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deposited Rs. 100 with the applicant with the object of doing some business, that the business was not carried out and the applicant returned Rs. 35, and Rs. 65 is still due from him. It turned out on the evidence of both parties in the court below that the business in respect of which the money was paid to the applicant was in respect of *satta* transactions, that is, wagering contracts. The defendant applicant went into the witness-box and stated that he had made wagering contracts on behalf of the plaintiff, the opposite party, with certain other firms, in which losses had been sustained, and the deposit made by the plaintiff had been swallowed up by the losses. The learned Judge of the Small Cause Court did not believe the defendant with regard to the losses. However, it is common case of both the parties that the money was given on account of *satta* transcations by way of security. Section 65 of the Contract Act, under which the decree of the lower court seems to have been passed, does not apply: *Dayabhai Tribhovandas* v. *Lakhmichand Panachand* (1). I think that under the law the claim of the plaintiff is not sustainable. I allow the application, set aside the decree of the court below and dismiss the claim of the plaintiff. Costs are allowed to the defendant applicant throughout.

Application allowed.

FULL BENCH.

Before Sir Grimwood Mears, Knight, Chief Justice, Justice Sir Pramada Charan Banerji and Mr. Justice Walsh.

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March, 30.

IN THE MATTER OF A VAKIL.*

Letters Patent, section 8—Legal practitioner—Disciplinary powers of High Court—Professional misconduct—Petition presented by a vakil purporting to be the petition of his clients, but which was in fact entirely the invention of the vakil and contained statements made recklessly and without any reasonable grounds of belief.

A vakil was retained to defend in the Court of Session certain persons accused of murder In the course of such engagement he prepared and put before the Sessions Judge a statement which purported to be a petition issuing from his clients and drafted on their instructions, whereas in truth and in fact it was a petition which originated with him and in respect of which he had received no instructions from his clients, and he put therein allegations

* Civil Miscellaneous No. 104 of 1920.

(1) (1885) I. L. R., 9 Bom., 358.

which were made recklessly and without any reasonable grounds of belief :— *Held*, that the vakil was guilty of professional misconduct, and in exercise of the powers conferred by section 8 of the Letters Patent, the vakil was suspended from practising his profession.

THIS was a matter reported to the High Court under section 14 of the Legal Practitioners Act, 1879, by the Sessions Judge of Farrukhabad. The facts of the case are fully stated in the order of the Court.

The Hon'ble Dr. *Tej Bahadur Sapru*, Mr. *A. P. Dube* and Dr. *Surendra Nath Sen*, for the vakil.

The Government Advocate (Mr. *A. E. Ryves*), for the Crown.

MEARS, C. J., BANERJI and WALSH, JJ. :—The respondent, a vakil of this Court, practising at Farrukhabad, has appeared before us on a notice, dated the 10th of March, 1920, to show cause why he should not be disbarred or suspended, in that :—

(*a*) On the 20th of January, 1920, he prepared and put before the Sessions Court a statement which purported to be a petition issuing from his clients and drafted on their instructions, whereas in truth and in fact it was a petition which originated with him and in respect of which he had received no instructions ;

(*b*) that he knowingly prepared and filed the said petition before the Sessions Court and put therein allegations which were to his knowledge untrue, or, alternatively, which were made recklessly without any reasonable grounds of belief ;

(*c*) that by means of the aforesaid he intended to deceive or mislead the court.

The facts which have given rise to this matter must be stated by us in some detail in order that this case may be thoroughly understood. On the night of the 5th of November, 1919, Pultu Singh, a zamindar, was sleeping in a room in his house when he was attacked by three men. Three servants slept in an adjoining room. They heard his cries and came to his rescue, and by the aid of a light which was burning and also by the fact of its being a light night, the three servants saw one man on either side of the charpoy holding down Pultu Singh with their *lathis* across him, whilst a third man was striking Pultu Singh with a chopper. The three servants recognized each of the men, and they were eventually arrested.

