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upon by the Benares Bank was valid or otherwise and whether it affected in any way the security bonds executed in favour of the appellants. The question whether the objection of the Benares Bank was one made under section 47 of the Civil Procedure Code or not and whether an appeal or a revision lies to this Court is not decided because there is an appeal as well as a revision before us and we think that in any view the order of the Subordinate Judge ought to be vacated. Costs will abide the result.

FAZL ALI, J.

MACPHERSON, J.—I agree.

Order set aside.

MISCELLANEOUS CIVIL.

Before Jwala Prasad and Ross, JJ.

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April, 1, 11. July, 7.

BABUI RADHIKA DEBI

v.

RAMASRAY PRASAD CHAWDHRY.*

Legal Practitioners Act, 1926 (Act XXI of 1926), sections 3 and 4—Advocate, appointment of, when and how determined—Courts, discretion to refuse permission—Code of Civil Procedure, 1908 (Act V of 1908), Order III, rule 4—Advocate's services dispensed with—Advocate, whether entitled to full costs—measure of compensation—Legal fee taxable under the Rules of High Court—fee, whether should be divided equally amongst Advocates engaged—Advocates, names of, mentioned in Vakalatnama—acceptance, whether necessary—quantum meruit, principle of—remuneration before termination of litigation—Court's discretion to reduce the legal fee payable.

Order III, rule 4, Code of Civil Procedure, 1908, lays down:

"(1) The appointment of a pleader to make or do any appearance, application or act for any person shall be in writing, and shall be signed by such person or by his recognized agent or by some other person duly authorised by power-of-attorney to act in this behalf.

*In the matter of an application in First Appeal no. 168 of 1927.

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(2) Every such appointment, when accepted by a pleader, shall be filed in Court, and shall be considered to be in force until determined with the leave of the Court, by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies or until all proceedings in the suit are ended so far as regards the client....."

Held, that the appointment may be determined either by the client or by the pleader, but in every case it can be done only with the leave of the Court, and, if it is not determined, then the appointment continues and the pleader is entitled to all his costs till the final termination of the proceedings in the suit.

Atul Chander Ghose v. *Lakshman Chander Sen* (1), followed.

In the circumstances of the present case the High Court held that sufficient ground had not been established by the applicant for giving leave of the Court under rule (2) allowing her to discharge the Advocates, and, therefore, made it a condition precedent to their services being dispensed with that their costs should be deposited in Court.

Held, further, that in the absence of a settlement of fee, the measure of compensation payable to the Advocate for work done and for the loss sustained by him on account of the cessation of his services is the legal fee which is payable to a successful party under the Rules of the High Court.

Where there are several Advocates engaged in a case, each of them is entitled to get the full legal fee separately.

Vellanki Ramakrishna Rao Bahadur v. *Patibanda Venkataramyya* (2), followed.

Sarat Chandra Roy Chowdhry v. *Chandi Charan Mitra* (3), not followed.

Where an Advocate is retained by a vakalatnama, he is entitled to his remuneration on the principle of *quantum meruit*, irrespective of whether he has signed the vakalatnama or not. *Keshav* v. *Jameetji*(4) and *Sibkishor Ghose* v. *Manik Chandra Nath* (5), followed.

(1) (1909) I. L. R. 36 Cal. 609.
(2) (1916) 38 Ind. Cas. 210.
(3) (1902) 7 Cal. W. N. 300.
(4) (1888) I. L. R. 12 Bom. 557.
(5) (1915) 21 Cal. L. J. 618.

In assessing, however, the remuneration payable to an Advocate before the termination of the litigation on account of the cessation of his services, the Court has the discretion to make a reduction and fix a sum which may not necessarily be the full legal fee payable to a successful party.

Full facts of the case material to this report will appear from the various judgments of the Court.

Rai Tribhuan Nath Sahay (with him *Bhagwan Prasad*), for the petitioner.

