

## SPECIAL BENCH.

*Before Sir Murray Coutts Trotter, Kt., Chief Justice,  
Mr. Justice Krishnan and Mr. Justice Beasley.*

*In re A VAKIL.*

1925,  
October 6.

*Professional misconduct—None where mere negligence and no  
moral delinquency—Clause 10 of Letters Patent.*

Mere negligence unaccompanied by any moral delinquency on the part of a legal practitioner in the exercise of his profession does not amount to professional misconduct. *In re G.M.C. (1889)*, 33 S.J., 397, followed.

The facts appear from the following notice issued by the High Court:—

“A complaint having been made to the High Court by S. Ponnusami Pillai, Contractor, and agent of C. Thayarammal, appellant in A.S. No. 267 of 1921 on the file of the Court of the Subordinate Judge of Chittoor (A.S. No. 119 of 1921 on the file of the District Court of Chittoor) and dharmakartha of Appukkutti Pillai Choultry of Renigunta, residing at No. 29, Perumal Mudali Street, Puddappakkam, Madras, against Mr. M., B.A., B.L., High Court Vakil, practising at Chittoor,

(1) that the said Mr. M. having been engaged as vakil of the said C. Thayarammal in the said Appeal Suit No. 267 of 1921 on the file of the Court of the Subordinate Judge of Chittoor preferred against the decree of the Court of the District Munsif of Madanapalle in Original Suit No. 309 of 1920, and having been put in possession of enough funds, failed to take the necessary steps to get in time certified copies of the judgment and decree in the said Appeal Suit No. 267 of 1921, for enabling the said C. Thayaramma to prefer a second appeal to the High Court and thereby deprived her of the right of second appeal, and (2) that therefore the said Mr. M. neglected his duty towards his client the said C. Thayarammal who, in consequence, suffered serious loss and damage and that thereby the said Mr. M. rendered himself liable to be dealt with under the disciplinary jurisdiction of the High Court for unprofessional conduct, the High Court, under section 10 of the Letters Patent, directed that the said vakil, Mr. M., be called upon to show cause why he should not in the circumstances

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stated be removed from the roll of vakils of the High Court, or be otherwise dealt with for his unprofessional conduct mentioned above."

*Advocate-General for the Crown.*—In this case what is proved is only negligence of a clerk who later on manipulated the accounts in order to deceive his master (the vakil). No professional misconduct on the part of the vakil is proved, nor any moral turpitude. The vakil offered from the beginning to make sufficient amends to the client; but the client's demand seems to have been excessive.

*T. R. Ramachandra Ayyar* for the Vakils' Association.— Mere negligence like this is not professional misconduct.

*P. Venkataramana Rao* for the vakil, was not called upon.

The JUDGMENT of the Court was delivered by

The CHIEF JUSTICE.— The charges framed, if they were substantiated, would prove no more than negligence on the part of the vakil's clerk. It is only fair to the vakil to say that he has throughout accepted civil responsibility for his clerk's negligence to the extent of any proved loss in consequence of it by the client. But it has been laid down clearly in England in the case of *G.M.C.* (in the proceedings against *MAYOR COOKE*, a solicitor)(1) and also by a Bench of this Court in a judgment delivered on the 7th December 1923 in the matter of *T. C. K. Kurup, Bar.-at-Law, Advocate, High Court, Madras*, the Court consisting of the then CHIEF JUSTICE, PHILLIPS and RAMESAM, JJ., that negligence by itself is not professional misconduct; into that offence there must enter the element of moral delinquency. Of that there is no suggestion here, and we are therefore able to say that there is no case to investigate, and that no reflexion adverse to his professional honour rests upon Mr. M.

N.R.

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(1) (1889) 33 S.J., 397.