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An examination of the premises resulted in the discovery, amongst other things, of a piece of wood of an irregular triangular shape, about 2 inches long and blood stained. The Sub-Inspector, who found it, took it away along with other things discovered on the premises, having no doubt, quite reasonably, in his mind that it might possibly prove to be a material piece of evidence in the trial. Apparently the police did not send it up as an exhibit, and the chopper when secured by the police did not show that any wooden part of it was missing. Therefore, so far as the story of the prosecution went, the finding of the piece of wood turned out to be a matter of no importance, as it did not fit in with any police theory of the case which they proposed to put forward. They rested their case upon the identity of the three accused, as sworn to by the servants, certain motives for the murder and the identification of the blade of the chopper by a blacksmith, named Khargu, who had sharpened it a few hours before the commission of the murder, at the instance of one of the accused men. The Magistrate took the piece of wood and placed it in an envelope which he sealed down. It was then handed over to the police and remained in their possession in the envelope unopened, and at the sessions trial (on the 19th of January) was lying on the desk of Mr. BENNETT, the presiding Judge. There it remained throughout the whole of the evidence of the prosecution, not being referred to at all by the prosecution, until the last witness for the prosecution was in the box. That was the Sub-Inspector, Muhammad Khalil. He gave evidence of his arrival on the spot. He detailed what he saw, and spoke to statements being made to him, of making a map, and then his examination-in-chief closed. That is important, because after that, all that was going to happen was the cross-examination of the Sub-Inspector and the reading of the medical evidence. Then this vakil, whose conduct is called in question, rose to cross-examine. What possessed him to bring this piece of wood into the case will never be known; but he asked that the piece of wood should be handed down to him, and that was done. He then cross-examined the Sub-Inspector, and the Sub-Insepctor said in answer to his questions:—"Below the corpse I found a piece of wood," exhibit

H ; (and then in brackets is a note, which is clearly a note by Mr. BENNETT, which says that it was a " blood-stained piece of wood about 2 inches long, seems a bit of the charpoy "). That, as far as we see, is the only question in cross-examination which relates at all to this piece of wood. The medical evidence was then given and the court rose for the day. Probably some time on the morning of the 20th the vakil drafted a petition. It is quite certain that he did not have any communication with his clients on the 19th, and it is certain that he never saw them on the 20th until after the petition had been completely drafted by him. It was suggested on Saturday last that he saw the brother of one of the accused, but we think it is fortunate for him that he did not pursue that line of defence, because it will be seen in a few moments that that was a suggestion entirely at variance with the explanation that he gave Mr. BENNETT, the Sessions Judge, and is not likely to have been the correct version. However, that is not before us now and it is not put forward in any way as his defence that he in fact received instructions from a brother or some relative of one of the accused. He drafted the petition. Now it is important to see what he says in that petition. And we may pause here for a moment to say this. It is the duty of an advocate, if he himself thinks that there has been some irregularity in the conduct of the police, or in the conduct of any of the witnesses, to call that irregularity to the attention of the court, and this vakil would have been perfectly within his rights and would have acted with the utmost propriety in bringing the matter to the attention of the court, if when he took that piece of wood in his hand on the afternoon of the 19th of January he honestly thought that piece of wood had been changed. But he should have brought it to the attention of the court by saying :—" I saw this piece of wood in the Magistrate's court. I have seen the piece of wood to day. I say that in my opinion these two pieces are not the same. I demand an inquiry—the fullest inquiry." Anything less than a demand for an investigation based upon his personal application would have been a failure by him in his duty to his client. But he chose a crooked course and drafted a petition which on the face of it makes it appear to the court that the three prisoners, in whose minds there had never been any suspicion of any

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change in this piece of wood, are made by him to say :—" We noticed this, we noticed that, we noticed the other," each of those statements being false statements.

