

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal in the matter of Thomas Newton, a Barrister, from the High Court of Judicature at Allahabad, North West Provinces of India; delivered 9th December, 1871.

Present :

SIR JAMES W. COLVILE.

SIR JOSEPH NAPIER.

SIR MONTAGUE SMITH.

SIR LAWRENCE PEEL.

THIS Appeal is brought by Mr. Thomas Newton, a Barrister-at-Law and an Advocate of the High Court of Judicature for the North-Western Provinces, against two Orders of that Court dated respectively the 13th and the 27th of August, 1870.

The particular terms of these Orders will be afterwards considered. It is sufficient for the present to state that they were made in the exercise of the power vested in the Court by the 8th section of the Letters Patent constituting it; and that by the latest of them Mr. Newton was suspended from practising as an Advocate of the Court until the further Order of the Court. Liberty was at the same time given to him, at the expiration of five years from the date of the Order, to apply for permission to resume practice, which, on the production of satisfactory proof of good conduct in the meantime (it was said), would be conceded to him. The effect, therefore, of the Order was to suspend Mr. Newton from practising as an Advocate of the Court,

certainly for five years, and possibly for a longer and indefinite period.

The following are the proceedings which resulted in this suspension :—

On the 19th of July, 1870, Mr. Bramly, the officiating Judge of Allyghur, forwarded to the High Court a Report of the proceedings in his Court on an application made by Mr. Newton on behalf of one Mrs. Saunders for letters of administration to the estate of her deceased son, Paterson Tandy Saunders, imputing improper conduct to Mr. Newton in that matter, and submitting to the Court whether such conduct was becoming a barrister. The precise nature of the charges against Mr. Newton will appear from the next proceeding.

On the receipt of this communication the High Court passed an Order, dated the 30th of July, 1870, calling upon Mr. Newton, on the 10th of August following, to answer the matters stated in Mr. Bramly's letter, and report "whereby it had been brought to the notice of the Court that he, Thomas Newton, had been guilty of grossly improper conduct in that, whilst acting as Counsel for Mrs. Saunders, on application to Mr. Bramly for letters of administration of the estate of her deceased son to be granted to her, he, well knowing the said Mrs. Saunders not to be the administratrix of the deceased Paterson Tandy Saunders' estate, obtained from the said Mrs. Saunders, and endorsed and put in circulation, a Government loan note for the sum of 3,000 rupees belonging to the estate of the said Paterson Tandy Saunders, and also certain other Government loan notes the property of the said estate, the said Government notes having been endorsed by Mrs. Saunders as administratrix, although the said Thomas Newton was aware that administration of the estate and effects of the said Paterson Tandy Saunders had not been granted to the said Mrs. Saunders; whereby also it had been brought to the notice of the Court that Mr. Thomas Newton had been guilty of grossly improper conduct in the discharge of his professional conduct as an Advocate in having wilfully deceived the said Mr. Bramly in the course of the hearing of the said application for

letters of administration, by informing him, on or about the 9th of July, 1870, that he was greatly surprised to hear that the said Paterson Tandy Saunders was illegitimate, whereas he, the said Thomas Newton, was well aware of the illegitimacy of the said Paterson Tandy Saunders, with some circumstances of aggravation concerning this latter charge which it is unnecessary to state."

Mr. Newton appeared before the Court under this Order, and made a verbal statement in explanation of both charges; evidence was taken, and a number of letters were produced in the course of the inquiry. On its termination the Court acquitted Mr. Newton of the second charge, but pronounced his explanation in respect of the first to be unsatisfactory, in terms which will be afterwards considered; and, having commented on his conduct in respect of various new matters which had come out in the course of the inquiry, and on the perusal of the letters produced, determined to take further proceedings against him. The result was that, on the 13th of August, 1870, an Order, being the first of those under Appeal, was drawn up in the following terms (Order, p. 2):—

"IN THE MATTER OF THOMAS NEWTON, AN ADVOCATE OF
THE COURT.

