THE SECRETARY TO THE COMMISSIONER OF SALT, ABKĀRI AND SEPARATE REVENUE, REVENUE BOARD, MADRAS v. MRS. ORR.

WHITE, C.J.

mortgage-deed, for the purposes of the Stamp Act, because it creates a right in respect of specified property for the purpose of securing money advanced or to be advanced.

I can deal shortly with Mr. Barton's second point. A hypothecation is not defined in the Stamp Act nor in the Transfer of Property Act either. Assuming that this instrument is a bill of exchange within the meaning of the definition in the Stamp Act, it seems to me it is not a letter of hypothecation within the meaning of the exemption. According to Mr. Barton the instrument is a formal declaration of trust. I do not think a formal declaration of trust can be treated as a letter of hypothecation within the meaning of the exemption. I quite agree that a fiscal enactment should be construed strictly and in favour of the subject, but it seems to me that whatever else the instrument may be, it is a mortgage-deed within the meaning of the definition in section 2 (17) of the Stamp Act.

SANKARAN NAIR, J.

SANKARAN NAIR, J.—I agree.

OLDFIELD, J.

OLDFIELD, J.—I agree.

APPELLATE CIVIL.

Before Mr. Justice Miller.

1913. October 24 and 29.

M. R. SRINIVASA RAU (RESPONDENT), PETITIONER,

v.

PICHAI PILLAI (PETITIONER), RESPONDENT.*

Civil Procedure Code (Act V of 1908), sec. 115—Civil Rules of Practice, Rule 277—Criminal Procedure Code (Act V of 1898), sec. 145—Pleader engaged in proceedings under—Whether disqualified to act for the other side in subsequent civil suit.

A pleader who had appeared for a party in proceedings under section 145 of the Code of Criminal Procedure must, before appearing for the opposite party in a subsequent civil suit flowing out of such proceedings, satisfy the Court that in acting in those proceedings he did not as a fact obtain from his then client any knowledge which would be of use to his present clients, or, that if he did obtain any such knowledge then, such knowledge is now, so to speak, public

* Civil Revision Petition No. 633 of 1913.

property available to any pleader who can obtain inspection of the record of the proceedings in the Magistrate's Court. If he fails to do so, he brings himself within Rule 277 of the Rules of Practice framed by the High Court and it cannot be said that the Court has wrongly exercised its discretion in refusing him audience.

Little v. *Kingswood Collieries Company* (1882) 20 Ch.D., 733, referred to.

PETITION under section 115 of the Code of Civil Procedure (Act V of 1908) praying the High Court to revise the order of K. SOWRIRAJULU NAYUDU, the District Munsif of Mannargudi, in Original Petition No. 424 of 1910.

The facts of the case appear from the Judgment.

T. R. Ramachandra Ayyar and *T. R. Krishnaswami Ayyar* for the petitioner.

T. R. Venkatarama Sastriar for the respondent.

MILLER, J.—In this case the District Munsif has made an order prohibiting a second-grade pleader from appearing for the plaintiffs, in Original Suit No. 32 of 1913 on his file. MILLER, J.

The pleader had appeared and acted in a proceeding in the Magistrate's Court under section 145, Criminal Procedure Code, and had there obtained an order for his client maintaining his possession until he should be disturbed by a Civil Court. Original Suit No. 32 of 1913 was instituted nearly three years after the date of this order by the unsuccessful party in the magisterial proceedings, and the pleader filed the plaint on their behalf and appeared for the purpose of conducting the case, but on the defendant's (his former client's) objection has been prohibited from doing so.

The District Munsif relies on Rule 277 of the Civil Rules of Practice as justifying his order, and in my opinion he is, in substance, right. Mr. Ramachandra Ayyar contends that this rule being in the Civil Rules of Practice has no application when one of the proceedings in question is a proceeding in a Magistrate's Court. These rules of practice, as is seen by their preamble, are to be applied only in Civil Courts, but here the matter which gives rise to the question is Original Suit No. 32 of 1913, a proceeding in a Civil Court, and I am not inclined to restrict the word "proceeding" in the earlier part of the rule to proceedings in a Civil Court when neither the language of the rule nor the preamble requires that limitation. It was further contended that the suit is not a matter connected with the

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proceeding before the Magistrate. I have had some doubt on this point, but I agree with Mr. Venkatrama Sastri's argument that the rule is not to be given too narrow a scope, and should be interpreted as liberally as its language will allow and I do not think it is very difficult to hold that Original Suit No. 32 of 1913 is a matter which, to use the words of HALL, V.C., in *Little* v. *Kingswood Collieries Company*(1), "flows out of" the former proceeding and "may be considered as something in the nature of a continuance of, or supplemental to," that proceeding. No doubt the title and not the possession is to be decided in the suit, but that does not affect the present question, for the mere fact that the questions to be decided are different will not necessarily involve the conclusion that the two proceedings are unconnected. The suit is that which was indicated in the Magistrate's order and so flows out of it; it was necessitated by that order, and it relates to the property with which that order was concerned and it is between the parties to that order.

