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MURTAZAI BIBI v. JUMNA BIBI.

TYRRELL, J.—I agree with all that has fallen from my brother Straight, and with the decree passed by him.

Appeals dismissed.

[NOTE.—This case is connected with F. A. No. 142 of 1888 in which also similar questions were in issue and the same judgment was delivered in both cases. Of this judgment only so much had been reported as relates to the point of law decided thereby, the former portion of the judgment dealing exclusively with the facts of the case.—W.K.P.]

FULL BENCH.

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December 20.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Tyrrell, Mr. Justice Mahmood and Mr. Justice Knox.

JANG BAHADUR SINGH AND ANOTHER (PETITIONERS) *v.* SHANKAR RAI AND ANOTHER (OBJECTORS.)

Counsel and client—Authority of counsel to compromise a case on behalf of his client—Nature of power conferred by counsel's retainer.

A counsel, unless his authority to act for his client is revoked and such revocation is notified to the opposite side, has, by virtue of his retainer and without need of further authority, full power to compromise a case on behalf of his client; and the Court will not disturb a compromise so entered into, unless it appears that it was entered into under a mistake and that some palpable injustice has been thereby caused to the client. *Strauss* v. *Francis* (1), *Matthews* v. *Munster* (2) and *In re West Devon Great Consols Mine* (3) referred to.

THIS was a reference to the Full Bench by Mahmood, J. The circumstances under which the reference was made, as also the facts of the case, are sufficiently stated in the judgment of Edge, C. J.

EDGE, C. J.—This was a reference by my brother Mahmood to the Full Bench for expression of its opinion on a question raised as to the authority of advocates by an application for review of a decree passed by my brother Mahmood. The applicant on the hearing of the appeal in this Court was represented by Mr. *Spankie*, one of the advocates of this Court. His opponents were repre-

(1) L. R., 1 Q. B., 379. (2) L. R. 20 Q. B. D., 141.
(3) L. R., 38 Ch. D., 51.

sented by Mr. *Conlan*, another advocate of this Court. Those gentlemen are also members of the English Bar. In the interest of their respective clients they agreed as to the form of the decree which should be passed by my brother Mahmood in the appeal. My brother Mahmood made a decree according to the terms agreed upon by those two advocates. My brother Mahmood acted under s. 577 of the Code of Civil Procedure. This applicant for review says, what we assume to be a fact, that he never agreed to those terms. He also says that he had not authorized his advocates to agree to any such terms. The question is, could my brother Mahmood interfere under the circumstances, review his judgment and alter his decree, dated the 23rd April 1890? It is not shown by the applicant that any unjust advantage was obtained by his adversary, or that Mr. *Spankie* acted under any mistake in such a way as to produce any injustice, nor is there any affidavit before us suggesting anything of the kind. From what I know of Mr. *Spankie* is it not at all likely that he lost sight of the interest of his client. I have no doubt that if we were satisfied that any unjust advantage had been obtained by the other side, or that Mr. *Spankie* had acted under a mistake in such a way as to produce injustice to this applicant, we could interfere. In order that I may not be misunderstood I had better say that what I understand as unjust advantage is not the consenting to terms which the client may object to, and which he may consider unjust; but some substantial injustice which should induce us to act. In most cases of compromise points have to be given up and concessions have to be made on each side. I may say, after many years' experience at the bar, that I think a respectable and responsible advocate of experience is a much better Judge of what course he should take for the best interest of his client than the client ever is. As an illustration as to the length to which the Courts in England have gone in upholding the acts of an advocate I may refer to the case of *Strauss* v. *Francis* (1) which decided that:—"It is within the general authority of counsel retained to conduct a cause to consent to the withdrawal of a juror, and the compromise being within the

(1) L. R., 1 Q. B., 379.

