

*Before Sir Norman Macleod, Kt., Chief Justice, Mr. Justice Heaton
and Mr. Justice Kajiji.*

1919.

In re JIVANLAL VARAJRAY DESAI AND OTHERS^o.

October 15.

*High Court—Disciplinary Jurisdiction—Amended Letters Patent, clause 10†
—Bombay Regulation 2 of 1827, section 56‡—Signing of a pledge to civilly
disobey certain laws to be fixed thereafter—Satyagraha movement—
Lawyers taking the pledge are amenable to the Disciplinary Jurisdiction—
Advocates, Vakils and Pleaders, status and duty of.*

The respondents, who were lawyers practising in the Courts of the Ahmedabad District, joined a movement called the Satyagraha Sabha which was started as a protest against the enactment of the Anarchical and Revolutionary Crimes Act (XI of 1919), and signed a pledge whereby they bound themselves "to refuse civilly to obey these laws (*viz.*, the Anarchical and Revolutionary Crimes Act) and such other laws as a Committee to be hereafter appointed may think fit." A question having arisen whether the respondents had, by taking the pledges, made themselves liable to be dealt with under the disciplinary jurisdiction of the High Court:—

Held, that the action of the respondents brought them within the disciplinary jurisdiction of the High Court; but that, under the circumstances, a warning to them was sufficient.

Per Macleod, C. J.:—"Advocates and pleaders are a privileged class enrolled not only for the purpose of rendering assistance to the Courts in the administration of justice, but also for giving professional advice, for which

^o Civil Application No. 681 of 1919.

† The material portion of the clause runs as follows:—

"10. And we do hereby ordain that the said High Court of Judicature at Bombay shall have power to make rules for the qualification and admission of proper persons to be Advocates, Vakils, and Attorneys-at-law of the said High Court, and shall be empowered to remove or to suspend from practice, on reasonable cause, the said Advocates, Vakils, or Attorneys-at-law ;

‡ The section runs as follows:—

"56. A pleader accused of a criminal offence, or guilty of misbehaviour or neglect of duty, shall be liable to be suspended or dismissed"

they are entitled to be paid, to those members of the public who require their services. Their position, training and practice give them immense influence with the public and their example must necessarily have a much greater effect whether for good or for evil than the example of those who do not occupy this privileged position. It is not necessary in order for us to be able to exercise our jurisdiction that any offence should have been committed, nor is it necessary that what the respondents have done should have subjected them to anything like general infamy or imputation of bad character."

DISCIPLINARY Jurisdiction.

The respondents were lawyers practising in the Courts of the Ahmedabad District. Respondents Nos. 1 and 2, Jivanlal Varajray Desai and Vallabhji Jhaverbhai Patel, were advocates of the Bombay High Court. Respondent No. 3, Krishnalal Narsilal Desai, was a Vakil of the Bombay High Court. Gopalrao Ramchandra Dabholkar, Manilal Vallabhram Kothari and Kalidas Jaskaram Jhaveri, who were respondents Nos. 4 to 6, were pleaders.

The Government of India published in 1919 two bills, Nos. 1 and 2 of 1919, entitled Indian Criminal Law (Amendment) Bill and the Criminal Law (Emergency Powers) Bill, which came to be known as the Rowlatt Bills. To prevent those bills into becoming laws, a movement called the Satyagraha Sabha, was started by M. K. Gandhi. Anyone who wished to join the movement, was required to sign a pledge which ran as follows :—

" Being conscientiously of opinion that the Bills known as the Indian Criminal Law (Amendment) Bill No. 1 of 1919 and the Criminal Law (Emergency Powers) Bill No. 2 of 1919, are unjust, subversive of the principles of liberty and justice, and destructive of the elementary rights of individuals on which the safety of the community as a whole, and the state itself, is based, we solemnly affirm that, in the event of these Bills becoming law and until they are withdrawn, we shall refuse civilly to obey these laws and such other laws as a Committee to be hereinafter appointed, may think fit, and further affirm that in this struggle we will faithfully follow truth and refrain from violence to life, person or property."

1919.

JIVANLAL
VARAJRAY
DESAI,
In re.

1919.

JIVANLAL
VARAJRAY
DESAI,
In re.

The respondents joined the movement by taking the pledge ; but no action was taken under the pledge.

Bill No.1 of 1919 was proceeded with and became with modifications the Anarchical and Revolutionary Crimes Act (XI of 1919).

The Satyagraha movement was later suspended.

The District Judge of Ahmedabad brought the respondents' case to the notice of the High Court, in the course of a letter, which is set out in the judgment.

The High Court thereupon issued notices to respondents Nos. 1 and 3 under clause 10 of the Amended Letters Patent and to respondents Nos. 4 to 6 under section 56 of Bombay Regulation II of 1827, calling upon them to show cause why they should not be dealt with under the disciplinary jurisdiction.

The notices were heard.

