As regards the latter view of the plaintiffs' rights, although there has been no formal resumption by them of the *sanad*, the present suit may be treated as having that effect, without prejudice to the defendants, who, if they could have proved a custom, would have done so to establish their right to create an hereditary *gumástá* notwithstanding the inalienability of the *vatan*.

With respect to the proceedings in execution of the decree of the 22nd June, 1869, the surviving plaintiffs were not parties to any of them, including Mr. Ranade's order of the 18th June, 1881, and are, therefore, not bound by them under the provisions of section 244 of the Code of Civil Procedure.

In either view, therefore, of the *sanad* we are of opinion that the plaintiffs are now entitled to the declaratory decree and injunction as prayed for, and the decree of the Court below should be confirmed with costs.

Decree confirmed.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Birdwood.

1887. *June 13.*

PA'LLONJI MERWA'NJI, (APPLICANT), *v.* KA'LLÁBHA'I LALLUBHA'I AND ANOTHER, (OPPONENTS).*

Pleader and clients, their rights and obligations inter se—Regulation II of 1827—Confidential communications made in the course of professional employment.

The rules prevailing in England with regard to the rights and obligations of solicitors in relation to their clients apply, with slight difference, to pleaders practising in India. The principles deducible from the English cases are as follows :—

1. A party to a judicial proceeding is entitled to such professional assistance as he thinks will best suit him.

2. A pleader is free to place his services at the disposal of any such party upon such terms as he may think most advantageous to himself consistently with the honour of his profession and the due administration of justice.

3. A pleader who receives any confidential information from his client in the course of his professional employment is not at liberty to carry that information

* Application under Extraordinary Jurisdiction, No. 191 of 1886.

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into the service of his antagonist, or any one who in that very litigation or in any subsequent litigation may be opposed to the client furnishing the information.

4. Under Regulation II of 1827, pleaders receive certain fees, in return for which they are not at liberty to act against those retaining them, whether they are retained by one client singly or by two or more clients jointly.

A pleader who has acted for several persons will not be restrained from afterwards acting for some of them only as against the others, unless it be shown that he is possessed of knowledge arising from his previous employment which might be prejudicial to his other clients.

As a general rule, the Court will require a very strong case to be made out before it will interfere by way of injunction, restraining a pleader from appearing for a client, and there must be clear affidavits made to show that special knowledge was acquired by the pleader during his employment by the former client. In case of his possessing such knowledge, he will not be allowed to throw up the conduct of the case and transfer his services. He will never be allowed to discharge himself from the conduct of the case if the case raises even a probability of prejudice to his former employers.

K., a pleader, was at first retained by P. and N. jointly to defend a suit on their behalf. At a later stage of the case, P. and N. quarrelled. Thereupon K. applied to the Court for leave to withdraw from the conduct of the case, on the ground that he could not attend to the interests of both P. and N. The Court allowed him to withdraw. A few days afterwards, K. appeared in Court, and filed a *vakalatnámá*, or warrant of attorney, signed by N., and claimed to conduct the case on behalf of N. alone. P. objected to this; but the Court disallowed this objection.

Thereupon P. made an application to the High Court for an injunction restraining K. from acting on behalf of N. alone.

Held that as it was not made out that K. was in possession of any confidential information either from P. or from P. and N. together, such as would give him an unfair advantage when acting on behalf of N., the Court would not interfere or restrain K. from serving N. alone.

Held, further, that a pleader in such circumstances should take the direction of the Court as to which of two or more clients he is to serve, and as to the disposal of the fees he has received from them jointly.

THIS was an application under section 622 of the Code of Civil Procedure (Act XIV of 1882).

The applicant Pállonji and one Nassarvánji were defendants in Original Suit No. 160 of 1882 in the Court of the First Class Subordinate Judge of Surat. Both the defendants engaged Mr. Kállábhái Lallubhái, a *vakíl* of the High Court, to appear and plead on their behalf in that suit. Mr. Kállábhái conducted

the case on behalf of both the defendants until 4th August 1886. On that day he presented an application to the Court, praying to be relieved from the conduct of the case, on the ground that his clients had quarrelled, that their interests now appeared to clash, and that he could not, therefore, appear for both.

