order, he said, could not be usefully made unless the decision of the issue, however decided, would dispose of the action so far at least as to dispense with a second trial. The proper order was to dismiss the plaintiffs' motion, and let the defendant Garfunkel set up the release in his statement of defence, without prejudice to his renewing his motion hereafter (though the Master did not wish to be understood as encouraging any such attempt). The costs of both the plaintiffs' and defendant's motion to be in the cause.

PEARS v. STORMONT—MASTER IN CHAMBERS—DEC. 14.

Costs—Lien of Solicitor on Judgment for Costs—Settlement and Release of Judgment without Notice to Solicitor—Fruits of Litigation—Notice of Claim of Lien.]—After the judgment of BOYD, C., in this case, 3 O.W.N. 56, 24 O.L.R. 508, negotiations took place for a settlement, part of which, as the plaintiff insisted, was to be a release to him by the defendant Querrie of the costs given him by the judgment. These had been taxed at $155.54, and had not been paid. The defendant Querrie's solicitors now moved for an order that the plaintiff pay them these costs, on the ground that this release was taken without their consent, and after notice of their lien for costs previously given to the plaintiff and his solicitors. The Master referred to De Santis v. Canadian Pacific R.W. Co., 14 O.L.R. 108, and cases cited; McCauley v. Butler, 1 O.W.R. 72, 343; and said that the Chancellor's judgment was given on the 25th September, and the final settlement was not made until the 1st December. On the 12th or 13th November, the plaintiff's solicitor told the defendant Querrie's solicitors that a settlement was being made, and asked if Querrie had been paid his costs, and was told that he had not. The plaintiff's solicitor said that Querrie's solicitors had better take steps at once to protect their costs, and offered to help them. Next day, the plaintiff's solicitor and the plaintiff received formal notice that these costs had not been paid. In these circumstances, the Master said, the only possible answer to the motion would be the contention that these costs were not fruits of the litigation. This was strenuously argued by Mr. Snow, his view being that, as nothing was paid by Querrie to the plaintiff, the latter was not benefitted. This, however, the Master did not agree with. The question of fruits or no fruits, he said, is to be decided with reference to the party whose solicitor is moving. Here there clearly were fruits