

## APPELLATE CIVIL—FULL BENCH.

Before Sir Owen Beasley, Kt., Chief Justice, Mr. Justice Reilly  
and Mr. Justice Sundaram Chetty.

## IN RE A FIRST GRADE PLEADER.\*

1931,  
January 19.

*Legal Practitioners' Act (XVIII of 1879), sec. 13 (b) and (f)—  
Legal practitioner—Duty of, to Court and his client—False  
representation to Court for the purpose of impeding the  
course of justice—Misconduct.*

A legal practitioner has not only got a duty to his client but he has got a duty towards the Court and it is his duty to see that the case is fairly and honestly conducted.

If a legal practitioner, deliberately for the purpose of impeding the course of justice, makes a statement to a Court which he knows or believes to be untrue and thereby gains an advantage for his client, he is guilty of grossly improper conduct and, as such, renders himself liable to be dealt with by the High Court.

PROCEEDINGS under section 13 (b) and (f) of the Legal Practitioners' Act calling upon a First Grade Pleader to show cause why he should not be dealt with under the disciplinary jurisdiction of the High Court for his grossly improper conduct in the discharge of his professional duty in that he, in his capacity as Pleader engaged for the accused in Calendar Case No. 606 of 1929 on the file of the Court of the Sub-Magistrate of Polur, applied for adjournments of the said case on 8th February 1930, 27th May 1930 and 24th June 1930 on the ground that he would move the High Court for a transfer of the said case and, having secured the grant of these adjournments, he took no steps to move the High Court, and that he withdrew from the said case on 7th July 1930 without offering any explanation therefor, and that his applications for adjournments were not *bona fide* but were made only with the object of prolonging the

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case unnecessarily and defeating the ends of justice, and that he thereby rendered himself liable to be dealt with under the disciplinary jurisdiction of the High Court.

*Advocate-General (A. Krishnaswami Ayyar) for the Crown.*—I concede that indiscretion or error of judgment in a legal practitioner should not be visited with serious penalty. Personal equation plays an important part in such matters. Intention is the test. Did he act in good faith when he applied for adjournments? Even one instance of grossly improper conduct must be punished.

*L. A. Govindaraghava Ayyar for the practitioner.*—The practitioner is a junior member of the bar. This case is one of mere error of judgment and as such cannot be brought under the disciplinary jurisdiction of the High Court. Good faith should be presumed. The Act requires that the practitioner should be guilty of fraudulent or improper conduct before he can be visited with any penalty. Misconduct has got to be proved and not inferred, *Dogar Mal v. P, a pleader*(1). In cases of this sort, the pleader's conduct should be viewed leniently, *In the matter of three Vakils of Jhansi*(2). The prolongation of the trial by ten months was not due to the pleader's conduct but to causes beyond his control.

### JUDGMENT.

BEASLEY C.J.—This matter comes before us under section 13 (b) and (f) of the Legal Practitioners' Act. The charge against the legal practitioner here is that, on three different occasions, he applied for adjournment in the Court of the Sub-Magistrate at Polur on the ground that the High Court would be moved for a transfer of the case and that he took no steps at all on those occasions either himself or by means of his client to move the High Court. It is charged against him that he applied for those adjournments with the deliberate intention of delaying the course of justice. I am quite satisfied that, if it is proved against a legal practitioner that he, deliberately

(1) A.I.R. 1930 Lah. 947.

(2) A.I.R. 1928 All. 896 (S.B.).

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for the purpose of impeding the course of justice, makes a statement to a Court which he knows or believes to be untrue and thereby gains an advantage for his client, he is guilty of grossly improper conduct and, as such, renders himself liable to be dealt with by the High Court. In this case, of course, it is not suggested that he has been guilty of fraudulent conduct in the sense that the word "fraudulent" is usually used, but it is alleged that his conduct has been grossly improper. The three dates upon which the legal practitioner applied for adjournments are the 8th February 1930, the 27th May 1930 and the 24th June 1930. His client was charged with the offence of criminal breach of trust. On the 4th October 1929 appearance was entered on behalf of the accused person by the legal practitioner in this case. Previous to this the accused, in the Magistrate's Court, had obtained an adjournment and actually presented a petition to the District Magistrate which was rejected. After the legal practitioner had entered his appearance on behalf of his client, the client applied for adjournments twice on his own behalf for the purpose of moving the High Court and one adjournment was granted and the other refused but on neither occasion were any steps taken to move the High Court and it is highly improbable that the practitioner was unaware of this. Then we come to the three occasions upon which the practitioner himself, on behalf of his client, presented petitions for adjournment. The first, as I have already stated, was on the 8th February of this year. The reason assigned then for an adjournment for the purpose of moving the High Court was, because it was contended on behalf of the accused that the offence with which the accused was charged was not one of criminal breach of trust but one of cheating under section 420, Indian Penal Code, and that the Sub-Magistrate of Polur had therefore no jurisdiction to

