actually ejected. It seems to me immaterial whether or no the proceedings resulted in a decree which might lead, but has not led, to an actual ejectment of the tenant. This is in accordance with the view expressed by the late Chief Justice and my brother WALLACE in [*Kanniappa Chettiar* v. *Ramachandraiyar*(1)] and I agree with them in thinking that the case of *Latifa Bi* v. *Mottai Ammal*(2) was wrongly decided. The answer to the reference will therefore be in the affirmative.

RAMESAM, J.—I agree.

WALLACE, J.—I agree.

N.R.

APPELLATE CIVIL—FULL BENCH.

Before Mr. Victor Murray Coutts Trotter, Chief Justice, Mr. Justice Ramesam and Mr. Justice Wallace.

MANICKAM PILLAI (SIXTH DEFENDANT), PETITIONER,

v.

MAHUDUM BATHUMMAL AND SIX OTHERS (PLAINTIFFS AND DEFENDANTS NOS. 1 TO 5 AND 7), RESPONDENTS.*

1924, April 11.

Civil Procedure Code, O. IX, r. 9, and O. III, r. 4 (2)—"Appearance" of pleader—Pleader stating "no instructions" to Court—Withdrawal of vakalat with leave of Court.

Held, by the Full Bench:—When a pleader engaged in a case reports that he has no instructions, whether after he has asked for an adjournment and been refused or not, he must be deemed not to have appeared in the case thereafter, even if there be no formal withdrawal in writing of the vakalat—*Radha Kishan* v. *The Collector of Jaunpur*, (1901) I.L.R., 23 All., 220 (P.C.), followed.

Held further, that the Court must be deemed to have given its leave within the meaning of Order III, rule 4 (2), Civil Procedure Code, to the pleader to withdraw his vakalat when it does not object to such withdrawal.

(1) (1924) 46 M.L.J., 407. (2) (1923) I.L.R., 46 Mad., 836.

* Civil Revision Petition No. 899 of 1922.

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PETITION under section 115 of Act V of 1908, praying the High Court to revise the Order of C. V. KRISHNASWAMI AYYAR, Subordinate Judge of Tuticorin, in Interlocutory Application No. 558 of 1922 in Original Suit No. 16 of 1921. This petition was referred to a Full Bench by the CHIEF JUSTICE at the suggestion of WALLACE, J.

In this case which was a suit for recovery of Rs. 10,000 based on accounts, the plaintiff's pleader appeared in Court on the day fixed for the hearing of the case and asked for an adjournment. On the adjournment being refused, he took from the Court the plaint which he had drawn and signed and endorsed on it as follows:—

"I have no instructions except to apply for an adjournment.

(Signed) A. V. KRISHNASWAMI AYYAR,

Vakil for the Plaintiff (16th April 1922)."

Then the suit was dismissed with the costs of such defendants as appeared in the case. Thereupon on an application under Order IX, rule 9, Civil Procedure Code, to set aside the order of dismissal for default, the Court held that though the allegations in the affidavit were not sufficient to excuse the default, the suit might be restored to file as a matter of grace as the plaintiff was a woman and as the value of the suit was Rs. 10,000. The Court accordingly set aside the dismissal for default on payment of costs to the defendant and restored the suit to file. Against this order the defendant preferred this Civil Revision Petition to the High Court, which was, as stated before, referred to a Full Bench.

ON THIS REFERENCE

P. V. Krishnaswami Ayyar for petitioner.—So long as the vakalat is not withdrawn, the vakil must be

deemed to be acting for the client and the plaintiff must be deemed to have "appeared" through him. Reference was made to section 2 (15), definition of "pleader," and Order III, rule 4 (2), Order V, rule 1 (2) (*b*), Order IX, rule 9, and Order XVII, rules 2 and 3, Civil Procedure Code. The pleader did not withdraw from the case and no leave of the Court as required by Order III, rule 4 (2), Civil Procedure Code, was given determining the engagement of the pleader. He relied on *Patinhare Tarkatt Rama Mannadi* v. *Vellur Krishnan Menon*(1) and distinguished *Gopala Row* v. *Maria Susaya Pillai*(2), *Ramanuja Reddiar* v. *Rangaswami Aiyangar*(3), *Shankar Dat Dube* v. *Radha Krishna*(4). He drew the attention of the Court to *Radha Kishan* v. *The Collector of Jaunpur*(5).

A. Swaminatha Ayyar and *K. R. Rangaswami Ayyangar* for respondents were not called upon.

OPINION.

COUTTS TROTTER, C.J.—In this case the plaintiff's vakil appeared in Court on the day fixed for the hearing of the suit, asked for an adjournment and stated that, if that adjournment were not granted, he had no further instructions to go on with the case. He had previously filed a vakalat in the ordinary form. He did something more than the mere asking for an adjournment. He took the plaint which he had drawn and signed, and endorsed it as follows :—

"I have no instructions except to apply for an adjournment.

