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GHASI RAM v. HAR GOBIND.

profits of which were to be considered, the valuation put by the Court upon those profits would be final and not open to appeal. But his argument is that that valuation was made in respect of a year other than the year mentioned in clause (v)*(c)* of section 7 of the Court Fees Act, and therefore that valuation is absolutely immaterial and does not concern him. In this view I concur, and I think, therefore, that both the Courts below have erred on the point of law as to the year the profits of which were to be taken into consideration. Being now of opinion that the profits have been improperly calculated, I must send down an issue upon that point to the lower appellate Court. The issue which I refer is this: what nett profits have arisen from the pre-empted property during the year next before the date of the presentation of the plaint in this suit, that is to say, during 365 days next before the 16th of July 1902? The Court will take all admissible evidence which either party may tender upon this point, and return its finding with the least possible delay. Upon return of the finding ten days will be allowed for objections.

Cause remanded.

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February 12.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkitt.

KURA MAL (PLAINTIFF) v. RAM NATH AND ANOTHER (DEFENDANTS).*

Act No. XV of 1877 *(Indian Limitation Act), section* 5—*Limitation—Appeal not presented within time—"Sufficient cause"—Appellant misled by his legal adviser as to course to be followed.*

Held, that when a client *bonâ 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 within time, he is entitled to the benefit of section 5 of the Indian Limitation Act, 1877. *Wazir Ali Khan* v. *Zainab* (1) followed.

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

Mr. *E. A. Howard*, for the appellant.

Babu *Sital Prasad Ghosh*, for the respondents.

STANLEY, C.J. and BANERJI, J.—This appeal arises out of a refusal by a learned Judge of this court to admit an appeal on the ground that the application was beyond time. The appeal

* Appeal No. 36 of 1905 under section 10 of the Letters Patent.

(1) Weekly Notes, 1903, p. 32.

sought to be preferred is against an order of the learned District Judge of Mirzapur, directing that the plaint in the suit be returned to the plaintiff for presentation in the proper court. The appellant, instead of presenting an appeal, acting under the advice of his counsel, made an application in revision to this court. On the hearing of this application a Full Bench decision of the court was brought to the notice of the counsel for the applicant, which laid down that the proper course for the applicant was not to apply in revision, but to file an appeal. Thereupon the learned Judge who heard the application, was asked to allow the revision matter to stand, to enable the applicant to file an appeal, and this request was acceded to. Accordingly an appeal was forthwith filed, but when it came before a learned Judge of this court, he rejected it on the ground that the appeal was 72 days beyond time. No reason is assigned for the refusal of the application, save and except the delay in instituting the appeal.

With the memorandum of appeal was filed an affidavit of the applicant, in which he stated that in filing the application in revision, the applicant acted under the advice of his counsel and under the *bonâ fide* belief that he was adopting the proper course and, on that ground he asked that the appeal should be admitted under the provisions of section 5 of the Limitation Act. The learned counsel who advised the petitioner has signified to the court that he was of opinion that the proper course was to apply in revision and not by way of appeal, and that his client had acted on his advice, and also that our learned brother refused to entertain the reasons assigned for the delay. We are disposed to think that if our learned brother had understood the reasons which were assigned for the delay, he would not have rejected the application, seeing that he was one of the Judges who determined the case of *Wazir Ali Khan* v. *Zainab* (1). That was a case in which intending appellants were erroneously advised that an appeal lay to the District Judge and not to the High Court and, in reliance on that advice, presented their appeal to the District Judge, in consequence of which the appeal when ultimately presented to the High Court was beyond time

(1) Weekly Notes, 1903, p. 32.

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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. *Sheorana* v. *Bharat Singh* (1) and *Hanuman Prasad* v. *Muhammad Ishaq* (2) distinguished.

* Second Appeal No. 574 1904, from a decree of Maulvi Maula Bakhsh, 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.