

1935
 MA HNIN
 ZAN
 v.
 MA MYAING.
 MYA BU, J.

The property taken by the surviving parent to his second marriage would ordinarily be his *payin* in that marriage, and so long as the *corpus* is unchanged it will always remain *payin* and unless there has been a merger of the *payin* into the *lettetpwa* property either by being inextricably mixed up or by conversion, the *payin* property does not lose its original character.

In the result, I fully concur in the judgment of my Lord the Chief Justice and in the orders proposed by him.

SPECIAL BENCH.

Before Sir Arthur Page, Kt., Chief Justice, and Mr. Justice Mya Bu.

1935
 Jan. 14.

IN THE MATTER OF A HIGHER AND A LOWER GRADE PLEADER.*

Pleader—Attempt to suborn a witness—Professional misconduct.

An attempt on the part of a pleader to suborn a witness amounts to gross professional misconduct, and the proper order in such a case is that the pleader's name be struck off the register of pleaders.

A. Eggar (Government Advocate).

Rafi for the first respondent.

Tha Kin for the second respondent.

PAGE, C.J.—In this case M. K. Roy, a higher grade pleader practising at Pyapôn, and a lower grade pleader, Hla Tin, have been called upon to show cause why their names should not be struck off the register of pleaders.

The charge against these pleaders is that each of them was a party to an attempt to suborn a witness,

* Civil Misc. Application No. 104 of 1934.

one Aung Myint, who had given evidence before the committing magistrate in a dacoity case.

In my opinion subornation of witnesses is as serious an offence as could well be committed, because it fouls the course of justice, and makes the due administration of law impossible.

Since I have been in Burma I have received a number of complaints that attempts have been made,—sometimes successfully, sometimes not,—to suborn witnesses in civil or criminal cases. It is always difficult to prove that witnesses have been tampered with and most of the complaints that I have received have been anonymous. But I am determined as long as I sit in this place to prevent, so far as in me lies, the pollution of the crystal river of justice, and any persons who are not unwilling to have recourse to such an iniquitous practice as the subornation of witnesses would be well advised to take warning that if their misdeeds are discovered they will be punished with the utmost rigour of the law.

In the present case I am satisfied that a wicked attempt was made to induce Aung Myint to retract the evidence that he had given in the Court of the Western Subdivisional Magistrate, Rangoon . . .

It appears that Vellu, Manikam and other persons had been charged with participation in a serious dacoity. Ultimately Vellu and Manikam, who were protagonists in the crime, among others were convicted and sentenced to terms of imprisonment. The proceedings were commenced at Pyapôn, and Vellu, a man of substance in that district, was defended by the respondent pleader, M. K. Roy. The case was subsequently transferred to the Court of the Western Subdivisional Magistrate, Rangoon. In the course of the committal proceedings Aung Myint, who had been employed by Vellu as a motor boat driver, gave

1935

IN THE
MATTER OF
A HIGHER
AND
A LOWER
GRADE
PLEADER.

PAGE, C.J.

1935
 IN THE
 MATTER OF
 A HIGHER
 AND
 A LOWER
 GRADE
 PLEADER.
 PAGE, C.J.

evidence for the Crown, and his testimony was damaging to the accused. After he had been examined-in-chief and before his cross-examination had been concluded the case was adjourned, and during the adjournment Aung Myint returned to Pyapôn. Vellu and Manikam got wind of this, and they decided to extract from Aung Myint a recantation of the evidence that he had given against the accused in the Magistrate's Court.

It is common ground that Aung Myint, while attending a *pree* at Pyapôn, was approached by or on behalf of Vellu and Manikam, and was taken in a motor car about 9 o'clock at night to the office of the respondent Roy, which was the lower part of the house in the upper part of which Roy resided. The respondent Hla Tin had been employed as a clerk by Roy. Afterwards he became a lower grade pleader, and as he was not well off and had no books of reference Roy allowed him to have a seat in his office. Now, on the night in question Roy was using his father-in-law's car, and Roy took Vellu with him in the car to Hla Tin's house. Hla Tin was fetched from the house, and taken back in the car to Roy's house. Vellu, Manikam, Hla Tin, and Aung Myint were together in Roy's office for sometime. What were they doing? They were preparing a draft, which was to be written out in Burmese by Hla Tin and then copied by Aung Myint in his own handwriting, of a recantation by Aung Myint of the evidence that he had given in the Magistrate's Court. According to the evidence of Aung Myint, which I believe, he was told by Hla Tin, no doubt on behalf of Vellu and Manikam, that if he would sign an affidavit in this sense on the following morning he would receive Rs. 50. It is not disputed that while Vellu, Manikam, Aung Myint and Hla Tin were engaged in this nefarious occupation Roy, for some part of the time at any rate, was present. It

appears, however, that later on Roy went upstairs to the apartments in which he lived, and that Vellu went out to E Ba, the driver of the car that Roy had been using, and told him to wait and take Hla Tin home. After a time Hla Tin, Aung Myint and other persons came out of Roy's house and went into the car. Hla Tin was dropped at his house, and Aung Myint was driven round the town and eventually spent the night in Vellu's motor boat. The following morning about 8 o'clock Aung Myint was taken to Hla Tin's house. Before the transaction was completed, however, the agents of Vellu and Manikam who were present, ~~went~~ away to procure the Rs. 50 and while Hla Tin was out of the room Aung Myint fled from the house, and gave information to the police.

The participation of Hla Tin in this attempt to suborn the witness Aung Myint, in my opinion, is clearly established . . .

In my judgment, having regard to the evidence at the enquiry and to the report of the District Magistrate, it is plain that Hla Tin was prepared to lend himself to Vellu for the purpose of assisting Vellu in his attempt to suborn the witness Aung Myint. He has proved himself quite unfit to be a member of an honourable profession, and the order of the Court is that his name be struck off the register of lower grade pleaders.

The case against the respondent Roy is somewhat different, and we have taken time to consider his case. I am bound to say that I doubt Roy's honesty, and I entertain the gravest suspicion that he was a party to the attempt to tamper with the witness Aung Myint. To whom would Vellu and Manikam be likely to turn to carry out their wicked design sooner than to the pleader Roy who had defended Vellu in the proceedings at Pyapôn?

1935

IN THE
MATTER OF
A HIGHER
AND
A LOWER
GRADE
PLEADER.

PAGE. C.J.

1935

IN THE
MATTER OF
A HIGHER
AND
A LOWER
GRADE
PLEADER.
PAGE, C J.

[His Lordship examined the evidence and concluded as follows.]

The Sessions Judge, in forwarding the report of the District Magistrate, observed that in his opinion the case against Roy "was not quite free from doubt." After carefully considering the case in all its bearings we are prepared to give the respondent Roy the benefit of the doubt; but beyond that I am not prepared to go. My learned brother and I regard the respondent Roy's conduct as highly suspicious, and it has necessitated the presence of the learned Government Advocate in the proceedings before us. In these circumstances the respondent Roy submits to any order that the Court deems fit to pass, and we direct that the respondent Roy do pay the costs of the learned Government Advocate which we assess at ten gold mohurs, but we refrain from taking disciplinary action in his case.

MYA BU, J.—I agree.