

What the Judge really says in respect of those words which have been objected to in his judgment is that parties should give the best proof in their power; if direct proof is wanting then the next best evidence as can be produced, should be submitted to the Court.

We dismiss the appeal with costs.

Appeal dismissed.

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WATSON
v.
PYARI LAL
SHAH.

[APPELLATE CRIMINAL.]

Before Mr. Justice Keay and Mr. Justice Glover.

IN THE MATTER OF THE PETITION OF GHOLABKHAN, MOOKHTEAR.
Act XX of 1865, ss. 15, 16—Mookhtear, dismissal of—Professional Conduct—Reasonable Cause.

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June 19.

“The High Court has power, under section 15, Act XX of 1865, to suspend or dismiss a mookhtear from his office, when it sees “reasonable cause,”

not stated under what circumstances that tree was cut. It may be, and probably was, the case, that the tree being no longer fit for bearing fruit, the defendant had cut it down, and consumed the wood in burning or other purposes: and, if that was so, it would come within the description of wasilat, and there would be no error in making the defendant accountable. I think the appeal is perfectly groundless and vexatious, and the judgment of the lower Court must be affirmed with costs.

MARKBY, J.—I am of the same opinion. It appears to me that both the cases from the Full Bench only speak of the collections made from the land, and that it was never intended to be laid down in those cases, as a proposition of law, that a man who was himself a cultivator, as was the plaintiff in this case, was not to recover the

profits which he would have made out of the land by his own cultivation. The collection of the land may be a very proper criterion where the plaintiff is not himself, the cultivator; but where the plaintiff is cultivator or himself uses or wishes to use the land, the principal on which wasilat ought to be calculated, is, I think, what he himself would have made by himself holding possession of the land.

As regards the other point, without going into the question whether or not mesne profits are strictly speaking damages, I think the plaintiff is entitled, when he recovers mesne profits, to treat as part of them, any produce of the land of whatever kind it may be that the wrongful possessor has appropriated to his own use in the course of his possession, which would include all the items which the lower Court has included in this case.

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although he might not have committed any act of "professional misconduct" under section 16 (1).

Mr. G. Gregory for the petitioner.—Under section 14, a mookhtear can be removed when he is convicted of a criminal offence. The accused here was charged with a criminal offence, and he was properly tried, and was acquitted on the evidence. All the Courts in the country must accept that finding for all purposes.

Section 15 provides only for cases of fraudulent or grossly improper conduct in the discharge of his professional duty. The words "or for any other reasonable cause" must refer to things *ejusdem generis*. The sessions Judge on the trial condemned the evidence against the accused as suspicious, and here we have only a part of that evidence adduced on this inquiry.

(1) Act XX of 1865, s. 15.— If the Judge or Magistrate shall find "The High Court may also, after such enquiry as it may deem proper, suspend or dismiss any pleader or mookhtear enrolled as aforesaid, who shall be guilty of fraudulent or grossly improper conduct in the discharge of his professional duty or for any other reasonable cause." that the charge established, and consider that the pleader or mookhtear should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and shall report the same to the High Court, and the High Court shall proceed to acquit, suspend, or dismiss the pleader or mookhtear.

Section 16.—"If any pleader or mookhtear practising in any Court subordinate to the High Court shall be charged in such subordinate Court with any such conduct as aforesaid, the Judge or Magistrate of the Court, as the case may be, shall send him a copy of the charge, and also a notice that, on a day to be therein appointed, such charge will be taken into consideration. Such copy and notice shall be served upon the pleader or mookhtear at least ten days before the day so appointed, and on such day, or on any subsequent day to which the enquiry may be adjourned, the Court shall receive all evidence properly tendered by or on behalf of the party bringing the charge, or by the pleader or mookhtear, and shall proceed to adjudicate on the charge. Such report when made by the District Judge, shall be submitted to the High Court through the District Judge, who shall accompany the report with any remarks that he may think necessary, and an expression of his own opinion on the case. Such report when made by a magistrate subordinate to the Magistrate of the District, shall be submitted through the Magistrate of the District to the District Judge, and shall be accompanied by the remarks and opinion of the Magistrate of the District as aforesaid. The Judge or Magistrate may, pending the investigation and the orders of the High Court, suspend the pleader or mookhtear from practising in the Court."

