There will also be an order that the debentures will be enforced by the sale of the property and the assets of the defendant bank.

The plaintiff's costs will be added to his claim.

The liquidator's costs to be paid by the receivers out of the assets in their hands as between attorney and client.

Attorneys for the plaintiff : *Morgan & Co.*

Attorneys for the defendant : *K. K. Dutt & Co.*

A. K. D.

CIVIL REVISION.

Before Jack and Mitter JJ.

1929

Mar. 23.

A PLEADER, *In re.**

Legal Practitioner—Suspension—Pleader convicted of criminal offence, when unfitted to continue in the profession—Further inquiry after conviction, if necessary—Discretion of High Court—Legal Practitioners Act (XVIII of 1879), s. 12.

A pleader who is convicted of a criminal offence, for misconduct committed strictly in his professional character, *e.g.*, criminal breach of trust and abetment of its commission by another pleader in respect of client's money, comes within the purview of section 12 of the Legal Practitioners Act, 1879, and it *prima facie* renders him unfit to be a member of the legal profession.

The conviction, followed by the sentence being brought to the notice of the High Court, is sufficient, without further inquiry, to justify it to take action under section 12 of the Legal Practitioners Act.

The discretion of the High Court, in each particular case under section 12, is absolute and it can let off a pleader with an admonition, or suspend him or strike him off the rolls.

Re a Solicitor (1) and *In re Weare* (2) referred to.

The facts of the case were as follows: Girijabhushan Sarkar, a pleader practising in the Calcutta Small Cause Court, was tried by the Chief Presidency Magistrate of Calcutta on two charges, one of aiding and abetting another pleader, Amarchandra Chandra, in committing criminal breach of trust in

* Civil Rule, No. 223 of 1929, under the Legal Practitioners Act.

(1) (1889) 61 L. T. 842.

(2) [1893] 2 Q. B. 439.

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respect of a sum of Rs. 1,002 drawn from court by Amarchandra Chandra on behalf of a client, Bholaram Kundulal, and the other, of himself misappropriating a sum of Rs. 1,350, drawn by Girijabhushan on behalf of his client, Sudarsanchandra Mallik. Girijabhushan Sarkar was sentenced to six weeks' rigorous imprisonment on each charge, under sections 406/109 and 409 of the Indian Penal Code. The sentences were, however, reduced in revision by the High Court, though the convictions were upheld. After the expiry of the sentences, Girijabhushan Sarkar applied to the High Court for permission to resume practice as a pleader, upon which this Rule was issued under section 12 of the Legal Practitioners Act, calling upon him to show cause why he should not be suspended or dismissed on the ground that the offences of which he was convicted imply a defect of character which unfits him to be a pleader.

Mr. H. D. Bose, Mr. Saratkumar Mitra and *Mr. Anilchandra Ray Chaudhuri*, for the petitioner.

Cur. adv. vult.

JACK J. By this Rule under section 12 of the Legal Practitioners Act, Babu Girijabhushan Sarkar, pleader, has been directed to show cause why he should not be suspended or dismissed, on the ground that he has been convicted of two offences of breach of trust and abetment of the same, implying a defect of character unfitting him to be a pleader.

He does not dispute the accuracy of the recitals of the two judgments of the Chief Presidency Magistrate in the cases in which he was convicted.

From these, we find that Babu Amarchandra Chandra, his co-accused in one of these cases, was previously prosecuted for embezzlement and had been declared an insolvent and prohibited by the court from withdrawing money on behalf of clients from the court. Knowing all this, Babu Girijabhushan Sarkar withdrew, in each of these cases, a large sum on account of a client of Babu Amarchandra

Chandra, by virtue of a power of attorney, in which his name was entered, unknown to the client. These sums were not paid to the clients and hence his conviction in these two cases.

Further, it appears, that, when asked for the money, he told various untruths to explain the delay in payment.

In his application to be allowed to resume practice in the Small Cause Court, he urged: (*i*) that he always acted *bonâ fide* under the direction of his senior (*i.e.*, his co-accused in one case, Babu Amarchandra Chandra), little knowing that he would be put to such trouble, and now repents his extreme indiscretion; (*ii*) that he has paid up the amount of the defalcations; (*iii*) that he has already suffered considerably through his prosecution and conviction.

These pleas indicate that he scarcely seems to appreciate the extent of moral delinquency indicated by his conduct. Such conduct is not compatible, as he seems to imagine, with *bonâ fides* and is not merely a matter of indiscretion. That he should have thought such pleas justified in the circumstances seems in itself an indication that his present character unfits him to be a member of an honourable profession and that he is not a man to whom the affairs of clients could be safely entrusted. His learned advocate very wisely does not now seek to justify his conduct, though he still seems anxious to put most of the blame on his co-accused.

He has, it is true, since he was convicted, paid up the amount of the defalcations and, putting the most favourable interpretation on this, some credit must be given to him for restoration of the amounts embezzled. But the fact that he did not act in a straight-forward manner, after the defalcations occurred, is very much against him. An order of dismissal seems almost to be demanded in the interests of the profession and of the litigant public. So much so, that it is with some hesitation that we refrain from ordering that his name be struck off the roll of pleaders and adopt the alternative course suggested

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in the Rule. Both the Chief Judge of the Small Cause Court and the Chief Presidency Magistrate regard, as a mitigating circumstance, the fact that he was apparently led astray by Babu Amarchandra Chandra, and, in this view of the case, we are disposed to treat him leniently, in the hope that, when he resumes practice, he will have been so impressed with the heinousness of such conduct that nothing of the kind will recur. We accordingly order that Babu Girijabhushan Sarkar be suspended from practice as a pleader for one year from this date.

