APPELLATE CIVIL.

Before Sir Sydney Robinson, Kt., Chief Justice, and Mr. Justice May Oung.

IN THE MATTER OF A PLEADER.*

1924

Mar. 17.

Legal practitioner—Boycott of a Court—Throwing up a brief without obtaining consent.

Where, in pursuance of a resolution of the local Bar, to boycott a Magistrate's Court, a pleader throw up his brief without first obtaining his client's consent and left his client undefended, *held*, that the pleader was guilty of unprofessional conduct.

Held further, that an arrangement arrived at with his client whether on terms and conditions or otherwise for a consent subsequent to the pleader's failure to appear and defend, would not affect his liability under the administra tive jurisdiction of the High Court.

Obiter.—A pleader has duties and obligations to his client in respect of the suit or matter which is entrusted to him and is pending in Court. There is a further and equally important duty and obligation upon him, *viz.*, to co-operate with the Court in the orderly and pure administration of justice.

In the matter of Tarini Mohan Barari and others, 26 C.W.N., 508—*referred to.*

ROBINSON, C.J., and MAY OUNG, J.—This is a report made after enquiry charging a pleader with unprofessional conduct submitted to this Court for confirmation and the passing of such order as may be appropriate.

The facts of the case are practically undisputed and are as follows :—

The members of the local Bar appeared to have taken a dislike to the Special Power Magistrate on the ground, it is alleged, that he was in the habit of dismissing their cases because counsel did not appear immediately the case was called on. We do not know the details of this matter, or what justification there is for the opinions formed by the members of the Bar. It is clear that the pleaders were in the habit of behaving in Court in a manner to which the Special

* Civil Miscellaneous No. 1 of 1924.

1924

IN THE MATTER OF A PLEADER.

ROBINSON, C.J. AND MAY OUNG, J.

Power Magistrate took grave exception. It is said that they were in the habit of sitting on the table or leaning over the rails of the Bench in addressing the Court, and addressing the Court as "you" instead of "your honour." On one occasion the Special Power Magistrate took exception to this mode of address by a pleader, and administered a stern rebuke to him in open Court. He apparently asked the pleader what his nationality was, the necessary implication being that he was ignorant of good manners and the proper mode of addressing the Court. The Special Power Magistrate told him not to address the Court as "you," but as "your honour." This pleader reported the circumstances to the local Bar Association. The Special Power Magistrate further passed an order to the effect that he noticed with regret that some of the pleaders appearing in that Court had been lacking in courtesy (*a*) by sitting on the table or resting their hands on the rails of the Bench when addressing the Court, and (*b*) addressing him as "you" instead of "your honour." The order goes on—"Personally I am indifferent; but as a Judge and Magistrate I feel it my duty to point out the disrespect to the Bench and must warn all concerned to desist from the practice." There is a note on the order to the Head Clerk to hang it upon the Bench for a fortnight.

Now it is perfectly clear that these acts, which are not denied, were grossly improper. They were lacking in respect to the Court—a respect which it was the bounden duty of the members of the profession to show, and which is invariably shown by them. It is also perfectly clear that, as the counsel did not behave becomingly when addressing the Court, he should have been severely reprimanded for his conduct; and that it was the duty of the Judge to put a stop

to it. The order was a perfectly proper one, and the only exception that can be taken to it is that the Special Power Magistrate would perhaps have shown more tact if he had sent the order to the President of the Bar Association for the information of the members instead of hanging it up in open Court, which is apparently what the pleaders principally objected to.

The Bar Association held a meeting on the 2nd March, at which they considered these two questions. As regards the order, the resolution is "that while this Association does not deny some of accusations contained in the so-called order, such as putting the arm on the rails of the Bench and using the second personal pronoun to the Judge instead of repeating "your honour" every time the pronoun has to be used, it emphatically disowns all intention to offer thereby any slight to that officer, and states that the incidents are so insignificant that nothing short of a fanciful and highly exaggerated notion of office dignity could cavil or take offence at them." We are glad to notice that there was no intention to offer any slight to the presiding officer of the Court; but it must have been known to the members of this Association that such behaviour in open Court is not to be brushed aside as insignificant, and that it was not a mere fanciful notion of office dignity, but a proper sense of duty which led the Magistrate to issue the order he did.

