

[EDGE, C. J.—Do you contend that this Court could not delegate these powers to the Board of Examiners?]

No.

[EDGE, C. J.—Then do you say that the Board, in the exercise of the powers so delegated, has acted illegally?]

Not illegally, but irregularly and improperly, in raising the standard in the way that it did. It was unfair to raise the standard without giving notice. If such notice had been given, many of the candidates would not have incurred the expense and trouble of preparing themselves and competing. The case of *Sukhmandan Lal* (1) seems to imply that the Court has jurisdiction to interfere if it thinks proper.

[EDGE, C. J.—If the Board should act illegally, the Court might have power to interfere. But you admit that it has not so acted, and ask us to interfere with the legal exercise of its discretion.]

EDGE, C. J., BRODHURST, TYRRELL and MAHMOOD, JJ.—This is an application to the Judges of the High Court to interfere with the discretion which was exercised by the Examination Board in the late examination of the candidates of the Upper Subordinate Grade. The High Court had delegated its power to the Board of Examiners, which the Court was authorized by law to do, and it appears to us that the Board has exercised its discretion properly, legally, and for the benefit of the public. In our opinion there is no cause for the Court to interfere in the matter.

STRAIGHT, J.—I prefer to express no opinion one way or the other, being the President of the Examination Board.

Application rejected.

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

MATADIN AND OTHERS (DEFENDANTS) v. GANGA BAI (PLAINTIFF).*

Practice—Pleader—Vakalatnama—Pleader handing over his brief to another—Civil Procedure Code, ss. 36, 37, 39, 635—Rule of Court of 22nd May, 1883.

The Rule of Court dated the 22nd May, 1883, and authorising legal practitioners in certain cases to appoint other legal practitioners to hold their briefs and appear

* Second Appeal No. 732 of 1886 from a decree of G. E. Ward, Esq., Commissioner of Jhānsi, dated the 27th January, 1886.

(1) I. L. R., 6 All. 163.

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in their place (1), was passed to facilitate the work of the Court and for the convenience of the pleaders practising before it, and was fully within the powers conferred upon the High Court by s. 635 of the Civil Procedure Code.

THIS was a reference to the Full Bench of a preliminary objection which was raised on behalf of the respondent in a second appeal which was heard by Straight and Mahmood, JJ. The order of reference, in which the objection was stated, was as follows:—

STRAIGHT, J.—This appeal, No. 732, had been called on for hearing, Mr. Hill and Mr. Baroda Prasad being instructed on behalf of the appellants. Mr. Hill is engaged in the other Court, and Mr. Baroda Prasad does not appear himself. But Mr. Sris Chandra states that he has been requested by Mr. Baroda Prasad to hold his brief and argue the case on the part of the appellants. Pandit Ajudhia Nath, for the respondent, objects to Mr. Sris Chandra being heard. Mr. Sris Chandra relies for his authority to be heard upon the rule to be found at page 5 of the supplement to the Rules of this Court, and dated the 22nd May, 1883 (1). Mr. Ajudhia Nath objects that this rule was *ultra vires* of this Court to make, and he bases his argument mainly upon the contention that Mr. Baroda Prasad, under the provisions of the Civil Procedure Code, being required by law to have a *vakalatnama* to act on behalf of his client, and having been so constituted the agent of his client, cannot delegate his authority to any other person; that the rule of this Court to which I have referred infringes the requirements of the law as laid down in the Civil Procedure Code, and, as such, should not have been made. I refer the determination of this question to the Full Bench.

MAHMOOD, J.—I agree.

