

REPORTS AND NOTES OF CASES.

Province of Ontario.

HIGH COURT OF JUSTICE.

Teetzel, J.]

[July 10.]

FRASER v. PERE MARQUETTE P.W. CO.

Crops—Destruction by fire—Railway Act, s. 298—Liability of railway company—Marsh hay baled and piled at siding.

This was an action for damages for the destruction of hay which was baled and piled at the railway siding awaiting shipment. The plaintiff owned a quantity of marsh lands, from which he annually cut grass commonly called marsh hay. It is also called sea grass, and, besides being used for fodder, it is used for the manufacture of mattresses. A large quantity of it had been cut and baled and at time of destruction was piled by siding used by defendant in connection with the Wallaceburg Sugar Refinery, awaiting shipment.

Two questions arise for determination: (1) Is the material covered by the word "crops" in s. 298 of the Railway Act of Canada? (2) If it was a crop while in the field, would it lose that character when baled and delivered for shipment?

TEETZEL, J.:—"In the Standard dictionary the word crop is defined as 'plants or grains collectively that are cultivated for consumption; also the soil product of a particular kind, place or season; anything gathered and stored at a proper time and for future use.' The grass in question is perennial and besides the work of cutting and gathering, the only work bestowed upon the ground consists in burning off, every spring, the old growth of the former grass. If the material had been destroyed in the field whether before or after it had been cut it would be well within the above definition of the word crop. Mr. Stone, solicitor for the defendants, presented a very ingenious argument, that, conceding the above to be the correct view, when the material was removed from the farm and piled along defendants' tracks for shipment, it lost the character of 'crop' within the contemplation of s. 298, and became merchandise.

"I am unable to adopt this argument. The Legislature has not