Bahadurji, acting Advocate General, with *S. S. Patkar*, Government Pleader, in support of the rule.

Sir Chimanlal Setalvad, with *Ratanlal Ranchhodas*, for *Gopalrao R. Dabholkar*.

Sir Chimanlal Setalvad, with *G. N. Thakor*, for *K. N. Desai*.

Sir Chimanlal Setalvad, with *H. V. Divatia*, for *J. V. Desai*.

Jayakar, with *G. N. Thakor* and *M. H. Vakil*, for *Kalidas Jhaveri*.

Jayakar, with *M. H. Vakil*, for *M. V. Kothari*.

G. N. Thakor, for *V. J. Patel*.

Sir Chimanlal Setalvad, with *Ratanlal Ranchhodas*, *G. N. Thakor* and *H. V. Divatia*, for respondents Nos. 1, 3 and 4.—In the beginning of this year there were introduced in the Imperial Legislative Council what are known as Rowlatt Bills—The Indian Criminal

1919.

Law (Amendment) Bills Nos. I and II of 1919. As a part of the opposition to these Bills was started a movement which is known as Satyagraha movement. The Satyagraha Sabha was established by Mr. Gandhi, who is a Barrister-at-Law of this Honourable Court and the prime mover in the Satyagraha activity.

JIVANLAL
VARAJRAK
DESAI,
In re.

My clients became the members of the Satyagraha Sabha in March 1919 and took the Satyagraha pledge. There was no secrecy observed in signing these pledges and everything was done openly.

On the 10th and 11th April came the unfortunate disturbances at Ahmedabad which resulted in considerable destruction of property. It was after these incidents that the learned District Judge addressed a letter to this Honourable Court and on which the present notice was issued. The District Judge says that my clients had an honourable record as professional men and acknowledges that they were honestly of opinion that the Rowlatt Bills were bad. He somehow gathered the impression that my clients J. V. Desai and V. J. Patel were actually connected with the disturbance. There is no evidence to show this; on the other hand it is shown that my clients did their best to quell the disturbances.

[MACLEOD, C. J. :—How does this appear on the face of the District Judge's letter?]

In his letter the Judge suggests that it may not be necessary to proceed against these two gentlemen under the disciplinary jurisdiction as they would be dealt with in all probability under the ordinary law before the Special Tribunals; subsequent events, however, showed that this impression of the Judge was without any foundation. The prosecution evidence before the tribunal does not in the least suggest that these

1919.

JIVANLAL
VARAJRAY
DESAI,
In re.

gentlemen were at all connected with the disturbances in any manner.

The Satyagraha pledge shows that the persons signing the pledge shall, in the event of these Bills becoming law and until they are withdrawn, refuse civilly to obey these laws and such other laws as the Committee to be appointed may select.

[HEATON, J. :—What is meant by “civilly disobey”?]

It means that the disobedience was to be practised in a civil manner, that is, in a polite manner without causing any violence or actively obstructing any one.

[HEATON, J. :—Then it is equivalent to passive resistance?]

Yes. It means that they would refrain from doing things which they were asked to do, but that they would not actively do anything or obstruct or prevent the authorities from doing anything. When the law enjoined them to do anything they would sit with their hands folded and say “we will not do these particular things.”

[MACLEOD, C. J. :—What about a law which enjoins you not to do something?]

In that case, a Satyagrahi will do that which the law enjoins him not to do but in a civil manner without using any violence.

The question for consideration is whether the matter charged against the respondents falls under clause 10 of the Letters Patent, 1865, and section 56 of the Bombay Regulation II of 1827. Our submission is, first, that the matters with regard to which punishment under disciplinary jurisdiction can be inflicted must fall under either of two heads: (1) either the man must

be guilty of professional misconduct, that is, misconduct in his professional capacity, or (2) he must be guilty of misconduct which though not connected with his professional capacity, subjects him to general infamy or imputation of such bad character as would render him unfit to practise.

Secondly, we submit that the notice issued to the respondents is premature.

As to the first point, we submit that the acts charged here do not fall within either of the above two heads. In considering the head of professional misconduct, the acts done by the respondents in their professional capacity must be regarded as distinct from the acts done in their private capacity. The distinction between professional capacity and private capacity is laid down by the Privy Council in *In re Wallace*⁽¹⁾. Wallace who was an attorney and Barrister of the Supreme Court, Nova Scotia, was a party defendant in two suits. As a suitor he wrote a letter attributing improper conduct to the Chief Justice and the administration of justice generally in the Courts. It was held that the letter, though a contempt of Court, having been written by a practitioner in his individual and private capacity as a suitor, had no connection whatever with his professional character or anything done by him professionally, and therefore it was not competent for the Supreme Court to inflict a professional punishment of suspension. Then they lay down that a practitioner may be dealt with under the disciplinary jurisdiction for conduct which though unconnected with his professional capacity is such as subjects him to general infamy or imputes to him such bad character as would render him unfit to practise.

