PRIVY COUNCIL.

IN THE MATTER OF KRISHNASAMI AIYAR.

*P.C. 1912 June 20.

[On appeal from the High Court of Judicature at Madras.]

Pleader—Suspension of vakil from practising—Functions of Pleader and duty to the Court and to client—Rule 95 of Appellate Side rules of Madras High Court—Non-payment by vakil of printing charges for appeal though paid to him by client—Misconduct of vakil in management of appeal—Letters Patent of High Court, section 10—Legal Practitioners' Act (XVIII of 1879)—Section 13.

Under section 95 of the Appellate Side rules of the Madras High Court, pleaders "are responsible to the Registrar for all translations and printing charges incurred by him on their behalf." To that extent, therefore, the vakil must co-operate in the conduct of the suit with the Registrar, and with the Court under those regulations; and vakils have also the general function, applicable not only to the bar in general, but also to solicitors at large, that they must in the conduct of all suits entrusted to them co-operate with the Court in the orderly and pure administration of justice.

In a proceeding in the High Court to restore an appeal which had been struck off for non-payment of the printing charges, it appeared that the vakil for the appellant, though the money for that specific purpose had been received in his office from his client, had omitted to pay the Registrar, had not made any true and proper explanation to his client of the cause of the appeal being struck off, but had allowed letters written by his clerks to go from his office to the client, and had even written one himself, which would lead him to believe that the appeal had been heard and dismissed in due course, and had also not given the Court, on the earliest possible opportunity any reason for his absence when the appeal was called on, except that other professional engagements had prevented him from being present, nor had he ever offered to the Court any explanation or apology concerning his conduct of the case nor expressed to the Court any regret for its effect. The vakil, after being called on to show cause why he should not be punished under the Letters Patent of the High Court, or the Legal Practitioners' Act (XVIII of 1879) for professional misconduct, was, whilst personally acquitted of any fraudulent or criminal act, suspended from practising for six months.

Held, on an appeal to the Judicial Committee, that the vakil had in his acts, and omissions to explain, regret, or apologise for them, utterly failed to perform what his honour and duty to his client and to the Court made it incumbent upon him to do; and their Lordships while not interfering with his acquittance of direct and personal fraud, did not see their way to acquit him of conduct in the management of the appeal, and of his client's affairs, which caused the procedure of the Court to be the

Present:—Lord SHAW, Sir JOHN EDGE, and Mr. AMEER ALI.

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very opposite of what it should be, namely, responsible, orderly, and pure; and they were of opinion that there was "reasonable cause" under section 10 of the Letters Patent, for the sentence pronounced by the High Court, which was justified both in its pronouncement, and the extent of the suspension.

APPEAL from an order (28th February 1912) of the High Court at Madras whereby the appellant, a vakil of the High Court, was suspended from practice for six months on the ground of professional misconduct.

The facts of the case sufficiently appear from the judgment delivered by the High Court (Sir CHARLES ARNOLD WHITE, C.J., and SANKARAN NAIR and AYLING, JJ.) which was as follows:—

"In this matter a vakil of this Court has been called on to show cause why he should not be suspended or removed from practice by reason of his conduct in connection with Second Appeal No. 1045 of 1907 in which he was retained. Notice was issued to the vakil in pursuance of an order made by this Court with reference in the judgment in Civil Miscellaneous Petition No. 498 of 1910. The application is made by the Advocate-General, and the question we have to consider is whether 'reasonable cause' within the meaning of section 10 of the Letters Patent has been shown for the removal or suspension of the vakil.

"On the hearing of the application Mr. Rangachariar and Mr. K. Srinivasa Ayyangar appeared for the vakil. We have considered the judgment of this Court in Civil Miscellaneous Petition No. 498 of 1910. Two affidavits have been relied on by the vakil, one in support of the application to restore the second appeal, dated February 14th, 1910, and another, dated December 6th, 1911. There are also affidavits by the vakil's manager Latchmiah and his clerk Bhashyam. An unsworn statement by the vakil was handed to us. We have considered this statement though, as it is not on oath and the vakil is represented before us, we were under no obligation to do so. We are anxious, however, that any point which may tell in favour of the vakil should not be overlooked.

