SPECIAL BENCH.

Before Sir Walter Salis Schwabe, Kt., K.C., Chief Justice, Mr. Justice Coutts Trotter and Mr. Justice Krishnan.

In re AN ADVOCATE.

1923, August 20.

Article 10, *Letters Patent—Barrister—Advocate—Misconduct—Conviction in England for perjury—Disbarring in England—Motion in High Court four years after, to disbar—Matters for consideration.*

A Barrister who was enrolled as an Advocate of the Madras High Court in 1913 was convicted of perjury in England by the London Central Criminal Court and sentenced in 1918 to imprisonment for six months, which conviction and sentence were confirmed on appeal. The Benchers of his Inn thereupon disbarred him and expelled him from the Inn in 1919. On a motion under Article 10 of the Letters Patent, made in 1923 to disbar the Advocate;

Held (1) that the loss of the privilege of being a Barrister in England, though it was his only qualification for admission here as an Advocate, did not necessarily entail his disbarment in the High Court, (2) that the conviction pronounced after a fair and full trial, though by an English Court, should be recognized as valid by the High Court and (3) that though in these proceedings it was not open to question the propriety of the conviction the Court can, with a view to fix the *quantum* of punishment, look into the circumstances of the case and ascertain the degree of moral turpitude and extenuating circumstances, if any.

Held further that though, if the motion had been made soon after the conviction, the Court would have disbarred him, yet as it was made four years later, it was open to the High Court to take into consideration such matters as would be relevant on an application to reinstate a practitioner who has been disbarred.

An order of disbarment is not necessarily final or conclusive for all time; it is open to the Court to readmit a practitioner after a lapse of time, if satisfied that he has in the interval conducted himself honourably and that the sentence of exclusion has had the salutory effect of awakening in the delinquent a higher sense of honour and duty so that he might be safely entrusted with the affairs of his clients and admitted to an honourable profession without its suffering any degradation.

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Looking into all the circumstances of the case their Lordships suspended the Advocate from practice for a year.

It having come to the notice of the High Court, that Mr. *A*, an Advocate of the Court, and a member of Lincoln's Inn, had been convicted of perjury and sentenced (in 1918) to undergo six months' imprisonment by the Central Criminal Court, London, and that the said conviction and sentence were upheld by the Court of Criminal Appeal, that the said Advocate had been expelled and disbarred by the Benchers of the Lincoln's Inn (in 1919) and that their action had been upheld by a tribunal presided over by the Lord CHANCELLOR, the High Court, directed (in 1923) that the said Advocate be called upon to show cause why his name should not be removed from its rolls.

Further facts are given in the judgment.

Advocate-General (*C. Madhavan Nayar*) for the Crown.—Having been deprived in England of his position as a Barrister, the Advocate should be disbarred here also, as his only qualification for enrolment and practice here as an Advocate has been taken away. The propriety of the conviction cannot be questioned; *In the matter of Rajendro Nath Mukerji*(1). Perjury involves moral turpitude. A person who belongs to this honourable profession should be above suspicion; *Re Hill*(2), *In re Weare*; *In re the Solicitors Act* 1888(3).

The Advocate in person.—The conviction being by a foreign Court is not binding on this Court. The conviction is wrong. I was really innocent. I did not commit perjury. Even if I cannot question the propriety of the conviction the Court can look into the circumstances of the case to see the extent of the

(1) (1900) I.L.R., 22 All., 49 (P.C.).
(2) (1868) 3 Q.B.D., 543 at 548. (3) [1893] 2 Q.B., 439, 445, 446.

gravity of the offence and the circumstances under which it was committed. [For this purpose the Advocate then read the relevant evidence in the criminal case.] Conviction need not entail disbarment. Even a person once disbarred can be reinstated on account of subsequent good conduct. *In re Abiruddin Ahmed*(1), *In re Hara Kumar Chatterjee*(2). More than four years have elapsed since the conviction and on the certificates of good conduct given to me, I should not be disbarred.

F. S. Vaz for the Bar Association.

JUDGMENT.

SCHWABE, C.J.

