

parts of the country to make a bargain "stick." It is certainly ungenerous for one who has been treated on closing a bargain, to claim that the treat of good-fellowship is a fraud on him, and in this case no advantage was taken of the plaintiff. And equally baseless is the allegation that the document was read rapidly, or that it was covered by the hand of M. when the plaintiff was signing it. The plaintiff is a one-armed man, and M. did put his hand on the paper to steady it while the plaintiff was signing it, but that was all. There can be no possible fault found with M. for his conduct during the negotiations (he did make certain statements which were not strictly true, but they were not at all material); and, unless more appears than has been mentioned, the release must stand.

Notwithstanding that the plaintiff had an ample opportunity to read the document, and notwithstanding that M. read it to him, I should have no difficulty, in view of such cases as *Foster v. Mackinnon*, L. R. 4 C. P. 704, in holding that the release is not binding, if as a fact the bargain was that the defendant was to pay the plaintiff's costs. No estoppel can arise here: there has nothing been done by either party which could have the effect of preventing the plaintiff having the advantage of the fact (if it were a fact) that the minds were not *ad idem*. The question is one of fact, viz.: "Was the bargain that the defendant should pay the plaintiff's costs?" I must, on the evidence which I believe, hold that the bargain was not that the defendant should pay the plaintiff's costs, but that the plaintiff thoroughly understood that he (the plaintiff) would have to look after any costs which his solicitors might claim.

In this view, the proper course to pursue is to order the plaintiff to pay the costs incurred since the added plea, including all costs reserved to the trial Judge; the sum of \$30 paid in by the plaintiff's solicitor to the clerk of the Court at Guelph, to be applied *pro tanto* upon these costs, no costs up to and including the added plea, and that the action be dismissed with the costs already mentioned, payable as aforesaid.

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#### ERRATUM.

Page 348, ante, line 15, for 26 Ch. D. read 36 Ch. D.