

This application must, therefore, be allowed, the suit is restored to the file, and the learned 2nd Judge of the Small Cause Court is directed to take into consideration the application of the applicant for leave to appear and defend the suit and to pass orders thereon upon its merits. The applicant is entitled to his costs of this application as against the respondent, advocate's fees seven gold mohurs.

1936  
 RATILAL  
 MEHTA  
 v.  
 PRAGJEE.  
 DUNKLEY, J.

GOODMAN ROBERTS, C.J.—I concur.

### CIVIL REVISION.

Before Mr. Justice Dunkley.

U SAN THEIN

v.

THE DISTRICT MAGISTRATE, MAGWE.\*

1936  
 Mar. 12.

*Pleader's misconduct—Power of suspension—Court entitled to inquire into misconduct—Court empowered to suspend—Procedure—Notice—Legal Practitioners' Act (XVIII of 1879), ss. 14 (5), 40.*

By the order of the District Magistrate, the applicant, a pleader, was suspended from practice, pending investigation into his alleged misconduct which took place in the Court of the Honorary Magistrates. No notice was issued to the pleader before suspension, and the District Magistrate apparently purported to act under s. 14 (5) of the Legal Practitioners' Act.

*Held*, that the Court empowered to inquire into the conduct of the pleader was the Court of the Honorary Magistrates before which the alleged misconduct took place, and that Court alone had the power of suspension. Further, the pleader must have notice of the charge against him and an opportunity of being heard in defence, and it is only after the Court has completed its inquiry and has recorded its findings and the grounds thereof, and has submitted the proceedings to the High Court that the power to suspend the pleader arises. The order of the District Magistrate suspending the pleader therefore was without jurisdiction.

*Bajrangī v. Muktear*, 15 C.W.N. 269—referred to.

*Kyaw Myint* for the applicant.

No appearance for the respondent.

\* Civil Revision No. 305 of 1935 from the order of the District Magistrate of Magwe in File No. II-2 of 1935.

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 U SAN THEIN  
 v.  
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DUNKLEY, J.—The applicant, who is a pleader of the Lower Grade practising at Taungdwingyi, has been suspended from practice by the District Magistrate of Magwe, who apparently purported to act under the fifth clause of section 14 of the Legal Practitioners' Act. It appears that the Honorary Magistrates of Taungdwingyi, through the Subdivisional Magistrate of Taungdwingyi, made a report to the District Magistrate alleging that this pleader had been guilty of certain misconduct during the progress of a trial before them, and on this report the District Magistrate issued an order to the Subdivisional Magistrate of Taungdwingyi, the final paragraph of which was in the following terms :

" Pending such investigation, as a *prima facie* case of using objectionable language to the Court of the Honorary Magistrates, Taungdwingyi, and of fraudulent conduct in the discharge of his professional duty has been made out against U San Thein, Lower Grade Pleader, Taungdwingyi, he is suspended from practice until further orders."

A copy of this paragraph of the District Magistrate's order was thereupon served upon U San Thein by the Subdivisional Magistrate of Taungdwingyi, and U San Thein was suspended from practice.

It is plain that, in any case, the only Court which could suspend the applicant from practice in connection with this particular misconduct was the Court of the Honorary Magistrates, for section 14 refers to an investigation into the misconduct of the pleader undertaken by the Court before which the misconduct took place, and under the fifth clause of that section that Court only has authority to suspend the pleader with the sanction of the District Magistrate. Hence the order served by the

Subdivisional Magistrate of Taungdwingyi upon the applicant, suspending him from practice, was clearly *ultra vires*.

Moreover, section 14 of the Legal Practitioners' Act is governed by section 40, and under section 40 of the Act no pleader may be suspended from practice unless he has been allowed an opportunity of defending himself before the authority suspending him. At the time when the order of the District Magistrate was passed no charge had been framed against the applicant and no notice had been served upon him, as required by the first and second clauses of section 14. Hence on this ground also the order of the District Magistrate suspending the applicant from practice was made without jurisdiction.

Furthermore, the fifth clause of section 14 gives authority to suspend a pleader only after the preliminary enquiry in the Court in which the misconduct took place, and pending the investigation before the High Court under section 13.

It has been held in the case of *Bajrangi Sahai v. Muktear* (1) that a legal practitioner cannot be provisionally suspended pending investigation (under section 14 of the Legal Practitioners' Act) of a charge of misconduct brought against him, without being heard in defence under section 40 of the Act, and before a report has been submitted to the High Court in terms of section 14, the investigation referred to in the fifth clause of that section being the investigation by the High Court. Consequently there is no authority to suspend a pleader until the enquiry by the Court in which the alleged misconduct took place has been completed, and that Court has recorded its findings

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(1) 15. C.W.N. 269.

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and the grounds thereof and submitted the proceedings to the High Court. It is only at that stage that the power to suspend a pleader arises. On all these grounds the order of the District Magistrate, dated 12th July, 1935, suspending the applicant from practice, was passed without jurisdiction, and this order is, therefore, set aside.

[25th Aug. 1936. The proceedings and findings of the Honorary Magistrates were submitted to the High Court (Civil Misc. Application No. 48 of 1936), and the matter came up before Goodman Roberts C.J. and Dunkley J. Their Lordships did not propose to take any further action save to issue a warning to the pleader to exercise more care in the manner of conducting his cases and his behaviour in Court.]

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## APPELLATE CIVIL.

Before Mr. Justice Dunkley.

1936  
 Mar. 25.

PAPA AMMAL

v.

PANCHAVARNAM AMMAL AND OTHERS.\*

*Court of last resort—Question of law raised for the first time—Entertainment of plea—Second appeal—Remand of case for evidence to decide point—New and different right raised.*

When a question of law is raised for the first time in a Court of last resort upon the construction of a document, or upon facts either admitted or proved beyond controversy, it is competent for the Court to entertain the plea.

*Connecticut Fire Insurance Company v. Kavanagh*, 1892 A.C. 473—*followed*.

But the High Court will not entertain a point of law raised for the first time in second appeal if the point cannot be decided without remanding the case for further evidence.

*Jarip Sardar v. Jogendra Nath*, 24 C.W.N. 53; *Pershottam v. Kasturbhai*, 32 Bom. L.R. 1001—*referred to*.

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\* Special Civil Second Appeal No. 139 of 1935 from the judgment of the District Court of Insein in Civil Appeal No. 32 of 1934.