

(1927) 03 BOM CK 0016
In the Bombay High Court

In Re: An Attorney

Date of Decision : 07-03-1927

Acts Referred:

Citation : AIR 1927 Bom 537 : (1927) 29 BOMLR 1066

Hon'ble Judges : Fawcett, J;Blackwell, J;Amberson Marten, J

Bench : Full Bench

Judgement

Amberson Marten, Kt., C.J.—The main facts in this case are concisely and clearly set out in the report of Mr. Justice Blackwell. By agreement between the parties the exhibits on the enquiry before him are to be treated as exhibits on the present petition by the Advocate General. I need not, therefore, recapitulate the facts.

2. The attorney has pleaded guilty to the three charges of professional misconduct (a), (b) and (c) formulated in the report. Having regard to the gravity of those charges, the only question which remains is whether under Clause 10 of the Letters Patent he should be removed merely or suspended from practice. Shortly stated, the charges to which he has pleaded guilty show grave professional misconduct. Being entrusted by one set of clients with Rs. 20,000 to advance on a mortgage of two properties in Sankli Street and Ripon Road, he deliberately omitted to register the mortgage made in their favour. The result was that that mortgage became useless. The clients afterwards got a mortgage of one of the properties, viz., the Ripon Road property, but they were left without any security on the Sankli Street property, though for some time they were led to believe by the solicitor that they had got a valid security on that property. Further as regards another set of clients, the solicitor allowed them to advance Rs. 22,000 on the mortgage of this very property in Sankli Street without telling them that there was already this other mortgage in favour of the first set of clients which had not been registered, but which at that date might still have been registered.

3. The solicitor has also endeavoured to suppress from his first set of clients and from the Law Society any knowledge of this second document, and it was only in

1926 when the Law Society caused a search in the register to be made that it was discovered. Further, in the enquiry before the Law Society the solicitor has deliberately put forward in his written explanation, dated June 11, 1926, a false defence to the effect that the first set of clients had agreed to waive their security on the Sankli Street property and that these clients had concocted the story that he did not carry out their instructions.

4. The solicitor has not gone into the witness box, or furnished any adequate explanation as to his conduct. In my judgment, then, the clear inference is that he acted in this disgraceful way for his own pecuniary benefit, The solicitor has repaid certain moneys, but the net result is that the clients have lost about Rs. 6,000 out of their original Rs. 20,000 though they may recover another Rs. 2,000 under a compromise decree against the solicitor and his firm. Sir Thomas Strangman for the solicitor has urged that in any event they would have lost this because the property on which they intended to advance their money must have heavily depreciated like other property in Bombay. There is no definite evidence as to this, but even if there was, it hardly affects the question whether at the outset the solicitor defrauded his clients. It only affects the actual loss caused by the fraud. For similar reasons the fact that the clients have actually settled with the solicitor has no great bearing on the matter of his original misconduct. But it may be noted that the misconduct in question was as long ago as November 1919 to November 1920.

5. The real question before us is whether he is fit to remain a member of this honourable profession. Now I take it that this question must be considered from at least three points of view, viz., those of the public and those of his professional colleagues and those of the Court. From the point of view of the public, it is vital that they should be able to repose reasonable confidence in an attorney in dealing with money matters connected with land. If the solicitor is to utilise their money for his private purposes, there must be an end of all confidence. And transactions in land are often of so technical a character that it is difficult for a layman to appreciate or to guard against the manner in which he may be defrauded.

6. Secondly, as regards his professional colleagues, it is of great consequence to them that in their mutual business dealings, they can repose in each other a reasonable amount of trust and confidence. But if a solicitor first defrauds his clients, and then is prepared to tell deliberate falsehoods to the leaders of his branch of the profession on a formal enquiry, is he likely to be the person with whom anybody would care to transact business in the future ?

7. Thirdly, it must be remembered that a solicitor is an officer of the Court, and that necessarily the Court has to trust him in many particulars.

8. Since the arguments were concluded, Mr. Justice Fawcett has brought to my attention two English cases which have a bearing on the present case. In *Re Poole* (1869) L.R. 4 C.P. 350 a solicitor had been struck off the rolls for

fraudulently misappropriating money entrusted to him by a client for investment. At a later date he applied to be readmitted on affidavits which spoke to his good conduct since the transactions in question. There Mr. Justice Willes, in giving the decision of the Court refusing the application, stated as follows (p. 353):-

Upon the whole, looking at the power vested in this Court of admitting to the responsible position of attorneys and officers of the Court persons who thus have the sanction of the Court for saying that, *prima facie* at least, they are worthy to stand in the ranks of an honourable profession, to whose members ignorant people are frequently obliged to resort for assistance in the conduct and management of their affairs, and in whom they are in the habit of reposing unbounded confidence; and looking to the fact that in restoring this person to the roll we should be sanctioning the conclusion that he is in our judgment a fit and proper person to be so trusted; I think we ought not to do so, except upon some solid and substantial grounds. And I further think it ought to be made a condition precedent to the restoration of the applicant to his former position that he should have made full restitution if of ability, or at least that he should have shown that he has made the best efforts in his power to do so. To require less would be a perversion of our duty, and would in effect be offering a premium to evil-doers, to the discouragement of those who toil honourably and faithfully in their profession. I am by no means prepared to say that, in this case, even if the condition I have suggested had been duly performed, I should have been prepared to yield to the application.

9. Then in *In Re H.A. Grey* [1892] 2 Q.B. 440 the Court of Appeal negated the contention that a judgment obtained against a solicitor for the amount in question would take away the disciplinary jurisdiction of the Court in the matter. There Lord Esher said (p. 443):-

The principle so laid down is that the Court has a punitive and disciplinary jurisdiction over solicitors, as being officers of the Court, which is exercised, not for the purpose of enforcing legal rights, but for the purpose of enforcing honourable conduct on the part of the Court's own officers. That power of the Court is quite distinct from any legal rights or remedies of the parties, and cannot, therefore, be affected by anything which affects the strict legal rights of the parties. Such was the principle laid down in the cases to which I have referred, and which were decisions of the Court of Appeal, and therefore are binding on us till overruled by the House of Lords.

10. Then Lord Justice Bowen said (p. 447) :-

There are in such a case two wholly distinct rights the right, of the client at law to be paid his debt, and his right to apply to the Court as a person whose confidence has been abused by a person who is an officer of the Court, and whom he would not have trusted unless he had been such an officer.

11. Then lower down he says:-

The moral duty of the solicitor does not disappear because the legal debt has become a judgment debt. We are sitting now as a tribunal for the enforcement of professional duties.

12. After a careful consideration then of the whole of the circumstances of the present case, I would answer the above question by holding that in the present case the solicitor has shown himself unfitted to remain a member of this honourable profession, and that a temporary suspension would not meet the gravity of the case. I would accordingly direct that he be removed from practice, and his name struck off the register of attorneys, and that he do pay the costs of this petition. His certificate is to be returned forthwith to the Prothonotary.

Fawcett, J.

13. I agree.

Blackwell, J.

14. I agree.