Now here is the petition. We shall refer to some only of its relevant parts. But we must bear in mind throughout that the first charge against this vakil is that, having no instructions from his clients, he fabricated a petition which made it appear that instructions had been given to him by his clients and that he was the mere agent to pass on to the court the beliefs of the men who were then standing their trial for their lives. The petition was addressed in form, as we have said, by the accused to the Judge. It begins—

" Sir, In the case noted above the piece of wood (Ex. H.) shown yesterday by order of the court, is not, in fact, the same wood which was produced by the Sub-Inspector, Khalil Ahmad, in the court of the Magistrate. Because (1) that piece of wood was much thicker than this and was of a different shape. The former clearly appeared to be a broken piece of the handle of a chopper. We had seen it in broad daylight. "

Now that statement drafted by the vakil, and signed by these men would convey to the Judge that in the minds of those three men there rested a conviction that the piece of wood which they had seen in broad daylight in the court of the Magistrate was not the same piece of wood which they had seen on the afternoon of the 19th of January in the court of the Sessions Judge. There was nothing in the prisoners' minds at all in the matter until this vakil put it into their minds in court on the morning of the 20th. One will search in vain the evidence in the Magistrate's court or in the court of the Sessions Judge to find any suggestion put forward by any witness that this piece of wood was in fact, or appeared to be, a broken piece of the handle of a chopper. That the police may orginally have formed a theory that it was possibly a broken piece of the handle of the chopper is, we think, quite likely, but they never formulated that theory in words and it is important to remember this because there are statements hereafter which deal with it.

The petition continues :—

" 2 In the court of the Magistrate, where the inquiry was held, the prosecution had tried to prove that the blade of the chopper which has been produced was the same which was made by the blacksmith, Khargu, but the handle or the wooden part was different. "

Now there it says that in the court of the Magistrate the prosecution had tried to prove that the blade was the same but the handle or the wooden part was different. Beyond the fact that Khargu, the blacksmith, split up his identification into two parts and said, "this is the same blade that I sharpened, this is the same handle," the evidence went no further than that, and we have examined every statement of fact that is contained in paragraph 2 of the petition by the light of every deposition that bears upon it. The petition continues :—

"This is clear from the statement of Ram Sarup, Sub-Inspector of police, station Thathir, made in the court of the Magistrate. On the same day Sub-Inspectors Khalil Ahmad and Ram Sarup were examined first and the blacksmith Khargu was examined after them. Therefore when the blacksmith Khargu was asked as to whether the handle of the chopper was the same to which the blade was fitted when it was made, and he replied, to the disappointment of the prosecution, that the handle was exactly the same : the prosecuting Inspector put the same question to him 3 or 4 times, but each time his reply was the same."

The Magistrate has been called, but he has no recollection of the prosecuting Inspector behaving in this extraordinary way and being permitted to put the same question to Khargu 3 or 4 times and there is no record of it in his notes. Then paragraph 2 concludes :—

"In this way the prosecution lost the most important piece of evidence against us because the handle which is at present fitted to the blade of the chopper is not in any way so broken as to allow the piece of wood produced by the Sub-Inspector Khalil Ahmad to fit in."

Then paragraph 3 deals with the conclusion that the three accused men wished the court to draw,—and we pass on to paragraph 4.

"The piece of wood, Exhibit H, before the court is apparently a piece of the leg of a cot, and no one can call it a piece of the handle of a chopper."

No one had called it the handle of a chopper until it occurred to this vakil to draft this most disingenuous petition.

"For these reasons we fully believe that this piece of wood has been put in place of the former piece."

We have already said the men had no belief about the matter at all ; they had never said one word about this to the vakil, and yet he had the audacity to draft this petition, setting up this deceitful story and present it to the court as emanating directly from his clients. The petition continues—

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"For these reasons we fully believe that this piece of wood has been put in place of the former piece. If the former piece had been produced before the court, the nature of the case would have been entirely changed."