K. P. Jayaswal, for the opposite party.

JWALA PRASAD AND ROSS, JJ.—1st April, 1930. This is an application by Musammat Bhawani Chaudhrain as guardian of minor appellant Babui Radhika Debi asking for leave to cancel the vakalatnama, dated the 29th April, 1929, in favour of Mr. Ram Krishna Jha and the other Advocates of this Court. The appeal was filed in this Court on behalf of the said minor, Babui Radhika Debi, through her father-in-law Ajodhya Chowdhuri as guardian, in 1927 through the said Advocate Mr. R. K. Jha. Ajodhya Chowdhuri died in February or March, 1929, and after his death the petitioner, Musammat Bhawani Choudhrain, his widow and the mother-in-law of the appellant Babui Radhika Debi, was appointed guardian. Then another vakalatnama was filed by her in favour of Mr. R. K. Jha on the 29th April, 1929, which was accepted by the learned Advocate on the 30th April, 1929. The present petition for cancelling the vakalatnama and discharging the Advocates concerned was filed on the 29th of January, 1930. It purports to have been signed by the lady, and was sworn to by Surajmani Das, patwari and karpardaz of the lady. This Surajmani Das also appears to have been newly engaged in place of his father who used to be the karpardaz of the husband of the lady. During the last three years that the case has been pending in this Court the paper book has been prepared and the case is ready to be heard; and Mr. R. K. Jha says that he had got the brief and was preparing himself for arguments. He has filed a sworn counter-affidavit in

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which he says that the reason for filing the petition in question for his discharge is due to the fact that one Babu Lal Rai came to him to give some instructions in the case; but he refused to receive any instructions from him in as much as from the allegations made in the plaint he found that Babu Lal Rai was acting adversely to the interest of the minor in question. Mr. R. K. Jha says in his affidavit that this probably enraged the man and he caused this petition to be filed; whereas the lady herself had no reason to file the petition in question in as much as he received a letter from her which he has filed showing that she had still confidence in him to continue to act for the minor. Mr. R. K. Jha further says that he had in December, 1929, met the lady herself whom he knew from before and she assured him of her confidence in him and that she had no intention of discharging him. The petition in question was, however, filed subsequent to the aforesaid letter and the aforesaid conversation and, therefore, it seems that the lady still wants to do away with the services of Mr. R. K. Jha and the other Advocates who were engaged in the case in the beginning. No reason has been alleged in this petition for discharging the said Advocates.

Surajmani Das, who was directed to come to this Court, has been asked about the reason and he says that Mr. R. K. Jha demanded a very high fee which the lady said she was not able to pay and that is the reason why she wanted to discharge him and appoint another Advocate in his place. The provision regarding the discharge of a pleader or an Advocate is laid down in Order III, rule 4, sub-rule (*2*) of the Civil Procedure Code, and it runs as follows:—

> "Every such appointment shall be filed in Court and shall be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client."

Thus the appointment may be determined either by the client or by the pleader, but in every case it can

be done only with the leave of the Court and if it is not determined then the appointment continues until all the proceedings in the suit are ended. The point came to be considered in the case of *Atul Chander Ghose* v. *Lakshman Chander Sen* (1), where it was held that unless the appointment was determined under the aforesaid rule of the Civil Procedure Code the attorney was entitled to all his costs till the case terminated with the preparation of the decree. In that case one of the defendants wrote to the attorney that the circumstances did not allow him to bear the expenses necessary to conduct the case and giving him notice not to act further on his behalf. The attorney replied that on the strength of his appointment he had engaged counsel and had instructed them and he could not accede to the request contained in the letter and asked the client to settle matters with other defendants. The defendant then definitely wrote to the attorney referring to the previous letter and stating that he was not responsible for the costs or counsel's fee from that date. The attorney objected to it and continued to work in the case; and it was held that he was entitled to his costs.

The learned Advocate, who appears upon a transferred brief from Mr. Rai T. N. Sahay, says on behalf of the lady that there was a typed copy of an affidavit in reply to the counter-affidavit of Mr. R. K. Jha but he is not in a position to say whether it was sworn to or not. He says that that copy contains an allegation that the reason for the lady discharging Mr. R. K. Jha was that she was informed that Mr. Jha had been accompanied by a karpardaz of the opposite party when he saw the lady in November or December last and that he asked the lady to compromise the case. If that is so, it should have been put forward in the sworn petition of the 29th January, 1930. Mr. Jha denies it altogether and, considering the position that Mr. Jha occupies as an Advocate of this Court, we must accept this as true

(1) (1909) I. L. R. 36 Cal. 609.

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as against the allegation not formally put forward in Court on behalf of the lady. Mr. Jha was in charge of the case and even if he asked the lady to compromise the case he must have done so in the interest of the minor in question. Be that as it may, we do not think that sufficient ground has been shewn for giving leave of the Court under the aforesaid rule of the Civil Procedure Code to allow the lady to discharge the Advocate in question in whom her husband had full confidence, and who carried on the work for three years. Even if she does not want the case to be argued or conducted by Mr. Jha and the other Advocates who were originally engaged by her she must pay them their full fees for the entire case, in as much as it is not possible at this stage that they can be engaged or may be permitted to be engaged by the other side.