SCHWABE, C.J.—*A* was called to the Bar by the Honourable Society of Lincoln's Inn in January 1913. He was admitted as an Advocate of this Court under the rule which includes among qualifications for such admission a call to the Bar in England. After his call to the Bar he remained in England for some time and practised there.

Unfortunately he became involved in matrimonial disputes arising out of his relations with two English ladies, one of whom he married and with the other of whom he went through a form of marriage. According to him it was valid under the Muhammadan Law, but it was clearly invalid according to the Law of England. It was alleged by the first of these ladies that he ill-treated and deserted her, and she in some way having got into communication with the editor of a newspaper, one Horatio Bottomley, the latter published a series of articles reflecting seriously on the character of *A*. He brought and himself conducted an action for libel based on these publications. At the hearing of that suit he

(1) (1910) 12 C.L.J., 625. (2) (1911) 14 C.L.J., 113.

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gave evidence and was cross-examined by Horatio Bottomley, a very skilled cross-examiner, who also conducted his case in person. The evidence given did not commend itself to the jury and *A* lost his case. He was subsequently prosecuted for perjury, in respect of the answers alleged to have been given under that cross-examination. He was convicted and sentenced to six months' imprisonment and on appeal the conviction was upheld. The matter came before the Benchers of his Inn, and after a full enquiry, it was decided by reason of that conviction he had been proved unfit to remain a member of that Honourable Society and he was disbarred and expelled therefrom. He appealed to his Majesty's Judges and his appeal was dismissed. The Lord Chancellor stated that it was impossible to allow a man who had been convicted of perjury to remain a member of the Bar, and although he hoped that the appellant having learnt his lesson and received his punishment might be able to lead an honest and successful life in the future, the tribunal could not interfere with the Benchers' decision. No steps were taken at the time to remove *A's* name from the roll of Advocates of this Court, and after a lapse of some years he commenced practice as an Advocate in Madras. The attention of the High Court having been called to these facts, he was called upon to show cause why his name should not be removed from the roll and he now appears to show cause.

In such cases the Court will not allow the propriety of the conviction and sentence to be questioned, but can and will enquire into the facts to ascertain the degree of moral turpitude involved and to form an opinion whether the legal practitioner in question should be removed or suspended or be otherwise dealt with. It has been argued before us that the rule as to not allowing

the propriety of the conviction and sentence to be questioned does not apply where the conviction took place in England and the application to the Court is in this country. I do not consider it necessary to consider how far this rule is applicable to cases of convictions in another country, though I concede that it is possible that, where the Criminal Law of the two countries differs in respect of the matters charged or in a case where it is alleged that there had not been a fair trial in some foreign country, the rule might be held not to be applicable. But, in this case, the law of the two countries is the same, and it is quite clear that A received a full and fair trial at the hands of the English Judge and Jury. Indeed, his own submission to the contrary is based on the admission of certain shorthand-notes of his cross-examination as evidence of answers given in respect of which the charge of perjury was brought. He suggested that such shorthand-notes were inaccurate and that the inaccuracy was intentional and due to corruption of the shorthand writers by Horatio Bottomley. It is a matter for regret that, in the stress of argument, he should have chosen to make such allegations which are entirely unsupported by evidence and which I am quite clear are unfounded. I am satisfied that he was rightly convicted, and it is therefore immaterial to consider whether or not we are bound, without enquiry, to accept the conviction as correct. If it is a matter upon which it is open to me to express an opinion, I must also say that I am quite satisfied as to the propriety of the decesion of his Benchers and of His Majesty's Judges. If an application had been made soon afterwards, in my judgment, on the facts of this case, no other order could have been properly made than that his name should be struck off from the roll of Advocates. I wish to guard myself from saying that this Court is

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bound to follow the decision of the Benchers of the Inns of Courts. I think it has, by the Letters Patent, a discretion vested in it, and it must in every case exercise that discretion itself, giving of course due weight to the views of the Benchers of a man's Inn in England.

