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would never himself have offered as compensation, and which in his judgment apparently is strikingly inadequate. That being so, it seems to me quite impossible to hold this award of Rs. 4 an acre to be an award made by a Special Collector. There are only a few words which I would say about the Calcutta case; they are these: to a considerable extent the argument proceeded on the question as to how information might be brought before the Special Collector. As to that I do not wish to say a word which would suggest the slightest difference of opinion from what is expressed in the Calcutta judgment. But if, and this seems to me very doubtful indeed, that judgment goes the length of saying that the Special Collector should set aside his own opinion and his own conscience and substitute for it an estimate made by some body else, then I should find the very greatest difficulty in following that conclusion.

Appeal No. 214 of 1910 is dismissed.

Decree reversed.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Batchelor and Mr. Justice Heaton.

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THE GOVERNMENT PLEADER, HIGH COURT, BOMBAY, APPLICANT, *v.* BHAGUBHAI DAYABHAI, OPPONENT.*

Bombay Regulation II of 1827, section 56†—Pleader—Pleader in the mofussil—Duty towards client—Winding up proceedings—Pleader must not represent parties whose interests are conflicting.

By the custom of the mofussil a pleader employed by a party to a proceeding before a Court is bound faithfully and exclusively to serve that party throughout the whole proceeding.

* Civil Application No. 204 of 1912.

† The section runs as follows:—

A pleader accused of a criminal offence, or guilty of misbehaviour or neglect of duty, shall be liable to be suspended or dismissed . . . . ; but nothing herein contained shall prevent a party from instituting an action for damages against his pleader when he may consider himself injured by his acts or omissions.

The pleader in the mofussil is not merely an advocate—he is the confidential legal adviser of his client and does for him those things which in the Presidency towns are often done by solicitors. For legal advice, for the prosecution of legal proceedings in all their stages, the client depends on the pleader. This dependence makes the position of the pleader peculiarly onerous and binds him to give exclusive attention to the interests of the client throughout any proceedings in which he is engaged.

In winding up proceedings, a single pleader must not represent two different creditors whose interests are known to conflict.

A pleader must not accept a Vakalatnama when he knows that he cannot act for his client throughout the proceedings.

A pleader in defending himself against charges of professional misconduct made certain statements. He was dealt with under the disciplinary jurisdiction for making them. It was contended in his behalf that the statements made by him in defence must be regarded as having been made by an accused and were therefore protected.

Held, overruling the contention, that the pleader was writing to the Court as a pleader and was responsible as such for the statements made by him.

THIS was an application made under the disciplinary jurisdiction.

The opponent Bhagubhai Dayabhai was a pleader practising in the District Court of Surat.

The facts alleged against him were as follows:—

One Pranjivandas Uttaram filed Suit No. 82 of 1910 in the First Class Subordinate Judge's Court at Surat against the Jaffiralli Spinning and Weaving Company, Limited, and obtained a decree in execution of which he attached certain property of the Company in July 1910. Pranjivandas was represented by Bhagubhai in the suit and execution proceedings.

In June 1910, one Gangadas filed a suit against the same Company. He too was represented by Bhagubhai.

In July 1910 one Bhaidas and other creditors of the Company presented Application No. 65 of 1910 for the winding up of the Company by the Court. Maganlal, one of the creditors, applied for stay of the proceedings in execution of the decree obtained by Pranjivandas against the Company and also for stay of the suit filed by Gangadas. In these proceedings Bhagubhai appeared for Pranjivandas and Gangadas and

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opposed Maganlal's application. The District Court made an order for winding up of the Company, and stayed all proceedings in Gangadas' suit as well as in execution of Pranjivandas' decree. On appeal, the High Court allowed Gangadas to proceed with the suit on his undertaking not to execute the decree without leave of the Court.

In September 1910 Bhagubhai applied on behalf of Pranjivandas for leave to execute the decree obtained by him, asserting a prior lien on the property attached to the exclusion of all other claims excepting that of Abdealli. In October of the same year Bhagubhai applied for sale of the property attached: this application was granted by the Court on the condition that the sale-proceeds should be deposited in Court.

