

FULL BENCH.

1885

January 17.

Before Sir W. Comer Petheram, Kt., Chief Justice, Mr. Justice Oldfield, Mr. Justice Brodhurst, Mr. Justice Mahmood, and Mr. Justice Duthoit.

IN THE MATTER OF DURGA CHARAN, PLEADER, AND S. 12 OF ACT XVIII
OF 1879.

Act XVIII of 1879 (The Legal Practitioners' Act), s. 12—Conviction of Pleader of criminal offence—Case reported to the High Court—Argument allowed to show that conviction was illegal.

A District Judge reported to the High Court for orders the case of a pleader who had been convicted of cheating under s. 417 of the Penal Code, and who, in the opinion of the District Judge, was unfit to be allowed to practice.

Upon the hearing of the case, counsel was permitted to go behind the conviction in order to show that the acts of the pleader did not amount at law to the offence of cheating.

THIS was the case of a pleader, who had been convicted of cheating, under s. 417 of the Indian Penal Code, which was reported to the High Court for orders, under Act XVIII of 1879. The District Judge making the report was of opinion that the pleader was unfit to be allowed to practice.

It appeared that the pleader had been convicted of cheating by a Magistrate, and sentenced to pay a fine of Rs. 200. On appeal to the Court of Session, the conviction and sentence were affirmed, and an application for revision, which came before one of the Judges of the High Court, was rejected.

The District Judge's report of the case came before Oldfield and Mahmood, JJ., who, being of opinion that it was desirable that the case should be disposed of by the Full Bench, referred it accordingly to the Full Bench.

Mr. T. Conlan, for the accused.

Mr. Conlan.—If I am permitted to go behind the conviction, I can show that Babu Durga Charan committed no offence at law.

[PETHERAM, C. J.—I think you are entitled to go behind it in order to show that.]

Mr. Conlan then contended that the acts of Babu Durga Charan did not amount at law to the offence of cheating.

At the conclusion of the argument, their Lordships delivered the following opinion:—

PETHERAM, C. J., and OLDFIELD, BRODHURST, MAHMOOD, and DUTHOIT, JJ.—We do not consider that Durga Charan, pleader, should be either suspended or dismissed under s. 12 of Act XVIII of 1879, and the Judge may be informed accordingly.

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IN THE MAT-
TER OF DURGA
CHARAN,
PLEADER.

APPELLATE CIVIL.

Before Sir W. Comer Petheram, Kt., Chief Justice, and Mr. Justice Brodhurst.

LACHMI NARAIN AND ANOTHER (DEFENDANTS) v. MANOG DAT

(PLAINTIFF).

Pre-emption—Wajib-ul-arz—“Transfer”—“Sale.”

On the 1st September, 1881, *L* and *R* entered into an agreement (which was duly registered) with *B*, that in consideration of their bringing a suit for recovery of a twelve-annas share in a village which *B* claimed by right of inheritance against *G*, they should receive a moiety of the share. *L* and *R* found funds for the prosecution of two suits in respect of the share, which on the 5th April, 1882, were compromised, *B* getting one anna and three pies out of the twelve annas originally claimed by her. In that compromise, *B* stated as follows:—“I make over one anna to *L* and *R* my partners, in lieu of the prosecution of the two cases. I, the plaintiff, shall remain in possession of the remaining three pies.” Meanwhile, on the 3rd September, 1881, *G* had sold three annas out of the twelve annas share to *M*. On the 3rd April, 1883, *M* brought a suit against *L* and *R*, claiming the right of pre-emption in respect of the one anna which they had acquired from *B*, on the allegation that the transfer of the share had taken place on the 5th April, 1882. This claim was based on the *wajib-ul-arz* of the village, which gave a right of pre-emption to the co-sharers of any sharer wishing to “transfer” his share.

Held that the compromise of the 5th April, 1882, was only a re-adjustment of the amount of the interest in the share between *B* and *L* and *R*; that the real transfer to *L* and *R* was given effect to on the 1st September, 1881; and that, this having been prior to the acquisition by *M* of any right in the village, he was not a co-sharer at the time of the transfer; and that he had consequently no right as against *L* and *R* by way of claim for pre-emption.

THE plaintiff in this suit claimed to enforce the right of pre-emption in respect of a one-anna share of a village under the following circumstances. On the 1st September, 1881, Bhagwanta, the daughter of Reoti Ram, who claimed as heir to her father a

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* Second Appeal No. 34 of 1884, from a decree of Rai Raghunath Sahai, Subordinate Judge of Gorakhpur, dated the 27th August, 1883, reversing a decree of Sayyid Muhammad Mir Badshah, Munsif of Bansi, dated the 14th June, 1883.