

Both the rules are, accordingly, discharged with costs, hearing-fee. five gold mohurs in each case, to be divided equally amongst the different sets of opposite parties who appeared.

PANTON J. I agree.

S. M.

*Rules discharged.*

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NARAIN ROY.

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## CIVIL REFERENCE.

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*Before Panton and Mallik JJ.*

EMPEROR.

v.

SATISH CHANDRA SINGHA.\*

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March 1

*Legal Practitioner—Misconduct—Proceedings under the Legal Practitioners Act, when and if to be taken, if charge amounts to a criminal offence—Proper mode of recording evidence in such case—Evidence, what is proper—Legal Practitioners Act (XVIII of 1879), s. 14.*

In a case where what was alleged against a pleader amounts to a charge of aiding and abetting or conspiring to commit a criminal offence, the correct procedure to be followed is that proceedings under the Legal Practitioners Act should not be taken out, but that, if it was thought necessary to take action, it should be by way of a criminal prosecution.

*In the matter of Rajendra Kumar Dutta and Abdul Khaleque* (1) relied on.

There is nothing illegal in recording evidence before framing a charge against the pleader, but the adjudication in a charge under s. 14 can only be on evidence taken in the presence of the person charged.

A charge cannot be said to be established merely on the unsupported testimony of an accomplice.

\* Civil Reference No. 7 of 1926, under section 14 of the Legal Practitioners Act (XVIII of 1879).

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REFERENCE under the Legal Practitioners Act.

This was a Reference under section 14 of the Legal Practitioners Act against Babu Satis Chandra Singha, a pleader of Bishnupur, recommending his suspension from practice for a period. On the 24th of August, 1926, Bhabanipati Banerji, a clerk of the Bishnupur Munsif's Court, in charge of title-suit records, reported to the Munsif that the said pleader asked for the records of Title Suit No. 275 of 1925 from the said clerk and was given the same to inspect. It was further reported that the unusual length of time taken by the pleader for inspection of the record made the clerk suspicious and when he went to take the record from the pleader, he found both the pleader and a pleader's clerk, Makhan Pramanik, bending over the record and in the very act of inserting the word "কতক" in paragraph 5 of the plaint. The clerk, Bhabanipati, snatched away the record from the pleader and questioned him as to the cause of his doing so. The pleader is reported to have replied that he was only rectifying a mistake. On receipt of of this report, the Munsif took down the statements of Sriram Mahapatra, a clerk, Abdul Ali Khan, a peon and Satis Chandra Chaudhuri, a copyist, who were alleged to have been present at the time the incident happened. These witnesses having corroborated the report of Bhabanipati, the Munsif, on the 25th of August, 1926, called upon the said pleader to show cause why his conduct should not be reported to the High Court under section 13 (f) of the Legal Practitioners Act. The pleader, in his written statement submitted on the 25th of September, 1926, stated that he was innocent. The Munsif then examined the pleader's clerk, Makhan Pramanik, on the 22nd of November, 1926, who stated that he had been requested by the pleader to insert the

word “কতক” in the plaint, but that he had refused to do so and that he could not tell in whose handwriting the word “কতক” was written. The Munsif, thereupon, made this Reference with the following finding:—

“ There can be no doubt from the evidence before me that Satish Babu attempted to interpolate that word either himself or through that clerk, Makhjan. I am, therefore, satisfied that the charge of attempting to interpolate the word ‘কতক’ and of tampering with the Court’s record has been made out against him.”

*Babu Mrityunjay Chatlopadhya*, to oppose the Reference, submitted that the Reference should be rejected on the following grounds, *first*, that in view of the fact that the allegations made against the pleader amounted to a charge of a very serious criminal offence, viz., forgery as defined in section 463 read with section 464 of the Indian Penal Code, the proper course should have been to institute criminal proceedings against the pleader and, if he was convicted, the pleader could have been proceeded against under section 12 of the Legal Practitioners Act. In the circumstances of the case, the summary procedure under the Legal Practitioners Act without a regular criminal trial was improper, as has been held in the cases of *In re Chandi Charan Mitter, a Pleader* (1) and *In the Matter of Rajendra Kumar Duttu and Abdul Khaleque* (2). *Secondly*, the procedure followed by the Munsif was in contravention of the provisions of section 14 of the Legal Practitioners Act, which merely contemplated that the Munsif, on receipt of a charge against a pleader, was immediately to give notice to the pleader to show cause and fix a date for the consideration of the charge, and on that date or on any subsequent date to which the matter might be adjourned, to take

