

Before Mr. Justice Loch and Mr. Justice Manby.

IN THE MATTER OF RAMDYAL SING.*

Act XX of 1865, s. 34—*Conviction by a Magistrate for practising as a Moolkhtar in the Revenue Court without a Certificate—Jurisdiction.*

1870
Nov. 9.

Reference.—Mr. D. M. Testro, Assistant Magistrate of Khoordah, has fined the appellant, under section 34 of Act XX of 1865, for practising as a Revenue Agent in the office of the Assistant Collector of Khoordah, without having the certificate required by the Act.

This order appears to me to be illegal, as such a fine could only be imposed by the Revenue officer in whose Court the appellant practised. I therefore forward the papers of the case, in order that the sentence may be set aside as illegal.

Order of the High Court.

LOCH, J.—We think that there has been a formal error on the part of the Assistant Magistrate in transferring this case from the Revenue to the Criminal side of his Court, and trying it in his capacity of Assistant Magistrate and not in that of Assistant Collector. This error, however, does not appear to be material, as Mr. Testro is both Assistant Collector and Assistant Magistrate, and the offence was committed before him in the former capacity, and as Assistant Collector he might have disposed of the case. The error, we think, may be rectified by his drawing up a fresh order in his capacity of Assistant Collector and filing the proceedings in the Revenue side of his office.

Before Mr. Justice Norman.

ROBERT LACHLAN AND OTHERS *v.* SHAIK ABDULLA.

1870
August 26.

Plaint—Signature and Verification—Practice.

Where the plaintiffs described themselves as lately carrying on business under the name of C. and Co., held, that there was no irregularity in the plaint being signed by C. and Co., and verified only by A. B., one of the partners.

See also
XII B.L.R.31

The plaintiffs in this suit were Robert Lachlan, Thomas Greenhill, and Arthur Bois, lately carrying on business in co-partnership at Dharramtolla in Calcutta, under the style and firm of Cook and Co., and the plaint was signed "Cook and Co." and verified by Arthur Bois alone.

Mr. Ingram, on behalf of the defendant, applied, on notice, to have the

* Reference to the High Court, under section 434 of the Code of Criminal Procedure, by the Sessions Judge of Cuttack, under his letter No. 251, dated 23th September 1870.

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plaint taken off the file. He contended that, under section 27, Act VIII of 1859 (1), the plaint ought to be subscribed and verified by all the partners. If only one partner knew all the facts of the case, he ought to have obtained the permission of the Court to subscribe and verify alone under section 28(2). Besides, in this case, the partners say they lately carried on business in partnership, consequently the firm of Cook and Co. did not exist as far as the plaintiffs were concerned; and the simple signature of Cook and Co. was therefore not sufficient. Supposing the statements in the plaint were all false, the defendant would not be able to prosecute any of the plaintiffs, except Bois.

The *Advocate-General (offg) contra* was not called upon.

NORMAN, J.—In this case the plaint has been admitted, and supposing there were any irregularities in the subscription and verification, I certainly would not take it off the file now. But it seems to me that there are no such irregularities as supposed by Mr. Ingram. It has been the practice of this Court in a suit brought by a firm to allow a member of the firm to subscribe and verify the plaint; and even if it were a wrong practice, which I do not think it is, I should be disinclined to interfere with it. As regards the objection that the firm of Cook and Co. does not exist as far as the plaintiffs are concerned, the old firm continues to exist so far as it is necessary for the winding up of its business. For that purpose the members of a partnership are entitled to use the name of their late firm so long as the partnership has not been wholly wound up. I think the name of Cook and Co. has been properly used. [Mr. *Ingram* It does not appear it has been used by any member of the firm.] NORMAN, J.—If it has not, the signature is a forgery.

Application dismissed

Attorneys for plaintiff: Messrs. *Pittar and Camell*.

Attorney for defendant: Mr. *Dover*.

(1) *Act VIII of 1859, s. 27.*—“The plaint shall be subscribed by the plaintiff and his pleader (if any), and shall be verified at the foot by the plaintiff in the manner following, or to the like effect: I, A. B., the plaintiff named in the above plaint, do declare that which is stated therein is true to the best of my information and belief.”

(2) *Act VIII of 1859, s. 28.*—“If the plaintiff, by reason of absence, or for other good cause, be unable to subscribe and verify the plaint, the Court may allow the plaint

to be subscribed and verified on behalf of the plaintiff by any person whom the Court may consider competent to make the verification. In suits by a Corporation or a Company authorised to sue and be sued in the name of an officer or trustees, the plaint shall be subscribed and verified on behalf of the Corporation or Company by any Director, Secretary, or other principal officer of the Corporation or Company who may be able to depose to the facts of the case.”