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Re the Complaint of Dr. C. J. KRIEKENBEEK against A. J., a Proctor of the Supreme Court.

Advocate and client—Appearing without retainer or other just cause—Intermeddling in conduct of case by advocate—Bullying witness—Tyrannizing cross-examination—Freedom of speech and of relevant questioning—Tenure of such privileges as public trust, involving responsibilities to the public and the profession.

The profession of an advocate is a most honourable one, and it is a noble duty of his to be ready when duly called upon to defend *pro deo* the right of the poor and the unprotected.

But it would open the door to much mischief if liberty were conceded to volunteer advice uninvited, or to offer to shape the accused's plea, or even to defend him *pro deo*.

Without retainer, an advocate's intermeddling in any of these ways would be impertinent and unprofessional; with it, whether for fee or *pro deo*, he would undertake grave responsibilities from which he could not lightly free himself, and would alter the career of the case, because he could not himself speak to facts, and his appearance on behalf of the suitor would shut his mouth also.

In conducting a case it is quite unworthy of an advocate to indulge in the small tyranny of cross-examination, or to enter into a contest with a witness giving evidence, or to "bully" him for impertinence or evasiveness.

The duty of checking a witness for such conduct lies on the Court and not on the advocate.

In the exercise of the great principles of freedom of speech and liberty of relevant questioning it should never be forgotten that advocates hold such privileges as a public trust, and that they will discredit an honourable profession every time they permit themselves to prostitute them to the gratification of personal ends. Advocates should be always mindful of the responsibility which they owe to the public and the profession.

THE complaint preferred in this case to the Supreme Court was to the effect that on the 24th April, 1878, when the ayah of the complainant, who held the office of Assistant Colonial Surgeon at Colombo, was called upon to take her trial in the Colombo Police Court and to plead to a charge of neglect of duty there preferred against her by her master, Dr. Kriekenbeek, Mr. A. J., a proctor, then happening to be present, without retainer from the accused or any other just cause, thrust himself forward as her advocate, and in that capacity took occasion, by deliberately offensive and irrelevant cross-examination, to annoy and bully the prosecutor solely for the purpose of gratifying a personal ill-feeling previously entertained by him towards the complainant for private reasons.

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The Supreme Court directed a rule to issue against Mr. A. J., calling upon him to show cause why he should not be disenrolled for professional misconduct.

The following is the affidavit which the respondent (Mr. Proctor A. J.) filed in reply :—

"The woman mentioned in the affidavit of Charles John "Kriekenbeek did plead first guilty to a charge of neglect of "duty, but simultaneously with that plea she said, in Tamil, 'I "'am guilty because I have been brought into Court, but I had no "'strength to raise the tub which I was ordered to carry,' or "words to that effect. It was clear from the statement of the "woman that she had pleaded guilty from ignorance of law, since "she could not be guilty of neglecting to do what was beyond "her power to do. Her story carried a strong probability with it, "especially as the plaint did not specify the duty for the neglect "of which she then stood charged. In cases of this kind it is "usual for one of the senior proctors to undertake the defence "*pro deo*. The several Magistrates who have presided over the "Colombo Police Court always approved of proctors defending "the poor without a fee, and not unfrequently thanked me for "my gratuitous services in this respect, which they were pleased "to consider as conducive to the due administration of justice. "In the case mentioned in the affidavit of Charles John Krieken-"beek he took offence at my seeming disrespect towards him in "conducting the defence of a case in which he was complainant, "and when I rose to cross-examine him he returned angry, "evasive, and impertinent answers, which necessitated my "examining him rather more sharply than I intended to examine "a witness of his position. I did not undertake the defence to "annoy or bully him, nor did I put a single question which I "thought was frivolous or vexatious. The Magistrate, Mr. Gibson, "who heard the case, and who has since left the Island for "England, neither disapproved nor stopped any of my questions, "but insisted on the complainant answering every one of them; "nor did the complainant himself ask for the protection of the "Court, as he certainly would have done at the time if I had used "him ill under cross-examination. A day after the case was over "I was told that the complainant had blamed me publicly for "having appeared against him an 'bullied' him because he had "taken no notice of me. In vindication of my own conduct, "which I considered had been unjustly assailed, and having been "questioned on all sides with reference to it, it is highly probable "that (for I cannot recollect the actual words at this distance of "time) I spoke to the following effect: 'It is true that we had

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" 'taken no notice of each other since we left school. But that had " nothing to do with my bullying him. It was his impertinence " and evasiveness in the witness-box that provoked me to bully " him, and it was amusing to notice that the doctor, who gave " cheek to the lawyer from the witness-box, has himself been " obliged to confess that he came out vexed and annoyed from the "contest.' "

Cur. adv. vult.

Brito appeared for respondent.

14th June, 1878. PHEAR, C.J. (after setting forth the facts of the case) :—

It is remarkable that this affidavit does not categorically deny any of the statements of facts, such as they are, which are made in the affidavit of the petitioner. The respondent merely gives a version of the occurrence counter to that of the petitioner with much interpolated matter relative to the practice of the Colombo Police Court, followed by a lively account of the way in which he thinks it is highly probable that he related the affair to the persons, who unjustly (in his opinion) assailed him on all sides by questioning him in respect to it.

Under all the circumstances of the case, however, it will, I think, be sufficient if we consider and deal with the matter of the rule upon the facts as they are represented by the respondent himself; and it seems to me, on his own showing, that his conduct, although it may not in all respects wear the complexion which is attributed to it by the petitioner, and so may not call for the punishment indicated by the rule, is yet marked by grave irregularity, and is characterized by such disregard or ignorance of the duty and responsibility of a proctor and advocate as ought not to escape reprehension from this Court.

