

1913.

Present: Wood Renton A.C.J. and Ennis J.

TIMES OF CEYLON CO. v. LOW.

361—C. R. Colombo, 36,111.

Proxy in favour of a proctor and his two assistants not working in partnership—Civil Procedure Code, s. 27.

A proxy in favour of several proctors trading in partnership is good.

The appointment by a single proxy of two or more proctors not constituting a firm and not standing in any professional relationship to each other as the proctors of one and the same client is open to objection. But there is no objection to the appointment of a proctor and one or more qualified assistants in the same proxy.

The Supreme Court directed the proxy in this case to be amended to show on the face of it that two out of the three proctors were assistants of the other.

THE facts appear from the judgment.

Hayley, for plaintiffs, appellants.—The section of the Code relating to the appointment of proctors is section 27. It does not make any reference to proctors practising in partnership. Yet no objection has ever been taken to a single proxy being granted to proctors practising in partnership. The singular, "a proctor," is used in section 27. But the singular includes the plural—see Interpretation Ordinance. The form in the Code (Form 7) indicates that several proctors may be appointed by one proxy.

If partners may file a single proxy, there is nothing in principle which would make the present proxy bad. The fact that a senior proctor instead of sharing the profits gives a monthly salary does not make any difference in principle.

The filing of proxies like the present, when there are several Courts where the proctors may have to appear at almost the same time, is an advantage, both from the point of view of the Court and the practitioners.

The case relied on by the Commissioner of Requests, *Letchimanan v. Christian*,¹ does not decide the question now before the Court. In that case one proctor appointed another proctor by proxy to appear for him.

Counsel also referred to *Habibu Lebbe v. Punchi Ettena*,² *Rossiter v. Elphinstone*.³

Stanley Obeyesekere, C.C., amicus curiæ.—If several proctors are allowed to file one proxy in their favour, the Government would be

¹ (1898) 4 N. L. R. 323.² (1894) 3 C. L. R. 84.³ (1881) S. C. C. 53.

defrauded of the stamp revenue. [Ennis J.—How is the Government defrauded?] Counsel referred to section 6 of the Stamp Ordinance. [Ennis J.—But that refers to several distinct matters contained in one document. This is one appointment.] The schedule to the Stamp Ordinance contemplates a single proctor, and prescribes a stamp duty for that. In the case of a partnership there is only one person.

Each proctor may tax his costs when several appear for one client; there is nothing to prevent that. The responsibility would be divided, and the Court cannot hold any one of them responsible for any act.

Hayley, in reply.—A firm of proctors are not a legal entity. They are separate proctors in the eye of the law. All the objections urged will apply with equal force to a firm of proctors.

Cur. adv. vult.

October 16, 1913. WOOD RENTON A.C.J.—

This case has been referred by my brother Ennis to a Bench of two Judges. It involves an important question of practice. The plaintiffs-appellants, the Times of Ceylon Company, Limited, sue the defendant for the recovery of a sum of Rs. 8.55 on a money claim. Their plaint is signed by Mr. Hislop. Their proxy is made out in the names of Mr. Osmond Tonks, Mr. R. W. Hislop, and Mr. Hellard, "Proctors of the Supreme Court of the Island of Ceylon, jointly and severally." The statement of account forwarded to the defendant is signed by Mr. Hellard. The learned Commissioner of Requests refused to accept the plaint in the present form, and returned it to be amended within seven days by the deletion of the names of two proctors, and the attachment of the proxy in favour of the one who was retained. The plaintiffs appeal from this order.

The grounds of the decision are thus stated by the learned Commissioner of Requests:—

"These three gentlemen do not constitute a firm, and the proxy itself purports to appoint them jointly and severally. In fact, this is a modest invitation to the Court to assist professional men to achieve the somewhat difficult task of being present in three Courts at once. The Supreme Court has already pointed out that there can be only one proctor in a case. See 4 N. L. R. 323."

The case referred to is that of *Letchimanan v. Christian*.¹ In that case Sir John Bonser C.J. held that no proctor is entitled to appear for a client unless he has a proxy signed by such client, that there cannot be more than one proctor at the same time on the record,

¹ (1898) 4 N. L. R. 323.

1913.

