

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of S. B. Sarbadhicary, from an Order of the High Court of Judicature for the North-Western Provinces, Allahabad; delivered the 14th December 1906.*

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Present at the Hearing:

LORD DAVEY.

LORD ROBERTSON.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Sir Andrew Scoble.*]

The Petitioner in this case, Mr. Sashi Bhushan Sarbadhicary, is a barrister of Gray's Inn, and an advocate of the High Court of Judicature at Allahabad; and he complains of an Order of that Court whereby he was suspended from practice in that Court for a period of four years, from the 5th July 1906, for "gross misconduct." The grounds of his Appeal are nine in number, and as two of them relate to the competency of the Court to make the order, it will be convenient to dispose of them in the first instance.

The first objection is that the Court "had no jurisdiction to deal with the Applicant for alleged misconduct, he being a member of the English Bar."

In the opinion of their Lordships this objection is untenable. By Section 7 of the Letters Patent by which it was established, the High Court is authorized and empowered "to approve, admit, and enrol such and so many advocates . . . as to the said High Court shall

“ seem meet ”; and by Section 8 the High Court is empowered “ to make rules for the “ qualification and admission of proper persons “ to be advocates . . . . and to remove or “ to suspend from practice on reasonable cause “ the said advocates.” By Rule 180 of the Court “ any barrister of England or Ireland, and “ any member of the Faculty of Advocates in “ Scotland may present an application for his “ admission to the Roll of Advocates of the “ Court ”; and on compliance with certain conditions specified in Rule 181 may, under Rule 182, if “ the Chief Justice and Judges “ then present in Allahabad ” think fit, be admitted as an advocate of the Court. It is clear, therefore, that any barrister so admitted becomes thereupon subject to the disciplinary jurisdiction of the Court.

The second objection taken by Mr. Sarbadhicary is that the Court which dealt with the charge against him was not properly constituted under the Rules of the Court. Rule 2 provides that—

“ A charge against an advocate . . . . in respect of “ any misconduct for which such person may be suspended “ or dismissed from practice . . . . shall be heard and “ decided by a Bench of three Judges. Such Bench may, “ at the hearing, refer the matter for disposal to a Bench “ consisting of five Judges.”

If this rule applies, there is no doubt that the Court which heard and disposed of Mr. Sarbadhicary's case was properly constituted, for it consisted of three Judges. But Mr. Sarbadhicary contends that, under Rule 197, which provides that “ the Chief Justice and Judges present for “ the time being in Allahabad may, for good “ cause appearing to them, by an order in “ writing under the seal of the Court, suspend “ or remove from the Rolls of the Court any “ advocate . . . .,” he was entitled to have his case heard by a Bench of five Judges, as

that number were then present in Allahabad. The learned Judges who heard the case, and before whom this objection was raised, say that "Rule 197 provides for cases in which the Chief Justice and Judges may for good cause, and without charge or trial, suspend or remove from the Roll of the Court any Advocate of the Court." And their Lordships see no reason why they should reject this explanation. An advocate convicted of a criminal offence might properly be suspended or removed from practice under this Rule without further charge or trial. In their Lordships' opinion, this objection also fails.

The facts of the case lie within a very short compass. On the 19th April 1906 Mr. Sarbadhicary was conducting a criminal case before Mr. Justice Richards, when to use the Petitioner's own language—

"An altercation happened between the honourable gentleman and the Counsel about the administration of the oath to the accused by the Magistrate who tried them. The Counsel was backed by two depositions of the two accused. . . . They were showed to the Judge (who) wanted to assail the Counsel, but the latter, relying on his own innocence, stated, as had the copies, he was not the least to blame. The Judge was angry, and said, 'Why did the Counsel assail the Court below?' The Counsel stated that, before the files reached, the copies were the only source of his information; and sat. The Judge asked the Counsel to be polite, and the Counsel applied (to) the Judge for the same favour. The Judge remarked he should not be answered back. The Judge thereupon angrily said 'Sit down.'"

In an affidavit filed in this matter, Mr. Sarbadhicary says the words used were "Hold your tongue." But whatever the words used, Mr. Sarbadhicary says he was "greatly affected" by them, and sent the Judge a notice that "he would be legally proceeded against, both civilly and criminally, on the expiration of two months." Before this period expired, on the 1st June 1906, Mr. Sarbadhicary published in a periodical called *The Cochrane*, of which

he is both the editor and publisher, an article which has given rise to the order of suspension of which he now complains.

There is no doubt that the article in question was a libel reflecting not only upon Mr. Justice Richards, but other Judges of the High Court in their judicial capacity and in reference to their conduct in the discharge of their public duties. There is also no doubt that the publication of this libel constituted a contempt of Court which might have been dealt with by the High Court in a summary manner, by fine or imprisonment, or both. The only question which their Lordships have to consider is whether the publication of such a libel constitutes "reasonable cause" for the suspension of an Advocate from practice under the power conferred by the Letters Patent.

Their Lordships will not attempt to give a definition of "reasonable cause," or to lay down any rule for the interpretation of the Letters Patent in this respect. Every case must depend on its own circumstances. It is obvious that the intention of the Crown was to give a wide discretion to the High Court in India in regard to the exercise of this disciplinary authority. The Rules of the Court, to which reference has been made, indicate the precautions taken by the Court itself to secure that the powers shall not be used capriciously or oppressively, and there is no reason to apprehend that the just independence of the Bar runs any risk of being impaired by its exercise. On the other hand, it is essential to the proper administration of justice that unwarrantable attacks should not be made with impunity upon Judges in their public capacity; and, having regard to the fact that in this case a contempt of Court was undoubtedly committed (and, as the evidence shows, not for the first time) by an advocate in a matter concerning

himself personally in his professional character, their Lordships agree with the conclusion at which the Judges of the High Court arrived, and that there was "reasonable cause" for the order which they made.

Among other grounds of objection to the Order Mr. Sarbadhicary endeavoured to draw a distinction between "his capacity as an advocate" and his capacity as an editor," and cited the case of *In re Wallace* (L. R. 1 P. C. 283) as an authority in support of his argument. But that was an entirely different case from the present. In delivering Judgment, Lord Westbury (at p. 294) says:—

"It was an offence . . . committed by an individual in " his capacity of a suitor in respect of his supposed rights as a " suitor, and of an imaginary injury done to him as a suitor; " and it had no connection whatever with his professional " character, or any thing done by him professionally, either as " an advocate or an attorney."

Here the whole controversey arose from the misbehaviour of Mr. Sarbadhicary as an advocate conducting a case before the Court, and the contempt of which he was properly found guilty was committed in the attempt to vindicate his professional conduct in a publication for which he was solely responsible.

Their Lordships will say nothing as to the character of the libel, or as to the extent of the punishment awarded. They will humbly advise His Majesty to dismiss the Appeal.

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