

APPELLATE CIVIL.

Before Sir John Wallis, Kt., Chief Justice, Mr. Justice Ayling
and Mr. Justice Kumaraswami Sastriyar.

TENJERLA SURYANARAYANA (DEFENDANT), APPELLANT,

v.

PRABHALA SUBBAYYA (PLAINTIFF), RESPONDENT.*

1917,
October
8 and 16.

*Contract Act (IX of 1872), sec. 23—Agreement to pay money to the vakil's clerk
for giving special attention to a case, whether opposed to public policy.*

An agreement by which a litigant binds himself to pay his vakil's clerk a certain amount for giving special attention to his legal business which his vakil was bound to see to in consideration of his fee, is opposed to public policy and is void and unenforceable.

Ex parte Cotton (1846) 9 Beav., 107, referred to.

APPEAL under clause 15 of the Letters Patent against the Judgment of OLDFIELD, J., who differed from BAKEWELL, J., in *Subbayya v. Suryanarayana*(1), Letters Patent Appeal against the Judgment of NAPIER, J., in *Suryanarayana v. Subbayya*(2).

The defendant who had a decree in his favour engaged a vakil for a fee to conduct execution proceedings therein and agreed to pay the vakil's clerk, the plaintiff, Rs. 20 in consideration of the clerk taking special interest in the matter. The agreement further provided that defendant was to make all arrangements for service of notices, attachments, etc., in the debtor's village, and was to pay the amount promised at the end of the execution proceedings without reference to his gaining or losing by them. After the close of the execution proceedings the plaintiff filed a small cause suit against the defendant for the recovery of Rs. 20. The defendant pleaded *inter alia* that the agreement had no consideration and was opposed to public policy. The Munsif decreed the claim. The defendant preferred a Civil Revision Petition (No. 346 of 1915) to the High Court. NAPIER, J., allowed the Revision Petition and dismissed the suit holding that the agreement was against public policy. An Appeal (No. 167 of

* Letters Patent Appeal No. 36 of 1917.

(1) Letters Patent Appeal No. 167 of 1916.

(2) Civil Revision Petition No. 346 of 1915, praying the High Court to revise the decree of G. G. SOMAYAJULU, the Principal District Munsif of Masulipatam, in Small Cause Suit No. 2680 of 1914.

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1916) under clause 15 of the Letters Patent was thereupon filed by the plaintiff and it was heard by OLDFIELD and BAKEWELL, JJ. OLDFIELD, J., held that the plaintiff was entitled to a decree, while BAKEWELL, J., dismissed the suit agreeing with NAPIER, J. In the result the judgment of OLDFIELD, J., prevailed under clause 36 of the Letters Patent and the Letters Patent Appeal was allowed. The defendant then preferred this Letters Patent Appeal No. 36 of 1917 under clause 15 of the Letters Patent.

P. Nagabhushanam for the appellant.—I contend for the view of BAKEWELL, J., who agreed with NAPIER, J. The policy of the legislature is to prohibit such contracts with vakils' clerks: see sections 10 and 28 of the Legal Practitioners Act, Order III, rule 1, Civil Procedure Code, and *Ramachandra Chintaman v. Kelu Raju*(1), and *Harrington v. Victoria Graving Dock Co.*(2). Such contracts are against public policy and in England they are not at all known. The rule in India should be similar. This contract, if recognized, will amount to this, viz., that the clerk who is paid for his services by his master has a right to stipulate for a special fee in some cases and thus neglect the cases of other clients who do not remunerate him in the same manner.

V. Ramadoss for the respondent.—The contract in this case is to do something which is not what a vakil or his clerk has to do ordinarily; such a contract is valid; *Kali Kumar Roy v. Nobin Chunder Chuckerbutty*(3). Unless such a contract is contrary to some known head of public policy, new grounds of public policy ought not to be introduced; vide *Janson v. Driefontien Consolidated Mines, Limited*(4), *Bhagwan Dei v. Murari Lal*(5) and *Fraser and Company v. The Bombay Ice Manufacturing Company*(6).

WALLIS, C.J.

WALLIS, C.J.—The agreement in question is one by which a litigant binds himself to pay his vakils' clerk Rs. 20 for giving special attention to legal business which the vakil was bound to see to in consideration of his fee. The revised translation makes it clear that this is the scope of the agreement. The law has never allowed legal practitioners of any kind to enforce

(1) (1878) I.L.R., 2 Bom., 362.

(2) (1878) K.R. 3 Q.B., 549.

