

1877.

DULSOOK
RATTAN-
CHAND
v.
CHUGON
NARRUN

The first question of the learned Judge—viz. whether a decree, payable by instalments with proviso as aforesaid, is barred, if application for execution of the same be not made within three years from the date on which any one instalment fell due and was not paid—must be answered in the affirmative; and his second question, as to whether the payment of instalments subsequent to default in payment of the first instalment at the date specified, gives to the judgment-creditor a fresh starting point, must be answered in the negative.

Order affirmed.

[APPELLATE CIVIL.]

Before Sir M. R. Westropp, Knt., Chief Justice, and Mr. Justice Melvill.

November 21. KABIR VALAD RA'MJAN (ORIGINAL PLAINTIFF), APPELLANT v. MA'HA'DU VALAD SHIWA'JI, A MINOR, BY HIS ADMINISTRATOR PURSHOTUM NA'RA'YEN (ORIGINAL DEFENDANT), RESPONDENT.*

Suit to recover costs of proceedings under Act XX. of 1864.

An action brought to recover costs of proceedings held under Act XX. of 1864 is not maintainable when the Court, before which such proceedings were taken, has made no order as to the payment of such costs.

THE following question was submitted for the opinion of the High Court, by Prabhákar Vithal Gupté, Second Class Subordinate Judge at Jalgaon, in the district of Khandesh, under the provision of section 22 of Act XI. of 1865:—

“ Whether, or not, an action for the recovery of costs incurred in obtaining a certificate of administration to the estate of a minor, under Act XX. of 1864, is maintainable, when the Court granting the certificate has passed no order as to the payment of such costs.

“ It appeared that the plaintiff, in 1873, brought a suit against the minor defendant on a bond which had been executed to him (plaintiff) by deceased Rámji; and that there being then no administrator to the minor's estate, which was worth more than Rs. 250, the plaintiff, in order that he might proceed with the suit, applied to the District Judge at Dhulia to appoint an admi-

* Small Cause Court Reference No. 100 of 1877.

nistrator to his (the minor's) estate under Act XX. of 1864. The District Judge accordingly granted a certificate to the Názir of this Court, but passed no order as to the payment of costs incurred by the plaintiff in obtaining the said certificate. The plaintiff, therefore, brought this present suit for the recovery of those costs.

"The defendant answered that the suit was not maintainable under Act XX. of 1864, and that he did not know what costs had been incurred by the plaintiff in obtaining the certificate.

"Section 13 of Act XX. of 1864 provides that, 'in all inquiries and other proceedings held or had by the Civil Court under this Act, the Court *may* make such order as to the payment of costs by the person on whose application such inquiry was made, or proceedings had, or out of the estate of the minor, or otherwise, as it may think proper.' Under this section it is, I think, discretionary with the Court, therein mentioned, to award, or not to award, costs incurred in inquiries and proceedings under the above-mentioned Act. In the present case the District Judge's order (copy of which is hereto annexed) granting the certificate is silent as to the payment of costs. To hold, therefore, that this action is maintainable, would be to allow the plaintiff to recover what the District Judge, in the exercise of his discretion, under the said section, has not thought fit to award him (the plaintiff).

"In *Jalam Punja v. Khoda Jawra* ⁽¹⁾ it has been held that no action lies for the recovery of costs incurred in a possessory suit under Bombay Act V. of 1864.⁽²⁾ This Act was silent as to the award of costs between party and party. In inquiries under Act XX. of 1864, however, the Legislature has, by section 13, left the award of costs to the discretion of the Court making such inquiries, and if, in the exercise of that discretion, the said Court has not thought it proper to award costs, it would, I submit, be an additional reason why the present suit should not be entertained.

"I am, therefore, of opinion, that this suit is not maintainable. But, as I entertain some doubts on this question, I respectfully beg to submit it for the opinion of the High Court.

(1) 8 Bom. H. C. Rep. 29 A. C. J.

(2) Now repealed by Act III. of 1876 (Bombay).

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“ Upon the evidence adduced before me in this case I have found that the amount of costs claimed in this suit, is reasonable and proper. But, as I am of opinion that this action is not maintainable, I have thrown out the plaintiff's claim with costs, subject, of course, to the opinion of the High Court on the question referred.”

PER CURIAM :—The Court concurs in the opinion of the Second Class Subordinate Judge of Jalgaon, that the action brought to recover costs of the proceedings, under Act XX. of 1864, will not lie, and was rightly dismissed with costs.

Decree affirmed.

[APPELLATE CIVIL.]

Before Sir M. R. Westropp, Knt., Chief Justice, and Mr. Justice Melvill.

November 20.

RA'MOHA'NDRA' CHINTA'MA'N (ORIGINAL PLAINTIFF), APPELLANT v.
KA'LU RA'JU AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

Vakil and client—Vakalatnama—Agreement without consideration—Nudum pactum—Inam chithi.

An agreement, executed by a client to his vakil, after the latter had accepted a *vakalatnama* to act for the former in a certain suit, whereby the client bound himself to pay to the vakil, in the event of his conducting the suit to a successful termination, a certain sum in addition to the vakil's full fees, held *nudum pactum*, and a suit founded upon it dismissed as unsustainable.

On the 19th August 1875, the plaintiff accepted a *vakalatnama* from the defendant to act for him in a certain suit. On the 11th August, issues were settled, and witnesses examined, and the suit was then adjourned to the 16th October following. On that day the defendant executed in favour of the plaintiff an agreement, called therein an “*inam chithi*,” whereby the defendant agreed to pay to his vakil, the plaintiff, a certain sum “as *inam*,” if the suit was decided in defendant's favour, and the plaintiff's claim therein was rejected, or “if it were amicably settled, or a *razinama* given,” and, in default of punctual payment of the “*inam*,” the defendant agreed to pay interest thereon. The agreement stated that, besides the amount of the “*inam*,” certain earnest money and

* Civil Reference No. 18 of 1877.