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counsel's apparent authority is binding on the client, notwithstanding he may have dissented, unless this dissent was brought to the knowledge of the opposite party at the time." I may refer also to the following passage in the judgment of Mr. Justice Blackburn in that case (at page 381):—"Mr. *Kinealy* has ventured to suggest that the retainer of counsel in a cause simply implies the exercise of his power of argument and eloquence. But counsel have far higher attributes, namely, the exercise of judgment and discretion on emergencies arising in the conduct of a cause, and a client is guided in his selection of counsel by his reputation for honour, skill and discretion. Few counsels, I hope would accept a brief on the unworthy terms that he is simply to be the mouthpiece of his client. Counsel therefore being ordinarily retained to conduct a cause without any limitation, the apparent authority with which he is clothed when he appears to conduct the cause is to do every thing which in the exercise of his discretion he may think best for the interest of his client in the conduct of the cause; and if, within the limits of this apparent authority, he enters into an agreement with the opposite counsel as to the cause, on every principle this agreement should be held binding." I do not think, I could express my views on a matter of this kind more fully or clearly than by adopting the judgment of Lord Esher in the case of *Matthews* v. *Munster* (1) which I think correctly lays down what the authority of the counsel is. I may quote the following passage from that judgment; the judgments of Lords Justices Bowen and Fry are equally instructive:—"This state of things raises the question of the relationship between counsel and his client, which is sometimes expressed as if it were that of agent and principal. For myself I do not adopt and never have adopted that phraseology, which seems to me to be misleading. No counsel can be advocate for any person against the will of such person, and, as he cannot put himself in that position, so he cannot continue in it after his authority is withdrawn. But when the client has requested counsel to act as his advocate he has done something more, for he thereby represents to the other side that counsel is to act for him in the usual course, and he must be bound

(1) L. R., 20 Q. B. D., 141.

by that representation so long as it continues, so that a secret withdrawal of authority unknown to the other side would not affect the apparent authority of counsel. The request does not mean that counsel is to act in any other character than that of advocate, or to do any other act than such as an advocate usually does. The duty of counsel is to advise his client out of Court and to act for him in Court, and, until his authority is withdrawn, he has, with regard to all matters that properly relate to the conduct of the case, unlimited power to do that which is best for his client." Now the meaning of this passage is this that a client employing an advocate cannot restrict the powers of that advocate to bind him in the suit unless he gives notice to his opponent that he has withdrawn or limited the authority of the advocate to act for him. Then again :—"I have said that the relation of an advocate to his client can be put an end to it at any moment, but that the withdrawing of the authority must be made known to the other side, and this shows that the client cannot give directions to his counsel to limit his authority over the conduct of the cause, and oblige him to carry them out; all he can do is to withdraw his authority altogether, and in such a way that it may be known he has done so." In the case of *In re West Devon Great Consols Mine* (1) in which the counsel had agreed not to appeal on terms, and his clients questioned his right to bind them, Lords Justices Cotton, Lindley and Bowen held that the clients were bound by the acts of their counsel. At page 54 of the report, Cotton, L. J. is reported to have said :—"The questions were raised in argument whether an undertaking not to appeal could be given at all by counsel without express authority, and if it could, whether it could be given after a decision on the merits. Now every compromise involves an undertaking not to appeal, it therefore cannot be beyond the authority of counsel to undertake that his client shall not appeal. As to the other point the counsel in fact says :—'The Judge has given a decision adverse to my client, and in consideration of his receiving his costs I undertake that he shall not appeal against it.' That is a compromise. The undertaking therefore is *primâ facie* binding." There are other cases

(1) L. R., 38 Ch. D., 51.

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also which show how careful the Courts are not to interfere with compromises or settlements effected by counsel on behalf of clients in suits. The case of *Prem Sookh* v. *Pirthee Ram* (1) that of *Hakeemoonnissa* v. *Buldeo* (2), and the case of *Sirdar Begum* v. *Izzutoolnissa* (3) are cases which relate to the authority of vakils and do not affect the case before us. When the authority of vakils to bind their clients is called in question that authority must depend entirely on the terms of the particular vakalatnáma. For my part I should read a vakalatnáma widely and liberally, unless it appears that the client intended to limit the authority of his vakil. In my opinion my brother Mahmood should reject this application for review.

STRAIGHT, J.—I am entirely of the same view, and approve of the learned Chief Justice's answer to this reference, namely, that the compromise on which my brother Mahmood made his decree was binding on both parties to the appeal.

TYRRELL, J.—I concur in the view of the learned Chief Justice, and in the answer given to the reference.

MAHMOOD, J.—I also concur in the answer of the learned Chief Justice, and my brother Straight.

KNOX, J.—I concur.

The application for review was disposed of on the same day in accordance with the views expressed by the Full Bench by the following order :—

MAHMOOD, J.—This is an application under s. 626 of the Code of Civil Procedure by an applicant for review of judgment. It was referred to the Full Bench by me, and the answer which has been given by the Full Bench renders it necessary for me to deal with it under s. 627 of the Code of Civil Procedure, and the rule No. 6 of the rules of the Court. In view of the answer given by the Full Bench I reject this application. No order as to costs is necessary, as no notice has gone to the opposite party.

Application rejected.

(1) N.-W. P. H. C. Rep., 1867, p. 222. (2) N.-W. P. H. C. Rep., 1868, p. 309.
(3) N.-W. P. H. C. Rep., 1870, p. 149.