The defendant now appeals.

Since the judgment already spoken of, the plaintiffs have issued another writ for the note for $300 or in the alternative for damages for conversion thereof.

The state of affairs, then, is that the plaintiffs contended that while there may have been a settlement of the amount due them from the defendant, there was no settlement of the account by notes but that he owed them $504.29, i.e., $24 more than the amount of the notes: but if it turned out that the notes were accepted in settlement, then they wanted the amount of the notes. The defendant said that the notes were given in settlement: he did not deny that the notes should be paid but he said that within a week of the writ he "paid" the amount of the notes which were due but the plaintiffs refused to accept the payment and repudiated the settlement. It is perfectly manifest that had the case gone on the only issue to be tried would be whether the notes were accepted as the defendant says they were—with what we know now that would have been determined in favour of the defendant—and the defendant would have been entitled to all the costs subsequent to payment in and to so much as his County Court costs before that time would exceed his Division Court costs. As it is by paying money into Court, the plaintiffs contend that he has enabled them to compel him to pay more costs than he would have paid had the action gone to trial. In other words, the plaintiffs by suing for a claim they cannot support and adding their real and supportable claim as an alternative contend that they may tax costs properly attributable only to the unsupportable claim. This would be a monstrous result and we must examine the rules with care to see if they make such a result necessary.

The Rule C. R. 425: "When the plaintiff takes out money in satisfaction of all the causes of action he may tax his costs of the action and sign judgment therefor, unless the defendant pays them within 48 hours after taxation."

The former rule read "the entire cause of action" C. R. 637—the change being made in order that there could be no doubt that the action was at an end.

Moore v. *Dickinson*, 63 L. T. 371. Here there are two causes of action, alternate indeed but still two. How can it