MURUGAPPA CHETTI v. OFFICIAL ASSIGNEE, MADRAS.

Achi should be allowed ; that the order of the appellate Court, dated 30th August 1933, should be set aside and that of the lower Court, dated 9th May 1932, restored ; and that the appeal of the Official Assignee should be dismissed. The costs both in the High Court and before this Board must be paid by the Official Assignee.

Solicitors for appellants : *Douglas Grant & Dold.*

Solicitors for respondent : *Burton, Yeates & Harte.*

C.S.S.

APPELLATE CIVIL—FULL BENCH.

Before Sir Owen Beasley, Chief Justice, Mr. Justice Mockett and Mr. Justice Horwill.

1937, April 21.

IN THE MATTER OF A FIRST GRADE PLEADER, VIZAGAPATAM.*

Legal Practitioners Act (XVIII of 1879), sec. 13 (b) —Legal practitioner—Misconduct—Use of client's money temporarily for practitioner's own purposes—Professional misconduct, if —Absence of intention to defraud client—Subsequent agreement between practitioner and client for restoration of money by former and for receipt thereof by latter—Effect of.

A legal practitioner who has intentionally used his client's money for his own purposes without his client's permission does so wrongfully and is guilty of professional misconduct, and it is not necessary to prove an intention to defraud his client, the temporary conversion of his client's money being quite sufficient. When once such an act of professional misconduct has been committed, any subsequent agreement by the legal practitioner to restore the money and by his client to receive it back does not make the act any the less one of professional

* *In re* A First Grade Pleader.

misconduct though the subsequent restoration of the money may have some bearing on the question of punishment. When a case of professional misconduct has been brought to the notice of the Courts, the charge cannot be permitted to be "squared".

PROCEEDINGS under section 13, clause (*b*), of the Legal Practitioners Act, calling upon a First Grade Pleader, Vizagapatam, to show cause why disciplinary action should not be taken against him for his grossly improper conduct in the discharge of his professional duty.

The facts of the case are set out in the judgment.

R. Ramamurti for *Advocate-General* (*Sir A. Krishnaswami Ayyar*) for the Crown.—The client's money was with the legal practitioner. He used it for his own purpose without the consent of the client. Registered letters were written by the client to return the money. There was no reply and the money was not returned. This is clearly professional misconduct. It may be that afterwards the client and the Vakil have adjusted the matter. Even then, it is misappropriation, though temporary. When a case of professional misconduct has once been brought to the notice of the Court, the client cannot be permitted to withdraw the charge.

Kasturi Seshagiri Rao for the practitioner.—No doubt it was wrong of the legal practitioner to use his client's money for his own purpose. But he had no fraudulent or dishonest intention. He wanted to return the money to the client later on. To go to a village in West Godavari in connection with his father-in-law's sudden death, he spent the money. He *bona fide* thought that his client would approve of the diversion of the fund for that purpose. The client asked him to hand over the papers in the case to another Vakil to conduct the litigation. Not knowing the reason for it, he wanted to make the client go over to him. That was the reason for his not replying to the letters. Subsequently the matter was amicably settled by the parties. So the client should be allowed to withdraw the charge. At least that circumstance may be considered in awarding punishment.

Cur. adv. vult

A FIRST GRADE PLEADER, *In re.*

BEASLEY C.J.

