

1935
 N.M.L.
 CHETTIAR
 FIRM
 &
 THE
 OFFICIAL
 ASSIGNEE.
 MOSELY, J.

allowed to stand by doing nothing, and then reap the benefit of another decree-holder's superior diligence. It is obvious that the word "application" cannot be unqualified. It must mean an application made in accordance with law, not barred by limitation, not yet satisfied, and capable of being satisfied, and, in my opinion, it must also mean an application still subsisting and pending, and not already disposed of, whether on the merits or by default.

For these reasons I consider that the order of the trial Court was correct, and the applicant was not entitled to rateable distribution. This application in revision will be dismissed with costs, advocate's fee Rs. 34.

SPECIAL BENCH.

*Before Sir Arthur Page, Kt., Chief Justice, Mr. Justice Mosely, and
 Mr. Justice Ba U.*

IN THE MATTER OF AN ADVOCATE.*

1935
 Mar. 11.

Advocate—Attempt to bribe judicial officer—Professional misconduct.

An advocate who attempts to bribe a judicial officer on behalf of his client is guilty of the grossest professional misconduct. He is unfit to remain a member of the legal profession, and should be struck off the Roll of Advocates.

A. Eggar (Government Advocate).

Zeya for the respondent.

PAGE, C.J.—In this case U Ba Htin, an advocate of the High Court, practising at Maubin, has been called on to show cause why he should not be struck off the Roll of Advocates or otherwise punished, on the ground that he has been guilty of professional

* Civil Misc. Application No. 6 of 1935

misconduct. The case was referred to the Bar Council, and an enquiry was held by a tribunal consisting of Mr. R. G. Aiyangar, President, Mr. K. C. Bose and U Kyaw Myint.

The following charges were framed :

" 1. That you U Ba Htin having been engaged by U Tha Kyi of Thôngwa to defend him in Civil Regular Suit Nos. 139 and 216 of 1931 on the file of the Township Judge's Court of Maubin intimated by letter as per photographic copy of Exhibit A to the said U Tha Kyi that the Myoôk had demanded Rs. 300 and that you were ' still bargaining with him trying to beat him down ' and thereby you are guilty of conduct unbecoming the profession of an advocate. You are hereby called upon to show cause why you should not be struck off the Roll of Advocates or suspended from practice or otherwise punished.

2. That you U Ba Htin did receive from Ma Hnin Bwin wife of the said U Tha Kyi the sum of Rs. 300 to be given as a bribe to the Township Judge, Maubin, in order to induce him to decide the cases in favour of the said U Tha Kyi. You are hereby called upon to show cause why you should not be struck off the Roll of Advocates or suspended from practice or otherwise punished.

3. That the said cases on the file of the Township Judge's Court of Maubin were decided against the said U Tha Kyi and that you U Ba Htin, misappropriated the said sum of Rs. 300 paid to you on behalf of the said U Tha Kyi by his wife Ma Hnin Bwin and thereby you are guilty of conduct unbecoming the profession of an advocate. You are hereby called upon to show cause why you should not be struck off the Roll of Advocates or suspended from practice or otherwise punished."

The members of the tribunal submitted separate reports, in each of which it was found that the first charge had been proved, but whereas Mr. Aiyangar, the President, also held that the second and third charges had been made out, the other members of the tribunal were of opinion that these charges had not been substantiated.

Now, the material facts lie within a narrow compass. In 1931 two money suits were filed in the

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Township Court of Maubin against U Tha Kyi, who lives at Thòngwa village, and the respondent Ba Htin was instructed to appear for the defendant. In each suit a decree was passed against the defendant on the 1st September, 1931.

On receiving notice that the cases had been lost and that the decrees were to be executed against him U Tha Kyi, who is an old man of 79, became extremely perturbed, because during the course of the proceedings and before judgment had been delivered he had, so it was alleged, received a letter from his learned advocate, U Ba Htin, written in Burmese (Exhibit A), the translation of which is as follows :

“ Ko Tha Kyi—do not worry. You may stay in peace. For the future there will be no necessity for you to come in connection with this case. Therefore be assured that everything is well and let your mind be in peace and contentment. Do not worry U Tha Kyi—Sir.

Sd. MG. BA TIN (in Burmese).

The delay is due to the fact that the Myoòk has demanded Rs. 300 (I am) still bargaining with him trying to beat him down.

Sd. MG. BA HTIN (in English).”

It was stated at the enquiry that Ma Hnin Bwin, the wife of U Tha Kyi, after the receipt of this letter had gone to Maubin and had paid Rs. 300 to the respondent for the purpose of bribing the Judge as therein suggested ; but that when he heard that the cases had been lost U Tha Kyi sent his wife to Maubin to demand the return of the money. She was unsuccessful, the respondent telling her to come again 4 or 5 days later.

