

MASTER IN CHAMBERS.

DECEMBER 7TH, 1912.

SOVEREIGN BANK v. SEVIGNY.

4 O. W. N. 459.

*Judgment—Motion for—Non-Compliance with Minutes of Settlement
—To be Made in Court—Costs.*

MASTER-IN-CHAMBERS refused to hear a motion to set aside a statement of defence filed, for non-compliance with minutes of settlement arrived at on the ground that it was in substance a motion to enforce a settlement which must be made in Court.

Pirung v. Dawson, 9 O. L. R. 248; O. W. R. 499, followed.

Motion by plaintiff for an order striking out the statement of defence herein and for entry of judgment against defendant for default in complying with terms of consent minutes filed at the trial of this action on 25th June last, upon which said trial was adjourned.

H. S. White, for the plaintiff.

F. Aylesworth, for the defendant.

CARTWRIGHT, K.C., MASTER:—The motion herein was made on November 16th, and as the case was to come on before Falconbridge, C.J.K.B., on the 19th November, and defendant's counsel contended that the action had been settled, it seemed best to refer the motion to the trial Judge. On its coming before him counsel for plaintiff attended but no counsel appeared for defendant. The reasons for this are given in his affidavit. Judgment was thereupon given for plaintiff with costs, including the costs of this motion; afterwards the judgment was set aside by the learned Chief Justice, and this motion was remitted to me.

The judgment debt has since been paid. The grounds on which defendant's counsel moves to have the motion dismissed with costs were: (1) that the action had been settled, and (2) that it could not be made before me.

I agree with this latter contention. It was decided in *Pirung v. Dawson*, 4 O. W. R. 499, 9 O. L. R. 248, that a motion to enforce a compromise or other agreement must be made to a Judge in Court. The plaintiff's motion was in substance a motion of that kind. Under the circumstances set out in the affidavit of defendant's solicitor filed on this second argument and not in any way impeached, I think the motion must be dismissed with costs to be set off against the costs taxable against the defendant—such costs being fixed at \$20.