it. It may be that the plaintiffs may be able to establish a lien for a part, if not the whole, of their claim, or . . . they may fail altogether. But all this is to be determined at a trial upon a proper record. At present there is nothing before the Court but a statement of claim. The plaintiffs should be left at liberty to prove, if they can, the allegations thereof, or any proper amendment in case the statement of defence or further investigation should demonstrate a necessity for it.

The order of the Divisional Court should be affirmed with costs.

MEREDITH, J.A., was of opinion, for reasons stated in writing, that the Act does apply to such buildings as those in question, and, therefore, that the County Court Judge's ruling was rightly overruled, and the case properly remitted to him. The appeal should, therefore, be dismissed.

GARROW, MACLAREN, and MAGEE, JJ.A., agreed in the result.

JUNE 15TH, 1910.

RICE v. TORONTO R. W. CO.

Street Railways—Injury to Person Crossing Track—Crossing behind Car without Looking — Negligence — Excessive Speed—Contributory Negligence—Findings of Jury—New Trial.

Appeal by the defendants from the judgment of SUTHERLAND, J., upon the findings of a jury, in favour of the plaintiffs, the executors of J. J. Rice, deceased, in an action to recover damages for his death, caused by a collision with one of the defendants' street cars, on the 8th December, 1908, on Gerrard street, in the city of Toronto.

The deceased had gone out intending to visit the Toronto General Hospital, which he was accustomed to do, and had alighted from a car on the southerly track proceeding easterly, when, attempting to cross the northerly track, he was struck by a westbound car upon that track.

The jury found that the defendants were guilty of negligence, consisting in a too high rate of speed at that place; that the deceased was not guilty of negligence; and they assessed the damages at $1,500. The question was also asked: "Notwithstanding the