

City Assets Co. Ltd.

v.

Hinds & Son.

Copy Opinion on

Case.

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Wor Clench & Adams  
61, Leicesters Lane Fields

17214

City Assets Company Ltd

Hinds & Co

Opinion

Leaving out of consideration for the moment the fact that there are two members of the Debt firm & treating "Hinds & Son" & Mr. Stephen Hinds as the same person, I am of opinion that there was nothing in the agreement or settlement <sup>not</sup> of 1890 to cut down or limit the right of Hinds to set off the debt due to him from Trollope against any claim for work & materials which Trollope might acquire against him. All that Hinds agreed to do was not to proceed with the existing action, & probably this may have carried with it an implied promise not to bring any fresh action for his claim so long as the <sup>terms of the</sup> settlement were carried out. It was clearly not intended that Trollope should be able to compel payment from Hinds of any bills for work or materials so long as he <sup>remained</sup> himself remained indebted to Hinds at all, & para 6 of the terms of settlement plainly indicates the contrary. The only annual payment that Trollope was bound to make under the agreement, in cash or receipted bills was the £100 under § 4 but if he did work to a larger amount than this there is nothing in the agreement to deprive Hinds of his right to set off to any extent necessary. I think therefore that the present Plaintiff's claim to limit the right to set off to the deficiency in the annual £100 is not well founded -

The fact of the partnership, however, introduces other difficulties. The ordinary rule is that joint debts of a firm can only be set off against joint claims, & separate debts of partners against separate claims. <sup>& I can find no authority for excepting this case from that general rule.</sup> The indebtedness of Trollope to Hinds (separately) cannot therefore be set off against the present claim against the firm; & if the whole £161. 2. 10 was in fact owing by the firm to Trollope, I should be of opinion that no set off could be claimed at all. But it appears that £103. 2. 5 of this claim was in fact for work done for Hinds personally, & was in the first instance charged against him & not against the firm. If so Trollope's indebtedness to Hinds can be set off against this; and though this part of the claim (on this assumption of fact) is not well made against the Deft firm yet I think the right course is to plead a set off to it in the name of S. Hinds individually, & I have so drawn the defence.

As to the balance £58. 0. 5 the suggestion is made that the firm's Clients & not the firm are responsible for it; and this would be so if it could be shown that Trollope had really given credit to the clients, or had elected to charge them with it when he discovered their names. There is however, no evidence of this at all; & so far as I can judge of the course of business, it appears to me much more likely that Trollope did the work on the credit of the firm, & looked to them for payment - I think therefore that this amount should be paid into

Court; but as it is suggested that the amount is  
 incorrect & excessive, I have so pleaded & have left  
 the amount of the payment into Court in blank.  
 The Defendants should make up their minds  
 how much of the £58. 0. 5 could be established  
 by Trollope leaving questions of assignment and  
 set off out of the question, & should fill up the blank  
 accordingly.

I think this course is the wisest to adopt. I do not  
 say that the contention that the right of set off extends  
 to the whole is not arguable, but on the whole I do  
 not think it extends beyond the £103. 2. 5, and  
 it would be unsafe to defend as to the residue.

J. Alderson Toole.

Temple Nov: 23<sup>rd</sup>/91.