which that Tribunal should have passed in this case, namely, that permission be granted to the appellant to discharge ninety six temporary workmen. In the circumstances of this case, we think that the parties must bear their own costs throughout.

Appeal allowed.

IN RE: SHRI 'M', AN ADVOCATE OF THE SUPREME COURT OF INDIA.

[JAGANNADHADAS, VENKATARAMA AYYAR and B. P. SINHA, JJ.]

Professional Misconduct—Appropriation by Advocate on record of Surplus Paper Book Cost towards fees—Legality—Standard of professional conduct—Trustee—Lien—Procedure—Supreme Court Rules, 1950, (as amended), O. IV, r. 30.

Facts. Shri 'M', while an Agent of the Supreme Court, filed a criminal appeal and later on became an Advocate on record under the new rules of the Court which came into force on January 26, 1954. He received a sum of Rs. 750 from his client for costs of printing of the Paper Book and deposited the same in the Punjab High Court from whose decision the appeal arose. There was a surplus of Rs. 242-1-9 pies. He withdrew the amount without informing his client, made no demand of any fees as being due to him, did not lodge any bill for taxation and appropriated the sum towards his alleged fees. The client came to know of the withdrawal from the Punjab High Court and when he confronted Shri 'M' with the letter from that court Shri 'M', who had denied the receipt of the surplus amount, could no longer do so and stated that he was entitled to a reasonable fee, had a lien therefor and had appropriated the amount.

Held, that on the facts found the Advocate was guilty of professional misconduct and must be suspended from practice.

The high standard of professional conduct contemplated by rule 30 of Order IV of the Supreme Court Rules virtually made an Advocate a trustee for his client in respect of all his moneys which came into his hands except what was specifically ear-marked for fees. Any lien which he might have under the rules would not justify the appropriation of any such money towards his fees without the express or implied consent of the client or an order of Court.

Nor could an Advocate, in absence of a prior settlement of fees, constitute himself a judge in his own cause and determine what

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would be reasonable fees payable to him. It might be that in certain circumstances he was entitled to exercise a lien, but he had to give reasonable intimation both of the fact of moneys having come into his hands and of the exercise of his lien over them until his account was settled.

The principle of trusteeship applied with greater force where the surplus money, as in the instant case, was meant for a specific purpose, it being well settled that in respect of such a money there could be no lien either under the common law or the statute.

That in a case such as the present, the standard applicable to an Agent under rules 31 and 32 of the old rules would be the same.

In the matter of Mr. G., a Senior Advocate of the Supreme Court, ([1955] 1 S.C.R. 490), followed.

Held further, that as the Supreme Court Rules did not specifically prescribe any procedure for cases coming under r. 30 of O. IV of the Rules, in the instant case the procedure substantially as in a warrant case under s. 251-A (as amended) of the Code of Criminal Procedure should be adopted as far as possible subject to such just and expedient modifications as accorded with the rules of natural justice.

DISCIPLINARY JURISDICTION.

In the matter of summons under Order 4, Rule 30 of the Supreme Court Rules, 1950 (as amended).

Purshottam Tricumdas, B. B. Tawakley, G. C. Mathur and *K. P. Gupta*, for the Advocate.

M. C. Setalvad, Attorney-General for India, and *B. Sen* Assisting the Court.

1956. October 17. The Judgment of the Court was delivered by

JAGANNADHADAS J.—These proceedings before us arise out of a summons under Order IV, rule 30 of the Supreme Court Rules, 1950, (as amended) issued to Shri 'M', who was originally an Agent of this Court and became an "Advocate on record" under the new rules of this Court which came into force on January 26, 1954. The summons issued calls upon him to show cause why disciplinary action should not be taken against him. It arises on a complaint against him made to the Registrar of this Court by one Attar Singh on December 5, 1955. The substance of that

complaint is as follows. The complainant was the appellant in Criminal Appeal No. 12 of 1950 in this Court. Shri 'M' acted for him in connection with the appeal. A sum of Rs. 750 was supplied to Shri 'M' for the printing charges therein. This sum was deposited in due course in the Punjab High Court from whose judgment the appeal arose. There remained an unspent balance of Rs. 242-1-9 out of it. Shri 'M' withdrew that money from the High Court without the authority and the knowledge of the complainant. When, later on, the complainant became aware of it, he demanded refund of the same. Shri 'M' first denied receipt of the money, and thereafter refused to refund it (claiming, as appears later in the evidence, to have appropriated it towards the balance of fees said to be due to him). This complaint was in the usual course put up before his Lordship the Chief Justice who directed the Chamber-Judge, our learned brother, Bhagwati, J., to enquire into it. Notices were issued thereupon both to Shri 'M' and the complainant as well as to three other Advocates of this Court who happened to be associated with that appeal. The enquiry before the learned Judge was fairly elaborate. Thereat, certain conclusions were reached on the basis of which charges were framed against Shri 'M'. The present summons to Shri 'M' is with reference to those charges and this Bench has been constituted as a Special Bench under Order IV, rule 30 of the Supreme Court Rules to deal with this matter. The learned Attorney-General has appeared, on notice, to assist the Court.

