

*J. H. Moss*, for appellant, contended that the County Court had no jurisdiction over the cause of action, and also that it was not a proper case for Rule 608.

*E. D. Armour*, Q.C., and *Steers*, for plaintiffs, contra.

*Held*, that the judge had no power to order a final judgment, the amount claimed not being in any way liquidated or ascertained, and being disputed by the appellant. The judge might have directed a reference or inquiry to ascertain the amount due, and might have held the motion over and given judgment after the ascertainment of the amount by such inquiry; but he could not give judgment and direct a reference by such judgment to ascertain the amount; that would be putting the cart before the horse. Appeal allowed and order for judgment set aside with costs here and below to the appellant against the plaintiffs in any event.

Boyd, C.]

CORRY v. LEMOINE.

[June 5.]

*Settlement of action pending reference—Duty of Master—Dispute as to terms of settlement—Finding—Report—Opening up—Costs.*

Pending a reference to take accounts, a settlement was made between the parties in the absence of their solicitors, but there was a dispute as to the terms of the settlement. The master gave the parties the alternative, on the suggestion of the plaintiff, either to go on so as to determine whether the settlement did in fact end the matters in litigation, or to go on with the accounts as if there had been no settlement. The defendants, however, refused to take any further part in the proceedings in the master's office. The master found the fact of a settlement, and also that the defendants had agreed to pay the plaintiff's costs as part of the settlement, which the defendants disputed.

*Held*, on appeal from the master's report that it was competent for him to deal with the question whether there was or was not a settlement, and report according to the result. The course taken by him was according to the proper practice and within the scope of his jurisdiction. The decisions as to staying proceedings, upon summary application in case of a compromise, are not necessarily applicable to a compromise arrived at pending a reference. By Rule 667, in taking accounts the master is to inquire, adjudge, and report as to all matters relating thereto as fully as if the same had been specially referred. The defendants, however, should not be prejudiced by their having withheld before the master any evidence to support the settlement in the terms which they asserted; and therefore the report should be opened up on payment of costs.

*F. R. Latchford*, for defendant. *W. Wyld*, for plaintiff.