We, therefore, direct that if the lady wants that Mr. R. K. Jha and others should have nothing to do with the case she should pay them their full fees and she will then be at liberty to have the case conducted by any other Advocate. In the circumstances of this case the Advocates are entitled to the costs of this hearing in addition to their fees in the case. We assess the costs at two gold mohurs to each of the Advocates concerned, as the case lasted for several days. An account must be filed by the learned Advocates concerned as to what their dues are, and the lady should also file her account to show what is due to the learned Advocates according to her.

* * * * *

11th April, 1930. In pursuance of the order of this Court, dated the 1st April, 1930, the Advocates concerned have filed the accounts showing what sum as compensation should be paid to them for the work done and which was still expected to be done by them in pursuance of their appointment as Advocates by the appellant. The petitioner has not filed any accounts as to what is due to the learned Advocates concerned, as directed by the order in question. Mr. T. N. Sahay appearing on behalf of the appellant-

petitioner wants time to furnish the account in question. The order of the 1st of April was passed in the presence of the petitioner's Advocate and the karpardaz and the direction to furnish an account was definitely made. There is no reason to give any further time.

We have scrutinized the accounts furnished by the learned Advocates concerned. The work done by them as set forth in their accounts in respect of which the charges have been made is not denied by the petitioner.

The first and the foremost account in order of importance is that of Mr. R. K. Jha. He was in charge of the case from the very beginning and drew up the grounds of appeal. In the bill he has charged Rs. 110 for this work. Under the High Court Rules in the scale of fees allowed to a successful party in Chapter XIII, rule 14, Rs. 100 is allowed for drawing up grounds of appeal where the valuation of the appeal exceeds Rs. 20,000. The value of the present appeal exceeds Rs. 1,00,000.

The second item is for opposing an application for security filed by the respondents. The charge is Rs. 55. Mr. T. N. Sahay says that it should be reduced to Rs. 32. Similarly with respect to the work done and referred to in items nos. 3, 4 and 5, Mr. Sahay says that the proper charge should be Rs. 96, Rs. 32 and Rs. 16, respectively, as against Rs. 200, Rs. 150 and Rs. 100, respectively. According to Mr. Jha his charges for the work mentioned in the aforesaid items come to Rs. 615, whereas according to Mr. Sahay the amount should not be more than Rs. 276. Mr. Sahay says that Mr. Jha should have given the figure with respect to the amounts actually paid to him by his client and should have produced his account of such payment. Mr. Jha says that his account of the sums received by him cannot be had, in as much as his clerk who used to keep his account is no longer in his service; but he says that he had received about Rs. 100 in all. This figure must be

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accepted as correct in view of the fact that no account has been produced on the other side to show what sum was actually paid to Mr. Jha. Mr. Jha says that in the circumstances of the case for the work referred to in items 1 to 5 he is prepared to accept Rs. 250, or such sum as the Court may fix; whereas deducting Rs. 100 which was admittedly paid to Mr. Jha, according to Mr. Sahay Rs. 176 is still due to Mr. Jha for the work done by him as aforesaid.

Then comes the question of the hearing fee. There is not much difference between the parties as to the length of time the appeal is likely to take at the hearing. The paper book is bulky and the case is somewhat complicated and important. The estimated time that may be occupied in the hearing of the appeal is stated to be fifteen days. Mr. Jha says that he expected that he was entitled to get Rs. 3,000 at the rate of Rs. 200 per day. In any case his fee could not be less than Rs. 90 or Rs. 100 per day which Mr. Sahay himself is charging from his client and considering the status of the learned Advocate concerned in the case. Calculated at this rate, the fee which Mr. Jha expects to earn at the time of hearing would amount to Rs. 1,350 to Rs. 1,500. Thus the difference between the charges for the fees, both for past and future services as estimated by Mr. Jha and Mr. Sahay, is not much after making deductions for the payments made and reducing the daily fee from Rs. 200 to Rs. 90 or Rs. 100. According to Mr. Jha after the aforesaid deductions it would come to Rs. 1,750, and according to Mr. Sahay, Rs. 1,626. The legal fee payable to a successful party in this appeal according to the aforesaid scale would amount to about Rs. 1,475, including Rs. 100 for drawing up the grounds of appeal. At least this much Mr. Jha is entitled to get under section 4 of the amended Legal Practitioners Act (Act XXI of 1926). This is upon the ground that the fee payable to Mr. Jha and the other Advocates concerned was not settled with the client

under section 3 of the said Act and, consequently, under section 4 they are entitled only to such fee as would come to on computation :

" in accordance with the law for the time being in force in regard to the computation of the costs to be awarded to a party in respect of the fee of his legal practitioner."

