

1895

PARSIDH RAI  
v  
RAJI NATH  
RAI.

under section 230 of Act No. XIX of 1873, and consequently that section 231 of that Act did not bar this suit.

We set aside the decree of the lower appellate Court, so far as it affects the interests of parties to this appeal, who have been served with notice and who are alive; and we remand this case under section 562 of the Code of Civil Procedure to the lower appellate Court for trial upon the merits. The decree below will stand so far as the representatives of deceased parties are concerned where such representatives are not upon this record. Costs will abide the result.

*Appeal decreed.*

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### FULL BENCH.

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*Before Sir John Edge, Kt., Chief Justice, Mr. Justice Know, Mr. Justice Blair, Mr. Justice Banerji, Mr. Justice Burkitt and Mr. Justice Aikman.*

IN THE MATTER OF RAJENDRO NATH MUKERJI.

*Letters Patent, section 8—Conviction of vakil for criminal offence—Vakil called upon to show cause why he should not be struck off the roll—Argument not allowed to show that conviction was wrong.*

A vakil practising in the High Court was convicted by a Court of Session of the offence punishable under section 471 of the Indian Penal Code, and the conviction was affirmed by the High Court on appeal. The vakil was subsequently called upon to show cause why he should not in consequence of such conviction be struck off the roll of vakils of the Court. On appearance in answer to this rule it was *held* that the vakil was not entitled to question the propriety in law or in fact of the conviction, but that it was open to him to show, if he could, that his conduct in the matter in respect of which he had been convicted was not such as to render him an unfit person to be retained on the roll of vakils of the Court.

THIS was a proceeding under section 8 of the Letters Patent of the High Court of Judicature for the North-Western Provinces. One Rajendro Nath Mukerji, a vakil practising in the High Court, had been convicted by the Sessions Judge of Allahabad of the offence punishable under section 471 of the Indian Penal Code and sentenced to three years' rigorous imprisonment. He appealed to the High Court, where his appeal was heard by a Division Bench and dismissed, the conviction being affirmed, but the sentence reduced to two years' rigorous imprisonment.

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*January 3.*

In consequence of this conviction the Registrar of the Court reported the case for the orders of the Court with a view to proceedings being taken under section 8 of the Letters Patent. Upon this report a rule was issued to Rajendro Nath Mukerji calling upon him to show cause why he should not be removed from the roll of the vakils and his certificate cancelled in consequence of the offence of which he was convicted by the Sessions Judge of Allahabad on the 6th of August 1895. This rule came on for hearing before a Full Bench of the whole Court on the 3rd of January 1896.

*Porter* for the vakil argued that he was entitled in showing cause to question the propriety of the conviction of the 9th of August 1895, referring to the following cases—*In the matter of Durga Charan, Pleader*, (1) *In the matter of Yad Ali*, (Miscellaneous No. 23 of 1894 decided on the 30th of April 1894); *In the matter of Ghulam Husain* (Miscellaneous No. 77 of 1894, decided on the 30th of June 1894), and *In re Weare, Solicitor*, (2).

On this point the following ruling was delivered :—

EDGE, C. J., KNOX, BLAIR, BANERJI, BURKITT and AIKMAN, JJ.—In this case, which is a proceeding under section 8 of the Letters Patent of this Court consequent on the conviction by the Court of Session of Allahabad of a vakil upon the rolls of this Court of the offence punishable under section 471 of the Indian Penal Code, which conviction was upheld on appeal to this Court, Mr. *Porter* has contended on the authority of *In the matter of Durga Charan, Pleader*, (1) and *in re Weare, Solicitor*, (2) that he was entitled to show that his client the vakil was not guilty of the offence of which he was convicted. If the observation of the Chief Justice on page 290 of the Indian Law Reports, 7 Allahabad, is to be taken as the decision of the Court on that point, we entirely dissent from it. It is to be observed that the Court, in refusing to exercise its power in that case under section 12 of Act No. XVIII of 1879, did not suggest that the conviction was bad in fact or in

(1) I. L. B., 7 All., 290.

(2) I. R., 1893, 2 Q. B. D., 439.

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law. The case in the Court of Appeal in England does not throw, in our opinion, any light on the question before us.

We cannot in this case question the propriety in law or in fact of the conviction of the Court of Session, which has been maintained by this Court on appeal. It is, however, incumbent on us, under section 8 of our Letters Patent, to consider whether there exists reasonable cause for removing or suspending from practice the vakil who has been convicted, and for that purpose it is necessary for us to ascertain, as it is not admitted, the degree of culpability involved in the acts which constituted the offence of which he has been convicted.

We hold accordingly that Mr. *Porter* is not precluded from showing, if he can, that the conduct of his client in the matter was not such as to render him an unfit person to be retained on the roll of vakils of this Court.

[The Court then went on to consider the degree of culpability indicated by the conduct of the vakil which led to the conviction above referred to, and in the end passed an order striking him off the roll of vakils of the Court.]

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## APPELLATE CIVIL.

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1896  
January 9.

*Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Burkill.*  
GAJENDAR SINGH (PLAINTIFF) v. SARUAR SINGH AND ANOTHER  
(DEFENDANTS).

*Hindu law—Joint Hindu family—Evidence of separation—Shares separately recorded in village papers—Separate purchases by individual members of family out of joint family funds.*

Where there has existed a joint Hindu family possessed as such of immovable property, the presumption is that until the contrary is shown such family will continue to be joint.

The fact that in the revenue and village papers individual members of a Hindu family once admittedly joint are recorded as holding each a certain specified portion of property is not, standing by itself, sufficient evidence that a separation has taken place, nor is the fact that specific purchases of immovable property have been made from time to time in the names of individual members of the family,

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First Appeal No. 56 of 1894 from a decree of Pandit Raj Nath, Sahib, Subordinate Judge of Moradabad, dated the 16th November 1893.