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it will then have to be ascertained whether the plaintiff worked for the defendant for six months as he alleges, or for any shorter period, or not at all. The evidence offered by the defendant to prove that the plaintiff performed no service at all, waa refused by the Courts below; but, in the eventuality which we have supposed, it will become necessary to take it.

[258] We must, therefore, require the District Court, after taking, or causing to be taken, the evidence produced by the parties, to find on the following issue:—

Has the plaintiff proved that he paid Rs. 500 to the defendant in consideration of the execution by the defendant of the instrument (Ex. No. 20)?

If the above issue be found in the negative, but not otherwise, the District Court should find, after taking, or causing to be taken, the evidence on the point which was rejected, on the following issue:—

For what period did the plaintiff actually perform work and services as the defendant's agent under the Ex. No. 20?

It is, perhaps, scarcely necessary to say that the District Judge should require very strong and convincing evidence of the payment of the Rs. 500 as consideration for the creation of the agency. The Ex. No. 20 contains no indication of the payment of any consideration; and, as the instrument has been drawn up with rather more than ordinary care and formality, it is certainly remarkable that no mention should have been made of such an important circumstance, and that there should be no provision for the payment of the sum advanced in the event of the agency being revoked.

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APPELLATE CIVIL.

Before Sir Michael Roberts Westropp, Kt., Chief Justice, and Mr. Justice Birdwood

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SHIVRAM HARI (*Original Plaintiff*), *Applicant v.* ARJUN AND TWO OTHERS, SONS OF MANA (*Original Defendants*), *Respondents.**

[3rd February, 1881.]

Vakil and client—Inam chithi—Vakalatnama—Act I of 1846, *s.* 17—*Nudum pactum.*

Where the acceptance of a *vakalatnama* by a pleader and the execution of an *inam chithi* (agreement) by his client, intended as remuneration for the professional services of the pleader, were contemporaneous, and the *vakalatnama* was not filed by the pleader until after the execution of the *inam chithi*.

Held that the acceptance of the *vakalatnama* and the execution of the *inam chithi* constituted one transaction, and that the agreement was not illegal under Act I of 1846, s. 7.

Ramchandra Chintaman v. *Kalu Raju* (1) distinguished.

[R., 8 B. 413; 61 P.R. 1907 = 33 P.L.R. 1907 = 45 P.W.R. 1907 (F.B.).]

[259] THIS was an application under the extraordinary jurisdiction of the High Court against the decision of E. Cordeaux, Judge of the District Court of Khandesh, affirming the decree of D. A. Dalvi, Second Class Subordinate Judge of Erandol.

The plaintiff Shivram Hari brought this suit against Arjun and his two brothers for Rs. 50, due on an agreement (*inam chithi*) executed to

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* Extraordinary Application, No. 88 of 1880.

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him by the defendants on the 12th August, 1879. The *inam chithi* stated that a certain Marwari had brought a suit (No. 624 of 1879) against the three defendants in the Subordinate Judge's Court at Erandol; that they had given the plaintiff a *vakalatnama* for conducting their defence; that they promised to pay the plaintiff Rs. 50 as *inam* if the plaintiff's claim should be rejected and the suit decided in their favour. The *vakalatnama* filed by the plaintiff on behalf of the defendants in suit No. 624 of 1879 was dated the 12 August, 1879. The Marwari's claim against the defendants in that suit was rejected. The plaintiff, therefore, sued to recover the amount of the *inam chithi*.

The defendants admitted the execution of the *inam chithi* and their liability to pay the plaintiff's claim.

The Subordinate Judge, however, dismissed the suit, holding the *inam chithi* to be *nudum pactum* on the authority of *Ramchandra Chintaman* v. *Kalu Raju* (1).

In appeal, the District Judge upheld the decision of the first Court. He observed: "The only question is whether the Subordinate Judge has rightly applied the above decision of the High Court to the present case. I find that decision does apply. The *vakalatnama* and the *inam chithi* were executed on the same day (12th August, 1879), but the latter expressly recites that the former was executed first. Consequently, the plaintiff was bound by the terms of the *vakalatnama*, and there was no fresh consideration from the plaintiff under the *inam chithi*. The case is similar to the case of *Rao Saheb V. N. Mandlik* v. *Kamaljabai* (2) in all respects, except the interval elapsing between the two documents. After hearing the pleader for the appellant, without giving notice to the respondent, I confirm the decree."