The law in the present section 4 referred to above has given effect to the conflict of views that existed in respect of the interpretation of section 28 of the Legal Practitioners Act, 1879 (Act XVIII of 1879). The law as it now stands is that a legal practitioner is entitled to recover his fee settled between himself and his client. When he is not able to prove such a settlement he is entitled to the fee which is payable to a successful party under the rules. The case of Mr. Jha and the other Advocates concerned at least comes under the last part of section 4. They are entitled at least to the legal fee taxable under the scale referred to in the aforesaid rule of the Court. That would be the criterion of the compensation payable to these Advocates for the work done and for the loss sustained by them in case their services are dispensed with by the client.

Mr. Sahay contended that this legal fee of Rs. 1,475 should be divided equally amongst all the Advocates engaged in the case and whose services are now being dispensed with and that each of them will not be entitled to get the fee separately. This argument is based upon *Sarat Chandra Roy Chowdhry* v. *Chandi Charan Mitra* (1). This view was not accepted in the case of *Vellanki Ramakrishna Rao Bahadur* v. *Patibanda Venkataramyya*(2) where it was held that when there are several gentlemen retained by a client in the same vakalatnama, each of the vakils is entitled to claim from his client the full fee stipulated for by him and not merely a share in the single fee allowed as against the losing party. The view taken by the Madras High Court seems to

(1) (1902) 7 Cal. W. N. 300.
(2) (1916) 38 Ind. Cas. 210 (Mad.).

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be reasonable. The present section 4 has apparently given effect to that view, in asmuch as it expressly says that any "such legal practitioner" shall be entitled to the fee, etc. Therefore, each of the learned Advocates concerned are entitled to the full fee. Considering, however, the fact that the appeal has not yet been heard and, although their services are being dispensed with, they are not precluded from accepting other work on the same dates and, considering the circumstances of the present case, we reduce the claim of Mr. Jha to Rs. 1,100 in all, and that of Mr. Roy to Rs. 300 and Mr. K. P. Upadhaya to Rs. 150. This nearly brings the total amount payable by the appellant to the fee mentioned in the scale of fees referred to in the aforesaid rule.

As regards the latter two gentlemen, Mr. Roy and Mr. Upadhaya, Mr. Sahay raises further objections. He says that Mr. Upadhaya did not sign the vakalatnama, either the one filed by Ajodhya Chaudhury or his widow Bhawani Chaudhrain on the 7th of November, 1927, and 29th of April, 1929, respectively, and that, therefore, he is not entitled to any fee. The argument has no substance, in as much as both the aforesaid vakalatnamas filed by the client mentioned his name and they engaged him. It only remained to be accepted by him. For the purpose of acting he could do so by signing the vakalatnama. For the purpose of pleading he could do so by filing only a memo. of appearance under the amended rule in Order III, rule 4, clause (*5*). As a matter of fact, he did accept it because he filed the memo. of appearance on the 29th of April, 1929, and, from what Mr. Jha says, it is certain that the karpardaz who was in charge of the case was told by Mr. Jha that he would take the assistance of Mr. Upadhaya and he did consent to it.

Mr. Roy was engaged from the very beginning and he assisted in the preparation of the grounds of appeal and appeared on the 23rd of February, 1928, in opposing the application of the respondents for

security for costs and before the Registrar in Lawazima matters; so he was an active worker as junior of Mr. Jha in this case and for all that he is entitled to charge his fee which, according to Mr. Sahay himself, is not very high. The charge is Rs. 80 for all the work done by him, out of which he has already received Rs. 8, the balance remaining unpaid being Rs. 72. He estimates his future loss at Rs. 55 per day during the hearing of the case. This is also not unreasonable for an Advocate of his position. We have, however, reduced the charge as aforesaid to Rs. 300 in his case.