On the complaint of a pleader of what is called an insult in open Court we would point out that the Magistrate was perfectly right in taking exception to that pleader's mode of address. It is unfortunate that he used language which might have been misunderstood; but to point out lack of respect and the proper mode of addressing the Court is not insulting, and the rebuke was the result of that pleader's own conduct. He brought it on himself, and he deserved it. The

1924

IN THE MATTER OF A PLEADER.

ROBINSON, C.J. AND MAY OUNG, J.

resolution passed was "that the members should suspend their practice in that officer's Court until such time when a suitable apology is tendered by him." There is a proviso to the resolution—"A member who has pending cases before that officer may appear in the cases thus pending, if he cannot obtain a release from his responsibilities in respect of those cases."

The next day the pleader now before us wrote a letter to the Superintendent of the Jail, in which his client was in custody, asking the Superintendent to inform the undertrial prisoner "that I shall not be able to defend him at the next hearing of his case before the Special Power Magistrate of Ma-ubin on account of the latter's bellicose attitude towards the lawyers generally. The fees given me by the prisoner's relations will be returned to them." The pleader then obtained the signature of his client to a petition to the District Magistrate for transfer of the case. In that petition it is stated that the pleader had written to say that he would not appear before the present Special Power Magistrate to defend the petitioner at the next hearing on account of the said Special Power Magistrate's haughty and insulting demeanour towards the lawyers who appeared before him. It goes on—"Thereupon the petitioner's relations had been to the local lawyers from door to door but none agreed to accept brief in the Special Power Magistrate's Court."

The case came on for hearing before the Special Power Magistrate, and the prisoner was undefended. He was convicted on the 6th March. An appeal was filed, and it was argued by the pleader now before us. The prisoner was acquitted. The learned Sessions Judge points out that the appellant had unfortunately been left in the lurch by his pleader in the middle of

the case, and he expresses the opinion that, if that pleader had put forward his case before the trial Magistrate as he he had done in that Court, the conclusion arrived at would have been different. The judgment in appeal was passed on the 5th April, so that the result of leaving his client in the lurch was that he had to remain in custody for a month longer than was necessary.

After writing the letter to the Superintendent of the Jail, the pleader interviewed the prisoner's employer who had originally engaged him on the prisoner's behalf, and it is clear that permission was given to him to throw up his brief, and arrangement was made that he would not appear before the Magistrate, but that he would file and conduct the appeal for the same fee.

The resolution of the Bar Association to boycott the Special Power Magistrate was recalled, but the pleader before us still supported the original resolution and would not agree to its being rescinded. The charge framed in this case was that the pleader had been guilty of grossly improper conduct in the discharge of his professional duty in that he was engaged to defend undertrial prisoner, Po Taik; that he accepted a fee and appeared by proxy at one hearing when the cross-examination of the prosecution witnesses was reserved; that the case was then adjourned to the 6th March, but that meanwhile on the 3rd he wrote to the Chief Jailor asking him to inform Po Taik that he would not be able to defend him at the next hearing of the case; and that he did not, in fact, appear at the next hearing or any subsequent hearing of the case either personally or by proxy.

It is argued that, having obtained a release from his obligation to defend the prisoner, he was clearly

1924

IN THE MATTER OF A PLEADER.

ROBINSON, C.J. AND MAY OANG, J.

not guilty of the charge that had been framed against him. There can be no question that, in the first instance, the pleader obtained no consent to his throwing up his brief. He wrote to the prisoner saying that he would not appear, and he so wrote obviously because of the resolution passed the previous day to boycott this particular Magistrate. It may be that, subsequently seeing that the position he had taken up was dangerous, he arranged for a consent on certain terms and conditions with a view to protecting himself from any such proceedings as these But it is also clear that he has known throughout these proceedings the seriousness of the charge ; that he acted, as he did, in pursuance of this resolution to boycott the Magistrate ; and that that was the motive that led him so to act.

