

1908.  
July 2.

*Present:* The Hon. Sir Joseph T. Hutchinson, Chief Justice.

TILLEKERATNE *v.* WIJESINGHE.

*C. R., Anuradhapura, 5,046.*

*Proxy in favour of proctor—Failure to sign—Subsequent signature—  
Ratification—Validity—Civil Procedure Code, s. 27.*

The plaintiff granted a proxy to a proctor, which, by oversight, was not signed by the plaintiff. The proctor acted on the proxy without any objection in the lower Court. When the case was taken up in appeal, the defendant's counsel objected to the status of the proctor in the case.

*Held*, that the mistake in the proxy could be rectified at this stage by the plaintiff signing it, and that such signature would be a ratification of all the acts done by the proctor in the action.

**A** PPEAL from a judgment of the Commissioner of Requests.  
The facts sufficiently appear in the judgment.

*A. St. V. Jayewardene*, for the plaintiff, appellant.

*Balasingham*, for the defendant, respondent.

*Cur. adv. vult.*

July 2, 1908. HUTCHINSON C.J.—

1908.  
July 2.

This is an appeal by the plaintiff from a decree dismissing the action. When it was called on, the respondent raised the preliminary objection that the petition of appeal was not duly signed. It purported to be signed by the appellant's proctor; but his proxy, although it had been filed at the institution of the action on December 12, 1907, had never been signed by the client. I allowed the appeal to stand over for a fortnight to enable the appellant to sign the proxy, without prejudice to the question whether the signature would get rid of the respondent's objection. It has now been signed; and the appellant's counsel contends that the signature is a ratification of all the acts done by the proctor in this action. He says that the omission to sign the proxy was a pure oversight; that no objection on account of it was taken in the Court of Requests, and that, in fact, no one noticed it until the appeal was called on. The respondent's counsel contends that the requirement of section 27 of the Civil Procedure Code is imperative, and that an authority not signed by the client is void.

Section 27 enacts that " the appointment of a proctor to make any appearance or application or do any act as aforesaid shall be in writing signed by the client and shall be filed in Court. " In my opinion that is only directory. If a plaintiff appearing throughout the action by a proctor, whom he has instructed to act for him, but whose proxy he had forgotten to sign, were to recover judgment, and if the omission to sign were then discovered and the proxy signed, the Court could not, in my opinion, hold that the whole of the proceedings on the part of the plaintiff up to and including the judgment were void because of the non-signature of the proxy; or, if the plaintiff failed in the action and it was dismissed with costs, the Court could not hold that the decree under such circumstances was of no effect against the plaintiff. No doubt the enactment means, though it does not in terms say so, that the appointment is to be signed and filed before the proctor does anything in the action. But if the omission to sign is not because the proctor has not in fact any authority, and if the client afterwards ratifies what has been done in his name by signing the authority, in my opinion that satisfies the requirements of the enactment.

On the merits I think the appeal fails. The plaintiff sued the defendant in C. R. 4,994 for the same cause. On the day of trial of that action the plaintiff was absent; the defendant was present and ready; the plaintiff's proctor informed the Court that he had no instructions; and the Court thereupon dismissed the action. Afterwards the plaintiff filed an affidavit stating that the reason why he was absent was that he was not aware of the day of trial, and was not able to ascertain it as he was not well, and he applied to be permitted to institute a fresh action on the same cause of action, stating in his

1908.  
July 2.  
HUTCHINSON  
C.J.

application that he was prepared to give security for the defendant's costs in the first action pending the result of the new action. Upon this application the Commissioner wrote " Allowed. " This allowance was made *ex parte*, and was apparently intended to be under section 823 (5) of the Civil Procedure Code. But the Commissioner had no power to make it except " upon payment into Court of the amount due to the defendant as costs in the previous action "; and there has been no payment into Court yet.

The Commissioner dismissed this action on the ground that the plaintiff has neither paid into Court the amount of the defendant's costs in the former action, nor tendered security, as he undertook to do, in this application under section 823. I think the dismissal was right. I dismiss the appeal with costs.

*Appeal dismissed.*

