In Re: an Attorney

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Court : Kolkata

Decided On : Jun-24-1954

Reported in : AIR1955Cal113,58CWN880

Judge : Chakravartti, C.J., ;S.R. Das Gupta and ;P.B. Mukharji, JJ.

Acts : Legal Practitioners Act, 1879 - Sections 5 and 13; ;Calcutta High Court (Original Side) Rules - Rules 5, 6 and 7

Appeal No. : Matter No. 52 of 1954

Appellant : In Re: an Attorney

Advocate for Def. : Adv. General and ;S.M. Bose, amicus curiae

Advocate for Pet/Ap. : H. Sanyal, Adv.

Judgement :

Chakravartti, C.J.

1. By an order made on 4-5-1954, P. B. Mukharji, J. and myself directed a Rule to issue on 'Jalan & Co.', ostensibly a firm of solicitors practising in this Court, requiring them to show cause whysuch, disciplinary action as the Court might deem fit and proper should not be taken against them for their failure to arrange for the defence of their clients, the appellants in Criminal Appeal No. 1 of 1954, and also for their failure to attend before the Court when the appeal was on the

day's list for hearing. The circumstances in which the order was made were as follows:

2. On 22-12-1953, three persons, named Ram Charitar Shaw, Ram Sunder Shaw and Anup Shaw respectively, were convicted by Sen J. in the Ordinary Original Criminal Jurisdiction of this Court of charges under Section 302, road with Section 34, Penal Code and duly sentenced, the first to death and each of the remaining two to transportation for life. On 9-1-1954, the convicted persons filed a joint appeal through Mr. s. N. Sen, a solicitor of this Court. On 15-1-1954, the appeal was admitted. On 24-3-1954, there was a change of attorneys and a fresh warrant from the Appellants was filed by Jalan & Co. with the consent of Mr. Sen. As Jalan & Co thus came to be the Attorneys on record, a copy of the printed paper-book was supplied to them on 7-4-1954.

On 10-4-1954, the appeal appeared in the Warning List and Jalan & Co. were informed by the Court's office that it had so appeared. The appeal appeared again in the Warning List, published on 24-4-1954. On 30-4-1954, Jalan & Co. were informed by a letter from the Court's office that the appeal would appear in the Peremptory List on 4-5-1954, before P. B. Mukharji J. and myself. The appeal appeared in the Peremptory List before us on the 4th May being the first of the cases in the day's List.

3. On 4-5-1954, as the appeal was about to be called, a very junior Advocate, named Mr.Tibre-walla, rose to apply for a month's adjournment on the ground that as the appellants had failed to put the solicitors in necessary funds, it had not been possible to brief a senior Advocate. Since the application was made in that form, we thought that the Advocate, addressing us, had himself been briefed in the appeal, particularly as he was holding a copy of the Paper-book in his hands, and that he was only hesitating to take upon himself the sole responsibility of arguing it. We accordingly told him that a case involving a sentence of death could not properly be adjourned in the routine fashion, as he was praying for and that he would have to proceed with the appeal and we would assist him as he went on.

Mr. Tibrewalla then 'made a prayer that if we were not inclined to adjourn the hearing of the appeal, we might release him and added, greatly to our surprise,

that he had been briefed only for asking for an adjournment, but not in the appeal as well. We told Mr. Tibrewalla that if he had not been briefed in the appeal, no question of our releasing him arose and we wanted to know where the solicitors, who had apparently made no arrangements for the representation of their clients, one of them condemned to death, were. Mr. Tibrewalla looked round and informed us that they had been sent for and would soon arrive. We then waited for over 15 minutes, but no one appeared. It was not possible to proceed with the consideration of the appeal, because oneof the appellants was under a sentence of death and it was necessary that at least he should be represented.

In those circumstances, we directed the matter to be brought to the notice of the Legal Remembrancer so that the State might take the necessary steps to engage a lawyer for the condemned prisoner and directed a Rule to issue on the solicitors to show cause why disciplinary action should not be taken against them. At the same time, we discharged the solicitors on account of their failure to act for their clients and for what appeared- to us to be very irresponsible conduct in regard to the carriage of the proceedings. It was all the more necessary to do so, because if they remained Attorneys on record, it would not be possible for the State to assign a lawyer to the condemned prisoner.

4. It is necessary at this stage to refer to another chapter in the history of these proceedings. On 4-5-1954, when P. B. Mukharji J. and myself resumed our seats on the Bench after the mid-day recess, Mr. S. Chaudhuri, a leading Counsel of this Court, appeared before us and prayed that the order made in the morning against the solicitors might be recalled. Mr. Chaudhuri stated, that he had no Justification at all to offer for the default which had occurred, but would only like to explain that it had been caused by the absence from Calcutta of one Mr. Jalan who was in charge of the case and who had gone away to Bombay in order to assist another person named Tulsi Prasad Khaitan who also was being tried for murder. In the absence of Mr. Jalan, his office had been unable to make the necessary arrangements for the conduct of the appeal before us.

We expressed our surprise to Mr. Chaudhuri that if the absence of Mr. Jalan was the cause of the default, not a word about it should have been said in morning, but

the only reason given for not briefing any counsel in the appeal should have been the failure of the appellants to supply the necessary funds, a reason which he was not then giving. Mr. Chaudhuri replied that the clients' failure to supply funds had also been stated to him as one of the reasons for the default, but he had not mentioned it to us, because he did not consider it to be a ground which a solicitor could properly take or which could properly be urged before the Court. As to why the absence of Mr. Jalan had not been mentioned in the morning, Mr. Chaudhuri stated that he was unable to explain why it had not been done.

It appeared to us that the ground put forward through Mr. Chaudhuri really amounted to saying that the solicitor had neglected his present clients, one of them in peril for his life, in the interest of another client or in the interest of. a friend and in those circumstances we thought that he must answer the Rule on affidavits and in the proper manner. Mr. Chaudhuri stated further that if we recalled our order and took up the appeal after the two other appeals on our List, an Advocate would be briefed to appeal for the appellants or, if necessary, he himself would appear for them, although he did not ordinarily practise the criminal law.

It appeared to us that arrangements made atthat stage under the pressure of circumstancescould not cure the dereliction of duty whichseemed, 'prima facie' at least, to have beenserious. The interests of the appellants also didnot require us to accept the suggestion of Mr.Chaudhuri, since we had already directed theState to arrange for the representation of thecondemned prisoner and since the other twoappellants would have ample time to brief whomsoever they wished. Accordingly, we declined torecall the order.

5. In compliance with the Rule, one Mr. Krish-nanand Jalan appeared to show cause & filed an affidavit affirmed on 15-5-1954. In the course of his affidavit Mr. Jalan stated that he alone was carrying on the business of a solicitor under the name and style of 'Jalan & Co.'. Two other affidavits were also filed, one affirmed on 14-5-1954, by Sudama Prasad Gupta, Bhagwat Shaw and Rambilas Shaw, alleged to be friends and relatives of the appellants and another affirmed on 15-5-1954 by one Mr. Samarendra Nath Mukherjee, a qualified Attorney, serving Mr. Jalan as a paid Assistant. Two Day-books, one kept by Mr. Jalan and another kept

by Mr. Mukherjee, were also produced at our. instance and tendered.

6. Two points of a technical character may first be disposed of. As the Warrant of Attorney filed in the appeal was in the name of 'Jalan & Co.', it was naturally thought that it was a firm of attorneys that was acting for the appellants and, accordingly, the Rule issued by us was addressed to 'the firm of Messrs. Jalan and Company, Attorneys-at-Law and the Attorneys on record for the appellants'. Again, the affidavit of service affirmed by an Assistant of the Order Department of the Court states that he went to the office of Jalan & Co. and met Mr. S. N. Mukherjee who informed him that none of the partners was present in the office at the time and there was no chance of their coining back shortly and that, thereupon, on ascertaining from Mr. Mukherjee that he was authorised to accept service of the Order 'Nisi' on behalf of Jalan & Co., the Assistant tendered to him the original Order, together with a copy thereof and that Mr. Mukherjee handed over the original order to an Assistant of the firm, who acknowledged service by signing his name on the back of the paper.