1919.

JIVANLAL
VARAJRAM
DESAL,
In re.

(1) (1866) L. R. 1 P. C. 283.

1919.

JIVANLAL
VARAJRAY
DESAL,
In re.

The principle laid down in *In re Wallace*⁽¹⁾ was affirmed by the Privy Council in *In re S. B. Sarbadhicary*⁽²⁾ though it was held in that case that Sarbadhicary was guilty of misbehaviour in his professional capacity.

The case of *Government Pleader v. Jagannath*⁽³⁾ is distinguishable from the present case. There Jagannath presided at a Public Meeting held to express sorrow for and sympathy with Mr. Tilak for the punishment awarded to him by the High Court of Bombay and one of the resolutions passed at the meeting reflected upon and denounced the conduct of the Judge who presided at the trial. He was dealt with under the disciplinary jurisdiction of the Court.

[MACLEOD C. J. :—That case goes contrary to the principle in the case of *In re Wallace*⁽¹⁾.]

Yes. Strictly speaking the decision in *Jagannath's case*⁽³⁾ is wrong but that is the furthest limit to which the Court has gone. But I submit that if a pleader did what Jagannath did, his conduct would certainly be conduct of a character which would fall within the two principles mentioned in *In re Wallace*⁽¹⁾.

In the case of *Government Pleader, Bombay v. Annaji Narayan Deshpande*⁽⁴⁾ the pleader Annaji was held guilty of fraud. It, therefore, falls within the second principle laid down in *In re Wallace*⁽¹⁾.

On the principle laid down in *In re Wallace*⁽¹⁾ it is clear that the signing of the pledge was not professional misconduct on the part of these gentlemen.

Then, did the signing of the pledge stamp the respondents with general infamy or bad character, involving such moral turpitude or dishonourable conduct as would

(1) (1866) L. R. -1 P. C. 253.

(3) (1908) 33 Bom. 252.

(2) (1906) L. R. 34 I. A. 41.

(4) (1912) 37 Bom. 354.

make them unfit for practice? We submit not. However misguided they might be in, signing the pledge, they had rather shown that they were really men of honour, having the courage of their convictions and further that in support of their convictions they were prepared to undergo suffering. Their signing the pledge really indicated honourable conduct. They openly said "we pledge ourselves to oppose this legislation and to see its repeal and for that purpose we pledge ourselves to disobey these laws when passed and also further to disobey other laws in order to mark our protest against this law; but in doing so, we shall not deviate a hair's breadth from truth, and do nothing which would be dangerous or violent." Can it be said that men who say this are guilty of conduct which is dishonourable in the case of members of the profession? Further, having regard to the terms of the pledge, could the Court say that a person who took a pledge of that character had acted in such a dishonourable manner as to render him unfit from practising any longer? The Court could not thereby impute to them that they had done anything which was unworthy of a gentleman, or anything of a dishonourable character, or that they were guilty of any conduct unworthy of a lawyer. I submit, therefore, that their case would not come within the second head stated in *In re Wallace*⁽¹⁾. Members of the English Bar who were at present occupying high legal offices have gone to much further limits in similar situations. They had gone the length of saying that they would resist by force the introduction of the Home Rule Act in Ireland. The pledges that they had taken went far beyond the pledge in the present case. And, however reprehensible their conduct might have been nobody thought of moving the Inns of Court or other authorities.

1919.

JIVANLAL
VARAJRAY,
DESAL,
In re.

(1) (1866) L. R. 1 P. C. 283.

1919.

JIVANLAL
WARAJRAY
DESAI,
In re.

to remove their names from the rolls. Government had taken no action in the matter and the law officers of the Crown had advised that no action could be taken.

Secondly, we submit that the notice is premature. The respondents had taken the pledge but no overt act had been done by any of them; and it might be that they might do nothing further in the matter at all or they might have no occasion to follow the pledge. If they did anything which made them guilty under the law then it would be time enough to take action. It might be that the Satyagrahi movement might not be revived in which case there would be no occasion to take any action, and counsel submitted he hoped and trusted that the Satyagraha movement had received its final quietus. The taking of the pledge itself was not conduct for which action can be taken and the present notice was entirely premature. The respondents might think that the suggestion of the Committee was not proper and they might not like to disobey the laws notified by the Committee. Therefore it is desirable to wait and see what action the respondents take, and if they do anything reprehensible the Court can deal with them. At present, however, there is no case for action; there is nothing on which action can be taken against them.

[HEATON J.:—Suppose a man comes to your clients and asks them whether he should obey the law or not, what would their advise be?]

They would give him advice as lawyers. They would conscientiously do their duty by their clients as lawyers and advise accordingly.

[KAJIJI, J.:—If they knowingly give incorrect advice they would bring themselves under the disciplinary jurisdiction of this Court.]

They have no intention of doing so, and will not do so.