"It appearing to the Court that the above-mentioned Thomas Newton, an Advocate thereof, has been guilty of grossly improper conduct in the discharge of his professional duty as an Advocate in procuring his client, Catherine Saunders, to endorse as 'administratrix to Paterson Tandy Saunders' estate. Three Government Promissory Notes, of the aggregate value of 14,000 rupees, or thereabouts, viz., No. $\frac{000547}{0248}$ of 1854-1855, for 1,000 rupees; No. $\frac{001130}{1135}$ of 1856-1857, for 10,000 rupees, both bearing interest at 5 per cent., and No. $\frac{001735}{1316}$ of 1859-60, for 3,000 rupees, bearing interest at $(5\frac{1}{2})$ five and a half per cent., and belonging to the estate of Paterson Tandy Saunders, deceased, he, the said Thomas Newton, well knowing that the said Catherine Saunders was not the administratrix of such said estate, and in endorsing and putting in circulation one of the said notes, to wit, the Government promissory note No. $\frac{001735}{1316}$ of 1859-60, for the sum of 3,000 rupees, bearing interest at $5\frac{1}{2}$ per cent. And also in drafting a certain letter, dated on or about the 14th day of April, 1870, and in procuring the same to be copied by one Maria Hill, and signed and sent by the said Catherine Saunders to the firm of Gillanders, Arbuthnot,

and Co., of Calcutta, which said letter contained a statement or introduction in the words following, to wit:—‘ With reference to your kind offer to advance money for the coming indigo season, which statement or introduction was known to the said Thomas Newton to be false, and inserted with the intention of inducing the said firm of Gillanders, Arbuthnot, and Co. to advance for the manufacture of indigo certain moneys, and with the intention of procuring the said Catherine Saunders to pay to him, the said Thomas Newton, out of the moneys if and when so advanced a sum or sums of money on account of his fees as an advocate, and also in procuring employment as an advocate by means of a threat contained in a certain letter written and sent by the said Thomas Newton to the said Catherine Saunders, and dated on or about the 27th day of January, 1870, in the words following, to wit:—‘ If I do not appear for you, I fear the result, as I know all the particulars ; and recollect, if the answer is not properly put, you may lose all you have.’ And generally in his behaviour and conduct in connection with his employment as an advocate by the said Catherine Saunders at divers times in the months of January, February, March, April, May, June, and July, 1870. Now the said Thomas Newton is hereby ordered to attend at the sitting of this Court to be held at the Court House, Allahabad, on Saturday, the 27th day of August instant, at eleven of the clock in the forenoon, to show cause why he, the said Thomas Newton, should not be suspended from the practice of his profession as an advocate of this Court within the jurisdiction of this Court.”

Mr. Newton duly appeared to show cause against this Rule ; and, on the 27th of August, 1870, the Court gave final judgment. It acquitted Mr. Newton on all but the two first charges, viz., the imputed misconduct in inducing Mrs. Saunders to indorse the Government notes ; and the imputed misconduct in causing her to write the letter to Gillanders, Arbuthnot, and Co. ; and finding that these two charges had been wholly or in part established against him, passed the Order of Suspension, which is the second of those under Appeal.

Exception was taken at their Lordships’ Bar to this course of procedure. It was argued first, that the Order of the 30th of July, 1870, was objectionable, inasmuch as it prejudged the Appellant’s case, by assuming that he “ had been guilty of grossly improper conduct.” Their Lordships, however, are of opinion that, although this Order may not have been very happily worded, the true construction of it is, that Mr. Newton was thereby merely called upon to answer the matters stated in Mr. Bramly’s

letter and Report; such matters being, for the sake of convenience, reduced into the two formal charges of professional misconduct set forth in the Order; and that there was no intention on the part of the Court to prejudge the case, or to prevent Mr. Newton from having the full benefit of any explanation of the matters charged, which he might be able to offer. That this was so, is shown, their Lordships think, by the subsequent proceedings.