The learned Advocate-General who appeared to assist the Court at its request pointed out that proceedings for disciplinary action were of a 'quasi-criminal' nature and since the Rule was addressed to the firm of Jalan & Co. without naming the partners of the firm, it was possible for the Respondent to take an objection to the form of the Rule. The learned Advocate-General pointed out further that in view of the statements contained in the affidavit of service, it was also possible to contend that no real attempt had been made to effect personal service on the parties intended to be served and therefore there had been no good service. Neither of the objections had been taken in the affidavits filed, nor had they been taken by Mr. Sanyal who was appearing on behalf of the solicitor and had concludedhis submissions before the learned Advocate-Greneral rose to address us.

As to the merits of the objections also, I do not think there would be much substance in them, even if they were taken, particularly as Mr. Jalan had declared himself to be the one and the only solicitor who was carrying on business under the firm-name of 'Jalan & Co.'. See the observations of Lord Wright in -- 'Myers v. Elman', (1940) A.C. 282 at p. 318 (A).

It is, however, not necessary to discuss the matter further, because as soon as the learned Advocate-General mentioned the objections which, in his view, might possibly be taken, Mr. Sanyal stated before us, that his client had not raised any technical objections and did not desire to raise any. The statement, made by Mr. Sanyal on behalf of his client was duly minuted, but at the same time in order to obviate all possible objections, the Rule was amended, with Mr. Sanyal's consent, so as to make it a Rule directed against- 'Mr. Krishnanand Jalan, 'alias' Jalan & Co.'.

7. Coming to the affidavits, the period from the filing of the Warrant of Attorney upto 30-4-1954 is covered by the affidavit of Mr. Jalan and that from 30-4-1954 upto 4-5-1954 is covered by the affidavit of Mr. Mukherjee. The affidavit of the friends and relatives of the appellants covers the entire period.

8. The case sought to be made by the affidavits is as follows: In the last week of February, 1954, Mr. Jalan was approached by certain friends and relatives of the appellants, including those who have affirmed an affidavit, and was persuaded by them to agree to appear on behalf of the appellants without charging any remuneration, as they were unable to find money for the further charges demanded by the solicitor who had filed the appeal. On going through the Paper-book after it had been supplied on 7-4-1954, Mr. Jalan came to think that the case required the services of an experienced and senior Advocate and both he and his Assistant advised the friends and relatives of the appellants to that effect. The friends and relatives were frequently coming to enquire about the position of the appeal. A notice that the appeal had appeared in the Warning List was received on 10-4-1954.

When the friends and relatives came next one or two days later, they were informed of the appearance of the appeal in the Warning List and asked to give immediate instructions for briefing a senior counsel. They promised to do so and said that they were trying to raise the necessary funds. In the meantime, Mr. Jalan approached Mr. Ajit Kumar Dutt, an experienced Advocate of this court through another Advocate, named Mr. P. C. Roy, to ascertain whether Mr. Dutt would agree to appear for the appellants on a modest fee and was informed that Mr. Dutt

was agreeable.

Thereafter, on 15-4-1954, Mr. Jalan delivered the Paper-book to an Advocate named Mr. S. K. Gupta with the idea that if a senior Advocate could be briefed, Mr, Gupta would appear with him as his junior, but otherwise he would conductthe appeal himself. On 28-4-1954, Mr. Gupta returned the Paper-book as he found himself unable to take the responsibility of defending the appellants. In the evening of 30-4-1954, a notice was received at the office of Mr. Jalan which informed him that the appeal would be heard on 4th May following by P. B. Mukharji. J. and myself. Mr. Jalan had previously booked his passage to Bombay by air for the morning of the 1st May and he told his Assistant Mr. Mukherjee that he

'should immediately call the representatives of the appellants and explain the extreme urgency of giving immediate instructions in the matter and arrange for the engagement of a senior Advocate ..... and that he shoulddo the needful.'

Mr. Mukherjee sent a copy of the notice at once to the representatives of the appellants and, along with the notice, he sent an urgent message, asking them to come to the office. They came on the next day, 1-5-1954, and then Mr. Mukherjee told them that the appeal would be heard on the 4th may & that they must give immediate instructions to brief a senior Advocate arid 'either pay the fees themselves to the Advocate or pay to Messrs. Jalan & Co. to enable them to brief the Advocate.'

The representatives of the appellants said that they desired to have the appellants dafended by a senior Advocate and not by a junior, but had not yet been able to raise sufficient funds and that they would let Mr. Mukherjee 'know definitely the position' on 3-5-1954. At the same time, they asked Mr. Mukherjee to make arrangements for an adjournment of the appeal. Thereafter, Mr. Mukherjee handed over the brief to Mr. Tribrewalla and instructed him to apply for an adjournment in case the representatives of the appellants failed to make arrangements for the engagement of a senior Advocate.

On 3-5-1954, the three representatives of the appellants who have affirmed an affidavit came to Mr. Mukherjee and asked him to apply for an adjournment as

they would not be able to raise sufficient funds for engaging a senior Advocate, unless some more time was granted. Thereafter Mr. Mukherjee instructed Mr. Tribrewalla to apply for an adjournment before the Court. On 4-5-1954, he was unable to reach the court in time, as there was a traffic jam on the way and when at last he arrived in a taxi, the case had already been disposed of. He then instructed Mr. Chaudhuri to apply for a recalling of the order.

9. The affidavit of Mr. Jalan gives also the reason for his going to Bombay. I shall deal with that matter and the reason given by Mr. Mukherjee for his failure to attend at the hearing of the appeal on the 4th May separately. As to the steps taken by the solicitor at the various stages of the appeal, there is also the affidavit of three friends and relatives of the appellants. I do not think that that affidavit calls for any paricular notice. The appellants are carters of push-carts and the 'friends and relatives', at least two of them, appear to belong to a similar sta-tion in life, one, of them being Illiterate and the other hardly able to sign his name, The affidavit affirmed by them was prepared in the office of Jalan & Co. and is, as regards common matters, in pratically the same language as the other two affidavits.

10. In the affidavit of Mr. Jalan as well as that of his Assistant, the position taken up is that:

'in view of the instructions on behalf of the appellants to ask for time to enable the appellants to raise necessary funds and to enable them to brief an Advocate of their choice, Messrs. Jalan & Co. could not appoint another Advocate ..... against such instructions.'

In substance, they plead justification. If the fact stated in the plea be true and the view expressed there as to the position of a solicitor be correct, Mr. Jalan had nothing to answer for, except the default in appearance on the 4th of May. His learned counsel, however, did not adopt that extreme attitude but, on the other hand, conceded that in view of the unqualified character of the Warrant filed, it was the duty of his client, in spite of the facts stated in the affidavits, to arrange for some representation of the appellants, although he at the same time added that the failure to do so did not amount to professional misconduct, particularly in the

circumstances of the case.

11. Before considering the question of the solicitor's liability, it is necessary to find the facts. I find myself entirely unable to accept those portions of the affidavits where it is sought to make out that it was, first, the insistence of the representatives of the appellants on the engagement of a senior Advocate and their failure to supply the necessary funds for the purpose and, then, definite instructions given by them to apply for an adjournment so that they might have some further time to engage a senior Advocate, which were responsible for the solicitor not engaging any Advocate to appear for the appellants in the appeal. In my view, it cannot be, believed that there was any such insistence or that any such instructions were given. The Daybooks and other statements made in the affidavit of Mr. Jalan are sufficient to discredit the story.

12. The Day-book kept by Mr. Jalan contains only three entries relating to Criminal Appeal No. 1 of 1954. The first entry is dated 22-2-1954, and speaks of the initial conference with the friends and relations of the appellants and the engagement to take over the carriage of the appeal from Mr. S. N. Sen 'without inpocket costs.' The second entry is dated 15-4-1954 and speaks/-of the delivery of the Paper-Book to Mr. S.K. Gupta.

The third entry is dated 28-4-1954. and speaks of Mr. Gupta returning the brief. There is no other entry. No entry appears in the book regarding the alleged visits of the friends and relations of the appellants between the 7th and the 10th April when they are said to have been attended to by both Mr. Jalan and his Assistantand informed of the necessity of briefing a senior Advocate. Nor is there any entry about the alleged conference 'a day or two after 10-4-1954', when the friends and relations are said to have been reminded of the necessity of briefing a senior Advocate without further delay in view of the appearance of the appeal in the Warning List and when they are said to have promised to raise and supply the necessary funds for which they had been trying.

