

C. A. a penalty, and I think you must declare specially as for a
1910 penalty."

Appeal allowed.

BOARD OF
TRADE
v.
EMPLOYERS'
LIABILITY
ASSURANCE
CORPORATION,
LIMITED.

Solicitor for plaintiffs : *Solicitor to the Board of Trade.*

Solicitors for defendants : *Watson, Soms & Room.*

W. J. B.

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June 16.

LITTLE v. SPREADBURY.

Practice—Authority of Solicitor to compromise Action—Apparent Assent but Misunderstanding in Fact on Part of Client as to Terms of Compromise.

If a client by his conduct induces his solicitor to believe that he is authorized to make a certain compromise in an action which the solicitor is conducting on behalf of the client, and the solicitor, reasonably relying on that conduct and believing that he has the authority of the client, makes the compromise, the client is bound whether he intended to give that authority or not and whether he in fact understood or did not understand the terms of the compromise.

Before a county court action was tried a settlement was arrived at between the solicitors for the respective parties and a memorandum embodying its terms was signed by the solicitors. This memorandum was not read by the defendant, but it was read over to her by her solicitor or his son, and she seemed to assent to its terms. The action was thereupon, by consent of the county court judge and the solicitors on both sides, struck out. Although the defendant seemed to assent to the terms of the compromise she did not in fact understand them and did not mean to assent to them. Subsequently an agreement in writing, signed by the solicitors for both parties, containing the terms of the memorandum was sent to the defendant, who repudiated it upon the ground that the terms of the compromise which she authorized her solicitor to effect were not contained either in the memorandum or in the written agreement:—

Held, that the defendant was bound by the compromise made by her solicitor and was liable in damages for the breach of it.

APPEAL from the judgment of the judge of the Hampshire County Court holden at Winchester.

The plaintiff, Miss Vivian Little, brought the action in the county court, to recover the sum of 35*l.* from the defendant, Mrs. Spreadbury, as damages for the alleged breach by the defendant of the terms of a compromise dated December 15, 1909,

of an action between the same parties. It appeared that in June, 1906, the plaintiff purchased a Pomeranian bitch known as Firefly, which (according to her contention) she placed in the defendant's charge upon the terms that the plaintiff was to pay 1s. a week as expenses and the defendant was to have half the proceeds of the sale of any puppies which the bitch might have. The defendant, however, contended that the plaintiff gave her the bitch outright subject to the plaintiff having half the proceeds of the sale of the puppies. In February, 1909, the plaintiff resumed possession of the bitch with the consent of the defendant. The animal was placed elsewhere by the plaintiff, and on December 16, 1909, the defendant went to the place where the bitch then was and took her away. The plaintiff thereupon commenced proceedings in the county court for the recovery of the bitch from the defendant. Before that action was tried a settlement was arrived at between the solicitors for the respective parties and the following memorandum embodying its terms was signed by them:—

“ Dog to be handed over to plaintiff, who is to retain same until she has bred and sold puppies to repay her 15*l.* she has already expended and the cost of keep, stud fees, travelling expenses, and veterinary fees to be incurred by her, and her costs of action agreed at 6*l.* 6*s.* and Court fees.

“ The dog then to be handed to defendant as her absolute property.

“ Dog to be insured for 20*l.* until all above paid, the premium to be paid equally by plaintiff and defendant. Policy money to be applied in payment of any balance due to plaintiff, any surplus to belong to defendant.

“ Mr. Tutt ” (a veterinary surgeon of Winchester) “ to be at liberty on defendant's behalf to inspect dog at all reasonable times with the view of seeing all proper steps are taken as to breeding.

“ If dog does not breed within two years the dog to be handed to Mrs. Spreadbury.”

This agreement was not read by the defendant, but it was read over to her by her solicitor, Mr. Lamport, or his son, and the action was thereupon, by consent of the county court judge and

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the solicitors for both parties, struck out. Subsequently an agreement in writing, signed by the solicitors for both parties, containing the terms of the memorandum was sent to the defendant, who thereupon repudiated it upon the ground that the compromise that she authorized her solicitor to effect was upon the basis of the bitch becoming her property after two years whether she had had puppies or not. She therefore declined to deliver up the dog to the plaintiff. The present action was thereupon brought by the plaintiff, who claimed (inter alia) damages for the alleged breach by the defendant of the terms of the settlement of the previous action.

