

*Judgement of the Lords of the Judicial Committee
of the Privy Council on the appeal of Southekul
Krishna Row from the Court of the Judicial
Commissioner at Coorg; delivered July 21st,
1887.*

Present :

LORD HOBHOUSE.

SIR BARNES PEACOCK.

SIR JAMES HANNEN.

SIR RICHARD COUCH.

THIS is an appeal by one Krishna Row against an order of the Acting Judicial Commissioner of Coorg, Mr. Plumer, by which he struck the name of the Petitioner off the roll of second grade pleaders in the Courts of Coorg.

The facts out of which the appeal arises are as follows. One Nanjappa had instituted a suit in which he had been unsuccessful. He had appealed once, and he desired to appeal again. The present Appellant, who was at that time a vakil, was going to Bangalore, and he was requested by Nanjappa to give instructions to a barrister of the name of Meenakshaya, at Bangalore, to take such steps as might be necessary for this appeal; and on the 27th or 29th of January 1880 Nanjappa remitted to the Appellant a sum of Rs. 80 for stamps and court fees. It appears that the Appellant did, in accordance with the directions he had received from Nanjappa, hand over the papers relating to the case, and the Rs. 80, to Mr. Meenakshaya. Mr. Meenakshaya was at that time about to leave Bangalore for two or three days, and he took the papers with him. He appears to have left on the 1st of February. On the

2nd of February the Appellant, either in consequence, as he says, of a telegram from Nanjappa, or of his own motion, went to the office of Meenakshaya and there saw one of his clerks. There is a question as to what information he received from that clerk with regard to the appeal. The Appellant says that he was told in answer to his inquiry that the appeal might have been filed, by which their Lordships understand him to mean that as Mr. Meenakshaya was away, the clerks did not know what had been in fact done, but that it might have been filed by him before he left. The clerk, however, gives a different account of the transaction, and says that all that he said was that the appeal might be filed when Mr. Meenakshaya returned. Whichever of those two statements is correct it does not justify, literally, the telegram which the Appellant sent to Nanjappa, because he telegraphed to him "Appeal filed Saturday; hearing not fixed." From his own point of view of the facts, it would appear that he assumed that the appeal had been filed, whereas, as he admits, all the information he received was that it might have been filed. That certainly is an inaccurate telegram. But the first question which underlies all these proceedings is whether or not it was a fraudulent statement by him that the appeal had been filed on Saturday. Now as he had handed over the papers and the Rs. 80 to Mr. Meenakshaya, who had taken the papers out of town for the purpose of considering what should be done, it does not appear that there could have been any motive for the Appellant's telegraphing falsely and fraudulently that the appeal had been filed, and it would appear more natural to come to the conclusion that there had been some misunderstanding on his part, or that he incautiously and improperly telegraphed as a fact that that had been done which

the clerk had stated was probable. It has been suggested by the Commissioner who has finally reported on the case that he may have anticipated the events which did subsequently occur, namely, that Mr. Meenakshaya would return the money, and so he would have an opportunity of appropriating it, or some of it. That is taking a very hostile view of his conduct, and their Lordships are not prepared to say that the facts lead with any degree of certainty to so adverse a conclusion. But as a matter of fact the Appellant did receive back from Mr. Meenakshaya the papers and Rs. 60, Mr. Meenakshaya retaining Rs. 20 as his fee for advising upon the case. The Appellant did not, as he ought to have done, hand over that Rs. 60, or at any rate as much of it as he considered should be paid after deducting some reasonable sum for his own expenses. He did not in fact hand over any. In the following December, Mr. Hayes, a barrister, was instructed by Nanjappa to write to the Petitioner asking him to render an account of the money which he had received back from Meenakshaya. The Petitioner wrote to Mr. Hayes saying that he was entitled to retain Rs. 20. He also said:—"After my return to this place Nanjappa never asked for the money. If he had done so I was ready to pay him Rs. 40, after deducting Rs. 20 which Mr. Meenakshaya had retained, and Rs. 20 for my travelling expenses. Such being the case, I was astonished to see your letter." He did not, however, remit the money to Nanjappa, but he alleges that on the following 28th of February 1881, he paid a sum of Rs. 30 to Mr. Hayes, which, together with another sum of Rs. 10, which he had previously given him, made up a sum of Rs. 40, on account of this claim of Nanjappa; and by way of proving that, he produced a letter from Mr. Hayes which simply demands payment of Rs. 30, and

upon which letter the Appellant states that he made a memorandum of those two payments of Rs. 30 and Rs. 10, making up the Rs. 40 which he had expressed his willingness to pay in his letter to Mr. Hayes.