The rules of this Court do not provide for the procedure to be adopted in such cases, except to say that "the Court shall issue, in the first instance, a summons returnable before the Court or before a Special Bench to be constituted by the Chief Justice to show cause against specified matters". There have been no precedents of this Court so far, to indicate the exact procedure to be adopted. The only previous case of professional misconduct on summons under Order IV, rule 30 of the Supreme Court Rules which this Court had occasion to deal with, was that reported

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in *In the matter of Mr. 'G', a Senior Advocate of the Supreme Court*(1). But that was a case in which action had been duly taken against the Advocate by the Bombay High Court in connection with alleged misconduct arising within its jurisdiction. The summons issued to the Advocate by this Court was with reference to the same matter but as regards his position as a Supreme Court Advocate. (We understand that there were also two such cases in the Federal Court). In the normal course, and in view of the rather elaborate enquiry which was held by our learned brother, Bhagwati J., we should have been content to confine ourselves to a mere hearing of arguments on the material recorded in that enquiry and come to our own conclusions with reference to the charges set out in the summons. But at the outset, objection was taken to our adopting such a course. The validity of the summons was questioned. It was said that under Order IV, rule 30 of the Supreme Court Rules, the enquiry was to follow a summons which is contemplated as the first step therein. It was also said that the enquiry having been in Chambers, the statements of witnesses were not on oath. The learned Attorney-General was also inclined to think that there was force in the objections raised. After discussion in court with the Advocates on both sides we felt it desirable to refrain from any decision on the preliminary objection and to give the Agent complained against, the opportunity of a fresh enquiry in open Court on formulated charges. We accordingly directed by our orders dated May 9, 1956, and September 13, 1956, that evidence should be taken afresh before us and that procedure, substantially as in a warrant case, should be adopted as far as possible under the amended section 251-A of the Criminal Procedure Code, subject to such modifications therein as may appear to be just and expedient in the circumstances of this case and without affecting the rules of natural justice. We treated the enquiry in Chambers as a preliminary enquiry and heard arguments on both sides with reference to the matter of that enquiry. We

(1) [1955] 1 S.C.R. 490.

came to the conclusion that this was not a case for discharge at that stage. We accordingly reframed the charges framed by our learned brother, Bhagwati J., and added a fresh charge. No objection has been taken to this course. But it is as well to mention that, in our opinion, the terms of Order IV, rule 30 of the Supreme Court Rules do not preclude us from adopting this course, including the reframing of, or adding to, the charges specified in the original summons, where the material at the preliminary enquiry justifies the same. The fresh enquiry before us in Court has proceeded with reference to the following charges as reframed and added to by us.

"You, 'M', once an Agent of this Court and thereafter an Advocate on record of this Court, are guilty of professional misconduct in that,

Firstly, you having deposited a sum of Rs. 750 in the Punjab High Court towards the printing charges of the appeal paper book in Supreme Court Appeal No. 12 of 1950 on behalf of your client, Attar Singh, and having the custody of the receipt issued by the Punjab High Court in respect of the same, applied for and obtained from the Punjab High Court without the authority of your client Attar Singh the balance of Rs. 242-1-9 in the month of March, 1952.

Secondly, that after obtaining the said sum of Rs. 242-1-9 as above from the Punjab High Court you retained that sum with you and did not return any part thereof to your client, Attar Singh, even though he frequently called upon you to do so and even though you are not entitled to recover from him by way of your professional charges anything beyond a sum of Rs 72-15-6 by reason of your having agreed to receive a sum of only Rs. 100 towards your fee and no more.

Thirdly, that you after receiving the sum of Rs. 242-1-9 in March 1952, retained the said sum, without any intimation to your client Attar Singh and without claiming any amount as due from him by way of fees to you and without lodging a bill for taxation against him for a period of over three years".

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The undisputed facts are as follows. The complainant, Attar Singh, engaged a Senior Advocate of this Court, Sardar Raghbir Singh, who associated with himself Shri M. K. Madan as the Junior Advocate and Shri 'M' as the Agent in the case. Criminal Appeal No. 12 of 1950 was filed by all these three gentlemen with reference to a Vakalatnama executed by the complainant, Attar Singh, in favour of the Agent, Shri 'M'. The complainant had to deposit a sum of Rs. 750 in the Punjab High Court for the preparation of the printed record in the appeal. Shri 'M' was entrusted with a bank draft for the said amount. He deposited it in the Punjab High Court. A receipt for the amount was issued in Shri 'M's name. The printed record in the case was made ready and dispatched to the Supreme Court about the end of December, 1951. Thereafter Shri 'M' applied to the High Court for refund of the unspent balance. He received from the High Court in March, 1952, the sum of Rs. 242-1-9 as the unspent balance. This amount has not been paid to the complainant by Shri 'M' who claims to have appropriated it towards fees said to be due to him.

Now the case of the complainant is this. When he filed the appeal he was impecunious as he had lost his job by reason of his conviction. He approached Sardar Raghbir Singh, Senior Advocate, through a relation of his and requested him to arrange for the conduct of the appeal on his behalf and to accept therefor a fee of Rs. 600 and no more, for himself, a Junior Advocate to assist him as well as for an Agent to be in charge, all taken together. It is the complainant's case that Sardar Raghbir Singh agreed to the same and was paid the said amount of Rs. 600 at the very outset, i.e., a few days before the actual filing of the appeal memorandum into this Court and that he (the complainant) was not directly concerned with the fixing up of the Junior Advocate and of the Agent or with the internal distribution of the said sum of Rs. 600 as between the three persons. His case accordingly is that Shri 'M' was not entitled to any further amount by way of fees and that he unautho-

