

(1949) 12 AHC CK 0037
In the Allahabad High Court
Case No : First Appeal No. 14 of 1944

Sharan Behari Lal and Others

APPELLANT

Vs

Kanhaiya Lal and Another

RESPONDENT

Date of Decision : 19-12-1949

Acts Referred:

Bar Councils Act, 1926 — Section 15
Contract Act, 1872 — Section 23
Legal Practitioners Act, 1879 — Section 6

Citation : AIR 1953 All 276 : (1950) 20 AWR 296

Hon'ble Judges : P.L. Bhargava, J; Agarwala, J

Bench : Division Bench

Advocate : N.P. Asthana, P.L. Banerji, V.D. Bhargava, K.B. Asthana and Amrit Lal Bhatia, for the Appellant; S.B. Johari and Brij Lal Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Agarwala, J.—This is a defendant's appeal arising out of a suit for recovery of money on the basis of a simple mortgage bond dated 23-12-1931, executed by Angan Lal, defendant 1, in favour of the plaintiff, who was at the date of the mortgage and still is, an advocate practising at Mathura. The appellants are subsequent transferees of the hypothecated property and were arrayed as defendants 2 to 5 in the suit. Defendant 1 did not contest the suit. Indeed, he appeared as a witness for the plaintiff. The appellants contested the suit inter alia on the grounds, (1) that the mortgagor, Angan Lal, was on the date of the mortgage, dated 23-12-1931, a member of the joint Hindu family with his brother Kunj Lal and as such, could not mortgage any portion of the property, and (2) that the plaintiff, being a legal practitioner, was prohibited from entering into a trade or business and as the advancing of a loan on the basis of the mortgage is a contract by way of trade or business, the contract is unenforceable and is void u/s 23, Contract Act. The lower Court held that Angan Lal had separated from, his brother in the year 1927 and that the rule prohibiting a legal practitioner from entering into a trade or business was a rule of discipline or

conduct and did not render the individual contract void. The suit was, therefore, decreed.

2. In this appeal, these two points have been re, agitated before us and no other point has been urged.

[After considering the evidence on the record, their Lordships held:]

3. In our opinion, the view of the lower Court that on the date on which the mortgage in suit was executed, Angan Lal was separate from his brother, is perfectly correct.

4. The next point urged is that the contract evidenced by the mortgage deed in suit is void u/s 23, Contract Act, as it is prohibited by law and is also against public policy. In this connection, reference is made to Rule 26 of chap. 26 of the High Court Rules, which was applicable to the plaintiff respondent, at the time when the mortgage was executed. The said rule is in these words:

"If any applicant for admission as a legal practitioner hold any appointment or carry on any trade or other business the High Court may refuse to admit him, or pass such orders on his application as it thinks proper.

Any person, who having been admitted as a legal practitioner, shall accept any appointment or shall enter into any trade or other business, shall give notice thereof to the High Court, which may thereupon suspend such legal practitioner from practice, or pass such orders as the said Court may think fit. If such legal practitioner be a pleader or mukhtar he shall give the notice through the District Judge in whose Court he is enrolled.

Ordinarily no legal practitioner can be permitted to take an active part in any trade or other business while at the same time carrying on a legal practice."

5. It was conceded by the plaintiff-respondent that for the purposes of this case, it may be assumed that he did money-lending business on a large scale.

6. This rule was framed in exercise of the powers given to the High Court by Section 6 of Act 18 of 1878 and paras 7 and 8, Letters Patent, Section 6, Legal Practitioners Act, empowered the High Court from time to time to make rules consistent with the Act as to the following matters namely,

"(a) the qualifications, admission and certificates of proper persons to be pleaders of the subordinate Courts and of the revenue-offices situate within the local limit of its appellate jurisdiction"

7. Clause 7, Letters Patent empowers the High Court to frame rules and lay down directions subject to which Advocates, Vakeels and Attorneys shall plead or act. Clause S, Letters Patent empowers the High Court to make rules for the qualification and admission of proper persons to be Advocates, "Vakeels and Attorneys at Law of the High Court.

8. The question is whether Rule 26, quoted above prohibits the making of a

contract in the nature of a trade or business and renders it void within the meaning of Section 23, Contract Act.