Again, the Day-book of the Assistant, who is said by Mr. Jalan to have been looking after the case and to have taken part in attending to the representatives of the appellants, contains only two entries relating to the appeal. The first is dated

the 3rd May and speaks of 'definite instructions' to apply for an adjournment & the second is dated the 4th May and speaks of the application for an adjournment, the discharge of the solicitor and the issue of the present Rule. There are no entries at all about the prior conferences which might be expected to occur in the Assistant's book if they were not made in Mr. Jalan's and there is even no entry about the alleged conference on the 1st of May when the representatives of the appellants are said to have stated to him that they desired the appellants to be defended 'by a senior Advocate of ability and experience and not by a junior.'

It was suggested at one stage of the argument that an Attorney's Day-Book would only contain entries regarding transactions which were to be paid for and therefore the absence of entries in the present case where the Attorney was not charging any remuneration was perfectly natural. The actual occurrence of entries, covering the whole period of the Attorney's connection, with the appeal, negatives that contention. In my view, if any conference or conferences with representatives of the appellants had taken place at which the engagement of a senior Advocate was discussed and decided on and the representatives undertook to supply the necessary funds before the Advocate was briefed -- thus relieving the solicitor of all responsibility in the matter -- appropriate entries would have occurred in the one or the other Day-Book. That no such entries are to be found makes it difficult, to accept the story.

What inclines me decisively against it is the fact that if the arrangement was that only a senior Advocate would be engaged and before the was briefed, the necessary funds would be supplied by the representatives of the appellants, there could be no reason for Mr. Jalan delivering the brief to Mr. Gupta on his own responsibility with the idea, as he states, that if a senior Advocate was engaged, Mr. Gupta would act as his junior, taut otherwise he would conduct the appeal himself. How is the intention with which Mr. Gupta is said to have been briefed consistent with the case that it was only a senior Advocate that the friends of the appellants would agree to have and that the engagement of such an Advocate and therefore of any Advocate at all depended on the supply of the necessary funds by them? The representatives of the appellants did not authorise Mr. Jalan to brief Mr. Gupta and indeed thethree of then who have affirmed an affidavit say that they

were only told by Mr. Jalan at one stage that he had delivered the brief to one Mr. Gupta.

If Mr. Jalan thus briefed Mr. Gupta on his own responsibility, it must have been because he knew that his obligations under his engagement with the appellants required him to arrange for their representation in the appeal. The story that it was suggested to the represenatives of the appellants that a senior Advocate should be engaged, that they agreed to the suggestion and promised to supply the necessary funds for the purpose and that, gradually, they worked themselves into suchan obsession with the idea that they would either have a senior Advocate or none at all and caused a default in appearance by failing to provide funds for the engagement of a senior Advocate, appears to me to be a complete myth.

The proved facts belie it and the probabilities are against it. So are the facts and probabilities wholly against the Assistant's case that on the 1st of May, the representatives of the appellants came to the solicitor's office on the receipt of an urgent summons and told him that they desired to engage a senior Advocate and not a junior and that they asked him, even at that stage, to wait till the 3rd of May for definie instructions and in the meantime to arrange for an application for an adjournment and that on the 3rd of May, they instructed him definitely to apply for an adjournment and left him no other choice. The Day-Book of the Assistant contains no entry regarding the alleged meeting with the representatives of the appellants on the 1st of May and as regards the 3rd of May, the language of the entry -- 'receiving definite instructions' -- is very unlike what one would normally expect to find in a solicitor's Day-Book.

I also find it wholly incredible that the friends and relations of any accused person who had been sentenced to death, knowing that his appeal had been fixed for hearing only three days later, would even at that stage ask the solicitor to wait for instructions as to the briefing of counsel till the day preceding the date of hearing or that any solicitor would expect an Advocate to accept a brief, consisting of more than 300 printed pages, in a death sentence case which was coming for hearing on the following day.

Lastly, if it was indeed a fact that the friends and relations of the appellants had insisted on the engagement of a senior Advocate and that the reason why no -arrangements for the representation of the appellants had been made but only an adjournment had been applied for, was that the friends and relations of the appellants had given definite instructions to apply for an adjournment in order that they might have further time to engage a senior Advocate, it is strange that not a word about it should have been said by Mr. Chaudhuri when he mentioned the matter after the mid-day recess on the 4th of May and when, he was being instructed by the Assistant himself, as is stated in His own affidavit. In my view, the story of tentative instructions on the, 1st of Mayand definite instructions on the 3rd to apply for an adjournment is equally a myth.

13. The real fact, as it appears from the few entries in Mr. Jalan's Day-Book and the circum-stances of the case, is that although he had accepted and filed an unconditional warrant, he was not prepared to brief counsel unless the appellants put him in funds and that although he delivered the brief to a junior Advocate when, the appeal first appeared in the Warning List, apparently in anticipation of receiving the necessary funds from the friends and relations of the appellants, he did not, when that Advocate returned the brief, take any further steps to brief counsel when he found that the representatives, of the appellants were not yet making any payment. The alleged expression of a desire by the friends and relations of the appellants to engage a senior Advocate and their undertaking to provide the necessary funds could be no reason for briefing no Advocate at all because even the affidavits do not say that the friends and relations ever told the solicitor or his Assistant, at least till the 1st of May, that while they were trying to raise funds for the engagement of a senior Advocate, even no junior Advocate should be briefed and no arrangement for the representation of the appellants in the appeal should be made by the solicitor.

14. It is now convenient to deal with the reason given for Mr. Jalan's going away to Bombay in order to see whether he has been candid with the Court and whether his making himself absent betrays any misconduct or at least a lack of a sense of professional responsibility. The -reason was first given through Mr. Chaudhuri when he mentioned the case after the mid-day recess on the 4th of May and when

the fact of Mr. Jalan's absence from Calcutta was also first mentioned as the cause of the failure to make any arrange- ment for the representation of the appellants.

It was said that Mr. Jalan had gone to Bombayin order to assist one Tulsi Prasad Khaitan whoalso was being tried on a charge of murder. Theaffidavit of Mr. Jalan gives the same reason andstates that he went to Bombay, 'as my presencethere was necessary for holding some consultations on some important matters with. which Iwas conversant' in connection with Khaitan'scase. The affidavit proceeds to state, with certain details, the intimate character of the relationship between Mr. Jalan and Khaitan and addsthat, previously too, he had been to Bombay inconnection with the case from 19th to 25-4-1954,when he had to come away because this courtwas re-opening after the Easter holidays on the26th,

It is further stated in the affidavit that a party, named Sri Mulraj Karsondas, of Bombay had, on Mr. Jalan's advice, briefed Mr. A. K. Sen, a Barrister of this court, through his Attorneys, Messrs. Amarchand Mangaldas of Bombay and that in view of his visit to Bombay, Mr. Jalan was asked to assist in that case which he did, though the case was actually conducted by the Bombay solicitors. The affidavit adds that the Assistant Mr. Mukherjee knew nothing of the case of MulrajKarsondas, which, the affidavit of the Assistant confirms.

15. What is thus sought to be made out is that Mr. Jalan did not go to Bombay in pursuit of gain but only to assist an old friend who was facing a charge of murder and whom or whose legal advisers he was in a position to help with his knowledge of certain relevant facts. His concern with the case of Mulraj Karsondas was only of a secondary character, because all that hap-pened was that in view of his presence at Bombay, some assistance from him had been availed of. Yet, Mr. Jalan's Day-Book contains the following entry : '19th April to 25th April.

Both days inclusive attending at Bombay inmatterMulraj Kersondas Re Tax Investigation Commn.Attg. receiving instructions from Mangaldas to send Mr. Sen to Bombay.

Re Tulsi's caseAttg. holding consultations with Srigopal from time to time attending court when trial went on but suddenly stopped due to stay order from High Court.'

In the affidavit it is stated not 'that the trial was stayed but that it was postponed for a few days on an objection taken by the 'Crown', but I disregard that discrepancy. What is material is that according to the Day-Book, the primary object of the visit to Bombay from the 19th to the 25th April, 'both days inclusive', was to attend to a professional engagement in the case of Mulraj Karsondas and not, as was sought to be made out, to assist Khaitan as a friend in his trial for murder. The reference to Khaitan's case comes second in the Day-Book entry, but even there, it does not speak of any consultations with lawyers. Whatever consultations or services it refers to, are described as 'attending' in the manner of the performance of professional duties. Indeed, if only friendly assistance was being rendered, there could be no reason for making any entries regarding them in the Day-Book at all.

