APPELLATE CIVIL.

Before Mr. Justice Batchelor and Mr. Justice Rao.

1912. *November* 12.

THE GOVERNMENT PLEADER, HIGH COURT, BOMBAY, APPLICANT, *v.* ANNAJI NARAYAN DESHPANDE AND ANOTHER, OPPONENTS.*

Bombay Regulation II of 1827, section 56†—Pleader—Misbehaviour—Not limited to professional misconduct—High Court—Disciplinary jurisdiction.

The term "misbehaviour" in section 56 of the Bombay Regulation II of 1827 is not restricted to misbehaviour in the strict course of a pleader's professional duties, but includes general misbehaviour.

There is no reason to suppose that the Legislature intended in this matter to enact a laxer rule of practice in India than the rule which prevails in England.

THIS was an application by the Government Pleader, Bombay, under section 56 of the Bombay Regulation II of 1827, against the two opponents, who were pleaders.

The facts appear stated in the judgment.

The Government Pleader in person.

D. A. Khare and *C. A. Rele*, for opponent No. 1.

Campbell, with *G. S. Mulgaokar*, for opponent No. 2.

BATCHELOR, J.:—This is a petition by the Government Pleader who invokes the disciplinary jurisdiction of this Court against two pleaders, named Deshpande and Kanmadi. The former was enrolled as a District Pleader in 1895, and the latter was enrolled in 1896. The charges against these persons are set out in detail in the Government Pleader's petition and need not at present be recapitulated. It will be enough for the moment to say that they involve alleged acts of fraud and gross misconduct. These proceedings are taken under clause 56 of Regulation II of 1827, which provides that a pleader accused of a criminal offence, or guilty of

* Civil Application No. 524 of 1912.

† The material portion of the section runs thus :—

A pleader accused of a criminal offence, or guilty of misbehaviour, or neglect of duty, shall be liable to be suspended or dismissed.

misbehaviour or neglect of duty, shall be liable to be suspended or dismissed; and the first argument which has been addressed to us turns upon the construction of the words of this clause, particularly the word 'misbehaviour' which is the governing word in this case. For the purposes of considering this argument we must of course assume that the acts of fraud and misconduct, alleged against the opponents, were committed by them. It has been contended by Mr. Khare for the first opponent Deshpande, and also by Mr. Campbell for the second opponent Kanmadi, that the word 'misbehaviour' in clause 56 must be narrowly construed so as to be restricted to misbehaviour in the strict course of a pleader's professional duties. We are, however, unable to accept this construction. It appears to us that the words of the clause itself do not favour the argument; and the occurrence of the word 'misbehaviour' in juxtaposition with the case of a pleader merely accused of a criminal offence rather suggests that the misbehaviour need not necessarily be restricted to professional misbehaviour. It is clear, moreover, that the larger construction is that which has the authority of this Court, for upon that construction that the case of *Government Pleader* v. *Jagannath*[1] was decided. Lastly, there appears to us to be no reason to suppose that the Legislature intended in this matter to enact a laxer rule of practice in India than the rule which prevails in England. The rule prevailing in England, however, is clearly against the opponents' contention. That contention was considered in *In re Blake*[2] and was disallowed by Cockburn C. J., who said that in deciding that case he would "proceed on the general ground that, where an attorney is shown to have been guilty of gross fraud, although the fraud is neither such as renders him liable to an indictment, nor was committed by him

[1] (1908) 33 Bom. 252.

[2] (1860) 3 E. & E. 34 at p. 38.

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while the relation of attorney and client was subsisting between him and the person defrauded, or in his character as an attorney, this Court will not allow suitors to be exposed to gross fraud and dishonesty at the hands of one of its officers." Mr. Justice Wightman in concurring said that it was of the greatest importance that transactions to which attorneys are parties should be *uberrimæ fidei*, and that the conduct of those who are accredited as officers of the Court should be above suspicion. So Mr. Justice Crompton, in repudiating the narrower view of the Court's jurisdiction, quoted from Lush's Practice, where it is laid down that for any gross misconduct, whether in the course of his professional practice or otherwise, the Court will expunge the name of the attorney from the roll. Mr. Justice Blackburn in explaining his reasons for the same view said: "It is not necessary, in order to induce the Court to interfere in a summary manner, that the misconduct charged should either amount to an indictable offence or arise out of a transaction in which the relation of attorney and client subsists between the attorney and the person against whom he has been guilty of misconduct". He quoted with approval what was said by Baron Alderson in *Stephens* v. *Hill*[1], namely, "if persons are to be accredited by the Court, it is our duty to watch over and control their conduct." This case was followed in *Re Hill*[2], where Chief Justice Cockburn says: "I am perfectly prepared to abide by what I said in *In re Blake*. When an attorney does that which involves dishonesty, it is for the interest of the suitors that the Court should interpose and prevent a man guilty of such misconduct from acting as attorney of the Court." Mr. Justice Blackburn also used language which is apt to our present purpose. He said: "We are to see that the officers of the Court are proper persons to be trusted by

