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existence of a state of circumstances which attracts the equitable jurisdiction, as for example, the non-performance of a contract of which equity can give specific performance."

In our judgment it would be highly inequitable in the present case to refuse the plaintiff his claim for interest upon the sum of Rs.26,000 which the appellant had no right to retain in view of her refusal to implement her obligations under the deed of the 16th December, 1928. We hold, therefore, that in equity the plaintiff is entitled to interest. Taking all the facts and circumstances into consideration we fix interest at the rate of 4 per cent. per annum. The interest will run from the 16th December, 1928, to the date of payment.

In the result the appeal is allowed in part and the decree of the court below is modified. The plaintiff is granted a decree against the appellant for the sum of Rs.26,000 plus interest thereon at the rate of 4 per cent. per annum from the 16th December, 1928, down to the date of payment. As the appellant has substantially failed, the respondent is entitled to his costs in this appeal.

FULL BENCH

Before Mr. Justice Iqbal Ahmad, Mr. Justice Rachhpal Singh and Mr. Justice Hunter

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September, 22

IN THE MATTER OF AN ADVOCATE*

Professional misconduct—Advocate advancing loans on interest—Whether moneylending business—"Engaging in trade or business"—Bar Councils Act (XXXVIII of 1926), section 15, Rules—Bar Tribunal's findings—Acceptance by the High Court.

What does or does not constitute moneylending business must depend on the facts and circumstances of each case and is not capable of an exact definition. Investments of his savings by an advocate do not necessarily amount to engagement

*Miscellaneous Case No. 167 of 1939.

in moneylending business, the more so when such investments are few and far between and are mostly made to relations and friends. But if investments by way of loan are made as a matter of regular business, and not merely on a few isolated occasions, such investments will constitute engagement in moneylending business. An element of system, habit and continuity is essential to constitute the exercise of a trade or business. Where it is found that moneylending transactions by an advocate are numerous, continuous and systematic the advocate must be held to have entered into moneylending business.

The question whether a particular advocate has violated the recognized canons of professional etiquette is primarily a matter that concerns the Bar Council and consequently the High Court ordinarily accepts findings on questions of fact recorded by the Bar Tribunal provided the findings are not perverse.

Dr. *N. P. Asthana,* for the Crown.

Sir *Tej Bahadur Sapru* and Messrs. *A. P. Pandey* and *N. D. Pant,* for the opposite party.

IQBAL AHMAD, RACHHPAL SINGH and HUNTER, JJ.:— On receipt of a complaint of one Prem Singh dated the 23rd of December, 1937, about the alleged professional misconduct of Mr. Bhairo Dutt Bhandari, an advocate on the rolls of this Court and practising in the courts of Ranikhet, this Court referred the case for inquiry to the Bar Council and the case was in due course inquired into by a Tribunal of the Council appointed by the Hon'ble the Chief Justice. The charge framed by the Tribunal against the advocate was as follows:

"That you Mr. Bhairo Dutt Bhandari an advocate on the rolls of the High Court of Judicature at Allahabad while practising in the courts of the Kumaun Division subordinate to the said High Court have been for a considerable time past carrying on moneylending business which is against the rules governing professional etiquette and have thereby been guilty of professional misconduct."

The advocate concerned filed a written statement in the course of which he admitted that during a period

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of ten years, viz., from 1926 to 1936, he advanced loans on promissory notes and mortgages on no less than 12 occasions. Out of these 12 transactions of loan three advances were on the security of immovable properties and the rest of the advances were made on the basis of promissory notes. All the three mortgages were in favour of the minor sons of the advocate and so were some of the promissory notes and the rest of the promissory notes were in favour of the advocate himself. Out of the 12 transactions three took place in 1930 and the remaining nine advances were made in the course of nine years, one in each year. It was alleged in the written statement that the advocate had from time to time set aside certain sums of money for the use and benefit of his minor children and had invested the amounts from time to time solely with the intention to benefit his sons. It was also mentioned in the written statement that the loans referred to above were made either to the relatives or to the friends of the advocate or of his family. The advocate also submitted that interest was charged on most of these loans only because the borrower expressed a preference to having the transactions placed on that basis. His motive, in most cases, according to the advocate, was not gain but the obliging of friends.

Prem Singh the complainant did not appear to substantiate the complaint before the Tribunal, but as the fact of loans being advanced by the advocate was admitted by him in his written statement the Tribunal proceeded with the inquiry in the course of which it recorded the evidence of the advocate and of two witnesses produced by him and then, on consideration of the materials before it, came to the conclusion that the charge referred to above was not established against the advocate and forwarded its finding to this Court.

The learned Advocate-General filed objections to the finding, maintaining that the finding was contrary to the weight of evidence in the case and was erroneous in law.

After hearing the learned Advocate-General and considering the findings on questions of fact recorded by the Tribunal we have decided, though not without some hesitation, to accept the findings of the Tribunal.

The charge framed against the advocate is with respect to the breach of the following rule framed under section 15 of the Bar Councils Act (XXXVIII of 1926): "No advocate while practising shall engage in trade or business or accept an appointment carrying a salary without previously obtaining the permission of the Bar Council and the High Court . . ."

