

ACTION — COMPROMISE OF CLAIM DURING PROCEEDINGS — PROCEDURE TO ENFORCE COMPROMISE — ENTRY OF JUDGMENT BY MOTION.

The plaintiffs in *N. V. Koninklijke Paketvaart Maatschappij (Royal Packet Navigation Co. Ltd.) v. Yee Chang & Co. Ltd.* (1959) 25 M.L.J. 97, claimed a liquidated sum by way of damages. During the course of proceedings the defendant agreed to pay and the plaintiffs agreed to accept a lesser sum than that claimed by the pleadings in settlement of the action: the defendants subsequently claimed that the agreed sum should be abated and declined to pay.

The plaintiffs applied by motion for the agreed sum in the original action and the Court of Appeal, affirming the decision of the Chief Justice, decided that this was the proper procedure, rejecting the defendant's contention that a new writ should have been issued in respect of a fresh cause of action. This decision follows *Eden v. Naish* (1878) 7 Ch. D. 781, 47 L.J.Ch. 325, 26 W.R. 392. Somewhat curiously, however, the judgment of the Court of Appeal contains the passage: "It is settled law that terms of compromise can be made an order or rule of court only if there is a stipulation to that effect in the terms; if there is no such stipulation the terms cannot be made an order or rule of court." This is consistent with the note in Halsbury's *Laws of England* (2nd ed., vol. 26, p. 83(k)), but the note in the *White Book* on the same case (1959 *Annual Practice* 2008: "Making an Order of Court") is properly more guarded. It is difficult to see how the Court of Appeal, if its view of the law was as stated, upheld a decision enforcing a compromise by rule (or order) of court which compromise certainly contained no stipulation of the kind mentioned and was, in fact, entirely silent on the means of its enforcement.

The previous authorities, to which the present decision in no way runs counter, can probably be summarised as follows:—

A. An agreement to compromise cannot be enforced in the original action if:—

1. (a) that action has been discontinued; or (b) it has been agreed that the action shall be discontinued (*Graves v. Graves* (1893) 69 L.T. 420, 28 L.J.N.C. 558, 1 R. 485); or
2. the court has already made an order exhausting its jurisdiction (and this includes making no order) (*Green v. Rozen* [1955] 2 All E.R. 797, 99 Sol. Jo. 473); or
3. *semble*. there has been an absolute and unqualified order for a stay of all further proceedings (see *Green v. Rozen (supra)* [1955] 2 All E.R. at 800-1).

B. An agreement to compromise containing terms within the scope of the action may be enforced in the original action:—

1. if the action is pending and (a) the agreement specifically provides for such enforcement (*Re Hearn (No. 1)* (1913) 108 L.T. 452 & 737, 57 Sol. Jo. 443); or (b) the agreement is silent as to enforcement (*Eden v. Naish, supra*); or
2. An order has been made providing for enforcement or reserving the right to the party seeking enforcement so to apply (e.g. *Dashwood v. Dashwood* [1927] W.N. 276, 71 Sol. Jo. 911; *Practice Note* [1927] W.N. 290).

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