The ORDER of the Court was delivered by BEASLEY C.J.—These proceedings relate to a sum of Rs. 70-10-0 which belonged to one Aletti Mallikarjunudu, a client of the respondent (pleader) and which sum the respondent by a letter of 4th February 1934 (Exhibit A-3) admitted that he had in his possession. The respondent did not return that money to his client in spite of repeated requests in writing to do so and eventually the client sent a registered letter of demand on 24th December 1934 which the postal acknowledgment shows was received on 2nd January 1935 by the respondent. This registered letter, however, did not produce any reply. A further registered letter was sent to the respondent on 14th March 1935 demanding the return of Rs. 65 within four days and telling him to hand over the papers in the suit to another Advocate at Vizagapatam and that he was to take no further steps with regard to this suit. This letter is shown by the postal acknowledgment to have been received by the respondent on 19th March 1935. No reply was made to this letter also. Eventually on 11th June 1935 a petition against the respondent was presented to the District Munsif of Vizagapatam by the client, A. Mallikarjunudu, setting out the facts and stating that the petitioner believed that the respondent had appropriated his funds for his own needs. He further charged him with not opposing an insolvency petition filed by the judgment-debtor in the suit, in which the respondent had acted on the petitioner's behalf, in spite of his instructions. Subsequently the petitioner met the respondent in October 1935 and then the latter admitted that he had used the money temporarily

for his own sudden and unforeseen private purpose, namely, for his journey to a village in West Godavari in connection with his father-in-law's sudden death and said that he thought that the petitioner would not mind his using the money for such a sudden private purpose. It appears that the petitioner after this explanation readily forgave the appropriation of the money and it was arranged that of the amount owing, Rs. 40 was to be paid in cash and the remaining Rs. 30-10-0 should be kept by the respondent in payment of future professional work to be done by him. The Rs. 40 cash payment is represented by payments in two instalments of Rs. 20 each in October 1935. Subsequently an endorsement was made on Exhibit A-4, which is the copy of an account furnished by the respondent to the petitioner on 4th February 1934, as follows :—

"The matter has been adjusted, and it need not be pressed."

There seems to be some confusion with regard to this endorsement, which is Exhibit A-7, as the District Judge states in his report that when asked by his predecessor Mr. Lancashire on 22nd July 1936 about his petition the petitioner endorsed on it that the matter had been adjusted and the petition was not pressed. It would appear from this that the endorsement was made upon the petition and not on Exhibit A-4. However, that is immaterial. The position at that time was, therefore, that the respondent had had in his hands money belonging to his client for a considerable time and that in spite of repeated demands he did not return the money to him but instead, upon some date about which no information has

A FIRST GRADE PLEADER, *In re.*

BEASLEY C.J.

been given by him, used his client's money for his own purposes and did so without having first of all obtained his client's permission to do so or told him about it after he had done so. This was, therefore, a clear case of the wrongful use for his own purposes by a legal practitioner of his client's money ; and it is obvious that the money was so used because the legal practitioner had not sufficient money of his own. That these facts disclose a case of professional misconduct is obvious ; and although the respondent may have been accused by the client of fraudulently and dishonestly using the money, it is not necessary that fraud or any other criminal offence should be proved. It is sufficient if it is shown that a legal practitioner has intentionally used his client's money for his own purposes without his client's permission ; and it is quite unnecessary to consider whether he did so with any intention of defrauding his client. He may have every intention of restoring the money to his client later on but he is nevertheless guilty of professional misconduct in converting the money to his own use even temporarily. It is not out of place to observe that it is probable that in most cases which end disastrously for persons entrusted with the money of others there is an original intention to restore the money. The clerk entrutsed with his master's money may gamble with it hoping that the gamble will be successful in which case he returns his master's money and his master remains in ignorance of the use to which it was temporarily put. But gambles are not so often successful and the money cannot be returned and disaster is the result. Legal Practitioners who

have in their hands the money of their clients must under no circumstances utilise that money for their own purposes without the sanction of their clients; and even to take a loan from a client is undesirable, so much so that in the "Instructions to the Members of the Bar issued by the (Madras) Bar Council, dated 2nd April 1933", it is laid down:

> "Practitioners should avoid arrangements by which clients' moneys in their hands are converted into loans. But in no case should such conversion be made without the previous consent in writing of the client."

