ORIGINAL CIVIL.

Before Costello J.

IMPERIAL BANK OF INDIA, LTD.

1929.

March, 26.

v.

BENGAL NATIONAL BANK, LTD.*

Company law—Indian Companies Act (VII of 1913), ss. 109, 112, 114, 120, 121—Debentures charging company's undertaking, properties, assets, when binding—Imperial Bank of India Act (XLVII of 1920), ss. 3 (1), 8, Sch. I, Part I, cl. (a), sub-cls. (v), (vi); Part II, cl. 1 (c)—Indian Registration Act (XVI of 1908), ss. 17, 49.

By clause 3 (*e*) of the memorandum of association of the defendant company, it was provided that among the objects for which it was established were the following—"To raise money by the issue of shares (preference, ordinary or deferred), debentures, debenture-stock, bonds, and other securities, and to invest the moneys so raised, or any part thereof upon any of the investments specified in the 'memorandum'." The defendant company borrowed money from the plaintiff bank upon the securities of promissory notes executed by it in favour of some of its directors who endorsed the same in favour of the plaintiff bank and also upon the securities of debentures issued by it in favour of the plaintiff bank creating charges upon all the defendant company's undertakings, properties and assets including its uncalled capital. In a suit by the plaintiff bank against the defendant company to recover the moneys due upon the said debentures, objections were raised by the defendant company that the debentures were *ultra vires* the defendant company and were illegal as contravening the provisions of the Imperial Bank of India Act, 1920.

Held that the defendant company was empowered by the aforesaid clause of the memorandum of association to raise money by means of debentures irrespective of the question of investment of the same and that the debentures in suit were issued in pursuance thereof and in conformity with Part I, clause (*a*), sub-clauses (*v*) and (*vi*) of the schedule to the Act XLVII of 1920 and so were valid and binding.

Where after the issue of mortgage debentures by a company the debenture-holders had the said debentures duly registered under the provisions of the Indian Companies Act, 1913, obtaining certificates of the said registration thereunder, no subsequent alterations, made by the Registrar of the Joint Stock Companies of his own accord in the register, affect the validity of the debentures as between the company and the debenture-holders.

ORIGINAL SUIT.

This suit was by the Imperial Bank of India claiming, as holders of two debentures of the Bengal National Bank, Ltd., for a declaration of charge upon

* Original Civil Suit, No. 1215 of 1927.

all undertaking, property and assets (including uncalled capital), an account, and enforcement of the said debentures by sale of the property and assets of the defendant and other consequential reliefs.

The facts of the case will appear from the judgment.

Mr. Sudhir Roy (with him *Mr. J. C. Sett*) on behalf of the defendant the Bengal National Bank. The Bengal National Bank had no authority to create the debentures:—(*a*) They are *ultra vires* the memorandum. The Bengal National Bank was authorised by its memorandum to create debentures for investment purposes only, but not for raising loans to meet withdrawal by depositors. See clauses (*e*) and (*h*) of section 3 of the memorandum. Contracts *ultra vires* the memorandum are void and do not give rise to any indebtedness. Buckley's Companies Acts, 10th edition, pp. 11, 228.

(*b*) The debentures were *ultra vires* the directors. The directors had no power to create the debentures and in fact the Articles did not give them any borrowing powers. See Article 99. Contracts *ultra vires* the directors are voidable by the company. See Buckley's Companies Acts, p. 12.

The debentures are illegal. The Imperial Bank of India is forbidden by statute to make any loan or advance for a longer period than 6 months or upon the security of immoveable property or documents of title. See sections 3 (*1*), 8, Sch. I, Part I (*a*) (*i*) to (*vi*) and Part II 1 (*c*) of the Imperial Bank of India Act. Such loans and advances thus made are *malâ prohibita* and any contract to do it is illegal. The two debentures purporting to do it are illegal. See section 23 of the Contract Act.

Where any part of the consideration for a promise is illegal the whole agreement is illegal, because it is impossible to discriminate between the weight to be given to different parts of the consideration. See section 24 of the Indian Contract Act, 1872; Halsbury's Laws of England, Vol. 7, p. 406.

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No suit can be brought to enforce an illegal transaction directly or indirectly. The Court will not assist an illegal transaction in any respect, it will leave the parties where it finds them. See Broom's Legal Maxims, pp. 561-562; Halsbury's Laws of England, Vol. 7, p. 408.

It follows, as an incident of an illegal transaction, that any money paid under the transaction can not be recovered and any security which is given in respect of the debt cannot be enforced. See Halsbury's Laws of England, Vol. 7, pp. 409, 410.

In any case, the debentures are *ultra vires* the Imperial Bank. It was *ultra vires* to take securities consisting of immoveable properties or documents of title. The contract for the loan of money would be perfectly valid but the security taken would be invalid and worthless. There are considerations of public policy involved in this prohibition. The Imperial Bank is not entitled to enforce such security in any way: *Azeem* v. *Cruickshank* (1) and *The National Bank of Australasia* v. *Cherry* (2). The Imperial Bank should therefore return the title deeds and should not interfere with the other immoveable properties. It should also return the scrip for shares and the *hundis*. Under the Imperial Bank of India Act, the Imperial Bank may take securities as collateral security, but, on the facts of this case, the securities taken were all taken as part of the same transaction. They have been taken as original security. There is nothing collateral about them as opposed to the word "original" used in the section. Further, if this were allowed it would be allowing the statute to be circumvented.