That is a sentence which demonstrates in our view that this vakil was acting dishonestly in the matter. The petition goes on:—

"It is therefore prayed with folded hands, that in order to prove these facts the prosecuting Inspector, Pandit Chandrabhan Pande, who had examined the Sub-Inspector Khalil Ahmad and the blacksmith Khargu, may be called forthwith in order to prove the piece of wood in the court of the Magistrate and the following questions may be put to him."

Then there were four questions set out, which were proper questions on the basis of it being part of the case (which of course it was not), that this was a piece of the handle of a chopper. Then the petition concluded—

"If necessary our pleader may be permitted to cross-examine him (*i.e.*, Pandit Chandrabhan Pande). Because, Sir, the court is being clearly duped in this matter and an effort is being made to secure our execution by means of an unfair and cunning act."

Now it is difficult to conceive greater rubbish than this, and the vakil cannot be so incompetent as to have believed a word of it. The fact all too clearly appears that he was acting dishonourably in the presentation of this petition and hoped to mislead the court.

We pass over the questions which he suggested should be put to the Magistrate. Again, they were proper questions on the basis of it being part of the prosecution that this broken piece of wood in fact formed part of the chopper. It continues—

"As no question was asked by the prosecution in this court about the piece of wood which was enclosed in an envelope, and we the three accused were fully believing from the day it was produced in the Magistrate's court that it would save our lives, it was absolutely necessary for our vakil to inquire of the last prosecution witness, Sub-Inspector Khalil Ahmad, about this piece of wood."

Now, follows this:—

"When the cover was opened our vakil was busy with cross-examination. We could have, therefore, no opportunity to inform our vakil of this fact and to put in this application. And as soon as the cross-examination of Sub-Inspector Khalil Ahmad was over, the hearing of the case was closed for the day, we were ordered to be taken out. This application could not, therefore, be put in yesterday."

That of course is designed to bring to the mind of the Sessions Judge and to convince him that the three men

immediately on seeing the piece of wood were satisfied that the piece of wood had been changed and that if they could, they would on that afternoon of the 19th, have communicated with their vakil and made the application instantly. The truth being, as we have reiterated, that this application originated in the mind of the vakil alone, and he put all these statements, partly falsehood and partly nonsense, into the mouths of the three men.

The last prayer is :—

"That by these questions suggested by us, the court should satisfy itself about the identity of the piece of wood, and this can be done only if the court takes the trouble of asking these questions, whereby the facts will become clear. As it is a question of life and death to three persons, it is, most respectfully and with folded hands, prayed that the court may take this trouble and pardon us for giving this trouble."

Then this precious document is signed by the three accused men and witnessed by the vakil.

That document was laid before the Sessions Judge, and he acted with admirable promptitude, and we are greatly indebted to him for the course he took which we commend to the consideration of every judicial officer in this province. What he did was to call the Magistrate and Sub-Inspector and examine them on the basis of the petition being a genuine one—genuinely emanating from the three accused and laid before the court by the vakil in his capacity as vakil. And then of course it turned out that the story was a fabrication, and thereupon the Sessions Judge very wisely asked a few questions of this vakil and most sensibly made the vakil sign what he said—a very necessary precaution when dealing with a person of shifty character. In the result we get this following note from the Sessions Judge:—"An application in regard to a piece of wood, Exhibit H, was handed in by . . . vakil for the accused, signed by the accused, on the commencement of the proceedings on the 20th of January, 1920. The statement of the vakil . . . is as follows :—

"The idea that this piece of wood was changed after being exhibited before the committing Magistrate was present in my mind in a hazy form when Exhibit H. was produced before the Sessions Judge yesterday. I am not quite sure whether I spoke to the accused or not on the subject yesterday."

Then there is a note by the Judge. "*Note*—Vakil said at first he did not speak to the accused on the subject yesterday." "I then drafted out the

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application this morning at my house before coming to court and before seeing the accused."

Now, he had not spoken to them on the afternoon of the 19th, and there we get it from him that the petition was written before seeing the accused on the morning of the 20th in the Court of Session.

