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**Case No. 2,352.**

CAMPBELL v. BARCLAY.

[4 Biss. 517.]<sup>1</sup>

Circuit Court, N. D. Illinois.

April, 1869.

OPENING DEFAULT—MISUNDERSTANDING BETWEEN COUNSEL.

This court will not allow parties to be injured or prejudiced by any misunderstanding between their counsel.

[At law. Action by Andrew J. Campbell against Daniel Barclay.] This is a motion to set aside a judgment entered on default, it being alleged that the default was taken and entered in violation of an understanding between counsel.

DRUMMOND, District Judge. This is the rule that I have always adopted in these

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cases, that where there is any agreement, understanding, negotiation, or any thing of the sort, as to the disposition of a case, and there is a difference of opinion between the counsel as to what actually took place, that, as it arises from the fact of the negotiations pending between the parties, although there may be a difference of opinion, or misunderstanding, I will not allow the party to be prejudiced by the misunderstanding. Where counsel deal with, each other at arm's-length, each standing on his own rights, of course there need be nothing of that sort; but where a negotiation is entered into between counsel, and difficulty and misunderstandings arise in consequence of that, I do not allow the party to be prejudiced. If you say that there never was anything of the kind at all; that there never was an agreement or understanding that the declaration should be given to them, and plea furnished by them,—that is another matter. If you say this is made out of whole cloth, that is another matter. Judgment set aside.

<sup>1</sup> [Reported by Josiah H. Bissell, Esq., and here reprinted by permission.]

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