

WILLOX v. MICHIGAN CENTRAL R. R. Co.—FALCONBRIDGE,  
C.J.K.B.—SEPT. 9.

*Railway—Fire Caused by Sparks from Engine—Negligence—Evidence—Finding of Fact of Trial Judge.*]—Action for damages for destruction of timber on the plaintiff's land by fire alleged to have originated in sparks from a locomotive engine of the defendants. The action was tried without a jury at St. Catharines. The learned Chief Justice, in a brief written judgment, said that the plaintiff had failed to prove that the damage to his property was caused by a fire started by a railway locomotive of which the defendants were making use. This conclusion did not turn upon the demeanour of witnesses, and it was open to an appellate tribunal to take a different view of the evidence, as in *Beal v. Michigan Central R.R. Co.* (1909), 19 O.L.R. 502. Action dismissed with costs. Gideon Grant and H. F. Upper, for the plaintiff. S. S. Mills, for the defendants.

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STIRTON v. DYER—MIDDLETON, J.—SEPT. 9.

*Costs—Partnership Action—Incidence of Costs—Contribution—Interlocutory Costs—Trustee—Misconduct—Parties.*]—Motion by the plaintiff for judgment on a Master's report in a partnership action. See *Stirton v. Dyer* (1916), 10 O.W.N. 393. The motion was heard in the Weekly Court at Toronto. MIDDLETON, J., in a brief written judgment, said that, having regard to the nature of the action and the result of the litigation and the issues involved, he did not think he should make a general award of costs in the plaintiff's favour, nor direct contribution. Any principle of apportionment by the taxing officer would be difficult to work out. Judgment should be entered in the plaintiff's favour, for the amount agreed upon, as against the defendant Dyer, with costs fixed at \$350. If, as was said in an affidavit filed, Dyer had any costs payable to him under any interlocutory order, such costs should be deducted from the amount fixed or credited on the judgment when taxed. As to the defendant Coles, misconduct as a trustee in refusing to account before action had been found by the Master. That defendant should not receive costs, nor should costs be awarded against him. Had he accounted before action, he could have paid the money in his hands into Court, and he need not have been a party to the controversy between Stirton and Dyer. R. G. Fisher, for the plaintiff. Sir George Gibbons, K.C., for the defendant Dyer. E. C. Cattnach, for the defendant Coles.