

APPELLATE CIVIL.

Before Mr. Justice Ramesam and Mr. Justice Curgenvven.

1934,
April 3.

CHIDAMBARAM CHETTIAR (PLAINTIFF), APPELLANT.*

*Court Fees Act (VII of 1870)—Court-fee—Refund of—
Grant of—Conditions.*

The Court can order a refund of court-fees (1) where the Court Fees Act applies, (2) where there is an excess payment by mistake or (3) where, on account of the mistake of a Court, a party has been compelled to pay court-fees either wholly or in part. Outside these cases the Court has no power to order a refund.

J. C. Galstaun v. Raja Janaki Nath Roy, (1933) 38 C.W.N. 185, not followed.

APPEAL against the decree of the Court of the Subordinate Judge of Salem in Original Suit No. 15 of 1929.

This appeal came on for orders as to withdrawal and the Advocates for the appellant, while requesting permission to withdraw the appeal, also prayed for a refund of the court-fee paid on the memorandum of the appeal.

C. S. Venkatachari and D. Ramaswami Ayyangar for appellant.

The JUDGMENT of the Court was delivered by RAMESAM J.—This appeal is withdrawn and is therefore dismissed. The appellant has filed an application for amendment of the decree which was allowed. The opposite party filed a revision petition in this Court. For fear that the amendment will be disallowed the appellant filed this

* Appeal No. 68 of 1933.

appeal. Now that the revision petition is dismissed, the appellant is willing to withdraw the appeal.

CHIDAMBARAM
CHETTIAR,
In re.

RAMESAM J.

In these circumstances the appellant asks for a refund of court-fees. He admits there is no section of the Court Fees Act which he can rely on. He relies on *C. T. A. M. Chettyar Firm v. Ko Yin Gyi and another*(1), *Mohammad Sadiq Ali Khan, Nawab Mirza v. Saiyid Ali Abbas*(2) and *J. C. Galstoun v. Raja Janaki Nath Roy*(3).

In our opinion, the Court can order a refund (i) where the Court Fees Act applies, (ii) where there is an excess payment by a mistake or (iii) where, on account of the mistake of a Court, a party has been compelled to pay court-fees either wholly or in part. Outside these cases we are not satisfied that we have authority to direct a refund. Once a case like *J. C. Galstoun v. Raja Janaki Nath Roy*(3) is recognised, we ought to permit refund in all cases where appeals are dismissed on the ground of limitation. We are not prepared to go so far. The fact that the delay in *J. C. Galstoun v. Raja Janaki Nath Roy*(3) is due to the fault of the legal adviser has no bearing on the right of the Crown to the court-fee paid. We cannot direct a refund of the court-fees.

G.R.

(1) (1929) I.L.R. 7 Rang. 88.

(2) (1932) I.L.R. 7 Luck. 588.

(3) (1933) 38 C.W.N. 185.