The debentures were at first registered with the Registrar of Joint Stock Companies, but such registration was subsequently cancelled. The Registrar has no power to rectify without an order of Court. See sections 120, 121 of the Indian Companies

(1) (1871) 16, W. R. 203. (2) (1870) L. R. 3 P. C. 299.

Act: Buckley's Companies Acts, p. 257. The debentures are therefore void against the liquidators. Section 109 of the Indian Companies Act.

The debentures were not registered with the Registrar of Assurances: They cannot, therefore, affect any immoveable property. Section 17 (*1*) (*b*) and section 49 of the Indian Registration Act.

Mr. W. W. K. Page (*The Advocate General, Mr. N. N. Sircar*, and *Mr. J. Langford James* with him), for the Imperial Bank of India:—

The memorandum of association of the plaintiff authorises the issue of the debentures: cl. (*h*) of s. 3 of the memorandum. Further this power to issue debentures is vested in the directors by the Articles: See Article 99.

It was not *ultra vires* the Imperial Bank to accept the debentures as security. It was entitled to accept them under Schedule I, Part I (*a*) (*vi*) of its Act. The original securities taken were the promissory notes made by the directors. The title deeds were taken as collateral securities. The word "collateral" means "existing side by side." These transactions were also duly authorised by the Central Board. Part II (*1*) (*c*) of the Act has no application to the facts of the case. It saves part I of the Act.

The cancellation of the entry in the register by the Registrar of Joint Stock Companies was made by him in error, under a misapprehension, and he has rectified it. He had full power to do so. It was not necessary to obtain an order of Court. It is conceded that, for want of registration with the Registrar of Assurances, no charge was created by the debentures on immoveable properties. There cannot, therefore, be a declaration of a charge on the immoveable properties.

But the question whether the title deeds would come under the description of immoveable properties of the defendant must form the subject matter of separate proceedings. The question cannot be decided in this suit, which is brought only to enforce the security constituted by the debentures.

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COSTELLO J.

COSTELLO J. In this suit the Imperial Bank of India is claiming against the Bengal National Bank, Ltd., which is now in liquidation, a declaration that two debentures, dated, respectively, the 4th May, 1923, and 1st August, 1923, constitute charges upon all the undertakings, property and assets, including the uncalled capital of the defendant bank. The plaintiffs are also claiming an account of what is due to them as the holders of those debentures for principal, interest and costs, and further that the debentures may be enforced by the sale of the property and the assets of the defendant bank.

The claim has been resisted by the defendants upon the ground that the issue and the acceptance of the debentures in question were *ultra vires* the memorandum of the defendant bank, and were illegal and unauthorised or at any rate *ultra vires* so far as the Imperial Bank of India is concerned, by reason of certain provisions in the Imperial Bank of India Act, which is Act XLVII of 1920.

Two further points were also taken on behalf of the defendants, *viz.*, that the debentures had not been properly registered as required by the provisions of the Indian Companies Act of 1913, and also that, as the debentures were not registered in accordance with the requirements of the Registration Act, section 17, in so far as they related to immoveable property, they are unenforcible. This latter point was readily conceded by Mr. Page on behalf of the plaintiffs, and Mr. Page admitted that, in so far as any of the properties of the defendant bank consists of immoveable property, that will not have been affected by the operation of the two debentures.

So far as the other point in connection with the registration is concerned, that is, registration under the companies Act of 1913, that has no substance at all, in my opinion, as it is clear that the plaintiffs did in fact register the debentures at the proper time with the Registrar of Companies, and they received from him the proper certificate showing that such registration had taken place, and, by the terms of section 114

of the Companies Act, that certificate is conclusive. Therefore it must be taken that all necessary formalities in regard to the registration of the documents were complied with. It is quite true that subsequently the Registrar of Companies, owing to a misunderstanding, did make an alteration or even made a cancellation in the Register with regard to these particular documents. I am, however, of opinion that nothing done by the Registrar of his own accord, after the plaintiffs had properly registered the documents, affected their validity as between the plaintiffs and the defendants.

The real points of substance in the defence, which was ably put forward and argued by Mr. Roy, are those relating to the question of whether or not these debentures were *ultra vires* either the plaintiff bank or the defendant bank. Now, so far as the latter is concerned, Mr. Roy relied upon clause 3 (*e*) of the Memorandum of Association of the Bengal National Bank Ld., and that clause sets out that among the objects for which the company was established was—

To raise money by the issue of shares (preference, ordinary or deferred) debentures, debenture-stock, bonds and other securities, and to invest the moneys so raised, or any part thereof, upon any of the investenents specified in this " Memorandum."

