

an order passed under section 476. But from the very words used by the Assistant Collector it is evident that his intention was, and that he did make in writing an allegation to the Collector of the District, with a view to the Collector taking action under the Code of Criminal Procedure, that Sundar Sarup had committed an offence under section 193 of the Indian Penal Code. The Collector of the District is also Magistrate of the District. As Magistrate of the District he considered this allegation and he acted upon it. Is his action to be taken as being without jurisdiction, because when it was addressed to him as Collector he took action upon it as Magistrate? If he had taken action upon it as the Collector this Court could not have considered the order in revision (see *In the matter of the petition of Bhup Kunwar*, Weekly Notes, 1904, p. 15), but he took action upon it as Magistrate; and in revision I prefer to follow the principles laid down in *In the matter of the petition of Alamdar Husain* (1), and decline to interfere, merely because, for after all it only amounts to this, the Magistrate of the District was in the proceeding of the Assistant Collector described as Collector of the District. If the Assistant Collector in his proceedings had directed that the record of the case be laid before the District Magistrate, there is no question that the District Magistrate being a Magistrate of the first class would have had jurisdiction to pass the order he did in spite of the otherwise imperfect and slovenly terms in which the order was couched. I dismiss the application.

*Application dismissed.*

## APPELLATE CIVIL.

*Before Mr. Justice Blair and Mr. Justice Banerji.*

GAYA DIN (DECREE-HOLDER) *v.* HIRA LAL (APPLICANT).  
*Civil Procedure Code, section 351(d)—Insolvency—“Any other act of bad faith.”*

One H. L. being the servant of a trading firm misapplied moneys of the firm. The firm obtained a decree against him for the refund of some nine

\* First Appeal No. 86 of 1903 from an order of T. C. Pigott, Esq., District Judge of Moradabad, dated the 30th of May 1903.

(1) (1901) I. L. R. 28 All., 249.

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hundred and odd rupees, and in execution thereof caused H. L. to be arrested. H. L. filed a petition praying for a declaration of insolvency.

*Held* that the application must fail, the misappropriation by H. L. of the money of his employers, amounting to an act of bad faith regarding the matter of the application within the meaning of section 351 of the Code of Civil Procedure, clause (d). *Gopal Das v. Bihari Lal* (1) followed.

THIS was an appeal by the sole creditor from an order of the District Judge of Moradabad granting the application of one Hira Lal to be declared an insolvent. Hira Lal had been a clerk in the firm of which the appellant was the head. He was dismissed from his employment and prosecuted for embezzlement of money belonging to the firm, but in this case he was discharged. Gaya Din, the head of the firm, then sued him in the Munsif's Court on certain entries in the firm's account books and got a decree for some nine hundred and forty rupees. On being arrested in execution of this decree, Hira Lal filed an application to be declared an insolvent. The granting of this application was opposed by Gaya Din, but unsuccessfully, and he accordingly appealed to the High Court.

Babu *Durga Charan Banerji*, for the appellant.

Pandit *Sundar Lal* and Pandit *Baldeo Ram Dave*, for the respondent.

BLAIR and BANERJI, JJ.—This is an appeal from an order declaring the respondent an insolvent. The appellant is the only creditor of the respondent. It appears that the respondent was employed in the firm of the appellant and was charged with having embezzled money belonging to the appellant. It is in respect of the amount so embezzled that the appellant obtained the decree in execution of which he caused the respondent to be arrested. It is contended before us that the embezzlement was an act of bad faith within the meaning of clause (d) of section 351 of the Civil Procedure Code, and that consequently the respondent is not entitled to be declared an insolvent. This contention is borne out by the ruling of the Full Bench in *Gopal Das v. Bihari Lal* (1). In that case it was held that the words "any other act of bad faith" mentioned in clause (d) mean "any act of bad faith not before mentioned in section 351 which bears directly upon the conduct of the debtor in the

matters leading up to the application for insolvency, and would not exclude any act of bad faith by which he had incurred a then subsisting liability to any of his creditors." As the liability in respect of which the appellant got his decree against the respondent was a liability which arose out of an act of bad faith, the respondent's case comes within clause (d) of section 351, and he should not have been declared an insolvent. We accordingly allow the appeal, and, setting aside the order of the Court below, dismiss the respondent's application for a declaration of insolvency with costs in both Courts.

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 GAYA DIN  
 v.  
 HIRA LAL.

*Appeal decreed.*

*Before Mr. Justice Knox and Mr. Justice Aikman.*

RAM CHANDAR SINGH AND ANOTHER (PLAINTIFF) v. TOHFAH BHARTI  
 DEFENDANT.\*

1904  


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 March 21.

*Act No. XV of 1877 (Indian Limitation Act), schedule II, article 97—Limitation—Suit on covenant in sale deed for repayment of consideration money in event of vendee being dispossessed—Terminus a quo.*

The plaintiffs, vendees of immovable property, sued upon a covenant in their sale deed to recover the consideration money paid by them alleging that certain persons had obtained, as co-sharers in the property sold, a decree against them for possession on the 1st of October 1894 and had actually dispossessed them on the 18th of April 1898. The suit was filed on the 1st of March 1901.

*Held* that on the cause of action stated in the plaint the suit was within time. *Bul Chand v. Parmanand* (1) distinguished.

On the 28th of August 1891 the defendant sold to the plaintiffs certain land for a consideration of Rs. 251. It was stipulated in the sale deed that "if for any reason the whole or part of the property sold pass out of the possession of the vendees, and if anyone should come forward as my co-sharer or partner and claim the property sold, I shall be liable for it and the vendees shall have nothing to do with it. I shall pay to the vendees the whole of the sale consideration with interest at Re. 1 per cent. per mensem from the date of the execution of the sale deed." A suit was brought by Budha Bharti and

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\* Second Appeal No. 1074 of 1901 from a decree of Munshi Achal Behari, Extra Additional Subordinate Judge of Aligarh, dated the 15th of July 1901, confirming a decree of Babu Hira Lal, Munsif of Bulandshahr, dated the 31st of May 1901.