

1900.
November 16
and 21.

CHITTAMBALAM v. POOTHATHAMBI.

D. C., Colombo, 12,568.

Bill of costs—One proctor appearing for another proctor—Costs of work done by acting proctor—Taxation against losing party.

When, owing to the absence of a proctor in a case, another proctor appears for him without objection by the court or the losing party, the work done by the latter proctor should be accounted to be work of the former proctor and charged against the losing party.

THE plaintiff instituted this case in the month of Mar 1899, and on 17th October it was dismissed with costs. The defendant's proctor was Mr. John Pulle. In his absence on the trial day Mr. Tisseverasinghe appeared on behalf of Mr. John Pulle and instructed counsel. On 21st March, 1900, Mr. Tisseverasinghe signed defendant's bill of costs "for proctor for defendant," but the taxation was cancelled on the ground that Mr. John Pulle had gone to Jaffna to practise there, and Mr. Tisseverasinghe was not defendant's proctor.

On 17th July, 1900, Mr. Tisseverasinghe filed a proxy on behalf of the defendant and again had his bill taxed. The plaintiff objected, but the District Judge overruled him and allowed the taxation.

Plaintiff appealed against this order.

Elliott, for appellant.

Keppel Browne and *H. J. C. Pereira*, for defendant.

Cur. adv. vult.

21st November, 1900. LAWRIE, J.—

The defendant during the earlier stages of this litigation was represented by his proctor, Mr. John Pulle. Mr. John Pulle went to Jaffna and afterwards accepted an appointment there. The defendant then gave a proxy to Mr. Tisseverasinghe. The defendant having got judgment with costs, Mr. Tisseverasinghe

presented the defendant's bill of costs for taxation. The plaintiff objected to certain items in the bill for work done after Mr. John Pulle left for Jaffna, and before Mr. Tisseverasinghe got his proxy. It was said that during the interval Mr. Tisseverasinghe had looked after Mr. John Pulle's business.

The taxing officer allowed these items. The taxation was brought under the review of the District Court. The plaintiff contended that Mr. Tisseverasinghe could not be allowed costs for work done by him before the proxy to him was filed. The learned District Judge rejected the objection and sustained the taxation.

In my opinion he was right. Mr. John Pulle remained proctor on the record until the appointment of Mr. Tisseverasinghe. The work done was work chargeable against the losing party. The proctor on the record was responsible for it.

There is a presumption that a proctor does the work for which he charges, but it is not possible that he personally can attend to every detail of every action in which he holds a proxy. Much must be done by partners and assistants and clerks; in the case of illness or necessary holiday, a friendly proctor may act.

In this case Mr. Tisseverasinghe acted as Mr. John Pulle's friend during his absence; he did so openly without objection either by the Court or by the plaintiff. It is my opinion that the work so done should be accounted to be Mr. John Pulle's work, for which his client is entitled to charge the losing party. I affirm the order with costs.

BROWNE, A.J.—

I quite agree, as there was no suggestion that Mr. Tisseverasinghe was acting covertly or improperly under the powers given to Mr. John Pulle, or without the knowledge of the latter. The chief object of the rule limiting all power to act to the proctor on the record is to notify to the other party who is responsible in that office and the original responsibility here continued.

1900.
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and 21.
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LAWRIE, J.

