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Isaac Tambyah, Advocate,

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V. Grenier and W. Sansoni, Advocates.

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The Jurisconsults of the XVIth Century and especially of the School of Cujacius.

(*Translated from the Dutch of L. A. Warnkoenig.*)

By A. E. Buultjens, B. A. (Cantab.)

[We omit three sections on the Glossators, the Canon Law, and the jurists of the XIV & XV centuries.]

When at length the study of the ancient classics was renewed in Europe in the XVI century, a more liberal zeal for the Roman Law was founded; but it now led jurisprudence to so high a degree of perfection, that at the present day that age is considered the most flourishing in the science of law. When the night of the Middle Ages was dispelled by the discovery of the books of ancient authors, the purpose of life was made more cultured, liberal arts were restored, all pursuits connected with classical literature began to be cherished, liberty, discovered in truth, restored to the human race, summoned the genius of almost all the nations of Europe to higher and nobler deeds. The new ardor of cultivating the sciences began to be common, as by the invention of the art of printing, all books could very easily be published. But in the pursuit of law that change should of

necessity lead to a new reason, as the study of Roman Law has been intimately connected with the culture of ancient literature. For just as a knowledge of the Roman Law is necessary for us to properly understand the Roman authors, so the true nature and purport of it cannot be learnt except from them, as those people among whom that law was born knew its character and fate; this knowledge is especially acquired from their classical authors. It happened therefore that when the customs of the Roman nation were understood and the genius and true character of the Latin language and the state and history of the Roman Republic, the genuine doctrine of the Roman Law was restored.

But a new method of treating jurisprudence had been founded especially in the following: the interpretation of the Roman Law was made more accurate, illustrated by philological and historical disquisitions. Hence the errors of the authors of the barbarous age were exploded; true precepts were discovered; the sources from which a knowledge of the civil law could greatly be fostered were brought forth into the light, and moreover classical authors were edited, fragments of ante-Justinian as well as of post-Justinian law were everywhere looked for and the vulgate was most diligently made use of by interpreters in explaining the laws of Justinian. By a knowledge of the Greek language very many interpreters were able to elucidate numerous difficulties.

Lastly jurists adorned with every learning employed their skill in this, to prepare editions of the books of the civil law free from faults and blunders; when this was done a more elegant jurisprudence at length began to be cultivated. By this historical and critical investigation of the Roman law several men of the XVI century obtained eternal glory for their name, and so highly are their merits regarded that more recent learned jurists agree in this, that for preserving a more substantial jurisprudence it should never be receded from their examples.

During the whole of the XVI century this method of treating jurisprudence was often used, and that particularly in France, where for forty years the most celebrated JACOBUS CUJACIUS was made principal of a famous school; so that we are wont to call from him that method the CUJACIAN METHOD and this age of jurisprudence the CUJACIAN CENTURY. [Such was his renown in the German schools that every one is said to have raised his hat at mention of his name. *Hunter.*]

However by this more liberal institution of law, its forensic use was not changed to such an extent that the

jurisprudence of the Middle Age was clearly driven out : for such is the force of long lived custom that it can only be overcome with difficulty and imperceptibly and gradually. But the works which those jurisconsults have left are regarded by all as of the highest authority, as it were a treasury of the richest law. [And yet Hunter quotes Hugo's opinion of Cujacius, "He fell into a rudimentary historical method, but possessed no philosophical conception of law" as a Note.] Not only was the study of the Common Law in this century so great, but they laboured to learn the laws and customs of their country. The ancient sources of law of modern nations were collected, their history was investigated, and science diligently cultivated.

It is important to name in this place the more well-known jurists of the XVI century.

