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in which the suit should be brought. In the present case the claim for *post diem* interest is one which the plaintiff is entitled to raise, having regard to the recent decisions on the subject, while the claim for the sum said by the defendant to be *res judicata* is one which the plaintiff can establish if he can show that there is no *res judicata*, and that the debt was incurred for purposes binding on the defendant. If the valuation of the suit is right, no question of *res judicata* by virtue of the decision in the District Munsif's Court can arise, since that Court could not have tried the present suit.

We have not overlooked *Lakshman Bhatkar* v. *Babaji Bhatkar*(1) on which much stress was laid by the respondents' pleader, but we think that the present case is distinguishable from it. Were it otherwise, we should hesitate to go so far as the learned Judges seemed disposed to go in applying the principle enunciated by him with reference to the duty of the Court in cases of alleged over-valuation.

We must therefore set aside the orders of the Courts below, and direct that the District Judge do receive the plaint and dispose of it according to law.

Costs throughout will abide and follow the result.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.

1897. December 15.

JAGAPATI MUDALIAR (DEFENDANT), PETITIONER,

v.

EKAMBARA MUDALIAR (PLAINTIFF), RESPONDENT.*

Pleader and client—Authority of pleader—Compromise entered into by pleader without the client's consent.

It is not competent to a pleader to enter into a compromise on behalf of his client without his express authority to do so.

PETITION under Civil Procedure Code, section 622, praying the High Court to revise the proceedings of V. Saminada Ayyar, District Munsif of Trivellore, in Small Cause Suit No. 1088 of 1896.

(1) I.L.R., 8 Bom., 31.

* Civil Revision Petition No. 99 of 1897.

The defendant in the suit retained a pleader and signed a vakalat in the following terms:—"I, the defendant in the above "suit, have appointed you as my vakil to conduct the suit on my "side. Therefore, I shall accept, as having been conducted by me "in person, all the acts done by you in the Court, concerning the "suit, such as applications written by you for me and those that "are spoken, signed and argued for me."

"Subsequently" said the District Munsif, "a compromise "petition signed by the plaintiff and his pleader and by the defend-"ant's pleader, but not defendant, was put in in this suit on 18th "December 1896. According to a practice which it is generally "found convenient to follow, the defendant was ordered by the "Court on that day to turn up in person or send a special power "to compromise, the vakalat already filed by his pleader containing "only a general power to act without an express power to com-"promise. It is conceded that there was nothing limiting the "scope of the pleader's general authority to act, as for instance, "by an express direction not to compromise. The defendant "turned up in person on 4th January 1897, and orally stated "that he did not agree to the compromise signed by his pleader "and put into Court on 18th December 1896. The only question "for consideration, therefore, on which there has been somewhat "a conflict of opinion, is whether a compromise entered into by "a pleader on behalf of his client without a special power to "compromise and without express instructions to the contrary is "binding on the client as against third persons."

The District Munsif answered the question thus stated by him in the affirmative referring to *Jagannathdas Gurubakshdas* v. *Ramdas Gurubakshdas*(1), *Jang Bahadur Singh* v. *Shankar Rai*(2), and he passed a decree in accordance with the terms of the compromise.

The defendant preferred this petition.

Champion & Biligiri for petitioner.

Sivasami Ayyar for respondent.

JUDGMENT.—We are unable to accept the view taken by the District Munsif. In England, no doubt, as urged for the plaintiff, an attorney, though he has not obtained express authority from his client for the purpose, has yet power to enter into a compromise

(1) 7 Bom. H.C.R. (O.C.J.), 79. (2) I.L.R., 13 All., 272.

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on behalf of the latter. However, as pointed out in the note to section 24 of Story on Agency (9th edition, page 27), such power has given rise to much litigation in England. It is not surprising, therefore, that even many of the American Courts, administering the English Common Law have declined to follow the English rule referred to. It is true that in the note in Story, cited above, it is said that the American decisions on the point generally agree with those of the English Courts. But the accuracy of that observation has been questioned in *Levy* v. *Brown*(1), where the Court says:—"In the elaborate note to section 24 in "Story on Agency, and also in Wharton on Agency, section 592, "it is said that the American rule is the same as the English. "If these learned authors mean to say that a majority of the "American Courts recognize an inherent right in the attorney to "compromise the original demand placed in his hand, so as to "receive in full satisfaction less than the amount due, or to substi- "tute claims upon other parties, or to take property in satisfaction "of a money demand, or to release any security existing when he "received the claim, we cannot agree with them. That there are "cases going to this extent is true, but we think that the decided "weight of authority in this country is the other way." When such is the case in countries advanced as those American States are, it would scarcely be safe to apply the English rule to practitioners in the position occupied by the majority of vakils here. *Prem Sookh* v. *Pirthee Ram*(2), *Musumat Hakeemoonnissa* v. *Buldeo*(3), *Musumat Sirdar Begum* v. *Musumat Izzut-ool-Nissa*(4), *Gour Pershad Doss* v. *Sookdeb Ram Deb*(5), *Chunder Coomar Deo* v. *Mirza Sudakat Mahomed Khan*(6), and *Sheikh Abdul Sabhan Chowdhry* v. *Shibkisto Daw*(7), are clear and distinct authorities against the view adopted by the District Munsif. Moreover, so far as this Presidency is concerned, it has been hitherto tacitly understood by all that a vakil has no implied authority to enter into a compromise on behalf of his client, as is manifest from the practice of the Courts which invariably insist upon the production of special authority from the client expressing consent to the compromise entered into on his behalf by the Vakil before the

(1) 30 American Reports, 359.
(2) 2 Agra H.C.R., 222.
(3) 3 Agra H.C.R., 309.
(4) 2 N.W.P. H.C.R., 149.
(5) 12 W.R., (C.R.), 279.
(6) 18 W.R., (C.R.), 486.
(7) 3 B.L.R., Appx., 15.

compromise is accepted by the Court. It is scarcely necessary to say that there is a considerable difference between the case where a pleader by way of compromise purports to give up a right claimed by the client, or to saddle him with a liability that is not admitted, and the case on which stress was laid in the argument, viz., where a pleader makes admissions as to relevant facts in the usual course of litigation, however much those admissions affect the client's interest. The power to bind by such admissions, which, in effect, is but dispensing with proof of the facts admitted, is one of the well-recognized incidents of a pleader's general authority. To deny power so to bind the client or to do any similar act obviously necessary for the due conduct of litigation would so embarrass and thwart a pleader as in a great measure to destroy his usefulness. But no such undesirable results would follow from holding that in the absence of specific authority, a pleader cannot bind by compromises strictly such. It is true that the opinion of a pleader as to the advisability of a compromise is often valuable. But it must be conceded that a client ought to have the power of deciding for himself whether a right asserted should be relinquished, and whether a liability denied should be accepted.

Having regard to all the considerations bearing on the matter, we think we ought to follow the Indian cases to which we have referred, and hold that the compromise in the present instance entered into by the defendant's vakil without the defendant's authority and the decree passed thereon in spite of his opposition are not binding on him. The decree is therefore set aside, and the suit remanded for disposal according to law. Costs will abide and follow the result.