On the 29th of the same month Bhagubhai filed a vakalatnama on behalf of Bhaidas and other creditors whom he had not till then represented in the liquidation proceedings.

On the 10th November 1910 Bhagubhai applied on behalf of Pranjivandas for leave to withdraw the sale-proceeds of the property attached in execution of Pranjivandas' decree and for rateable distribution of the same with Abdealli to the exclusion of all other creditors. The Court ordered notices to issue to Bhaidas and other creditors represented by Bhagubhai, but no notices were issued as process fee was not paid. The Court drew the attention of Bhagubhai to the fact that the interests of Bhaidas and other creditors whom he represented clashed with those of Pranjivandas whom he also represented and advised him to withdraw from representing one or the other parties. Bhagubhai refused to do so. Upon the foregoing facts, the first charge framed against Bhagubhai was that he accepted conflicting briefs in the matter of a winding up proceeding.

The second charge alleged against Bhagubhai was that he made recklessly false charges against the District Judge of Surat. These were contained in several letters which Bhagubhai addressed to the District Judge in the course of inquiry into his professional misconduct in accepting the conflicting

briefs referred to above. They were, as set out in the petition presented by the Government Pleader, as follows :—

(1) In about January 1911 Bhagubhai wrote to the District Judge as follows :—

"I may state that I believe that these proceedings have been initiated by the District Judge *suo motu* to prevent me to appear on behalf of Bhaidas Purshottamdas who has been repeatedly requesting the Court to make inquiries into the several criminal offences charged by him against B. A. Desai, one of the partners in the Agents' firm and with whom the presiding Judge of this Court has great familiarity and who is admittedly one of his friends."

(2) On the 4th April 1911, in an application which Bhagubhai made to the District Court, he stated that the District Judge had framed charges against him for professional misconduct "which were not *bonâ fide* but made maliciously to harm him in his reputation." He went on to say :—

"The District Judge bears strongest grudge against me since 5th January 1911 in consequence of a question asked by me to a witness B. A. Desai upon instructions of my client Mr. Bhaidas about his '*gharoba*' and '*dosti*' with the said witness against whom several charges of misfeasance, breach of trust, misappropriation, have been made by Bhaidas."

(3) On the 7th April 1911, Bhagubhai gave notice to the District Judge, under section 80 of the Civil Procedure Code, in which he said as follows :—

"That the main object of the District Judge, as I believe, was that I should give up the brief of my said client Bhaidas and thereby to prevent his friend the said Balmukundrai from being prosecuted for criminal offences."

(4) Bhagubhai next tendered apology to the District Judge for the statements made by him, and yet a short while after he wrote to the District Judge in the following strain :—

"The prosecution (on charges of misbehaviour framed by the District Judge) is malicious and not a *bonâ fide* one initiated by the District Judge without any reasonable and probable cause and knowing full well that he has no jurisdiction. It is filed with intent to annoy me and put me to unnecessary expense and to wreck vengeance against me for an alleged insult which he considered was given to him by me in my asking a question to the witness B. A. Desai as to his acquaintance with the presiding Judge."

(5) Later on Bhagubhai made the following statements in the course of an application which he presented to the District Court :—

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"The District Judge wrote a letter to his Subordinate Magistrate in a criminal matter pending before him which he had no right to do. By his action he indirectly biased the mind of the Magistrate as I believe. I do not say he caused the Magistrate to fine me. But his action, I believed, must have induced the Magistrate to return the judgment of guilty: to please his superior he must have been induced to fine me. I do not mean to say that he caused the Magistrate to find me guilty and to fine me. But I *bonâ fide* believe that his said action must have some effect on the mind of the Magistrate."

