

authorities. It does not appear to be reported elsewhere, the judgments are not given verbatim, and the arguments are not given at all. It is not found in Mews' Digest nor, so far as can be discovered, is it referred to in any subsequent English case.

And there were in it some very special and peculiar circumstances. The action was brought by a bar-maid for breach of promise. She had apparently forbidden any settlement at all, but her solicitor made a compromise for £150, without costs. His bill amounted to £218, and, after making the settlement, he wrote to her, saying that he thought she would find it difficult to get out of it. "The truth," said Lord Esher, M.R., "seems to be that the solicitor became anxious about his costs" and the facts indicated very strongly that he had not acted in good faith. It can well be imagined that counsel for the defendant did not argue with any great earnestness in support of such a transaction, and that the court strove to set it aside. The decision, it is submitted, must be supported upon its special facts, and is not of any general authority.

Nor does *Neale v. Lady Gordon-Lennox* lend ex post facto support to the judgment in *Benner v. Edmonds*, for the Divisional Court was not being "asked" by the defendant "for its assistance" to enforce the settlement, within any reasonable meaning of these words, but set it aside on the application of the plaintiff. There was, therefore, nothing which enabled the court to exercise any discretion, or to invoke the "higher principle" relied upon by the House of Lords.

It is submitted, with deference, that settlements of actions by counsel or solicitors, made in spite of the client's express prohibition, which, however, is unknown to the other side, have been left by the authorities in this position:—

1. Such a settlement will not be set aside by the court on the application of either party, and can be successfully relied upon as a defence, or as a ground for staying proceedings.

2. The breach of, or refusal to perform such a settlement will in all cases support an action for any damages sustained thereby.