In September, 1906, the terms of a settlement were arrived at by which the whole corpus of bonds and coupons was to be bought by Ritchie at the rate of about 70 cents in the dollar ($464,000). The executions, it is said in the evidence, were kept in the sheriff's hands till a satisfactory arrangement was come to with Ritchie: the bonds and coupons along with them were sold at 70 cents in the dollar; the interest would have amounted to considerably more than the principal. This transaction "satisfied the judgments."

In January, 1909, the money was received by the plaintiffs by which the bonds and coupons and judgments were satisfied; this money being paid in pursuance of the settlement arrived at before the writs were withdrawn from the sheriff's hands.

Upon this state of facts, I would infer that the proceedings at law and the maintenance of the writs of execution against the equity of redemption in the lands of the railway company were a precautionary measure to preserve any possible rights of property that might be available for execution; but in point of law the execution was a nugatory proceeding, both because a section of the road could not be sold (i.e., such part as was in the sheriff's bailiwick), and because the first charges on the road turned out to be even more than it was worth, and there was nothing in the equity. Having regard to the terms of Rule 1190 (2), I think there was a settlement arrived at here pending the execution, which was an equitable satisfaction of the judgments and executions; but, as upon a sale nothing could possibly have been realised, I cannot find any basis on which to say that any sum should be given as representing poundage. The agreement of the 29th January, 1906, put in, shews that the 70 per cent. basis of settlement was arrived at by taking the face value of the bonds as the prime factor, leaving out the accrued interest.

Another point is that the possession of the receiver in 1902 would effectually prevent the enforcement of any writ of execution.

Having regard to all the details, I should say this is not a case contemplated by the new Rule 1190 (2). That Rule is intended for the benefit of the sheriff when a settlement has been arrived at under pressure of an execution, which, if enforced, would be productive of beneficial results for the execution creditor; no levy on this fi. fa. on the equity of redemption of a part of the road could have worked any change in the situation. And the settlement was induced not because of there being writs in the sheriff's hands, but for other more cogent reasons.

I would dismiss the application, but give no costs, as the sheriff might have well been more liberally dealt with.