GLOVER, J.—Gholab Khan was tried at the Midnapore Sessions, on a charge of instigating a very serious dacoity; he was acquitted (the Judge differing from the Assessors who thought the accused guilty), on account of an insufficiency of evidence which induced the judge to give him the benefit of a doubt. The Magistrate considered that, although acquitted at the Sessions, Gholab Khan was under the circumstances unfit to hold the position of mookhtear, and applied to the Judge, under section 16 of Act XX of 1865, to report the matter to the High Court. The Judge, Mr. Bainbridge (the same officer who held the Sessions trial), sent up the Magistrate's letter, with an endorsement to the effect that the mookhtear deserved to lose his sanad. This Court, after reading the proceedings, pointed out to the Judge that the requirements of the law had not been complied with; and the papers were returned with directions that a charge should be properly drawn up, and a copy of the same, with notice of the day fixed for considering it, should be sent to Gholab Khan. These directions have been carried out, and the Magistrate again recommends that Gholab Khan be dismissed from his office of mookhtear. The Officiating Judge, Mr. Cornell, has however declined to support the Magistrate's proposition, holding that the mookhtear has been sentenced to dismissal on account of an offence of which he has already been acquitted by a competent Court, and that in any case, the misconduct, contemplated in section 16 of the Pleaders' Act, is professional misconduct, of which Gholab Khan is not even alleged to have been guilty.

After hearing the counsel for the petitioner, I am disposed to think that the procedure under section 16 of the Act does refer only to cases of professional misconduct; the words used "any such misconduct as aforesaid" being connected with the words "grossly improper conduct in the discharge of his professional duty" used in section 15; and as the misconduct which the Magistrate considers proved against Gholab Khan is not alleged to be "professional" misconduct, I think that so far the Officiating Sessions Judge was right.

But I do not concur in the other part of his opinion. It

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seems to me that the words "for any other reasonable cause" used in the last clause of section 15 refer to cases of other than professional misconduct, and that, if such reasonable cause is shown, a mookhtear may be suspended, or dismissed, notwithstanding that he has committed no act of professional misconduct; if it were not so, it is difficult to see with what intention the Legislature added the words above quoted to the section.

Now in the dacoity case, Gholab Khan was acquitted against the opinions of the Assessors; the Judge himself did not seem to have any moral doubt of his guilt; for, after detailing the reasons which induced him to think the evidence insufficient, he says:—"At the same time I think the strongest suspicion attaches to him, and possibly simply as a matter of justice, the Assessors may be right." I was one of the Judges who heard the dacoity case in appeal to the High Court, and I thought at the time that the Assessors were right, and that there was sufficient evidence to convict Gholab Khan. No doubt, he was acquitted, and cannot be harassed again on the same charge; but when the law says that a mookhtear may be dismissed by the High Court for any "reasonable cause," we may, I think, look, if necessary, behind a verdict of acquittal, and see, if the circumstances, under which that acquittal was come to, do not, except as regards a fresh trial, practically annul any such declaration of Gholab Khan's innocence, as a verdict of not guilty might ordinarily be supposed to give. We ought to treat his case, I think, as a matter of equity and good conscience, and ought not be bound to consider him a blameless man, *quoad* section 15, Act XX of 1865, merely because he has been released under very peculiar circumstances from a criminal charge.

After carefully considering the evidence brought against Gholab Khan in the dacoity case, I cannot agree in the propriety of the verdict of acquittal. I think it proved that he did instigate the attack on the Rani's premises, and that is, I consider, a very sufficient and reasonable cause for his dismissal from the office of mookhtear.

I say the evidence "in the dacoity case," because, as I have before stated, I do not think that the question now raised comes

under section 16 of the Act at all, and the charge and notice appear to me to have been unnecessary. When I joined in the order directing the Magistrate to proceed under section 16, I was under the impression that that section governed the matter. Further consideration has made me think differently.

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It seems to me that, when a mookhtear is alleged to have committed some impropriety (short of an offence for which he could be prosecuted criminally, and if convicted dismissed from office under section 14 of the Act) which does not come under the denomination of professional misconduct, the High Court may institute enquires "*motu suo*," and if it thinks that "any reasonable cause," other than professional, has been established, may suspend or dismiss the mookhtear, without the necessity of either written charge or notice. Of course, it would take care that the mookhtear had every facility for knowing what he was charged with, and for making his answer, but no formal charge as under section 16, would appear to me to be necessary. In this case Gholab Khan has had every opportunity.

KEMP, J.—I have again read the evidence in the dacoity case against Gholab Khan. I concur with the Assessors, and think that there is evidence which clearly establishes that Gholab Khan took an active part in instigating the dacoity on the Rani's kutcherry. I am of opinion that Gholab Khan is not a proper person to practise as a mookhtear, and I concur with Mr. Justice Glover in directing that the name of Gholab Khan be struck off the roll of mookhtears.

Petition dismissed.