(1) (1842) 10 M. & W. 28 at p. 34. (2) (1868) L. R. 3 Q. B. 543.

the Court with regard to the interests of suitors, and we are to look to the character and position of the persons, and judge of the acts committed by them, upon the same principle as if we were considering whether or not a person is fit to become an attorney." Reference may also be made to *In re Weare*[1], where the Court upheld the view that its jurisdiction was complete even although the misconduct of the attorney was not professional misconduct. Lord Justice Lindley in discussing the question says: "What is the function of the Court in considering applications to strike solicitors off the rolls? It is impossible to express that function better than in the language of Lord Mansfield in the case of *Re Brounsall*[2], which was repeated and adopted with little variation in the later case of *Rex* v. *Southerton*[3]. The question is whether a man is a fit and proper person to remain on the roll of solicitors and practise as such. That is the question." Lastly it may be observed that the Sanad which was issued to these opponents recites that they shall not be liable to removal from their situation "during their good behaviour", the words 'good behaviour' being apparently of a general description. For these reasons we are of opinion that it is incorrect to hold that this Court's jurisdiction in such matters is limited to cases where a pleader's alleged misconduct is committed in the course of his professional duties.

It remains to determine whether or not the Government Pleader has succeeded in establishing the charges which he has made against these opponents. We are clearly of opinion that he has so succeeded; and in our judgment nothing more is required to establish that proposition than to set out the facts as they are now ascertained to be. We do not pause to discuss those

(1) [1893] 2 Q. B. 439. (2) (1778) 2 Cowp. 829.
(3) (1805) 6 East 126.

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facts at any length. For the most part they are admitted facts; and although a minor detail here and there has been challenged, or an attempt has been made to put an innocent complexion upon one or two incidents, we are satisfied on the evidence, and after hearing all the arguments, that the true view of the facts of this case is the view which was taken by the District Judge, and on appeal by this Court.

The facts, then, to which we refer are in substance these. The genealogy of the parties concerned is given in the District Judge's judgment and need not now be repeated. Pandurang Shamji owned a house and certain survey numbers in the village of Madbhavi. In 1902 Pandurang died, leaving his widow Rakhamabai and a separated brother, Govind. His son Narsu having predeceased Pandurang, his daughter Dhondubai was left in a position of exceptional helplessness, seeing that her own husband was a half-witted man. In 1904 Pandurang's widow died; and in the same year the predeceased son's widow Venubai filed Suit No. 174 of 1904 against Rakhamabai and the mortgagees of certain parts of Pandurang's property, for arrears of maintenance and for future maintenance. Rakhamabai died during the pendency of this suit, and her three daughters were brought on the record as defendants in her stead. In this suit Deshpande was the pleader for Venubai, while Kanmadi was the pleader for the mortgagee, Ghenappa. Dhondubai pleaded that Pandurang's property had been given to her by Pandurang during his life and that it was not liable for Venubai's maintenance. Dwarkabai on the other hand admitted Venubai's claim and her liability to satisfy one-third of it. The defendant Ghenappa urged that the properties which he held in mortgage were not liable as his claim was prior. In the end a decrée was passed substantially in favour of Venubai, but the lands mortgaged to Ghenappa were

excluded from the properties liable to contribute on the ground that the mortgages were effected during Pandurang's life-time. The Court disallowed Dhondubai's claim that the properties were given to her by Pandurang. This decree, which was made in October 1905, threw upon Venubai the obligation to pay Court-fees.

Against this decree Dhondubai preferred an appeal to the District Court, her main contention in that appeal being, as it had been in the trial Court, that she was the donee of the properties from Pandurang. This appeal remained pending for a long period of time, and the pleader instructed by Dhondubai to conduct it was a gentleman named Mr. Natu. There is reason to suppose that about this time Govind and his two sons Hanmant and Shamji were casting covetous eyes upon this property. It must also be noted that the property adjoined lands belonging to the opponent Deshpande, and there are clear indications that from an early date the existence of this property had excited Deshpande's avarice.

On the 21st December 1906 occurred the first series of overt transactions in this connection. They are instruments executed by Dhondubai in favour of Deshpande. Exhibit 93 is a sale-deed of the undivided moiety of the survey numbers, while Exhibit 92 was a self-liquidating mortgage for a term of ten years, operating upon the other undivided moiety of these lands. There was also an oral agreement made by Deshpande that he would conduct Dhondubai's appeal and would see to the education of her son. It is in our judgment clear upon the evidence either that no consideration or that a very fragmentary consideration passed from Deshpande in connection with these instruments. It is equally clear that the whole transaction was a hole-and-corner one, rushed through with suspicious haste, and that the woman Dhondubai had no opportunity to obtain, and did not obtain, any independent legal advice.