It was next objected, that the Judges improperly placed themselves in the anomalous position of being at once accusers and Judges; and that they ought to have committed the conduct of the proceedings against Mr. Newton to some third person. And in support of this latter proposition, the case of *Emerson v. The Judges of Newfoundland*, 8 Moore, P. C., was cited. In that case, whilst litigation between an attorney and his former client was still in some sort pending, though after payment under protest of the sum claimed, the Court, of its own mere motion, and not on the application of the opposite party, and without previously calling upon the attorney to explain his conduct, served him with a notice to show cause, within four days, why he should not be struck off the Rolls; refused to enlarge the Rule, and give him further time to prepare his defence; and on his failing to show cause within the four days, made the Rule absolute. It is obvious that several of the circumstances which induced this Committee to reverse that Order, do not exist in the present case. It is, however, undoubtedly true that, in delivering their Lordships' Judgment, Lord Kingsdown said, that an explanation should have been required; and that upon that explanation proving insufficient, "the proper course would have been that some person should have been instructed on behalf of the Crown, to apply to the Court for a Rule to show cause why further proceedings should not be taken."

Looking to the substance of the objection as applicable to this case, their Lordships think that there is a broad distinction between the charges originally brought by Mr. Bramly, and those made for the first time by the order of the 13th of August, 1870.

The High Courts in India exercise peculiar powers of superintendence and control over the subordinate Courts, and the proceedings therein. It was, their Lordships apprehend, in the regular course of practice that Mr. Bramly should make the report which he did make of proceedings in his own Court; and that he should complain, if he had ground of complaint, to the High Court of the supposed *mala praxis* of a practitioner over whom he had no direct power; but who, by virtue of being an advocate on the rolls of the High Court, had the right of appearing in the Lower Court; and their Lordships are of opinion that the High Court was perfectly justified in taking action on that report and complaint, by calling upon Mr. Newton to explain his conduct.

Whether it would not have acted more regularly if it had placed the conduct of the further proceedings against Mr. Newton in the hands of a third party is another question. But the Judges have stated that they had not the means of doing so, and their Lordships must accept that statement; and they are disposed to think that even on the authority of the case cited, the omission to do this is not a fatal objection to the subsequent proceedings.

Their Lordships, however, cannot but regret that the learned Judges of the High Court, acting on letters which came to their knowledge in the course of the first inquiry, should have thought fit, on the instant and without further inquiry, to frame new charges against Mr. Newton, and thus assume the functions of accuser and Judge. A very strong and clear case may arise, in which such a course would be justified. But the inconvenience of it is great; and the more manifest in the present case, inasmuch as the learned Judges found themselves obliged, in all but one instance, to abandon the charges which they themselves had on the first impression suggested and framed.

Their Lordships have deemed it right to make these observations on the questions of form which have been raised before them. To decide, however, such a case as this upon a question of form, would be far from satisfactory; and they therefore proceed to consider it upon its merits.

They are relieved from the necessity of con-

sidering any but the two charges upon which Mr. Newton was finally suspended. Of the second of the original charges he was acquitted on the first proceeding against him. Of all but two of the charges embraced in the order of the 13th of August, 1870, he was also acquitted, the Court being of opinion that though the conduct imputed to Mr. Newton by those charges may have been inconsistent with the rules and traditions which regulate the conduct of barristers in this country, and may not have been altogether unobjectionable even in India; it did not amount to that *mala praxis* on which the Court, having regard to the position and functions of an advocate in the North-West Provinces, could fairly found any proceeding of a penal character.

Their Lordships propose to deal first with the last of the two charges which the High Court thought were established against Mr. Newton, viz., that of having counselled Mrs. Saunders to write to Messrs. Gillanders, Arbuthnot, and Co., the letter of the 14th April 1870.