But this case has not come before us immediately, but after the lapse of some years, and, in my judgment, it is open to this Court to consider the matter as it now stands, and to take into consideration such matters as would be relevant on an application to reinstate a man who has been disbarred. The law, I think, is quite clear that an order of disbarment is not necessarily final or conclusive for all time and that it is open to a Court to readmit a practitioner after a lapse of time, if it is satisfied that the practitioner has in the interval conducted himself honourably and that the sentence of exclusion has had the salutary effect of awakening in the delinquent a higher sense of honour and duty, so that he might be safely entrusted with the affairs of his clients and admitted to an honourable profession without its suffering degradation, and in such a case it is open to the proper tribunal to restore a man to the rolls whether he be a Barrister, Advocate or Attorney; *See Ex parte Pyke*(1) and the judgment of MOOKERJEE, J., in *In re Abiruddin Ahmed*(2). In this case we might strike off the name from the rolls and leave it to the practitioner to qualify himself again for admission by applying to his Inn for reinstatement. But *A* is here and not in England; he desires to practise here and not there and I do not think it would be right for us to avoid the responsibility of considering the matter ourselves by leaving the burden of the decision to the Benchers of his Inn. We have before us a considerable body of testimony that *A*

(1) (1865) 6 B. & S., 703; 122 E.R., 1354.
(2) (1910) 12 C.L.J., 625.

has led an honourable and reputable life since his return to this country. I think too we may take into consideration the fact that, although this crime of perjury did involve moral turpitude as a practitioner, at the time he was young and that he swore falsely under the stress of severe cross-examination and that it is a case where he was in fact defending himself from a very serious attack upon his character, and that he probably became somewhat unbalanced by reason of his matrimonial affairs in a foreign country, and his being involved in a mass of personal litigation resulting therefrom.

On the whole the justice of the case will be met by ordering that *A* shall be suspended from practice as Advocate for a period of 12 months, such time to run from the 26th February 1923, the date when he first appeared before this Court to show cause. The order will not be retrospective in effect and his suspension will be from now until February 26th, 1924.

COUTTS TROTTER, J.

COUTTS TROTTER, J.—My Lord the Chief Justice has set out the facts in relation to this gentleman, and I need not repeat them. But I think it is right that I should state in my own words my reasons for concurring in the course he has proposed, and I fully realize the serious responsibility which is cast upon us in this matter. It was at one time suggested that we were relieved of that responsibility on the ground that one of the qualifications necessary for the enrolment of an Advocate in this Court was that the applicant should be a member of the English bar, and that, as it is not suggested that Mr. *A* has or had any other qualification on ceasing to be a member of the English bar, he must *ipso facto* be removed from the roll of Advocates of this Court as being without qualification. I do not think that we are entitled so to evade the responsibility of determining for ourselves whether reasonable grounds exist for taking the step

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that we are invited to take by the Advocate-General in the name of the Bar, and I think that we are invested with a discretion which, however reluctantly, we must exercise for ourselves.

I agree that the actual conviction of Mr. *A* for perjury is a thing which we cannot allow him to go behind, and we must take it that he committed the crime for which he was tried and convicted. But I think we are entitled, indeed, are bound to look into the facts in order to form an opinion as to the degree of moral turpitude involved in a conviction on those facts. In doing so I am not called upon to express any opinion as to his relations with the two women in whose lives he involved himself. With regard to the first there seems reason to believe that he infected her with gonorrhœa soon after their marriage. There also seems reason to think that at the time of the marriage he quite honestly believed himself to be free from taint. With regard to Miss Ling, I confess myself unable to see that she had any legitimate cause of complaint against him. On her own admission she seems to have known all the facts relating to him and all the risks she ran in going through a form of marriage with him at the time when she commenced her association with him. But there can be no possibility of doubt that when cross-examined in the libel action which he brought against Mr. Bottomley he committed deliberate perjury by swearing that he was not the father of Miss Ling's child. He was foolish enough in this Court to suggest that the shorthand writers who recorded those answers were tools in the employment of Mr. Bottomley and that he never gave the answers they swore to from their notes. Such a suggestion cannot be entertained for a moment and I think it is quite clear that he did what is sometimes spoken of as "swearing by the card." I entirely and respectfully agree with

AVORY, J., that the sooner that "swearing by the card" is recognized and punished as perjury the better, and indeed there is a very old instance in the books where it was so punished.

