

From this report there was an appeal, upon which, *inter alia*, a reference back was directed for the purpose of ascertaining whether the assignment under which the Bank of Ottawa claimed was limited to the September and October estimates.

Upon the reference back the Master found that the assignment was so limited, and he reduced the amount from \$1,824.77 to \$505.52 by deducting from \$1,986.77, which he found to be the amount of the September and October estimates, \$1,481.25, the aggregate amount of the claims of the assignees, which, according to the Master's finding, were entitled to priority over the bank's claim.

The appeal was from this report.

F. E. Hodgins, K.C., for appellants.

W. E. Middleton and H. L. Dunn, for the respondents.

MEREDITH, C.J.—The first ground taken by the appellants is, that the Master should not have found that the October estimates amounted to \$1,986.77, as he did find, but to that sum with the percentages retained by the railway company added.

The assignment to the appellants was made by Bunyan, dated 11th November, 1903, in these words: "I hereby assign to the Bank of Ottawa all moneys due to me under my contracts for the year 1903 with the Canadian Pacific Railway Company as shewn by the estimates hereto annexed."

Bunyan's contract with the railway company is dated 3rd June, 1903, and is for the doing of work at scheduled prices on different sections of their line.

Paragraph 18 of the contract is as follows: "Approximate estimates of the work done under this contract are to be made at the end of each calendar month by the engineer, and payments thereon shall be made by the railway company to the contractor on or about the 20th day of the next ensuing month, less all previous payments and less 10 per cent. of the amount of each and every such monthly estimate, which last mentioned percentage may be retained by the railway company as an additional security for the performance of this contract by the contractor until the same has been completely performed."

And paragraph 19 provides as follows: "When, in the opinion of the chief engineer of the railway company, this agreement has been completely performed within the time herein provided, subject to the foregoing provision as to extension, he shall certify the same in writing under his hand,