Jayakar, with *M. H. Vakil*, for respondents Nos. 5 and 6.—We adopt the arguments advanced by Sir Chimanlal and further submit that the conduct of the respondents in signing the pledge only was not of such a character as would necessitate an action under disciplinary jurisdiction. My clients had been acting according to their own conviction and never attempted to foist their opinion on their clients.

[MACLEOD C. J. :—Can you say that this Court must issue a Sanad to a person who pledges himself to disobey laws?]

The disobedience is not general. It was to be only until the Rowlatt Acts were repealed.

[MACLEOD C. J. :—That is for an indefinite period. The question is whether we should issue a Sanad to such a person.]

I submit there is no objection in issuing a Sanad to a person signing such a pledge if in other respects he conforms to the other requirements.

G. N. Thakor, for respondent No. 2.

Bahadurji, acting Advocate General, with Government Pleader, appeared in support of the notice :—We submit that having regard to the terms of the pledge the real question is : Is their conduct consistent with their duties, in other words, whether the respondents who are acting as officers of the Court could be relied upon to do their duty as such officers. As Lord Langdale in *Hutchinson v. Stephens*⁽¹⁾ has observed, men in the position of respondents are ministers of

1919.

JIVANLAL
VARAJRAX
DESAI,
In re.

(1) (1837) 1 Keen 659 at p. 668.

1919.

JIVANLAL
VARAJRAY
DESAL,
in re.

justice, acting in aid of the Judge before whom they practise. As such ministers it is their duty to uphold the majesty of the law whether good or otherwise, once it was promulgated. In signing the pledge, moreover, the respondents have abdicated their own judgment in favour of an unknown Committee and have undertaken to break laws which such Committee may determine for them. They cannot, therefore, be expected to uphold the majesty of the law and do their duty as officers of justice.

The pledge is not subject to any limitations as suggested by the respondents' counsel. Anyone who takes it binds himself absolutely to disobey such laws as the Committee may name.

Then the question is whether the conduct of the respondents is such as can be dealt with under the disciplinary jurisdiction. The case of Barristers and pleaders can be dealt with on the same footing. There is no real difference in the language used in clause 10 of the Letters Patent, 1865, and that used in section 56 of the Bombay Regulation II of 1827.

The atmosphere and the conditions prevailing in England and India are different and any reference to the latitude allowed to lawyers for their utterances in England are beside the point.

The cases cited for the respondents have no bearing on the point at issue except the case of *Government Pleader v. Jagannath*⁽¹⁾.

Sir Chimanlal Setalvad, in reply.—No different standards should be laid down for judging the conduct of the members of the Bar in India and in England. It would be disastrous to lay down any standard of independence in this country different from the one accepted in England.

⁽¹⁾ (1908) 33 Bom. 252.

The intentions of the respondents are honourable. They think that in the interests of the country they must get the Rowlatt Act repealed and for this purpose they took the pledge in the observance of which they say that they would pay faithful regard to truth and not have any recourse to violence. So far as their duties as lawyers are concerned there is nothing to suggest that they would not act properly.

Much has been said about upholding of the majesty of law, but it would be carrying matters too far to suggest that people must not attack a law however bad once it is passed.

C. A. V.

MACLEOD, C. J.:—A notice was issued by the High Court in its Disciplinary Jurisdiction on the 12th of July 1919 against Jivanlal Varajrai Desai and Vallabhaji Jhaverbhai Patel who are Barristers-at-law and Advocates of this Court, and Mr. Krishnalal Narsilal Desai, High Court Pleader, at present practising in the Courts at Ahmedabad. The reason for issuing the notice was the receipt of a letter from Mr. Kennedy, the District Judge of Ahmedabad, dated the 22nd of April 1919, which runs as follows:—

1. "I have the honour to submit for the determination of their Lordships the question of the pleaders of this Court who have signed what is known as the Satyagrahi pledge. The following are the pleaders practising here who have given in their names as members of the Satyagrahi League :

Mr. Gopalrao Ramchandra Dabholkar.

Mr. Krishnalal Narsilal Desai, High Court Pleader.

Mr. Manilal Vallabhram Kothari.

Mr. Kalidas Jaskaran Jhaveri.

There are others who have not yet given in their names to me.

2. I had an interview with the above gentlemen on the 16th and expressed my sentiments and elicited theirs. I asked for some sort of satisfactory

1919.

JIVANLAL
VARAJRAY
DESAI,
In re.

1919.

JIVANLAL
VARAJRAJ
DESAI,
In re.

explanation of the sense in which they took the Satyagrahi oath: They have furnished an explanation which I do not think is satisfactory. I therefore submit the case for orders, as I suppose the question is general to all Districts.

3. As I understand the Satyagrahi oath, it binds the signatories not only to oppose the Rowlatt Bills, and cognate legislation but to break all laws of whatever kind which a Committee may decide should be broken. I gather also from the papers that some illegal acts have been already ordained. I cannot myself see that the public adherence to a body which has that rule binding on it, is consistent with the duty of a pleader and the terms of his Sanad, and I think the explanation furnished by the pleaders leaves matters much where they are.

