1941 *Present :* **Howard C.J. and Soertsz J.**

PUNCHIBANDA *v.* PUNCHIBANDA *et al.*

89—D. C. Kurunegala, 19,047.

Evidence—Admission made by Counsel—Admission not clear—Binding effect on party—Admission to be in writing.

An admission made in the course of a trial on behalf of a party should be clear and distinct and should, as a rule, be made in writing and signed by the parties or their proctors.

APPEAL from a judgment of the District Judge of Kurunegala.

N. Nadarajah, for defendants, appellants.

N. E. Weerasooria, K.C. (with him *E. B. Wickremanayake*), for plaintiff, respondent.

Cur. adv. vult.

June 5, 1941. SOERTSZ J.—

The short point in this case is whether the defendants-appellants are entitled to avail themselves of the opportunity given to them by the District Judge on January 26, 1940, to amend their answer, by amending it to the extent of disregarding an admission made by Counsel who appeared for them and by the plaintiff's proctor to the effect that "The shares are admitted at this state. It is admitted that the parties do not base their claim to particular lots on their prescriptive rights".

The amendment which has been rejected calls in question the plaintiff's right to any shares of this land at all, and sets up a prescriptive title against him.

The learned trial Judge rejected this amended answer because he held that the defendants were not entitled to repudiate the admission on the ground on which they seek to repudiate it, namely, that their Counsel had no right to make it, and that he made it without their consent.

It has been held in several cases that a proctor has the right to settle or compromise a matter or case entrusted to him even without consulting his client in regard to it (see *Fernando v. Sinnoris Appu* [1]), and I suppose Counsel may make an admission if he is instructed by his proctor to make it, but the difficulty in the present case is that the admission is recorded in so perfunctory a manner that one cannot be certain as to who made the admission and in what circumstances, it was made.

This Court has often pointed out that when settlements, adjustments, admissions, &c., are reached or made, their nature should be explained clearly to the parties, and their signatures of thumb impressions should be obtained. The consequence of this obvious precaution not being taken is that this Court has its work unduly increased by wasteful appeals and by applications being made to it for revision or *restitutio in integrum*. One almost receives the impression that once a settlement is adumbrated, those concerned, in their eagerness to accomplish it, refrain from probing the matter thoroughly lest the settlement fall through.

[1] *26 N. L. R. 469.*

This is a very unsatisfactory state of things and it is to be hoped that a greater degree of responsibility will be shown on these matters by both judges and lawyers.

Reference was made in the course of the argument here to the case of *Hewa Radage Phillspu v. Ferdinandis and others*[1] in which Burnside C.J. commenting on an admission which it was alleged had been made by Counsel said "I should hold that any admission which might be made for the defendants attempting to bind them to their manifest prejudice in the very essence of their contention on their evidence would not bind them without showing that they had expressly authorised their Counsel to make it and with a full knowledge of its effect". In the case before us there is nothing to show that the parties had so expressly authorised their Counsel. Indeed they say that they were not consulted in the matter. But quite apart from that objection, I am of opinion that the admission relied on is so vaguely worded that it is difficult to say what shares were being admitted and what prescription was being waived—prescription in respect of separate blocks or of the whole land or both. The English case of *Landers v. Landers*[2] lays down that "admissions ought, in general, to be *in writing* and signed either by the parties or their solicitors. *They should be clear and distinct*". Section 408 of the Civil Procedure Code read with Section 91 requires a certain formality in regard to agreements and compromises. I would, therefore, set aside the order of the District Judge and send the case back for trial on the pleadings as amended. The costs of this appeal will abide the result. The parties and proctors will not be entitled to costs incurred on January 31, 1939, and on June 27, 1940.

HOWARD C.J.—I agree.

Order set aside.