1935 *Present :* **Akbar, Poyser, and Maartensz JJ.**

In re TWO PROCTORS.

IN THE MATTER OF A RULE ISSUED AGAINST THE RESPONDENTS UNDER SECTION 19 OF THE COURTS ORDINANCE.

Proctor—Settlement of case—Stipulation for payment of exceptional fee—Attempt to keep the payment secret—Deceit and malpractice—Proctor and client—Jurisdiction of Court to inquire into question of costs—Courts Ordinance, No. 1 of 1889, s. 19.

Two persons Karuppiah and Kaduravel of Gampola claimed the money due on a prize drawn in a sweep conducted by the Galle Gymkhana Club, and, as a result, an interpleader action was instituted in the District Court of Galle to decide the dispute. The case was settled by a joint motion filed in the action in the following terms:—"We move that decree be entered declaring each of the defendants entitled to a half share of the amount in deposit, each party to bear his own costs."

The first and second respondents were proctors practising in Gampola, who advised Karuppiah and Kaduravel respectively, throughout the proceedings that culminated in the settlement.

The motion for the settlement contained a certificate that it was explained to the defendants by the two respondents, who signed it.

The first respondent stipulated for the payment to him of a fee of Rs. 6,000 and it was part of the settlement that the fee should be paid to him out of the half share of the money allotted to Kaduravel. The second respondent gave an undertaking that the fee would be paid.

Held, that the terms of the settlement had been drawn up to mislead the Court and to conceal the fact of the payment to the first respondent, and that the conduct of the respondents amounted to deceit and malpractice within the meaning of section 19 of the Courts Ordinance.

A Court has inherent power to inquire into a question of costs as between proctor and client.

Mere belief in the truth of a client's case does not necessarily imply that a proctor who suggests a settlement on less advantageous terms to his client is guilty of corrupt conduct.

THIS was a rule issued by the Supreme Court against the two respondents who are proctors of the Court on three charges framed under section 19 of the Courts Ordinance. The first count charged the first respondent with being guilty of malpractice, in that he acted for and on behalf of Karuppiah against Kaduravel after an inquiry at which Kaduravel and his witnesses had disclosed to the first respondent evidence on which Kaduravel relied to prove his claim. The second count charged both respondents with corruptly entering into an agreement or arrangement for the settlement of the matter in dispute in pursuance of which the second respondent agreed to pay Rs. 6,000 to the first respondent from the half share which was to be given to Kaduravel. The third count charged the respondents that in submitting to the District Judge of Galle the motion of settlement they were guilty of deceit and malpractice, in that the terms of the settlement were not correct when it stated that each party was to bear his own costs.

J. E. M. Obeyesekere, Acting D. S-G. (with him *Crosette Tambiah, C.C.*), in support.

R. L. Pereira, K.C. (with him *H. V. Perera* and *Garvin*), for first respondent.

F. de Zoysa, K.C. (with him *S. W. Jayasuriya*), for second respondent.

Cur. adv. vult.

June 24, 1935. AKBAR J.—

This is an inquiry into a rule issued by this Court against the two respondents, who are proctors of this Court on three charges framed under section 19 of the Courts Ordinance, 1889.

The facts connected with this inquiry are long and complicated and formed the subject-matter of a District Court case in Galle (D. C. Galle, No. 31,009) and a trial before the Assize Court in Kandy (12 S. C., P. C. Gampola, No. 1,653, 1st Midland Circuit 1934).

The whole proceedings originated as the result of a labourer on Baranagalle estate, Dolosbage, winning the first prize in a sweep held by a racing club called the Galle Gymkhana Club on the Viceroy's Cup race run in Calcutta in December, 1931. The draw took place on December 22, 1931, and the first prize was won on Ticket No. F 3743 (P 1) the name being given as K. Poochi, nom-de-plume Samy Mariamma, and the address Baranagalle estate, Dolosbage. The sum allotted as the first prize was no less a sum than Rs. 46,400.25, and there were two claimants to this prize, both labourers on the estate; namely, Periatamby Karuppiah the second defendant in the interpleader action, D. C. Galle, 31,009 referred to above, and Kaduravel Poochi the first defendant. Periatamby Karuppiah's claim was based on the allegation that he had a daughter aged 6, named Poochi, and that he had bought the ticket in her name at one Sarnelis' boutique (the second accused in the Assize trial referred to above) situated near the boundary of Baranagalle estate, about the end of November, 1931. Sarnelis, according to Karuppiah, sold tickets as the agent of Messrs. D. H. Ango Appu & Co., a company doing a large business at Nawalapitiya and a member of the Galle Gymkhana Club to whom a list had been issued for the sale of tickets for the sweep on the Viceroy's Cup. Karuppiah was in this favourable position, namely, that he was in possession of the sweep ticket P 1 and the registered letter P 2 containing a notification that the holder had drawn a horse which eventually won the first prize. These two exhibits had, according to Karuppiah and Zavier the tea-maker on the estate who handled the tappal or post bag, been delivered to Karuppiah in the ordinary course. Karuppiah's case was that Sarnelis had tried to extort money from him by making him give a document marked P 6 dated January 3, 1932, by which Karuppiah, signing his name as K. Poochi, acknowledged that he had borrowed Rs. 5,000 from Sarnelis and promised to refund this sum with interest as soon as his "race money" came into his hand. When Karuppiah refused to hand over the winning ticket P 2 to Sarnelis or go with him to Galle to collect the money the two fell out and Karuppiah's case was that Sarnelis then put forward Kaduravel, the first defendant in the civil case, as the winner of the prize, who had bought his ticket at Ango Appu's boutique at Nawalapitiya and not at Sarnelis' boutique. There can be no doubt at all that of the two versions Karuppiah's is the truth for several reasons. Kaduravel, Sarnelis, Lewis (partner of Ango