At the same time I think that we are entitled to look at this man's position and see what he actually did. He was being persecuted by a ruffian who conducted a blackmailing journal whose activities are the more revolting because they were conducted in the hypocritical guise of a *censor morum*. Mr. *A* was practically a ruined man unless he could vindicate his character in an action for libel against that journal or its editor or both. He throughout maintained and maintains now that he regarded Miss Ling as being, according to the law of his own people and by every moral law, his wife. These are the circumstances in which he took the foolish and wrong step of swearing that he was not the father of Miss Ling's child. It was because, as he said, he regarded her not as Miss Ling but as Mrs. *A*. There is this to be said in extenuation for his doing so, namely that he was goaded and harassed by a relentless persecutor and that so far as I can see it was perjury committed not deliberately in furtherance of any fraudulent aim or to cause any injury to anybody else, but solely in self defence. No doubt its tendency was to pervert justice; and it even might have tended to put damages in his pocket to which his character did not entitle him; but I do not think that this consideration actuated him or was present to his mind. It was also I think inspired by the desire of trying to make by a verbal quibble a score off his opponent. I think his conduct is not inaptly described in the document which is signed by an Indian gentleman of position who has written on his behalf as "conceit and legal lunacy." Perjury is an offence the gravity of

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which I do not seek to minimise, especially when committed by a member of the bar who knows its full import. At the same time it has many degrees of gravity, and I think there is much to be said in extenuation of the offence committed by Mr. *A*. I am the more inclined to take this view as in the latter part of his address to us Mr. *A* practically abandoned the foolish attempt to argue against the propriety of his conviction and in effect threw himself upon the clemency of the Court.

The much greater difficulty which has pressed upon me throughout and presses upon me still is the gravity of the position of our appearing to act contrary to the action of the Benchers of Lincoln's Inn who disbarred him, and the very eminent judges who confirmed that sentence. In view of certain arguments that were addressed to us by Mr. *A*, arguments to my mind both injudicious and pernicious, I wish to make my attitude on one point as clear as I can make it. I utterly dissent from the view that any different standard of conduct or character is required from a barrister of Indian race to a barrister of English race. I equally strongly dissent from the view that a different standard of honour should be held to exist for a practitioner at the English bar of whatever race and the practitioners of this Court, whether barristers or vakils. I am jealous of the honour of the bar which practises before me, as I am proud of what I believe to be its high standard of professional conduct, and I resent as keenly, as I feel convinced that that bar would resent, any suggestion that the standard of honour that it strives to maintain and which it would wish this Court to uphold is in any respect lower than the standard demanded from practitioners at the English bar. So far from thinking that any prejudice was imported into any of the proceedings in England by reason of Mr. *A*'s race, I think

that all those who investigated the case were clearly actuated by an insistent desire to make such allowance both for his race and his religion as probably told considerably in his favour.

My reasons for taking the undoubtedly strong course we are taking of allowing this gentleman to continue to practise in these Courts are the following. In the first place I think that he has been very severely punished already for what he did. I think it is to his credit that for a number of years he has acquiesced in that punishment and has only recently sought once more to seek his livelihood in what he tells us—I see no reason to question his statement—is the only vocation in which by his training and associations he is able to earn a living. In the next place it does weigh with me very greatly that Viscount Cave, a lawyer of the greatest eminence and now Lord Chancellor, when Home Secretary, thought fit to order his release immediately on the rejection of his appeal against his conviction. It also weighs with me greatly that a very large number of documents have been put before us, including a memorial signed by a large number of well-known practitioners of this Court, men mostly of a different race and creed to his own, who all concur in the view that he has sufficiently purged his conduct, that this episode is a blot on a previously honourable career, that he is fit to be associated with them in their profession, and that therefore they recommend him to the favourable consideration of this Court. Finally I do not conceal my view that it is much extenuation of his most reprehensible conduct that it was committed under the goad of a relentless persecution for the mere purpose of public notoriety by one of the foulest pests that has ever infected English society. Perhaps I may make my position clear by putting it in this way. If this Court

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were invested with jurisdiction to re-admit him as a member of the English bar, which it is not, I should consider that he had purged his offence and was fit to resume the privileges which he justly lost. As that is my opinion, it logically follows that I must say as I do that he is entitled under the conditions which my Lord has laid down to be permitted once more to practise as an advocate of this Court.

