

1903.  
July 16 and  
17.

TREABY v. BAWA.

C. R., Batticaloa, 8,700.

*Proxy—Imperfection of, for want of entry in it of proctor's name—Authority of proctor to file plaint.*

The plaintiff having, by an oversight, omitted to insert in the proxy which he had signed the name of the proctor whom he employed to appear before the Court and conduct his case, and the defendant having objected in his answer to the maintenance of the action against him:

*Held*, that the proper course to adopt in such a case was not to order the plaint to be taken off the file and cast the plaintiff in costs, but to supply the omissions then and there and proceed with the case in due course.

THE following order of the Commissioner (Mr. H. O. Fox) explains the facts of the case:—

“The plaint filed is signed by Mr. Suppramaniam as proctor for plaintiff. The first objection raised in the answer is that the plaintiff's proxy does not authorize Mr. Suppramaniam to bring and maintain this action.

“On examining the proxy I find that, though signed by plaintiff, it neither named Mr. Suppramaniam or the Court before which he is to appear to maintain this action. It is signed 7th January, 1903; and under the same date the initials ‘C.S.’ have been written on the stamp affixed to the proxy.

“The signing and filing of the plaint are acts which only a proctor duly appointed by the plaintiff is entitled to do.

“The proxy certainly does not duly appoint Mr. Suppramaniam to be proctor for plaintiff.

“The defect cannot be considered to have been waived by any acquiescence hitherto in Mr. Suppramaniam's appearance as proctor for plaintiff, nor can it be cured by amendment at this stage.

“I order that the plaint be taken off the file. Plaintiff to pay defendant's costs as well as his own.”

The plaintiff appealed. The case was argued on 16th July, 1903.

*Browne*, for appellant.

*Bāiwāntudawē*, for respondent.

*Cur. adv. vult.*

17th July, 1903. GRENIER, A.J.—

The proceedings before me are very remarkable, and I can hardly believe that the fact of the proxy in question not containing Mr. Suppramaniam's name should have formed the subject

of a solemn discussion in the Court below. The plaintiff, by an oversight and nothing more, appears not to have inserted the name of Mr. Suppramaniam in the body of the proxy, although Mr. Suppramaniam had admittedly acted for him as his proctor so far. Instead of the Commissioner then and there asking the plaintiff to rectify the omission by the insertion of Mr. Suppramaniam's name, he has ordered the plaint to be taken off the file on an objection pressed by defendant's counsel. He should not have listened to such an objection, because it was quite within his power, without any prejudice whatever to the defendants, to accede to Mr. Suppramaniam's request, made both on the 5th February and on the day of trial, that the plaintiff may be allowed to insert his name in the proxy, the plaintiff himself being willing, presumably, to do so on both occasions.

The order appealed from must be set aside, and the case sent back for trial, with liberty to the plaintiff to insert Mr. Suppramaniam's name in the proxy. I remark that in the answer filed by the defendants no mention whatever is made of the omission. The Commissioner seems to have thought that the point was involved in the first issue of law raised by the defendants in their answer. I do not think so. The defendants will pay the costs of this appeal and the costs of the day in the Court below.

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GREENIER,  
A.J.

