
(1922) 02 CAL CK 0076
In the Calcutta High Court

Emperor

APPELLANT

Vs

Babus Rajani Kanta Bose and Another, Babus Rajani Kanta
Nag and Another, Babu Annada Charan Roy and Babu
Surendra Kumar Nag

RESPONDENT

Date of Decision : 06-02-1922

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 342
Evidence Act, 1872 — Section 111(b), 114
Legal Practitioners Act, 1879 — Section 13(f)

Citation : AIR 1922 Cal 515 : 71 Ind. Cas. 81

Hon'ble Judges : Lancelot Sanderson, C.J.; John Woodroffe, J.; Asutosh
Mookerjee, J

Bench : Full Bench

Judgement

Lancelot Sanderson, C.J.

Reference No. 4 of 1021.

1. In this reference it appears that the Pleader D.P. Chakraborty was retained to make an application on one day only (in the absence of the Pleader who filed the appeal).
2. This duty he duly performed and his retainer was discharged.
3. He was not further retained in the case, and, consequently, in our opinion there was no professional misconduct on his part.
4. In the of D.P. Chakraborty, therefore, the reference is discharged.
5. The case of R.K. Bose is different.
6. He was the Pleader for the appellant whose appeal was fixed for hearing on the 2nd June 1921. The Pleader did not appear. Notice under the Legal Practitioners Act was served upon him, but he did not appear to show cause.
7. He apparently was present at the public meeting where the hartal was

declared and took part in moving some resolutions.

8. The resolutions involved a boycott of the Court by the Pleaders.

9. In his case there can be no doubt that he deliberately took part in the "hartal" of the Pleaders. We have, however, been informed that R.K. Bose has ceased to practice as a Pleader and has not taken out a certificate this year.

10. Consequently, in our judgment, it is not necessary for us at present to enquire further into the case of R.K. Bose, or to take any steps in connection with this reference.

Reference No. 7 of 1921.

Sanderson, C.J.

11. This is a reference by the learned District Judge of Noakhali forwarding a report made by the Officiating Subordinate Judge under the Legal Practitioners Act, 1879, with respect to two. Pleaders of that Court, Rajani Kanta Nag and Preo Nath Roy Chaudhuri.

12. The Subordinate Judge reported that the Pleaders committed grossly improper conduct in the discharge of their professional duty by not attending Court on the date in question and neglecting to do the necessary work on behalf of their client in the suit mentioned in the report on the 25th May 1921 though asked by their client, he further reported that they were guilty of misconduct within the meaning of Section 13(f) of the Legal Practitioners Act, The learned District Judge confirmed the report of the learned Subordinate Judge.

13. The charges against the Pleaders were in similar terms and the charge against Rajani Kanta Nag may be taken for the purpose of ascertaining the terms thereof: That charge is as follows:

Whereas you being a Pleader of this Court joined the hartal and non-co-operation movement and did not attend the Court along with other members of the Local Bar in furtherance of the common object of the said movement and the boycott of Courts from 23rd May 1921 to 3rd June 1921 and whereas you were engaged as a Pleader for the defendant in the marginally noted suit pending in this Court that was fixed for hearing on the date mentioned against it and was fixed for hearing on the date mentioned against O.C. No. 1083 of it and whereas your client's work and acted to the prejudice of his interest by absenting yourself from the Bhanaban Chandra Court on that date you thereby committed grossly improper conduct in the discharge of your professional duty by defendant No. 2 neglecting your client's work and acting to the prejudice of his interest (Section 13(b)) and you have further been guilty of misconduct by joining the said movement started to boycott Courts and paralyse the work of the Courts and absenting yourself from the Court on those dates (23rd May 1921 to 3rd June 1921, without any lawful excuse. 14. On the hearing of the charge the Pleaders filed written

explanations. Rajani Kanta Nag, among other allegations, said that he was only instructed to file the written statement along with several other Pleaders for the defendant No. 2, on the 17th February, 1921, and that since the filing of the written statement the said defendant neither consulted him on any date about his case nor made any tadbir for him. Further allegations are contained in paragraphs 3, 6, 9, 10 and 13 which are as follows:

(3) That on 25th May; 1921 the said defendant No. 2 did neither pay me "any fees nor did he even come to me to ask for my legal advice, nor did he instruct or ask me to make any tadbir in his case, nor did the defendant No. 2 even inform me that this case was fixed for hearing on 25th May 1921 and that I did not know what tadbir he actually made on that date. This defendant No. 2 did not enter his case in my sherista, he himself took all the previous dates and looked after the case."

6. That in the matter of not attending Courts during hartal there was no combination or common object amongst the members of the Bar, that I did not, with a view to the furtherance of the alleged common object of the hartal or non-co-operation movement, absent myself from Court from 23rd May 1921 to 3rd June 1921. No such hartal or non-co-operation movement was started by me or the Local Bar; non-cooperation movement was started long before the period in question and it has no connscction with my absence from Court."

9. That consequent upon the cooly affairs at Chandpur, public feeling in this town ran so very high that-the people, in one voice, resolved in sympathy for them, to suspend all works for a time and desired the Headers, the Mukhtears, merchants, ghariwallas and others to follow their decision under threat of social punishment and humiliation, and that it might be in obedience to this resolution that none of my clients asked me to appear in Court from 23rd May 1921 to 3rd June 1921.

10. That the resolution referred to above was enforced so strictly that no gentlemen could dare disobey it with impunity, that men of position and honour had to suffer much inconvenience and humiliation during this period and that it was, in no way, possible for me to attend Court against such strong current of public opinion.

13. That as a matter of fact I did not join any non-co-operation movement, I am not a member of any Congress Committee and I do not mix in any politics.

15. Preo Nath Ray Chaudhuri's written explanation contained the following paragraphs.

1. That non-co-operation movement had nothing to do with the general hartal declared by the Noakhali public out of sympathy for tea-garden coolies stranded at Chandpur. The non-co-operation movement was started long before the said hartal and has no connection with thekeeping away from the Court by your petitioner.

2. That a general hartal in all departments of public life was decided upon in a

public meeting held at Noakhali and that no one could safely ignore or disregard the resolution of the indignant public and in fact the clients did not come to me on account of hartal during those days. Your petitioner also considered it safe and desirable to bow down to the popular will when public feeling was running so very high and so your petitioner did not attend Court during the period of the same hartal, that is, from 23rd May 1921 to 3rd June 1921.

3. That in the matter of not attending the Court during the hartal there was no combination or common object among the members of the Bar, and, in fact the Bar Association passed no resolution at all in the matter.

4. That it is not correct to say that the petitioner joined the non-co-operation, movement alleged to have been started to boycott Courts and paralyse their work. As a matter of fact your petitioner had been and is working as Pleader both before and after the hartal.

5. That the client in question did not instruct me to attend the Court on the date fixed nor did he pay me for the same.

9. That in Original Civil Suit No. 1083 of 1920, pending in your Honour's Court I was only instructed to file objection against the plaintiff's prayer for temporary injunction and to take time for filing written statement on nth January 1921; that since the filing of that objection I was not further instructed to do any other work for him, that on 25th May 1921 the said defendant No. 2 did not pay me" any fees nor did he even ask my legal advice.

10. That defendant No. 2 did not even inform me that his suit was fixed for hearing on 25th May 1921, he himself making tadbir in his cases and having not entered this case in my sherista.

16. These two Pleaders and two others accepted a vakalatnama from the defendant No. 2 in a Suit No. 1083 of 1920, on the nth January 1921. The hearing of the suit was fixed for the 25th May 1921. Neither of the Pleaders attended the Court on that day, and the defendant No. 2 filed a petition asking for a month's adjournment on account of the hartal which had begun on the 23rd May 1921 and which continued until the 3rd June 1921, and in consequence of which the Pleaders did not attend the Courts.

17. The petition is as follows:

To-day is the date of the abovementioned sirit. To-day I went to Pleader's basha with copy of issue to file list of witnesses: making hartal in the course of non-co-operation no Pleader looked into any papers. I pray for one month's adjournment in order to enable my Pleaders to consult with reference to suit papers as to what evidence should be adduced on ray behalf and to file list of witnesses. Be it known that for the reasons stated above none of the Pleaders not having signed the petition, I file this petition signing it myself. Dated 25th May 1921.

18. The defendant, when cross-examined, said that Rajani Mitter was his retained Pleader, and that he did not go to the focuses of the two Pleaders concerned in this reference, nor to the house of his Pleader, meaning thereby, as I understand, Rajani Mitter, and that he did not instruct the two Pleaders to work for him on the 25th May 1921.

19. The learned Judge, however, said that he was unable to accept this evidence, as the witness was, in his opinion, evidently trying to save the Pleaders; and he found as a fact that the Pleaders were asked to do the necessary work on behalf of the defendant No. 2 on the 25th May 1921.

20. I see no reason for disagreeing with this finding of fact and in my judgment it must be taken for the purpose of this case that the Pleaders were asked to attend Court on the 25th May 1921 and that they refused" to do so. The question, therefore, arises whether they were justified in so refusing. I have no doubt that the reason for their refusal was the hartal which was then in force. On account of an incident, in connection with some coolies at Chandpur, resolutions had been passed at a public, meeting in Noakhali, one of which was to the effect that the Pleaders should not attend the Courts, In consequence of this the Pleaders in a body with one or two exceptions, abstained from attending the Courts.

21. Each of the two Pleaders, as already mentioned, stated in his explanation that he had been instructed only in respect of particular matters in the suit and it was argued that they were under no duty to attend the Court on the day in question.

22. I cannot accept that contention. The Pleaders had accepted the vakalatnama and it is proved, in my opinion, that they were asked by the defendant No. 2 to go to Court and protect his interests, and that they refused. In my judgment it was their duty to do so, unless it is proved that their obligations towards their client, entailed by the acceptance of the vakalatnama were limited by a special arrangement accompanying tie acceptance of the vakalatnama. No such special arrangement has been proved by the Pleaders, upon which the onus of, proving it lay.

