Present: Bertram C.J. and De Sampayo J.

1922.

SILVA *v.* FONSEKA.

D. C.—Kalutara, 7,858.

Restitutio in integrum—*Proctor's authority to settle a case without consulting his client—Courts should obtain signature of parties to settlements.*

Where a proctor has by his proxy general authority to settle and compromise a case without consulting his client, the client is not entitled to relief by way of *restitutio in integrum* if the proctor settles the case without his consent. But where the settlement has been made contrary to the express instructions of the client, relief by way of *restitutio in integrum* is available.

It is desirable that the Court, when a compromise is effected, should explain it to the parties and obtain their signatures to the compromise.

THE facts appear from the judgment.

Jayawardene, K.C. (with him *L. H. de Alwis*), in support.

Amarasekera, contra.

February 3, 1922. BERTRAM C.J.—

This is an application for *restitutio in integrum*. The action to which it relates was an action to set aside a deed which was said to have been made in fraud of creditors. The complaint of the first defendant, who now applies to this Court, is that her counsel agreed to a compromise without her consent and without her being in any way consulted. This is an *ex parte* statement, and I am not to be taken as expressing the opinion that such are the facts. But we have to consider this application on the basis of this complaint. By her proxy she had given to her proctor the usual power of settlement and compromise, and it is not suggested that she in any way subsequently varied or limited those instructions. Where it is made to appear to this Court that a settlement has been made contrary to the express instructions of the client, we have given relief under this procedure. But, as far as I know, we have never done so unless some departure from such express instructions is shown.

Mr. A. St. V. Jayawardene, who appears for the applicant in this case, relies upon a recent English authority (*Shepherd v. Robinson*[1]). In that case, while the general authority of counsel to compromise

[1] *(1919) 1 K. B. 474.*

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a case was fully recognized, attention was drawn to another principle, namely, that if, before the consent order is drawn up and perfected, it appears that the consent was given by either counsel or solicitor under a misapprehension, the Court will not proceed further in the drawing up and perfecting of the order, but will order the case to be restored to the list. I do not think, however, that the facts of the present case can be brought within that principle. In the case referred to there had been some revocation of authority which had been communicated to those negotiating the compromise, or there had been some misapprehension of some other nature. Here, no misapprehension can be suggested. All that Mr. Jayawardene says is that, although the client may have given general authority to settle by executing the proxy, no settlement should have been come to until the client was first consulted.

It seems to me that that is a proposition which has no legal authority, and which it would be dangerous for us to sanction. On the other hand, it also seems to me that, in view of the numerous cases which are brought before us in which clients complain of settlements made by their legal advisers, it would be a good rule for District Courts and Courts of Requests to adopt to insist that in all such cases the clients should be brought forward and the compromise explained to them and that their signatures should be taken. This would avoid any future misunderstandings or complaint. With regard to the present application, my opinion is that it must be dismissed, with costs.

DE SAMPAYO J.—I agree.

Application dismissed.