IN THE MATTER OF RAMASAMY CHETTY.

evidence has to be recorded in his presence and judgment given; if the security or bail required to be furnished is not forthcoming imprisonment follows as a matter of course; finally an appeal is allowed in the matter. If a proceeding involving these requisites and incidents is not a *trial*, it is impossible to see what it is. I have no hesitation, therefore, in holding that the order of the Magistrate requiring security was an order in a criminal trial and consequently any order which may be passed on appeal or in revision in connection with such a proceeding is also an order in a criminal trial. I would accordingly reject this appeal.

RUSSELL, J.—I am of opinion there is no "judgment" in this case, and therefore there is no appeal under article 15 of the Letters Patent—*vide* a decision of a Bench of this Court in *Puthukudi Abdu* v. *Puvakka Kunhikutti*(1) following previous reported decisions on the same point.

I express no opinion on the question whether the proceedings in the lower Court were a trial or not.

I think the appeal should be rejected.

APPELLATE CIVIL.

Before Sir S. Subrahmania Ayyar, Officiating Chief Justice, and Mr. Justice Bhashyam Ayyangar.

1903. October 27. November 3.

SUBBA PILLAI (PLAINTIFF), APPELLANT,

v.

RAMASAMI AYYAR (DEFENDANT), RESPONDENT.*

Legal Practitioners Act—XVIII of 1879, *s.* 28—*Agreement not filed in Court—Contract Act—IX of* 1872, *ss.* 217, 218—*Lien.*

The Legal Practitioners Act does not enact that no claim by a pleader for professional services rendered or for recovery of out-fees advanced shall be sustainable unless an agreement in writing for the same has been entered into with the client and filed in Court, but only that an agreement, if any, in respect thereto, shall be void unless the same has been reduced to writing and filed in Court.

(1) I.L.R., 27 Mad., 340.

* Second Appeal No. 254 of 1902, presented against the decree of K. Ramachandra Ayyar, Subordinate Judge of Negapatam, in Appeal Suit No. 23 of 1901, presented against the decree of P. Narayana Chariar, District Munsif of Kumbakonam, in Original Suit No. 590 of 1899.

A pleader (as the Court found), at the request of his client disbursed moneys for out-fees in a suit in which he was retained, and took a promissory note for the amount of the disbursements:

Held, that the promissory note was, within the meaning of section 28 of the Legal Practitioners Act, an agreement respecting the amount of payment for charges incurred or disbursements made by the pleader in respect of the suit in which he had been retained, and as it had not been filed in Court as required by the section it was invalid. But that, independently of the promissory note, the pleader was entitled to recover the out-fees advanced by him, and, under section 217 of the Contract Act, he was entitled to retain the same out of the sums received by him to the credit of his client.

Razi-ud-din v. *Karim Bakhsh*, (I.L.R., 12 All., 169), and *Sarat Chunder Roy Chowdhry* v. *Chundra Kanta Roy*, (I.L.R., 25 Calc., 805), commented on.

SUIT for money. Plaintiff alleged that defendant, a first-grade pleader, had received certain sums of money from Court on behalf of plaintiff's undivided brother Govinda Pillai, for whom defendant had acted; that Govinda Pillai had since died; that a portion of the money in question had been paid over to plaintiff, but that there was a balance remaining due of Rs. 498-12-1, which plaintiff now sued for, with interest. Defendant admitted having received the money, but pleaded that after the death of Govinda Pillai he had obtained a vakalat from plaintiff, and had acted for him. He claimed to hold Rs. 94-1-0 as a portion of the fees due in a partition suit which Govinda Pillai had instituted against plaintiff and which was pending when Govinda Pillai died. He also stated that Govinda Pillai had borrowed Rs. 200 from him in order to institute a suit and had given defendant a promissory note therefor; and he claimed to hold the balance of the amount sued for under an agreement with the plaintiff, who, he alleged, consented to his retaining it in settlement of other sums due to the defendant for fees. An issue was framed on this point, and another as to whether defendant was entitled to a lien on the money in respect of any unpaid fees and of the balance of debt due to him by Govinda Pillai. The District Munsif found against defendant on both issues, and decreed in plaintiff's favour.

