

CANADA / JUDGMENT

McDougall v. Cameron

(1892) 21 SCR 379

COURT

Supreme Court of Canada

DECIDED

10 October 1892

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McDougall v. Cameron Collection Supreme Court Judgments Date 1892-10-10 Report

(1892) 21 SCR 379 Judges Strong, Samuel Henry; Taschereau, Henri-Elzéar; Gwynne, John Wellington; Patterson, Christopher Salmon On appeal from Ontario Subjects Professional law Decision Content Supreme Court of Canada McDougall v. Cameron, (1892) 21 S.C.R. 379 Date: 1892-10-10 John McDougall and Robert Cowans and Emily A. Bickford and Others, Executors of Edward Oscar Bickford (Deceased) (Defendants) Appellants; and Hector Cameron and Robert Swanton Appelbe (Plaintiffs) Respondents. Emily A. Bickford and Others Executors of Edward Oscar Bickford Deceased (Defendants) Appellants; and Hector Cameron and Robert Swanton Appelbe (Plaintiffs) Respondents. 1892: June 17; 1892: October 10. Present: Strong, Taschereau, Gwynne and Patterson JJ. (Sir W.J. Ritchie C.J. was present at the argument but died before judgment was delivered.) ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO. Solicitors—Action on bill of costs—Set-off—Mutual debts—Special services—Retainer—Appeal—Jurisdiction. In an action by a firm of attorneys for costs due from clients the defendants were not allowed to set off against the plaintiffs' claim a sum paid by one of them to one of the solicitors for special services to be rendered by him there being no mutuality and the payment not being for the general services covered by the retainer to the firm. Held, per Taschereau J.—A decision of the Court of Appeal affirming the judgment of the Divisional Court which refused to allow such set-off is not a final judgment from which an appeal will lie to the Supreme Court of Canada. Strong J. also expressed doubt as to the jurisdiction. APPEAL from a decision of the Court of Appeal for Ontario affirming the judgment of the Divisional Court by which the ruling of the master allowing the defendants' set-off was overruled. The plaintiffs, Cameron & Appelbe, brought an action against the defendants, McDougall, Cowans and Bickford, and another action against Bickford alone, for bills of costs due from the respective defendants for services rendered by the plaintiffs as solicitors, attorneys and counsel, and a reference was made to a taxing officer for taxation of said bills. On such taxation evidence was taken before the taxing officer, who, in his report, found as follows: — "I further find that the plaintiffs are bound to give credit to the, defendant, Edward Oscar Bickford, for the sum of \$4,000 received by the plaintiff, Hector Cameron, from the defendant, John McDougall, as set forth in the evidence of the said plaintiff, Hector

Cameron, taken before me.” By the evidence referred to it appeared that the \$4,000 was paid to Cameron under the following circumstances. The firm of solicitors were acting for all the defendants in negotiations for the sale of the Grand Junction Railway to the Grand Trunk Railway Company and the defendants having quarrelled Bickford declared he would not sell. McDougall thereupon said to Cameron that if he could get the agreement signed by Bickford and by Hickson, manager of the Grand Trunk, he, McDougall, would pay Cameron \$4,000. Cameron performed the service of getting the agreement signed and received the \$4,000, but it never went into the funds or accounts of his firm. The plaintiffs appealed from the report of the taxing officer to the Divisional Court where the appeal was allowed and the defendants appealed to the Court of Appeal, pending which appeal Bickford made a settlement with Cameron by which he abandoned his right to the said sum of \$4,000. The other defendants continued the appeal on their own behalf, and the Court of Appeal affirmed the judgment of the Divisional Court. The defendants then appealed to this court. Riddell and Nesbitt for the appellants referred, on the question of the right to appeal which was raised by the court, to *O’Donohoe v. Beatty*[1], and on the merits to *Cooper v. Ewart*[2]; *Russel v. Buchanan*[3]. Ritchie Q.C. for the respondents. STRONG J. I have great doubts as to the jurisdiction of the court to entertain this appeal, but assuming that there is jurisdiction it appears to me that the judgment of the majority of the Court of Appeal was perfectly right and must be sustained for the reasons given by them. The set off of the \$4,000 paid by McDougall to Mr. Cameron was originally claimed, not by McDougall but by Bickford. Bickford afterwards abandoned all claim to it but the taxing officer having allowed the credit insisted on McDougall supported it, and now appeals in order to have it allowed to him. In the first place McDougall seeks to set off in this action, brought to recover a debt for solicitors’ costs alleged to be due to Messrs. Cameron and Appelbe jointly, a separate debt which he claims to be due to him from Cameron alone. Unless we are to apply different principles as regards the law of set-off in an action by solicitors against a client to recover costs, a proposition for which no authority has been or could be quoted, it is very plain that the ordinary rule that a debtor cannot, when sued by joint creditors, set off a debt due to him by one of them, in other words, the rule that mutuality is of the essence of set off, must be conclusive against the appellants’ contention. Upon that ground alone the appeal must be dismissed. I am of opinion, however, that the additional reason assigned by Mr. Justice Osler in his judgment, namely, that this was not a payment to Cameron on account of professional services generally, but a specific payment for a specific service rendered by him to McDougall, not as a partner in the firm of McDougall, Bickford & Cowans, but to him personally, in procuring the signature of the agreement by Mr. Hickson and Mr. Bickford, is also conclusive. McDougall has made no case showing that he is entitled to recover back the payment and could not on the facts have made any such case. Whether Bickford had any equity which he might have asserted in an action against Cameron in respect of this payment is a matter which we need not inquire into as he abandoned all claim to such relief, and as, moreover, such an equity would not in any case be the proper subject of inquiry in this action as a set-off or otherwise. Upon both grounds the decision of the

Court of Appeal must be upheld and this appeal dismissed with costs. TASCHEREAU J.—
The objection taken by the respondent against this appeal should, in my opinion, prevail.
This is not an appeal from a final judgment. I would quash, no costs. GWYNNE and
PATTERSON JJ. concurred in the judgment of Mr. Justice Strong for dismissing the appeal.
Appeal dismissed with costs. Solicitors for appellants McDougall & Cowans: Riddell,
Armstrong & Nesbitt. Solicitors for appellants executors of E.O. Bickford: Blake, Lash &
Cassels. Solicitors for respondents: Cameron & Spencer.

[1] 19 Can. S.C.R. 356.

[2] 2 Phil. 362.

[3] 9 Sim. 167.

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Prepared on 26 October 2026 · Esheria