Appu & Co.), Albert (clerk at Ango Appu's), and one Dingiri Banda, who had supported Kaduravel's claim at an inquiry held by the first respondent in this inquiry on January 31, 1932, and subsequently before the Galle Gymkhana Club by means of affidavits (P 7, P 8, P 9, P 10, and P 11) stood their trial in April, 1934, on charges of conspiracy and cheating with regard to this very matter and were convicted and sentenced by the Assize Judge with the exception of Kaduravel and Dingiri Banda who had died during the trial. These convictions do not of course prove the truth of Karuppiah's claim, so far as these proceedings are concerned, but there are certain circumstances which point clearly to the correctness of the convictions at the trial. It is not necessary to give all these points in detail, but the statement of Lewis, the third accused, to the Police Magistrate, the document D 4, the evidence of Ratnasamy, and the document P 29 (Ango Appu's Galle Club list) clearly prove that Sarnelis Appu's denial that he had sold any tickets at his boutique on behalf of Ango Appu & Co., was entirely false. This shows that the story of Kaduravel that he had bought a ticket (represented by P 1) at Ango Appu's boutique and had given his name as K. Poochi was entirely a fabricated one. As a matter of fact this aspect of this inquiry was not disputed by respondent's counsel at this inquiry and was in fact admitted by them at the very beginning of these proceedings.

To pass on now to the events which followed the putting up of this false claim by Sarnelis on behalf of Kaduravel, Mr. Gascoigne, the Superintendent of Baranagalle estate, naturally took an interest in this dispute as it affected two labourers of his estate, and he at the request of Karuppiah introduced him to the first respondent, who is a proctor who had practised for nearly 35 years, a J.P., U.P.M., and also the local Crown Proctor. Mr. Gascoigne also introduced Kaduravel to the first respondent and on January 31, 1932, the first respondent publicly inquired into the respective merits of the claims of the two labourers in the presence of their witnesses and Mr. Gascoigne. The inquiry was a long one, but first respondent came to no conclusion ; Mr. Gascoigne's and his suggestions that the sum won should be divided between the two contestants or that the matter should be arbitrated upon by a *panchayet* of five estate Superintendents were not accepted by Karuppiah, although they were readily accepted by Kaduravel. Kaduravel had his four witnesses ready, viz., Sarnelis, Lewis, Albert, and Dingiri Banda and there can be no doubt that their statements must have made some impression on both first respondent and Mr. Gascoigne. Obviously when men of the type of the four Sinhalese witnesses supported the labourer Kaduravel, especially Lewis who was a partner in a big commercial firm at Nawalapitiya, it was bound to affect the opinion of anyone who had to inquire into the merits of the rival claimants. To add to this impression created in the minds of Mr. Gascoigne and of first respondent Karuppiah rather stupidly denied his signature in P 6, probably because he thought at first that that was the easiest way of escaping liability, though subsequently he admitted his signature to first respondent. However that may be, first respondent took up Karuppiah's cause and being paid a sum of Rs. 250 by Karuppiah for a trip to Galle went with him to interview the Club authorities. Letter P 15 of February 8, 1932,

written by first respondent to Mr. Gascoigne reporting the result of the trip shows how strongly first respondent believed in the truth of his client's claim. He also pointed out in the letter that as Karuppiah had all the credentials in support of his claim, it was for Kaduravel to prove his claim and further that he had persuaded the Galle Club to call upon Kaduravel to prove his claim within a definite period. It was owing to this action taken by the Club that Kaduravel and his supporters sent up affidavits P 7, P 8, P 9, P 10, and P 11 and letter P 37 of February 11. As a result the interpleader action D. C. Galle 31,009, was instituted by the Club on April 8, 1932, the money being deposited in the custody of the Court and the two claimants being made defendants. Although the minor's name was disclosed she was not made a party to this action, as a result of a recent decision of this Court (see *Fernando v. Fernando* [1]) and nothing hinges on this point.

First respondent took all the necessary steps to fight the case vigorously in the interest of his client, Karuppiah. He retained Mr. Kularatne, a proctor at Galle, to be Karuppiah's proctor on the record. First respondent sent a draft answer and a cheque to cover the stamp fees and Mr. Kularatne's retainer. The issues were also sent by him on June 14, 1932, and the trial was fixed for August 26, 1932. Two lists of witnesses were filed by first respondent giving the names of no less than ten witnesses including Mr. Gascoigne and first respondent in the first list and four witnesses in the additional list including Sarnelis to produce P 6, which second list was filed on August 17 just nine days before the trial. Mr. Kularatne sent first respondent a copy of Kaduravel's witnesses, containing eight names including Mr. Gascoigne to produce an estate book (in which the girl Poochi's name was given as Karupayee) and M. D. Amith, conductor on Baranagalle estate. Kaduravel's proctor on the record was the firm of Abeykoon & Dias Desinghe of Kandy whom Sarnelis had retained on behalf of Kaduravel. In a case of this kind where the two protagonists are unsophisticated impecunious labourers, the question of finance for the litigation becomes an acute problem and one of paramount importance and, as one would expect, these labourers had to resort to money-lenders. Sarnelis cuts a sinister figure in this case, and the result of the criminal trial and the admission of respondents' counsel referred to by me above leave no room for doubt that it was he who engineered the colossal fraud of putting forward Kaduravel to lay a false claim for the prize money by suborning witnesses from Ango Appu's firm to support the false claim. It was Sarnelis who retained the firm of Dias Desinghe to be proctors on the record and to conduct the trial, and in addition Sarnelis had an auxiliary legal adviser in the person of the second respondent, who had just begun to practise at Gampola and who is a distant relative of Sarnelis and a low-country Sinhalese gentleman from Ambalangoda who had lived in Nawalapitiya from his boyhood. It was Sarnelis who got his cousin Ratnaweera to finance Kaduravel on the champertous deed P 75, under which Ratnaweera agreed to lend Rs. 3,000 for the litigation, but if Kaduravel won Ratnaweera was to get half the money awarded. Similarly Karuppiah, through the influence of his uncle