There is no entry in the Day-Book regarding the journey to Bombay on the 1st of May, but since the affidavit states the object of the two visits to have been the same, whatever conclusion appears to be legitimate as regards the first visit, must apply equally to the second. It appears to me to be abundantly clear that both the visits to Bombay were professional visits, that such attention as was given to Khaitan's case was only secondary and that also was professional and that the reason for the visits to Bombay was not the urgent necessity of rendering assistance to a friend in grave peril, as was untruly stated.

16. It remains to refer to one other question of fact. Mr. Jalan states in his affidavit that on the 30th April, after receiving the notice of the date of the hearing of the appeal, he told his Assistant of his projected journey to Bombay next morning and asked him to call immediately the representatives of the appellants and explain to them the extreme urgency of giving immediateinstructions in the matter and arrange for theengagement of a senior Advocate and to do theneedful in the matter. The Assistant, in his affidavit, describes the instructions received by himin the same language.

It does not appear that Mr. Jalan placed any funds at the disposal of the Assistant or authorised him to pledge his credit and engage an Advocate, even if the

representatives of the appellants provided no funds. That he did either of. these things is not stated in either affidavit, nor can the words 'the needful' cover instructions to brief an Advocate on the solicitor's own responsibility, for it appears that, actually, the Assistant made no attempt to brief any Advocate. He was only pressing the representatives of the appellants for payment even till the 3rd of May, although he must have known that the application for adjournment for which he says he was given tentative instructions on the 1st of May, might not be granted.

17. The facts, so far as they bear on the solicitor's liability, may now be summarised. The Warrant of Attorney filed by the solicitor was in an unqualified and unconditional form and contained no stipulation that he would not be bound to brief counsel and arrange for the representation of the appellants before the Court, unless they placed in his hands the necessary funds in advance. I find that having filed a Warrant in that form, the solicitor failed to brief any Advocate to represent the appellants In the appeal and left them unrepresented for the reason that the appellants had not provided him with the necessary funds and for no other reason; that he yet continued to be the solicitor on record; and that knowing that the appeal of the appellants, one of whom had been sentenced to death and the other two, for transportation of life, was fixed for hearing on the 4th of May, he left for Bombay on the 1st in order to attend to other professional engagements there without putting his Assistant in a position to brief an Advocate in the appeal and without making any arrangement at all for the representation of the appellants. When called upon to explain his conduct, he put forward a plea which was materially untrue.

18. I should like to point out here that, on the facts of the present case, the default in appearance on the part of the solicitor himself or of any one from his office on the 4th May is a separate matter and I shall deal with it separately.

19. On the main question in the case, Mr. Sanyal, who appeared on behalf of the solicitor, submitted that there had undoubtedly been an error of. Judgment on the part of his client as a result of which an omission in the course of the carriage of the appeal had occurred, but his client had not been guilty of professional misconduct which only could, be visited with disciplinary action.

According to Mr. Sanyal, professional misconduct meant dishonourable or disgraceful conduct in connection with the exercise of the profession. Mere negligence was not professional misconductand the failure of the solicitor in the present case to brief an Advocate to represent the appellants in the appeal, although he continued to be the solicitor for them on record, was no worse than negligence. Mr. Sanyal appealed to the Court to protect the solicitors by not laying down conditions of practice under which a solicitor be bound to brief counsel for a client, on pain of being hauled up for professional misconduct if he did not do so, even if the client did not supply the funds required for the purpose. But, for such negligence as had occurred and such inconvenience as had been caused to the Court, Mr. Sanyal tendered to the Court an unqualified apology on behalf of his client.

20. The learned Advocate-General who appeared in the case at the request of the Court and to whom we are indebted for the assistance he rendered, naturally made no submissions on questions of fact. On the question of law as to the liability of the solicitor, he submitted that the failure of the solicitor to take any steps to engage an Advocate between the 28th and the 30th of April, after Mr. S. K. Gupta had returned the brief, amounted to a dereliction of duty and his leaving for Bombay on the 1st of May without leaving funds in the hands of his Assistant for engaging an Advocate also amounted to such dereliction, although if a solicitor left the station after making proper arrangements for the conduct of the cases in his charge, no exception could be taken, to his conduct.

As to whether the derelictions of duty amounted to professional misconduct, entitling the Court to take disciplinary action, the learned Advocate-General was doubtful. He pointed out that this Court had been held by the Privy Council to have no larger jurisdiction in regard to disciplinary action against solictors than the Courts in England and that, in England, failure of a solicitor to attend in Court after receiving his fee appeared to have been treated as not amounting to professional misconduct.

21. I think it will be useful to clarify first the point we have to decide. It is all the more necessary to do so, because the actings of the solicitor in regard to the

appeal fall into two periods, one during which he was himself in charge and another during which the appeal was in the charge of his Assistant and he himself was absent from Calcutta. In spite, however, of such delegation of the charge during the latter period, this is not a case where a solicitor is being sought to be made liable for the misconduct of an Assistant or managing clerk in which he had no personal complicity. Had the solicitor, when he left for Bombay, placed the Assistant in a position to take all necessary steps for engaging an Advocate and had the latter yet failed to do so and had the proceeding against the solicitor been for such failure, a question as to the extent to which the solicitor was liable to disciplinary action on such a ground would have arisen.

It seems to be well-established that although a solicitor is liable even for such vicarious misconduct, arising from the misconduct of a managing clerk or a partner in which he had no directpart, he cannot be visited with the penalty of suspension from practice or removal from the rolls, because those penalties are appropriate only to personal turpitude by which the solicitor had shown his personal unfitness to practise. See (1940) AC 282 (A). But no such question of vicarious responsibility arises in the present case. Here, the omissions for which the conduct of the solicitor is to be examined must stop at the point of his leaving for Bombay, without making proper-arrangements for the conduct of the appeal, and what the Assistant did or did not do thereafter is in ho way relevant, except on the question of the failure to attend in court on the 4th of May. The prior omissions are all personal to the solicitor.

But the basis of the Court's disciplinary jurisdiction over solicitors is not any privity or breach of warranty of authority as between them and their clients, but a duty of proper conduct owed by them to the court itself as officers of the court. The point for decision therefore is whether by filing a Warrant of Attorney in an unqualified form, the solicitor had placed himself under a duty to the court to arrange for the representation of the appellants before it, irrespective of whether he was put in funds or not and whether by failing to arrange for such representation and absenting himself from Calcutta while continuing to be the solicitor on record, he committed a breach of that duty and such a breach as made him liable to disciplinary action in the form of suspension or removal from the rolls.

22. It was not seriously disputed by Mr. Sanyal that if a solicitor filed an unqualified Warrant of Attorney, he bound himself to arrange for the representation of his client by counsel before the Court, if necessary, whether the client supplied him with the necessary funds or not. At one stage of his argument, he referred to the old case of -- 'In the matter of Gopeenath Mudduck', 14 Suth WR 7 (B), where it was said that an Attorney, when he had taken a retainer to conduct a suit, must proceed as far as the money placed in his hands by his client would allow him and he could abstain from proceeding only on the ground that he was not being furnished by his client with sufficient funds, but he must, even in such a case, give timely notice that funds were needed. The case, however, only means that if funds fail, the Attorney may terminate the engagement, as Mr. Sanyal ultimately conceded and not that he may stick to the Warrant and yet do nothing on the plea that no funds were being supplied. There is nothing to prevent a solicitor from inserting a stipulation in the Warrant that he would not be bound to act unless funds were supplied. If he makes no such stipulation with the client but files an unconditional warrant, he informs the Court that he has agreed to give credit to the client and so long as he allows the warrant to remain on the record as an effective warrant, he is not permitted to withdraw the credit. 'It is the duty of a solicitor who has once undertaken to conduct a cause', observed the Privy Council in an old appeal from this court to (by?) the solicitor in charge of it, 'to carry it toa conclusion, and he cannot refuse to do that duty by reason of the client not having complied with any application that may have been made to him' -- 'In re A. Solicitor', 4 Beng LR 29 (PC) (C). The principle was re-affirmed by all the three Judges in the case of -- 'Emperor v. Rajani Kanta Bose', AIR 1922 Cal 515 (SB) (D) and though the legal practitioners concerned in that case were pleaders, the principle stated with reference to their professional obligations, appliesequally to solicitors. To quote from Woodroffe J. : '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', AIR 1922 Cal 515 at p. 530 (D).

