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their Lordships of the Judicial Committee, which have been quoted in the decision to which reference is made by the learned Judges who decided I. L. R., 48 All., 468, are to the effect that litigants in the proceedings must act in good faith, but it is nowhere laid down that a man acts in bad faith if he in his heart is not really anxious to secure the remedy to which he is entitled under the law and for which he has applied. *Mala fides* may stand in the way of a litigant being granted relief, but we are not convinced that the circumstance that a man does not really wish to obtain the execution for which he has asked, is an act of bad faith which would render an application made by an applicant, who did not really wish the relief sought, an application which is not in accordance with law. For the above reasons we dismiss these appeals with costs.

*Appeals dismissed.*

## APPELLATE CIVIL.

*Before Sir Louis Stuart, Knight, Chief Judge and  
Mr. Justice Muhammad Raza.*

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March, 8.

MATHURA PRASAD (PLAINTIFF-APPELLANT) v. CHAIRMAN, DISTRICT BOARD, SITAPUR (DEFENDANT-RESPONDENT).\*

*United Provinces District Boards Act (X of 1922), section 192—District Board, suit against—Suit for price of work done for a District Board, whether a suit against the Board “in respect of an act done by the Board”—Limitation Act (IX of 1908), Article 56—Limitation for suit for recovery of price of work done for the Board.*

Where the plaintiff brought a suit against a District Board for the price of work done by him at the latter's request, when the Board did not settle his account, *held*, that the suit

\*Second Civil Appeal No. 309 of 1927, against the decree of Mahmud Hasan Khan, Subordinate Judge of Sitapur, dated the 21st of May, 1927, confirming the decree of Pardaman Kishun Kaul, Munsiff, Sitapur, dismissing the plaintiff's suit.

was not instituted against the Board in respect of an act done by them, and so the provisions of section 192 of District Boards Act, X of 1922 (local) did not apply to it. It was a suit instituted in respect of an act done by the plaintiff, namely, the work which he had done and he was asking payment thereof, and where no time had been fixed for payment the ordinary period of limitation under Article 56 of the First Schedule of Act IX of 1908 was three years from the time when work had been done.

Mr. *S. C. Das*, for the appellant.

Mr. *H. K. Ghosh*, for the respondent.

STUART, C. J. and RAZA, J. :—This appeal has arisen in the following manner. The plaintiff is a contractor. He entered on the 30th of September, 1920, into a written contract with the District Board of Sitapur to make certain constructions on their behalf. These constructions were not completed in April, 1923, and with the consent of the District Board the plaintiff was relieved from his obligations under the contract apparently on an understanding that accounts should be settled on the basis of the work done. The plaintiff's case is that he handed over to the District Board, which itself had undertaken to complete the constructions certain materials and that, after credit had been given to him for the work which he had done and for the materials which he had supplied, and after advances made to him had been debited to the account, there was a balance in his favour on the 19th of April, 1923. According to him he was not in a position to discover the exact amount of this balance until later. He issued a notice on the 5th of October, 1925, which was apparently intended to be issued to the Board, but it actually was issued to the Deputy Commissioner of Sitapur who in the year 1925 had no connection with the Board and no responsibility in the matter. In this notice he also very foolishly, in addition to making his claim for the balance which he alleged to be due, added a somewhat preposterous claim

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for damages for what he alleged had occurred as far back as 1920. This claim for damages has since been withdrawn. The Board did not settle his account. He instituted a suit against them on the 25th of February, 1926. The Board in reply took two main defences. The first was that no suit could be instituted against them under the provisions of section 192, Local Act X of 1922 in connection with this matter until the expiration of two months next after notice had been left at its office and that no notice had been received. They further took the position that the cause of action had accrued more than six months before the date of the institution of the suit and that, therefore, the suit was also barred under the provisions of section 192. Both courts have decided in favour of the Board on these points. It is quite clear to us that if the issue of a notice under section 192 were required the plaintiff's suit must fail, for no notice had been left at the Board's office; but we are of opinion that no notice was necessary. Section 192 clause (1) says: "No suit shall be instituted against a Board . . . . . . . . . . in respect of an act done or purporting to have been done in its . . . official capacity, until the expiry of two months next after notice in writing has been in the case of a Board left at its office . . ." And clause (3) states: "No action such as is described in subsection (1) shall, unless it is an action for the recovery of immovable property or for a declaration of title thereto, be commenced otherwise than within six months next after the accrual of the cause of action." If this is not a suit instituted against a Board in respect of an act done or purporting to have been done in its official capacity the provisions of the section have no application and limitation will be decided by the provisions of Act IX of 1908. We have examined the plaintiff's pleadings which are exceedingly bad and reflect very little credit on the person who drafted them. The pleadings on behalf of

the Board leave also much to be desired. This much, however, appears certain to us. This was a suit for the price of work done by the plaintiff for the defendant at his request where no time had been fixed for payment and the ordinary period of limitation under Article 56 of the First Schedule of Act IX of 1908 was three years from the time that the work had been done. Now the plaintiff's work had been done on the 19th of April, 1923, and the suit was filed on the 25th of February, 1926, and was thus clearly within limitation unless section 192, Local Act X of 1922 has operation. The suit was for the price of work done and it certainly was not instituted against the Board in respect of an act done by them. It was instituted in respect of an act done by the plaintiff, namely, the work which he had done, and he was asking for payment therefor. Whether the position would have been altered had there been a distinct act on the part of the Board by way of refusal of a definite nature to admit his claim is a question which does not arise here, for we cannot find that there was any such refusal on the part of the Board, whatever may have been the nature of the letters sent to the plaintiff by officials of the Board. In these circumstances we do not find that the suit is time-barred. As the suit has been dismissed on a preliminary point and we have reversed that decision on appeal we send the suit back to the learned Munsif in whose court it was instituted or his successor under the provisions of order XLI, rule 23 to readmit it under its original number in the register of suits and to try it upon the merits. Costs here and heretofore will follow the result.

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*Case remanded.*