

SPECIAL BENCH.

Before Courtney Terrell, C.J., Khaja Mohamad Noor and James, JJ.

1936.
December,
3.

RAI BABBAN LAL, MUKHTAR, In the matter of.*

Mukhtars, identification by, who have become professional identifiers should not be accepted.

It is not expedient in the public interest that the profession of professional identifiers should be allowed to continue. Identification by mukhtars who have made identification their profession should not be accepted by courts and officers as a matter of course.

Reference under section 14 of the Legal Practitioners' Act, 1879.

The facts of the case material to this report are set out in the judgment of Courtney Terrell, C.J.

Government Advocate, in support of the reference.

Jaleshwar Prasad and Phulan Prasad Verma, against the reference.

COURTNEY TERRELL, C.J.—We have before us the case of one Rai Babban Lal, a mokhtear practising at Chapra and aged about 70 years. The evidence very clearly discloses the fact that although he is certainly qualified to practise as mokhtear his practice in fact consists of identification. He does not take his seat in the mokhtar-khana of the court; he sits under a *bar* tree and does nothing else. The case which has led to the discovery of his real occupation was one in which he purported to identify the signature of one Ramnandan on three documents. One Basdeo Singh was placed on trial in the criminal court for complicity in the false identification of Ramnandan Singh and Rai Babban Lal mokhtear gave evidence in the course of that trial as to the particular incident in question. He explained it thus. He said that the

* Civil Reference no. 2 of 1936. In the matter of proceeding under section 13, clauses (b) and (f) of the Legal Practitioners' Act, 1879, against Rai Babban Lal, Mukhtar.

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accused man Basdeo Singh had come to him and asked him to identify the signature of Ramnandan. That as Ramnandan was a well-known person he thereupon signed the identification of what purported to be Ramnandan's signature on the documents presented to him. He stated that the accused person Basdeo Singh had informed him that Ramnandan was on his way to him (the mokhtear) and that he would come before him for the actual process of identification and while waiting for the appearance of Ramnandan he, the mokhtear, turned to other work and while his attention was distracted from the matter Basdeo Singh took up the papers which he had already signed purporting to identify Ramnandan and disappeared, that is to say, the mokhtear threw all the blame on the individual Basdeo Singh who was being tried. The criminal court acquitted Basdeo Singh of complicity in this false identification. The mokhtear was cross-examined in the course of his evidence and a number of cases were put to him in which he had purported to make identifications and in which it was very clear that the identification was falsely made. Indeed in one particular case—the case of the individual whom he had purported to identify on a former occasion and who was shown to him in court—he had to admit that he could not say whether that was the individual he had identified.

There is no doubt that in the course of time there has come into existence a class of mokhtears usually aged men who have no real practice as mokhtears but who earn a precarious living by making identifications which they are prepared to perform at a fee of a few annas as in the case of this particular man, and it is not expedient in the public interest that that profession of professional identifiers should be allowed to continue. It is of no avail to plead any excuse that the mokhtear is an aged person who could not otherwise maintain life, for that very excuse might be made for any aged person accused of some thoroughly wrongful act. The Courts and all officers who have

to receive documents on which signatures are identified should remember that they are not bound to accept the identification merely because the nature of the identifier's profession entitles him to perform identifications. It is very easy for any officer in that position to become acquainted with the fact that such and such mukhtear whose name he frequently sees on papers of identifications has really no other business, and in those circumstances the presumption is that he is merely a professional identifier whose identification should not be accepted. If the Courts and the officers engaged therein are careful to bear this principle in mind this undesirable type of practitioner will very soon disappear. There is no possible excuse for the individual whose case we are considering and his name must be removed from the roll of Mokhtears.

KHAJA MOHAMAD NOOR, J.—I agree.

JAMES, J.—I agree.

Reference accepted.

J. K.

SPECIAL BENCH.

Before Courtney Terrell, C.J., Khaja Mohamad Noor and James, JJ.

DEOBANSH SINGH, In the matter of.*

Legal Practitioner—Mukhtarnama or Vakalatnama to withdraw money—responsibility of Vakils and Mukhtars in accepting.

A mukhtear accepted a mukhtarnama, authorising him to withdraw money from court, offered to him by the Karta of a joint Hindu family who was known to him from before and who was accompanied by two other members of the family; but it subsequently transpired that the thumb impression of one other member and the signatures of two others were false.

Held that although the money had not been withdrawn and the conduct of the mukhtear was honest throughout, but

* Civil Reference no. 1 of 1936. In the matter of a proceeding under the Legal Practitioners' Act against Deobansh Singh, Mukhtear.

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