respect of that contract, we think that is sufficient to protect the Insolvent Trader. To hold otherwise would be to defeat the intention of the Legislature.

Under these circumstances we think that Sir Charles Sargent was right in the decision at which he arrived, and his decision must be affirmed and this appeal dismissed with costs.

Order accordingly.

Attorneys for the Official Liquidator, *Manisty and Fletcher.*

Attorneys for Vináyak Pándurang, *Leathes and Crawford.*

[APPELLATE CIVIL JURISDICTION].

April 9.

Referred Case.

GÁNGJI VITHAL .....*Appellant.*

SITÁRÁM SHRIDHAR.....*Respondent.*

Costs as between Pleader and Client—Remedy of Pleader—Quantum meruit—*Regulation II. of* 1827, *Sec.* 52—*Act I. of* 1846, *Sec.* 7.

The provisions of Regulation II. of 1827, Sec. 52, clauses 1 and 2, and of Act I. of 1846, Sec. 7, regarding the award of pleader's costs by way of a percentage, relate only to costs as between party and party, and (inasmuch as Sec. 52 of Regulation II. of 1827 is, by Sec. 6 of Act I. of 1846, expressly rendered inoperative for any purpose except for the purposes of Sec. 7 of the latter Act) there is not any statutable provision for costs as between pleader and client, so that, in the absence of an agreement between them, the pleader is left to his remedy on a *quantum meruit.*

THIS was a reference made by W. M. P. Coghlan, Judge of the District of Thána, under the provisions of Section 28 of Act XXIII. of 1861.

The reference was considered by WESTROPP, C.J., and LLOYD, J.

The facts fully appear from the judgment of the Court.

WESTROPP, C.J.—This is a reference made to us by the District Judge of Thána under Section 28 of Act XXIII. of 1861, in an appeal to him in a suit brought by a pleader against his client to recover remuneration for professional services rendered to the defendant in a miscellaneous application in an ordinary civil suit.

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We infer from what the District Judge has said that the client Gángji was not represented by the Pleader Sitárám in the suit itself on any other occasion than that of the miscellaneous application when in the lower Court and afterwards in the appeal Court.

The Subordinate Judge at Kalian has, in this suit, now under reference, awarded what both he and the District Judge think to be a fair remuneration for the plaintiff's services, and in so doing has followed two decisions of the late Sadr Adalat--namely, *Hemachul* v. *Babjee* (*a*) and *Heerachund* v. *Jethabhaee* (*b*).

The District Judge, however, entertaining doubts as to the soundness of these decisions, has referred to this Court the question whether it was incumbent on himself to calculate and allow the remuneration of the pleader at ¼th of 3 per cent. on the amount the subject of the miscellaneous application.

Section LII of Regulation II. of 1827 contained the four following clauses:--

"First.--Each pleader employed in prosecuting or defending *an original suit* shall be entitled to a percentage on the amount sued for, according to the rates specified in appendix (L.) as a remuneration for his trouble in acting in behalf of his client, until the decree in the suit is passed, and thereafter until such decree is fulfilled.

"Second.—The remuneration to a pleader employed in prosecuting or defending *an appeal, regular* or *special*, shall be the same as is above prescribed in the case of an original suit.

"Third.—The above rules shall not prevent an express agreement being entered into between pleader and client, for either a larger or smaller sum than the established fee.

"Fourth.—But if a larger sum than was agreed for between a pleader and client is awarded in costs against the other party, the pleader, notwithstanding his agreement with his own client, shall be entitled to the excess when recovered."

(*a*) 4 Morris Rep. 30. (*b*) 7 Harrington Rep. 304.

There was a fifth clause relating to the mode in which the pleader's fees should be recovered and not material to the present case.

It is manifest that the provisions in that Section (52) as to the pleader's right to percentage are applicable only to the prosecution or defence of original suits or regular or special appeals. The Bombay Legislature seems to have thought that the same pleader would have been employed through out the suit, and until the decree was not only made, but also fulfilled. In the absence of an express agreement between the pleader and his client, no provision is made as to the rate at which the former should be remunerated in the event of the pleader being only employed, as in the present case, after the decree has been made for the purpose of enforcing in part the execution of it.

The 3rd clause as to special agreements seems to be applicable merely to such cases as the percentage clauses (1 and 2) would have been applicable to, if there were no special agreement, viz., original suits and regular and special appeals.