Now, U Tha Kyi's son, Po Thin, is the village headman of Thòngwa, and U Tha Kyi consulted

him on the matter. It appears that after Po Thin and his brother Po Byu had failed to obtain repayment of the money from the respondent they showed the letter (Exhibit A) to U Thein Nyun, a pleader at Maubin, who advised them to have the letter photographed as U Ba Htin might get possession of the original letter before the money was returned. This was done and three copies of the letter (Exhibit A) were obtained, of which one was given to Po Thin and two were retained by U Me, Thein Nyun's father. U Ba Htin, on being shown the original letter by Po Thin, told him that he would return the money if U Tha Kyi came for it. U Tha Kyi and his wife Ma Hnin Bwin then went to Maubin, and according to Ma Hnin Bwin she "handed over the letter to U Ba Htin as he promised to return the money." She added

"he asked for the letter and said that he would pay the money in four or five days' time. I gave it to him because I believed him. I thought it would be easier to get the money if I returned the letter to him. I went to him again about four or five days later to make a demand, but he did not pay me. I did not go again. Later on U Po Byu sent his letter."

It was proved to the satisfaction of the tribunal that Exhibit A was one of the photographic copies of the original letter in U Me's possession. Further, it was admitted by the respondent that subsequently a letter of demand for the repayment of the money was received by him, but that he did not reply to it.

At the conclusion of the evidence in support of the charges the respondent was asked by the President :

"Q. Do you want to make any statement in connection with the evidence already recorded to explain anything that appears in it against you ?

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A. Personally I have no wish to make a statement. I have given full instructions to my lawyer."

The case urged by U Zeya on behalf of the respondent was that the whole story is a concoction from beginning to end, and that the letter (Exhibit A) was fabricated and forged by U Pe Maung, a brother-in-law of the respondent, who was on bad terms with him.

[His Lordship, after discussing the evidence, held] that the inherent evidence from the documents themselves and the probabilities of the case support the oral testimony of the witnesses who came from Thôngwa village, and I am clearly of opinion that the first charge has been made out against the respondent.

In these circumstances it is unnecessary to discuss whether the second and/or the third charges have been substantiated, although there does not appear to me any sufficient ground for disbelieving Ma Hnin Bwin's evidence that she paid Rs. 300 to the respondent as alleged in the second charge if her evidence on the first charge is worthy of credence ; specially in view of the admission by the respondent that he had received the letter demanding the return of the money and yet had sent no reply to it.

In this Province complaints are frequently received by the High Court to the effect that attempts have been made to bribe the subordinate judiciary. The complaints are nearly always anonymous, but there is, I am sorry to say, ground for surmising that it is not an uncommon practice in some parts of Burma for unscrupulous litigants to have recourse to such a device in order to obtain a judgment in their favour. An advocate who stoops to such nefarious tactics is guilty of the grossest professional misconduct ; for by

such means, if successful, justice is both dishonoured and betrayed.

Each case turns on its own facts [see *Re Hari Prosanna Mukerjee* (1)], and having carefully considered the present case in all its bearings we have no doubt as to what is the proper order for the Court to pass. In our opinion, by his conduct the respondent has shown himself to be unfit to remain a member of the legal profession, and it is ordered that his name be struck off the Roll of Advocates of this Court.

BA U, J.—I agree.

MOSELY, J.—I agree with my Lord the Chief Justice that the first charge against the respondent was fully proved. The three members of the tribunal, who were able to observe the demeanour and satisfy themselves of the veracity of the witnesses, were unanimous in their finding on this charge. It is impossible to suppose that these villagers of Thongwa would have lent themselves to making a false accusation against the respondent, and indeed the proceedings did not originate on any complaint by them. Ma Hnin Bwin, the principal witness, was certainly not eager to incriminate the respondent. It is evident from the report of the President of the tribunal that her statement that she did not know what became of the letter was not regarded as an answer as to what she did with the letter. Presumably she thought she was asked what the respondent did with the letter. The matter was cleared up when she was recalled. She was corroborated as to the letter by Po Thin and Po Byu and by the pleader Thein Nyun. The Burmese member of the tribunal,

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U Kyaw Myint, in his report lent much aid to the opinion of the handwriting expert, and has given, I consider, conclusive reasons for believing that the letter which was the original of the photograph Exhibit A was written by the respondent.

I agree that there was no sufficient reason for disbelieving Ma Hnin Bwin's evidence that the Rs. 300 was paid to the respondent. She was presumably assisting U Tha Kyi in his business, and a busy woman may well have forgotten after an interval of two years whether the money was paid in one or two instalments. I do not agree with the member of the tribunal, Mr. Bose, that the money could not have been paid to the respondent without any further communication from him, and U Kyaw Myint is certainly mistaken when he says that the wording of the letter is against any payment having been made after the receipt of it. The letter does not indicate that the respondent had any money of U Tha Kyi's in his hands. It may be that these two members of the tribunal were right in holding that there was technically insufficient evidence to substantiate the second charge, but, as I have said, there was no ground for discrediting Ma Hnin Bwin's evidence.

I agree that the only fitting punishment is to order that the respondent's name be struck off the Roll of Advocates of this Court.