may frequently abuse his trust without being discovered. It is therefore essential that flagrant abuses such as the petitioner was guilty of should not be lightly passed over or regarded as capable of expiation by a short probationary period during which they have not been repeated. If we considered that the case was at all doubtful or that a larger tribunal might properly take a more lenient view we might issue a rule and call upon the Government Advocate to appear and show cause against the application before a special bench, but I am satisfied that no *primâ facie* case has been established and I have no doubt that the course we should adopt is to reject the application.

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DAWSON MILLER, C. J.

MULLICK, J.—I agree.

REFERENCE UNDER THE LEGAL PRACTITIONERS ACT, 1879.

Before Dawson Miller, C. J. and Mullick and Jwala Prasad, J.J.

BANAMALI DAS,

*In the matter of.**

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June, 7.

Legal Practitioners' Act, 1879 (*Act XVIII of* 1879), *sections* 13 *and* 14—*filing a written statement on behalf of defendant who has not given instructions to do so—no action taken by trial court—reference to High Court by appellate court, validity of—High Court's powers in case of invalid reference*—Vakalatnama, *practice as to acceptance of.*

Where a reference is made to the High Court under section 14 of the Legal Practitioners Act, 1879, by a court which has no power to make such reference under section 14, the High Court has power under section 13, after such inquiry as it thinks fit, to suspend or dismiss the practitioner whose conduct is complained of.

The nature of the inquiry to be held by the High Court in such a case is a matter for the discretion of the court. In

* Civil Reference No. 1 of 1922.

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the present case the High Court held that the materials collected by the District Judge in an inquiry held by him were sufficient for the purposes of the case, although the practitioner concerned could, had he wished to do so, have placed further evidence on his own behalf.

Duty of pleaders in accepting *vakalatnamas* discussed.

The facts of the case material to this report are stated in the judgment of Dawson Miller, C. J.

K. N. Chaudhuri (with him *Parmeshwar Dayal*, *G. Prasad* and *B. C. De*), for the pleader.

DAWSON MILLER, C. J.—This matter comes before us upon what purports to be a report of the District Judge of Cuttack under section 14 of the Legal Practitioners Act, although, from the wording of the report itself, it would appear that the learned District Judge considered that it was a case in which it was necessary or desirable for the High Court to take action under section 13 of that Act. Upon receipt of the learned District Judge's report this court issued notice to the pleader in question, Babu Banamali Das, a pleader practising in the courts at Puri, to show cause why he should not be dealt with under the Legal Practitioners Act. The charge which is made against the pleader is in effect that he signed and filed in court a written statement on behalf of a defendant for whom he was not authorized to appear at all. It is unnecessary to go in detail through the various stages of the litigation in which this alleged offence was committed or the processes by which the matter eventually came before this court. It may be stated shortly that the pleader was briefed in a suit instituted before the Munsif at Puri on behalf of some of the defendants in that suit. There were five defendants altogether and the *vakalatnama* which was accepted by the pleader was on behalf of four only of the defendants. The suit against the five defendants was brought by the superintendent of a *math* claiming damages and other relief against the defendants for having wrongfully collected tolls from the shop-keepers

in the *mela* at the end of the month of *Magh* when the plaintiff alone as the superintendent of the *math* was entitled to collect those tolls. The defendant No. 4 in the suit, who was a servant of some of the other defendants, did not join in the *vakalatnama* and consequently the pleader was not instructed by him. A written statement, however, was prepared, not by the pleader whose conduct is now in question before us, but by his senior who had also been briefed by the other defendants. This written statement, when it was brought to the pleader for signature, contained what purported to be the signatures not only of the four defendants who had briefed him but also the signature of Balabadra the other defendant who had not briefed him, and the pleader, without apparently considering or making any enquiries as to whether his *vakalatnama* had really been signed on behalf of Balabadra, signed the written statement and presented it in the Munsif's Court purporting to be a written statement on behalf of all the defendants. Subsequently, about a little more than a week later, the 4th defendant himself presented a written statement on his own behalf and, at the same time, put in a petition repudiating the authority of the pleader or anybody else to act on his behalf and to file a written statement purporting to be with his authority before the court. In so far as the written statement put in by Balabadra is concerned it was not very materially different from that already put in by the other defendants purporting to be on his behalf as well as the others. The only difference is that whereas in the original written statement the defendants deny having collected any tolls at all and further deny that the defendant No. 4 and the defendant No. 5 had collected any tolls legally payable to the plaintiff the written statement put in subsequently by Balabadra admitted that certain tolls amounting to a small sum of something like Rs. 6 had in fact been collected by the defendant No. 5 apparently with the assistance and connivance of Balabadra himself. It is clear that the difference between these two statements, although not very vast in extent, was a material

