

In Re: B, an Advocate

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Court : Allahabad

Decided On : Aug-20-1935

Reported in : AIR1935All1023; 159Ind.Cas.561

Appellant : In Re: B, an Advocate

Judgement :

Bennet, J.

1. This case against Mr. B, advocate of Ghazipur, was sent to the Bar Council for an enquiry and the Bar Council framed the following two charges : (1) That you, Mr. B, carried on a business in partnership with others, but took steps not to disclose your connection as a partner and thereby committed professional misconduct. (2) That in the suit, out of which F.A. 481 of 1929 arose, you denied that you were a partner, which denial was held not to be true both by the Subordinate Judge and the Hon'ble High Court, and your conduct in the said suit disclosed that you took steps to make out that you were a creditor, which was also found to be untrue, and by such action you were guilty of professional misconduct.

2. The Bar Council conducted an enquiry and heard evidence on both sides and have come to a conclusion as follows:

Our conclusions therefore are that Mr. B was never a partner but had advanced Rs. 2,000 as a loan to Harnandan Prasad, that his defence in suit No. 85 of 1928 was true, that the charges against him are not proved and that he is not guilty of

any professional misconduct.

3. Against this conclusion the learned Government Advocate has filed two objections as follows : (1) That the finding of the Tribunal is against the weight of evidence on the record. (2) That the Tribunal has erred in going behind the finding of the High Court in First Appeal No. 481 of 1928.

4. This finding of the High Court was to the effect that Mr. B was a partner in the business in question. We will first dispose of this point of law. The learned Government Advocate relied on two rulings for his proposition. One of these is reported in *In the matter of Bajendro Nath Mukerji* (1900) 22 All. 49. In that it was held by their Lordships that the High Court was correct in deciding that the propriety in law or in fact of the conviction maintained by the Court of appeal could not be brought into question and that it was final and that the appellant could not argue that he did not fraudulently or dishonestly use a copy of the decree as he had been convicted of doing. The learned Government Advocate also referred to *In the matter of an Advocate* 1934 Rang. 33. In that case an advocate had been convicted under Section 177, Penal Code, of furnishing an income-tax return which he knew to be incorrect. On the other hand in *Muni Reddi v. K. Venkata Row* 1914 Mad. 512, a Full Bench laid down that the judgment and evidence given in the civil suit filed by a party against the pleader was admissible as evidence in an enquiry against the pleader under the Legal Practitioners Act, but the judgment and evidence was not conclusive proof in the enquiry. It appears to us that a distinction is to be drawn between the judgment in a criminal case and the judgment in a civil case where these judgments are produced in an enquiry against a legal practitioner. In the case of a criminal conviction the Court is making an enquiry as to whether the character of the legal practitioner is such that he should be allowed to remain on the rolls. In this enquiry the proceedings are of a criminal or quasi-criminal nature. The Evidence Act, Section 54, provides as follows:

In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Explanation 1. - This section does not apply to cases in which the bad character of any person is itself a fact in issue.

Explanation 2. - A previous conviction is relevant as evidence of bad character.

5. In our opinion the case we are supposing would be one in which the bad character of the legal practitioner was itself a fact in issue and therefore a previous conviction would be relevant as evidence of bad character under Explanations 1 and 2. The fact that a man had been convicted therefore would be relevant evidence and the grounds on which he had been convicted could not be called into question. But when we come to a civil decree as in the present case, Section 54, Evidence Act, cannot be applied. The learned Government Advocate was not able to refer to any section of the Evidence Act, which he could apply to show that the findings of the civil Court were conclusive proof. Accordingly we agree with the view expressed by the Full Bench of the Madras High Court that the judgment and evidence in the civil suit are admissible as evidence in this enquiry, but the judgment and decree are not conclusive proof.

6. We now come to examine the admitted facts in this case. Mr. B was a vakil of the High Court who had acted as a Munsif at Etah in 1911 and 1912 and he states that he came to Ghazipur in August or September 1920 and began to practice in Ghazipur. He had a cousin, Trijugi Narain, who was an assistant master in the D.A.V. School at Ghazipur, and the school authorities did not desire to retain the services of Trijugi Narain any longer. Harnandan Singh and his brother, Harcharan Singh, had a flour mill in Ghazipur and Harnandan Singh desired to start a flour mill in Ballia. Trijugi Narain and Harnandan Singh and Mr. B. were concerned in the starting of this mill as follows:

A sum of Rs. 2,000 was advanced by Mr. B, and received by Harnandan Singh through Trijugi Narain. This is shown by a receipt (Ex. 1) printed on p. 34 of the paper book as follows:

Mill Mills Tank,

Ghazipur, U.P. 24th February 1921.

Received from Babu Trijugi Narain and Babu B, the sum of Rupees two thousand only on account of making up for the payment of an oil engine, worth Rs. 2,046-15-0 (as per draft National Bank, Calcutta).

Rs. 2,000.

One anna stamp.

Sd. Harnandan Singh.

On an earlier date Ananda Prasad Singh had also advanced money as is shown by receipt (Ex. 5) of 20th October 1920:

Barh,

20th October 1920.

'Received Rupees two thousand (Rs. 2,000) only from Ananda Prasad Singh (Rs. 1,000 on 15th instant, and Rs. 1,000 this day) on account of purchasing an Oil Engine from Messrs. Parkins & Co., Leeds, England.

Rs. 2.000

One anna stamp.

Sd. Harnandan Singh,

20th October 1920.

7. This receipt is almost identical in its nature with the receipt, Ex, 1, and the money in each case is stated to be received to make up the money for the payment of the oil engine. We may also note that in Ex. 1 the money is put down as received from B. Trijugi Narain and B. The evidence for defence is that Mr. B had alone made a loan. The explanation he gave in evidence was that because the money was sent through Trijugi Narain therefore his name was also entered and that he thought there was no harm in this as Trijugi Narain was working in the mill. This explanation is childish. Mr. B is a lawyer and he must have known perfectly well that if he made a loan the name of his cousin ought not to appear in

the receipt. Another point to be noted in regard to these receipts (Exs. 1 and 5) is that they both state the purpose for which the money was received, for the payment of an oil engine or on account of purchasing an oil engine. It is not usual to enter such a purpose in a mere receipt for money lent.

