

*Judgement of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Bickford
v. Cameron from the Court of Appeal for
Ontario, Canada; delivered March 2nd, 1886.*

Present :

THE LORD CHANCELLOR.

LORD BLACKBURN.

LORD HOBHOUSE.

SIR RICHARD COUCH.

THIS is an appeal from a Judgement of the Court of Appeal for the Province of Ontario, reversing a Judgement of the Court of Chancery of that Province.

The action was brought by Mr. Cameron, the Respondent, to obtain against Mr. Bickford, the Appellant, an account of the profits which had been made in certain enterprises which it was alleged had been entered upon on joint account. The Defendant in the suit, Mr. Bickford, asserted that no contract had been made to share the profits upon these enterprises; and he also asserted that so far as regarded the original enterprise, which had undoubtedly been entered into between the parties, the whole rights of the Plaintiff in the suit were determined by a payment which had been made to him by Mr. Bickford in June and the succeeding months of 1878 in settlement of all claims between them. In the Court below Mr. Justice Proudfoot decided for the Defendant on the ground that he had made out the defence that such a settlement had been arrived at. In the Court of Appeal the two Judges who heard the appeal came to a different conclusion, and reversed the Judgement, and granted to the Plaintiff the relief which he claimed upon the basis of his

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being entitled to an account as having an interest in the enterprise in which the Plaintiff in the suit asserted that he was jointly interested.

The original transaction between the parties was an agreement which was entered into in 1874, about the terms of which there can be no reasonable dispute. It was a joint adventure by Bickford and Cameron, under which they were to share the profits upon a transaction of the sale of iron to a person named Brooks in the proportions of 80 per cent. to Bickford and 20 per cent. to Cameron. Under that arrangement an agreement was entered into to which both Bickford and Cameron were parties, with Brooks, so that their credit became jointly pledged to him. Each was to give his services in the carrying out of the undertaking; and the profits of the adventure were to be shared in the proportions which have been described. It appears that owing to the insolvency of Brooks that contract was not carried out; and accordingly, in 1876, an agreement was entered into to which again both Bickford and Cameron were parties by which Bickford and Cameron sold to Pardee all their rights against the Grand Junction Railway Company, who had already become possessed of some of the iron in the shape of rails laid down on their railway, and all their rights against the estate of Brooks, for the sum of 75,000 dollars, and also sold to Pardee at an agreed price a small quantity of iron which was in stock at Belleville, which it had been intended to use for the purposes of the contract. Now, no doubt under that agreement, if these promissory notes which Pardee gave for the 75,000 dollars for the iron had been paid as soon as all the liabilities of the adventure for which Bickford alone was liable had been discharged, the surplus would have fallen to be divided between them in the proportion of 20 per cent.

to the one and 80 per cent to the other. But Pardee does not appear to have been in perfectly solvent circumstances; at all events he did not pay the notes at the times when they ought to have been paid, and the matter went on in that unsatisfactory condition for a considerable time, until it became obvious that unless Pardee paid the notes there would be no profit on the transaction, and Bickford might have been left to sustain a very severe loss by having to pay for the iron. It was obviously to the interest therefore of both parties that some kind of arrangement should be come to. Mr. Jeune no doubt is perfectly right in saying that it was to the interest of both that the line should be finished; but so far as this iron contract was concerned it does not appear to have mattered by whom it was finished.

Those being the circumstances, and such being the respective rights of the parties, a somewhat acrimonious correspondence passed between them in the latter part of 1877 with regard to their respective rights; and probably the Solicitor-General was correct in the view which he suggested, that each of the parties to the correspondence put his rights somewhat higher than the law would justify. But early in 1878 the parties seem to have adjusted their differences; and at that time, undoubtedly, it was in contemplation by Mr. Bickford to come to an arrangement with Mr. Pardee to put an end to the unsatisfactory condition of things which then existed, and to buy back not merely what had been sold to Pardee by Bickford and Cameron, but to enter with Pardee upon a much more extensive transaction.

The statement of Mr. Bickford is that whilst that negotiation was pending, and with a view to get free of the joint adventure and of all difficulties which might arise with regard to it,

he was desirous of coming to a settlement with Mr. Cameron, and that he did come to a settlement with Mr. Cameron by which Mr. Cameron agreed to receive, and was afterwards paid 4,000 dollars in discharge of his entire interest in the joint adventure. It seems certain that at that time some proposals were passing between Mr. Bickford and Mr. Cameron with a view to such a settlement, because although Mr. Cameron says that Mr. Bickford never did suggest jumping the accounts at 5,000 dollars, yet a letter was produced to him on which he was obliged to admit that such a proposal had been made in the December of 1877. Well, then, Mr. Cameron also admits that in the spring of 1878 there was a discussion with regard to fixing the amount at which his share of the profits upon the first transaction was to be taken; and their Lordships think that that is a matter of considerable importance when considering which of the two accounts—Bickford's or Cameron's—is to be accepted; because it is certainly important to see where they agree; and they agree that there was an interview which took place about the time spoken to by Bickford, and that at that interview there was a discussion with regard to fixing the amount of Cameron's interest. That this was so is further clear from the memorandum which was drawn up at that time by Cameron with a view obviously to make out his interest to be as great as he could. It is made out in two different ways: the one bringing out a result of 5,200 dollars, and the other a somewhat larger result arising from a different estimate of the original profit on the transaction. Therefore we have the parties obviously in communication with regard to fixing the amount. We have Cameron preparing a memorandum for the purpose of putting that amount as high as he could, and obviously using

