

court. It was stated by Sir Edward Clarke on the subsequent argument that the omission was due entirely to an oversight on his part. After an interview with his client, Sir Edward Clarke moved to rescind the order of reference, and to have the case restored to the list for trial. The motion was opposed by the defendant.

After reviewing the previous cases, Lord Alverstone expressed his agreement with them, and said that, if the settlement had been a final one, the plaintiff would have been bound by it. But he considered that, as it provided for a reference, it was interlocutory only, and that to such settlements the rule established by the cases cited had no application. He therefore ordered that the action should be replaced on the list for trial.

But the Court of Appeal were of opinion that the distinction drawn by Lord Alverstone had no foundation. They accordingly applied the rule to its full extent, and, basing their decision on the ground that Mr. Isaacs had had no knowledge of any limitation of Sir Edward Clarke's authority, ordered a reference in accordance with the memorandum of settlement.

It was from this judgment that counsel for the plaintiff appealed, and it may be conjectured that his gratification at the result was not unmixed with surprise. Out of a sky apparently clear, except for a cloud no bigger than a man's hand, which an observant prophet might perhaps have noticed in *Matthews v. Munster*, 20 Q.B.D. at p. 143, one more bolt was hurled from the Olympus of the Lords upon the heads of those, already almost overwhelmed by similar missiles, who hold it more important that the law should be certain than that it should be just.

For the House of Lords reversed the judgment of the Court of Appeal, and restored that of Lord Alverstone, though on a different ground from that relied upon by him. Lord Halsbury thought that there was "a higher and much more important principle at stake than that involved in discussing whether a particular part of a bargain has or has not been within the