8. The mill started work and it is stated in evidence by Trijugi Narain that he was to receive a half share of the profits. This was confirmed by a draft deed of partnership between Trijugi Narain and Harnandan Singh (Ex. 15) printed on p. 45. The date of this as printed is admittedly incorrect as the year was 1920. This draft was drawn up by Mr. B and it sets out in paragraph 2 that Trijugi Narain and Harnandan Singh were sharers half and half and that profit and loss would be in the same shares. Now what happened subsequently in regard to the deed of partnership is in dispute, and no deed of partnership is produced other than this draft. It is to be noted that Trijugi Narain is related to B as a cousin and on the other hand Ananda Prasad is related to Harnandan Singh as a brother-in-law, the sister of Ananda Prasad being married to Harnandan Singh. The suggestion of the learned Government Advocate is that the division half and half represents As. 8 for Trijugi Narain and Mr. B, his cousin, and eight annas for Harnandan Singh and Ananda Prasad, his brother-in-law. Later someone added the name of Ananda Prasad on the top of the draft, but the draft was not altered in the body of the draft. This alteration may have been merely to indicate that the new draft should take into account the share of Mr. Ananda Prasad. That Trijugi Narain and Ananda Prasad were partners in the mill is further shown by a sarkhat, Ex. 10, printed on page 47 bearing the signatures of Trijugi Narain and Ananda Prasad and Trijugi Narain has admitted that he signed this document and wrote the whole of this document. This sarkhat states that certain cash was received through Trijugi Narain and Ananda Prasad, owners of Sri Lakhshmi Flour Mills, Ballia and cash was also received through Harnandan Singh. The person who received this cash was Vishnu Ram who had supplied petrol to the mill. Trijugi Narain stated in the paper book, p. 18:

Harnandan Singh had never paid me half of the profits. He had given me my bare expenses. I returned from Ballia where the flour mill was first started in April 1922. After that I had no connexion with the mill. I used to manage the mill so long as I

had remained in Ballia. I had filed an objection regarding the levying of income-tax on this mill at the instance of Harnandan Singh who was sick at the time.

I used to take from the mill nothing definite or fixed but used to take as much money as I required. I used to take an average of Rs. 30 or Rs. 40 p.m.

9. Now when the connection of Trijugi Narain as manager of the mill terminated in April 1922 a document was shortly afterwards executed on 7th June 1922, printed on p. 37. This is a hypothecation bond of half the flour mill executed by Harnandan Singh alone in favour of Mr. B. This document sets out:

I borrowed Rs. 2,000 from B.B. pleader practising at Ghazipur. I have not yet been able to pay up that amount. After payment only Rs. 1,600 is due by me up to this time. I shall pay the entire debt with interest at the rate of one per cent p.m. within 2 years in the instalments detailed below...whatever liability is on the mill up to this time, all that shall be liable to be paid by me after rendering the account. Trijugi Narain shall not be liable for payment of Rs. 73-8-0 due under a note of hand in the name of Kundan Ram Bishun Ram; rather I shall be liable for the payment of that amount. From 1st June 1922 and from that date the amount of interest also mentioned in this document shall run and be considered.

10. Now, the receipt, Ex. 1, bears an endorsement on the same date 7th June 1922 to the effect that Rs. 400 was paid on that date. The finding of the Bar Council is that Rs. 358 was paid in cash and the balance set off against a debt due by Trijugi Narain, Therefore the original advance of Rs. 2,000 was reduced by this payment of Rupees 400 to Rs. 1,600 and the bond for Rs. 1,600 was written in favour of Mr. B. Now it is regrettable that the Bar council in making their enquiry by some oversight omitted to enquire into a most important point, that is what rate of interest was fixed on the original advance of Rs. 2,000, if any. All that we find is a brief statement of a few words in their finding as follows : 'Mr. B gave up the interest.'

11. We think this question of whether interest was fixed and what was the rate is one of great importance as obviously, if Mr. B's contention; is correct that this was a loan, the loan would have carried interest. Now the receipt, Ex. 1, is silent on the

point of interest. Further the bond of 7th June 1922 does not state that interest due on the original advance was given up. That bond merely states that after payment only Rs. 1,600 was due. It is very strange that if interest on the original advance had been fixed and was given up when that bond was executed, the bond should be silent on the point. In his statement on pp. 16 and 17 Mr. B does not mention any rate of interest as fixed at the time of the advance. Nor did he make this statement in his evidence recorded by, the Bar Council.

12. When his counsel, Mr. Kamla Kant Verma, was asked by us what was the rate of interest, Mr. B. made a statement which he has signed: 'Trijugi Narain told me that eight annas per cent, per mensem would be paid.' This seems very strange that Mr. B should have made a loan of Rs. 2,000 without agreeing with Harnandan Singh what the rate of interest should be. It is true that Trijugi Narain had stated on page 20 : 'The rate of interest was not entered in the receipt. Interest was settled at As. 8 per month.' Now in regard to this question as to whether 8 per cent. p.m., interest or any rate was settled for the advance there are the following points : (1) The receipt is silent as to any interest and also the receipt does not say that the money was given as a loan. (2) It is admitted that no interest was paid. (3) The fact of remission of interest is not stated in the bond of 7th June 1922. (4) No definite evidence was put forward by B that he had fixed a rate of interest, nor did he ever cross-examine on those lines.

13. For these reasons we consider that no rate of interest was fixed between the parties and that the Rs. 2,000 was advanced by Mr. B (without any interest to be paid to him).

14. Mr. B filed a suit No. 301 of 1928 in the Court of the Munsif of Ghazipur against Harnandan Singh on the basis of this bond of 7th June 1922 claiming Rs. 1,990 due under the bond, the amount of the principal with interest less certain payments. The bond had not been registered and therefore be treated it as a simple money bond. Harnandan Singh alone was impleaded. It is important to notice that the case of partnership was put forward on this, the earliest opportunity and Harnandan Singh pleaded that he, Trijugi Narain, Ananda Prasad and Mr. B were partners in the flour mill. As a defence against the claim be pleaded that the

bond was obtained merely by way of security and that the partnership still subsisted and plaintiff was only entitled to profits. The Munsif held that the defence of partnership was not proved and he decreed the suit on 22nd August 1928. Next month on 15th September 1928 Mr. B executed his decree and attached the machinery of the flour mill which had been moved to Ghazipur to another mill of Harnandan Singh. On 30th October 1928 Ananda Prasad filed suit No. 85 of 1928 in the Court of the Subordinate Judge against three defendants, Mr. B, Trijugi Narain and Harnandan Singh. The plaint asked for a decree declaring that the Lakshmi Flour Mill is a partnership firm in which each of the parties owned a fourth share, defendants 1 and 2, B, and Trijugi Narain owning a half share, and that the property was not attachable in satisfaction of the decree passed by the Munsif. The suit was not defended by Harnandan Singh but Mr. B and Trijugi Narain defended the suit. The Subordinate Judge held that the partnership of all four persons was proved but he held against the plaintiff, Ananda Prasad, on the ground of limitation. An appeal was filed in the High Court F.A. No. 481 of 1929-by Ananda Prasad and a Bench of this Court held that the suit was within time and upheld the finding of fact of the Subordinate Judge that there was a partnership between these four persons, and further that although there had been this hypothecation bond of 7th. June 1922 the partnership still subsisted in law. The Bench ordered this enquiry to be made against Mr. B. Now it will be noted that the Subordinate-Judge and the Bench of this Court have come to the conclusion of fact that Mr. B was a partner in this flour mill. Those findings are based on the documentary evidence which we have set out. The Bar Council have come to a contrary finding and we now proceed to examine the grounds that they? have put forward.