The Court allowed Mr. Kállábhái to withdraw from the case.

A few days afterwards he appeared in Court and filed a fresh *vakalatnámá* on behalf of the defendant Nassarvánji alone, and claimed to conduct the case on his behalf.

The other defendant, Pállonji, thereupon objected, and applied to the Court to restrain Mr. Kállábhái from appearing on behalf of his co-defendant.

This application was rejected. The Court held that there was no objection to Mr. Kállábhái's appearing on behalf of one of his former clients. Thereupon Pállonji made the present application to the High Court for an order restraining Mr. Kállábhái from conducting the case on behalf of Nassarvánji. He also prayed that the Court should take such further notice of the pleader's professional conduct as it might deem fit.

It was urged (1) that it was improper and unprofessional for Mr. Kállábhái to appear for Nassarvánji, the co-defendant, after having withdrawn from the case; and (2) that as he had received full instructions from the applicant, and had become acquainted with the whole of his case, he ought not to be allowed to appear on behalf of the co-defendant.

A rule *nisi* was granted on the 9th December, 1886, calling upon Mr. Kállábhai and his client Nassarvánji to show cause why the former should not be restrained from further acting on behalf of the latter.

Mánekshâh Jehángirsháh for the applicant.

Shántárám Náráyan for opponent No. 1.

Shivrám V. Bhandárkar for opponent No. 2.

West, J.:—This is an application made by Pállonji for restraining Mr. Kállábhái Lallubhái, a pleader engaged by him and his co-defendant Nassarvánji in a certain suit brought against them

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both by one Jamsedji in the Court of the First Class Subordinate Judge of Surat, from appearing and acting for Nassarvánji alone, since he, Mr. Kállábhái, had with the permission of the Court withdrawn from the conduct of that case for them both. The applicant also prayed that this Court should take such further notice of the conduct of Mr. Kállábhái as a pleader as to it might seem proper.

A rule *nisi* was granted by us on the 9th December last, calling upon both the opponents to show cause why Mr. Kállábhái should not be prohibited from further acting on behalf of Nassarvánji.

We have heard Messrs. Shántárám Náráyan and Shivrám V. Bhandárkar, who appear to show cause, and Mr. Máneksháh Jehángirsháh in support of the rule, and we do not think there is good ground shown for making the rule absolute.

In disposing of this case we have to act very much on principles or in accordance with the rules prevailing in England with regard to solicitors.

The principles that can be gathered from cases decided in England are chiefly these :—

1. Any person who needs professional assistance has a right to get the services of any one who is qualified for the purpose, and whom that man chooses.

2. Those persons who have satisfied the requisite conditions and passed the necessary tests and who render professional advice have a right to earn due emoluments for their services in such ways as are consistent with the honour of their profession and the due administration of justice.

3. Those persons who have been given information in their service as professional advisers, and who act for him who has engaged them, are not at liberty to carry that information into the service of his antagonist or any one who in that very litigation or in any subsequent litigation may be opposed to the client furnishing the information.

4. In India, these rules though apply with some slight difference, the pleaders under Regulation II of 1827 receive certain

fees, in return for which they are not at liberty to act against those retaining them, whether they are retained by one client singly or by two or more persons jointly.

The difficulty in such cases as the one now before us arises when clients jointly engage the services of a pleader, and when the latter happens subsequently to be engaged by some one or other of them, but not all, but in reference to the same subject-matter.

When a pleader who was once engaged by a number of persons jointly and as a composite body is subsequently engaged by one of them separately, the English cases lead to the conclusion that such a succession of services can under particular circumstances occur without any breach of honour and professional etiquette. If there is any unfair communication or use of information, that must be checked as improper.

Mr. Shántárám in the course or his argument stated that his client, Mr. Kállábhái, had already pressed Mr. Nassarvánji to engage another pleader to conduct the case, for him, and that the latter had done so. But that does not affect the merits of the questions raised by the applicant, Pállonji; because mere outward withdrawal from a case would not prevent a pleader from advising the client as regards the conduct of the case, or from giving him any information that might have been derived from his former clients during his employment. Such a course, instead of being of any substantial advantage to the applicant, would but tax his antagonist with an additional fee.