risedly withdrew the amount and appropriated it towards alleged fees. Attar Singh, the complainant, has been examined in support of his case. Sardar Raghbir Singh and Shri Madan have also been examined to substantiate it. The evidence of Sardar Raghbir Singh is that he was approached by Attar Singh through a common friend, that he was asked to accept a consolidated fee of Rs. 600, that in consultation with a Junior Advocate, Shri Madan, whom he knew well, he accepted the engagement, that Shri Madan brought in Shri 'M' as the Agent and that the amount of Rs. 600 was paid to him by Attar Singh and was shared by the three Rs. 300 for the Senior, Rs. 200 for the Junior, and Rs. 100 for the Agent. His evidence is that Shri 'M' was not known to him previously but that he was fixed by Shri Madan, that Shri Madan informed him about Shri 'M' having agreed to accept the engagement for a fee of Rs. 100 without more and that in pursuance of this arrangement the said sum of Rs. 100 was paid over to Shri 'M' and Rs. 200 to Shri Madan. The Junior Advocate, Shri Madan, has been examined to substantiate that it was he who fixed Shri 'M' as the Agent in the case with the arrangement that the Agent should charge only Rs. 100 as his fee. The evidence of these three persons, Attar Singh, Sardar Raghbir Singh and Shri Madan, is that all the above took place a few days prior to the filing of the appeal into Court. The appeal was admittedly filed on the 11th May, 1950. Shri 'M' has offered himself as a witness on his own behalf. He admitted that he was fixed up as an Agent in the appeal through Shri Madan at the request of Sardar Raghbir Singh, but he says that he is not aware of any arrangement between the complainant and Sardar Raghbir Singh or about the payment of Rs. 600 by the complainant to Sardar Raghbir Singh on the alleged arrangement. He says that, having been taken as an Agent into the case by Sardar Raghbir Singh on the recommendation of Shri Madan, he was paid at the time of filing of the appeal only a sum of Rs. 50 by Attar Singh himself as part payment of his fees and was promised that reasonable fee

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would be paid later on. He denies that there was any understanding or arrangement that only a sum of Rs. 100 was to be paid to him and also denies that he was paid by Sardar Raghbir Singh the sum of Rs. 100. To substantiate that the alleged arrangement to accept only Rs. 100 could not be true, he gives evidence that even the Junior, Shri Madan, sent to him in August, 1952, a bill for Rs. 320 which he says he passed on to Attar Singh and of which he purports to produce a copy. But Shri Madan denies that he ever sent such a bill and Attar Singh denies that he received any such.

The controversy on this part of the case is covered by charge number two. The two material facts which have to be determined are (1) whether the Agent, Shri 'M', came into this case on a definite arrangement that his entire fee for the case was to be Rs. 100, and (2) whether he was in fact paid the said sum of Rs. 100 by Sardar Raghbir Singh at the outset. The complainant, Attar Singh, is not by himself a direct witness either to the arrangement or to the fact of payment of Rs. 100. The only material fact which he spoke to on this part of the case is as to his arrangement with Sardar Raghbir Singh. It was that he should fix up, a Junior Advocate and an Agent of his own choice, and accept the sum of Rs. 600 as fees for all the three of them together without claiming anything more. He says also that the said sum of Rs. 600 was paid by him to Sardar Raghbir Singh at the very outset. Sardar Raghbir Singh admits the payment. There is no reason to doubt that a sum of Rs. 600 was in fact paid by Attar Singh to Sardar Raghbir Singh a few days before the actual filing of the appeal in May, 1950, though Shri 'M' denies knowledge of it. On the evidence as given before us, Shri Madan is the only direct witness to the arrangement with Shri 'M' that a sum of Rs. 100 is to be paid to him and that he should claim nothing more for the conduct of the entire case. The arrangement itself was not made in the presence of Sardar Raghbir Singh but it is Sardar Raghbir Singh's evidence that he was informed about it by Shri Madan.

It is also Sardar Raghbir Singh's evidence that in pursuance thereof Shri 'M' was paid by him Rs. 100. Thus on the evidence, as given, Shri Madan is the direct witness for the arrangement and Sardar Raghbir Singh is the direct witness for the payment and each became aware of the other fact from the conversations between them at the time and in the course of events. The evidence of both these gentlemen has been commented upon and criticised by the learned Advocate for Shri 'M'. It has been pointed out that these two gentlemen had, in these proceedings, occasion to speak to the facts at three stages, first in answer to letters of enquiry written to each of them by the Registrar of this Court after the complaint was filed and Shri 'M' filed his answer thereto, next when they were examined formally before the learned Judge in Chambers, and now when they are examined before us on oath. It is pointed out that there are substantial variations and developments in their versions. The explanation given by both of them for the variations is that at the earlier stages they did not desire to be more specific or categorical since they were given to understand that the matter would somehow be adjusted, that they did not want to harm Shri 'M' and that the lines on which they were to answer the enquiry from the Registrar, were discussed in a conference between themselves and Shri 'M' with his Advocates. Shri 'M' also admits that there was such a conference. It is urged by the learned Advocate appearing for Shri 'M' that this very explanation offered by these two gentlemen shows that their word, even before us, is not to be taken at its face value. It is also pointed out that neither of the Advocates could produce any accounts to substantiate the payments alleged to have been made, nor any record or note as to the amount of fees fixed for each and the arrangement with Shri 'M' that has been spoken to. On the other hand, they admit that they maintain no accounts at all. It does not also appear that they maintain any satisfactory diaries or other record which might have corroborated their evidence. The learned Attorney-General while

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fairly conceding that there is good deal of room for comment about the evidence of these two gentlemen, urges that we should attach greater value to their present evidence given on oath particularly in view of the fact that both of them admit the complainant's story that Rs. 600 was all that was intended to be paid for all the three together and they categorically admit that they have themselves no further claim against the complainant for the work done by them. The learned Attorney-General submits that it is unreasonable to suppose that while both of them accepted comparatively small fees for the whole case, the Agent, Shri 'M', was promised 'a reasonable fee" without any fixation. He urges further that on his own admission, Shri 'M' can point to nothing in the diaries or registers said to have been maintained by him for his cases, which may substantiate his version. He also urges that in view of the probabilities and the evidence we should accept not merely that there was a definite arrangement with Shri 'M' to accept only Rs. 100 for the entire case but also that he was in fact paid the said sum of Rs. 100 then and there. After having given our consideration to the entire evidence on this part of the case, we are of the opinion that we should dispose of this case without coming to any definite conclusion on the disputed facts, material for this issue. All that we need say is that we are not quite happy about the evidence on both sides bearing on this matter. We are inclined to refrain from recording a categorical finding on this issue, which if found against Shri 'M', may amount virtually to a finding of criminal misappropriation. We are willing to dispose of this issue in favour of Shri 'M' by giving him, so far as these proceedings are concerned, the benefit of doubt in respect of the disputed facts material to this issue.

