

Reminiscences

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It may not be out of Place to mention one incident to show how the Vakils Association used to be a well-knit body under the leadership of Sir Tej Bahadur Sapru. In the year 1926, a Bench was constituted of Mr. Justice Dalal and Mr. Justice Pullan, both members of the Indian Civil Service. They were quick, intelligent and hardworking Judges. They would read the papers at home and confine the arguments to points mentioned by them so that counsel was not able either to build an argument or to properly place his case. This caused a great deal of dissatisfaction, and when a number of lawyers were lightly discussing in the Vakils Association the manner in which Order 41, Rule II, C.P.C. cases had been disposed of that day by the Bench, Sir Tej Bahadur Sapru took a serious view of the remarks and considered that the confidence of the litigant public in the administration of Justice would be shaken and called a meeting of the Association. A resolution was passed that notice of the Hon'ble Judges may be drawn to the apprehension prevailing in the minds of the members of the Bar and it may be pointed out to their Lordships that the appellant was entitled to a proper hearing. The resolution was sent to the two learned Judges under the signature of Pandit Shyam Kishan Dar, the Secretary of the Vakils Association. The Acting Chief Justice Sir Cecil Walsh sent for Mr. Dar and asked him to apologize, and, on Mr. Dar pointing out that he had merely signed the letter sending the resolution as the Secretary of the Association and he could not very well express his personal apology, the learned Acting Chief Justice issued a notice of contempt against him. On the issue of the notice every member of the Vakils Association headed by Sir Tej Bahadur Sapru signed an identical letter which was sent to the two learned Judges and a copy of it was sent to the Hon'ble the Acting Chief Justice. Thereupon notice was issued to all the members of the Association why they should not be dealt with for contempt of court. As every member of the Vakils Association was involved, the Barristers were called upon to defend them and Mr. B. E. O'Connor, Dr. M. N. Agarwala and myself were selected to represent the members of the Vakils Association. I still treasure the letter that I received from Sir Tej Bahadur Sapru, as a client, asking me for time when he could come to explain to me his case and enclosing a cheque for perusal fee and for appearance on the first day. After discussing the matter with Mr. O'Connor, instead of returning the cheque to Sir Tej, we decided to preserve it. The Bench constituted for hearing the case consisted of Sir Cecil Walsh, the Acting Chief Justice, and Sir Benjamin Lindsay, the Senior Puisne. Mr. Justice Lindsay, when he came to his Chambers and heard what the case was about, told the Acting Chief Justice that he refused to make himself ridiculous and would not like to be on that Bench. The other English Judges took a similar attitude and then Sir Shah Mohammad Sulaiman was approached, who agreed to form a member of the Bench provided he was given 24 hours' time to mediate. His mediation resulted in the happy ending by mutual exchange of apologies and the matter was not heard of again.

Another interesting incident that will probably be not out of place to mention here arose in this way. Mr. A. P. Pandey filed an execution First Appeal.* The Bench hearing the appeal, consisting of Boys and Pullan, JJ., came to the conclusion that it was a reprehensible proceeding which amounted to an abuse of the process of the Court' and issued notice to Mr. Pandey 'to argue the general question whether in these circumstances Court' had 'power to order a legal practitioner' to pay the costs personally. The reasoning was that a Vakil here did the work both of a Solicitor and an Advocate, so he could be made personally liable. This discussion took place before lunch. During the Luncheon hour Sir Tej Bahadur Sapru heard about it and after lunch he went to Sir Grimwood Mears, Chief Justice-and we followed him there-and mentioned the incident and said that, as it was a very important matter from the point of view of the members of the Bar, he would like the case to be transferred to the court of the learned Chief Justice. As Sir Tej was very excited, Sir Grim wood Mears promised to have the matter considered by a Full Bench of all the lawyer- Judges from which the service Judges were all to be excluded. A Bench of seven Judges was constituted, out of which three were English men and four were Indians. The Bench consisted of Sir Grimwood Mears, Sir Shah Mohd. Sulaiman, Boys, Lalit Mohan Banerji, Young, Surendra Nath Sen and Niamatullah, JJ. The Indian Judges held in favour of the Bar, while the other Judges held that a member of the Bar could be made personally liable for costs. During the course of the argument, great excitement was caused by the fact that the Judges had to admit that the Bench hearing the appeal was wrong and the decision of the lower court should have been set aside. In his defence Mr. Justice Boys said that the case had not been argued before him in the manner it had been placed before the Full Bench by Sir Tej, nor the authorities on which Sir Tej relied had been cited before him; and Sir Tej thundered back that it could not, therefore, be said that whenever a Judge thought that counsel was in the wrong he was necessarily in the wrong.

