

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.

THE COLLECTOR OF VIZAGAPATAM, PETITIONER,

v.

ABDUL KHARIM SAHIB AND ANOTHER (PLAINTIFFS),
RESPONDENTS.*

1897.
December 6.

Civil Procedure Code—Act XIV of 1882, ss. 412, 622—Dismissal of suit in forma pauperis without trial—Liability of plaintiff for Court-fee—Revision.

A plaintiff who sues in *forma pauperis* is liable to pay the stamp duty if his suit is dismissed without trial; and he may be ordered to do so under section 622.

PETITION under Civil Procedure Code, section 622, praying the High Court to revise the proceedings of E. C. Rawson, Acting District Judge of Vizagapatam, in Original Suit No. 5 of 1895.

This was a suit instituted *in forma pauperis*, which was dismissed without contest on the 25th August 1896 against defendants Nos. 1 to 6 without costs, the plaintiffs being ordered to pay costs to defendant No. 7. A question arose whether the stamp duty was payable by the plaintiff and notice was served on the Collector. The District Judge made no order against plaintiff for payment of Court-fees. He said "this case appears to be on all fours, except that the suit proceeded as far as the final hearing instead of only as far as the settlement of issues, with the case of *The Collector of Kanara v. Krishnappa Hedge*(1) where it was decided that section 412 of the Civil Procedure Code applied only to cases of adjudicated failure, and that there was no adjudication of the rights of the parties, and the plaintiff could not, therefore, have been said to have failed in the suit; the case did not fall within the section at all."

This revision petition was preferred on behalf of the Secretary of State for India in Council represented by the Collector of Vizagapatam.

The Government Pleader (Mr. E. B. Powell) for petitioner.
Plaintiffs were not represented.

JUDGMENT.—The Bombay case relied on by the District Judge has been dissented from by this Court in *Lakshmikantam v. Lakshmi-*

* Civil Revision Petition No. 73 of 1897.

(1) I.L.B., 15 Bom., 77.

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devamma(1). Sir T. Muttusami Ayyar there observed:—"The words in the sections are 'succeeds' and 'fails in the suit' and "they refer to the ultimate decision or the result of the suit and not "to the mode in which the decision is arrived at. I should be "doing violence to the language of the section if I introduced into "them the words 'after contest' which I do not find in them." We see no reason to dissent from this view.

We accordingly allow the petition and direct that the plaintiffs in the suit do pay the Collector the stamp duty payable on the plaint and the costs of this application.

We have dealt with this matter under section 622, Civil Procedure Code, as we are of opinion that the District Judge has failed to exercise a jurisdiction vested in him by law in consequence of a misconstruction placed by him on section 412, Civil Procedure Code.

APPELLATE CRIMINAL.

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

QUEEN-EMPRESS

v.

RAMASAMI.*

*Criminal Procedure Code—Act X of 1892, s. 419—Presentation of
criminal appeal.*

A petition of appeal under the Criminal Procedure Code is not duly presented when having been signed by a pleader, it is handed in by a person who is not his clerk and over whose conduct and actions he has no control.

PETITION under Criminal Procedure Code, section 439, praying the High Court to revise the order of A. R. Cumming, Head Assistant Magistrate of Kistna.

The order sought to be revised was an order rejecting certain appeals against the convictions of the appellants by the Second-class Magistrate of Jaggiapet. The Head Assistant Magistrate said:—"This batch of appeals was presented to me at Jaggiapet

(1) Referred Case No. 12 of 1893. (unreported).

* Criminal Revision Cases Nos. 256 to 263 of 1897.