In the circumstances and at the time, the amount offered did not appear to be an unreasonable settlement. I think in view of her solicitor's letter that if the $20 for costs therein had been mentioned nothing more would have been heard of the case and this was after the settlement and apparently after a conference with her solicitor about it.

I think the action fails, therefore, on the ground that the plaintiff agreed to accept $150 in settlement thereof and is bound thereby; *North British Rw. Co.* v. *Wood* (1891), 18 Ct. of Sess. Cas. (4th series) 27; *Gissing* v. *T. Eaton Co.* (1911), 25 O. L. R. 50.

But even if I had not come to this conclusion I would be obliged to dismiss the action as against the defendant Crothers also on the ground that the fence at the point where the accident occurred not being substantially adjoining the highway there could be no liability.

Counsel for the defendant relied on *Coupland* v. *Hardingham* (1818), 3 Camp. 397. There is, of course, a duty upon those whose property abuts on a street not to permit an excavation to exist or a barbed wire fence to be erected so adjacent to it as that those lawfully using it may by some "sudden start of a horse" or "making a false step or being affected with sudden giddiness" or perhaps being suddenly started by a runaway horse, fall into the excavation or come in contact with the barbed wire and injury result. Beaven on Negligence, 3rd ed., pp. 364, 428, 429, and 435.

But the test as to liability is whether the excavation or fence is so near the highway as to interfere with the ordinary use of the same by the public.

In the present case the fence in question at the point where the plaintiff came in contact with it was 20 feet distant from the sidewalk on which the plaintiff was walking and 10 feet back from the street line on the defendant's property.

It would, I think, be out of question to impose a liability on the defendant in such a case: *Hardcastle* v. *South Yorkshire Rw. & River Dun Co.* (1860), 4 H. & N. 67; *Binks* v. *South Yorkshire Rw. & River Dun Co.*, 3 B. & S. 342; *Latham* v. *R. Johnson & Nephew Ltd.*, [1913] 1 K. B. 398; *Pedlar* v. *Toronto Power Co.* (1913), 29 O. L. R. 527.

The action will, therefore, be dismissed as against both defendants, with costs, if asked.