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No. 33

MACLENNAN, J.A.

OCTOBER 2ND, 1902.

C.A.—CHAMBERS.

CENTAUR CYCLE CO. v. HILL.

*Court of Appeal—Joint Appeal of Two Parties—Security Furnished by One—Payment into Court—Abandonment of Appeal—Motion for Payment out—Costs—Set-off—Increased Security—Limitation of Amount—Rule 830.*

Motion by defendant Love to have paid out to him \$200 paid into Court as security for the costs of the appeal to the Court of Appeal by both defendants.

W. E. Raney, for defendant Love.

W. H. Blake, K.C., for defendant Hill.

W. E. Middleton, for plaintiffs.

MACLENNAN, J.A.—It appears that defendant Love has abandoned his appeal, having effected a settlement with plaintiffs (respondents) of the matters in dispute. The respondents do not object to the payment out, if, as between the appellants themselves, Love is entitled to have the money paid out to him. The objection that the motion for payment out ought to be made to a Judge of the High Court was waived, the parties agreeing to accept the decision of the learned Judge of Appeal, quantum valeat.

On the argument I decided that defendant Love was not entitled to succeed on his motion, defendant Hill desiring and intending to avail himself of the deposit and to proceed with the appeal. It appeared that, while the deposit was made by Love with his own money, the notice of appeal was a joint one, and the deposit was made in the name of both and for the joint benefit. It was, in effect, a loan or advance made by Love to or for the benefit of his co-defendant, which could not be recalled by undoing the purpose which it was intended to serve and to which it was applied. I, therefore, dismissed the motion with costs, but reserved the question of set-off.

By paragraphs 17 and 18 of the judgment appealed against, Love is entitled to be indemnified by Hill against all