might be arrived at by the learned Subordinate Judge in regard to the issue which was then remitted for trial. We affirm that order. As to costs since then our order is that the plaintiffs-appellants shall pay the defendant Raja Bisheshwar Bakhsh Singh's one third costs only. The rest of the costs will be borne by the parties themselves.

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SARNAM v. RAJA BISHESHWAR BAKHSH SINGH.

*Stuart, C. J. and Hasan, J.*

*Appeal partly allowed.*

## MISCELLANEOUS CIVIL.

*Before Sir Louis Stuart, Knight, Chief Judge and Mr. Justice Muhammad Raza.*

### IN THE MATTER OF A PLEADER.*

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November, 15.

*Advocates—Enrolment as advocates— Bar Council's objections to the enrolment of an advocate, weight to be attached to—Oudh Civil Rules, rule* 285(1)(*c*) and (*d*).

Where the Bar Council objects to the enrolment of a particular person as an advocate, the opinion of the Bar Council should not be treated as a negligible factor but due weight must be given to it. Objections based upon mere suspicion or prejudice should not be accepted, but it should be seen whether they are based on reason and fact. At the same time where the Bar Council has formed the considered opinion that an applicant should not be admitted into their number it is not necessary, in order to support those objections, for them to show that the applicant has shown by his conduct that he is not fit to be in the profession. If the Bar Council can establish that as fair-minded men, who have treated the case on its merits and in a reasonable manner, they are convinced that a certain member of the profession does not deserve to be enrolled as an advocate and that his enrolment will be prejudicial to the credit of the body of advocates, their objections should prevail.

Mr. *J. Jackson*, for the applicant.

Mr. *G. H. Thomas*, for Bar Council.

STUART, C. J. and RAZA, J. :—This is in the matter of accepting or refusing the application of

*Civil Miscellaneous Application No. 665 of 1929.

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IN THE MATTER OF A PLEADER.

*Stuart, C. J., and Hasan, J.*

Mr. *R.* for admission as an advocate of the Chief Court. This is the first matter of this nature which has come before a Bench of this Court. It is therefore necessary to consider with care the principles that should be adopted in deciding questions of this nature. The practice of legal practitioners in Oudh was until 1925 under the rules framed by the Judicial Commissioner's Court. That Court laid down certain rules as to the admission of advocates, pleaders of the first grade and of the second grade and the question of admission was determined absolutely by the Judicial Commissioner's Court. After the creation of the Chief Court a similar practice prevailed until the 1st of March, 1928, when the Indian Bar Councils Act (XXXVIII of 1926) was declared to be applicable to the Chief Court of Oudh. From this period there have commenced a completely different system of enrolment and also a completely different system of classification of the members of the Bar. Formerly the only advocates of the court were barristers of the Inns of Courts in England and gentlemen holding similar qualifications in other parts of the United Kingdom with the addition of certain first grade pleaders who were selected for outstanding merit. Next came pleaders of the first grade and finally there were pleaders of the second grade. Now under the present rules barristers of England or Ireland and members of the Faculty of Advocates in Scotland who are possessed of special qualifications, former advocates in Oudh, advocates of other High Courts, persons who hold the degree of LL.B. of universities established by the law of the United Provinces and who have practised for at least two years in courts subordinate to the Chief Court of Oudh or who have worked in other capacities, those who as advocates, vakils or pleaders were entitled as of right to practise in the Chief Court immediately

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before the 1st of March, 1928, and persons who had practised in Oudh for not less than twenty years as pleaders of the second grade under the old rules and who have been recommended by the Bar Council as persons fit to be enrolled as advocates, may apply to be so enrolled. The last class can only apply if they have been specially recommended by the Bar Council. In the other classes no special recommendation is necessary. Notice is given of all applications to the Bar Council and the Bar Council can object to the enrolment of any applicant. When such an objection is lodged it is heard by a Bench of the Chief Court.

The applicant in this particular instance passed his LL.B. examination in 1919. He was enrolled as a pleader, second grade, in Lucknow in 1920. He was enrolled as a pleader of the first grade in 1922. He has since been practising at Bara Banki. He has thus the right to apply for admission under clause 1(*c*) and 1(*d*) of Rule 285 of the Oudh Civil Rules. The Bar Council having objected to his enrolment, the matter has been heard by this Bench.

It seems advisable to lay down certain principles which should be adopted in deciding this case and similar cases which may arise in future. All the persons who are permitted to apply must have certain qualifications. If they are pleaders of the second grade, in addition to those qualifications, they must obtain a special recommendation from the Bar Council. In all other cases they do not require any recommendation from the Bar Council, but the Bar Council is allowed to object to their enrolment. What should be the principles of this Court in determining such objections? It is obvious that under present conditions this Court must give due weight to the views of the Bar Council. If it were taken that any man, who holds the necessary qualifications and who is not shown to be actually of bad

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character, is to be admitted as a matter of course, whether the Bar Council does or does not object to his inclusion as a member of the body of advocates, the opinion of the Bar Council would be a negligible factor. We consider that the opinion of the Bar Council should not be treated as a negligible factor but in justice to the applicant it is necessary for this Court to examine the objections of the Bar Council and see whether they are founded on reason and on fact. Objections based upon mere suspicion or prejudice, (if unfortunately such objections should ever be made) would not be accepted. But at the same time where the Bar Council has formed the considered opinion that an applicant should not be admitted into their number it is not necessary, in order to support those objections, for them to show that the applicant has shown by his conduct that he is not fit to be in the profession. If it is a case of unprofessional conduct of a grave nature, the penalty would not be non-admission but something much more serious. We think that if the Bar Council can establish to us that as fair-minded men, who have treated the case on its merits and in a reasonable manner, they are convinced that a certain member of the profession does not deserve to be enrolled as an advocate and that his enrolment will be prejudicial to the credit of the body of advocates their objections should prevail. It may not be that the conduct in question deserves suspension or removal. Such conduct may not be such as to debar the applicant from practising in the courts subordinate to the Chief Court. It may well be said that a man is not good enough to be an advocate, although he may be allowed to practise in such courts. Having thus enunciated the principles which we think should govern these cases we proceed to the facts of the present case.