"The facts are as follow:—

'A bill for printing the pleadings in the appeal amounting to Rs. 48 was issued by the Court in November 1907. Several applications for payment made to the client by the clerk Latchmiah were not attended to. On or about May 5th, 1908, a bill for printing documents amounting to Rs. 60 was issued. Further letters to the client demanding payment were written by or on behalf of the vakil. On or about January 6th, 1909, the client sent to the vakil a money order for Rs. 40.'

"On March 5th, 1909, the appeal was posted for dismissal by reason of the non-payment of the printing charges. Time for payment was extended by two weeks and the bill was reduced from Rs. 108 to Rs. 68. On that day the client paid Rs. 28 to the vakil. The vakil states that the client was present when the order was made for the extension of time and for the reduction of the bill. He also states—and we accept the statement—that although the client had paid Rs. 68 to the vakil, the vakil had only some Rs. 54 or 55 to the credit of the client, as he had made some small payments in connection with the appeal out of his own pocket.

"On March 15th, 1909, Latchmiah wrote to the client as follows :—'Received the letter written by you and learnt its contents. When you were here, the printing bills were amended and it was found that Rs. 48 had to be paid for one bill and Rs. 20 for the other ; up till now, exclusive of the sum of Rs. 40 you sent to Aiyar, you paid me Rs 28 and went away. On my now asking Aiyar for the money he said that the money received by him from you was spent and asked me to get the money from you and pay Rs. 40 for the bill. Therefore as soon as you see this letter, remit to my address Rs. 40 by money order, and then attend to other affairs If you fail to send, the case will be spoilt and there will be no use in blaming us.' Latchmiah says in his affidavit he wrote this letter on his own responsibility so as to be on the safe side, and that, so far as he remembers, he had no such conversation with his master as is stated in the letter. The letter is headed with the name of the vakil and with his office and private address. It is signed by Latchmiah.

"The letter is a most extraordinary one. It gives no particulars of the alleged spending of the client's money and demands another Rs. 40. The vakil repudiates all knowledge of this letter and he says it was not until the 25th of Januury, 1910, that he came to know that the client's printing charges had not been paid.

"What action, if any, the client took on receipt of this letter of March 15th we do not know as the letters written by the client to the vakil or his clerks have not been produced. It is not suggested that the demand for payment of a further Rs. 40 was complied with. On July 15th, 1909, a clerk, Bhashyam, wrote to the client, after referring to letters written by the client, 'your appeal is being printed. We shall let you know the date of hearing.' On July 17th, the same clerk wrote again, after referring to letters written by the client, 'The papers in the said appeal are being made ready. You need not in any way be anxious. We shall let you know if there be anything particular.' On 26th January 1910 the appeal was posted for dismissal for non-payment of printing charges. No one

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appeared for the appellant, and the appeal was dismissed for default. Two days later, on January 28th, 1910, the clerk Bhashyam wrote to the client as follows :—'Your second appeal referred to above was posted on 26th instant for hearing, and decided against us, that is, the appeal was dismissed.' This letter is headed with the name and address, business and private, of the vakil and is signed, 'By order, Bhashyam.' The vakil says in his affidavit that this letter was written without his knowledge. Bhashyam, the clerk, says in his affidavit he understood from the manager Latchmiah that the case had been dismissed but he did not know the details. The manager Latchmiah in his affidavit says nothing about it.

"The vakil did nothing until his client appeared on the scene and put in an application for restoration on February 14th, 1910. The application to restore is signed by another vakil, Mr. G. S. Ramachandra Aiyar, as well as by the vakil whose conduct is the subject of this enquiry. In support of the application to restore the appeal the vakil put in an affidavit. The affidavit is as follows :—

"'I, G. Krishnasami Aiyar, son of P. S. Ganapathi Aiyar, A Hindu Brahman of the age of about 34 years, High Court Vakil, residing at No. 3, North Tank Square, Mylapore, Madras, do hereby solemnly and sincerely affirm and say as follows :—

"'(1) That I am the vakil for the appellants herein.

