

ment upon the evidence already given and such further evidence, if any, as any party may adduce upon the reference"—but neither party saw fit to have this direction inserted in the formal judgment.

In the *McGrath Case* it was directed the costs of the first trial, of the appeal and of the new trial to be in the discretion of the Judge or Referee before whom such new trial should be had.

The four cases come on again before Hon. Mr. Justice Teetzel and also the fifth case, *McMillan v. Pearce*. In the *McMillan Case* the learned Judge found cause of action proven, and having assessed the damages at \$80, he directed judgment to be entered for the plaintiff for \$80 and High Court costs. In the *McGrath Case*, 19 O. W. R. 904, he found damages \$110 in respect of lot 8, and directed judgment to be entered for \$110 and High Court costs, including the costs of appeal less the sum by which the costs have been increased by reason of the claim for lots 9 and 10. The learned Judge found damages to the amount of \$150 in respect of part of lot 9, and \$225 in respect of lot 10, and the rest of lot 9; but did not consider that the plaintiff was entitled to these sums.

In the three first named cases, an assessment of damages was had and the Judge found \$600, \$250 and \$65—and directed judgment for these sums with costs on the High Court scale.

The defendants now appealed to Divisional Court composed of HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B., HON. MR. JUSTICE BRITTON and HON. MR. JUSTICE RIDDELL.

E. F. B. Johnston, K.C., and E. G. Porter, K.C., for the defendants.

H. E. Rose, K.C., for the plaintiffs.

HON. MR. JUSTICE RIDDELL:—A difficulty arose at the outset of the argument as to the propriety of the appeal being brought before a Divisional Court, and it was agreed by all parties that the findings, etc., of Hon. Mr. Justice Teetzel should be considered findings, etc., made by him after a trial, that the matters might be heard by the Divisional Court and the proper judgment entered up as a Divisional Court judgment.