

1883
January 11.

APPELLATE CIVIL.

Before Sir Robert Stewart, Kt., Chief Justice, and Mr. Justice Tyrrell.

MADHO PRASAD (CREDITOR) v. BHOLA NATH (INSOLVENT).*

*Insolvent—Creditor when to prove debt—Application by “unscheduled” creditor—
Civil Procedure Code, ss. 352, 353—Meaning of “then” in s. 352.*

A judgment-debtor was declared an insolvent, and a receiver of his property appointed, under s. 351 of the Civil Procedure Code, and his creditors were ordered to come forward and prove their claims within a certain time. No creditor came forward for that purpose within such time, and in consequence the case was struck off the file, and the order appointing a receiver cancelled, and no schedule was framed under s. 352. Subsequently a creditor applied to have his name entered in such schedule. *Held* that the applicant, notwithstanding no schedule had been framed, was an “unscheduled” creditor, and was therefore entitled, under s. 353 of the Civil Procedure Code, to make the application.

On the 2nd March, 1882, Bhola Nath, the respondent in this case, was declared an insolvent under s. 351 of the Civil Procedure Code, and his creditors were given fifteen days to come forward and prove their claims under s. 352. No creditor came forward for that purpose. On the 1st April, 1882, the case was struck off, and the order stating that a receiver would be appointed was cancelled. In consequence no schedule of creditors whose debts had been proved was framed as required under s. 352. Subsequently Madho Das, the appellant, one of the creditors, applied to have his name inserted in the schedule of creditors whose debts had been proved. The lower Court refused this application, on the ground that no schedule of creditors whose debts had been proved had been framed as required by s. 352, owing to the laches of the appellant and the other creditors, and therefore the appellant was asking for an impossibility.

On appeal to the High Court the appellant contended that the lower Court should have entertained his application under s. 353, and the fact that it had not framed a schedule under s. 352 was not a bar to its entertaining the application under s. 353; and that the lower Court should have framed a schedule of the debts which were admitted by the insolvent himself in his application to be declared an insolvent, and the appellant's name should have

* First Appeal No. 102 of 1882, from an order of R. D. Alexander, Esq., Judge of the Court of Small Causes at Allahabad, dated the 27th May, 1882.

been entered in such schedule, as he did not claim more than the insolvent admitted to be due to him.

Babu *Ram Das Chakarbat*i, for the appellant.

The respondent did not appear.

The Court (STUART, C. J., and TYRRELL, J.) delivered the following

JUDGMENT.—The appellant is clearly an unscheduled creditor, and is not the less so because no schedule had been framed. He is therefore entitled, under s. 353 of the Civil Procedure Code, to apply to the Court, which had exercised insolvency jurisdiction in favour of his debtor, to receive evidence of the amount and particulars of his pecuniary claim against the said debtor, who had been declared an insolvent under s. 351 *supra*, and to seek for the insertion of his name in a schedule to be framed by the Court, as a creditor for the debt he may succeed in proving. The limitation of ninety days provided by law for making such an application (see art. 174 of the Limitation Act) had not expired when the appellant made his application, and it was therefore wrongly rejected by the Court below, which has misapplied s. 352 to the case, and has misunderstood the word “then” as contained in that section. This word refers to sequence of procedure, and not to periods of time or dates. In other words, it is logical, as distinguished from chronological, in its import. We set aside that order, and direct the Court now to entertain the application, and to dispose of it according to law.

Before Mr. Justice Straight and Mr. Justice Brodhurst.

TEGH SINGH (PLAINTIFF) v. AMIN CHAND AND ANOTHER (DEFENDANTS)*

Uncertified adjustment of decree—Civil Procedure Code, s. 258—Question as to adjustment between decree-holder and third party.

Certain immoveable property having been attached in execution of a decree for money, dated in 1879, directing the sale of such property, T, who had purchased such property in 1880, objected to the attachment. His objection having been disallowed, he sued to establish his right to the property and for the removal of the attachment. He claimed on the ground, amongst others, that the decree of 1879 had been wholly adjusted. The alleged adjustment had not been certified under s. 258 of the Civil Procedure Code. *Held* that the provisions of that sec-

* Second Appeal No. 708 of 1882, from a decree of H. G. Keene, Esq., Judge of Saharanpur, dated the 30th March, 1882, reversing a decree of K. Scott, Esq., Subordinate Judge of Dehra Dun, dated the 13th February 1882.

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