"All the statements in the application as to the piece of wood being different from that in the Magistrate's court were written by me of my own accord and not dictated to me by any one. All the information in the application is original and no information was given to me by any one. I had the application written out ready and read it over to the accused and asked them if they agreed with it and got it signed by them and presented it to court."

We have already referred to the fact that on Saturday this vakil, even in this Court, seemed to be prepared to put up a substantive case that the petition had been drafted on the instruction of a brother, or some relative, of one of the accused. But it happened by good fortune that the court rose at 1 o'clock and that matter was not pursued to day, or it might have led to further and serious developments, because it is clear from this document that when he was giving his explanation to the Sessions Judge that explanation did not include any suggestion that anybody on behalf of the accused had said anything to him in regard to this matter. The statement continues—

"I asked the accused whether they agreed to what I had written and they said they agreed to it. Then I asked whether it should be presented, and they said it should be. I handed it in. The piece of wood was not handed to the accused yesterday it was only seen by them at the distance from the dock to the court table (10 feet). I stated to the court this morning that before handing the application I wanted to make sure and I asked that the piece of wood should be handed to the accused to make sure that they would persist in making the application."

"Persist in making the application" is a strange phrase when the accused were as a fact mere puppets in the hands of this unscrupulous advocate.

"The reader handed the accused the piece of wood and I do not know what they said (and then said) —wants to add "probably."

We do not quite understand what this means. It is put in brackets and it is (then said) wants to add ("probably"). Then it continues.

"They said it was not the same."

We should have been very astonished if they had said that it was the same after seeing the petition drafted by their vakil.

"After seeing this wood they said they do persist in making the application, then I handed it in. I cannot say whether the accused have seen this piece of wood clearly yesterday. They said it was not the same piece of wood when I saw them this morning."

Then Mr. BENNETT put the question, "Why was it necessary for them to see it again this morning if they had seen it yesterday in court" and the vakil's answer was "To make sure that they will make the application."

Question.—Anything more to state?

Answer.—"My first intention was before presenting this application to the court, I wished to request the court that the piece of wood should be shown to the accused. The court asked me to speak louder. The piece was shown to accused. After it was shown I presented the application. I have authority by *vakalatnama* to make the application."

And here we find that by that time even this vakil had realized that Mr. BENNETT had taken his measure, and we now see the complete lack of moral stability when he continues.

"If the court think any improper conduct on my part, I would like to take back the application, though I think I have done nothing wrong; personally I would like to take back the application, but I do not know whether I have authority to do so or not. Before I actually take it back I wish the permission of my clients. That is all."

Now, having regard to the fact of this petition being made and to the information which the learned Sessions Judge obtained by asking questions of this vakil, it is small wonder that he sent the matter up to this Court for our inquiry.

Now, the notice which was served on him has been read. On Saturday last the vakil appeared before us with the great advantage of having as his advocate, Dr. *Sapru*. After what really might be called persuasion on our part on Saturday, the vakil seemed to think that there was some slight cause for him to express some slight shade of regret. Then there came an alteration of mood on his part and he really thought himself quite an honest man who would like to fight the matter out. He had of course a perfect right to do that and the case continued for a short time on that basis. To day his point of view has again changed and he has said through his learned advocate that he has considered the matter very carefully, that he is sincerely sorry for his conduct and admits that he is unable to substantiate practically all the allegations in the statement, and he further unreservedly and without any qualification withdraws

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every single allegation which is damaging to any one interested in the prosecution, and he desires Dr. *Sapru* to express his genuine and sincere apology to this Court, to Mr. BENNETT, Sessions Judge, and to the police.