Another interesting episode that I might mention which also came up before the Court for judicial decision was the question whether a member of the Bar could sue for his fees or could be sued for the refund thereof. There was an old Full Bench decision of the Allahabad High Court in which a litigant had filed a suit against Sir Charles Ross Alston for refund of fees on the ground that he had not been able to attend to his case. It was held that a Barrister's fee was an honorarium and a Barrister could neither file a suit to realise the arrears of his fee nor could he be made to refund the amount received by him. The question arose in an Advocate filing a suit in the District Court for realisation of the balance of his fees which had not been paid. The suit was dismissed on the basis of the old Full Bench ruling. In the High Court the lawyer was represented while the litigant was not. Sir Lal Gopal Mukerji, before whom the case came, was the Acting Chief Justice and he decided to give notice to the Vakils Association and to the Bar Library, and while the Bar Library took up the attitude that what the lawyer got was a mere honorarium and he had no legal remedy nor was there a legal remedy against him, the Vakils Association took up the opposite view. Dr. Kailash Nath Katju appeared on behalf of the Vakils Association and Mr. Abdul

* Mahant Shantanand VS. Mahant Basudevanand (ILR 1930 All. 619 =AIR 1930 All. 225 F. B.).

Majeed Khwaja and myself on behalf of the Bar Library; but the learned Acting Chief Justice and the majority of his brother Judges took the view that the engagement of an Advocate came under the Contract Act and was governed by its provisions.

How a Judge, faced with his own wrong decision, can at times be put in a very awkward position, was demonstrated once when Sir Shah Mohammad Sulaiman differed from a Single Judge decision of Mr. Justice Lalit Mohan Banerji on a point of Hindu Law. The case was referred to a Full Bench and Sir Grimwood Mears constituted a Bench of three Judges, Sulaiman, Boys and Banerji. Counsel attacking Mr. Justice Banerji's view was doing it gently and with a great deal of circumspection, but Mr. Justice Boyo was forthright in his condemnation and Mr. Justice Banerji was smarting under his criticism, Suddenly we felt a change in the atmosphere. Mr. Justice Banerji had sent for his original judgment and found that it was entirely different from the reported judgment, which had been edited by the President of the Council of Law Reporting, Walsh, J.

I do not want in this article to give my reminiscences but I am tempted to mention certain gentle repartees of Mr. Pearey Lal Banerji which made the judge, Sir Edward Bannet, feel very uncomfortable. Once Sir Edward pointed out to Mr. Banerji that he (Mr. Banerji) had no experience of the conditions inside a jail.

Mr. Banerji quietly replied that he bowed to his Lordship's experience as he had never had till then the experience of having to spend a night in jail. The judge took great pains to explain that all his experience was derived from his being a jail visitor. On another occasion Sir Edward mentioned to a counsel from Bihar who had been a judge (Mr. Manukh) that he did not know how a Judge's mind worked, Mr. Banerji quietly remarked that Mr. Manukh had just retired from the Patna Bench. Once Sir James Allsop asked Mr. Banerji his age. On Mr. Banerji telling him that he would complete sixty on a certain date, Sir James said "If you were on the Bench, Mr. Banerji, you would be thinking of retiring. " Mr. Banerji said "Not necessarily, My Lord, I may not be then completing sixty."

Mr. Justice Boys was very particular about little details and some days after he was appointed a Judge, he sent for Mr. Baleshwari Prasad from the Vakils' room and me from the Bar Library to point out that a comma had been misplaced in the copy of the Letters Patent included in the High Court Rules and his Lordship had worried about it for three days till he discovered the mistake by comparing the copy with the original Letters Patent. He pointed out that he was amazed. that so many generations of lawyers had not discovered the mistake. Mr. Justice Boys was very particular in taking down full notes. Once Dr. M. N. Agarwala started by saying that so and so were brothers. He could not give the name of the father. Mr. Justice Boys insisted on having the name-Dr. M. N. Agarwala said the name was not material. Mr. Justice Boys said he . wanted the name for his notes and Dr. Agarwala's rejoinder was "then you better put down in your notes 'some descendant of Adam'."