[1] *29 N. L. R. 316.*

Adakan who had a large sum in deposit with one Arumugam Pillai, a money-lender in addition to his many other activities, entered into a working arrangement with Arumugam to finance him in the litigation. According to Karuppiah first respondent wanted an inclusive fee of Rs. 1,700 for his defence and Karuppiah arranged with Arumugam Pillai that the latter would guarantee this sum. Upon this point there is a conflict between Arumugam Pillai, Karuppiah, and first respondent, for the former stated in evidence after some hesitation that he only guaranteed up to the sum of Rs. 1,000 and no more, the Rs. 1,000 being meant to cover travelling expenses, stamp fees, &c., but not the lawyers' fees, which Karuppiah was to find for himself. Arumugam Pillai agreed to guarantee this amount only because Adakan had said he himself would be liable for this amount to Arumugam Pillai.

First respondent's evidence was to the effect that he had asked for a fee of Rs. 6,000 for himself for the whole case in addition to other costs for retaining counsel, stamp fees, batta, &c. First respondent went on to say that Karuppiah agreed to pay him this inclusive fee, and that he mentioned this sum to Arumugam Pillai and that he expected Arumugam Pillai to guarantee the payment of this Rs. 6,000. First respondent produced no written guarantee from Arumugam Pillai or Karuppiah, nor is there a note of this promised sum in his file or fee book which have not been produced although such file and fee book do exist. In cross-examination he said that Arumugam Pillai had guaranteed the costs with no limit because Adakan had deposited his money with Arumugam Pillai. So that if Arumugam Pillai is to be believed, first respondent had only the word of Karuppiah for the fulfilment of the contract if by any chance Karuppiah lost his case. Both Kaduravel's party and Karuppiah's party never bargained for the costly litigation which the lawyers on both sides had in view, as no less a sum than Rs. 46,400.25 was at stake.

The scale on which the case was to be conducted will be realized if we look at the counsel already retained by the proctors and those whom they proposed to retain for the trial. On behalf of Kaduravel Mr. Desinghe had already retained Mr. Cyril Perera, an advocate at Kandy, to advise him on the steps to be taken before trial. Mr. Perera had hopes of ultimate success, but Mr. Desinghe was despondent of success after a visit to the estate and an examination of the estate books and after hearing Mr. Gascoigne's opinion. In fact he thought his client's case so weak that he arranged for a consultation at Kandy with Mr. Advocate Weerasooria of Colombo on August 18, 1932, at which Mr. Perera, second respondent, Sarnelis, and Kaduravel were present. Mr. Weerasooria shared the doubts of Mr. Desinghe and advised his client to settle the case. Mr. Desinghe gave evidence to the effect that he insisted on Mr. Weerasooria and Mr. Cyril Perera appearing in Galle and conducting the trial. According to Ratnaweera and Sarnelis the full sum of Rs. 3,000 which the former had agreed to lend for the case was already exhausted nearly three months before the trial, and Mr. Desinghe had asked for nearly 100 guineas to brief Mr. Weerasooria and Mr. Cyril Perera for the trial. It can thus be imagined how anxious Sarnelis was to settle the case so as to get enough money to pay the costs

already incurred by him. This anxiety must have been intense as we now know that Kaduravel's claim was an entirely false one. The same dearth of funds is evident on first respondent's side if we examine the evidence.

If first respondent is to be believed his fee was Rs. 6,000, exclusive of counsel's fees and other costs, such as stamp duty, batta &c. He fixed this fee as he reckoned that the hearing would take ten days, which would have meant his being away from Gampola for three days at each hearing. Thus the Rs. 6,000 meant about Rs. 200 a day for thirty days. Karuppiah had already paid Rs. 250 to first respondent to interview the club authorities at Galle when Arumugam Pillai arrived on the scene.

Before the trial, Arumugam Pillai, out of the Rs. 1,000 which he was willing to advance, had advanced Rs. 759.36 to Karuppiah on account of stamp duty, batta, Mr Kularatne's fees, &c., which sum was paid to first respondent or his clerk Samath. For the trial first respondent intended to retain a King's Counsel and an advocate from Kandy and he asked for Rs. 1,000 from Karuppiah. Arumugam Pillai refused to lend this sum two or three days before August 19 because Adakan refused to guarantee any further sum. According to the evidence of both Arumugam Pillai and first respondent, the former went and told first respondent before he left for Bandarawela that Karuppiah found it difficult to get money to pay counsel and had suggested to Arumugam Pillai that the case should be settled, half the prize money to be given to each of the claimants and first respondent's fees to be paid by Kaduravel. To this first respondent replied that if Karuppiah wished the settlement, " Somehow or other let us try and settle it. "

