

ground that a settlement was agreed to on the terms mentioned in a letter from the defendant's to the plaintiff's former solicitors of the 12th April, 1911.

It is also common ground that that agreement has been in part performed, viz., that the defendant has in the plaintiff's name brought an action against Frank W. Maclean and has succeeded in vacating the registration of a mortgage to him on the property in question and that the defendant has indemnified the plaintiff against the costs of that proceeding.

But there are two items of the agreement which it is alleged have not been performed, viz., the payment of the balance of the purchase money and \$15 for costs. About the costs I am not quite sure as nothing was specifically said by either party, but that is immaterial. According to the settlement the balance of the purchase money was to be paid as soon as the registration of the Maclean mortgage had been vacated. When this took place does not appear.

Payment not having been made, the plaintiffs on 23rd October last, filed a statement of claim and on 29th October last, sent the defendant's solicitor a statement of account shewing the amount alleged to be due and claiming \$50 for costs. On 3rd November last, payment not having been made, the plaintiff's solicitors wrote to the defendant's solicitors requiring them to file a defence. And it is here that some misunderstanding arose. Mr. Cook, a solicitor in the employment of the defendant's solicitors, says that on receipt of this letter he telephoned to either Mr. Davis or Mr. Mehr and arranged with him that the action should stand until the return of Mr. Mackenzie to the city as it was a matter on which he alone was instructed. This alleged arrangement is denied by Mr. Davis, and he states that he is informed by his partner Mr. Mehr, that he at no time had any conversation with Mr. Cook or with anyone else regarding this matter.

This conflict is regrettable. In the circumstances of the case it seems extremely probable that in the absence of Mr. Mackenzie some communication would in the ordinary course of business be made by Mr. Cooke to the plaintiff's solicitors in response to their letter of the 3rd November. Mr. Davis denies that the communication was made to him which is no doubt true, and he says that Mr. Mehr informed him that he had no conversation with Mr. Cook on the sub-