ORIGINAL TESTAMENTARY JURISDICTION —FULL BENCH.

Before Sir Owen Beasley, Chief Justice, Mr. Justice Venkatasubba Rao and Mr. Justice Mockett.

1937, April 21.

P. THAYARAMMAL AND ANOTHER, PLAINTIFFS,

v.

PITTY KUPPUSWAMY NAIDU, DEFENDANT.

M. KRISHNAMMAL BY HER POWER AGENT, T. BALASUBRAMANIAM PILLAI, APPLICANT.*

Practice—Audience in Court—Agent with power of attorney to appear and conduct judicial proceedings—Audience in Court —Right of—Notice on principal desiring to appear and conduct proceedings himself or by appointing an Advocate —Right to—Carrying on business as solicitor or attorney— Right of—Code of Civil Procedure (Act V of 1908), *O. III, rr.* 1 *and* 2*—Letters Patent (Madras), Cls.* 9 *and* 10*— Indian Bar Councils Act (XXXVIII of* 1926*), ss.* 8 *and* 9*— Original Side Rules (Madras High Court), O. XXXIX, rr.* 1, 2, 2-*A*, 3 *and* 5*—Effect of.*

An agent with a power of attorney to appear and conduct judicial proceedings has no right of audience in Court and is not entitled to notice if his principal wants to appear and conduct the proceedings himself in person or appoints an Advocate to appear for him. Such an agent cannot carry on business as a solicitor or attorney, drafting, engrossing and filing plaint, Judge's summons, affidavits and generally issuing legal process, and charge fees to the principal.

Civil Miscellaneous Petition No. 498 of 1911, *Hurchand Ray Goburdhon Das* v. *The Bengal-Nagpur Railway Co.*(1) and *In re Eastern Tavoy Minerals Corporation, Ltd.* (2) relied upon.

ON THE REFERENCE :

T. R. Srinivasa Ayyangar for applicant (Krishnammal).— The right of a practitioner to act and appear is under the control of the Court. The right of a suitor to act and appear is confined

* Testamentary Original Suit No. 7 of 1935. Application No. 1964 of 1936.

(1) (1914) 19 C.W.N. 64. (2) (1933) I.L.R. 61 Cal. 324.

to himself. No person who has not been enrolled as an Advocate is entitled to act and appear in Court as of right. The Legal Practitioners' Act provides for the practising of pleaders and mukhtears also. No other person is entitled to practise. In all the cases, qualifications are laid down for the different classes of persons entitled to practise. Section 32 of the Legal Practitioners' Act provides a penalty for persons practising unauthorisedly. If a power of attorney agent can appear, a disbarred practitioner can obtain a power of attorney and act and so circumvent his being disbarred. Rules 2-A and 5 of Order XXXIX of the Original Side Rules do not assist the agent because they are confined only to pleaders. [Reference was made to Order III, rules 1 and 2, Civil Procedure Code; Clauses 9 and 10 of the Letters Patent; sections 4, 8, 9, 10, 14 and 19 (1) of the Indian Bar Councils Act; sections 6, 17, 20, 32, 33 and 34 of the Legal Practitioners' Act; Order V, rule 10, Order VIII, rule 20, and Order XXXIX of the Original Side Rules; and Rules 5, 16-A and 17 of the Appellate Side Rules.] These references show the control which the Court has over practitioners and the conditions subject to which alone they can practise. A power of attorney agent will be subject to no control whatever. [Reliance was placed upon the decision in Civil Miscellaneous Petition No. 498 of 1911 and upon *Hurchand Ray Gobourdhon Das* v. *The Bengal-Nagpur Railway Co.*(1), *In re Eastern Tavoy Minerals Corporation, Ltd.*(2) and *Jivan Lal* v. *Property of Ram Ratan*(3).] No person other than an Advocate, attorney, vakil or mukhtear can appear and argue before a Court.

[Suppose it is held that a power of attorney agent is not entitled to appear and plead in Court, how far can he *go?*—BEASLEY C.J.]

