

## REVISIONAL CRIMINAL.

*Before Mr. Justice Knox and Mr. Justice Aikman.*

EMPEROR v. BENI BAHADUR.\*

*Act No. XVIII of 1879 (Legal Practitioners Act), section 32—Illegally practising as a pleader.*

*Scemle* that the expression "practises in any Court" as used in section 32 of the Legal Practitioners Act, 1879, does not mean "habitually acts as a pleader or mukhtar," but signifies the doing of acts, or, it may be, a single act, in a professional capacity as of right which could not be done as of right by a non-professional person.

ONE Beni Bahadur of Ajmere appeared in the Court of a Magistrate of the first class at Orai to defend a person charged under section 457 of the Indian Penal Code. He represented himself to Babu Brojendronath, a vakil practising in Orai, to be a vakil of the High Court, and a vakalat-namah was drawn up in their names. Beni Bahadur signed the vakalat-namah as accepted, and it was presented, but the Magistrate's suspicion being aroused he declined to allow Beni Bahadur to appear. To the Court also Beni Bahadur represented himself to be a High Court vakil and promised to produce his certificate. He was subsequently arrested and fined Rs. 5 under section 32 of Act No. XVIII of 1879.† Beni Bahadur appealed to the Sessions Judge of Jhansi, who rejected the appeal on the ground that no appeal lay, but, treating the memorandum of appeal as an application in revision under section 35 of the Act, reported the case to the High Court. After stating the facts of the case the learned Sessions Judge continued:—

"It is quite clear from what I have stated that Beni Bahadur did not and does not practise as a vakil in Orai and did not therefore commit any offence under section 32. The offence under the latter section has been explained

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\*Criminal Reference No. 415 of 1903.

† Section 32 of Act No. XVIII of 1879 is, so far as is material, as follows:—"Any person who practises in any Court or Revenue Office in contravention of the provisions of section 10 or section 20 shall be liable, by order of such Court or the officer at the head of such office, to a fine not exceeding ten times the amount of the stamp required by this Act for a certificate authorizing him so to practise in such Court or office, and, in default of payment, to imprisonment in the Civil jail for a term which may extend to six months."

By section 10 it is provided that "except as provided by this Act or any other enactment for the time being in force, no person shall practise as a pleader or mukhtar in any Court not established by Royal Charter, unless he holds a certificate issued under section 7 and has been enrolled in such Court or in some Court to which it is subordinate."

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in *Tussudug Hosain v. Girhar Narain* (1), in which it was held that when any person other than a mukhtar, constantly and as a means of livelihood performs any of the functions of a mukhtar he practises as such and is liable to the penalty under section 32. The order of the Deputy Magistrate is contrary to law and should be set aside. The proper course for the Deputy Magistrate was to have prosecuted Beni Bahadur for attempt of an offence under section 416, I. P. C., which was disclosed by facts. But he apparently overlooked the explanation to that section. It will still be open to him to do so in another court, as he will be initiating the proceedings under section 190(c) and is himself a witness.

"Let the record be submitted to the Hon'ble Court with such remarks as the Magistrate may wish to offer."

The Deputy Magistrate in his explanation submitted that the case of *Tussudug Hosain v. Girhar Narain* in reality supported his view of the construction of section 32 of the Legal Practitioners Act, and he contended that section 416 of the Indian Penal Code did not apply to the case, inasmuch as there was no act or omission of the person deceived which had caused or was likely to cause damage or harm to that person in body, mind, reputation or property. The Deputy Magistrate referred to *Mojev v. The Queen-Empress* (2).

The Government Advocate (Mr. A. S. Ryves) in support of the conviction referred to the case of *Fuzzle Ali* (3), *Kali Kumar Roy v. Nobin Chunder Chuckerbutty* (4), and more particularly to *In re Horton* (5). Practising does not connote the doing of acts habitually or often, but signifies the performance of an act by a person as a professional man which, as a private individual, he could not do. In this case the accused filed a vakalatnamah and attempted to appear for the accused as of right (see section 340 the Code of Criminal Procedure) which he could do as a pleader, but not otherwise, unless specially permitted by the court.

The following order was passed :—

KNOX and AIKMAN, J.J.—After hearing the learned Government Advocate we discharge the rule and direct that the record be returned.

(1) (1887) I. L. R., 14 Calc., 556.

(3) (1873) 19 W. R., Cr. R. 8

(2) (1890) I. L. R., 17 Calc., 606.

(4) (1881) I. L. R., 6 Calc., 585

(5) (1881) L. R., 8 Q. B. D., 434.