Present : Bertram C.J. and Schneider J.

1924.

FERNANDO *v.* SINGORIS APPU.

Application for *restitutio in integrum* in D. C. Colombo, 11,217.

Proctor and client—Authority to compromise an action—Limitation of authority—Notice to other side—Restitutio in integrum—*Mistake.*

Where a proctor under the general authority given to him by a proxy enters into a compromise with regard to an action, such a compromise is binding upon his client.

The fact that there is a limitation of that apparent authority does not affect the authority to compromise, unless that limitation is communicated to the other side.

There is an exception to the principle enunciated above, viz.: If before the order is drawn up, the Court is satisfied that there is some equitable ground of relief such as mistake or surprise, the Court will not direct the order to be drawn up, but will restore the case to the list.

APPLICATION by way of *restitutio in integrum* to set aside a judgment entered by the District Judge of Colombo, based upon a settlement concluded by proctors on both sides, on the ground that the settlement was contrary to the instructions of the applicant.

1924.

Fernando v. Singoris Appu

It appears that, when the case was called, the applicant owing to a mistake of his proctor was not present. A witness was called, but before the witness was examined, the proctor took the responsibility of acting upon his general authority and coming to a settlement with the other side.

Weerasuriya, in support.

E. G. P. Jayatilleke, contra.

September 22, 1924. BERTRAM C.J.—

This is an application for *restitutio in integrum*. The application is made that we should set aside a judgment entered by the District Court based upon a settlement concluded by the proctors on both sides on the ground that the settlement was contrary to the instructions of the applicant. The application was supported by an affidavit in which it was stated, " That if the said order was made of consent it is bad, inasmuch as my counsel and proctor were acting without my instructions on the said day of trial and contrary to the instructions given by me to my proctor and set out in my answer. " Afterwards, in a letter filed in the District Court by the applicant in person, this statement was slightly enlarged, and it was there stated, " That the settlement was made contrary to my express instructions. " We can have little doubt, however, in view of the manner in which the instructions were referred to in the affidavit, that no question of a compromise had been considered between the applicant and his proctor, that no specific prohibition of a compromise had been communicated to him, and that he had received no instructions that any compromise arrived at must take a particular form.

The position, therefore, is this: That acting in pursuance of the general authority conveyed by his proxy the applicant's proctor did make a settlement of the matter in dispute. The principles governing this question have been considered in a series of cases—see in particular *Silva v. Fonseka*, [1] *Gunetilleke v. Orr*, [2] and *Ponniahpillai v. Mootatamby*. [3] In this matter our Courts have followed the English decisions, the latest of which is *Shepherd v. Robinson*. [4] The most important of the earlier decisions are *Neale v. Gordon Lennox* [5] and *Little v. Spreadbury*. [6]

It appears to be clear that, inasmuch as the proctors on both sides have, in the absence of any evidence to the contrary, apparent authority to compromise an action, if in pursuance of that apparent authority they come to a compromise, the clients are bound. The fact that there is a limitation of that apparent authority does not

[1] *(1922) 23 N. L. R. 447.*
[2] *(1922) 4 C. L. R. 28.*
[3] *(1923) 1 Times L. R. 232.*
[4] *(1919) 1 K. B. 474.*
[5] *(1902) A. C. 465.*
[6] *(1910) 2 K. B. 658.*

affect the authority to compromise, unless that limitation is communicated to the other side. Attention was drawn to this requirement in the case of *Ponniahpillai v. Mootatamby* (*supra*), and it appears to have been overlooked in the case of *Gunetilleke v. Orr* (*supra*). To this there is only one exception—if the order has in fact not been drawn up, and if the Court is satisfied that there is some equitable ground such as mistake or surprise. If it appears for example, that counsel who settled the case was under the mistaken belief that his authority was unlimited, whereas in fact it was limited—see *Shepherd v. Robinson* (*supra*), then the Court will not direct the order to be drawn up, but will take steps to correct the mistake and restore the case to the list. In the present case, no doubt, the order had been drawn up, and if it could be shown that there was some mistake or other equitable ground for relief. the Court would be free to give it. But I am unable to see in this case that there has been established any such ground of relief.

It appears from the record that the case was called. The applicant owing to a mistake—a mistake which was alleged to be the proctor's—was not present. A witness was called but before the witness was examined, the proctor took the responsibility of acting upon his general authority and coming to a settlement with the other side. In view of the decisions I have explained above, it seems clear that this Court cannot interfere with the settlement so arrived at.

The only question that might be asked is whether a settlement was in fact arrived at. Mr. Weerasooriya draws attention to the form of the learned Judge's note. It says: "The following settlement is ordered." He suggests that the settlement was not in fact agreed to by the parties, but that it was imposed on the parties by the Court. I do not think that the learned Judge's words can justly be so interpreted. When he said, "the following settlement is ordered," he clearly must have meant that a settlement being arrived at between the parties, an order was made in accordance with the settlement. To rule otherwise would be to impute an arbitrary proceeding to the learned Judge which there is nothing in his position or his judicial methods to justify us in imputing to him. I am of opinion, therefore, that the application must be refused with costs.

SCHNEIDER J.—I agree.

Application refused.