KRISHNAN, J.

KRISHNAN, J.—In this case the learned Advocate-General has applied to us to exercise our disciplinary powers under the Letters Patent and to remove the name of Mr. *A*, an advocate of this Court, from the roll of advocates for the reason that he was convicted of perjury by the Central Criminal Court in London, a conviction which was confirmed on appeal, and he was disbarred subsequently by the Benchers of his Inn (Lincoln's Inn) by reason of that conviction, their order being confirmed by His Majesty's judges on appeal.

Mr. *A* was called upon to show cause why this application should not be granted. He did not deny the facts stated by the Advocate-General but he raised certain contentions in answer which I shall consider. The first point he tried to make was that he was wrongly convicted and that we should examine the facts of the perjury case against him and decide for ourselves whether his conviction was right or wrong. Now it is laid down by the Privy Council in *In the matter of Rajendro Nath Mukerji*(1) that in an inquiry into the conduct of a practitioner under the Letters Patent the propriety of a conviction and sentence could not be questioned though the facts of the case might be considered to see whether the culpability of the individual concerned was such as to disqualify him for his

(1) (1900) I.L.R., 22 All., 49 (P.C.).

profession. Sir RICHARD COUCH who delivered their Lordships' judgment in that case quotes and follows the following observations of Lord MANSFIELD in *Ex parte Brounsall*(1).

"This application is not in the nature of a second trial or a new punishment. But the question is whether after the conduct of this man it is proper that he should continue a member of a profession which should stand free from all suspicion and it is on this principle that he is an unfit person to practice as an attorney. It is not by way of punishment, but the Courts in such cases exercise their discretion whether a man whom they have formerly admitted, is a proper person to be continued on the roll or not."

The Court would not as a matter of course strike a man off the rolls because he has been convicted, but will examine the case to see in what manner its discretion should be used. It will not however examine the propriety of the conviction on the merits.

It was argued in answer by Mr. *A* that these principles could not be applied to his case as he was convicted not by a Court in India but by an English Court which according to him is in the position of a foreign tribunal. I am unable to accept this argument. No authorities have been cited in support of it. In a matter of disciplinary jurisdiction which we are now exercising the English Court cannot, in my opinion, be put on the same footing as a foreign Court. It is because Mr. *A* was a Barrister of England that he was admitted as an advocate here. The question whether he should be continued as an advocate here stands on much the same footing as the question whether he should be allowed to continue as a Barrister in England and if, for the purpose of deciding the latter question, the principles stated in *In the matter of Rajendro Nath Mukerji*(2)

(1) (1778) 2 Cowp., 830; 98 E.R., 1385. (2) (1900) I.L.R., 22 All., 49 (P.C.).

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apply to judgments of English Courts, as they clearly do, there is no reason not to apply them for the purpose of deciding the former question. The question whether these principles will apply when the judgment relied on is really that of a foreign tribunal and, if so, subject to what conditions they will apply is a difficult one on which I express no opinion, as it has not been properly argued before us.

Even assuming that we should go into the facts and decide if Mr. *A*'s conviction for perjury was right, there can be no doubt that it was. The only substantial argument addressed to us on the point to suggest that his conviction was wrong was that he did not utter the words regarding which he was charged with perjury but that what he swore to, was somewhat different in effect. If there was any substance in this suggestion it would have been put forward as the main ground of defence in the perjury trial. On the other hand the shorthand writers who were called as witnesses to prove what Mr. *A* had sworn to in the libel action and who proved the words used by him were not cross-examined at all. The suggestion now made, therefore, appears clearly to be an after-thought and cannot in my opinion be accepted for a moment.

Finding that Mr. *A* did commit perjury what action should we take against him? The learned Advocate-General in the course of his argument suggested that as Mr. *A* was admitted as an advocate here solely on the ground of his being a Barrister in England, his disbarment in England should, as a matter of course, lead to his being removed from the list of advocates. He contended that the continuance of his qualification as a barrister was necessary for the continuance of his status as an advocate, he not having any other qualification for it.