The case of *Robinson* v. *Mullett*[1] establishes that a solicitor who has acted for several persons will not be restrained from afterwards acting for some of them only, as against the others, unless it be shown that he is possessed of knowledge arising from his previous employment which might be prejudicial to his other clients.

The case of *Grissell* v. *Peto*[2] and others also refer to similar questions arising between solicitors and their clients, and the general result of the examination of all these cases is that the Court will require some very strong case to be made out before

(1) 4 Price's Rep., p. 353. (2) 9 Bing., 1,

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it will interfere by way of injunction, and there must be clear affidavits made to show that special knowledge was acquired by the pleader during his employment by the former client. In case of his possessing such knowledge he will not be allowed to throw up the conduct of the case and transfer his services. He will never be allowed to discharge himself from the conduct of the case even if the case raises a probability of prejudice to his former employer or one of his clients—at any rate he must not change sides.

In the present case down to a late stage as between the plaintiff and defendants Mr. Kállábhái was engaged, and he acted for both the defendants. In the evidence of Nassarvánji some facts were revealed, which showed that Pállonji might have claims against Nassarvánji in respect of certain collections made by the latter out of properties under his management.

When matters reached that stage, Mr. Kállábhái stated that he could not conduct the case for both the defendants, and on applying to the Court, got his discharge.

The case as between the plaintiff and the defendants would, in his opinion, necessitate the adjudication of some rights as between Pállonji and Nassarvánji *inter se*, and he properly thought himself justified in a claim to be discharged from his liability to serve them both.

The question is, what should he have done under the circumstances? As a pleader of the High Court he must or he ought to have known that though the interests of both of his clients appeared to clash, it was still possible or rather desirable for him to serve one or other of the two, and the more so since he himself admitted that he was not in possession of any confidential information from either of them.

The proper course was for him to go to the Judge and ask his direction as to how he should act,—that is, for one or the other of the two clients, and to conduct the case according to the advice thus given him up to the end. The Judge, after hearing the clients if necessary, would have said, "you, Mr. Kállábhái, take up the case of Nassarvánji or Pállonji" (as to him might have seemed proper) "and as the other client will be forced to

engage another pleader, I will make an order regarding the return of part of the fee paid by both together, in order that he may with that engage another pleader to conduct the remainder of the case for him."

It was not the right course for him to get a discharge wholly from the conduct of the case and then get himself engaged without any refund by whoever paid him the higher additional fee. A pleader might thus be tempted to go to his clients and say, "I shall serve him who pays me the higher fee, and thereby secure an unfair advantage to him." The intervention of the Judge after notice to the parties would prevent temptation and avert suspicion.

It is not made out in this case that Mr. Kállábhái got from Pállonji or from Pállonji and Nassarvánji together such definite instructions as would give him an unfair advantage when acting in favour of Nassarvánji alone. We decline, therefore, to say that Mr. Kállábhái should be restrained from serving Nassarvánji in the case, or that he is not to use this or that information; but we direct that the matter should go to the First Class Subordinate Judge of Surat, who should make such orders as to him appear just and proper as regards fees paid first by Pállonji and Nassarvánji both and also by Nassarvánji alone.

In future it should be the rule that a pleader in such circumstances should take the Court's advice as to which of two or more clients he is to serve and as to the disposal of the fee he has received from them jointly, and it will deal with the question on the principles laid down in this order and in the cases herein referred to.

We discharge the rule. Each party to bear his own costs.

Rule discharged.

NOTE.—The following is a copy of the judgment delivered by West, J., as Judge of Sadar Court in Sind, in *Reg.* v. *Bezonji Nowroji*, in which the same points were discussed :—

The cardinal principles on which a case, like the present, must be disposed of are, first, that a party to a judicial proceeding is entitled to avail himself of such professional assistance as he thinks will best suit him; secondly, that a pleader is free to place his services at the disposal of any such party upon such terms

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as he may think most advantageous to himself; thirdly, that facts confidentially communicated to a pleader in the course of his professional employment must not be made use of to the detriment of the employer. This last principle so limits the operation of the other two that no pleader ought, by a second engagement, to put himself into a position in which he will be under a temptation to promote the interests of the new client by using for his benefit the confidential statements made by the previous one to the detriment of the latter.

