APPELLATE CIVIL.

Before Sir Lallubhai Shah, Kt., Acting Chief Justice, and Mr. Justice Crump.

THE GOVERNMENT PLEADER, HIGH COURT, BOMBAY, APPLICANT *v.* VINAYAK BALVANT CHAUKAR AND TWO OTHERS, OPPONENTS*.

1922. *July 20.*

Disciplinary jurisdiction—Pleader—Criticism on proceedings pending in Court—Resolution at a public meeting—Pleaders taking part in meeting—Reasonable cause for suspension of Sanad—Amended Letters Patent, clause 10—Bombay Pleaders Act (Bom. Act XVII of 1920), section 25†.

A public meeting was held to congratulate certain persons who were being tried at Karachi, and a pleader of Belgaum who was on his trial at Dharwar. Opponent No. 1 presided at the meeting; and opponents Nos. 2 and 3 respectively moved and seconded the resolution of congratulation. The first two opponents were pleaders of the District Court, and the third opponent was a Vakil of the High Court. The Government Pleader of Bombay applied to the High Court for action to be taken against the opponents under disciplinary jurisdiction:—

Held, that "a reasonable cause" was made out for dealing with the opponents under clause 10 of the Amended Letters Patent and section 25 of the Bombay Pleaders Act, 1920, the resolution in question amounting to comment on proceedings pending in Court.

THIS was a rule obtained by the Government Pleader, High Court, Bombay, calling upon the opponents to show cause why they should not be suspended or removed from practice.

Opponents Nos. 1 and 2 held Sanads entitling them to practise in the District Court of Ahmednagar, and Opponent No. 3 was a Vakil of the High Court.

* Civil Application No. 187 of 1922.

† The section runs as follows :—

On the application of the Government Pleader in the High Court, or on a report from a District Court or Court of Session, or from the Chief Judge of the Court of Small Causes of Bombay, or from the Chief Presidency Magistrate for Bombay, or otherwise, the High Court may suspend or remove from practice, or may fine or reprimand, a pleader on reasonable cause

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A public meeting was convened at Ahmednagar, at which opponent No. 1 presided, while opponent No. 2 moved, and opponent No. 3 seconded a resolution, which ran as follows :—

"That this meeting congratulates Maulana Mahomedali and Shaukatali and other leaders who are on their trial at Karachi as well as the leaders and other persons convicted in Dharwar case and also Mr. Gangadharrao, Pleader of Belgaum, who is on his trial at Dharwar".

The opponent No. 1 put the resolution to vote, and it was duly passed.

The Government Pleader obtained the present rule against the opponents.

S. S. Patkar, Government Pleader, in support of the rule, first submitted that in associating themselves with the resolution in question, the opponents were guilty of contempt of Court: see *In re Jivanlal Varajray Desai*[1]. Further, the conduct of opponents was improper within the meaning of section 26 of the Bombay Pleaders Act: see also Halsbury's Laws of England, Vol. VII, para. 610. Comments on proceedings pending in a Court are highly objectionable: see *Reg.* v. *Gray*[2] and *Skipworth's Case*[3]. If such meetings were held all over the country, the necessary result would be that the mind of the jurors who would have ultimately to decide the question would be affected. The expression "reasonable cause" in clause 10 of the Amended Letters Patent and section 26 of the Bombay Pleaders Act, 1920, is very wide and gives a wide discretion to the High Court in regard to the exercise of the disciplinary jurisdiction: see *In re S. B. Sarbadhicary*[4]. See also *Government Pleader* v. *Jagannath*[5].

(1) (1919) 44 Bom. 418.
(2) [1900] 2 Q. B. 36 at p. 40.
(3) (1873) L. R. 9 Q. B. 230 at pp. 234, 238.
(4) (1906) L. R. 34 I. A. 41 at p. 45.
(5) (1908) 33 Bom. 252.

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G. S. Rao with *D. C. Virkar* and *P. V. Kane*, for opponents Nos. 2 and 3 :—All that the opponents Nos. 2 and 3 did was to associate themselves with the resolution congratulating Ali brothers and the rest for their self sacrifice and courage of their convictions. Their act would not amount to improper conduct. The opponents did not want to interfere with the due course of justice or to bring any Court or Judge into contempt or to influence the jurors.