15. More than two pages of the finding, of the Bar Tribunal is taken up with, the consideration of certain account, books alleged to have been kept by the flour mill. These account books were produced by a witness, Muhammad Sami Khan on 26th February 1929-in the Court of the Subordinate Judge and he stated that the amin had appointed him as tahsildar of the mill when the mill was attached and these books were put into his possession by the amin. The Bar Council object that these books were not produced in the Munsif's Court in suit No. 301 of 1928 and they were not produced in the Subordinate Judge's Court on the date of issues,

and the amin when called as a witness before the Bar Council in 1935 stated that he had not given these, books over to Sami Khan whom he had appointed receiver. The Bar Council came to the conclusion on these grounds apparently that the account books were fabricated by Ananda Prasad and Harnandan Singh when Ananda Prasad brought his suit, No. 85 of 1928. Now one objection to this finding is that the books were not put, forward in the Subordinate Judge's Court as proving the partnership although there is an entry in the book for 1921 setting out that these four persons were partners of four annas share each. That book is stated by the witness, Raja Ram, to have been written by Harnandan Singh. We are of opinion that to put that entry in evidence it would be necessary to call Harnandan Singh as a witness and this was not done. Learned Counsel for defence argued that as the books were books of account they could be tendered under the provisions of Section 34, Evidence Act. We do not consider that a statement in regard to partnership could be proved in this manner by a witness who merely says that the statement is in the handwriting of a certain person. In our opinion a statement oral or written by a person not called as a witness comes under the general rule of hearsay. Learned Counsel alluded to Section 47, but that section deals with the question arising when the Court has to form an opinion as to the person by whom any document was written or signed. It is not a question here of whether Harnandan Singh wrote this entry or not. It is a question of whether the statement in the entry is true or not. That like any other statement can be only proved by legal evidence. As regards the objection that the books were not filed in the suit before the Munsif we are of opinion that Harnandan Singh naturally considered that as that suit was brought against him on a bond which he had executed the books would not be of service as a defence. The bond of 7th June 1922 indicated that no partnership subsisted after that date between Mr. B and Harnandan Singh and as between these two Harnandan Singh had undertaken to pay off a certain sum of money. His defence was that the bond was taken merely by way of security. But the non-production of the books in that suit does not in our opinion indicate that they did not exist at that time or that these are not the books of the mill. Learned Counsel further argued about certain entries of payment. These entries have been noted by the learned Subordinate Judge as totaling Rs. 625-5-6 paid to defendants 1 and 2 between 11th July 1921 and 31st May 1922.

We have already mentioned that defendant 2 Trijugi Narain admits that he received between Rs. 30 and Rs. 40 a month from the mill. The difference is not so extensive as to indicate that the books were fabricated. We are of opinion that in this case the books have been drawn across the trail of evidence as a mere red herring and that no conclusion can be arrived at from a consideration of the books as they were not properly put in evidence before the Bar Council to prove the case against Mr. B. That case in our opinion rests in the main on the documentary evidence.

16. In regard to the oral evidence the Bar Council had before them the persons who had given evidence before the Subordinate Judge in 1929. When those statements were taken in 1929 the matter was much fresher in the memory of the witnesses than it was in 1935, In particular we may note that the Bar Council lay stress on the evidence of one Dr. Prio Nath Choudhury. This gentleman who lives in Ghazipur stated that he had advised Harnandan Singh to start a flour mill, that he had refused to advance him a loan, that later he heard that a flour mill had been started in Ballia, that:

B and Harnandan Singh both came to my dispensary along with Kalicharan and asked me to settle the matter of the money advanced by B to Harnandan Singh. I induced B to give up the interest and take the capital gradually. By capital I meant the principal amount advanced by him, and he agreed to forego the interest. I do not remember if I was told that Trijugi Narain was a partner in the flour mill.

17. Now this gentleman was not produced in the Courts in 1928 or 1929 and he appears only in 1935 to give evidence for the first time in regard to transactions 1922, that is 13 years earlier. His evidence is extremely vague as he does not know whether Trijugi Narain was a partner in the flour mill or not, and apparently he does not know whether Mr. B was a partner or not. The suggestion is made that because he claims to have induced Mr. B. to give up interest therefore the advance must have been a loan. We do not think that any weight should be assigned to this evidence taken after so many years from a witness who had apparently made no memorandum of what was stated to him at the time. Now as regards the oral evidence produced against Mr. B the Bar Tribunal has stated:

We can place no reliance on this evidence. Dasrath states that he had been sent for by Mr. B and was appointed by him and sent to Ballia. He wishes to make out that his father had engaged Mr. B as a vakil, but it is proved that Mr. B had started practice in Ghazipur only in 1920. We are satisfied that Dasrath is not telling the truth.

18. From this comment one would suppose that Dasrath had stated in evidence that his father had engaged Mr. B before 1920. There is no such statement in the evidence of Dasrath as recorded by the Bar Council or anywhere else. It is stated in the evidence of Trijugi Narain (p. 19, line 15) : 'The mill began to work in Ballia 4 or 5 months after the preparation of the draft agreement' (which was made by Mr. B) and before the Bar Tribunal he stated : 'The flour mill began to work in Ballia from May 1921.' This witness Dasrath who is a Mallah was employed to clean the machinery. He therefore would not have taken up work before May 1921. Mr. B stated that he came to practice in Ghazipur in August or September 1920 and Trijugi Narain has stated that the date was even earlier, May 1920. It is clear therefore that there was a considerable interval of time during which the father of Dasrath might have got to know Mr. B by engaging him in some case before Dasrath was employed in the mill. We are unable to understand how the Bar Tribunal have found that the evidence of Dasrath should be rejected on this ground. The comment on the evidence of Badal Khan is that he only says that there was a discussion when Mr. B was not present as to how the money would be contributed. This comment ignores the statement in the paper book, p. 14 : 'I had seen all the four persons checking the account and supervising the business at Ballia.' Learned Counsel argued that before the Bar Council in cross-examination this witness had said:

I never saw any accounting taking place. But the witness had repeated his statement quoted above and a distinction is to be drawn between 'accounting' and supervising the business and checking accounts.

19. No comment is made on the evidence of Harcharan Singh who is a step-brother of Harnandan Singh. He stated that the mill was owned in partnership by the four persons and he was a marginal witness of the bond in question. One other

point which we may mention is that the bond of 7th June 1922 states that Harnandan Singh undertook all the liabilities. If B had merely made a loan to the mill on interest then he would not have been, interested in the question of whether Harnandan Singh was or was not liable for other liabilities. This statement in the bond clearly indicates to our minds that Mr. B was a partner in the mill and as a partner had a liability along with the other partners for debts incurred by the mill. The document therefore provided that in regard to those liabilities Harnandan Singh would alone be liable. It therefore followed that by this provision Mr. B would not have any liability for the debts of the mill. This was why this provision was made in this bond and in our opinion it is a very strong piece of evidence against Mr. B with which the Bar Council have entirely failed to deal. Another point we desire to note is that in the draft deed of partnership on p. 45, para. 7 it was agreed:

If at any time any party wanted to be separated then he shall transfer his share in the mill to the other party.