There is a dispute upon this, as upon almost every other fact of the case. Mr. Hayes denies that he received that money on account of Nanjappa; but it is quite certain that there were money transactions between Mr. Hayes and the Appellant, and it is not impossible to believe that this sum of Rs. 40 was paid by the Petitioner to Mr. Hayes on account of Nanjappa.

In that state of things Nanjappa instituted proceedings against the Petitioner of a criminal nature. When those proceedings came on for hearing a compromise was arrived at by its being agreed that Nanjappa should receive the whole Rs. 80 back again. There is a question how that Rs. 80 was made up. The Appellant says that half of it was paid by Mr. Hayes, the other half being furnished by him. Mr. Hayes, however, denies that he furnished anything, and represents that the whole of it was paid by the Appellant under fear of the proceedings that had been taken against him. A compromise was effected by the receipt of the Rs. 80 by Nanjappa. But although the claim of Nanjappa was thus put an end to, proceedings were afterwards instituted — the proceedings which are now the subject of appeal before this Board— against the Appellant in his character of pleader and officer of the Court. Those proceedings took place before Colonel Hill, who is the Commissioner of Coorg. It does not appear very clearly what led to the institution of those proceedings, but it is unnecessary to inquire into their origin, as if it became known to an officer presiding in a Subordinate Court that one of the practitioners before that Court has been guilty

of unprofessional conduct, it would be within the scope of his duties to take steps for the purpose of having that matter adjudicated upon. That would properly take place under the 14th section of the Legal Practitioners Act, No. 18 of 1879, which provides that: — “If any such pleader practising in any Subordinate Court is charged in such Court or office with any such misconduct” — that is (referring back to the preceding section)— “in the discharge of his professional duty,” then that certain steps shall be taken. The presiding officer is to send him a copy of the charge, and also a notice that on a day to be thereby appointed such charge will be taken into consideration. Ultimately it becomes the duty of such officer, if he finds the charge established, and considers that the pleader should be suspended or dismissed in consequence, to record his finding and the grounds thereof, and to report the same to the High Court, and the “High Court may acquit, suspend, or dismiss the pleader or mukhtar.”

A report was made to Mr. Plumer, the acting Judicial Commissioner, who in this respect represents the High Court. The Acting Judicial Commissioner has given the two orders which are the subject of appeal in this case. The first was on the 28th of February 1883, when he makes the order with this preface: — “In the matter of the recommendation made by the Commissioner of Coorg for the removal of the name of Southekul Krishna Row from the roll of second grade pleaders for his having defrauded one Ramashetty Nanjappa of Mercara.” He goes on to say that the record of the case before him showed clearly that Krishna Row received Rs. 80, and that he fraudulently omitted to repay it, and also that he made a false statement that he had paid his

client a portion of the money through Mr. Hayes. Then coupling that with alleged previous misconduct, he comes to the conclusion that he ought to be struck off the roll.

Up to that time it is to be observed that the Petitioner had not been heard before Mr. Plumer. Petitioner remonstrated upon the order that had been made, and the result was another order of the 5th of June 1885. That is, that evidence shall be adduced by the Appellant, and evidence was in fact taken before Colonel Hill. Their Lordships are of opinion that the Petitioner had the opportunity of adducing such evidence as he might think fit, and that his complaint on that head is not well founded. But upon the evidence so obtained being remitted to the Judicial Commissioner, he makes this report or order:—"I have gone very carefully again through all the papers connected with this case, and I have given them my best consideration. I regret that I am unable to modify the opinion expressed in my previous order, or to alter the conclusion I arrived at." He therefore concludes "I confirm my former order striking Petitioner off the rolls."

This order was made without the Petitioner's having had the opportunity of being heard before the acting Judicial Commissioner after the evidence had been taken, and in that respect their Lordships are of opinion that there has been a plain irregularity, because in whatever way the proceedings may be instituted, they are subject to the provision of the 40th section of the Act referred to, by which it is enacted that, "notwithstanding anything herein-before contained, no pleader shall be suspended or dismissed under this Act unless he has been allowed an opportunity of defending himself before the authorities suspending or dismissing him." Now, the only

authority which could suspend or dismiss him was the High Court, represented by the acting Judicial Commissioner, Mr. Plumer, before whom he never has had an opportunity of defending himself. Their Lordships are therefore of opinion that this Order directing that he be struck off the rolls is in that respect irregular, and that it must be set aside, and the Petitioner be restored to the roll.

It is unnecessary to give a definite opinion upon the merits of the case, but their Lordships consider that if the charge had been established in a regular way, the offence, as alleged against the Petitioner, was not of a character which called for his entire removal from the profession, but that a suspension for less time than that which he has in fact undergone would have been sufficient to meet the merits of the case.

Their Lordships will therefore humbly advise Her Majesty to set aside the order appealed from, and to order that the Petitioner be restored to the roll.

