

1928

RUKIA
v.
MEWA
LAL.

We accordingly allow the appeal, set aside the decree of the court below and dismiss the plaintiff's suit. In view of the fact that both the parties had freely engineered false evidence we direct that they should bear their own costs both here and heretofore.

Appeal allowed.

FULL BENCH.

Before Mr. Justice Boys, Mr. Justice Weir and Mr. Justice King.

IN THE MATTER OF A VAKIL OF AZAMGARH.*

1928
June, 25.

Act No. XXXVIII of 1926 (Bar Councils Act), sections 2, 8, 10 and 19—Letters Patent, section 8—Vakil—Disciplinary action of High Court—Procedure.

As and from June 1, 1928, the procedure by which an advocate can be called upon to answer for misconduct is governed by section 10 and the following sections of the Bar Councils Act, 1926. To proceed under section 10, the High Court is required by sub-section (2) of that section, if it does not summarily reject the complaint, either to refer the case for inquiry to the Bar Council, or after consultation with the Bar Council, to refer it to the Court of a District Judge. Similar powers of reference are given where the Court, instead of acting on a complaint, acts on its own motion. But, in either event, it is necessary for the case to be either referred to the Bar Council, or at any rate for the Bar Council to be consulted.

THIS was a reference under the Legal Practitioners Act. The facts of the case, so far as they are necessary for the purposes of this report, appear from the judgment of the Court.

The Government Advocate, (Mr. *U. S. Bajpai*,) for the Crown.

The applicant appeared in person.

*Miscellaneous Case No. 552 of 1928.

BOYS, WEIR and KING, JJ. :—In this case what purported on the face of it to be a notice to Madho Prasad Khanna, Vakil, of Azamgarh, was issued from this Court purporting to call on him to show cause why he should not be dealt with under the Legal Practitioners Act in that he was guilty of professional misconduct in respect of certain facts which were then set out. The notice was dated 13th of June, 1928.

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The reference to the Legal Practitioners Act, while it is an error, is not an error of any material importance. The Court, apart from another objection that has been taken, would have had power to deal with Madho Prasad Khanna under section 8 of the Letters Patent.

Another objection has, however, been taken which goes to the root of the matter. The Bar Councils Act, XXXVIII of 1926, received the assent of the Governor-General on the 9th of September, 1926. By section 1, sub-section (3) it was provided that section 1 and sections 2, 17, 18 and 19 should come into force at once; while the rest of the Act, or any portion thereof, should come into force in respect of any High Court upon such date as the Governor-General-in-Council might by notification in the *Gazette of India* determine. By the notification published in the *Government of India Gazette*, Part I, page 400, dated April 7, 1928, the Governor-General in Council notified the 1st of June, 1928, as the date on which the rest of the Act was to come into force for the purposes of this High Court. By that notification, then, section 8 came into force as and from the 1st of June, 1928, and the roll required by section 8, sub-section (2), was prepared, and persons entered on that roll, whatever may have been their status before, became advocates of the Court by virtue of section 2, clause (a). By section 19, sub-section (2) of the Act, which actually came into force by virtue of its own provisions at the

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same time as section 8, though it is declared by section 1, sub-section (2), that it should come into force at once, the provisions of the Letters Patent in so far as they may conflict with the provisions of the Act were abrogated and the new procedure detailed in section 10 of Act XXXVIII of 1926 came into force.

The result is that as and from the 1st of June, 1928, the procedure by which an advocate can be called upon to answer for misconduct is governed by section 10 and the following sections. To proceed under section 10, the High Court is required by sub-section (2) of that section, if it does not summarily reject the complaint, either to refer the case for inquiry to the Bar Council, or after consultation with the Bar Council to refer it to the court of a District Judge. Similar powers of reference are given where the Court instead of acting on a complaint acts on its own motion. But in either event it is necessary for the case to be either referred to the Bar Council or at any rate for the Bar Council to be consulted.

It appears, therefore, that this Court is not at present at any rate properly seised of the case and has no jurisdiction to proceed with it. We, therefore, refrain from saying anything further than that the Court is not properly seised of the case and that the notice issued to Madho Prasad Khanna to show cause is, as framed, *ultra vires* and a nullity. It will be for the High Court to decide whether further action should be taken under section 10 of the Bar Councils Act, 1926.