In a case very similar to the present one, in which members of the local Bar passed a similar resolution boycotting a Court, the matter was considered by a Bench of three Judges of the Calcutta High Court—(*In the matter of Tarini Mohan Barari and others*, 26 C.W.N., 580). In the course of his judgment the learned Chief Justice said : " It must not be assumed that the Court regards the action of the pleaders as a matter of little importance. On the contrary we regard it as a very serious matter. The pleaders deliberately abstained from attending the Subordinate Judge's Court and took part in a concerted movement to boycott the learned Judge's Court, a course of conduct which cannot be justified or tolerated. The pleaders had duties and obligations to their clients in respect of the suits and matters entrusted to them, which were pending in the Court of the learned Subordinate Judge. There was a further and equally important duty and obligation upon them, *viz.*, to co-operate with the Court

in the orderly and pure administration of justice. By the course which they adopted, the pleaders violated and neglected their duties and obligations in both these respects. We desire to make it clear that such conduct cannot and will not be tolerated." With those remarks we entirely agree. This boycott resolution, had it not been withdrawn, would have called for serious notice of the Court, and we desire to point out that the conduct on the part of the members of the profession, such as has been mentioned and admitted in the course of this matter was conduct which the Special Power Magistrate was not only justified in taking notice of, but which he was bound to take notice of. We have no doubt that it was by reason of this resolution that the pleader threw over his client, and that the subsequent consent was obtained merely because he saw that his position could not be justified.

The conduct in Court, which is brought out in this case, was most reprehensible. The conduct in passing this boycott resolution would have called for the severest punishment. We trust that this strong expression of our opinion will serve as a warning, and that we shall not be called upon to deal with such conduct in future.

This enquiry, however, has had an unfortunate course. The matter was first taken up by the District Magistrate, and it was pointed out to him that any such enquiry must be held in the Magistrate's Court. An enquiry was thereupon held by the Magistrate, but, as he had framed no charge, we set aside that enquiry and directed a fresh enquiry by his successor.

The matter has now been pending for a very long time, and though we think that there is no real substance in the defence the matter of the boycott

1924

IN THE MATTER OF A PLEADER.

ROBINSON, C.J. AND MAY OUNG, J.

resolution was not contained in the charge and he was not called upon to meet it and therefore we do not consider that it would be proper to pass any order of suspension. We trust that the warning that has been given and the fact that it is known that such resolutions of boycott are grossly improper and that, repeated, they will be severely dealt with, will be sufficient. The rule will, therefore, be discharged.

ORIGINAL CIVIL

Before Mr. Justice Rutledge.

1924

Mar. 20

In re A. V. JOSEPH, INSOLVENT.*

Mercantile document—Construction of general words following specific words—Doctrine of ejusdem generis, *application of—.*

Held, that where in a mercantile document in which there is specific mention of a distinct category followed by general words, the doctrine of *ejusdem generis* applies.

R. v. *Edmundson*, 28 L.J.M.C. , 213 ; *Tillmanns & Co.* v. *S.S. Knutsford, Limited*, (1908) L.R. 2 K.B.D., 402 ; *Official Assignee* v. *M. E. Neikwara* 1 Ran., 153—*referred to.*

Jarman on Wills, 6th Edition,—*referred to.*

Paget—for the Petitioners.
Keith—for the Respondent.
J. Ali—for the Insolvent.

RUTLEDGE, J.—In this case the Bank claims that *inter alia* by their mortgage or hypothecation deed, dated the 12th May, 1922, they have security over two cargo boats which bore the license Nos. 667 and 668 respectively of 1923, and over which the respondents have a mortgage dated the 23rd May, 1923.

The case turned upon the construction to be put on certain words in the petitioners' hypothecation instrument of the 12th May, 1922,—" The mortgagor doth hereby hypothecate unto the Bank all and

* Insolvency Case No. 233 of 1923.