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difference in this way, that one admitted the collection of tolls to a small extent at all events, whereas the other put the plaintiff to proof of his statement by denying that any tolls had been collected. During the conduct of the case an application was made to the Munsif to take criminal proceedings against the defendants other than Balabadra and against the pleader upon charges of forgery, and a further application was made to take proceedings against the pleader under section 14 of the Legal Practitioners Act in that he had appeared for a party by whom he was not instructed.

The learned Munsif did not immediately hold an enquiry but at the trial he examined the pleader himself and various other parties in connection with the alleged misconduct, the subject of the charge made by the defendant No. 4. Balabadra, and in the course of his decision he made some adverse comments upon the conduct of the pleader and came to the conclusion that in giving his explanation of what had happened he had certainly not been very frank and fair. He did not however take any steps with regard to a criminal prosecution or granting sanction, and the case subsequently went on appeal to the District Judge.

The District Judge dismissed the appeal, the finding originally having been in favour of the plaintiff. Subsequently a further application was placed before the Munsif again asking that criminal proceedings might be instituted and that an enquiry might be held against the pleader, under section 14 of the Legal Practitioners Act. This application came before the successor of the Munsif who originally tried the case and both the application for sanction to prosecute and the application under section 476 of the Criminal Procedure Code were rejected as well as the application to proceed against the pleader under the Legal Practitioners Act. Subsequently it appears that the matter was reagitated before the District Judge and the District Judge after hearing the pleaders on behalf of the parties came to the conclusion that a serious offence had been committed by the pleader and referred

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the matter to this court in a letter, dated the 23rd February this year. The learned District Judge says that he refers the case under section 14 of the Legal Practitioners Act and then he sets out a short account of the case with certain findings arrived at by him and ends his letter by saying "Accordingly I think that necessary action ought to be taken against him under section 13 of the Legal Practitioners Act."

It is contended before us to-day that the reference to this court under section 14 of the Legal Practitioners Act by the District Judge is *ultra vires* and ought not to be entertained because under that section it is only the presiding officer of the court in which the offence is committed who has power to deal with the matter and make the reference to the High Court. In so far as this objection to the reference is concerned I think that there is no answer to it. The section provides that the proper person to make the enquiry and refer the matter and make the report to the High Court is the presiding officer of the court in which the offence or misconduct is committed. That court in the present instance clearly was not the court of the District Judge and therefore the District Judge had no power under section 14 to make a reference to this court in the present case. But at the same time I have no doubt that under section 13 of the Act the High Court has absolute power in any case, after such enquiry as it thinks fit, to suspend or dismiss a pleader or mukhtar from practice, and if we thought that this was a case in which suspension or dismissal would be a proper punishment to be inflicted we could in the circumstances, in my opinion, take action under that section. Nor does it matter that the case has come before us merely upon a reference by the District Judge who had no power to refer the matter to the court under section 14. It would be necessary however that this court should make an enquiry. What the nature of that enquiry ought to be is clearly a matter for the discretion of the court. We have before us in this case I think all the materials necessary to enquire and come to a decision upon the case, and we could without

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any further notice as the pleader has already appeared, assuming he did not wish to put before us any further evidence on his behalf, deal with the case upon the evidence which is already before us. A petition has been filed by the pleader and he sets out in detail the facts of the case, and his case is that when he signed the written statement he was under the impression that he had been briefed, not merely by four of the defendants in the case, but by them all, and further that when he did sign the written statement the signature of Balabadra, the other defendant, was in fact upon the written statement so signed by him, and in these circumstances it never occurred to him that he was not authorized to sign the written statement on behalf of Balabadra. After considering the case I have come to the conclusion that no actual intention on behalf of the pleader to commit a fraud or to mislead the court has been made out and the only doubt or difficulty that I have had, arises purely and simply from the manner in which the pleader himself gave evidence about this matter when he was examined before the Munsif. There can be no doubt that the attitude he took up on that occasion, which was an attitude of forgetfulness as to all the important things which had happened, was probably intended to shield as far as possible the other defendants or their servants who had also given evidence about how the signature of Balabadra came to be upon the written statement. In adopting that attitude, I think, he was certainly not frank and straightforward. He was also extremely foolish because it led the Munsif to treat his whole conduct with great suspicion and it has also created a doubt in my mind as to his *bonâ fide* in the matter. At the same time I am not satisfied from the evidence which is at our disposal that he had any real intention at the time he signed the written statement of committing a fraud or lending himself to any fraud which had already been committed.

