

Present : Bertram C.J. and Schneider A.J.

WIJESURIYA v. KALUAPPU.

33—D. C. (Inty.) Galle, 14,790.

Proctor—Lien—Proctor paying advocate's fees and for stamps.

A proctor who personally pays the advocate's fees and for stamps on behalf of his client has a lien on the money which has been recovered by his exertions for such disbursements.

THE facts are set out in the judgment of the District Judge (L. W. C. Schrader, Esq.) :—

In this matter a purchaser in execution who moved this Court to be put in possession was cast in costs of the first defendant, respondent, in the matter of his application. The bill was taxed at Rs. 338·46, and the amount paid in to first defendant's account on October 21, 1919. Of this, stamp fees and advocate's fees were seized at the instance of plaintiff on October 24. The first defendant's proctor states that he has a lien on the advocate's fees Rs. 73·50 and Rs. 13·80 for stamps because he paid personally.

The question is, Does this lien extend to money advanced on behalf of a client? Section 75 speaks of "costs payable to him" (the proctor) "under the decree"; section 212 likewise. Advocate's fees are payable to the advocate, and are usually received in advance from the client by the solicitor who engages and pays counsel.

Counsel cannot recover by action. The authority given by the client to the solicitor includes that of engaging counsel, and fees are recoverable against the client by inclusion in the taxed bill. If the proctor advances the fees of counsel or surveyor's fees, has he the same lien as for "costs payable to him?"

According to *Halsbury XXVI., 1336*, the costs in respect of which the solicitor's lien arises must be taxable costs, charges, and expenses incurred by him as solicitor for his client, including advances, which may be disallowed or moderated on taxation. But this paragraph refers to the retaining lien on a client's papers and documents, and has no reference to the particular lien on the proceeds of a decree. That comes in at paragraph 1342. The lien over proceeds of any judgments obtained is a particular lien; it is not available for the general balance of account between suitor and client; it extends only to the costs of recovering or preserving the property in question (in a case), including the costs of protecting the solicitor's rights to such costs, and of establishing the lien.

Now, the lien which exists in Ceylon law is that "over costs payable to him" (the proctor) "under the decree" (*11 N. L. R. 1*), that is, his costs, and "only such costs as the taxing master has a right to consider or moderate" (*15 N. L. R. 51*). Advocate's fees and surveyor's bills are both subject to this scrutiny and surcharge. But, primarily, neither of them are due to the proctor. The question is, Whether he is entitled to advance and claim a lien as his due?

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The proxy authorizes him to appoint counsel, but if he does so without being paid the fee by his client, is it part of his proper functions as proctor to advance the amount? In D. C. 12,435 I had the question of a surveyor's account paid by a proctor. And I there held that the recovery made on that account was payable to the proctor who had disbursed, as the surveyors looked to the proctors for their fee if the clients failed to pay. But that case was not an advance I believe, but a payment of the bill out of recoveries made from costs due. It was, in any case, due to the proctor. So that this does not exactly definitely touch the question, whether a proctor has this lien mentioned in sections 75 and 212 of the Code for moneys advanced in the interest of his client.

I should always be inclined to hold definitely that the surveyor's bill and counsel's fees are not part of the costs payable to the proctor. Certainly, it is not the custom for the proctor to advance these items or incur these costs. If they do so, are they entitled to claim this particular lien? I am of opinion that I could not so hold without holding that it was part of their duty to help suitors with funds in order to carry on their litigation. I hold there is no such lien, and that it is a matter of good faith or other security if a proctor assists his client financially.

I therefore disallow Mr. Weerasuriya's claim to the amount Rs. 87·30, and allow the plaintiff's claim to the seized amount Rs. 153·46, with costs.

H. E. Garvin (with him *Keuneman*), for the appellant.—Proctor's lien for costs is recognized by the Code in sections 75 and 212. Costs include all legitimate disbursements. See *Halsbury*, vol. XXVI., section 1342; Civil Procedure Code, section 208. Advocate's fees and money spent on stamps are legitimate disbursements. *In re Metcalfe*.¹ Lien extends to all costs taxed. *Perera v. Perera*;² *Appu Sinno v. De Silva*.³

Cooray, for the respondent.—The question is only as to the extent of the lien. The lien extends to costs recoverable by the client and payable by him to the proctor. The advocate's costs are payable to the client, as they are primarily paid by him; they do not therefore come within the costs recoverable by the proctor. The proctor is not expected to advance advocate's fees. He has no lien for such advances.

July 27, 1920. BERTRAM C.J.—

The question raised in this case is whether a proctor's lien for costs extends to disbursements made as part of his professional duty, or whether it is confined to payments for his personal services. I do not think that there can be the least doubt in the matter. The nature of a proctor's lien for costs has been explained by previous judgments of this Court, in particular by the judgments in the

¹ (1862) 30 *Beav.* 406.

² (1907) 11 *N. L. R.* 1.

³ (1911) 16 *N. L. R.* 51.

cases of *Perera v. Perera*¹ and *Appu Sinno v. De Silva*.² A summary of the law may be found in the Article on Solicitors in Lord Halsbury's *Laws of England*, section 1342. It is there explained that the lien attaches to all property recovered or preserved by the exertions of the proctor. There can be no question that the fund in Court, which we are considering in this case, was brought into Court through the professional exertions of the proctor in the case. The property liable to the lien is, as I have said, property recovered or preserved by the proctor's professional exertions. It extends to all costs of recovering or preserving the property. We have to ask ourselves then, in the first place, is the fund in Court a fund to which the lien applies; and, in the second place, what are the items which the proctor is entitled to claim by virtue of the lien? The answer to the second question is: "All costs legitimately incurred for the purpose." Then comes the question, What is meant by costs? I understand that the word includes all sums which may properly be included in a bill of costs for taxation.

It has been long settled by authority that a distinction must be drawn between professional disbursements and non-professional disbursements; that the former may be included in a bill of costs, and that the latter may not be so included, and that both counsel's fees and stamps for the purpose of Court fees are professional disbursements, which may be legitimately included in a bill of costs. Mr. Garvin has referred us to the case *In re Metcalfe*³ as an express authority on that point.

Further, I may draw attention to the fact that our own Code (section 208) defines costs as including both "the expense of stamps" and "fees and charges for advocates." In several places our Code makes allusion to the proctor's lien for costs. Wherever these allusions occur, the word "costs" must be interpreted by the definition contained in section 208, which is entirely in accordance with the English rules governing the matter.

I can have no doubt, therefore, that in this case the District Judge's judgment is based upon a misconception, and I am of opinion that the appeal should be allowed, with costs, here and below.

SCHNEIDER A.J.—I agree.

Appeal allowed.

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¹ (1907) 11 N. L. R. 1.

² (1911) 15 N. L. R. 51.

³ (1862) 30 Beav. 406.