From the mere naked statement of these leading principles no one probably would be inclined to dissent, but the precise extent to which in an actual case the third ought to govern the application of the other two is sometimes a matter not quite easy to determine. It is not to be disputed that a defendant must not bribe a plaintiff's solicitor to change sides. Nor must a solicitor dismiss himself for such a purpose. The case of *Cholmondeley* v. *Clinton*(1) furnishes an instance in which the latter rule was applied to the case of a solicitor, who left a partnership under an agreement with his late partner not to act for a particular client, and who then sought to transfer his services to the other side. This was disallowed by Lord Eldon, Chancellor, after consulting all the Judges, on the ground that the solicitor could not by any bargain with his partner discharge himself from his obligations to the client of the firm, and that it must, for practical purposes, be assumed that the real motive for his new employment was a desire to take advantage, adversely to this duty, of the special knowledge he had acquired.

A solicitor discharged for misconduct stands on the same footing as one who has discharged himself. This is absolutely necessary; because, otherwise, he would only have to misconduct himself so grossly as to make his further retention impossible in order to be set free to serve the other side.

The distinction between such a case and that of a solicitor dismissed for no misconduct has always been recognized. In the latter case the client who has voluntarily parted with his solicitor cannot complain of his going into the adversary's service. All he can claim is that his own secrets shall still be religiously guarded against disclosure. It may be that there never were any secrets. It may be that what once were secrets have since become knowledge available to all through proceedings in Court or by other means. In such cases no reasonable objection can be raised. If the secrets, however, still subsist as such, the solicitor must not take them over with him; and as he cannot really divest himself of the knowledge confidentially acquired in his first employment, he ought to decline the second. The same reason applies when the former service has altogether ceased through the close of the litigation. The solicitor's duty does not end with his employment, and those confidences which he might refuse to break as a witness on oath he must not betray to serve his own purposes. In *Davies* v. *Clough*(2), a solicitor formerly engaged in a transaction for a lady, by which she abandoned her claim to an annuity for a sum of money, afterwards sought as solicitor for another person to cut down thi interest. This was disallowed both as to the solicitor and as to his partner;

(1) 19 Ves. Jun. 261; S. C. Coop., 80. (2) 6 L. J., Eq., 113.

and the Court prohibited the disclosure to the plaintiff of any communication received in confidence from the former client. The Vice-Chancellor in this case would not allow a solicitor to act for other parties, in order, by his own personal knowledge of the transaction, to destroy that very agreement which he had been effecting for his client. In the case of *Brady* v. *Lawless*(1), a solicitor had been employed by the guardian of a female infant to file a bill on her behalf. In this a particular charge on the property in favour of another client of the solicitor was denied, but eventually it was admitted. The young lady having married, her husband stopped the proceedings in Chancery; and when the solicitor afterwards came forward with a bill to enforce the charge of his other client, he was restrained from acting, and his client from retaining him in that litigation. In another case reported in the same volume, *Biggs* v. *Head*(2), a solicitor filed a bill for a creditor of a deceased client of his own. In this he set forth part of the contents of a document which he had recommended the deceased to keep secret. The Court would not permit him to act, and it prohibited his disclosing any matters confidentially communicated to him, whether material or not. In *Beer* v. *Ward*(3), the same principle was recognized by Lord Eldon as applicable to a clerk who afterwards goes into business for himself; and in *Bricheno* v. *Thorp*(4) his Lordship says that "a gentleman going into business for himself must not carry into it the secrets of his master."