The county court judge found that the terms of the settlement of the first action did not accurately represent the terms to which the defendant agreed, but that the terms agreed to by the defendant were that whether the bitch did or did not have puppies within two years she was at the expiration of that period to be returned to the defendant, Mrs. Spreadbury, as her absolute property, and that the defendant's solicitor had authority only to compromise the action on those terms and had no authority to compromise it on any other, and that any other terms were by implication forbidden. He accepted the evidence given by Mr. Lamport, the defendant's solicitor, and his son, to the effect that the terms of the agreement sued upon were read over to her and that she seemed to assent to them, but he found that she did not in fact understand the terms of the settlement and did not mean to assent to them. Upon this ground he gave judgment for the defendant.

The plaintiff appealed.

Francke (S. H. Emanuel with him), for the plaintiff. The county court judge was wrong. The defendant's solicitor had authority to agree to the terms of settlement in the absence of express prohibition. The compromise was with regard to the matter in dispute and not with regard to a collateral matter which might be outside the general authority of counsel or solicitor. The present case is covered by the decision in *Strauss v. Francis* (1), which was among the authorities cited in the

Court of Appeal in *Neale v. Gordon-Lennox* (1) and adopted by the Earl of Halsbury L.C. in his judgment in that case in the House of Lords. (2) Where a client apparently consents to a compromise and leads the solicitor to reasonably believe he understands it, the client cannot afterwards say he did not understand it: *Holt v. Jesse* (3); *Hickman v. Berens* (4); *Fray v. Vowles* (5); *Chown v. Parrott*. (6) [*Chambers v. Mason* (7) and *Rumsey v. King* (8) were also referred to.]

H. F. Dickens, K.C., and *Mallinson*, for the defendant. Whether the compromise ought to be held to be binding on the defendant was a matter within the discretion of the county court judge, and he rightly exercised his discretion in holding that the defendant ought not to be bound as there was a misunderstanding on her part: *Lewis's v. Lewis*. (9) The decision in *Harvey v. Croydon Union Rural Sanitary Authority* (10) is a direct authority in support of the proposition that it is for the judge to decide whether there has been such a mistake that he ought to set the compromise aside. It was pointed out by the Earl of Halsbury L.C. in delivering judgment in *Neale v. Gordon-Lennox* (2) that a compromise must be dealt with in the same way whether the party relying upon it is applying for specific performance or is asking the Court for an order enforcing the compromise. That case also shews that it is not necessary that the limitation of authority should be made known to the other side in order to enable a Court to set the compromise aside. In the present case there was not enough to give the defendant's solicitor apparent authority to make the compromise and the position of the parties has not been altered. *Chambers v. Mason* (7) and *Prestwich v. Poley* (11) are distinguishable. In those cases the matter was left entirely in the advocates' hands. *Strauss v. Francis* (12) is inconsistent with *Neale v. Gordon-Lennox* (2) and must therefore be taken to have been overruled. In the present case the solicitor had no authority in fact to do

(1) [1902] 1 K. B. 838.

(2) [1902] A. C. 465.

(3) (1876) 3 Ch. D. 177.

(4) [1895] 2 Ch. 638.

(5) (1859) 28 L. J. (Q.B.) 232.

(6) (1863) 32 L. J. (C.P.) 197.

(7) (1858) 28 L. J. (C.P.) 10.

(8) (1876) 33 L. T. 728.

(9) (1890) 45 Ch. D. 281.

(10) (1884) 26 Ch. D. 249.

(11) (1865) 18 C. B. (N.S.) 806.