9. The power conferred on the High Court, for the purpose of framing the rule, was limited to the specific object of prescribing the conditions, under which legal practitioners should be admitted and practise before it or in the Courts subordinate thereto, or under which they could be removed or suspended from practice. The High Court was not given the power of declaring void contracts entered into by legal practitioners in the course of trade or business, because that power appertains to the field of contracts and not to the practice of the profession of law. Since the High Court had no power to make a rule rendering a contract entered into by a legal practitioner void, if it made such a rule, the rule itself would be void; and so the rule in question cannot be read as impliedly rendering a contract void.

10. The matter, however, can be looked at from another stand-point. The practice of the learned professions including that of law has always been considered to be superior in honour and dignity to the plying of a trade or the carrying on of a business. It has further been considered that in order to maintain the dignity and the traditions of the Bar one may not carry on a trade or business, The rule in question, therefore, is a rule of discipline or conduct for legal practitioners. It is not its intention to render void any individual contract which may be entered into by a legal practitioner.

11. The remarks of the Full Bench case of this Court in *Mt. Bhagwan Dei v. Murarilal* 1916 ALL L. J. 962 F.B. are decisive of the question before us. In that case an assignment of mortgagee rights was taken by a patwari in the name of his mother and a suit on the basis thereof was brought. Rule 10 of the rules framed by the Board of Revenue provided that :

"Every patwari is forbidden to engage in trade or moneylending or under any circumstances to borrow money from any land-holder or cultivator of his circle; and to own or cultivate any land of any tenure within his circle."

The rule was framed by the Board in exercise of the powers granted to it for regulating

"appointment of Kanungos and Patwaris, their services, qualifications, duties, removal, punishment, suspension and dismissal."

Walsh, J. observed :

"With regard to the rules, I think it very doubtful whether the power to make rules relating to the appointment, dismissal and so forth of a patwari, u/s 234, confers any right to qualify the general law with, regard to contracts or anything else, and I think the draftsman, who drew these rules, knew his business too well and therefore omitted to do any such thing. In my view, a rule declaring contracts void would have been ultra vires, but that no such intention was ever contemplated la I think clearly indicated by the penalty provided by Rule 11

which immediately follows the prohibition in Rule 10."

On the same day, the same Full Bench decided another case reported in *Kamala Devi v. Gur Dial* 14 ALL. L.J. 969, in which a Kanungo had purchased the equity of redemption of a property in the name of his wife in contravention of Rule 311, Government Servants' Conduct Rules framed by the Local Government. It was held that the rule by itself did not make the transfer to the Kanungo's wife null and void nor could the transfer be considered void on the ground of public policy.

12. In *Ram Singh v. Mst. Raghubansa* AIR 1923. oudh 3, Kanyaiya Lal J. C. had a case of a legal practitioner who had taken a mortgage in his wife's name. He held:

"There is a wide distinction between a contract which it may be improper for a pleader to enter into without the sanction of J. C.'s Court and a contract the toleration of which is so injurious to the public welfare that even as between the parties who have voluntarily entered into it, the Courts will refuse to enforce it. The question in such cases is really one of professional etiquette rather than of public policy and the contract cannot be regarded as invalid."

13. In *Ram Krishna v. Narayan* 40 Bom. 126, debts were contracted in a trade carried on against the Government Servants' Conduct Rules by a Government servant. The Government Servants' Conduct Rule in question was as follows:

"A Government servant may not, without the previous sanction of the Local Government engage in any trade or undertake any employment, other than his public duties."

It was held that these contracts could not be termed as immoral or improper within the meaning of Hindu Law and were not invalid.

14. In *Dharwar Bank Ltd. Vs. Mahomed Hayat*, , a Government servant in contravention of rules had acquired property. It was held that such acquisition was not illegal because the Govt. Servants' Conduct Rules were not based on any statutory provision but were merely rules of conduct. It was pointed out that there was a clear distinction between the conduct of a person and the subject-matter of a contract :

"Though the conduct of a person might be opposed to public policy the subject-matter of the contract is not necessarily opposed to public policy in the absence of any statutory prohibition."