(3) (1881) I.L.R., 6 Calc., 585.

(4) (1902) A.C., 484.

(5) (1917) I.L.R., 39 All., 51 (F.B.).

(6) (1905) I.L.R., 29 Bom., 107 at p. 120.

contracts with clients irrespectively of the consideration whether they conformed to public policy or not. Barristers cannot sue at all for their fees, and the fees which barrister's clerks receive by custom according to a fixed scale are mere gratuities and cannot be sued for though they are recognized on taxation: *Ex parte Cotton*(1). Solicitors' charges are now the subject of legislative enactment in England resembling the provisions in the Legal Practitioners Act as to charging more than the regulation fees. But even before these enactments, such agreements were jealously scrutinized and required to conform to the dictates of public policy. In *Pomfret v. Murray*(2), speaking of a novel stipulation by an attorney who was also a trustee, Lord HARDWICKE said :

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“ This is a case of great consequence : and it is incumbent on the Court to proceed warily before they allow such a demand,”

an observation which appears to me to be peculiarly applicable to the present case. In *Saunderson v. Glass*(3) the same great Judge observed :

“ It is truly said at the bar, that a security obtained by an attorney, whilst he is doing business for his client, or whilst a cause is depending, appears to this Court in a quite different light than between two common persons ; for if an attorney, *pendente lite*, prevails upon a client to agree to an exorbitant reward, the Court will either set it aside entirely, or reduce it to the standard of those fees to which he is properly entitled ; . . . and if the Court did not observe such a rule, it would expose clients very much to the artifices of attorneys.”

See also *Drax v. Scroope*(4) and *Philby v. Hazle*(5), where ERLK, C.J., and WILLIAMS and BYLES, JJ., all speak of agreements by solicitors of the kind there in question as being in the words of WILLIAMS, J., manifestly ‘ *contrary to the general policy of the law.*’ It is clear then that we shall be introducing no new law if we apply the test of public policy to agreements of the character now sued on. We have not been referred to any case in England in which a solicitor's clerk has stipulated with his employer's client for remuneration for giving special attention to his business. Such conduct might very possibly afford good

(1) (1846) 9 Beav., 107.

(2) (1740) 9 Mod., 231.

(3) (1742) 2 Atk., 296.

(4) (1881) 2 B. & Ad., 581.

(5) (1860) 8 C.B. (N.S.), 647.

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ground for his immediate dismissal, and the fact that in this case the vakil does not object to his clerk's adopting this course in this and other cases, far from making the case any better, opens out a fresh vista of undesirable possibilities, and only makes it the more incumbent on us to interfere for the protection of clients by refusing to enforce such agreements as contrary to public policy. I would allow the appeal and dismiss the suit with costs throughout.

AYLING, J.

AYLING, J.—I concur.

KUMARA-
SWAMI
SASTRIYAR, J.

KUMARASWAMI SASTRIYAR, J.—I agree.

N.R.

APPELLATE CIVIL.

*Before Sir John Wallis, Kt., Chief Justice, Mr. Justice Ayling
and Mr. Justice Kumaraswami Sastriyar.*

1917,
October 26.

ANNAVAJHULA VENKATACHELLAMAYYA
(PETITIONER—DECREE-HOLDER), APPELLANT,

v.

RAMA GIRJEE NILAKANTA GIRJEE (AUCTION-PURCHASER, FIRST
COUNTER-PETITIONER), RESPONDENT.*

*Civil Procedure Code (Act V of 1908), Order XXI, rr. 71 and 84 to 87—Purchase
in a Court sale of judgment-debtor's right to get a reconveyance of certain
lands—Default in payment of balance of purchase-money within fifteen days
of Court sale—Liability of purchaser for deficiency on re-sale.*

A purchaser in a Court auction of a judgment-debtor's right to get a reconveyance of certain lands on payment of a specified sum is, on default in payment of the balance of purchase-money within fifteen days of the Court sale, liable to pay under summary process under Order XXI, rule 71, Civil Procedure Code, any deficiency in price on a re-sale, though the date stipulated for payment to get the reconveyance happens to be shortly after the Court sale and before the expiry of the fifteen days allowed for the payment of the balance.

The loss of the right to get a reconveyance which is a substantial right, occasioned by the neglect of the purchaser to exercise his right to pay at the stipulated time, does not make the property re-sold, any the less the same property as the one sold before, provided all the then existing rights of the judgment-debtor therein are correctly stated in the proclamation for the re-sale.

* Letters Patent Appeal No. 42 of 1917.