

## MISCELLANEOUS CRIMINAL.

Before Sir Grimwood Mears, Chief Justice.

MUHAMMAD INAYAT ALI v. EMPEROR.\*

1929  
April, 15.

*Professional misconduct—Legal Practitioner—Refusal to appear in a case against a brother practitioner—Duty of advocate.*

The refusal of a lawyer to take up a brief for a member of the public, simply and solely on the ground that he would be appearing against a brother practitioner who was the litigating party on the other side, or putting forward untrue excuses when the real reason is a disinclination to appear against a brother practitioner, is professional misconduct; that is, it is a breach of the duty which the acceptance of the status of an advocate demands from every man who becomes an advocate.

Mr. *Saila Nath Mukerji*, for the applicant.

The opposite party was not represented.

MEARS, C. J. :—This is an application for the transfer of a case on the very singular ground that local counsel refuse to carry out the obligations which, by their profession, they are bound to do. Quite recently a similar complaint was made by a member of the public, and I then pointed out that the refusal of a lawyer to take up a brief for a member of the public, simply and solely on the ground that he would be appearing against a brother practitioner who was the litigating party on the other side, is professional misconduct; that is, it is a breach of the duty which the acceptance of the status of an advocate demands from every man who becomes an advocate. There is a definite and well-recognized rule, which however does not seem to be understood in this country, that a lawyer must take up a case for any member of the public if—

- (1) a fair and proper fee is tendered to him;
- (2) adequate instructions are given;

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\* Criminal Miscellaneous Case No. 125 of 1929.

(3) the case is of a class which the lawyer is accustomed to do.

That is the general rule, but he may of course legitimately decline to take up the case if, for instance, he has an outstation engagement, or is engaged in some social function such as a marriage, or is incapacitated by ill-health or any reason which a sensible man would recognize as adequate. But to refuse to take up a case simply and solely on the ground that the advocate will not appear against a brother practitioner, or to put forward untrue excuses when the real reason is a disinclination to appear against a brother practitioner, is, in each case, professional misconduct and can and should be dealt with as such. The reason for the rule is obvious, and if lawyers as a body refuse to act against other lawyers, they would become a class standing above the law, and justice would be denied to the public.

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There is also another matter which, if true, has an unpleasant aspect. The case apparently is that Muhammad Inayat Ali Khan, the applicant, assaulted Khan Bahadur Fazal-ur-Rahman Khan. Whether he did so or not must be a relatively simple matter of fact, and, according to the papers before me, a question of fact on which both sides can be heard and a decision given in the course of an hour or two. I am greatly surprised to find in the affidavit a statement that "most of the leading criminal practitioners are appearing in the case as counsel for the complainant, among them being Hafiz Zakir Ali and Mr. B. Nund, Barrister-at-law." Mr. *Saila Nath* tells me that he understands that at least five gentlemen have already been engaged on this very simple matter to defend and protect the interests of Khan Bahadur Fazal-ur-Rahman Khan. I doubt if this can be correct, because it must be perfectly apparent to Khan Bahadur Fazal-ur-Rahman Khan that two gentlemen are

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more than sufficient adequately to present his case, and that if in fact he did engage others, he would lay himself open to the suggestion that he had done so for the purpose of shutting out Muhammad Inayat Ali Khan from obtaining their services or had brought in friends for the purpose of giving them advertisement. Nobody can seriously suggest that the simple question whether *A* struck *B* at a given place on a given date can require the services of more than one counsel, though it may be reasonable to add a second so that one of them would certainly be present at the hearing.

A copy of this order is also to be sent to Khan Bahadur Fazal-ur-Rahman Khan, because I am sure that he must wish to act with complete propriety in this matter, and I go further and say that it is his duty, from his position at the Bar, to make it clear to the other members of his profession at Shahjahanpur that they should conform to the rules of the profession and most certainly accept the brief against him if the conditions that I have mentioned are fulfilled by Muhammad Inayat Ali Khan. Nobody with the least degree of level-headedness and good sense could, for a moment, suppose that any brother lawyer would regard the appearance in court of a brother practitioner against him as a personal matter. It is not personal in the slightest degree. The conduct of a case in court should be as impersonal as an operation by a surgeon, and for any practitioner to feel that a brother practitioner would be aggrieved on this account shows a lack of understanding of how people with decent instincts behave to each other.

[After some detailed directions, which are here omitted, the judgement concluded.]

Meanwhile I stay the hearing of this case in the court of the learned Magistrate until further orders.