Well, that is making some amends, and Dr. *Sapru* whose judgment in matters like this can well be relied upon, has admitted on behalf of his client that he could do nothing less, that the facts which are proved, or admitted, bring this case within section 8 of the Letters Patent, and he referred to his client quite properly as a young man who had gone wrong, hopelessly wrong. Those are Dr *Sapru's* own words. He has also put forward the plea of inexperience. But a plea of inexperience is not apposite to a case of this character. You do not want to be an experienced advocate to know that you must not tell lies or try to confuse or deceive the court. It is a matter of instinct,—a matter of right feeling. But he is a young man and after a good many shiftings about in this case he has at last made an apology, which in terms is a full apology. But of course that is not adequate at all, and we have got to vindicate the power that is given to us under section 8, and we have also got to exercise discipline for people who stand so much in need of it as this vakil seems to do. We are going to take a course, which all three of us regard as lenient. But it is not to be regarded as by any means the sort of scale that will prevail in the future. But nevertheless the penalty must be a substantial one, which will not be forgotten by this vakil, and should be borne in mind by other people. And the order that we make is that we find (A) that on the 20th of January, 1920, the vakil prepared and put before the Sessions Judge a statement which purported to be a petition issuing from his clients and drafted on their instructions, whereas in truth and in fact it was a petition which originated with him and in respect of which he had received no instructions; (B) that he knowingly prepared and filed the said petition before the Sessions Court and put therein allegations which were made recklessly and without any reasonable grounds of belief, and we find him thereby guilty of professional misconduct. And in those circumstances in exercise of our powers under section 8 of the Letters Patent

we do order that he be suspended from practising from this day until the 1st day of January, 1921. We direct the vakil to hand over his certificate of practice to the Registrar of this Court.

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Suspension ordered.

Before Sir Grimwood Mears, Knight, Chief Justice, Justice Sir Pramada Charan Banerji and Mr. Justice Piggott.

LALTA PRASAD (PLAINTIFF) *v.* SRI MAHADEOJI BIRAJMAN TEMPLE AND OTHERS (DEFENDANTS)*.

1920 *April*, 7.

Hindu law—Joint Hindu family—Partition—Suit instituted by minor member of family—Difference in effect of, as compared with suit instituted by adult member—Power of manager to dedicate family property for religious purposes.

Held that the institution of a suit by a minor member through his next friend for partition of joint family property has not the same effect as the institution of a similar suit by an adult member of the family, that is to say, the mere institution of the suit does not effect a separation of the family, but separation only takes place when the suit is decreed. *Girja Bai* v. *Sadashiv Dhundiraj* (1) distinguished. *Chelimi Chetty* v. *Subbamma* (2) followed.

Held also that, although the managing member of a joint Hindu family may be competent to dedicate some portion of the family property to religious uses during his life-time, he cannot make such a dedication by will. *Vitla Butten* v. *Yamenamma* (3), *Suraj Bunsi Koer* v. *Sheo Persad Singh* (4), *Bathnam* v. *Sivasubramania* (5) and *Lakshman Dada Naik* v. *Ramchandra Dada Naik* (6) followed.

THE facts of the case are fully set forth in the judgment. They may be briefly stated as follows:—Gajadhar Lal and his grandson Lalta Prasad, a minor, constituted a joint Hindu family. On the 18th of November, 1914, a suit for partition was instituted in the name of Lalta Prasad, who was then about seventeen years of age, through his mother acting as next friend. Gajadhar Lal, however, died on the 25th of November, 1914, and the suit for partition abated. On the 22nd of November, 1914, Gajadhar Lal had executed a will containing, *inter alia*, a bequest of a small portion of the joint ancestral property in favour of an idol. In a suit

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*First Appeal No. 336 of 1917, from a decree of Muhammad Husain, Additional Subordinate Judge of Cawnpore, dated the 31st of July, 1917.

(1) (1916) I. L. R., 43 Calc., 1031.
(2) (1917) I. L. R., 41 Mad., 442.
(3) (1874) 8 M. H., C. Rep., 6.
(4) (1879) I. L. R., 5 Calc., 148.
(5) (1892) I. L. R., 16 Mad., 353.
(6) (1880) I. L. R. 5 Bom., 48.