

Burman sued Rosin for money due under a plumbing contract, and recovered judgment for \$95. Rosin, upon another contract, had a judgment against Burman for \$135. These contracts were both completed about March, 1915. On the 31st August, 1915, Burman assigned his claim against Rosin to one Kirkpatrick; and Kirkpatrick resisted Rosin's claim to set-off one demand pro tanto against the other.

G. T. Walsh, for Burman and Kirkpatrick, contended that there could not be a set-off to the prejudice of the assignee, because the transactions giving rise to the respective claims were in no way connected, and no right or claim to set off had been asserted before the assignment.

W. M. Mogan, for Rosin.

MIDDLETON, J., said that the claim to set off was entitled to prevail. The debts were both due and payable long before the assignment; both claims were disputed and were in litigation, and the exact amount due upon either had not been in any way ascertained; but this did not prevent these claims being mutual debts and as such liable to be set off: Judicature Act, R.S.O. 1914 ch. 56, sec. 126. The right of an assignee of a chose in action is subject to all equities which would have been entitled to priority over the right of the assignee under the law previously in force: Conveyancing and Law of Property Act, R.S.O. 1914 ch. 109, sec. 49. The right to set off mutual debts when there would have been set-off in a common law Court was such an equity—though it might well be regarded as a defence to the claim, a defence which would wipe out the claim and cause it to cease to exist as effectually as a release or payment: *Jeffries v. Agra and Masterman's Bank* (1866), L.R. 2 Eq. 674, 680.

Set-off was allowed at law if the debt was due at the date of the writ, even though not payable till a future date—*debitum in presenti, solvendum in futuro*: *Christie v. Taunton Delmard Lane and Co.*, [1893] 2 Ch. 175, 183.

Reference also to *Watson v. Mid Wales R.W. Co.* (1867), L.R. 2 C.P. 593; *Young v. Kitchin* (1878), 3 Ex. D. 127; *Government of Newfoundland v. Newfoundland R.W. Co.* (1888), 13 App. Cas. 199, 213; *Parsons v. Sovereign Bank of Canada*, [1913] A.C. 160.

Nowhere can there be found any foundation for the suggestion now made that, where the debts are past due and the statute