The facts admitted or proved concerning this letter are as follows :—

Mrs. Saunders was a native woman who, after cohabiting for several years with Mr. George Saunders, an indigo planter, in the Allyghur district, had been married by him some time before his death. The date of this marriage is now ascertained to have been the 17th October, 1856. Under the will of her deceased husband she seems to have been tenant for life of his indigo factory and other property. She had several children by him, born either before or after the marriage. One of them was a son, Paterson Tandy Saunders, who, under his father's will or otherwise, was possessed of several Government notes aggregating 14,000 rupees. Another was a daughter who had been married first to a person of the name of Nichterlein; and afterwards, after having been sued by him for breach of promise of marriage, to a Mr. Kelly. George Saunders had been indebted to Mr. Nichterlein's estate, which was in the hands of the Administrator-General. Mrs. Nichterlein before her second marriage, had made a gift of her share of this debt to her mother, or to her father's estate; but this gift

was disputed by her second husband; and the original debt, and the effect of Mrs. Nichterlein's gift appear to have been at the beginning of 1870, subjects of pending or contemplated litigation. Mrs. Saunders had likewise a cross claim against Nichterlein's estate for the proceeds of indigo of a former season.

On the 15th December, 1869, Paterson Tandy Saunders died, under age and unmarried. Shortly after his death, and on the 10th January, 1870, Mr. Newton, who had acted in at least one lawsuit on behalf of Mr. George Saunders, and appears to have kept up friendly relations with the family, wrote to Mrs. Saunders condoling with her on the death of her son, and volunteering, if he were not then retained to act for her in that matter, some advice concerning the litigation between her and the Administrator-General.

It further appears that she was then pressed for money, and that she required funds both for the purposes of the indigo factory, and for carrying on the suits pending or about to be commenced, and that in respect to the latter Mr. Newton was to receive certain fees. In these circumstances she, under the advice of Mr. Newton, wrote and sent to Messrs. Gillanders, Arbuthnot, and Co., merchants, of Calcutta, the following letter:—
 “Coel Factory, Allyghur, 14th April, 1870. Dear Sirs,—With reference to your kind offer to advance money for the coming indigo season, I write to inquire whether you would place at my disposal 30,000 rupees. On hearing from you I will commence my indigo advances.”

On the first inquiry, that of July, 1870, it came out on the evidence of Miss Hills, the governess and amanuensis of Mrs. Saunders, that if any money had been received from Gillanders, Arbuthnot, and Co., Mr. Newton's fees would have been paid.

Messrs. Gillander, Arbuthnot, and Co. however, declined to make any advance, and nothing came of the application to them.

The Judges of the High Court, nevertheless, saw fit to make this transaction matter of charge against Mr. Newton. The view of it which they took when they framed the charge in respect of it, which is contained in the Order of the 13th

of August, 1870, was thus stated by the acting Chief Justice:—"Again you induced an uneducated woman whom you were advising—whether wisely or unwisely matters not—to carry on certain litigation whereby you hoped to secure to yourself, what I must call under the circumstances the exorbitant fee of 3,800 rupees, to write to a Calcutta firm a letter drafted by you, containing a false assertion, whereby that firm was to be induced to advance to Mrs. Saunders, for the purposes of her Indigo Factory, certain moneys, and which moneys that firm would naturally consider was to be employed for the legitimate purposes of the Factory, whereas a large portion was to be paid to you for the purposes of carrying on litigation. It is abundantly clear that Gillanders, Arbuthnot, and Co. had never promised to advance moneys to Mrs. Saunders. That lady, from her manner to-day we cannot doubt had never heard their names before. The Court cannot but come to the conclusion that the statement made in the letter to Gillanders, Arbuthnot, and Co., as to their previous offer of assistance, was to your knowledge false, and that it was made for the purpose of obtaining money to pay your fees."