4. I am not in any way impressed by the temporary suspension of the illegal activities of this league. There can be no doubt (at least I have none) that suspension is merely a device to avoid the possibility of punishment falling on the Satyagrahis in respect of acts directly or indirectly due to their teaching and influence, the actual perpetrators of which and the instigators of which are likely to meet with condign punishment.

5. I am of the belief that the above gentlemen are sincerely and conscientiously under the impression that the Rowlatt Bill legislation is a crime, and as they have that impression, I would not blame them for going to the edge of the law to oppose it. They are all men for whom I have considerable esteem, and I have known them and appreciated them for some years, and it is very painful for me to raise their case, but I am of the opinion that they are unfit to practise until they have severed their connection with this league in the same public way in which they have joined it.

6. There are also at least two Barristers who have joined and are prominent members of the local league:—

Mr. Jivanlal Varajrai Desai.

Mr. Vallabhbai Jhaverbhai Patel.

But I have no power to deal with them and very likely recent events in Ahmedabad may make it unnecessary to proceed against them. I enclose a copy of the Satyagrahi oath and of the explanation and covering letter of three of the pleaders concerned. No one would be more pleased than myself if it could be found that the explanation was satisfactory. But personally I am of the opinion it is not."

Accompanying the letter were copies of what is known as the "Satyagrahi oath", and letters to the

District Judge from Messrs. G. R. Dabholkar, Krishnalal Narsilal Desai, Kalidas Jaskaran Jhaveri and Manilal Vallabhram Kothari, explaining their conduct as the District Judge had requested at an interview with them on the 16th of April. It will be noted that the District Judge did not consider this explanation satisfactory, and that he considered that those four pleaders were unfit to practise until they had severed their connection with the Satyagrahi league in the same public way in which they had joined it. With regard to Messrs. Jivanlal Varajrai Desai and Vallabhbai Jhaveribhai Patel, Barristers-at-law, who the Judge stated had joined and were prominent members of the local league, the Judge said he had no power to deal with them.

This notice was issued under clause 10 of the Letters Patent. A similar notice was also issued on Messrs. G. R. Dabholkar, Manilal Vallabhram Kothari and Kalidas Jaskaran Jhaveri under clause 56 of the Bombay Regulation II of 1827. Cause has now been shown by all the respondents and it has been admitted by Sir Chimanlal Setalvad, who appeared for Mr. J. V. Desai, G. R. Dabholkar and K. N. Desai, that whether they are to be dealt with under clause 10 of the Letters Patent or clause 56 of the Bombay Regulation II of 1827, the same principles are involved.

In the case of *Government Pleader, Bombay v. Annaji Narayan Deshpande*⁽¹⁾ it was held that the term "misbehaviour" under clause 56 of the Bombay Regulation II of 1827 is not restricted to misbehaviour in the strict course of a pleader's professional duties, but includes general misbehaviour. And in *In re S. B. Sarbadhicary*⁽²⁾ at page 45 appears the following passage:—"Their Lordships will not attempt to give a

1919.

JIVANLAL
VARAJRAI
DESAI;
In re.

(1) (1912) 37 Bom. 354.

(2) (1906) L. R. 34 I. A. 41 at p. 45.

1919.

JIVANLAL
VARAJRAY
DESAL,
In re.

definition of 'reasonable cause', or to lay down any rule for the interpretation of the Letters Patent in this respect. Every case must depend on its own circumstances. It is obvious that the intention of the Crown was to give a wide discretion to the High Courts in India in regard to the exercise of this disciplinary authority".

The powers of a Court in dealing with cases of alleged misconduct against attorneys are described in *In re Hill*.⁽¹⁾ An attorney, while acting as a clerk to a firm of attorneys, in completing the sale of certain property, received the balance of the purchase-money, which he appropriated to his own use. On an application to strike him off the roll, he admitted the misappropriation, and it was held that although the misconduct was not committed strictly in his professional character, yet, as it was misconduct which would have prevented him from being admitted as an attorney, the Court would exercise its summary jurisdiction, and punish the misconduct. Lord Blackburn said:

"But where there is a matter which would subject the person in question to a criminal proceeding, in my opinion, a different principle must be applied. We are to see that the officers of the Court are proper persons to be trusted by the Court with regard to the interests of suitors, and we are to look to the character and position of the persons, and judge of the acts committed by them, upon the same principle as if we were considering whether or not a person is fit to become an attorney."

Lord Cockburn said:—

"I should add, there is one consideration I omitted, and which, I think, is entitled to great weight. It is that put to us in the course of the discussion, namely, that if these facts had been brought to our knowledge upon the application for this gentleman's admission, we might have refused to admit him; and I think the fact of his having been admitted does not alter his position; having been admitted, we must deal with him as if he were now applying for admission; and as in the case of a person applying for admission

⁽¹⁾ (1868) L. R. 3 Q. B. 543.

as an attorney, we should have considered all the circumstances, and either have refused to admit, or have suspended the admission for a certain time, so where a person has once been admitted we are bound, although he was not acting in the precise character of an attorney, to take notice of his misconduct."

