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sue is claimed. His disability extends to the property he owns and not to that which he holds as a trustee. A person who happens to be the manager of an endowed property is not the owner of that property and holds no beneficial interest therein. He cannot be regarded as a disqualified proprietor in regard to the property which he so holds as manager, and the idol, in whom the endowed property is supposed to be vested, cannot be treated as a ward within the meaning of section 55 of the Act. The property of the idol was never in fact taken over by the Court of Wards under its management. The plea was clearly untenable. Indeed, as pointed out in *Mannu* v. *Nasrat-ullah Khan* (1), one of the co-sharers can sue to eject a trespasser from the joint land, and the suit was maintainable.

We accordingly allow the appeal, set aside the order of the lower appellate court and remand the case under order XLI, rule 23, to that court with a direction to reinstate it on its file of pending cases and dispose of it according to law. The costs here and hitherto will abide the result.

Appeal decreed.

FULL BENCH.

Before Sir Grimwood Mears, Knight, Chief Justice, Justice Sir Pramada Charan Banerji and Mr. Justice Stuart.

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February, 27.

SHIB DAYAL AND ANOTHER (PLAINTIFFS) *v.* JAGANNATH PRASAD (DEFENDANT)*

Act No. IX of 1908 (Indian Limitation Act), section 5—Appeal filed after time owing to erroneous advice given by vakil—Extension of period of limitation:

Held that an honest mistake on the part of a litigant caused by erroneous advice given to him by his vakil in the district, by reason of which an appeal was not filed until the period of limitation therefor had expired, is a good ground for the application in favour of the would-be appellant of the provisions of section 5 of the Indian Limitation Act, 1908.

Wazir Ali Khan v. *Zainab* (2), *Kura Mal* v. *Ram Nath* (3) and *Anjora Kunwar* v. *Babu* (4) followed. *Coles* v. *Ravenshear* (5) and *In re Helsby* (6) referred to.

THE period for filing a certain second appeal expired on the 3rd of May, 1921. On the 2nd of May, the appeal was laid before the Court, but it was accompanied only by copies

* Application in Second Appeal No. 742 of 1921.

(1) Weekly Notes, 1901, p. 36.
(2) Weekly Notes, 1903, p. 32.
(3) (1906) I. L. R., 28 All., 414.
(4) (1907) I. L. R., 29 All., 638.
(5) (1907) 1 K. B., 1.
(6) (1894) 1 Q. B., 742.

of the judgment and decree of the lower appellate court and not by a copy of the judgment of the court of first instance, without which the appeal could not be legally " presented ". The absence of a copy of the judgment of the first court was explained—and this explanation was accepted by the High Court—by the fact that the would-be appellants had been informed by their vakil in the district that it would not be required. The appellants then procured a copy of the judgment of the court of first instance and presented their memorandum of appeal to the High Court together with an application praying that in the circumstances the appeal might be admitted notwithstanding that it was beyond time. The sole question before the Court was whether the fact that a party had been misled by the advice given to him by his vakil in the district was sufficient ground for the application in his favour of section 5 of the Indian Limitation Act, 1908.

Babu *Sital Prasad Ghosh*, for the appellants.

Munshi *Harnandan Prasad* (for Babu *Priya Nath Banerji*), for the respondent.

MEARS, C. J. :—In this case the appellant applied under section 5 of the Limitation Act and asked that a time-barred appeal might be heard on the ground that there was ' sufficient cause ' for his having failed to comply with the rules. When a second appeal is presented to this Court, there is no doubt that the copy of the first court's judgment and a copy of the judgment and decree of the lower appellate court must be filed. The appellant waited until almost the last day for the admission of his appeal, and then, on the 2nd of May, 1921 filed the judgment and decree only of the lower appellate court. The last day of limitation expired on the 3rd of May, 1921. The appellant, having learnt that the appeal could not be admitted without the judgment of the first court, subsequently obtained it and then asked that time should be extended and the appeal admitted. It is stated that his failure to comply with the rules was due to the error of the vakil, in the district, who had informed him that the judgment and decree of the lower appellate court were alone necessary.

We believe that this is what actually happened, and, therefore, the question arises whether that explanation can in the year 1922 be accepted as sufficient cause. There is no doubt it was the practice in past years to allow applications of

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this kind, and between 1903 and 1907 distinguished Judges of this Court did absolve the applicant from the consequences of an error on the part of his legal practitioner. See *Wazir Ali Khan* v. *Zainab* (1), *Kura Mal* v. *Ram Nath* (2) and *Anjora Kunwar* v. *Babu* (3).