It was no wonder first respondent welcomed such a settlement. If there was no settlement Karuppiah ran a grave risk of losing his case, for he had no further funds to prosecute his claim. Arumugam Pillai had told first respondent that he was not going to advance any further sum. So that it will be seen how very opportune and fortunate the idea of the settlement was, when first respondent found that instead of his having to sue a penniless labourer for his Rs. 6,000, with no scrap of paper to prove Karuppiah's agreement to pay this sum, the conditions of the settlement were to be that his client was to get half and the other side was to pay his fee of Rs. 6,000. This Rs. 6,000 was to include first respondent's expenses " until the final decision of the case in Ceylon if the case went to trial ". First respondent admitted with regard to what he had done for Karuppiah up to August 19, 1932, that he had not done Rs. 6,000 worth of work. His very words are as follows:—" I had interviews, seeing counsel, but I don't say I was entitled to Rs. 6,000, no, not certainly that sum. I don't certainly say that I had done Rs. 6,000 worth of work. But it was a fixed sum that I was getting and that too from the other side—not against the interests of my client. "

Q.—The other side knew just as well as you did that the trial was not coming on ?

A.—I take it so.

Q.—But yet they were willing to pay you far more than you had earned at that time ?

A.—Yes

Q.—It should have occurred to you that there was some very good reason why the other side was willing to pay you so ?

A.—There may have been some good reason. But as far as it affected my client, it was certainly benefiting him.

Q.—Do you call that benefiting ? You were depriving him of a sum of Rs. 23,000 while you get Rs. 6,000 from the other side ?

A.—Well he may have lost the whole thing.

Q.—What about the interests of your client ?

A.—He could not finance his case.

This was the state of affairs when first respondent left for Bandarawela on August 18, 1932. The case was fixed for August 26, 1932; first respondent required nearly Rs. 1,000 to pay his two counsel and a substantial part of his own fee. In his own words he wanted a sum between Rs. 2,000 and Rs. 2,500 to cover the expenses of the first day of trial and he was told definitely by Arumugam Pillai that there was no hope of Karuppiah being able to pay any further sum. If this was the prospect which faced first respondent before the first day of trial one can imagine what first respondent's feelings must have been with regard to the funds which were required for the other nine days the trial would have lasted, and the fees that would have to be paid in the event of an appeal.

As it turned out, however, all first respondent's troubles were resolved the very next day for a settlement was arranged during first respondent's absence at Bandarawela whereby his client was to get half the prize money and the other claimant Kaduravel was to pay the full Rs. 6,000 to first respondent from his half, and what is more there was the second respondent, a proctor, who was ready and prepared to guarantee or be responsible for the payment of this Rs. 6,000 by Kaduravel to first respondent. This was how this remarkable settlement was arrived at. It will be remembered that Sarnelis was one of the witnesses in Karuppiah's second list of witnesses and the summons was served on him by the fiscal's peon on August 19 in the presence of Arumugam Pillai. Both Sarnelis and Arumugam were longing for a settlement under which they could clear their losses, and the two after some consideration readily came to an agreement in a few minutes which was confirmed almost immediately afterwards by Sarnelis' auxiliary legal adviser and distant relative, second respondent, who happened to be in the Gampola resthouse a little distance away. Second respondent agreed to the terms and wished to have Karuppiah's confirmation of the terms. This was at about 11 a.m. on August 19 and took place in the presence of the fiscal's peon, who saw the meeting between Sarnelis, Arumugam and second respondent, but did not hear what they were talking about. But Karuppiah who came there about 4 p.m. was more cautious than his friend Arumugam, and Arumugam at Karuppiah's request wanted second respondent to give a post-dated cheque for the payment of the Rs. 6,000 to first respondent. Second respondent assured Karuppiah that he would settle the question of the payment with first respondent personally.

That same night at 9 p.m. Samath, first respondent's clerk, got into touch with his master at Bandarawela and told him that the case was

settled and his fees had been arranged for. First respondent thought that his fees were going to be paid by his own client Karuppiah and he stipulated that it should be paid before he went down to Galle. First respondent came down to Gampola the next day, *i.e.*, August 20, saw second respondent, and was given a guarantee by second respondent that his fees of Rs. 6,000 would be paid to him. First respondent promptly went to Kandy to get Mr. Desinghe's approval to the terms of the settlement. According to first respondent he told Mr. Desinghe that his client was to pay first respondent his fees, but he did not tell him the amount. Mr. Desinghe's evidence was that the only thing he was told was that each side was to get half, whereas second respondent was positive that he had *mentioned the sum* to Mr. Desinghe on his first visit to Mr. Desinghe, on August 20 when he went with Sarnelis. Mr. Desinghe readily gave his assent and they all arranged to go down to Galle the next day to put the settlement through. First respondent apparently forgot to mention a word about the settlement to Mr. Gascoigne, although it was Mr. Gascoigne who had sent Karuppiah to first respondent, and had always taken a great interest in the case. Mr. Gascoigne had helped first respondent to inquire into the claims of the two claimants on January 31, had helped both parties to scrutinize the estate books, had actually been put down as a witness on the lists of the two claimants and had been summoned to appear at the trial on August 26, and yet first respondent omitted to say a word about the proposed settlement even on the telephone to Mr. Gascoigne. Both Karuppiah and Kaduravel, with their supporters and the proctors on both sides, including first respondent and Samath, travelled down to Galle, met in Mr. Kularatne's office on August 22, 1932, and Mr. Desinghe wrote out the draft terms of settlement (P 70). In this draft Mr. Desinghe inserted a clause for the issue of a payment order to himself for Rs. 250 as his costs in addition to the payment orders in favour of Karuppiah and Kaduravel but it was scored off and the actual settlement that was signed is to be found in the record, D. C. Galle, 31,009. The document is dated August 22, 1932, and reads as follows:—"The case is settled. We move that decree be entered declaring each of the defendants entitled to a half share of the amount in deposit. Each party to bear his own costs. We also move that the Court be pleased to issue the following orders of payment—

(*a*) in favour of the first defendant for the sum of Rs. 23,117.72,

(*b*) in favour of the second defendant for the sum of Rs. 23,117.72."

