

up for months; possibly lose his investment in California, and forego the chances of a sale to some other party, who might not be so particular about the legal title. Certainly the injury to the defendant by insisting upon the contract was vastly more than the loss to the plaintiff by its abandonment. And again, defendant has not yet received his patent; nevertheless, plaintiff is asking a decree for a specific performance. In other words, he is asking this court to compel a conveyance of the very title which, when offered, he declined to receive. True, he asks that this court retain jurisdiction of the case and of the defendant until such time as the patent shall be issued, and that in the mean time he himself be relieved from the obligation to pay; in fact, the bill has a twofold aspect,—one to compel performance by defendant, and the other to delay payment by the plaintiff. Again, as a general rule it may be observed, in cases of this kind, a leading inquiry is as to who is seeking to avoid the contract. It may happen that a vendor under such a contract, seeing a chance to realize more on another sale, or believing in the rapid increase of value, seeks some technical excuse to avoid complying with his contract. When that is apparent, and the purchaser has acted in good faith, the court will readily enforce specific performance. It will punish the wrong-doer by compelling him to do that which he agreed to do. On the other hand, when the vendor is acting in good faith, is ready to perform that which he understood he had agreed to perform, to transfer all the title that he has, and the purchaser is the one who is making excuses, and seeks without present payment to hold his claim upon the property, then the courts will be very apt to say to him to pursue his remedy by an action at law, and let go his hold upon the property. Finally, it may be observed that in matters of this kind courts not merely observe the words of the contract, but also have respect to the obligations of the golden rule, and that, unless a plaintiff has done as he would be done by, it is useless for him to come into that forum where equity and good conscience reign supreme over the letter of the law. A decree will be entered dismissing the bill.

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SWANSON *v.* CHICAGO, ST. P. & K. C. RY. CO.

(*Circuit Court, D. Minnesota. June 28, 1888.*)

ATTORNEY AND CLIENT — COMPENSATION — COMPROMISE WITHOUT PAYMENT —  
RIGHT TO PROSECUTE SUIT.

Where plaintiff in an action for personal injuries voluntarily proposes a compromise, which is accepted, and there is nothing to show that it was collusive as to plaintiff's attorneys, who had no knowledge of it, a motion by the attorneys for leave to prosecute notwithstanding the settlement will be denied.

On Motion.

*Arctander & Arctander*, for plaintiff.

*Lusk & Bunn*, for defendant.

BREWER, J. A motion was made by plaintiff's counsel for leave to prosecute this suit, notwithstanding an alleged settlement made by the plaintiff with the defendant, on the ground that the same was made without the knowledge of plaintiff's counsel, and with a view to defraud them out of their fees. I have simply this to say: It is unquestioned that parties to a lawsuit may settle and compromise their litigation without consulting their counsel; and that, in the absence of a statute giving an attorney a lien for his fees, courts will not intervene, unless there has been collusion between the parties, and an attempt to defraud an attorney out of his fees. So say all the authorities presented by counsel for the plaintiff. In this case there is no reason to believe that there was any collusion, or any intent to defraud. It is one of those actions for personal injuries in which, while the amount claimed is large, yet we all know that there is often a great uncertainty as to the fact, as well as to the amount, of the verdict. It appears that the plaintiff, on one of the first days of this term, of his own volition, went to the claim agent of the defendant, and proposed to compromise for a given sum, amounting to about a thousand dollars. The same was accepted, the money paid, and a stipulation for the settlement of the case signed. This was done without consultation with, and without the knowledge of, the attorneys; and there is nothing in the transaction to show that it was not executed in the utmost good faith, without any thought of any interest the attorneys might have in the case. It is true that, the day before, the respective counsel met here in the court room, and spoke of a compromise. Counsel for defendant said he had no authority to do anything in the matter, but would suggest the terms mentioned to his client; and the plaintiff's attorney said he would do the same to his; but neither of them saw their clients, or had any consultation with them, and before they met again their clients had settled this suit. Under those circumstances, I think the settlement must stand, although it may operate to prevent counsel for plaintiff from receiving any compensation for their services. The motion will be overruled, and the case dismissed as per stipulation.

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LEWIS v. CHICAGO, ST. P. & K. C. RY. CO.

(Circuit Court, D. Minnesota. June 19, 1888.)

**ASSAULT AND BATTERY—CIVIL ACTION—PLEADING.**

A complaint which alleges, as in the old common count, that defendant, by one of its employes, committed an assault and battery upon the plaintiff, another employe, is not demurrable.

At Law. On demurrer to complaint.

Action by Douglas Lewis against Chicago, St. Paul & Kansas City Railway Company.