1877.

KABIR VALAD RA'MJAN v. MA'HA'DU VALAD SHIWA'JI.

"Upon the evidence adduced before me in this case I have found that the amount of costs claimed in this suit, is reasonable and proper. But, as I am of opinion that this action is not maintainable, I have thrown out the plaintiff's claim with costs, subject, of course, to the opinion of the High Court on the question referred."

PER CURIAM:—The Court concurs in the opinion of the Second Class Subordinate Judge of Jalgaon, that the action brought to recover costs of the proceedings, under Act XX. of 1864, will not lie, and was rightly dismissed with costs.

Decree affirmed.

[APPELLATE CIVIL.]

Before Sir M. R. Westropp, Knt., Chief Justice, and Mr. Justice Melvill.

November 20. RA'MCHA'NDRA' CHINTA'MA'N (ORIGINAL PLAINTIFF), APPELLANT *v.* KA'LU RA'JU AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

Vakil and client—Vakalatnama—Agreement without consideration—Nudum pactum—Inám chithi.

An agreement, executed by a client to his vakil, after the latter had accepted a *vakalatnama* to act for the former in a certain suit, whereby the client bound himself to pay to the vakil, in the event of his conducting the suit to a successful termination, a certain sum in addition to the vakil's full fees, *held nudum pactum*, and a suit founded upon it dismissed as unsustainable.

ON the 19th August 1875, the plaintiff accepted a *vakalatnama* from the defendant to act for him in a certain suit. On the 11th August, issues were settled, and witnesses examined, and the suit was then adjourned to the 16th October following. On that day the defendant executed in favour of the plaintiff an agreement, called therein an "*inam chithi*," whereby the defendant agreed to pay to his vakil, the plaintiff, a certain sum "as *inam*," if the suit was decided in defendant's favour, and the plaintiff's claim therein was rejected, or "if it were amicably settled, or a *razinama* given," and, in default of punctual payment of the "*inam*," the defendant agreed to pay interest thereon. The agreement stated that, besides the amount of the "inam," certain earnest money and

* Civil Reference No. 18 of 1877.

1877.

RA'MCHANDRA CHINTA'MA'N v. KA'LU RA'JU AND ANOTHER.

the amount of the vakil's full fee had been debited by the plaintiff to the defendant at the latter's direction. The suit was decided in favour of the defendant, who, however, did not pay the amount of the "inam" to the plaintiff. The plaintiff, therefore, brought the present suit upon the agreement.

The Subordinate Judge of Shirpur, in whose Court the suit was filed, rejected the plaintiff's claim, on the ground that the contract was void under the Indian Contract Act No. IX. of 1872, holding that such an agreement could not be made between the pleader and his client *pendente lite*. In appeal, Mr. Cordeaux, Acting Judge of the district of Khandesh, forwarded the case for the opinion of the High Court, under section 28 of Act XXIII. of 1861, with the following remarks :—

"The question which I would submit is, whether a private agreement, settling the remuneration to be paid for a pleader's professional services, is void by reason of its being executed on a date subsequent to that on which the *vakalatnama* has been filed in a suit, and before decision has been passed therein?

"My opinion is, that such an agreement, if it is purely a promise to pay certain remuneration for professional services, is not invalid: and that the burden of proving the good faith of the transaction is on the pleader only when the good faith is impeached by the client (see section 111 of the Evidence Act). At the same time it appears to me doubtful whether an agreement, such as that which was executed by the defendants in favour of their pleader, is not contrary to public policy, and, therefore, void on that ground. In *Rao Sáheb V. N. Mandlik* v. *Kamaljábái* [1] there was an exactly similar agreement, and it was argued by the learned counsel (Anstey and Latham) that to enforce an agreement of this kind would be a dangerous precedent to establish for vakils practising in the mofussal. Whilst, on the other side, it was contended that such agreements were frequent between parties and their pleaders, and were not opposed to section 7 of Act I. of 1846. No opinion was expressed by the Court, the case being

(1) 10 Bom. H. C. Rep. 26.

1877.

RA'MCHANDRA CHINTA'MA'N v. KA'LU RA'JU AND ANOTHER.

decided on other grounds; and I have been unable to find any decision on the subject to guide me.

"It appears to me that an agreement—in which there is a promise to pay a pleader a certain sum, if, in consequence of his professional services, the client wins the suit, as remuneration for his services—cannot be held to be invalid, unless there has been misrepresentation or fraud, and the client finds himself called on to pay a sum utterly inadequate to the services performed.

"Here, too, the law will not presume fraud, and the burden of proof of the good faith of the transaction is not on the pleader till the good faith of the transaction is impeached by the client."

WESTROPP, C. J., after stating the facts, continued:—We are of opinion that the agreement was executed without consideration, and thus being a "*nudum pactum*," the suit founded upon it is unsustainable. The plaintiff, having accepted a *vakalatnama* from the defendants upwards of two months previously to the execution of the agreement, was already bound to render his best services as a pleader to them in suit No. 723 of 1875, and had, as appears from the agreement itself, accepted that *vakalatnama* upon the terms of receiving his usual fee as a pleader. It must not, however, be supposed that we regard the appearance of that circumstance on the face of the agreement as a matter of importance. It is one which, in the absence of any express stipulation to the contrary, the law would imply when a pleader is retained by a party to a suit. There was no fresh consideration proceeding from the plaintiff when he obtained the agreement of the 16th October. He could not be more firmly bound by it to render to the defendants his professional services than he already was by the acceptance of the *vakalatnama*. It may be noted, too, that the agreement, appropriately enough, describes itself as an *inam chithi*. Not, indeed, that this is of any importance, inasmuch as, even if this were not so, it would be sufficiently manifest that the promise to pay the sum of Rs. 61, in addition to the ordinary fee and earnest money mentioned in the agreement, was utterly without consideration. The District Judge should be informed that the plaintiff's suit should be dismissed with costs.