plants thereon does not thereby become entitled to the produce.

I set aside the judgment and decree of the District Court. There will be a decree declaring that the plaintiff is entitled to possession of the land in suit as against the defendants. There will also be a decree for the plaintiff for Rs. 150, the value of 100 baskets of paddy, as against the first two defendants. These first two defendants will also pay the plaintiff's costs in all Courts.

APPELLATE CIVIL.

Before Sir Sydney Robinson, C.J., and the other Judges of the High Court (in Chambers).

IN THE MATTER OF MAUNG PO TOK, A PLEADER.*

1924

July 4.

Legal Practitioners' Act (XVIII of 1879), section 13—Pleader standing surety for a person arrested on a charge under section 420, Indian Penal Code—Taking charge from the accused of property subsequently found to be property in respect of which an offence had been committed—Previous acquittal in a criminal trial, whether a bar to action on the same facts under the Legal Practitioners' Act—Autrefois acquit.

At the request of H who was arrested on a charge under section 420 of the Indian Penal Code, T, a legal practitioner, took charge of certain property which H had deposited with R. Subsequently H was released on bail, T standing surety for him; after staying for a few days in T's house, H thereafter disappeared. It then transpired that the property which T had taken charge of was property in respect of which H had committed an offence under section 420 I.P.C. Later, H was arrested and convicted in respect of the said property.

T was was then prosecuted and after a trial on alternative charges under sections 420, 411 and 414, Indian Penal Code, was acquitted. On the District Magistrate's recommendation that on the facts narrated, the High Court should take action against T under the Legal Practitioners' Act,

Held that in standing surety for H, T was not guilty of unprofessional conduct and did not act as a pleader.

Held, further, that H was not acting in his professional capacity in taking charge of the property and keeping it for H, nor was he guilty of any criminal offence in so doing.

---

* Civil Miscellaneous Application No. 50 of 1924.

1924

IN THE MATTER OF MAUNG PO TÔK, A PLEADER,

Held, further, that proceedings under the Legal Practitioners' Act are quasi-criminal, and where the facts have already formed the subject of a criminal trial which has resulted in an acquittal, the principle of "Autrefois acquit" must apply.

One Po Hman of Kyonmange was arrested at Myaungmya by the Police on the 12th December 1923 on a suspected charge under section 420 of the Indian Penal Code in respect of a loongyi belonging to a woman resident at Wakèma. Maung Po Tôk, a practising pleader, and one Hla Tin stood surety for Po Hman and on the next day Po Hman was released. When Maung Po Tôk first came to the police-station for the purpose of obtaining bail, Po Hman had asked him to take charge of certain properties, deposited by him with the local manager of Rowe & Co. Maung Po Tôk accordingly took over the property, which included amongst other items a packet of diamonds.

After his release, Po Hman lived in Maung Po Tôk's house for some days. In the meantime, certain diamond merchants, Gordhan Das and Puji Ram, were in search of Po Hman, who had disappeared with diamonds, gold coins and other jewellery entrusted to him for sale. Upon hearing that Po Hman was living at Maung Po Tôk's house, Gordhan Das lodged a report with the Police on the 18th December 1923 and on search the being made at the house, Maung Po Tôk produced ten sovereigns and two white stones and stated that Po Hman had gone away. Po Hman was subsequently arrested and convicted.

Maung Po Tôk was also thereafter prosecuted under sections 420, 411 and 414 of the Penal Code but after a trial by the District Magistrate of Myaungmya, was acquitted. In the course of his acquittal order, the District Magistrate stated "I cannot help believing that Po Tôk must have known or at least suspected or would have had reason to believe

1924

IN THE MATTER OF MAUNG PO TÔK, A PLEADER.

that the property in question was stolen property but since the evidence on this point is not conclusive, I must give him the benefit of the doubt . . . . . However Maung Po Tôk, being a practising pleader, is, I consider, guilty of gross misconduct in standing surety for a person arrested by the Police for a cognisable offence and by retaining ten sovereigns from that person, which subsequently turned out to be stolen property, on the alleged excuse to cover the amount of security he had offered." The District Magistrate then instituted the present proceedings under the Legal Practitioners' Act, framing the following charge against Maung Po Tôk. "For that according to your own admission as an accused in Criminal Regular Trial No. 1 of 1924 of this Court, you on the 13th December 1923 stood bail for one Maung Po Hman who was arrested by the Police on suspicion of commission of a cognisable offence and that you received and retained sundry valuable property, to wit two diamonds, 50 sovereigns, 53 pieces of gold coins of various denominations and some loose imitation stones in respect of which Po Hman has since been convicted of criminal breach of trust: for that you have retained till seized by the Police on the 19th December 1923, a portion of that property to wit, ten sovereigns and two imitation stones ostensibly to cover the amount of security you offered; you have thereby committed professional misconduct as a pleader, thereby rendering yourself liable to punishment under section 13 (*f*) of the Legal Practitioners' Act, 1879." Maung Po Tôk pleaded that he had no reason to believe nor had the slightest suspicion that the articles in question were stolen property.

