

does not therefore, in my opinion, fall within the words of the 17th section of the Registration Act. Whether a Court of Equity would, under given circumstances, consider a party who had signed such a document as this to be in the same position as if he had actually executed the contemplated lease or its counterpart, is another question altogether.

Attorneys for the plaintiffs: Messrs. Pittar and Cowell.

Attorneys for the defendants: Mr. Watson.

1871  
 HAJI ABDUL  
 VIDONA  
 JONAS  
 v.  
 HAJI HARONE  
 ESMILE.

*Before Mr. Justice Paul.*

*In re GURUDAS BOSE.*

*Act VIII of 1859, s. 281—Discharge of Prisoner—Bad Faith.*

1871  
 Mag<sup>2</sup> 5,

“Bad faith,” in section 281 of Act VIII of 1859, refers only to bad faith in respect of an application under that section.

THIS was an application by an attorney for the discharge of a prisoner under Act VIII of 1859, section 281. It appeared, on the examination of the prisoner, that a debt of Rs. 1,200 was due to the prisoner from one Bhuban Mohan Bose. This debt the prisoner had not disclosed.

The cases of *The Oriental Bank v. Manimulhab Sen* (1) decided by, Macpherson, J., and *Smith v. Boggs* (2) decided by Norman, J., were referred to.

PAUL, J.—I am in favour rather of the opinion of Mr. Justice Macpherson than of the view taken by Mr. Justice Norman. I think that the words “bad faith” in section 281 of Act VIII of 1859 mean bad faith in respect of the application, and do not refer to bad faith on previous occasions. The prisoner has concealed a debt owing to him which he ought to have disclosed. He has not brought himself within the terms of the section. His discharge is refused.

*Before Mr. Justice Phear.*

SONAMALL v. SUDARAM ROTTI.

*Taking Plaintiff off the File*

1871  
 June 26.

THIS was an application to take a plaintiff off the file, on the grounds, first, of indefiniteness; secondly, that the plaintiff had not deposited security in accordance with section 34 of Act VIII of 1859. The plaintiff was resident out of the British territories in India, but he had a shop in which he carried on business in Calcutta. The suit was for sums due on a balance of account in respect of mutual dealings between the plaintiff and defendant. The plaintiff, which was filed on December 12th 1870, stated that the cause of action arose “previous to 21st August 1869,” but did not show that the suit was not barred

(1) 3 B. L. R., App., 14.

(2) 5 B. L. R., App., 22.

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SONAMALL  
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ROTTI.

by the Law of Limitation. No application had been made by the defendant that the plaintiff should be ordered to deposit security, nor had the defendant filed his written statement.

Mr. *Evant*, in support of the application, contended that the plaintiff should be taken off the file; for anything therein appearing, the suit might be barred by lapse of time—*Luckey Money Dossee v. Khetter Coomary Dossee* (1). The plaintiff not having deposited security at the time of presenting the plaint, nor obtained any extension of time for doing so, had not acted in accordance with the provisions of section 34 of Act VIII of 1859, and the Court could not now entertain the suit.

Mr. *Lowe contra*—The defendant might have made an application that the plaintiff should furnish security, but he has never done so. The time for doing so has now elapsed; the plaintiff has filed a written statement. The whole cause of action arose here—*Joan Mull v. Mynoo Lall* (2). The time the cause of action arose may be stated with certainty in the written statement. [Mr. *Evans* objects to the written statement being referred to. PHEAR, J.—Has it not been held that the date of the cause of action must be stated in the plaint? (3)]. The plaint and written statement are to be taken together. The plaintiff is carrying on business in Calcutta. Section 34 does not apply to persons resident out of British territories who are carrying on business and have property in the local limits. [PHEAR, J., to Mr. *Evans*.—You do not deny the carrying on business in Calcutta. Mr. *Evans*.—No: but the section says “not possessing any immoveable property.” It is not shown that the plaintiff has any property at all. If unsuccessful, he may take himself off at once out of the jurisdiction.] The plaint may be amended by adding to it the statement that the suit was brought on a balance of account in respect of dealings between 24th December 1868 and November 4th, 1869. [Mr. *Evans* objected that this was not consistent with the plaint, which alleged the cause of action arose prior to August 1869.]

PHEAR, J.—I think I must order the plaint to be taken off the file. If the plaintiff's amendment is correct, he will not be damaged by this course; if incorrect, the suit cannot be maintained. The plaintiff will pay the costs. If necessary, leave will be given now to bring a fresh suit.

Attorney for the plaintiff: Mr. *Linton*.

Attorneys for the defendant: Messrs. *Robertson & Co.*

(1) 2 Ind. Jur., N. S., 117.

(2) 1 Ind. Jur. N. S., 219.

(3) See Ind. Jur., O. S., 13; and 2 Ind. Jur., N. S. 311.