

The result is that that portion of the plaintiff's suit, in respect of which this appeal has been preferred, must be dismissed.

The appellant will be entitled to his costs in this Court on the sum at which this appeal is valued, and in the lower Court on the whole amount claimed by the plaintiff.

C. D. P.

*Appeal allowed.*

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SURYA KANT  
ACHARYA  
BAHADUR  
\*  
HENANT  
KUMARI  
DEVI.

*Before Mr. Justice Tottenham and Mr. Justice Banerjee.*

G. CHISHOLM (DEFENDANT) v. GOPAL CHUNDER SURMA  
(PLAINTIFF).<sup>o</sup>

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June] 14.

*Set-off—Cross-demand arising out of the same transaction—Civil Procedure Code (Act XIV of 1882), s. 111.*

When the defence raises a cross-demand which is found to arise out of the same transaction as, and is connected in its nature with, the plaintiff's suit, the defendant is entitled to have an adjudication of it, although it may not amount to a set-off under s. 111 of the Civil Procedure Code.

*Bhagbat Panda v. Bamdeb Panda* (1) relied on ; *Clark v. Ruthnavaloo Chetti* (2) referred to.

SUIT for the recovery of arrears of salary.

The defendant, who was the Agent of The Rivers Steam Navigation Company at Behali, on the 28th November 1882,

think there is sufficient evidence to charge them all jointly. Whether it would be or is possible, or whether it is the fact and could be proved by any other evidence, that the whole of this joint family are in possession of the patni is a different matter, but as the record at present stands, we do not think there is sufficient evidence to support the finding of the learned Judge, but we decree this appeal on the ground that the plaintiff cannot sustain this suit by reason of her not having been the registered proprietor at the time when the suit was brought, and by reason of the provisions of s. 78 of Bengal Act VII of 1876. We express no opinion whatever as to any finding of the learned Judge with reference to the joint liability of the defendants except we think that the evidence at present on the record is not sufficient to sustain it. The appeal will be decreed with costs.

C. D. P.

*Appeal decreed.*

<sup>o</sup>Appeal from Appellate Decree No. 1474 of 1888, against the decree of H. Luttman-Johnson, Esq., Judge of the Assam Valley Districts, dated the 8th of May 1888, affirming the decree of Baboo Madhub Chunder Bardolai, Munsiff of Tejpur, dated the 31st January 1887.

1889 appointed the plaintiff his mohurir at the Steamer Ghât on a salary of Rs. 40 per mensem. The plaintiff was at first allowed the services of three chowkidars on Rs. 6 per mensem each, but in March 1883 this number was reduced to two by the defendant. In July 1884 the plaintiff tendered his resignation, and on the 1st September following was relieved of his duties. After repeated demands for payment, the plaintiff brought this suit to recover the sum of Rs. 890 which he claimed on account of arrears of his salary and the wages of the chowkidars up to the end of August 1884, after giving credit to the defendant for various sums of money amounting to Rs. 204 paid from time to time.

The defendant contended that on account of goods and property damaged, lost, or not accounted for by the plaintiff, he was entitled to set-off the sum of Rs. 624-6-3 made up of the following items:—

	Rs.	As.	P.
(1) Tea-lead, damaged through plaintiff's negligence, value ... ..	188	0	0
(2) A boat lost while in charge of the plaintiff, value ... ..	50	0	0
(3) Timber in plaintiff's charge not accounted for, value ... ..	138	0	0
(4) Kayah's stores received from steamer and not delivered or accounted for, value ... ..	84	12	0
(5) Advance paid when plaintiff was serving as Garden Mohurir ... ..	25	15	0
(6) Freight on goods landed from steamer realized, but not paid to defendant ... ..	7	11	3
(7) Amount received from the Steam Navigation Company on account of salary ... ..	130	0	0
Total Rs. ... ..	624	6	3

As regards the last item the defendant alleged that the plaintiff had received this sum of money from the Rivers Steam Navigation Company on account of his salary in addition to the sum of Rs. 204 which the plaintiff admitted had been paid to him on the same account by the defendant.