The Hon. Pandit Ajudhia Nath, for the respondent, in support of the objection.—The question depends upon the construction to be placed on s. 39 of the Civil Procedure Code. The Rule of 22nd May, 1883 is inconsistent with this section, because it

(1) "When a legal practitioner, retained to appear and plead for any party to an appeal or other case in the High Court, is prevented by sickness or engagement in another Court from appearing and conducting the case of his client, he may appoint another

legal practitioner to appear in his place, so that his client may not be unrepresented at the hearing; and the Court, if it see no reason to the contrary, may allow the hearing to proceed in the absence of the legal practitioner originally engaged."

authorizes the appointment of one pleader by another without any *wakalatnama* or appointment by the client being written and filed in Court. Further, a *wakil* is merely the agent of his client, and consequently he cannot delegate his functions to another. The appointment of a pleader, like that of any other agent, is the outcome of personal confidence, which the client cannot be presumed to extend to any person whom the pleader may appoint as his substitute.

[EDGE, C. J.—Does your argument apply to counsel as well as pleaders?]

Not to the same extent. Pleaders in this country stand in the same kind of relation to their clients as solicitors in England.

[EDGE, C. J.—That is an unfortunate illustration. It has never been suggested that a country solicitor who sends his papers to a solicitor in London exceeds his powers, though he acts without any express authority given by the client. Again, it often happens that one solicitor employs another to appear and argue in his place in the county Court. No authority for such a course is ever obtained from the client.]

The analogy is not complete. A solicitor is not required to file a written authority empowering him to act.

[EDGE, C. J.—No, but he is an agent, and is liable to his principal for negligence.

STRAIGHT, J.—How is the provision of s. 39 as to *wakalatnamas* inconsistent with the pleader's right to transfer his brief?]

The substituted pleader must appear on behalf of either the original pleader or the client. In the former case he has no *locus standi*: in the latter, his appointment must, under s. 39, be in writing filed in Court. If it is not, he is not "duly appointed to act" on the client's behalf; nor is he a "recognized agent" of the client within the meaning of ss. 36 and 37: under the former section, therefore, he is not competent to appear or act.

[STRAIGHT, J.—You would argue that inasmuch as a pleader may bind his client by admissions as to matters of fact, considerable hardship might result if an incompetent or inexperienced substitute were appointed without the client's consent or knowledge.

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Could not the client repudiate such admissions as made by a person not appointed by him, and therefore not authorized to make admissions on his behalf?

Unquestionably he might do so.

[EDGE, C. J.—The rule involves no hardship to the client; so far as I can see. If he complained, the answer would be that if no substitute had been appointed, he would have been unrepresented: if he were appealing, the appeal would have been dismissed for default, and if he were respondent, his chance of sustaining the decree would have been smaller. Then again, if you admit any analogy between Indian and English practitioners, you must meet this difficulty. Suppose that in the Court below your client has filed a forged receipt upon which his whole case depends, and has called witnesses to support it. In this Court, on appeal, you are obliged to admit the forgery and to throw your client over. You say that your client has committed forgery and his witnesses perjury, but your *vakalatnama* is hardly what authorizes you to do that. Then under what authority can you do it?]

Babu *Baroda Prasad Ghose*, for the appellant.—The rule to which objection has been made is warranted by s. 635 of the Civil Procedure Code. See s. 7 of the Letters Patent. The Calcutta High Court has made a similar rule; that was framed under Act VIII of 1859, but the provisions of that Act as to *vakalatnamas* were the same as those of the present Code. The validity of the rule has never before been questioned.

The Hon. Pandit *Ajudhia Nath*, in reply.

The following judgment was delivered by the Full Bench:—

EDGE, C. J., and STRAIGHT, BRODHURST, TYRELL, and MAHMOOD, JJ.—The simple question to be determined is whether the rule mentioned in the referring order was beyond the power of this Court to make. In our opinion it was not, and we do not think that the argument urged against its validity, based upon the provisions of ss. 36, 37, and 39 of the Civil Procedure Code, has any force. By s. 635 of the Code it is distinctly provided that “nothing in this Code shall be deemed.....to interfere with the power of the High Court to make rules concerning advocates, vakils, and attorneys.” The rule now impeached was passed to facilitate the work

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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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.