

as has been said, there is no issue, or (ii) that Nogendra Nath Mitter, the surviving plaintiff was a party to the conspiracy.

Under these circumstances the statements will be rejected.

Attorney for the plaintiff : *N. C. Bose.*

Attorneys for Kumudini Dassi : *Kali Nath Mitter and Sarbadhikari.*

Attorneys for Nayan Manjari : *S. D. Dutt and Gupta.*

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30 C. 983=7
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30 C. 986 (=7 C. W. N. 843).

[986] ORIGINAL CIVIL.

SARAT CHANDRA SINGH v. BROJO LAL MUKERJI.*

[13th July, 1903.]

Practice—Vakils' right to audience on the Original Side of the High Court—Revisional Jurisdiction of the High Court over the Presidency Small Cause Court—Civil Procedure Code, Act XIV of 1882, s. 622.

A vakil is not entitled to audience on the Original Side of the High Court.

Applications for the exercise of the Court's revisional powers over the Presidency Small Cause Court are properly dealt with in the exercise of the Ordinary Original Civil Jurisdiction of the Court, and should be made in the usual way by an advocate of the Court instructed by an attorney.

[Fol. 1914 M. W. N. 368=26 M. L. J. 467=23 I. C. 572; 18 M. L. T. 164=29 M. L. J. 353=1915 M. W. N. 728=30 I. C. 353; Ref. 37 Cal. 714.]

APPLICATION by a vakil to a Judge sitting on the Original Side of the High Court.

On an application being presented on behalf of one Brojo Lal Mukerji (the defendant in the Presidency Small Cause Court suit No. 16286 of 1902), by Babu Boidya Nath Dutt—a vakil enrolled and practising on the Appellate Side of the High Court,—for the exercise of Revisional Jurisdiction under s. 622 of the Code of Civil Procedure, in respect of the decree of that Court made in the suit, the question arose as to a vakil's right to audience on the Original Side of the High Court.

The Officiating Advocate General (Mr. L. P. Pugh) shewed cause, upon notice, against the application being made by a vakil. Vakils have no right to appear on the Original Side. This has always been the practice and never departed from. The application is one within the jurisdiction of the Original Side of the High Court, and following the practice which has been prevailing since the time when the Old Supreme Court was in existence, the vakils should not be allowed to appear and argue on the Original Side.

[The Advocate-General desired to cite authorities, but His Lordship did not think it necessary at that stage.]

Babu Boidya Nath Dutt. Under s. 6 of the Presidency Small Cause Courts Act a vakil has a right to appear in this Court which [987] has Appellate Jurisdiction over the Small Cause Court; see also s. 4, Legal Practitioners Act, and s. 15, Letters Patent and Rule 71 of Belchamber's Rules and Orders.

The Presidency Small Cause Courts Act of 1882, as amended by Act I of 1895, together with s. 15 of the Charter Act, does away with

* Application under s. 622 of the Civil Procedure Code.

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whatever Original Jurisdiction the old Supreme Court had over the Presidency Small Cause Court.

By rule 72 of the Rules and Orders of the High Court a vakil can appear in a case transferred from a District Court to the Original Side of the High Court in its Extraordinary Jurisdiction, but this right never has been asserted. Under a recent Rule* of the High Court, applications under s. 622 of the Civil Procedure Code for revising orders of the Calcutta Small Cause Court are to be made before a single Judge sitting on the Original Side of the Court. But as the revisional powers have hitherto been exercised by the Appellate Side of the Court only, the vakils are now entitled to appear before the single Judge exercising those revisional powers: *Kadambini Baiji v. Madan Mohan Basack* (1), *Jadu Mani Boistabee v. Ram Kumar Chakravarti* (2), *Haladhar Maiti v. Choytonna Maiti* (3).

The Advocate-General was not called on to reply.

SALE, J. I do not think it is necessary to call on the Advocate-General to reply, inasmuch as the question argued does not, in my opinion, admit of any real doubt.

