

before the District Judge. The costs in the Court of first instance will abide the result of the retrial.

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NATH PAL
CHOWDHURI

FLETCHER J. I agree.

RICHARDSON J. I also agree.

P.
MOHINI
MOHAN PAL
CHOWDHURI

N. G.

*Appeal allowed ;
case remanded.*

CIVIL REFERENCE.

Before Mookerjee, Acting C.J., and Fletcher J.

CHANDI CHARAN MITTER, A PLEADER,

*In re**

1920 -

April 29.

Pleader—Professional misconduct—Disciplinary action—Legal Practitioners Act (XVIII of 1879) s. 14—Criminal offence—Suspicion.

The District Judge of Rangpur made a Reference under s. 14 of the Legal Practitioners Act against C., a pleader, on three charges formulating strong suspicion that he offered to bribe the record-room keeper and attempted to have certain words removed from a document :

Held, where the misconduct alleged has no direct connection with the conduct of the pleader in his practical and immediate relation to the Court, ordinarily, there should be a trial and conviction for criminal misconduct before disbarment will be ordered.

In the matter of an Attorney (1), *In the matter of Nil Kunt Biswas* (2), *In the matter of the Second Grade Pleaders* (3), *In the matter of—*(4), *In re—*(5), *Ex-parte—*(6), *Stephens v. Hill* (7), *Ex-parte Wall* (8) referred to.

Babu Chandi Charan Mitter, B.L., a pleader of Rangpur Sadar Court, was the plaintiff in a title-suit against

* Reference No. 1 of 1920 under the Legal Practitioners Act.

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| (1) (1913) I. L. R. 41 Calc. 113. | (5) (1838) 3 Nev. & Per. 389. |
| (2) (1868) 9 W. R. Cr. 29. | (6) (1833) 2 Dowl. P. C. 110. |
| (3) (1910) I. L. R. 34 Mad. 29. | (7) (1842) 10 M. & W. 28. |
| (4) (1834) 5 B. & Ad. 1088. | (8) (1882) 107 U. S. 265. |

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one Haribola Das. The suit was decreed and there was appeal and second appeal to the High Court when the record of the case came back from the High Court, Babu Chandi Charan Mitter applied for copy of certain document, and in that connection came to the record-room of the Court. Circumstances led the officers of the Court to suspect that he had either himself removed or caused to be removed the words “*দেখর বড়ি* or *দেখর কড়*” from the document in question. Thereupon, the District Judge directed the 1st Munsif of the Court to enquire into the matter and report. On that report the District Judge referred the matter to the High Court under s. 14 of the Legal Practitioners Act (XVIII of 1879). Further facts appear fully from the judgment.

The Offg. Senior Government Pleader (Babu Dwarka Nath Chakravarty) and Babu Surendra Nath Guha, in support of the reference.

Babu Dasarathi Sanyal, Babu Ramtaran Chatterjee and Babu Akhil Cuhandra Gpta, for the pleader.

MOOKERJEE, A. C. J. This is a Reference under section 14 of the Legal Practitioners Act, by the District Judge of Rangpur, in the matter of Babu Chandi Charan Mitter, a pleader, practising in the Rangpur Courts. Proceedings were taken against the pleader under s. 13 (f) of the Legal Practitioners Act for misconduct set out in three formal charges as follows :

“*First, That taking advantage of his position as a pleader, he, between the dates 17th to 20th September 1919 or thereabouts offered bribes to the record-room staff to cause the disappearance of a word which was in all probability either *দেখর বড়ি* or *দেখর কড়* from a deed, dated the 25th of Aswin*

“ 1136 B. S. executed by one Rajaram Nandi in favour
 “ of one Santiram Bairagi. *Secondly*, that he attempted
 “ to remove the said word from the document between
 “ the dates 17th to 20th September or thereabouts;
 “ and *thirdly*, that in all probability he caused the
 “ disappearance of the said word from the document
 “ between the dates 17th to 20th September or there-
 “ abouts.”

It is plain that the charges thus formulated, if established, show that the pleader has been guilty of grave criminal offences. Indeed, at one stage the District Judge considered whether criminal prosecution should not be commenced against the pleader; but he came to the conclusion that the evidence available was of such a character that a criminal prosecution was not likely to be successful. He accordingly directed the institution of proceedings under the Legal Practitioners Act. We are of opinion that this was not the appropriate procedure to follow in the circumstances of this case. It was pointed out by Sir Lawrence Jenkins C.J. *In the matter of an Attorney* (1) that, when on an application by an aggrieved party to have an attorney struck off the roll of attorneys, on the ground of professional misconduct, there was a positive sworn denial of the misconduct by the attorney coupled with an explanation which was not demonstrably false, even a strong case of suspicion would not justify disciplinary action against the attorney on a summary proceeding. This view is substantially in agreement with the opinion expressed by Mr. Justice Louis Jackson *In the matter of Nil Kunt Biswas*, (2). In that case Mr. Justice Jackson observed that the matter alleged against the mookhtear, in fact, amounted to a criminal offence; it seemed to be admitted by the Magistrate that the

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evidence would not have sufficed for a conviction, and he did not think that it could be said that evidence which would not support a conviction on the criminal charge would justify a removal from the profession. It is not necessary to lay down an inflexible rule that there must in every case be a trial and conviction for criminal misconduct before disbarment will be ordered. That should be the ordinary rule where the misconduct alleged has no direct connection with the conduct of the pleader in his practical and immediate relation to the Court. On the other hand, where the misconduct attributed indicates unfitness to discharge professional duties, a criminal conviction may not always be a pre-requisite to the adoption of disciplinary measures; and, indeed, notwithstanding acquittal on the criminal charge, disciplinary measures may be successfully taken, as in the case of *In the matter of Second Grade Pleaders* (1). The test to be applied in each case is, whether the person concerned will be prejudiced by the adoption of summary procedure for the investigation of what is in reality a grave criminal charge. There can be no doubt that if the procedure followed in the present case were approved, the result might be an obvious injustice to the person concerned. If a criminal prosecution had been instituted against the pleader, he would have had the benefit of a trial by a jury and might conceivably have been acquitted, as indeed was apprehended by the District Judge. In such circumstances, summary proceedings under the Legal Practitioners Act should not have been adopted. The view we take is supported by cases of high authority: *Anon.* (2), *Anon.* (3), *Anon.* (4), *Stephens v. Hill* (5). The rule

(1) (1910) I. L. R. 34 Mad. 29.

(4) (1833) 2 Dowl. P. C. 110.

(2) (1834) 5 B. & Ad. 1088.

(5) (1842) 10 M. & W. 28;

(3) (1838) 3 Nev. & Per. 339.

62 R. R. 517.

deducible from these cases may be briefly stated. An attorney will be struck off the roll if convicted of felony or if convicted of a misdemeanour involving want of integrity, even though the judgment be arrested or reversed for error; and also, without a previous conviction, if he is guilty of gross misconduct in his profession or of acts which, though not done in his professional capacity, gravely affect his character as an attorney; but in the latter case, if the acts charged are indictable and are fairly denied, the Court will not proceed against him until he has been convicted by a jury, and will, in no case, compel him to answer under oath to a charge for which he may be indicted. A similar view has been approved by the the Supreme Court of the United States: *Exp. Walt* (1).

We are clearly of opinion that this Reference must be discharged and the *ad interim* order of suspension cancelled.

FLETCHER J. I agree.

Reference discharged.

N. G.

(1) (1882) 107 U. S. 265.

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