[260] The plaintiff thereupon applied to the High Court under its extraordinary jurisdiction.

Manekshah Jehangirshah, on behalf of the plaintiff, applied for a rule *nisi*—As the defendants admitted the plaintiff's claim, the Subordinate Judge ought to have made a decree in plaintiff's favour for the amount claimed, as laid down in s. 102 of the Civil Procedure Code (Act X of 1877). The Subordinate Judge was wrong in raising of his own accord an issue which was not called for by the defendants. The lower Courts were wrong in holding that there was no consideration for the *inam chithi*. The execution of the *vakalatnama* by the defendants and the acceptance of it by the plaintiff were parts of the same transaction, and the agreement was a consideration for the acceptance of the *vakalatnama*. The lower Courts have misapplied to the facts of this case the ruling of the High Court in *Ramchandra Chintaman* v. *Kalu Raju* (1). That case does not apply, because there the *inam chithi* was passed long after the acceptance of the *vakalatnama*. The *inam chithi* bears the same date as the *vakalatnama*, and the *vakalatnama* was filed in Court subsequently to the execution of the *inam chithi*. It is not illegal for a party and his pleader to settle by such private agreement the amount of remuneration to be paid by the former for the professional services of the latter, under Act I of 1846, s. 7.

The High Court (Kemball and F. D. Melvill, JJ.) granted a rule *nisi*.

Subsequently the High Court (Westropp, C. J., and F. D. Melvill, J.) directed the District Judge to report to them certain facts, which he submitted to the following effect:—That the *vakilpatra* was filed in suit

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No. 624 of 1879 after 10 o'clock on the 12th August, 1879; that the *inam chithi*, which bears the same date as the *vakalatnama*, was executed some hours before the filing of the latter in the said suit; that the Marwari plaintiff in that suit sued for Rs. 310, and his suit was rejected as against the defendants; that their costs, which amounted to Rs. 15-14-10, were not awarded to them; that their defence was actually conducted by the plaintiff, though another pleader was also retained in the case.

[261] The High Court (WESTROPP, C.J., and BIRDWOOD, J.) in making the rule absolute on the 8th February, 1881, gave the following judgment:—

JUDGMENT.

WESTROPP, C.J.—This case differs materially from that of *Ramchandra Chintaman* v. *Kalu Raju* (1), inasmuch as the acceptance of the *vakalatnama* by the pleader (the plaintiff in this case) and the execution of the agreement sued upon, were contemporaneous, and the *vakalatnama* was not filed by the pleader until after the execution of the agreement. The agreement, it is true, is called an *inam chithi*, but it was evidently given as the sole intended remuneration for the professional services of the pleader; and, looking at Act I of 1846, s. 7, we cannot say that such an agreement is illegal. The words "we have given you a *vakilpatra*" in the past tense occur in it, but the report of the Subordinate Judge and the evidence taken by him lead us to the conclusion already expressed that the acceptance of the *vakilpatra* (or *vakalatnama*) and the execution of the *inam chithi* were simultaneous, and constituted one transaction. Although we cannot designate the remuneration as extortionate, yet we regard it as high, when the amount sued for in the case in which the plaintiff was to act as pleader for the defendants was only Rs. 310, and we feel no disposition to encourage agreements which give to pleaders a personal interest in the litigation of their clients. We must set aside the decrees of the Courts below, and direct a new trial. But we give no costs to the plaintiff either of his original suit or of the appeal, or in this Court.

Decree set aside.

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[262] APPELLATE CRIMINAL.

Before Mr. Justice M. Melvill and Mr. Justice Nanabhai Haridas.

EMPRESS v. HUSEN.* [15th February, 1881.]

Lunatic—Imbecile—Inability to understand proceedings—The Code of Criminal Procedure (X of 1872), ss. 186 and 423.

The provisions of s. 186 of the Code of Criminal Procedure do not apply to a person who is of unsound mind; they apply to persons who are unable to understand the proceedings from deafness, or dumbness, or ignorance of the language of the country, or other similar cause. But where the inability to understand the proceedings is due to unsoundness of mind, the procedure provided in chap. XXXI of the Code must be followed.

Where a Magistrate found that an accused person convicted of theft was an imbecile, and consequently unable to understand the proceedings, but that he was not of unsound mind, the High Court held that this distinction was

* Criminal Reference No. 2 of 1881.

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