Early Notes of Canadian Cases.

SUPREME COURT OF CANADA.

Ontario.] [Oct. 10.

MCDOUGALL *v.* CAMERON.

BICKFORD *v.* CAMERON.

Solicitor—Action for costs—Set-off—Mutuality—Appeal—Jurisdiction.

A firm of solicitors brought an action against certain clients on a bill of costs, to which action it was sought to set off a sum of money received by one of the solicitors from one of the clients for special services. The taxing officer allowed the set-off, but his decision was reversed on appeal.

Held, affirming the judgment of the Court of Appeal for Ontario, that assuming the court had jurisdiction to entertain the appeal, which was doubtful, the client was not entitled to set-off in an action by a firm, a sum paid to one of its members, the debts not being mutual; moreover, the money being paid to one of the solicitors for special services, and not for services covered by the retainer to the firm, it could not be set off.

Held, per TASCHEREAU, J., that the appeal was not from a final judgment within the meaning of the Supreme Court Act, and there was no jurisdiction to entertain it.

Appeal dismissed with costs.

Riddell & Nesbitt for appellants.

Ritchie, Q.C., for respondents.

WESTERN ASSURANCE CO. *v.* ONTARIO COAL CO.

Marine insurance—General average—Insurance on hull—Abandonment—Attempt to save vessel and cargo—Expense incurred—Liability of cargo to contribute—Average bond.

A schooner loaded with coal was stranded in Humber Bay near Toronto, and abandoned. The hull was insured, but not the cargo, and notice of abandonment was given to the underwriters, who secured the services of an experienced wrecker and a wrecking expedition, and attempted to save the vessel. It was considered advisable, and the best course in the interest of the owners of the cargo as well as the underwriters, to attempt to save the vessel and cargo together. Owing to stress of weather, operations could not be begun for some days after the expedition was ready, and when the wreckers got to work a portion of the coal was taken out and attempts made to save the vessel, but without success, and she had to be abandoned. Before any of the cargo was delivered, the owners and the underwriters executed an average bond, by which, after a recital of the loss of the schooner, they respectively bound themselves to pay the losses and expenses incurred according to their respective shares in the vessel, her earnings as freight and her cargo, and that such losses and expenses should be stated and apportioned in accordance with the established laws and usage of the Province in similar cases by a named adjuster.

The adjuster apportioned the loss between the underwriters, as owners of the material saved, and the owners of the cargo, making the amount due from the latter $2314, and an action was brought against them on the average bond to recover the same. The sum of $557 was paid into court, and liability beyond that amount was denied.

Held, affirming the judgment of the Court of Appeal (19 A.R. 41), of the Queen's Bench Division (20 O.R. 295), and of BOYD, C. (19 O.R. 462), that the average bond only obliged the owners of the cargo to pay what should be legally due according to the law of general average; that the cargo and the vessel were never in that common peril which gives the right to claim for general average; and that the sum paid into court was sufficient to cover the cost which would have been incurred in saving the cargo by itself, and the underwriters were not entitled to recover more.

Appeal dismissed with costs.

Osler, Q.C., and *Chrysler*, Q.C., for appellants.

Delamere, Q.C., for respondents.

HARRIS *v.* ROBINSON.

Contract—Specific performance—Time—Extension—Waiver—Rescission.

H. made an offer to R. for exchange of properties on specified terms, the matter to be closed within ten days if possible. R. accepted the offer. He had not, at the time, the title to