(6) Lastly, in a letter which Bhagubhai addressed to the District Judge, he made the following statements:—

"In April last, while the inquiry of my alleged misbehaviour was going on before the District Judge, my brother Chunilal Dayabhai sent him three letters by registered post. One of these letters was opened by the then District Judge while giving charge to your honour of all office papers . . . and the other . . . two were opened by you. When I requested you in my inquiry you told me that they were opened by you. I presume from your withholding them from me that they must have been called for by the then District Judge or by someone on his behalf from my enemy Mr. Chunibhai with a promise that he would keep them secret or that he would be saved from criminal prosecution."

The Government Pleader applied to the High Court, submitting that the pleader Bhagubhai was guilty of misbehaviour within the meaning of section 56 of the Bombay Regulation II of 1827 and prayed that he might be dealt with under the disciplinary jurisdiction of the High Court.

The Government Pleader (*G. S. Rao*) appeared in person.

Inverarity, with *Manubhai Nanabhai*, for the opponent.

The following cases were referred to in arguments: *In re Wallace*[1]; *Government Pleader* v. *Maganlal*[2]; and *In the matter of Sashi Bhushan Sarbadhicary*[3].

Cur. adv. vult.

HEATON, J.:—This is a case in which Mr. Bhagubhai Dayabhai, a pleader of the Surat Courts, is charged with misbehaviour and neglect of duty within the meaning of those terms as used in section 56 of Bombay Regulation II of 1827.

A good deal of argument in the case has been based on the supposed analogy of pleaders and barristers and the

(1) (1866) L. R. I. P. C. 283. (2) (1907) 9 Bom. L. R. 866.
(3) (1906) 29 All. 95.

supposed resemblance between general retainers in the case of barristers and the retainer described in the second clause of section 50 of that Regulation. It seems to me that the analogy is false and the resemblance is unreal. By the custom of the mofussil a pleader employed by a party to a proceeding before a Court is bound faithfully and exclusively to serve that party throughout the whole proceeding. This practice is based on, and we think, implied in the words of section 50, clause 3, and section 53, clause 3, of the Regulation. The pleader in the mofussil is not merely an advocate—he is the confidential legal adviser of his client and does for him those things which in the Presidency towns are often done by solicitors. For legal advice, for the prosecution of legal proceedings in all their stages, the client depends on the pleader. This dependence makes the position of the pleader peculiarly onerous and binds him to give exclusive attention to the interests of the client throughout any proceeding in which he is engaged.

The proceeding, we are concerned with here, is one relating to the winding up of a Company under the Indian Companies' Act; a more complicated affair than the simple matters in which pleaders were for the most part employed in 1827 when the Regulation relating to them was framed. But the principle is the same; exclusive devotion to the interests of the client throughout the proceedings. No doubt it is possible in winding up proceedings for a single pleader to represent several independent creditors of a Company whose interests are not identical. Clearly, however, a pleader must not represent two different creditors whose interests are known to conflict. It is said that Mr. Bhagubhai allowed himself to represent two creditors whose interests were known to conflict.

The facts are these: prior to the winding up order one Pranjivandas for whom Mr. Bhagubhai acted as pleader had obtained a decree and was taking out execution against the Company. The winding up proceedings were promoted amongst others by one Bhaidas and several other creditors who formed a group which, for brevity's sake, may be called the Bhaidas group. Mr. Bhagubhai who previously

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had represented Pranjivandas in the suit and execution proceedings came into the winding up proceedings to represent Pranjivandas in them and to press his client's claim to obtain satisfaction of his decree out of the Company's assets, in preference to or in priority over the general body of creditors. In an order, dated 23rd July, the District Judge of Surat said "As to whether the attached properties should be allowed to be sold for the decrees (one Abdeally as well as Pranjivandas had a decree) or not, we think it is proper to postpone orders pending the disposal of the winding up petition". This order was made in a contentious proceeding to which the Bhaidas group were parties. This order did not satisfy Pranjivandas who appealed against it unsuccessfully. Meantime he tried to induce the District Judge to modify the order, also unsuccessfully. In these proceedings he defined his opponent to be the Official Liquidator. The Bhaidas group were not referred to. Nevertheless in so far as the interests of Pranjivandas conflicted with those of the general body of creditors they conflicted with the interests of the Bhaidas group.

