dence to the jury coupled with a caution which the practice and authority of the most eminent Judges in England recommend."

In the case at bar there was no jury, and the learned Judge appears to have been alive to the law and practice, and there is no reason to doubt that he properly charged himself when forming his conclusions upon the evidence, and, there being no question of his power, there appears also to be no objection to his practice.

The first question should, therefore, be answered in the affirmative, and, that being so, the second question calls for no answer, but, if it did, I should not be inclined to disagree with the learned Judge.

The conviction should be sustained.

MEREDITH, J.A., gave reasons in writing for the same conclusion.

GARROW, MACLAREN, and MAGEE, JJ.A., concurred.

HIGH COURT OF JUSTICE.

DIVISIONAL COURT. MAY 5TH, 1910.

McMULKIN v. COUNTY OF OXFORD.

Municipal Corporations—Repair of Highway — Construction of Watercourses—Flooding Land Adjoining Highway — Absence of By-law—Diverting Water from Highway not under Control of Corporation—Right of Action — Remedy by Arbitration — Damages—Injury to Land.

Appeal by the defendants from the judgment of TEETZEL, J., ante 410, in favour of the plaintiff for the recovery of $450 damages for diverting water from highways upon the plaintiff's farm.

The appeal was heard by BOYD, C., MAGEE and LATCHFORD, JJ.

W. M. Douglas, K.C., and G. F. Mahon, for the defendants.

J. B. Clarke, K.C., for the plaintiff.

BOYD, C.:—I do not find the cases in a harmonious condition. Upon the findings of fact, that more surface water is discharged on the plaintiff's land than would naturally flow upon it before the work was undertaken, and that this excess of water gives ground for an action as distinguished from a right to compensation by way of arbitration, I think there are authorities binding on us which support the judgment. At the same time I am inclined to