20. We find in the hypothecation deed of 7th June 1922 that instead of hypothecating the flour mill only half the flour mill was hypothecated. In our opinion this confirms the view that at that time the two partners Mr. B and his cousin Trijugi Narain retired and the Rupees 2,000 which had been advanced from them was returned, Rs. 400 being in cash and Rs. 1,600 being applied by this bond. The bond therefore was taken on the one-half of the mill which they were giving up. This question of two partners having retired is also confirmed by the action of Ananda Prasad who when the decree was obtained on his bond against Harnandan Singh did not object because Harnandan Singh had executed the bond, but when the mill was attached he came forward with his objections that he was a partner in the mill. He therefore was interested in the matter and this explains why he objected.

21. In view of the considerations we have set forth, we have come to the conclusion that the two charges against Mr. B have, been established by the evidence which has been produced. The question now remains as to what should be, the order of this Court in regard to this finding. Mr. B as a vakil of the High

Court was not permitted by the rules to take part in business or enter into a partnership. The rules on this point are very strict and have been strictly administered by this Court, and it is the custom of this Court to refuse permission for any member of the Bar to enter into such a partnership. It is an aggravation of, the offence that Mr. B did not inform this Court of the matter. Further Mr. B has put forward statements in evidence that he was not a partner and therefore has made statements which are untrue. Under these circumstances we cannot take a very lenient view of the conduct of Mr. B. However we do not desire to take an extreme view of the matter and the order which we pass is that Mr. B will be suspended from practice for a period of six months from the date of this order.

Iqbal Ahmad, J.

22. I respectfully dissent as, after giving due weight to all that could be and has been urged against the finding of the Bar Council, I remain unconvinced. I can discover no justification for not accepting the finding of the Bar Tribunal that Mr. B, advocate, was never a partner in Sri Lakshmi Flour Mills, and that the sum of Rs. 2,000 advanced by him to Harnandan Singh was by way of loan and not as a contribution to the capital of the partnership and that his defence in suit No. 85 of 1928 was true. The finding of the Bar Council being in favour of the advocate, the burden to displace that finding lies on the Government Advocate and that burden, in my judgment has not been discharged. It is to be remembered that the question for consideration by the Bar Tribunal was a pure question of fact and its findings on the question are entitled to great weight. It is further to be remembered that the charges of professional misconduct against an advocate must be proved by clear and convincing evidence and should not be inferred from mere grounds for suspicion, however reasonable those grounds may appear to be : vide A. a Pleader v. The Judges of the High Court of Madras .

23. It may be that in the present, case there were certain grounds for suspicion against the advocate; but clear and cogent evidence to bring the charges home to the advocate was wholly wanting, and I therefore have no hesitation in accepting the finding of the Bar Council.

24. The charges framed by the Tribunal against the advocate were as follows:

That you Mr. B carried on a business in partnership with others but took steps not to disclose your connexion as a partner and thereby committed professional misconduct. (2) That in the suit out of which F.A. 481 of 1929 arose, you denied that you were a partner, which denial was held not to be true both by the Subordinate Judge and the Hon'ble High Court, and your conduct in the said suit disclosed that you took steps to make out that you were a creditor, which was also found to be untrue, and by such action you were guilty of professional misconduct.

25. Mr. B started practice as a vakil in Etah and practised there till the year 1920. He left Etah and commenced practice in Ghazipur from August or September 1920. His first cousin, Trijugi Narain, was then employed as an assistant master in the D.A.V. School of Ghazipur. It is in evidence in the case that they were joint, but their 'incomes are separate.' One Harnandan Singh was also a teacher in the D.A.V. School. Trijugi and Harnandan were known to each other from the year 1909. Both were together in college in Allahabad and resided in Oxford and Cambridge Hostel and both were teachers in the D.A.V. School, Ghazipur. Harnandan along with his-brother Hareharan owned a flour mill at Ghazipur. The mill existed from the time of his father. Harnandan had therefore, some experience about the business of flour mills. Harnandan was keeping bad health and, it appears from the evidence of Dr. Preo Nath Chaudhri which evidence I accept that he was suffering from slow fever and cough and on the advice of the doctor went to the sanatorium at Bhowali. On his return from Bhowali the D.A.V. School authorities refused to keep him in service presumably because of the infectious disease from which he was supposed to be suffering. Harnandan then conceived the idea of starting a flour mill at Ballia and in November 1920 an order for the engine of the mill was placed. The engine arrived in January 1921 and a sum of about Rs. 3,000 was required for payment of the price of the engine with a view to take its delivery. It is alleged that Harnandan received a sum of Rs. 2,000 in October 1920 from his brother-in-law (wife's brother) Ananda Prasad. A further sum of Rs. 2,000 was paid by the advocate in February 1921. Harnandan passed a receipt on 24th February 1921, for the sum of Rs. 2,000 and this receipt, constitutes the sheet anchor of the case against the advocate. The receipt is in the

following words:

Received from B. Trijugi Narain and B.B. the sum of rupees two thousand only on account of making up for the payment of an oil engine, worth Rs. 3,046-15-0 (as per draft, National Bank, Calcutta) Rs. 2,000.

26. The delivery of the engine was then taken. It is alleged that there were four partners in Lakshmi Flour Mills, viz., Harnandan Singh, Ananda Prasad, Trijugi Narain and B, and that each partner contributed Rs. 1,000 to the capital of the partnership. It is said that out of the sum of Rs. 2,000 advanced by Ananda Prasad in October 1920 a sum of Rs. 1,000 represented his share of the partnership capital and the balance of Rs. 1,000 was advanced by him as a loan to his brother-in-law, Harnanidan Singh. It is also asserted that the sum of Rs. 2,000 paid by the advocate in February 1921 was on account of the share of the advocate and his cousin Trijugi Narain in the capital of the partnership. In short the ease against the advocate is that he was a partner in the mill and that the advance made by him was on account of his share in the capital of the partnership. The case put forward by the advocate, on the other hand, was that a sum of Rs. 2,000 was advanced by him as a loan and that he never was a partner in the mills.

27. The cardinal question that arises for consideration in the case therefore is whether Mr. B was a partner in the mill and advance made by him was by way of loan. The answer to the question, whether a person is a creditor of a partnership concern or the money advanced by him was in the capacity of a partner, is always beset with difficulties of varying intensity and, as observed by Underhill, in 'Principles of the Law of Partnership' 1931 Edition, p. 23:

A person whose intention was to be a bona fide lender finds himself in the mortifying position of an apparently mala fide partner with all its consequent litigation, worry and not impossible ruin.

28. The flour mill began to work in Ballia from May 1921 and Trijugi Narain resigned his post as a teacher in the school on 14th May 1921, when the sessions closed. It is common ground that Trijugi Narain took an active part in the working of the mill at Ballia and remained there till April 1922. By this time it became

apparent that the mill was working at a loss and the mill was then shifted from Ballia to village Reotipur (vide the evidence of Dasrath, a witness examined by the counsel who was appointed to prosecute the case against the advocate). From Reotipur the mill was taken to Ghazipur and located in close proximity to the ancestral flour mill of Harnandan Singh.

