REFERENCE UNDER THE BAR COUNCILS ACT, 1926.

1937.

April 15, 20.

SPECIAL BENCH.

Before Courtney Terrell, C. J., Khaja Mohammad Noor and Varma, JJ.

AN ADVOCATE, IN THE MATTER OF.*

Vakalatnama—responsibility in accepting—withdrawal of money.

It is extremely necessary that advocates having to withdraw money or to accept serious responsibility of the kind from and on behalf of client should, even if there be no apparent circumstances to justify a suspicion, do everything in their power to verify the form of the vakalatnama and further more they should not accept a vakalatnama unless they have satisfied themselves of the bona fides of the person who offers it to them.

Reference under the Bar Councils Act, 1926.

The facts of the case material to this report are set out in the judgment of the Court.

B. N. Mitter, for the Bar Council.

Government Pleader, for the Crown.

COURTNEY TERRELL, C. J. AND MOHAMAD NOOR AND VARMA, JJ.—In this matter we have to consider the conduct of an Advocate of this Court and the report thereon by a tribunal appointed under the Bar Councils Act.

The facts are simple. Another Advocate whom we will designate as X was in charge of a certain first appeal pending in this court on behalf of the appellants. The appeal was eventually disposed of and a sum of money remained due to the Advocate X from his clients and a sum of money was lying to the credit of the appellants as surplus printing cost in the High Court. The Advocate X had a clerk who up to that time seems to have given satisfaction to his

* Miscellaneous Judicial Case no. 1 of 1937.

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employer. There is a rule governing the practice of the office. When money is to be withdrawn standing to the credit of a client, the Advocate has to go down personally to acknowledge the receipt of the money. This practice is sometimes inconvenient for Advocates of leading practice, with the result that a junior Advocate whose time is not so precious is instructed to take out the money. In this particular case the Advocate X was not accustomed to receive money in the office and the practice I have described seems to have been usually followed by him of advising the client to get the services of a junior Advocate for that limited purpose. On one morning the clerk of the Advocate X went to the Advocate whose conduct we are considering with what purported to be a vakalatnama on behalf of the appellants authorising him to withdraw the sum standing to the appellant's credit. The Advocate being aware of X's general unwillingness to perform that kind of duty and being directly approached by X's clerk accepted the vakalatnama from the clerk. He should have of course ascertained that the vakalatnama was genuine and that the person who gave it to him had authority to do so, but acting, as the tribunal have found and as we had no doubt, in perfect good faith in the circumstances he crossed out the endorsement which stood on the vakalatnama shown to him by the clerk "Received through Firangi Rai", and simply signed his name with the word "Accepted". When the application for withdrawal was presented in the office the irregularity of the precise form of acceptance was noticed, and the Advocate was called on for an explanation and eventually the matter was directed to be placed before the tribunal of the Bar Council who investigated the matter under the head of certain charges which the tribunal thought fit to hear against the Advocate: firstly, that he had accepted a vakalatnama from a person who was not authorised to give it; secondly, that he had not complied with rule 5(*f*) of Chapter IV of the General

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Rules and Circular Orders; thirdly, that he had accepted the vakalatnama without consulting Mr. X and thereby had assisted the client in an attempt to deprive Mr. X of the amount still due to him and, fourthly, that he had stated to the Registrar that he had consulted Mr. X before doing so which statement was said to be untrue. The tribunal investigated the matter and found that there was nothing to throw the slightest imputation upon the Advocate's professional honour. The tribunal found that in the particular circumstances of the case the admitted fact that Mr. X was unwilling to perform the kind of duty mentioned and the circumstance that the Advocate was approached by a person who was up to that time at least a clerk in the employ of Mr. X and trusted by him, deprived his mind of all cause for suspicion. With those findings we agree. The case is, however, of some importance, because it emphasises the extremely clear necessity that Advocates when having to withdraw money or to accept serious responsibility of the kind from and on behalf of client should, even if there be no apparent circumstances to justify a suspicion, do everything in their power to verify the form of the vakalatnama and furthermore they should not accept a vakalatnama unless they have satisfied themselves of the bona fides of the person who offers it to them. Some discussion took place in the matter of the alleged statement by the Advocate to the Registrar as to the prior consultation with Mr. X, but the tribunal unanimously found that there was no intention on the part of the Advocate to deceive the Registrar and that the interpretation of his statement to the Registrar was a matter of a misunderstanding.

The tribunal make certain recommendations which will carefully be considered as to the advisability of altering the rules in certain respects which at this time it is not necessary to discuss.

With the emphasis of the importance to the profession and to the administration of justice of the

accurate verification of vakalatnamas, we see no reason to disagree with the report of the tribunal or to make any further order in this matter.

Report accepted.

J. K.

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April, 26.

REFERENCE UNDER THE COURT FEE ACT, 1870.

Before James, J.

NAND KISHOR KUMAR.

v.

ACHAMBIT KUMAR.*

Court Fee—suit for partition—averment in plaint, whether the sole guide for ascertainment of court-fee leviable—Ad valorem court-fee, whether can be demanded if the defendant pleads adverse possession—practice.

It has not ordinarily been the practice of the Patna High Court to depend exclusively on the averment in the plaint for the ascertainment of what should be the proper court-fee payable which should be determined on an appreciation of what the plaintiff really sought.

Jai Pratap Narain v. *Rabi Pratap Narain*(1) not followed.

The plaintiff cannot be required to pay ad valorem court-fee in a partition suit merely because the defendant pleaded adverse possession.

Sukha Nand v. *Musammat Shiva Devi* (2) and *Peshauri Lal* v. *Jai Kishan Das*(3), distinguished.

But the court should be astute to see that plaintiffs should not avoid liability to pay court-fee under section 7(*iv*)(*c*) or section 7(*v*) of the Act merely by omitting to assert a prayer for possession in what was essentially a title suit in the guise of a partition suit.

Reference under the Court Fees Act, section 5.

*In the matter of First Appeal no. of 1926.

(1) (1930) I. L. R. 52 All. 756.

(2) (1935) A. I. R. (Lah.) 14.

(3) (1931) 142 Ind. Cas. 829.