

prayed by him in his petition of the 26th October, 1881. The Judge has taken an erroneous view of s. 351 of the Procedure Code, and has assumed a wider discretion than the law confers on him. If a person making an application to be declared an insolvent has not brought himself within clauses (a), (b), (c) or (d) of s. 351, then the Court has no discretion on other grounds to refuse his petition. The bad faith, the reckless contracting of debts, the unfair preference of creditors, the transfer, removal or concealment of property, the making false statements in the application are all dealt with by s. 351, and are intended to confine the category of acts of misconduct that will debar the applicant from obtaining the relief and protection he asks. As far as we can see there is no real evidence to support the hasty conclusions as to the conduct of the present appellant at which the Judge has arrived, and before coming to them he should have been careful to record the formal evidence of the creditors, who he alleges were dishonestly dealt with by the applicant. As we have, however, already pointed out, this is altogether beside the question, the creditors whether rightly or wrongly had converted the obligations of the appellant to them into a judgment-debt, and under the terms of s. 351 it was no part of the Judge's duty to go behind the decrees to see in what way the debts had been incurred. The appeal is therefore decreed without costs, and we declare the appellant an insolvent, and order his discharge.

Appeal allowed.

FULL BENCH.

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March 21.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Oldfield, Mr. Justice Brodhurst, and Mr. Justice Tyrrell.

BIRJ MOHAN SINGH AND OTHERS (PLAINTIFFS) v. THE COLLECTOR OF ALLAHABAD AS PRESIDENT OF THE MUNICIPAL COMMITTEE OF ALLAHABAD (DEFENDANT).*

Suit against Municipal Committee—Claim for a declaration of right—Limitation—Act XV of 1873 (N.-W. P. and Oudh Municipalities Act), s. 43—Act XV of 1877 (Limitation Act), sch. ii, No. 120.

A Municipal Committee refused the lessee of certain land permission to establish a market thereon, such lessee having applied for such permission on behalf of

* Appeal under s. 10 of the Letters Patent No. 6 of 1881.

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the owners of such land. Subsequently such Municipal Committee refused the owners of such land such permission on their applying themselves for it. Thereupon the owners of such land sued such Municipal Committee for a declaration of their right to establish such market, and for a perpetual injunction restraining the Collector as President of the Committee from interfering with their so doing.

Held by the Full Bench (reversing the decision of DUTHOIT, J., and affirming that of STUART, C. J.,) that such suit was not barred by limitation under the provisions of s. 43 of Act XV of 1873, because it had not been brought within three months after the date of the alleged cause of action, inasmuch as the provisions of that section were only applicable to suits brought against a Committee for something done under the Act in which compensation was claimed, and not to those in which compensation was not claimed.

Held also by the Full Bench (confirming the decision of STUART, C. J.,) that the refusal of the Municipal Committee to allow the plaintiffs' lessee to establish the market gave them a cause of action.

THIS was an appeal to the Full Bench, under s. 10 of the Letters Patent, from the judgment of Duthoit, J., in second appeal No. 1366 of 1880 decided by him and Stuart, C. J., on the 23rd August, 1881. That case is reported at p. 102 of this volume and the report contains the judgments of the learned Judges who decided it. The facts of the case are stated in those judgments and in the judgment of the Full Bench.

Pandit *Ajudhia Nath*, for the appellant.

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

The Full Bench delivered the following judgments :—

OSFIELD, J., (STRAIGHT, J., BRODHURST, J., and TYRRELL, J., concurring).—The plaintiffs, as owners of certain lands within the Municipality of Allahabad, brought this suit against the Collector of Allahabad as President of the Municipal Committee in consequence of the refusal of the Committee to allow them to erect buildings and to open a market on their land. It appears that one Mahangu representing plaintiffs made an application to the Committee on the 27th September, 1878, for leave to establish a market and build houses and shops on the land, and his request was refused on the 26th November, 1878, and on the 22nd November of the same year three of the plaintiffs addressed a petition, which they sent by post, to the Committee on the same subject, requesting that they might not be prevented from constructing the market,

buildings, and shops, of which petition no notice was taken. The plaintiffs then brought this suit in which they ask (i) that they be declared competent and entitled to build shops and establish a market on the land owned by them, and (ii) that a perpetual injunction be issued to the defendant as representing the Municipality directing him not to interfere with or obstruct the building of shops and the establishment of a market as claimed. They assert that the denial of the exercise of their proprietary right is calculated to cause them substantial injury, and they allege as their cause of action the order dated the 26th November, 1878, by which their application was rejected. The material part of the defence set up was that the suit is barred by the limitation of three months provided in s. 43 of Act XV of 1873; that the plaintiffs had disclosed no cause of action; and there were other pleas affecting the merits of the claim. The Munsif dismissed the suit on the ground that the Municipality acted within their powers in refusing the permission to establish a market and build shops; and the lower appellate Court (*i.e.*, the Subordinate Judge), without entering into the question of limitation or the merits of the case, affirmed the decree on the ground that the plaintiffs had shown no cause of action against the defendant, inasmuch as the only person who could maintain the suit on the facts disclosed in the plaint was Mahangu. An appeal was preferred by the plaintiffs to this Court, which was heard by the Chief Justice and Mr. Justice Duthoit. The plaintiffs directed their contention against the ground on which the judgment of the lower appellate Court had proceeded, and contended that the rejection of the applications made by some of the plaintiffs and Mahangu afforded a good ground of action; and for the respondents, the plea of limitation was raised. The learned Chief Justice held that the ground on which the lower appellate Court's decision proceeded could not be supported, and that the plea of limitation set up by respondents failed, and he was in favour of reversing the decree of the lower appellate Court, and remanding the case to that Court for disposal on the merits. Mr. Justice Duthoit, on the other hand, held that the suit was barred by the limitation of three months under s. 43 of Act XV of 1873; and his judgment affirming those of the lower Courts prevailing, this appeal has been preferred to the Full Bench of this Court; and it

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raises the two questions which came for disposal before the Chief Justice and Mr. Justice Duthoit.

We have no hesitation in holding with the Chief Justice that s. 43 does not apply to a suit of the nature of the present, which is one for a declaration of a right to establish a market and build shops on the plaintiffs' land, and for an injunction to the defendant not to interfere with or obstruct the plaintiffs, and is not a suit brought for damages for any thing done under the Act.

The law on the subject appears to us to have been correctly stated by the Divisional Bench of this Court in the case to which the Chief Justice has referred.—*Manni Kasaundhan v. Crooke* (1).

On the second point we observe that the Subordinate Judge's decision appears to proceed on the ground that the plaint does not disclose any privity between plaintiffs and Mahangu, or any injury to the plaintiffs in consequence of the refusal to grant Mahangu's application.

The plaint does not, however, appear to us to be open to this objection, since the plaintiffs in their plaint refer to the application made by Mahangu as made on their behalf, and refer to the rejection of that application and of their subsequent application as the ground of their action and as calculated to cause them substantial injury, and as a matter of fact it does not appear to be disputed that Mahangu was acting on their authority. The rejection of these two applications, for the last was practically rejected, gave the plaintiffs a right of suit for the relief claimed.

We therefore decree the appeal, and in pursuance of the order of the Chief Justice, the decree of the Subordinate Judge will be reversed, and the case remanded to him for disposal on the merits. Costs will abide the result.

STUART, C. J.—As my colleagues not only concur in my opinion, but in stating their views have gone over the same ground taken in my judgment in the Division Bench, it is unnecessary for me to say more than that I adhere to that judgment in all respects.

Cause remanded.