23. It was then said that no fees were paid for their attendance at Court on the 25th May 1921. No proof has been given that any fee was asked or that there was any arrangement that a fee should be paid before the Pleaders would attend Court. In the absence of such proof the mere fact that no fee was tendered or paid is, in my judgment, no justification for this refusal to attend to their clients" interests.

24 Further, having regard to the facts of the case and the statements in the written explanations of the two Pleaders, I have no doubt that even if a fee had been offered, they would not have accepted it or attended the Court.

25. It was then argued that there was no evidence of the common object alleged

in the charge.

26. I agree that it has not been strictly proved that the Pleaders took part in what has come to be called the "non-co-operation" movement.

27. In my judgment, however, it has been proved that the Pleaders did join in the hartal, one object of which was to boycott the Courts.

28. The excuses put forward in the written explanations of the Pleaders, in my opinion, cannot be accepted. In the one case, the Pleader stated that he did not attend the Court for fear of being put to great inconvenience and humiliation by the irritated public. In the other case the Pleader stated that he considered it safe and desirable to bow down to the popular will when public feeling was running so very high and so he did not attend Court during the period of the hartal.

29. The Pleaders must be judged by their conduct. The facts of the case do not show that there was any real risk of physical danger to them if they had attended the Court. They never made any attempt to do so. The learned Subordinate Judge has found that the plea that they were threatened with social punishment was a lame excuse. One Pleader allowed the fear of "inconvenience and humiliation" to override his duty to his client and to the Court. The other considered it "safe and desirable to bow down to the popular will" rather than do his duty to his client and to the Court. There being no adequate reason for the abstention from the Courts, I regret to have to come to the conclusion that the Pleaders willingly acquiesced in, even if they did not actually sympathise with, the boycott of the Courts. By so doing they lent support to the movement, which was calculated to paralyse the administration of justice.

30. In my judgment, therefore, the Pleaders concerned in the reference were guilty of grossly improper conduct within the meaning of Clause (b) of Section 13 of the Legal Practitioners Act, and of such misconduct as would bring their case within Clause (f) of the same section.

Reference No. 8 of 1921.

Sanderson, C.J.

31. This is a reference by the learned District Judge of Noakhali forwarding a report of the Subordinate Judge under the Legal Practitioners Act. The charge was as follows:

Whereas you being a Pleader of this Court joined the hartal and non-co-operation movement and did not attend the Court along with other members of the Local Bar in furtherance of the common object of the said movement and the boycott of Courts from 23rd May 1921 to 3rd June 1921 and whereas you were engaged as a Pleader for the plaintiff in the marginally noted suit pending in this Court that was fixed for hearing on the date O.C. No. 318 of 1920 mentioned against it and whereas you wilfully neglected your Prasana Kumar client's work and acted

to the prejudice of his interest by Rai Plaintiff absenting yourself from the Court on that date you thereby committed grossly improper conduct in the discharge of your professional duty by neglecting your client's work and acting to the prejudice of his interest (Section 13(6)) and you have further been "guilty of misconduct by joining the said movement started to boycott Courts and paralyse the work of the Courts and absenting yourself from the Court on those dates (23rd May, 1921 to 3rd June 1921) without any lawful excuse ((Section 13(f))

32. The report of the Subordinate Judge was that the Pleader was guilty of grossly improper conduct in the discharge of his professional duty within the meaning of Clause (6) of Section 13 of the Legal Practitioners Act and of misconduct within Clause (f) of the said section.

33. The learned District Judge concluded his reference as follows:

The opposite party, as such Pleader, is liable to some punishment, however light, u/s 14 of the Legal Practitioners Act; as he, in my opinion, has brought himself within the disciplinary jurisdiction of the High Court and his misconduct which falls within Clause (f) of Section 13 of the Legal Practitioners Act; is grave enough to deserve it. But I cannot say that his conduct deserves severe punishment.

34. Notice of the charge was given to the Pleader on the 12th July 1921, and on the 30th July 1921 the Pleader filed an explanation to which reference will be made later.

35. The material facts in this case are as follows: one Jashoda Kumar Roy and two of his brothers filed a mortgage suit in the Court at Noakhali. In this suit the Pleader Annada Charan Roy and another Pleader, A.M. Bose, accepted a vakalatnama from Jashoda Kumar Roy, in January and February 1921, respectively. The 2nd June 1921 was fixed for the hearing of the suit; on that day Jashoda Kumar Roy filed a petition in the Court, which was as follows:

On account of hartal of the Pleaders the witnesses or the Pleaders of the plaintiffs in the above suit decline to attend the Court. The plaintiffs are, therefore, unable to prove their case or tot conduct it otherwise. So it is humbly prayed that the Court be pleased to adjourn the suit to some other date and grant the plaintiffs 10 days time to produce witnesses.

36. The result was that the hearing of the suit had to be adjourned.

37. At the hearing of the change against the Pleader, Jashoda Kumar Roy gave evidence and said that the contents of his petition were true to his own knowledge.

38. It was argued by the learned Vakil for the Pleader that though it was permissible to prove the fact of the filing of the petition, the contents of this petition were inadmissible in evidence; and that the case must be decided upon the verbal evidence of Jashoda Kumar Roy, and that as he said he had suffered no loss and had no complaint to make against his Pleader the reference should

be refused.

39. Jashoda Kumar Roy is a cousin of the Pleader Annada Charan Roy and the learned District Judge has held that apparently interest for his cousin had made him forget what he had said in his petition.

40. In my judgment, the contents of the petition were admissible in evidence. In my opinion it was admissible u/s 157 of the Evidence Act in corroboration of the evidence which the witness had already given at the time when his attention was directed to the contents of the petition and when he said that the contents were true to his own knowledge. It is also to be noted that the petition was the foundation of the proceedings and that no objection was raised to the admission of the evidence.

41. In my judgment it is clear that in this case the Pleader declined to attend the Court on account of the hartal of the Pleaders.

42. In the course of the argument, the learned Vakil for the Pleader informed us that hartal meant "strike".

43. This conclusion is not based upon the statements in the petition only. There is other evidence in this case.

44. It appears that on the 22nd May 1921, a meeting was held in the town and resolutions were passed, one of which was that Pleaders and Mukhiars should not attend the Courts. This meeting was held to show sympathy in respect of an incident which had occurred at Chandpur. The object of such a resolution could only be to: boycott the Courts and so interfere with the administration of justice. On the 23rd May 1921 the Pleaders in a body with the exception of the Government Pleader and Public Prosecutor, abstained from attending the Courts. This abstention lasted until the 3rd June 1921. There was an informal gathering of some Pleaders in the Bar library called by the Pleader Annada Charan Roy, whose conduct is now under consideration, at which meeting the opinion was expressed by the majority that "as the public feeling is very high it is not safe to disobey."

45. These facts show conclusively that it was in consequence of the hartal that Annada Charan Roy did not attend to Jashoda Kumar Roy's suit on the 2nd June and unless good cause can be shown for his abstention, in my judgment, he must be held guilty of grossly improper conduct in the discharge of his professional duty to his client.

46. It was urged by the learned Vakil for the Pleader that the Pleader was under no duty to appear in the Court on the 2nd June 1921. He argued that the vakalatnama was no more than an authority to the Pleader to act. I cannot accept this contention. In this case the Pleader has not proved any special arrangement and: in my judgment the acceptance of the vakalatnama in the suit by the Pleader entailed a duty upon the Pleader to attend the Court on the day fixed for the hearing of the suit or at least to make arrangements with the other

"Pleaders" who had accepted the vakalatnama, to protect the interests of the client, even if the client had not specially requested the Pleader's services for the 2nd June. There is no question in this case of whether a proper fee was tendered by the client, because the Pleader in question, being related to the client, was working "gratis" for him.

47. It is not, however, necessary to pursue the consideration of the point further, for on the facts of this case I am satisfied that the client did request the Pleader to attend the Court on the 2nd June 1921 and that the Pleader declined on account of the hartal. It was then urged that the client was satisfied that the Pleader should not act and, consequently, it was a matter between the client and his Pleader and not a matter for the Court.

48. I cannot accept this contention. In the first place I am not prepared to hold that the Pleader can divest himself of his duty, arising by the acceptance of the vakalatnama, without the leave of the Court.

49. The provisions of Order III, Rule 3(1) and (2) of the CPC support the view that unless and until the conditions specified in that rule are complied with, the duties and obligations of the Pleader will remain.

50. But it is not necessary to decide this point now, for on the facts of this case, in my judgment, it cannot be said that the Pleader discharged himself with the consent of the client.

51. The Pleader was bound to give the client reasonable notice so as to afford the client an opportunity of obtaining other legal assistance.

52. In this case, the Pleader must have known that it was impossible for his client to obtain such assistance on the 2nd June 1921; all the Pleaders were observing the hartal except the Government Pleader and Public Prosecutor, and the client had no option except to bow to the inevitable and to present his petition himself.

53. It was then urged that although the Pleader absented himself from Court, and although his absence was in consequence of the hartal, there was no evidence of his joining the hartal.

54. I put aside the question of the "non-cooperation movement" as there is no evidence against the Pleader in this respect. I am satisfied, however, that there was a hartal; one of the objects of that hartal was to boycott the Courts; there is no evidence that the Pleader took part in promoting the hartal: but to my mind it is clear that he abstained from going to the Court on the 2nd June in consequence of the hartal; he took part in the discussion in the Bar library, and he acquiesced in the hartal, the result of which was that not a single Pleader, except the two already mentioned, attended the Courts. He must have known that the observance of the hartal would result in a boycott of the Courts, and in a grave interference with the administration of justice. His intention must be gathered from his acts, and in my judgment he must be held to have intended to

take part in the hartal to boycott the Courts.

