SPECIAL BENCH.

Before Hon'ble Mr. R. F. Rampini, Acting Chief Justice, Mr. Justice Brett and Mr. Justice Woodroffe.

IN THE MATTER OF PURNO CHUNDER DUTT.

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June 18.

Attorney—Attorneys, final examination for admission of—Rules and orders of the High Court, Rules 116, 117, 118 and 132—Board of Examiners—Jurisdiction—Certificate—Solicitors Act, 1877 (40 and 41 Vict. ch. 25) s. 9—Special Bench.

An application by a candidate against the refusal of the Board of Examiners for the Attorneyship Examination to grant him a certificate of his having passed a Final Examination, should be made to a Special Bench constituted by the Chief Justice.

The application refused on the merits of the case.

Per Woodroffe J.: By rule 116 of the Rules and Orders of this Court, discretion has been delegated to the Board of Examiners without any express reservation as made by s. 9 of the English Solicitors Act of 1877. The Court will not interfere with the exercise by the Examiners of the discretion confided in them, unless the Examiners refuse to exercise that discretion, or do not exercise that discretion honestly and conscientiously.

THE petitioner Purno Chunder Dutt, an articled clerk, presented himself as a candidate at the Final Examination for the admission of attorneys held in February 1908, but failed to satisfy the Examiners, and on the publication of the result of the examination on the 14th March 1908, it was found that he had failed. From enquiries made, the petitioner discovered that he had passed in five out of the six papers set in the examination, but had failed in the paper in Equity by 25 marks. Each paper carried 160 marks, and a candidate had to obtain 90 marks in each to pass. On the 20th March 1908 Purno Chunder Dutt petitioned the Board of Examiners to assign to him proper marks for his answer to question No. 4 of the Equity paper, to strike out question No. 6, and to assign the 20 marks allotted to it to all the examinees. The Board rejected the petition and refused the petitioner's subsequent application for a copy of the grounds for their decision.

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Thereupon on May 21st 1908, the petitioner applied for, before Woodroffe J. the Senior Judge on the Original Side, and obtained a rule against the Board of Examiners to show cause, why they should not produce the question paper in Equity, as well as the answers of the petitioner thereto for the inspection of the Court, and why the Court should not look over the answer of the petitioner to question No. 4, and why, if the Court should be of opinion that the said answer was correct and according to laws the Court should not give the petitioner and direct the Examiner, to give the petitioner proper marks therefor, and why the Court should not direct the Examiners to strike out the questions Nos. 1 and 6 and to award the marks reserved therefor to the petitioner or to distribute their marks over the other questions in the paper and thus proportionately to raise the marks already awarded to the petitioner, and why, in the event of the Court being of opinion in examining the answers of the petitioner, or on the marks of the questions Nos. 1 and 6 being awarded to the petitioner or distributed, that the petitioner had passed in Equity, the Court should not direct the Examiners to certify that the petitioner had duly passed the Final Examination, and why the Court should not make such other order as to the Court may seem meet.

The paper in Equity consisted of eight questions including:—

1. What are the main presumptions as to instruments on investigating a title as regards—Reconveyances, stamps, matters of fact and survivorship. 4. A is an equitable tenant for life. Is he entitled to keep the title deeds? 6. What is the main proposition involved in the case of *Holroyd* v. *Marshall* and what was the main objection urged by the respondent?

None of the six candidates, who presented themselves at the examination, obtained the requisite pass-marks in the Equity paper. The petitioner obtained the following marks in the paper No. 1, 18 marks, No. 2 nil, No. 3 nil, No. 4, 5 marks, No. 5, 15, marks, No. 6 nil, No. 7, 15 marks, No. 8, 16 marks, out of 20 marks for each question.

The rule came on for hearing on June 1st, before Woodroffe J., as the Senior Judge on the Original Side.

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The Advocate-General (*Mr. Sinha*) (*Mr. Morison* with him) for the Board of Examiners, showing cause against the rule, took the preliminary objection that the matter could not be disposed of by a single Judge sitting on the Original Side, but that rule 118 of the Rules and Orders of the High Court applied and the application should be heard by two or more Judges, whom the Chief Justice should appoint for that purpose.

