

HON. MR. JUSTICE RIDDELL.

NOVEMBER 4TH, 1912.

WEEKLY COURT AND CHAMBERS.

SMYTH v. HARRIS.

4 O. W. N. 223.

*Action—Settlement—Terms of—Embodiment of in Order of Court.*

RIDDELL, J., refused to embody the terms of a settlement in an order of the Court where the settlement only provided that an order should be made confirming the same, and made an order in the exact terms of the settlement, "confirming the settlement."

No costs of application.

Motion by the plaintiffs for an order in terms of a settlement of the action made by the parties. See 23 O. W. R. 100.

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

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

HON. MR. JUSTICE RIDDELL:—In this case reported 23 O. W. R. 100, 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 February 1st, 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 plaintiff submits 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 haec in foedera 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