23. Likewise, a solicitor who has filed an un-conditional warrant must, so long as his client does not discharge him or he does not discharge himself, either by agreeing to a change of attorney or by obtaining his release from the court, render to the client all the professional services normally rendered by a solicitor, including engagement of counsel, whether or not the client supplies him the necessary funds. He is, however, not irrevocably committed to acting, to use Mr. Sanyal's phrase, as the client's banker and does not need the protection from the court for which Mr. Sanyal pleaded. He can protect himself, as I have already pointed out, by insisting on a stipulation that he will not be bound to act or take any step until and unless paid or provided with funds and he can also, when he finds himself unable to give further credit, terminate the engagement by appropriate methods.

24. In the present case, the solicitor did notterminate the engagement, but continued to remain the solicitor on record and therefore continued to be liable to arrange for the representation of the appellants under the unconditional terms of the warrant filed, irrespective of whether the appellants put him in funds for the purpose or not. In not arranging for their representation and not engaging another Advocate after the 28th of April, he committed a breach of his professional duty. By leaving the station on the 1st of May for other professional engagements and doing so without making any arrangements for engaging a lawyer for the appellants, one of whom, was under a sentence of death and two under a sentence of transportation for life and whose appeal was coming up on the 4th of May, he aggravated the nature of the breach.

25. Does such breach, of duty bring the solicitor within the purview of the disciplinary jurisdiction of the. Court? In my opinion, it clearlydoes. The learned Advocate-General submitted that our disciplinary jurisdiction was ultimately founded on Clause 10, Letters Patent which empowered the court to remove or suspend from practice an Attorney-at-Law 'on reasonable cause' and he pointed out that in -- 'In re Augustus Stewart', (1868) 2 PC Appeals 88 (E), the Privy Council hadheld that that phrase did not authorise disciplinary action by this court in a case where similar action would not be sanctioned by the practice of the courts in England.

The learned Advocate-General next referred to a case, noticed in Cordery's Law relating to Solicitors as 'Re A Solicitor' and mentioned there as having held that non-attendance by a solicitor in court after receiving his fee was not professional misconduct, although it would render the solicitor liable for negligence. In that state of the authorities, the learned Advocate-General felt some doubt as to whether the failure Of a solicitor to arrange for the representation of his client by counsel, even if he might be bound to do so under the terms of his Warrant, would amount to anything more than negligence and whether this Court had authority to take action against a solicitor for such failure in the exercise of its disciplinary jurisdiction.

26. In my view, the doubt felt by the learned Advocate-General was not well-founded. It rests on two assumptions, first that it is only with respect to such conduct in the exercise of the profession as amounts to professional misconduct that the disciplinary jurisdiction of the court can be exercised and, second, that negligence is not professional misconduct. A corollary to the last proposition is that a solicitor's negligence in the performance of his duty towards his client does not involve a breach of any duty owed to the Court and therefore does not attract the disciplinary jurisdiction. The correctness of the first assumption, so far as it goes, is not open to question, but it appears to me that underlying the second assumption and its corollary, there was a misconception. I have said 'so far as it goes', because misconduct outside, the profession may come within the 'reasonable cause' of our Letters Patent and may be the ground of disciplinary action in England.

27. As to professional misconduct, the nature of the disciplinary jurisdiction and of the conduct with respect to which it can be exercised was discussed by the House of Lords in great detail in the case of (1940) AC 282 (A). As explained in the illuminating speeches in that case, the disciplinary jurisdiction is not a jurisdiction, exercised for the purpose of enforcing any contractual or other obligations between legal practitioners and their clients, but is a jurisdiction exercised for the purpose of maintaining proper discipline among the legal practitioners on the basis that they are officers of the court and owe to the court a duty of proper professional conduct. The jurisdiction is a summary jurisdiction, inherent in the relation in which the Court stands to the legal practitioners and not derived from

any statute. If in exercising that jurisdiction, the Court takes notice of misconduct towards parties, it does so because a lawyer's duty to the parties is founded on his duty to the Court.

The Court maintains on its rolls a body of legal practitioners whose qualifications and character it has previously checked and certified to the public and to whom it has accorded certain privileges and it exercises a disciplinary jurisdiction over them by way of supervising their conduct in order to ensure that no one, borne on its rolls, dishonours the certificate and departs from that standard of integrity and care, on the faith of which it is allowing them to function as limbs of the court and to maintain which is their corresponding obligation. Legal practitioners owe a duty of attention and care as much as a duty of integrity and honour and a lapse from either is professional misconduct and so a matter for disciplinary action. It is not merely conduct which would be reasonably regarded as disgraceful or dishonourable that comes under the description, as was suggested: negligence is equally professional misconduct, being equally a breach of a duty owed to the court.

In the House of Lords case, Lord Wright defined professional misconduct of a solicitor as 'conduct which involves a failure on the part of a solicitor to fulfil his duty to the court and to realise his duty to aid in promoting in his own sphere the cause of justice.' He did not except negligence; and Lord Atkin observed that 'a breach of duty owed to the court committed by gross negligence may lead to the exercise of punitive jurisdiction.' It is only the penalty imposed which differs according as the misconduct is negligence or disgraceful conduct. If it be mere negligence, involving no moral turpitude, the penalty of removal from the rolls or suspension from practice is not imposed, but on the other hand, costs may be directed to be paid, whether the negligence be of the legal practitioner himself or of a partner or of a clerk. Disgraceful conduct, on the other hand, must necessarily be personal and where such conduct is found, it is penalised by suspension from practice or removal from the rolls.

28. In view of those principles laid down by the House of Lords, I cannot share the learned Advocate-General's doubt as to whether an act of negligence makes a

lawyer amenable to disciplinary action. Nor can I regard failure to appear for a client or to arrange for his representation before the court after receiving fees for the purpose or undertaking to give him credit as mere negligence.

The case of 'Re A Solicitor' on which the learned Advocate-General relied is a very poor authority for the proposition for which it is quoted in Cordery's treatise. The case is reported only in the 'Times' of 7-8-1890, but the industry of the learned counsel for the solicitor succeeded in obtaining a copy of the report from the old files of the paper in the National Library. It appears that a solicitor, named Moor, was brought up by the Incorporated Law Society before Baron Pollock and Mr. Justice Grantham on four charges of misconduct, one of which was found not proved. Of the remaining three, one was a charge of appearing in court to conduct a case in a drunken state, another was a charge of failing to appear in a case after receiving his fees for the reason that, at the time, he was in custody for being drunk and disorderly and the third was a charge of failing to attend an inquest afterhaving received a fee for so doing. The court found the solicitor guilty of professional misconduct with respect to the first two of the above charges and suspended him for two years, but the third charge was not pressed by the representative of the Law Society who said that the facts established only a case of negligence and not one of misconduct within the meaning of the Solicitors' Act, 1888. The court held or said nothing. It is important to notice that what the further facts were does not appear and as it is conceivable that there may be circumstances in which a lawyer's failure to appear in a case will be nothing worse than negligence, I do not see that the case establishes anything. It is also to be noticed that the court was not invited to pronounce on the charge and it made no pronouncement. On the other hand, there is a clear decision of a Bench of three Judges of this Court in the case of AIR 1922 Cal 515 (SB) (D), where it was said 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' -- per Mookerjee J., at p. 533.

I do not, however, regard the case of -- 'Satis Chunder v. Saroda Prosad', 19 Cal LJ 432 (P), which also the learned Advocate-General brought to our notice, as Of any importance in this connection, as there the learned Judges were considering a case of a breach of an undertaking given to the Court.

29. In my view, the failure of the solicitor in the present case to arrange for the representation of his clients, one of whom was under a sentence of death and two under sentences of transportation for life, coupled with the circumstances in which such failure occurred, establishes not a case of mere negligence, but a case of disregard of professional obligations, attended with a degree of selfishness and indifference which was far from honourable. The misconduct clearly makes the solicitor liable to disciplinary action.