"'(2) That Visvanatha Chetti, one of the appellants herein, paid my clerk V. Latchmiah a sum of Rs. 28 on or about the 5th March 1909 for paying the printing charges hereof; he had sent me also a sum of Rs. 40 by money order towards the expenses of this appeal on or about 6th January 1909 after the time for the bill had expired.

"'(3) That by mistake my clerk V. Latchmiah entered the said amounts paid by the appellants to the credit of a different second appeal from the same, South Arcot district, namely, Second Appeal No. 49 of 1907, and the printing charges of this appeal were not paid.

"'(4) That this case was posted on the evening of 25th January, 1910, for order under rule 100 of the Translation and Printing Rules and my clerk Bhashyam Aiyangar brought it to my notice then; I had a recollection that the party had paid the printing charges after time and that time had been extended by the Court and on looking over the account I found that a mistake had been committed. I wanted to bring this matter to the notice of the Court on the 26th January 1910 and on that day this case was posted as fourth case in the list.

"'(5) That on the 26th day of January, 1910, I had three fresh Small Cause Suits posted before His Honour the Third Judge, Small Cause Court, for trial and two Original Suits Nos. 208 of 1908 and 199 of 1908 before His Lordship Justice WALLIS.

"'(6) That as this case was the fourth case in the list I waited for a few minutes at my chambers, made some arrangements for the Small Cause Court work, and went to the Original Side to see when my said original cases were likely to be reached and then came to this Court.

"'(7) That when I reached the doors of this Court it was about a few minutes after this case had been called on and dismissed for default.'

"The statement in paragraph 3 of the affidavit that the amounts paid by the appellants were by mistake credited to a different second appeal is admittedly inaccurate. The books only purport to show that Rs. 40 was so credited.

"According to the vakil's own case, by a mistake of his clerk moneys paid by the appellant in Second Appeal No. 1045 of 1907 were credited to another client and as a result of this mistake the appeal was dismissed for default. The case was posted not on account of any default of the client but on account of a mistake, or something worse than mistake, in the office of the vakil. In this state of things, the onus was heavy on the vakil to explain the true state of affairs to the Court and to his client. So far as the Court is concerned he does nothing. His failure to be in Court when the case was called on may have been accidental. But one would have thought in a case where a grave injustice had been done to his client by a mistake in his office of which the vakil was personally aware, he would have been specially careful to attend and explain how things stood. It was a duty which he owed to the Court. It was a duty which he owed to his client, who had suffered a serious injustice. It was a duty which he owed to himself since the mistake might well give rise to questions involving the personal honesty of the vakil or his clerks. There may be an explanation of the vakil's failure to appear. It seems to us there can be no satisfactory explanation of his conduct in not bringing the matter before the Court at the very earliest opportunity. In our opinion, the *gravamen* of the charge is not that the vakil failed to appear when the case was called on (this, as we have said, may have been an accident) but that having failed to appear, and the appeal having been dismissed, he did not give a full explanation to the Court at the earliest opportunity. His excuse that he was under the impression that he could not mention the facts till the same Bench sat again seems to us to be idle.

"As regards the client, whatever may have been the practice of the vakil's office as to allowing his clerks to write letters which did not come before him the vakil seems to have entirely misconceived the nature of his duty and responsibilities in not taking steps to see that the real

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circumstances in which the appeal had been dismissed were brought to the notice of his client. He did nothing until the client appeared upon the scene. To make matters worse, the letter of January 28th to which we have referred was written by the clerk Bhashyam. This letter is a deliberate lie. The object with which it was written was obviously to deceive the client and make him think there was nothing more to done. We cannot shut our eyes to the fact that if this letter had accomplished the object with which it was written, the clerk or the vakil might have got the benefit of the client's money, and nothing more would have been heard of the case. The suggestion that the object of the clerk in writing the letter was to 'gain time' is not worth serious consideration.

"As regards the accounts all we need say is that there are very strong reasons to suspect that the day-book and the ledger have been altered in order to support the case that Rs. 40 were credited to the wrong Second Appeal.