The matter arising under charge No. 1 may also be shortly disposed of. The question under that charge is whether, for withdrawing the unspent balance from the Punjab High Court, Shri 'M' had the requisite authority. In support of the alleged authority, he relies both on specific authority given to him orally

by or on behalf of the complainant, Attar Singh, and also on the authority in his favour for the withdrawal as implied from the wording of the Vakalatnama executed in his favour by Attar Singh. The evidence in support of the specific oral authority is his sole statement before us on oath. He deposes that he was authorised by the relation (or *pairokar*) of the complainant, Attar Singh, (who used to go to him in connection with the appeal) to withdraw the unspent balance from the High Court. He stated that he was unable to give the name of the *pairokar* but that he was sitting in Court while he was giving evidence before us. The alleged relation or *pairokar* has not been examined as a defence witness. In the proceedings before our learned brother, Bhagwati J., his version on this part of the case is contained in paragraph 8 of his affidavit dated the 5th March, 1956, which is as follows:

"I requested Attar Singh to remit funds for prosecuting appeal on 21-12-51 and with *his* permission wrote to the High Court on 17-1-52 for refund of the balance out of Rs. 750. Thus I received Rs. 242-1-9 from High Court in March, 1952".

This clearly indicates that his case then was that he had the permission of Attar Singh himself for withdrawal of the balance. But when examined before our learned brother, Bhagwati J., he said as follows:

"Somebody asked me to get the money from the High Court to meet the expenses. Subsequently I wrote to the High Court".

In answer to the specific question who that somebody was he said "I do not remember exactly who it was". He did not then say that he was the complainant's relation or *pairokar*. In his cross-examination before us he says "His (Attar Singh's) relation came to me and told me that I should get the money from the High Court". When further cross-examined with reference to his previous statements he said that when he used the phrase "with his permission" in his affidavit he meant to indicate the agent or *pairokar* of Attar Singh and when further pressed as to who that relation was and whether he knows his name he was unable

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to give any satisfactory answers. His evidence on this part of the case is highly unsatisfactory and cannot be accepted. We have no hesitation in coming to the conclusion that he has not proved the specific oral authority, which he has pleaded, for the withdrawal of the balance amount.

What is next relied upon in support of the authority is the Vakalatnama executed by Attar Singh in his favour. The vakalatnama is in form No. 3 of the Fifth Schedule of the Supreme Court Rules, 1950, before their amendment in 1954. What is relied upon is that this form authorises the Agent not only to deposit moneys but also *to draw moneys*. It is also urged that an Agent has the power by virtue of the specific wording of the vakalatnama "to do all things *incidental* to his acting" for his client in connection with the appeal. It is urged that the deposit of printing charges and the withdrawal of the unspent balance of the printing charges are all acts incidental to acting for a client in connection with his appeal. On the other side it is pointed out that the form itself indicates that the acting is to be in connection with the work in the Supreme Court since it is headed "in the Supreme Court of India" and that the authority arising under this vakalatnama cannot extend to acts to be done in the Punjab High Court. We do not consider it necessary to decide about the exact scope of the power exercisable under the vakalatnama with reference to the form that has been employed. There is the outstanding fact in this case that the amount has been in fact paid by Shri 'M' direct into the Punjab High Court on a letter issued by the High Court to him. There is also the fact that the receipt for the said amount has been issued by the High Court to him and in his name. There is the further fact that the unspent balance has been paid by the High Court directly to him without requiring any further written power or authority, apparently because he was the depositor and was therefore presumably entitled to withdraw the unspent balance. In view of these facts it would appear that the High Court itself was under the impression that the withdrawal was within the

scope of Shri 'M's authority as an Agent for the appeal in the Supreme Court. This impression, if wrong, was one that may well have been shared by Shri 'M' equally with the High Court. In these circumstances, while we definitely hold that the specific oral authority set up has not been proved, it appears to us that no serious notice need be taken of this charge.

What remains is charge No. 3 which is as follows:

"That you after receiving the sum of Rs. 242-1-9 in March 1952, retained the said sum, without any intimation to your client Attar Singh and without claiming any amount as due from him by way of fees to you and without lodging a bill for taxation against him for a period of over three years".

The questions which require consideration under this charge are (1) whether Shri 'M' intimated Attar Singh about the withdrawal of the unspent balance of printing charges, (2) whether Shri 'M' intimated Attar Singh that any fee remained due and made any demand in that behalf, and (3) whether Shri 'M' was justified in retaining the amount towards fees without lodging a bill for taxation against his client.

It is now necessary to recall the relevant facts and enumerate some further facts. Criminal Appeal No. 12 of 1950 was filed into this Court on May 11, 1950, by the Agent, Shri 'M', on the basis of a vakalatnama signed by Attar Singh without date and accepted by Shri 'M' on May 11, 1950. Attar Singh says that when he signed the vakalatnama there were blanks therein and that after signing, he gave the vakalatnama with the blanks to Sardar Raghbir Singh. It is his evidence that having fixed the engagement with Sardar Raghbir Singh and paid the money into his hands, he went away leaving the actual filing of the appeal, on a later date, to Sardar Raghbir Singh. Shri 'M' who accepted the vakalatnama on May 11, 1950, and who filed the appeal memorandum into Court on the same date with the signatures thereon, also of Sardar Raghbir Singh and Shri Madan, admits that the blanks in the vakalatnama were filled in by him in his own handwriting. But he says that Attar Singh was also present at the time of

