1913.

Present: Wood Renton A.C.J. and De Sampayo A.J.

WIDYASEKERA *v.* DIAS.

305—D. C. Colombo, 35,897.

Proctor—Proxy authorizing proctor to obtain injunction—Proctor obtains mandate of sequestration by mistake—Writ of injunction ordered by Court—Mistake of chief clerk and proctor—Client not liable in damages.

The defendant by his proxy authorized his proctor to sue the plaintiff for rent, to obtain an injunction restraining him from disposing of or removing his property, and also to "file all necessary papers and to take all steps necessary in the premises." The injunction was granted by Court, but the proctor prepared by mistake a mandate of sequestration, instead of a writ of injunction, and obtained the signature of the chief clerk and forwarded it to the Fiscal. The plaintiff brought this action for damages for wrongful sequestration.

Held, that the defendant was not liable, as his proxy had expressly limited his proctor's authority.

THE facts are fully set out in the judgment.

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

R. L. Pereira, for the defendant, respondent.

Cur. adv. vult.

October 27, 1913. WOOD RENTON A.C.J.—

This case raises an important question as to the liability of a suitor for the mistakes of his proctor. The material facts are these. The plaintiff, a vedarala, was the defendant's tenant. The defendant and his wife mortgaged the house which he occupied to a third party, who put the bond in suit and purchased the house himself. The defendant put forward a claim to a part of the house on behalf of his stepdaughter. The purchaser thereupon gave notice to the plaintiff not to pay any more rent to the defendant. The plaintiff acted on this notice, and the defendant forthwith sued him in C. R. Colombo, 32,471, claiming an injunction to restrain the defendant in that case from disposing of or removing the household furniture and effects which he then had in the house in question, and also judgment for the balance of rent alleged to be due. The plaint was filed on February 3, 1913, and the proxy in favour of the defendant's proctor, which bore the same date, authorized him to sue the plaintiff for the rent, to obtain an injunction restraining him from disposing of or removing his property, and also to " file all necessary papers and to take all steps necessary in the premises."

This statement of the scope of the proctor's authority was written in ink in the body of the proxy itself. The printed matter which followed in no way extended his powers. The defendant stated in his evidence that he had seen his proctor on February 1, and instructed him to file an action for rent, and move for a writ of injunction restraining the plaintiff from selling his property. That statement is corroborated by the affidavit sworn by the defendant in support of the application for an injunction, and also by the terms of the proxy itself. On February 2 the proctor asked the defendant for Rs. 13 for guard hire, and the defendant paid him the money. The injunction was granted on February 3, subject to the condition that the defendant should give security for costs in the sum of Rs. 200. A security bond was prepared and filed. It shows on the face of it that the order in respect of which the bond had been required was an injunction. The proctor went to Mr. Brohier, Chief Clerk of the Court of Requests, Colombo, and asked him what form to use. Mr. Brohier referred him to the schedule of forms in the Code of Civil Procedure. It is the practice in the Court of Requests, Colombo, for proctors to prepare and submit to the chief clerk drafts of orders of this description. The Code of Civil Procedure itself recognizes the right of proctors to charge for such work, and the practice may give rise to little mischief if it is carefully supervised by the responsible officers of Court themselves. The proctor found no form of injunction in the schedule to the Civil Procedure Code, and being unaware that there is a distinction between a writ of injunction and a mandate of sequestration before judgment, he prepared and submitted to Mr. Brohier a mandate of sequestration. Mr. Brohier passed this without demur. He was guilty of reprehensible carelessness in doing so. It is obvious that he must have signed the mandate without reading it. Armed with the formidable instrument which the negligence of Mr. Brohier had placed at his disposal, the proctor took it to the Fiscal's office, and at the same time wrote to the Fiscal the letter P 6, in which he requested him to seize, sequester, and place guards over the plaintiff's property under the mandate. He stated in this letter that the property would be pointed out by the defendant, but the evidence shows that the defendant had nothing to do with, and was entirely ignorant of, the seizure. The Fiscal duly executed the mandate, and the plaintiff brings this action claiming damages from the defendant on the ground of his proctor's mistake. The learned District Judge has dismissed the action on the ground that in preparing the mandate of sequestration the proctor was acting as the agent, not of his client, but of the Court. The plaintiff appeals.