"On January 17th, 1910, the clerk Bhashyam wrote 'Second Appeal No. 1045 of 1907 . . . . . I have written to you on several occasions that the sum of Rs. 40 sent for the printing charges in connection with the above case is insufficient.'

"This goes a long way to show that the suggestion that the Rs. 40 had been credited not to Appeal No. 1045 but to Appeal No. 49 was an after-thought and that the entries in the books which bear date January 6th, 1909, had not been made when the letter of January 17th, 1909, was written. The way in which the credit of Rs. 40 in Appeal No. 49 is entered in the day-book strongly suggests that it was made at some time after the date which it purports to bear. Latchmiah's letter of 15th March, 1909, and Bhashyam's letters of 15th and 17th July 1909 are all inconsistent with the suggested mistake. The fact that after July, 1909, no further efforts were made to get money from the client although the case was not posted for orders till January, 1910, is also inconsistent with the suggestion.

"In the statement which has been handed to us the vakil states that Rs. 68 was refunded to the client in February 1910. This payment does not appear in the ledger, but we find in the day book under date February 16th, 1910 'To client in Second Appeal No. 1045 of 1907 Rs. 75.' This was after the client had come to Madras and the application for restoration had been put in.

"The letters of March 15th, 1909, and January 28th, 1910, were written by Latchmiah and Bhashyam respectively on paper headed with the vakil's name and address. The vakil tells us, in effect that these letters were written without his knowledge or approval. It was suggested

that there was nothing unusual in this. If a practice of vakils' clerks being allowed to write letters on behalf of their masters without their masters' knowledge really exists, it seems to us that the practice is altogether unbusiness-like. The letter of January 28th, 1910, contains a false statement, a false statement—as it seems to us—made deliberately with a definite object in view. The vakil cannot protect himself from responsibility by saying he knew nothing about this letter. We must hold him responsible for it. If this letter was in fact written with the vakil's knowledge and approval the case would be an extremely bad one. We assume, in his favour, that the letter was written without his knowledge. We also assume, in his favour, that what appear to be the obvious alterations in the books made, as it seems to us, with the object of supporting the very doubtful story as to the Rs. 40 having been credited to the wrong second appeal by mistake, were made without the knowledge of the vakil. Then remains the fact that when the appeal was dismissed for default in circumstances which made it the duty of the vakil to offer a prompt and full explanation to the Court and to his client he did nothing till his client appeared on the scene. He did not write to the client himself. He gave no instructions to his clerk to write. The matter was one of special delicacy and importance and in our opinion it was the duty of the vakil either to give express instructions to his clerk in the matter or to satisfy himself that any communication which his clerk sent to the client was a true statement. As we have said, the clerk's statement was untrue and we must hold the vakil responsible for it. We cannot take the view that the facts shows nothing more than negligence on the part of the vakil and we do not think his conduct can be excused on the ground of want of experience or ignorance of practice.

"The order of the Court is that Mr. G. Krishnasami Aiyar, a vakil of this Court, be suspended from practice for six months from this date."

On this appeal which was heard *ex parte DeGruyther*, *K.C.*, and *Kenworthy Brown* for the appellant contended that at the most the evidence showed that he had been guilty of negligence, but not of professional or other misconduct. The Judges of the High Court cleared him of anything fraudulent or criminal. There was, it was submitted, no fraudulent misconduct on the part of the appellant sufficient to make him liable to the punishment inflicted on him. Reference was made to the Letters Patent of the High Court, 1865, section 10; Legal Practitioners' Act (XVIII of 1879) section 13; Corderry on Solicitors,