Both the Extra Assistant Commissioner of Tejpur and the Judge of Assam on appeal decreed the plaintiff's claim in full, holding that inasmuch as the items claimed as set-off were not ascertained sums of money within the meaning of s. 111 of the Civil Procedure Code, they could not be set off against the plaintiff's claim. The defendant appealed to the High Court.

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G. CHISHOLM  
v.  
GOPAL  
CHUNDER  
SURMA.

Baboo *Pran Nath Pundit* for the appellant.

Baboo *Jogendro Nath Ghose* for the respondent.

The judgment of the High Court (TOTTENHAM and BANERJEE, 'JJ.) was as follows:—

This appeal has been preferred by the defendant in a suit brought against him by the plaintiff to recover arrears of salary. The defendant disputed the amount due. In his written statement he has set out a number of items for which he claimed credit; and the total of which, if allowed, would reduce the plaintiff's claim by Rs. 624 odd.

Both the Courts below decreed the plaintiff's claim in full, holding that none of the items set out by the defendant in his defence came within the scope of s. 111 of the Code of Civil Procedure and could not be claimed as a set-off. Against this decision the present appeal has been brought. As regards most of the items set out by the defendant we concur with the lower Court in thinking that they do not come within the scope of s. 111, for most of them are not ascertained amounts due by the plaintiff. It is true that they are all specified amounts, but specified amounts are not necessarily ascertained debts. As regards, however, one of the items, it was not pleaded as a set-off, but it was alleged to be payment on account of salary for which the suit is brought. The plaintiff has given credit for Rs. 204, as having been paid from time to time. The defendant pleaded a further payment of Rs. 130. That payment he did not allege to have been made personally to the plaintiff, but he alleged that the plaintiff had received it from the Steamer Company whose servant the defendant was, and which was in a sense, therefore, employer of the plaintiff also, although it may be that the defendant had employed the plaintiff without any reference to the Steamer Company. Be that as it may, if the plaintiff actually received Rs. 130

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from the Steamer Company on account of monthly salary, that amount will have to be credited in the present suit. At all events the Court should have enquired into this item, and not treated it as a claim to set-off, under s. 111 of the Code. Then as regards the other items set out in the first Court's judgment as claimed by the defendant, although most of them may not, and do not, come within the scope of s. 111, still we think, independently of that section, that the defendant was entitled to bring them forward, and have an adjudication in respect of them in this suit. They were in the nature of cross-claims, and were so connected with the plaintiff's claim for salary as servant and agent of the defendant, that it would seem inequitable to compel the defendant to have recourse to a separate suit to recover them. This has been laid down in *Clark v. Ruthnavaloo Chetti* (1). It was there said "that the right of set-off will be found to exist not only in cases of mutual debts and credits, but also where the cross-demands arise out of one and the same transaction, or are so connected in their nature and circumstances as to make it inequitable that the plaintiff should recover and the defendant be driven to a cross-suit." That decision was followed not only in later cases in the Madras Court, but also followed in this Court, in a case of *Bhagbat Panda v. Bamdeb Panda* (2); and we think that the law there laid down is applicable to the present suit. The claims as made by the defendant arise for the most part out of the relation set up by the plaintiff in this suit, as a suit of master and servant, or principal and agent; and so far as these items are claimed in respect of the alleged neglect or misconduct of the plaintiff in his capacity of servant of the defendant, we think that the defendant was entitled to have the claims enquired into. Of course there may be, as regards each item, several reasons why the defendant may fail in recovering, still those are matters which will have to be enquired into.

We therefore direct that the case be sent down to the Court of first instance to be re-tried.

Costs will abide the result.

C. D. P.

*Appeal allowed and Case remanded.*

(1) 2 Mad. H. C., 296.

(2) L. L. R., 11 Cal., p. 557.