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was for past and future profits and a fee has been actually paid.

Our answer to the reference is that the plaintiff is bound to pay the court-fee on Rs. 540 claimed by him before he can execute the decree in the suit. We acknowledge our indebtedness both to Mr. Srinivasa Ayyangar, who appeared for the Government Pleader, and to Mr. Narasara-ju who appeared as *amicus curiae* for the assistance they have rendered to us.

A.S.V.

ORIGINAL CIVIL.

Before Mr. Justice Gentle.

1938,
January 11.

CHIDAMBARAM, MINOR, BY NEXT FRIEND, NATESA MUDALIAR,
APPLICANT,

v.

NATARAJA MUDALIAR AND SIX OTHERS,
RESPONDENTS. *

*Code of Civil Procedure (Act V of 1908), O. XXXIII—Applica-
tion for leave to sue in forma pauperis—Pendency of—
Application for the appointment of a commissioner under
O. XXXIX, r. 7—Competency of.*

On the presentation of a petition for leave to sue in *forma pauperis* a suit must be deemed to have been instituted. Accordingly an application for the appointment of a commissioner under O. XXXIX, r. 7, of the Code of Civil Procedure can be made after the filing of a petition for leave to sue in *forma pauperis* and before leave is granted.

A. B. Nambiar for applicant.

* Application No. 49 of 1938 in Application No. 30 of 1938.

JUDGMENT.

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In this application, the applicants desire that an order may be passed for the appointment of a commissioner for the taking of an inventory of the movable properties at premises No. 15, Kuppumuthu Street, Triplicane, Madras. I am satisfied on the merits that the applicant is entitled to the appointment of such a commissioner. This application is made after the filing of a petition for leave to sue in *forma pauperis* and before leave has been granted as prayed for in that petition. The question is whether there is a suit pending, inasmuch as the right of the applicant to apply for the appointment of a commissioner arises under Order XXXIX, rule 7, Civil Procedure Code, in which the following words appear:

“The Court may, on the application of any party to a suit, . . . make an order.”.

If there is no suit, then there can be no parties, and if there are no parties to a suit, this Court is unable to make an order appointing a commissioner. This same matter came on before me in Application No. 1849 of 1937 and upon the arguments and authorities then placed before me, I came to the conclusion that the parties in a contemplated pauper suit whose petition to have their suit admitted under the provisions of Order XXXIII, Civil Procedure Code was pending, were not entitled to the relief of appointment of a commissioner or receiver inasmuch as no suit was in existence unless and until the petition to be admitted as a pauper was granted. In the application I have just mentioned, my attention was not directed to a decision of the Privy Council

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reported as *Skinner v. Orde*(1). In that case, their Lordships of the Privy Council discussed at length the date when a pauper suit commences, and at page 136 the following conclusion is expressed :

“ In their view the petition to sue as a pauper became a plaint, and under this statute the suit must be deemed to be instituted when that application was filed.”

The statute referred to is the Statute of Limitations, Act IX of 1871, clause 4. Had my attention been drawn in the previous application to this authority of the Privy Council, my view would have been different from that expressed therein. In my view, on the authority of the above decision, on the presentation of the petition to sue as a pauper the suit is to be deemed to have been instituted, and therefore there must be parties, the parties being those persons cited in the copy of the plaint filed with the petition. I therefore desire to reconsider the decision in Application No. 1849 of 1937. There will be an order for the appointment of a commissioner to take an inventory of the movable property consisting of jewellery, cash, silverware and other items in the possession of the second defendant, Amurthammal, and to be found in premises No. 15, Kuppumuthu Street, Triplicane, Madras. This appointment will be conditional upon Mr. A. B. Nambiar undertaking to me to pay into Court by 15th January 1938 the sum of Rs. 50 in respect of the remuneration of the Commissioner. Mr. M. V. Ganapathi, an Advocate of this Court, is appointed the commissioner. This order can be drawn up and issued forthwith.

G.R.