

assignment." From this order the assignee, Dickson, appealed. In the event of his appeal succeeding defendants claimed the benefit of the garnishee process, which their solicitor swore "was never in any sense abandoned, but was expressly preserved by arrangement with the solicitors for the accountant."

C. A. Moss, for appellant.

W. E. Middleton, for defendants.

ANGLIN, J.—The right of set-off, under such circumstances as exist in this case, is purely equitable: *Lynch v. Wilson*, 3 P. R. 173; *Booth v. Walton*, 44 U. C. R. 500. Defendants, who, "instead of paying to the plaintiff what he had recovered, expended money which might have been so employed in buying up a judgment" against him, are not entitled to ask the Court to exercise its equitable powers to assist them in this attempt to defeat plaintiff's recovery: *Elliott v. Crocker*, 1 P. R. 13.

Neither do I think I should assist defendants by reinstating the garnishee summons, which the Master has discharged. A hardship, if not an injustice, to Dickson would certainly follow, and unless bound to do so, and I think I am not so bound, I am not disposed, with such consequences to an innocent party, to help defendants, who have voluntarily put themselves in their present position, to virtually defeat a meritorious claim, payment of which the learned Chief Justice of the Common Pleas, who tried this action, thought should never have been resisted.

I assume, as did both counsel on the argument, that the document of 29th January did not operate to transfer the liability of Lester under the judgment in "*Accountant v. Plummer*."

If the liability of Bleasdel has been effectively assigned to defendants—and before so holding I should be obliged to consider with great care Mr. Moss's able argument to the contrary—attempting to enforce, as assignee, by garnishee proceedings, the judgment establishing that liability, whether in his own name or in that of his assignor, the defendants in reality seek to attach moneys in their own hands to satisfy their own claim. This in itself seems anomalous. Moreover they would thus, indirectly, but most effectively, accomplish the set-off, which, in my opinion, any discretionary powers which the Court possesses should be employed to prevent. If the liability of Bleasdel under the judgment in favour of the accountant has not been effectively transferred, the accountant alone can properly proceed to enforce that