

CONSTRUCTION AND PAVING CO. LIMITED V. CITY OF TORONTO—
BRITTON, J.—JUNE 19.

Contract—Action for Price of Work and Materials—Non-Payment by Contractors of Wages of Workmen—Special Clauses of Contract with Municipal Corporation—Counterclaim—Recovery of Wages Unpaid—Condition Precedent—Payment.—Action to recover \$1,043.63 for repair work and materials provided upon certain city streets. The defendants admitted the amount claimed as correct; but counterclaimed for an equal amount, relying upon the provisions of a contract between them and the plaintiffs. The action and counterclaim were tried without a jury at Toronto. BRITTON, J., in a written opinion, set out the provisions of the contract relied upon by the defendants. In disposing of the case, he confined himself to the defendants' right under the contract to counterclaim for the short payment of wages by the plaintiffs, before the defendants had themselves made up to the men the deficiency alleged. He was forced to the conclusion that payment by the defendants was a condition precedent to their recovering. The contract practically was that upon payment by the defendants they might charge against the plaintiffs (the contractors) the amount so paid. Judgment for the plaintiffs for \$1,043.63 with costs; and counterclaim dismissed with costs, but without prejudice to the defendants, after payment, recovering from the plaintiffs, if so entitled, and without prejudice to the plaintiffs resisting a claim upon any ground open to them other than what is now decided. W. G. Thurston, K.C., for the plaintiffs. Irving S. Fairty, for the defendants.

BRADY V. RANNEY—SUTHERLAND, J.—JUNE 19.

Husband and Wife—Agency of Husband for Wife—Findings of Master on Reference—Variation—Costs.—Motion by the plaintiff for judgment on further directions and costs. The plaintiff asked for judgment against both defendants (husband and wife) for \$724, a balance found due by the report of a Local Master, with interest from the date of the report and costs of the action and references. Upon this motion, pursuant to leave reserved, the defendant Bertha Ranney raised the question of her liability. The motion was heard in the Weekly Court at Toronto. SUTHERLAND, J., in a written opinion, said that the evidence justified the finding of the Master that the husband was the licensee of his wife