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

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LITTLE v. SPREAD- BURY.	<i>Francke</i> , in reply, referred to <i>In re Newen</i> . (1)

BRAY J. In this case the plaintiff contends that there was a binding contract between her and the defendant in the terms of the document signed by the two solicitors. The answer of the defendant to that contention is, "My solicitor signed that without authority." Before I deal further with those contentions I wish to distinguish the decision of the House of Lords in *Neale v. Gordon-Lennox* (2), which in my opinion has no real bearing upon the point that we have to decide. In that case the facts were in substance that there was a trial, that the plaintiff signed a certain document agreeing that the case should be referred to arbitration, one of the terms of which was that there should be a withdrawal of all imputations in Court, and that afterwards her counsel made an agreement in which there was no such term. The plaintiff then desired to get that agreement set aside, and before any order was drawn up took steps with a view to that being done. The order was then drawn up in order that it might be set aside. That was mere form. The real question which the Court had to determine was whether it would order that the case should be referred to arbitration. The Court was therefore being asked (as the Earl of Halsbury L.C. pointed out in his judgment) for its assistance. In delivering judgment the Earl of Halsbury L.C. said: "The Court is asked for its assistance—and I entirely repudiate the technical distinction between what is called an application for specific performance and an order to be made that such and such things should be done—the Court is asked for its assistance when this order is asked to be made and enforced that the trial of the cause should not go on." Later in his judgment he said: "Where the contract is something which the parties are themselves by law competent to agree to, and where the contract has been made, I have nothing to say to the policy of law which prevents that contract

(1) [1903] 1 Ch. 812.

(2) [1902] A. C. 465.

being undone : the contract is by law final and conclusive. But when two parties seek as part of their arrangement the intervention of a Court of justice to say that something shall or shall not be done, although one of the parties to it is clearly not consenting to it, but has in the most distinct form said that the consent to refer—to take it from the jurisdiction of the ordinary tribunal—shall only be on certain terms, to say that any learned counsel can so far contradict what his client has said, and act without the authority of his client as to bind the Court itself, is a proposition which I certainly will never assent to.” It seems to me to be quite clear that the ground upon which the Lord Chancellor based his judgment in that case was that the party seeking to uphold the arrangement was coming to the Court to ask it to enforce by an order a certain thing being done and that he excepts altogether the case of a contract which can be carried out by the parties without the intervention of the Court for the purpose of saying that something shall or shall not be done. That is, in my opinion, why he did not deal with a great number of cases which had been cited. In my opinion that case is quite distinguishable.

In the present case we have only to consider the question which ordinarily arises upon any contract that is signed by an agent, namely, whether that agent had authority to bind the principal. In my judgment the authorities shew that in the absence of a special prohibition a solicitor has power to make a compromise with regard to the subject-matter of the action, but not with regard to collateral matters. It is not contended that this compromise deals with any collateral matter. The dispute between the parties with regard to which the first action was brought was as to who was to have possession of the dog, and the parties very sensibly arranged that as the dog could not be divided between them one party should have possession of it for a certain time and that the other party should have possession of it afterwards, and that meanwhile the dog should be insured and the person who did not first have it should have inspection of it from time to time. Those seem to me matters as to which the solicitor was competent to make a compromise, unless he had an express prohibition from his client not to enter into such

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compromise. On behalf of the plaintiff it has been contended that in law it matters not whether there was such express prohibition or not if the other side was unaware of the prohibition. It seems to me to be unnecessary to decide that point. I will assume for the purpose of my judgment, without deciding the point, that if there was an express prohibition on the part of the defendant to enter into the contract she would not be bound.

The county court judge has found that when the terms of compromise were read over to her the defendant seemed to assent (in other words he accepted what Mr. Lamport, the solicitor who was then acting for her, and his son said upon that point), but that nevertheless she did not in fact understand them and she did not mean to accept them.