When, however, cause was shown against the rule, it came out that Mrs. Saunders so far from having never heard the names of Messrs. Gillanders, Arbuthnot, and Co., had been in correspondence with them at various times between 1866 and 1870, and had had various business transactions with them. It was further urged that the assumption that Gillanders, Arbuthnot, and Co. had offered to advance money to Mrs. Saunders if erroneous, had deceived, and could deceive nobody. And the High Court in its final Judgment expressed its willingness to assume "That it was from information given him by Mrs. Saunders, that he (Mr. Newton) introduced the passage relating to a former offer of advances." The gist therefore of the offence imputed to Mr. Newton in respect of this transaction is reduced to this, viz., that he, knowing that a portion of the moneys to be received from Gillanders, Arbuthnot, and Co. was to be employed in payment of his fees, drafted for his client a

letter calculated to induce that firm to believe that this advance was sought for a different purpose. It appears to their Lordships, after carefully considering all that is said of this matter in the final Judgment of the High Court, that the harsh view of the transaction there taken is not borne out by the facts, and that the drafting of the letter cannot be taken to constitute such grave professional misconduct as would justify any part of the severe sentence passed on Mr. Newton. The letter is an application in the most general terms from an Indigo planter for an advance of money for the coming season. It is clear that Mrs. Saunders did want moneys for the purposes of her factory. Their Lordships are not aware that such an application implies any undertaking that the money if advanced is to be earmarked; is not to be mixed with the general funds of the planter; and that no part of it is to be withdrawn, even temporarily, and applied to a purpose other than the cultivation or manufacture of Indigo. If the lender chooses, he can of course take any security or guarantee he may think necessary, in order to have the money set apart and applied entirely to the purpose of producing the crop on the security of which he makes the advance. But here the loan was declined. All that is established is that Mrs. Saunders pressed for money to provide both for carrying on her factory, and for the prosecution of a suit in which she may well have hoped to recover further funds, wrote this letter under Mr. Newton's dictation, meaning to apply part of the money in the first instance to the payment of his fees in the suit. Looking to all that is established in respect of this letter, and to the absence of any complaint on the part of any person concerning it, their Lordships are of opinion that the order against Mr. Newton cannot be maintained on this charge.

They next proceed to consider the graver charge against him of having induced or advised his client to indorse the Government notes as Administratrix of Paterson Tandy Saunders, when she was not entitled to assume that character. The facts proved which particularly relate to this transaction are as follows :—

On the 5th of April, 1870, Mrs. Saunders wrote to Mr. Newton inclosing one of the notes belonging to the estate of Paterson Tandy Saunders, and standing in his name, being a note for 10,000 rupees, and asking him to get the note renewed in her name, and broken up into ten notes for 1,000 rupees each. On the 9th of April, 1870, Mr. Newton wrote to Mrs. Saunders to the effect that he had spoken to Mr. Clarke, the Treasury officer at Allyghur, who had informed him that the note could not be renewed, nor interest paid upon it, until she had taken out administration to her son's estate. Thereupon Mr. Newton was instructed to make and did make, as Counsel for Mrs. Saunders in Mr. Bramly's Court, the application for letters of administration to the estate of her deceased son, describing him as a British subject who had died a minor and intestate. The date of this application was the 2nd of May. On the 6th of May, the day before the usual citations were issued by the Judge, Mr. Newton, who had advanced some small sums to Mrs. Saunders, received from her the security for 10,000 rupees, and two other Government notes standing in Paterson Tandy Saunders' name and part of his estate, all being indorsed by her as administratrix of that estate. At the same time she executed to him a receipt admitting the loan of 200 rupees, and he executed to her a receipt for the notes; being the two receipts at page 8 of the Appendix; and Miss Hills, in her account of the transaction, has deposed as follows: "Mr. Newton wrote the indorsements in pencil on the notes, and told me to write it small on the pencil marks; and I said at the time, 'Mrs. Saunders has not got the administratrixship, how can I write that?' and he said, 'Whatever blame there is will fall on me.' I said nothing more. I then wrote the indorsements. Mrs. Saunders signed them."

The indorsements were special to Mr. Newton. One of these notes, being one for 3,000 rupees, he afterwards specially indorsed to the Delhi Bank, and that Bank having demanded in Calcutta a renewal of it, inquiry was made concerning the fact of the grant of administration to Mrs.

Saunders, and so the transaction was brought to the notice of Mr. Bramly.