arguments to show that it ought to be taken at as high a figure as he could put it at. Mr. Cameron says nothing further took place—that that was all—that he did not come to any agreement or any settlement. Mr. Bickford says that a settlement was come to at 4,000 dollars. Now it does not appear to their Lordships to be improbable on the face of it that such an agreement should be come to, because of the amount. Cameron no doubt placed his claim somewhat higher; Bickford, it would appear, placed it somewhat lower. Therefore it does not seem at all improbable that they should have arrived at the sum of 4,000 dollars with a view to settle accounts between them. It appears further to be probable that both parties might desire such an arrangement; because if Bickford was going into a new and very much larger transaction, it might well be that Cameron would desire to have a certain fixed sum down, and pocket it, as the result of the former transaction, rather than wait to see what was the result of this very much larger adventure. Besides that, he seems to have been at the time undoubtedly urging the payment to him by Mr. Bickford of money; and again he had a motive for coming to a friendly settlement with Mr. Bickford, if he (Mr. Bickford) desired it, because it was obvious that it would be advantageous to him not only to continue his professional relations with Mr. Bickford, but to receive the appointment which Mr. Bickford might influence, and did in fact afterwards influence, of solicitor to the line of railway. All these circumstances appear to their Lordships to point in the direction of the evidence given by Mr. Bickford. Further than this, some weight is to be attached to the endorsement upon the cheque, "This is 4,000 dollars," as pointing to some specific sum of 4,000 dollars having relation to some

transaction or other. That is wholly unexplained by the account given by Mr. Cameron. He says this 4,000 dollars was simply paid generally on account—apparently not on account of costs, but on account of the expected profits. But previous payments had been made to Mr. Cameron, and one does not see why the later payments alone should have been included, if it was to be summing up all sums paid on account. Obviously these were more than 4,000 dollars. Therefore the words “this is 4,000 dollars,” referring to that particular 4,000 dollars paid in the way pointed out in the course of the argument, seems to point to some individual transaction.

Then the two telegrams which were sent, and which are at page 184, also point in the same direction. The account given by Mr. Bickford is that he was not prepared absolutely to come to a settlement with Mr. Cameron, because it must be conditional on his being able to settle with Pardee. If he did not settle with Pardee their relations must remain as they were before. It was only in view of a new agreement with Pardee that he was willing to be a party to this settlement. Mr. Cameron leaves for England, and a telegram is sent to him:—“Pardee here offers to accept nearly my terms.” And again:—“No need you should stop for this; it may take till your return.” That supports, to some extent, the story told by Mr. Bickford of the arrangement come to in the earlier part of June 1878. Their Lordships, in examining the account given by Mr. Bickford of the transaction in his examination-in-chief and cross-examination, do not see any such discrepancy as to lead them to disbelieve the account given.

Then, the 4,000 dollars being so paid, the agreement is entered into by Bickford with Pardee and entered into in his own name alone.

Now it is quite true that at that time Mr. Cameron was absent from Canada; but still, considering that Mr. Cameron was a professional man, and that he had been so careful to put his previous arrangements into writing by the insertion of his name, one would have expected, if he had any continuing interest in this matter at all, to have found some document drawn up by him, or some letter written by him indicating that such was his view. But from that time onwards there is no document to be found, no claim made, and no letter written, which in any degree conflicts with the suggestion that matters as to the first adventure had been then settled between the parties. The only letter upon which reliance has been placed in argument, and upon which reliance was placed in the Court below, is a letter in the month of July 1880. It seems to have appeared to the learned Judges in the Court below that that letter was inconsistent with the alleged settlement; but their Lordships are unable to take that view. It appears to them that when that letter is considered in conjunction with the other letters written at that same time there is no such inconsistency, and that there may well have been a settlement, notwithstanding the terms of the letter of the 5th July 1880.

The learned Judge who tried the case, and who observed the demeanour of the witnesses, certainly saw, as between the two, no more reason to believe Mr. Cameron than Mr. Bickford in the accounts which they gave of the transaction. That is, putting the matter at the very lowest. He thought the probabilities of the case and the other facts, corroborated Mr. Bickford rather than Mr. Cameron. The Judges of the Court of Appeal took a contrary view; but upon a review of the whole of the circumstances their Lordships have come to the conclusion that the view taken by Mr. Justice Proudfoot was the correct one;

and in their judgment the alleged settlement is supported on the whole by the evidence in the case.

Their Lordships are clearly of opinion—as indeed both the Courts below appear to have been—that no agreement to share in the new adventure was established by Mr. Cameron. It appears to them to have been an entirely new enterprise entered upon after the agreement with Pardee in 1878, and that in that adventure Mr. Cameron had no interest at all as under any agreement by him to enter upon that adventure and take an interest in it. In the Court below the learned Judges appear to have considered—Mr. Justice Proudfoot certainly did—that even though no such agreement was made out, by reason of the fact of part of the profits, or possible profits, of the first adventure having been embarked by Mr. Bickford alone in the second adventure, there was some equity which gave Cameron, apart from agreement, a right to a share in the profits of the new adventure. In the view which their Lordships have taken, that the first adventure, and all the transactions and rights arising out of it, were settled by the payment of the 4,000 dollars under an arrangement which they find was come to in June 1878, it is not necessary for them to express an opinion with regard to the suggested equity; but they think it right to state that they are not prepared to express concurrence with the view taken by the learned Judges in the Court below that any such equity would arise under the circumstances.

Upon the whole, their Lordships will humbly advise Her Majesty that the appeal from Mr. Justice Proudfoot's decision should be dismissed with costs, and that the Respondent should pay the costs of this appeal.