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his acceptance of vakalatnama and the filing of the appeal and that Attar Singh then paid him a sum of Rs. 50 without any settlement of fees. He says further that when he accepted the engagement he was given to understand by Sardar Raghbir Singh that he would be paid reasonable fee. This was at the time when the appeal was filed in Court and presumably in the presence of Attar Singh according to him. Attar Singh denies that he was present or paid Rs. 50 to Shri 'M' at the time of filing the appeal or that he met Shri 'M' at all at the time. On his evidence, if accepted, Shri 'M' could have no expectation of any further payment of fees. About an year later there was the payment of Rs. 750, towards the printing charges. It is admitted that the amount was supplied by means of a draft in favour of the Deputy Registrar of the High Court given to Sardar Raghbir Singh, by the brother-in-law of Attar Singh. This was passed on to Shri 'M' who sent it on to the High Court. A receipt dated July 19, 1951, was issued therefor by the High Court in Shri 'M's name. It is in evidence that the printed record was received in the Supreme Court in December, 1951. Intimation of the same was presumably given to the Agents concerned in due course. Shri 'M' applied to the High Court in January, 1952, for refund of the unspent balance of the printing charges and received an amount of Rs. 242-1-9 in March, 1952. The appeal was set down for hearing in May, 1952. It is the evidence of Attar Singh that on receiving intimation that the appeal was coming up for hearing he came down to Delhi from Bombay, where he was employed at the time, and found that Sardar Raghbir Singh had left for China and was not available for arguing the appeal. His evidence is that he enquired from the wife of Sardar Raghbir Singh who told him to meet Shri 'M' which he did. He says that they came to the conclusion that Shri Umrigar, an Advocate of this Court, was to be engaged to argue the appeal. Thereupon Shri Umrigar was fixed up. The appeal was not actually taken up in May, 1952, as expected. The engagements of both Sardar Raghbir Singh and Shri Madan were termi-

nated sometime in August, 1952, by Shri 'M' under instructions of Attar Singh. The appeal came up for hearing, later on, in November, 1952. It was Shri Umrigar who argued the appeal. Admittedly Shri 'M' was also present at the hearing and instructed Shri Umrigar. The judgment in the appeal was delivered on the 5th December, 1952, allowing the appeal and remanding it for further hearing by the Sessions Court, as an appellate court, on the evidence on record. It would appear that nearly two years later, i.e., on November 24, 1954, Attar Singh applied to the Punjab High Court stating that he had paid Rs. 750 for the printing charges of the record in his appeal and that some balance was lying to his credit out of the said amount and requesting that the same may be remitted to him. He received a reply thereto from the Deputy Registrar of the Punjab High Court dated October 17, 1955, intimating that the unspent balance of Rs. 242-1-9 was refunded to his counsel, Shri 'M' of the Supreme Court, and advising him to contact him in this behalf. It is in view of this information that Attar Singh ultimately filed on December 5, 1955, a complaint on which the present proceedings were initiated.

The evidence of Attar Singh on this part of the case is quite simple. He says that some time after the appeal was filed, i.e., in or about January 1951, he went away to Bombay in connection with private employment which he had obtained there and that he came to Delhi again only in May, 1952, on receiving intimation that his appeal was expected to be taken up. He says further that since the appeal was not taken up in May and went beyond the long vacation he got himself transferred to, and remained in, Delhi since about May, 1952. He says that he came into direct contact with Shri 'M' only from May, 1952, and that he had not met him till then. It is also his evidence that he was never told by Shri 'M' about the unspent balance being available or of his having withdrawn the same. He was also not told that any fees had yet to be paid. He was under the impression that no further fee was due to Shri 'M' and that his

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fees must have been paid up at the outset by Sardar Raghbir Singh. There was no demand by Shri 'M' from him at any time for balance of fees, not even at the time when his appeal was heard by this Court for two or three days. Towards the end of 1954, he was greatly in need of money on account of the further proceedings in his appeal consequent on the remand. He then felt that he might enquire from the High Court about the availability of any unspent balance out of the printing charges deposited and get back the same and meet his needs. He accordingly wrote a letter to the High Court in November, 1954. He had to send a number of reminders. He ultimately received the reply dated October 17, 1955, from the High Court nearly an year after his first enquiry. According to Attar Singh, before he wrote to the High Court enquiring about the unspent balance, he approached Shri 'M' and enquired from him. It was on his advice that he wrote to the High Court. His evidence further is that when he actually received the letter from the Deputy Registrar of the High Court dated October 17, 1955, he again met Shri 'M' about the unspent balance and enquired of him whether he had received the amount, but that Shri 'M' denied having received any money. He says that thereafter he confronted him with the reply he had received from the High Court and that on seeing it Shri 'M' was astonished and told him to come later on. He states that when he went to him again, Shri 'M' told him that he will return the money after two days, but that ultimately he evaded him. It was after this that at the suggestion of some friends, he lodged the complaint with the Registrar of this Court.

As against this, Shri 'M's evidence is as follows. When the printed record was received from the High Court, and he got intimation of the same, he wrote a letter dated December 21, 1951, to Attar Singh intimating that the printed record had been received in the Supreme Court, that further steps have to be taken and that he is to supply him with funds therefor. He says that thereafter Attar Singh's relation came to him in January, 1952, and told him to write

to the High Court to get a refund of the unspent balance of the printing charges. He admits that he received the refund in March, 1952, and says that he appropriated the same towards his fee. He also says that when in May, 1952, Attar Singh came in connection with the expected hearing of the appeal, he told him about the unspent balance having been received by him and that later on, i.e., after the hearing of the appeal was over, he told him that the bill for the work done by him in connection with the appeal would be about Rs. 500. He denies the version of Attar Singh that he was not aware of the unspent balance having been drawn and that for the first time he contacted Shri 'M' in 1954 for the unspent balance and wrote to the High Court on his advice for refund of the balance, if any. He denies specifically that Attar Singh met him in this connection a number of times and wrote reminders to the High Court at his instance. He also denies categorically that he was confronted by Attar Singh with the letter received by him from the High Court and that he then told him all that had happened.