There can be no doubt, on a consideration of these cases, that what common probity would suggest is also in this matter recognized law. The Bar in England has allowed to itself a greater license; and in the case of *Baylis* v. *Martin*(5) Sir C. Pepys, M. R., declined to interfere in a case wherein a barrister, who had acted for the defendants, was on his promotion to the rank of King's counsel presented with a retainer for the plaintiff which he accepted. The question in such a case is complicated by the theory—however practice may fail to conform to it—of a counsel's services being gratuitous, and his *honorarium* a mere token of the client's gratitude and appreciation. In *Kennedy* v. *Brown*(6) Erle, C. J., insists that the "relation of counsel and client renders the parties mutually incapable of making any legal contract of hiring and service concerning advocacy in litigation"—a principle, which, with all possible respect for the learned Judge, was, I think, carried further in that case than in the Roman law, which undoubtedly gave effect to securities passed after the close of a cause by way of remuneration to an advocate. But a contract being thus legally impossible, neither party can on ordinary principles be legally bound; and through the practical impossibility of showing in many cases how a counsel is acting in bad faith without disclosing or pointing attention to the very matters which it is most essential to keep secret, the barrister must in this as in other matters often be left to the guidance of that sense of duty which Erle, C.J., thought would preserve its sensitiveness more unimpaired the less it was affected by any idea of legal obligation. Impossible, however, as it may be to enforce in such instances all that honour might prescribe, the principle laid down by Lord Eldon

(1) Sausse & Sc., 365.
(2) Sausse & Sc., 335.
(3) Jac., 77.
(4) Jac., 300, at p. 302.
(5) 4 L. J., Ch., 78.
(6) 32 L. J., C. P. at p. 143.

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in *Cholmondeley* v. *Clinton*(1) seems the correct one. It was urged that a counsel, who had advised on pleadings and evidence, might afterwards take a retainer on the other side, and was even bound to take it, unless barred by a previous subsisting retainer. On this, Lord Eldon says: "I do not admit, that he is bound to accept the new brief. My opinion is, that he ought not to accept the new brief, if he knows anything that may be prejudicial to the former client, though that client refused to retain him." A client who has taken confidential advice ought not to be obliged whenever he goes to law again to retain the barrister whom he consulted, on pain of having his previous confidences turned against him. Let the case, however, stand as it may with regard to the English Bar, there is nothing to impede the application of a sound principle here. A pleader in this province is bound by a contract to his client; a position, which, I must say, I think, is one in no way less honourable than the fictitious independence of the barrister, and one quite as much calling for a delicate sense of probity. Fulfilling the duties both of solicitor and of counsel, the pleader is liable to every obligation, necessarily induced by those duties, that attaches either to the one or the other. These obligations cannot be frittered away by any subtleties, and the first of them is the maintenance of an honourable fidelity, whether the pleader be further retained by the same party or not.

In applying the principles that I have dwelt on to actual cases, the English Courts have always required, as a ground of interference, something more than a mere hyphothetical suggestion of possible injury to the former client. In *Bricheno* v. *Thorp*(2) Lord Eldon, after making the remark as to an articled clerk setting up for himself, which I have already quoted, proceeds: "On the other hand, I think it my duty to take care that he may not be prevented from engaging in any business that he may fairly and honourably take." He then required that it should be pointed out to him, upon the papers in the case, in what way the employment of the former clerk would be prejudicial to his former master's client; and this not being done he declined to interfere. "There are general allegations," he said, "but nothing particular is stated; unless that is done, I cannot go the length of making this order." In *Beer* v. *Ward*(3) he had said: "If it is desired that he should be restrained from making communications to individuals, you must show me what has been done; for I could not interfere to restrain, in this case, any more than in cases of waste, unless something has been done which ought not to have been done." He would not assume, without some cogent proof, that any breach of duty was intended or probable. In the case of *Grissell* v. *Peto*(4) the Court of Common Pleas went still further. Solicitors acted in a Chancery suit for A. and B.: B. as it appeared on the affidavits not being really interested. Afterwards they acted as attorneys for B. in an action against him by A. It was sought to restrain them; but Tindal, C.J., said: "Without any allegation of misconduct, the application for the interference of the Court is at least premature. And it could not be of any great advantage to the plaintiff if another attorney were named for the defendant; since nothing could prevent his present attorneys

(1) 19 Ves. Jun., 261 at p. 275.
(2) Jac. 300 at pp. 302, 304.
(3) Jac. 77 at p. 80.
(4) 9 Bing. 1 at p. 3.

