

POWER OF COUNSEL AND SOLICITOR TO COMPROMISE SUITS.

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There are not a few who question the policy of thus doing away with these judicial prizes. There may be said to be two main reasons tending to induce successful men to give up their practice and go on the Bench. One is a commendable desire to fill a highly honorable position, and the second is the certainty of a handsome salary for life. Now judicial salaries are not, in comparison with the standard of modern incomes, what they once were. In fact this inducement may be said to be practically at an end, even in England, and more so in this country. The salary will not, therefore, obtain the best men, and we certainly need the very best men, for cheap judges do not by any means ensure cheap justice; in fact much the reverse. As to the other inducement we may aptly quote the language of an English writer, when speaking on the question of judicial policy brought up by the publication of Lord Selborne's letter:—"An 'ordinary' judgeship is not quite what it once was; the very efficiency of the Court of Appeal has turned the courts of first instance in reality into inferior courts. It, therefore, may well admit of doubt whether the abolition of historic posts, such as that of the Chief Baron, is not a mistake. It does not need the example of Sir Alexander Cockburn to prove how great, how salutary, and elevating may be the influence of historical traditions and associations. The future will assuredly gain little by sacrificing the names or the offices which connect the judges of the High Court with an impressive and glorious past."

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The power to compromise suits and actions is incident to the general authority which attorneys and solicitors have to conduct causes on behalf of their clients. The attorney has been held to have power in the

bona fide exercise of reasonable care and skill to compromise the pending litigation in any manner he may judge to be in the interest of his client. Such a compromise is binding, even if no express authority has been obtained from the client. But if there be no express authority, and the arrangement consented to is of so unfair a character as to suggest fraud, then the compromise is not binding on the client: *Brady v. Curran*, Ir. R. 2 C. L. 314; *Berry v. Mullen*, Ir. R. 5 Eq. 368. The general rule may perhaps be stated succinctly thus: The attorney has power to make *bona fide* compromises of the client's case in the absence of any dissent on the part of the latter: *Chambers v. Mason*, 5 C. B. N. S. 59.

If, however, the client has given express instructions not to compromise, the better view seems to be that a compromise thereafter effected will be valid as between the parties litigant, if there is nothing in the terms to suggest suspicion or to put the opposite party on enquiry as to the extent of the attorney's authority; but that as between attorney and client, the former is liable to an action for damages, and will not be exculpated though he show that his conduct was reasonable and skilful and for the benefit of his client: *Fray v. Voules*, 1 Ell. & Ell. 839.

This implied authority extends not merely to enter into a compromise, but justifies the entire abandonment of the claims of his client in the particular suit, *per* BACON, C. J. in bankruptcy in *Re Wood*, 21 W. R. 104; see also *Rumsay v. King*, 33 L. T. N. S. 728, as to *stet processus*.

The proctor who acts for a married woman has the like ample power to compromise on her behalf, and that in litigation affecting her matrimonial rights or otherwise: *Stanes v. Stanes*, L. R. 3 Prob. & Div. 42. So also may compromises be carried out on behalf of infants by the observance of certain pre-requisites which are well indicated by the Master of the Rolls in the case of *Wilson v. Birchall*, 29 W. R. 27: "Before sanction-