

POWER OF COUNSEL AND SOLICITOR TO COMPROMISE SUITS.

ing a compromise the Court requires an affidavit from the next friend or guardian, as the case may be, and the written opinion of the junior counsel to the effect that it is for the benefit of the infants. In addition, I always ask the leader myself, if I see one in Court, whether he concurs in the advice given."

The power of counsel to compromise is at least commensurate with that of the attorney, but some of the judges are disposed to give him more ample authority, so that he may even disregard the wishes of his client. It is questionable, however, whether the law can be, and it is undesirable that it should be carried to this extent. One of the cases which has gone furthest is *Strauss v. Francis*, L. R. 1 Q. B. 379. It was there held that counsel retained to conduct the cause had power in court to consent to the withdrawal of a juror, and to put an end to the cause, that being within his apparent authority, and that his action was binding on his client notwithstanding the client's dissent, unless this dissent is brought to the knowledge of the opposite party at the time. The views of Malins, V. C., in *Jesse v. Holt* 24 W. R. 879, somewhat modify this conclusion. He said that where an order is made by consent through inadvertence of counsel or misapprehension on the part of the client, to which order in fact the client did not consent, the Court would not hold the client bound irrevocably thereby. But in this case before him, where the order was made in the presence of the defendant, his solicitor and counsel, and the case was a simple one, the judge declined to interfere upon the defendant alleging that he had not consented, and that his counsel had no authority to consent, and that he had not understood what was being done. A similar case came before Fry J. in the *Attorney-General v. Tomline*, L. R. 7 Ch. D. 388. He refused to give relief where the order compromising the case had

been drawn up, passed and entered between two and three weeks after the delivery of the judgment based on the consent. The client alleged that he had been under a misapprehension of facts. But it was held that he was too late in moving, and that it was his duty to ascertain the correctness of the facts within a reasonable time.

A distinction is to be noted which will help to reconcile many of the observations made by different judges, which would otherwise prove rather embarrassing; that is, special importance is attached to arrangements for a compromise, which are made in open Court, whereas the same conclusive effect will not be attributed to terms of compromise arranged out of Court by the representatives of the clients, whether counsel or attorneys. Some of the cases show that practically it is well-nigh impossible to get rid of a compromise which has been embodied in an order or rule. Mr. Justice Fry observed in the *Attorney-General v. Tomline*, that when the order is passed and entered it could only be set aside for reasons which would enable the Court to set aside an agreement. In *Rogers v. Horn*, 26 W. R. 432, it was held that the consent might be withdrawn at any time before the order was passed and entered, but other authorities are to be found at variance with this ruling; as, for instance, *In re the North-west of Ireland Deep Sea Fishery Company* (16th March 1871), wherein Bacon, V. C., refused to allow the parties to recede from an agreement made by a junior counsel on his own judgment, and without express authority, on which an order of Court had been made, although it was immediately repudiated by the solicitor, even before the order had been drawn up: 18 Sol. J. 376. No doubt the best plan in all cases is to consult the client before effecting the compromise, and if the client refuses his counsel's suggestions and insists on a course inconsistent therewith, then the counsel should return his brief.