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These matters later came to the knowledge of Shamji Govind, who was naturally anxious to defeat Deshpande; and it appears that Dhondubai and her relatives soon began to realize the true effects of these Exhibits 92 and 93. In these circumstances, on the 12th May 1908, Deshpande passed an agreement in favour of Dhondubai's husband, Shesho Kulkarni, by which Deshpande, waiving some of the privileges reserved to him under Exhibits 92 and 93, agreed to accept all liability for the expenses involved in bringing the land under cultivation. The Government Pleader urges, and we think with accuracy, that this concession was made by Deshpande in order to remove the doubts and suspicions which had formed in the minds of Dhondubai and her relatives, and to keep them quiet.

Meanwhile in January 1908, Dhondubai's sister Dwarkabai had died. Shamji, anxious, as we have said, to save the property from Deshpande, resorted to the second opponent Kanmadi and consulted him as to the best means of effecting this purpose. Kanmadi saw that the unmarried daughter would take to the exclusion of the married daughter, and therefore advised Shamji that if possible he should obtain a conveyance from Dwarkabai's relatives on her husband's side. Shamji himself, however, did not take such a conveyance. But on the 29th November 1908 the opponent Kanmadi himself takes a deed of this character from Dwarkabai's husband Bharmaji. The Government Pleader contends, and again we think with justice, that this was an attempt by Kanmadi to supplant his client Shamji and to take advantage of the disputes concerning the title of this property. In any event the manœuvre afterwards became known to Shamji, and on the 1st of December 1908 we have another set of transactions. By Exhibit 145 Kanmadi conveys an undivided one-third of these lands to Shamji's brother Hanmant, and he

agreed to give another one-third to Dhondubai. The object of these transactions was, in our opinion, to enlist the assistance of Shamji and Dhondubai, without whose aid the title derived from Bharmaji would be uncertain and precarious. With their aid, however, Kanmadi was placed in a position of much strength which he proceeded to use to the best advantage. He, Dhondubai, Dhondubai's husband and Shamji Govind then repaired to Belgaum, and there on the 18th December 1908, Dhondubai, who had been kept from any opportunity of consulting her Pleader Mr. Natu, applied to the Court to withdraw her appeal. That application was allowed, and the parties being satisfied returned to their homes.

On the 23rd December Kanmadi conveyed to Dhondubai, not the one-third which he had promised, but only one-sixth (see Exhibit 142). On the same day by Exhibit 141 Hanmant, the brother of Shamji, conveyed one-fourth of his one-third to Dhondubai's husband. Thus on the 23rd December 1908 Dhondubai's husband became entitled to an undivided one-fourth of the property. These devices came to the knowledge of Deshpande who perceived that he had been outwitted by Kanmadi. He therefore approaches Bharmaji on his own account, and on the 6th of January 1909 obtains from Bharmaji, nominally for a sum of Rs. 1,000, a conveyance of this identical property. The conveyance is Exhibit 160, and it is worth while to refer to it for a moment for the purpose of seeing the value which the parties themselves were putting on the documents previously obtained. In this instrument Bharmaji recites that "there was really speaking an agreement between me and Kanmadi, pleader at Athni, whereby he agreed to get it decided that all those lands belonged to me alone and to get the possession thereof awarded to me and in respect of his remuneration and costs for his accomplishing the same I was to give him one-fourth

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of the said lands. But he got from me a hollow sale-deed written in his favour in respect of the said lands, having misrepresented to me *inter alia* that my doing so would give him facility in conducting the work and security for the costs that he would have to incur. But within a few days after the sale-deed was passed, he began to dispose of the said lands by making sales, etc., thereof in favour of others, representing that he was the actual owner. Hence it being clear that he does not intend to complete the agreement that was made between us, I am convinced that he deceived me fully."

Thereafter Deshpande made attempts to get possession of the property by filing possessory suits against some of the tenants. Kanmadi, it appears, intervened, and there was an abortive attempt to effect a compromise. When that attempt failed, the final step was taken in these proceedings, and Deshpande and Kanmadi made common cause against Dhondubai and Shamji. In pursuance of this conspiracy between them Deshpande conveys an undivided half to Apte, a client of Kanmadi, while Kanmadi conveys his undivided half to one Kulkarni, a client of Deshpande. These conveyances were executed on the 25th and 26th March 1909. They were presented for registration on the same day, the 29th March, when both the opponent pleaders were present at the registration office. It must be noted that neither of these documents describes any source of the transferor's title or gives any warranty of title. On the 2nd February 1910 Deshpande files Suits Nos. 41 and 42, and the evidence in both was recorded in Suit No. 41. The parties were substantially the same, the defendants including the tenant concerned on the land, Shamji, his father Govind, Dhondubai, Kanmadi and Kulkarni in whose favour Kanmadi had conveyed the undivided moiety. The suits were ultimately tried by the learned District Judge of Belgaum who subjected all the evidence

