Order 35, R. 5, Civil P. C., 1908, provides that an interpleader suit cannot be filed by a tenant against his landlord for the purpose of compelling him to interplead with any persons other than persons making a claim through such landlord, and the crucial question to be decided in this appeal is, whether defendant 1 can be said to be making a claim through defendant 2 who is admitted by the plaintiff to be his landlord. It has been held in (1859) 1 Giff 167[1] that a tenant cannot sustain a bill of interpleader against his landlord unless the title be affected by some act done by the landlord subsequently to the lease. The same principle is laid down in (1794) 2 Ves Jun 304.[2] The object of O. 35, R. 5, Civil P. C., 1908, is to prevent a tenant from compelling his landlord to have his title determined as against a stranger, and it is not disputed that an interpleader suit is maintainable if the landlord, subsequent to the letting, does anything whereby his right to recover the rent is entangled. Defendant 1 in this case claims the title to the property in suit under a sale deed passed by defendant 2 on 27th May 1926. After that sale deed, defendant 2 leased the property to the plaintiff on 1st November 1927. If follows therefore that if the claim of defendant 1 be good, defendant 2 had no right to lease the land to the plaintiff on 1st November 1927. It cannot therefore be said that defendant 1 is claiming through defendant 2, since he is challenging the very right of defendant 2 to let out the land to the plaintiff.

There is however one circumstance which apparently seems to be in favour of the plaintiff. In the sale deed executed by defendant 2 in favour of defendant 1 the property in suit was not included, but defendant 2 says that he wanted to transfer all his property to defendant 1, who is his sister's son, as benami, in order to screen it from his creditors. After passing the sale deed, the plaintiff remained in possession of all the property by giving a rent-note or a *makte patra* to defendant 1. Even in that rent-note the property in suit was not included. But, subsequently on 1st February 1928, defendant 2 made a statement before the talati that the property in suit also was intended to be conveyed to defendant 1 and had been omitted in the sale deed through oversight. So at his instance the property in suit also was entered in the name of defendant 1 in the Record of Rights (Ex. 25). It is argued from this that defendant 2 made such a statement before the talati subsequent to the lease in favour of the plaintiff and thereby his right to recover the rent became entangled. The statement of defendant 2 does not however mean that defendant 1's title was created on the date on which it was made. He merely admitted that the sale deed passed by him prior to the lease was intended to include the property in suit. Defendant 1 also says the same thing and he claims title to the property from that date, viz. 27th May 1926, and not from the date of the statement. Hence, according to defendant 1, the subsequent lease by defendant 2 in favour of the plaintiff was unauthorized. He cannot therefore be regarded as claiming the property through defendant 2. The trial Court was therefore right in holding that so far as this suit is concerned, defendant 1 claimed the property independently of defendant 2 and he contended that defendant 2 had no right to lease the property to the plaintiff. The plaintiff cannot therefore call upon defendant 2 to litigate with defendant 1 and have his title cleared. The suit is therefore barred under O. 35, R. 5, Civil P. C., 1908. I set aside the order of the lower Appellate Court and restore the decree passed by the trial Court. The appellant shall recover his costs in this Court and in the lower Appellate Court from respondent 1.

N.S./R.K. *Order set aside.*

1. Cook v. The Earl of Rosslyn, (1859) 1 Giff 167 =28 L J Ch 833 = 5 Jur (N S) 973 = 7 W R 537.
2. Dungey v. Angove, (1794) 2 Ves Jun 304 = 2 R R 217.

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WASSOODEW AND SEN JJ.

T. L. Wilson & Co., Solicitors — Applicants.

v.

Hari Ganesh Joshi and others — Opponents.

Civil Appln. No. 106 of 1938, Decided on 14th November 1938.

(a) Contract Act (1872), S. 2 (h) — Nudum pactum—Solicitor's costs—Solicitor agreeing to accept full taxed costs only in event of success so as to lighten burden of client in event of failure—Agreement is valid and enforcible.

