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SIR P. S. SIVASWAMI AIYAR.

We offer our hearty felicitations to Sir P. S. Sivaswami Aiyar on the attainment of his eighty-first birth-day. To the advocates of Madras the occasion is a particularly memorable one. Sir Sivaswami Aiyar is one of the founder members of the Madras Advocates' Association and has throughout his whole professional and public life exhibited a standard of integrity and adherence to principles seldom surpassed. To the junior members of the Bar, Sir Sivaswami Aiyar may not be a familiar figure as he left the Bar in 1912 in order to accept the high office of Executive Councillor. He is however a person who in many respects is a pattern and an exemplar to the profession. On retirement from office in 1917 (he was but 53 then) he finally put aside the idea of reverting to the Bar of which he had been such a distinguished ornament and decided to devote himself to public service. As a lawyer he had followed the highest ideals of professional etiquette and it was a fitting tribute which Sir S. Varadachariar paid when on the occasion of his taking leave of the Madras Bar he recounted one or two incidents from Sir P. S. Sivaswami Aiyar's professional life characterising them as "the high-water mark of professional idealism". In the words of the learned Chief Justice, while unveiling the portrait of Sir P. S. Sivaswami Aiyar at the premises of the Advocates' Association: " The Madras Bar has produced many great men but none can be deemed to be more deserving of a niche in the hall of fame than Sir P. S. Sivaswami Aiyar ".

Sir P. S. Sivaswami Aiyar's public activities are too numerous to be recounted. As the Vice-Chancellor of two Universities, as a member of the Legislative Assembly at Delhi, and as a politician he has rendered yeoman service to the country. Simple and unostentatious he has always shunned the limelight of publicity. His achievements though not spectacular have an abiding value. He has been an ornament to the cultured society of Madras, a fine blend of eastern and western culture. His Kamala Lectures on the Evolution of Hindu Moral Ideals and his book on the Indian Constitution are marked by deep thought, keen insight and an accurate sense of values.

Sir Sivaswami Aiyar's life has been a well-regulated life in every way. He never rushed into any action without deep thought. He never sacrificed a principle. His benefactions have been considerable and striking and well conceived. He planned early and lived up to the plan.

Sir Sivaswami Aiyar has been associated with the Madras Law Journal almost from the beginning. It was started in 1891, and he joined the editorial board in 1893. His editorial comments on current legal events, his critical examination of decisions and his translations from original Sanskrit authorities have all been of the greatest value to the profession.

Sir Sivaswami Aiyar is still healthy and strong as few of his age are. It is our fervent prayer that he live long and attain the Vedic length of years and serve the country by his disinterested service and even more by his example.

AS THE BAR VIEWS IT.

The Bar feels that its interests have failed on many matters to receive adequate consideration at the hands of the authorities and that its wishes have not been taken due note of. It is proposed to refer here to one or two of such matters.

Recruitment to the High Court Bench.

Recruitment to the High Court Bench is a matter of the greatest importance from the point of view of the Bar. It has often been claimed that the judiciary in England stands pre-eminent in the world and that the English judicial system affords a model for others to emulate. The English Bar has, throughout its history, been famous for its independence and integrity and recruitment to the judiciary has been made exclusively from its ranks. In India the judiciary is no doubt modelled on the English system, but for certain reasons appointments to the Bench have continued to be made, in spite of the passing of more than eighty years and the changed condition of things since the establishment of the High Courts, not exclusively from the ranks of the Bar. Till the passing of the Government of India Act, 1935, one-third of the sanctioned strength of the Bench was to be chosen from judicial officers belonging to the Indian Civil Service. In the selection of the remaining two-thirds also it was not an unfamiliar practice to take on to the High Court Bench a member or two from the ranks of the Provincial Judicial Service. When the Government of India Bill was before the Joint Select Committee of Parliament, it was represented that the fixing by statute of any proportion of Judges as to be recruited from any particular class imparted unnecessary rigidity and was undesirable and that Judges should be selected from the ranks of the Bar only. The latter point was not conceded, though the Report refers in para. 331 to the existence of a feeling against recruitment of Judges from outside the Bar. Anyway one would have expected that with the growth of a strong and independent Bar in each province and the assimilation of English ideals and traditions and practice, there will at any rate be a progressive increase in the proportion of Judges taken from the ranks of the Bar. In Madras a different result seems to have now been reached. In the latter half of 1937 the proportion of Judges who had gone to the Bench straight from the Bar to the other Judges was 8: 6; in 1941, when two additional Judges were appointed the proportion was 8: 8; and at the present moment it is 6: 10. In the circumstances is it too much to ask that in regard to appointments to the Bench in future at least selection should be only from the Bar and not from outside the profession?

State of the Lists.