MITTER J. This Rule was issued by the Full Court, by virtue of the powers vested on the High Court by section 12 of the Legal Practitioners Act (XVIII of 1879), by which Girijabhushan Sarkar, a pleader practising in the Calcutta Small Cause Court, was called upon to show cause why he should not be suspended or dismissed on the ground that the offences, of which he was convicted, imply a defect of character which unfits him to be a pleader.

It appears that the pleader was charged with aiding and abetting another pleader, Amarchandra Chandra, in committing breach of trust of a sum of Rs. 1,002 withdrawn on the 14th November, 1925, by the said Chandra from the court, the sum being due to one Bholaram Kundulal. He was convicted under sections 406/109 of the Indian Penal Code by the Chief Presidency Magistrate and was sentenced to undergo rigorous imprisonment for six weeks. He was also charged under section 409 I. P. C., with criminal breach of trust for misappropriation of a sum of Rs. 1,350 drawn on behalf of his client, one Sudarsanchandra Mallik, and he was sentenced to another six weeks' imprisonment on this charge. The pleader moved the High Court and Mr. Justice C. C. Ghose and Mr. Justice Gregory reduced the sentences, observing in their judgment that he has tried to make amends after his conviction.

Mr. H. D. Bose has appeared on behalf of the pleader and has argued that the money misappropriated had been paid up and that, as the pleader was

a junior pleader of only six years' standing and that, as regards the first offence, the Presidency Magistrate observed in his judgment that he was to some extent the victim of the co-accused, Chandra, a merely nominal punishment should be given.

When a pleader does an act, which involves dishonesty, it is for the interest of the suitors that the court should interpose and prevent a man, guilty of such misconduct, from acting as pleader of the court. In this case, the pleader had been proceeded against criminally and has been convicted of breach of trust and abetment of the same and, upon those convictions being brought to our notice, it is the bounden duty of the court to act. It is not permissible to us to go behind the conviction, nor has learned counsel for the pleader asked us to do so. In our opinion, the convictions followed by the sentences were sufficient, without further enquiry, to justify the High Court in taking proceedings under section 12 of the Act, for it is now firmly established that the pleader cannot be allowed to have indirect appeals against the judgment of the Chief Presidency Magistrate confirmed by the High Court: *In the Matter of Rajendro Nath Mukerji* (1). Where a pleader has been convicted of criminal offences, for misconduct committed strictly in his professional character, that *prima facie*, at all events, renders him unfit to be a member of the honourable profession. I do not, however, mean to say that wherever a pleader has been convicted of a criminal offence, the court is bound to strike him off the roll. The use of the word "may" in section 12 after the words "the High Court" shows that the discretion of the court in each particular case is absolute. In this connection, the following observations of Lord Esher, Master of the Rolls, are instructive and may be usefully referred to: "Where a "man has been convicted of a criminal offence, that "*prima facie*, at all events, does make him a person "unfit to be a member of the honourable profession. "That must not be carried to the length of saying

(1) (1899) I. L. R. 22 All. 49 ; L. R. 26 I. A. 242.

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"that, wherever a solicitor has been convicted of a "criminal offence, the court is bound to strike off the "roll. That was argued on behalf of the Incor- "porated Law Society in the case of *Re a Solicitor, "Ex parte Incorporated Law Society* (1). It was "there contended that, where a solicitor had been "convicted of a crime, it followed, as a matter of "course, that he must be struck off; but Baron Pollock "and Manisty J. held that, although his being con- "victed of a crime *primâ facie* made him liable to be "struck off the roll, the court had a discretion and "must inquire into what kind of a crime it is of "which he has been convicted, and the court may "punish him to a less extent than if he had not been "punished in the criminal proceeding. As to "striking off the roll, I have no doubt that the court "might, in some cases, say 'under these circum- "'stances we shall do no more than admonish him', "or the court might say 'We shall do no more than "'admonish him and make him pay the costs of the "'application'; or the court might suspend him or "the court might strike him off the roll. The dis- "cretion of the court in each particular case is "absolute. I think the law as to the power of the "court is quite clear." See *In re Weare* (2).

Bearing these observations in mind, let us consider what are the circumstances of mitigation in this case. There is the fact that he has paid the sums withdrawn by him. On the other hand, it is to be noticed that the repayment was after the discovery of the fraud. If he had spontaneously come forward and acknowledged the truth and of his own accord had made good the loss his clients had sustained through the embezzlement in question, I think that would have entitled him to much more favourable consideration than the mere fact of his payment on the discovery of the fraud. He paid the money more for the purpose of protecting himself from the conse- quences of his misconduct rather than from any con- trition on his part and desire to make good the

(1) (1889) 61 L. T. 842.

(2) [1893] 2 Q. B. 439, 445.

mischief he had done. But, still taking into consideration the facts that he has paid the money, that he was, to some extent, the victim of circumstances, in that he associated himself with his senior pleader, whose conduct was known not to be above board, that he has conducted himself well and had done nothing wrong since his last offence, that he, through his counsel, has expressed his repentance and has given us the assurance that he would lead an honourable life henceforth, we think we are not called upon to go to the extent of striking him off the roll; but we cannot pass the case over without marking our sense of the misconduct of the pleader in the two instances of misappropriation which are found to have taken place. The least that we can do is to say that he must be suspended from practising as a pleader for the period of one year from date.

For these reasons I agree with my learned brother in the order which he proposes to make.

Rule absolute.

A. A.