(Signed) A. V. KRISHNASWAMI AYYAR,
Vakil for the Plaintiff (with the date)."

The relevant provision of the Code is Order III, rule 4. Sub-rule (1) of that rule is

(1) (1903) I.L.R., 26 Mad., 267. (2) (1907) I.L.R., 30 Mad., 274.
(3) (1908) 18 M.L.J., 51. (4) (1898) I.L.R., 20 All., 195.
(5) (1901) I.L.R., 23 All., 220 (P.C.).

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COUTTS TROTTER, C.J.

"The appointment of a pleader to make or do any appearance, application or act for any person shall be in writing, and shall be signed by such person or by his recognized agent or by some other person duly authorized by the power-of-attorney to act in this behalf."

Sub-rule (2) is,

"Every such appointment, when accepted by a pleader, shall be filed in Court, and shall be considered to be in force until determined with the leave of the Court, by a writing signed by the client or the pleader, as the case may be, and filed in Court."

It is sought to be said here that, although this vakil wrote what I have read on the back of the plaint after having filed a vakalatnama, the vakalatnama must be considered to continue in force until something further was done, and it is also argued that the effect of the vakalatnama being considered to be in force is to make the pleader constructively appear in a proceeding in which he has explicitly stated that he does not appear. In our opinion, the statute does not require the writing containing the withdrawal by the pleader of his vakalat to be in any specified form, and it appears to us that that which he endorsed on the back of the plaint was a perfectly good written withdrawal from his duties and obligations under the vakalat. That is really sufficient to dispose of this case, and Mr. Krishnaswami Ayyar very frankly said that, if we take that view as to the proper construction of the writing, the case, so far as he is concerned, is unarguable. But, while basing our decision on that short ground, we think, in view of some decisions of this Court,—one recently reported decision and another which is unreported—that we ought to point out that when this matter was discussed in those cases, attention does not seem to have been drawn to the decision of the Privy Council in *Radha Kishan* v.

The Collector of Jaunpur(1). The facts of that case are set out in a quotation from the judgment of the Subordinate Judge, which runs as follows :—

"That day (i.e., the day fixed for hearing) the pleader for the applicant stated that he could not conduct the case, and he had received no instructions from his client. Thereupon the Court proceeded to try the case and tried and decided the issues on the evidence adduced on the plaintiff's behalf and decreed the suit against the applicant."

Their Lordships held in that case that the applicant could not be held in the circumstances to have appeared. We trust that if this matter comes before the Courts again, notice will be taken of that decision, because, so far as appears, a wider question is determined there, as there is no statement—a feature that exists in this case—to the effect that the pleader has filed an instrument in writing taking himself out of his vakalat, a withdrawal on his part which Order III, rule 4, contemplates.

The exact question put to us is, if when a pleader reports no instructions, whether after he has asked for an adjournment and been refused, or not, the Court is correct in holding that the party for whom the pleader was appearing has not appeared. We think that the only answer can be that, at any rate in the circumstances of this case, the pleader cannot be deemed to have appeared.

I should add one other word. The section says that the withdrawal of the pleader must be with the leave of the Court. It does not say, nor do I think we are to import into it, that any formality is necessary in the manner of the granting of the leave of the Court, and in the circumstances, we must presume that, in a case like the present, the Court in assenting to the conduct

(1) (1901) I.L.R., 23 All., 220 (P.C.).

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of the vakil and in raising no question about his withdrawal, must be taken within the meaning of the section to have given its consent.

COUTTS TROTTER, C.J.

The case will go back to the single Judge for disposal on any point not determined by this Full Bench.

RAMESAM, J.

RAMESAM, J.—I agree.

WALLACE, J.

WALLACE, J.—I agree.

N.R.

APPELLATE CIVIL—FULL BENCH.

Before Mr. Victor Murray Coutts Trotter, Chief Justice, Mr. Justice Ramesam and Mr. Justice Wallace.

1924, April 11.

KRISHNAMACHARIAR (COUNTER-PETITIONER), PETITIONER,

v.

SRIRANGAMMAL AND TWO OTHERS (PETITIONERS), RESPONDENTS.*

Rule applying sec. 5, Limitation Act (IX of 1908), to applications under O. IX, r. 13, Civil Procedure Code, whether ultra vires.

Held by the Full Bench:—The rule framed by the High Court applying section 5 of the Limitation Act to applications under Order IX, rule 13 of Civil Procedure Code, is *intra vires*. *Sennimalai Goundan* v. *Palani Goundan*, (1916) 32 I.C., 975, followed.

PETITION under sections 115 of Act V of 1908 and 107 of the Government of India Act praying the High Court to revise the order of M. N. KRISHNA AYYAR, District Munsif of Kovilpatti, in Interlocutory Application No. 15 of 1922, in Original Suit No. 296 of 1921.

The facts are given by KRISHNAN, J., in his Order of Reference to a Full Bench.

This petition coming on for hearing on the 4th and 5th days of December 1923, the Court made the following

* Civil Revision Petition No. 633 of 1922.