29. On 7th June 1922, Harnandan Singh executed a hypothecation bond for a sum of Rs. 1,600 in favour of the advocate. Half of the Lakhshmi Flour Mills was hypothecated to secure the sum of Rs. 1,600, but, as the document was not registered, it did not operate as a mortgage. The bond was in respect of the amount taken under the receipt dated 24th February 1921, referred to above. It is a matter of admission that some amount was paid in cash and a sum of about Rs. 45 was set off against a debt due from Trijugi Narain and the bond was for the balance of the amount paid by the advocate in February 1921. The sum of Rs. 1,600 with interest at 1 per cent per mensem was stipulated to be paid by Harnandan by instalments extending over about two and a half years. It was recited in the bond that the flour mill at Ballia was purchased by Harnandan out of his 'own expenses' and that as he had not sufficient amount of money he borrowed Rs. 2,000 from the advocate.

30. Some of the instalments were paid by Harnandan Singh and endorsements about those payments were made on the back of the bond, but most of the instalments remained unpaid and then the advocate filed a suit (suit. No. 301 of 1928) in the Court of the Munsif of Ghazipur for recovery of Rs. 1,990 against Harnandan Singh. Harnandan pleaded that the advocate, he himself and Ananda and Trijugi were partners in the flour mill and that the sum of Rs. 2,000 advanced by the advocate was by way of investment and not as a loan, and that the bond in suit was obtained from him (Harnandan) by way of security. He contended that as the partnership still subsisted, the advocate was only entitled to profits and his claim was not maintainable. The Munsif held that the advocate was not a partner and the amount was advanced by him as a loan and, accordingly, decreed the suit on 22nd August 1928.

31. In execution of the decree the advocate attached the flour mill on 15th September 1928, and then on 30th October 1928, Ananda Prasad filed a suit (suit No. 85 of 1928) in the Court of the Subordinate Judge of Ghazipur impleading B, Trijugi Narain and Harnandan Singh as defendants. Ananda prayed for a declaration that the parties to the suit were the four partners of the Lakshmi Flour Mills each having an equal share in the assets thereof and that B, the advocate, was not entitled to have the mill attached and sold in execution of the decree obtained by him against Harnandan Singh. In the plaint he alleged that:

When a loss was caused to the business, defendant 1 (advocate), cunningly and dishonestly with a view to his future gain and the loss of this plaintiff, and also for the purpose of safeguarding his profit and the principal amount, brought defendant 3 (Harnandan Singh) in his collusion and got a bond, dated 7th June 1922, of which the plaintiff has got the information now, executed without plaintiff's knowledge...and obtained a fictitious and collusive decree against defendant 3, and by means of the same he has got the whole machine attached.

32. B contested the suit mainly on the allegation that he was never a partner in the mill, nor did he pay the sum of Rs. 2,000 as his share in the firm. He maintained that the sum of Rupees 2,000 was taken by Harnandan Singh as a loan from him through Trijugi Narain. He also alleged in the written statement that Ananda had full knowledge of the suit filed by him on the basis of the bond and, that Ananda had filed the suit for declaration at the instance and for the benefit of Harnandan and, that the suit was really prosecuted by Harnandan himself. In short he alleged that the suit was a collusive suit filed for the benefit of Harnandan. Harnandan also filed an appeal against the decree in suit No. 301 of 1928 which was numbered as appeal No. 414 of 1928. This appeal was transferred for disposal to the same Subordinate Judge who tried suit No. 85 of 1928.

33. Suit No. 85 of 1928 was decided by the Subordinate Judge on 10th May 1929. He held that: (1) Lakshmi Flour Mills was a partnership concern in which the four parties were partners, and that Rs. 2,000 paid on 20th October 1920 represented the share of the advocate and Trijugi Narain in the capital of the partnership. (2) The partnership was dissolved in June 1922; and (3) the claim on the basis of the

partnership was time-barred; and on these findings dismissed the suit. The Subordinate Judge also dismissed the appeal filed against the decree passed by the Munsif holding that the bond dated 7th June 1922, was executed by Harnandan as a debtor and that the relationship of creditor and debtor existed between the advocate and Harnandan. Ananda Prasad preferred an appeal (F.A. 481 of 1929) to this Court against the decree of the Subordinate Judge in suit No. 85 of 1928. The appeal was allowed by a Bench of this Court, wherein it was held that Harnandan, Ananda Prasad, B and Trijugi Narain were partners in the flour mill and continued as such up to the date of attachment. Ananda's claim for declaration mentioned above was therefore decreed.

34. The case was then referred to the Bar Council for enquiry and Mr. Prem Mohan Lal was appointed to prosecute the case against the advocate. Mr. Prem Mohan Lal contended before the Tribunal that the finding of the High Court on the question of fact was final. This argument has also been advanced by the learned Government Advocate before us. On the other hand it was contended on behalf of the advocate that, as the case was sent to the Bar Tribunal for enquiry, the Tribunal was bound to record the evidence produced by the parties, and then to record a finding on consideration of that evidence, irrespective of the fact that this Court has arrived at a decision adverse to the advocate.

35. In support of his contention the learned Government Advocate relied on the decisions of their Lordships of the Privy Council in In the matter of Bajendro Nath Mukerji (1900) 22 All. 49 and In the matter of an Advocate 1934 Rang. 33. In the case in 22 All 49 (1) a vakil was convicted under section 471, Penal Code, of fraudulently using as genuine a document which he knew to be forged. His conviction was affirmed on appeal. The High Court then ordered notice to be given to the vakil to show cause why he should not be removed from the roll of vakils and his certificate be cancelled in consequence of the offence of which he had been convicted. This Court held that the propriety in law or in fact of the conviction could not be questioned by the advocate, and the decision of this Court was affirmed on appeal by their Lordships of the Privy Council. The Privy Council observed that:

The conviction of forgery followed by a sentence of two years' rigorous imprisonment is sufficient without further inquiry to justify the Court in removing the vakil from the roll of vakils.

36. In the matter of an Advocate 1934 Rang. 33 also the propriety of the conviction of the advocate was not allowed to be questioned in the proceedings taken against him for the removal of his name from the roll of advocates. These two cases are distinguishable on the broad ground that in those cases the conviction itself was the basis of the charge against the advocate, and are no authority for the proposition that the finding recorded against an advocate, by a civil Court is final and conclusive in proceedings taken against the advocate under the Bar Councils Act. When a case is referred to the Bar Council under Section 10, Bar Councils Act, for enquiry into the conduct of an advocate it is the duty of the Council to enquire into the matter and to record a finding on the materials produced before it, irrespective of any finding on the point recorded by a civil Court. The enquiry by the Council is with a view to ascertain whether or not the advocate concerned has been guilty of misconduct. The enquiry is of a quasi criminal nature and a finding has to be arrived at on a consideration of the materials before the Council. I am not aware of any provision of law that supports the contention that the finding of the civil Court is either relevant or conclusive in the enquiry before the Bar Council. I therefore hold that the Bar Tribunal in the present case was right in recording its own finding on the question before it untrammelled by the finding recorded by the Subordinate Judge or by this Court.