15. On behalf of the appellants, however, our attention has been invited to the following cases: *Langton v. Hughes* (1813) 105 E. R. 222; *Bensley v. Bignold* (1822) 106 E. R. 1214 ; *Cope v. Rowlands* (1836) 150 E. R. 707; *Fergusson v. Norman* (1838) 132 E. R. 1034; *Victorian Daylesford, Syndicate v. Doth* (1905) 2 ch. 624; *Whiteman v. Sadler* (1910) A. C. 514; *Anderson Ltd. v. Daniel* (1924) 1 K. B. 138; *Sahibunnissa v. Abdul Ghafur* 34 Ind. Cas. 360 (oudh); *Ramanayudu v. Suryadevara Seetharamayya* AIR 1935 Mad. 440 (F.B.); *Ramlal v. Ram Din*

1941 ALL. L. J. 370 and Sugnomal Kirpomal v. Moosaissa AIR 1943 Sind 219.

16. In *Langton V. Hughes* (1813) 105 E. r. 222, there was a suit by a druggist for the recovery of price of articles sold to a brewer. The brewer had been prohibited by Statute 42 Geo. 3, c. 38, s. 20, from using anything but malts and hops in brewing beer. The druggist had sold, not malt and hops, but other articles with the full knowledge that they were to be used for brewing beer. It was held that the druggist could not recover the price of the articles sold.

17. In *Bensley v. Bignold* (1822) 106 E. e. 1214, a printer had failed to put his name upon the work which he had printed, as required by 39 Geo. 3", c. 79, s. 27. It was held that he could not recover for labour or materials used in printing the work.

Best J. observed:

"The distinction between "mala prohibita" and "mala in se" has been long since exploded. It was not founded upon any sound principle, for it is equally unfit, that a man should be allowed to take advantage of what the law says he ought not to do, whether the thing be prohibited, because it is against good morals, or whether it be pro-hibited, because it is against the interest of the State. The object of the 39 Geo. 3 was to provide the most effectual means of discovering the authors of every publication, in order that they might be made answerable for the contents, and for that purpose, it has directed, that all the parties. concerned in bringing the publication into the world, whether printers or publishers, shall be made known. Here, the printer's name has not been printed upon the publication as required by the Act of Parliament, and that being so, there is no legal contract on which an action can be founded, inasmuch as the thing was done in direct violation of the law."

In this case the requirement of the law was in the general public interest and was not collateral to the contract. The law required that a certain thing shall be done in printing the work, namely, that the printer's name shall be put upon it. This requirement was for the benefit of the public in general. The printer, having acted in violation of statutory requirements, could not recover for labour or materials.

18. In *Cope v. Rowlands* (1836) 150 E. R. 707, a broker, without taking out a licence required by Statute, had entered into transactions on behalf of his principals. It was held that he could not maintain an action for the recovery of commission due to him. Parke B., observed :

"It is perfectly settled that where the contract which the plaintiff seeks to enforce, be it express or implied, is expressly or by implication forbidden by the common or Statute law, no Court will lend its assistance to give it effect. It is equally clear that a contract in void if prohibited by a statute, though the statute inflicts a penalty only, because such a penalty implies a prohibition: *Bartlett v. Vinor* (1692) Carth. 251. And it may be safely laid down, notwithstanding some dicta apparently to the contrary, that if the contract be rendered illegal, it can

make no difference, in point of law, whether the statute which makes it so has in view the protection of the revenue or any other object. The sole question is, whether the statute means to prohibit the contract ?"

19. After holding that since the statute prohibited the broker to act without taking out a licence, he could not recover his brokerage, his Lordship further observed :

"The distinction between this and the case of *Ex parte Dyster* (1815) 2 Rose 256, which was cited on behalf of" the plaintiff, is very clearly explained by Lord Eldon in "His judgment. The prohibition to act without admission, is statutory; the regulations adopted by the Mayor & Court of Aldermen in the case of admitted brokers are not; they are purely municipal, and have not the force of a general law; the only consequences of their violation are those which the regulations prescribe."

20. The distinction between the present case and *Cope's case* (1836) 150 E.R.. 707) is the same as existed between the *Cope's case* and the case of *Ex parte Dyster* 1815 2 Rose 256.

21. In *Fergusson v. Norman* (1838) 132 E. R. 1034, a pawnbroker had advanced loans to a person without observing the formalities required by Section 6, *Pawnbrokers' Act*, e. g. the enactment was that every person who, after the commencement of this Act, shall, by way of pawn or pledge, take from any person whatsoever goods or chattels of any kind whatsoever, whereon shall be lent any sum exceeding 5s., shall forthwith, and before he shall make, and advance or lend money on such pawn or pledge, enter the same in a book in a particular manner. The section required other duties also to be performed; some of which were to inquire the place of abode of the party who brought the goods, whether he be a lodger or house-keeper, and to put a certain mark according to the fact, H. or L., on entering the loan. This section further directed that the pawnbroker shall, at the time of taking any pawn or pledge, give a duplicate in a particular manner. The pawnbroker had not observed those formalities in taking the pawns. It was held that he could not maintain a lien on them against the assignees of the pawner. Tindal C. J. observed :