In regard to the plea of the accused ayah, it was quite out of place for the respondent to interfere between her and the Court, unless in the character of *amicus curiæ* for the purpose of correcting any misapprehension, if any was obviously apparent on the part of the Court, as to what were the actual words used by the accused at the time of pleading or as to her capacity to plead.

The profession of an advocate is, I like to believe, a most honourable one, and it is surely a noble principle of duty, by which all the members of it are proud to be actuated, that each must be ready when duly called upon, **without hope** of fee or reward, and solely *pro deo*, as the laconic **mediæval Latin** has it, to defend the right of the poor and unprotected.

But it would open the door to a mischief that might soon become intolerable, if liberty were conceded to every idle person attending our Criminal Courts to volunteer his advice uninvited to any poor undefended accused person that he chose as each case came on for hearing, and to offer to shape the accused's plea for him and even to defend him *pro deo*. And I hope it is not necessary for me here to state that nothing of this kind is recognized as legitimate in the practice of our Criminal Courts. Yet it is difficult to say that the respondent's behaviour in the Police Court on the occasion in question, as described in his own affidavit, was not an illustration of this hypothetical case. Indeed, it goes further in the direction of error: for the respondent does not profess to have obtained or to have sought the ayah's retainer, or her acceptance of him as his advocate. Without that retainer his intermeddling was impertinent and unprofessional; with it, whether for fee or *pro deo*, he would undertake grave responsibilities from which he could not lightly free himself and would alter the career of the case, because he could not himself speak to facts, and his appearance on behalf of the accused would shut her mouth also.

I am afraid it is only too clear that the manner in which the respondent ventured to assume the character and to discharge the duties of advocate of the accused person in the conduct of her defence was at least irregular and blameworthy, though I will take it as not being established that his motive was personal hostility to the petitioner, as the latter's affidavit makes it out to be.

In the conduct of that defence, too, as he himself represents it, I cannot avoid the conclusion that he must have seriously transgressed the limits of an advocate's duty. When he says in his affidavit it is highly probable that a day or two after the trial was over he told certain persons that "it was the petitioner's "impertinence and evasiveness in the witness-box that provoked "him, the respondent, to 'bully' him, and it was amusing to "notice that the doctor, who gave check to the lawyer from "the witness-box, has himself been obliged to confess that he "came out vexed and annoyed from the contest," it may be taken as certain that he considered there had been a contest between himself and the petitioner in the witness-box, the result of which he was pleased to discover was to vex and annoy the petitioner, and in the course of which he, the advocate, had been provoked into "bullying" the witness. Now, there is not a shadow of justification for behaviour of this kind disclosed in the affidavit. Apart from the vulgarity of the language employed by the

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respondent to describe it, the behaviour itself is quite unworthy of the advocate's profession. The affidavit does not state the particulars of the impertinence and evasiveness on the part of the witness which were referred to by the speaker, and in the absence of any such particulars we cannot now rightly assume that any such provocation existed. It is difficult, indeed, to imagine how anything of the kind could have occurred, if the advocate, who must have been practically uninstructed, limited himself to the only course of examination which was properly open to him; and there is not a trace of it to be found in the copy of the Magistrate's notes, which has been filed by the respondent.

But even had the petitioner returned impertinent answers to the advocate's questions, or evaded answering them altogether, it was for the Court, not for the respondent, to check him, and by a sufficient exercise of its authority to oblige him to answer with propriety. Occasions do unfortunately only too often occur when the stupidityi, obstinacy, or perversity of a witness renders it necessary, in the interest of justice, that the Court should make its authority bear some what hardly and sharply upon him. But it is because an ultimate resort for this purpose always lies to the Court that the advocate is not permitted any license of the kind.

It is indeed of the essence of the English mode of trial that the advocate should have complete freedom of speech and all liberty or relevant questioning, and I trust that our Courts will never fail to give effect to this great principle. But advocates must on their part also never forget that they hold their privileges as a public trust; and that they discredit an honourable profession every time that they permit themselves to prostitute these privileges to the gratification of petty personal ends. I am afraid that the respondent, who after indulging in the small tyranny of cross-examination, found it amusing "to notice that the "doctor who gave cheek to the lawyer from the witness-box "had himself been obliged to confess that he came out vexed "and annoyed from the contest," was then but little mindful of the nature of the responsibility which he owed both to the public and to his profession.

With this expression of the opinion on the merits of the case I think the rule may be discharged.

CLARENCE, J.—

I quite agree with the Chief Justice's exposition of the duties of an advocate.

With reference to Mr. J.'s interposition in the Police Court case in question, it would appear from Mr. J.'s affidavit that this

interposition was irregular, an irregularity, however, for which a general laxity of practice in the Colombo Police Court was perhaps the cause. With regard to the complaint of Mr. Kriekenbeek that Mr. J. behaved improperly while cross-examining Mr. Kriekenbeek as a witness. I am willing to suppose that Mr. J.'s explanation, though not happily expressed, is to be taken no further than as an admission that Mr. J. cross-examined sharply a witness whom he considered, rightly or wrongly, to be shuffling. For anything that has been placed before us, the petitioner may have given his evidence with perfect propriety; but so far as a charge is made against the respondent of having misconducted himself on this occasion, it appears unfortunate that such charge should have been deferred for nearly six weeks after the trial in question, until, owing to the Magistrate having left the Island, it has become impossible for us to make any reference to him.

I think this matter may now drop.

DIAS, J.—

I quite concur in the opinion expressed by the other judges, and think that, under the circumstances, the rule should be discharged.