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page 180; and *In the matter of Southekal Krishna Rao* (1). No specific charges of misconduct were formulated against the appellant, nor was he called upon to answer or defend himself against any specific charges, and he had been prejudiced by this course. The case against him, and particularly the charge of failing to send to his client a full explanation of the circumstances under which the Second Appeal No. 1045 of 1907 was dismissed did not sufficiently appear from the judgment of 3rd January 1912, in the Civil Miscellaneous Petition No. 498 of 1910, in reference to which the notice to the appellant to show cause was issued. He trusted in the honesty and capacity of his two clerks, and even if that was negligence he did not thereby become guilty of professional misconduct, or render himself liable to punishment under the Letters Patent of the High Court, or the Legal Practitioners' Act. There was no evidence that the clerks desired to deceive the client in the matter, and even if they did the appellant had no part in any such design. At the worst he was only guilty of not explaining to the Judges of the High Court on 26th July 1910 his non-payment of the charges in the Appeal (No. 1045 of 1907), and clear himself of any suspicion of misconduct. That non-payment he now stated was due to a mistake in crediting the amounts received on that appeal to another appeal from the same district. Under the circumstances the heavy punishment incurred was not wholly merited, and as he now expressed very sincere regret at what had occurred some leniency, it was submitted, might be shown towards him by Their Lordships.

1912, *June 20th.*—The judgment of their Lordships was delivered by

Lord SHAW.—This is an appeal against an order of the High Court of Judicature at Madras. The order is dated the 28th February 1912. Under that order the appellant, who was a vakil of the Court, was suspended from practice for six months on the ground of professional misconduct.

The circumstances of the case have been reviewed in very careful judgment by the learned Judges of the Court below. Their Lordships only review them further for the purpose of

(1) (1888) I.L.R., 15 Calc., 152; (1887) L.R., 14 I.A., 154.

illustrating the one point which appears to them to be conclusive of the present appeal.

In the year 1907 the present appellant, the vakil, was employed to file a second appeal in the High Court against a decree of the District Court of South Arcot. The condition of matters with regard to a vakil, and his relation to the procedure of the Court, which bears upon this case, are set out in section 95 of the Appellate Side Rules of Madras. By that section pleaders "are responsible to the Registrar for all translation and printing charges incurred by him on their behalf" under those rules. To that extent the vakil must co-operate in the conduct of the suit with the Registrar, and with the Court, under those regulations. And they have the other general function, applicable not only to the Bar in general, but to solicitors at large, that they must, in the conduct of all suits entrusted to them, co-operate with the Court in the orderly and pure administration of justice.

In the present case a certain advance was made, or required to be made, in order to enable printing to be done as Court printing. A correspondence accordingly ensued between this vakil and his client; and it is a well-founded observation made in the anxious argument presented to Their Lordships from the Bar that that correspondence was mainly conducted by a manager and a clerk of the vakil, and not by the vakil personally. That, however, is not completely true, because one of these letters, an important one, of the 8th September 1908, was written by the vakil himself. Further, the vakil in the present case, the present appellant, was, of course, charged with the knowledge that it was necessary, not only that the moneys should be received from his client, but that in common honesty that money should be paid to the Registrar for the discharge of the printing dues. This was not done. Statement after statement is made by the manager and clerk in the course of this correspondence containing a false narrative of what had been proceeding, and constituting fraudulent deception of the client.

Matters, however, culminated in a visit paid by the client on the 5th March 1909, when a payment of Rs. 28—making up the full amount to which the printing charges had accumulated at that date—was made by the client to one of the clerks in the vakil's office. The full sum amounted to Rs. 68, that is to say,

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a payment of Rs. 28 on the spot, added to a previous payment of Rs. 40.

That being done, what followed? The client naturally expected that his case would be proceeded with. He was falsely informed on the 15th July, by a letter written by the clerk, that certain progress was being made. Nothing, however, had been done, on account of the initial withholding from the Registrar of the Court of the whole of the money received from the client.