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to very careful examination and wrote an exhaustive judgment showing that he had got to the bottom of the whole of the transactions which had occurred between the various parties. Dhondubai and Shamji defended themselves on the ground that Exhibits 92 and 93 were obtained without consideration and under undue influence and were void. The District Judge found that the fraud and undue influence which the defendant set up had been proved, and he consequently dismissed Deshpande's suits. Deshpande appealed to this Court, and the appeal was heard by our brother Chandavarkar and one of us. It was ultimately dismissed, and this Court's judgments show that we accepted the District Judge's findings of fact. It is important only to add that in the suit before the District Judge, Deshpande had to be virtually forced into the witness box by the District Judge himself. Kanmadi did not appear as a witness at all.

Now as we are satisfied that the facts are as we have stated them to be, it appears to us to follow inevitably that as against the opponent Deshpande the following propositions are made good: first, that by fraud and undue influence and without the payment of any real consideration he took a conveyance to himself of valuable property from a Hindu lady who was in a position of peculiar helplessness, who was the adversary of his own client Venubai in the suit, and whose appeal was still pending; secondly, by so doing he in order to promote his own dishonest schemes placed his interests in direct conflict with the interests of his client Venubai; and thirdly, when his scheme was checked by Kanmadi, who was on his own account endeavouring to filch this property from the rightful claimants, he made common cause with Kanmadi, and the two together sought to support their position by further unreal transactions with some of the parties interested.

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Upon the same facts it appears that as against Kanmadi the following propositions are made good: first, that after he had been consulted as a pleader by Shamji, he, either of his own motion or in collusion with Shamji, purported to purchase the property for himself, and to purchase under a title which conflicted with the title of Dhondubai, the mortgagor of his original client Ghenappa; secondly, that in prosecution of this same dishonest scheme he prevailed upon this ignorant woman Dhondubai to withdraw her pending appeal without allowing her an opportunity to consult the pleader whom she had engaged to conduct that appeal for her; thirdly, as an aggravation of the foregoing, he omitted to carry out even the paltry promises on the faith of which he had induced Dhondubai thus to sacrifice her own interests; and fourthly, he subsequently joined Deshpande in entering into a series of sham transactions in order to conceal this fraud and retain their hold over the property.

There is in our opinion only one redeeming feature in this case, and that is the expression of regret which the opponent pleaders have instructed their legal advisers to make to this Court in the event of their legal defences proving unavailing. We were glad to hear this expression of regret which, we hope, is sincere, and we have allowed it to influence us in the measure of punishment which we feel our duty to inflict. We must however bear in mind that it is the bounden duty of this Court to vindicate its own Sanads; by that we mean, to take measures to prevent the abuse of that confidence which such Sanads inspire, especially among the less advanced classes in the moffusil. This Court which is responsible for the issue of these Sanads is equally responsible for seeing that the position of dignity and influence thus conferred is not diverted to dishonest uses. Such dishonesty, if practised in the moffusil, is usually of an

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especially reprehensible character, seeing that parties there are almost wholly dependent upon pleaders for the protection of their interests. It may be that the most powerful check against malpractices of this kind would lie in a healthy public opinion in the profession itself, and it may perhaps stimulate the formation or the development of such an opinion to reflect that the honourable profession of pleaders has no worse enemies than those among its own members who are capable of stooping to dishonest or discreditable practices. Our order is that Deshpande's certificate be suspended for a period of two years and that Kanmadi's certificate be suspended for a period of one year.

Order accordingly.

R. R.

CRIMINAL REVISION.

Before Mr. Justice Batchelor and Mr. Justice Rao.

In re NANCHAND SHIVCHAND.*

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November 13.

Criminal Procedure Code (Act V of 1898), section 195—Indian Penal Code (Act XLV of 1860), sections 193, 511—Court—District Judge hearing election petition under section 22 of the Bombay District Municipalities Act (Bom. Act III of 1901) is a Court—False evidence before the District Judge—Sanction for prosecution.

A District Judge hearing an election petition under the provisions of section 22 of the Bombay District Municipalities Act (Bombay Act III of 1901) is a "Court" within the meaning of section 195, clause (*b*) of the Criminal Procedure Code, 1898. No prosecution for attempting to fabricate false evidence (sections 193 and 511 of the Indian Penal Code) before the District Judge can be instituted without having obtained sanction as required by section 195 of the Criminal Procedure Code, 1898.

Raghoobuns Sahoy v. *Kokil Singh* (1), followed.

* Criminal Application for Revision No. 317 of 1912.

(1) (1890) 17 Cal. 872.