Thakor that Mr. *R* was only engaged in a bail application, and did not appear in the case, but all that is necessary is that he should agree to do so and since he put in a vakalatnama, it must be concluded that he accepted a retainer within S. 11 of the Act. Mr. Shah's explanation was that he had left vakalatnama forms ready with a petition-writer Ramanlal Bhailal and that just before the case was called Ramanlal handed him one duly filled in, which he accepted and so appeared for the complainant. Immediately after, he says, Mr. Hiralal for the other side drew his attention to the fact that he had already appeared for the defence, whereupon he withdrew. We find it very difficult to accept this explanation and we feel strongly that the arrangement he has disclosed with the petition-writer at Matar is most objectionable. At the best Mr. *R's* explanation amounts to carrying on his work without due care and attention, or in other words with gross carelessness. But we feel that there was more in it than that, and that Mr. *R* is guilty of professional misconduct. I agree therefore with the severe reprimand which has been pronounced by my learned brother.

K.S. *Order accordingly.*

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MURPHY, AG. C. J. AND MACKLIN, J.

Khandesh Laksmi Vilas Mills Co., Ltd.—Applicant.

v.

Graduate Coal Concern, Jalgaon—Opponent.

Civil Revn. No. 390 of 1933, Decided on 4th July 1934.

Civil P. C. (1908), S. 152—Decree drawn up in terms of interlocutary application instead of according to final order owing to mistake on part of ministerial servant—Court has inherent power to amend decree.

Under S. 152 the Court has inherent power to vary or amend its own decrees or orders so as to carry out its own meaning. Hence where a decree was apparently drawn up in the terms of the interlocutory application for a final decree by a mistake on the part of a ministerial servant, but it ought to have been drawn up according to the final order of the Judge himself :

Held : that the Court had inherent power to amend it. [P 75 C 2]

Ambedkar, W. B. Pradhan and *G. S. Gupte*—for Applicant.

A. G. Desai and *P. B. Gajendragadkar*—for Opponent.

Macklin, J.—This is an application to revise an order of the First Class Subordinate Judge of Jalgaon amending a decree in such a way as to bring the name of the applicant upon the decree as judgment-debtor. The applicant is a company known as the Khandesh Laxmi Vilas Mills Company. They were sued by a concern known as the Graduate Coal Concern on a mortgage. A preliminary decree was passed on the mortgage, and the plaintiffs at a later stage applied, under Ex. 56, to have the decree made final. The decree was made final under Ex. 86. Then the Graduate Coal Concern applied in execution proceedings to have the property brought to sale. Notice of the execution proceedings was sent to the Khandesh Laxmi Vilas Company; but they put in an application alleging that the final decree was not binding upon them inasmuch as they had not been a party to that decree. The application was heard, and it was decided that the final decree was not binding upon the Khandesh Laxmi Vilas Company because it could not be said that the decree had been made final against the company owing to the way in which the company had been described. The Graduate Coal Concern then asked for leave to amend their application, Ex. 26, and for the decree to be amended by inserting the name of the Khandesh Laxmi Vilas Company in clear terms. Both the application for final decree and the final decree itself were accordingly amended. The Khandesh Laxmi Vilas Company has now applied in revision against those amendments.

It is contended that the learned Subordinate Judge had no jurisdiction to amend the final decree at that stage of the proceedings, since he was functus officio. Moreover, so it is said, the correct procedure would have been to appeal against the finding in the execution proceedings that the final decree was not binding upon the Khandesh Laxmi Vilas Company. We do not agree. Under S. 152, Civil P. C., the Court has an inherent power to vary or amend its own decrees or orders so as to carry out its own meaning. There is plenty of authority quoted in support of this in Sir Dinshah Mulla's Civil Procedure Code, and it appears that the Subordinate Judge who heard the application for execution