He can appear, etc., for a client under disability but he cannot do so for a person who is himself competent to act on receipt of a fee. If he is allowed to do so it will mean that he is allowed to practise. [Reference was made to *In the matter of the petition of Khoda Bux Khan*(4) and *Tussuduq Hosain* v. *Girhar Narain*(5).] The test to see whether a power of attorney agent practises in Court is whether it

(1) (1914) 19 C.W.N. 64. (2) (1933) I.L.R. 61 Cal. 324.
(3) (1936) 161 I.C. 538. (4) (1888) I.L.R. 15 Cal. 638, 644.
(5) (1887) I.L.R. 14 Cal. 556 (F.B.).

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is his habit to appear for litigants on receipt of remuneration. If so, he cannot be allowed to do so. If he appears in an individual case and on behalf of a party under disability, it will be a different matter. On the Original Side an agent desiring to appear on behalf of a litigant is bound to obtain the permission of the Assistant Registrar. In the mufassal, under the Civil Rules of Practice, he has to file an affidavit. Order III, rule 1, Civil Procedure Code, cannot help the agent because (*a*) it does not entitle him to plead, (*b*) it does not apply to the Original Side of the High Court and (*c*) it is controlled by other provisions in the Letters Patent, etc. The respondent's claim that his authority cannot be revoked because of his having an interest in the subject-matter is unsustainable. [Sections 202 and 203 of the Indian Contract Act were referred to.] The respondent is entitled only to a remuneration

T. M. Krishnaswami Ayyar for the Bar Council.—A power of attorney agent cannot claim to plead as of right. He may do so if the Court permits him and the limit of the extent to which the Court will permit him is indicated in *P. Charles Kinnell & Co.* v. *Harding, Wace & Co.*(1).

[What is the limit to the agent's acting outside Court, e.g., filing a pleading, etc. ?—VENKATASUBBA RAO J.]

He can do all that a party who has engaged an Advocate or attorney can do.

[Do you mean to say that he can do everything except plead in Court ? If he can do all that and makes it his calling, what sort of control has the Court over him ? —VENKATASUBBA RAO J.]

It is in that connection that *Tussuduq Hosain* v. *Girhar Narain*(2) and *In the matter of the petition of Khoda Bux Khan*(3) are of help.

[What is the provision of law empowering the Court to control him ?—VENKATASUBBA RAO J.]

The Court can deal with him as for contempt of Court. [Section 8 of the Indian Bar Councils Act and *Ainsworth, In re. The Law Society, Ex parte*(4) were referred to.] Section 32 of the Legal Practitioners' Act gives ample power to the Court to deal with such persons.

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(1) [1918] 87 L.J.K.B. 342, 346.
(2) (1887) I.L.R. 14 Cal. 556 (F.B.).
(3) (1888) I.L.R. 15 Cal. 638.
(4) [1905] 2 K.B. 103.

[That section seems to deal with persons who are qualified to plead but have not obtained the necessary certificate.—BEASLEY C.J.]

Section 32 applies to persons unqualified and qualified. Section 3 defines legal practitioners. Rule 16 of the Civil Rules of Practice contemplates the passing of an order permitting an agent to appear or act. An agent's act cannot be recognised by the Court until such permission is given. Rule 17 states the precautions to be taken by the Court. Interest in the subject-matter of the suit cannot convert an agent into a legal practitioner. He may be entitled to damages for the termination of his agency or he may apply to be impleaded in the suit.

G. Lakshmanna for the Advocates' Association.—Section 2 (15), Civil Procedure Code, defines a "pleader". He must be a person who has a status which entitles him to appear and plead in Court apart from any agreement between him and a litigant. "Pleader" in Order III, rule 1, Civil Procedure Code, means a pleader as defined in section 2 (15). A recognised agent, if he wants to practise, must be a person entitled to practise by virtue of his status as a practitioner. The real distinction is between a case in which an agent appears in an individual case on behalf of a party under disability and a case in which he habitually does so for remuneration and therefore must be said to practise.