We said that at the end of the XV century Angelus Politianus flourished. He died in 1494. He was followed by Ludovicus Bologninus, who shewed critical care in the Pandects, comparing the Florentine Code with it. At the beginning of the XVI century the first to perform the work of a more elegant jurisprudence were G. Burdœus (1467–1540) of Paris in France, Udabricus Zasius (1461-1535) of Friburg in Germany, and Andreas Alciatus (1492-1550) in Italy, whom they commonly call the father or restorer of a better jurisprudence. Lastly Germany had wellknown men—F. Sichardus (1499-1552), the first editor of fragments of the ancient Roman Law, and G. Haloander (-1531) of whose celebrated edition of the *corpus juris* we have already spoken, and lastly Viglius ab Ayta Zuichemus (1507-1577), the most learned jurist of the Belgians, most famous in the history of his country, and well-known not merely for his paraphrase of Theopilus.

In Italy next there flourished Antonius Augustinus of Spain (1517-1586) well skilled in Roman and Canon Law; Lœlius Taurellius (-1576) his son, editors of the Florentine Pandects; Carol. Sigonius (1519-1584), a historian and the first famous writer on Roman antiquities; Guido Pancirolus, and Ant. Muretus a philologist most skilled in Roman Law.

Among the Spanish there flourished Ant. Nebrissensis, and Didacus Covarruvias (-1577).

But France had far more jurists of the XVI century, teaching in many academies among which however Bituricensis (the University of Bourges) holds the first place. Andreas Alciatus also taught there. In publishing

the sources of law these have obtained immortality : J. Tilius (Dutillet) Bishop of Briacencis, and Meldensis (-1570) first editor of Ulpian and the Theodosian Code ; Antonius Contius (-1577), Ludovicus Chavondas and Lud. Russardus of whose zeal in publishing the body of the Roman Law we have already mentioned. Among the most famous interpreters of the Roman Law of their age should be praised Eguin. Baro (-1495), Fr. Duarenus (-1559), Fr. Balduinus (1520-1573, F. Hotomannus (1524-1590), Hugo Donellus (1523-1591) [after the massacre of St. Bartholomew, Doneau (i. e. Donellus) found refuge at Leyden (*Hunter*), where he occupied the chair of law at the University *W. Pereira*], J. Mercerius, Raguellus, and lastly Barnabas Brissonius (Goveanus ?), and several others all of whom we cannot here praise. But all are surpassed both in fame and in merits concerning the entire Roman Law by the most celebrated JACOBUS CUJACIUS.

Among all the more recent jurists, he, most sagaciously and with a mind antique as it were, investigated the monuments of ancient jurisprudence and combining with genius a rare erudition he by himself so far excelled in the science of law every individual author, and at the same time almost all of his contemporaries together. He was not only the best and most elegant interpreter of the Roman Law, but also the happiest investigator of its history and antiquities, and the editor of fragments of the ante-Justinian law and of a part of the Basilica, the value of which especially in the interpretation of the Justinian Law he indicated. He carried off the palm from the contemporary jurists in the critical interpretation also of almost all parts of the Roman Law. Cujacius restored the true view of Roman jurisprudence ; he opened out the treasuries of classical jurists, and he pointed out with marvellous skill to the jurists of all times what guides we have in them.

But he is great not only in rare scholarship, but greatness has been thrust upon him in this too, that he trained up several pupils of his own land most skilled in studies and in literature, whose praises history mentions, among whom are the Pithœi (Pithou) brothers(Peter and Francis), Labittus, D Gothofredus. Janus a Costa, G. Maranus, H. Giphanius, Thuanus, Ant.Loiselius,Ranchinus and several others both jurists, and philologists and historians. Cujacius. however, as he had famous disciples, so had he the most bitter enemies, among whom are Duarenus, Donellus, Hotomannus, Antonius Faber, and Joan. Robertus.

Among the jurists of France, skilled in the law of their country, Carolus Molinœs (Dumoulin), whose authority is the highest to-day in the courts of his country, hold the first place.

Among the Belgians, too, in the XVI century, a more liberal study of Roman law not less than of ancient literature was cultivated by every learned man, and the Universities of Louvain and Douay produced famous Doctors of law, whose names are celebrated even to-day. The first who taught the better jurisprudence at Louvain was Gabriel Mudœus (1500-1560) of Antwerp, who had frequented the schools of law in France, and on his return to his country was made the tutor of many very learned men. Several of them taught both among other nations and especially in Germany and left behind the glory of his name.