The question before us is which of these versions is to be accepted. Was there any intimation by Shri 'M' to Attar Singh that he withdrew the unspent balance and did he demand from him the alleged balance of fees? Admittedly, there was no written intimation and no specific written demand. The only writing from himself to his client that Shri 'M' relies on, is a letter dated December 21, 1951. He produces an alleged copy thereof which is as follows:

"S. Attar Singh
C/o Gurdwara Sisganj,
Delhi.

Dear Sir,

Your appeal pending in the Supreme Court No. 12 of 1950 is ripe for further steps as the record has been printed and despatched by the High Court, Simla.

Now you have to supply me with funds for drafting petition of appeal, statement of case, affidavits of service of notices and typing charges.

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Since the record has reached the Supreme Court on 12th December 1951, you are to file petition within 30 days of receipt of this date.

Please treat this as very urgent, otherwise the appeal shall be dismissed for non-prosecution".

It may be noticed that the wording of this letter does not in terms state that what is being demanded is his own fees. Paragraph 2 of the letter may well be understood by a lay-man, as asking for nothing more than expenses to be incurred. Attar Singh deposes that he never received the letter. It is clear from the evidence that Attar Singh was not in Delhi at the time and it is curious that the letter is addressed to him at Sisganj Gurdwara, Delhi. Shri 'M' has been cross-examined on this and in our opinion, he has not been able to give any satisfactory explanation. He says that the address was furnished by Sardar Raghbir Singh. But Sardar Raghbir Singh was not asked about it. Assuming the letter to be true, it is obvious that it would not have been received by Attar Singh. Clearly no money has been remitted, nor any written communication received, *in response to this letter*. If the letter is true, one would have expected some further letter to have been written to him with the correct address on proper enquiry. It is to get over this difficulty that the story has been put forward by Shri 'M' of a relation of Attar Singh having contacted him in January, 1952, and instructing him to withdraw the unspent balance, if any, of the printing charges. There is nothing to show that these alleged instructions were by way of response to the above letter. It is not a little surprising that the said relation does not appear to have cared to ascertain whether any money was in fact available or was received. But it is unnecessary to dwell on this any further because we have already noticed the entire evidence relating to these alleged instructions of the relation and seen how unsatisfactory it is. We are clearly of the opinion that the story of instructions by the relation is wholly unreliable. In that view, assuming, without deciding that the letter of December 21, 1951, is true, it is all the more significant that there are no

further reminders to Attar Singh to his correct address right up to May, 1952, i.e., when the appeal became ready for hearing, though in the interval Attar Singh was not in Delhi. It is also surprising that even after the disposal of the appeal and up to the stage of the complaint, Shri 'M' did not make any written demand or send any bill for the fees to Attar Singh. It is only in the reply dated December 16, 1955 to the complaint, filed before our learned brother, Bhagwati, J., by Attar Singh that a reference is made to his bill of about Rs. 550 against Attar Singh for the work done by him on his behalf. The bill was in fact produced at a later date on March 5, 1956, along with his affidavit filed before Bhagwati, J. In paragraph 9 of that affidavit he says "I, as agent, had lien over the sum of Rs. 242-1-9 which was appropriated towards my bill for Rs. 542-15-9 (herewith attached). Rs. 250 is still due to me from Attar Singh". That bill has also been marked before us as an exhibit on behalf of Shri 'M'. It is the evidence of Shri 'M', as already stated, that when he accepted the engagement he was given to understand that he would be paid a reasonable fee but that there was no settlement at the time. He is not very clear in his evidence what was the aggregate reasonable fee which he was entitled to. But from the statement in his evidence that he informed his client after the appeal was finished, that his bill would be Rs. 500 it may be presumed that his case is that he was entitled to the amount of his bill as exhibited. If so, there should have been no difficulty in his applying to the Court for taxation against his client. We have been informed that such a course is permissible under orders of the Court, even in a criminal matter. But Shri 'M' admits that he took no such step in spite of the fact that a large and substantial balance should have been due to him according to his case. When asked to explain why he did not do so, his answer is as follows:

"Because the appeal was remanded and it is a general practice here that when the case is finished the clients do pay the balance. So we do not insist

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further. Generally when the appeal or a matter is finished I do not make complaints or file suits or do anything for the balance of fees because mostly these matters create fuss. I did not, in this matter, press for the balance".

It may be noticed that in the bill the total of the items of out-of-pocket expenses is Rs. 22-15-6, leaving a balance of Rs. 27-0-6 out of the amount of Rs. 50, which on his own showing, he had received from his client. All the rest of the bill submitted by him is a claim for fees for various items of work said to have been done. If it be true, as he says, that he sent in December, 1951, a letter to Attar Singh demanding fees, it is all the more surprising that he never made any further written demand either during the pendency of the appeal or at least sent a bill after the disposal thereof, for the balance of the fees, whether or not he would have felt it advisable later on to take the matter to court for taxation. This admitted inaction renders it probable that, having obtained the refund of a substantial amount of over Rs. 200 after December, 1951, without the specific oral instructions or the knowledge of his client or his agent—as we have already found—he has kept discreetly silent, without intimating to the client the fact of his having received the balance and without making a demand against him for the fees. It is only now that he claims a lien on the said amount for a bill which he puts forward, and pleads justification for the retention and appropriation of the amount on the basis of that bill. Learned counsel for Shri 'M' very strongly urges that the evidence of Attar Singh that he was not informed by Shri 'M' about having obtained refund of the unspent balance and that at no time was any demand made to his knowledge for the balance of fees should be rejected as being utterly improbable. He urges that the evidence of Shri 'M' that he orally intimated to him the fact of his having obtained refund of the unspent balance, and of his making constant oral demands for the balance of fees should be accepted. He suggests that it is Attar Singh who discreetly evaded raising the question about the balance