It is signed by the defendants and their proctors Messrs. Desinghe and Kularatne. At the bottom there is this certificate—"We identify the signatures of the defendants who are known to us. We have explained the above motion to the defendants," and to this certificate are attached signatures of first and second respondents.

Whatever may be the truth regarding Mr. Desinghe's knowledge of the payment of Rs. 6,000 to first respondent by Kaduravel which I shall discuss later, one fact is clear, namely, that Mr. Kularatne, who was Karuppiah's proctor on the record and who had been retained by first respondent, did not know a word about the proposed payment of Rs. 6,000 or any sum by Kaduravel to first respondent. He understood the

settlement order in the sense in which it was written, namely, that each defendant was to get half of the money in deposit and that each party was to bear his own costs. It was owing to this interpretation of the order that Mr. Kularatne was paid 9 guineas in all, 7 guineas being paid by first respondent to Mr. Kularatne after the payment order was issued to Karuppiah on the day of the settlement, 2 guineas having been already paid by first respondent before that date. Mr. Kularatne was quite satisfied with this remuneration as first respondent did all the proctor's work, filing lists of witnesses, answer, getting ready for the trial, &c.

Immediately after the payment orders were issued, the whole party including first respondent, second respondent, Mr. Desinghe, and others followed the two defendants to the Kachcheri for the cheques, and then to the bank for payment on the cheques, the defendants being identified by first and second respondents. At the bank Karuppiah was paid Rs. 8,000 in cash and for the balance Rs. 15,000 a draft was given in favour of Arumugam Pillai drawn on a Colombo bank. Kaduravel's money too was divided, Sarnelis was given a draft for Rs. 10,000 and Kaduravel was paid Rs. 15,000 in cash, out of which Rs. 6,000 was paid by Kaduravel to first respondent through second respondent Kaduravel also paid Mr. Desinghe Rs. 200 for his costs, and a further sum of Rs. 500 (of which according to the evidence Rs. 500 was a loan) to second respondent. According to Sarnelis out of the Rs. 10,000 he drew, he paid Rs. 5,000 to Ratnaweera on deed P 73, and kept the balance to himself.

His Lordship, after discussing the evidence, proceeds :—

. . . . . .

There are three charges against the respondents, the first charge relating only to the first respondent and it can be easily disposed of. The first count charges the first respondent with being guilty of malpractice in that he acted for and on behalf of Karuppiah against Kaduravel after the inquiry of January 31, 1932, at which Kaduravel and his witnesses had disclosed to first respondent the evidence on which Kaduravel relied on to prove his claim. The answer to this charge is that on January 31 first respondent inquired into the respective claims of the two claimants at their request to see whether the matter could not be settled out of Court or arbitrated upon and he did so openly in the presence of Mr. Gascoigne and a large number of persons, the supporters and witnesses of both claimants, and whatever evidence was disclosed by Kaduravel and his witnesses was disclosed not confidentially to first respondent but publicly to all present there. According to Mr. Gascoigne there were about twenty to twenty-five people present. Further Kaduravel and his witnesses sent affidavits (P 7, P 8, P 9, P 10, and P 11 dated February 10, 1932), disclosing their whole case to the Galle Club authorities, and these documents were open to inspection by any person interested. The fact that Sarnelis was summoned to produce document P 6 by Karuppiah cannot be said to depend on any exclusive confidential information furnished by Kaduravel and Sarnelis to first respondent. It was openly produced by Sarnelis and if Sarnelis had failed to produce P 6 at the trial the contents could have been proved by the oral testimoney of Mr. Gascoigne or Karuppiah himself, and not necessarily by the evidence of first respondent whose name also appears in Karuppiah's list. In

Rakusen v. Ellis Munday & Clarke [1], the Court of Appeal emphasized the fact that the information derived must be of a confidential character. In my opinion the first respondent is not guilty on the first charge.

