

We think also that the Judge should have raised issues as to the ownership and possession both of the plaintiff's vendor and the plaintiff, since even if the deed were not proved, the plaintiff might be able to substantiate a title independently of it, and, on the other hand, if the deed were proved, it would not necessarily establish the title either of his vendor or of himself.

We reverse the decree and remand the appeal for a fresh decision on the merits. Costs to be costs in the cause.

*Decree reversed and case sent back.*

## APPELLATE CIVIL.

*Before the Honourable Chief Justice Farran and Mr. Justice Parsons.*

SINDHA SHRI GANPATSINGJI HIMATSINGJI (ORIGINAL DEFENDANT),  
APPELLANT, v. ABRAHAM ALIAS VAJIR MAHOMED AKUJI (ORIGINAL PLAINTIFF), RESPONDENT.\*

1935.

September 2.

*Contract Act (IX of 1872); Secs. 2 (d), 25—Services rendered during the defendant's minority at his desire and continued at his request after his majority—Agreement to compensate for services—Consideration—Annuity.*

Services rendered at the desire of the minor expressed during his minority and continued at the same request after his majority form a good consideration for a subsequent express promise by him in favour of the person who rendered the services. By section 2 (d) of the Contract Act, services already rendered at the desire of the promisor are placed on the same footing with such services to be rendered, and constitute a good consideration for a definite agreement.

Cases where a person without the knowledge of the promisor or otherwise than at his request does the latter some service and the promisor undertakes to compensate him for it, are covered by section 25 of the Contract Act (IX of 1872); in them the promise does not need a consideration to support it.

SECOND appeal from the decision of R. S. Tipnis, Assistant Judge, F. P., of Surat at Broach, confirming the decree of Ráo Sáheb Karpurrám M., Subordinate Judge of Jambusar.

The plaintiff sued to recover Rs. 625, being the amount of five years' (1882 to 1886) arrears due on a deed, dated the 5th June, 1875, by which the defendant agreed to pay him Rs. 125 per annum in consideration of the services rendered by him to the defendant in connection with a suit which the defendant had

\* Second Appeal, No. 143 of 1894.

1895.

SINDHA SHRI  
GANPATSINGJI  
v.  
ABRAHAM  
ALIAS  
VAJIB.

filed against his father to establish his legitimacy, and in which he, the defendant, got a decree for maintenance. The litigation lasted in all for five years, and during its continuance the defendant attained his majority.

The following is the translation of a portion of the deed in suit:—

“Since the commencement of this dispute and up to its end, with great care and properly you (plaintiff) have rendered me much assistance by living with me (though) it is difficult for me to give (due) return for the assistance thus rendered by living beside me in times of such distress of mine; yet in order that you may have recompense for your trouble, and that you may remember me for ever (may have something to remember me for), do I pass you this deed (to wit) when (it will please) God to make me the owner of the *gádi* of Sarod, *i.e.*, when God will instal me in the *gádi* of Sarod from that year will I continue paying Rs. 125, in words one hundred and twenty-five, a year as long as there are your and my issues (during the life-time of my issues and yours.)”

The defendant replied that the agreement was void on the ground of fraud, undue influence and misrepresentation; that it was without consideration and opposed to public policy; that the right to sue had not yet accrued, because his estate was in the hands of the *tálukdári* settlement officer, and that the agreement was oppressive.

The Subordinate Judge had at first dismissed the suit on the ground that it was premature, because the defendant's estate was in the management of the *tálukdári* settlement officer, but on remand on appeal he allowed the claim.

On appeal by the defendant the District Judge confirmed the decree.

The defendant preferred a second appeal.

*Inverarity* (with *Kálábhái Lallubháí*) appeared for the appellant (defendant):—We contend that the agreement is not binding on us. It has no consideration. The document purports to have been executed for past services which, we submit, do not form a valid consideration—Pollock on Contracts, pp. 168, 169.

*Motílál M. Munshi* appeared for the respondent (plaintiff):—Under the Contract Act past services form a good consideration—section 2, clause (d) of the Contract Act. Even supposing that past services do not form a good consideration, still our claim can be supported under section 25 of the Contract Act.

FARRAN, C. J.—The history of this case is fully set out in the judgments of the lower Courts, which have concurred in awarding the claim. The point argued before us for the appellant is that there was no legal consideration for the agreement sued on. By it the defendant promises to give the plaintiff an allowance of Rs. 125 a year, because during the whole of the five years' litigation, which went on between his father and himself, and in which his legitimacy was questioned, plaintiff rendered him great assistance and remained with him in times of distress. It was thus distinctly an agreement to compensate for past services. These services were rendered to the defendant at first while he was a minor, and were subsequently continued after he had attained his majority. There is no finding by the lower Courts whether they were rendered at the desire of the defendant, but it is plain, from the judgment of the District Judge, that he was of opinion that it was not intended by the parties that the plaintiff's services should be rendered gratuitously. They were intended to be recompensed, though the nature and extent of the proposed recompense were not fixed until the agreement now sued on was executed by the defendant. Hence we have not to consider whether a past action upon request which the parties did not intend to create a contractual jural relation between them is a consideration within the meaning of the Contract Act. It may be open to question whether an act done at another's desire, which is not intended by either party to create a contractual relation between them, such as joining a friend in a walk or on an excursion at his request, can be considered a consideration for a binding promise. Mr. Anson thinks that it could not. "Unless" (he says) "the request is virtually an offer of a promise, the precise extent of which is hereafter to be ascertained, or is so clearly made in contemplation of a promise to be given by the maker of the request that a subsequent promise may be regarded as part of the same transaction, the rule in *Lampligh v. Braithwait* has no application"—Anson, Principles of the English Law of Contract, page 89. But the point does not arise in this case.

Mr. Inverarity, for the appellant, cited Pollock on Contracts, page 169, (5th Ed.), as expressing the law founded upon decisions in the English Courts which ought to govern us in the pre-

1895.

SINDHA SHRI  
GANPATISINGJIABRAHAM  
ALIAS  
VAJIR.

1895.  
SINDHA SHRI  
GANPATISINGJI  
v.  
ABRAHAM  
ALLAS  
VAJIR.

sent case, but we are unable to accept that contention: The Contract Act, though in the main founded on English case law, does not follow, as pointed out by Mr. Cunningham in his work on the Act, the present English law on the subject of consideration. We must turn to the Act itself. If the services of the plaintiff were rendered at the desire of the defendant, expressed during the defendant's infancy and continued at the same request after his majority, we do not doubt that they form a good consideration for the defendant's subsequent express promise to pay the annuity secured by the agreement. Services at the desire of the promisor already rendered and such services to be rendered are placed in section 2 (d) upon the same footing. Either will constitute a good consideration for a definite agreement. If the services were rendered without the desire of the defendant (and it is, we think, difficult to conceive in the present case that they were rendered otherwise than at his express or implied request or desire) the case falls within section 25 of the Act. The services will have been voluntarily rendered for the defendant. The section appears to cover cases where a person without the knowledge of the promisor or otherwise than at his request does the latter some service and the promisor undertakes to recompense him for it. In such cases the promise does not need a consideration to support it. A rather extreme application of the section will be found in *Dhiraj Kuar v. Bikramdjit Singh* (1).

The other grounds taken in the memo. of appeal have not been pressed upon us.

We confirm the decree with costs.

*Decree confirmed.*

(1) I. L. R., 3 All., p. 787.