Another matter that might be mentioned is as regards the desirability of publishing at the commencement of every term statistics concerning the state of the lists in the High Court. In England it seems to be done. Here also it is understood that such statistics are compiled for official purposes. No extra effort or expense is therefore likely to be involved in publishing in the High Court notice-boards such statistics. Such publication will be of great assistance to the Bar and will enable them to adjust their work. It will help the advocates to decide their own career in reference to it and above all it is desirable that the public should have correct figures in regard to litigation rather than be allowed to make comments on figures which may be inaccurate, or incomplete or perhaps conjectural in any degree.

JUDGES' SITTINGS.

The sittings of Judges is essentially a matter of administrative detail. In some courts the sittings seem to be announced as for a term; in others they are varied from time to time. It will certainly be undesirable to shift Judges from one class of work to another at very short intervals. But will not their continued retention in a particular class of work for long periods tend to produce a sense of monotony, and exclusion of some Judges from a class of work altogether? Will not a rotation of Judges not frequently but at convenient intervals avoid such a result? This is not a mere imaginative picture of people who have no experience. Judges who have been in the admission Court have been known to complain of the frequent shifting of attention from one case to another every day over long periods. Periodical shifting of the kind of work that a Judge has to do may keep his mind refreshed and fit, efficiently to perform its task.

RELATIONSHIP BETWEEN THE BENCH AND THE BAR.

We should like to invite the attention of our readers to the judgment of the Lahore High Court in *Hakumat Rai* v. *King-Emperor*[1]. It contains a lucid exposition by Din Mahomed, J., of the principles that should govern the relationship between the Court and the lawyers practising before it. The principles themselves are well-known but a remembrance of them in actual practice will be highly helpful, particularly where a slight tact, a little tolerance or the possession of a sense of humour either on the one side or on the other would ease a situation which otherwise may get tense. Approving the statements regarding this matter in Oswald and Wareville, the learned Judge points out that while "an over subservient Bar would be one of the greatest misfortunes that could happen in the administration of justice", at the same time, it should be remembered that a lawyer "should at all times pay deferential respect to the Judge and scrupulously observe the decorum of the court room". The learned Judge pertinently remarks that while it is true that a lawyer should always conduct himself properly in court and exert his best at all times to maintain the dignity of the court, "the court has also a reciprocal duty to perform and should be not only not discourteous to a lawyer but should also try to maintain his respect in the eyes of his clients and the general public with whom he has to deal in his professional capacity. Hypersensitiveness on the one side or rudeness on the other must be avoided at all costs. . . . . Mutual adjustment and not mutual antagonism should be the end in view on both sides, eliminating all ideas either of domination or of servility". As pointed out by Lord Atkin in *Debi Prasad Sharma* v. *Emperor*[2], in another context "judicial personages *can afford* not to be too sensitive" (italics ours). The rule framed by the American Bar is commended by Din Mahomed, J., in this respect, namely, that "a self-respecting independence in the discharge of professional duty, without denial or diminution of the courtesy and respect due to the Judge's station is the only proper foundation for cordial personal and official relations between Bench and Bar". The statement in Mr. Justice Sundara Aiyar's treatise on Professional Ethics at p. 99—"Without failing in respect to the Bench it is the duty of the members of the Bar to assert their just rights to be heard by the tribunal before which they are practising. They should be fearless and independent in the discharge of their duties: they would be perfectly right in protesting against irregular procedure on the part of any Judge, and if the advocate is improperly checked or found fault with . . he should vindicate the independence of the Bar" —is approved.

The observations of the learned Judge on two other matters may also be noted. On the question whether a remark made by a pleader in court as "an

1. I.L.R. (1943) Lah. 791. 2. (1943) 2 M.L.J. 568, 570 (P.C.).

aside" to a brother member of the Bar which the Judge happened to overhear can be made the subject of an offence under section 228, Indian Penal Code, it is stated that "there is ample authority for the proposition that if a remark is not addressed to a court, however rude or vulgar it may be, it cannot be made the subject of an offence under section 228, even if the court happens to overhear it". How far a lawyer is an officer of court is also elucidated. According to the learned Judge, a lawyer is no doubt subordinate to the courts in so far as he is subject to their disciplinary authority, but all the same he is not a subordinate officer of the court like any other ministerial officer of the court; it is largely through the labours of counsel that Judges are able to dispatch the business of the court and to degrade him to the level of other ministerial officers working in the court is an entirely erroneous conception of the position he occupies.