The point is an important one but was not properly argued by either side. No authorities or precedents were cited. Giving it the best consideration I can, I have come to the conclusion that the Advocate-General's argument is not sound. No doubt it is true that it was the fact that he was a barrister that enabled Mr. *A* to get enrolled as an advocate here and that if he were now to apply to be enrolled he could not be admitted as he is not a barrister now. But on being enrolled here in 1913 we must hold that he obtained the status of an advocate here. And under the Letters Patent we can interfere with that status by removing or suspending him only for sufficient cause shown. We have to exercise our judgment in each case on the facts placed before us and decide whether sufficient reason has been made out to take action and, if so, what action we should take. To adopt the Advocate-General's suggestion would be to allow the Benchers in England effectively to control our discretion in the matter though indirectly. That does not seem to me to be right. We are not bound by the action of the Benchers any more than they are bound by ours. Though in most cases we should and would follow the action taken by the Benchers, I cannot accede to the argument that we should do so in every case.

In the present case we have to consider not merely the facts which existed when the Benchers took action four years ago but also all that has transpired since. As pointed out by the learned Chief Justice the position now is very much the same as if Mr. *A* had made an application for reinstatement as a barrister. It is settled that such applications are competent even if a man has been altogether struck off the rolls. See *Ex parte Pyke*(1), *In re Abiruddin Ahmed*(2) and *In re*

(1) (1865) 6 B. & S., 703; 122 E.R., 1354. (2) (1910) 12 C.L.J., 625.

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Hara Kumar Chatterjee(1). In that view we must see how the matter stands. Perjury is a serious offence and undoubtedly involves great moral turpitude; it is all the greater in the case of practitioners as it is their duty whether Englishmen or Indians to maintain the purity of the administration of the law. There can be no difference in this matter between the English and the Indian practitioner or between England and India. The standard of conduct expected from the practitioner is of course the same in both the countries, be he an advocate, a barrister or a member of any other branch of the profession. I therefore agree with the learned Chief Justice in thinking that if the facts of this case had been brought to our notice at the time when the Benchers took action, our proper order would have been to strike off Mr. *A*'s name from the roll of advocates. But as I have already observed the position is not the same now and we have to consider whether it is necessary now to adopt the extreme measure of striking him off the roll or whether a more lenient order will not meet the ends of justice and the exigencies of the situation.

More than four years have passed since Mr. *A* was disbarred in England. During all these years there is reason to suppose that he has led an honourable life. He has been able to obtain and place before us numerous certificates from eminent persons both here and in England testifying to his good conduct. He has also produced a memorial signed by a large number of his brother practitioners saying that he is a fit person to continue at the bar and asking that he may be so continued. At the end of the argument he acknowledged his error and threw himself on the mercy of the

(1) (1911) 14 C.L.J., 113.

Court and it may be reasonably inferred that he can be trusted to behave honourably hereafter. In spite of all this I should have hesitated to take too lenient a view of the case as the offence is such a serious one. But the learned Chief Justice has taken a lenient view of the case and in a matter like this of the exercise of our disciplinary jurisdiction I do not feel called upon to differ from his Lordship and to insist on more drastic action being taken. I therefore concur in the order proposed by my Lord the Chief Justice.

N.R.

APPELLATE CIVIL—FULL BENCH.

Before Sir Walter Salis Schwabe, Kt., K.C., Chief Justice, Mr. Justice Coutts Trotter and Mr. Justice Krishnan.

VIZAGAPATAM SUGAR DEVELOPMENT COMPANY, LTD., AND ANOTHER (APPELLANTS), DEFENDANTS,

1923, August 2.

v.

MUTHURAMAREDDI AND TWO OTHERS (RESPONDENTS), PLAINTIFF AND ADDITIONAL RESPONDENTS.*

Part-performance—Contract to sell land worth more than Rs. 100 *—Payment of consideration and delivery of possession—Suit by vendor to eject purchaser for want of conveyance—Part-performance and right to specific performance, good defences—Section* 54, *Transfer of Property Act* (*IV of* 1882) *—'Sale' and 'Price,' meaning of.*

A agreeing to sell his lands worth more than Rs. 100, to *B*, received the consideration and put *B* in possession but did not execute a conveyance. In a suit by *A* to eject *B* from the lands, based on the want of a conveyance;

* Appeal No. 106 of 1921.