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the respondents were tenants with a right of occupancy in the land, the subject-matter of this suit; further that they were zamindars of the land in dispute and that a suit for ejection would not, in consequence, lie. The Court of first instance decreed the claim. The lower appellate Court, in a judgment somewhat perfunctory and difficult to understand, held that, although the respondents at the commencement of their tenancy were tenants holding from the zamindars of mauza Mungrauli, they had subsequently redeemed a mortgage on their property which they had effected and had thus regained their possession as proprietors in the village and were no longer tenants and could not be ejected as tenants. The view taken by the learned Judge is incorrect. The respondents entered upon the land in dispute as tenants and until they give up possession of their tenancy, they are liable to all the incidents of such tenancy. The mere fact that during the time of occupancy they recovered or acquired in some way a share in the proprietorship of the village, makes no change in their status so far as the holding is concerned of which they are tenants. This was laid down by a Bench of this Court in Second Appeal No. 739 of 1889, decided on the 7th of December 1891, *viz.* *Kakharuddin Khan v. Bhogi Tewari*.\* The appeal is decreed. The decree of the lower appellate Court is set aside and that of the Court of first instance restored with costs.

*Appeal decreed.*

## FULL BENCH.

*Before Sir John Stanley, Knight, Chief Justice, Mr. Justice Sir George Knox and Mr. Justice Richards.*

RAGHUNATH SAMAN SINGH (DEFENDANT) v. SRI RAM (PLAINTIFF).†  
*Act No. XVIII of 1879 (Legal Practitioners' Act), section 28—Oral agreement to pay full legal fee.*

A suit for damages for breach of contract based on an oral promise "to pay full legal fees and to engage the plaintiff as a pleader on behalf of the defendant" is barred by section 28 of the Legal Practitioners' Act.

\* Cf. *Mahabir Singh v. Absan-ullah* (Weekly Notes, 1901, p. 53)—ED.

† Second Appeal No. 165 of 1905, from a decree of Shal Amjad-ullah, Subordinate Judge of Mirzapur, dated the 21st of December, 1904, reversing the decree of Babu Jotindro Mohan Bose, Munsif of Mirzapur, dated the 5th of April, 1904.

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*Razi-ud-din v. Karim Bakhs* (1), *Rama v. Kunji* (2), *Sarat Chunder Roy Chowdhry v. Chundra Kanta Roy*, (3), and *Subba Pillai v. Rama Sami Ayyar* (4) referred to.

THIS was a suit to recover damages for breach of an agreement. The plaintiff was a pleader practising in Mirzapur. He alleged that in December, 1902, the general attorney of the defendant had visited him with regard to a suit which the defendant was proposing to institute against one Maulvi Farzand Ali. According to the plaintiff the defendant's agent "promised to pay full legal fees and engaged the plaintiff as a pleader on behalf of the defendant and made over to him (the plaintiff) copies of documents and letters, in order to prepare a draft, and Rs. 16 in cash." The plaintiff went on to allege that notwithstanding this agreement the defendant employed another pleader to conduct the litigation to which the agreement referred, and further that the other party to that litigation having approached him with a view to retaining him on their side, he had to refuse the offer. The plaintiff claimed Rs. 760 as damages, with costs of suit and interest. The defence was a denial of the agreement and a special defence that even if the agreement was entered into, it was void by reason of the provisions of section 28 of Act No. XVIII of 1879. The Court of first instance (Munsif of Mirzapur) dismissed the plaintiff's suit. On appeal, however, the lower appellate Court reversed the decree of the Munsif and decreed the plaintiff's claim. That Court found that the agreement set up by the plaintiff had in fact been entered into. The defendant appealed to the High Court.

Mr. *W. Wallach*, for the appellant, submitted that the suit was barred by the provisions of section 28 of the Legal Practitioners' Act 1879. \* Under that section the oral agreement relied upon by the plaintiff was invalid. He cited *Rama v. Kunji* (5) and *Nursimmi Chariar v. Sinnovan* (6) and distinguished the case of *Razi-ud-din v. Karim Bakhs* (7) on the ground that there was then no rule requiring pleaders to file certificates. •

\* Quoted at p. 768 *infra*, in the judgment of Richards, J.