30. I have lastly to deal with the failure of the solicitor or anybody on his behalf to attend the appeal, on the 4th of May. In my opinion, with respect to that matter, no case of negligence can be made out against the solicitor. In exercising the profession of a solicitor, delegation of work to an Assistant or the managing clerk is inevitable. If a solicitor leaves the station after making proper arrangements for the conduct of the cases in his charge and the arrangement is that a properly qualified Assistant or a competent managing clerk will perform the necessary duties, no exception can justly be taken to his conduct. The fault of the solicitor in the present case was that he did not, when leaving for Bombay, put his Assistant in such a position that he would be able to perform the duties which the solicitor himself could have performed, if he were in Calcutta. For that omission he is liable. But although he might not have put the Assistant in a position to engage an Advocate for the appellants, he certainly left it to the Assistant to attend to the appeal in all other ways. If the Assistant failed to attend the appellate court on the 4th of May, the default was his. In such default, no negligence or personal turpitude of the solicitor himself was involved, and therefore no question of his being liable to disciplinary action for such default arises.

31. In the above view, it is not necessary to consider the genuineness or adequacy of the explanation offered by the Assistant. I may point out, however, that the genuineness of his explanation is not too clear. Although the Assistant has said in

his affidavit that he was delayed in arriving at the court because the tram car in which he was travelling was held up by a traffic jam and he arrived at a time when the appeal had already been disposed of, his Day-Book shows that the entry about the appeal is the third entry of the day, while before it there are two other entries, showing that he first attended a chamber application before S. R. Das Gupta J. and then attended an application before the Master in Chambers. It is well-known that chamber applications are taken the first things in the morning. Assuming that his applications came up some time after 10-30 A.M., yet one would expect him to make an enquiry about the appeal immediately on his arrival in court and the entry about it to occur in the Day-Book first, if any entry was made at all.

Again, I do not understand why an entry about the appeal was made. Solicitors make entries in their Day-Books only about transactions in which they take part. The Assistant did not attend the appeal. It is curious to find that while there is an entry about the disposal of the appeal in the morning when the Assistant did not attend, no entry occurs about the mentioning of the appeal by Mr. Chaudhuri after the mid-day recess on the instructions of the Assistant himself who was also personally present. I need not, however, pursue the matter further insasmuch as it is not the Assistant who is being proceeded against and inasmuch as his conduct is not in question before us.

32. What action we should take against the Solicitor Mr. Jalan is a matter which has caused us anxious concern. As was observed by Baron Pollock in 'Re. R Solicitor', already cited, what the Court has to consider in such cases is not so much the punishment of the Solicitor as the protection of any one who may in future be tempted to trust him. In England, since the Solicitors' Act of 1919, the Disciplinary Committee of the Incorporated Law Society has itself had the power to suspend a solicitor from practice or remove him from the rolls, though the power of the Court has also been preserved.

It is stated in -- 'Myers v. Elman', (A) ('ante') that whether the Court would now entertain an application to srike a solicitor off the rolls or to suspend him, instead of leaving the matter to the Disciplinary Committee, may be doubted. In India, however the sole disciplinary authority is still the Court and the Court must

exercise thejurisdiction, when occasion arises, with proper regard to the true object of exercising it against a delinquent solicitor. We have been unable to accept the defence of Mr. Jalan and we cannot overlook the grave impropriety of his conduct. Yet we consider it proper to bear in mind that his learned Counsel began and ended his address with an admission of error and an apology to the Court. We were also pressed to take into account the great mental suffering which the solicitor had already undergone.

On the question of the protection of future litigants, again, the publicity which these proceedings have inevitably received and are going to receive appears also to be a relevant consideration. In view of those circumstances and also in view of the fact that no actual harm was caused to the clients, we think that the ends of discipline will be met by a public disapproval of the solicitor's conduct and admonition to him to avoid the repetition of such conduct in the future.

In view of the findings we have arrived at, this action may appear to be unduly mild, but we think that where an officer of the Court has admitted his lapse and given up resistance in the end, the Court may properly be generous, although he may have mixed some untruths with his apology. Accordingly, Mr. Krishnanand Jalan is severely reprimanded, but we desist from taking further action, against him in the hope that he will profit by the lesson of these proceedings and try to make himself a better officer of the Court and a better member of the great profession to which he belongs. An entry regarding this reprimand administered to him will be made against his name in the Roll of Solicitors maintained by this Court, with an appropriate reference to this order.

S.R. Das Gupta, J.

33. I agree.

P.B. Mukharji, J.

34. I agree with the finding of fact and the punishment proposed by my Lord the Chief Justice.

35. The clear issue in this case is whether an Attorney of this Court by leaving his client, a prisoner condemned to death, to his fate without making any arrangement for a counsel to defend his case in spite of his Warrant of Attorney from the condemned prisoner undertaking to pay him all costs and expenses and by going off at the most crucial time to Bombay on an errand which has no urgency and where his presence is not indispensable, can be said to be guilty of professional misconduct so as to merit punishment under Clause 10, Letters Patent of this High Court. I have no doubt that it is professional misconduct which makes him liable for disciplinary action under Clause 10, Letters Patent of this High Court. It is necessary to examine and analyse the law on this point, with a view to see whether the law provides that the Attorney in such a case should be exonerated.

36. The point is res integra. Mr. Sanyal appearing for the attorney based his argument on an attempted distinction between negligence on the one hand and professional misconduct in the nature of dishonourable or discreditable conducton the other. The inspiration for his argument was drawn from the observations of Viscount Maugham in the House of Lords in 1940 A. C., 282 at p. 289 (A), and of Darling J. in the case, of 'In Re A Solicior; ex parte Law Society' reported in 1912-1 K. B. 302 (G). In the latter case it was found that the terms upon which the solicitor conducted certain actions amounted in law to champerty and the Committee of the In-corported Law Society found that the solicitor had been guilty of professional misconduct within the meaning of the Solicitors Act, 1888.

Darling J. in delivering Judgment in that case said that the definition of 'infamous conduct in a professional respect' on the part of a medical man as described in the celebrated case of -- 'Alin-son v. General Council of Medical Education & Registration', 1894-1 Q. B. 750 (H). applied also to the professional misconduct on the part of a solicitor. In that medical case it was said,

'If it is shown that a medical man in the pursuit of his profession, has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency'then it was open to the Medical Council to say that he had been guilty of 'infamous conduct in a professional respect'.

Applying that principle Darling J. at p. 312 of the Report in 1912-1 K. B. 302 (G), says:

'The Law Society are very good judges of what is professional conduct as a solicitor, just as a General Medical Council are very good judges of what is misconduct as a medical man. I see no reason for coming to any other conclusion than that to which the Committee of the Law Society has come, namely, that that method of obtaining business is not such as this Court can possibly countenance and that therefore the Committee was perfectly right in saying that with regard to that matter there was professional misconduct.'

In that case the solicitor was suspended for twelve months.

37. The learned Advocate-General who appeared to assist this Court on this Rule has also drawn attenion to this branch of the English Law. Now no one for a moment suggests that every negligent or irresponsible conduct on the part of an attorney is necessarily and invariably professional misconduct involving the serious consequence of being struck off or being suspended from the roll of solicitors. It is always a grave and serious matter and the Court can never be too careful in coming to such a serious conclusion. But the whole question here is, can the act or conduct of the attorney under consideration in this case be passed over as merely negligent or irresponsible?

38. The learned Advocate-General has drawnthe attention of this Court to the case of (1868) 2PC 88 (E), which was a decision on appeal from(sic)he then High Court in Bengal where Lord Justice(sic)ood at p. 105 of that Report observed:Their Lordships are not aware of any such, special authority as appears to be referred to byPhear J. as would authorise the striking off the appellant from the rolls of the High Court where such a step would not be sanctioned by the practice of the Courts in England.'

39. This decision was given in 1868. That particular observation of the Privy Council controverted Phear J's view that

'the High Court here had the power, if it thought reasonable to exercise it (even though, such a case might not, according to Reports of Cases in England, be recognised by the Supe-rior Courts of Westminster as a cause of punishment), to remove or suspend from practice an attorney from this Court', to quote the language of that Report at p. 102.

