APPELLATE CIVIL.

Before Mr. Justice Mackney.

R.M.A.L. FIRM *v.* KO SHAN AND ANOTHER.*

1939

Feb. 23.

Limitation Act, s. 5—Appeal filed in wrong Court on advice of lawyer—"Sufficient cause"—Litigant leaving his lawyer to file appeal—Responsibility of litigant for acts of his lawyer—Mistake of lawyer in good faith—Due care and attention—Value of suit over Rs. 500—Decree for lesser sum—Appeal filed in Assistant District Court—Error of advocate inexcusable—Burma Courts Act, s. 9 (1) (a) and (c).

The fact that a litigant has been misled by erroneous legal advice given by his lawyer and acting upon such advice he has filed his appeal in the wrong Court may be "sufficient cause" within the meaning of s. 5 of the Limitation Act.

Sunderabai v. *Collector of Belgaum*, 46 I.A. 15; I.L.R. 43 Bom. 376, referred to.

But where the litigant merely asks his advocate to file an appeal and leaves it entirely to him to take the necessary steps the litigant takes the full responsibility for the acts of his lawyer and if the lawyer has acted carelessly, the litigant cannot invoke the aid of s. 5 of the Limitation Act in his favour. To act in good faith means to act with due care and attention.

Ambika Ranjan v. *Manikhgunje Loan Office, Ltd.*, I.L.R. 55 Cal. 798; *Bhattatraya* v. *Secretary of State for India*, I.L.R. 45 Bom. 607; *Highton* v. *Treherne*, 48 L.J.K.B. 167; *Surendramohan Ray* v. *M. Banerji*, I.L.R. 59 Cal. 781, referred to.

The mistake of a lawyer made in good faith may afford sufficient cause for admitting an appeal after time, but the mistake must have been made in spite of due care and attention. The fact that the appellate Court in which the appeal was wrongly filed did not notice the error is immaterial.

J. N. Surty v. *T.S. Cheltyar Firm*, I.L.R. 4 Ran. 265; *Tin Tin Nyo* v. *Maung Ba Saing*, I.L.R. 1 Ran. 584, referred to.

Under s. 9 (*1*) (*a*) of the Burma Courts Act an appeal lies to the District Court if the value of the suit exceeds Rs. 500, and under clause (*c*) of the section the appeal lies to the Assistant District Court if the value of the suit is under Rs. 500. The plaintiffs sued for Rs. 580 in the Township Court and obtained a decree for Rs. 175. The defendants instructed their advocate to file an appeal. An appeal was filed on behalf of the defendants in the Assistant District Court and decided in favour of the defendants. On appeal the High Court set aside the decree of the Assistant District Court on the ground that it had no jurisdiction to decide the appeal. The defendants then filed the appeal in the proper District Court. *Held*, that in the circumstances the defendants could not claim to have acted in good faith in filing the appeal

* Civil Second Appeal No. 276 of 1938 from the judgment of the District Court of Bassein in Civil Appeal No. 6 of 1938.

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unless the advocate so acted : that the mistake of the advocate was gross and inexcusable and he cannot be said to have acted in good faith, and no extension of time could therefore be allowed under s. 5 of the Limitation Act.

Paget (with him *Venkatram*) for the appellants.

Hay for the respondents.

MACKNEY, J.—The appellants, being defendants in a successful action brought by the respondents in the Township Court of Ngathainggyaung, instructed their advocate to file an appeal : he filed the appeal in the Assistant District Court of Bassein. The decree obtained was for Rs. 175, but the plaintiffs had asked for Rs. 580. The suit being of a value of over Rs. 500 an appeal lay not to the Assistant District Court but to the District Court under s. 9 (*1*) (*a*) of the Burma Courts Act: if it had been of a value not exceeding Rs. 500 the appeal would lie to the Assistant District Court under clause (*c*) of the section. It is quite clear that the advocate did not trouble to consider whether the value of the decree or the value of the suit determined the forum of appeal, and owing to lack of due care and attention carelessly filed the appeal in the Assistant District Court. The advocate for the respondents was guilty of the same carelessness and filed a cross-appeal in the same Court. The Assistant District Court also overlooked the defect of jurisdiction, heard the appeal, and decided in favour of the appellants.

Respondents appealed to the High Court and on the 10th of February 1938 the decree of the Assistant District Court was set aside on the ground that it had had no jurisdiction to decide the appeal. On the 22nd March 1938 the appellants filed their appeal in the District Court of Bassein against the original decree of the Township Court. The appeal was dismissed on the ground that it had been filed without sufficient cause

after the expiration of the period allowed for filing such an appeal.

The decree of the Township Court is dated 5th June 1937. Appeal was filed in the Assistant District Court on the 5th July 1937. Four days had been occupied in obtaining copies of decree and judgment. When the appeal was filed in the District Court on the 22nd March 1938 it was not necessary to file copies of the judgments of the Assistant District Court or of the High Court. Consequently, after making all due allowance, and even excluding the time occupied in prosecuting an appeal in the Assistant District Court and in the High Court, a period of 66 days elapsed between the date of the decree of the Township Court and the date of the filing of the appeal in the District Court. Appellants explain the delay of six days by the illness of their agent and unavoidable delay in obtaining the necessary papers from Rangoon.

