

## APPELLATE CIVIL.

*Before Mr. Justice Wallis and Mr. Justice Ayling.*

RAMALINGATHUDAYAR (DEFENDANT), APPELLANT,

v.

UNNAMALAI ACHI (PLAINTIFF), RESPONDENT.\*

1914  
March 9, 10  
and 16.

*Contract to pay plaintiff, breach of—Attachment of plaintiff's property in consequence—Right of suit without actual damage.*

The defendant having agreed with the plaintiff as one of the terms of a compromise of a suit *in forma pauperis*, to pay part of the Court fee if subsequently levied, and having failed to do so, in consequence of which the plaintiff's properties were attached,

*Held*, that on the defendant's failure to pay the plaintiff according to his contract, the plaintiff was entitled to sue at once and to recover substantial damages.

APPEAL against the Order of A. S. BALASUBRAHMANYA AYYAR, the Subordinate Judge of Kumbakonam, in Appeal No. 33 of 1913 preferred against the decree of S. C. RAMASWAMI AYYAR, the District Munsif of Valangiman, in Original Suit No. 342 of 1911.

*The following is the judgment of the lower Appellate Court:—*

“ This appeal arises out of a suit for a recovery of money due  
“ under an agreement that if Court fees had to be paid to Govern-  
“ ment in a certain suit settled out of Court between the plaintiff  
“ and the defendant, the defendant should pay the amount of the  
“ Court fees less Rs. 250 to be paid by plaintiff. The plaintiff  
“ alleges that defendant failed to pay the amount as agreed and that  
“ order for payment of the same has been made by Court against  
“ the plaintiff. On these allegations, the District Munsif holds  
“ that as plaintiff has not paid the amount actually prior to the  
“ institution of the suit the plaintiff has no cause of action. The  
“ Court's order, Exhibit A, passed prior to the suit directs the levy  
“ by Government of the Court fees from the plaintiff to the extent  
“ of the assets of her husband and father-in-law. Plaintiff's  
“ injury is complete on this order. It is mere speculation to  
“ say that the Government may not eventually levy the Court fee

\* Civil Miscellaneous Appeal No. 223 of 1913.

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“from plaintiff or execute the order, Exhibit A, against plaintiff.  
“Government took out attachment of plaintiff’s properties for  
“realising the amount—see Exhibit B. The sale of the properties  
“is not necessary to constitute injury to plaintiff. As a matter  
“of fact it is conceded that the Court fee has been subse-  
“quently paid by the plaintiff herself. I am therefore unable to  
“agree with the District Munsif that plaint discloses no cause of  
“action or that the suit is premature on the allegations in the  
“plaint. The District Munsif has tried the issue as a preliminary  
“issue on demurrer and has not tried the issue on the merits as to  
“the factum of the agreement alleged in the plaint and denied in  
“the written statement. I therefore reverse the decree of the  
“District Munsif and remand the suit for disposal according to  
“law on issues other than issue II. Costs of appeal in this Court  
“and of the suit in the Court below will abide and will be  
“provided for in the revised decree.”

*T. Ranga Achariyar* for the appellant.

*P. R. Ganapathi Ayyar* for the respondent.

WALLIS, J.

WALLIS, J.—A suit instituted *in forma pauperis* was settled out of Court on the terms that if a Court fee were eventually levied, Rs. 250 should be paid by the plaintiff and the balance by the defendant, the present appellant.

An order was subsequently made by the Court against the present respondent who was the widow of the second plaintiff in that suit, for payment of the Court fee out of the assets in her hands belonging to the deceased first plaintiff and his son, the second plaintiff, and as the Court fee was not paid the property of the first plaintiff in her hands as legal representative of his son, the second plaintiff, was attached in execution of the order. The respondent then filed this suit against the appellant to recover the balance of the Court fee which he failed to pay under the award, and subsequently before trial paid the Court fee. The District Munsif dismissed the suit as premature, but the Subordinate Judge has set aside the decree and remanded the suit. We think the Subordinate Judge was right. Assuming in favour of the defendant that his agreement was to pay the balance of the Court fee to the Court and not to the plaintiff, at the date of suit the defendant had committed a breach of his contract and the plaintiff had suffered damage by having her property attached. There was therefore sufficient to give her a cause of action,

and *Doraisami Tever v. Lakshmanan Chetty*(1) is clearly distinguishable.

Further the English cases which were not referred to in the argument before us show that in a case of this kind the defendant's failure to pay according to his contract at once gives rise to a cause of action in which substantial damages are recoverable; *Mayne on Damages*, page 334, 6th Edition; "Where the defendant's promise is an absolute one to do a particular thing, as to discharge or acquit the plaintiff from such a bond, an action may be brought the moment he has failed to perform his contract and a plea of *non damnificatus* (he sustained no damages) would be bad. Therefore where a party entered into a covenant to pay off encumbrances by a particular day, or to take up a note, it was held that an action might be brought and damages to the extent of the encumbrances and note respectively might be obtained though no actual injury had been sustained." *Lethbridge v. Mylton*(2) and *Loosemore v. Radford*(3). These cases were followed in *In Re Allen*(4).

The appeal is dismissed with costs.

AYLING, J.—I agree.

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AYLING, J.

## APPELLATE CRIMINAL.

*Before Mr. Justice Tyabji.*

*Re SIVANUPANDIA THEVAN alias APPAVU*  
THEVAN (ACCUSED), PETITIONER.\*

1914.  
March 23.

*Indian Penal Code (Act XLV of 1860), sec. 424—Conviction of a ryot under Madras Estates Land Act (I of 1908), for dishonest concealment and removal of crops, legality of—Madras Estates Land Act (I of 1908), ss. 73 and 212, no bar to conviction.*

The accused who was a ryot under the Madras Estates Land Act and who was bound under the conditions of his tenure to share the produce of his land with the landholder in a certain proportion, dishonestly concealed and removed the produce, thus preventing the landholder from taking his due share.

Held, that the provisions of sections 73 and 212 of the Madras Estates Land Act were no bar to a conviction of the ryot under section 424, Indian Penal Code, for the dishonest concealment and removal.

(1) (1904) 14 M.L.J., 285.

(2) (1831) 2 B. & Ad., 772; s.c., 109 E.R., 1332.

(3) (1842) 9 M. & W., 657.

(4) (1898) 2 Ch., 345.

\* Criminal Revision Case No. 98 of 1914.