

## REPORTS AND NOTES OF CASES.

## Province of Ontario.

## HIGH COURT OF JUSTICE.

Divisional Court--K.B.]

[Oct. 23.

BEAL v. MICHIGAN CENTRAL R.R. Co.

*Railway—Fire from engine—Evidence—Right of appellate court to reverse trial judge's finding when evidence misapprehended.*

Appeal by defendant from the judgment of MACMAHON, J., who tried the case without a jury, and gave a verdict for plaintiff for \$500. The action was for damages to premises destroyed by fire from engine.

*Held*, that upon an appeal from the finding of a judge who tries a case without a jury the court appealed to does not and cannot abdicate its right and its duty to consider the evidence. Subject to the exception referred to in *Lodge v. Wednesbury Corporation* (1908) A.C. 323, and *Coghlan v. Cumberland* (1908) 1 Ch. 704, if it appears from the reasons given by the trial judge that he has misapprehended the effect of the evidence or failed to consider a material part of it, and that the evidence leads the appellate court to a clear conclusion that the findings of the trial judge were erroneous, it is the plain duty of the court to reverse these findings.

Reference was made to *Connacher v. City of Toronto*, Mar. 4, 1893, Q.B. Divisional Court, unreported; *Campbell v. Acton Tannery Co.*, June 29, 1900, Court of Appeal, unreported; *Shields v. City of Toronto* (1897), Court of Appeal, unreported.

*Saunders, K.C.*, and *W. B. Kingsmill*, for defendants. *G. G. McPherson, K.C.*, for plaintiff.

Meredith, C.J.C.P.]

[Oct. 28.

RE ST. PATRICK'S MARKET.

*Deed—Construction—Condition subsequent—Contingent reversionary interest.*

Appeal from the Referee under Quieting Titles Act. The land in question was conveyed by D'Arcy Boulton to the City of