WOOD
RENTON
A.C.J.Times of
Ceylon Co. v
Low

and that the form of proxy (No. 7) scheduled to the Civil Procedure Code, in so far as it refers to one proctor appointing another proctor in a case, is not justified by section 27 of the Code. This ruling is, of course, based on the provision in section 27 that the appointment of a proctor to make any appearance or application or do any act on behalf of a party in any Court shall be in writing signed by the client. But it does not touch the question of the appointment of more than one qualified proctor by a single proxy. It is well settled (see *Rossiter v. Elphinstone*¹) that a proxy in favour of several proctors trading in partnership is good. There is no authority in Ceylon for the appointment by a single proxy of two or more proctors not constituting a firm, and not standing in any professional relationship to each other, as the proctors of one and the same client, and such an appointment would be open to two substantial objections, pointed out by Mr. Obeyesekere, Crown Counsel, who acted as *amicus curiæ* on the hearing of this appeal. In the first place, it would defraud the revenue of the stamp due under Schedule B, Part II., of Ordinance No. 22 of 1909, on every appointment of a proctor; and in the next place, we should have introduced into an action several independent proctors, each of whom would be in a position to throw upon the other responsibility for any act which was called in question. I do not see, however, any substantial objection to the appointment of a proctor and one or more qualified assistants in the same proxy. The proctor whose assistants they are would remain responsible to the client and to the Court for everything done by them under the proxy. The provision in section 28 of the Civil Procedure Code, that, on the death of any proctor appointed under section 27, no further proceeding shall be taken in the action against the party for whom he appeared until thirty days after notice to appoint another proctor has been given to that party, either personally or in such other manner as the Court directs, would not, in my opinion, give rise to any difficulty in this matter. If the death even of one of several partners acts as a revocation of a proxy granted in favour of a firm, the death of the principal proctor, where a proxy was granted in favour of a proctor and one or more of his assistants, would have a similar effect. No form of proxy is prescribed by the text of the Civil Procedure Code itself, although Form No. 7 appears in the schedule. I see no reason why the plaint with which we are here concerned should not be accepted on the proxy being amended so as to read as follows:—

“ We, the Times of Ceylon Company, Limited, have nominated, constituted, and appointed, and do hereby nominate, constitute, and appoint, Osmund Tonks and his Assistants Robert Hislop and John Alexander Hellard, Proctors of the Honourable the Supreme Court,” &c.

¹ (1881) 4 S. C. C. 53.

I would send the case back to the Court of Requests with a direction that the plaint, account, and proxy should be accepted on the proxy being amended in that sense.

It is eminently desirable that nothing should be done to diminish the professional responsibility of proctors to their clients and the Court, but where that responsibility is fully safeguarded there is no need to refuse formal recognition to a relaxation of the existing practice, which will be of the utmost convenience both to proctors and to their clients.

ENNIS J.—

This is an appeal from an order of the Court of Requests, Colombo, returning a plaint for amendment upon refusing to accept a proxy in favour of three proctors on the ground that there can be only one proctor in a case. The second- and third-named proctors in the proxy are assistants to, and practice exclusively for and on behalf of their principal, Osmund Tonks, the first-named proctor, at the address given for service of process.

I do not see any legal or practical objection to such a proxy. The object of these proxies is to show the Court that the proctor appearing for a party is duly authorized by that party. There is no express provision in the Code limiting the number of proctors to be appointed on a proxy. Section 24 provides that any application, act, or thing to be made or done by a party may be made or done by a proctor duly authorized.

Under the proxy before us every one of the three proctors mentioned is "duly authorized," and any one of them could make application, &c., for the party he represents without a contravention of the terms of this section.

The practice in Ceylon already allows the members of a partnership of proctors to be jointly and severally appointed on a proxy. The members of such a partnership are associated in the partnership by their own agreement, and in the case by the authority of their client. In the proxy before us the three proctors named are associated as principal and assistants by their own agreement, and they are associated in the case by the authority of their client. It seems to me that if there is no practical objection in the case of partners, there can be none in the present case.

I concur with the order proposed by my brother the Acting Chief Justice.

Sent back.

1913.

WOOD
BANTON
A.C.J.

Times of
Ceylon Co. v.
Low