

*Judgment of the Lords of the Judicial Committee of the Privy Council; delivered 2nd February, 1869, on the Petition of Z. M. D'Silva, for leave to appeal from an Order of the Recorder of Moulmein.*

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Present :

LORD CHELMSFORD.

SIR J. W. COLVILLE.

SIR JOSEPH NAPIER.

Although their Lordships have not entertained any great doubt upon this matter, yet they have thought it right to consider very carefully whether the Petitioner ought to be admitted to appeal, on account of the serious consequences resulting from the sentence which has been pronounced upon him; but, having considered the circumstances carefully and anxiously, their Lordships are of opinion that they ought not in this case to give leave to appeal.

It is quite clear that the matter was heard very fully before the Recorder, who possessed an advantage which of course their Lordships could not have, that is, he heard the witnesses *viva voce*; he was enabled, therefore, to judge more satisfactorily than their Lordships can as to the truth of the different statements that were made.

Mr. D'Silva was fully prepared for the inquiry, by a notice given to him by the Recorder in the terms following:—"The result of the inquiry which I have held into the circumstances connected with the letter addressed to me, and signed by a fictitious name, and which was sent to me at my house on the evening of the 3rd of August, 1868, has been to convince me that it was written with malicious intent by Mr. D'Silva or at Mr. D'Silva's instance, and that the statement which he (Mr. D'Silva) has made in Court with reference to it, viz. that he received it

“from a member of the Rangoon bar, was false. I call upon Mr. D’Silva, therefore, to show cause why his licence to practise as a Counsel in this Court should not be withdrawn or vacated by reason of the above matter.”

There can be no doubt, that what has been called the anonymous letter (the letter signed with a fictitious name) was a most improper act; that it was calculated to be highly injurious to the young man who was about to apply for his admission as a Counsel in the Recorder’s Court; and the circumstances which Mr. D’Silva himself admits with reference to that letter are sufficient, we think, to fix upon him what is called in the rule “dishonourable and disgraceful conduct.” Whether he received it from Rangoon or not, is a matter, to our minds, wholly immaterial, because, assuming that he did so, we apprehend his duty was, in the first place, to inform the young man who was about to make an application to the Court of the communication which had been made to him, and then openly to state to the Recorder the information which he had so received. Instead of pursuing this straightforward course he proceeds in the most secret and insidious manner. He places the letter in a cover, and either directs it himself in a feigned hand, or gets somebody else to direct it; and has it conveyed to the Recorder, so as to conceal from him by whom it was sent. He delivers the letter to his syce (his groom), telling him not to go himself to the Recorder’s house (giving the reason for this order that the dog would bite him), but to send a cooly with the letter, paying him two annas for his trouble.

Under these circumstances it is impossible to come to any other conclusion than that Mr. D’Silva was acting in a most improper way, doing that which, to use the language of the rule, was “dishonourable and disgraceful,” and upon which the Recorder might very well act and consider him as unworthy to hold a licence to practise as Counsel in his Court.

It may be that it would be very severe, even under these circumstances, to deprive Mr. D’Silva of his licence indefinitely; but at the same time it is impossible for us to come to any other conclusion than that the Recorder was justified in the course

which he pursued. We certainly should not give leave to appeal merely because we might entertain an opinion that, after a certain time, Mr. D'Silva might be re-admitted by the Recorder, or by the authority of some other Court, to the position of which he has been deprived.

Under these circumstances, although their Lordships very much regret that Mr. D'Silva should so have misconducted himself, and that such severe consequences should have fallen upon him, they feel that, in the discharge of their duty and in justice to the Recorder, they ought not to interfere. The Recorder was perfectly justified in depriving Mr. D'Silva of his licence (at all events for a time), and consequently this application must be refused.



