

In the Matter of the Plaint presented by SIMAN APPU
to the Police Court of Kegalla in Case
No. 21,253 of the said Court.

1900.
Sept. 12.

*Proctor—Signing plaint drawn by petition-drawer—Unprofessional conduct—
Suspension from practice.*

It is unprofessional conduct on the part of a proctor to sign a plaint drawn by a petition-drawer, and such conduct will render him liable to be dis-enrolled or suspended from practice.

IN P. C., Kegalla, 21,253, one Siman Appu presented a plaint to the Magistrate of that Court charging certain persons with having caused hurt to him and his brother by means of a club and knife, and with committing mischief by setting fire to his dwelling-house. Siman's brother having died, one of the accused, Peeris Appu, was committed before the Supreme Court for murder, and the case came on for trial before the Chief Justice and a jury on the 11th August, 1900, and resulted in an acquittal. Siman Appu stated in the course of the trial that the plaint which he had presented to the Police Magistrate was drawn by a petition-drawer and then taken to Mr. Proctor S., who, without inquiry, signed it in Court, and that it was thereafter handed to the Magistrate. The signature of the Proctor was necessary to be attached to the written plaint under section 148 (1) (a) of the Criminal Procedure Code.

The Chief Justice considered that for a Proctor to sign a plaint drawn by a petition-drawer was conduct which could not be overlooked, and directed the District Judge of Kegalla to inquire and report under what circumstances Mr. Proctor S. countersigned the plaint.

After due inquiry the District Judge reported as follows:—

“ Mr. Proctor S. did countersign the complaint in P. C., Kegalla, 21,253, which had been drawn by a petition-drawer, George Jansen, and the said Proctor admits that he countersigned it; but in palliation he urges that he first inquired into the facts of the case and that he did not appear in the Police Court for the party whose complaint he countersigned.

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Upon reading this report and the notes of the inquiry held by the District Judge, the Supreme Court ordered that the said Proctor "do personally or by counsel show cause by affidavit before us at our Supreme Court at Colombo on Wednesday, the 12th day of September, 1900, at 11 A.M., why he should not be struck off the roll of Proctors for unprofessional conduct in countersigning the said written complaint of Gammunige Siman Appu to the Police Court of Kegalla, which complaint was drawn by a petition-drawer and not by himself."

Bawa (with *Sampayo*), appeared before the Collective Court (BONSER, C. J., MONCREIFF, J, and BROWNE, A. J.) for Mr. Proctor S., and read the following affidavit of the said proctor:—

" 1. I am a Proctor of the District Court of Kegalla.

" 2. I am sixty years of age, and was admitted a Proctor of the District Court of Kandy in May, 1863. I had a very large practice there, which I carried on continuously until about the year 1889, when my warrant was transferred to Kegalla, the town in which I was born and where most of my family and connections are.

" 3. I acquired a considerable practice in Kegalla, almost entirely of a civil character.

" 4. I have been served with a rule issued by the Hon. the Supreme Court to show cause why I should not be struck off the roll of Proctors for unprofessional conduct, in that I countersigned a written complaint by one Gammunige Siman Appu to the Police Court of Kegalla; the unprofessional conduct of which I am stated to have been guilty being that the said complaint was drawn by a petition-drawer and not by myself.

" 5. I admit that I countersigned the said complaint under the following circumstances. About the 17th March, 1900, the complainant came to me with my registered clerk, Abdul. He stated that he desired to present a complaint to the Police Magistrate of Kegalla, the particulars of which appeared in the document X, copy of which has been furnished to me. I briefly questioned the complainant, and finding no variance between what he told me and the statement in document X, I signed it without inquiring who had written the document.

" 6. Ever since I have been a proctor written complaints have been accepted by Police Magistrates, and until the Criminal Procedure Code, 1898, came into operation it was not required that they should be drawn, drafted, or signed by a proctor. I was not aware that my conduct in signing a plaint drafted or written or drawn by any other person than the proctor countersigning was objectionable or unprofessional. I swear that my attention was not arrested by the fact when I countersigned document X that

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it was drawn or written by a petition-drawer. It did not occur to me to inquire. I honestly and truly believed that I was doing nothing irregular or objectionable in countersigning the said document under the circumstances stated above.

“ 7. I desire to express, as I do now, my deep regret that I have committed what I acknowledge to have been wrong, and I hereby apologize to the Hon. the Supreme Court and promise that I shall take special care not to repeat the offence.

“ 8. I am entirely dependent on my practice for my living. I have a wife and eight children, and if I am struck off the roll of Proctors I. as well as those dependent on me, will be utterly ruined. I have hitherto practised my profession without reproach or complaint before Messrs. Christoffels de Saram, Berwick, Gillman, and the Hon. A. C. Lawrie in Kandy, and Messrs. H. C. P. Bell, Vigers, Hellings, Cooke, Drieberg, J. S. de Saram, Dunlop, Smart, Cumberland, T. J. de Alwis, and Molamure in Kegalla. I believe that any one of these gentlemen will testify to my unimpeachable professional character.”

BONSER, C. J.—

This is a serious offence. We have been doing all in our power to prevent petition-drawers, who are in many cases men of bad character—proctors and notaries who have been struck off the roll—having anything to do with criminal prosecutions. They have been found to be mixed up in false cases: where they were honest they have not been found to be intelligent, and where they were intelligent, not honest.

Considering the circumstances alleged in mitigation of the offence, we think Mr. S. should be suspended from the practice of his profession for three months.