O. T. G. Nambiar for the Attorneys' Association.—As to the extent to which an agent can act, see Clause 10 of the Letters Patent and section 8 of the Indian Bar Councils Act. These provisions are saved by Order III, rule 1, Civil Procedure Code. They are express provisions to the contrary—at any rate in the High Court. Order II, rule 6, of the Original Side Rules is the only provision authorising an agent to do anything with reference to the Court. [Reference was made to Order II, rule 7.] An agent can only sign and verify a plaint. He cannot do anything else. All else must be done by the party himself or his pleader. An agent cannot take a plaint and file it in Court because that is doing an act with reference to the Court.

R. N. Aingar for the Bar Association.

Respondent appeared in person.

Cur. adv. vult.

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The JUDGMENT of the Court was delivered by BEASLEY C.J.—This matter has been referred to us by GENTLE J. The following questions have been raised, viz.,

"(i) Whether an agent with a power of attorney to appear and conduct judicial proceedings has the right of audience in Court;

(ii) Whether the agent is entitled to notice if his principal wants to appear and conduct the proceedings himself in person or appoints an Advocate to appear for him; and

(iii) Whether the power of attorney agent can carry on business as a solicitor or attorney drafting, engrossing and filing plaint, Judge's summons, affidavits and generally issuing legal process and charge fees to the principal."

That all three questions stand to be answered in the negative seems to us to be clear; but as the respondent has definitely asserted a right to the notice specified in question No. (ii) and certainly by strong implication if not by his conduct to the right of audience stated in question No. (i) and the matters in question No. (iii) also arise both out of his conduct and claim, we consider that this matter, which is of course of extreme importance to the legal profession, should be fully discussed by us.

The matter arises in the following way. The respondent is the holder of a power of attorney given to him by one Krishnammal, a widow. Krishnammal had filed a suit in the Madras City Civil Court against her sister Thayarammal to get her half share in the assets of one Palla Kuppammal deceased and it was necessary to apply for a search and get copies of the records

in Original Petition No. 58 of 1935 (Testamentary Original Suit No. 7 of 1935) on the file of the High Court and to take further proceedings therein. Being unable to stay in Madras she appointed the respondent as agent

"to search the records and apply for copies thereof in the above matter, to file into and receive from Court all papers relating thereto, to swear affidavits, to file necessary petitions and to verify and sign the same, to appear and plead in Court in person on my behalf, to engage Advocates if necessary and to sign in their vakalaths, to do all acts necessary in the conduct of the above proceedings and in furtherance thereof".

In the before-mentioned litigation (Testamentary Original Suit No. 7 of 1935) a petition was posted on 16th November 1936 before the Master and on that date, when the petition was called on, Mr. T. R. Srinivasa Ayyangar appeared on behalf of Krishnammal having been given a vakalath by her. The petition was adjourned and the respondent filed an affidavit on 26th November 1936 stating that Krishnammal had neither orally nor in writing intimated to him that she did not wish him to appear in the litigation and without revoking his power of attorney (which he marked as an exhibit) had engaged Mr. T. R. Srinivasa Ayyangar, and he further stated that Krishnammal did this in order to deprive him of the remuneration due to him payable by her; and he claimed that the power of attorney was of the same force and validity as that of a vakalath and that, unless it was revoked by formal proceedings through Court, no orders could be passed on the petition. Therefore, by reason of the authority given to him in the power of attorney he claimed the same right as a legal practitioner who has been given a vakalath; and since the power of attorney

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authorises him to plead in Court it follows that he claims that right; and indeed we are informed that either in these proceedings or in some other LAKSHMANA RAO J. allowed him to address the Court. In view of the claim put forward by the respondent in the affidavit referred to, the Master posted the matter before GENTLE J. for orders and he has referred the matter to us and it has been fully argued here by the learned Counsel for the petitioner Krishnammal, the Bar Council, the Advocates' Association and the Attorneys' Association; and we have also heard the respondent in person.

