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Present : Fisher C.J., Driberg J., and Jayewardene A.J.

In the Matter of a Proctor of the Supreme Court
and

In the Matter of Section 19 of the Courts Ordinance, 1889.

*Proctor—Neglect to tax bill—Orders of Supreme Court—Courts Ordinance,
No. 1 of 1889, s. 19.*

Where a Proctor wilfully neglected to tax his bill of costs against a client who called upon him to do so under the direction of the Supreme Court,—

Held, that the Proctor was guilty of misconduct.

THIS was an application under section 19 of the Courts Ordinance for a rule on the respondent, a Proctor, to show cause why he should not be suspended from practice or removed from the Roll of Proctors on the ground of misconduct.

The facts are fully stated in the judgment of Driberg J.

De Zoysa, K.C. (with *Soertsz, Ameresekere, and Canjemanathan*), for respondent.

L. M. de Silva, Acting Deputy S.-G. (with *Basnayake*), as *amicus curiae*.

July 17, 1928. FISHER C.J.—

I have had the advantage of reading the judgment of my brother Driberg in this case. He has dealt very fully with the facts, and I will only deal therefore very shortly with the charge in respect of failing to tax his costs which we hold to have been proved against the respondent. It is quite clear that he wilfully and without any excuse failed to comply with the request of his client made, as he must have well known, at the instance of the Judge who was inquiring into the serious allegations which had been made against him by his client. He persistently ignored the request, and in his letters of February 21, 1928, and April 4, 1928, he put forward an excuse which is idle and self-condemnatory.

It must be emphasized that a Proctor who studiously ignores a request to tax his bill, made to his knowledge at the instance of the Court which is in process of investigating charges against him, is guilty of misconduct as an officer of the Court.

We must mark our disapprobation of such misconduct, and we are of opinion that the respondent should be suspended from practice for three months, and we order accordingly.

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On June 22, 1928, a rule was issued on the respondent, a Proctor, to show cause why he should not be suspended from practice or removed from the Roll of Proctors on the ground of misconduct and deceit as follows :—

- (1) For failing to comply with the order of the Supreme Court of March 23, 1927, requiring him to submit an account supported by proper vouchers of how the sum of Rs. 150 drawn by him from Court on or about May 19, 1926, was paid out by him, which order was communicated to him by the District Judge on April 12, 1927.
- (2) For falsely representing to the District Judge of Colombo, at the inquiry by him on October 15, 1926, that Mr. Navaratnam had been retained as Junor Counsel for the appeal, that fees were then due to them which had not been paid, and that part of the sum of Rs. 150 was retained by him for the purpose of paying Mr. Navaratnam.
- (3) For falsely representing to the District Judge of Colombo, at the inquiry held by him on October 15, 1926, that he had retained part of the said sum of Rs. 150 to pay Mr. E. G. P. Jayetilleke a further fee for the appeal.
- (4) For failing to prepare and tax his bill of costs against his client when called upon by his client to do so.

These proceedings were the result of a petition of June 7, 1926, by T. Don Leo, the defendant in D. C., Colombo, 14,179, in which he was sued for the recovery of Rs. 3,271.93. The respondent was his Proctor in this action. The plaintiffs' action was dismissed with costs and they appealed. Their Proctors, Messrs. Julius & Creasy, deposited a sum of Rs. 150 as security for Don Leo's costs of appeal. On April 29, 1926, the appeal was dismissed with costs, and on May 21 the respondent got an order of payment for the Rs. 150 and drew the money. Don Leo then presented to this Court the petition referred to, complaining that the order of payment had been taken by the respondent without his consent, that he wanted the respondent to cancel his proxy, and in effect that the respondent would give him no explanation and merely asked him to do what he wished.

This petition was referred to the District Court for inquiry and the Acting District Judge, Mr. Croos DaBrera, reported that on the evidence it was difficult to say what the understanding was as to the order of payment. He said that as regards the sum of Rs. 150 the respondent should account for it as he did not think that he was entitled to appropriate the whole sum. In his evidence at this inquiry, on October 15, 1926, the respondent admitted that a sum of Rs. 42.50 had been paid to Mr. E. G. P. Jayetilleke for his fees in appeal and that that sum had been paid by Don Leo.

