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biswansis as proprietor, the remaining  $4\frac{1}{2}$  biswas being held by him as mortgagee. There can be no doubt that his decision was an adjudication of a question of title or of proprietary right which, not having been set aside in appeal in the manner provided by s. 9 of Act XIX of 1863, became final, and bars any fresh adjudication of the question so decided. We have therefore no alternative but to allow the appeal and to dismiss the suit by reversal of the lower Court's decree with costs of both Courts.

*Appeal allowed.*

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May 6.

*Before Sir Robert Stuart, Kt. Chief Justice, and Mr. Justice Spankie.*

MANNI KASAUNDHAN (PLAINTIFF) v. CROOKE, SECRETARY TO THE MUNICIPAL COMMITTEE OF GORAKHPUR (DEFENDANT).\*

*Act XV of 1873 (North-Western Provinces and Oudh Municipalities Act), ss. 40, 43—Suit against Secretary to Municipal Committee—Substitution of President as defendant—Act XV of 1877 (Limitation Act), s. 22.*

Where after the notice required by s. 43 of Act XV of 1873 had been left at the Office of a Municipal Committee, such Committee were sued within three months of the accrual of the plaintiff's cause of action in the name of their Secretary, instead of in the name of their President, as required by s. 40 of Act XV of 1873, and the plaintiff applied to the Court more than three months after the accrual of his cause of action to substitute the name of the President for that of the Secretary, held that by reason of such substitution such suit could not be deemed to have been instituted against such Committee when such substitution was made, s. 22 of Act XV of 1877 applying to the case of a person personally made a party to a suit and not to the case of a Committee sued in the name of their officer, and that such substitution when applied for should have been made.

*Semle.*—S. 43 of Act XV of 1873 contemplates suits in which relief of a pecuniary character is claimed for some act done under that Act by a Committee, or any of their officers, or any other person acting under their direction, and for which damages can be recovered from them personally, and not a suit against a Committee for a declaration of the plaintiff's right to re-construct a building which had been demolished by the order of such Committee, and for compensation for such demolition.

This was a suit instituted on the 8th November, 1877, against William Croke, Secretary to the Municipal Committee of Gorakhpur, in which the plaintiff claimed a declaration of his right to re-construct certain buildings which the Municipality had directed to be removed by an order dated the 2nd August, 1877, and com-

\* Second Appeal, No. 1129 of 1878, from a decree of Maulvi Sultan Hasan, Subordinate Judge of Gorakhpur, dated the 29th June, 1878, affirming a decree of Maulvi Azmat Ali, City Munsif of Gorakhpur, dated the 28th January, 1878.

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pensation for the removal of such buildings. Notice of the suit required by s. 43 of Act XV of 1873 was given in the Office of the Municipal Committee. On the 28th January, 1878, the plaintiff prayed that the President of the Municipal Committee might be substituted as a defendant for the Secretary, as the suit should have been instituted against the President and not the Secretary. This application was refused by the Court of first instance. On the same date, which date had been fixed for the settlement of the issues, the Court of first instance dismissed the suit on the ground, amongst others, that the suit should have been instituted against the President of the Committee and not the Secretary, and that, even if the President had been substituted for the Secretary when application was made by the plaintiff in that behalf, the suit would not have been maintainable, regard being had to s. 43 of Act XV of 1873 and s. 22 of Act XV of 1877, as it would have been brought more than three months after the accrual of the plaintiff's cause of action. On appeal by the plaintiff the lower appellate Court concurred in the ruling of the Court of first instance.

The plaintiff appealed to the High Court.

Lala *Lalla Parshad*, for the appellant.

The *Senior Government Pleader* (Lala *Juala Parshad*), for the respondent.

The judgment of the Court was delivered by

SPANKIE, J.—The plaintiff appears to have made the Secretary, instead of the President, of the Municipal Committee, defendant. When he asked the Court to make the President defendant, it refused to do so, and the Courts have held that, though the suit as against the Secretary was in time, it was not so against the President, even if his name had been substituted for that of the Secretary, as it would have been brought more than three months after the accrual of the cause of suit (s. 43, Act XV of 1873).

Notice of the action required by s. 43 was given in the Office of the Municipal Committee. It is true that the suit ought to have been instituted against the Committee in the name of the President, and that if s. 22 of the Limitation Act applied, and the name of the Secretary had been struck out and that of the President added, more than three months would have elapsed from the accrual

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of the cause of action. But the suit is not against the President personally, and s. 22, Act XV of 1877, seems to apply to new plaintiffs and defendants personally made parties to a suit after its institution rather than to cases like the present, where a Committee is sued through their officer, and a clerical error is corrected by the Court, and the substitution as defendant of the proper officer for the wrong one might be permitted. It was an error of form only and not an act of wilfulness, and the Committee who are really sued have had full notice of action. Moreover the suits contemplated by the Act seem to be those claiming relief of a pecuniary character for some act done under the Act (XV of 1873) by the Committee, or any of their officers, or any other person acting under their directions, and for which damages can be recovered from them personally. The last paragraph of s. 43 bars all recovery if the person to whom the notice prescribed by the section has been given before the suit is brought tenders sufficient amends to the plaintiff.

The present suit is one to prove the right of plaintiff to build certain verandahs and a platform, which he avers were demolished by order of the Committee, and for which compensation is sought. It may be said that if notice to the Committee was required, it has been given, and that the Courts below should have substituted the name of the President in lieu of the Secretary and have tried the case on the merits. Substantially the requirements of the Act have been complied with, and the substitution of the name of the President for that of the Secretary is not affected by s. 22 of the Limitation Act, the suit against the Committee having practically been instituted within three months after the accrual of the cause of action.

On the other hand, if this is not one of the suits contemplated by Act XV of 1873, it is not at all affected by s. 43 of the Act, and would be certainly within time if the name of the President was substituted for that of the Secretary. Either way the substitution should be made and the case should be heard on the merits. We therefore decree the appeal, remand the case through the Judge to the first Court, for amendment of the plaint by the substitution in it of the President as provided by s. 40, Act XV of 1873, and for the disposal of the case on its merits. Costs to abide the result.

*Cause remanded.*