"Upon looking at that section, the requisites that are made necessary are those that are to precede the contract, and to accompany and make it out; they are not, as has been contended, collateral to the contract itself. A distinction may easily be drawn as to those duties imposed on the pawnbroker which are entirely collateral to the individual contract; and it would be too much to say, because he had observed the enactment of the statute in such matters, that therefore, the contract made by him should be void. Suppose an instance in which, his name was required to be put up over the door, and some mistake had been made. A penalty is given for not putting up the name; but it would not follow that contracts entered into by an individual whose name had been incorrectly spelled, would be therefore void."

Then quoting the section, His Lordship observed:

"It appears, therefore, that there are acts to be done by the pawnbroker before and at the time of entering into the contract; and it is quite evident that the statute was passed not only for the purpose of protecting the numerous parties who borrow money on small pledges, but also the public, against frauds committed on third persons, the real owners of goods, by pledging their property without their consent; for the pawnbrokers' entries would facilitate the detection of any fraud or robberies so committed. This, therefore, being the object and intention of the Legislature, and the requisite being such as are to be performed at the time of, and previously to, entering into the contract, I think the contract must be held to be void, notwithstanding there are specific penalties for the omission of such requisites."

22. In *Victorian Daylesford Syndicate, Ltd, v. Doit* (1905) 2 Oh. 624, a money-lender having got himself registered under the Money-lenders Act, 1900, had advanced monies in the course of his business as a money-lender. It was held that he could not recover.

23. In *Whiteman v. Sadler* (1910) A. C. 514, a money-lender was held to have carried on business "in more than one name" within the meaning of Section 2, Sub-section 1 (b), Money-lenders' Act, 1900, and incurred the penalty imposed by Section 2, Sub-Section (2) of the Act. The principle of law laid down by Parke B. in *Cope v. Rowlands* (1836 150 E. R. 707) and by Tindal C. J. in *Fergusson v. Norman* (1838 132 E. R. 1034) was approved but it was held that contravention of the statute did not render the contract void because the moneylender had acted in the registered name, although the registration was not correct.

24. In *Anderson Ltd. v. Danial* (1924) 1 K. B. 138, there was a sale of an article used as a fertiliser of the soil without giving to the purchaser an invoice stating what the respective percentages (if any) were of certain chemical substances contained in the article. This was in contravention of Section 6, Sub-section 3, Fertilisers and Feeding Stuffs Act, 1906; it was held that the sale was void altogether. Section 6, Sub-section 1 of the Act provided:

"If any person who sells any article for use as a fertiliser of the soil. fails without reasonable excuse to give, on or before or as soon as possible after the delivery of the article, the invoice required by this Act ;..... he shall without prejudice to any civil liability, be liable on summary conviction to a penalty."

It was also observed that the object of the statute in requiring the vendor to give the statutory invoice and imposing on him a penalty in the event of his default was to protect the purchasers of fertilisers and the effect of non-compliance with the requirement was not merely to render the vendor liable to the penalty, but also to make the sale illegal and preclude the vendor from suing for the price.

25. In *Sahib-un-nissa v. Abdul Ghaffur* 34 Ind. Cas. 360 , a pleader in Oudh had advanced loan to one of his clients upon an usufructuary mortgage. In doing this,

he acted against a rule framed under the Legal Practitioners Act, requiring him to give notice to the Judicial Commissioner of his intention to enter into trade or business or to advance money on interest to any person. It was held that the conduct of the practitioner was against public policy and the contract was void. This decision is entirely in conflict with the two Full Bench cases of this Court referred to above and cannot be considered as laying down good law.

26. In *Sundrabai Sitaram Narangikar Vs. Manohar Dhondu Khandalgaonkar*, a police officer had purchased property in contravention of a statutory prohibition contained in Section 33, Bombay District Police Act, which runs as follows :

"No police officer shall engage in trade or be in any way concerned either as principal or agent, in the purchase or sale of land within the district wherein he is employed or in any commercial transaction whatever, without the permission of the Magistrate of the district or of Government."