55. It was, however said that he did this through fear of the consequences which would ensue if he did attend to his duties as Pleader. The material statements in his explanation in this respect are paragraphs 2 and 3, which are as follows:

2. That a general hartal in all departments of public life was decided upon in public meetings, held at Noakhali and that no one could safely ignore or disregard the resolution of the indignant public. I also considered it safe and desirable to bow down to the popular will when public feeling was running so very high and so I did not attend Court during the period of the said hartal.

3. That in the matter of not attending the Court during the hartal, there was no combination or common object among the members of the Bar and in fact the Bar Association passed no Resolution at all in the matter.

56. I am by no means satisfied that the conditions in Noakhali were such as to render the Pleader's attendance to his duties unsafe during the hartal. There is no suggestion that he made any attempt to attend the Court, though he was able to go to the Bar Library which, we were told, is adjacent to the Court. Other people, as already mentioned, did attend the Courts and the learned Subordinate Judge characterised the threat of social punishment as an "empty threat".

57. The town meeting was held on the 22nd May 1921 the very next day all the Pleaders, except those two already mentioned, abstained from attending the Courts. We were informed that there are about 70 Pleaders in Noakhali. I cannot believe that they were all so devoid of courage that no one of them dared to venture to attend to his work and duties as a Pleader.

58. The facts of this case point to the conclusion that there was a common object, viz., the boycott of the Courts, and that in pursuance of that object the Pleader in this case deliberately abstained from discharging his professional duty. In my judgment, therefore, the Pleader failed in his duty both to his client and to the Court and he was guilty of grossly improper conduct in the discharge of his professional duty within Clause (6) of Section 13 and of such misconduct as would bring his case within the meaning of Clause (f) of the said section.

Reference No. 9 of 1921.

Sanderson, C.J.

59. This is a reference by the learned District Judge of Noakhali u/s 14 of the Legal Practitioners Act, 1879.

60. The learned Judge forwarded with his reference a report of the learned Munsif of the Third Court.

61. The charge was:

Whereas you being enrolled as a Pleader and authorised to act as such in this Court, absented yourself from Court, contrary to the Mis. Case No. 419 wishes of

your client and to the prejudice, of his interests, of 1920. on 28th and 50th May 1921 when the case noted in the margin, (Order XXI, Rule 90, C.P.C.) in which you were engaged for the Petitioner was called on, Azam-ud-din?Peti you are guilty of grossly improper conduct in the discharge of titioner v. Md. Ibrahim your professional duties within the meaning of Section 13 of the Bhuiya--Opp.-Party. Legal Practitioners Act and have rendered yourself liable to be reported to the High Court u/s 14 of the said Act. 62. The learned Munsif held that the charge had been established and reported the case to the High Court.

53. The learned District Judge concluded his reference by saying:

The opposite party as such Pleader is liable to some punishment, however light, u/s 14 of the Legal Practitioners Act, as he in my opinion, has brought himself within the disciplinary jurisdiction of the High Court, aid his misconduct winch falls within Clause (f) of Section 13 of the Legal Practitioners Act is grave enough to deserve the punishment.

But I cannot say that his conduct deserves severe punishment.

64. A preliminary point was taken by the learned Vakil appearing for the Pleader. He pointed out that the learned Munsif had found the Pleader to be guilty of "grossly improper conduct" within the meaning of Section 13(b) and the learned Judge had held the Pleader to be guilty of misconduct within Section 13(f) and that, therefore, as the report of the Munsif and the reference of the Judge did not agree, the reference should not be acted on by the High Court. In my judgment there is no ground for such a contention.

65. It is clear from the terms of Section 14 that the report of the learned Munsif is to be made to the High Court. The section, however, provides that the report of the learned Munsif should be made through the District Judge and that such report should be accompanied be the opinion of the District Judge through whom it is made. This was probably provided for the purpose of giving the High Court the benefit of the District Judge's opinion, and also as an additional protection to the person, whose case might be under consideration.

66. The report of the learned Munsif, having been made, had to come to the High Court, with the addition of the opinion of the District Judge, through whom it had to be made, and it rests with the High Court to decide what action, if any, is to be taken" in respect of the learned Munsif's report. In my judgment the proceedings are in order in this respect, and the point taken by the learned Vakil has no foundation.

67. Notice of the charge was given to the Pleader on the 12th July 1921 and on the 1st August 1921. The Pleader filed an explanation to which I shall refer later.

68. The material facts which led up to these proceedings were as follows:

69. One Azam-ud-Din, an illiterate agriculturist, had made an application to the Court for setting aside a sale. On the evidence it is clear, in my judgment, that

S.K. Nag acted as Pleader for Azam-ud-Din in connection with that application-. The 28th May 1921 was fixed for the hearing of that application. On the morning of that day Azam-ud-Din went to Noakhali and to the house of S.K. Nag and asked him to sign and move a petition in Court on his behalf.

70. The evidence of Azam-ud-Din is that

The Pleader said he would not come to Court or sign my petition or a hajirah. His clerk said he would not write my petition. I am an illiterate man, I could not write a petition or a hajirah. They told me to come to Court. I came to Court but could not take any steps. I found no Pleader or Pleader's clerk in Court that day. I had engaged no other Pleader in my case except Surendra Babu. I had requested my Pleader to come to Court. I could not know the result that day.

71. It appears that Azam-ud-Din went to the Court and waited about until 3-30 P.M. He asked the peshkar to give him the adjourned date of the case. The peshkar wanted the number of the case and said he could not find the case without the number; this Azam-ud-Din was not able to supply: the number was noted in the diary of the Pleader's clerk, but neither the Pleader nor his clerk had even taken the trouble to give Azam-ud-Din the number of his case. The result was that the case was called on and as no one appeared it was adjourned until Monday the 30th May, 1921. This was without the knowledge of Azam-ud-Din, and he returned to his home without knowing what had been done about his case.

72. On Monday, the 30th May, the case was again called on, and as no one appeared the application was dismissed.

73. On the Wednesday or the Thursday following, Azam-ud-Din again went to Noakhali and learnt from the Pleader's clerk that, his case had been dismissed for default.

74. On the 14th June, 1921, a petition was filed praying for the restoration of the application which had been dismissed on the 30th May, 1921.

75. This petition was signed by the Pleader S.K. Nag.

76. The petition is as follows:

1. The petitioner filed in this Court against the opposite party Miscellaneous Case No. 419 of 1920 for setting aside sale. But that case having been struck off on 30th May 1921 for default on account of the absence of both the parties, the petitioner has sustained a heavy loss.

2. The petitioner himself came to Noakhali on the date fixed the 28th May 1921, but as hariai prevailed at that time in the town and as Pleaders and clerks did not attend Court and as the petitioner himself does not know how to read and write he could not take any step, and having loitered the whole day in the Court went home without knowing the date. It is now seen that the above case was adjourned to 30th May 1921 and struck off for default in the absence of both the

patties. The petitioner could not comprehend that the date would be adjourned after two days. If the petitioner could know that the case would be fixed for 30th May 1921 he would surely have attended the Court and the case would be granted ex parte.

So the petition for revival is fit to be granted.

3. The cause of action has arisen from 30th May 1921 when the case was struck off.

4. So it is prayed:

(Ka). That on taking evidence the prayer for revival be granted and Miscellaneous Case No. 419 of 1920 be restored to its original number and justice done.

77. It is to be noted that the Pleader by signing the petition makes himself responsible for two material statements: first that, in consequence of the application to set aside the sale being dismissed, the petitioner (Azam-ud-Din) had sustained a heavy loss, and, secondly, that the cause of this heavy loss" was that hartal prevailed at the time and Pleaders and clerks did not attend Courts, and that as the petitioner could neither read nor write he could not take any step. I am not aware whether the matter was set right as neither side was able to inform the Court what had been the result of the petition.

78. In my judgment it is clear that on the 28th May 1921 S.K. Nag was the sole Pleader for Azam-ud-Din in connection with the application to set aside the sale; that was the day fixed for the hearing of the sale; Azam-ud-Din requested him to go to Court and file a petition. the Pleader refused. He was asked to sign a petition, the Pleader refused: the Pleader's clerk would not even write out the petition.

79. The Pleader must have known that Azam-ud-Din was illiterate; he must have known that unless he complied with Azam-ud-Din's request, Azam-ud-Din's application to set aside the sale would be in jeopardy, and Azam-ud-Din's interests might be seriously prejudiced; further, he must have known that as there was a hartal no other Pleader or Mukhtear would be available; and unless, some valid excuse can be found, in my judgment, his conduct was most reprehensible.

80. Several technical points were raised by the learned Vakil for the Pleader, all of which, in my judgment, had no substance in them, and the fact that such points were taken on his behalf is a strong indication that the Pleader must have felt that on the facts there was no justification for his conduct and it is a matter of surprise to me that no word of regret for the unfortunate position, in which he placed his client, was forthcoming.

81. It was first argued that the vakalalnama was not produced: to my mind that is immaterial; it was proved by Azam-ud-Din that S.K. Nag was his Pleader in the

"original case for setting aside the sale" and the learned Vakil for the Pleader admitted in this Court that on the 8th May he was: Azam-ud-Din's Pleader in that matter.

82. It was next argued that there was no evidence of the Pleader's duty on the 28th May: in my judgment, it is not necessary in this case to define the duties of a Pleader generally. I merely mention this, so that I may make it clear that I do not adopt, the suggestion which has been made that a vakalatnama is merely an authority to act; in my judgment it is much more than that, and the acceptance of it entails duties on the part of the Pleader to his client. In this case it is not necessary to say more.

83. On the facts of this case, in my judgment, there can be no doubt if was the duty of the Pleader to give his assistance on the 28th May when asked by Azam-ud-Din so to do, and to take such steps as were necessary to protect his client's interests.

