

of the Court and for the convenience of the pleaders practising before it, and was, in our opinion, fully within the powers conferred by s. 635. We think, therefore, that Mr. *Sris Chandra* was entitled to be heard on behalf of Mr. *Baroda Prasad*.

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v.
GANGA BAI.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Brodhurst, Mr. Justice Tyrrell, and Mr. Justice Mahmood.

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BAKHTAWAR SINGH (JUDGMENT-DEBTOR) v. SANTI LAL AND ANOTHER
(DECREE-HOLDERS).*

Practice—Barrister—Advocate of the High Court—Right to take instructions directly from client—Right to “act” for client—Letters Patent, N.-W. P., ss. 7, 8—Civil Procedure Code, ss. 2, 36, 39, 635.

Reading together ss. 7 and 8 of the Letters Patent for the High Court, and ss. 2, 36, 39, and 635 of the Civil Procedure Code, an advocate on the roll of the Court can, for the purposes of the Code, perform on behalf of a suitor all the duties that may be performed by a pleader, subject to his exemption in the matter of a *vakalatnama* and to any rules which the High Court may make regarding him. No such rule having been made to the contrary, such an advocate may take instructions directly from a suitor, and may “act” for the purposes of the Code on behalf of his clients.

THIS was a reference to the Full Bench by Straight and Mahmood, JJ., of two preliminary objections raised on behalf of the respondents to the hearing of a first appeal from an order. The reference was in the following terms:—

STRAIGHT, J.—In reference to this first appeal from Order No. 35 of 1887, Pandit *Ajudhia Nath*, on behalf of the respondents, objects to Mr. *Amir-ud-din*, who appears to support the appeal on behalf of Mr. *Reid*, who handed over his brief to him, on two grounds: first, that Mr. *Reid*, as an English barrister, had no power to take direct instructions from the appellant and file the appeal; and, secondly, that if he had such power, he had no power to hand over his brief to Mr. *Amir-ud-din*, and therefore the appeal ought to be dismissed in default of any person competent to act or to appear on behalf of the appellant having acted or appeared on his behalf. I refer these two points to the Court at large for determination.

MAHMOOD, J.—I agree.

The Hon. Pandit *Ajudhia Nath*, for the respondents, in support of the objections.—I contend that an English barrister is not

* First Appeal No. 35 of 1887 from an order of Babu Abinash Chandar Banerji, Subordinate Judge of Aligarh, dated the 23rd February, 1887.

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entitled to file an appeal, or to "act" for his client in other similar ways. He is not entitled to do so by reason of a positive disability attaching to his status as counsel. The disability is created by the custom of the English Bar.

[EDGE, C. J.—Do you insist on the first point mentioned in the order of reference—that Mr. *Reid* was not entitled to take instructions direct from his client? Up to the end of the last century, counsel often dealt directly with their clients, without any solicitor or attorney at all.]

Strictly speaking, and as a matter of law, he was entitled to do so: *Doe d. Bennett v. Hale* (1). But according to the practice of his profession, which, in England, is now universal, he ought not to do so. That practice the Court should enforce.

[STRAIGHT, J.—In England it is merely a rule of professional etiquette made by the Bar itself. In India, circumstances being different, no such rule has been made by the Bar, and there is no such rule to enforce.]

The English Bar is one body, which has its own practice and etiquette. This practice is whatever the body as a whole has in course of time established, and it ought not to be set aside or disregarded by a minority, wherever they may happen to be practising. S. 2 of 6 and 7 Vic., c. 73 (An Act for consolidating and amending several of the laws relating to attorneys and solicitors practising in England and Wales) (2) shows that in England the power of acting

(1) 15 Q. B. 171; 18 L. J., Q. B. 353.

(2) "And be it enacted that from and after the passing of this Act no person shall act as an attorney or solicitor or as such attorney or solicitor sue out any writ or process or commence, carry on, solicit or defend any action, suit, or other proceeding in the name of any other person or in his own name in Her Majesty's High Court of Chancery or Courts of Queen's Bench, Common Pleas or Exchequer, or Court of the Duchy of Lancaster, or Court of the Duchy Chamber of Lancaster at Westminster, or in any of the Courts of the counties palatine of Lancaster and Durham, or in the Court of Bankruptcy or in any county Court or any Court of civil or criminal jurisdiction or in any other Court of law or equity in that part of the United Kingdom of Great Britain and Ireland called England and Wales, or act as an attorney or solicitor in any cause, matter, or suit, civil or

criminal, to be heard or determined before any justice of assize of oyer and terminer or gaol delivery, or at any general or quarter sessions of the peace for any county, riding, division, liberty city, borough or place, or before any justice or justices or before any commissioners of Her Majesty's revenue, unless such person shall have been previously to the passing of this Act admitted and enrolled and otherwise duly qualified to act as an attorney or solicitor under or by virtue of the laws now in force, or unless such person shall after the passing of this Act be admitted and enrolled and otherwise duly qualify to act as an attorney or solicitor pursuant to the directions and regulations of this Act, and unless such person shall continue to be so duly qualified and on the roll at the time of his acting in the capacity of an attorney or solicitor as aforesaid."