Mr. Norton (*Mr. Chakravarti* with him) for the petitioner, contended that rule 132 of the Rules and Orders applied and that the Senior Judge on the Original Side had jurisdiction to entertain the application.

WOODROFFE J. I doubt whether sitting here as a single Judge on the Original Side, I have jurisdiction to entertain an application of this nature. It is said I have, and that the case comes within Rule 132, but I do not think that is the proper construction of that rule. It is contended on behalf of the applicant that the meaning of that rule is that any application not expressly provided for by the other rules may be made under it. This application is not one specifically provided for by the rules as is the case of the certificate referred to in rule 117, as regards which rule 118 admits of a petition to the Chief Justice. In my opinion the meaning of rule 132 is not that contended for, but it is that if any application may be made under the rules, but those rules do not provide specifically as to the Court or Judge, to whom such application may be made, then the application may be made to the Judge or Senior Judge exercising the Ordinary Original Civil Jurisdiction of this Court.

I desire to say nothing at the present moment as to the merits of the rule, which has not yet been heard before me, or as to whether the Court has jurisdiction. I think, if this Court has jurisdiction, that jurisdiction ought to be exercised by the whole Court or by a Court appointed by the Chief Justice to represent the Full Court and not by a Single Judge exercising the Ordinary Original Civil Jurisdiction of the Court only. It seems further desirable that the matter should be heard by the Court. It is a matter of some novelty and one of importance. The course therefore I propose to take is to refer this application to the Chief Justice for his orders with reference thereto, and, if necessary, after speaking to him, I will mention the matter again in Court.

On June 12th 1908, the present Special Bench was appointed by the Chief Justice to hear the application.

Mr. Norton (*Mr. Chakravarti* with him) in support of the Rule. Among the rules and orders of the High Court dealing with the admission of attorneys, there is no particular rule, which provides for the case, where the certificate of admission is refused on the ground that the applicant has not passed the

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examination. I submit this matter falls within the scope of rule 132, and this Court has jurisdiction. [Rampini A. C. J. referred to clauses 9 and 10 of the Charter.] The examiners were appointed by the Chief Justice under rule 110. It would be intolerable, if the Chief Justice had not the power to supervise and control the Board. The English Solicitors Act 1877 (40 and 41 Vict. ch. 25) Section 9 provides for an appeal from the refusal of a certificate of having passed the examination. This Court has inherent analagous power by the issue of an order in the nature of a *mandamus*. I could not ask the Court to interfere with the discretion of the examiners. But here, I submit, the examiners have failed to exercise their discretion. English Courts have interfered with the action of the Universities in conferring degrees. See Shortt on Mandamus, page 352. I withdraw my complaint as regards question No. 1. Question No. 4 was useless and should not have been put; in any case the answer was correct and complete. Question No. 6 was unreasonably difficult and unfair as none of the recognised text-books on Equity dealt with the case, otherwise than cursorily, and the question could only be answered by the perusal of the report of the case in 10 H. L. Cas. I submit the petitioner should be allowed a re-examination in another paper in Equity only.

Mr. Chakravarti, following, contended that in England before the Judicature Act 1873, the Court had the power of selecting attorneys. The Court has inherent jurisdiction, which here is exercised by the Chief Justice. The Chief Justice delegates his authority to the Registrar and others, but the absolute power of examination lies in the Court. After the Judicature Act of 1873, statutory provision had to be made for the retention of this power by the English Court and this was done by section 9 of the Solicitors Act of 1877. But in as much as the Judicature Act has no application to India, no such statutory provision is necessary here.

The Advocate-General (*Mr. Sinha*) (*Mr. Morison* with him) for the Board of Examiners. Under rule 116 no person can be admitted as an attorney without producing a certificate of having passed the Final Examination. Rule 132 does not enable

