

1887

APRIL 21.

APPEL-
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12 B 71.

For these reasons, we modify the decrees of the Courts below and pronounce the appellants liable to the decree-holders for the amount of the decree of the Court of first instance.

Costs of this appeal and of the Courts below to be in proportion to the amounts sought and now awarded.

12 B. 78.

[78] APPELLATE CIVIL.

Before Mr. Justice West, and Mr. Justice Birdwood.

YASHVANT NARAYAN ADARKAR (*Original Opponent*), *Appellant v.*
XAVIER J. J. V. DESOUZA (*Original Applicant*), *Respondent.**
[21st April, 1887.]

Civil Procedure Code (Act XIV of 1882), s. 617—Plea ler—Professional conduct.

Section 617 of the Code of Civil Procedure (Act XIV of 1882) does not authorize a reference, except on a point arising in a litigation between parties in a suit, or appeal, or in a matter wherein the Court is called on to adjudicate, that is, to pronounce on the opposite pretensions of contending parties.

A pleader was fined Rs. 25 by a Second Class Subordinate Judge for refusing to act on behalf of his client after receipt of retaining fee. On appeal, the District Judge referred the matter to the High Court, under s. 617 of the Code of Civil Procedure (Act XIV of 1882).

Held, that the inquiry into the pleader's professional conduct was of a disciplinary, and not litigious, character. The fact that an appeal lay from the Subordinate Judge to the District Judge did not make it litigious. In such an inquiry no reference could properly be made, under s. 617 of Act XIV of 1882.

THIS was a reference, under s. 617 of the Code of Civil Procedure, by H. Batty, Acting District Judge of Ratnagiri.

One Yashvant Narayan Adarkar, a pleader practising at Vengurla, in the Ratnagiri District, was fined Rs. 25 by the Second Class Subordinate Judge of Vengurla for refusing to act on behalf of his client, Xavier J. J. V. DeSouza, after receipt of retaining fee. Yashvant Narayan appealed to the District Court.

The District Judge referred the following questions to the High Court for decision:—

"1. Is a pleader justified in refusing to act for a client, on the ground that in a former case he had been engaged by the party to whom under his new engagement he would be opposed, unless his previous engagement has placed him in possession of facts, &c., that would give him an undue advantage?

"2. Is a pleader justified in receiving a retaining fee, with a conditional acceptance of his duties?

"3. Does a pleader by refusal to act after accepting the retaining fee commit an offence under s. 50 of Reg. II of [79] 1827? Or is it sufficient justification that he believes *bona fide* that his undertaking is inconsistent with a previous engagement, when that belief has been formed on facts which he might have ascertained before accepting the fee?

The District Judge's opinion on the first and second points was in the negative; on the third he held that the offence was complete, whenever a refusal to act was given after the acceptance of a

* Civil Reference, No. 8 of 1887.

retaining fee, provided the disqualifying facts could with reasonable inquiry have been ascertained before acceptance of the fee.

Ghanasham Nilkant, for the appellant and original opponent.

Manekshah Jahangirshah, for the respondent and original applicant.

At the hearing of the reference Mr. Ghanasham raised a preliminary objection, contending that the reference, not being made on a question of law or usage arising in the course of a suit or appeal, was not authorized by s 617 of Act XIV of 1882. He relied on *Ghella Tarachand v. The Collector of Ahmedabad* (1).

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JUDGMENT.

WEST, J.:—The present reference has not been made as to any point arising in a litigation between parties before the District Court in a suit or appeal or in a matter wherein the Court was in the proper sense called on to adjudicate,—that is, to pronounce on the opposite pretensions of contending parties. In the case of *Ghella Tarachand v. The Collector of Ahmedabad* (1) Sargent, C.J., and Melvill, J., held that the District Court could not refer to the High Court even a point that arose in a contention connected with the Land Acquisition Act, X of 1870, and such a case would, it seems, be more analogous to an ordinary litigation than one in which the District Judge had only to consider whether or not a pleader had been guilty of professional misbehaviour. An inquiry of this kind is of a disciplinary character. See *In re Hardwick* (2). Being disciplinary, it is not litigious, and the fact that an appeal is allowed from the Subordinate Judge to the District Judge does not make it litigious. Sections 617, 647 of the Code of Civil Procedure cannot, according to the case we have quoted, [80] authorize a reference, except in a matter of litigation, and we must decline to entertain the one now made to us. The District Judge will act on his own view of the facts and the law.

12 B. 80.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice and Mr. Justice
Nanabhai Haridas.

KRISHNAJI AND ANOTHER (*Original Defendants*), Appellants v.
VITHALRAV AND OTHERS (*Original Plaintiffs*), Respondents.*
[5th May, 1887.]

Vatan deshmukhi—Grant of profits of such vatan in perpetuity—Hereditary gumastas—How far such grant valid after the death of the grantor—Limitation—Adverse possession—Decree, proceedings in execution of, against the original debtor—Such proceedings not binding upon persons not parties to them.

By a *sanad* duly executed on the 20th August, 1850, the plaintiffs' father, Yashvantrav, who was a *vatarandeshmukh*, appointed the defendants and their heirs hereditary *vatanigumastas*, and granted, by way of remuneration for their services, Rs. 201 and a quantity of grain out of the annual *vatan* income in perpetuity. In consideration of certain sums obtained from the defendants, Yashvantrav mortgaged the *vatan* property to the defendants who subsequently sued Yashvantrav upon the mortgage. That suit was referred to arbitration, and an

* Second Appeal, No. 692 of 1885.

(1) Printed Judgments for 1882, p. 257. (2) L. R. 12 Q. B. Div. 148.