

FIRST DIVISIONAL COURT.

MAY 29TH, 1916.

## \*RE SOLICITOR.

*Solicitor—Investment of Money of Client—Undertaking—Enforcement—Order for Payment within Limited Time—Penalty on Default, of Striking Name from Roll, not Enforced—Costs.*

Appeal by the solicitor from the order of CLUTE, J., ante 181.

The appeal was heard by GARROW, MACLAREN, MAGEE, and HODGINS, J.J.A.

M. Wilkins, for the appellant.

Harcourt Ferguson, for the client, respondent.

GARROW, J.A., read a judgment in which, after stating the facts, he said that the terms of the solicitor's undertaking were too explicit to admit of doubt; and that he was in default in performance, was equally beyond question. There was no doubt as to the jurisdiction of the Court to enforce performance of such an undertaking on the part of a solicitor on a summary application: *United Mining and Finance Corporation Limited v. Becher*, [1910] 2 K.B. 296, and cases cited.

The real difficulty was as to the consequences to follow disobedience of the order to pay. With some hesitation, the learned Judge said, he had arrived at the conclusion, that the extreme measure, upon default, of removing the solicitor's name from the roll, was not warranted.

Failure to implement an undertaking has never in itself been held to be such misconduct as the Court will act upon in striking from the roll.

Reference to *In re Pass* (1887), 35 W.R. 410; *In re Hilliard* (1845), 2 D. & L. 919; *Cordery's Law of Solicitors*, 3rd ed., pp. 176 et seq.; *In re Cooke* (1889), 24 L. J. Notes of Cases 237; *In re A Solicitor* (1895), 11 Times L.R. 169.

Upon the whole, while there was reason to be suspicious, there was also justification for regarding the solicitor as dupe rather than knave. When the negotiations began, he may quite honestly have considered that he was proposing to the applicant a reasonably safe and sound investment, which would considerably increase her income; and he, therefore, has incurred only the minor penalty of being summarily ordered to perform his undertaking, which in the end may even be more beneficial to the applicant than if the