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Mr. Jayetilleke says that he was paid Rs. 31.50 on December 17, 1925, and a further fee of Rs. 10.50 on January 12, 1926. The respondent also stated that Don Leo did not owe him anything and that he had to pay Don Leo a sum of Rs. 124.50 and this included the sums given to the respondent both on account of the trial and the appeal. He said that he had to pay the Advocates who appeared in the lower Court and in appeal as they had appeared on his guarantee and that he retained the sum of Rs. 150 to pay them and himself. He could not say what balance was due to them.

The Advocates who appeared in appeal were Messrs E. G. P. Jayetilleke and E. Navaratnam. Mr. Navaratnam came in to the case at the request of Mr. Jayetilleke as he needed the help of another Advocate at the time, and Mr. Navaratnam in fact did it entirely to oblige Mr. Jayetilleke. Mr. Navaratnam says that he had no communication with the respondent and did not regard the respondent as under any obligation to pay him a fee. This however was ascertained later by inquiry from Mr. Navaratnam.

Order was then made on March 24, 1927, by this Court that the respondent should immediately submit an account of how this sum of Rs. 150 was paid out and support the account with proper vouchers. The proceedings were returned to the District Court for this order to be communicated to the respondent. On April 12 the District Judge reported that he had communicated this order to the respondent on March 26 or 27, that he had undertaken to submit an account without delay, but that he had failed to do so.

On May 23, 1927, proceedings were returned to the District Judge, who was asked to inform the respondent that unless an account supported by proper vouchers and affidavit was filed within a week he would be called upon to show cause before the Supreme Court why he should not be removed or suspended. This order was communicated to the respondent on May 24 by the District Judge, On May 31 the respondent wrote to the District Judge that he had retained the sum of Rs. 150 in payment of the fees due to him for work done in the District Court, that he had received nothing from Don Leo by way of fees, and that there was still in Court a sufficient sum of money to pay the fees of the Advocates who appeared, and that he had promised Mr. Jayetilleke to pay him his balance fees out of this. This was a position different from that which he had taken before the District Judge at his inquiry. By the sum still in Court the respondent referred to Rs. 138.12 remaining in Court out of a sum of Rs. 362.62 deposited by Messrs. Julius & Creasy as costs due to the defendant in the action. Of this sum the respondent had drawn Rs. 100, and a sum of Rs. 124.50 which the respondent said represented the amount due to Don Leo out of the costs had been seized and drawn by a creditor in another action.

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Matters being in this condition it was not possible to say whether the respondent was entitled to retain the sum of Rs. 150, and for the purpose of a decision on this matter this Court wrote to Don Leo on September 6, 1927, that he should get the respondent to present his bill against him and have it taxed, and that no further action could be taken on his petition unless upon such taxation it was found that the respondent after being credited with all payments made by him was not entitled to retain the Rs. 150 in question. On November 17, 1927, Don Leo complained to this Court that the respondent though requested by several letters to have his bill taxed had not done so. He annexed a receipt of a registered letter sent to the respondent on September 26. On November 30, 1927, the respondent was written to by the Registrar that the Supreme Court had directed Don Leo to ask the respondent to have his bill of costs against Don Leo taxed, and that Don Leo had written complaining of the respondent not having done so, and inquiring from the respondent whether these statements of Don Leo were correct. No reply was received from the respondent to this letter and the Registrar was obliged to draw his attention to it by a letter of January 11, 1928. The respondent then replied on February 21. In his reply he explained that he had agreed with Messrs. Julius & Creasy to accept Rs. 362.62 and Rs. 150 in full satisfaction of all costs in the District Court and Appeal Court. He mentioned what I have already stated about the sums of Rs. 100 and Rs. 124.50, and the sum of Rs. 138.12 still in Court. He stated that he had paid all sums of money due to the "plaintiff"—by which he means the defendant, Don Leo—and he asked that the Supreme Court should direct the District Judge to issue in his favour an order of payment for the Rs. 138.12. As this letter contained no reference to the one matter to which his attention had been directed, viz., whether his client had requested him to have his bill against him taxed, his attention was drawn to this circumstance by the Registrar by a letter of March 28, 1928, and he was again asked to reply whether or not his client had requested him to have his bill taxed. He replied to this on April 4, again ignoring the point and stating that he had received a registered letter from Don Leo requesting him "to have the bill of costs taxed but that there was no necessity to do so as the costs had been agreed between him and Messrs. Julius & Creasy for the plaintiff."