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evidence. But in this case, the Munsif had recorded most of the evidence in the absence of the pleader and before any notice was served on him. *Thirdly*, that the only evidence that was legally before the Court was the evidence of the pleader's clerk, Makhan, who alone was examined in the presence of the pleader. As against this witness, it was submitted, that he was, on the report of Bhabanipati, an accomplice, and in the absence of corroboration it was unsafe to have any decision thereon; and further, the evidence of Makhan did not carry one far, for he could not say who wrote the word in the plaint.

No one appeared in support of the Reference.

PANTON AND MALLIK JJ. This is a Reference under section 14 of the Legal Practitioners Act, made by the Munsif of Bishnupur through the District Judge of Bankura. It relates to the alleged misconduct of Babu Satish Chandra Singha, a pleader. What is reported against him is this, that he, accompanied by a clerk, obtained from the officers of the Munsif's Court the record of a certain suit, on the pretext, apparently, of examining it. While the record was thus in his custody, either he or the clerk interpolated in the plaint the Bengali word "কতক", which had the effect of materially altering the sense of that document. It appears that the matter was reported to the Munsif by Babu Bhabanipati Banerji, a clerk in charge of the records. This was on the 24th August last. The learned Munsif thereupon investigated the matter and he appears to have taken the statements of Bhabanipati, Sriram Mahapatra, a clerk, Abdul Ali Khan, a peon, and Satis Chandra Chaudhuri, a copyist, who are said to have borne out the allegations against the pleader. The learned Munsif then called upon the pleader to show cause

why his conduct should not be reported to this Court and fixed the 18th September for the hearing of the matter. On the application of the pleader, the hearing was adjourned till the 25th September and on that date he put in a petition asserting his innocence. The hearing was then adjourned to the 20th November and then again to 22nd November, on which date one Makhan Pramanik was examined. Thereafter the learned Munsif made the report upon which these proceedings are founded. The Crown is unrepresented.

Several points have been taken on behalf of the pleader. In the first place it is pointed out that the misconduct alleged against him is of a kind which would render him liable to criminal prosecution. That appears to be the case, for what is so alleged is that he committed forgery within the definition of that word in the Indian Penal Code or conspired to commit that offence. That being so, the decision of this Court, founded upon earlier decisions of a similar character, in *In the matter of Rajendra Kumar Dutta and Abdul Khaleque* (1) is relevant. It was there pointed out that in a case where what was alleged against pleaders amounts to a charge of aiding and abetting or conspiring to commit a criminal offence, the correct procedure to be followed is that proceedings under the Legal Practitioners Act should not be taken, but that if it was thought necessary to take action it should be by way of a criminal prosecution. In view of that decision, we are of opinion that these proceedings should not have been taken and must fail. It is unnecessary, therefore, for us to go into the other points urged, but possibly it is better that we should do so.

The second point is that the procedure adopted by the Munsif was in contravention of the provisions of

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section 14 of the Legal Practitioners Act. It has been urged that he was wrong in recording the evidence of these clerks and the peon, before framing his charge against the pleader. We do not see any substance in this objection. But the substantial defect in the procedure adopted is that the evidence of these persons was not received and recorded as required by section 14 upon the date on which the enquiry was held. In other words, they were not examined as witnesses in the presence of the pleader. As I have pointed out, the only person who was examined was Makhan Pramanik. Nevertheless, the learned Munsif formed his opinion to a very considerable extent upon the statements made to him by the clerks and the peons in the absence of the pleader.

The third objection taken is that, putting aside the evidence of these persons which should not be used against the pleader, there remains only the statement of Makhan Pramanik, who, if the offence was committed, was obviously an accomplice in its commission, upon whose unsupported testimony the charge could not be established.

For these reasons we are of opinion that this Reference must be rejected.

S. M.

*Reference rejected.*