

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Benson.

NARASIMMA CHARIAR (PLAINTIFF), PETITIONER,

v.

SINNAVAN (DEFENDANT), RESPONDENT.*

1896.
November 6.

Legal Practitioners Act—Act XVIII of 1879, s. 28—Oral agreement for pleader's remuneration—Criminal Proceedings—“Quantum meruit.”

A pleader was retained by an accused person to conduct his defence. The accused did not pay the agreed fee and the plaintiff whereupon declined to conduct his defence. The defendant who was one of the accused, then undertook orally to pay the fee, but failed to do so after the plaintiff had conducted the defence of both accused persons. The plaintiff now sued the defendant to recover the agreed amount :

Held, that, under Legal Practitioners Act, section 28, the plaintiff was not entitled to recover on the contract, but that he was entitled to recover reasonable remuneration for the services rendered by him.

PETITION under section 25 of the Provincial Small Cause Courts Act praying the High Court to revise the decree of K. Krishnama-chariar, District Munsif of Madura, in Small Cause Suit No. 1480 of 1895.

The plaintiff was a First-grade Plead~~er~~, and he sued to recover Rs. 25 under the following circumstances. One Mathuranayagam Pillai retained the plaintiff to defend him in a criminal case, but failed to pay his fee whereupon the plaintiff refused to appear for him. Thereupon the defendant, who was also on his trial in the same case, undertook to pay the plaintiff Rs. 25, the fee agreed to be paid by Mathuranayagam Pillai. Relying upon this undertaking the plaintiff conducted the defence, but the defendant failed to pay the amount for which this suit was accordingly brought.

The District Munsif dismissed the suit ; holding, with reference to Legal Practitioners Act, sections 28 and 29, and *Sundararaja Ayyangar v. Pattanathusami Tevar* (1), that the claim could not be supported on the oral contract alleged by him ; and he expressing the opinion that, under the circumstances, the plaintiff was not entitled to bring this suit to recover *quantum meruit*, and declined to consider the plaintiff's claim on that footing.

The plaintiff preferred this petition.

* Civil Revision Petition No. 73 of 1896.

(1) I.L.R., 17 Mad., 306.

NARASIMMA
CHARIAR
v.
SINNAVAN.

Mahadeva Ayyar for petitioner.

Srirangachariar for respondent.

JUDGMENT.—We agree with the District Munsif that section 28 of the Legal Practitioners Act is applicable. The plaintiff may, however, recover reasonable remuneration for the work done by him for the benefit of the client on the principle *quantum meruit*, *Krishnasami v. Kesava*(1).

The District Munsif refused to go into this question on the ground that the person benefited, viz., the second defendant, in the criminal case, was no party to the present suit. We observe, however, that the plaintiff would not have gone into Court at all but for the guarantee given by the first defendant, and the latter would have been in that case undefended. The first defendant then derived benefit from the plaintiff going into Court to defend him and the second defendant jointly. We think, therefore, that the plaintiff may recover reasonable remuneration for the services he rendered. We therefore set aside the decree of the District Munsif with costs and direct him to restore the suit to his file and dispose of it on the merits.

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Benson.*

LINGUM KRISHNABHUPATI DEVU (PETITIONER),
APPELLANT,

v.

KANDULA SIVARAMAYYA (COUNTER-PETITIONER),
RESPONDENT.*

Civil Procedure Code—Act XIV of 1882, ss. 243, 588—Stay of execution pending suit between decree-holder and judgment-debtor—Stay of execution refused—Appeal.

An appeal lies from an order refusing stay of execution under Civil Procedure Code, section 243, pending a suit between a decree-holder and his judgment-debtor.

APPEAL against the order of H. R. Farmer, District Judge of Vizagapatam, in Miscellaneous Petition No. 78 of 1896.

This was a petition under section 243 of the Code of Civil Procedure preferred by the judgment-debtor in Original Suit No. 11

(1) I.L.R., 14 Mad., 63.

* Appeal against Order No. 52 of 1896.