

I am of opinion that the appeal should be dismissed. The claimant has produced no evidence but his own in support of his mortgage, although that of his father was available, and his own account of the matter under the circumstances appears to me unsatisfactory. Apart from this, however, I think it is plain that the claimant's position as a mortgagee was never changed; that his mortgage, not having been renewed in January, 1900, had expired as against creditors before the seizure by the sheriff, and that his title to the goods in question had not been completed as against creditors by any actual and continued change of possession before the seizure, for he and his father still occupied the premises upon which the goods had always remained and upon which they continued to remain until the seizure by the sheriff.

FALCONBRIDGE, C.J.—I concur.

BRITTON, J.—With the greatest respect for the decision of my learned brother Street, whose opinion I have had the privilege of perusing, I regret that I am not able to agree.

I think the judgment of the learned County Court Judge is wrong and should be reversed, and that judgment should be entered for the claimant.

Appeal dismissed with costs; BRITTON, J., diss.

C. R. Fitch, Stouffville, solicitor for plaintiff.

James McCullough, Stouffville, solicitor for defendant.

JUNE 5TH, 1902.

DIVISIONAL COURT.

PATTISON V. TOWNSHIP OF WAINFLEET.

*Way—Non-Repair — Municipal Corporation — Negligence — Bridge
— "Traction Engine"—R. S. O. ch. 242.*

Appeal by defendants from judgment of County Court of Welland, in favour of plaintiff in an action for damages for personal injuries to plaintiff and for injury to an engine attached to a grain threshing machine which plaintiff was driving over a bridge in the township of Wainfleet, when the bridge gave way and the engine was thrown down into the bed of a creek below. The trial Judge found that the bridge was out of repair and unsound, to the knowledge of defendants, for a considerable time before the damage complained of; and that the engine, not being a traction engine within the ordinary meaning of that term, R. S. O. 1897 ch. 242, pleaded by defendants, did not apply, so as to relieve them