

Costs to all parties out of the estate.

Counsel referred also to the following authorities: Encyc. of the Laws of England, vol. 7, p. 513; Jarman, 6th ed., p. 1783 et seq.; Re Gamble, 13 O.L.R. 299; Wharton, 7th ed., p. 392; Kew v. Rouse (1685), 1 Vern. 353; Am. & Eng. Encyc. of Law, 2nd ed., vol. 17, p. 658; Richardson v. Richardson, 14 Sim. 526.

RIDDELL, J.

NOVEMBER 4TH, 1912.

SMYTH v. HARRIS.

*Settlement of Action—Application for Order of Court—Nature of Order to be Made—Order Confirming Settlement—Taxation of Costs.*

Motion by the plaintiffs for an order in terms of a settlement made by the parties. See the note of the decisions upon a motion and an appeal in the same case, ante 168.

H. E. Rose, K.C., for the plaintiffs.

E. F. B. Johnston, K.C., for the defendants.

RIDDELL, J.:—In this case the parties have come to a settlement. The defendants agree to do certain things and to pay certain costs. If the acts are not done by the 1st February, the plaintiffs may "give notice of an application to" myself "to fix a day for trial." "Pleadings to be considered as now closed, and no steps except taxation of costs to be taken in action from execution of this consent until service of notice of application to proceed." "(5) Application to be made by the parties to" myself "for an order confirming this settlement."

The parties now attend; and the plaintiffs submit a formal order, as of the Court, directing the defendants to do the acts, etc., which they agreed to do; the defendants say: "That is not the bargain; non hæc in fœdera veni." And I think they are right.

So far as I am concerned, all I am to do under the agreement is to make an order confirming the settlement, which I do. The parties have not agreed that I am to determine what the settlement means. Very experienced counsel have drawn up the settlement; they, no doubt, know what it means; at all events, they have not agreed that I shall tell them.

Then there is no provision (as is most usual) that an order of the Court is to be made to carry the settlement into effect. The