

in the cause, by which it was agreed "that the plaintiff's claim and defendant's counterclaim should each be dismissed without costs, and the Court is requested to enter judgment accordingly." This memorandum was signed by the plaintiff and the defendant.

The plaintiff in his affidavit states that, during the discussion as to the settlement, he proposed to the defendant that Mr. Clute, his counsel, who was staying in the hotel, should be called in to assist and advise in the settlement; but this the defendant refused, and said if Mr. Clute were called in he would not settle at all. But, after the terms of settlement had been agreed upon, the defendant called in Mr. Northrup, K.C., his counsel, and Mr. Drewry, his solicitor, and after they left the room, the defendant paid plaintiff \$50 in cash and gave him a cheque for \$355 on the Standard Bank at Brighton, the extra \$5 being to cover his expenses, under an arrangement between them by which the plaintiff was to take the early train for Toronto the same morning, so that when the Court should open he should not be present, and his counsel and solicitor should not know of his whereabouts. Plaintiff and defendant sat up together until three o'clock in the morning, when plaintiff went to the Cobourg station, and took the 4.20 train for Toronto, according to the arrangement, and plaintiff left Toronto by the train at 5 o'clock in the afternoon and returned to Brighton. The plaintiff also states that, as part of the settlement, the defendant agreed to assist him in settling his costs, which included the costs of defence in a criminal proceeding brought or instigated by the defendant against him in respect of which the plaintiff's action was brought, and the costs of the action, and when plaintiff met the defendant at Brighton on the 22nd he spoke to him about the costs, and defendant urged him to pay no attention to the bill of costs. Plaintiff would not agree to this, and defendant then told him to get the bill and bring it to him and he would help him to settle it. On the 22nd he got the bill of costs from his solicitor, and took it to the defendant, who examined it and said, "I won't pay it, let them sweat a while."

The defendant denies that there was any arrangement between himself and plaintiff that plaintiff should leave Cobourg and go to Toronto, and says that he did not pay plaintiff anything for his expenses to Toronto, but that the arrangement was, that, as the case was settled, neither of them would require to appear in Court when the case was called, and Mr. Northrup should present the memorandum of settlement to the Court and ask to have the case marked settled