This instruction was given in pursuance of views expressed by the Judges of this High Court. That being so, how is the charge of misconduct affected by the amicable settlement of the matter come to between the petitioner and the respondent once such an offence has been brought to the notice of the Court? The answer is that, when once an act of professional misconduct has been committed such as the one here, any subsequent agreement by the legal practitioner to restore the money and his client to receive it back does not make the act any the less one of professional misconduct, though the subsequent restoration of the money may have some bearing on the question of punishment. When a case of professional misconduct has been brought to the notice of the Courts, then the charge cannot be permitted to be "squared". Clients whose money legal practitioners have wrongly utilised have no interest at all except to get their money back and, if they do, are quite prepared to withdraw the charges. They are not in the least degree interested in any rules of professional conduct, although many of these are framed for the benefit

A FIRST GRADE PLEADER, *In re.*

BEASLEY C.J.

of the public, nor do they care anything about the prestige and honourable name of the legal profession ; and where the disciplinary functions of the Courts have been invoked and the money has been returned to them, they are not interested in the control of the Courts over legal practitioners. This however is the concern of the Courts ; and mere restoration of the money to the client by a legal practitioner who has improperly used it for his own purposes cannot be any ground for allowing the withdrawal of such a charge. The Court's concern is to exercise its control over legal practitioners who have converted their clients' money to their own use ; the client's concern is to get his money back. We have dealt with this topic at some length because it has been made clear to us not only in these proceedings but in similar proceedings that there is an impression that charges like this when they have once been made to the Court, can be "squared" in the same way as this obviously has been ; and we are all the more constrained to say what we have, because it appears to us that to some extent the District Judge is under the same misapprehension. He finds that the legal practitioner appropriated this money to his own sudden and unexpected private use in the *bona fide* belief that his client would not mind it in the circumstances and without any fraudulent or dishonest intent to misappropriate the amount and further that he foolishly detained the money and failed to reply to his client's letters owing to his pique at another Vakil having been engaged and was expecting his client to go to him in person and was intending to return the money then after

some rebuke for having engaged another Vakil. He thinks that the legal practitioner believed that his client would approve of this diversion of his funds for his own private purpose in the special circumstances and that this cannot be said to be wholly unreasonable in view of the relationship as lawyer and client and the sudden death and the consequent urgent journey rendered necessary by it, and indeed his client's readily forgiving the diversion is itself proof, he thinks, of the reasonableness of the legal practitioner's belief. In other words, in order to escape serious consequences of his conduct a legal practitioner who converts his client's money to his own use has only got to say that he thought that his client would not object to its use in that way and subsequently by agreeing to repay the money to his client obtain his client's forgiveness. The District Judge in the end certainly says that the legal practitioner deserves to be severely censured for utilising his client's money for his private use without having previously obtained his client's permission to do so. We are quite unable to understand why in the circumstances of this case the District Judge should think that the legal practitioner's belief that his client would not object to the use of his money by him was reasonable or even *bona fide*. The circumstances to which we refer are his studied neglect to tell his client that he had done so or to comply with his client's demands to return the money or even to reply to them and his obvious difficulty in repaying only a part of the money in October 1935. The reasonableness of the legal practitioner's belief and his *bona fides* at the time when he so

A FIRST GRADE PLEADER, *In re.*

BEASLEY C.J.

used the money seem to us to be better tested by these latter facts than by the subsequent forgiveness of his conduct by his client upon his agreeing to restore the money to him. We, on the contrary, think that the legal practitioner's belief was not a reasonable one at all and indeed it is difficult to accept his statement that he had such *bona fide* belief. We are clearly of the view that the legal practitioner was guilty of professional misconduct and, were it not for the fact that the suspension of the renewal of his sanad pending the proceedings in this High Court has resulted in his being unable to practise for some time, we should not be satisfied with the punishment proposed by the the District Judge, namely, severe censure. We think, however, that in view of what we have stated no further punishment need be inflicted upon him. The order of the Court is that the Pleader is severely censured for his conduct.

V.V.C.