The Subordinate Judge, on appeal, upheld the Munsif's finding on the first issue, but held that defendant had an equitable lien for the amount of the promissory note for Rs. 200 with interest. He allowed defendant to retain this out of the Rs. 498-12-1, as well as a sum of Rs. 94-1-0. This latter was a sum due under a decree to Govinda Pillai, and was drawn from Court, and the Subordinate Judge held that defendant was entitled to appropriate

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it for whatever was due to him from Govinda Pillai, in any suit, and that Govinda Pillai had authorized defendant to so appropriate it.

Plaintiff preferred this second appeal.

P. S. Sivaswami Ayyar for appellant.

V. Krishnaswami Ayyar for respondent.

JUDGMENT.—The two items allowed by the lower Appellate Court in favour of the respondent to which objection is now taken by the appellant's pleader are (i) an item of Rs. 94-1-0 being the share of Govinda Pillai, the appellant's deceased brother, in the sum drawn by the respondent from the Court in Small Cause Suit No. 1938 of 1895, and (ii) an item of Rs. 200 being the amount of a promissory note made by Govinda Pillai in favour of the respondent.

As regards the first item, the respondent's plea was that he appropriated the amount towards the fees due to him in Original Suit No. 14 of 1895, a suit for partition against the present appellant which abated on the death of Govinda Pillai, the plaintiff therein, and that he was also authorized by Govinda Pillai to do so. The lower Appellate Court refers to this question of authorisation as the third question for decision in the appeal before it and records (on it) a finding in the affirmative in favour of the present respondent. There is evidence in the case in support of this alleged authority and we accept the finding of the Subordinate Judge on this point. It is, therefore, unnecessary to consider whether even in the absence of such authority, the respondent would be entitled, as found by the Subordinate Judge, to appropriate this item, which was drawn in Small Cause Suit No. 1938 of 1895, for fees due to him (by Govinda Pillai) not in that suit but in another suit, namely, Original Suit No. 14 of 1895.

As regards the second item, if the amount of the promissory note were in reality a sum advanced by way of loan to Govinda Pillai, the respondent's remedy would be only on the promissory note and he would have no lien under section 217 of the Indian Contract Act, on any sums received by him (from Court) on behalf of Govinda Pillai, his client, and the promissory note would not be invalid under section 28 of the Legal Practitioners Act. But reading the promissory note (exhibit I, dated the 11th November 1896) along with the letter (exhibit II, dated the 7th October 1896) of Govinda Pillai to the respondent, it is clear that the

amount of the promissory note was not an amount advanced by way of loan, but an amount which, at the request of his client, the respondent disbursed for out-fees in the suit in which he was retained as vakil. In this view the questions arising for decision are whether the promissory note is invalid under section 28 of the Legal Practitioners Act and whether the respondent is entitled, under sections 217 and 218 of the Indian Contract Act, to a lien in respect of the amount and can deduct the same out of the sum received by him (from Court) on account of his client; it being conceded that the respondent's claim, if any, on the promissory note, whether by suit or by set off, was barred at the date of the suit.

We are clearly of opinion that the promissory note for payment on demand of the sum of Rs. 200 with interest thereon at one per cent. per mensem is, within the meaning of section 28 of the Legal Practitioners Act, an agreement respecting the amount of payment for charges incurred or disbursements made by the respondent, in respect of the suit in which he had been retained as a vakil; and as the same has not been filed in Court as required by the section, it is invalid. The section is general and there is nothing to restrict its operation to agreements which prov de for the payment of a larger amount than the disbursements actually made for out-fees, or of any lump sum irrespective of such disbursements or for payment of pleader's fee in excess of what may be allowed as such on taxation between party and party in accordance with the rules framed under section 27 of the Legal Practitioners Act. We are, therefore, unable to concur in the contrary view taken by the Allahabad and the Calcutta High Courts (*see Razi-ud-din* v. *Karim Bakhsh*(1), *Sarat Chunder Roy Chowdhry* v. *Chundra Kanta Roy*(2)). The policy of sections 28, 29 and 30 of the Legal Practitioners Act, corresponding to sections 4, 9 and 6 of the English Attorney and Solicitors Act, 33 & 34 Vict., cap. 28, is that whenever an agreement is entered into between a pleader and his client respecting his remuneration or payment for out-fees, such agreement should be reduced to writing and not only so, but also filed in Court and that when a suit is brought upon such agreement, the Court should have the power if, in its opinion, the agreement is not fair and reasonable to reduce the amount payable thereunder

(1) I.L.R., 12 All., 169. (2) I.L.R., 25 Calc., 805.