On the 25th of January matters were in this position: that the case was listed for the following day, the 26th, and, as is admitted in a most fatal document for the appellant in this case, namely his own affidavit, the appellant then personally knew of the transactions in the interim. His knowledge must have included the knowledge that the moneys received for a specific purpose from the client had not been so applied. When the vakil arrived at the Court in the morning of the 26th January 1910 he was aware that he was accordingly bound, as a responsible vakil, in honour and in duty to his client, to himself, and to the Court, to explain that the cause, which would in the natural course be dismissed for want of payment of the printing dues, was exposed to this peril by reason of a circumstance for which he apologised publicly to the Court, and expressed his regret. His affidavit, however, is to this effect: "When I reached the doors of this Court it was about a few minutes after this case had been called on and dismissed for default." In short, he makes to the Court below, and at this Bar, an excuse that, being engaged elsewhere, he did not appear to discharge that duty of honour, which on all sides plainly rested upon him. Having made that mistake a further course was open to him, and that was to wait until an interval in any procedure of that Court, or till the Court was about to adjourn, and instantly to make his honourable explanation. He did not do so. He allowed matters to drift for about 18 days, as aftermentioned; and the Court below having considered the excuses put forward for not sooner making application to notify what had occurred think these excuses to be idle.

He apparently returned to his office, and what did he then do with his staff? His staff by that time had been convicted of most fraudulent and improper conduct in keeping of the client's money, in sending lying letters to a client, and in giving, in the interval, an untrue account of the proceedings in the appeal.

This vakil, who has been acquitted of personal fraud by the Court below, an acquittance with which their Lordships do not in any degree interfere, was guilty of the regrettable conduct of permitting a staff who had previously been guilty of such deception, to continue in correspondence with his client. It was for him to say whether he should retain such persons in his service, but at all events he was honourably bound to disclose to his client the mishap that had occurred on the morning of the 26th January. Instead of that the staff was continued as before, and on the 28th January the client was written to by Bhashyam in these terms: "Your second appeal aforesaid came on for hearing on the 26th instant, and was decided against us, that is the appeal was dismissed." That implies two falsehoods. The case did not come on for hearing. It was never heard. It was not decided against them in the sense of a decision having been pronounced *in foro contentioso*. It was dismissed simply in consequence of the improper non-payment of moneys due. Accordingly, so far as the client was concerned, nothing was done to wipe out the mistake which had been made by the vakil. So far as the Court was concerned nothing was done for a period of about 18 days.

In the interval the client had appeared in Madras, and, no doubt, made his determination plain to have the matter brought before the Court as one at least of mischance. Accordingly, an application had to be made, and it was not made until the 14th of the following month of February—an application for restoration of the case to the Roll. Then, the Court apprehending the gravity of the situation, instituted this enquiry. Every conceivable point has been taken against the regularity of that enquiry in the Court below; but at the Bar, where the case was anxiously and ably argued, these points have not been insisted upon. For they were without substance.

The main issue in this case is, what was the conduct, relative to the Court, relative to the client, and relative to his own professional position, which this vakil perpetrated on or about the 26th January? There Lordships while not interfering, as stated with his acquittance of direct and personal fraud, do not see their way to acquit him of conduct in the management of the appeal and of his client's affairs which caused the procedure of the Court to be the very opposite of what all such procedure

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should be, namely, first responsible, secondly orderly, and thirdly pure: In all these reports there has been a violation of properties which attach to legal procedure.

That being so, the Court made this enquiry. Its powers seem to be those contained in section 10 of the Letters Patent creating the Court and containing, *in gremio* thereof, the rules with regard to advocates, vakils, and attorneys-at-law. Amongst the rules is rule 10, which empowers the Court in these terms: "to remove, or to suspend from practice on reasonable cause the said Advocates, Vakils or Attorneys-at-law."

The sole question which Their Lordships have to consider in the present case is: the Court being apprised of the procedure which has been briefly described, can it be said to have acted without reasonable cause in making an interim suspension of the appellant from practice as a vakil for a period of six months? Their Lordships think that there was reasonable cause in the present case, and they further think the Court below was justified both in the pronouncement and the extent of the suspension.

With regard to the appeal very properly made by *Mr. Kenworthy Brown* as to his client, Their Lordships can only express the hope that in the management by those under him of affairs committed to his charge, he will, in future, see to it, that such improprieties as those referred to do not recur; and, if that is done, there seems no reason to doubt that, after this discipline, he will be able to resume an honourable professional career.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed.

Appeal dismissed.

Solicitor for the appellant: *Douglas Grant.*

J. V. W.