The application is to invoke the exercise by the Court of its revisional jurisdiction over the Presidency Small Cause Court under section 622 of the Civil Procedure Code, and it is made on the Original Side of this Court to a Judge exercising the Original Civil Jurisdiction of the High Court.

The application is not made in the usual course by an advocate of this Court, but it is made by a vakil, who is admittedly not [988] entitled to practise on the Original Side of this Court. The vakil contends, however, that the revisional powers which I am asked to exercise do not fall within, or form part of, the Ordinary Original Civil Jurisdiction of this Court, and I am asked to deal with the application as a Judge exercising some jurisdiction other than the Original Civil Jurisdiction which, it is argued, has, for the purpose of applications of this character, been conferred on me by a Rule* of Court recently issued.

I am unable to assent to the proposition that the revisional powers of this Court, so far as the Presidency Small Cause Court is concerned, can only be exercised by this Court in its Appellate Jurisdiction.

It is a remarkable fact that the jurisdiction of a Judge sitting on the Original Side to exercise revisional powers over the Presidency Small Cause Court, which is now challenged for the first time, has been exercised ever since the establishment of the High Court over 40 years ago, as its records abundantly show. Within this period innumerable applications have been heard and determined by single Judges sitting on the Original Side of this Court, and orders and decrees of the Small Cause Court have from time to time been varied or set aside. No Court would, I venture to say, arrive at the conclusion that this jurisdiction had been wrongly exercised and the orders made thereunder for a long series of years were null and void, except upon the clearest grounds. I

* Rule IVA.—Applications under section 622 of the Code of Criminal Procedure for revision of orders of the Calcutta Presidency Small Cause Court, shall be heard by a single Judge sitting on the Original Side of the High Court.

The 12th June 1903. (*Calcutta Gazette, June 24, 1903, p. 845.*)

(1) (1898) 9 C. W. N. 247.

(3) *Ante*, p. 588.

(2) (1902) I. L. R. 29 Cal. 299.

am aware that these revisional powers have in recent years been exercised on various occasions by Division Benches sitting on the Appellate Side on this Court. I say nothing with reference to the question as regards the exercise by this Court in its Appellate Jurisdiction of these revisional powers. I think, however, the fact that the High Court in its Appellate Jurisdiction has exercised these revisional powers does not necessarily affect the present question, which is whether revisional powers are, by legislative enactment or otherwise, excluded from the Original Jurisdiction of this Court. Revisional Jurisdiction of the Court is not necessarily a part of its Appellate Jurisdiction, for a Court which has no Appellate Jurisdiction over another Court may still exercise Revisional Jurisdiction over it.

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[989] In this way the Supreme Court exercised Revisional Jurisdiction over the Presidency Small Cause Court and, on the abolition of the Supreme Court, the High Court in its Original Jurisdiction, being vested with the powers of the Supreme Court as a Court of Original Jurisdiction, continued the exercise of the same revisional powers.

I find nothing in section 15 of the Charter Act or in section 6 of the Presidency Small Cause Courts Act which confines revisional powers to the Appellate Jurisdiction of this Court, nor are the cases which have been cited any authority for that contention.

The remaining question is whether the recent Rule* which has been issued has the effect of vesting the Judges sitting on the Original Side of the Court with some new or special jurisdiction so as to enable them to exercise powers which they would be otherwise unable to exercise. I do not think it was intended that this Rule should have any such effect or operation. So far as I know, the only object of the Rule was to set at rest the question which had arisen whether, for the future, applications for the exercise of the Court's revisional powers over the Presidency Small Cause Court should be heard on the Appellate or on the Original Side of the Court. It has now been decided that the Original Side practice to hear and determine these applications is to be continued, and that the irregularity—if I may use the expression—of sometimes making these applications on the Appellate Side of the Court should be discontinued.

In these circumstances I am of opinion that this application must be dealt with in the exercise of the Original Jurisdiction of this Court, and that the motion must be made in the usual way by an advocate of the Court, instructed by an attorney, and not by a vakil who is not entitled to audience on the Original Side of the Court.

[At the request of the vakil the petition was returned to him in order that it might be properly presented.]

* *Ante*, p. 987 (note).