

SUTHERLAND, J.

DECEMBER 15TH, 1917.

## STOTHERS v. TORONTO GENERAL TRUSTS CORPORATION.

*Railway—Trustee for Bondholders and for Municipalities Guaranteeing Payment of Bonds—Account—Payments Made by Trustee under Engineer's Certificates—Res Adjudicata—Bona Fides—Interest—Delivery of Unguaranteed Bonds—Costs.*

Action by Thomas Stothers and the Municipal Corporations of the Towns of Goderich and Kincardine and the Townships of Ashfield and Huron against the Toronto General Trusts Corporation for an account of all moneys received and paid out by the defendant corporation as trustee for bondholders and municipalities in connection with the West Shore Railway and for payment to the plaintiffs of any and all moneys improperly paid out by the defendant corporation and for interest and for delivery to the plaintiffs and cancellation of the bonds of the railway company deposited with the defendant corporation by one John W. Moyes and of any bonds of the railway company in its possession or control.

The action was tried without a jury at Toronto.

E. D. Armour, K.C., William Proudfoot, K.C., and C. Garrow, for the plaintiffs.

I. F. Hellmuth, K.C., and E. G. Long, for the defendant corporation.

SUTHERLAND, J., in a written judgment, after stating the facts and referring to many agreements, by-laws, and statutes, and to the order of Middleton, J., in *Re Ontario and West Shore R.W. Co.* (1911), 2 O.W.N. 1041, and to the correspondence between the parties and their solicitors, said that, in so far as the matter of most importance in this action was concerned, namely, the payments made by the defendant corporation under the authority of the engineer's certificates, what he was in effect asked to do was to hear and determine an appeal from the order of Middleton, J. This was not open to the learned Judge; he was compelled to assume that the order was rightly made, and that the matter of the payments was *res adjudicata*.

Upon the evidence, it would be impossible to find the defendant corporation guilty of any wilful breach of the trusts imposed upon it by the terms of the trust-deed. Anything done by the corpora-