After these proceedings on 10th October Mr. Bhagubhai on behalf of Pranjivandas applied to the District Judge, in the matters of the winding up, naming the Official Liquidator as his opponent, for leave to execute his decree by selling certain goods which had been attached on condition that the sale-proceeds were deposited in Court. This application was granted on the 14th October.

On October 28th the Bhaidas group who previously had been represented by a different pleader, employed Mr. Bhagubhai to represent them in the liquidation proceedings. They knew Mr. Bhagubhai already represented Pranjivandas and they instructed him that he was not to represent them—to put it broadly—where the peculiar interests of Pranjivandas might conflict or apparently conflict with theirs. Such we take to be the effect of the understanding. The Vakalatnáma was in terms general and to that extent misleading to one who read it in ignorance of the conditions when it was executed.

It is said, and in our opinion rightly said, that Mr. Bhagubhai ought not to have accepted this Vakalatnáma. He seems to have been perfectly frank with his clients; his conduct was absolutely consistent with honesty; but in our opinion he acted unprofessionally. He thinks not; so we will explain as best we can the reasons for our opinion. The basis of it has already been stated: having undertaken to act for Pranjivandas in the liquidation proceedings, it was his duty to act for him and exclusively in his interests throughout. So far, we think, Mr. Bhagubhai will agree. The interests of Pranjivandas did, in certain material particulars, conflict with the interests of the general body of creditors including the Bhaidas group. Mr. Bhagubhai could not, therefore, act for the Bhaidas group throughout the proceedings. That is admitted; he did not attempt it; he only became their pleader in the liquidation proceeding on the express understanding that he could not act for them throughout. This being so he was wrong to act for them at all if it was apparent at the time (as admittedly it was) that he could not act for them throughout. It is absolutely a question of principle. Did he professionally do right or wrong? The defence set up is that he was right absolutely—that it was open to him to accept the Vakalatnáma with limitations. It is not asserted or suggested in defence that the Bhaidas group could not get another pleader or that there were other special circumstances which brought another equally important principle into play. The defence is a denial of the principle that a pleader must not accept a Vakalatnáma when he knows that he cannot act for his client throughout the proceedings.

What followed is of interest as showing that disregard of this principle is likely to lead to an embarrassing situation. Later on the District Judge heard Mr. Bhagubhai argue an application on behalf of Pranjivandas to be paid the sale-proceeds then deposited in Court. The Judge seeing that this might not be to the interests of the general body of creditors thought that the Bhaidas group should have notice of the application. He asked Mr. Bhagubhai whether that group objected. Mr. Bhagubhai replied they did not; but bethinking himself that he had better enquire on the point, asked for time. Time was given.

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He made enquiry and informed the Court that the Bhaidas group as a body did not consent to Pranjivandás' application. Now this was an embarrassing position to every one concerned; to the Judge, who was appealing to one pleader to ascertain the views of two antagonistic parties for both of whom that pleader held a Vakalatnáma; to Pranjivandas whose pleader was pledged to his interests, but who also gave information in the interests of some of his opponents; to the Bhaidas group whose pleader could not represent them in the matter; and finally, could he have realised it, to Mr. Bhagubhai himself. We do not say that any real harm ensued but the position was one which ought not to arise; and it did arise because Mr. Bhagubhai allowed himself to take a Vakalatnáma from clients in whose interest it was known to be impossible for him to act throughout the liquidation proceedings.

We think his failure to refuse the Vakalatnáma was a neglect of duty but we do not think it necessary in this matter to do more than point this out. The circumstances do not require a punishment.