Of Viglius we have already spoken ; he never taught law in his own country. But he excelled as a patron of all the fine arts, founded the Viglian College at Louvain, and to-day the rarer books and manuscript codes collected by him remain in the Belgian libraries. We mention here the names of some others, namely Peter Ægidius(—1533), who was the first of all to publish in 1517 certain fragments of ante-Justinian law. Jac. Curtius of Bruges who first turned into Latin the paraphrase of Theophilus in 1639 ; F. Damhouder of Bruges (—1575), a famous writer on criminal law ; Fr. Polletus of Douay (— 1547 patron of causes at Paris ; Joach. Hoppers (— 1576 who left several books on the correct arrangement of the science of law ; Joannes Wamesius (—1590) (Leodiensis ?), professor of Louvain who wrote for forensic use ; his cousin G.Corselius(1617) ; Henricus Agylous(—1595), whose Latin version of the novels we have praised ; Albert Leoninus (—1596) successor of Mudœus ; Petrus Gudelinus of Athens, and Jac. Rœvardus of Bruges (1536—1568) whom although, he died when quite young, the Belgians not undeservedly called Papinian ; he taught the civil law at Douay.

The following Belgians, educated in their country's academies, gained distinction among strangers :—Matthæus Wesenbeck, of Antwerp, the most celebrated professor of law of his time in the academies of Saxony (—1586), and his cousin Peter Wesenbeck(—1603) ; their works enjoy great authority even to-day ; Andreas Gaill of Agrippina (—1587), a law author of great renown ; Franciscus Mœdius of Bruges(—1597),a not unknown editor of the corpus juris . and Hubertus Giphanius (1534 —1604),born at Geldria, who surpassed all in fame, and afterwards taught in several universities of Germany,

leaving behind him so great fame as a great philologist and jurist that he received the name of Cujacius of the Germans.

Several of them were pupils of that Mudœus to whom therefore the glory of more cultured author of juris prudence in Belgium should be rightly attributed.

Who does not know the philologists of the Belgains of that most celebrated century ? Justus Lipsius, Erasmus of Rotterdam, Heinsius, Janus Gruterus, Hubert Golzius, Pighius and Puteanous whose names are always in the months of literati.

But in the following centuries the science of law sought for itself news abodes among the Dutch and Northern Belgians, whilst in the schools of Louvain and Douay the more elegant jurisprupence began to be neglected.

Very few famous jurists lived there in the XVII century: among them, however, should be named Zœsius, Tuldenus, and especially Ant. Perezius (—1674), born of a Spanish family. Afterwards Belgian authors wrote only for the forensic use of law, especially illustrating the customs of the different provinces, as Anselm, Zypœus, Christynœus, J. and T. a Sande, Peter Stockmans, Ghewiet, and the famous writers of Leodien, Sohet, Louvrex and de Mean.

[*We have already published about the Dutch School of Law*]

But not only among the Dutch were there learned interpreters of the Roman Law during the XVII and XVIII centuries, but also among the Germans, Italians, Spanish and in France. We shall look particularly into the well-known authors of law in Germany. Antonius Merenda (—1655) made Italy illustrious by his fame and also Hieronymus Aleander (—1630), Marcus Aurelius Galvanus (—1659), Joannes Vincentius Gravina(—1717), Joseph Averanius (—1738), G. Vico, and several others, among whom too should be praised Gœtano Filangieri (—1788), an author illustrious for finding out the principles of explaining the law.

The Spanish jurists of the XVII century adopted the Cujacian method of treating of the Roman Law.

The most celebrated among them are Melchior de Valentia (—1657), Franciscus Ramos del Manzano(—1683), Joseph Ferdinandez de Retes (—1678), Jo. Suavez de Mendoza (—1681); and in the XVIII century Jos. Finestres(—1777), and A. Gregorius Majansius (— 1781).

