

Appellate Jurisdiction (a)*Regular Appeal No. 46 of 1868.*

PALANIAPPA CHETTI.....Appellant.

RAYAPPA CHETTI.....Respondent.

A suit lies to enforce an award made without the intervention of a Court of Justice.

The procedure provided in Section 327 of the Civil Procedure Code is not imperative upon a plaintiff who seeks to enforce an award so made.

THIS was a Regular Appeal against the decision of H. D. Cook, the Civil Judge of Coimbatore, in Original Suit No. 28 of 1865. 1868.
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The plaintiff stated that a settlement of disputes existing between plaintiff and defendant was made by arbitrators on the 18th January 1864, by which the defendant was bound to pay to the plaintiff the sum of rupees 1,245-8-6, for which amount, together with interest, the suit was brought.

In the defendant's written statement it was alleged that as the suit was based on the decision of arbitrators, the suit could not be maintained under Section 327 of the Civil Procedure Code.

The Civil Judge dismissed the suit on the ground that there was no cause of action, as Section 327 did not permit a party affected by an award to re-open the case in a Court of Justice and to have a decision on the merits. As regarded the merits, the case had been determined by the arbitrators, and was conclusive between the parties.

The plaintiff appealed.

Srinivasa Chariyar for *Rama Rau* for the Appellant, the plaintiff.

Venkatapathi Row, for the Respondent, the defendant.

The Court delivered the following

JUDGMENT:—This is a suit brought to recover in accordance with an award. The Civil Judge decided the case and dismissed the suit upon the preliminary objection

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that a suit will not lie upon an award, but that the only course open to the parties to enforce it is by a proceeding under Section 327 of the Civil Procedure Code. This decision is clearly erroneous. Under Section 327 it was certainly open to the plaintiff to adopt the procedure therein provided, but the Section is not imperative, and there is no doubt that a suit lies to enforce an award made without the intervention of a Court of Justice. The remark made by the Civil Judge as to the opening up of the merits leads us to make the observation that, if the award has been duly made, it is binding upon the parties as regards the matters thereby decided. We, therefore, under Section 351, Civil Procedure Code, reverse the decree of the Civil Court and remand the suit to be heard and determined upon the merits. The costs of this appeal should be borne by the defendant.

Original Appellate Jurisdiction (a)

Regular Appeal No. 5 of 1868.

T. KISTNASAMY PILLAY.....Appellant.

THE MUNICIPAL COMMISSIONERS FOR } Respondents.
 THE TOWN OF MADRAS..... }

Contract—Set off—Stamp.

The right of set off exists where there are cross demands arising out of one and the same transaction or where they 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. In a suit to recover money due under a contract made between the plaintiff and defendants,

Held, that the defendants were entitled to set off the amount of damages which the defendants had proved they had sustained by reason of the plaintiff's breach of the contract sued on.

Where a written contract liable to an optional stamp is put in evidence by the defendants, the plaintiff cannot recover a larger amount under it than (if stated) the optional stamp upon the instrument would have been sufficient to cover. In a suit for the recovery of money due under a written contract, the defendants admitted that a sum of rupees 6,328-4-0 was due to the plaintiffs, subject to certain deductions which they claimed to be entitled to set off against the plaintiff's claim. The defendants put in evidence the written contract, the stamp upon which was only sufficient to cover the sum of rupees 5,000.,

Held, that notwithstanding the admission of the defendants, the plaintiff could only recover rupees 5,000 in the suit.

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THIS was an appeal from the decree of Bittleston, J. in Original Suit No. 440 of 1867 dismissing the suit,

(a) Present : Scotland, C. J., and Collett, J.