

LETCHEMANAN v. CHRISTIAN.

D. C., Galle, 3,533.

1898.  
August 23  
and 26.

*Proctor and client—Proctor giving proxy to another proctor to appear in the case—Rights of proctor—Civil Procedure Code, s. 27, form 7.*

No proctor is entitled to appear for a client unless he has a proxy signed by such client; and there cannot be more than one proctor at the same time on the record.

Nor can one proctor employ another proctor to appear for him and conduct a case.

A proxy to that effect should not be received in Court.

If the proctor appointed by a client does not wish to conduct the case himself, he is at liberty to employ an advocate.

The form of proxy No. 7 given under section 27 of the Civil Procedure Code, so far as it refers to one proctor appointing another proctor in a case, is not justified by that section of the Code.

ACTION on a promissory note against two defendants who were the makers of it. The second defendant engaged Mr. N. D. Abeyesingha as his proctor and granted him a proxy dated 18th April 1895, on the strength of which he appeared for him before the District Court on the 22nd April of that year. Judgment was entered up against first defendant on the same day for default of appearance. The case against the second defendant came for trial on the 4th April, 1897, when Mr. Proctor Gunasekara filed proxy from Mr. Proctor Abeyesingha and appeared at the trial.

The original proxy of the second defendant in favour of Mr. Abeyesingha contained, amongst other clauses, the following: " And I do further authorize and empower my said proctor to take " and use all such lawful ways and means, and to do and perform " all such acts, matters, and things as may be necessary in and " about the premises which I, being personally present, might or " could lawfully do, and if necessary *one or more proctor or " proctors* or an advocate or advocates to appoint and again at " pleasure such appointment to revoke."

In terms of this power Mr. Abeyesingha signed a proxy in favour of Mr. Gunasekera appointing him " to be my proctor and " for me and in my name and behalf before the District Court " of Galle in case No.           to appear and therein to conduct the " said case," and in all other respects the document signed purported to be an exact copy of the original proxy.

The District Judge entered judgment for plaintiff against the second defendant, and the second defendant appealed.

*E. W. Jayawardane*, for defendant, appellant.

*Van Langenberg* (with him *Sampayo*) for plaintiff, respondent.

*Cur. adv. vult.*

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On the merits their lordships modified the judgment pronounced by the District Judge; and as regards the proxy filed at the trial by Mr. Gunasekera,—

BONSER, C.J., made the following observations:—

I notice that at the trial Mr. Proctor Gunasekera, who appeared for the second defendant, filed a proxy for one Mr. Abeyesingha, who appears to have been the defendant's proctor, for I find filed in the record a proxy by the defendants in his favour. I also find in the record another proxy, evidently the one referred to above signed by Mr. Abeyesingha, by which Mr. Abeyesingha purports to appoint Mr. Gunasekera "to be my proctor and for me and in my name and behalf before the District Court of Galle in case No. (the number is left blank) to appear and therein to appear for me and conduct the said case." This was quite irregular, and should not have been received. One proctor cannot employ another proctor to appear for him and conduct a case. If the proctor does not wish to conduct the case himself, he is at liberty to employ an advocate.

The irregularity may have arisen from the form of proxy given in the schedule to the Civil Procedure Code, which states that the proctor may appoint "one or more proctor or proctors or an advocate or advocates." But this form is inconsistent with the plain provisions of the Ordinance (see section 27 of the Civil Procedure Code, and *Habibu Lebbe v. Punchi Etena*, 3 C. L. R. 84). No proctor is entitled to appear for a client unless he has a proxy signed by such client, and there cannot be more than one proctor at the same time on the record.

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