As to the indulgence which may be granted on prosecuting an appeal in a wrong Court, an opinion has already been given by this Court in *Tin Tin Nyo* v. *Maung Ba Saing* (1), where it was held that the mistake of a pleader made in good faith may afford sufficient cause for admitting an appeal after time, but the mistake must have been made in spite of the exercise of due care and attention. In that case the plaint itself disclosed that the value of the suit was about Rs. 10,000 and in filing the appeal in the wrong Court it seemed obvious that the advocate could not be held to have exercised due care and attention. It was further remarked that the error of counsel for respondents and the omission of the Divisional Judge to notice the error were not seen to affect the matter in the slightest degree. In *J. N. Surty* v. *T.S. Chettyar Firm* (2) this view was approved.

(1) (1923) I.L.R. 1 Ran. 584. (2) (1926) I.L.R. 4 Ran. 265.

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It has been argued before me that an appellant who in good faith accepts the advice of his lawyer and files his appeal in the wrong Court is entitled to the benefit of s. 5 of the Limitation Act: and reliance is placed on the observations of their Lordships of the Privy Council in *Sunderabai* v. *Collector of Belgaum* (1) to the effect that the fact that litigants had acted on mistaken advice as to the law did not preclude them from shewing that it was owing to their reliance on that advice that they had not presented the appeal to the right Court within the prescribed period of limitation ; and that that would be sufficient cause for not presenting the appeal at the proper time. It is quite clear, however, that their Lordships were referring to the case of a litigant who before preferring his appeal had taken the advice of the Legal Remembrancer as to the proper Court and had acted on that advice. I do not think it would be correct to apply the remarks to the case before me, where it would appear that the appellant merely asked his advocate to file an appeal and left it entirely to him to take the necessary steps.

In *Bhattatraya Sitaram* v. *The Secretary of State for India* (2), although *Sunderabai* v. *Collector of Belgaum* (1) was not referred to, a similar view was taken and it was held that even if there had been carelessness on the part of the pleader, a party who relying on his advice had filed his appeal in the wrong Court could not be said to have acted without good faith. I interpret this to mean that the party must shew that he chose the wrong Court after having consulted his lawyer as to the proper Court in which to file the appeal. Similarly in *Ambika Ranjan Majumdar* v. *Manikgunje Loan Office, Ltd.* (3) it was held that where an appeal was filed in the wrong Court on the advice of a pleader of some

(1) (1918) 46 I.A. 15; I.L.R. 43 Bom. 376. (2) (1920) I.L.R. 45 Bom. 607.
(3) (1927) I.L.R. 55 Cal. 798.

standing on whose words the party had good reason to rely, he was entitled to an extension of time. However I am obliged to say, with great respect that this dictum is hardly consonant with the facts of that case: for it would appear that the party had not "acted on the advice of a pleader", he had merely sent all the papers and costs to the pleader—presumably instructing him to appeal—and the pleader had by mistake filed the appeal in the wrong Court. It appears to me that when a litigant gives *carte blanche* to his lawyer to act as he thinks fit without further consulting him he must take full responsibility for the acts of the lawyer: and he cannot claim to have acted "in good faith" in filing the appeal unless the lawyer so acted: if the lawyer acted with complete carelessness he cannot be said to have acted in good faith—that is with due care and attention. Where we are considering what is "sufficient cause" within the meaning of section 5 of the Limitation Act the good faith with which a person must be shown to have acted will appropriately be taken to mean that variety which presupposes due care and attention rather than mere "honesty".

The leading cases on the subject are reviewed in *Surendramohan Ray Chaudhuri* v. *Mahendranath Banerji* (1) where the Court followed the dictum of Brett M.R. in *Highton* v. *Treherne* (2)

> In cases where a suitor has suffered from the negligence or ignorance or gross want of legal skill of his legal adviser he has his remedy against that legal adviser, and meantime the suitor must suffer. But where there has been a *bona fide* mistake . . . such as a skilled person might make, I very much dislike the idea that the rights of the client should be thereby forfeited".

and it was held that from a review of the cases it would appear that there is no authority for the view that a mistake of a legal adviser, however gross and

(1) (1931) I.L.R. 59 Cal. 781. (2) (1878) 48 L.J.K.B. 167.

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inexcusable, if *bona fide* acted upon by a litigant would entitle him to the protection of s. 5 of the Limitation Act. It was pointed out that in the case of *Ambika Ranjan Majumdar* v. *The Manikgunje Loan Office, Ltd.* (1), Suhrawardy J. while condoning the mistake in that particular case refused to lay down any such general rule.

I am of the opinion that in the case before me the mistake of the advocate was gross and inexcusable, and not such as to entitle the advocate to claim that he acted in good faith : and I hold, further, that the appellant cannot plead that he acted in good faith in filing the appeal on the erroneous advice of a person in whose skill he was entitled to trust, because he has not shewn that he filed the appeal in the Assistant District Court on the advice of his advocate to file it there and not in the District Court. The nature of the mistake is such that if he had discussed the matter at all with his advocate it would have been realized that the appeal must be filed in the District Court. No doubt if the mistake had been of a less careless nature the appellant might have had a good claim to indulgence on the ground that he had been misled by his lawyer in whom he had reason to trust. I would add that in my opinion the appellant has also failed to account satisfactorily for the six days delay in filing his appeal in the proper Court which remains even after excluding the days spent in infructuous appeal. He took no adequate steps to procure the necessary papers from his Rangoon advocates without delay. He instructed his Bassein advocate on 15th March to file the appeal. It should have been filed the next day, but nothing was done and appellant returned to his home that evening—being too ill to stay in Bassein, but not too ill to travel by train. This appeal is dismissed with costs, advocates' fees five gold mohurs.

(1) (1927) I.L.R. 55 Cal. 798.