from communicating the knowledge they possess." The force of this last *dictum* has not been admitted by the Court of Equity in more recent cases. Their procedure makes it possible pretty often to determine with proximate certainty whether there has been any improper communication or not, and in *Biggs* v. *Head*(1) the Court said it would not permit a solicitor to reveal confidential communications, and would not speculate about their materiality. But it is clear that the possession of secrets which may be unfairly made use of, as well as a probable intention thus to make use of them, must be satisfactorily made out as a ground for an inhibition. In *Johnson* v. *Marriott*(2) an attorney who had been employed by a bankrupt's assignees after his dismissal by them became the attorney of a person against whom they had brought an action. It was sought to restrain him, as he had "taken the opinion of counsel on all the facts of the case." This was supported by the affidavits of the new attorney and his clerk. His answer was that the case for counsel "had been drawn up by a former solicitor, and that he was not further acquainted with the facts of the case than could be gathered from the declaration, or than an indifferent person." In his judgment, Bayley, B., says: "The principal ground of my judgment, in this case, is, that the client makes no affidavit. The attorney, here, was originally concerned for the assignees, who can tell whether they made any confidential communications, and whether they would be prejudicial. They neither of them join in any affidavit; and it is not sworn, that they ever made any communications essential to keep concealed, nor, if they did, is any reason assigned for their not making an affidavit. If the assignees had stated that they had made communications of essential importance, which, if disclosed to the other party, might be prejudicial to the suit, I should have paused before I said, that this rule ought to be discharged, and Mr. Jay be permitted to act; but, when the present attorney and his clerk alone make affidavits, and their testimony depends upon the bill of costs, I am of opinion, that the materials are not sufficiently strong to induce the Court to restrain Mr. Jay from acting." Bolland, B., concurred; and Gurney B., added: "The party who makes an application of this kind, ought to lay a foundation for our interference in his affidavits."

The general result is that a solicitor, and, therefore, a pleader, after his dismissal without misconduct on his part, or after the close of the business, is at liberty to take sides against his former employer, provided always that he has no secrets to carry with him that can be used to his former client's prejudice. The Court will require a strong case to be made out as a ground for an order restraining a pleader from acting in any particular case, but from the nature of the thing it will, in general, be satisfied with an affidavit of a person who says he made confidential communications pertinent to the now pending suit, without requiring him to go into details, the statement of which would be a disclosure of the very matters which it is his purpose to keep concealed. The mere appearing in Court on successive occasions to support opposite views, however much it may weaken a pleader's advocacy, is not a breach of any rule that a Court could enforce. It

(1) Sausse & Sc., 335. (2) 3 L. J., Ex., 40 a p. 4

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is a question for the advocate's own delicacy and self-respect, and with these the Court has nothing to do.'

I have not been able to discover any case in which the question of a change of sides in a criminal cause has been considered; in the absence of such cases it is to be assumed that the same general principles apply as in civil suits, with such modifications as may arise from the consideration that the Crown in prosecuting one accused of a crime desires only that truth may be ascertained; the success of the prosecution being by comparison of no moment at all. This purpose of a criminal proceeding and the peculiar duties which it imposes on the counsel for the Crown, as distinguished from those of the prisoner's counsel representing a man anxious only for acquittal, are well discussed in Mr. Fitz-james Stephens' View of the Criminal Law of England, pp. 166, 167. In a case of two or three persons about to be tried separately upon the same set of facts, an advocate retained for the Crown in the first trial could not properly during its pendency take a brief for the prisoner in the second. To do so, would necessarily prevent his doing complete justice to either client. If a brief for B. were offered to him after the close of the trial of A., his acceptance or refusal of it should, I apprehend, be determined by the circumstance of whether as counsel against A. he had learned any matter confidentially which he could now use in the interest of B. If he had, he ought to refuse the brief, from which he would speak with an unfair advantage. So, also, if first engaged for one of the prisoners and then offered a brief for the Crown. Many other cases might be put, but the solution of them all seems to depend on this, that a counsel must not use any knowledge gained in consultation for a legal end, in a way, which, if anticipated, would certainly have prevented its communication.