of fees due, with full knowledge that some amount had already been received by Shri 'M' and that a much larger amount would be found due on a regular bill. He urges that if there is no reasonable proof of the arrangement that Shri 'M' was to receive only Rs. 100 and of the fact of payment thereof, it is very unlikely that a professional gentleman like Shri 'M' would go on working in the appeal without making even an oral demand for fees unless he was permitted by the client to withdraw and appropriate the amount. He strongly urges that the conduct of Attar Singh himself on this part of the case gives room for considerable suspicion. It is pointed out that though the appeal was disposed of in December, 1952, he makes no enquiry for the unspent balance until after nearly two years. It is urged that he has no satisfactory account how he *then* came to know that there was a balance at all, the payment of which he might obtain from the High Court. It is submitted that his story that it was at the instance of Shri 'M' himself that he wrote to the Punjab High Court making enquiries about the balance is utterly improbable. We are not, however, impressed with the soundness of these comments. We see no difficulty in accepting the explanation of Attar Singh that he came to think of the possibility of obtaining the unspent balance, if any, which may be available to him, only when he was hard-pressed for money for the further conduct of his criminal appeal as a result of the remand. It may or may not be that the letters of Attar Singh to the Punjab High Court enquiring about the unspent balance were written on the advice of Shri 'M', but the fact remains that for an adequate reason as given by him he did start enquiries in this behalf so late as two years after the disposal of the appeal. On this part of the case what is really significant is that at the earliest opportunity which Shri 'M' had, he did not put forward his present specific case, of intimation of the refund and of demand of the fees. Para 5 of the complaint of Attar Singh dated December 5, 1955, states as follows:

"I had throughout been making enquiries from

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Shri 'M' and he has consistently denied having received any money from the High Court".

In his reply dated December 16, 1955, Shri 'M' has contented himself with a bare denial as follows:

"Para 5 of the application is emphatically denied and not admitted".

Even in his later statement, in the form of an affidavit dated March 5, 1956, filed before Bhagwati, J. all that he says is that "on December 21, 1951, he requested Attar Singh to remit funds for prosecuting the appeal and that with *his* permission wrote to the High Court on January 17, 1952, for the refund of the balance. He has attempted to explain that by "his permission" he meant "his *pairokar's* permission". We have found that, on the evidence and probabilities, the story of *pairokar's* permission cannot be accepted as reliable. The story of his having directly informed Attar Singh about his having got the balance occurs for the first time in the cross-examination before Bhagwati, J., wherein he says that he told him about it at the time of the hearing of the appeal. But even there he says that he did not at that time ask for anything further. There he admits that it is only when Attar Singh asked him to refund the money that he told him that he should pay him the balance due. Now, it is in this Court in the cross-examination of Attar Singh that the story of his having informed Attar Singh about his obtaining from the High Court refund of the unspent balance and of his having demanded the fees due to him, *all* at the time of hearing of the appeal,—has been put forward in the following questions and answers.

"Q. In fact, at the time when your appeal was heard Mr. 'M' had told you that Rs. 242, had been recovered from the High Court?

A. It is far from true.

Q. He also told you that his fees has got to be paid?

A. No.

Q. You said nothing about it because you knew that more fees than Rs. 242 would be due to Mr. 'M'?

A. The question does not arise".

The further cross-examination of Attar Singh is as follows.

"Q. I am putting it to you that your talk that you showed the letter of the 17th October, 1955 to Mr. 'M' is a pure fabrication?

A. No, it is correct.

Q. I will tell you what had happened. You had asked 'M', 'M' had told you (this is my case) that he had recovered Rs. 242 and when you said 'what about Rs. 242' he said 'you have got to pay my fees', which would come to much more, and therefore thereafter there was no further talk between you both?

A. Nothing was talked by Mr. 'M' to me then, nor up till now".

This belated case about intimation of withdrawal of unspent balance and about demand for fees having been made at the time of the hearing of the appeal, cannot be accepted as true. His admission before Bhagwati, J. that even at the time of the hearing of the appeal (which admittedly took two or three days) he did not ask for anything further must be accepted as correct. If so that would make it very probable that the first information to Attar Singh about the fact of Shri 'M' having obtained refund of the unspent balance of the printing charges was only when the High Court intimated the same to him. It follows that the first oral demand for the fees by Shri 'M' to Attar Singh, may have been when he was confronted with the letter of the High Court. This is what he admitted in the enquiry before Bhagwati, J.

It may further be noticed that Shri 'M' states in his evidence as follows:

"After I received this money (unspent balance) I appropriated it towards my fee. There was no settlement of fees between me and my client. Raghbir Singh never told me that I should get only Rs. 50 or Rs. 100".

He was cross-examined whether the appropriation was with the consent of the client, as appears from the following.

"Q. Coming to May, 1952, when you said you told the client that you had received money did you

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tell him that you appropriated the money.

A. Yes.

Q. No question therefore remained of any lien. The money was appropriated towards fees.

A. This is all opinion whether it was lien or appropriation. It was lien. So I appropriated it.

Q. You had lien.

A. Yes.

Q. You appropriated with the client's consent.

A. The consent was there".

How unsatisfactory his answers are as to the client's consent for appropriation even on his own case that the amount was appropriated is noticeable.