The passage relied on by the learned Government Pleader from Halsbury's Laws of England is irrelevant. In every one of the cases, on which that passage is based, there is either a publication of pending proceedings or an attack on witnesses or on the Court during the pendency of a trial.

The Court should have regard to what has actually happened. It is wrong to take action so long as no prejudice has really been caused : see *Legal Remembrancer* v. *Matilal Ghose*[1] and *In the matter of a Special Reference from the Bahama Islands*[2].

The conduct of the opponents does not make them amenable to disciplinary jurisdiction. There is no law which prevents a pleader from expressing his views on the current topics of the day. If he honestly expresses his opinion, can it be called improper conduct?

Patkar, in reply :—I rely on *Skipworth's Case*[3]. The test is whether the action tended to interfere with the course of justice and not whether it actually did so.

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[1] (1913) 41 Cal. 173 at p. 224.
[2] [1893] A. C. 138.
[3] (1873) L. R. 9 Q. B. 230

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SHAH, AG. C. J.:—This is an application by the Government Pleader under our Disciplinary Jurisdiction for action being taken against the three opponents. The three opponents are: (1) Vinayak Balwant Chaukar, District Pleader, (2) Kundanmal Sobhachand Firodia, District Pleader, and (3) Chintaman Mohiniraj Saptarishi, High Court Vakil, all practising in the District of Ahmednagar. The first opponent was enrolled in May 1883, and is an old pleader holding a Sanad of this Court. The other two opponents Nos. 2 and 3 received their Sanads in 1910 and 1911 respectively. The allegations against them, which are set forth in the petition and which are not disputed, are that on the 24th October 1921, while Gangadharrao Deshpande and the Ali brothers were on their trial at Dharwar and Karachi respectively, a meeting was held at Ahmednagar and was presided over by opponent No. 1, and a resolution congratulating the convicts in the Dharwar Sessions Case and Gangadharrao Deshpande and the Ali brothers was moved by opponent No. 2 and seconded by opponent No. 3. The resolution runs as follows:—

"This meeting congratulates Maulana Mahomedali and Shaukatali and other leaders who are on their trial at Karachi as well as the leaders and other persons convicted in Dharwar case and also Mr. Gangadharrao, pleader of Belgaum, who is on his trial at Dharwar."

We do not know whether any speeches were made by opponents Nos. 2 and 3 at the time and, if any were made, the reports of those speeches are not before us. The application is based upon the part taken by these opponents at this meeting. The resolution, which I have above set forth, was passed on that day.

The explanations which the opponents offered to the District Judge are in the paper-book. In response to the notice issued on the application of the Government

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Pleader, opponent No. 1 has not appeared before us and opponents Nos. 2 and 3 have put in their appearance, and their case has been presented to us by Dewan Bahadur Rao. In support of the application it was urged that this resolution amounted to contempt of Court. In my opinion, however, it is not necessary to go into this question. This is a question which may raise some difficult points; for instance, we will have to consider whether such a resolution passed at Ahmednagar in respect of one proceeding pending at Dharwar and another at Karachi would constitute contempt of this Court, because it is only the contempt of this Court as such that we would be concerned with. In this respect it seems to me that if it had been necessary to examine that question, we would have to examine it on the lines indicated in my judgment in *Emperor* v. *Balkrishna Govind*[1] :—

"In each case it must be determined as a question of fact having regard to all the circumstances including the nature of the contempt, the nature of the proceedings with reference to which the contempt is committed, the relation of the Subordinate Court to the High Court with reference to those proceedings and its probable effect upon the due administration of justice".

This, however, is an application for such action as we may think proper to be taken under our Disciplinary Jurisdiction under section 25 of the Bombay Pleaders Act XVII of 1920, and clause 10 of the Amended Letters Patent. What we have to consider is whether any reasonable cause has been shown for taking action under our Disciplinary Jurisdiction. On that point the observations in *In re S. B. Sarbadhicary*[2], which have been referred to and relied upon by the learned Government Pleader, are in point. The observations are at p. 45 :—

"Their Lordships will not attempt to give a definition of "reasonable cause," or to lay down any rule for the interpretation of the Letters Patent

[1] (1921) 46 Bom. 592 at p. 628.

[2] (1906) L. R. 34 I. A. 41.