In France too in the XVII century various interpreters of great renown in Roman Law lived, although already the

study of their law began gradually to be neglected. The following are to be praised : Edmund Merillius (—1647), a pupil of the pupils of Cujacius ; Hannibal Fabrotus (—1659), of whose merits in publishing Theophilus, the Basilica, and the works of Cujacius we have already spoken. Jos. d' Avezan (—1669), Ant. Desid. Alteserra (—1682), J. M. Ricard (-after 1678), Ægidius Menagius (—1692), ant L' Espeisses (—before 1659), Dion Lebrun (—1708); and especially Joannes Dornat (—1695)whose work "The Civil law according to Natural Order" has obtained great fame and authority.

But in the XVIII century jurists gifted with immortality made France famous : H. F. de Agnesseau (—1761), Joseph Pothier (—1772), C. de Montesquieu(—1755).

The overthrow of the Republic, codes of nev. law, and continual wars by no means favoured the study of Roman Law.

Professional Propriety.

For the first time in the history of Hultsdorf the attention of all concerned in preserving the proprieties of the Profession pure and unsullied, has been drawn by an outbreak of vigilance calculated to strike terror into the hearts of even the most pharisaical of all who profess and call themselves lawyers. The vigilance is commendable. The element of fear it has a tendency to rouse is not always ascribable to suspicious causes. Uncertainty as to what exactly is proper and what is otherwise may induce a sense of disquiet, although the assumption is not unreasonable that the exercise of a right judgment in all things appertaining to professional conduct is a matter about which there should not be any doubt. The decrees of the Bar Council——if we may give its decisions a name connoting authority——have declared certain things improper which for a long period of time down to April 1910 have been openly tolerated. Long usage had given such practices the sanction of time and tradition. It is only *now* improper on the part of an advocate to affix his signature to civil motions before the Supreme Court without the intervention of a proctor. (1)

(1.) See minutes of Par Council, Ceylon Law Review Vol. VII, p. 11

Again in all criminal matters, advocates both seniors and juniors, were wont to accept fees and appear under instructions directly from the clients. The late Mr. Rudra was the first to introduce into Ceylon a more extensive employment of proctors in criminal cases than counsel were accustomed to before his time. The appearance of an advocate *instructed* by a proctor in a criminal case has however not been altogether unknown before Mr. Rudra's days, only the practice has not been general. The Criminal Procedure Code of 1898 (2) permits the appearance of an advocate on behalf of an accused person in any criminal court, without the intervention of a proctor. Indeed it is one of the most important rights of an accused person to be defended by *a* pleader, and it is questionable how far it is not an encroachment of such right to make the exercise of it depend upon the pleader being associated with another. A prisoner on trial may have means enough to secure the services of one pleader, and it is a hardship that he should be in danger of losing professional assistance by being saddled with the anxiety incidental to the duty of engaging a proctor. The resolution of the Bar Council (3) that it is not in accordance with etiquette to appear in a criminal trial otherwise than on the instructions of a proctor seems to make the law of none effect by the traditions of men. We are second to none in insisting not only on the propriety but even the absolute necessity of an advocate in a criminal court being instructed by a proctor, and we plead for no relaxation of the rule embodied in the resolution of the Bar Council, but we feel entitled to comment upon the variance between that rule and the statute law of the land.

From the point of view of forensic morality the practice in vogue under the Code of counsel appearing in criminal causes without a proctor is undoubtedly one which is open to grave abuses. It has the tendency to bring the youthful practitioner into undesirable contact with non-professional intervenients between counsel and client, a circumstance beset with the perils of statutory punishment (4). We do not for one moment

(2.) Crim. Proc. Code Sec. 287:—"Every person accused before any Criminal Court any of right be defended by a pleader" Sec 3,—"pleader" used with reference to any proceeding in any court means (1) an advocate, (2) any person authorised under any law for the time being to practise in such Court.

(3.) Ceylon Law Review Vol. 7. 106.