The second count charging both the first and second respondents is the most serious charge, which, if proved, will mean the disenrolment of both the respondents. It charges them with corruptly entering into an agreement or arrangement on August 20, 1932, with Arumugam Pillai for the settlement of the matter in dispute, in pursuance of which the second respondent agreed to pay Rs. 6,000 to the first respondent from the half share which was to be given to Kaduravel. Mr. Obeyesekere, leading counsel in support of the rule, put his case on the footing that first respondent had, for a consideration of Rs. 6,000 to be paid by Kaduravel, deliberately settled the case, whereby his client Karuppiah instead of getting the full sum in deposit got only half. It is not surprising that counsel put his case on this footing, for he relied on the several points and circumstances which I have indicated in my judgment, namely, that first respondent fully believed in the truth of his client's case (P 15) and had taken all steps to get ready for the trial on August 26. He also relied on the haste with which the settlement was put through and the Rs. 6,000 paid on August 22 without the knowledge of Mr. Gascoigne and the non-disclosure of the payment of Rs. 6,000 either to Mr. Desinghe, Mr. Kularatne, or to the District Judge. Mr. Obeyesekere also stressed the abnormal fee charged, viz., Rs. 6,000. There can be no doubt that there was a great deal of force in his argument, but in a case of this sort such an accusation must be based on evidence. Even if the arrangement was first entered into without the knowledge of Karuppiah, if Karuppiah did as a matter of fact give his consent to the settlement before it was sanctioned, the gravamen of the charge fails. As I have already said I cannot believe Karuppiah when he said that he did not consent to the terms of the settlement. All the other evidence is to the effect that Karuppiah originally proposed the settlement as there was no money forthcoming from Arumugam Pillai or Adakan to enable him to retain counsel and prosecute his claim further. Further the mere belief in the truth of a client's case does not necessarily imply that a proctor who suggests a settlement on less advantageous terms to his client is guilty of corrupt conduct, owing to the uncertainty and the prolonged character of litigation where such a large sum as Rs. 46,400.25 is involved. After all Kaduravel had a string of apparently respectable witnesses of another community than his own to prove the alleged sale of the ticket to him at Ango Appu's shop at Nawalapitiya, and first respondent may well have felt the strength of Kaduravel's case in the same way that Mr. Cyril Perera, advocate, did. First respondent also gave us as one of his reasons the undoubted fact that one of Karuppiah's witnesses, Appavu Kangany, who, as first respondent understood his client's case, was a very important witness to prove the sale of the ticket to Karuppiah by Sarnelis at the latter's boutique, was not forthcoming to give evidence. On the other hand the omission to notify Mr. Gascoigne of the settlement and the non-disclosure of the payment of Rs. 6,000 to Mr. Kularatne were certainly strange. So is the abnormal amount of the sum charged for costs against

[1] *(1912) 1 Ch. 831.*

Kaduravel, viz., Rs. 6,000. There can be no doubt of the excessive character of the amount charged, if we keep in mind that Mr. Wickremasinghe, proctor for the Galle Club, only drew Rs. 87.50 for his fees; that Mr. Kularatne was satisfied with 9 guineas and that Mr. Desinghe was paid Rs. 200 in addition to the other sums given to him for paying counsel's fees, stamp duty, &c., of which there is no evidence; and second respondent got Rs. 200. First respondent himself admitted, as I have said before, that he had not done Rs. 6,000 worth of work at the time of the settlement, and no fee book file or writing has been produced by first respondent to prove that he had asked for Rs. 6,000 as his fee and that Karuppiah had agreed to pay this sum. Although there is no comparison between Sierra Leone and Ceylon as regards the standard of conduct and the education of the inhabitants, yet there are certain parts of the Island where the inhabitants are below the level of the other inhabitants, especially among the Indian labour population, and one must always keep in mind the words of the Privy Council in the case of *MaCauley v. Judges of the Supreme Court of Sierra Leone*[1]. "Their Lordships appreciate the necessity in a country so described of inducing the inhabitants to resort to the Courts for the settlement of their disputes rather than to the possibly more familiar means of personal violence. For this purpose it is essential that the people should be brought to feel the greatest respect not only for the impartiality and independence of the tribunals but for the honesty and fairness of those who practise before them." It is clear from first respondent's evidence that he hoped to recover the sum of Rs. 6,000 or whatever the sum was he had in mind from Karuppiah by asking for a substantial part of this sum on each occasion on which he had to go to Galle, and that he would not have gone down to Galle unless the instalment was paid. His answer on this point was to this effect, "I was not going down to Galle until I was paid a substantial sum of money and the whole of the Rs. 6,000 paid before the conclusion of the trial. That meant that Karuppiah would have to find a good deal of money and if the money was not found I was not under obligation to go." Nor does the reason he gave for asking for such a large sum commend itself to me. "The nature of the claim also influence me. It was a big claim and it was a sweeps ticket claim which a man had got for Rs. 2. Therefore I felt justified in asking for a fee of Rs. 6,000." The reaction of Karuppiah when he was asked for this sum, shows the light in which Karuppiah at any rate regarded the fee. In first respondent's words, "When I asked for that fee Karuppiah did not say it was too much. He made the remark: 'If I could pay for nothing Rs. 5,000'—I do not know whether he said Sarnelis—'why cannot I pay you Rs. 6,000.' He was quite agreeable to paying me Rs. 6,000." So that in Karuppiah's humble mind first respondent and Sarnelis occupied the same level.

Mr. Obeyesekere's argument was that the Rs. 6,000 was in the nature of a bribe to induce first respondent, who had the whip hand at the time, to agree to the settlement and that the story of the fee of Rs. 6,000 by the respondents was an after-thought. If we examine the evidence with regard to the agreement of Karuppiah the evidence is contradictory.

[1] (1928) *A. C. 344.*

Karuppiah of course denied that he agreed to pay Rs. 6,000 and asserted on the contrary that it was Rs. 1,700. We have the evidence of first respondent and Samath, his clerk, to the effect that Karuppiah had agreed, and the evidence of Sarnelis, second respondent, and Arumugam Pillai that first respondent was to be paid his fee of Rs. 6,000 by Kaduravel as a condition of the settlement. Arumugam Pillai's evidence regarding the consent of Karuppiah to pay the Rs. 6,000 is contradictory. He said before us as follows:—

"Karuppiah said first respondents' fees would be Rs. 6,000. He said this on the 16th or 17th.

Q.—How did he know that?

A.—Because first respondent had told Karuppiah in my presence on more than one occasion that his fees would come to Rs. 6,000."

