Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of G. Krishnasami Aiyar, from the High Court of Judicature at Madras; delivered the 20th June 1912.

PRESENT AT THE HEARING:

LORD SHAW.

SIR JOHN EDGE.

MR. AMEER ALI.

[DELIVERED BY LORD SHAW.]

This is an Appeal against an Order of the High Court of Judicature at Madras. The Order is dated the 28th February 1912. Under that Order the Appellant, who was a Vakil of the Court, was suspended from practice for six months on the ground of professional misconduct.

The circumstances of the case have been resumed in a very careful Judgment by the learned Judges of the Court below. Their Lordships only review them further for the purpose of illustrating the one point which appears to them to be conclusive of the present Appeal.

In the year 1907 the present Appellant, the Vakil, was employed to file a Second Appeal in the High Court against a decree of the District Court of South Arcot. The condition of matters with regard to a Vakil, and his relation to the procedure of the Court, which bears upon this case, are set out in Section 95 of the Appellate Side Rules of Madras. By that Section pleaders "are responsible to the Registrar for "all translation and printing charges incurred

" by him on their behalf " under those Rules. To that extent the Vakil must co-operate in the conduct of the suit with the Registrar, and with the Court, under these regulations. And they have the other general function, applicable not only to the Bar in general, but to solicitors at large, that they must, in the conduct of all suits entrusted to them, co-operate with the Court in the orderly and pure administration of justice.

In the present case a certain advance was made, or required to be made, in order to enable printing to be done as Court printing. A correspondence accordingly ensued between this Vakil, and his client; and it is a well-founded observation made in the anxious argument presented to their Lordships from the Bar that that correspondence was mainly conducted by a manager and a clerk of the Vakil, and not by the Vakil personally. That, however, is not completely true, because one of these letters, an important one, of the 8th September 1908, was written by the Vakil himself. Further, the Vakil in the present case, the present Appellant, was, of course, charged with the knowledge that it was necessary, not only that the moneys should be received from his client, but that in common honesty that money should be paid to the Registrar for the discharge of the printing dues. This was not done. Statement after statement is made by the manager and clerk in the course of this correspondence containing a false narrative of what had been proceeding, and constituting a fraudulent deception of the client.

Matters, however, culminated in a visit paid by the client on the 5th March 1909, when a payment of Rs. 28— making up the full amount to which the printing charges had accumulated at that date—was made by the client to one of the clerks in the Vakil's office. The full sum

amounted to Rs. 68, that is to say, a payment of Rs. 28 on the spot, added to a previous payment of Rs. 40.

That being done, what followed? The client naturally expected that his case would be proceeded with. He was falsely informed on the 15th July, by a letter written by the clerk, that certain progress was being made. Nothing, however, had been done, on account of the initial withholding from the Registrar of the Court of the whole of the money received from the client.

On the 25th of January matters were in this position: that the case was listed for the following day, the 26th, and, as is admitted in a most fatal document for the Appellant in this case, namely his own affidavit, the Appellant then personally knew of the transactions in the interim. His knowledge must have included the knowledge that the moneys received for a specific purpose from the client had not been so applied. When the Vakil arrived at the Court on the morning of the 26th January 1910 he was aware that he was accordingly bound, as a responsible Vakil, in honour and in duty to his client, to himself, and to the Court, to explain that the cause, which would in the natural course be dismissed for want of payment of the printing dues, was exposed to this peril by reason of a circumstance for which he apologised publicly to the Court, and expressed his regret. His affidavit, however is to this effect: "When I reached the doors of this "Court it was about a few minutes after this "case had been called on and dismissed for "default." In short, he makes to the Court below, and at this Bar, an excuse that, being engaged elsewhere, he did not appear to discharge that duty of honour, which on all sides plainly rested upon him. Having made that mistake a further course was open to him, and

that was to wait until an interval in any procedure of that Court, or till the Court was about to adjourn, and instantly to make his honourable explanation. He did not do so. He allowed matters to drift for about 18 days, as after mentioned; and the Court below having considered the excuses put forward for not sooner making application to notify what had occurred think these excuses to be idle.

He apparently returned to his office, and what did he then do with his staff? His staff by that time had been convicted of most fraudulent and improper conduct in keeping of the client's money, in sending lying letters to a client, and in giving, in the interval, an untrue account of the proceedings in the Appeal. This Vakil, who has been acquitted of personal fraud by the Court below, an acquittance with which their Lordships do not in any degree interfere, was guilty of the regrettable conduct of permitting a staff, who had previously been guilty of such deception, to continue in correspondence with his client. It was for him to say whether he should retain such persons in his service, but at all events he was honourably bound to disclose to his client the mishap that had occurred on the morning of the 26th January. Instead of that the staff was continued as before, and on the 28th January the client was written to by Bhashyam in these terms: "Your Second Appeal "aforesaid came on for hearing on the 26th "instant, and was decided against us, that is "the Appeal was dismissed." That implies two falsehoods. The case did not come on for hearing. It was never heard. It was not decided against them in the sense of a decision having been pronounced *in foro contentioso*. It was dismissed simply in consequence of the improper non-payment of moneys due. Accordingly, so far as the client was concerned, nothing was

done to wipe out the mistake which had been made by the Vakil. So far as the Court was concerned nothing was done for a period of about 18 days.

In the interval the client had appeared in Madras, and, no doubt, made his determination plain to have the matter brought before the Court as one at least of mischance. Accordingly an application had to be made, and it was not made until the 14th of the following month of February—an application for restoration of the case to the Roll. Then, the Court apprehending the gravity of the situation, instituted this enquiry. Every conceivable point has been taken against the regularity of that enquiry in the Court below; but at the Bar, where the case was anxiously and ably argued, these points have not been insisted upon. For they were without substance.

The main issue in this case is, what was the conduct, relative to the Court, relative to the client, and relative to his own professional position, which this Vakil perpetrated on or about the 26th January? Their Lordships while not interfering, as stated with his acquittance of direct and personal fraud, do not see their way to acquit him of conduct in the management of the Appeal and of his client's affairs which caused the procedure of the Court to be the very opposite of what all such procedure should be, namely, first responsible, secondly orderly, and thirdly pure. In all these respects there has been a violation of the proprieties which attach to legal procedure.

That being so, the Court made this enquiry. Its powers seem to be those contained in Section 10 of the Letters Patent creating the Court and containing, *in gremio* thereof, the rules with regard to advocates, vakils, and attorneys at law. Amongst the rules is Rule 10, which empowers the Court in these terms: "to "remove, or to suspend from practice on

" reasonable cause the said Advocates, Vakils or " Attorneys at Law."

The sole question which their Lordships have to consider in the present case is: the Court being apprised of the procedure which has been briefly described, can it be said to have acted without reasonable cause in making an interim suspension of the Appellant from practice as a vakil for a period of six months? Their Lordships think that there was reasonable cause in the present case, and they further think the Court below was justified both in the pronouncement and the extent of the suspension.

With regard to the appeal very properly made by Mr. Kenworthy Brown as to his client, their Lordships can only express the hope that in the management by those under him of affairs committed to his charge, he will, in future, see to it, that such improprieties as those referred to do not recur; and, if that is done, there seems no reason to doubt that, after this discipline, he will be able to resume an honourable professional career.

Their Lordships will humbly advise His Majesty that this Appeal should be dismissed.

In the Privy Council.

IN THE MATTER OF
G. KRISHNASAMI AIYAR.

DELIVERED BY LORD SHAW.

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