Court was properly framed and under the amendment of the Civil Courts Act by Act VI of 1926 such a suit would now lie. We are, however, bound to apply the law as it stood in 1925 when the suits were filed. There was no difficulty in the way of the plaintiff in serving the notice under section 80 of the Civil Procedure Code on the Secretary of State as section 15 of the Indian Limitation Act would obviate any difficulty as regards limitation, and in view of the circumstances in which the Subordinate Court ceased to exercise jurisdiction the plaintiff would also be entitled to the benefit of section 14 of the Indian Limitation Act. I am, therefore, of opinion that the view of the District Court that both these suits must be dismissed is correct and that the appeals should be dismissed with costs.

Decree confirmed.

J. G. R.

DISCIPLINARY JURISDICTION.

Before Mr. Justice Fawcett and Mr. Justice Mirza.

THE GOVERNMENT PLEADER, HIGH COURT, BOMBAY, APPLICANT *v.* DATTATRAYA NARAYAN DESHPANDE, VAKIL, HIGH COURT, BOMBAY, OPPONENT.*

1928
April 4

Disciplinary jurisdiction—High Court—Insolvency of pleader—Suspension of Sanad—"Reasonable cause"—Amended Letters Patent, 1865, Clause 10—Bombay Pleaders Act (Bom. XVII of 1920), section 25—Permission to practise by insolvent pleader—Burden of proof.

Under section 25 of the Bombay Pleaders Act and Clause 10 of the Amended Letters Patent, 1865, the High Court in its disciplinary jurisdiction has full power to suspend the sanad of a pleader, who has been adjudicated an insolvent, *until he obtains a discharge*, if, in the circumstances of the case, it considers that the insolvency coupled with the surrounding circumstances supplies a "reasonable cause" for such a suspension.

Under certain conditions a pleader who is adjudicated an insolvent may be able to satisfy the Court that he should be permitted to continue his professional practice. In such cases the burden of proof is upon the pleader to show that this can be done with safety.

*Civil Application No. 184 of 1928.

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APPLICATION under the Disciplinary Jurisdiction of the High Court.

The facts material for the purposes of this report are sufficiently stated in the judgment of his Lordship Sir Charles Fawcett.

P. B. Shingne, Government Pleader, for the Crown.

G. S. Rao, for the opponent.

FAWCETT, J. :—The opponent in this application, Mr. D. N. Deshpande, is a High Court Pleader. He was enrolled as such on or about January 31, 1917, and has since been practising in the local Subordinate Courts in Bombay. He was adjudicated an insolvent on March 16, 1925. According to his own statement in the application that he made to the Chief Justice on April 23, 1926, he had speculated in shares of different joint stock companies and on account of a crisis in the local stock exchange had incurred heavy losses to the extent of Rs. 40,000. The Official Assignee, in his report Exhibit B, says that the statement filed by him shows liabilities to the extent of Rs. 50,000 as loss in speculation, but that as the insolvent has not filed his schedule his actual liabilities cannot be definitely ascertained. On April 23, 1926, he applied to the Chief Justice, mentioning his adjudication and asking that during the pendency of the insolvency proceedings and after his discharge he might be granted leave to practise as a pleader of this Court. In making this application he was following precedents in the case of other High Court Pleaders, who had similarly applied for permission to continue to practise as a pleader. We have before us a similar application that was made and granted in April 1922, and there have since been similar applications. There is an obvious reason for a High Court pleader reporting the fact that he has been adjudicated as an insolvent and requesting permission