We are, therefore, of the opinion that the following facts have been proved. Without the knowledge of or intimation to Attar Singh, Shri 'M' obtained in March, 1952, from the High Court the unspent balance of printing charges deposited by him on behalf of his client Attar Singh amounting to the sum of Rs. 242-1-9. He retained the same without any intimation to his client and without making a demand or lodging a bill for any amount as due from him by way of fees. The fact of his having obtained the refund became known to Attar Singh for the first time only by the letter of the Punjab High Court to him and it was only when Shri 'M' was confronted with the same that he raised the question of payment of fees with Attar Singh. Prior thereto he denied receipt of any such moneys when asked by his client about it and did not make any demand for fees. In fact he appropriated the amount, on receiving it, without any demand for fees or lodging a bill for taxation and without the knowledge and consent of the client.

The question that next arises for consideration is whether on these facts Shri 'M' is guilty of professional misconduct. It is urged before us that an Agent has a lien on the moneys of his client coming into his hands for the reasonable fee that may be due to him if—as may be assumed for the purposes of this case—the fee was not settled originally. It is urged that in this case Shri 'M' has done nothing more than exercising that lien and appropriating the

amount which legitimately came into his hands towards what he considered as reasonable fee due to himself leaving the settlement of any further fee that may be due to him to the good sense and the good will of the client on the termination of the case. It is urged that on this view his action is *bona fide*. It is pointed out that while, it may be, that such conduct is not consistent with the highest professional standards, it cannot be treated as amounting to professional misconduct. It is urged that it is not every conduct which may be considered unjustifiable or improper that amounts to professional misconduct if in fact the agent or advocate honestly believed that he was justified in adopting the course he did so long as such a course is not, in terms, prohibited by any positive rules framed by competent authority to regulate the conduct of agents and advocates in such matters. We are unable to accept this contention. As has been laid down by this Court *In the matter of Mr. 'G', a Senior Advocate of the Supreme Court* (supra) "the Court, in dealing with cases of professional misconduct is not concerned with ordinary legal rights, but with the special and rigid rules of professional conduct expected of and applied to a specially privileged class of persons who, because of their privileged status, are subject to certain disabilities which do not attach to other men and which do not attach even to them in a non-professional character". ..... "He (a legal practitioner) is bound to conduct himself in a manner befitting the high and honourable profession to whose privileges he has so long been admitted; and if he departs from the high standards which that profession has set for itself and demands of him in professional matters, he is liable to disciplinary action". It appears to us that the fact of there being no specific rules governing the particular situation, which we are dealing with, on the facts found by us, is not any reason for accepting a less rigid standard. If any, the absence of rules increases the responsibility of the members of the profession attached to this Court as to how they should conduct themselves in such situations, having regard to the very high privilege that

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an Advocate of this Court now enjoys as one entitled, under the law, to practice in all the courts in India. We are conscious that at the time when the relevant facts happened in this case Shri 'M' was only an Agent. But at the time when he was confronted with the letter of the Punjab High Court intimating receipt of the unspent balance, he had already become an Advocate on record and we have to deal with this case with reference to rule 30 of Order IV of the amended Supreme Court Rules. That rule says "Where.... the Court is of opinion that an Advocate has been guilty of misconduct or *of conduct unbecoming of an Advocate*, the Court may take disciplinary action as provided therein". Even under rules 31 and 32 of Order IV of the Supreme Court Rules prior to the amendment, the position would be the same in so far as a matter of the kind with which we are dealing is concerned. It is true that under rule 32 of the old rules which refers to disciplinary action against agents, the phrase "conduct unbecoming of an Advocate" is not to be found. But that is probably only because in certain matters the Agent's position in relation to his client may differ from that of an Advocate. But we have no reason to think that in respect of a matter such as the one we are concerned with, the standard applicable to an Agent or to a present "Advocate on record" is anything different. We have no doubt in our mind that the high standards of the profession demand that when the moneys of the client come into the possession of an Agent or an Advocate, otherwise than as earmarked fees, he has to treat himself as in the position of a trustee for the client in respect of the said moneys. Even if he has a lien on such moneys, it would be improper for him to retain, i.e., to appropriate the same towards his fees without the consent, express or implied, of his client or without an order of the Court. It may be that in certain circumstances he is entitled to exercise a lien, but he has to give reasonable intimation both of the fact of moneys having come into his hands and of the exercise of his lien over them until his account is settled. If there has been no prior settlement of fees he cannot constitute

himself a judge in his own cause as to what would be the reasonable fee payable to him. This position of trusteeship in respect of moneys of the client in his hands is all the greater where the moneys represent the unspent balance of what was given for a specific purpose, such as for payment of printing charges, as in this case. On any *such* unspent balance, it is well settled, that he has no lien either under the common law or by the statute. (See Cordery's Law relating to Solicitors, 4th Edition, page 456 and Halsbury's Laws of England, 2nd Edition, Vol. 31, page 239, para 265). In this case it appears to us that the retention and appropriation of the money by Shri 'M' without intimation to the client and without sending a bill to him for his fees or applying for taxation even after disposal of the appeal constitutes professional misconduct. This is aggravated by the facts emerging from the evidence of Attar Singh who, Shri 'M' admits, has no animus against him, and whose evidence on this part of the case we see no reason not to accept. That evidence shows that when in 1954 Attar Singh enquired of Shri 'M' he denied knowledge of the unspent balance and that when confronted with the letter received from the Punjab High Court he admitted receipt and demanded fees but evaded the situation without fairly and frankly facing it.

Shri 'M' appears to have been enrolled as an Agent in 1949 and he says that when, at the instance of Shri Madan and Sardar Raghbir Singh he accepted the engagement in May, 1950, it was his third or fourth engagement as Agent. There may, no doubt, be cases where an unscrupulous client may take advantage of and exploit a beginner in the legal profession. But we are satisfied that this is not such a case.

We are clearly of the opinion that Shri 'M' is guilty of professional misconduct. We direct that he should be suspended from practice for a period of two years.

Order accordingly.