

The Legislature evidently intended by this enactment to secure, if possible, "an amicable settlement" between the parties, and that not only in suits specified in section 3, but in all matters "within the cognizance of a civil Court." This is rendered still more clear by section 47, which provides:—"No suit,.....to which any agriculturist.....is a party, shall be entertained by any Civil Court, unless the plaintiff produces" a certificate under section 46 that the endeavour to effect an amicable settlement has failed. Such being the clear language of these sections, we must hold that they do apply to such a suit as the present, and that the appellant, therefore, is entitled to have the intervening time excluded; such time—19th September to 30th November, 1880—being thus excluded, the appellant's suit is in time. [His Lordship then proceeded to discuss the evidence, and remanded the case for the determination of certain issues of fact.]

Issues sent down accordingly.

APPELLATE CIVIL.

*Before Sir Charles Sargent, Knight, Chief Justice, and
Mr. Justice Nánabhái Haridas.*

PARSHRA'M VA'MA'N, PLAINTIFF, v. HIRA'MAN FATU AND OTHERS,
DEFENDANTS.*

May 1.

Vakil and client—Indm patras—Agreements for rewards—Act I of 1846, Sec. 7.

Indm patras, or agreements, oral or written, made contemporaneously with the *vakalatnámás* by clients with their pleaders for the payment of rewards in addition to the regulation fees, provided their cases are decided in their favour, are not *nudum pactum*, and, having regard to section 7 of Act I of 1846, cannot be considered as illegal.

THIS was a reference, under section 617 of the Code of Civil Procedure (XIV of 1882) by Ráv Sáheb Krishnáji Náráyan Pátankar, Subordinate Judge of Bhusával, who stated the case thus:—

"Suits Nos. 128 and 131 of 1884 are brought on oral agreements made by clients with their pleaders to pay certain rewards in addition to the usual fees, provided the cases are decided in favour of the parties. Suit No. 141 of 1884 is brought on a simi-

*Civil Reference, No. 18 of 1884.

1884

PARSHRAM
VAMÁN
v.
HIRÁMAN
FATV.

lar agreement subsequently reduced to writing. The agreements were contemporaneous with the *vakalatnámás*.

“The question is, whether the claims can be awarded. Section 7 of Act I of 1846 appears to be in favour of the plaintiffs. On the other hand, the agreements give to the pleader an undue personal interest in the litigation of their clients; and they seem to be against public policy. *Báo Sáheb Vishwanáth Náráyan Mandlick v. Kamaljábái Sáheb*⁽¹⁾, *Rámchandra Chintáman v. Kálu Rájú*⁽²⁾, and *Shivrám Hari v. Arjun*⁽³⁾ are three decided Bombay cases on the subject. In none of them, however, is the point directly decided upon. *Achamparambathcheria Kunhammu v. William Sydenham Gantz*⁽⁴⁾ is directly in point. It is principally based, however, on one circular order of the Madras High Court. The principles enunciated in the circular seem to be of universal application.

“I am of opinion that the agreements should not be enforced, but I am not sure as to the soundness of my view.

“The records have been sent herewith.

“In these cases the decrees of the Court will be final. The cases have been left undecided pending this reference.”

There was no appearance in the High Court on behalf of either party.

The judgment of the Court was delivered by

SARGENT, C. J.—The decision in *Rámchandra Chintáman v. Kálu Rájú*⁽²⁾ only determines that where the agreement is entered into after the *vakalatnámá* has been accepted by the pleader under circumstances which prevent their being regarded as contemporaneous, such agreement is *nudum pactum* for want of consideration. In *Shivrám Hari v. Arjun*⁽³⁾, where the agreement preceded the filing of the *vakalatnama*, it was held that such an agreement was not *nudum pactum*, and having regard to Act I of 1846, sec. 7, could not be regarded as illegal. The Subordinate Judge should decide the suits according to their particular circumstances, having regard to the above remarks.

Answer accordingly.

(1) 10 Bom. H. C. Rep., 26.

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

(3) I. L. R., 5 Bom., 258.

(4) I. L. R., 3 Mad., 138.