

and struck off the list; that he did not agree to pay plaintiff's costs or to assist him in settling the bill of costs. He also states that he did not refuse to permit Mr. Clute to be called in on behalf of the plaintiff, but said if Mr. Clute was called that Mr. Northrup and Mr. Drewry should also be called in, and that they had better settle it themselves without any lawyers.

When Mr. Northrup and Mr. Drewry were called in to write the memorandum of settlement, neither of them was told of the terms of settlement, except those disclosed in the memorandum itself. Mutual releases under seal were prepared by Mr. Northrup and executed by the plaintiff and defendant, which on the plaintiff's part included the claims sued for in the action. No money consideration is mentioned. And the defendant's solicitor, Mr. Drewry, states in his affidavit that it was not until the 5th May that he learned from his client that any money had been paid or cheque given by him to the plaintiff.

Shortly before the Court opened on the 22nd, Mr. Northrup informed Mr. Clute that the case had been settled, and when the case was called Mr. Northrup informed the Court that a settlement had been arrived at, and read the memorandum of settlement and offered to put it in. Mr. Clute urged that the case should go on, and that Mr. Northrup could amend the pleadings by adding as an additional defence the settlement. After argument the trial Judge said that he would strike the case off the list, reserving to the plaintiff the right to move to have the case reinstated on giving notice.

The defendant states in his affidavit: "I assumed that if the plaintiff owed anything to his solicitor or counsel for costs, he would pay them out of the money and cheque I gave him." The affidavit is silent as to how the sum of \$405—the consideration paid the plaintiff to settle—was arrived at, or what the \$5 was paid for, although plaintiff states expressly that it was given to pay his expenses to Toronto, in order that he should not be present when the Court opened. Defendant admits that he saw plaintiff in Brighton on the 22nd, "who said something about Gordon (plaintiff's solicitor) and arranging his costs, and I told him he had better get a bill of them and get them settled up," and that on the 23rd he saw plaintiff, who shewed him a bill of costs, which he had received from his solicitor, and he told plaintiff it seemed a very large bill, and if he were in his (plaintiff's) place he would have it taxed.

The learned local Judge, in his written judgment dismiss-