

accident, were the remains of the hardened track which had been travelled upon during the winter, which had melted more slowly than the ice and snow on each side of the track; and that, having regard to the expenditure which would have been required to remove them, the appellant corporation was not guilty of a breach of its statutory duty on account of its not having removed them.

There was a direct conflict between the testimony of the plaintiff and his hired man, on the one side, and that of two men called as witnesses for the appellant corporation, on the other side; and the County Court Judge accepted the plaintiff's version of what occurred.

The finding upon the fact to be determined depended upon the credibility of the witnesses; and the learned Judge, who saw and heard them, had given full credit to the testimony of the plaintiff.

Upon the whole, the Court was of opinion that the judgment was right and should be affirmed.

In this view, it was unnecessary to consider what would have been the result if the theory as to the character and extent of the ridges had been as contended by counsel for the appellant corporation.

Appeal dismissed with costs.

FIRST DIVISIONAL COURT.

FEBRUARY 21ST, 1916.

***STERLING LUMBER CO. v. JONES.**

Mechanics' Liens—Claim against Purchaser of Unfinished Building—Absence of Actual Notice of Lien or Claim—Priority of Registration of Conveyance to Purchaser—Application of Registry Laws—Mechanics and Wage-Earners Lien Act, R.S.O. 1914 ch. 140, secs. 2 (c), 21—"Owner."

Appeal by the plaintiffs from the judgment of an Official Referee refusing the plaintiffs' claim for enforcement of their lien for work and materials against the owners of land, under the Mechanics and Wage-Earners Lien Act, R.S.O. 1914 ch. 140.

The appeal was heard by MEREDITH, C.J.O., GARROW, MACLAREN, MAGEE, and HODGINS, J.J.A.

D. Inglis Grant, for the appellants.

R. G. Agnew, for the defendants the owners, respondents.

The judgment of the Court was delivered by HODGINS, J.A.,