A nudum pactum is a promise not supported by consideration. The agreement to pay or pay something on one side without any compensation either in service or in any other manner will certainly not support an action. But for service undertaken

at the request of the promisor who has enjoyed the benefit of the service, an action for compensation will lie, for it is not a bare promise. [P 251 C 2; P 252 C 1]

Where undue influence is not apparent and the solicitor has agreed to defend appeal for a sum less than full taxed costs but stipulates that he should be paid in full in the event of success so as to lighten the burden on the client in the event of failure and the client agrees to abide by the terms, the agreement cannot be looked upon with disfavour, and the Court will respect the terms of such an agreement of employment. Therefore neither in practice nor in law such an agreement can be regarded as invalid or unenforceable. [P 252 C 1]

(b) Civil P. C. (1908), O. 45, R. 7 — Object of security — Solicitor can recover his taxed costs by summary proceeding from amount deposited under O. 45, R. 7.

The object of the security is to secure the successful party against costs awarded to him in terms of the Order in Council. The amount is in the custody of the Court and can be paid out in terms of the security and in compliance with Order in Council. Therefore, a solicitor can recover by a summary proceeding the amount of his full taxed costs from out of the deposit made in Court under O. 45, R. 7 : *A I R 1931 Cal 734, Rel. on.* [P 252 C 2]

H. C. Coyajee and P. B. Gajendragadkar — *for Applicants.*

Dr. B. R. Ambedkar and L. G. Khare, and Y. V. Dixit and B. N. Gokhale — *for Respondents 1 and 2, and 3 respectively.*

Wassoodew J.—This is a petition made by Messrs. T. L. Wilson & Co., Solicitors of London, who had acted on behalf of one Sitabai, widow of Ramchandra Sadashiv Khare, respondent in a Privy Council Appeal No. 57 of 1934, which was decided in her favour on 13th April 1937, for payment of the balance of the costs not received from their client or her executors out of the security deposited in this Court by the appellant under the provisions of O. 45, Rule 7, Civil P. C., 1908. The petitioners allege that they have received £100 from the respondent Sitabai towards their legal charges and an extra sum of £2 from her executors after her death when they were brought on record in her place, and that they are entitled, under the terms of their agreement, to the difference between that sum and the sum taxed in the bill of costs in the Order in Council, the total sum payable under that order being £199 3*s* 9*d*. It seems that under pressure and persuasion of Sitabai's agent, one K. N. Dharap, an advocate of this Court who represented that she was helpless and poor, the solicitors agreed to defend the appeal for a sum less than the full taxed costs, but at the same time stipulated that they should be paid full costs in the event of success. The terms of the agreement are thus set out in their letter dated 27th July 1933 :

In the circumstances we are willing to defend the appeal for £100. You will understand that this is a considerably reduced fee. In the event of success we shall expect to be paid the difference between the £100 and the taxed party and party costs which will be inserted in His Majesty's order.

It may be noted that the amount deposited by the appellant is sufficient to pay the full taxed costs; and the depositor of the security in Court, namely the appellant in the Privy Council Appeal, has no objection to the payment of the amount claimed by the solicitors out of the money deposited. But the objection proceeds from the executors of Sitabai, in whose favour the order of costs was made by the Privy Council, on the ground that the terms of the contract were not properly explained to, and accepted by, the deceased Sitabai, that such a contract is void and illegal and that the relief claimed should not be given in these summary proceedings. We are satisfied upon the affidavits of Nagarkar and Dharap and the correspondence produced that the terms set out in that letter were explained to, and accepted by, Sitabai and that her acceptance was conveyed to the solicitors by Dharap, her agent, on 15th September 1933 in these terms.:

I am glad to say that she has accepted all your terms. Particularly, I may mention to you that she is quite willing to accept your term about the fees, viz. that in case we succeed she will give to you the difference between £100 and the costs that will be taxed. In case of success you will have earned them and the client has no right to claim them.

