

the evidence in a written judgment, BRITTON, J., said that he was of opinion that the defendants had not, beyond reasonable doubt, made out a case of fraud against the plaintiff. The learned Judge said that he was not aware of any case where relief had been given for alleged fraud where there was so much inquiry, so much of actual examination and inspection, and so much delay and apparent satisfaction, as in this case. The defendants failed in their defence and failed to establish their counterclaim. Judgment for the plaintiff for possession of the farm with costs and dismissing the counterclaim with costs. F. S. Mearns, for the plaintiff. D. B. Simpson, K.C., for the defendants.

RE CANADIAN MINERAL RUBBER CO. LIMITED—SUTHERLAND, J.
—JULY 21.

Contract—Winding-up of Contracting Company—Moneys Payable to Company in respect of Contract—Assignment to Bank—Claims of Wage-Earners and Material-men—Priority—Construction of Contract.—An appeal by the Canadian Bank of Commerce from a decision of the Master in Ordinary, in the course of a reference for the winding-up of the company, allowing a claim made by wage-earners and material-men in respect of work and material supplied to the company, under a contract between the company and a municipal corporation in British Columbia. The contract was assigned by the company to the Canadian Bank of Commerce, the appellants. The Master's finding was, that the several claimants were entitled to be paid in full out of the fund held by or available to the municipal corporation for settlement of the claim of the company under the contract. If the municipal corporation paid over the whole price of the work and materials to the company, the Master found, the claimants would be entitled as creditors of the company to preferential payment out of the fund. The appeal was heard in the Weekly Court at Toronto. SUTHERLAND, J., in a written judgment, said that the question for him was merely as to the construction of the contract; and he was of opinion, agreeing with the Master, that it was competent for the municipal corporation to insist as against the contractor, the company, and consequently as against the company's assignees, the appellants, on the claims being paid, or adequate proof of payment furnished, before the company or the appellants could claim the balance of the moneys payable under the contract. If there was any discrepancy between two clauses of the contract, the earlier one would probably govern: Norton on Deeds, 2nd ed. (1906), p. 80. Appeal dismissed with costs. Glyn Osler, for the appellants. W. B. Raymond, for the claimants, respondents.