

SPECIAL BENCH.

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

IN THE MATTER OF A LOWER GRADE
PLEADER.*

1936

Jan. 20.

Professional misconduct—Client unable to sign application—Pleader allowing client's nephew to sign client's name—Pleader's action improper but not a connivance at forgery—Disciplinary action.

A pleader prepared two applications on behalf of his client for the purpose of having the record of certain proceedings lodged in Court. The pleader found that his client could not sign the applications on account of a swollen hand, and he allowed the nephew of his client, who used to sign documents for the client when he was ill, to sign the applications in the name of the client without obtaining an order from the Court in that behalf. The Township Magistrate took the view that the pleader's conduct amounted to a connivance at a forgery.

Held, that the action of the pleader was thoughtless and improper, but that it could not be held that he had acted with any indirect motive or with intent to commit a breach of professional duty, and that in the circumstances of the case disciplinary action against the pleader was not necessary.

Ba Han for the respondent.

PAGE, C.J.—In this case, in our opinion, the Township Magistrate has taken an exaggerated view of the gravity of the offence which admittedly the respondent has committed. The Township Magistrate ought only to have taken cognizance under section 14 of the Legal Practitioners Act of the action of the respondent in the criminal case which was a proceeding that took place in his Court—*U Thein Nyun v. District Superintendent of Police, Maubin* (1). But, as the same question arises both in the criminal proceeding and in the civil proceeding, for the purpose of disposing of the present application it makes little difference that the Magistrate took action in respect of both proceedings.

* Civil Misc. Application No. 102 of 1935.

(1) (1935) I.L.R. 13 Ran. 737.

It appears that the respondent, who is a lower grade pleader practising at Pa-an, had been instructed on behalf of one Katari in a criminal proceeding and also in a civil proceeding, and that in the course of his duty as the pleader of Katari he thought it was necessary that the record of certain proceedings should be before the Court, and two applications were prepared that the proceedings should be lodged in Court for the purpose of the trial. He took the two applications to Katari, and asked him to sign each of them. Katari, however, had a swollen hand and could not himself sign the documents. Foolishly the respondent allowed Mutaya, the nephew of Katari who used to sign documents for him when Katari was ill, to sign these two applications in the name of Katari. The proper course for the respondent to have taken in the circumstances plainly was to apply to the Court in the matter, pointing out the difficulty in which he was placed, and to seek permission from the Court to have the documents executed as the Court might direct. It was thoughtless and improper of the respondent to have allowed Mutaya to write the name of his uncle Katari on the documents without obtaining an order from the Court in that behalf.

The Township Magistrate expressed the view that in acting as he did the respondent was conniving at, if not causing, the forgery of one person's signature by another; and he stated that "the respondent U San Yi has attempted to hoodwink the Presiding Officers of the Courts of Justice and has actually succeeded in his attempt in the Civil Execution Case until the same was found out by my predecessor when the said Civil Case was called for reference in Criminal Regular Case No. 44 of T.M., Pa-an."

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With all due respect I do not think that the respondent acted with any indirect motive, or with the intention of committing a breach of his professional duty. No doubt he was thoughtless, but I do not think that he deliberately did anything which he thought was unprofessional. It must not be taken, however, that this Court in any sense condones his conduct. The respondent ought to have known what his duty was, and in acting as he did he committed a breach of his professional duty. Dr. Ba Han, with his usual good sense, has not attempted to palliate the wrongful act of the respondent. The only question that this Court has to consider is whether in the circumstances it is necessary for the Court to direct that disciplinary action should be taken against the respondent. In such cases as that under consideration the Court has to pass a suitable order taking into account the setting in which the action of the respondent is found. I cannot persuade myself that the conduct of the respondent shows that there is such a defect in his moral character as disentitles him to perform the honourable and onerous duties which fall to his lot as a pleader, and in the circumstances we do not think it necessary that the Court should take disciplinary action against the respondent. We have no doubt that the fact that these proceedings have been taken against him will act as a warning to the respondent in the future to be more careful in carrying out the exacting duties which as a pleader he is called upon to perform.

BA U, J.—I agree.