In accordance therewith the amount settled was remitted and the appeal was defended by the solicitors. Nagarkar, who is a close relative and a respectable gentleman, has in his affidavit supported the statement of Dharap that Sitabai appreciated the contents of the letter of the solicitors and agreed to abide by the terms. It is alleged that the proposals disclosed by the solicitors' letter amount only to a bare expectation and are no part of the terms of the contract. The expression "we shall expect to be paid" is a courteous way of saying that it shall form a term in the contract. It is a misnomer to say, it is a nudum pactum as counsel for the opponents has characterized it. A nudum pactum is a promise not supported by consideration. The agreement to pay or pay something on one side without any compensation

either in service or in any other manner will certainly not support an action. But it has always been recognized that for service undertaken at the request of the promisor who has enjoyed the benefit of the service, an action for compensation will lie, for it is not a bare promise. We think that the contract in question is enforceable in law. Here, we are dealing with a special agreement between a solicitor and his client. The validity of such an agreement will depend in England upon the Solicitors Act, (1932) 22 and 23 Geo. V, C. 37. That statute prescribes the terms on which such agreements should be held valid. The relevant provisions in that Act are contained in S. 63. It says :

(i) Nothing in the four last preceding Sections of this Act shall give validity to . . . . .

(ii) any agreement by which a solicitor retained or employed to prosecute any action, suit or other contentious proceeding stipulates for payment only in the event of success in that action, suit or proceeding.

That is a provision against champertous agreement which is not the case here. The agreement is neither opposed to any principle of common law as applicable to the remuneration of solicitors in India who receive reasonable remuneration after its being taxed by the Master in Equity and the Taxing Officer. All that is demanded here by the solicitors is extra payment in the event of success but not in excess of the taxed costs. The relevant Section in the Act would be S. 60, Cl. (1) (i) and (ii), and the provisions of that Section are not offended against in the present case. It is said that such an agreement is as offensive as an agreement to receive reward in the event of success and Courts should discourage it. The argument is based on false analogy. Where undue influence is not apparent and the solicitor has agreed to accept taxed costs in the event of success so as to lighten the burden on his client in the event of failure, the agreement could not be looked upon with disfavour, and the Court will respect the terms of such an agreement of employment. Therefore neither in practice nor in law such an agreement can be regarded as invalid or unenforceable.

There then remains the question whether we should not exercise our summary powers in a claim of this kind, assuming it is essentially not one to enforce a solicitor's subsisting lien. The petition is for payment out of the security for costs which is required as a condition precedent to the grant of a certificate in all appeals taken to the Privy Council. The object of the security is obviously to secure the successful party against costs awarded to him in terms of the Order in Council. The amount is in the custody of the Court and can be paid out in terms of the security and in compliance with the Order in Council. Perhaps in complicated cases a Court would be justified in refraining from exercising its powers summarily. But the fact that it does possess such powers to distribute the amount to the successful party cannot be disputed having regard to the terms of the deposit and the provisions of O. 45, R. 7, Civil P. C. If authority were needed, I would refer to 58 Cal 1034.[1] There the High Court ordered the amount deposited as security to be paid to the respondent's solicitors in England in satisfaction of their bill of costs taxed before the Privy Council. We therefore allow this petition and direct the payment of the costs from the deposit with the Registrar in terms of the prayer in the petition with costs which shall be paid by opponents Nos. 1 and 2. Opponent No. 3 will bear his own costs.

N.S./R.K. *Petition allowed.*

1. Bikramkishore Manikya v. Ali Ahmad, (1931) 18 A I R Cal 734=134 I C 1071=58 Cal 1034.

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* A. I. R. 1939 Bombay 252

BEAUMONT C. J.

Tayerali Mahamadali — Plaintiff — Applicant.

v.

Garabad Sadu — Defendant — Opponent.

Civil Revision Appln. No. 78 of 1938, Decided on 18th November 1938, against decision of Second Sub-Judge, Nandurbar, in Sm. C. C. Suit No. 1709 of 1936.

*** Limitation Act (1908), Ss. 19 and 20 — Part payment not coming under S. 20, when operates as acknowledgment under S. 19 stated —Endorsement on pro-note stating that certain amount is paid towards payment without specifying whether it is towards interest as such — Payment being on account of debt secured by note, endorsement amounts to acknowledgment of liability.**

Sections 19 and 20 are independent of each other. There may be an acknowledgment of liability which comes under Sec. 19 unaccompanied by any part payment, or there may be an acknowledgment of liability coupled with a part payment, which complies with the terms of S. 20, in which case the debt is saved from limitation both under