
EDMOND LETOURNEAU AND }
 JOSEPH BERNIER (DEFEND- } APPELLANTS :
 ANTS) }

1905
 Oct. 25.
 *Oct. 26,

AND

CHARLES EUGENE CARBON- }
 NEAU AND BELINDA ANN } RESPONDENTS.
 CARBONNEAU (PLAINTIFFS)..... }

Practice—Amending judgment after entry.

The minutes of judgment as settled by the registrar directed that the appellants' costs should be paid out of certain moneys in court, and in this form the judgment was duly entered and certified to the clerk of the court below. Subsequently it was made to appear that there were no moneys in court available to pay these costs, and upon the application of the appellants the court amended the judgment, directing that the costs of the appellants should be paid by the respondents forthwith after taxation.

*PRESENT :—Sedgewick, Girouard, Davies, Nesbitt and Killam JJ.

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 LETOURNEAU
 v.
 CARBONNEAU. Registrar.

MOTION to vary the minutes of the judgment of the Supreme Court of Canada (1) as settled by the Registrar.

The appeal was from the judgment of the Territorial Court of the Yukon Territory *in banco*, affirming the judgment of Craig J. at the trial by which the plaintiffs' action was maintained and the counterclaim of the defendants dismissed with costs.

The appeal was allowed by the Supreme Court of Canada (1) Sedgewick and Killam JJ. dissenting.

Mr. Justice Nesbitt gave the reasons of the majority of the court, which as to costs provided as follows:

"All costs of the previous trial and of the proceedings in the court below and in this court of the appellants, defendants, to be payable forthwith out of the moneys in court, with power to either party to apply with reference to such moneys and full power of amendment to dispose of all questions which may arise out of the counterclaim." (2)

The minutes of judgment were settled by the registrar on the 21st July, 1904, as follows:

"And this court proceeding to render the judgment which the said the Honourable Mr. Justice Craig should have rendered did further—ORDER AND ADJUDGE that the whole question of taking of accounts between the parties and the claim for damages under the counterclaim should be and the same were referred back to be tried and disposed of by the courts below and that all costs of the previous trial and of the proceedings in the courts below and in this court of the appellants (defendants) be paid forthwith out of the moneys in court, with power to either party to apply to the courts below with reference to such moneys and full power to the said courts below to make such amend-

1) 35 Can. S. C. R. 110.

(2) 35 Can. S. C. R. at p. 113.

ments as may be necessary to dispose of all questions which may arise out of the counterclaim."

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The judgment as settled was duly entered and forwarded by the Registrar of the Supreme Court to the Clerk of the Territorial Court of the Yukon Territory on the 25th day of July, 1904. On the 18th October following, the solicitors for the appellants gave notice that the Supreme Court of Canada would be moved on behalf of the appellants for an order amending the minutes of judgment by adding thereto after the words "this court doth order and adjudge that the said appeal should be and the same was allowed and that the said judgments of the Territorial Court of the Yukon Territory *en banco* and of the Honourable Mr. Justice Craig should be and the same were reversed and set aside," the words "with costs in all said courts to be paid by the said respondents to the said appellants forthwith after taxation thereof," and in support of the application filed an affidavit of the appellants' solicitor, Mr. Noel, in which he deposed that between the date of the pronouncing of the judgment of the Territorial Court on the 15th December, 1903, and the date of the delivery of judgment by the Supreme Court of Canada on the 8th day of June, 1904, the respondents withdrew from court all the moneys paid into court, and that at the date of the delivery of the judgment of the Supreme Court there were no moneys in court to the credit of the cause out of which the costs of the appellants could be paid.

The application was heard by the full court on the 25th day of October, 1904.

J. A. Ritchie for the motion.

Glyn Osler contra.

On the 26th October the court granted the motion and directed the judgment to be amended as moved for, the reasons for judgment being delivered by :

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Girouard J.

GIROUARD J.—We think that the motion to amend the minutes of our judgment should be granted. At the time the case was argued we were told by both parties that a sum of \$10,000 was in court pending the appeal. It is alleged that the moneys have been withdrawn by the respondents, and it is contended that in consequence there is some doubt as to the meaning of our judgment. We believe there is none, but to remove the possibility of a doubt, we would amend the judgment by adding the following words: "with costs in all said courts to be paid by the said respondents to said appellants forthwith after taxation thereof."

The motion is therefore allowed. No costs.

Motion allowed without costs.

MEMO.—The judgment which had been forwarded to the Clerk of the Territorial Court, upon requisition of the Registrar, was returned to the Supreme Court of Canada and amended to conform to the present order of the court.