It was held that the transaction of sale was void as the section must be construed as prohibiting the transaction. Apparently it was considered, in that case, that the statute contained an express prohibition for a police officer to be concerned in the purchase or sale of land within the district where he is employed, and that there was nothing to show that the prohibition was made simply by way of a rule of conduct for police officers, for the purpose of maintaining discipline. The learned Judges who decided that case pointed out that the ease of a similar prohibition, if made by rules, would be different. The facts of that case, therefore, were entirely different from the facts in the present case.

27. In *Chava Ramanayudu v. Seetaramayya A. I. R. 1935 Mad. 440*, a promissory note was executed for advances to be made by the plaintiff for the partnership in an Abkari business with defendant 1 who had obtained a licence to run an Abkari business but had not obtained the Collector's permission to work the Abkari shop in partnership. Clause 27, General Sales Notification, provided :

"No privilege of supply or vend shall be sold, transferred or sub-rented without the collector's previous permission. Nor, if the Collector so orders, shall any agent be appointed for the management of any such privilege without his previous approval."

It was held that the effect of this provision in the Notification was that a partnership in Abkari business was prohibited unless the previous permission of the Collector had been obtained. It was also held that the contract of partnership in Abkari business was void. It will be observed that in this case there was a direct prohibition of the license being transferred or sub-rented.

28. In *Ram Lal v. Ram Din 1941 ALL. L. J. 370*, some Railway servants had taken a mortgage by conditional sale in contravention of Section 137 (3) (b), Railways Act which provided :

"A Railway servant shall not in contravention, of any direction of the Railway

Administration in this behalf engage in trade."

It was held by Ismail J., that an isolated transaction could not mean "engaging in trade or money-lending business" and so the transaction was not void. It is contended that by implication the learned Judge held that if the plaintiffs in that case had done regular money-lending business, the transaction would have been void. We do not consider that this is the effect of the decision.

29. In *Sugnomal Kirpomal v. Moosaissa A. I. R 1943 sind 219*, a licensed vendor had supplied intoxicating liquor on credit in contravention of a rule made under the Bombay Abkari Act. The rule was as follows :

"The licensee shall not sell liquor on credit nor shall he receive any wearing apparel or ornament, or any consideration except coin or currency notes for any liquor that he may sell, nor shall he give free doles of liquor to any person."

It was held that this rule was made for social and moral purposes and therefore the licensee could not recover the price of the liquor supplied by him on credit. The "rule was made u/s 35 (a), Bombay Abkari Act which authorised the Commissioner to make rules prescribing the restrictions under and the conditions on which any license, permit or pass might be granted and such license might contain a condition prohibiting; the sale of intoxicating liquor except for cash. It will be observed that the rule in question in that case was found to have been made for social and moral purposes, and the benefit of society in general.

30. We may also notice a few other cases, though not cited at the bar.

31. In *Smith v. Mawhood* (1845) 153 E. R., 552, there was a sale of tobacco by a person contrary to the provisions of the Excise License Act, 6 Geo. 4, c. 81, which subjected to penalties any manufacturer of, or dealer in, or seller of, tobacco, who did not have his name painted on his entered premises in manner therein mentioned; or who shall manufacture, deal in retail or sell tobacco without taking out the license required for that purpose. It was held that the effect of the provisions was merely to impose a penalty on the offending party for the benefit of the revenue.

32. In *Baily v. Hams* (1849) 116 E. R. 1109, the case was of an assumpsit for goods sold and delivered. It was held that a contract of sale was not void merely because the goods were liable to seizure and forfeiture to the Crown and under the "Excise Laws the maker of the goods was liable to a penalty.

33. In *Smith v. Lindoo* (1858) 140 E. R. 1138, a person without taking out a licence required by the Statute 6 Ann. c. 16, acted as a broker in the city of London and according to a usage of trade, paid for the shares. It was held that though he could not recover his commission, the contract of purchase and sale itself was not void and that therefore, he could recover the money paid on behalf of his principal for the purchase of the shares. This case should be read as supplementing the decision in *Cope v. Rowlands* (1836) 150 E. R. 707.

34. It appears to us that the folio-wing propositions are deducible from the decided cases:

(1) The question whether a particular transaction falls within the purview of a prohibitory statute is manifestly one of construction, and the question to be asked in each case is whether the statute means to prohibit the contract, *Cope v. Rowlands* (1836) 150 E. R. 707 .

(2) When a transaction is forbidden, the grounds, of the prohibition are immaterial. There is no difference between "mala prohibita" (that is, things which if not forbidden by positive law would not be immoral), and "mala in se" that is things which are so forbidden as being immoral, *Bensley v. Bignold* (1822) 106 E. E. 1214.

