

no appeal lay to him, we direct the parties to bear their own costs of this revision.

DANIELS, J.—I concur. My reason for holding that a revision lies from the order of the District Judge is this. The respondents' objection is that no revision lies because no case has yet been decided. The case had in fact been decided by the Subordinate Judge in a final order from which no appeal lay, and when the District Judge entertained an appeal from that order which he had no jurisdiction to entertain and set it aside, his order is certainly open to revision by this Court.

*Application allowed.*

*Before Mr. Justice Sulaiman.*

BHAKTA SHIROMANI (DEFENDANT) v. SITAL NATH  
(PLAINTIFF).\*

*Master and servant—Servant in default—Servant dismissed without notice, but for good cause—Servant not entitled to wages beyond date of dismissal.*

Where a servant paid by the month is dismissed by his master in the middle of a month without notice, but for a reason which justifies the master in so dismissing him, he is not entitled to wages for the broken part of the month during which he did attend to his duty. *Rughoonath Doss v. Mr. T. Halle* (1) and *Ralli Brothers v. Ambika Prasad* (2), referred to.

THE facts of this case are fully stated in the judgment of the Court.

Munshi *Bhagwati Shankar*, for the applicant.

The opposite party was not represented.

SULAIMAN, J. :—This is a revision from a decree of a Court of Small Causes. The plaintiff came to court on the allegation that he was employed as a

1925

ZAHUR  
AHMAD  
v.  
TASLIM-  
UN-NISSA.

1925  
May, 29.

\* Civil Revision No. 43 of 1925.

(1) (1871) 16 W.R., C.R., 60.

(2) (1912) I.L.R., 35 All., 182.

1925

BHAKTA  
SHIROMANI  
P.  
SITAL NATH

compositor in the defendant's press at a salary of Rs. 17 per month and that he was dismissed on the 20th of January, 1925, without notice. He claimed the pay for the twenty days he served and an additional pay for fifteen days as he was dismissed without previous notice. The suit was contested by the defendant and all liability was denied. The learned Judge of the Court of Small Causes has granted the plaintiff a decree for his pay for twenty days and dismissed the rest of the claim.

The findings, which I must accept, are as follows:—The plaintiff worked in the defendant's press up to the 20th of January, on which date, at about 12 o'clock, he, having got fever, disappeared from the press without applying for leave. He did not turn up for 5 or 6 days, and as he had disappeared without leave or sanction and had left the work, the defendant was much irritated and dismissed him. The court below finds that the plaintiff committed default and the defendant was justified in dismissing him. In spite of this finding it has granted the plaintiff a decree for his wages for 20 days.

As I have said, it was admitted by the plaintiff in the plaint that he was engaged on a monthly salary of Rs. 17. On the findings he left the work without leave and without sanction of the defendant and did not turn up for 5 or 6 days. The defendant was justified in dismissing him. If the conduct of the plaintiff was such that it justified the defendant in dismissing him before the expiry of the month, the plaintiff, in my opinion, was not entitled to his salary for even the broken period for which he had served.

In the case of *Rughoonath Doss v. Mr. T. Halle* (1), although the claim of the servant for wages for the

1925

BHAETA  
SHIROMANI  
V.

SITAL NATH.

broken period during which he had served was allowed, it was pointed out that he would not have got it if the master could prove that the dismissal was justifiable.

In the case of *Ralli Brothers v. Ambika Prasad* (1) TUDBALL, J., held that an office clerk engaged on a monthly salary was not entitled to any salary for the broken portion of the month in the course of which he left the service without the consent of his employer.

The present case is certainly distinguishable inasmuch as the plaintiff here did not actually leave the service but left the work which justified the master in dismissing him. But the English Law governing the rules and liabilities of master and servant is to be found in Smith's Law of Master and Servant, sixth edition, pp. 169—172. In the absence of any statutory provisions in India, the common law of England would prevail. It is there laid down that

“ when a servant, whose wages are due periodically, so conducts himself that the master is justified in discharging him without notice, he is not entitled to be paid any wages for that portion of time during which he has served since the last payment of wages. That is to say, if a servant whose wages are only due yearly, absconds from his master, or is rightfully discharged before the expiration of the year, he could recover nothing for services rendered previous to such departure or discharge. And the same principle would apply to the case of a quarterly, monthly or weekly hiring ”.

The governing principle seems to be that the contract is that the servant should perform his part of the contract for the whole period for which wages are paid and that if he fails to perform his part of the contract or is rightfully discharged at any intervening period between the dates when his wages are due, he can recover nothing for the broken period of service.

(1) (1912) I.L.R., 35 All., 182.

1925

BHAKTA  
SHIROMANI  
v.  
SITAL NATH.

The learned author cites several English cases where servants, who have been rightly discharged and have afterwards sued their late masters for wages, have failed to recover anything.

I am, therefore, of opinion that in view of the findings of the court below that the default was committed by the plaintiff and that his master was justified in dismissing him, the plaintiff was not entitled to recover the wages for even twenty days during which he had served. The judgment of the court below, therefore, is not according to law. I allow the revision and set aside the decree of the court below and dismiss the suit. As the applicant professes to have contested the suit mainly on principle, I direct that the parties should bear their own costs of this application and in the court below.

*Application allowed.*

## APPELLATE CIVIL.

1925  
June, 1.

*Before Mr. Justice Lindsay and Mr. Justice Kanhaiya Lal.*

SHIAM LAL (DEFENDANT) v. RADHA BALLABH AND OTHERS (PLAINTIFFS) AND BALMAKUND AND OTHERS (DEFENDANTS).\*

*Joint property—Improvement made in good faith by one co-sharer—Partition—Compensation for improvements—Set-off on account of use and occupation by the party claiming compensation.*

In 1911 one R. C. purchased a ruined house and spent a considerable sum of money in re-building it. In so doing he apparently acted in the belief that his vendors were the sole owners and that he had acquired a complete title. In 1914, however, some other members of the vendors' family appeared

\* First Appeal No. 142 of 1922, from a decree of Ganga Sahai, Subordinate Judge of Muttra, dated the 30th of January, 1922.