

ment upon, a new trial should be directed ; costs to be costs to the successful party.

DUBUC, J., dissenting.

Hovell, Q.C., and C. P. Wilson for the motion.

Hugel, Q.C., contra.

DUBUC, J.]

[Feb. 16.

MONKMAN v. FOLLIS.

Attorney and client—Power of attorney to compromise action after judgment.

Appeal from order of referee setting aside *alias writ of fi. fa.* After judgment entered and execution issued, plaintiff's attorney entered into an agreement for settlement and compromise with the defendant's attorney to take a sum considerably less than the judgment in full satisfaction for the same.

The plaintiff repudiated the settlement, and also swore that he had never given his attorney any instructions, authority, or consent to compromise the action or the judgment recovered thereon, and that his instructions to the attorney were that he should collect the judgment debt and costs in the usual way. The attorney also testified that he had no authority to make such a settlement.

Held, (1) as a general rule the authority of an attorney is determined on final judgment being signed, but it seems that he may after judgment sue out execution upon it within a year, or receive the damages without execution.

(2) The plaintiff by instructing the attorney to collect the judgment debt and costs in the usual way continued his authority after judgment, and so the attorney would retain the power to bind the client by a compromise ; following *Butler v. Knight*, L.R., 2 Ex., 109.

Appeal dismissed with costs.

Monkman for plaintiff.

Ewart, Q.C., for defendant.

BAIN, J.]

[Feb. 18.

HARRIS v. YORK.

Interpleader—Delay by sheriff—Forfeiture of order for protection by reason of damage caused by bailiff.

Appeal by claimants from order of referee directing an interpleader issue on the application of the sheriff of the Eastern District.

The sheriff's bailiff seized, on 1st of December last, about twenty stacks of wheat and three of oats on a farm where he swore the defendant resided. A notice claiming the grain was served on bailiff by claimants within a day or two after seizure, and sheriff received the notice on or about the 8th of December. After service of the notice the bailiff threshed the stacks and sold a portion of the grain for \$201.60, and this money and the balance of the grain is yet in the sheriff's possession. Sheriff applied for interpleader on December 23rd, assigning as the reason for the delay that he had difficulty in getting definite information from the bailiff, who lives at Morden, and from the place the seizure was made.

The claimants filed affidavits stating that shortly after the grain had been stacked a heavy storm of rain and snow had occurred, which drove into the stacks, and that the bailiff, by threshing the stacks as they stood with the snow and ice in them, practically destroyed the grain, and the wheat, which, if properly threshed, would have been worth from fifty to sixty cents per bushel, was not worth more than twenty cents ; the stacks should have been left till spring, and not threshed till the snow and ice had melted out and the stacks dried. The bailiff's affidavit stated that the reason for threshing as he did was that shortly before he seized both defendant and claimant, A. N. York, had arranged with a thresher to thresh the grain as soon as he could get around to the farm on which it was, and that having heard of the arrangement after he seized he thought it advisable that it should be carried out, as it was very difficult to get threshing done ; so it was done by the thresher for him at the same time as it would have been done for others. Other facts appeared in the affidavits, but it is sufficient to state that the learned judge found that the affidavits showed, "*prima facie*, that substantial loss had been occasioned by the action of the bailiff in threshing the stacks when he did."

Held, (1) if the stacks were the claimants', and they have suffered by the bailiff's action, they should not be deprived of their right to take action against the sheriff.

(2) The sheriff was not entitled to an interpleader, as he had not applied promptly as soon as he had notice of the adverse claim, but chose to exercise his own discretion, and, ignor-