The next matter is more flagrant. The District Judge called on Mr. Bhagubhai to explain his unprofessional conduct in accepting a Vakalatnáma for the Bhaidas group. Mr. Bhagubhai sent a written reply on the 4th January 1911. On the 25th January he sent a further written application in the matter to the District Judge in which he stated that he believed the proceedings to have been initiated by the District Judge *suo motu* from motives, described in the application but which I need not set out. These motives as described are scandalous and shocking. Similar motives were attributed to the Judge in subsequent applications made to him. In this Court we have not heard one single word of apology or regret from or on behalf of Mr. Bhagubhai. He still apparently believes that these scandalous allegations are true. If he is so misguided, so ready to attribute evil where none need be surmised, he should at least have the decency to refrain from expressing these noxious beliefs in applications presented in the Court of the Judge whom he insults. Conduct such as

Mr. Bhagubhai's is not merely misbehaviour, it is misbehaviour of a peculiarly wanton and offensive kind. Various defences were made such as that we had no jurisdiction, that the pleader spoke as an accused person and had the license of such. He was a pleader and was writing to the Court as a pleader throughout; so there is no substance in these defences.

Mr. Bhagubhai is ordered to deliver up his Sanad to the Registrar of this Court to be endorsed. He should be informed that the Sanad will not at present be returned to him and he will not be allowed to practice as a Pleader. When he has satisfied this Court that he has made such public apology to the Court of the District Judge, Surat, and personally to the Judge whom he insulted as the occasion requires, he may apply for the return of his Sanad. This Court will then consider and deal with the application as it thinks fit. Costs on Mr. Bhagubhai.

On the 21st June 1912, Bhagubhai tendered an apology in Court and applied for restoration of his Sanad.

BATCHELOR, J. :—We have heard this application by the pleader Mr. Bhagubhai who petitions the Court that as he has now made the apology, which by our previous order he was directed to make, the Court should restore to him his Sanad as a pleader.

We observe that in the apologies which Mr. Bhagubhai has seen fit to submit in deference to our order, he has taken care to insert words, apparently of justification, to the effect that the insulting statements used by him towards the Judicial Officer whom he maligned were used in "excitement and on the spur of the moment."

The record of the case shows that these words are not true, and that so far from the insulting statements having been once uttered in an access of excitement or under a sudden impulse, the fact is that they were repeated on divers occasions after Mr. Bhagubhai's attention had been drawn to them, and indeed after he had once expressed regret for them.

Even now Mr. Bhagubhai's main contention before us has been that the insulting imputations were made by him under a

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mistaken notion that he was, as of right, entitled to make them and that is a totally different defence from the defence suggested by the use of the phrase as to excitement on the spur of the moment.

Mr. Bhagubhai, however, expresses his consent to the deletion of these words to which we have objected, and I am, therefore, prepared to accept these apologies with the offending words deleted, as a sufficient compliance with our previous order.

I must, however, express my inability to follow Mr. Bhagubhai when he supposes that a tepid and ungracious apology such as this is sufficient entirely to remove the effects of the reiterated insults which he lodged at high judicial officers. There was nothing in our previous order to lead him to suppose that any apology, still less such an apology as he has tendered, would be an end of the matter and would have the immediate effect of restoring him to his status as a practising pleader. It appears to me that the recovery of that status must still be deferred and that this Court must mark by a proper penalty its sense of the grave and scandalous misconduct of which Mr. Bhagubhai has unfortunately rendered himself guilty.

I think it no excessive penalty to order that his Sanad be retained for a period of six months from this date, and that he do pay the costs of this application.

HEATON, J.:—I concur. I would only add this that apparently the form of the order we made has been looked upon, at any rate, by Mr. Bhagubhai himself, as expressing some idea that as soon as an apology was made he would be allowed to continue to practice as a pleader. But the true meaning of the order was that until an apology was made we were not prepared to consider that he should ever be allowed to practice as a pleader. As soon as the apology was made and the ground cleared in that way, then we were prepared to consider for how long we should suspend him from practice and I quite agree with my learned colleague that the period of six months is one that does not err on the side of severity.

Order accordingly.

R. R.