40. This has led to a good deal of confusion which, in my view, has been unnecessarily caused by a misunderstanding of the principle In--'Augustus Stewart's case', (E). Assuming that the practice in England and the practice here in respect of removing or suspending solicitors from the roll are the same, it is evident that there is no reported practice supported by any decision in England to show that an attorney's conduct of not engaging Counsel to defend a prisoner condemned to death in an appeal where the prisoner must be counting his days in the cell, after the attorney had obtained a Warrant of Attorney from the condemned prisoner to do all that is required in his defence in such an appeal and then making himself absent by leaving the station altogether at the time of the hearing of the appeal of which the attorney had ample notice, for a place where he was called neither as a solicitor nor as a witness and where it is not shown that his presence was even otherwise indispensable and leaving it to an assistant of his office without making any arrangement whatever for briefing counsel, is not professional misconduct in England. I shall be extremely surprised to know that there is. any practice in England to say that such a conduct of a solicitor is not professional misconduct. This, therefore, shows that the invocation of the English practicedoes not help the attorney in this case.

41. A word now is necessary to say that the situation in England is governed by many consi-derations which are inapplicable in India. Two major distinguishing features must be stated at the outset in this connection. First, the Law Society in England in its present form was incorporated by Royal Charter of 1855, and further provisions for its constitution were made by supplementary Charters of 1872, 1903 and 1909. Although, there is in Calcutta a society of solicitors which is called the Incorporated Law Society, it has no Charter of incorporation as in England. No Charter regulates the work and conduct of solicitors of the Incorporated Law Society in Calcutta. The second distinguishing feature in 'England is that the

solicitors are regulated there by the Solicitors' Acts.

In 1932 the Statute law relating to solicitors which has been accumulating since the Solicitors' Act of 1943 (6 and 7 Victoria, Chapter 73) which was a consolidating and amending Act was almost entirely consolidated into one Act of Parliamentby the Solicitors' Act, 1932 (22, 23 George V, Chapter 37). Elaborate provisions are made in this Solicitors' Act for exercise of disciplinary jurisdiction by the members of the Law Society themselves. In fact, in Section 5, Solicitors' Act, 1932, an application for removing the name of a solicitor from the roll is to be made to and heard by a Committee of the Law Society. There is a proviso to Section 5 of that Act which says 'provided that nothing in this section shall affect the jurisdiction which, apart from the proviso of this section, is exercisable by the Master of the Bolls or any Judge of the High Court over solicitors'. What little is left of High Court's jurisdiction in England by this proviso is very doubtful because this section not only requires that the application should be made to the Law Society but also gives the Committee of the Law Society the power to impose the punishment on the solicitors. Section 7, Solicitors' Act, 1932, even says that every order by the Committee is to be enforceable in the same manner as a judgment or order of the High Court, The words 'apart from the provisions of this section' in the proviso of Section 5 of this English Act leave very little power to the High Court in this respect. In fact, Lord Wright in the recent case in the House of Lords in 1940 A. C. 282 at p. 318 (A), doubts it by saying 'Whether the Courts would now entertain any application to strike a solicitor off the roll or to suspend him, instead of leaving the matter to the Disciplinary Committee (law Society) may be doubted.'

It is strange that the solicitors in this country have never been regulated by any Statute. Even the advocates and barristers of this Court are subject to the Bar Councils Act and other lawyers by the Legal Practitioners' Act. No Charter or no Statute regulates the conduct of the Solicitors in India. I am, therefore, of the view that these two distinguishing features, one of the Charters of Incorporation and the other of the Acts of Parliament (Solicitors' Acts), materially distinguish the practice in England from the practice in this Court so far as the solicitors in India are concerned.

42. It will be necessary to refer to three of the Calcutta High Court decisions and authorities in this connection.

43. In the case of --'In re An Attorney AIR 1914-Cal 192 (SB) (I), a Bench with Jenkins C. J. and Stephen and Chaudhury JJ. observed that the disciplinary action against an attorney rested on the principle that the Court Seemed him an unfit person to act as an attoreny and not by way of punishment. It is there pointed out that strong suspicion is not enough to justify disciplinary action on a summary proceedings especially when there is a positive sworn denial and repudiation of the misconduct imputed. No exception can be taken to this enunciation of the principle. In that case the main charge against the attorney was that there was a conflict between two verified statements for which the attorney was responsible and that one of them must have been false to his knowledge. The attorney deniedthe charge and the Court came to the conclusion that on the materials before them, it could not be held that the attorney's explanation was demonstrably false. The Rule was accordingly discharged in that case. No question of such dispute or sworn denial of fact arises in this case before us. The facts here are undisputed. The fact here is that the attorney left the condemned prisoner to his fate without engaging a Counsel to defend him which it was his duty both under the Warrant of Attorney and otherwise by the nature of his employment. The further fact is that he left for Bombay where he did not act either as a witness or as a solicitor and remained absent from Calcutta during the time when the case came up for hearing in this Court and of which hearing the attorney had ample notice before he left Calcutta for Bombay.

44. The next case is AIR 1922 Cal 515 (SB) (D), and decided by Bench of Sanderson C. J. and Mookerji and Woodroffe JJ. That was a decision on a Reference under Section 14, Legal Practitioners Act, 1879, by a District Judge and was not a case of disciplinary action against an attorney under Clause 10, Letters Patent such as the one before us. It was there held that proceedings under Section 14, Legal Practitioners Act, were quasi criminal in the sense that they might result in penalty but that they were only quasi criminal and not criminal proceedings in the sense that all rules of procedure applicable to criminal trials were necessarily applicable. I do not think any useful purpose will be served by

attempting to draw any analogy between the Legal Practitioners Act and Clause 10, Letters Patent specially because Section 13, Legal Practitioners Act of 1879 not only uses the word 'unprofessional conduct' in its marginal note but also sets out different grounds in addition to 'reasonable cause'.

45. The other case is one reported , as -- 'In re Two Attorneys : AIR1925 Cal964 . It was decided by a Bench of Sanderson C. J. and C. C. Ghose and Buckland JJ. In that case it was distinctly laid down that the attorney was an officer of the Court and as such owed duty to the Court. The misconduct there alleged was that having taken the money from the sheriff of this Court where it was deposited for the purpose of paying it as rent to the owners of the premises, the attorney, instead of paying it to the owners of the premises, paid the money to his clients. The case decided that independently of any question of moral turpitude, the attorney in that case as an officer of the Court owed a duty to the Court and had committed a breach of that duty by taking the money out from the Sheriff for paying it towards the liquidation of the rent but in fact not utilising the money for that purpose.

46. The jurisdiction and power of this High Court to remove or suspend from practice attorneys of this Court must, in my judgment, be (entirely deduced from Clause 10, Letters Patent. The only words there used which are material for the purpose of construing this High Court's power to remove or suspend attorneys are, 'on reasonable cause'. There is no other fetter. It is(sic) plenary jurisdiction. It is a jurisdiction w(sic)is neither civil nor criminal. It is a misnomer to call it quasi criminal. It is a specific jurisdiction under Clause 10, Letters Patent. What is a reasonable cause must of course be determined first with reference to the facts of each individual case and secondly with reference to the nature of the act or conduct of the attorney complained against and always after giving the fullest opportunity to such attorney to be heard in his favour. Professional misconduct is not an expression used in Clause 10, Letters Patent. Professional misconduct is an expression of wide import to cover the whole range of the professional activity of the solicitor and his general worthiness to act as such solicitor and as a person deserving the confidence of and responsibility for clients. There can be no doubt that it is a part of the professional duty and activity of the solicitor to engage a

counsel to defend his client at the hearing. It is settled law that an attoreny holding a power of attorney cannot refuse to act for his client because he has not been paid the necessary fees. If he complains of lack of funds, then his only course is to discharge himself from the warrant of attorney and not continue to hold the warrant and then leave his client to his fate. In discussing what professional misconduct is I can do no better than quote Lord Atkin in the same case reported in 1940 AC 282 at p. 303 (A), where the noble Lord says:

'But the words 'professional misconduct' themselves are not necessarily confined to cases where the solicitor himself is personally guilty. After all they only mean misconduct in the exercise of the profession; and they cover cases where a duty is owed by the solicitor to the Court and is not performed owing to the wrongdoing of the clerk to whom that duty has been entrusted.'

47. To my mind this definition or description is as reasonably accurate as could be, although I feel there can never be a cut and dried, or an exclusive definition of what professional misconduct is. That depends on the facts and circumstances of each case. To describe the solicitor as an officer of the Court means very little in this context. Here again we in India have very loosely talked of the solicitor being an officer of the Court by imitating this English phrase without knowing its history. Long before the system of solicitors came into vogue in England, clerks and officers of the Court used to guide the suitors before it about the rules and procedure. Later when the solicitors took over this job and the clerks and officers ceased advising suitors about rules and procedure of Court, the solicitors came to be described also as officers of the Court. That is the historic reason for the appellation of the solicitor as officer of the Court.