for the client belongs exclusively to the solicitor, and counsel are as much excluded from the exercise of such power as any other class of persons.

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[EDGE, C. J.—That statute does not help you. Its only object was to prevent anyone from practising as a solicitor without a certificate.]

In Stephen's Commentaries, vol. iii, p. 278 (8th ed.), it is said that "no man can conduct the practical proceedings in a cause to which he is not himself a party, unless he be a solicitor." In the Calcutta and Bombay High Courts, advocates are not allowed to act (1). See also *Ram Taruck Burick v. Sidessoree Dossee* (2).

[TYRRELL, J.—How can you possibly apply the English practice in a place where there are no solicitors?]

It is because the rule has been ignored that solicitors have ceased to practise here. Formerly solicitors were enrolled by this Court, but their privileges were disregarded, and they could not maintain their position.

[STRAIGHT, J.—In the absence of express rules to the contrary, such as those made by the Calcutta High Court, the last paragraph of s. 39 of the Civil Procedure Code clearly shows that an advocate may act, and that in doing so he is not subject to the same restrictions as a pleader. Under s. 635 we, like the Calcutta Court, might make rules forbidding advocates to act, but we have not made them.

TYRRELL, J.—Reading s. 36 with the last paragraph of s. 39, it appears to me that an advocate may do for his client all that a pleader might do, and without being obliged to produce his authority.]

(1) See Belchambers' Rules and Orders of the High Court of Judicature at Fort William in Bengal, General Rules, Original Side. Rule 70.—"Advocates of this Court may appear and plead for suitors in any branch of the Court, civil or criminal.

"71. Vakils may appear, plead, and act for suitors in this Court, provided that they shall not appear, plead, and act for any suitor in any matter of ordinary original jurisdiction, civil or criminal, or in any matter of appeal

from any case of ordinary original civil jurisdiction, unless, upon appeal from a judgment in a case of such original civil jurisdiction, a question of Hindu or Muhammadan law or usage shall arise, and unless the Court or a Judge thereof shall think fit to admit a vakil or vakils to plead for any suitor or suitors in that case. In such case, the vakil or vakils so admitted may plead accordingly."

(2) 13 Suth. C. R. 60.

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S. 39 only means that inasmuch as in England and elsewhere no *vakalatnama* need be filed by counsel, so it need not be in India. For the practice of the county Courts in England, see 15 and 16 Vic., c. 54, s. 10, which has an indirect bearing on the question. *The Queen v. Doure* (1) implies that a member of the English Bar, wherever he may practice, cannot divest himself of the disabilities imposed on him by the general usage of his profession. See also *Neate v. Denman* (2).

[EDGE, C. J.—So far as the question you raise is one of discipline, if you consider that the practice adopted here by any counsel is unprofessional, you should petition the Benchers of his Inn. If there was a well-established body of solicitors practising here, the case might be different, but practically there are no solicitors. Then, so far as the question is one of law, it depends on the provisions of the Civil Procedure Code and the Letters Patent.]

The point as to Mr. *Reid's* power to hand over his brief was not pressed, being settled by *Matadin v. Ganga Bai* (3).

Mr. *Amir-ad-din*, for the appellant, was not called upon to reply.

The following judgment was delivered by the Full Bench:—

EDGE, C. J., and STRAIGHT, BRODHURST, TYRELL, and MAHMOOD, JJ.—The only question that has been argued on this reference is as to the power of members of the Bar admitted to the roll of advocates of this Court to take instructions directly from the parties to appeals, and to “act” for the purposes of the Civil Procedure Code on behalf of their clients. It does not appear to us necessary to enter upon a discussion of the practice that prevails and regulates the professional status and proceedings of counsel in England, as it seems to us to be altogether beside the question we have to determine, namely, whether enrolled advocates of this Court are, as such, prohibited from doing all such acts as admittedly may be done by the vakils. By s. 7 of the Letters Patent, powers are conferred upon this Court “to approve, admit, and enroll such and so many advocates, vakils, and attorneys as to the said Court shall

(1) L. R., 9 App. Cas. 745, at p. 752. (2) L. R., 13 Eq. 127.