ought to have found that all that had happened was a mistake on the part of the ministerial servant of the Court in drawing up the decree. The decree was apparently drawn up in the terms of the interlocutory application, Ex. 56, for final decree. But it ought to have been drawn up according to the final order of the Judge himself, which was to the effect that there should be a final decree against the defendants; and it is customary and indeed obligatory, upon the ministerial servant of the Court who draws up decrees to take the names of the parties as they appear in the plaint. The applicant company was correctly described in the plaint, and all that was necessary was for the final decree to be amended so as to give the name of the defendants as they were described in the plaint. In effect what the learned Subordinate Judge, whose action is not criticised, has done is to give effect to Section 152, Civil P. C., and to exercise his inherent powers of amending a decree in such a way as to bring it into conformity with the meaning of the Court which ordered the decree to be passed. We see no reason to interfere, and we discharge the rule with costs. The stay application also be discharged with costs.

K.S. *Rule discharged.*

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MURPHY AND SEN, JJ.

Morarji Jivraj—Petitioner.

v.

Emperor—Opposite Party.

Criminal Revn. No. 323 of 1934, Decided on 3rd October 1934, from order of Presidency Magistrate, Third Court, Bombay.

Criminal P. C (1898), Ss. 202 and 259—Complaint under Ss. 406, 471 and 109, I. P. C.—Process issued to accused and date fixed — Application by complainant to refer matter to police dismissed — Complainant absent on date of hearing — Accused discharged under S. 259—Fresh complaint on same facts, with prayer that case should be referred to police — Prayer granted by Magistrate — Held order of discharge was illegal and granting prayer in fresh complaint was not proper—Under S. 202 complainant has no rights or privileges to require Court to refer case to police.

On a complaint under Ss. 406 and 471, read with S. 109, I. P. C., Magistrate issued process and summons for the production of account books relating to the alleged transaction and fixed a date for hearing. The complainant then applied for a reference of the case to the police. That application was rejected on the ground, apparently, that the Court had no jurisdiction, having once ordered process to issue. On the date of the hearing, complainant was absent and the Magistrate, purporting to act under S. 259, Criminal P. C., discharged the accused. On the very next day the complainant filed a fresh complaint on the same facts and added a prayer that the case should be referred for investigation to the police under S. 202. This prayer was granted by the Magistrate.

Held: that the order under S. 259 should not have been passed by the Magistrate particularly with respect to the offence punishable under S. 406, I. P. C. As the offences punishable under Ss. 406 and 471 were interrelated and clearly involved in each other, this was not a case in which the accused should have been discharged with respect to the offence punishable under S. 471 not even under S. 209, Criminal P. C., which (and not S. 259) was the appropriate section under which such action could have been taken, the offence being one triable by a Court of Session and as such the order of the Magistrate purporting to be passed under S. 259 was manifestly illegal, and it therefore vitiated the filing of the subsequent complaint and the proceedings thereafter.

Held further: that the complainant deliberately stayed away on hearing date in order that the accused might be discharged so that he could file a fresh complaint and then pray for a reference to the police, and that his conduct in this respect was not straightforward and was intended to circumvent the provisions of the law and to take an unfair advantage of the Court's powers and as such his prayer ought not to have been granted and that the Magistrate did not exercise his discretion properly.

Held also: that under S. 202 complainant has no rights and privileges to require Court to refer the case to the police. [P 78 C 1]

C. H. Carden Noad and *R. B. Kantawalla*—for Petitioner.

G. N. Thakor, *V. N. Chhatrapati* and *R. G. Naik*—for Opposite Party.

B. G. Rao—for the Crown.

Sen, J.—The facts out of which the present application arises are as follows. Opponent 1, who is the widow of one Narsi Sawal, was the complainant against the petitioner and opponent 2 whom she charged with criminal breach of trust and abetment thereof and using a forged share-transfer form in respect of ten ordinary shares of the Tata Iron and Steel Co. belonging to her, under Ss. 406 and 471, read with S. 109, I. P. C. The case was tried in the Court of the Third Presidency Magistrate, Bombay, who issued process and summons for the production of account books relating to the alleged transaction, and he fixed the case for hearing on 3rd July 1934. On 2nd July 1934 opponent 1 applied for a reference of the case to the Criminal