1872.

GA'NGJI VITHAL v. SITA'RA'M SHRIDHAR.

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 Ṣadr 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 Ṣadr Adalat held that the pleader, although he had not made any express agreement, was entitled to remuneration. In *Hemachul* v. *Babjee* (*suprà*), the Ṣadr 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. *Jethabhâee* (*suprà*), 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 that 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.]

Referred Case.

April 9.

MULCHAND, Heir of KA'LIDA'S MANEA'KHRAMDEED .....*Plaintiff.*

MOTICHAND HARGOVANDA'S .....*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.

1872.

MULCHAND v. MOTICHAND HARGOVANDA'S.

UNDER Section XXII. of Act XI. of 1865, Gopálrao Hari Deshmukh, Judge of the Court of Small Causes at Ahmadabad, stated the following case for the opinion of the High Court:—

"The question is—whether or not a plaintiff can be excused the production of a certificate of heirship, if he shows that the District Judge has directed him to be furnished with one. * * *.

The plaintiff has sued the defendant for rent of a house, alleged to be the property of his deceased brother, Kálidás. He produces an order of the District Judge showing that on his application to be recognized as heir and brother of the deceased Kálidás, an order was passed that he be furnished with a certificate of heirship.

The defendant, among other pleas, urges that the plaintiff should take out and produce a formal certificate before the Court, and that the production of an order is not sufficient. He produces in support of his statement a copy of the High Court's order passed on Special Appeal No. 210 of 1868, confirming the decree of the Judge of Ahmadnagar, rejecting Bhowansing's claim on the ground that he did not produce a certificate, though he was allowed by the District Judge to take out one.

The estate of Kálidás is valued at Rs. 24,000; a stamp paper of Rs. 480 would be required for a certificate. The plaintiff states that he has not at present the means of laying out this sum.

My opinion is that the plaintiff must produce a certificate in order to show that he was recognized as heir by the District Judge."

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

PER CURIAM:—To the question whether or not a plaintiff can be excused the production of a certificate of heirship if he show that the District Judge has directed him to be furnished with one, the Court replies that if such a certificate, though ordered to be given, has not in fact been given, it

will not be sufficient to produce the order, or a copy of it. A reference to *Dámodhár Bápuji* v. *Zinga* (*a*) and *Dámodhár Bápuji* v. *Ravjí* (*b*), and the remarks made upon those cases in 8 Bom. H. C. Rep. 159, and to *Lálchánd Ramdayál* v. *Gumtibái* (*c*), (with regard to the effect of an order for the issue of letters of administration before the letters themselves are issued,) will show the necessity for the production of the certificate of heirship itself.

Of course, if a certificate be issued and proved to be lost, the Court is not to be understood as saying that secondary evidence may not be given of it.

The Court holds the opinion of the Judge of the Court of Small Causes of Ahmadabad to be right.

Order accordingly.

[APPELLATE CIVIL JURISDICTION.]

Special Appeal No. 522 *of* 1871.

April 15.

UTAMRA'M MA'NIKLA'L .....*Appellant.*
DA'MODHARDA'S MA'NIKLA'L.....*Respondent.*

Minor—Accounts of Guardian—Administration of Minor's Estate—Jurisdiction—Civil Court of District—Act XX. of 1864.

A suit to compel a minor's guardian, appointed under Act XX. of 1864, to account for his administration of the minor's estate, cannot be properly brought in the Court of a Subordinate Judge or in any Court but in the principal Civil Court of the District where the property is situate, if it be in one district; but if it be in more districts than one, then in the principal Civil Court of the district in which the minor has his residence.

THIS was a special appeal from the decision of W. H. Nownham, Acting Judge of Súrat, in Regular Appeal No. 92 of 1871, confirming the decree of the Subordinate Judge of Balsar.

The special appeal was argued before WESTROPP, C.J., and LLOYD, J., on the 15th April 1872.

(*a*) 7 Bom. H. C. Rep. A. C. J. 31. (*b*) *Ibid* 32.
(*c*) 8 Bom. H. C. Rep. O. C. J. 140, 154, 155,