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in this respect. Every case must depend on its own circumstances. It is obvious that the intention of the Crown was to give a wide discretion to the High Court in India in regard to the exercise of this disciplinary authority. The rules of the Court, to which reference has been made, indicate the precautions taken by the Court itself to secure that the powers shall not be used capriciously or oppressively, and there is no reason to apprehend that the just independence of the Bar runs any risk of being impaired by its exercise".

What we have to decide is whether an active participation in the passing of a resolution of this character amounts to a reasonable cause within the meaning of clause 10 of the Amended Letters Patent, and section 25 of the Bombay Pleaders Act, XVII of 1920. In determining that I prefer to confine myself to the facts which are apparent on the resolution itself and which are not in dispute. The resolution in terms refers to certain persons on their trial at the time, and to other persons convicted in the Dharwar case. The reference is to a case which was then decided, or believed by those who took part in the resolution to have been finally decided. The real complaint in respect of this resolution to my mind is based upon the fact that these felicitations were offered to persons who were to be put on their trial at a time when the proceedings were pending. The question is not as to what reasons influenced any particular individual in endorsing this resolution; but the fact remains that it was a resolution passed in respect of persons concerned in pending proceedings. It is a proposition which is not always fully realized, but which is none the less true, and ought to be obvious, that anything done or said which may amount to criticism of any proceedings pending in a Court of justice is calculated to hinder the even and impartial administration of justice. It is, I think, fair to say that officers of this Court who hold Sanads of this Court, are expected to extend their co-operation and assistance in the task of the administration of

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justice; and the least that could be expected of them is that by their act they will cause no hindrance to the even and impartial administration of justice. The main ground, upon which it seems that the present opponents have transgressed the limits of proper conduct as pleaders, appears to me to lie in the fact that they in a meeting assembled took part in the passing of a resolution which in its effect would amount to a criticism of the pending proceedings. I think, therefore, that the opponents acted improperly in being parties to a resolution of this character.

It has been urged on behalf of opponents Nos. 2 and 3, in the course of a clear and forcible argument by Dewan Bahadur Rao, that the reasons which actuated his clients, i.e., opponents Nos. 2 and 3, are set forth in their explanations, and if those are the true reasons, they cannot be said to have transgressed the limits of proper conduct. I will take the explanation of opponent No. 2. In paragraphs 5 and 6 it is stated as follows:—

"No reflections of any kind against the Courts or their proceedings were ever desired or intended by the opponent.

The resolution in question was intended to appreciate the sacrifice which the persons concerned were ready to make for their principles and honest convictions".

The opponent No. 3 also has made a similar statement. It is urged that if a pleader honestly believed that a particular man, on account of his character and the sacrifice which he was ready to make, deserved to be congratulated, there was no reason to put any check upon the liberty of the pleader to so congratulate him and that could not be held to be improper conduct: that may be so. But this argument overlooks the main fact that while the proceedings were pending, it was improper for a pleader to express his opinion on such a point in the manner followed

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in this case. The position would have been different if the proceedings had not been pending.

I think, therefore, that a case is made out for notice being taken of the conduct of the opponents.

None of the opponents has expressed any regret either to the District Court or to this Court. It seems to me that opponent No. 1 who is an old pleader, and as such expected to realize the significance and the bearing of such a resolution during the pendency of the proceedings, and who presided at this meeting, is more to blame than the other two opponents. The other two opponents are much younger men ; and it is conceivable that in their enthusiasm they allowed their feeling to get the better of their judgment. I do not desire to take any very serious action against the opponents ; and, indeed, if they had expressed their regret, I should have been even prepared to drop the idea of making any further orders against them. But it is impossible to allow transgression of this wholesome rule by officers of this Court to pass unnoticed. After a careful consideration of the nature of the act, I think it will meet the requirements of the case if opponent No. 1 is suspended from practice for three months, and opponents Nos. 2 and 3 are suspended from practice for one month each. I would order accordingly, and direct that the Sanads be submitted to the Registrar for the usual endorsement of the order. No order as to costs.

