

In Re: Upendro Lall Bose

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Court : Kolkata

Decided On : Sep-03-1880

Reported in : (1881)ILR6Cal675

Judge : Richabd Garth, C.J. and ;Broughton, JJ.

Appellant : In Re: Upendro Lall Bose

Judgement :

Richard Garth, C.J.

1. There is no doubt that the plaint in this case has been verified in an irregular way; but having heard Mr. Kennedy's explanation, we have already informed him, in the course of the argument, that we entirely acquit his client of any intentional impropriety.

2. The mistake which he has made in the form of verification has evidently arisen from his confounding the permission to verify the plaint itself, which is provided for by Section 51 of the Code, with the power to sign the plaint on behalf of his client, which is provided for in the addition to that section made by the amending Act XII of 1879, Section 11.

3. He obtained leave upon the usual petition to verify the plaint himself, and then, instead of doing so, he signed the plaintiff's own name to the verification, describing himself as the plaintiff's attorney for that purpose.

4. The result is, that neither the plaintiff nor his attorney could be made criminally responsible for any false statements there may be in the plaint.
5. If Upendro Lall Bose really meant, having obtained the leave of the Court for that purpose, to verify the plaint himself, he should have signed the verification on his own account, and not as the plaintiff's attorney.
6. If he meant to sign the verification merely as the plaintiff's attorney, the plaintiff himself ought to have seen the plaint and verification, and authorized the attorney to sign the verification for him. The discussion which has taken place upon these points has raised a question of very general importance as to what should be the form of verification. We have taken occasion to consult some of the other Judges upon it, and we think that it may probably be found necessary to frame a rule or rules upon that subject. Meanwhile, we think that, in all cases, whether the plaint is verified by the plaintiff or by some other person, the party verifying should state shortly what paragraphs he verifies of his own knowledge and what paragraphs he believes to be true from the information of others.
7. This is the form of verification used in affidavits for the purpose of interlocutory applications (see Section 196 of the Code of Civil Procedure). There is no inconvenience, so far as we are aware, in adopting it, and it is really the only means of securing anything like truthful statements in the plaint.
8. The rule against Upendro Lall Bose will, of course, be discharged, and he is entirely acquitted of all blame which can affect his character.