In the case in question, in the course of a trial, a somewhat searching cross-examination had been made by the pleader for the accused, one of the prosecution witnesses having made certain prevaricating statements. The cross-examination was not however of inordinate length and the questions put were found to be not only relevant but most material. In adjourning the case the Magistrate made a remark to the effect that unnecessary questions had been put by the pleader who took exception by saying that he "resented" it. On the Magistrate requiring the pleader to reduce his protest in writing, which the pleader considered unnecessary, according to the Magistrate the pleader also observed that the Magistrate's remark was "improper". The Magistrate demanded an apology which was refused. The Magistrate directed the "detention in custody of the pleader" and took up another case. In the meanwhile a relative of the pleader and a respectable member of the place "possibly astounded at the order made against" the pleader sought to enter the court but was maltreated by the chaprasi. The pleader thereupon went forward to the Magistrate and protested against the treatment meted out to the gentleman. The Magistrate took this to be an interruption of his work, refused to listen to the pleader and directed him to resume his seat. The pleader remarked that that was "strange". Certain members of the Bar with a view to remove the misunderstanding approached both sides but with no effect. In reply to the lawyers who were urging him to withdraw the expressions he had used, the pleader remarked that he would not do so as he would like to make it "a test case". The Magistrate happened to hear the remark and at the end of the day called upon the pleader to show cause why he should not be proceeded against under section 228, Penal Code and in that connection examined him on all the points that in his view constituted contempt of court. At the conclusion of the examination and without recording any evidence the Magistrate wrote a judgment holding that the pleader had committed contempt in respect of the words used by him and sentenced him to pay a fine of Rs. 100. On appeal to the Lahore High Court the conviction was set aside and it was held that no contempt had been committed.

SIR WILLIAM HOLDSWORTH.

The death of Sir William Holdsworth removes from the legal firmament in England a star of outstanding scholastic brilliance. His monumental History of English Laws bringing up to date as it were the efforts of Pollock and Maitland in that direction in regard to the earlier centuries, was a work of no mean achievement. As Vinerian Professor of English Law at the Oxford University since 1922, as Reader in Constitutional Law and Legal History to the Inns of Court since 1937, as a systematic contributor to the columns of the Law Quarterly Review, he has achieved in the academic sphere a measure of renown which few could equal. Honours came to him fast and from far and wide. He became King's Counsel in 1920, and was a Bencher of Lincoln's Inn. He was elected a Fellow of the British Academy in 1922, and

was awarded the Ames Medal of the Harvard University in 1927, and the Swiney Prize of the Royal Society of Arts in 1934.

To Indians his name will be particularly familiar because of his membership of the Butler Committee on Indian States in 1928, and the Donoughmore Committee on Ministers' Powers in Ceylon, in 1930. Students of law in India will always remember him as Tagore Law Lecturer, Calcutta University, in 1938.

His death coming soon after that of Sir Frederick Pollock will cause a void in the ranks of jurists in England who had carved out a commanding position by reason of their great scholarship and erudition that cannot be easily filled up.

JOTTINGS AND CUTTINGS.

UNVEILING OF SIR ABDUR RAHMAN'S PORTRAIT.

A pleasant function took place, when Sir Lionel Leach, the Chief Justice, unveiled on Friday the 21st January a portrait of Justice Sir Abdur Rahman at the High Court in the presence of a large gathering of Judges and advocates. The portrait was the gift of the Madras Advocates' Association to the High Court to be hung in the Judges' portrait gallery.

In requesting His Lordship, the Chief Justice, to unveil the portrait, Mr. T. V. Muthukrishna Aiyar, the President of the Association, said:

"My Lord the Chief Justice,

On behalf of the Advocates' Association I have much pleasure in requesting your Lordship to be so good as to accept and to unveil the portrait of the Hon'ble Sir Abdur Rahman. Only the other day when the members of the Bar of this Court assembled together to wish that learned Judge godspeed in his new environments I spoke of his many qualities that endeared him to the profession here. I do not therefore propose this evening to dilate on them. I shall content myself with saying that when about a year ago he had to leave us mainly for personal and domestic reasons it was with genuine regret that the members of the Bar parted company with him. His fearless independence, his desire to get into the details of every case that came before him and his evident anxiety conscientiously to render justice between man and man were some of his outstanding qualities. Above all, his unfailing courtesy and his firm conviction that the members of the Bar were collaborators with him in the administration of justice made him one of us. Outside the precincts of the Court he was ever affable and social. He was quick to form friendship and had a happy knack of retaining it. It is some consolation to us however that this portrait of his will constantly remind us of the five happy years we spent with him.

I now request your Lordship to be so good as to unveil the portrait."

In unveiling the portrait, The Hon'ble the Chief Justice said:—

"Mr. President,

This is the sixth occasion on which it has been my pleasant duty to unveil the portrait of a Judge of this Court. If it goes on at this rate I think we will have to build a separate Judges' portrait gallery as there will not be sufficient room on the walls. Past experience has told me that there is really no need for a speech at the unveiling, as everything that is necessary is said by the president at the beginning and it is rather difficult to go on repeating.