In 1914 the case of *Dewan* v. *Buddhu* (4) came before Sir SUNDER LAL on appeal from the District Judge who had admitted a time-barred appeal. The circumstances under which the omission to file the appeal within time took place were not very clearly put forward by the applicant but it "was not suggested that there was any misapprehension on the part of Mr. *Weston* (the counsel employed to file the appeal) as to the time within which the appeal ought to have been lodged." Sir SUNDER LAL thinking that the explanation of the delay was " utterly inadequate," overruled the decision of the District Judge. That case is, therefore, clearly distinguishable from the present one, and notably from the decision of STANLEY, C. J., and BANERJI, J., in *Kura Mal* v. *Ram Nath* (5). On appeal a Bench of this Court upheld the decision of Sir SUNDER LAL on the ground that the lower appellate court had no materials upon which a discretion could be exercised : *Buddhu* v. *Diwan* (6).

During the hearing of this application it was suggested, by Mr. JUSTICE STUART, that the more correct principle was that laid down in the English decisions by which a default by the legal practitioner is not held to be a sufficient cause for extending the time for an appeal. Except for expressions of regret on the part of COLLINS, M. R., and COZENS HARDY, L. J., in the case of *Coles* v. *Ravenshear* (7), the current of English decisions is consistent and the result may be summarized in the words of DAVEY, L. J., who in *In re Helsby* (8) concluded his judgment by saying " I cannot see that a mistake made by a solicitor of the party who is applying for an extension of time is sufficient ground for extending it."

The English Courts have laid stress upon the fact that the proposed respondent to an appeal has a right to hold his

(1) Weekly Notes, 1903, p. 32.
(2) (1906) I. L. R., 28 All., 414.
(3) (1907) I. L. R., 29. All., 638.
(4) (1914) 12 A. L. J., 837.
(5) (1906) I. L. R., 28 All., 414.
(6) (1915) 13 A. L. J., 268.
(7) (1907) 1 K. B., 1.
(8) (1894) 1 Q. B., 742.

judgment and that such right ought not to be interfered with after the lapse of the prescribed time, unless there are special circumstances.

The question which is to be decided is one of policy. If this Court decides to break away from its decisions, pronounced during the period 1903 to 1907, it will not mean that these cases were wrongly decided at the time that they were so decided. In the past 15 years, legal education has progressed in this country and courts are right in demanding, in the public interest, increasing competence in legal practitioners. Whilst I am of opinion that the English rule is a salutary one, and the courts should ordinarily insist upon legal practitioners giving correct advice, it may nevertheless be that to demand at the present time a normal standard of efficiency would impose hardship upon litigants.

In this aspect of the case the decision must turn upon the question whether the profession in the muffassil is in such a state of efficiency as to make it expedient to depart from the rule which has hitherto prevailed in this Court. Mr. *Sital Prasad Ghosh* laid emphasis on the disadvantages of practitioners in places remote from libraries, and I give weight also to the argument used by him that there is in the muffassil some want of knowledge of the procedure of the High Court. My opinion as to the general average of efficiency must necessarily be based upon the quality of work as disclosed in the printed records which come up here on appeal. The work, no doubt, has been done with increasing care and discrimination, and, therefore, the records of 1917, 1918 and 1919 now coming before us in appeal do not, I believe, present a fair picture of the standard of the records in current cases in the lower courts. Every one who practises in this Court will agree that throughout the last two years there has never been one week in which counsel, on one side or the other, has not admitted himself to be in difficulty, by reason of the way in which the case was launched or conducted in the court below, and the complaint is always based, not upon some mere technicality but upon a matter of real importance and substance, such as some grave defect of pleading, failure to obtain essential particulars under Order VI, rules 4 and 5, the omission to call the plaintiff or defendant or some necessary witness or the deliberate withholding of documents or books of account. I am, therefore, of opinion that, at the present,

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we ought to maintain our existing practice, namely, that mistakes of the kind, into which we are inquiring, should not bar appeals. An honest mistake, even though a negligent one, ought not, in the present state of the profession in the district, be allowed to operate to the prejudice of clients. I would, therefore, admit the application.

BANERJI, J.—I, also, am of opinion that the application should be granted and the appeal admitted. The petition of appeal was presented one day before the expiry of the prescribed period of limitation, but on that date a copy of the judgment of the court of first instance was not filed with the memorandum of appeal, as required by the rules of this Court. When the copy was, subsequently, produced, the period of limitation had expired. For this reason the appellant has now applied under section 5 of the Limitation Act for the admission of his appeal after the expiry of the period of limitation. Under section 5 of the Limitation Act, a petition of appeal may be admitted after the expiry of limitation, if sufficient cause is established to the satisfaction of the Court. What constitutes sufficient cause cannot be laid down by hard and fast rules. The sufficient cause must be determined on a reference to the circumstances of each case. In my opinion the expression " sufficient cause " should be liberally construed so as to advance substantial justice. In the present case the sufficient cause alleged is that the appellant was advised, by his vakil in the lower court, that copies of the judgment and the decree of the lower appellate court would be sufficient for the purposes of his appeal. He honestly believed that the advice given to him was correct, and in this honest belief he made a delay in the presentation of the copy of the judgment of the court of first instance, and, therefore, asks that his appeal should be admitted although the period of limitation has expired.

