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## JOTTINGS.

*Sir Maurice Gwyer on fee to Juniors.*—The statement made by the Chief Justice of India on the 14th October relative to the payment of fee to juniors defines the code of duty to be observed by a Senior Advocate (corresponding to King's Counsel in England) and his junior in the case, where the fee payable to the latter bears to the fee payable to the former a proportion less than what the Federal Court Rules require. The rules of the Federal Court embody mainly the practice of the Supreme Court in England. Under those rules a Junior Advocate appearing with a Senior Advocate shall be entitled to a fee not less than one-third and not more than two-third of the fee marked on the brief of the senior, though in England a Junior Counsel will be allowed two-third of the fee of his leader and the taxing officer has no authority to give him less [*Re Park., Bott v. Chester*<sup>1</sup>]. A Senior Advocate may however ask for a 'special fee in addition to the 'brief fee,' provided he had announced that he will not accept any brief or any brief of a specified class without a special fee of a named amount, and where the brief is so marked, the Junior can claim his proper proportion of the ordinary fee only. The practice is to pay the fees marked on the brief at the time of delivering the brief. Marking a fee is at best only an offer of payment and hence Counsel may refuse to accept a brief if the fee is not actually paid. If he does not insist on such prior payment, the payment will become only a matter of honour and not of legal obligation having regard to the dual agency system operating with reference to the Federal Court, as in England, though in some circumstances the non-payment of fees to Counsel by an Agent in possession of his client's funds for that purpose may become a ground for the exercise of the Court's disciplinary jurisdiction.

The statement of Sir Maurice Gwyer deals essentially with the marking of a proper fee for the junior. There are two aspects of the matter, first, where a lower fee is marked on the brief, the junior

having agreed to accept the same, and second, where the marking is made in error or by oversight. The case which elicited the pronouncement of the Chief Justice of India on this matter belonged to the latter category but the learned Chief Justice has made it clear that that will make no difference in the result. It is *always* the duty of the junior to refuse to accept a brief not properly marked: it is equally the duty of the Senior Advocate to refuse to go into Court in such a case till a proper fee is marked on the junior's brief and also to bring to the notice of the Court through the Registrar the breach of the rules. Sir Maurice Gwyer has also pointed out that suitable action will be taken against any Agent who refuses to pay the proper fee or obtains a receipt for a fee not in fact paid. He has further declared that before a case is heard the fees should have been *legibly* marked on the brief and that the backsheets of the briefs so marked with Counsel's receipt upon it for the fees should be produced on taxation to the taxing master.

To what extent the principles postulated by the Chief Justice of India will be applicable and can be applied to the members of the Bar in the High Court and in the mofussil is a matter not susceptible of an easy solution. There is no recognised division of the Bar here into senior advocates and junior advocates; nor is there any rule rendering it obligatory on any particular class of advocates to appear always with a junior. One of the rules of professional etiquette formulated by our Bar Council no doubt lays down that "in every case in which an advocate of over ten years' standing receives a fee of not less than Rs. 500/, he is expected to be instructed by a junior advocate, pleader, or solicitor"; but even if strictly observed the rule will not be of much help to juniors. Cases where an advocate is paid more than Rs. 500/- will not be considerable, but that apart, the rule does not prescribe the proportion which the junior's fee shall bear to that of the senior normally. Mr. Justice Sundara Aiyar's suggestion in his Lectures on Professional Ethics that the fixing of the proportion will not result in any real advantage to the junior rests mainly on an apprehension that the client may not care to engage a junior at all or that he may go in for the services of the seniormost among the juniors rather than engage two advocates. The apprehension now stands considerably dispelled in consequence of the rule enunciated by the Bar Council that a senior should be instructed by a junior advocate under certain circumstances. The other reason mentioned by Mr. Justice Sundara Aiyar will affect the position in a comparatively small degree only, for it is doubtful whether a client will prefer to be without the services of a senior with an acknowledged reputation and go in for a junior of some standing merely because the senior insists on being instructed by a junior. It is however

gratifying to note that though the code of duty propounded by Sir Maurice Gwyer was directed to the members of the Federal Bar, it was accepted and acted upon, the moment he read the statement, by a leading member of our own Bar, by making the client agree to pay his junior in the case the fee which would be proper according to the standards laid down by the Chief Justice of India.