37. In the enquiry before the Tribunal both sides agreed that the documentary evidence already on the record of suit No. 85 of 1928 (F.A. 481 of 1920) be treated as evidence. The parties further agreed that the evidence of Ananda Prasad as recorded in suit No. 85 of 1928 be read as evidence, as Ananda Prasad did not appear before the Tribunal, neither side produced further documentary evidence. But Mr. Prem Mohan Lal examined four witnesses named Dasrath, Harcharan, Badal Khan and Raja Ram and the advocate examined himself, his cousin Trijugi Narain, Tribeni Sahai, Abdul Aziz Khan and Preo Nath Chaudhri. Some of these witnesses were examined before the Subordinate Judge in suit No. 85 of 1928, but their evidence as recorded by the Subordinate Judge is not legal

evidence in the present proceedings.

38. In support of the contention that B, advocate, was a partner in the mill and that the sum of Rs. 2,000 was not advanced by him as a loan reliance is placed on the receipt dated 24th February 1921, (Ex. 1, paper book H.C., p. 34), a sarkhat (Ex. 10, paper book; H.C., p. 47), a draft of partnership agreement (Ex. 15, paper book, H.C., p. 45), and an account book for the year 1921 (Ex. 6), and also on the evidence of the witnesses examined before the Tribunal against the advocate.

39. I propose first to deal with the account books. Certain account books alleged to have been kept by the flour mill in dispute are relied upon. One of these account books is marked Ex. 6. This book purports to be the account book of the flour mill for the first year, viz., the year 1921. On the very first page of the account book there is an entry to the effect that Harnandan's share in the mill was to the extent of four annas and Ananda's share also was four annas and eight annas share in the mill belonged to B and Trijugi Narain. There are also-entries showing that a sum of Rupees 1,000 was deposited by Ananda and a similar amount was deposited by Harnandan and that Rs. 2,000 was deposited by B and Trijugi Narain. This account book, if genuine, is proof positive of the fact that the allegation that the advocate was a partner in the mill is true. I however have no hesitation in holding that the account book is a forged document.

40. The issues in the suit filed by the advocate in the Munsif's Court and in the suit filed by Ananda Prasad in the Subordinate Judge's Court were identical, and the cardinal question for decision in both the suits was whether or not the advocate was a partner in the Mills. This account book would therefore have been a valuable piece of evidence in the suit in the Munsif's Court. Indeed it would have been conclusive against the advocate and would have afforded a complete answer to his claim. The account book was however not produced in the Munsif's Court. No explanation, good, bad or indifferent, is forthcoming as to why this account book was not produced in the Munsif's Court suit. It is not pretended that the account book was not under the control of Harnandan. It is worthy of note in this connection that Harnandan studiously avoided the witness box both in Ananda's suit and in the proceedings against the advocate before the Bar Tribunal. His

absence from the witness box is significant, and must have been due to the fact that it would have been impossible for him to account for the non-production of the account book for the year 1921 in the suit filed by the advocate. The non-production of the account book in the Munsif's Court, in my opinion, raises a violent presumption against its genuineness.

41. When suit No, 85 of 1928 was filed: by Ananda Prasad, he did not mention, as is required by Ode 7, Rule 14-(2), Civil P.C., this account book, Ex. 6, or the other account books, now relied upon against the advocate. The account books were not even produced on the date of issues (3rd January 1929), but were produced on 26th. February 1929, through a witness, named Sami Khan. The account books, were produced after Ananda Prasad had left the witness box. Again no-explanation is forthcoming as to why the account books particularly, Ex. 6, were not produced on the date of issues. It is suggested on behalf of the advocate that the belated production of the. account book, Ex. 6 is due to the fact that it was not ready till 3rd January 1929, and, in my opinion, there is considerable force in this suggestion.

42. A witness, Raja Ram, was produced before the Tribunal and he stated that he wrote the account books after the mill was transferred to Ghazipur and the first book which he wrote commenced on 1st June 1926. He admitted that the account books written by him were not produced in the Munsif's Court suit. He further stated that all the account books before his time, i.e., upto 1925 were in the handwriting of Harnandan Singh. But Dasrath and Badal Khan, witnesses, admitted that 'the accounts of the mills used to be written mostly by Trijugi Narain.' The account book for the year 1921 however does not' contain even one entry in the handwriting of Trijugi Narain. Thus it is conclusively proved even from the statement of the witnesses examined against the advocate that Ex. 6 is not the account book that was maintained at the mills in the year 1921. It follows that Exhibit 6 was fabricated for the purposes of the suit filed by Ananda Prasad.

43. It is said that as no demand was made by the advocate in the Court of the Subordinate Judge for the account book of 1929 the argument that Ex. 6 is a forged document is not open to him. The answer is that as a book purporting to be

the book for 1921 was produced by Ananda it would have been idle for the advocate to demand another book for the same year, because Ananda's answer would have been that the book for 1921 has already been produced.

44. In execution of the decree obtained by the advocate the mill was attached on 15th September 1928 by an amin named Abdul Aziz Khan, Sami Khan stated in suit No. 85 of 1928 that the account books were made over to him by the amin, but this is falsified by the statement of Abdul Aziz Khan examined on behalf of the advocate, and also by the warrant of attachment, Ex. A, and the report of the amin Ex. B. The amin made the following statement:

I had not attached any account books. I did not make over the attached property to any Supurddar. When the Court appointed me a receiver I then entrusted the work of writing daily account books to Muhammad Sami Khan. I never made over any account books to Mohammad Sami Khan as I had never received any. If I had attached any account books I would have put my signature on them so that their identity should be established.

45. Trijugi Narain after looking into the account books stated that they were not the account books that used to be kept. He had filed an objection in the income-tax department on 19th. January 1922. (Ex. 12, paper book H.C., p. 36) and he stated that he had filed a bahi khata in support of the objection and the account book produced by him before the income-tax officer was not, in the account books-produced by Ananda Prasad. For the reasons already given I consider that this statement of Trijugi Narain is true.

46. There is a slip pasted on Ex. 6 and. it purports to be signed by Ananda Prasad, Trijugi Narain and Harnandan Singh. Ananda stated in suit No. 85-of 1928 that 'the label on the cover of the bahi bears the signatures of myself, Trijugi Narain and Harnandan Singh.' Trijugi Narain denied the signature on the slip. He always spells his name as 'Trijugi' and not as 'Tirjugi' as appears on the label, and. therefore it is proved that the name of Tirjugi Narain is not in the handwriting of Trijugi Narain and his name was also forged on the slip. As the account book itself contained no entries in the handwriting of Trijugi the slip appears to have been pasted and Tirjugi's name forged on the same with, a view to show that the

account book was the book of the mill and was a genuine document. It is needless to observe that such slips are never pasted to account books and it was wholly unnecessary to affix the slip on Ex. 6.

47. The other account books produced in the case are for the period subsequent to the execution of the bond, dated 7th June 1922. It appears from, the statement of Raja Ram that in the account book for the year lissome amounts are entered as having been paid to B, Trijugi Narain and. that:

there are small amounts credited to the khata of B. Trijugi Narain, and similarly to the khatas of Ananda Prasad and Harnandan Singh.