In the meantime a question had arisen in Mr. Bramly's Court touching the legitimacy of Paterson Tandy Saunders, and whether administration of his estate ought to be granted to Mrs. Saunders as his mother and next of kin, or to the Administrator-General as representing the Crown. It appears to be now certain that Paterson Tandy Saunders was born out of wedlock; but it is suggested on behalf of Mr. Newton that he might, nevertheless, as the son of a Scotchman retaining his domicile though resident in India, have been made legitimate *per subsequens matrimonium*.

Their Lordships think that it is fortunate for Mr. Newton that the determination of this case does not depend upon this point. If it appeared that Mr. Newton, knowing that Paterson Tandy Saunders was born out of wedlock, had applied for letters of administration as if the deceased had been born in wedlock, and pending that application had caused Mrs. Saunders to indorse these bills in the character of administratrix when she did not possess that character, and had attempted to raise money on them for Mrs. Saunders, in the expectation that he might ultimately succeed in showing that the status of Paterson Tandy Saunders was to be regulated by Scotch law, and that under that law, though born out of wedlock, he was legitimate, their Lordships are of opinion that his conduct would have been almost without excuse. For the proof of legitimacy and of the right of Mrs. Saunders to administration, and to a beneficial interest in any part of her son's estate, would in that case have depended on the determination of a disputable, and, possibly, very nice question, viz. :—Whether Mr. George Saunders, if his domicile of origin were Scotch, had not lost that domicile, and acquired an Indian domicile by settling as an indigo planter in India and there dying. In the cases of *Campbell v. Campbell*, and *Munro v. Munro*, one of the principal issues was whether the father of the person whose legitimacy was in question had retained his Scotch domicile. And in both cases the facts on which the issue was determined were very

different from those on which the like issue would have been tried in the case of Mr. Saunders.

But, in truth, this was not the defence of Mr. Newton in the High Court, nor need it be his defence here. The case which he made there was that when he first made the application for letters of administration, and when he caused Mrs. Saunders to indorse the notes, he did not know or believe that Paterson Tandy Saunders was born out of wedlock; and, therefore, had good reason to believe that in a few days she would possess the character which the indorsement attributed to her. And this fact has been found in his favour by the High Court. On the occasion of the first hearing the Acting Chief Justice says:—
 “When you procured your client to sign the promissory notes as administratrix, you doubtless were under the belief that she would at once get administration granted to her, and we, therefore, do not regard the act as so gravely criminal as it would otherwise have been. The opinion which we have formed on the second charge, which is made against you in the Judge’s report, that you possibly were not aware that any impediment existed to the obtaining of the administration by your client, enables us to assume in your favour that when you procured your client’s signature as administratrix, you believed that in a very short time she would be in a position legally to assume that character and make a good title to her son’s property.”

If the High Court had found upon sufficient evidence that Mr. Newton had advised Mrs. Saunders to make the indorsements as administration, knowing that she had no title, or a doubtful title, to obtain the grant of letters of administration, their Lordships would have felt that the sentence upon Mr. Newton ought to be confirmed. But the finding of the High Court negatives this knowledge; and upon this finding of the High Court, their Lordships feel that, although in this matter Mr. Newton has been guilty of a grave irregularity, which, in their opinion, is well deserving of censure, he has been acquitted of having acted with the *malus animus*, which is a necessary ingredient in every fraudulent act, and therefore that his conduct, though cen-

surable, does not bear the character which the heavy sentence passed upon him would stamp upon it. Their Lordships, therefore, however unwilling to weaken the hands of the Courts of India in repressing professional misconduct and maintaining a high standard of honour amongst those who are admitted to practise before them, have come to the conclusion that in this case it is their duty humbly to advise Her Majesty to allow the Appeal, and to reverse the last of the Orders against which it is brought, and that in lieu thereof to order that the rule to show cause of the 13th August, 1870, be discharged. They do not propose to recommend the reversal of that Order, inasmuch as such reversal would imply that no rule to show cause ought to have been made. They make no order or recommendation as to costs.