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and it was held that the appellants having *bond fide* accepted the advice of their pleaders, there was sufficient cause within the meaning of section 5 of the Limitation Act of 1877 for not presenting the appeal within time. In the judgment there is a review of the authorities dealing with this question, and the true principle is stated which should guide the courts in deciding questions of the kind. One of us was a party to that judgment. We have no hesitation in holding that when a client *bond fide* accepts the advice of counsel as to the proper procedure to adopt in the course of litigation and, misled by that advice, fails to file an appeal in time, he is entitled to the benefit of section 5 of the Limitation Act and should not be visited with the serious penalty which is involved in the rejection of his appeal. We think that the views entertained by the court in the case to which we have referred lay down the true principle upon which the courts should be governed in determining the question whether sufficient cause for not presenting an appeal within time has been shown. We therefore allow this appeal; set aside the order of the learned Judge of this court, and direct the appeal be admitted. We say nothing as to costs.

Appeal decreed.

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February 14.

Before Mr. Justice Sir George Knox and Mr. Justice Aikman.

GANGA RAM AND OTHERS (DEFENDANTS) v. MIHIN LAL (PLAINTIFF).*

Parties to suit—Defendant improperly impleaded as a minor—No objection raised by defendant during suit—Subsequent suit for declaration that decree was not binding on defendant—Estoppel.

A certain defendant was impleaded in a suit as a minor under the guardianship of his mother, who was his certificated guardian. He and his mother jointly defended the suit, and at no period did the defendant raise the objection that he was not a minor when the suit was instituted. A decree was passed in favour of the plaintiff and no appeal was preferred either by the defendant or his guardian *ad litem*. Held that it was not competent to the defendant to sue subsequently to have the decree declared not binding upon him, upon the ground that he was in fact of full age when it was instituted and that his mother had betrayed his interests. *Sheorania v. Bharat Singh* (1) and *Hanuman Prasad v. Muhammad Ishaq* (2) distinguished.

* Second Appeal No. 574 1904, from a decree of Maulvi Maula Baksh, Additional Subordinate Judge of Aligarh, dated the 19th of April, 1904, confirming a decree of Babu Banke Behari Lal, Munsif of Haveli Koil, dated the 4th of May, 1903.

(1) (1897) I. L. R., 20 All., 90.

(2) Weekly Notes, 1905, p. 229.

THE facts of this case sufficiently appear from the judgment of the Court.

Babu *Jogindro Nath Chaudhri* (for whom Babu *Sarat Chandra Chaudhri*), for the appellants.

Hon'ble Pandit *Madan Mohan Malaviya* (for whom Pandit *Mohan Lal Nehru*), for the respondents.

KNOX and AIKMAN, JJ.—This second appeal arises out of a suit brought by one *Mihin Lal*, who is respondent here, for a declaration that his share in certain property, which had been mortgaged by his father and uncle, was not liable to sale in execution of a decree obtained upon the mortgages. The suit was instituted after the death of the plaintiff's father. The plaintiff was made a defendant to the suit, which was instituted on the 27th August, 1897. In the plaint in that suit *Mihin Lal* was described as a minor and his mother, *Musammât Mohini*, who had been his certificated guardian, was appointed guardian *ad litem*. It is found that *Mihin Lal* had attained majority just one fortnight before the suit was instituted. In the plaint in the present suit *Mihin Lal* throughout alleges that his mother had colluded with the appellants and had allowed the decree to pass, and owing to collusion did not appeal from it. He further alleges that he did not come to know of the decree which was passed on the 13th of January, 1898, until the 26th of November, 1900, when the sale notification was issued. All these allegations are found to be false, and it is further found that jointly with his mother he defended the claim. The lower appellate Court relies upon the decision of this Court in *Sheorania v. Bharat Singh* (1) and the learned vakil for the respondent relies further upon the case of *Hanuman Prasad v. Muhammad Ishaq* (2). Both of these cases are clearly distinguishable from the present case. In our opinion the plaintiff's suit ought to have been dismissed. His allegations of collusion and as to the date when he came to know of the passing of the decree have been found to be false. He was a defendant to the original suit. He undoubtedly had notice of it; and if he thought that his interests were not properly safeguarded by his mother, he could have applied to have her removed and to be allowed to

(1) (1897) I. L. R., 20 All., 90.

(2) Weekly Notes, 1905, p. 229.

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defend the suit. He stood by and did not do so. There is no allegation that the debt was tainted with immorality. On these grounds we think that this appeal must succeed. We set aside the decrees of the Courts below, and we dismiss the plaintiff's claim with costs in all Courts.

Appeal decreed.

1906
February 15.

Before Mr. Justice Banerji and Mr. Justice Richards.

SHIB KUNWAR SINGH (DEFENDANT) v. SHEO PRASAD SINGH (PLAINTIFF) AND NAUNIHAL SINGH AND OTHERS (DEFENDANTS).*

Mortgage—Sale in execution of a simple money decree of mortgaged property—Notification of mortgage—Purchaser not estopped from disputing the existence of the mortgage—Civil Procedure Code, sections 282, 283 and 287.

In execution of a simple money decree the rights of a mortgagor in certain property ostensibly subject to a mortgage were put up to sale. The property was not sold subject to the mortgage, as contemplated by section 282 of the Code of Civil Procedure, but the existence of the mortgage was notified in the proclamation of sale for the benefit of intending purchasers. *Held*, on suit brought by the mortgagee for sale, that the auction-purchaser was not under the circumstances debarred from proving that the mortgage in suit was fictitious and without consideration. *Inayat Singh v. Izzat-un-nissa* (1) referred to.

THIS appeal arose under the following circumstances:—

The rights of a mortgagor in certain mortgaged property were purchased at auction in execution of a simple money decree by the present appellant. It was mentioned in the sale proclamation that there was an alleged mortgage on the property, but the Court did not sell the property subject to a mortgage as contemplated by section 282 of the Code of Civil Procedure.

The mortgagee eventually brought the suit out of which this appeal arose upon his alleged mortgage.

The auction-purchaser resisted the suit alleging that the mortgage-bond was fictitious.

This defence was accepted by the first Court, but for reasons set forth in the judgment of their lordships the lower appellate Court rejected it and remanded the case under section 562.

The auction-purchaser brought this appeal from that order of remand.

* First Appeal No. 109 of 1905, from an order of D. R. Lyle, Esq., District Judge of Moradabad, dated the 4th of August, 1905.

(1) (1904) I. L. R., 27 All., 97.