(4.) Ord, No. 11, of 1894 Sec. 2, "any person who being a legal practitioner tenders or gives any gratification, or consents to the retention of any gratification for procuring or having procured the employment as Inch practitioner of himself or any other practitioner shall be guilty of on offence.

insinuate or desire to be understood that those gentlemen notably of the Junior Bar who have almost an established practice in the Assize Court at Hultsdorf have secured a footing there by means of questionable methods, and we must protest against any impression to that effect in the mind of anybody in or outside Bar Council. An easy, rational explanation which will do no violence to the prerumption of professional integrity in favour of lawyers at Hultsdorf is that the average case in the Assize Court is one which from the remunerative point of view, affords little or no attraction whatever to senior advocates. Their scale of fees is properly high, and does not bring them into competition with the enterprising junior who can ill afford to have anything but a more moderate tariff. What is the result? Those who are willing and who must needs be willing to accept fees, on a far smaller scale than that of the ordinary senior, naturally have a large proportion of the Assize Court practice. It is well known that in exceptionally big cases more or less sensational, accused persons are able to retain counsel whose demand for high fees finds ready response. The new rule, we humbly think, will not alter this state of things to any appreciable extent. It is just possible, now that Supreme Court proctors are more numerous than in years gone by, that the average accused person may be able to secure the services of proctors with as modest aspirations, from the stand point of fees, as the enterprising junior advocate. Of course the rule will have the desired effect, viz. to impress on both branches of the profession, not merley the interdependence one on the other, but also an exalted sense of professional ethics and professional responsibility.

The Bar Council is undoubtedly composed of gentlemen whole sole motive in action is the maintenance of professional purity. We are glad that they have not in any course of action they have hitherto adopted constituted themselves into an auxiliary of the Ceylon police force. They have not made use of police methods, and we rejoice to dissociate them altogether from devious tactics in the matter which on July 1st culminated in the inquiry before the Supreme Court into the conduct of an advocate and a proctor. We however claim to endorse the justice of the impression, not unlikely to arise under the circumstances, that the revived and renewed activities of the Bar Council, its vigilance in committee and sub-committee work, and its laudable zeal to uphold the traditions of an honourable calling are unavoidably calculated to prompt malignant busy bodies to aspire to the unenviable distinction of spies and traducers. The Pro-

fession reposes the fullest confidence in the Bar Council, that it will studiously discountenance a system of espionage and surveillance with its pernicious consequences of unjust suspicion and corroborative perjury. The council will find a most effective co-operation, in its plans and purposes, far more in an appeal to the sense of honour of every member of the Profession, rather than in the adoption of methods which, however legitimate and however unquestionable, attract outside attention in a way that is calculated to shake public confidence in legal assistance.

We desire it to be distinctly understood that in none of the preceding observations we have intended or implied anything that is designed to minimise by one jot or tittle the absolute necessity of lawyers conforming to established rules of etiquette, and that every attempt to prevent its breach and enforce its observance calls for the fullest measure of support that a lawyer can render to the cause.

Bar Etiquette.

The Full Court, consisting of their Lordihip the Chief Justice, Mr. Justice Middleton and Mr. Justice Wood Renton, sat on Friday, July 6, 1910, to dispose of the matter of a Rule issued on an Advocate, and a Proctor. The rule on the advocate was taken up first.

Mr. de Sampoyo, K.C., with Mr. H. J. C. Pereira and the Hon. Mr. A. Kanagasabai appeared for him. The rule charged the Advocate with having on the 4th May last received instructions, without a Proctor, from one Don Brampy alias Pugita, and one Engo Nona alias Engeltinahamy, and prepared a petition of appeal on behalf of a boy of 14 years, one Marco Appu, who was convicted and sent to the Maggona Reformatory for a peried of 4 years for theft. The persons who interested themselves on the accused Marco's behalf were his grandmother and this man Brampy.

