

## ORIGINAL CIVIL.

Before Mr. Justice Fletcher.

*In re* A VAKIL'S APPLICATION.\*

1910  
July 8.

*Practice—Vakil's right to appear before a Judge sitting on the Original Side of the High Court—Application to file warrant of attorney—Extraordinary Civil Jurisdiction—Civil Procedure Code (Act XIV of 1882) s. 635—Civil Procedure Code (Act V of 1908) ss. 119, 129.*

A vakil of the High Court applied before a Judge sitting on the Original Side of the Court, claiming a right to file a warrant of attorney in respect of a suit pending before the Midnapore District Court, in which a rule had been issued calling upon the plaintiffs to show cause why the suit should not be transferred to the High Court in its Extraordinary Original Civil Jurisdiction :

*Held*, that having regard to the long-continued course of practice during which *vakils* never appeared on the hearing of such applications, the present application should be refused.

*Held*, further, that the Civil Procedure Code of 1908 has nothing to do with a matter governed by old rules in force before 1909

THIS was an application made by Babu Ram Doyal Dey, a vakil of the High Court, for leave to file a warrant of attorney in respect of a suit pending in the Midnapore District Court, in which a rule had been obtained by the defendants, Mr. Donald Weston and others, calling upon the plaintiffs, Upendra Nath Maiti and another, to show cause why the suit should not be transferred to the High Court in its Extraordinary Original Civil Jurisdiction.

*Babu Ram Doyal Dey* (a *vakil* of the High Court), submitted that the new Civil Procedure Code made a difference to the provisions in force before 1909, as under section 119 the word '*Ordinary*' was omitted before the words '*Original Civil Jurisdiction*.' Therefore this application, which was made before the Court in its Extraordinary Civil Jurisdiction, was sound. Under rule 71 of Belchamber's Rules and Orders, *vakils* were entitled to appear in all cases other than those on the Ordinary Original Civil Jurisdiction of the High Court.

\* Application in Original Civil Extraordinary Suit No. 7 of 1910.

1910  
A VAKIL'S  
APPLICA-  
TION,  
*In re.*

FLETCHER J. This is an application by a gentleman, who is a vakil of this Court, claiming the right to file a warrant of attorney in respect of a suit which is pending in the Midnapore Court, in which a rule has been issued on behalf of the defendants, calling upon the plaintiffs to show cause why the suit should not be transferred to this Court in its Extraordinary Civil Jurisdiction. Now, it is undoubted that vakils have never appeared on the hearing of such an application for transfer. I have made enquiries as to what the practice has been, and in no case have vakils appeared. I have myself been sitting three and a half years on the Original Side of this Court, and during that time I have transferred a certain number of cases to this Court, where I have thought that justice demanded that the trial should take place in this Court rather than in the District Court, and in none of these cases have the parties been represented except by an advocate of this Court instructed by an attorney. There has been a long-continued practice in which vakils have never appeared, dating from the establishment of the High Court in 1862 and continuing down to 1910; and one would have thought that, had the vakils the right to appear, some exercise or claim to exercise that right would have been put forward during a period of almost half a century. I am satisfied that the claim to appear on an application for transfer has never yet been made. That being the established practice of this Court, it would be obviously improper for a single Judge, sitting on the Original Side, to depart from a practice regulating the various branches of the profession for such a period, unless he was satisfied that the practice was wrong.

The learned vakil who appears, says that the new Code of Civil Procedure has made a difference to the provisions in force before 1909 in this respect. Section 119 of the present Code is in the following terms :—

“Nothing in this Code shall be deemed to authorise any person on behalf of another to address the Court in the exercise of its Original Civil Jurisdiction, or to examine witnesses, except where the Court shall have, in the exercise of the

power conferred by its Charter, authorised him so to do, or to interfere with the power of the High Court to make rules concerning advocates, vakils and attorneys."

It seems to me that so far from the alteration made by the present section 119 in the wording of the former section 635 by the omission of the word "Ordinary" before "Original Civil Jurisdiction" being in favour of the vakil's contention it is rather against his case. I do not think that the Civil Procedure Code has anything to do with the case, for section 129 provides in respect of High Courts established under the Indian High Courts' Act and by Letters-Patent "nothing herein contained shall affect the validity of any such rules in force at the commencement of this Code." It is, therefore, obvious that the new Code of Civil Procedure has nothing to do with a matter governed by old rules in force before 1909.

I am not satisfied that vakils have ever appeared on a rule for application to transfer, and not being so satisfied, and having regard to the long-continued course of practice during which vakils have not appeared, I think it right to refuse the present application.

*Application refused.*

B. G. M.

1910  
A VAKIL'S  
APPLICA-  
TION,  
*In re.*  
FLETCHER J.