In the Assize case he said as follows:—

"First respondent told Karuppiah that he would appear only if Rs. 6,000 was paid. (I did not guarantee this fee.) I was prepared to pay only up to Rs. 1,000.

"First respondent wanted Rs. 6,000 to fight out the case."

"First respondent told me that he asked Karuppiah to pay the Rs. 6,000 if the case was to be fought out for Karuppiah. He did not talk of fees if the case was settled. When I went to first respondent to pay the money in connection with this case I heard first respondent say that Karuppiah had agreed to pay Rs. 6,000 as his fees."

It will thus be seen that the only positive evidence to prove that Karuppiah had agreed to pay the fee of Rs. 6,000 is that of first respondent and Samath. Even if I hold that the Rs. 6,000 which was paid to first respondent was not the fee which Karuppiah had promised to pay him, as I have said, the evidence does not prove the second charge if we exclude Karuppiah's evidence, which I do not accept, for reasons given by me. In the words of Kennedy J. in *In re Lydall*[1], "The jurisdiction which we are exercising is punitive and almost penal, and in proceedings of such a nature the accused are, in our judgment, entitled in a high degree to insist upon strictness of proof."

In the words of Jenkins C.J. in *In the Matter of an Attorney*[2], "It is a strange story that the attorney tells; still even a strong case of suspicion is not enough to justify disciplinary action on a summary proceeding, especially when there is a positive sworn denial and repudiation of the misconduct imputed. Moreover there is more than a bare denial, there is an explanation of the transaction by the attorney, and it is an old rule that where this is so, an adverse order should not be made on a summary proceeding, unless the attorney's story is highly incredible."

Nor does the argument of Mr. Crosette Tambiah, who ably concluded the case against the respondents when the counsel leading him fell ill, that it was first respondent's duty to have taken time to advise Karuppiah against the settlement instead of readily agreeing to it carry the case further. Assuming that it was Karuppiah who proposed the settlement owing to his inability to carry on the case any further through lack of funds, first respondent's acquiescence with the settlement does not show that he acted corruptly.

[1] *70 L. J. Q. B. D. 5.*

[2] *I. L. R. 41 Calcutta 113.*

There is only the third charge left, namely, that the two respondents, in causing to be submitted to the District Judge of Galle in the Galle case the motion of settlement, were guilty of deceit and malpractice. There is no contest on the facts. The motion says on its face that each party is to bear his own costs, whereas in truth and fact Kaduravel was to pay Rs. 6,000 from his share to first respondent, proctor for Karuppiah, as his fees which Karuppiah would otherwise have to pay. The motion for the settlement contains the certificate that it was explained to the defendants by the two respondents who signed it. The respondents therefore knew that the settlement was not correct when it said that each party was to bear its own costs. The question that I have to decide is whether this act was one of deceit and malpractice or whether it was done without any wrong intention in the ordinary course. The expression regarding the costs is certainly 'misleading', in the words of Mr. Hale who was called for the defence. It is also true that in ordinary cases of settlement what is material is the consent of the parties, but at the same time each case of this kind will depend on the circumstances of that case. Here we have a proctor who, though not the proctor on the record, wished to be paid the sum of Rs. 6,000 on the footing that it was his fee which was due to him for legal work done by him as the proctor of Karuppiah. I cannot accede to Mr. H. V. Perera's argument that the sum was not due as fees to a lawyer, but as expenses incurred respecting a third party and due to such third party on a contract. Even if there was a contract between Karuppiah and first respondent, this sum was paid to him in his capacity as proctor as fees due to him for work done as proctor. Now the Court has as a matter of inherent jurisdiction the power to supervise the conduct of proctors as it appears in cases coming before it, especially in the matter of costs. It is not only a power but it is the duty of the Court. In such matters our law and practice are the same as those in England. In the case of *In re Whitcombe*[1], the Master of the Rolls said as follows:—"I must remark on the great danger which solicitors incur when they enter into such arrangements with their clients. An agreement like this between a solicitor and client for taking a fixed sum in satisfaction of all demands for costs, is an agreement which may be perfectly good; but the Court, for the protection of parties, looks at every transaction of this kind with great suspicion. The matter may turn out to be perfectly fair and right, still it exposes the conduct of the solicitor to suspicion, and naturally awakens the vigilance and jealously of this Court, seeing that one party has all the knowledge and the other is in ignorance." It is true that in that case it was an agreement for costs due and here we are concerned with an agreement for future costs. It is also true that we have no Statute similar to the Attorneys and Solicitors Act, 1870[2], which referred in express terms to agreements as to the payments of past and future costs, and provided for such agreements being in writing with a special provision for the rescission of such agreements by the Taxing Master when made in respect of business done or to be done in any action at law or suit in equity, and also if required by the Court. (See *In re Russell, Son & Scott*[3], and *In re Stuart*[4].) Although we have no such Statute there is the inherent power in the Court to inquire into a question

[1] *8 Beavan's Reports 140.*
[2] *33 & 34 Vict. C. 4.*
[3] *L. R. 30 Ch. D. 114.*
[4] *(1893) 2 Q. B. D. 201*

of costs between a proctor and a client (see the procedure indicated in sections 214 and 215 of the Civil Procedure Code). The motion, had it strictly adhered to the true facts, should have asked for payment orders in favour of Karuppiah and Kaduravel for a half each of the sum in deposit and set out that Kaduravel was to pay Rs. 6,000 to first respondent on account of Karuppiah's costs. There is no reason why such a settlement should not have been submitted to Court, for although no decree could have been passed with respect to this payment to first respondent who is no party to the case, yet in terms of section 408 of the Civil Procedure Code the Court could pass a decree "in accordance therewith so far as it relates to the action" "and the decree will be final" "so far as it relates to so much of the subject-matter of the action as is dealt with by the agreement, compromise or statisfaction." To my mind, the settlement was worded deliberately in the terms in which it was finally drawn up to keep the fact relating to the payment of Rs. 6,000 secret, so as to avoid criticism from the Judge and public comment. If the settlement had been set forth as stated by me above, or if the payment orders were to issue for Rs. 17,117.72 in favour of Kaduravel and Rs. 29,117.72 in favour of Karuppiah the District Judge was bound to have inquired into this matter.

