

OCTOBER 12TH, 1915.

## \*HILL v. STOREY.

*Mechanics' Liens—Material-men—Conditional Sale—Goods Subject to, Affixed to Realty—Right of Vendors to Benefit of Conditional Sale Contract and also to Mechanics' Lien—Conditional Sales Act, R.S.O. 1914 ch. 136, sec. 9—Mechanics and Wage-Earners Lien Act, R.S.O. 1914 ch. 140, sec. 16—Claim of Contractor—Assertion by Lien-holder—Extras—Finding of Fact—Appeal.*

Appeals by the Toronto Furnace and Crematory Company, claimants, and Rastall & Co., lien-holders, from the judgment of an Official Referee, in a proceeding for the enforcement of mechanics' liens.

The appeals were heard by MEREDITH, C.J.O., GARROW, MACLAREN, MAGEE, and HODGINS, J.J.A.

J. F. Boland, for the appellants the Toronto Furnace and Crematory Company.

M. Grant, for the appellants Rastall & Co.

J. M. Ferguson, for the defendant Storey, the owner.

HODGINS, J.A., delivering the judgment of the Court, dealt first with the claim of the Toronto Furnace and Crematory Company to a lien under the Mechanics and Wage-Earners Lien Act, R.S.O. 1914 ch. 140. These claimants had supplied furnaces for the houses erected on the land sought to be charged, but the title to the furnaces remained, as was found by the Referee, in the claimants until payment of the price, by virtue of the Conditional Sales Act, R.S.O. 1914 ch. 136. The rights of the parties must be governed by sec. 9 of that Act, which provides that, where the goods have been affixed to realty, they shall remain subject to the rights of the seller. But for that section, the provisions of the Mechanics and Wage-Earners Lien Act, sec. 16, would apply. These two provisions make a sharp contrast between a chattel which is the subject of a conditional sale, whereby the property does not pass till payment, and the case of material supplied, on which the vendor is given a lien until it is affixed to the realty.

Insisting as the claimants did upon their conditional sale contract, they could not rank as lien-holders and compete with others who had no right against the furnaces; and their appeal should be dismissed with costs.