ORIGINAL CIVIL.

Before Sanderson C.J. and Chaudhuri J.

In re AN ADVOCATE.*

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June 14.

Barrister—Counsel receiving instructions direct from client—Non-return of fees for professional work not performed—Usage and etiquette of the profession—Duties of Counsel—Nomination of juniors by seniors and of seniors by juniors, practice of—Practice.

The usage of the profession of a Barrister that counsel should take his instructions only from an attorney in respect of any professional work on the Original Side of the High Court, is a most beneficial one from the point of view of the public and the Bar and, though founded upon no rule of law, ought to be maintained

In a certain suit, counsel accepted a brief containing instructions for him to appear at the trial on behalf of a party and was paid the consultation fee and the fee for attending the trial, which were marked thereon. Counsel attended the consultation and subsequently left Calcutta to attend to an urgent professional call, having previously returned the brief to the attorney, but not the fees :—

Held, that counsel should have returned the whole fee (both for consultation and for attending the trial). It was given to him for the purpose of attending the trial, and the consultation was held with a view to his so doing.

The practice for seniors to name their juniors, or for juniors to nominate their seniors, is contrary to the traditions of the profession and to its best interests, and such a practice ought to be discouraged. It is, however, quite legitimate for a senior to ask a junior to hold a brief for him when he is temporarily unable to attend to a case.

RULE.

This was an application against an Advocate of the High Court brought by one Mr. Chill claiming the return of fees paid by him to the Advocate in connection with legal work which it was alleged was not performed by the Advocate, and charging him with

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unprofessional conduct. Mr. Chill was introduced to the Advocate by one Mrs. Neil, and at the interview Mr. Chill told the Advocate that he had a claim against the Uncovenanted Family Pension Fund, and that he wanted the Advocate to peruse the considerable correspondence, which extended over 10 or 12 years, between himself and the authorities of the Fund, and also other papers and documents in connection therewith, and to advise him with a view to civil proceedings being taken.

On this very heavy file of papers being made over by the petitioner to the Advocate, the latter demanded a fee of Rs. 500 for perusal and opinion, in anticipation of any course he might advise the petitioner to pursue. The petitioner, thereupon, paid the Advocate Rs. 100 on account on that occasion, a further sum of Rs. 100 on or about the day following, and, subsequently, further sums, aggregating a sum less than the stipulated amount of Rs. 500. Thereafter, a brief was sent to the Advocate with a fee of 4 G. Ms. and a separate fee of 3 G. Ms. for consultation, marked thereon. The Advocate attended the consultation but before the case came on for trial, he had to go to Hazaribagh on urgent professional business. Prior to his leaving Calcutta, he returned his brief to the Attorney together with his notes on the case, but not the fees he had been paid. At the trial, the petitioner's case was taken up by another counsel, who conducted the suit for him. Thereafter, the petitioner applied to the High Court for the present Rule. In answer to the petitioner's application, the Advocate claimed that the fee for perusing the documents and giving his opinion to the petitioner prior to the institution of the suit, and the fee for consultation had been properly earned by him, but in regard to the fee of 4 G. Ms. on the brief, he had consented to refund the same.

The Petitioner in person, in support of the Rule.

Mr. Eardley Norton, *Mr. H. D. Bose*, *Mr. S. K. Mullick* and *Mr. A. Rasul*, for the Advocate, showed cause.

SANDERSON C.J. In this case we have considered the complaints which have been made against the Advocate. After reading the affidavits we thought it necessary that we should further enquire into the matter, more especially with regard to two questions, namely, the circumstances under which the work was originally undertaken by the Advocate, and the alleged non-return of his fees when he was unable to conduct the case in Court. Accordingly, we held the further enquiry yesterday.

With regard to the first question, we are of opinion that there is no need for any further action by the Court.

