

met as to the matter of sale of the bill, or, in the words of the Contract Act, there was no consent, as they did not agree about the contract in the same sense, the plaintiffs cannot under the circumstances of this case recover the amount of the bill from appellant, because it is clear that Jhamman was guilty of gross negligence in taking the bill and keeping it so long without ascertaining its character and applying for redress, by which circumstances have changed and the position of the parties has been altered, and they cannot be put back into their original position. The bill on the face of it shows that appellant only acted as an agent, and if Jhamman could not read English, he should have had the bill explained; instead of this, on his own showing, he kept it by him for a week, taking no action in the matter, while in the meantime the firm failed, and appellant had expended the money, not on himself personally, but in the business of the firm for which he was agent.

We decree the appeal and modify the decree of the lower Court, by dismissing the suit against appellant Nightingale. Appellant will have his costs in both Courts.

Appeal allowed.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

SALAMAT ALI (JUDGMENT-DEBTOR) *v.* MINAHAN AND OTHERS
(DEOREE-HOLDERS).

Insolvent judgment-debtor—Act X. of 1877 (Civil Procedure Code), s. 351.

A judgment-debtor applied to be declared an insolvent. Certain of the claims against him were claims under decrees. The Court of first instance refused the application, notwithstanding the statements in the application were substantially true, and the applicant had not committed any act of bad faith mentioned in s. 351 of the Civil Procedure Code, on the ground that the applicant had contracted the debts for which such decrees had been made dishonestly, and that section gave the Court in such a case a discretionary power to refuse the application.

Held that the Court of first instance had taken an erroneous view of s. 351, and had assumed a wider discretion than the law conferred on it. If a person making an application to be declared an insolvent has not brought himself within clauses (a), (b), (c) or (d) of that section, then the Court has no discretion on other grounds to refuse the application. 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

* First Appeal, No. 3 of 1882, from an order of R. D. Alexander, Esq., Judge of the Court of Small Causes at Allahabad, exercising the powers of a Subordinate Judge, dated the 22nd December, 1881.

1882

NIGHTINGALE
v.
FAIZ-ULLA.

1882
March 20.

1882

in 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.

SALAMAT ALI
v.
MINAHAN.

THIS was an appeal from an order of R. D. Alexander, Esq., Judge of the Court of Small Causes at Allahabad, exercising the powers of a Subordinate Judge, refusing an application by the appellant to be declared an insolvent under Chapter XX. of the Civil Procedure Code. Four of the six claims against the appellant mentioned in this application were claims under decrees. These claims all arose in the following manner. In each case the appellant, who acted as a broker, principally in horses, hearing that a person had property for sale, had gone to such person and told him that he knew of a purchaser, who was willing to give so much, and that if the owner would give him the property and allow him so much commission, he would return with the balance. The property had accordingly been given to him, and after a few days he had returned, bringing a sum far less than the price he had stated, and said that the purchaser would not give more. The owner had refused to receive this amount, and had sued him for the value of the property, and obtained a decree against him. Having regard to the manner in which these four claims arose, the Small Cause Court Judge refused to grant the application, holding that the words "may declare" in s. 351 of the Civil Procedure Code gave him a discretionary power to refuse the application in a case where debts had been contracted as they had been in this case, notwithstanding the statements in the application were substantially true, and the applicant had not committed any act of bad faith mentioned in that section.

On behalf of the appellant it was contended that the conditions of s. 351, having been satisfied, the Small Cause Court Judge had no option but to declare him an insolvent.

Mr. *Hill*, for the appellant.

One of the respondents (creditors) appeared in person: the others did not appear.

The judgment of the Court (STRAIGHT, J., and TYRRELL, J.,) was delivered by

STRAIGHT, J.—We are of opinion that this appeal should prevail and that the appellant is entitled to be declared an insolvent as

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.

1882.
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.