

CARTWRIGHT, MASTER.

MAY 15TH, 1906.

CHAMBERS.

McDONALD v. CRITES.

*Costs—Right to Tax—Interlocutory Costs Payable “in any Event”—Settlement of Action.*

Motion by plaintiff to set aside appointment issued by defendant for taxation of certain interlocutory costs.

Grayson Smith, for plaintiff.

W. E. Middleton, for defendant.

THE MASTER:—On 14th December last this action was settled by an agreement in writing. This provided “that each party shall pay all their own costs.” Certain interlocutory costs had been given to defendant in any event, and, notwithstanding the settlement, defendant’s solicitor has taken out an appointment to tax them.

Plaintiff moves to set this aside, relying on *Campbell v. Dunn*, 19 C. L. T. Occ. N. 382.

Defendant relied on *Walter v. Bewicke*, 90 L. T. J. 409.

I think the motion must succeed. The distinction is plain between these cases. A judgment of the Court at the trial does not interfere with interlocutory costs, and they can be recovered even if the action is dismissed without costs. But where such a judgment is by consent, then there are no costs recoverable. To hold otherwise would be to go counter to the express agreement of the parties.

The appointment should be set aside with costs.

TEETZEL, J.

MAY 15TH, 1906.

WEEKLY COURT.

RE INTERNATIONAL MERCANTILE AGENCY, LIMITED.

*Company—Winding-up—Creditors—Preferred Claim—Trust—Moneys Collected and Deposited in a Bank.*

Appeal by the liquidator from the report of the referee in a winding-up, whereby the Snowball Co., creditors of the