I take the account which is given by the Advocate himself in his affidavit, paragraph 2; after setting out that the petitioner was introduced to him at his house by one Mrs. Neil, and pointing out that the petitioner told him that he had a claim against the Uncovenanted Service Family Pension Fund, he goes on to say that: "He further told me that considerable correspondence extending over 10 or 12 years had taken place with the authorities of the said Fund and he requested me to peruse the whole volume of correspondence and other papers and documents in connection with the matter and to advise him how to proceed. That, thereupon, he made over to me a very heavy file of papers and I demanded from the petitioner a fee of Rs. 500 for perusal and opinion in anticipation of any course I might advise him to pursue, whereupon the petitioner paid me Rs. 100 on account on that occasion, and a further sum of Rs. 100 on or about the day

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following." Further money was paid afterwards, but not amounting to Rs. 500, and it does not affect the point that I am now considering. I think it unfortunate that the Advocate did not follow the well-known custom and ask that he should be properly instructed by an Attorney. The advice of the Advocate was sought with a view to civil proceedings being taken. The custom to which I have referred is well-known, and is stated in Lord Halsbury's book (The Laws of England, Vol. II, page 389), as follows:—" The usage and etiquette of the profession of a Barrister require that in all but some exceptional cases counsel should not undertake any professional work as regards which the relation of counsel and client can arise except on the instructions of a solicitor." That, as we were informed yesterday, will not apply literally to the Appellate Side, where counsel are instructed sometimes either by a vakil or a mukhtear or in some cases by an attorney. " There is no rule of law to prevent a litigant from instructing counsel directly, or to prevent counsel so instructed from appearing on behalf of a litigant ; but a judicial opinion has been expressed that it is expedient in the interests of suitors and for the satisfactory administration of justice to adhere to the usage which requires that counsel should not accept a brief in a civil suit from anyone but a solicitor. The exact scope of the usage is not very clearly defined, but it extends to all civil contentious business, and to all criminal business except what is known as a 'dock defence.' It does not extend to the preparation of a will, to work before Parliamentary Committees, where counsel may appear when instructed by Parliamentary Agents who need not be solicitors, or to inquiries under the Local Government Acts, the Public Health Acts, or the Light Railways Act; at such inquiries counsel may be instructed by clerks to local authorities

who are not solicitors. A Barrister may advise in non-contentious business without the intervention of a solicitor, though the practice has been stated to be undesirable." The Rule stated in Mr. Belchamber's Book "Practice of the Civil Courts" page 8, to which the learned Advocate-General referred us yesterday, is as follows:—"The usage that counsel should take their instructions only from attorneys is beneficial and, though founded upon no rule of law, ought to be maintained.' The learned Advocate-General, when asked whether the course which the Advocate adopted, as set out in paragraph 2 of the Advocate's affidavit to which I have referred could be said to be in accordance with the custom here, said that according to his experience it was not so, and it should not have been done. The abovementioned usage is a most beneficial one from the point of view of the public and the Bar: and, if it had been followed in this case, much of the trouble which has arisen would have been avoided. At the same time, I do not think that in this case the complainant was prejudiced, for though the fee demanded was a large one, namely, Rs. 500 for perusal of the papers and opinion, the full amount was not paid, and it is alleged that there was a large volume of correspondence and other documents which had to be looked into; and, apparently, the Advocate took considerable trouble over the matter.

As regards the second question, it appears that the Advocate accepted the brief marked 7 G. Ms.—4 and 3—containing instructions for him to appear at the trial on behalf of the complainant. Sometime in March 1916, the Advocate alleges, he had to go to Hazaribagh on an urgent professional call, and before he left Calcutta he returned his brief to the attorney with his notes. He did not, however, return his fees. He had had the consultation and he claimed

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to have earned the consultation fee of 3 G. Ms. marked in the brief. In my opinion, he should have returned the whole fee of 7 G. Ms. It was given to him for the purpose of attending the trial, and this consultation was held with a view to his so doing: and if he could not attend the trial, another counsel would have to be briefed and a further consultation with the second counsel would be necessary for which the client would have to pay. Under the advice of his counsel, the Advocate has now offered to return the fee of 7 G. Ms., and I think he should do so.

