

against such defendants as do not defend without prejudice to the right of the plaintiff to proceed with the action against any other defendant or defendants, in so far as it is intended to abrogate the old rule that, in an action against two or more joint debtors, taking judgment against one is a release of the other or others, must be construed strictly, and cannot be applied in a case in which the judgment was entered against a joint debtor who had actually entered a defence, although such defence was afterwards struck out for default in making discovery.

*J. F. Fisher and W. C. Hamilton, for plaintiff. A. H. S. Murray, for defendants.*

## Province of British Columbia.

### COURT OF APPEAL.

Full Court.]

CUDDY v. CAMERON.

[Jan. 27.

*Agreement—Construction of—Set-off for deficiency to be decided—Arbitration condition precedent to right of action.*

In an agreement between the parties for the purchase and sale of a logging plant, one of the provisions was:

"The said parties of the first part further guarantee that the balance of the assets of the said company . . . are truly and correctly set forth in the said schedule, and if upon investigation and examination it turns out that the said assets or any of them are not forthcoming and cannot be delivered, the value of said deficiency shall be estimated by three arbitrators . . . and the amount of the award of the said arbitrators shall, in the manner hereinbefore mentioned, be deducted from the said purchase money still owing and unpaid under this agreement."

*Held*, on appeal (affirming the judgment of CLEMENT, J., at the trial), that the holding of an arbitration to determine any deficiency was a condition precedent to the claiming of any set-off against the purchase price.

*L. G. McPhillips, K.C., for appellant. Davis, K.C., for respondent.*