- (1) (1890) I. L. R., 12 All., 169. • (4) (1903) I. L. R., 27 Mad., 512.  
 (2) (1886) I. L. R., 9 Mad., 375. (5) (1886) I. L. R., 9 Mad., 375.  
 (3) (1898) I. L. R., 25 Cal., 805. (6) (1896) I. L. R., 20 Mad., 365.  
 (7) (1890) I. L. R., 12 All., 169.

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The Hon'ble Pandit *Sundar Lal* (with whom Dr. *Tej Bahadur Sapru*, Pandit *Baldeo Ram Dave* and the Hon'ble Pandit *Madan Mohan Malaviya*), for the respondent, argued that the provisions of section 28 of the Legal Practitioners' Act did not apply to the present case, which was a suit to recover damages for breach of contract. It was necessary to bear in mind the provisions of the law as it stood before Act No. XVIII of 1879 came into force in order to place a correct interpretation on section 28 of this Act. Under the old Regulations the suitors were required by law to deposit in Court the fees payable for cases according to a scale fixed by the Court, and on the conclusion of the case the fee so deposited by the client was paid over to the pleader. The fee payable was thus fixed by the rules, and its payment to the pleader was secured. The Court practically undertook to recover the pleader's fee for him. By section 39 of Act XX of 1869 the parties were declared free to settle by private agreement the remuneration to be paid to the pleaders for their professional services. It was no longer necessary to specify in the vakalatnama the fee agreed to be paid, and it was further enacted that such agreements could not be enforced otherwise than by a suit. Section 28 of Act No. XVIII of 1879 enacts that no agreement entered into by any pleader "respecting the amount and manner of payment of any fee, &c.," shall be enforceable unless it be in writing and filed in the manner specified in the section. The agreement in so far as it related to "the amount or manner of payment of the fee" was declared unenforceable by suit, but the contract in so far as it created the relation of pleader and client was unaffected and held good. If the agreement as to "the amount payable" was to that extent unenforceable, there was nothing in law to preclude a pleader from recovering fees due to him and recoverable under rules made under section 27 of the Act. The object of the section was to check contracts for the payment of exorbitant fees, and the mischief which the section seemed to be aimed at preventing would be effectually prevented if the section were held applicable only to contracts for payment of fees higher than those payable under the rules of the Court. The section had been held not to apply to agreements for the payment of the fees ordinarily payable under the

rule. *Rama v. Kunji* (1), *Razi-ud-din v. Karim Baksh* (2), *Anantayyar v. Padmayya* (3) and *Sarat Chunder Roy Chowdhry v. Chundra Kanta Roy* (4) were referred to. This had been the rule of law ever since the decision of *Razi-ud-din's* case. The plaintiff was engaged as a pleader. He was confided with all the facts of the case, and had perused all the papers relating to it for the purpose of drawing up the plaint. He could not with propriety take up the case for the other side, and was entitled to recover as compensation the loss which he had suffered by reason of the defendant breaking his part of the contract.

Mr. *W. Wallach* replied.

STANLEY, C.J.—I have had an opportunity of reading the judgment of my brother Richards, and I entirely agree with him that the oral agreement upon which the plaintiff brings his suit comes within the purview of section 23 of the Legal Practitioners' Act of 1879. The agreement is alleged to have been entered into at an interview between the general attorney of the defendant and the plaintiff. According to it the general attorney agreed to engage the plaintiff as a pleader on behalf of the defendant and promised to pay the plaintiff full legal fees. The agreement was therefore one respecting, among other things, the amount of payment for services. I therefore agree in holding that it ought to have been in writing, and not having been reduced into writing it is not valid. I am disposed further to think that the agreement alleged is entirely too vague and uncertain to form the foundation of a suit. This, however, it is unnecessary to determine. I would therefore allow the appeal, set aside the decree of the lower appellate Court and restore the decree of the Court of first instance with costs of this appeal, and also costs in the lower appellate Court.

