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Therefore the question to be determined is whether the offence under section 121 has or has not been committed. Briefly stated, the most cogent argument for the defence is this:—So long as a man only tries to inflame feeling, to excite a state of mind, he is not guilty of anything more than sedition. It is only when he definitely and clearly incites to action that he is guilty of instigating and therefore abetting the waging of war. That is, it seems to me, a correct statement. Therefore it has to be determined whether the poems recited in the charge do clearly instigate to action. It is contended for the defence that they do not. In my opinion they do. In unmistakable language they tell the readers of the book to form secret societies, to take arms and to revolt against the Government. That is clearly to my mind an instigation to action. Therefore I think the conviction is correct and should be confirmed.

I attach no importance to the argument that the word 'abet' in section 121 means something less than that word as used in section 107 of the Indian Penal Code. Section 7 of the Code refutes that argument. Nor am I impressed by the argument that the abetment meant by section 121 means abetment of some war in progress. There may be and usually is instigation of rebellion before rebellion actually begins. Under the law of this country, instigation of that kind is abetting waging war against the King.

Appeal dismissed.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Knight.

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January 27.

BASANGOWDA HANMANTGOWDA PATIL AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* CHURCHIGIRIGOWDA YOGANGOWDA AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

Practice—Court—Inherent powers—Compromise—Compromise assented to by pleader not specially authorised in that behalf—Decree in terms of compromise—Decree set aside.

In the course of a suit, a compromise was presented which was signed by the defendants' pleader who was not specially authorised in that behalf. The Court

* Civil Extraordinary Application No. 215 of 1909.

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passed a decree in terms of the compromise. The defendant then applied to the Court to set aside the decree on the ground that he did not engage the pleader and that he had not authorised the pleader to compromise the suit. The Court set aside the decree and set down the suit for hearing.

Held, that it is the inherent power of every Court to correct its own proceedings where it has been misled.

Held, also, that under the circumstances, the compromise was not binding upon the defendant and the decree passed upon it was void as to him.

CIVIL extraordinary application from the order passed by G. N. Kelkar, First Class Subordinate Judge at Dhárwár.

The plaintiffs filed a suit against defendants Nos. 1 and 2 in the Court of the First Class Subordinate Judge at Dhárwár. In that suit, the defendant No. 1 engaged a pleader for him and for his brother (defendant No. 2). The pleader, it appeared, never had any interview with defendant No. 2. Defendant No. 1 compromised the case with the plaintiffs; and at his instance the paper of compromise was signed by the pleader. The Court passed a decree in terms of the compromise.

Defendant No. 2 thereupon applied to the Court stating that he had not engaged the pleader and that he had not authorised him to enter into the compromise.

The Court set aside the decree and set down the suit for hearing.

The plaintiffs applied to the High Court under its extraordinary jurisdiction.

S. R. Bakhale, for the applicants.

K. H. Kelkar, for the opponent No. 2.

CHANDAVARKAR, J.:—It is contended that the lower Court has erred in law in upsetting the decree, which was passed in terms of what purported to be a compromise between the parties. The compromise ended in a decree, because it was stated to the Court that the present opponent (defendant) Bhimangauda, who was represented by his pleader, had authorized the latter to enter into the compromise. Bhimangauda, after the decree had been passed, applied to the Court to set aside the compromise on the ground that the pleader had not been instructed to

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appear for him in the suit and that he had given him no instructions in the case, authorizing him to enter into any compromise. If that was so, the compromise was not binding upon Bhimangauda, and the decree passed upon it was void as to him. It was *ultra vires*. The Court had been asked to put its seal upon and sign a document, which had no legal foundation to rest upon, and if that decree goes out, then the whole suit is re-opened. But it is said that the procedure adopted by Bhimangauda is not in accordance with law; that there is no section in the Code of Civil Procedure which entitles a party in the situation in which the defendant is, to ask the Court to re-open the suit and set aside the decree in a summary manner. Now, where limited authority was given to Counsel to enter into a compromise and Counsel entered into a compromise beyond that authority, it has been held by the House of Lords that Counsel, having exceeded his authority, the party was entitled to have the agreement to refer set aside and the cause restored to the list for trial: *Neale* v. *Gordon Lennox*[1]. What the defendant says is that there was a suit against him, and that the suit was declared to have ended by reason of a decree passed with his consent. He never consented, and the result has been that there has been fraud committed upon the Court. The Court was persuaded to sign a decree to which the defendant had never consented, and that upon the representation that he had consented to it. Therefore, once the Court is asked to go back upon its own procedure, it is not a question whether there is any section in the Civil Procedure Code to warrant the action of the Court amending its proceedings. It is an inherent power of every Court to correct its own proceedings where it has been misled. We must, therefore, discharge the rule with costs.

Rule discharged.

R. R.

(1) [1902] A. C. 465.