

The claim for negligence was then tried with a jury, who found in favour of the plaintiff Alice Gissing, and assessed her damages at \$750, upon which findings judgment was entered in her favour with costs; the claim of her husband being dismissed.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, J.J.A.

I. F. Hellmuth, K.C., and G. W. Mason, for the defendants.
T. N. Phelan, for the plaintiffs.

GARROW, J.A. (after setting out the facts):—I feel compelled to agree with Middleton, J., in his dissenting judgment. People must not be allowed to play fast and loose with settlements made, as this was, deliberately, intentionally, and with full knowledge of all the facts. Business could never be carried on in that way.

I am, with deference, quite unable to see in the evidence any justification for the statement that the settlement was brought about by intimidation or fraud, or by imposition of any kind.

Black did not seek the plaintiffs, nor urge, nor advise them to settle. They sought him as the representative of the defendants having charge of the matter, and he went to the plaintiffs' residence only in pursuance of the arrangement made with the male plaintiff, at the instance of his wife, who sent him to obtain a settlement if possible. Before going, he had given to the husband his ultimatum—\$50, and not a cent more—and this was duly reported to the female plaintiff by her husband on his return. So that when, later in the day, Black came, the matter was of the very simplest, namely, to say "yes" or "no" to the offer. It had in the meantime been under discussion and consideration by the plaintiffs; and, as the female plaintiff herself admits, her husband had advised—she puts it in one place "influenced" and in another "drove"—her to accept.

The female plaintiff is, it is true, shewn to have been in bed, and she may have been ill and in pain, although it would have been more satisfactory on these points if her physician had been called or even her husband, neither of whom was examined on this issue. But, granting that her condition was as she describes, there is absolutely nothing fairly to shew that she was so ill as to be unable understandingly to accept or reject the offer, which, after all, is all that she was called on to do. Some-