84. Another argument was raised that no fee was paid by Azam-ud-Din to the Pleader on the 28th May and, therefore, he was not bound to act as Pleader. In my judgment this argument was without any foundation: in the first place, Azam-ud-Din's evidence was that the Pleader did not ask for any fee on the 28th: the real reason why the Pleader refused to act, was undoubtedly the hartal which was then going on, and the learned Vakil when asked by one of my learned brothers if the Pleader would have accepted a fee, if it had been offered to him, had to admit that "probably" he would not have, accepted it. I think instead using the word: "probably" he might have used the word "certainly."

85. It was then argued that the Pleader had discharged himself on the 28th May and that the client agreed to such discharge. It is difficult to treat such an argument seriously if the Pleader wished to discharge himself, he was bound to give his client reasonable notice: his refusal to act was on the morning of the 28th May: the case was fixed for that day: the Pleader knew his client could get no other advice on that day because of the hartal, and that he was an illiterate man, who could neither read nor write: it cannot possibly be held that the notice was reasonable.

86. It is then said the client agreed to the discharge. There is no evidence of such agreement by the client: on the contrary the evidence is all the other way and it is clear that Azam-ud-Din wanted the Pleader to go to Court: when the Pleader refused Azam-ud-Din had no alternative but to go to Court himself, and to my mind there is no ground for the suggestion that he agreed to the discharge of the Pleader.

87. Then it was said that there was no evidence that the Court made any order on the 28th My that the Pleader should take action on the 30th. That is true, but, in my judgment, it is immaterial: the facts show that the Pleader's absence on the 28th May was responsible for the dismissal on the 30th May.

88. There remains to be considered the explanation of the Pleader.

89. It appears that public meetings were held at Noakhali in respect of an incident at Chandpur, and resolutions were passed; one being to the effect that Pleaders and Mukhtears should not attend the Court.

90. The learned Munsif said in his report that the Pleaders in a body, with the exception of the Government Pleader, did not attend Court.

91. The Pleader in paragraph 9 of his explanation stated as follows:

That a general hartal in all departments of public life was decided upon in public meetings held at Noakhali as a token of sympathy for the ill-treated stranded coolies at Chandpur, and no one could safely ignore or disregard the resolution of the indignant public. I also considered it safe and desirable to bow down to the popular will when public feeling was running so very high, and so did not attend Court during the said hartal.

92. The learned Munsif, who was himself on the spot, held that he was not satisfied that the conditions were such as to render the Pleader's attendance at Court unsafe during the hartal: and, as far as I can judge from the evidence, I entirely agree with him. The Government Officers, including the Ministerial and menial staff, and the District Board and Municipal Officers regularly attended their offices during the hartal. The learned Munsif further held that the alleged threats were of no practical consequence and that the Pleaders could really have no apprehension of danger in attending Courts. I agree with this finding also. In my judgment it is clear that the Pleader acquiesced in the hartal: he made no effort to go to Court: he said " he considered it safe and desirable to bow down to the popular will when the public feeling was running so very high-and so he did not attend Court during the said hartal."

93. The facts as found were no justification of his conduct, and the fact that he went so far as to refuse to sign the client's petition, which he could have done in his own house, shows that he was acquiescing in, if not sympathising with, the hartal, one object of which was that the Pleaders should boycott the Courts and so bring the administration of justice to a standstill.

94. The Pleader had a duty not only towards his client but also towards the Court and, it was clearly his duty to co-operate with the Court in the orderly and pure administration of justice.

95. The Pleader has failed altogether in showing any justification for his refusal to act for his client, and to attend the Court and in my judgment, he was guilty of grossly improper conduct in the discharge of his professional duty within Clause (b) of Section 13 and of such misconduct as would bring his case within Clause (f) of the same section.

References Nos. 4, 7, 8 & 9 of 1921.

Woodroffe, J.

96. These references have been heard separately but they have certain points in common to which I address myself. The Tleaders concerned are charged with furthering a hartal or strike by abstaining from Court in breach of their duty towards their clients and the Court. The hartal was proclaimed by a public meeting as an expression of public feeling regarding the treatment of certain tea-garden coolies at Chandpur near Noakhali. There is no evidence to show that this; hartal was part of or connected with the political movement known as the non-cooperation movement, though as a method of expressing public opinion it may have had the actions of some of those who call themselves followers of this movement as an exemplar.

97. No one is obliged to be a legal practitioner or (if he qualifies himself as such) to practise. But if he becomes a legal practitioner, and holds himself out for and accepts employment, he becomes an officer in a judicial system in which his position, rights and duties and the authority to which he is subject are determined. A person may stand out of such a system but if he enters it he is bound by the rules and must submit to the authority to which that system subjects him. It is obvious that he cannot act or combine with others to act against such authority. If the legal practitioner has a grievance and such grievance arises out of matters with which the Court is concerned he must seek the remedy from the judicial authority appropriate to the particular case just as the remedy for other grievances should be sought from, the administrative authority concerned. It follows that a legal practitioner cannot join in an action to boycott the Court, or any particular Judge, because of any grievance, real or alleged, whether touching the Courts or of a political or other character.

98. Action to boycott may be manifested either by initiating, preaching, or otherwise furthering the boycott, such as (to deal with the matter before us) refusing, without justifying reason to attend Court when bound to do so. The statement is so qualified because there is no obligation to attend the Courts provided that the legal practitioner is not bound to his client and the Court to do so. The issue, therefore, which arises in the cases is whether there is any overt act proved of the alleged intention to boycott the Courts which is the gravamen of the charge. And the chief question again here is whether an obligation to attend Court is established and, if so, whether there was lawful excuse for the non-attendance which is admitted. For the Pleaders charged may either show, as they attempt to do that they were not bound to attend Court and, that if they were, the promulgation of a public hartal directed, amongst others, against the Courts was a sufficient excuse for such non-attendance.

99. I think it is open to any practitioner for reasons personal to himself to refuse to practise in a particular Court or before a particular Judge. But he can only adopt this course either by refusing briefs in such Court, or before such Judge, or, if he has accepted a brief or vakalatnama, by first properly discharging himself on due notice to the client and in the latter case to the Court. But concerted action by a whole body of legal practitioners to boycott a Judge or

Court in protest against an alleged wrong to one of its members or in respect of its conduct of the administration of justice generally is not permissible, because the Bar in any such case cannot constitute itself the authority to adjudge on such grievance and its duty is not to impede the administration" of justice, by, collective abstention from Court, but to make its representation through (if there be one) its Association to the High Court which has superintendence in such matters. In the present case, moreover, the abstention is alleged to have been due to causes wholly extrinsic to the administration of justice, namely, the action of the civil administration in regard to some tea-garden coolies, a matter in which the Pleaders concerned and others may have been rightly interested in their personal capacity, but with which, qua Pleaders, and as a body of legal practitioners, they were not concerned.

100. The common form of defence in all the cases is that since, "public opinion was running so high in sympathy with the stranded tea-garden coolies at Chandpur, no one could safely ignore or disregard the united voice of the indignant public," and, therefore, the Pleader in question "considered it safe and desirable to bow down to the popular will" and did not dare to attend Court. Now, assuming that a Pleader was otherwise under an Obligation to attend Court on behalf of his client he could successfully plead as a lawful excuse that he was by circumstances, not under his control, prevented from doing so. Thus a Pleader could obviously not be charged with grossly improper professional conduct because he did not work for his clients at the risk of receiving physical injury to himself. Nor might such excuse be, in my opinion, limited to such injury. We are not concerned in this case, nor likely to be concerned in others, with outcasting strictly so called, because outcasting takes place in consequence of breach of caste rules which in no way touch such a matter as that before us. But the consequences of the ancient outcasting have been in recent times extended to cases of difference of political opinion. That is, a party may say that if another person or party does not do, or does not abstain from doing what the first party wants or does not want done, then the second party will be subject to the penalties of the old outcasting or ex-communication. The penalties may remain the same, though the motive differs, in one case being of a caste and in the other of a political nature. To these penalties others may be added such as humiliation or insult. It may be true, as the learned Standing Counsel said, that so far as the old outcasting is concerned, the effect of it is much diminished in modern life in the large cities and it may be true that the effect of a political boycott is less in those cities than in the towns such as Noakhali and in the villages. But in these smaller towns and villages the menace conveyed by the threat of a boycott may be very great and might, in my opinion, exempt a legal practitioner from a charge of misconduct if he feared to brave it. To hold otherwise would be to make unwillingness to face a real danger or lack of courage grossly improper conduct in the discharge of professional duty, which is not, in my opinion, the law. In my opinion, it would not be possible to charge a legal practitioner with grossly improper conduct, whatever his liability to his

client might be, if he omitted to carry out his duty to his clients by reason of his genuine fear of any real and substantial injury, physical or otherwise, to himself or family. Nor, in my opinion, would it make any difference if such fear were, in fact, unfounded if, in fact, it was sincerely entertained. And this for the reason that the Courts cannot punish a legal practitioner for grossly improper conduct because his apprehensions were beside the mark or he was devoid of courage. In such a case his client might have a remedy against him for neglect of a duty which his apprehensions did not excuse. But it would not be grounds for the Court's action by way of punishment for grossly improper conduct. It might, of course, be that the apprehensions were so littli founded as to give rise to the inference that they could not have been sincerely entertained. But if sincerely entertained then no case of professional misconduct would be, in my opinion, made out.

