



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which makes it clear, if that affidavit is to be accepted, that the circumstances were such that the matter had been withdrawn by consent of the parties, and that although there was no express consent on behalf of the defendant, there was an implied consent to the matter being withdrawn with no order as to costs.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 He endorsed the record, and presumably that endorsement was read out in Court, - 'By consent action withdrawn and no order as to costs.'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to, was that there was an implied consent, to put it at its lowest, by Counsel for the defendant to the action being withdrawn without there being any order as to costs.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.