1919.

JIVANLAL
VARAJRAY
DESAI,
In re.

It is not suggested that the respondents have done anything which would subject them to criminal proceedings but that case is sufficient authority for stating that we can deal with the respondents in the same way as if they were now applying for enrolment.

It is necessary, therefore, to carefully consider the terms of the document known as the Satyagraha oath or pledge which, according to the copy sent to us by the District Judge, runs as follows:—

"Being conscientiously of opinion that the Bills known as the Indian Criminal Law (amendment) Bill I of 1919 and the Criminal Law (Emergency Powers) Bill II of 1919 are unjust, subversive of the principles of liberty and justice, and destructive of the elementary rights of individuals on which the safety of the community as a whole and the State itself is based, we solemnly affirm that in the event of these Bills becoming law and until they are withdrawn we shall refuse civilly to obey these laws and such other laws as a Committee to be hereafter appointed may think fit, and further affirm that in this struggle we will faithfully follow truth and refrain from violence to life, person or property".

The movement to obtain signatures to this oath commenced in February. I may say at once that no one can reasonably object to the right of a citizen to express his opinion as to the merits or demerits of a legislative measure proposed to be adopted by the Government and, if he is opposed to it, to take every means to induce Government to withdraw it, provided he keeps within the bounds imposed by established law. The signatories to the oath have expressed their objection to these Bills, which came to be known as the Rowlatt Bills, and affirmed that they would civilly refuse to obey them if they became law. "Civilly" according to the Dictionary, means in a polite manner,

1919.

JIVANLAL
VARAJRAY
DESAL,
In re.

politely. It is suggested that civil or polite disobedience is the same as what is known as passive resistance. That is not so. Passive resistance connotes complete inaction in the presence of a command of law, that is to say, the refusal to do what the law commands, while disobedience includes the doing of something which is forbidden by law. Whether the disobedience is active or passive depends on the nature of the law which it is intended to disobey.

Now we are concerned in this matter with the conduct of the respondents not as citizens but as advocates and pleaders.

We have nothing to do with their political views, nor have we anything to do with expressions of opinion on their part, however strong, against any particular measure proposed by the Legislature. But a public declaration made by an advocate or a pleader that he has bound himself civilly to disobey any laws which a Committee to be thereafter appointed might think fit, appears to me to go very much further than a mere expression of opinion as to the merits of a Bill proposed by the Legislature. I take it for the purpose of the argument that the respondents, as Mr. Kennedy believes, were sincerely and conscientiously under the impression that the Rowlatt Bill legislation was a crime, and that they honestly thought that signing the Satyagraha pledge would be a constitutional form of agitation against the passing of the Rowlatt Bills. But I have to consider whether the signing of such a pledge is consistent with the duties which they owe as Officers of this Court. Advocates and pleaders are a privileged class enrolled not only for the purpose of rendering assistance to the Courts in the administration of justice, but also for giving professional advice, for which they are entitled to be paid, to those

members of the public, who require their services. Their position, training and practice give them immense influence with the public and their example must necessarily have a much greater effect, whether for good or for evil, than the example of those who do not occupy this privileged position. It is not necessary in order for us to be able to exercise our jurisdiction that any offence should have been committed, nor is it necessary that what the respondents have done should have subjected them to anything like general infamy or imputation of bad character. The case of *In re Wallace*⁽¹⁾ was relied on by the respondents. But I do not think that Lord Westbury in giving judgment went so far as to say that an act to render an attorney remaining in the Court as a practitioner improper must necessarily be an act committing an attorney to anything like general infamy or an imputation of bad character. That was an appeal from a decision of a Canadian Court, and as regards the respondent in the case proceedings of a different nature could have been taken against him for the act complained of. Under the Letters Patent and the Regulation each case must be decided on its own facts, as their Lordships of the Privy Council said in *Sarbadhicary's case*⁽²⁾ and in my opinion there may be acts which would entitle us to refuse admission to a candidate seeking to be enrolled as a pleader or an advocate, or to consider that it was improper that a pleader or advocate should remain as a practitioner of the Court, although the acts complained of do not involve an imputation of general infamy or bad character. This pledge, however, can be said to involve, if not directly, certainly indirectly, the professional character and reputation of the respondents. Their duty as pleaders and advocates under

1919

JIVANLAL
VARAJRAX
DESAL,
In re.

(1) (1866) L. R. 1 P. C. 283.

(2) (1906) L. R. 34 I. A. 41.

1919.