to continue to practise. Such an adjudication necessarily affects the insolvent's professional and social status. A Government Officer, for instance, is liable to dismissal if he is adjudicated an insolvent; a member of a club in many cases *ipso facto* ceases to be a member upon his adjudication. A person cannot be admitted to be a student for the Bar if he is an undischarged bankrupt, cf. Halsbury's Laws of England, Vol. II, paragraph 610, page 362; a trustee vacates his office upon becoming an insolvent; and as a more relevant instance, in England, since 1906, a solicitor is liable not to have his practising certificate renewed, if he is an undischarged bankrupt: See Halsbury's Laws of England, Vol. XXVI, paragraph 1190, at page 721, and the Solicitors' Act, 1906 (6th Edw. VII c. 24), section 1. It may, therefore, be taken as a settled practice of this Court that the sanad of a pleader, who has been adjudicated an insolvent, and who has not received his discharge, is liable to be suspended on the ground of there being " reasonable cause " for such suspension under section 25 of the Bombay Pleaders Act XVII of 1920 or Clause 10 of the amended Letters Patent, 1865. The opponent, however, did receive permission to continue to practise from the late Chief Justice, as appears from the endorsement " Sanctioned " upon the application made by the opponent. The present question would probably not have arisen in these circumstances but for the fact that there was a subsequent adjudication of insolvency against the opponent on September 28, 1927. The explanation that is given for this in the affidavit of the opponent is that towards the end of 1926 he had to incur further debts for meeting expenses that are there specified, and that one of his creditors obtained a decree against him and upon it obtained a warrant of arrest against him, so that to prevent his arrest he was obliged to file a fresh petition in insolvency for debts to the

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extent of Rs. 2,500, while the first petition was still undisposed of. The Official Assignee in his report Exhibit B states that the opponent has shown liability to the extent of Rs. 2,500 as borrowed from different persons. But, here again, as he has not filed his schedule, his actual liabilities cannot be definitely ascertained. It is obvious that any permission that was granted in respect of the first insolvency cannot be held to cover a further insolvency, and Dewan Bahadur Rao for the opponent did not contest this. His position simply is that his client was under a misapprehension as to the necessity for a renewed permission after the filing of the second petition of insolvency; that he did not receive a letter which the Registrar of this Court addressed to him on October 12, 1927, drawing his attention to the necessity of getting the sanction of the Chief Justice to practise as a pleader; that there was no intention of showing disrespect or ignoring the authority of this Court; and that his client expresses his regret for the failure to apply for permission at the proper time and asks that this may now be granted. In support of these statements there is the affidavit of the opponent made on March 28, 1928, and another by one Vithal Saggon Sawant made on the same day. The latter states that the letter which the Registrar addressed to the opponent was handed to him and that he took delivery of it on behalf of the opponent, with a view to hand it over to him. This is corroborated by an entry in the local despatch book that is before us. The deponent has there signed "V. Savant for D. N. Deshpande, Vakil, H. C." He says in his affidavit :—

"But I misplaced the said letter somewhere and consequently I forgot to tell him about the receipt of the said letter until I was asked by him about it yesterday, i.e., March 27, 1928."

If that statement is accepted, then, of course, it does support the position taken up by Dewan Bahadur Rao. We thought it necessary, however, to put some questions to Mr. Sawant by way of cross-examination, and the record of this is contained in Exhibit A. He first of all clearly stated more than once that he had left the services of Deshpande about the beginning of October 1927. When his attention was drawn to the fact that he had stated in his affidavit that he left his services in the beginning of 1927, whereas October 1927 could not properly be called the beginning of the year 1927, he still stuck to his statement that he left in the month of October. But subsequently he changed his story and said that he was in the service of some other pleaders in October, November and December 1927. He was further asked about the letter and he said :—

"I took the letter and put it in my coat-pocket among the brief-papers and many other letters and I forgot all about it"

and that he never thought any more about the letter, although he had undertaken to hand it over to Mr. Deshpande. We have no hesitation both from the demeanour of this clerk under cross-examination and his vacillation in entirely disbelieving his story. We feel no doubt whatever that the statement that he put the letter away and forgot all about it is a pure invention; and in the circumstances we cannot accept the explanation of the opponent that this letter from the Registrar never reached him. It is to be noted that there was a delay of over a year in the first application to the late Chief Justice after the first insolvency, and we think the circumstances strongly point to the opponent endeavouring to delay as long as possible in making a second application, especially as he might have reason to think from the Registrar's communication that that permission might be refused.