(3) *Ante*, p. 613.

seem meet ; and such advocates, vakils, and attorneys shall be, and are hereby authorized to appear for the suitors of the said High Court, and to plead or to act, or to plead *and* act, for the said suitors, according as the said High Court may by its rules and directions determine, and subject to such rules and directions." This in plain terms empowers advocates of the High Court to "act." By s. 8 it is further declared that this Court shall have the power to make rules for the qualification and admission of its advocates, vakils, and attorneys, and to remove or suspend them, and it directs that no person whatever other than such advocates, vakils or attorneys "shall be allowed to act or to plead for or on behalf of any suitor in the said High Court, except that any suitor shall be allowed to appear, plead, or act on his own behalf or on behalf of a co-suitor." By s. 635 of the Civil Procedure Code it is in specific terms enacted that "nothing in this Code shall be deemed to interfere with the powers of the High Court to make rules concerning advocates, vakils, and attorneys." And in s. 39 of the same Act it is declared in terms that "no advocate of of any High Court established by Royal Charter shall be required to present any document empowering him to act"—an exemption that does not apply to pleaders. But more than this, s. 2 of the Code defines the term "pleader" as used in the Act "to include an advocate, a vakil, and an attorney of a High Court." Reading ss. 36 and 39 in conjunction with the interpretation clause and s. 635, therefore, it comes to this, that for the purposes of the Civil Procedure Code an advocate can perform all the duties for a suitor that a pleader may perform, subject to his exemption in the matter of a *vakalatnama*, and subject, further, to any rules this Court may make regarding him. Not only by the Letters Patent, therefore, but by the Civil Procedure Code, an advocate may "act" for his client in this Court in the manner in that statute set forth, and do all things that a pleader, *i. e.*, a vakil, may do, provided always that he be upon the roll of the Court's advocates. Referring to the matter more particularly mentioned in the order of reference, we have to concern ourselves with the action of the gentleman whose name is therein mentioned only as an advocate upon our roll, and not as an English barrister. As we have made no rule prohibiting an advocate from taking instructions directly from a suitor, and as

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his doing so is in conformity with the provisions of the Civil Procedure Code, we think the first objection mentioned in the order of reference had no force and should be disallowed. As to the second, that has been disposed of in another case (1).

APPELLATE CIVIL.

Before Mr. Justice Brodhurst and Mr. Justice Mahmood.

MUHAMMAD MASHUK ALI KHAN AND OTHERS (PLAINTIFFS) v. KHUDA BAKHSH, (DEFENDANT). *

Declaratory decree—Act 1 of 1877 (Specific Relief Act), s. 42—Civil Procedure Code, s. 578.

An improper or irregular exercise of the discretionary power conferred by s. 42 of the Specific Relief Act (1 of 1877) does not in itself constitute sufficient ground for the reversal of a decree which is not open to objection on the ground of jurisdiction or of the merits of the case, being covered by s. 578 of the Civil Procedure Code. *Sant Kumar v. Deo Suran* (2) referred to.

THE plaintiffs in this case sued Khuda Bakhsh and others, co-sharers and the lambardár in a village Landhaur, for a declaration of their right to have the profits of the village divided on the principle that there were three *thokes*, one of $\frac{2}{3}$ rd and two of $\frac{1}{6}$ th each, and not three equal *thokes*. It appeared that a suit had previously been brought by Khuda Bakhsh against the lambardár for a share of certain trees, and that the Munsif had decided in decreeing that suit that the three *thokes* were equal.

This decision was alleged to be the cause of action for the present suit. The defendants pleaded, *inter alia*, that the plaintiffs had no cause of action. The Court of first instance (Subordinate Judge of Saháranpur) decreed the claim after taking evidence and investigating the case on the merits. On appeal the District Judge of Saháranpur reversed the Subordinate Judge's decree on grounds which he stated as follows:—

“It is clear that no cause of action accrued to the plaintiffs against Khuda Bakhsh or any one by the Munsif's decree in his

* Second appeal No. 856 of 1886, from a decree of J. W. Muir, Esq., District Judge of Saháranpur, dated the 22nd January, 1886, reversing a decree of Maulvi Maqsud Ali Khan, Subordinate Judge of Saháranpur, dated the 28th June, 1883.

(1) *Maladin v. Ganga Bai*, *ante*, p. 613. (2) I. L. R., 8 All. 365.