Mr. de Sampayo in submitting the facts said that so far as the Advocate was concerned, it would seem that after the decision of the case these persons were desirous of appealing on behalf of the boy. They consulted the Proctor, intending to get the appeal argued by the Advocate. The Proctor then got a copy of the proceedings and they brought this copy to the Advocate. The parties were known to the Advocate very well, and

the latter presumed that the Proctor had desired him to draft out a petition of appeal. Knowing that a copy could not be obtained unless upon application by the Proctor in the case, he concluded it was all right, drafted the petition and sent it on. Subsequently the fair copy was signed by the Proctor and the Advocate countersigned it.

Mr. de Sampayo here read to their Lordships the affidavit. setting out fully all the facts.

With regard to criminal matters, Mr. de Sampayo submitted, there was no definite rule laid down about instructions from a Proctor or not. The Advocate had been informed that a Proctor had appeared, and it was by arrangement between the parties and the Proctor that the copy of the proceedings was obtained and sent to him for the preparation of a petition of appeal. Whatever strict view might be taken even in regard to criminal matters the Advocate had acted in this matter in accordance with the recognized practice of the Courts, and he had done nothing which required condemnation under the circumstances.

The Chief Justice enquired what the meaning of the word "settled" at the foot of the petition of appeal meant.

Mr. de Sampayo said that there was no special meaning attached to that. It meant "drawn out" read, revised, "signed by," etc. It was usual for documents drafted by petitiondrawers, in petitions to H. E. the Governor, or the Government Agent to write at foot "drawn by so and so" but that form was only used by unprofessional men. As far as he himself and the members of the Bar took it, the words "settled by" were used by Advocates to denote the drawing out by them of a petition of appeal.

His Lordship remarked that the word was in use in England and implied the same meaning as expressed by Mr. de Sampayo.

Mr. Akbar, C. C., who appeared on behalf of the Attorney General submitted that it was on this point he had been requested to draw their Lordship's attention. First, with regard to the petition of appeal, it was signed by the Proctor and settled by the Advocate. It was a document which was intended to be filed in a Court of Law. It was on the instructions of Don Brampy that the Advocate drew up the petition of appeal. Section 340 subsection (2) prescribed that it must be signed by the appellant or his Proctor, otherwise it could not be accepted by a Magistrate. Ordinance 1 of 1886, Section

18 gave a Magistrate the discretionary power to sentence that boy for a period of 4 years. The Supreme Court had the power to enhance that punishment and make it 6 months' rigorous imprisonment. Supposing the boy were to repudiate the petition of appeal, what would be the share of the Advocate and the Proctor in the matter? The Attorney-General wished also to bring it to the notice of their Lordships that certain facts in the affidavit were not borne out by the deposition.

Motion in Re a Proctor.

The rule on the Proctor was then taken up. Mr. B. W. Bawa, Advocate, instructed by Mr. A. C. Abeyawardene, Proctor, appeared for the Proctor. Mr. Bawa in opening said this rule served on the Proctor was somewhat different to the one served on the Advocate. The charges were practically (1) Not preparing or giving instructions for the petition of appeal, and not enquiring into the allegations in the petition of appeal. (2) That the petition of appeal was presented without instructions from Marco Appu or some person duly authorized to act for him.

Mr. Bawa submitted and read to their Lordships the affidavit filed in the matter.

Continuing his remarks, Mr. Bawa said the Proctor was a young Proctor who had only been practising for two years, and asked their Lordships if there has been any irregularity to overlook it. In the present case, he said, he had not been guilty of any irregularity. He appeared for the 2nd and 3rd accused in the Police Court case, as would be seen from the record itself. He also applied for the certified copy of the proceedings in his capacity as Proctor for the accused. A great deal of what Mr. de Sampayo had said applied to the Proctor. Their Lordships were well aware of the ignorance of the ordinary villager in respect to matters of law. It was a mere formality to ask an accused if he desired to appeal, but the responsibility lay on the Advocate who had to decide whether an appeal might or might not be filed. Their Lordships knew, and the members of the Bar were familiar with the experiences of clients being obliged to take on their shoulders the mistakes of their legal advisers. In Civil Cases, it was impossible for Counsel to say what the ultimate result of a case might be. Mr. Bawa here cited a ruling by Mr. Justice Browne and also a judgment of Mr. Justice Lawrie with regard to the signing of petitions of appeal. He also referred their Lordships ot a judgment of two judges in a case from the Police Court of Hatton in which Mr. Justice Wendt and Mr.