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In our opinion, this Court in its disciplinary jurisdiction has full power to suspend the sanad of a pleader, who has been adjudicated an insolvent, until he obtains a discharge, if, in the circumstances of the case, it considers that the insolvency coupled with the surrounding circumstances supplies a reasonable cause for such a suspension. It is largely a matter of discretion. The Chief Justice receiving an application of this kind can well be satisfied from the circumstances that are put forward that there is no objection to grant an insolvent pleader permission to continue to practise, and in doing so he would be acting on behalf of the Court, but if he considers that the case is one where there is reason to doubt the advisability of granting such permission, he can ask the Government Pleader to bring it before the Court in its disciplinary jurisdiction. That has been the action taken in the present case. We have, therefore, to consider whether in all the circumstances we should exercise that jurisdiction and hold that there is no objection to the opponent continuing to practise, while he is an undischarged bankrupt, or whether the circumstances show reasonable cause for suspending his sanad during that period.

We have carefully considered all that the Government Pleader and Dewan Bahadur Rao have placed before us upon this question. But we regret to say we have come to the conclusion that this is a case in which the permission that has been asked for should be refused and the opponent's sanad suspended.

In the first place, the record of the opponent is certainly one that cannot be described as "clean." I do not think it necessary for the purpose of this judgment to go into all the details of the complaints that are referred to in the record in the paper book about his receiving money from clients and not having duly

followed instructions in regard to amounts entrusted to him. The opponent was able in all these cases either to induce the complainants not to press their complaints or to furnish explanations so that no disciplinary action was taken against him. But, in, at any rate, the case of Baniram he admitted the receipt of the money, and the explanation that he gave for not paying the money, or some of it, into Court certainly does not appear satisfactory. Further action was not taken because the complainant did not attend in obedience to a notice given by the Chief Judge of the Small Causes Court that he was going to hold an enquiry. That was not equivalent to being acquitted honourably, and the case illustrates the risk that may attend permission to the opponent to continue to practise and to receive money from clients, when he is in an embarrassed condition and is, therefore, subject to special temptation. Then there was a criminal case against the opponent, in which he was charged with abetment of forgery. Here, again, I do not think it necessary to go into details. Undoubtedly he was acquitted by a unanimous verdict of the jury, but the fact remains that a Magistrate considered that there was adequate evidence to justify his being committed to the High Court for trial. Then, in regard to these two insolvencies we learn from the report of the Official Assignee that the insolvent has not yet filed his schedule in either of them. This failure is no doubt a very common practice in Bombay, whereby debtors use the insolvency Court as a shield against arrest and do not comply with the provisions of the Act as to their obligations as insolvents. But it is conduct which certainly is not such as should be expected from a High Court pleader. It is in his favour that some assets have been obtained in regard to the first insolvency. The amount of them is not stated by the Official Assignee, but the insolvent places them at

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Rs. 15,000. Even allowing for this, it appears to us in all the circumstances that the Court should exercise its discretion, and can exercise its discretion judicially, by holding that the opponent should not be allowed to continue to practise as a High Court pleader, while he remains an undischarged insolvent. We think that, in circumstances of the kind before us, an onus lies upon the insolvent to satisfy the Court that this can be done with safety. In the present case we regret to say we are not so satisfied. Therefore, we direct under section 25 of the Bombay Pleaders Act and clause 10 of the Letters' Patent that the sanad of the opponent be suspended for such period as he may remain an undischarged insolvent in the two insolvencies in question. The opponent to return his sanad to the Registrar within two days. After he has obtained his discharge he may, of course, apply to this Court for a re-issue of his sanad.

