

Case No. 7370a. JOHNSON v. A RAFT OF SPARS.
[21 Betts, D. C. MS. 108.]

District Court, S. D. New York.

Jan., 1853.

ATTORNEYS—ACCORD AND SATISFACTION—CLANDESTINE AND COLLUSIVE SETTLEMENT—SEAMEN—SUITORS GENERALLY—EVIDENCE.

1. As a general principle, it is competent to litigating parties to adjust their controversies by amicable settlement, upon terms satisfactory to themselves, and courts will favor such settlements:
2. But a clandestine and collusive settlement of a cause in litigation, by the parties out of court, without the knowledge of the attorney of the prosecuting party, and without provision for the satisfaction of his costs already accrued, will not be regarded conclusive upon him; especially if his client had a clear cause of action, and is of no personal responsibility.
3. The rule is more stringent in respect to seamen, because of their known heedlessness and want of responsibility; and a private settlement of their suits for wages, made out of court with them personally, will be presumed made with the intent to defraud their proctor of his costs, and will not bar the action for the recovery of these costs. *Bright v. The Mary Jane, MSS.*, Oct., 1833 [unreported.]
4. In respect to suitors generally, it will be presumed they are able to satisfy their own lawyers, and courts will not allow an action after a settlement of the demands between the parties, for the purpose of enforcing payment of the attorney's costs, unless it be found that the settlement was made with the design to defraud the attorney of his costs, and that his client is unable to respond to him for the amount.
5. The evidence submitted in this case does not prove any fraudulent collusion between the parties, nor but that the libellant is amply competent to satisfy the costs; and, it being a case of tort for collision, it is not specially privileged. Judgment for claimants.

{This was a libel by William Johnson against a raft of spars (Street and McLean, claimants) for collision. The hearing is now upon objections by libellant's proctor to a settlement made by the parties.}

Before BETTS, District Judge.