Justice Wood Renton had held that it was lawful for an Advocate to take instructions from a person interested in or who was acting on behalf of the appellant. In view of that judgment the Proctor need have consulted nobody. He could act on his own responsibility in the matter. When he was approached he was right in procuring the copy of the proceedings from the Police Court in the usual way and he committed no irregularity in instructing his client to take the matter to the Advocate to draw up the petition of appeal. Of course, t would have been more regular to have written a letter by post, but time was pressing. The appealable time had nearly elapsed. There were no statements of facts in the petition of appeal not borne out by the record itself. He put his signature to it because the law required him to do so. His signature cast upon him a responsibility. There was no irregularity in his signing the petition of appeal drawn up by the Advocate.

Mr. Akbar, C. C., drew Their Lordships' attention to the deposition made by the Proctor on the 16th May. It shewed, he said, the circumstances under which the Proctor was retained. There was the question "What did Engo Nona pay you for appearing at the trial? Was it to defend Gilbert or Marco or both?" The reply was "Brampy told me it was to defend both." In the same deposition he was asked if he had made inquiries if Brampy Singho had any authority to instruct him. His reply was "I signed it and returned it to Brampy."

Mr. Justice Wood Renton drew Mr. Akbar's attention to the words "I first refused to sign it."

Mr. Akbar stated that that clearly shewed he had some misgivings about the matter. On both occasions, it was Brampy who came to him. On another page, he said "Later on I asked Brampy if he had any interest in the boy." Brampy said he was related to the boy in some way, so that it clearly showed that he had made no effort to find out what authority Brampy had to instruct him. The only proof that the Proctor appeared for the accused was his application for a certified copy. That was written by Brampy at the instance of the Proctor. It was Brampy who took it to the advocate. Then why did he hesitate to sign it?

Mr. Bawa referred His Lordship to page 12: "Brampy came to me, I signed this application. He wanted a copy to show to the Advocate." Further, it was the carelessness of the learned Police Magistrate in not entering the name of the proctor who appeared on the

record. Mr. Byrde has not, however, suggested that the Proctor did not appear in the case.

THE DECISION.

Hutchinson, C. J.,—" It is of the greatest importance to any member of the public, who unfortunately comes to be engaged in litigation that, if he does not conduct it personally, he should be able to employ a lawyer, who is trustworthy and honourable, to act for him; it is of the greatest importance too that the Court should be able to rely on the integrity and good conduct of the lawyer, and to attain these objects it is also necessary that they should not only be perfectly straightforward, but should also conform to the rules and etiquette which have been established and have been found by long experience to be necessary. Now in this case if we assume that the rule was not at the date of this transaction clearly settled as to an advocate only acting upon instructions from a proctor, still the advocate had no instructions from either the client or the proctor. He did not satisfy himself that the persons, Brampy and others who went to him, were duly authorised by the client or that they stood in any such relation to him as considering that the client was a boy, might have justified the advocate in filing an appeal upon their instructions. He is not a boy, but is an advocate of some standing, and it is impossible that he could have thought that he was justified in receiving instructions from a proctor by a verbal message through a third party. The charge, which he is called upon to answer, states that he being an advocate instructions from certain persons to prepare petition of appeal on behalf of Marco, such persons being neither the proctor nor the parties to the case and that on such instructions he presented a petition of appeal, and that after it was copied and the proctor had signed it, he (the advocate) signed it, writing on it settled by———— ————advocate, knowing that the petition was going to be filed in Court. There is no doubt that he did that, and we are of opinion that his conduct deserves severe censure. With regard to his writing on the petition that it was settled by him, that to any magistrate or judge who saw it would imply that it was settled on instructions from a proctor, whereas, in fact, he had no instructions from a proctor, unless it could be inferred, from the fact of the proctor's having signed it, that the proctor instructed him also to settle and sign it. In regard to Mr.———— therefore we think that his conduct deserves censure but we do not consider it such as to justify us in making any order. With regard to the proctor, what is alleged against him is that he authenti-

