

Nadar(1) and *Brahmayya v. Pappasetty*(2). We do not think it necessary to say more than that, in our opinion, the first case, which was not brought to the notice of the Bench in the second, was rightly decided. The second case proceeds on the misconception that the definition in section 3 clause 6 of the Madras General Clauses Act of 1891 applied to Regulation VII of 1828 or to Act II of 1864.

CHITRAYVA
v.
SECRETARY
OF STATE
FOR INDIA.
WALLER J.

Following the decision in *Gnana Sambanda Pandara Sannadhi v. David Nadar*(1) we dismiss the second appeal with costs (two sets).

G.R.

APPELLATE CIVIL.

*Before Sir Owen Beasley, Kt., Chief Justice and
Mr. Justice Cornish.*

P. KRISHNAMACHARIAR (CLAIMANT—APPLICANT),
APPELLANT,

1931,
November 24.

v.

THE OFFICIAL ASSIGNEE OF MADRAS (RESPONDENT),
RESPONDENT.*

Advocate—Property recovered by his exertions for client—Lien.

An advocate has no lien upon property recovered by his exertions for a client, apart from any express agreement with the client to that effect.

APPEAL from the judgment of STONE J., dated 13th April 1931, and passed in the exercise of the Insolvency Jurisdiction of the High Court in Application No. 256 of 1931 in Insolvency Petition No. 79 of 1926.

(1) (1904) 14 M.L.J. 433.

(2) (1921) I.L.R. 51 Mad. 695.

* Original Side Appeal No. 70 of 1931.

KRISHNAMA-
CHARIAR
v.
OFFICIAL
ASSIGNEE,
MADRAS.

Vere Mockett for appellant.

V. Radhakrishnaaya and *S. G. Satagopa Mudaliyar*
for respondent.

JUDGMENT.

CORNISH J. —The appellant is an advocate of this Court. He put in a claim to the Official Assignee for certain moneys due to him by the insolvent for work done for the insolvent in probate proceedings in respect of a will of which the insolvent was the executor and a legatee, and also for other work done by him on behalf of the insolvent. The Official Assignee disallowed a portion of the claim as excessive. There was an appeal against that order, and STONE J. held that the claim of the appellant should be allowed in full with interest against the estate of the insolvent. The appellant impeaches that order on the ground that he was entitled to payment from the estate of the testator, Appaswami Pillai, inasmuch as he was entitled to a lien on that property as having been recovered for the insolvent by his exertions in the probate litigation.

With regard to the first part of this contention, it appears to us that it would not have been competent for the Insolvency Court to make an order against the estate of the testator. The only property which was vested in the Official Assignee by reason of the executor's insolvency was the property of the insolvent. The insolvency of the executor did not have the effect of divesting him of Appasami Pillai's estate which was vested in him as executor and of vesting it in the Official Assignee. The Insolvency Court could not, therefore, have made an order directing the Official Assignee to satisfy the claim out of the estate of the testator.

With regard to the other point, I do not think that it is sustainable. There is no enactment in this country

recognizing the particular lien for costs which is sanctioned by the Solicitors' Act, 1860, in favour of a solicitor upon property recovered by his exertions for a client; though it has been held that solicitors who have been admitted attorneys of an Indian High Court have this lien; see *Tyabji Dayabhai & Co. v. Jetha Devji & Co.*(1). But the appellant is an advocate and not a solicitor or attorney, and the only possible ground for supporting a claim to such a lien in his favour would be an express agreement by the client to that effect. But no such agreement is forthcoming, on the contrary it appears that the appellant took a promissory note for Rs. 3,000 as security for his costs in the probate litigation. There is, therefore, no ground for holding that the appellant had a lien. Under these circumstances, the appeal fails and must be dismissed with costs.

BEASLEY C.J.—I agree.

Solicitor for appellant — *N. T. Shamanna.*

G.R.

KRISHNAMA-
CHARIAR
D,
OFFICIAL
ASSIGNEE,
MADRAS.
CORNISH J.

(1) (1927) I.L.R. 51 Bom. 855.