KNOX, J.—I also agree and have nothing further to add.

RICHARDS, J.—In this suit the plaintiff, a pleader, sues for damages for breach of an agreement as set forth in the second paragraph of the plaint. The plaint after referring to some contemplated litigation alleges the agreement in the following terms: "After some talk he (the defendant's agent) promised to pay full

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(1) (1886) I. L. R., 9 Mad., 375.

(3) (1892) I. L. R., 16 Mad., 278.

(2) (1890) I. L. R., 12 All., 169.

(4) (1898) I. L. R., 25 Cal., 805.

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legal fees and engaged the plaintiff as a pleader on behalf of the defendant." The plaint goes on to allege that, notwithstanding this agreement, the plaintiff employed another pleader to conduct the litigation to which the agreement referred, and he claims damages for breach of contract. The damages are said to be measured at the sum that would be awarded to the defendant against his adversary if successful in the litigation. The defence is a denial of the agreement and a special defence that even if the agreement was entered into it is void by reason of the provisions of section 28 of Act No. XVIII of 1879. The lower appellate Court has found in favour of the agreement, and accordingly in this second appeal we are bound by the finding and have only to consider the second defence to which I have referred. Section 28 is as follows:— "No agreement entered into by any pleader, mukhtar, or revenue agent with any person retaining or employing him, respecting the amount and manner of payment for the whole or any part of any past or future services, fees, charges or disbursements in respect of business done or to be done by such pleader, mukhtar or revenue agent, shall be valid, unless it is made in writing signed by such person, and is within fifteen days from the day on which it is executed filed in the District Court or in some Court in which some portion of the business in respect of which it has been executed has been or is to be done."

The plaintiff contends that, on the true construction of this section, only agreements providing for the payment of fees in excess of those fixed by the High Court under the preceding section of the Act are rendered void, and that the present agreement, which was only an agreement for "full legal fees," is perfectly valid. The section is not very happily expressed and the words "respecting the amount" might perhaps suggest that the Legislature had in mind agreements whereby the client rendered himself liable for fees in excess of those fixed. On the other hand, if this was the sole intention of the Legislature, it could very easily have said so in express words, and it is also to be remarked that section 27 only provides for the fixing of "party and party" fees. It makes no provision for fees in criminal cases or for what is known in England as "solicitor and client" costs, or for a pleader's remuneration in non-litigious matters.

In England machinery is provided for the taxation of all costs, whether between party and party or solicitor and client, and whether the business be civil or criminal, litigious or non-litigious. In India there is no, or practically no, corresponding machinery. If a pleader and his client fail to adjust their accounts by mutual consent and payment, the only conceivable course is a suit in the Civil Court by the pleader for work done. The Civil Court can then decide what work has been done, what is reasonable and fair remuneration for the services rendered. Such a course, unless prohibited by the Legislature, seems to me quite unobjectionable under existing circumstances in this country. To return to the present case, it may be convenient to consider for a moment what the agreement set forth in the second paragraph of the plaint really meant. It did not merely mean that the plaintiff should be entitled to his "legal fees" for the work he actually did. It meant that the plaintiff should be employed throughout the litigation, no matter how much the defendant might wish to terminate the agreement. No other pleader could be employed unless the defendant was prepared to pay the plaintiff his full fees irrespective of whether the work was or was not done by him. In other words, the plaintiff, by the agreement, stipulated for considerably more than to be paid his legal fees for work and services actually performed and rendered. In my judgment the Legislature intended by this section that all special agreements between a pleader and his client should be in writing, signed and filed according to the provisions of the section. It intended at the same time to leave the pleader his full right to recover from his client his reasonable and proper fee for work actually done for the client and also all moneys duly and properly disbursed on his behalf. If a pleader relies on an express or special agreement, he must prove one made in accordance with the provisions of the section. It is impossible to say that the present agreement was not technically an agreement respecting "the amount and manner of payment" for services. It stipulated for "full legal fees," whatever that may mean. Construing the agreement in the manner it is necessary to construe it in order that the plaintiff should succeed in this suit, it is an agreement within the mischief intended to be prevented by

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the section and should, in my opinion, have been in writing signed by the client and filed.