Copies of certain letters were produced by the attorney. These letters are alleged to have been written by him to the Advocate at Hazaribagh. The Advocate denies having received them and he denies the statements contained therein. I accept his statement. If he had received these letters and if the facts alleged therein were proved, I should have taken a much more serious view of the matter. I think he should have returned his fees when he found he could not attend to the case without being asked so to do: especially, as he must have known that the complainant was not a man in affluent circumstances and that the non-return of the fees might place him in a difficulty. Fortunately, however, another counsel took up the case for Mr. Chill and conducted it for him so that in the end his interests did not suffer. The conduct of the Advocate with regard to this part of the case cannot be regarded with anything but disfavour: but having regard to the circumstances of the case, which I have mentioned, I do not think it necessary for the Court to take any further steps. Consequently, in my opinion, this Rule ought to be discharged.

I wish to add a word about a matter which has nothing to do with this case, but it is a matter of general importance to the profession. It cropped up

during the course of the hearing with reference to a passage in the affidavit of the Advocate in paragraph 11, in which he says "I made over my brief with all the notes I had prepared for my own use to the attorney when I left Calcutta, and I state that I had no hand in the selection of my junior." I happened to pass a remark about that; and, thereupon, one of the learned counsel alleged that it was by no means an unknown or uncommon practice for one counsel to select another counsel to act with him in the case. I should be very sorry to believe that this is so. I do not refer of course to a learned counsel holding á brief for another when he is temporarily unable to attend to a case. That is a very different matter. What was suggested was that a counsel already engaged in a case selected the other counsel who should be briefed with him. If such a thing has been done, I think that it must have been on comparatively rare occasions: such a practice is contrary to the traditions of the profession, and it is also contrary to the best interest of the profession, and such a practice ought to be, and I feel sure would be, discouraged by all who have the interests of the profession at heart.

CHAUDHURI J. I concur, but I want to add a few words in respect of one of the charges in this case, which was that the Advocate concerned had nominated his junior. Mr. Norton stated that it had become a somewhat frequent practice at the Calcutta Bar, for seniors to name their juniors, and he also said that juniors sometimes nominated their seniors and that in fact his name had once been struck out by a junior member of the Bar. This is a very serious matter, but as Judges of the Court, we can hardly do anything in our judicial capacity, to prevent such gross breaches of the rules of the Bar. What was stated to us implied

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that work was thus being kept within a circle. The matter being mentioned to the Advocate-General, he agreed that it was reprehensible conduct, and assured us that he would take immediate action if the matter was brought to his notice. There is always great reluctance to bring these unpleasant matters to the surface, but I think the Bar owes it to itself to take action in these matters. The Calcutta Bar has justly prided itself on its strength and independence, and I appeal to it to see that its high position is always maintained. Work naturally gets into the hands of a limited circle and there is nothing improper, and it is quite legitimate, for a senior to ask a junior to hold a brief for him, but to form a group is entirely improper. I feel that any attempt to form such a group should be discouraged by the Bar. Mr. Norton's name being struck out by a junior shows, not only that a Bar rule was broken, but also want of respect for senior members of the profession. We honoured them when we were at the Bar. The respect we show to our seniors, results from the feeling of respect one ought always to have for one's profession. I worked as a member of the Calcutta Bar for over 25 years. Its interest and welfare are almost personal questions to me. Although I am now sitting as a Judge, I feel I am a member of the Calcutta Bar, and I hope my appeal to them will not be in vain.

I am glad to say the charge made in this case has not been substantiated. I regret to say that the Day-Book of the Attorney in this case does not inspire the confidence such a document deserves, and I hope the attorney will take note of the fact and improve his methods of work.

O. M. *Rule discharged.*

The petitioner in person.

Attorney for the Advocate : *H. C. Bannerjee.*