101. The question then, which, in my opinion, we have to determine in these cases, is whether the Pleaders did not attend Court (assuming for the moment that they were bound to do so) because they were really afraid of the consequences which they thought might follow. This we must ascertain from the statements of the Pleaders in showing cause, their own conduct and the other evidence. In the first place these statements say that it was considered safe and "desirable" to bow down to the popular will. The latter word evidences an intention to adopt the resolutions of that will and a sympathy with it. The unanimity as regards the danger suggests the same conclusion, I think that the Pleaders were in sympathy with the hartal, evidenced by, amongst other things, their failure (though being a considerable and important body of the general public) to oppose it. It is easy under such circumstances to understand that the alleged consequences of disobedience was considered as being of no account. If it were a matter of safety only and not also desirability it might well have been expected (I speak of the circumstances disclosed in these cases) that varying opinions would have been entertained in respect of the dangers to be incurred as the result of disobedience to the popular will. I have referred to the circumstances of this case because it might, as an abstract proposition, be argued that the general consensus of opinion was evidence of a real peril. In the present case it is denied that tip boycott was part of the widespread, permanent and organised non-co-operation movement, but the strike arose out of a passing and local incident. The strike is said to have been an expression of the popular will; But the considerable body of Pleaders at Noakhali were leading members of the community, whose non-co-operation with the movement might have checked it, if not brought it to an end. It does not seem to me open to a considerable body of leading citizens to say that they were in fear of the consequences of disobedience to the popular will, when, instead of opposing as they might have done successfully the menace of it, they gave it further weight by rendering it an unnecessary obeisance. We find that, notwithstanding that it is reasonable to expect some difference of opinion as to the reality of the menace, a difference which might be due both to judgment and degree of courage, practically all the

Pleaders abstained from attendance at Court. In one of the references (No. 9) the Pleader charged declined even to sign a petition in his own house, showing that it was not in that particular instance a case of apprehension of danger in going out and attending Courts. And in other cases it seems to me that the refusal to attend was due to sympathy with the objects of the hartal and not to fear of the consequences of disobeying it. And what were these consequences in fact? One person was molested by having his bicycle taken from him in attending Court, the Government Pleader, who with the Public Prosecutor attended Court, was fined Rs. 25 by the "public" (whether it was paid or not does not appear) and has some night-soil thrown into his compound, another man was fined by the "public" Rs. 5 and the like. Large number of people carried on, and amongst these the Municipal mehiars made more decent and mannerly disposal of night-soil, doing, as did others, their service in the ordinary way. The whole affair was over within a fortnight. On these facts the conclusions at which I arrive is, firstly, that, whatever may have been the risk involved, it was not sufficient to exempt the Pleaders from the performance of their duty, and might have been nothing at all had the whole body of Pleaders (who appeared to be all East Bengal men--a people not deficient in courage) attended Court instead of furthering and Strengthening the boycott by their absence; and, secondly, that such risk, if any, was not the operative cause on the minds of the Headers in inducing them not to attend. They did not, in my opinion, attend not because they were in fear of any penalties for doing so, but because they were in sympathy with the cause of and object of the hartal. To put the matter concisely they bowed to the popular will not because they were afraid of it but because they approved of it.

102. That will was an expression of public feeling as regards the treatment of the stranded coolies. Now, here we have no concern with the question of such treatment. I will, however, assume for the purposes of this judgment that the sympathy which the Indian public showed for the coolies was well-founded, still that is obviously no excuse. Whatever sympathy these Pleaders may have had for the coolies should not have been allowed to override their duty towards their client and towards the Court. If then their engagement to their clients so demanded, they were obliged to attend Court.

103. The next question is whether they were so bound?

104. I have hitherto dealt with certain general principles affecting all the cases and to these I will limit my observations on this second part of the case. The details peculiar to each case are dealt with in the judgment of the learned Chief Justice whose final conclusions, on the facts I adopt. I add only some observations on the general principles involved and which have been referred to before us.

105. I am of opinion that these proceedings are (as it has been contended and conceded) quasi-criminal in the sense that they may result in penalties. I am not prepared, however, without further argument to hold with the decision of the Madras High Court cited to us that a Pleader cannot be examined on oath if he-

so wishes. I mention the point without discussing or deciding it, for that is not here necessary.

106. Quasi-criminal proceedings are not (as the word shows) criminal proceedings in the sense that all rules of procedure applicable in criminal trials are necessarily in force in a quasi-criminal proceeding. This question is not of much moment here for reasons next stated. Thus I think that in such a proceeding as this it is open to the Pleader charged to say nothing, to give no explanation, to adduce no evidence, to refuse to be examined on oath or otherwise and to say to the Court proceeding against him "prove your case." This is a course legally open to him, though, seeing that the Pleader is an offer of Court, I cannot say it is a proper course and certainly not a wise one, if the Pleader has any defence. I cannot conceive that a legal practitioner who has a real defence on the merits will not disclose every fact and take every step to prove it. When there is no defence or the defence is doubtful, it may be that a legal practitioner may adopt the course taken by a guilty accused in a criminal trial. Anyhow the prosecuting party must prove its case. If, however, (as here) the Pleaders charged do offer an explanation, the Court may take, it into account in ascertaining whether the charge is made out. This is of some importance in the present case, as in deciding whether the case is made out against each Pleader the latter's statement may be considered. The onus again is undoubtedly on the party making the charge, though I think that if the Pleader does offer an explanation or evidence, the Court may, in considering whether the charge is proved, take" into account such explanation and mast consider such evidence. A point of evidence was taken in the Reference No. 8 against the admissibility of the previous petition of the client which it was said was only admissible in contradiction or corroboration of previous testimony and that there was nothing in the evidence to corroborate. I think the petition was improperly used, for the question by which it was made evidence was a leading one. But this rather goes to the weight of the evidence so elicited than its admissibility. And the matter of weight I have considered, for it may be that the question was put in this form to bind a witness who was disposed to go back on what he had previously said. But in law the effect was the same as if, without the petition being put in or shown the witness was asked whether he did not make each of the statements in it. An affirmative answer made the petition, though improperly elicited, substantive evidence in the case. It became incorporated with and part of the evidence taken on oath. The petition was of course evidence of a step taken in the proceeding and would be corroborative to the extent that there was evidence on the record which it might corroborate.

107. The evidence must doubtless establish the practitioner's guilt beyond all reasonable doubt. If it be said that the trial being of a quasi-criminal character the evidence must be incompatible with any theory as the innocence of the accused, the answer, I think, is that we may in this case consider, a I have said, both the evidence offered against the Pleader and his answer to the charge. Further, it may be (as urged) that the mere, acceptance of a vakalatnama does

not bind the Pleader to appear on every day of the proceeding in which it is given, for the giving of the vakalatnama may be accompanied by special terms, or other circumstances may affect the matter. But I am of opinion that all that the prosecution has to prove is a prima facie case and that when as here (except in Reference No. 9 where it was unnecessary) it is shown that a Pleader has accepted a vakalatnama in a general and common form, this is sufficient to start the case against him, and if it be desired to show that there was any special contract accompanying the acceptance of the vakalatnama, the burden of proving this, as a matter specially within his knowledge, is on the Pleader. If again it is alleged that the Pleader who has accepted a vakalatnama has discharged himself, he must show that he has properly done so with sufficient notice to his client and with intimation to the Court.

108. If again a Pleader stipulates for payment of fees before he does any work he is not bound to do such work without such payment. If, however, he accepts a vakalatnama without such stipulation, that is, gives credit to his client, he must proceed to represent him, even though unpaid his fees, until either his client discharges him or he properly discharges himself.

109. Applying these general principles to the present case, I am of opinion that the obligation to attend Court as charged is prima facie established, that no special contract affecting the general inference to be drawn from the acceptance of the vakalatnama has been established, nor any valid self-discharge.

110. I am of opinion that the Pleaders, other than D.P. Chakraborty in Reference No. 4. who is shown to have been engaged for one application, only abstained from attendance at Court when there was a duty upon them to attend and that the abstention was without lawful excuse from motives of sympathy with the hartal, and that they, therefore, in fact acted in furtherance of it, in breach of their duty towards their client and the Court. This follows from the finding which rejects the defence of fear. It was by public resolution expressed to be a common object of the hartal movement to boycott the Courts. A meeting of Pleaders called by the legal practitioner in Reference No. S was then held at which it was resolved to bow to the popular will. And in fact all the Pleaders against whom proceedings are taken abstained from attendance, though they had business in Court which properly called for it. If we exclude, as I do, the theory of fear, the only inference to be drawn is that the intention of the Pleaders by their overt act of non-attendance when bound to attend was in furtherance of the hartal. There is no evidence that the hartal was part of the non-co-operation movement and that the Pleaders charged are not non-co-operators is shown by their appearance before us.

111. There is, I think, a stronger case in favour of the Pleader in Reference No. 8 on the question whether the evidence establishes duty to attend Court, seeing the nature of the relations between him and his client, the explanation given and the evidence." But on the other point in this case it is shown that the Pleader, who is Secretary of the Bar library, convened the meeting to determine whether

the hartal was to be obeyed, a meeting which was followed in fact by obedience to the hartal resolution.

112. Such action is not permissible because the question whether a resolution declaring a hartal directed against the Courts is to be approved and obeyed or not is not a question which can be at all considered by a legal practitioner. There is no question for discussion since the answer must necessarily be a disapproval of the boycott, though it would be of course lawful to meet to consider measures of self-defence or means of combating it.

113. As regards the question whether these cases fall under Clause (b) or Clause (f) of Section 13 of the Legal Practitioners Act, I am disposed to think they fall under both clauses, that is under Clause (b) in so far as they involve neglect of duty towards the client in accepting a vakalatnama and without excuse not fulfilling the duties involved in such acceptances; and under Clause (f) in so far as the practitioners conduct was directed against the Court by abstention from attendance on account of the hartal. In the present case the two are closely connected, because one and the same act constitutes the neglect and furtherance of the hartal. It is plain on the view of the facts here taken that one or other section applies. The matter is of no practical importance in any event, particularly having regard to the order which we are about to pass in these cases.

References Nos. 4, 7, 8 & 9 of 192.

Mookerjee, J.

114. These are four references made by the District Judge of Noakhali u/s 14 of the Legal Practitioners Act in respect of six Pleaders. Reference No. 4 relates to Babu Rajani Kanta Bose and Babu Burga Prosanna Chakraborty, Reference No. 7 to Babu Rajani Kanta Nag and Babu Priya Nath Rai Chattdhuri, Reference No. 8 to Babu Annada Charan Roy, and Reference No. 9 to Babu Surendra Kumar Nag. The references raise important questions of principle, which are of first impression and affect a large section of the legal profession in this Presidency; they may be conveniently considered together, though the investigation by the Subordinate Court proceeded, in each case, on evidence separately recorded.

