

defendants were not entitled to tax profit costs against plaintiffs, defendants being under no liability to pay costs to their solicitor.

H. T. Beck, for plaintiffs.

J. H. Moss, for defendants.

The judgment of the Court (MEREDITH, C.J., MACMAHON, J., LOUNT, J.) was delivered by

MEREDITH, C.J.:—Judgment was pronounced in this action on the 14th September, 1901, dismissing the action with costs. The defendants brought in their bill of costs for taxation. It was objected by the plaintiffs that the arrangement between the defendants and their solicitor was such as according to law disentitled the defendants to recover more than disbursements. The local Master and deputy registrar at Ottawa decided in favour of the contention of the plaintiffs. Upon appeal to my learned brother Street, the Master's decision was reversed, that learned Judge being of opinion that the defendants were entitled to their profit costs, as well as to the disbursements.

At the time judgment in the action was pronounced, the arrangement between the defendants and their solicitor was that he was to receive a salary of \$1,800 a year, for all services, including the costs of litigation in which the clients should be engaged. The by-law providing for that was passed on the 21st February, 1898. On the 10th July, 1902, a by-law was passed amending the earlier by-law, by providing that, in addition to the salary, the solicitor should be entitled for his own use to the costs of actions which he prosecuted or defended for his clients in which costs were recovered.

My learned brother Street was of opinion that the later by-law was the one which governed the rights of the parties.

Upon the argument before us, Mr. Moss, while not giving up that point, did not strongly urge it, and it seems to us that that position cannot be maintained. The judgment, as I have said, was pronounced on the 14th September, 1901, and the question, as it seems to us, is, what were the rights of the defendants in the circumstances as they existed at that date, and not what they were on or after the 10th July, 1902.

If it were not so, a client might arrange with a solicitor that he should conduct litigation without any charge to him at all, and in the event of success the agreement might be afterwards varied by providing that the solicitor should receive his profit costs as well as his disbursements. The statement of that proposition seems to me to contain the answer