The District Magistrate then made the following remarks in his report to the High Court: "That Maung Po Tôk's retention of the property in question

1924

IN THE MATTER OF MAUNG PO TÔK, A PLEADER.

was ostensibly for the purpose of covering the amount of security he had furnished, but in my opinion, he really retained them as his fees for getting Maung Po Hman out on bail. I therefore consider that Maung Po Tôk is guilty of gross misconduct in his capacity as a practising pleader and should be punished." The learned Sessions Judge supported the findings of the District Magistrate but suggested that Maung Po Tôk cannot be held to have acted in his capacity as a pleader but should be charged with general misconduct unconnected with professional duties.

The matter was considered by Honourable Judges of the High Court in Chambers, and the result of their Lordships' deliberations will found in the order reported below which was pronounced by the learned Chief Justice.

ROBINSON, C.J.—Upon reading the proceedings in Criminal Miscellaneous Case No. 31 of 1924 held by the District Magistrate of Myaungmya against Maung Po Tôk who was charged under section 13 (*f*) of the Legal Practitioners' Act.

It is ordered that in the view of the Honourable Judges the proceedings under section 13 of the Legal Practitioners' Act are misconceived. In standing surety for a man arrested on a charge under section 420 Maung Po Tôk was not guilty of unprofessional conduct and did not act as a pleader. He was not acting in his professional capacity in taking charge of the property from Rowe & Co.'s Manager and keeping it for Po Hman ; nor was he guilty of any criminal offence in so doing. Moreover, he has been acquitted by a Criminal Court of receiving and retaining stolen property while the Magistrate who tried him on those charges also decided that there was insufficient

1924

IN THE MATTER OF MAUNG TÔK, A PLEADER.

ROBINSON, C. J.

evidence to justify a charge of cheating with respect to the substitution of the diamonds. Proceedings under the Legal Practitioners' Act are quasi-criminal and where the facts have already formed the subject of criminal trial which has resulted in an acquittal the principle of "Autrefois acquit" must apply.

APPELLATE CIVIL.

Before Mr. Justice Duckworth and Mr. Justice Godfrey.

1924

July 7.

MA E KHIN AND OTHERS
v.
MAUNG SEIN AND OTHERS.*

Sunni Mohamedan Law—Wakfnamah—Reservation to the wakif, as Mutwalli, of the occupation of the property during his lifetime, and the usufruct of the profits—The right to alter the rules of the grant under the wakf, whether reserveable to the wakif—Wakf, when duly created—Invalid clauses in the wakfnamah, effect of—Verbal wakf—Nature of evidence to establish an oral wakf—Non-appointment of a Mutwalli—Object of the trust whether necessary to be declared—Wakf Validation Act (VI of 1913).

Held, that at Sunni Mohamedan Law, the reservation to the wakif, as Mutwalli, of the occupation of the property during his lifetime and the usufruct thereof, did not vitiate a wakf, provided that the *corpus* of the property was definitely and finally appropriated to the intended purpose.

Held, also, that the wakif may legally reserve to himself the right to alter the rules of the grant under the wakf, if such alteration did not amount to a revocation of the wakf.

Held, also, that a wakf is completed by the wakif's dedication; and that provisions in the wakfnamah that Mutwallis, who were to succeed the donor should not enter upon the property before a certain period after his death, did not constitute it a testamentary disposition.

Held, further, that if there were invalid clauses in a wakfnamah, the wakf was not vitiated thereby but only the offending clauses were void.

Held, also, that a verbal declaration of the intention to create a wakf was sufficient if made in the presence of witnesses and that where the witnesses deposed that the owner declared either that he then dedicated his property or had already dedicated it, it was enough to divest him of his proprietary rights therein.

Held, also, that the wakif need not appoint a Mutwalli, and that he need not declare the object of the trust; the presumption then being that the wakif

* Civil First Appeal No. 14 of 1923 (at Mandalay) from the decree of the District Court of Mandalay in Civil Regular No. 42 of 1920.