48. The account book for 1926 must, if genuine, have been in existence during the pendency of the suit filed by the advocate in the Munsif's Court. This account book was also not produced in that suit and again no explanation is offered for its non-production. For the reasons given above I am in complete agreement with the following finding recorded by the Bar Tribunal:

We are therefore definitely of opinion that these account books were Fabricated by Ananda Prasad and Harnandan Srasad when Ananda Prasad brought his suit No. 85 of 1928 and no ?reliance can be placed on anything contained therein.

49. The draft of the deed of partnership which is relied upon against the advocate also contains an interpolation, and, in my opinion, the interpolation was dishonestly made with a view to support the case of Ananda Prasad. The draft is printed at p. 45 of the High Court paper book. The draft as originally prepared purported to be the draft of an agreement between Trijugi Narain and Harnandan Singh. Ananda Prasad's name clearly appears to have been interpolated over the line in a different ink. This draft shows that the idea was that Harnandan Singh and Trijugi Narain would become partners. That this is so is manifest from the various paragraphs of the draft and particularly by para. 2 which runs as follows:

We Trijugi Narain and Harnandan Singh are sharers half and half and according to the same proportion they will be entitled to and responsible for the profit and loss.

50. The draft is in the handwriting of the advocate with the exception of the portion (the name of Ananda Prasad) which appears in a different ink. Ananda Prasad made the following statement in his evidence before the Subordinate judge:

A partnership deed was executed on an nil stamped paper. B has prepared the draft of the partnership. The faired out partnership deed was signed by myself, Trijugi Narain and Harnandan Singh. B had not signed the deed on the plea that he was a pleader and therefore could not engage openly in any trade. For this reason Trijugi Narain was alone shown as the holder of the eight annas share in the partnership.

51. In cross-examination he stated that:

The partnership deed was executed about three months after the starting of the Mill. I do not remember even approximately how many days or months before the execution of the partnership deed the draft was prepared. Lean not even say whether the Mill bad commenced working at that time or not.... The draft made by B. was faired out after the addition of my own name and some other alteration. I do not know why B. had omitted my name as a partner from the draft.

52. If Ananda Prasad was one of the partners in the Mill there was absolutely no reason for the omission of his name from the draft. Again the whole tenor of the draft shows that the partners were to be only two persons, viz., Harnandan and Trijugi. The alleged faired out partnership deed is not forthcoming and I am of the opinion that the statement of Ananda Prasad that the deed was faired out and signed by three persons is untrue. If a partnership deed had been executed it would have been registered. Even if it was not registered either it would have been in the possession of the managing partner, viz., Harnandan Singh, or duplicates of the same would have been prepared and would have been handed over to each partner.

53. Harcharan Singh, the brother of Harnandan', who was examined before the Tribunal also stated that a deed of partnership was faired out at the house of B after the mill had started work and that the draft remained with Harnandan and the faired out document was taken by B. According to his evidence Trijugi Narain,

Harnandan and Ananda were the executants of the deed. His evidence on the point is open to the same criticism as the evidence of Ananda Prasad. Apart from this, if instead of two partners there were to be three partners in the mill, drastic alterations would have been necessary in the draft, but there is not one single alteration in the draft.

54. The case put forward by the advocate is that after his arrival in Ghazipur he was informed by his cousin, Trijugi Narain, that Harnandan wanted to set up a flour mill in Ballia and as he himself was keeping indifferent health he wanted Trijugi Narain's services for the working of the mill. Some time later he was approached by Harnandan to make a draft for a partnership deed and then he prepared the draft. He however denied that the draft was ever faired out or that any faired out deed was in his possession. In view of the observations made above, I hold that the case of the advocate on the point is true.

55. I now proceed to consider the receipt, Ex. 1, on which great emphasis has rightly been laid by the learned Government Advocate. This receipt and receipt, Ex. 5, are practically in identical terms. The latter receipt is dated 20th October 1920, and the former bears the date 24th February 1921. The receipt, Ex. 1, has been quoted in extenso above. Receipt, Ex. 5, runs as follows:

Received Rupees two thousand (Rs. 2,000) only from Ananda Prasad. Singh (Rs. 1,000) on 15th instant, and Rs. 1,000 this day on account of purchasing an oil eiigine from Messrs. Parkins & Co., Leeds, England.

Rs. 2,000.

56. Ananda Prasad stated that be had paid Rs. 1,000 as his share of the partnership capital on 15th October 1920, and that Harnandan had also contributed a like amount on 20th October 1920, after taking a loan from him, and that he had taken a receipt from Harnandan regarding both the items. This statement of Ananda Prasad is not convincing. If Rs. 1,000 out of the sum of Rs. 2,000 evidenced by the receipt, Ex. 5, was advanced by Ananda Prasad as his share in the partnership concern and the remaining Rs. 1,000 was advanced by him as a loan, there would have been something in the receipt to differentiate

between the two items. In other words, if Harnandan and Ananda were each contributing Rs. 1,000 as partners and a sum of Rs. 1,000 out of the sum of Rs. 2,000 was advanced by Ananda as a loan the receipt would not have been worded in the way in which it has been. The case of Ananda Prasad that he was one of the partners in the mill does not, for the reasons to be presently stated, appear to me to be true, and I have a suspicion in my mind that this receipt of Rs. 2,000 was forged with a view to support the argument that the receipt, Ex. 1, also evidenced a similar transaction. I however cannot make this suspicion the basis of my judgment and, accordingly, I shall leave it at that. On Ananda's own showing a sum of Rs. 1,000 was advanced by him as a loan to Harnandan and, as, there is nothing to differentiate between the two sums of Rs. 1,000 mentioned in the receipt, it appears to be likely that the entire sum of Rs. 2,000 was advanced by Ananda to Harnandan as a loan. The evidence as to the understanding or arrangement between Harnandan and Ananda as to this amount of Rs. 2,000 is far from clear, and therefore no positive inference can be drawn as to the nature of the advance made - if an advance was at all made - by Ananda Prasad.

57. The receipt, Ex. 1, has been the subject of much argument and it has been contended that the language of this receipt shows that the advocate and Trijugi Narain contributed Rupees 2,000 as partners. It has also been argued that if the advocate had advanced the sum of Rs. 2,000 as a loan he would have insisted on the execution of a promissory note or a bond and would not have been content with a receipt in the terms of Ex. 1. There is certainly great force in this contention, but the receipt must be considered along with the other evidence in the case and when so considered, it does not lead to, the conclusion that the sum of Rs. 2,000 was by way of contribution to the capital of the mill. The advocate's case was that he was informed by Trijugi Narain that Harnandan Singh was a rich man and that he had ordered an engine for the mill. In January 1921 he was informed by Trijugi that Harnandan Singh could not take delivery of the engine because he was short of money and was requested to advance a sum of Rupees 2,000 as a loan. He refused at first to lend the money, but on being pressed by Trijugi Narain's mother and his other relations he agreed to advance the loan as he was told that Trijugi would share half the profits. He stated that when he found that the receipt was both in his favour and Trijugi Narain he was not satisfied, but he did not insist for a

fresh receipt or for a promissory note as there was no risk of his money. If this explanation of the advocate stood by itself I would not have been prepared to accept it, but, having regard to the other facts that appear from the evidence, I consider this explanation to be true.