A number of cases have been cited in the course of the argument, but in none of them did a pleader sue for damages for breach of contract as in the present case. In the case of *Razi-ud-din v. Karim Bakhsh* (1) the plaintiff had done the work and the defendant had been actually allowed against the opposite party the fees sued for, and it was held that notwithstanding the provisions of the section the plaintiff could recover. The defendant had been allowed these fees on taxation against his adversary solely because he had paid or was liable to pay them to his own pleader the plaintiff. The case is no authority against the view that I take, on the contrary, it is in complete accord with it. In the case of *Rama v. Kunji* (2) the plaintiff only sued for his regular fees after the work was done. A decree was made in favour of the plaintiff. The learned Judges expressly say, at page 376:—"The plaint does not show that the cause of action is based on an oral agreement. Nothing is said about any agreement at all; the suit is framed as for work and labour done." In *Surat Chunder Roy Chowdhry v. Chundra Kanta Roy* (3) the plaintiff sued for fees in a criminal case and for work done. The Court held that the plaintiff could not succeed in the absence of a written agreement. The case was only argued on one side. So far as the plaintiff's suit was based on a special oral agreement, I think it was rightly dismissed. I am not, however, prepared to say that the claim for work actually done ought to have been dismissed. In this respect the case is contrary to the rulings of the Court in these Provinces and in Madras.

In *Subba Pillai v. Ramisami Ayyer* (4) the Court held that a promissory note given for fees was void, not having been filed according to the provisions of the section. The learned Judges say, at page 516:—"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

(1) (1896) I. L. R., 12 All., 169.

(2) (1886) I. L. R., 9 Mad., 375.

(3) (1898) I. L. R., 25 Cal., 805

(4) (1903) I. L. R., 27 Mad., 512.

advanced by him." The argument based on hardship has no force. If a pleader enters into a fair and reasonable agreement with his client which the latter understands and approves of, there is no great hardship in having it reduced to writing and in filing it in Court. In my judgment the utmost the plaintiff was entitled to was a reasonable sum for the preparation of the plaint. He does not, however, sue for this. It does not appear that the plaint was ever made any use of. I very much doubt that the plaintiff refused to act for the other side. If the allegations in the plaint are true, there was certainly no obligation on him, legal or moral, to do so. It is somewhat significant that the defendant (after, as the plaintiff says, leaving important documents with him) was able so easily to go to another pleader. Possibly the Rs. 16, which the plaintiff accepted at the time was not altogether insufficient remuneration for the work done. This suit is not, however, brought for work done, it is a suit for damages, and the liability of the defendant for those damages has been the issue between the parties.

I would allow the appeal.

By THE COURT.—The order of the Court is that the decree of the lower appellate Court be set aside and the decree of the Court of first instance restored with costs of this appeal and also costs in the lower appellate Court.

*Appeal decreed.*

## FULL BENCH.

1906  
July 10.

*Before Sir John Stanley, Knight, Chief Justice, Mr. Justice Banerji and Mr. Justice Aikman.*

DELHI AND LONDON BANK, LIMITED (DECREE-HOLDER) v. PARTAB SINGH (JUDGMENT-DEBTOR).\*

*Civil Procedure Code, section 273—Attachment of decree for sale of mortgaged property.*

A decree for the sale of immovable property under section 88 of the Transfer of Property Act is not a decree for the payment of money or a decree for money, and is therefore liable to attachment and sale under the penultimate clause of section 273 of the Code of Civil Procedure.

\*First Appeal No. 42 of 1906, from a decree of Pandit Pitambar Joshi, Subordinate Judge of Bareilly, dated the 22nd of December, 1905.