115. It appears that in the month of May last, there was considerable excitement in the town of Noakhali, due to sympathy for tea garden coolies stranded at a neighbouring place called Chandpur. At a public meeting, convened in the Town Hall by the Local Congress Committee, a resolution was carried that complete hartal, that is, cessation of public activity of every description, should be observed as an expression of the indignation of the community. At a second public meeting, it was resolved that those who did not loyally follow the previous resolution, should be punished with social boycott or in some equally deterrent manner. Subsequently, an informal meeting was held in the Bar library, at the instance of Babu AnarMa Charan Roy, one of the Pleaders whose cases have been reported to us, and the opinion was expressed by the majority that it was not safe to disobey the public feeling which ran very high. It may be added

that there is no evidence to show that the hartal thus proclaimed, though possibly inspired by the method adopted by non-co-operators, was in any way connected with that political movement. But it cannot be disputed that the object was to paralyse the work of the Courts and to bring judicial administration to a standstill. This result was in fact achieved, for all the Pleaders except two, ceased to attend the Courts during the period of the hartal from the 23rd May to the 3rd June. The consequence was that cases, when they were taken up for disposal on the appointed dates, had either to be postponed or decided ex parte or dismissed for default. On the reports of the Judicial Officers presiding over the Courts where this took place, the District Judge has submitted the matter to this Court for disciplinary action against the Pleaders concerned. Apart from the special facts of each case, which will be considered later, three fundamental questions emerge for consideration, namely, first, when a Pleader has accepted a vakalatnama, is he bound to appear to conduct the case in its various stages; secondly, if he is so bound, does the liability continue till he has discharged himself by recourse to the appropriate procedure; and, thirdly, does failure to appear to conduct the case before he has so discharged himself, render the Pleader liable to disciplinary action by the Court? As regards the first question, it is essential to point out that a Pleader must be duly appointed before he can appear, act and plead in a case. Reference may be made to Rule 1 and Rule 4(1) and 4(2) of Order III of the Code of Civil Procedure, 1908.

Any appearance, application or act in or to any Court required or authorised by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a Pleader duly appointed to act on his behalf.

Provided that any such appearance shall, if the Court so directs, be made by the party in person.

The appointment of a Pleader to make or do any appearance, application or act for any person shall be in writing, and shall be signed by such person or by his recognised agent or by some other person duly authorised by power-of-attorney to act in his behalf.

Every such appointment, when accepted by a Pleader, shall be filed in Court, and shall be considered to be in force until determined with the leave of the Court, by a writing signed by the client or the Pleader, as the case may be, and filed in Court, or until the client or the Pleader dies or until all proceedings in the suit are ended so far as regards the client.

116. It has been argued in this Court that although when a Pleader has accepted a vakalatnama and filed it in Court, he thereby becomes authorised to act and plead on behalf of his client, it does not follow that he is under an obligation to do so on a particular occasion. In my opinion, this contention has been too broadly formulated. A Pleader who has accepted a vakalatnama and filed it in

Court is ordinarily bound to appear and conduct his case, in the absence of an agreement to the contrary. It is conceivable, that the vakalatnama may not set out explicitly all the terms of the engagement between the Pleader and his client, and amongst these there may be implied terms sanctioned by well-known and well-established usage of the profession. To take one example, at the time the vakalatnama is accepted and filed, there may be an understanding, express or implied, that the Pleader will appear to conduct the case only on one occasion, or only after he has been paid the fees settled, or only after he has been furnished with the requisite papers. Reference may in this connection be made to the judgment of Mr. Justice Phear delivered with the concurrence of Mr. Justice Dwarka Nath Mitter in *Gopeenath Mudduck, In re* 14 W.R. 7 (Rule 359 of 1870). In that case, a litigant who was respondent in an appeal from appellate decree in this Court, which had been decreed ex parte, had engaged Babu Hari Mohan Chakraverty, a Vakil of this-Court, to apply for re-hearing. On the 26th May 1870 the petitioner moved the Court to compel the Vakil to appear and argue his case, alleging that the Pleader had been paid his fees, and yet had declined to attend and plead his case. The Court accordingly called upon the Vakil to answer the allegation. The Vakil stated that he had been paid only one-half of the fee agreed upon. The Court thereupon directed the Vakil to return the amount paid to him, and ruled that the acceptance of a vakalatnama by a Vakil of the High Court should in all cases be unconditional. But it is plain, that notwithstanding this expression of opinion, vakalatnamas have been accepted by Vakils in this Court, subject to conditions implied by well-known usage, as is clear from the decision in *Ram Koer v. Puna Koer* 3 Shome. 75. I am bound to add, however, that the true import of the observations made by Mr. Justice Phear was not, it seems to me, correctly appreciated by Sir Richard Garth, C.J. The view indicated by Phear, J., that if once a legal practitioner accepts a brief, he is bound to plead the cause of his client, whether he is paid his fee or not, is not in conflict with the opinion maintained by Garth, C.J., that a legal practitioner may, both as a matter of right and of professional propriety, insist upon the payment of his fee before he reads his brief or pleads his client's cause. As Garth, C.J., himself points out, if a legal practitioner takes a brief without a fee and without informing his client that the fee must be paid before he attends to the case, he cannot with propriety recede from it, without due notice to his client, upon the ground that the fee is not paid. To my mind, the true position is that the acceptance of a vakalatnama with the usual terms, which is filed by the Pleader in Court, prima facie places him under an obligation to appear and act on behalf of his client; and, if he fails to perform what is thus prima facie his duty, he must be ready to justify his conduct by proof that the client had failed to fulfil an implied term of the engagement, such as the advance payment of fee or the supply of the requisite papers or such like circumstances, which perhaps, cannot, at least need not for our present purposes, be exhaustively enumerated. This view is identical with that adopted by Mr. Justice Sankaran Nair and Mr. Justice Sundara Aiyar in *Munireddi v. Venkata Rao* 17 Ind. Cas. 544 : 37 M. 238 : 23 M.L.J. 447 : 12 M.L.T. 615 : (1912) M.W.N. 1029 : 13 Cr. L.J. 800 where the principle was enunciated that a

Vakil is bound to appear and conduct his case, even if the fee or any portion thereof remains unpaid, in the absence of any agreement to the contrary, or at least, notice to the effect to the client in sufficient time to enable him to make other arrangements, see the statement by Mr. Justice Sundara Aiyar in his luminous lectures on Professional Ethics, page 270, and *Rally Chum v. Carapiet 2 Shome*. 124. Reference may also be made to the observations of Lord Westbury in *Solicitor, In re 4 B.L.R.P.C. 29 : 2 Sar. P.C.J. 533 (P.C.)* which favour a strict view of the duties of a Solicitor; and a similar opinion was expressed by *Tottenham and Trevelyan, JJ.*, in *Satis Chunder y. Saroda Prasad 25 Ind. Cas. 510 : 19 C.L.J. 432*. But, as was pointed out by Wallis, C. J., in *Muthu Krishna Yachendra Bahadur v. Nurse 69 Ind. Cas. 695 : 44 M. 978 : 14 L.W. 154 : 41 M.L.J. 213 : (1921) M.W.N. 562* the decisions of Lord Tenterden in *Rowson v. Erle (1829) Mood. & Mal. 538* of Tindal, C.J., in *Vansandau v. Browne (1832) 9 Bing. 402 : 2 Moo. & Sc. 543 : 1 D.P.C. 715 : 2 L.J.C.P. 34 : 131 E.R. 667 : 35 R.R. 571* and *Lawrence v. Potts (1834) 6 C. & P. 428* and of Lord Esher in *Underwood v. Lewis (1894) 2 Q.B. 306 : 64 L.J.Q.B. 60 : 9 R. 440 : 70 L.T. 833 : 42 W.R. 517* favour a less stringent view of the duties of a legal practitioner. It is not necessary, however, for the decision of the cases now before us, to investigate in further detail this and correlated aspects of the matter, such as that raised in *Moheshpur Coal Co. v. Jotindra Nath Gupta 18 Ind. Cas. 315 : 40 C. 386 : 17 C.W.N. 278*.

117. As regards the second question, it is clear that when a Pleader has accepted a vakalatnama with or without implied conditions his liability continues, till he has discharged himself by recourse to the appropriate procedure. It is a mistake to suppose, however, that this is a matter solely between the Pleader and his client. The statutory provisions on the subject leave no room for doubt that "the appointment of a Pleader, when filed in Court, with his acceptance, continues in force until determined with the leave of the Court by a writing signed by the client or the Pleader, as the case may be, to this rule, there are two exceptions, namely, first the death of the client or the Pleader, and, secondly, the termination of the proceedings in the suit so far as regards that client. An instance of the application of this rule is furnished by the decision of Harington, J., in *Atul Chandra Ghose v. Lakshman Chunder Sen 2 Ind. Cas. 830 : 36 C. 609 : 13 C.W.N. 1172*. See also *Prabhu Lal v. Kumar Krishna Dutt 33 Ind. Cas. 73 : 23 C.L.J. 326 : 20 C.W.N. 437* *Prabhu Lal v. Kumar Krishna Dutt 33 Ind. Cas. 78 : 23 C.L.J. 473 : 20 C.W.N. 443*. The principle has been recognised for more than half a century, as is clear from Section 18 of Act VIII of 1859 and Section 39 of Act X of 1877 and Act XIV of 1882, which were applied in the cases of *King v. King 6 B. 416 at p. 429 : 3 Ind. Dec. 733* and *Watkins v. Fox 22 C. 943 : 11 Ind. Dec. 626*. It is not difficult to realise that serious uncertainties and inconveniences might arise in the conduct of judicial proceedings, if the appointment of a Pleader, made in writing and lodged in the Court where the case was to be tried, could be revoked without the knowledge and sanction of the Court. It is further well-settled that the legal practitioner must always give

reasonable notice of his withdrawal from the case to his client; *Hoby v. Built* (1832) 3 B. & Ad. 350 : 1 L.J. (N.S.) K.B. 121 : 110 E.R. 131 : 37 R.R. . 444
Harris v. Osbourn (1834) 2 Cr. & M. 629 : 4 Tyr. 445 : 3 L.J. Ex. 182 : 149 B.R. 912 : 39 R.R. 872
Nicholls v. Wilson (1843) 11 M. & W. 106 : 2 Dowl. 1031 : 12 I.J. Ex. 266 : 152 E.R. 734 : 63 R.R. 523
Whitehead v. Lord (1852) 7 Ex. 691 : 21 L.J. Ex. 239 : 155 E. S. 1126 : 19 L.T. (O.S.) 113 : 36 R.R. 797.