58. The case formulated in the plaint filed by Ananda was that Harnandan and the advocate were in collusion and that the decree in the Munsif's Court suit was a collusive decree obtained with a view to cause loss to Ananda. The case of the advocate, on the other hand, was that the suit in the Subordinate Judge's Court was a collusive suit and was filed by Ananda Prasad at the instance of Harnandan Singh simply with a view to avoid the payment of the decree passed by the Munsif. Harnandan and Ananda are near relations and it appears from the evidence in the case that Ananda and his mother were living with Harnandan in Ballia in 1921. There is not the faintest suggestion in the evidence about any hostility between Harnandan and Ananda that could have induced Harnandan to let a collusive decree be passed in the advocate's favour with a view to cause loss to Ananda. Ananda admitted in his evidence that 'Harnandan is my sister's husband. Harnandan has no enmity with me.' It is impossible to believe that Ananda was not aware of the Munsif's Court suit till the attachment was effected in execution of his decree by the advocate. Ananda however did not file his suit till the attachment was effected* and the mill was in peril of being sold. Harnandan though a defendant did not contest the suit. All this leads to the conclusion that Ananda was in the confidence of Harnandan and the suit in the Subordinate Judge's Court was filed at the instance of Harnandan. I therefore hold that the charge of collusion between the advocate and Harnandan was utterly untrue. The matter does not rest there. Amanda's claim was sought to be supported by fabricated documents and the genuine account book of the mill for the year 1921 which must have been under the control of Harnandan was not produced. Harnandan would have been a very important witness in Amanda's suit, but though summoned he was not examined. Similarly the evidence of Ananda and Harnandan was of great importance in the proceedings before the Bar Tribunal. These were the two persons who were in a position to give a lie to the advocate and Trijugi Narain, but though the last named persons were examined before the Tribunal, both Ananda and Harnandan had not the courage to appear as witnesses. There is therefore no

escape from the conclusion that the best possible evidence in rebuttal of the evidence of the advocate and Trijugi has been withheld and their evidence remains unrebutted.

59. It is not disputed that Harnandan is a man advanced in years and able to protect his own interest. It was apparent by June 1922, when the bond was executed in favour of the advocate, that the mill was a losing concern. If the sum of Rs. 2,000 advanced by the advocate was by way of contribution to the capital of the alleged partnership, Harnandan would have been the last person to agree to allow the amount to be treated as a debt due from him alone, and to execute a document with respect to the same stipulating to repay the amount with interest at 1 per cent, per mensem. The only reason that the learned advocate, who was holding the brief of the learned Government Advocate, could suggest in rejoinder for this curious conduct on the part of Harnandan was that he was in collusion with the advocate. The suggestion of collusion between the advocate and Harnandan is however as already observed, wholly unfounded. Again from the year 1922 to 1928, viz., for a period of six years, no objection was taken to the validity of the bond. Indeed some of the instalments were paid to the advocate and the defence of partnership was not raised till the advocate put the bond in suit for the amount remaining unpaid. Further there are letters of Harnandan on the record that show that he throughout recognised himself as a debtor, and expressed his obligation to the advocate for the indulgence shown by him in the matter of the realisation of the debt. All this supports the case of the advocate and is wholly inconsistent with the allegation that the advocate was a partner in the mills.

60. If there was a partnership between four persons I would have expected a duly registered partnership deed disclosing the terms of the partnership being executed by the partners. No such deed was however executed. The absence of a partnership deed lends strong support to the case of the advocate that Harnandan alone was the owner of the mill. Further if the advocate was a partner letters would have passed between the various partners about the affairs of the partnership, but no such letters are alleged to have been received either by Harnandan or Ananda, and none are produced. Ananda stated in his evidence before the Subordinate Judge that 'no correspondence regarding the partnership had ever to my

knowledge taken place between B and other parties.'

61. It is a matter of admission that the advocate and Trijugi had no connection with the mill after the same was removed to Ghazipur. It must therefore be taken for granted that if Trijugi and the advocate were partners they ceased to be so in the year 1922. That being so one would have expected a settlement of account so far as the outgoing partners were concerned. But no such settlement is alleged, to have taken place.

62. The case that each of the alleged partners contributed a sum of Rupees 1,000 as his share of the capital of the partnership rests on the allegation that Ananda was one of the four partners, but this allegation appears to me to be wholly false. Ananda was examined as a witness before the Subordinate Judge in February 1929. He then stated that his age was 25 years. He must therefore have been 16 years of age and a minor in the year 1920. A minor cannot enter into a contract of partnership. At any rate the advocate would never have consented to become a partner with a minor. This fact by itself demolishes the case that the partnership consisted of four persons one of whom was Ananda. If there were not four partners the whole of the case against the advocate goes by the board.

63. I may mention here that I am not concerned with the question as to whether Trijugi was or was not a partner with Harnandan. Possibly he was, but he did not advance any money and was to get remuneration for his services out of the profits. The fact that Trijugi was interested as a partner in the Mill is supported by the rent agreement, Ex. 33, printed at p. 35 of the High Court paper book.

64. Before leaving this part of the case I must notice an argument that was strongly pressed against the advocate. It was contended that if the sum of Rs. 2,000 evidenced by the receipt of February 1921 was advanced by way of loan the advocate would have charged interest on the same. The answer to this contention is furnished by the evidence of Dr. Preo Nath Chaudhri who stated that at the time of the execution of the bond the advocate agreed to forgo interest on the amount. The doctor was an impartial witness and I place implicit reliance on his evidence. Apart from this the advocate knew that Trijugi was to get a half share of the profits of the mills in lieu of his services and must have anticipated that the amount

received by him would be far in excess of the interest on the sum of Rs. 2,000. There is no occasion for surprise therefore if he did not bargain for interest when he advanced the amount.

65. Having regard to the facts noted above I hold that the receipt is not inconsistent with the case put forward by the advocate and cannot be made the basis of a finding that the advocate was a partner in the mill.

66. It now remains to consider the sarkhat. Ex. 10. The sarkhat is signed by Trijugi Narain and Ananda Prasad and in the sarkhat Trijugi and Ananda are described as owners of the Lakshmi Flour Mills, Ballia. The explanation offered by Trijugi was that at the time of the execution of the sarkhat Harnandan was ill and Ananda therefore joined in the execution of the same. As Ananda was a near relation of Harnandan he, while signing the sarkhat, was shown as one of the owners of the mill. Having regard to the finding recorded by me that Ananda was not a partner in the mill, I have no hesitation in accepting the statement of Trijugi, the more so as it has not been rebutted either by Ananda or by Harnandan.

67. For the reasons given above I hold that the charges against the advocate were not made out and that he was not guilty of any misconduct.

68. The order of the Court is that Mr. B. be suspended for a period of six months from the date of this order.