

**In Re: an Attorney**

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**Court :** Kolkata

**Decided On :** Sep-01-1920

**Reported in :** AIR1921Cal267,61Ind.Cas.908

**Judge :** Greaves, J.

**Appellant :** In Re: an Attorney

**Judgement :**

**Greaves, J.**

1. This is an application that an Attorney, referred to in the papers before me, should explain and answer the matters referred to in paragraphs Nos. 19 and 20 of the petition, and I am asked to issue a Rule that will go before a Bench of three Judges, in order that the matters now complained of may be investigated before that Bench and dealt with by the Bench in such manner as seems right to them.

2. The questions arise with regard to a suit which I tried in February of this year and with regard to certain receipts for payments made to doctors which were produced by the defense in the course of the trial before me. It appears that on the 22nd August 1918 the guardian for the infant defendant swore an affidavit of documents on her behalf in this suit. The affidavit was undoubtedly prepared by the Attorney whose conduct is now tailed in question. In paragraph No. 15 of the Attorney's affidavit filed herein on the 28th August 1920, I have some explanation with regard to the preparation of that affidavit of documents. I should have desired

that that paragraph had dealt more fully and more explicitly with the manner in which the affidavit was prepared, but I do not think that there is any advantage in my adjourning this present application for the purpose of the production of a further affidavit by the Attorney on this point. The affidavit of the guardian states what documents are in the possession and power of the defendant. The only documents that are referred to in the schedule thereto are the cause papers in the suit and an objection to produce those is made, Paragraph 3 of the affidavit is in the common form that you find in these affidavits, that to the best of the guardian's knowledge, information and belief the defendant has never had in her possession or power or in the possession of her Attorneys or agents or in the possession or power of any other person or persons on her behalf, inter alia, any book of account, receipt and so on. On the 26th August 1918 the infant's guardian under the directions of this Court Sled his guardian-ship accounts extending over a considerable period. The affidavit filed with the accounts on that date is in the common form in which all these affidavits exhibiting accounts are made, and with the accounts were filed a large number of vouchers, including receipts for money by certain doctors for attendance on the infant at times which are extremely material to the question that was at issue in the suit, and there is not the slightest doubt that these receipts were material documents that should have been disclosed in the affidavit of documents sworn in the suit on the 22nd August 1918. But I have no reason to believe on the materials before me that the Attorney, when he prepared the affidavit of the 22nd August 1918, knew of the existence of these vouchers, and although it is true that he prepared the affidavit of the 26th August 1918, I am satisfied on the materials before me that he did not go through the accounts or the vouchers that were filed in connection therewith. So far therefore, as the affidavit of the 22nd August is concerned, it is impossible, I think, for me to say that there has been such a prima facie case of misconduct or dishonourable conduct by the Attorney as would justify me in taking the steps which I am asked to take. The suit apparently was fixed for hearing on the 6th January of this year, although it was not actually heard until either the end of that month or early in February. A consultation apparently took place on the 3rd or 4th January, which was attended by the Attorney and by the two Counsel for the infant who appeared on her behalf at the trial. At this consultation the legal advisers of the infant came

to know from her guardian of the existence of these particular vouchers. The Attorney says that, acting on the advice of Counsel, as the case was fixed for the 6th January, he saw no necessity to make a supplemental affidavit of documents or to write and disclose the existence of these his opponent and give him an opportunity of inspecting them.

3. In the result I am not prepared to accede to the application that is made to me and the application will stand dismissed.

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