cated by his signature a petition which he had not prepared or had not given instructions to have prepared—that is true—and that he did not make any inquiry into the allegations contained therein. We do not think that is substantiated because he acted as proctor for the appellant before the Magistrate and therefore he knew the circumstances. It is also alleged that he did not satisfy himself that the petition was presented on the instructions of the appellant Marco or by persons duly authorised by him. Strictly speaking that also is true. He had no instructions from the appellant, and the persons who instructed him had not, so far as he knew, any instructions from the appellant. I do not think that is a serious matter, because these were the very persons upon whose instructions he had appeared for the boy before the Magistrate. The Magistrate made some inquiry into the circumstances under which this petition was presented, and at that inquiry the proctor made certain statements on oath. To-day, he filed an affidavit. It appears to us that the affidavit is not in all respects consistent with what he swore before the Magistrate. It seems to us that either his deposition or his affidavit is disingenuous. In his case also I make no order.

Appeal Court Notes.

(By W Sansoni and V. Grenier, Advocates.)

86. **Plea of guilty—Proctor's authority.**

Where a proctor pleaded guilty to a charge on behalf of his client the accused, and the accused did not then or after sentence state that the proctor had no authority to do so—Held, the proctor must be presumed to have acted on the authority of the client and with his knowledge and consent. Grenier, J. 346, P. C. Colombo, 3405.

23 June, 1910, M. C., *William Silva* v. *Sollamuttu*

87. **Maintenance—Corroboration of Applicant's evidence—Paternity—Registration of Births.**

The corroboration of the evidence of an applicant required by Sec. 7 of Ord. 19 of 1889 is the same as required by law for the evidence of accomplices. It should consist of some evidence oral or real, entirely independent of that of the applicant, which renders it probable that her story as to the paternity of the children, is true.

An admission by the Respondent of the registration of the births of the children is corroboration in law of the applicant's story.

Wood Renton, J., 336 P.C. Matara, 30619. 22 June, 1910.

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88. **Gaming—Joinder of charges—Gambling and keeping a common gaming place.**

The offences of gaming and keeping a common gaming place being offences committed in the course of the same transaction are triable together—any objection to the joinder must be taken by the accused at the trial. The accused cannot afterwards plead that he was embarrased or prejudiced in his defence by the joinder of the charges.

314-316 P.C. Balapitiya, 33919. Grenier, J., 22 June, 1910.

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89. **Cheating—Sec. 400 and 398 Penal Code.**

Where the accused took Rs. 5 from the complainant undertaking to do certain work within a certain time, and failed to do the work and was convicted of cheating—Held, it is clear the accused could not be convicted of cheating inasmuch as to establish such a charge there must be affirmative proof of an intention on his part to break his contract at the time that he entered into it.

Wood Renton, J., Case stated—P. C. Panadure, 33264. 22 June, 1910.

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90. **Grievous hurt—Medical Officer's Report—Alteration of charge.**

Where upon the report of a Medical Officer the accused is charged with grievous hurt and non-summary proceedings were taken and the complainant leaves hospital on the nineteenth day, the Magistrate altered the charge to one of simple hurt and tried the accused summarily—*Held* the Magistrate was entitled to do so under Section 172 of the Criminal Procedure Code. The P. M. has power to alter a charge, after explanation of its character to the Appellant.

Wood Renton, J., 321 P.C. Galle, 48082. 20 June, 1910.

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91. **Mohammeddan Lebbe—Mosque—Injunction Possessory action.**

Following 2 C. L. R. 22 & 2 N. L. R. 50 it was held that the duly appointed Mahallam or Lebbe of a mosque has a right of action against any person interfering with him in the performance of his duties and in the exercise of his rights.

Grenier, J., 162 C.R. Anuradhapura, 5807. 17 June, 1910.