The 4th clause is the only one which expressly refers to an award of costs as between party and party, and provides that, in such a case, if the sum so awarded exceeds the amount agreed upon between pleader and client, the former and not the latter, shall be entitled to the excess. The inference to be drawn from this clause, when taken with clauses 1 and 2, is that the award of costs between party and party should be on the percentage principle, and not in any wise regulated by the private agreement subsisting between the pleader and his client.

Act I. of 1846, Section 6, enacted (*inter alia*) that Regulation II. of 1827, Section 52, "shall cease to be enforced excepting for the purpose specified in Section 7 of this Act" (I. of 1846).

Section 7 enacted "That parties, employing authorised pleaders in the said Courts, shall be at liberty to settle with them by private agreement, the remuneration to be paid for

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their professional services, and that it shall not be necessary to specify such agreement in the Vakalutnama: provided that when costs are awarded to a party in any regular suit original or appeal, decided on the merits, against another party, the amount to be paid on account of fees of pleaders shall be calculated according to the rules contained in the Sections of Regulations specified in Section 6 of this Act; and that when costs are *awarded* in other cases the amount to be paid on account of such fees shall be one-fourth of what it would have been in a regular suit decided on its merits."

The first part of that Section (7) is general. It allows the pleader to make, as to his remuneration, a private agreement with his client with regard to professional services in any kind of litigation. But the latter part (the proviso) relating to remuneration by percentage, is applicable only to the awarding of costs between party and party, and not between pleader and client. It, in substance, provides 1st, that when costs are awarded as between party and party, in any regular suit, original or appeal, decided on the merits, the fees shall be calculated according to the percentages given in Appendix L to Section 52 of Regulation II. of 1827; and 2ndly, that when costs are *awarded* in other cases, *i. e.*, suits or appeals not decided on the merits or miscellaneous applications, the percentage shall be ¼th of what it would have been in a regular suit decided on the merits. This second part of the proviso, as well as the first part of it, is manifestly, when truly construed, limited to the awarding of costs as between party and party.

Hence and inasmuch as Section 52 of Regulation II. of 1827 is, by Section 6 of Act I. of 1846, expressly rendered inoperative for any purpose except the purpose of Section 7 of that Act, there is not any statutable provision for costs as between pleader and client in the absence of an express agreement between them, and the pleader (who stands as regards title to remuneration, rather in the position of an attorney, who is not supposed to work gratuitously, than of a barrister whose labours are supposed to be honorary, and who cannot maintain an action for fees) is left to his remedy on

a *quantum meruit*, to recover such remuneration, as the trouble, to which he has been put, renders it just should be awarded to him.

Such was the principle, as we think most correctly, adopted by the Sadr Adalat in the cases followed, but doubted by the District Judge. In both of those cases, and in a previous case referred to in the first of them, the Sadr Adala held that the pleader, although he had not made any express agreement, was entitled to remuneration. In *Hemachul* v. *Babjee* (*supra*), the Sadr Adalat held that, in meting out the recompense for his labour, the Court might, if it saw fit, adopt, as a guide, the percentages laid down by law for the regulation of costs as between party and party; and in *Heerachund* v. *Jethabhaee* (*supra*), that it was not incumbent on the Court to adopt that guide, if the circumstances of the case rendered it just that the pleader's deserts should be otherwise gauged. In both of these decisions we concur.

In conformity with these views, and as the amount awarded by the Subordinate Judge of Kalian appears to be a fair sum, under the circumstances of the present case, we hold hat his decree and that of the District Judge in affirmance of it, are right, and ought to be upheld, and that the question above stated, as submitted to this Court, should be answered in the negative. Costs, if any, incurred in this reference should be paid by the defendant.

[APPELLATE CIVIL JURISDICTION.]

April 9.

Referred Case.

MULCHAND, heir of KALIDÁS MANEKH-RAMDEED .....*Plaintiff.*

MOTICHAND HARGOVANDÁS .....*Defendant.*

Heirship—Certificate of Heirship—Production of Certificate.

A plaintiff suing as the heir of a deceased person is (where a certificate of heirship is necessary to enable him to sue) bound to produce the certificate itself. It is not sufficient for the heir to show that an order has been made directing the issue of such certificate to him.