We may say at once that there is an unreported Bench decision of this High Court directly in point on the first question, Civil Miscellaneous Petition No. 498 of 1911, where it was held by BENSON and SUNDARA AYYAR JJ. that a right to appear in Court for his principal given to a recognised agent by Order III, rules 1 and 2, Civil Procedure Code, does not include a right to plead, that it means simply that one can take proceedings to submit oneself to jurisdiction, that the High Court has under the Letters Patent and the Legal Practitioners' Act and under sections 119 and 122, Civil Procedure Code, power to make rules as to who shall plead for parties before the High Court in its original and appellate jurisdiction and in the lower Courts, that Clause 10 of the Letters Patent makes provision with regard to who alone can plead before the High Court and that others, such as recognised agents, cannot have the right to plead. There are also two decisions of the Calcutta High Court upon this point, viz., *Hurchand Ray Gobourdhon Das* v.

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The Bengal-Nagpur Railway Co.(1) and *In re Eastern Tavoy Minerals Corporation, Ltd.*(2). In the former, a recognised power of attorney agent claimed a right to plead in Court on behalf of his principal under Order III, rule 1, Civil Procedure Code, but it was held by JENKINS C.J. and CHATTERJEA J. that he had no right of audience; and in the latter case, a director of a company, holding a power of attorney authorising him to appear for and on behalf of the company and to conduct and represent the company in the proceedings, claimed the right of audience on behalf of the company and, applying the ruling in the former case, it was held that he had no right of audience. It is plain from these three cases that rules 1 and 2 of Order III, Civil Procedure Code, do not give the recognised agent any right to plead in Court on behalf of his principal either in the appellate or original side of the High Court and, even if it could be contended successfully that Order III gives a right to a recognised agent to plead in Court on the appellate side, it is clear that he can have no such right of audience on the original side because of section 119 which provides:

"Nothing in this Code shall be deemed to authorise any person on behalf of another to address the Court in the exercise of its original civil jurisdiction, or to examine witnesses, except where the Court shall have, in the exercise of the power conferred by its Charter, authorised him so to do, or to interfere with the power of the High Court to make rules concerning Advocates, vakils and attorneys."

The respondent certainly has not been authorised by the High Court to do so. In this connection Clauses 9 and 10 of the Letters Patent

(1) (1914) 19 C.W.N. 64. (2) (1933) I.L.R. 61 Cal. 324.

are important. Clause 9 relates to the powers of the High Court as to the admission of Advocates, vakils and attorneys; and such Advocates, vakils and attorneys as have been approved, admitted and enrolled by the High Court are authorised to appear for suitors in the High Court and plead or act for them according as the High Court may by its rules and directions determine and subject to such rules and directions; and Clause 10 gives the High Court power to make rules for the qualifications and admission of proper persons to be Advocates, vakils and attorneys and empowers the High Court to remove or suspend from practice on reasonable cause Advocates, vakils or attorneys and enacts thus:

> "No person whatsoever but such Advocates, vakils or attorneys shall be allowed to act or to plead for, or on behalf of, any suitor in the said High Court, except that any suitor shall be allowed to appear, plead, or act on his own behalf or on behalf of a co-suitor."

These two clauses are sufficient to dispose of the respondent's claim, and in addition section 8 of the Indian Bar Councils Act is equally definite. It is as follows:

> "No person shall be entitled as of right to practise in any High Court, unless his name is entered in the roll of Advocates of the High Court maintained under this Act: provided that nothing in this sub-section shall apply to any attorney of the High Court."

Section 9 empowers the Bar Council with the previous sanction of the High Court to make rules to regulate the admission of persons to be Advocates of the High Court. It must be observed that section 8 is not limited to the right to "plead" but to the right to "practise". The Legal Practitioners' Act is similarly decisive as regards the mufassal Courts. The answer to

question No. (i) is so clear that no further reference to statutes or decided cases is necessary and it must be in the negative.