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or order it to be cancelled, and, in the latter case, to award such amount only as would have been decreed in the absence of any agreement between the pleader and his client. Section 30, however, provides that a pleader shall not be entitled to claim anything beyond the terms of such agreement, except in respect of services, fees, charges or disbursements expressly excepted from the agreement.

It seems therefore clear that, though an agreement entered into will be invalid unless reduced to writing and filed in Court, yet the pleader is not disentitled, in absence of any agreement, to claim reasonable remuneration in respect of his professional services or the repayment of out-fees advanced by him. This is the view taken in the decision of this Court in *Rama* v. *Kunji*(1) in regard to a claim for pleader's fee; and the decision will be equally applicable to a claim for out-fees. The circumstance, however, that there was, in fact, an oral agreement or a written agreement which was not filed in Court, cannot, in our opinion, make any difference; and the pleader's rights and remedies will be just the same as if there had been no agreement at all. An oral agreement or a written agreement not filed in Court, being invalid under section 28 of the Legal Practitioners Act and therefore unenforceable, is 'void' (*vide* section 2, clause (*g*) of the Indian Contract Act), and cannot therefore preclude the pleader from maintaining a suit as if no agreement had been entered into at all. This is in accordance with the opinion expressed by this Court in *Krishnasami* v. *Kesava*(2).

The conclusion we, therefore, come to is that the Legal Practitioners Act does not enact that no claim by a pleader for professional services rendered or for recovery of out-fees (advanced) shall be sustainable, unless an agreement in writing for the same has been entered into with the client and filed in Court, but only that an agreement, if any, in respect thereto shall be void unless the same has been reduced to writing and filed in Court.

The promissory note (exhibit I) is therefore void and it hence becomes unnecessary to consider whether the lien which the respondent would otherwise have had (under section 217 of the Indian Contract Act) should be regarded as having been waived by his taking a promissory note, if the same had been filed in

(1) I.L.R., 9 Mad., 375. (2) I.L.R., 14 Mad., 63.

Court under section 28 of the Legal Practitioners Act. Independently of the promissory note, the respondent is entitled to recover the out-fees advanced by him and, under section 217 of the Indian Contract Act, he is entitled to retain the same out of the sums received by him to the credit of his client. The appellant's pleader admits that the amount actually advanced by the respondent for out-fees was Rs. 200 and it is therefore unnecessary to remit an issue for the purpose of taking an account as to the sums actually advanced by the respondent for out-fees.

The second appeal, therefore, fails and is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Subrahmania Ayyar and Mr. Justice Benson.

1897. March 11, 12. September 27.

LAKSHMANA PADAYACHI AND OTHERS (DEFENDANTS), APPELLANTS IN SECOND APPEAL No. 1498.

SUPPA ASARI AND OTHERS (DEFENDANTS Nos. 1, 2, 4 AND 5), APPELLANTS IN SECOND APPEAL No. 1568.

v.

RAMANATHAN CHETTIAR (PLAINTIFF), RESPONDENT IN BOTH THE CASES. *

Tanjore custom—Free occupation of manaikats belonging to mirasidars by artizans—Conditional on rendering services.

There is a practice in the Tanjore district by which purakudis or artizans are allowed to occupy manaikats belonging to mirasidars, free of rent, so long as they cultivate the lands of the mirasidars or render them services in other ways.

SUIT(1) to recover possession of a manaikat, with mesne profits.

The plaintiff sued as a trustee of the Thulapureswaraswami temple, to recover possession of a manaikat and for the removal of the building thereon, alleging that the manaikat sued for belonged to the said temple, that defendants' ancestors were permitted to occupy it on condition that they should cultivate

(1) Directed to be reported.

* Second Appeals Nos. 1498 and 1568 of 1895, presented against the decree of V. Srinivasa Charlu, Subordinate Judge of Kumbakonam, in Appeal Suits Nos. 384 and 385 of 1894, presented against the decree of J. C. Fernandez, District Munsif of Shiyali, in Original Suit No. 93 of 1893.