Before finishing this judgment I think that one ought to draw attention to a practice which appears in some parts of this province to have grown up of

disregarding entirely the rules which have been laid down under the Legal Practitioners Act in relation to the accepting of *vakalatnamas*. If these rules were properly carried out then it would be almost impossible for mistakes such as that which has happened in the present case to take place. One of the rules provides (it is numbered 45E in Chapter XI of the General Rules and Circular Orders, Appellate Civil, Volume I) that a pleader accepting a *vakalatnama* shall note on it the name of the person from whom it has been received with an endorsement to the effect that he is satisfied that the person from whom he received it is either the party himself or his servant or relation or one who has been authorized by the party to deliver it to him as the case may be. He should also note the date of his receipt of the *vakalatnama*. In the present case the *vakalatnama* was merely signed by the pleader with the word "received" above. There is no date nor is there anything to indicate on whose behalf it was received or any certificate that he was satisfied that the person from whom he received it was the party himself or a servant or relation or agent. If that had been done I think it would have been impossible for the pleader in this case when he came to sign the written statement and file it in court to have had any doubt as to whether or not he had been instructed on behalf of Balabadra, the defendant No. 4. It was simply through neglect to obey these rules that when the time came he apparently got the impression that he had authority to act for a party who had in fact not instructed him. Although I do not think that this is a case which merits either dismissal or suspension from practice I think that the pleader has been careless and very remiss in the exercise of his duties. He is a young man at the beginning of his career and I think it ought to be pointed out to him that he cannot be too careful, exercising as he does a position of responsibility and trust both towards his clients and towards the court, in seeing that his conduct is in all matters in connection with his profession absolutely above suspicion. Although it is not a case to be dealt with

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severely, I think it is a case in which the pleader through his neglect to carry out the rules, has brought himself into a precarious position and it is a case in which I think he ought to be reprimanded and warned to be more careful in the future.

MULLICK, J.—I agree.

JWALA PRASAD, J.—I agree.

REVISIONAL CIVIL.

Before Coutts and Adami, J.J.

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June, 12.

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v.

KESHWAR LAL.*

Code of Civil Procedure, 1908 (*Act V of* 1908), *section* 24(4)—*Court invested with powers of Small Cause Court, transfer of suit from—Appeal from decision in such suit, whether lies.*

No appeal lies from the decision in a suit instituted in a court invested with Small Cause Court powers even though the suit was transferred for trial by the District Judge to, and tried by a court not invested with such powers.

Ramchandra v. *Ganesh*(1), and *Dalal Chandra Deb* v. *Ram Narain Deb*(2), not followed.

Sukha v. *Raghunath Das*(3), followed.

Madhusudan Gope v. *Behari Lal Gope*(4), *Sankararama Iyer* v. *R. Padmanabha Iyer*(5) and *Narayan Sitaram Mulay* v. *Bhagubin Ganga Ghanekar*(6), referred to.

Application by the defendants.

The facts of the case material to this report are stated in the judgment of Coutts, J.

* Civil Revision No. 25 of 1921, against a decision of Babu Harihar Charan, Subordinate Judge of Patna, dated the 7th October, 1920, reversing a decision of Babu Krishna Sahay, Munsif of Patna, dated the 31st January, 1920.

(1) (1899) I. L. R. 23 Bom. 382. (4) (1918) 27 Cal. L. J. 461.
(2) (1904) I. L. R. 31 Cal. 1057. (5) (1915) I. L. R. 38 Mad. 25.
(3) (1917) I. L. R. 39 All. 214. (6) (1907) I. L. R. 31 Bom. 314, F.B.