The question that arises for consideration is whether the advances of loan admitted by the advocate do or do not amount to engagement in moneylending business by the advocate and the answer to the question is beset with considerable difficulty. Investments of his savings by an advocate do not necessarily amount to engagement in moneylending business, the more so when such investments are few and far between and are mostly made to relations and friends. Nevertheless if investments by way of loan are made as a matter of regular business and for gain there can be no escape from the conclusion that such investments constitute engagement in moneylending business. What does or does not constitute moneylending business must depend on the facts and circumstances of each case and is not capable of an exact definition. The question is a mixed question of fact and law and the answer to the question must depend on the facts found in each particular case.

The view that we take finds support from the decision in *Edgelow* v. *MacElwee* (1). In the course of his judgment in that case MCCARDIE, J., made the following observations: "A man does not become a moneylender by reason of occasional loans to relations, friends, or acquaintances, whether interest ,be charged or not Charity and kindliness are not the bases of usury. Nor does a man become a moneylender merely because he

(1) [1918] 1 K.B. 205.

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may upon one or several isolated occasions lend money to a stranger. There must be more than occasional and disconnected loans. There must be a business of moneylending, and the word 'business' imports the notion of system, repetition, and continuity . . . The line of demarcation cannot be defined with closeness or indicated by any specific formula. Each case must depend on its own peculiar features. It is ever a question of degree."

In *Litchfield* v. *Dreyfus* (1) it was observed that "Speaking generally, a man who carries on a moneylending business is one who is ready and willing to lend to all and sundry, provided that they are from his point of view eligible."

To the same effect are the observations contained in the case of *Grainger & Son* v. *Gough* (2). Lord MORRIS is reported to have observed as follows: "There can be no definition of the words 'exercising a trade'. It is only another mode of expressing 'carrying on a business'; but it certainly carries with it the meaning that the business or trade must be habitually or systematically exercised, and that it cannot apply to isolated transactions. There is no special legal meaning to the words 'exercising a trade', and it must be considered with regard to what would be its ordinary or popular meaning, and that must in each case depend on the facts of that particular case; and we are not to canvass what might be a logical outcome from any decision when it is the facts of a particular case that are solely decided on. I have heard no suggestion of any plainer or more intelligible meaning for the words 'exercise his trade' than the words themselves convey."

The question under consideration formed the subject of decision by a Full Bench of this Court in *In re Tika Ram, Vakil* (3) and the view taken by that Bench was that an element of continuity and habit is essential to constitute the exercise of a profession or business. That

(1) [1906] 1 K.B. 584(589). (2) [1896] A.C. 325(343).
(3) (1919) I.L.R. 42 All. 125(127).

this is so is apparent from the following observations made in the course of the judgment: "The vakil has admitted that from time to time he entered into transactions for the sale of grain, salt, cotton seeds, etc., by way of speculation, but he has not done so habitually. He has mentioned eight instances, seven of which were instances of business carried on in the years 1915, 1916 and 1917. It does not appear that he has habitually or systematically exercised the profession of a trader in addition to his work as a vakil. We do not think, therefore, that he can be held to have violated the provisions of the rule to which we have referred."

On the other hand if it is found that moneylending transactions by an advocate are numerous, continuous and systematic the advocate must be held to have entered into moneylending business and to this effect is the decision of a Full Bench of the Madras High Court in *Kunmetta Chinnarappa* v. *Kona Timma Reddi* (1). The pleader concerned in that case had nearly a hundred moneylending transactions in his own name and in that of his minor son and it was found that the transactions in the son's name were only a shield or screen and that they really were transactions by himself and it was held that the pleader had engaged in moneylending business.

The cases noticed above illustrate in a remarkable degree the difficulty, rather the impossibility, of fixing a line of demarcation and in formulating a hard and fast rule as to what does and what does not constitute moneylending business and it is this state of uncertainty that has to a great extent turned the scale in the present case in favour of the advocate and has induced us not to interfere with the finding of the Tribunal.

The question whether a particular advocate has violated the recognized canons of professional etiquette is primarily a matter that concerns the Bar Council and consequently this Court ordinarily accepts findings on

(1) (1910) 8 Indian Cases 677.

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questions of fact recorded by the Bar Tribunal provided the findings are not perverse. In the present case the Tribunal accepted the evidence of the advocate and of his witnesses and held that the advances of loan which he made were made to close acquaintances, relations and friends. The Tribunal further held that the loans advanced by the advocate were occasional and disconnected and did not amount to engagement in moneylending business. While we consider that the case is one on the border line and that the advocate by making 12 advances in the course of ten years dangerously sailed near the wind, we are not prepared to hold that the conclusion arrived at by the Bar Tribunal is erroneous and we must, therefore, accept the finding that the charge was not brought home to the advocate.

Before parting with the case we must, however, observe that it is in the interest of the advocates themselves that before they make advances by way of loan they should obtain the previous sanction of the Bar Council and of this Court. It may be that in a particular case half a dozen advances made during a particular period may not be held to amount to engagement in moneylending business, but seven advances by way of loan made during the same period may be held to amount to engagement in moneylending business. It is this state of uncertainty that counsels caution on the part of the advocates in their own interest and we hope and trust that the requisite caution will be exhibited by members of the profession in future.

In the circumstances of the present case we make no order as to costs.