J	Α	М	Α	I.	С	А

IN THE COURT OF APPEAL								
R.M. COURT CIVIL APPEAL 15/65								
BEFORE :	The Hon. Mr. Justice Duffus, President							
	The Hon. Mr. Justice Waddington							
	The Hon. Mr. Justice Shelley (Acting)							
BETWEEN	CASWELL CASSELL - Plaintiff/ Respondent							
A N D	GERALD BROWN - Defendant/ Appellant							

11:8:

Mr. H.D. Carberry for Defendant/Appellant Mr. R.N.A. Henriques for Plaintiff/Respondent

22nd February, 1966:

WADDINGTON, J.A.,

This is an appeal from an order made by the learned Resident Magistrate for the parish of Manchester on the 25th of January, 1965, in which he endorsed the proceedings before him in the following manner:

"By consent, action withdrawn and no order as to costs."

It appears from the records that when the matter came on for trial, there was some discussion between the parties as to whether or not the plaintiff had brought the right proceedings before the Court, and that after some discussion the learned Resident Magistrate suggested to the parties that the action should be withdrawn : with no order as to costs, and that order was duly endorsed on the records. There appears to have been some misunderstanding as to that endorsement, because learned Counsel who appeared for the defendant has filed an affidavit in which he expressed his understanding of the matter as being, that he did not consent to the matter being withdrawn without any order as to costs, but that on the learned Resident Magistrate stating the manner in which he intended to dispose of the matter, he did not dissent from that, as according to him, it "_____was clear.... was clear that the learned Resident Magistrate had intimated that in any event, he would not be awarding any costs.

On the other hand, an affidavit has been filed by the Solicitor for the plaintiff, which makes it clear, if that affidavit is to be accepted, that the circumstances were such that the matter had been withdrawn by consent of the parties, and that although there was no express consent on behalf of the defendant, there was an implied consent to the matter being withdrawn with no order as to costs.

The proceedings appear to have been in the nature of a family dispute concerning the interpretation of the terms of a will, and it would seem that the circumstances were such as to lend itself not to a settlement but to a withdrawal in the manner which was suggested by the learned Resident Magistrate. The real point in issue is whether the defendant is bound by the order made by the learned Resident Magistrate. He endorsed the record, and presumably that endorsement was read out in Court, - 'By consent action withdrawn and no order as to costs.' If Counsel for the defendant did not agree to that endorsement, then it was his duty at the time to intimate his disapproval or disagreement with that order and to expressly ask for costs.

In view of the circumstances, it seems to us that the only conclusion that this Court can come to, was that there was an implied consent, to put it at its lowest, by Counsel for the defendant to the action being withdrawn without there being any order as to costs. That being so, we can see no reason to disturb that order and the appeal will therefore be dismissed with costs to the respondent for £12.

DUFFUS, P.,

I agree.

SHELLEY, J.A. (Acting), I agree.