JIVANLAL
VARAJRAY
DESAI,
In re.

their Sanads is to advise their clients to the best of their abilities as to what the law is, not as to what the law should be in their opinion. But it would be impossible for them to keep their duties to the League separate from their professional duties. This conflict would become the more pronounced if any of the respondents had occasion to advise his client regarding one of the laws denounced by the league.

Sir Chimanlal was asked whether his clients would be able to give advice conscientiously to their clients without being influenced by their pledge, and Sir Chimanlal replied that they would give advice as Lawyers conscientiously and not as Satyagrahis. He was bound to say that, but the atmosphere of this Court, before which his clients have been arraigned, is somewhat different to the atmosphere of their consulting chambers in Ahmedabad. Supposing for instance the Committee had denounced the Income Tax Act, the respondents would be bound by their pledge to refuse to fill in the Schedules sent to them for the purpose of assessment. If a client consulted one of them regarding the way in which the Schedule should be filled in he would be on the horns of a dilemma. Every member of the League of this description is of necessity a propagandist. To arrive at the desired end as many adherents must be gathered in as possible, no opportunity of doing so must be lost. It would, therefore, be the respondent's duty as a Satyagrahi to persuade the client to disobey the law, it would be his duty as an officer of the Court to tell the client to obey.

It cannot be doubted, for a moment that it is extremely undesirable that any of those who hold Sanads as advocates or pleaders of this Court should find themselves involved in this conflict of duty. Then there is the danger of their example being followed by persons who do not possess that high moral character,

that love for the truth, that abhorrence of all ideas of violence to life, person or property possessed by the respondents. It would appear on the face of it that the signatory to the pledge abdicates all independent judgment in favour of an unknown body of his fellow signatories. I am told that if the Committee referred to in the pledge called upon the signatories in persuasion of their pledge to do acts repugnant to the respondents' feelings, they would not act in accordance with their pledge. If that is the case, the signing of the pledge would not involve any obligation on the part of the signatories to act according to the pledge, and if a signatory considers himself entitled to form his own opinion whether he should follow the lead of the Committee or not, it follows that the pledge is worthless and he would much better not have signed it. But the public can only judge men by their actions, and the more ignorant and less educated of the public who sign the pledge and see the names of other signatories are not acquainted with the mental reservations of their fellow signatories. A very sound principle to remember is that those who live by the law should keep the law. I should certainly be disinclined to grant a Sanad of this Court to any one who I knew was a signatory to this pledge for I should not consider him a proper person to be enrolled in that privileged class referred to above. That being so I should be inclined to say under the powers given us by the Charter and the Regulation that a person who had signed this pledge was not a fit person to be allowed to continue amongst that privileged class.

Turning now to the letters of explanation given by the pleader respondents to the District Judge I am not surprised at his expressing the opinion that they were not satisfactory. It must be remembered that those letters were written a few days after the lamentable

1919.

JIVANLAL
VARAJRAY
DESAI,
In re.

1919.

JIVANLAL
VARAJRAY
DESAI,
In re.

riots on the 10th and 11th April at Ahmedabad and, though I do not for a moment suggest that any of the respondents took any part either directly or indirectly in those riots, it is a matter of common knowledge that there had been several meetings attended by thousands of millhands during March and the first ten days of April which were summoned by the leaders of the Satyagraha Sabha. Whether those meetings had any connection with the subsequent riots was a question which was not discussed during the course of the arguments, but it has already been the subject of judicial decision. The District Judge considered he had no power to deal with the barrister respondents; so the record contains no letter of explanation from them. Mr. J. V. Desai, however, has put in an affidavit at the last moment, a proceeding which cannot be commended considering that the hearing of these notices has twice been adjourned for the convenience of the respondents, while Mr. Patel with wiser discretion has contented himself by being represented before us by Mr. G. N. Thakor who supported the argument of Sir Chimanlal.

There is no need to deal in detail with Mr. Desai's affidavit. It is sufficient to say that it does him no credit.

I have refrained from dealing with many points contained in the argument of counsel for the respondents, which concern rather the politician than the Judge, and are therefore always open to controversy. The plain issue is what are the duties of the respondents to this Court?

I have waited in vain for any acknowledgment on the part of the respondents that they have realised in the events which have happened, that, however harmless and constitutional they may have considered this

movement when it was started, it is absolutely incompatible with their duties as lawyers to the High Court that they should continue to take part in it.

Sir Chimanlal did indeed say that it might be that the Satyagraha movement would receive its quietus. He hoped and trusted that it had received its final quietus now. That no doubt was his own personal opinion but is there any trace on the record that that was also the opinion of the respondents?

Sir Chimanlal also said it was open to the signatories to withdraw from the pledge. Then why does not he advise his clients to do so now?

I wish to make it perfectly clear that apart from all other considerations those who are enrolled as advocates and pleaders of this High Court or of the District Courts cannot serve two masters. It may be that after due consideration of this expression of our opinion the respondents may see the force of it. We have no desire to deal harshly with them, and for the present we shall content ourselves with giving them this warning. We do so because we are told that the Satyagraha Sabha since the riots of April has been quiescent. Whether we shall take any further action depends entirely on the development, if any, of the Satyagraha movement, so that these notices will be adjourned with leave to the Advocate General and the respondents to move for their restoration to the Board should occasion arise.