The respondent's contention regarding question No. (ii) is based on the claim that because of his power of attorney he stands in the same position as that of an Advocate holding a vakalath by reason of Order XXXIX of the Original Side Rules. Rule 1 of that Order prohibits a pleader from appearing, pleading or acting in any suit unless he has filed his vakalath in Court in accordance with the rules and his appointment continues under Rule 2 until the death of his client or it is revoked under Rule 3 which provides that the appointment may be revoked by an order upon a Master's summons in Chambers. Under Rule 2-A, if there is already a pleader on record, a pleader proposing to file an appointment in the suit may not do so unless he produces the written consent of the pleader on record or unless, where the consent of such pleader is refused, he obtains the special permission of the Court; and Rule 5 prevents a party who has filed an appointment of a pleader from appearing before the Court except in the absence of his pleader or to make any application or do any act in person so long as the appointment is in force; and there are similar provisions in the Appellate Side Rules. By reason of these rules the respondent claims that as his power of attorney authorising him to appear in Court and plead on behalf of Krishnammal has not been revoked, she is not entitled to give an appointment to Mr. T. R. Srinivasa Ayyangar to act for her. But as an agent under a power of attorney has no right

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of audience in Court, it follows that the power of attorney authorising him to plead is of no force whatsoever and upon that ground alone his contention must fail. But quite apart from that difficulty, there is no warrant whatever for putting a power of attorney given to a recognised agent to conduct proceedings in Court in the same category as a vakalath given to a legal practitioner, though probably the latter may also be described as a power of attorney. The very rules upon which the respondent relies show that such a power of attorney or appointment as it is called is confined only to pleaders, i.e., those who have a right to plead in Courts; and question No. (ii) must, therefore, also be answered in the negative.

Question No. (iii) raises some important points and, as it is drafted, does not present any difficulty. Obviously a power of attorney agent cannot carry on "business" as a solicitor or attorney. To carry on business in such capacity is to practise. What exactly the word "practise" used in section 8 of the Indian Bar Councils Act means is not defined in the Act but it certainly must be taken to mean and include everything that a legal practitioner does as such in the High Court such as question No. (iii) refers to, namely, drafting, engrossing and filing plaints, Judge's summons, affidavits and generally issuing legal process; and, although it is not necessary to say what would constitute carrying on a "business", and each case would depend upon its facts, a clear case of it would be where an agent has made a habit of doing so, though even one instance might be sufficient, or if an agent were to take business premises and to hold himself out as a law agent

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prepared to act in such matters for remuneration. Even one isolated act has, in England, been held to constitute "acting as a solicitor" rendering persons guilty of such conduct liable to be dealt with under section 26 of the Solicitors Act of 1860 for contempt of Court; *Ainsworth, In re. The Law Society, Ex parte*(1). In that case, an unqualified person gave as agent for the defendant in an action the notice of appearance to the writ required by Order XII, rule 9, of the Supreme Court Rules to be given by the defendants to the plaintiff or his solicitor, and he was held to be acting in contravention of section 2 of the Solicitors Act of 1843 which prohibits any unqualified person from "acting as a solicitor" or "carrying on any proceeding" in the superior Courts. There, the unqualified person does not appear to have done this for remuneration at all and there does not seem to be any reason why even one isolated instance here should not suffice to constitute carrying on business or practising. As it stands, therefore, question No. (iii) has clearly to be answered in the negative also.

In conclusion we would add the following general observations with regard to what the claim put forward by the respondent really amounts to. It is that he should be accorded all the rights and privileges which are enjoyed by members of the legal profession whose qualifications for admission to its ranks are laid down in the rules made by the Bar Council with the sanction of the High Court, and whose professional conduct thereafter is regulated by rules of practice

(1) [1905] 2 K.B. 103.

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and professional etiquette and who are subject to the disciplinary control of the High Court; whereas the respondent need possess no qualifications whatsoever as regards education and character and is not bound by any rules of professional conduct or etiquette and is not subject to the disciplinary control of the High Court or of anyone, and there can be no better example than this case itself affords of the highly objectionable result such a claim may lead to and actually has led to here, because the respondent claims to be remunerated by his principal for his services in question and before us stated that the condition regulating his payment is that he is to receive it only if the result of the proceedings is successful but not otherwise. On his own admission, this is a transaction which, if entered into by a legal practitioner, would at once render him liable to strong disciplinary action, for to engage in speculative litigation is a grave breach of professional conduct. Yet his claim is that he is free to undertake such business and this is only one example of probable resultant evils.

A.S.V.