It has been held in this Court in the cases to which the learned Chief Justice has referred, that an honest mistake made by a litigant upon incorrect advice given to him by his lawyer is a sufficient cause within the meaning of section 5 of the Limitation Act. These are the cases of *Wazir Ali Khan* v. *Zainab* (1), *Kura Mal* v. *Ram Nath* (2), *Anjora Kunwar* v. *Babu* (3). A similar view was also held by the High Courts

(1) Weekly Notes, 1903, p. 32.
(2) (1906) I. L. R., 28 All., 414.
(3) (1907) I. L. R., 29 All., 638.

of Calcutta and Madras in the cases to which Mr. *Sital Prasad Ghosh* invited our attention in the course of his argument. The same principle was affirmed by a Full Bench of this Court in the case of *Brij Mohan Das* v. *Mannu Bibi* (1) In all these cases it was held that if there has been an honest mistake on the part of the litigant, and this mistake has been caused by reason of incorrect advice given to him by his counsel, he is entitled to have his appeal admitted under section 5 of the Limitation Act. The case of *Buddhu* v. *Diwan* (2) was referred to as laying down a different proposition. I do not think that this is so. The question which arises in this case was not the question which was considered and decided in that case. There the counsel for the appellant had omitted to present his petition of appeal in due time, although he had been furnished with the necessary papers and the necessary costs. That was a case in which there was culpable negligence on the part of the counsel, and for this reason it was held that no sufficient cause had been established for the admission of the appeal after time. I was a party to one of the cases cited above, and I see no reason to alter the opinion which was expressed in that case.

A contrary view was held in the case of *Coles* v. *Ravenshear* (3). But two of the learned Judges felt themselves bound by a recent authority in that Court. COLLINS, M. R., said:—" I confess that if the case were free from authority and I felt myself at liberty to follow my own judgment in the matter, I should unhesitatingly allow the time to be extended ". COZENS HARDY, L. J., observed: " If the matter had been free from authority, I should have preferred, in a case where there has been an honest mistake by the legal adviser of a party, . . . to hold that the Court would be justified in giving the leave ". He also added that the course of authority on the subject in England had been " far from uniform ".

In this Court, as I have pointed out above, there is a consensus of authorities and, I think, upon those authorities, from which I see no reason to depart, we should be justified in admitting the appeal, which must be taken to have been filed after the period of limitation.

(1) (1897) I. L. R., 19 All., 348.
(2) (1915) 13 A. L. J., 286.
(3) (1907) 1 K. B., 1.

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The remarks which the learned Chief Justice has made as to the duty of practitioners in the districts, have my full concurrence, and I hope that those practitioners will bear them in mind.

STUART, J.—While I am still of opinion that the rule as laid down by JAMES, L. J., in the *International Financial Society* v. *City of Moscow Gas Company* (1) and again in *In re Helsby* (2) is the rule which I should like to see enforced in this Court, I am convinced upon the reasoning of the Chief Justice that the time has not yet come when it would be wise to enforce this rule. I, therefore, concur in the order passed.

BY THE COURT :—Our order, therefore, is that we extend the time for the filing of these two appeals and declare the appeals admitted. Let a date be fixed under Order XLI, rule 11, of the Code of Civil Procedure for hearing.

Appeal admitted.

REVISIONAL CRIMINAL.

1922
April, 5.

Before Mr. Justice Stuart.

EMPEROR v. SUNDAR LAL.*

Criminal Procedure Code, section 476—Jurisdiction—Powers of court which has partly heard a case subsequently transferred to another court.

The circumstance that a case has passed out of the hands of a court, as, for instance, by an order of transfer, after it has been partly heard, does not deprive the first court of its jurisdiction to take proceedings against a witness under section 476 of the Code of Criminal Procedure, nor is that jurisdiction taken away by the circumstance that the second court may have formed a different opinion as to the veracity of the witness. *King-Emperor* v. *Zalim Singh* (3) and *Girwar Prasad* v. *King-Emperor* (4) referred to.

THE facts of this case are fully set forth in the judgment of the Court.

Babu *Satya Chandra Mukerji*, for the petitioner.

The Assistant Government Advocate (Mr. *R. Malcomson*), for the Crown.

STUART, J. :—The facts out of which this application for revision has arisen, are as follows :—Mr. Parmanand Singh, Tahsildar of Basti, as Magistrate of the third class, tried in 1921 a criminal case in which Adhar Singh made a complaint against Devi Bakhsh Singh under the provisions of section 352/447 of the Indian Penal Code. In the course

* Criminal Revision No. 112 of 1922, from an order of J. F. Sale, District Magistrate of Basti, dated the 2nd of March, 1922.

(1) (1877) L. R., 7 Ch. D., 241.
(2) (1894) 1 Q. B., 742.
(3) Weekly notes, 1901, p. 177.
(4) (1909) 6 A. L. J., 392.