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Edited by

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[Ram. Rep. 1820. pp. 1.

Present: Giffard, C. J., and Byrne, J.,

No. 3390.

VanDerStraaten v. DeLatre.

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**Heir.—Meaning of in Civil Law and English Law—
Liability of heir for ancestor's obligations—Plea of com-
pensation—What may not be set off—Meaning of liquida-
ted debt.**

1. By the Civil Law, the *heir* inherits all the rights and all the obligations of the testator or intestate: he is considered as one person with him and, except in contracts which can only be executed by the individuals contracting, or in cases where the obligation arises *ex delicto*, the heir is liable though not named in the obligation entered into by the person from whom he inherits.

2. A claim of damages and penalties is always held to be unliquidated, until settled either by a suit at law or the admission of the party.

The facts of the case appear sufficiently in the judgment.

Judgment.

Per—The Supreme Court of Judicature:—

This is a suit brought by the official administrator of the estate of Kronenberg, deceased, to recover Rds. 797.2, being the balance of an account due by the defendant to the intestate Kronenberg. Interest is also demanded by the administrator.

It appears that the intestate had, in pursuance of a contract entered into by him with the defendant, as de-

puty Commissary General, furnished him with beef for the troops in Colombo, from the 31st of December, 1818, to the 24th day of January, 1819, on which day the intestate died. On that day, the accounts stood against the defendant, making him debtor in Rds. 2,297.2.

The plaintiff admits a receipt of Rds. 1500 in liquidation of this balance, on the 26th September, 1819, and he claims interest on the old balance for the interval between January and September, and on the reduced balance of Rds. 797, from September 26th 1819. This is the substance of the plaintiff's libel.

The defendant being an officer acting on behalf of His Majesty's Government, His Majesty's Advocate—Fiscal has been instructed to undertake his defence.

By that defence the ground of the demand, or the amount of beef actually furnished, is not denied, but it is insisted that the intestate having entered into a contract to furnish beef to the troops, under certain conditions of penalty, and his securities having, after his death, failed to execute the contract, the damages and penalties thereby incurred should be set against the present demand.

These damages, according to the calculation in the answer, would have amounted (for the difference between the amount of beef furnished 29th January, 1819, and that supplied from other persons) to Rds. 672; and on the same day a penalty of Rds. 5000 for breach of contract, and on 5th and 6th of February, another penalty of Rds. 5000: being in the whole, damages and penalties Rds. 10672 as against the contractor; and for not urging the demand of this sum the Advocate—Fiscal claims credit for the forbearance of Government.

The case then is that the demand made by the administrator of the intestate's estate for the principal sum of Rs. 797 with interest, is met by a counter demand—a plea of *compensation*, as the Civil Law terms it—for Rs. 12,500.

To this the plaintiff replies by insisting that the contract ceased with the life of the intestate, and that it was so considered by the defendant, who, in February, 1819, entered into a new contract with another person for supplying the troops with beef. And the plaintiff relies upon the fact that the word *heirs* not being introduced into the contract, the *heir* of the intestate is not bound by it.