Mr. Weeraratne, the District Judge said, as follows :—

"Suppose there was a statement in that motion that out of this amount that the first defendant was to pay first respondent Rs. 6,000, would you have made that a matter of inquiry ?

A.—It is possible that I might have asked why such a large sum was going to be paid.

Q.—Supposing orders were for Rs. 17,000 odd and Rs. 29,000 would you have inquired?

A.—I would have inquired why there was a difference. Again I would have considered whether the parties very clearly understood that.

Q.—If there was provision in the motion for the payment of Rs. 6,000 as fees or costs to the proctor concerned in the case, would the Court allow such a payment without taxing hi sbill?

A.—If the parties agreed I would not have objected ordinarily. I do not see any reason why I should have objected".

If we keep in mind the fact that the pleadings disclosed fraud either on the part of Kaduravel or Karuppiah, a District Judge, as he had the power to inquire into a settlement before sanctioning it for the purpose of finding if it was a lawful agreement under section 408, would have inquired into it if the motion had been framed in either of the alternative forms I have indicated. Framed as it was in its misleading form, there was every prospect of its being passed by the Judge without any comment, as it did pass in this case.

The abnormal nature of the fee charged is bound to strike the eye of anyone, especially as the costs which could have been taxed by first respondent if he had been the proctor on the record against Karuppiah would have been no more than Rs. 700 or Rs. 800 at the date of the settlement. It will be seen that section 214 of the Civil Procedure Code provides for the taxation of costs as between proctor and client, and for the obtaining of the decision of the Court if any person is dissatisfied with

the taxation; and section 215 refers to an action by a proctor against his client for the recovery of fees and the section provides for the taxation of such fees. There is no reason why there should be this reference to taxation unless the taxed items are to be used as a test of the fairness or reasonableness of the claim made by the proctor in the same sense as Lord Esher indicated in the case of *In re Stuart* (*supra*). "It is impossible to say that work which according to information given by the Taxing Master to the Divisional Court would be properly remunerated by a sum of £90 can be reasonably charged at nearly £100."—*Per Lord* Esher, M.R.

It is very doubtful if Karuppiah really agreed to pay this sum. At any rate there is nothing in writing signed by him. First respondent may have told Karuppiah that he must be paid Rs. 6,000, but this would not amount to an agreement by Karuppiah. According to first respondent he hoped to recover it by insisting on prepayment of substantial instalments on each occasion he had to go to Galle, and by refusing to go unless the instalment asked for was paid. With reference to such conduct it is not inappropriate to quote here the remarks of Ameer Ali J. in the case of *Mookerjee v. Mullick*[1]. "It appears to me that when he took up the plaintiff's case it was his duty to assure himself whether the plaintiff was a person of substance. In my opinion, having once undertaken the conduct of a case, an attorney is bound, whether the client is rich or poor, to proceed with due diligence in prosecuting the claim. The law has provided him with means for realizing his costs from his client. He cannot, to use the language of the learned Judges to whom I have referred, turn round and say that unless a considerable sum is paid to him he will not do what he is bound to do, viz., to conduct and prosecute his client's case with diligence and honesty." The plea put forward by second respondent that the motion was worded as it was because Sarnelis "was anxious to show the world that he had got exactly half and nothing less" was not at all convincing especially as Sarnelis himself said that it was done at the request of the labourer Kaduravel "to save his face." Not only did first respondent get the motion worded in its misleading form, but he went to the extent of getting an undertaking from second respondent making himself personally liable for the payment of the Rs. 6,000 by Kaduravel, and the two of them were present at every material stage from Gampola to the bank at Galle till at last the cheque was cashed by Kaduravel and the money paid to first and second respondents was also remunerated. It seems to me that their conduct amounts to deceit as well as malpractice because they purported to state in the motion what was not true in order to prevent every possibility of any unpleasant consequences to themselves.

The fact that in actual practice parties sometimes settle their cases when the terms of settlement are quite different to those expressed in the motion submitted makes no difference in this matter, when we consider the special features of this case. Any divergence between the actual terms of settlement and those submitted to Court does not necessarily mean that it would be an act of deceit or malpractice. Ordinarily it would not, but each case must be decided on its own facts. In this case

[1] *I. L. R. 29 Calcutta 62.*

I am of opinion that the respondents are guilty of deceit and malpractice if one keeps in mind the peculiar facts which have come to light in this inquiry.

In my opinion the respondents as proctors must have realized the seriousness of their act in misleading the Court in the circumstances of this case and they are both guilty on charge No. 3. The sentence which this Court imposes on the first respondent will be suspension from practice for a period of six months, and in the case of the second respondent suspension from practice for a period of three months. The rule so far as it refers to charges (1) and (2) is discharged.

POYSER J.—I agree.

MAARTENSZ J.—I agree.