

Glyn Osler, for the plaintiff.
H. W. Mickle, for the defendants.

FALCONBRIDGE, C.J.K.B.:—The defendants appeared in the Yukon action. An application for final judgment was made to Mr. Justice Macaulay under sec. 102 of the Judicature Ordinance.

The defendants filed an affidavit of one A. B. Craig, and counsel appeared for them and shewed cause to the motion. The Judge made the order asked for, and judgment was signed in pursuance thereof.

A great deal of evidence was taken in England on commission, and some viva voce testimony was given before me.

The case, as thus presented, falls within "the combination of the two rules," as enunciated by Mr. Justice Garrow, in *Jacobs v. Beaver* (1908), 17 O.L.R. at p. 506: "The fraud relied on must be something collateral or extraneous, and not merely the fraud which is imputed from alleged false statements made at the trial, which were met by counter-statements by the other side, and the whole adjudicated upon by the Court, and so passed on into the limbo of estoppel by the judgment."

I am not sitting in appeal from or by way of rehearing of the Yukon judgment.

The defence, therefore, fails. The question of amendment of the statement of defence, by specifically pleading fraud in procuring the judgment, is referred to any Court which may sit in appeal from this judgment.

Judgment for the plaintiff for \$4,918, with interest from the 2nd September, 1909, and costs.

BOYD, C.

SEPTEMBER 27TH, 1911.

*CHANDLER & MASSEY LIMITED v. IRISH.

Company—Illegal Disposition of Assets—Acquisition by Shareholder of Shares of another Company—Payment by Means of Assets of Company—Breach of Trust—Right of Liquidator—Following Trust Funds.

Action in the name of a company in liquidation, brought by the liquidator, to recover certain assets of the company alleged to have been illegally transferred to the defendant.

*To be reported in the Ontario Law Reports.