In the case now before the Court, the Moháuas, formerly defended by Messrs. *Leggett, Dayárám,* and *Oodárám,* have not themselves made any affidavits. To the unsworn statements drafted for them the Court can pay no attention. Those documents ought not to have been appended to Captain Crawford's own affidavit. In the latter it is said these Mohánas declared that "they were afraid for their lives if they complained against the vakils;" but they have had abundant and recent proof of the power of the law to protect them, and I cannot suppose that they would feel any terror in telling the truth under the patronage of the Superintendent of Police. If their moral fibre is indeed so feeble, what value could be attached to their affidavits even if they had made them, much more to any loose statement by which they may possibly have misled Captain Crawford into his present complaint. I must assume that they have nothing material to tell; a circumstance which itself weighs strongly against the application.

From Captain Crawford's affidavit it appears that Bezonji, late Town Inspector of Karáchi, took these Mohánas into custody and sent them for trial on a charge of taking part in the dishonest disposal of stolen property. They were acquitted, their pleaders being Messrs. *Leggett, Dayárám,* and *Oodárám.* Their accuser Goka and his servant Bucho were then charged, and partly on the evidence of the Mohánas convicted of receiving stolen property. Bezonji is now accused of having given false evidence in the second trial and with having maliciously

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instituted the proceedings in the first. The question is whether Messrs. *Leggett*, *Dayárám*, and *Oodárám* can properly be restrained from defending him on either of these accusations. It is obvious that the Mohánas, if called as witnesses against Bezonji, may be cross-examined on his behalf in a way intended to elicit from them statements quite inconsistent with the line of defence once taken for them by the same pleaders. The pleaders themselves may, in the interest of their new client, have to urge that the account formerly given by the Mohánas and adopted by themselves of the transactions connected with the stolen property was not true. All this, however, the pleaders may do, not perhaps without some damage to their advocacy, but without any breach of duty to their former clients, unless by having learned in confidence from those clients matters not accessible to the public generally, and by endeavouring to use this knowledge unfairly, so as to force them to disclose what they formerly communicated, they infringe upon a well-recognized principle. To the prosecution they are under no direct obligation, since they were not retained for the Crown in the previous proceedings; and on the theory of criminal trials being intended to elicit the whole truth, whether favourable to a conviction or an acquittal, no objection could be raised by a prosecuting officer to any disclosure that they might be in a position to extract from the Mohánas.

When, however, I compare the affidavits laid before the Court, I do not find that Captain Crawford has stated that any confidential communications were made by the Mohánas to the pleaders which can give the latter an unfair advantage in conducting the defence of the accused Bezonji. He could not indeed depose of his own knowledge to such communications; for his presence, when they were made, would have deprived them of their privileged character. Messrs. *Leggett*, *Dayárám*, and *Oodárám*, on the other hand, depose in the strongest possible terms that they are in possession of no secrets of the Mohánas at all, that their knowledge extends no further than the proceedings held in open Court and depositions accessible to all. These statements are above all suspicion; and as they remove all grounds for the apprehension or possibility of any breach of confidence, I cannot hamper the freedom of action of these gentlemen by any expression of opinion unfavourable to their taking up the defence of the accused Bezonji on either or both of the charges preferred against him. It is a matter within their own discretion. In a conversation between Captain Crawford and Mr. Leggett some warm words seem to have passed, from which the former understood Mr. Leggett to say that he was aware of a fraud on the part of the Mohánas and would use that knowledge against them. Mr. Leggett thinking that it was sought to put an improper pressure upon him says he put the case as a purely hypothetical one. It is not necessary that I should dwell further on what was probably a misunderstanding. What passed could not affect Mr. Leggett's duties or rights in relation to his clients, though it might account for the course taken by Captain Crawford in complaining to this Court. That complaint was, no doubt, dictated simply by a sense of public duty, but it has been fairly, and, for the purpose in hand, completely met. No breach of duty has yet occurred; none at all is inevitable. If any should take place, the Court will be ready to take proper notice of it; its duty for the present is discharged by its declining to interfere.