118. As regards the third question, it is plain that the failure of a Pleader to appear to conduct the case before he has discharged himself in the manner prescribed by law, unless such failure can be justified, renders him liable to disciplinary action by the Court. It is neither practicable nor necessary to have a complete enumeration of justifying circumstances which must necessarily depend upon the facts of each case. In view of the arguments addressed to the Court, I may, however, state that, in my opinion, it may be successfully urged as a justifying reason for failure to attend to a case, that the absence was in fact due to overriding pressure of circumstances beyond the control of the Pleader, notwithstanding an honest desire, on his part to perform his duty towards his client and towards the Court. No formula can be framed to enable us to measure accurately the nature and extent of such pressure, but, to my mind, it is essential that the Pleader, in full appreciation of his duty as the representative of his client and as an officer of the Court, should have been sincerely anxious to protect the former and to assist the latter. The relation of Pleader and client has been described by some as that of principal and agent and by others as that of master and servant, in a limited and dignified sense, *Maruga Chetty v. Rajasami* 14 Ind. Cas. 823 : 22 M.L.J. 284 : (1912) M.W.N. 333 : 11 M.W.N. 280. It may be a matter for controversy how far these analogies hold good; but, in any event, the relation involves the highest personal trust and confidence, so much so that it cannot be delegated without consent. The Pleader by his obligation is bound to discharge his duties to his client with the strictest fidelity and is answerable to the disciplinary jurisdiction of the Court for dereliction of duty. A Pleader, however, is more than a mere agent or servant of his client. He is also an officer of the Court, and as such he owes the duty of good faith and honourable dealing to the Courts before which he practises his profession. His high vocation is to inform the Court as to the law and facts of the case and to aid it to do justice by arriving at correct conclusions. The practice of the law is not a business open to all who wish to engage in it; it is a personal right or privilege limited to selected persons of good character with special qualifications duly ascertained and certified: it is in the nature, of a franchise from the State conferred only for merit and may be revoked whenever misconduct renders the Pleader holding the license unfit to be entrusted with the powers and duties of his office. Generally speaking, the test to be applied is whether the misconduct is of such a description as shows him to be an unfit or unsafe person to enjoy the privileges and to manage the business of others in the capacity of a Pleader, in other words, unfit to discharge the duties of his office and unsafe because unworthy of confidence. His office is a very badge of respectability, a patent of

trustworthiness, derived from his position on the Court's roll of Counsel; consequently, he ought not to be suffered to pass for what he is not. Amongst various types of misconduct, there is none more reprehensible than such conduct as tends to impede, obstruct, or prevent the administration of the law or to destroy the confidence, of the people in such administration; and any attempt on the part of a Pleader to boycott the Courts or to obstruct the administration of justice by a resort to any form of device, constitutes, in my opinion, ground for disbarment or suspension.

119. Before we pass on from these general observations to a consideration of the special facts of each case, it is necessary to notice an argument which was advanced in all the cases. It was contended that the proceedings u/s 14 of the Legal Practitioners Act are quasi-criminal in character and must be based on evidence cogent and conclusive, such as is deemed necessary for a conviction in a criminal case; in support of this proposition reliance was placed upon observations in the decisions in Nilkunt Biswas, In re 9 W.R. 29 Cr. Kotha Subba Chetti v. Queen 6 M. 252 : 7 Ind. Jur. 247 : 1 Weir. 116 : 2 Ind. Dec. 454 Government Pleader v. Raghunath S. Sule 2. 4 Ind. Cas. 266 : 10 Cr. L.J. 526 : 11 Bom. L.R. 1150. In my opinion, it is plain that the proceeding is not of a criminal nature; see Government Pleader v. Bhagubhai 16 Ind. Cas. 788 : 36 B. 606 : 14 Bom. L.R. 700 : 13 Cr. L.J. 913 though, as pointed out in Nando Lal Roy v. Baserali 50 Ind. Cas. 806 : 23 C.W.N. 560 and Nallasivan Pillai v. Ramalingam Pillai 41 Ind. Cas. 305 : 32 M.L.J. 402 : (1917) M.W.N. 303 : 6 L.W. 364 : 18 Cr. L.J. 785 it is undoubtedly a judicial proceeding. It was ruled in the cases of Hardwick, In re (1883) 12 Q.B.D. 148 : 53 L.J.D.Q. 64 : 49 L.T. 584 : 32 W.R. 191 and Eede, In re; Davy, Ex parte (1890) 25 Q.B.D. 228 : 59 L.J. Q.B. 376 : 38 W.R. 683 that as the Court in making an order striking a Solicitor off the rolls for misconduct does so in the exercise of its disciplinary powers over its own officers and not in the exercise of its criminal jurisdiction, an appeal lies from such order to the Court of Appeal. The same principle was recognised by Lord Mansfield in Brounsall, Ex parte (1778) 2 Cowper. 829 : 98 E.R. 1385 when he over ruled an objection to disciplinary proceedings against an Attorney who had been convicted of felony, on the ground that the only misconduct imputed to him was the very offence which had formed the basis of his conviction. The same view has been affirmed by the Supreme Court of the United States in Randall v. Bringham (1868) 7 Wallace. 523 : 19 Law. Ed. 285 and Wall, Ex parte (1882) 17 Otto. 265. The true position appears to be that these proceedings are neither civil suits nor criminal prosecutions: Janak Kishore, In the matter of 37 Ind. Cas. 484 : 1 P.L.J. 576 : (1917) Pat. 60 : 18 Cr. L.J. 132. They are special proceedings resulting from the inherent powers of the Courts over their officers. Their object is to preserve the purity of the Courts and the proper and honest administration of the law. The purpose of suspension and disbarment is to protect the Court and the public from legal practitioners who, disregarding the sanctity of their office, pervert and abuse the privileges annexed to the responsible office they have secured from the Court. The form of procedure, consequently, is not of

controlling importance, so long as the essentials of fair notice and opportunity to be heard are present: Ganapathy Sastri, In re 3 Ind. Cas. 344 : 19 M.L.J. 504 : 6 M.L.T. 253 : 11 Cr. L.J. 274. Section 14 of the Legal Practitioners Act, which describes the procedure for investigation when a charge of unprofessional conduct is brought in a subordinate Court against a legal practitioner, provides that the presiding officer shall send him a copy of the charge and also a notice that on an appointed day the charge will be taken into consideration. This section does not make it obligatory on the Pleader to submit a written defence and does not even provide for his compulsory presence or oral examination: A Pleader, In re 18 M.L.J. 184 : 3 M.L.T. 237 : 7 Cr. L.J. 333 but it does lay down that the presiding officer shall receive and record all evidence properly produced in support of the charge or by the Pleader presumably in answer to the charge. The essence of the matter, consequently, is that the Pleader must be allowed an opportunity of making his defence: Southekal Krishna Rao, In the matter of 14 I.A. 154 : 15 C. 152 : 12 Ind. Jur. 115 : 5 Sar P.C.J. 96 : 7 Ind. Dec. 685 Golab Khan, In re 15 W.R. 171 : 6 B.L.R. 83 Second Grade Pleader, In the matter of 24 M. 83 Government Pleader v. Maganlal 9 Bom. L.R. 966. The Pleader need not make any defence if he so chooses, though I am emphatically of the opinion that he should be absolutely candid with the Court in such a proceeding. He may, howsoever, unwisely decline to render any assistance to the Court, maintain a stolid silence and take up the position that the case against him must be completely proved. But if he does adopt such an attitude, he obviously runs a grave risk, for even in a criminal case Section 342 of the Criminal Procedure Code provides that if an accused person refuses to answer a question put by the Court, the Court and the Jury, if any, may draw such inference from such refusal as it thinks just; see Section 114, 111(b) of the Indian Evidence Act; Emperor v. Dwijendra Chandra 31 Ind. Cas. 164 : 19 C.W.N. 1043 : 16 Cr. L.J. 734. On the other hand, if the Pleader does submit a written statement in answer to the charge, the Court is bound to take it into consideration and may draw such inference as legitimately arises from its contents. To take an example, if the Pleader in his written statement seeks to justify his conduct on certain allegations of fact, it may well be inferred that the conduct was not justifiable on other hypothetical or imaginable grounds. A singular illustration of such a contingency was furnished in the course of argument in one of the cases now before us. It was urged with considerable insistence that the failure of the Pleader to appear in Court on the appointed day did not render him liable to disciplinary action, inasmuch as it had not been affirmatively established that he had been offered his fee for the day by the client. But in answer to a question put by the Court, the reply was given that even if the fee had been tendered, it would not have been accepted, as the Pleader had decided not to attend the Court on account of the hartal. In my opinion, when in answer to a charge made against a Pleader, a written statement has been filed in a proceeding u/s 14, it is not obligatory on the Court to rule out all conceivable hypothetical grounds which could have been, but had not been, setup in answer. The justice of the case may ordinarily be met, if the enquiry proceeds on the basis of the charge and the

answer.

