

of possession to issue to place Warbrick in possession of certain premises leased to Rutherford.

Gideon Grant, for the applicant.

J. G. O'Donoghue, for the landlord.

MACMAHON, J.—No writ of possession has as yet been issued, and under sec. 6 of the Act, it is only where such writ has been issued, that such a motion as the present can be made.

The motion must be refused with costs.

MACMAHON, J.

JUNE 30TH, 1903.

CHAMBERS.

BONTER v. NESBITT.

*Solicitor—Lien for Costs—Depriving Solicitor of—Settlement of Action—Collusion to Prevent Acquisition of Lien—Right of Plaintiff to Costs—Promise of Defendant to Pay—Leave to Continue Action for Recovery of Costs.*

Appeal by plaintiff and his solicitor from order of one of the local Judges at Cobourg dismissing appellants' motion for an order upon defendant to pay the costs incurred by plaintiff in this action, upon the ground of a settlement of the action between plaintiff and defendant, behind the back of plaintiff's solicitor, which deprived the latter of his lien for costs.

R. C. Clute, K.C., for appellants.

C. H. Ritchie, K.C., for defendant.

MACMAHON, J.—The record had been entered for trial at the non-jury sittings at Cobourg commencing on Monday, the 20th April. The Court adjourned at ten o'clock at night, it being arranged that the trial of this action, which was for malicious arrest and prosecution, should be proceeded with at the opening of the Court on the following morning.

Shortly after the adjournment of the Court, the plaintiff and the defendant—who both live in the village of Brighton—met at a hotel in Cobourg and went into a room together, where they discussed the question of settlement until one o'clock of the following morning, when it was agreed that the action should be dismissed, and the defendant should pay the plaintiff \$400, and discharge him from all claims arising out of the counterclaim against the plaintiff. Mr. Northrup, defendant's counsel, and Mr. Drewry, his solicitor, were called in; the former prepared a memorandum of settlement, styled