

double the entire amount of the debt was to become at once payable, was in the nature of a penalty. The mere acceleration of payment of the debt would not have that effect, but the enhancing the amount of the debt (in this case [557] amounting to more than 100 per cent.) ought, we think, to be so regarded, as shown by the remarks of the Court in *Sterne v. Beck* (1) and *The Protector Endowment Loan and Annuity Company v. Grice* (2).

1888  
APRIL 12.  
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APPEL-  
LATE  
CIVIL.  
—  
12 B. 555.

12 B. 557.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nanabhai Haridas.

KESHAV GOVIND JOSHI (*Plaintiff*) v. JAMSETJI CURSETJI  
(*Defendant*).<sup>\*</sup> [23rd April, 1888.]

*Pleader and client, costs between—Act I of 1846, s. 6—Quantum meruit.*

In a suit brought by R. in *forma pauperis* against the defendant he had engaged the services of the plaintiff as his pleader, but no express agreement for the remuneration of the plaintiff was made. The suit was numbered, and, after the evidence on either side had been gone into, the trying Court made an order dispaupering R. On an application by R., who offered to pay the Court-fees, the High Court under its extraordinary jurisdiction made an order directing the lower Court to receive the fees and to proceed with the suit. R. paid the fees, but the suit was compromised. The plaintiff did not attend to the suit after remand. The plaintiff having sued the defendant for his fees, the Subordinate Judge was of opinion that one-fourth fee under s. 6 of Act I of 1846 should be awarded to the plaintiff. On reference to the High Court.

*Held*, that the plaintiff was entitled to a *quantum meruit*, which was to be determined with reference to all the circumstances of the case—there being no express agreement in the case.

THIS was a reference by Rav Bahadur Chunilal Maneklal, First Class Subordinate Judge of Thana, under s. 617 of the Civil Procedure Code (Act XIV of 1882).

The facts of the case were stated as follows :—

"The plaintiff brought this suit in the First Class Subordinate Judge's Court at Thana, to recover his fees in suit No. 388 of 1885, which was brought in the same Court in *forma pauperis* by one Ratanbai against the present defendant, who had engaged the plaintiff as a pleader in that suit. No express agreement for the plaintiff's remuneration was alleged to have been made. [558] The said suit, No. 388 of 1885, was numbered and registered as a regular suit. Evidence on both sides had been gone into, but the final decision of the Court was under s. 414, Civil Procedure Code, and the plaintiff was ordered to be dispaupered. The plaintiff then applied to the High Court under its extraordinary jurisdiction, and offered to pay the requisite Court-fees. The High Court reversed the order of the Subordinate Court and remanded the case, with directions to levy the requisite Court-fees. The plaintiff paid the Court-fees, but the suit ended in a *razinama*. The present plaintiff had not attended to the case after the remand.

<sup>\*</sup>Civil Reference No. 1 of 1888.

(1) 1 De G. J. & S. 595.

(2) 5 Q.B. D. 592.

1888  
APRIL 23.  
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APPEL-  
LATE  
CIVIL  
—  
12 B. 557.

The question referred by the Subordinate Judge for the High Court's decision is—

Whether, under the circumstances above stated, the plaintiff is entitled to his full fees, or only to one-fourth of the fees?

The Subordinate Judge was of opinion that the plaintiff is entitled to only one-fourth fees under Act I of 1846, the suit not having been decided on its merits.

*Shivram Vithal Bhandarkar*, for the plaintiff.—The plaintiff is entitled, under the circumstances of this case, to full fees. There is no rule what fees a pleader should charge. The rule of law applies where the parties are to be charged with costs of a suit. See *Gangji Vithal v. Sitaram Shridhar* (1).

*Vishnu Krishna Bhatvadekar*, for the defendant.

### JUDGMENT.

SARGENT, C. J.—The Subordinate Judge is wrong in thinking that the pleader is only entitled to one-fourth fee under s. 6 of Act I of 1846—*Gangji Vithal v. Sitaram Shridhar* (1). The pleader, in the absence of an agreement, is entitled to a *quantum meruit*, which ought to be determined with reference to all the circumstances of the case. The Court in assessing the *quantum* may be guided by the percentages laid down by law for the regulation of costs between party and party, but is not bound to adopt that guide where the circumstances of the case would render it unjust to do so. See the judgment in the above case and authorities referred to.

12 B. 559.

### [559] APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nanabhai Haridas.*

TARACHAND (*Original Plaintiff*), Appellant v. SUKLAL AND ANOTHER (*Original Defendants*), Respondents.\*

[18th April, 1888.]

*Champerty—Agreement to divide property after litigation if successful—Furnishing money under such agreement.*

An agreement to furnish money for litigation on the terms of sharing the property to be recovered thereby, is not necessarily void in India, unless accompanied by circumstances which lead to the conclusion that it was not a "*bona fide*" one for the acquisition of an interest in the subject-matter of litigation, but an illegitimate transaction got up for the purpose merely of spoil, or of litigation, disturbing the peace of families, and carried on from a corrupt and improper motive."

THIS was a second appeal from a decision of J. B. Alcock, Assistant Judge of Khandesh, confirming the decree of Rav Saheb K. N. Patankar, Subordinate Judge of Bhusaval.

The plaintiff claimed, as assignee of the equity of redemption of Ramji and Sakharam, to redeem a plot of ground alleged to have been mortgaged by Ramji and Sakharam's father to the first defendant in 1863.

\* Second Appeal No. 505 of 1885.