entertain that charge. An adjournment was granted for the purpose of taking that question up to the High Court but no steps were taken either by the legal practitioner or by his client. Then on the 27th May one of the defence witnesses was available in Court and ready to be examined. But the accused did not wish that witness to be examined as the other defence witnesses were not ready and an adjournment was asked for, for the purpose of having all the defence witnesses summoned and examined on the same day. That application was refused by the Magistrate. Then an adjournment was asked for by the legal practitioner for the purpose of making an application to the High Court against that order and it was granted. It does not seem to me to have been reasonable to ask for an adjournment of the case to some future date in order to examine all the defence witnesses. One of the defence witnesses was there and he could have been examined, but it has been stated, on behalf of the legal practitioner, by Mr. L. A. Govindaraghava Ayyar, that it was probably because it was thought more convenient to call the defence witnesses in a certain order. However that may be, no steps were taken to move the High Court in the matter, so that, we have here the second occasion on which the legal practitioner asked for an adjournment for a purpose which was never carried out. The third occasion was on the 24th June of this year. The case had been adjourned for hearing to the 21st June by the Sub-Magistrate and on that date the accused sent a telegram stating that he was ill and unable to attend Court. The Magistrate who had, by this time, formed a reasonable opinion with regard to the tactics being pursued by the accused would not accept that statement or the telegram or the excuse, and ordered the accused to be brought to Court on a non-bailable warrant, and he was produced in Court on the 24th June.

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With him came a medical certificate, granted by a local dispensary, showing that the accused had attended as an out-patient of that dispensary on the 21st June, the very day when the case should have been taken up by the Magistrate ; but the nature of the illness from which the accused in that case was suffering was not stated in the certificate. With that certificate before him and the previous history of the case in his mind, the Magistrate refused to grant bail to the accused. Thereupon he was again asked by the practitioner for an adjournment, again for the purpose of moving the High Court. That, he refused to grant, but later on, in the same day, he granted an adjournment for fourteen days for the purpose of the High Court being moved. After thirteen days had elapsed, and no steps whatever had been taken to move the High Court, the practitioner withdrew from the case. That was on the 7th July 1930. The charge against the practitioner is that he was not acting *bona fide* in the matter and that he knew perfectly well, when he asked for adjournments for the purpose of moving the High Court and obtained them, that that purpose was not going to be carried out, and that he therefore impeded the course of justice. This, of course, is not a matter of direct evidence at all. One cannot look into the mind of the practitioner and say how much he knew, how much he did not know or, what his intention was. His intention has to be gathered from the circumstances of the case, and, if the inference is so strong that it leads us to the conclusion that he knew perfectly well, when he asked for adjournments and obtained them, that the purpose for which the adjournments were asked was not going to be carried out, then, he has been guilty of grossly improper conduct. The facts of the case here are that, to the practitioner's knowledge, obviously, before he himself commenced asking for adjournments, his client

had twice asked for adjournment for the purpose of moving the High Court but had taken no steps whatever in the matter. Then he himself asked for an adjournment for a similar purpose and that purpose was not carried out. That was repeated a second time and it was repeated a third time. With the knowledge the legal practitioner had before him of what his client had done before he ever started making applications on his behalf, and with the knowledge that on the first occasion on which he himself gained an adjournment, no attempt was made to move the High Court, nor on the second occasion, nor on the third occasion, the inference is well nigh irresistible that he knew perfectly well, when he asked for the adjournment, that he was putting forward a misrepresentation for the purpose of gaining a benefit for his client, and that the High Court would never be moved by him. In his written explanation he says that he did this on the instructions of his client. He seems to think that it is the duty of a legal practitioner blindly to follow every instruction his client gives him. That is an entire misapprehension of the duty of a legal practitioner. He has not only got a duty towards his client but he has got a duty towards the Court and it is his duty to see that the case is fairly and honestly conducted. He must not trick or deceive the Court or attempt to gain for his client an advantage by dishonest means. To attempt to obtain adjournments by misrepresentations and to put forward a purpose which the legal practitioner knows will never be carried out is to attempt to gain and to gain an advantage by a trick and a very dishonest one too. It is to be noted also that in his written explanation he says that he withdrew from the case because his client was in want of funds and that his client's creditors were pressing him on towards insolvency. That must mean that, if his client had not been in need of funds and his creditors had not been

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pressing him towards insolvency, he would have remained in the case as his legal practitioner. Before the District Magistrate, upon whose report this case has come before us, a totally different explanation was given, namely, that the practitioner then realized that his client's conduct was not *bona fide*. It need hardly be pointed out that these two explanations appear to be quite contradictory. In my view, the charge against the legal practitioner has been proved and amounts to grossly improper conduct and for that conduct he must be punished. This is, so far as I know, the first case of this kind that has ever been before this Court and I do not think that we should make a very serious example of the Pleader. I think that one very useful purpose will have been achieved by it being brought home to some of the members of the legal profession that they are under a duty to the Court. They must not mislead the Court. They must not ask for adjournments for their clients when they know that the reasons they are putting forward are untrue or have reason to believe are untrue. They must only make applications which they believe to be well-founded. I think that this case will certainly serve a very useful purpose in bringing to the notice of legal practitioners, the majority of whom, of course, I feel sure, do not require such a thing to be brought to their notice, that this is not conduct which can be tolerated by the High Court. The punishment which in my opinion should be inflicted upon the Pleader is that he be suspended from practice for a period of three months.

REILLY J.—I agree.

SUNDARAM CHETTY J.—I agree.