Mr. Roy, as Mr. Page contended, sought to put a restrictive meaning upon that clause and to make it read as if the Bengal National Bank were restricted to the raising of debentures for the purpose of obtaining money to invest and not otherwise. I agree with the view put forward by Mr. Page that that is not the right interpretation, and that the clause should be read as an enabling and not a limiting clause, and the real meaning of it is that the Bengal National Bank were empowered to raise money by the issue of debentures, and that if they so desired to invest the money they raised or any part of it. That clearly gives them an option as to whether they invest the money raised by debentures either wholly or in part or not at all.

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Therefore, I think it is clearly within the objects of the Bengal National Bank to raise money by means of debentures.

The other point at first sight seems not altogether free from ambiguity or doubt. That is to say, the question of what are the powers of the Imperial Bank of India in a matter of this kind, because by Part II of the schedule to the Imperial Bank Act of 1920 it is laid down that the Bank shall not transact any kind of banking business other than those specified in Part I and in particular—".....upon mortgage or "in any other manner upon the security of any "immoveable property, or the documents of title "relating thereto." That, on the face of it, is a specific prohibition. It is, however, subject to the provisions contained in Part I of the schedule 1, and in sub-clause (*a*) read with the operative part of the clause it is provided that the bank is authorised to carry on and transact the several kinds of business thereinafter specified, *viz.* :—

"the advancing and lending money, and opening "cash credits upon the security of—

"(*vi*) fully paid shares and debentures of com- "panies with limited liability, or immoveable "property or documents of title relating thereto as "collateral security only where the original security "is one of those specified in sub-clauses (*i*) to (*iv*), and "if so authorised by any general or special directions "of the Central Board, where the original security is "of the kind specified in sub-clause (*v*)."

Sub-clause (*v*) refers to this kind of business—

"(*v*) accepted bills of exchange and promissory "notes endorsed by the payees and joint and several "promissory notes of two or more persons or firms "unconnected with each other in general partnership."

In the present case, the debentures which were issued by the defendant bank in favour of the Imperial Bank of India were, in my opinion, securities

"collateral" to that of the kind mentioned in sub-clause (*v*), *viz.*, promissory notes made by the Bengal National Bank in favour of the directors of the Bank and by them endorsed in favour of the Imperial Bank of India, and indeed, in the first of the two debentures, the position is clearly stated, in that the debenture begins—"The Bengal National Bank, Ltd., in consi-"deration of ten lakhs now paid on loan to them by the "Imperial Bank of India against certain securities "authorised by Act XLVII of 1920, do hereby as an "integral part of and collateral security for the said "loan, undertake to pay....." The second debenture is not worded in exactly the same form, but I have no doubt whatever that both parties realised what their rights were, and that they deliberately put in the forefront of the list of securities which had been given the promissory notes executed by the Bengal National Bank in favour of its directors, who in their turn, endorsed them in favour of the Imperial Bank.

Mr. Roy sought to put upon the word "collateral" in connection with "security" rather an extended meaning, and he said that as the clause refers to the original "security," collateral security must mean a security which is given *after* the loan is actually paid, and the primary or original security has been taken. He cited in support of that proposition two cases, *Azeem* v. *Cruickshank* (1) and *The National Bank of Australasia* v. *Cherry* (2). All that those cases decide, in my opinion, comes to this, that if there were an express prohibition against giving a particular kind of security, in the first instance, that would not necessarily preclude that security from being given subsequently for the purpose, not of covering the original debt, but of securing repayment of the debt as and when it became due. Those two cases do not really assist the defendants in the present instance, because they do not say that, in those circumstances, the word "collateral" is to be read as if it meant collateral and subsequent.

(1) (1871) 16 W. R. 203. (2) (1870) L. R. 3 P. C. 299.

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There are, on the other hand, two cases *Athill* v. *Athill* (1) and *Leonino* v. *Leonino* (2), which determine in my opinion that the question of whether a security is collateral or not depends upon the time of its operation, and not necessarliy on the precise moment at which it is given. Security may equally be collateral, whether it is given at the same time as what may be called the principal security or whether it is given subsequently, provided only that it is intended to take effect and to operate and to enure for the benefit of the person to whom it is given, alongside and parallel with the other security that has been given. I have no doubt that the intention in the present instance was, as I have said, that the promissory notes should be the original security, and that the other forms of security should, at the time when the loans were given, be collateral to that security, and, accordingly, they would fall within the terms of Part I of the schedule, sub-clauses (*v*) and (*vi*).

I accordingly hold that these debentures did fall within the powers possessed by the Imperial Bank of India under the provisions of the Act of 1920. I am, therefore, bound to say that there is no reason why the plaintiffs are not entitled to the declaration that they ask for, except that from the operation of the debentures there must be excluded immoveable properties belonging to the defendant bank by reason of the fact that these debentures were not registered under the terms of the Registration Act.

I make a declaration that the two debentures, dated the 4th May, and 1st August, 1923, constitute charges upon all the undertakings, property and assets including the uncalled capital of the Bengal National Bank, Ltd., other than such part of the bank's property as is "immoveable." I make an order at the defendants' request that an account be taken of what is due to the plaintiffs, the holders of those two debentures, on account of the principal and interest and charges.

(1) (1880) 16 Ch. D. 211. (2) (1879) 10 Ch. D. 460.

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.