

tion of the costs, why was he tendering advice to the plaintiff to have it taxed?

All this, however, while it shews there was collusion to prevent the plaintiff's solicitor acquiring a lien for his costs, on the amount agreed to be paid to the plaintiff, does not shew collusion between the plaintiff and defendant to absolutely deprive the solicitor of his costs, because the plaintiff states that the promise of the defendant to pay the costs was part of the agreement under which the settlement was effected. If that is so, then the plaintiff is entitled to recover of costs notwithstanding the release, otherwise it would be a fraud on the plaintiff to agree to pay, and on the strength of that secure the execution of a release, and when the bill of costs is furnished to set up the release. According to the plaintiff, both he and the defendant were by this arrangement providing for the payment of the plaintiffs' costs, and if that was his understanding, there was no collusion to deprive his solicitor of his costs.

Both the plaintiff and his solicitor are applicants, and, although the motion does not ask for an order in the alternative allowing the plaintiff to continue the action for the recovery of the costs, there is power to make such an order: *Price v. Crouch*, 60 L. J. Q. B. 767; *Dunthorne v. Bunbury*, 24 L. R. Ir. 6.

The substantial material upon which such an order ought to be made is abundant, and it should be made now without driving the parties to the expense of making a substantive motion. The order of the learned local Judge will therefore be varied by permitting the plaintiff to re-enter the record for trial for the next jury sitting at Cobourg, without paying any fee for such re-entry, and also by making the costs of that motion in the cause to the successful party. The costs of the appeal will be in the same way.

MACMAHON, J.

JUNE 30TH, 1903.

CHAMBERS.

MARSH v. McKAY.

*Security for Costs—Defamation—Unmarried Woman—Trivial or Frivolous Action—Defence on Merits.*

Appeal by defendant from order of Master in Chambers, ante 522, dismissing application by defendant for security for costs of an action for libel brought by an unmarried woman against the publisher of a newspaper.

S. B. Woods, for defendant.

T. H. Lloyd, Newmarket, for plaintiff.