this Court to deal with any application not provided for, but only with such applications as are provided for in the rules. No provision is made in the rules for the case of the examiners refusing a certificate of the candidate's passing the examination. *In the matter of Graham*(1), where a similar application was made on the ground that the papers in Criminal Law contained questions on English Criminal Law outside the scope of the examination, it was held that the Chief Justice could not dispense with the requirements of rule 116. The same was also held in *In the matter of Kristo Kishore Dey*(2). Although the Court may direct the examiners to exercise their discretion as in *In the matter of Rudra Narain Roy*(3) it will not interfere with their discretion, when once exercised. See Shortt on Mandamus pp. 260-264, and *R* v. *Archbishop of Canterbury*(4). Unless the exercise of discretion has been arbitrary, unreasonable and improper, in which case the proper remedy would be under section 45 of the Specific Relief Act. The Court may interfere with the performance of merely ministerial duties by way of mandamus, but it will not interfere with the performance of duties involving judicial or *quasi*-judicial discretion. See *The Queen* v. *Collins*(5) and *Rex* v. *Justices of Kingston*(6). Hence the Court will not enquire into the fairness or unfairness of questions, or the sufficiency or insufficiency of the answers to questions.

Mr. Chakravarti, in reply. Assuming that the discretion exercised by the examiners is *quasi*-judicial, such exercise must be sound and not arbitrary. Rule 116 does not operate as an abdication of his authority by the Chief Justice in favour of the Board of Examiners, but merely indicates the usual procedure. The applications in *In the matter of Graham*(1) and *In the matter of Kristo Kishore Dey*(2) were misconceived and have no bearing on the present facts. *In the matter of Rudra Narain Roy*(3) was not a matter under clauses 9 and 10 of the Charter, but under section 45 of the Specific Relief Act and hence has no application, nor have the cases of *The Queen* v. *Collins*(5) and *Rex* v. *Justices of Kingston*(6). The powers exercised by the Judges at Serjeant's

(1) (1870) Unreported.
(2) (1900) Unreported.
(3) (1901) I. L. R. 28 Calc. 479.
(4) (1812) 15 East. 117.
(5) (1876) L. R. 2 Q. B. D. 30.
(6) 1902) 86 L. T. 589.

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Inn (See *Ex parte Stewart*(1) are by the rules of this Court, vested in the Chief Justice.

Cur. adv. vult.

RAMPINI, A. C. J. This is a Rule on the examiners appointed to conduct the examination for the admission of attorneys, to show cause why the petitioner Purno Chunder Dutt, a candidate at the last examination, should not be granted a certificate that he has duly passed the final examination. This Bench has been constituted under rule 132 of the Rules of the Original Side.

Mr. Norton for the petitioner has argued that we have powers of supervision over the examination for attorneys under sections 9 and 10 of the Letters Patent of 1865; that we have inherent powers corresponding to those conferred by the English Solicitor's Act (40 and 41 Victoria, Chap. 25) to revise the proceedings of the examiners appointed by the Chief Justice of this Court for the examination of candidates for admission as attorneys; that in this particular case, we ought to exercise these powers, as the questions 1 and 6 of the Equity paper set at the last examination were improper, and that we should therefore, either alter the marks awarded to the petitioner by the examiner in Equity, or direct the examiners to examine the candidate again in the subject of Equity.

The Advocate-General for the examiners contends that we have no such powers. He cites rule 116 of the Rules of the Original Side of the Court, and urges that, unless the petitioner produces a certificate granted by the examiners under that rule, we cannot direct that he be enrolled as an attorney. He further urges that Rule 132 in accordance with which this Bench is constituted, does not enable us to deal with any application not provided for, but only with such applications as are provided for in the rules. He does not contend that, if the examiners appointed by the Chief Justice of this Court discharge their duties in an arbitrary, unreasonable, or improper manner, there is no remedy, but that the proper course to adopt is to apply under section 45 of the Specific Relief Act, which

(1) (1872) L. R. 7 Exch. 202.

corresponds with the former provisions for the issue of a mandamus, and which procedure has not been followed in this case. He has further called attention to certain passages in Shortt on Mandamus and Prohibition, according to which a writ of this nature should not, where there is a discretion imposed in any body, be issued to compel that body to exercise that discretion in any particular way, but only to compel the exercise of that discretion "in a manner fair, candid and unprejudiced" and not "arbitrary, capricious or biassed, much less warped by resentment or personal dislike." The learned Advocate General has also cited to us previous applications to this Court made by candidates for the examination, notably the applications of *William Thomson Graham* (1) in 1870, on which Chief Justice Couch recorded as follows: "The Chief Justice cannot dispense with the compliance by Mr. Graham with the rule of Court, which requires that no person shall be admitted as an attorney except upon production of a certificate of examiners," and the application of *Kristo Kishore Dey* (2) in 1900, in which the present Chief Justice declined to interfere.