In spite therefore of the lapse of three years between the one proceeding and the other, I am of opinion that the later is a matter connected with the earlier.

It was suggested at the end of his argument, though not taken as a ground in his petition, by Mr. Ramachandra Ayyar, that Rule 277 is *ultra vires* of the High Court in the sense that it is not founded on any section of the Legal Practitioners Act which gives power to make it. It may be that that is so, but I do not think it necessary to search the statutes for enabling powers in this case. I may take it for my present purpose that the rule merely defines the view of the High Court as to what will amount to a sufficient reason for punishing a pleader in the particular matter, that if a practitioner does not infringe the rule he will not lay himself open to punishment or reprimand even though he may not attain to that standard of fidelity which may seem desirable in persons professing to deserve the degree of confidence which must of necessity be placed in a legal practitioner by his client. Of course if a pleader be found as a matter of fact to have disclosed to one client secrets confided to him in his capacity of legal adviser by another that would give rise to different considerations, which would not depend

(1) (1882) 20 Ch. D., 733.

on the existence of a rule like rule 277 of the Civil Rules of Practice. Whether the two clients were ranged as opponents or not, such conduct would necessarily be grossly improper. Taking this view of the rule, I have to consider the further objection that the District Munsif had no jurisdiction to make the order he has made. The rule however clearly empowers the Court, *i.e.*, the Court in which the "connected matter" is under consideration to authorize or refuse to authorize the pleader to act, and I take the Munsif's order simply to amount toa refusal to give the necessary authority. If, in spite of the refusal, the pleader were to continue to act, it might be necessary to consider in what manner the District Munsif's authority is to be vindicated but it is not necessary to go into that question here. I do not suppose that any rule is necessary to enable a District Munsif, subject to correction by this Court, to refuse an audience to a pleader in a case in which that pleader by his very appearance is guilty of what will be viewed as professional misconduct, and that is all, as I understand the matter, that has been really done by the District Munsif here, though the District Munsif does not take exactly that view of it.

There remains the question whether the District Munsif ought to have authorised the pleader to act for the plaintiffs in Original Suit No. 32 of 1913.

Considering that a large number of documents of title were produced in the proceeding in the Magistrate's Court, it seems to me that it lay on the pleader to satisfy the District Munsif that in acting in that proceeding he did not as a fact obtain from his then client any knowledge which would be of use to his present clients, or that, if he did obtain any such knowledge then, such knowledge is now, so to speak, public property available to any pleader who can obtain inspection of the record of the proceeding in the Magistrate's Court. The pleader did not satisfy the District Munsif on these points and Mr. Ramachandra Ayyar did not satisfy me on them. As then in my opinion, the pleader has brought himself within the rule, I cannot say that the District Munsif has wrongly exercised his discretion in refusing him audience.

In declining to interfere on behalf of the pleader, I think I ought to observe that the District Munsif is probably right in holding that he is not guilty of misconduct involving any moral

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turpitude. It is not shown, that is to say, nor do I see any reason to suspect that he accepted the plaintiff's vakalat in order to make use of such knowledge formerly derived from the defendant, nor with any idea of making use of such knowledge. But the District Munsif is right in saying that he ought to have offered his services to the defendant before acting for the plaintiffs, and if it be objected that an unscrupulous defendant might easily in the circumstances have undertaken to employ him and then have refused after the plaintiffs had engaged some one else, one answer seems to be that practitioners must, even at some risk of sacrifice, refrain from taking up positions calculated to impair the confidence reposed in them by their clients; on grounds of policy if on no other ground this suggests itself as the better course.

The District Munsif made the pleader pay the costs of the argument before him, and I think he was right. In this Court too, as the pleader has persisted in his contention that the rule does not apply to him and so has necessitated argument in this case, he must pay the costs of the respondent.