

counsel for plaintiff in *Eden v. Naish* to the contrary not being noticed in the judgment of Hall, V.-C. Moreover, in *Eden v. Naish* the order pronounced seems to have been merely for a stay of proceedings.

In *Gilbert v. Endean*, 9 Ch. D. 259, and *Emeris v. Woodward*, 43 Ch. D. 185, the Court held that a party contesting the validity of an agreement for compromise and seeking to set it aside cannot obtain that relief upon a summary motion; and Mr. Daniell in his *Chancery Practice*, 7th ed., at p. 16, after stating the general jurisdiction of the Court to enforce a compromise upon motion, says: "The question, however, whether a compromise is invalid should be the subject of a separate action, and cannot be determined upon application in the original action."

Notwithstanding the course taken in *Eden v. Naish*, therefore, in view of the decisions in *Gilbert v. Endean* and *Emeris v. Woodward*, the observations of Fry, J., in *In re Gaudet Frères S. S. Co.*, and the statement of Mr. Daniell in his esteemed work, it seems to me at least doubtful whether the question of the validity of an agreement for compromise, if raised in answer to a motion to enforce it, can be determined upon such motion. If this, however, were the only difficulty in the way of the applicants, I should have been inclined, if not to follow *Eden v. Naish*, at least to direct the trial of an issue, as was done in *Rees v. Carruthers*, 17 P. R. 51.

Such cases as *Johnson v. Grand Trunk R. W. Co.*, 25 O. R. 64, and *Haist v. Grand Trunk R. W. Co.*, 22 A. R. 504, in which alleged settlements arrived at before or pending the actions were set up in bar of the plaintiffs' claims, and the existence or validity of such settlements was denied, the issue so raised being dealt with by the Court at the trial, were clearly within sec. 57 (12) of the *Judicature Act*. They, however, differ entirely from the present case, and afford no guide for the disposition of the present motion.

In *Johnson v. Grand Trunk R. W. Co.*, however, at p. 69, Street, J., says that where something has been done under the settlement which renders it impossible to proceed with the pending action without first getting rid of the settlement, a fresh action to try the question of its validity seems