(3) The imposition or non-imposition of penalty by the legislature for a specific act or omission is no sure criterion whether the legislature intended to prohibit the contract. Even in cases where a penalty is provided for the breach of statutory provision, the contract need not necessarily be considered to be void : *Smith v. Mawhood* (1845) 153 E. R. 552 and *Baily v. Harris* (1849) 116 E. R. 1109. The absence of a penalty does not prevent the contract from being held void : *Sundrabai Sitaram v. Manohar A. I. R. 1933 Bom. 262.*

(4) If the context shows that the object of the legislature in imposing conditions for the conduct of any particular business or profession is the maintenance of public order or safety or health, whether or not it was also for the protection of revenue the non-observance of the conditions render the contract void: *Langton v. Hughes* (1813) 105 E. E. 222; *Bensley v. Bignold*(1822) 106 E. R. 1214; *Anderson Ltd. v. Daniel* (1924) 1 K. B. 138; *Ramanayudu v. Suryadevara Seetharamayya A. I. R. 1935 Mad. 440 (F.B.)* and *Sugnomal Kirpomal v. Moosaissa A. I. R 1943 sind 219.*

(5) Where the prohibition or conditions imposed for the conduct of any particular business or profession are intended for the benefit of a particular class of persons dealing with those on whom the condition is imposed, the contract between such persons and the persons for whose benefit conditions are imposed is rendered void : *Gope v. Bowlands* (1836) 150 E. R. 707; *Ferguson v. Norman* (1838) 132 E. R. 1034; *Victorian Day Resford Syndicate v. Dott* (1905) 2 ch. 624; *Whiteman v. Sadler* (1910) A. C. 514 and *Sundrabai Sitaram Narangikar Vs. Manohar Dhondur Khandalgaonkar*, but the further contract entered into with other persons for whose benefits the conditions are not imposed is not rendered void : *Smith v. Lindoo* {1858) 140 E. R. 1138.

(6) Where the conditions are imposed merely for a collateral purpose for the convenient collection of the revenue (1845) 153 E. R. 552, or for the maintenance of discipline in a class of persons or for the dignity or integrity of a certain profession and is not intended for the benefit of persons dealing with the person on whom the condition is imposed the contract is not void. Where those conditions are imposed by a rule framed under a power conferred for the purpose

of laying down conditions for admission or appointment, dismissal or suspension, they are deemed to be for the collateral purpose of the maintenance of discipline or the dignity or integrity of the profession or service, and the contract is not rendered void, though the non-observance of conditions may entail punishment of the offender : Bhagwan Din v. Murarilal 1916 ALL. L. J. 962 ; Kamala Devi v. Gurdial 1916 ALL. L. J. 909 ; Ham Singh v. Mt. Raghubansa A. I. R. 1923 oudh 3 ; Ramkrishna v. Narayan 40 Bom. 126 and Dharwar Bank Ltd. Vs. Mahomed Hayat, .

35. In the present case it appears to us that the restrictions imposed upon the legal practitioners not to engage in trade or business are intended to maintain the dignity and integrity of the profession and are not intended for the benefit of those who may deal with legal practitioners but in their capacity as ordinary citizens. Take the illustration of a legal practitioner entering into speculative transaction and losing heavily in the share market in a series of transactions which may amount to trade or business. Can it be said that the person with whom the contracts were made is not entitled to recover sums of money which became due to him upon the contracts? He can recover only if the contract is not void. There is no doubt that he can recover. The contract is, therefore, not a void contract even though it has been made in the course of business or trade. The nature of the penalty that the legal practitioner engaging in trade or business incurs also gives an indication whether the law intends contracts to be treated as void or not. "The only penalty is that the legal practitioner renders himself liable to be suspended or removed from practice. He does not incur any other liability, which also suggests that by the non-observance of the conditions imposed upon him he does not act against the State as a whole, but acts against the discipline, dignity or the honour of the profession to which he belongs. In this view of the matter, it is immaterial that the prohibition not to enter into trade or business is contained in a Statute, e. g. in Section 15, Bar Councils Act, or is contained in a rule framed by the High Court or some other body.

36. We are, therefore, of opinion that the mortgage in suit was not void on any of the grounds suggested by the defendants-appellants. There is no force in this appeal, and it is dismissed with costs.