The respondent's conduct in not having his bill against his client taxed is the subject of the fourth charge, and I shall deal with it later.

On the second and third charges I am unable to reject the respondent's evidence, that at the time of the inquiry in the District Court it was his intention to pay a further fee to Mr. Jayetilleke and a fee to Mr. Navaratnam. Mr. Jayetilleke had appeared on less

than his usual fee, and though Mr. Navaratnam who appeared to oblige Mr. Jayetilleke and help him did not expect any fee, Mr. Jayetilleke said he wished that he should receive a fee and that it is possible he told the respondent so.

The respondent has altered his position since he gave evidence in the District Court. His explanation there was that he intended paying Messrs. Jayetilleke and Navaratnam out of the Rs. 150. Later he took the position that by agreement with Messrs. Julius & Creasy he was to take the two sums of Rs. 362.62 and Rs. 150 in settlement of costs in both Courts, and that he told Don Leo that he would give him out of this Rs. 124.50, which was all, so he says, he received from him. The respondent apparently compounded for a lesser sum for District Court costs than that for which he could have taxed a bill. If this explanation is correct I cannot say that he misled the District Judge when he spoke of his intention regarding payment of fees to Messrs. Jayetilleke and Navaratnam. He says he took the Rs. 150 for his own fees, and there is still Rs. 138.12 in Court with which he can carry out his intention regarding counsel.

The first charge must fail as the circumstances of the case were that he could not file an account with vouchers as he took the Rs. 150 in payment of what was due to him. But whether he was justified or not in taking that sum for his fees depends on what was due to him by his client, and this could only be ascertained by his taxing his bill against his client and crediting him with the payments made to him.

In my opinion the respondent's conduct in not taxing his bill against his client when the latter, under the directions of this Court as he was well aware, called upon him to do so amounts to misconduct.

A client, if he desires it, is entitled to a full account from his Proctor of his client against him for fees and expenses, and what these amount to, if disputed, can only be determined by taxation of the Proctor's bill. In this case there was a very definite charge against the Proctor by his client of his retaining more than he was entitled to. It was because the respondent set off against his client's claim fees due to him that this Court as far back as September 6, 1927, informed Don Leo that no action could be taken on his petition until the respondent had taxed his bill of costs against him.

The respondent's letters to my mind show that he affected to misunderstand what he was asked to do. In his affidavit submitted when showing cause, however, he says: "I did not tax a bill against my client when he requested me to do so as I felt that there was no necessity for taking such a step," and he repeats his arrangement with Messrs. Julius & Creasy which in no way affected his obligation

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to account to his client. Knowing as he did that his client's request proceeded on the directions of this Court the obligation on him was stronger.

We acquit the respondent of the first, second, and third charges against him, and on the fourth charge we find that he has been guilty of misconduct in failing to prepare and tax his bill against his client when called upon to do so, and we order that he be suspended from practice for a period of three months.

JAYEWARDENE A.J.—

I agree, and only wish to add that a Proctor is more than a mere agent or representative of his client. He is also an officer of the Court, and, as such, owes his duty of good faith and honourable dealing to the Court before which he practises his profession. He has a duty, not only towards his client, but also towards the Court, and it is his duty to help the Court in the orderly and pure administration of justice. The practice of the law is not a business open to all who wish to engage in it; it is a personal right or privilege limited to selected persons of good character with special qualifications duly ascertained and certified; it is in the nature of a franchise from the State conferred only for merit, and may be revoked whenever misconduct renders the holder unfit to be entrusted with the powers and duties of his office and unsafe because unworthy of such confidence. Any attempt on the part of a legal practitioner to obstruct the administration of justice by a resort to any form of device constitutes ground for disbarment or suspension. (*Emperor v. Rajani Kanta Bose & others.*¹)

By various devices the respondent has frustrated the attempts of this Court to settle the accounts between himself and his client, and he is answerable to the disciplinary jurisdiction of this Court for dereliction of duty.