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On the 1st of April, 1926, a certain Mohammad Ismail, a grain-dealer in the Bara Banki district, submitted an application to the Chief Court in which he made four complaints against the present applicant Mr. *R.* The Chief Court referred those complaints to the District Judge of Bara Banki for inquiry. As Mr. *R.* was not an advocate, action had to be taken in this manner. The District Judge found that none of these complaints were substantiated. He was not in the best position to determine the matter, as Mohammad Ismail refused to substantiate his complaints. It appears that Mohammad Ismail desired to have the inquiry conducted by an officer other than the District Judge of Bara Banki, and when this Court refused to accede to his wishes he withdrew from the inquiry. In the end none of the charges were found to be substantiated. The District Judge reported accordingly, and this Court on the 30th of April, 1929, refused to take any action in the matter. It was thus found that no unprofessional conduct had been made out against Mr. *R.* which deserved further action. It appears, however, that a further inquiry was made in respect of one of these charges. This is the only charge which we shall now consider. It was over the payment of a sum of Rs. 70 which was due on a decree passed in favour of a certain Suraj Bali Rai against the East Indian Railway Company. The applicant had appeared for Suraj Bali Rai in the suit in question. A certain Mr. *Masih-ud-din* appeared for the Company. The nature of this particular charge was as follows. The Railway Company had sent a pay order for Rs. 70 to Mr. *Masih-ud-din* to pay to the decree-holder. The pay order was cashed. The decree-holder at first never got the money. The District Judge of Bara Banki in his inquiry came to the conclusion that there was nothing to show that Mr. *R.* had ever received the money. On his finding Mr. *Masih-ud-din* had received it. Mr. *Masih-ud-din* was Government pleader and as a result of the District Judge's remarks the Deputy

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Commissioner of Bara Banki made an inquiry into the conduct of Mr. *Masih-ud-din*. The Bar Council had these facts before them. The Deputy Commissioner of Bara Banki took the statement of Mr. *R.* and took the statement of Suraj Bali. He arrived at the following conclusion. He found that Mr. *Masih-ud-din* had cashed the payment order and had handed the money to Mr. *R.* in August, 1924, and that Mr. *R.* had retained that money until the 9th of April, 1926, and had then paid it to Suraj Bali Rai. Now it is noticeable that the complaint of Mohammad Ismail to the Chief Court of Oudh was dated the 1st of April, 1926. The learned Counsel Mr. *John Jackson* who has appeared on behalf of Mr. *R.* here has gone through the record of the Deputy Commissioner's inquiry and has criticised the evidence there with force. After considering those criticisms we find that the Deputy Commissioner was right and that Mr. *R.* did receive this money in August, 1924, and that he retained it for nearly two years before he paid it to his client. We do not propose to take up again the matter of unprofessional conduct and in view of the fact that the money was eventually paid we would not go so far as to say that the conduct deserves disciplinary action, but we consider that when the Bar Council had these facts before them they cannot be held to have acted unfairly or capriciously or with prejudice in saying that they do not consider Mr. *R.* a desirable addition to the advocates of this Court. There appear to have been other matters which it would be difficult for a court to comment upon. It is obvious that professional lawyers who have personal experience of the work done by other lawyers must know much of the suitability of the members of the lower Bar for promotion to a higher position. But it would be very difficult to reduce impressions of this kind to evidence which can form the subject of a report. It would appear sufficient here if the court is satisfied that the Bar Council have acted honestly, fairly and without prejudice. We have no reason to suppose

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that in this particular instance the Bar Council have acted otherwise than honestly, fairly and without prejudice, and in these circumstances consider that we should not be justified in refusing to accept their objections. We accordingly regret that we are unable to allow the enrolment of Mr. *R.* as an advocate of this Court. We point out here that this fact will in no way interfere with his practice in the Bara Banki courts where he is practising already.

*Application rejected.*

## ORIGINAL CIVIL.

*Before Mr. Justice A. G. P. Pullan.*

1929

November, 22.

RAJA MOHAMMAD MUMTAZ ALI KHAN (PLAINTIFF) *v.* RAJA SYED MOHAMMAD SA'ADAT ALI KHAN (DEFENDANT).*

*Court Fees Act (VII of 1870), schedule I, article 1—Proviso—Written statement, claiming set-off or putting forward counter claim—Maximum court-fee payable on written statement pleading set-off or counter claim.*

The Court Fees Act does not authorize the recovery of any sum by way of court-fee in excess of Rs. 3,000. It is true that the proviso to article 1 of schedule I refers only to the maximum fee leviable on a plaint or memorandum of appeal, and leaves out any reference to a written statement pleading a set-off or counter claim, but, as there is nothing in the Act to suggest that there is any fee in excess of Rs. 3,000 leviable on a sum upwards of Rs. 4,10,000 there is no authority for charging a larger sum on a written statement than that fixed as the maximum in schedule I. This schedule is simply headed "*Ad valorem Fees*" and the table of reference applies to the whole schedule and not in particular to article 1, which is the only article which makes any proviso indicating that there is a different maximum for the fees leviable on a written statement. There is no reason to confine the heading of the first column of the table of rates to a plaint or memorandum of appeal, rather these words apply equally to written statements claiming a set-off.

In re *Report of Chief Inspector of Stamps.*

*Original Suit No. 7 of 1928.