

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.

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.

W. W. Erwin and E. F. Lane, for plaintiff.
Lusk & Bunn, for defendant.

BREWER, J. A demurrer was argued in this case, and I shall confine myself to a single issue raised therein. I think it settled law that a corporation can be held responsible for a tort, even to the extent of holding it liable for a tort of such a character that a court would call it so wanton as to be malicious; and that a master may be responsible for an assault and battery committed by one of his servants, whether that assault and battery be committed upon a co-servant or a stranger. I also take it to be settled under the rules of pleading that what was equivalent to a common count under the old practice is good now as against an objection raised by demurrer; and I think that is all that can be said about this pleading. It alleges that the defendant, by one of its employes, committed an assault and battery upon the plaintiff, another employe. That is the allegation in the pleading of a substantive and ultimate fact. What the particular facts may be, whether that assault and battery was committed in the line of his employment, and in the discharge of a duty which he owed the defendant, the master, as an employe, does not now appear. Of course, I do not mean to sanction the idea that if one of defendant's employes gets into a quarrel with another employe and assaults him, the master is liable. But the allegation of the pleading is general. The complaint says that the plaintiff was a porter, and the other employe a conductor on the same cars; but under what circumstances the assault and battery was committed is not disclosed. It is set up, as in the old-fashioned common count, that the defendant, by one of its employes, committed an assault and battery upon another employe, and that is all. I will overrule the demurrer, with leave to answer in 40 days. There are one or two other errors alleged beyond this, but I do not deem them sufficient to warrant me in taking notice of them.

WITTERS *v.* SOWLES *et ux.*

(*Circuit Court, D. Vermont. July 21, 1888.*)

BANKS AND BANKING—NATIONAL BANK—SHAREHOLDERS—MARRIED WOMEN.

Rev. St. U. S. § 5151, providing that shareholders of national banks shall be responsible "for all contracts, debts, and engagements of such association to the extent of the amount of their stock therein," applies to a married woman who is such a shareholder, and she is liable for an assessment upon stock held by her, whether she acquired the same by subscription, purchase, bequest, or otherwise. Following 82 Fed. Rep. 767.

At Law.

Action by Chester W. Witters, receiver, etc., against Edward A. Sowles and Margaret B. Sowles, his wife, to recover an assessment on bank stock held by the latter.