MIRZA, J. :—I agree. The Insolvency Act is intended primarily for the benefit of *bonâ fide* traders who have incurred debts in the course of business and are unable through no fault of theirs to discharge such debts. The benefit of the Insolvency Act, no doubt, is also extended to other *bonâ fide* debtors. The opponent is a pleader and as such is an officer of this Court. While he was practising the profession of a lawyer it was not proper for him to have speculated in shares. A lawyer, no doubt, may invest his savings in shares or other securities, but a line must be drawn between investments which are *bonâ fide* and investments which are in the nature of a business speculation. *Prima facie*, therefore, on his own admission the opponent has done something which, in our opinion, was not proper. Having filed his petition in insolvency it was the opponent's duty on being adjudicated on the petition to

file his schedule within a reasonable time setting out therein a detailed account of his liabilities, an explanation as to how he came to incur them and the extent of his properties and good assets. The opponent has neglected to do this. He has the less excuse for his dilatoriness as being a lawyer he ought to have known his duty under the Insolvency Act better than an ordinary layman would. Being adjudicated an insolvent the opponent would be under the orders of the Official Assignee and it would be his duty to attend the office of the Official Assignee regularly and to help the Official Assignee in recovering his outstandings for the benefit of his creditors. The opponent is not shown to have done so. Neither of the two insolvencies is yet ripe for hearing. No steps are taken by the opponent beyond filing his two petitions and obtaining the two adjudication orders.

The fact that the opponent is an undischarged insolvent does not by itself raise a presumption that the insolvency is dishonest. Under certain conditions a pleader who is adjudicated an insolvent may be able to satisfy the Court that he should be permitted to continue his professional practice. In such cases the burden of proof is upon the applicant to show that there is nothing shady or dishonest about his insolvency. There are not sufficient materials before us to judge that the opponent's two insolvencies are honest and due to circumstances over which he had no reasonable control or to say at this stage that in due course he will get an honourable discharge. It is possible that when the affairs of the opponent are put up for investigation before the Insolvency Court, the Commissioner in Insolvency might suspend the opponent's discharge or otherwise punish him under the provisions of the Insolvency Act which are in the nature of quasi-criminal

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provisions. It is evident from these considerations that the Court cannot permit the opponent to continue in the practice of a profession which is deemed to be an honourable profession while he is an undischarged bankrupt, more particularly in view of his past record to which our attention has been drawn. I concur in the order proposed by my learned brother.

Order accordingly.

J. G. R.

APPELLATE CIVIL

Before Mr. Justice Fawcett and Mr. Justice Mirza.

1928
April 5

KESHAVLAL MOHONLAL JHAVERI AND OTHERS (ORIGINAL PLAINTIFFS), APPLICANTS *v.* BAI LAXMI, WIDOW OF BALABHAI SAVCHAND (ORIGINAL DEFENDANT), OPPONENT.*

Arbitration—Applicants present under protest—Return of arbitration proceedings to Court—Request by the Court to arbitrators to proceed with the award—Jurisdiction to proceed with arbitration.

In certain suits pending before arbitrators, on the day fixed by them for taking evidence, the applicants were present under protest and wished that the arbitrators should note that fact. On receipt of the application the arbitrators returned the proceedings to the Court with an endorsement that under the circumstances they did not think it proper to decide those matters. The Court returned the papers and proceedings to the arbitrators with a note as follows: "The arbitrators are requested to finish the work. The protest does not matter. It is unjustified. The Court has confidence in the arbitrators. The arbitrators should not retire for that would mean that the plaintiff succeeds in his tactics." The arbitrators then resumed their arbitration. On an application to reverse the order and for a stay of the proceedings before the arbitrators:—

Held, that the order of the Court was proper, for the note made by the Court was not an order which forced or compelled the arbitrators to resume the arbitration against their own wish, but it was in the nature of a request made to the arbitrators to reconsider their decision and to resume the arbitration if they were agreeable to do so.

Har Narain Singh v. *Bhagwant Kuar*[1]; *Maharajah Joymungul Singh Bahadoor* v. *Mohun Ram Marwaree*[2]; *Basdeo Mal, Gobind Prasad* v. *Kanhaiya Lal, Lachmi Narain*,[3] followed.

Shibcharan v. *Ratiram*,[4] distinguished.

APPLICATION praying for setting aside the order of the Joint Subordinate Judge at Ahmedabad.

*Civil Revision Application No. 83 of 1928.

(1) (1887) 10 All. 137.
(2) (1875) 23 W. R. 429.
(3) (1920) 43 All. 101.
(4) (1884) 7 All. 20.