Upon the appeal of Rastall & Co., who were entitled as lien-holders to assert the contractor's rights, it was impossible to disturb the finding of the Referee that the amount claimed as an extra was really part of the contract price.

Both appeals dismissed with costs.

OCTOBER 12TH, 1915.

FITZGERALD v. CANADA CEMENT CO.

Easement—Private Way—Deed—Establishment of Locus—Defined Way—Interference—Damages—Leave to Supply New Way—Judgment—Reference—Way of Necessity.

Appeal by the defendant company from the judgment of FALCONBRIDGE, C.J.K.B., 7 O.W.N. 321.

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

Strachan Johnston, K.C., for the appellant company.

W. C. Mikel, K.C., for the plaintiff, respondent.

MEREDITH, C.J.O., delivering the judgment of the Court, said that the action was brought to recover damages for the interference by the appellant company with a right of way which the respondent claimed over part of the appellant company's farm, which the respondent and another conveyed to the predecessor in title of the appellant company, in 1890; the grantors reserving to themselves, their heirs and assigns, "the right . . . to pass over for cattle, horses and other domestic farm animals for water going to and from Dry Lake."

There had been for many years a well-defined way across the appellant company's land, used for the purpose of the respondent's cattle going to Dry Lake for water, and the same way continued to be used after the conveyance.

The way which the respondent claimed had been rendered useless owing to certain mining operations of the appellant company.

The trial Judge awarded the plaintiff $1,500 damages for the loss of the right of way, subject to a reference to ascertain whether the appellant company could give a right of way to a proper watering place, and, if so, to define the way, and ascertain the damages caused by withholding it, etc.