The defendant contends that before the terms were read to her she had told Mr. Lamport to agree to certain terms and that therefore a prohibition against compromising upon any other terms is implied. I will assume in the defendant's favour that in the first place she said to her solicitor "These are the terms that I will accept," the terms not being those of the compromise; and that, as often happens, the other side were not willing to accept those terms, but asked for some modification of them, and that the memorandum which was drawn up was a modification of them. That memorandum was read to her. She seemed to consent to it. In my opinion that bound her and gave authority to the solicitor to enter into that contract. In my judgment, if a client by her conduct induces her solicitor to believe that he has authority to make a certain compromise, and he, reasonably relying on that conduct and believing that he has that authority, does make that compromise, the client is bound whether she intended to give that authority or not and whether she in fact understood or did not understand the terms of the compromise. That is an application of the common law principle that a person is bound by his acts. You cannot go into what his intentions were. The defendant is bound by her acts, and if she led her solicitor to believe that she assented to those terms, it was, in law, an assent to his making those terms. It seems to me unnecessary to decide anything further. In my opinion Mr. Lamport, the defendant's solicitor, had authority to enter into the agreement when he did

so. There was no withdrawal of authority before that agreement was signed or before the action was struck out. How soon afterwards the authority was withdrawn it matters not; that agreement was signed while the solicitor was under the belief that he had authority to do so. In my judgment the defendant was bound, and it is our duty to say that the county court judge should hold as a matter of law upon his findings that she was bound, by the contract, and inasmuch as she has broken the contract he must try the question of what damages the plaintiff has suffered in such manner as he thinks right.

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LORD COLERIDGE J. I agree. I need not recapitulate the facts which have been so lucidly stated by Bray J. My view of the law is this: Where a client has given specific instructions for a compromise, or has given a prohibition against compromising, except upon certain terms, the solicitor has no authority from the client to depart from those instructions without the client's consent expressed or implied. Where, however, there is a general authority, a solicitor has authority to compromise on such terms as he thinks best for his client. It is unnecessary to decide whether the client has in such a case a right to repudiate such authority. The client can certainly only do so on the ground of mistake or surprise and at the earliest possible moment—at any rate before an order is drawn up; and if in the meantime the other side has acted on the compromise in such a manner that it would be inequitable to annul it, I think the client would nevertheless, notwithstanding the withdrawal, be bound. But that is not the case with which we are dealing, nor is this a case where the solicitor has effected a compromise through his own admitted inadvertence or mistake to which the client has not in fact consented. In this case the client—although not in fact understanding the terms of the compromise, and therefore not in fact assenting to it—nevertheless apparently assented to it. By her conduct she led the solicitor reasonably to believe that she did consent to it, and the solicitor, relying upon such apparent consent, effected the compromise. In these circumstances the compromise is, in my judgment, binding on the client whether the authority to compromise be general or specific, or even where

1910 there was originally a prohibition to compromise upon the terms
 LITTLE which the client subsequently apparently assented to, although
 v. in the latter case the evidence would have to be stronger in order
 SPREAD- to prove the apparent consent. In the present case, however,
 BURY. the county court judge has found that the defendant did, by
 Lord Coleridge conduct, induce her solicitor to believe he had authority to effect
 J. the compromise in question. He accordingly acted upon his
 apparent authority, and the defendant is therefore bound by
 his act.

Appeal allowed.

Solicitors for plaintiff: *Church, Adams & Prior, for Percy W. Snelling, Winchester.*

Solicitors for defendant: *Nonweiler & Romain.*

J. E. A.

C. A.

[IN THE COURT OF APPEAL.]

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 July 6.

KING v. PHOENIX ASSURANCE COMPANY.

Employer and Workman—Compensation—Company—Winding-up—Insurance—Liability of Insurers—Arbitration Clause in Policy—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 5, sub-s. 1.

In the case of bankruptcy or winding up off an employer who is insured s. 5 of the Workmen's Compensation Act, 1906, only gives the workman the same right against the insurers as the employer would have had. Where a policy of insurance contains a clause that any dispute between the insured and the insurers shall be referred to arbitration under the Arbitration Act, and that an award under that Act shall be a condition precedent to any right of action against the assured, and there is a bona fide dispute, a workman cannot take proceedings in the county court to have compensation awarded until the matter has been referred to arbitration under the Arbitration Act and an award obtained.

LOUISA KING, the plaintiff in this case, was an infant employed by the British Roller Skating and Engineering Company. On February 7, 1910, the punch of a press at which she was working fell upon both her hands and cut off several fingers. The company paid full compensation from February 7 to March 14. On