

1917

LAOHRMAN  
DAS  
v.  
AHMAD  
HASAN.

been decided; in other words, it was merely an objection to the execution of the decree in the manner sought by the decree-holder. It may be said that if he had paid off the debt, or if he had meant that the debt was not due, he would have said so in plain language, and that the natural inference from what he had said was that the debt was due. It seems to me that an acknowledgement must be a clear acknowledgement and not be left only to sheer inference. In the Full Bench case there was language the meaning of which beyond all doubt was that the debt was due. In the present case there is simply the bare fact that the man did not say that he had paid off the money. Such omission cannot be taken as an admission that the debt was due. In my opinion the petition of the 5th of February, 1912, did not contain an acknowledgement at all, and therefore the application was barred by time. The result is that the application is dismissed with costs.

*Application dismissed.*

*Before Justice Sir Pramada Charan Banerji.*

VICTORIA MILLS COMPANY, LIMITED, (DEFENDANTS) v. BRIJ MOHAN  
LAL (PLAINTIFF).\*

1917  
February, 2.

*Civil Procedure Code (1908), order VIII, rule 6—Set-off—Suit by clerk who had left employment without notice for arrears of wages—Counter-claim for damages in lieu of notice.*

*Held*, in a suit by a clerk, who had left his employment without notice, to recover arrears of wages from his employers, that it was not competent to the defendants to counter-claim against the plaintiff for damages in lieu of notice.

THE plaintiff in this case was a clerk in the service of a company. On the 4th of April, 1916, he left his employment without notice, and then brought a suit against the company to recover his wages for March and for the four days of April. He also claimed pay for the month of May. The defendants filed a written statement, in which they claimed that they were entitled to Rs. 14 "by way of damages in lieu of notice." The court gave the plaintiff a decree for his wages for the month of March, and dismissed the remainder of the claim. It also disallowed the defendants' claim to a set-off. The defendants came to the High Court in revision urging that their claim for damages should have been allowed.

\* Civil Revision No. 130 of 1916.

Mr. A. H. C. Hamilton, for the applicants :—

The plaintiff left his service on the 4th April without notice. He is entitled to his pay for March but not for the broken month, and we are entitled to set-off a month's pay in lieu of notice. We are claiming an equitable set-off arising from the same transaction. The Code regulates *procedure* only and cannot take away from the defendant a right which he has independently of the Code and apart from order VIII, rule 6. *Stephen Clark v. Ruthnavaloo* (1) is the leading case on the point, and has been frequently followed. *Sheo Saran Singh v. Mahabir Prasad* (2) shows that equitable set-off is applied in India to cross-claims which are closely connected together, where it would be inequitable for the plaintiff to recover and for the defendant to be driven to a cross-suit. I. L. R., 27 All., 145, shows that set-off may be allowed otherwise than under section 111 of the old Code, corresponding with order VIII, rule 6, of the new Code. The English Judicature Act and order XIX, rule 3, of the English Rules have placed liquidated and unliquidated claims on the same footing. Order VIII, rule 6, is a statement of the Common Law rule qualified by English legislation prior to the passing of the Judicature Act. It is independent of the rule of Equity allowing set-off in matters arising out of the same transaction. The Indian and English practice prescribe that so far as possible all matters in controversy shall be completely and finally determined and multiplicity of proceedings avoided, though undoubtedly the court can order separate trials if satisfied that the claims of the parties cannot conveniently be decided in one suit.

The opposite party was not represented.

BANERJI, J.—The only question which has been argued in this case is whether the applicants defendants were entitled to set-off against the plaintiff's claim the amount which they claimed as damages. The plaintiff was in the employment of the defendants as a clerk. On the 4th of April, 1916, he resigned his appointment and went away. He brought the present suit to recover his salary for the month of March and for the four days of April. He also claimed his pay for the month of May. The defendants filed a written statement, in the 13th paragraph of which they

(1) (1865) 2 Mad., H. C. Rep., 295. (2) (1905) I. L. R., 32 Cal., 576 (580).

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claimed that they were entitled to Rs. 14 " by way of damages in lieu of notice. " The court below made a decree for the wages for March and dismissed the remainder of the claim. It was of opinion that the defendants were not entitled to any further damages. It is contended in this application for revision that the court below ought to have allowed a set-off of the damages claimed. I am of opinion that this contention cannot prevail. Order VIII, rule 6, of the Code of Civil Procedure provides that in a suit for the recovery of money, the defendant can claim to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff. The amount claimed as damages is not an ascertained sum of money. So that, according to the Code of Civil Procedure, there cannot be a set-off of damages. This is clear from Illustration (c) to the rule. The cases on the point have been quoted in Woodroffe and Ameer Ali's edition of the Code of Civil Procedure, and I need not refer to them. The present case is not a case of equitable set-off nor is it a case of damages arising out of the same transaction. Therefore under the provisions of order VIII, rule 6, referred to above, the damages claimed could not be set off in this case. The court below was, in my opinion, right. I dismiss the application, but without costs as the other side is not represented.

Application dismissed.

## APPELLATE CIVIL.

1917  
February, 3.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Muhammad Rafiq.

GAYA DIN (PLAINTIFF) v. SRI RAM AND OTHERS (DEFENDANTS).\*

Act No. XXVI of 1891 (Negotiable Instruments Act), sections 64, 76—Hundi—Presentation—Liability of drawer—Burden of proof.

Where it is sought, with reference to section 76 (d) to render liable the drawer of a *hundi* which has not been presented for payment, the *onus* of proving that the drawer could not suffer damage from the want of presentation is on the party who wants to excuse himself for the non-presentation of the

\* Second Appeal No. 1550 of 1914, from a decree of C. E. Guiterman, Additional Judge of Moradabad, dated the 14th of July, 1914, reversing a decree of Ganga Sahai, Subordinate Judge of Moradabad, dated the 6th of January, 1914.