I am not sure that the judgment could be upheld on the ground on which the learned District Judge has rested it. If the proctor had been authorized by his client to take proceedings for sequestration against the plaintiff, the latter would, I think, have been

liable for an act done in accordance with the practice of the Court and impliedly recognized by the Code of Civil Procedure itself. But I would maintain the judgment of the learned District Judge for another reason. The proxy expressly limits the proctor's authority. It enables him to sue for rent and for an injunction, and to do everything necessary for the purposes of such an action. It gives him no authority to take the entirely different class of proceedings to which, in point of fact, he had recourse. I have found very little direct local authority as to the legal effect of proxies in Ceylon. It was held, however, in an old case (D. C. Kandy, 21,886 [1]) that, by an ordinary proxy for a District Court, only the proctor was retained, and that he could charge for his own fees solely and not for those of an advocate, unless the proxy expressly authorized the proctor to retain an advocate. In *Babuwe v. Salonchi* [2] Bonser C.J. and Lawrie J. held that, where an action is commenced without proper authority, the proctor was liable to pay costs, and that where the proxy did not specify the nature of the action to be commenced, the proper course was to give the proctor an opportunity to put in a proper proxy and to obtain confirmation of all acts done till then. These decisions point to the conclusion that a proxy is regarded in Ceylon, not only from the point of view of the relation between the proctor and the Court, but also from that of the relation between the proctor and the client.

No authority from Roman-Dutch law was cited to us, and I have been unable to find any. The English law on the subject is clearly settled. But in considering it the fact has to be borne in mind that in England no proxy is required. Since the decision of the Court of Common Pleas in *Jermain v. Hooper* [3] there has been no doubt but that a client is liable for any act done by his attorney or solicitor in the conduct of an action in the client's interest and within the scope of the attorney's or solicitor's authority. The reason for this rule is quaintly stated in a note to the report of *Jermain v. Hooper* [3]: "Formerly the suitor, who was the client of his sergeant, was called the master of the apprentice of the Court, whom he employed, whether that apprentice was acting as his attorney or as his counsel in Courts in which sergeants did not usually attend. (*Serviens ad legem, 11, 45, 188.*) The case of attorney and client (master) would therefore appear, like that of sheriff and bailiff, to come distinctly within the rule *respondeat superior.*"

It is equally clear that the client is not liable where the solicitor acts outside the scope of his authority. (See *Smith v. Keel,*[4] and compare *Morris v. Salberg.*[5]) The appellant's counsel pressed us strongly with the case of *Collett v. Foster.*[6] But in that case the authority of the attorney was sufficient to cover the particular class

[1] *1 Thomson's Institutes 552.*
[2] *(1896) 7 Tamb. 38.*
[3] *(1843) 6 Man. & G. 839.*
[4] *(1882) 9 Q. B. D. 340.*
[5] *(1889) 22 Q. B. D. 614.*
[6] *(1857) 2 H. & N. 356.*

of process to which he resorted if the facts had made it applicable. Moreover, the illegal act of the attorney was ratified by the client. In the case before us the only evidence of ratification is the Estatement of the defendant that he had supplied the proctor with guard hire prior to the application for the injunction. What appears to have happened, however, was that the proctor asked the defendant for guard hire, and the defendant supplied it, thinking, no doubt, that it was an expense necessarily incidental to the proceedings which he had authorized. The letter by the proctor to the Fiscal is of little importance in the present case. It was an act done by him without the authority of his client, and in the execution of process which, under his proxy, he had no power to issue.

For the reasons that I have stated I would dismiss the appeal with costs.

DE SAMPAYO A.J.—I agree.

Appeal dismissed.