*Tenure of Office of High Court Judges.*—Anent the announcement extending the term of office of Mr. Justice Venkataramana Rao, it may be interesting to recall the changes that have been progressively made in the rules relating to the tenure of High Court Judges in India. Originally all Judges held office during pleasure of the Crown and there was no prescribed age limit for their retirement. The English practice of those days permitting a Judge to continue in office till he himself felt that he should retire was evidently followed in India. Sir George Knox and Sir P. C. Banerjee among others constitute illustrious instances of Judges who continued on the Bench for a long time after passing their three score years with unimpaired vigour and unabated reputation. Sir George Knox's record was absolutely unique in the annals of public service in India. He was a Judge of the High Court for more than 30 years and remarkably enough, if the report be true, had availed himself of only a day's leave throughout his service, that day being his wedding day. Sir P. C. Banerjee also continued on the Bench for well nigh 30 years, retiring in his 75th year. In England there was the outstanding example afforded by Lord Macnaghten, some of whose scintillating judgments were delivered at the Privy Council after he had attained his 80th year, and in recent times there was the case of Mr. Justice Avory who continued on the Bench even after passing his 83rd year. These can however be regarded only as remarkable exceptions. For the first time by his Despatch of the 27th April 1899—No. 18 Judicial, the Secretary of State for India in Council intimated to the Government of India that it had been decided that every Chief Justice or Judge appointed to a High Court in India will be called upon to resign his office on attaining the sixtieth year, that notice to this effect should be given to a Judge at the time of appointment and that his acceptance of the condition was to be obtained and duly recorded. The Government of India was also informed that no relaxation of the rule would be practicable. Even after the Government of India Act, 1915, no statutory age limit existed but such a limit was in practice enforced by taking an undertaking from the Judges at the time of their appointment to retire on attainment of the sixtieth year. In certain cases however Government has been pleased for special reasons to continue in office Judges who shall have otherwise to retire in accordance with such undertaking. In our own High Court Mr. Justice Bhashyam Iyengar formerly,

Mr. Justice Seshagiri Aiyar in 1920 and now Mr. Justice Venkataramana Rao had such extensions granted. It has sometimes been suggested that the prospect of an extension of the tenure of Judges at the choice of Government might react on the complete independence of the judiciary from the executive. At the same time it may be noted that a compulsory retirement of Judges on their completing sixty years will sometimes result in the services of Judges possessing talents and judicial qualities of an outstanding character being altogether lost. In the case of Judges of the Federal Court the age-limit is fixed at 65 and there can be no justification for the imposition of a different limit for the High Court unless it be that the work of the Federal Court is not expected to be so taxing as work on the Bench of the High Courts. In England there is always the possibility of the services of distinguished judges being utilised even after retirement by their being appointed to the Judicial Committee or being elevated to the peerage whereby they would become eligible to participate in the judicial business of the House of Lords. In India the tenure of Judges of the High Court falls to be governed now by S. 220 of the Government of India Act, 1935. The Judges hold office during good behaviour and can serve till they attain 60 years. Extension of term can lend itself to criticism only where it is courted but not where it results from an appreciation of the judicial qualities of a judge. The limit though negative being however statutory, no question of extension of the term of office of a judge will receive favourable consideration where the appointment has been made after the coming into operation of the Government of India Act, 1935. In the case of Judges appointed before the commencement of Part III of the Act, though they shall be deemed to be appointed under that Part, yet their term of office will not be affected by the Act [S. 231]. And if the proposals relating to the expansion of the powers and jurisdiction of the Federal Court materialise it may well be that a certain portion of the personnel of the Federal Bench will be recruited from judges of the High Courts having distinguished records of service, and in that manner the services of such Judges from the Bench will continue to be available till they attain 65 years.