Whether the vakalatnama has been signed or not, the Advocates concerned are entitled to their remuneration for the work done by them on the principle of *quantum meruit* stated by Sargent, C.J., in *Keshav* v. *Jamsetji* (1), which was in the following words :—

" The pleader, in the absence of an agreement, is entitled to a *quantum meruit*, which ought to be determined with reference to all the circumstances of the case."

This case has been referred to with approval by Mookerjee, J., in the case of *Sibkisor Ghose* v. *Manik Chandra Nath* (2). We are not at present taxing the fees as in a case of terminated litigation, but we are assessing the remuneration for the work done and for the loss that the learned Advocates themselves would suffer on account of the cessation of their services by their client and that compensation is within the discretion of the Court to be assessed upon the circumstances of the case and need not necessarily be upon the scale of fees fixed by the rules to be charged against a losing party. We have, however, taken into consideration all this in assessing the compensation to be paid to the learned Advocates concerned before the appellant discharges their services. We accordingly make the order as aforesaid, and order

(1) (1888) I. L. R. 12 Bom. 557. (2) (1915) 21 Cal. L. J. 618.

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that unless and until the aforesaid fees are paid the vakalatnamas in question will not be cancelled. All the three Advocates concerned have been served with notices by the appellant as regards cancellation of their vakalatnamas. These vakalatnamas will remain in full force unless and until the compensation assessed above is paid by the petitioner to the learned Advocates concerned. We assess the hearing fee of this application payable to the learned Advocates concerned at two gold mohurs each.

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ROSS AND SCROOPE, JJ.—7th July, 1930. The petitioner applied for leave to cancel the vakalatnama in favour of Mr. Ram Krishna Jha and two other Advocates of this Court. The matter came before the Court and it was decided that the vakalatnama must remain in force until the petitioner paid in all Rs. 1,550, viz., Rs. 1,100 to Mr. Jha, Rs. 300 to Mr. Roy and Rs. 150 to Mr. Upadhaya. The petitioner now applies to withdraw her application to cancel the vakalatnama.

Mr. Jayaswal, on behalf of the Advocates, states that this is merely a device to avoid paying the compensation which has been assessed by this Court; and that if this petition is allowed, the order of the Court will be defeated. It seems to us that as between the parties the contract was at an end. Mr. Ram Krishna Jha and the other two Advocates had been discharged from the case so far as the petitioner could discharge them and they are no longer willing to work in the case unless their fees as calculated by this Court are paid and the allegations made withdrawn. In our opinion the effect of the order of this Court was merely to hold in suspense that cancellation of the contract until the rights of the Advocates concerned had been adjusted; and in this view we direct that the petitioner do deposit in Court Rs. 1,550. On this deposit being made and all allegations being withdrawn, Mr. Ram Krishna Jha

and the other two Advocates are willing to work in the case; and they will then be entitled to withdraw the compensation deposited towards their legal fees when the appeal has been heard. On these terms the petitioner is permitted to withdraw her application fo cancellation of the vakalatnama and engage another senior Advocate, if she so desires, to argue the case. Mr. Ram Krishna Jha, Mr. Arun Chandra Roy and Mr. Kali Prasad Upadhaya are entitled to the costs of this application.

LETTERS PATENT APPEAL.

Before Terrell, C.J. and Macpherson, J.

1930.

April, 1.

GANPAT LAL

v.

WAZIRA SINGH.*

Abandonment—auction-sale of holding—formal delivery of possession—original tenant continuing in possession and asserting title—whether constitutes abandonment—mere transfer insufficient—entry, landlord's right of—limitation, when begins to run against landlord—trespasser, possession of, necessary.

If, in spite of a court sale and delivery of possession, the raiyat actually remains on the land in disregard of the delivery of possession and asserting his tenancy, there is no abandonment by the raiyat and the landlord is not entitled to enter on the land as from the date of formal delivery of possession. Something more than mere transfer, at least *contra invitum*, is necessary to give the landlord a right of re-entry, or a cause of action for a claim to possession.

Held, therefore, that time does not begin to run against the landlord, under the law of limitation, until a person, whom he could designate a trespasser, is actually cultivating

*Letters Patent Appeals nos. 88, 89, 90 and 91 of 1928, from a decision of the Hon'ble Mr. Justice Ross, dated the 3rd August, 1928, affirming a decision of Babu Phanindra Lal Sen, Subordinate Judge of Patna, dated the 25th June, 1927, who in turn reversed a decision of Maulavi Abdul Aziz, Munsif, 1st Court of Patna, dated the 26th June, 1926.