CRUMP, J. :—We are here concerned with the conduct of three pleaders practising at Ahmednagar. The facts are not disputed and are briefly as follows. In 1921 certain persons were tried by the Sessions Court at Dharwar, and convicted of being concerned in a breach of the public peace. The offence was of a political complexion, being connected with the non-co-operation movement. In the same year two persons, Mahomedali

and Shaukatali, were prosecuted at Karachi for offences against the State, and another person, named Gangadharrao Deshpande, was prosecuted for a similar offence at Dharwar. On the 24th October 1921, after the completion of the first of these three trials, and during the pendency of the second and third, a public meeting was held at Ahmednagar. The opponent No. 1 presided. At that meeting opponent No. 2 moved a resolution and opponent No. 3 seconded it. That resolution has been set out in the judgment just delivered by the learned Chief Justice and need not be repeated. The question is, what is the meaning of that resolution? It has been suggested, indeed that was the explanation before the District Judge, that the resolution was intended to express admiration at the self-sacrificing spirit of these persons, without implying any approval of their aims or objects. That is the aspect of the matter which has been pressed upon us by Dewan Bahadur Rao for opponents Nos. 2 and 3. But the words must be taken in their plain sense. The word "leader" is alone enough to show that the resolution was not one of congratulation alone but one of sympathy. It would be a rare phenomenon for a public meeting to congratulate a person on a manifestation of self-sacrifice in a cause of which the meeting did not approve. I am, therefore, unable to accept the explanation which has been suggested, and to my mind the resolution goes very near to saying that the acts of which these persons stood charged were virtues and not offences.

But I do not propose to rest my conclusions on that aspect of the matter, even though continued loyalty is an express condition under which these opponents hold the office of pleader. I am prepared to concede much to Dewan Bahadur Rao's eloquent appeal to the right of free speech. The reasons why I hold that the conduct of these pleaders renders them amenable to

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our Disciplinary Jurisdiction is of a different nature. We have heard somewhat lengthy arguments as to whether the conduct of these persons amounts to contempt of Court, but we are not sitting to determine that question. It suggests, however, the aspect in which the matter presents itself to me. It is as a public expression of opinion with reference to cases pending in Courts that the conduct of these pleaders appears to me objectionable. To glorify publicly as a martyr a man who is on his trial, for that is the plain meaning of this resolution, must tend to hinder and embarrass the proper administration of justice. No appeal to the right of free speech can justify this. In my own country where the freedom of speech is as highly prized as anywhere in the world, the limitation is well recognized, and has indeed found recognition more than once in our Courts. Whether in this particular case we should have jurisdiction to deal with the conduct of these persons as contempt of Court, and whether that conduct amounts to contempt is, as I have said, not precisely the point before us. But that such conduct savours of contempt can hardly be denied.

But it is as pleaders that the opponents come before us. The office of pleader was created in furtherance of the administration of justice. Pleaders have privileges, but they have responsibilities also, and a pleader who acts so as to hinder and embarrass the administration of justice is to my mind guilty of "improper conduct" within the meaning of those words as used in section 26 of the Bombay Pleaders Act XVII of 1920, and such conduct furnishes "reasonable cause" for the exercise of our Disciplinary Jurisdiction within the meaning of those words as used in section 25 of the same Act. Holding as I do that the opponents have so acted, that is to say, that their conduct was such as tended to hinder and embarrass

the administration of justice, I am of opinion that they have rendered themselves amenable to be dealt with under the Disciplinary Jurisdiction of this Court.

Now it has been argued that in any case a resolution passed in Ahmednagar at a public meeting could not affect the course of trials held at Dharwar and at Karachi. That is a plea in extenuation. But I am constrained to say two things: one, that this is not a solitary instance, and where there are a number of such meetings in different places, the course of justice is likely to be seriously embarrassed: another, that the habit of public comment on pending trials has become increasingly common and requires to be checked. Therefore I cannot regard the conduct of these persons as being no more than a venial error.

In this connection I may say that unfortunately we have no expression of regret from these opponents. Had such expression of regret been forthcoming, I might have been disposed to accept it as sufficient, and to trust to their good sense to avoid a repetition of conduct to which exception has rightly been taken. As matters stand, I see no course left open to us but clearly to mark our disapprobation of this conduct in the manner suggested by my Lord the Chief Justice in the judgment just delivered. The order proposed is, I think, a lenient order, and I agree that there should be a lenient order as, so far as I am aware, this is the first case precisely of this kind which has come before this Court. I trust that our expression of opinion will clearly demonstrate to those concerned that the habit of unrestricted public comment upon pending cases is one which we are unable to tolerate. On these grounds I concur in the order proposed.

Order accordingly.

R. R.