

# The Ontario Weekly Notes

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No. 43.

COURT OF APPEAL.

JULY 13TH, 1911.

\*MANUFACTURERS' LUMBER CO. v. PIGEON.

*Receiver—Equitable Execution—Fund not Presently Payable—  
Contract.*

An appeal by the plaintiffs from the order of a Divisional Court, 22 O.L.R. 378, ante 341, reversing the order of MIDDLETON, J., 22 O.L.R. 36, ante 79, by which a receiver was appointed, by way of equitable execution of the plaintiffs' judgment, to reach a fund in the hands of the Corporation of the City of Stratford.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MAGEE, J.J.A., and SUTHERLAND, J.

R. T. Harding, for the plaintiffs.

R. S. Robertson, for the defendant.

The judgment of the Court was delivered by MACLAREN, J.A.:— . . . The defendant had entered into a contract with the Corporation of the City of Stratford to pave a certain street and maintain it for 10 years. On the completion of the paving, he was to be paid 90 per cent. of the contract price, and the remaining 10 per cent. was to be retained by the corporation until the expiration of the 10 years, with the right to pay out of the same for any repairs not made by the defendant, interest being allowed him meantime on the balance in the hands of the corporation. The contract provides that at the end of the 10 years a "final certificate for the balance due (if any) shall be issued and paid to the contractor."

The whole question is, whether the said 10 per cent. is such a sum as is subject to equitable execution, and whether a receiver

\*To be reported in the Ontario Law Reports.