It is not remembered in this country that in England a solicitor's position as an officer of the Court has received statutory recognition. The statutory recognition of that position in England will be clear from Section 215(1), Supreme Court of Judicature (Consolidation) Act, 1925 which provides,

'any person duly admitted as a solicitor of the Supreme Court shall be an officer of the Court,and the High Court and the Court of Appeal respectively or any Division or Judge thereof'

We in India-have no such statute although not-withstanding such fact we have not been slow in importing that notion of the solicitor as an officer of the Court. In a sense every one is an officer of the Court who happens to help in the administration of justice by the Court. If the solicitor in India is an officer of the Court then I do not see why an advocate or a barrister is not equally an officer of the Court, though I have not heard an advocate or a barrister being described as such officer of the Court. That is why I say that questions of professional misconduct do not hinge merely on the distinction whether the act complained of against an attorney concerns him as an officer of the Court or concerns him in his profession. If apart from the Statute a solicitor can be an officer of the Court then he is so only by reason of his profession and it may not be always logically possible to separate his two functions while determining any question of professional misconduct.

The notion of solicitors as officers of the Court is used in England for the Court's summary jurisdiction over solicitors as officers of the Court. This is brought out clearly in the speech of Lord Wright in the House of Lords decision in --'Myers v. Elman (A)'. For this High Court the jurisdiction is founded entirely on Clause 10, Letters Patent and we do not need to delude ourselves that Clause 10, Letters Patent is only a summary jurisdiction. It is a plenary jurisdiction in every case of 'reasonable cause'. It will not I think be inappropriate in this connection to draw the attention of the profession to the celebrated observation of Lord Mansfield quoted with approval by Lord Esher, the Master of the Rolls, 'in Re Weare, 1893-2 Q. B. 439 at p. 442 (K)', where the principle is put in this way:

'And it is on this principle, that he is an unfit person to practise as an attorney.'

48. The principle, therefore, is whether the act or conduct is such as to make him a person who is unfit to act as an attorney. The act in question may or may not have anything to do with the actual exercise of his profession or his character as a solicitor. In the case that I have just quoted Lord Esher, the Master of the Rolls, lays down the principle that a solicitor may be struck off the roll for an offence which has no relation to his character as a solicitor, the question being whether it is such an offence as makes a person guilty of it unfit to remain a member of that

great profession. In that case it is said that conviction for a criminal offence prima facie makes a solicitor unfit to continue on the roll; but the Court has a discretion and will enquire into the nature of the crime and will not as a matter of course strike him off because he has been convicted. In that case it was considered that the nature of the offence was such, being a summary conviction for allowing the house as a landlord to be used by the tenants as brothels,that the solicitor should be struck off the roll.

I cite this case only to show that the solicitor's status as an officer of the Court and owing dutyto the Court is not the only measure by which his misconduct can be judged and for which he can be made liable to be removed from the roll. This also shows that the doctrine of 'mere negligence' is not decisive of professional misconduct. If what is described as 'mere negligence' is such that it shows the solicitor to be unfit for the responsibility with which his profession has charged him, then it becomes a ground of misconduct and in my view 'a reasonable cause' within the meaning of Clause 10, Letters Patent of this High Court which may justify this Court removing or suspending him from the roll of solicitors. The observations of Viscount Maugham which I have already mentioned use the most careful language and they are. 'Mere negligence will not suffice. The application is strictly personal and relates to the solicitor himself and his fitness to practise' (1940 A. C. 282 at p. 289 (A)).

49. The argument in this context that a particular client if he suffers by his attorney's conductor negligence, can always sue or proceed against his attorney in damages, or himself move thisCourt to remove or suspend the attorney underClause 10, Letters Patent, is not only inadequate but also conceals a dangerous misconception. The inadequacy of the private right of an aggrieved client is patent. One particular client's remedy in damages against his own attorney, leaves the attorney free to act for other clients and therefore the danger to the profession of attorneys and to the litigant public alike is not avoided.

This Court cannot ash the litigant public or the suitors before it to engage one of this Court'sattorneys at such grave peril to themselves which may be irreparable by any damage. It is needless to emphasise that this Court can act under Clause

10, Letters Patent and does not have to wait to be moved by the aggrieved client under that Clause. The language of Clause 10, Letters Patent is clear on the point. This Court as the only custodian of the disciplinary standards for the attorneys, has in a fit and proper case, the right, the jurisdiction, the power, and indeed the obligation, to move on its own initiative under Clause 10 Letters Patent, and independently of any private remedy of the aggrieved client against the attorney personally. This Court, on the other hand, may feel that a particular case does not call for any disciplinary action against the attorney, even though in that case the aggrieved client may have his private remedy against the offending attorney and in that case the Court will refuse to act under Clause 10, Letters Patent.

In other words, in disciplinary jurisdiction it is not sufficient to show that an attorney's conduct is such as to support an action by his client against him for want of skill but his conduct must be judged by the test whether by the act in question the attorney has exhibited a standard which renders him unfit to remain on the roll of attorneys. The test is not whether the attorney has by his act become beholden to his client for any breach of contract or for any tortious or criminal liability towards his client. The answer to the whole question depends on the fact whether this Court considers the particular case before it to disclose 'a reasonable cause' forremoval or suspension of the attorney. If it does, then it is free to act by removing or suspending the attorney from the roll and then the fact that the client also possesses a private remedy against the attorney concerned in such case does not take the case out of the ambit of the disciplinary jurisdiction of this Court under Clause 10, Letters Patent.

50. I will conclude this branch of the law by one more observation which I consider material. The language of Clause 10, Letters Patent indicates that this Court's power is to 'remove' or to 'suspend'. But even where there is 'reasonable cause' the Court is not compelled to take either of these two extreme measures or not act at all. According to my interpretation of Clause 10, Letters Patent, applying the well-known maxim of construction of the greater including the lesser, the greater power of removal or suspension implies and includes the lessor one of warning and admonition even when the Court finds 'reasonable cause' under that clause of the Letters Patent.

51. On a review of the authorities and on the facts of this case I am satisfied that the attorney's conduct in this case does amount to professional misconduct, and I hold accordingly.

52. There are two short points of a technical nature to which the Advocate-General has drawn the attention of the Court. One arises under Rules 5 and 6 of Chap. 5 and the other arises on Rule 7 of Chap. 5, O. S. Rules. These points are no longer of importance because we have already amended the Rule in this case with a view to avoid any possible complaint and because the attorney has appeared in answer to the Rule and has taken no objections on these two points. I feel nevertheless that it is necessary to make my own observations on these two technical points,

53. First, it is said that under Rules 5 and 6 of Chap. 5, the Rule to show cause must be directed against the attoreny and as the original Rule in this case was directed against Jalan & Co., the Rule was bad. In the facts of this particular case where Jalan & Co. is only a mere business or professional name for Krishna Das Jalan, who is the sole proprietor thereof, this technical point has, in my judgment no substance whatever. The intention of these two Rules 5 and 6 is clear on this point. It is that the Rule must make it plain who is required to show cause. The point would have been of substance if Jalan & Co. were a firm with more than one partner. If in future such points are raised, then this Court may well have to consider whether it will permit a solicitor of this Court to carry on his professional activity under the cloak of a name with or without the addition of the word. 'Company' and it might well be necessary in that event to prohibit In future the use of nom de plume to escape responsibility.

54. The second technical point of objection arising under Rule 7 of Chap. 5 is that, as this rule requires 'service of the Rule shall, where possible, be personal,' the service in this case being on a clerk of Jalan & Co. was bad. Apart from the fact that the words used in the Rule are 'where possible', and in this case Mr. Jalanbeing out in Bombay at the time when the Rule was issued it might have been argued that it was not possible to serve him personally at the time, the decisive factor remains that Mr. Jalan has appeared in answer to this Rule and has used his affidavit in response to the Rule without protest and without any

objection on the ground of lack of personal service. The reason behind the requirement of a personal service is to bring home to the attorney personally the Rule to show cause. If he does appear in answer to the Rule and shows cause, then very little remains to support the objection that the service was not personal. In that view such service, therefore, cannot be Impugned.

55. For these reasons I concur with the punishment proposed and that for reasons stated in theJudgment of My Lord the Chief Justice.