I am sure you will agree that the photographer—it is not a painting, it is an enlarged photograph—has caught the learned Judge in that most charming smile which is so characteristic of him. Mr. Justice Abdur Rahman was appointed a Judge of this Court to fill the vacancy caused by the retirement of Mr. Justice Cornish. His appointment was gazetted at the same time as my appointment as the Chief Justice. I was sworn in during the long vacation and my first duty in the term was to swear in Mr. Justice Abdur Rahman and it was the first occasion on which we had the ceremonial which is now associated with the swearing in of permanent Judges of this Court.

Mr. Justice Abdur Rahman had a distinguished career before his appointment as a Judge. He did not confine his activities to the material side of his profession. He has done a great deal of good work outside it. He was from 1927 to 1934 the Dean of the Faculty of Law at the Delhi University and from 1930 to 1934, he was the Vice-Chancellor of that University. His services were recognised by His Majesty in 1934

when the honour of knighthood was conferred upon him and the University conferred upon him its degree of Doctor of Laws.

As you are all aware, Mr. Justice Abdur Rahman's transfer from this Court to Lahore High Court was only because the climate of Madras did not suit him. I know he regretted his transfer as we all did. Mr. Justice Abdur Rahman was in the true sense of the word a gentleman and as you all know, Lord Halsbury said that that is the first qualification for promotion to the Bench. He had the other requisite qualifications, namely, a sense of justice and an extensive knowledge of law. The statement of Coke that a good Judge judges according to what is right and good and prefers equity to strict law aptly describes the judicial outlook of Mr. Justice Abdur Rahman. As you know, the Bench over which I preside takes in its list all appeals from judgments of Judges of this Court and I can say that I have had to consider many of the judgments of Mr. Justice Abdur Rahman in appeals filed under the Letters Patent. Therefore I can speak with an intimate knowledge of his work, and I may say that I formed a high opinion of the care and learning which he brought to bear on his pronouncements.

His transfer to Lahore meant a great loss to this Presidency, but he is now dispensing the same measure of justice in a climate more suitable to him than the climate of Madras and we wish him every good wish. At the same time I cannot avoid saying that I would sooner have him here than his photograph, but as we cannot have him here we must be content with his photograph which will always remind us, if reminder is necessary, of his presence among us as a great Judge with a spirit of kindliness and one who always strove to do justice and succeeded.

I will now perform the pleasant duty of unveiling his portrait."

Autrefois Acquit.—What was stated to be an entirely new point on the law of *"autrefois acquit"* came before the Recorder of Bournemouth on 4th October (*The Times*, 5th October) in *R.* v. *C. R. Browne*. The accused had pleaded "Not guilty" to charges of obtaining by false pretences two separate sums of £5 from branches of the Midland Bank. He had previously been committed at the Hampshire Quarter Sessions last April of two similar offences, and had then admitted and had had taken into consideration the two offences with which he was now charged, together with five others. He received twenty months' imprisonment for all these offences at the April trial, but on appeal both the conviction and the sentence were quashed. At the trial at Bournemouth counsel for the accused argued that because there had been a previous conviction, and alternatively because there had been a previous acquittal on the two charges now before the Court, the accused could not be put in peril of a conviction again on the same charges. A jury was accordingly empanelled to try these special pleas, and in his direction to them the learned Recorder stated that it was a principle of law that a man could not be put in peril twice in respect of the same offence. The Court of Criminal Appeal had said nothing with regard to the outstanding charges, and it was unnecessary that they should, because the sentence which they quashed was for the two offences of which he had been found guilty at Winchester. It was assumed that that sentence was increased by the taking into account of the outstanding charges, but the outstanding charges were only taken into account as subsidiary matters, and went by the board entirely when the sentence was quashed. The Recorder advised the jury that they ought to find that, whether the plea was one of *autrefois convict* or *autrofois acquit*, the defence had failed to make out the plea on either of those two charges for which the defendant was indicted. The jury nevertheless found that the accused had been previously convicted. The rule that "a man may not be put twice in peril for the same offence" is "an established rule of the common law" (2 Hawk. c. 35). The jury in the present case came to the conclusion that there had been a previous conviction, but that cannot be right, as the power of a court to take into consideration other offences admitted by the accused relates only to sentence and not to conviction. He was never convicted, nor having admitted the offence, could he be said to have been acquitted. On the other hand, he certainly was in peril of imprisonment in respect of the offences, which were taken into consideration in awarding the sentence on the conviction which was subsequently quashed, but he was put in peril by his own voluntary act, a fact which seems to take the case out of the common law rule. —*S.J.*, 1943, *p.* 366.