In connection with these notices there has been a regrettable incident of which we are bound to take notice. An application was made to this Court by some of the respondents or their pleaders for copies of Mr. Kennedy's letter. Copies were furnished and considering that the respondents were lawyers it did not appear necessary to inform them that such copies

1919.

JIVANLAL
VARAJRAT
DESAI,
In re.

1919.

JIVANLAL
VARAJRAY
DESAL,
In re.

were given to them for their private information and not for publication. That letter was published before the case came on for hearing in Court. Who is responsible for what we must regard as a very grave breach of a well recognised rule we cannot say. We are quite sure that the legal advisers of the respondents are free from blame; if the respondent or respondents who published the letter do not give in his or their names to the Registrar, the blame must for the present rest on all the respondents.

HEATON, J.—I concur generally in the judgment just delivered by my Lord the Chief Justice and I concur in the order proposed by him. There are however a few words of my own to add. One of the legal gentlemen concerned in these proceedings in dealing, in an affidavit, with the Rowlatt legislation and the Satyagraha movement wrote as follows:—

“ I believe that it is the inherent right of a citizen to protest against such legislation by such constitutional methods and I have merely acted on that *bona fide* belief.”

Of the rights of ordinary citizens however little need be said, for we are not dealing with the case of ordinary citizens. Our notices were issued against professional lawyers and it is with them and with them only that we are concerned. They belong to a privileged class and they enjoy their privileges with our consent. But just as they enjoy special privileges, so they are under peculiar obligations. Moreover, this Court is under special obligations in regard to them. Just as it licenses or permits them to practise as lawyers so it is bound to see that they do not flagrantly abuse their privileges.

I will first deal with their obligations to clients. We not unnaturally asked what advice would a professional lawyer, who had taken the Satyagraha pledge, give to a client who asked him whether as a citizen he

ought to obey one of those laws which as a lawyer he was pledged civilly to disobey. If the lawyer's answer were that, to quote the words of the pledge: "the law was unjust, subversive of the principles of liberty and justice and destructive of the elementary rights of individuals and ought to be disobeyed"; then a position would arise which we could not but consider reflected very unfavourably on the lawyer's performance of his professional duty. For, it is as much the lawyer's duty in dealing with his client to act on the law as it is, not as he would have it be, as it is the duty of a judge to do the same.

We were, however, most positively assured by counsel who appeared for the respondent that this would not happen. In other words, we are told that though as citizens the respondents would unhesitatingly assert that certain laws ought not to be obeyed; yet they would, as professional lawyers, advise their clients that those same laws had to be obeyed. It may be so; but the temptation to tell the client that the law should be disobeyed would at least be severe, and would place them in a position which no conscientious practising lawyer ought to occupy.

I will now turn to the duty of professional lawyers to this Court and to the law. They are bound, as I have said, to act according to the law as it is, not as they would have it be. Criticism of the law, even severe criticism, is permitted even to Judges, much more so perhaps to professional lawyers. Nevertheless, it is a matter of conscience with both, that they are to recognise and give effect to the law. We must assume that professionally the respondents would obey all the laws: but as they have taken a pledge, as citizens, to disobey certain laws, their position is just as unsatisfactory in relation to this Court and to the law as it is in relation to their clients.

1919.

JIVANLAL
VARAJRAY
DESAL,
In re.

1919.

JIVANLAL
VARAJRAY
DESAL.
In re.

It seems to me that professional lawyers cannot fulfil both the obligations of the Satyagraha pledge and the obligations of their profession. They are pledged to follow the truth but this they cannot consistently do if they disobey certain laws as citizens whilst as lawyers they obey and advise obedience to those same laws.

It has been necessary to say all this, as I gather that the respondents are blind to the fact that there is anything unsatisfactory or unbecoming in their attitude. They are under the impression that their position as professional lawyers is correct. But to me it seems to be essentially incorrect.

Suppose we were dealing with those who desired to become professional lawyers and who applied to us for enrolment on our list of advocates or for Sanads to practise as pleaders. Should we grant the applications? I greatly doubt it: At any rate until the applicants had given definite undertakings that they would limit their political activities, not merely so as not to interfere with, but so as not to excite suspicion as to the correctness of their professional conduct.

The attitude which the respondents have adopted is to my mind undeniably embarrassing and unseemly from a professional point of view. But need we anticipate that anything worse will follow? That we cannot say. It depends on the development of the Satyagraha movement with which the respondents have intimately associated themselves.

KAJIJI, J. :—I have had the advantage of reading the Judgments of my Lord the Chief Justice and brother Heaton and I concur in the order proposed and have nothing to add.

Order accordingly.

R. R.