I am inclined to agree with the learned Advocate General in his view as to our powers and duties in connection with this matter. But it is, I think, unnecessary to express any definite opinion on this point. I am convinced that on the merits the petitioner's case is not one of hardship, that the examiners have not treated him unfairly, that as a fact he has not come up to the standard required by the examiners, or to that attained by the other candidates for examination, to whom the examiners have granted certificates of passing.

I would therefore discharge this Rule with costs.

BRETT J. I agree.

WOODROFFE J. The Court cannot by reason of Rule 116 of the Original Side Rules dispense with the production of the certificate therein mentioned. No appeal is given by those Rules from the refusal of the examiners to grant such a certificate, as in the case of the certificate as to character referred to

(1) (1870) Unreported. (2) (1900) Unreported.

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in Rule 117, against which an appeal is given by the following Rule. The ordinary remedy of a person, who has failed at one examination, is to go up for another. The Court has thus delegated to the Board of Examiners a discretion without making any such express reservation as was made by section 9 of the English Solicitors Act (40 and 41 Vict. C. 25), which provides that any person, who has been refused a certificate, may object to such refusal on account of the nature and difficulty of the question or any other ground. The result of the provisions therefore, which govern this Court, are that it will not interfere with the conscientious exercise by the examiners of the discretion, which the Court has confided in them. It does not however follow that the Court has no control over those, whom it has appointed, to test the qualifications of others, who seek to become its officers. The Court can compel the examiners, as any other body subject to its jurisdiction, to do its duty. That duty is to exercise the discretion given and to exercise it conscientiously. If therefore there is a refusal to exercise that discretion, the Court will direct them to do so. Or again, if the discretion is not exercised honestly and conscientiously, the Court will interfere. It is not necessary to consider this question further, as the present case is not of either of these kinds. It would be enough to say that there having been in this case a conscientious exercise of discretion, the Court will not enquire into the grounds, on which it is based. Further, even if a case for interference is made out, the Court will not direct the examiners to exercise their discretion in a particular way. It will not say to them (to use the language of one of the cases cited) "approve what we approve and say what we say." The Court will not assume their functions, but direct their exercise. I think it however desirable to deal with the case on the facts, because the charges made against the fairness of the examination have not been made out and the application, even if sustainable in law, fails in my opinion on those facts. The questions, which have been objected to, are numbers 1, 4, and 6 in the Equity paper. The petition submits that the first question "is so vaguely and loosely worded as to make it difficult, for the candidates to understand what is wanted by the examiner." As a matter of fact the

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petitioner understood the question well enough to secure 18 marks out of 20. He next alleges that the examiner awarded him no marks for question 4, though the answer was correct. As a matter of fact he did obtain marks, but not as many as he thinks he ought to have got, because his answer was incomplete. The answer gave a special exception enacted by the Settled Land Acts, which have not been extended to this country, where the old rule of Chancery is still in force that the equitable tenant for life is not entitled to the custody of the title deeds. It was subsequently suggested that this question was not sufficiently explicit to be understood. It was however understood by four out of the seven candidates, three of whom obtained full marks for it and the fourth secured 15 marks out of 20. Lastly the sixth question is complained of as being "unreasonably difficult and unfair." It is a fact that none of the candidates answered it. The first portion of this question might I think have been answered from the recognised text-books. It may be that the second portion sets a somewhat high standard, but that is a matter for the examiner and what we should have to look at, if we were to go into the question at all, is the paper as a whole, and to see whether the candidates had a fair opportunity of shewing their qualifications. Further, it is to be noted that the petitioner wholly failed to secure marks for the second and third questions, against which no exception is taken. Had these been answered the point now before us would not have arisen, as the applicant would then have qualified in the Equity paper. Lastly I may point out, that the case of the applicant is not otherwise meritorious, for it appears that he secured pass-marks only, in two of the subjects and only 6 and 5 marks respectively more than pass-marks in two of the other subjects.

I think therefore a certificate was rightly refused. The application fails on all grounds and I therefore agree that the Rule should be discharged with costs.

Rule discharged.

Attorney for petitioner: *J. C. Dutt.*

Attorney for Board of Examiners: *G. C. Chunder.*

J. C.