120. In one of the cases, an additional point was urged with some emphasis. It was contended that no disciplinary action can be taken by the High Court when the District Judge and the Judge of the Subordinate Court are not agreed as to the specific provision of Section 13 which covers the misconduct attributed to the legal practitioner concerned. This argument is manifestly untenable and is based upon a misapprehension of the scope of the authority of this Court in the exercise, of its disciplinary jurisdiction. Section 14 Contemplates an enquiry and report by the Subordinate Court. This is forwarded by the District Judge with his opinion thereon. As pointed out in *Rasik Lal Nag*, In the matter of 38 Ind. Cas. 980 : 44 C. 639 : 20 C.W.N. 1284 : 24 C.L.J. 190 : 18 Cr. L.J. 420 the ultimate decision rests with the High Court and the authority of this Court is not taken away by any divergence of opinion between the Judge of the Subordinate Court and the District Judge, either as to the facts, or as to the law applicable. It is consequently immaterial that while the Judge of the Subordinate Court thought that the facts attracted the operation of Section 13(b), the District Judge deemed the case governed by Section 13(f). I am further of opinion that the case is really comprehended within the scope of both the clauses of Section 13 just mentioned; the conduct of the Pleader was reprehensible not only because to neglected his duty towards his client, but also because he sympathised with and acquiesced in a boycott of the Courts; the former makes Clause (b), the latter makes Clause (f), applicable.

121. In Reference No. 4, we are called upon to consider the cases of Babu Rajani Kanta Bose and Babu Durga Prosanna Chakraborty. As regards Babu Rajani Kanta Bose, it is plain that his conduct was reprehensible. He was present at the public meeting where the hartal resolution was carried and took an active part in the proceedings. He then absented himself from Court and did not appear in the case in which he had been engaged. He has not shown cause, and we have been informed that he has retired from the practice of his profession. It is, consequently, not necessary to discuss this matter further. As regards Babu Durga Prosanna Chakraborty, the evidence indicates that his services were engaged by the client for only one occasion, consequently his failure to appear on another occasion does not support the charge of professional misconduct.

122. In Reference No. 7, we are concerned with the cases of two Pleaders, Babu Rajani Kanta Nag and Babu Priyanath Rai Chaudhri. The evidence makes it abundantly clear that these Pleaders had accepted a vakalatnama and yet did not appear in Court when their case was taken up. There can be no doubt that they acted in this manner, because they were in sympathy with the hartal resolution, and it is idle for them to urge that they had no intention to boycott the Court or paralyse the administration of justice. I feel no doubt that they could have attended the Court, as the Government Pleader and the Public Prosecutor had done, and that the risk of consequent inconvenience and possible humiliation by an irritated public has been unduly magnified. I consider that their conduct in not

attending to the case in which they had been engaged was unjustifiable, and they have rendered themselves liable to disciplinary action by this Court.

123. In Reference No. 8, we have to deal with the case of Babu Annada Charan Roy. In his written defence, he has urged that no one could safely ignore or disregard the hartal resolution adopted by an indignant public, but he has also added that he considered it safe and desirable to bow down to the popular will. The evidence shows that he had convened the meeting at the Bar library where the opinion was expressed by the majority that it was not safe to disobey the strong public feeling. I think there is no reasonable doubt that he acquiesced in the hartal resolution and neglected to perform his duty towards his clients and towards the Court. This, in my opinion, makes him liable to disciplinary action by this Court.

124. In Reference No. 9, we have to consider the case of Babu Surendra Kumar Nag. In my opinion, his conduct was far more reprehensible than that of the other Pleaders: and the line of defence adopted in the lower Court as also in this Court has placed him in a position of great peril. He was engaged by one Azam-ud-Din as Pleader in a suit which resulted in a sale of the property of his client. He then applied to have the sale set aside; the matter was fixed for hearing on the 28th May 1921. The client saw him at his house in the morning and requested him either to file a list of the witnesses present or to make an application to the Court for adjournment. The Pleader refused the request. The client then went to the Court but as he was illiterate and ignorant of the number of the case, he could not take steps to apply for adjournment. The case appears to have been postponed along with other cases till, the 30th May. The client however was not apprised of this, and the case was dismissed for default, as on the adjourned date neither he nor his Pleader was present. On the 14th June the Pleader presented an application for restoration of the case, which recites, that as hartal prevailed at the time and as Pleaders and clerks did not attend Court and as the petitioner himself could not take steps by reason of his illiteracy, he could not appear on the date to which the case was adjourned without, his knowledge. In view of the statement contained in this petition, which was signed by the Pleader himself, it is difficult to understand how the charge, of unprofessional conduct could be seriously met. It has been urged, however, that as no vakalatnama was filed along with the application, for reversal of sale, the Pleader was not liable to attend on the appointed date. There is no foundation whatever for this contention, for it is well-settled that no fresh vakalatnama is necessary to entitle the Pleader to appear in proceedings subsequent to the decree, *Shah Mukhun v. Sreekishen Singh* 8 W.R. 92 *Sutto Chum v. Suroop Chunder Doss* 12 W.R. 465 *Gopal Jayachand v. Hargovind Khushal* 5 B.H.C.R. (A.C.J.) 83 *Sadashiv Ganpatrao v. Vithaldas Nanchand* 20 B. 198 : 10 Ind. Dec. 691. The Pleader did not, in fact, present the application for reversal of the sale, and, subsequently the petition for restoration of that application, on the strength of his appointment as Pleader in the suit; and no weight can be attached to the fact that a fresh vakalatnama was not filed. There is also no force in the

contention that he was not paid his fees, he did not demand his fees and would not have attended the Court even on payment. The truth is he sympathised with the movement for boycott of the Court and considered it safe and desirable to bow down to the popular will. His conduct is, in my opinion, not capable of justification on any imaginable ground and can only be characterised as amounting to a deliberate and reckless disregard of the interest of the illiterate and ignorant litigant who had the misfortune to engage his services. As observed by the Special Bench of seven Judges in *Roopnath Banerjee, In re 1 Shome*. 125, his case has undoubtedly not been improved by the sophistical arguments put forward to sustain an indefensible position, and he has clearly rendered himself liable to disciplinary action by the Court.

125. I desire to add that the conduct and attitude of the Pleaders whose cases we have been called upon to consider, appear, in my judgment, to be lamentably deficient when tested from the standpoint of the honour and dignity which we are accustomed to associate with gentlemen who claim the position and privileges of members of the legal profession. As observed in *Government Pleader v. Jagannath 2 Ind. Cas. 264 : 10 Bom. L.R. 1169 : 33 B. 252* their position as a privileged class enrolled for the purpose of rendering assistance to the Courts in the administration of justice, their special training and their responsible practice gave them influence with the public, and it was their duty to use that influence so that the administration of justice might not be, brought into contempt: *Jivanlal Varajrai Desai, In re 54 Ind. Cas. 679 : 44 B. 418 : 22 Bom. L.R. 13 : 21 Cr. L.J. 151*. They should have been actuated by a keen sense of duty and loyalty to the Courts and to their clients. They should have made a strenuous endeavour to resist and defeat the ignoble attempt to boycott the Courts and to imperil the administration of justice. Their paramount duty was, in the language used by Lord Shaw *Krishnasawmy Aiyar, In the matter of 16 Ind. Cas. 328 : 23 M.L.J. 114 : 16 C.W.N. 1081 : 13 Cr. L.J. 680 : 12 M.L.T. 396 : 35 M. 543 : 14 Bom. L.R. 1079 : 16 C.L.J. 634 : 5 (1912) M.W.N. 963 : 39 I.A. 191 (P.C.)* affirming *Krishnasawmi Aiyar, In re 14 Ind Cas. 965 : 22 M.L.J. 276 : (1912) M.W.N. 348 : 11 M.L. 396 : 13 Cr. L.J. 421* to co-operate with the Court in the orderly and pure administration of justice. It is thus a matter of the deepest concern that they passively acquiesced in, if not actively sympathised with, the movement to paralyse the Courts, and, what is most deplorable, they did not hesitate to cast baseless aspersions on the judicial officers who instituted these disciplinary proceedings solely with a view to vindicate the authority and maintain the dignity of the Courts.

References Nos. 4, 7, 8 & 9 of 1921.

Sanderson, C.J.

126. After due consideration we have decided to take no further action in respect of the References No. 4 of 1921, No. 7 of 1921, No. 8 of 1921 and No. 9 of 1921. Some of the reasons which have actuated us in coming to this conclusion, are:

(1) that these are the first cases of the kind which have been brought before this Court;

(2) that the Pleaders concerned, with the exception of one, who has ceased to practise, have resumed work and attended the Courts;

(3) that there was undoubtedly a strong feeling in Noakhali on the occasion in question;

(4) the Pleaders may have acted in haste and without due consideration of the serious nature and effect of their conduct.

127. We have therefore, decided to treat as leniently as possible the Pleaders concerned in the references now before us, in the hope and belief that the warning, which we now give, will have the effect of preventing a repetition of such conduct.

128. It must be recognised, however, that the Court takes a very serious view of this matter.

129. The Pleaders in Noakhali were a considerable body in point of numbers, and were persons whose influence and action must have had a considerable effect on the hartal. It is, perhaps, not too much to say that if the Pleaders had abstained from observing the hartal, it might have failed altogether, or at any rate it would have had much less effect. But, apart from this, the Pleaders are a privileged body, with duties not only towards their clients but also towards the Courts of which they are Pleaders, to co-operate in the orderly and pure administration of justice.

130. The Pleaders in question failed to perform their duties in both respects, and they joined in a hartal, one of the objects of which was to paralyse the administration of justice.

131. Such conduct cannot and will not be permitted, whether it be on account of some alleged grievance in connection with the administration of the Courts or in furtherance of some movement, political or otherwise. Therefore, while deciding to take a lenient course in these cases, the first of the kind brought before us, we desire to make it clear that if such conduct is repeated in the future, it may entail serious consequences to those concerned.