Defendant's story is in a manner corroborated, as to *his* understanding of what took place, at least, by the fact that the day after the settlement he wrote to his solicitor, Mr. Plaxton, saying that he had settled, "they pay all costs and give me the binder, but could not get no money from them." On receiving this letter, Mr. Plaxton swears that he wrote at once to defendant, saying that he would not recognize any settlement that would deprive him of his right to look to the plaintiffs personally for his costs, which, as his bill shews, amounted to the sum of $226 at that time, after giving credit for all moneys received from defendant; and that the day following he wrote to the plaintiffs and to Messrs. McCarthy & Pepler, their solicitors, to the same effect. On the 19th of April the defendant himself sent a telegram to the plaintiffs (residing at London), in these words, "I wont abide by the settlement unless you decide to pay my solicitors the costs under the judgment herein."

All this would show that if it had been necessary, the defendant's solicitor had in good time repudiated the settlement, provided that the effect of it was to deprive him of his costs. This was not a case, however, in which it was necessary to give notice to prevent the money being paid over. There is, as Mr. Pepler contended, no fund upon which defendant's solicitor could claim a lien, unless indeed it may be the judgment or order of the Divisional Court obtained against the plaintiffs for the defendant's costs through the exertions and by means of his solicitors. Assuming this to be a "fund" or whatever we may call it (and practically it was one in favor of defendant's solicitors, and not himself), two questions may be asked: 1. Was this judgment order or "fund" such as the defendant could release and surrender to the plaintiffs without his solicitor's consent or concurrence; and (2) did he actually effect this release by the terms of the settlement entered into. If it were necessary to consider whether the liability for those costs was under a "judgment" or an "order," the case of *Onslow* v. *Commissioners I.R.*, L.R. 25 Q.B.D., 465, would seem to show that it was an "order."

Mr. Plaxton claimed a lien upon this "fund" (to call it so for the present), and the answer was that a defendant's solicitor could not claim a lien in the same way as a plaintiff's solicitor. The case of *Wardell* v. *Trenouth*, 8 P.R. 142, shows that a *defendant's* solicitor has a lien on a fund as well as a *plaintiff's* solicitor. Be the order or judgment against the plaintiffs what it may, it was something that was obtained by the industry and partly at the expense of the defendant's solicitor, and the proceeds of which he would have a right to retain whenever received.

Had he not succeeded in the application, to set aside the arrest, the defendant would have been liable to his solicitor for the costs of the proceedings—his success relieved defendant from such liability so long as the plaintiffs were able to pay them. Now, the defendant is worthless, and if the plaintiffs are relieved from payment, the solicitor must go without. The second question, "Are the plaintiffs relieved from the payment of the costs ordered, by reason of this settlement?" I think that where the liability of the plaintiffs for those costs, is upon an order made against them, and upon which execution might issue, there must be something very clear indicating that such liability has been released. This is not clear from the terms of the settlement, and the evidence *dehors* tends, in my opinion, to shew the contrary.

I have examined some of the cases referred to: *Ross* v. *Buxton*, L.R. 42 Chy. D., 190, *Morgan* v. *Holland*, 7 P.R. 74, and *Friedrich* v. *Friedrich*, 10 P.R. 308, and from the principles laid down there, I do not think I would be wrong in holding, if it were necessary to do so, that whatever the costs in question may be called, the right of the defendant's solicitor to them should not be ousted by this settlement.

Looking at the circumstances attending the settlement, while, perhaps, it might be going too far to say that collusion was proved, still I must say a strong suspicion is raised that plaintiffs' agent knew he was doing something that the defendant's solicitor, and indeed I might say, plaintiffs' solicitor also, would not approve of or consent to. Defendant swears, and is not contradicted, that he wished to see his solicitor before he made any settlement, but that the plaintiffs' agent dissuaded him from it, saying his (defendant's) lawyer would advise him to keep the case going, and that he had no money to do it; and he finally persuaded him to go to a third solicitor to have a settlement carried out.