APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ranade.

1896.
January 23.

DADABHAI JAMSETJI (ORIGINAL PLAINTIFF), APPELLANT, *v.* MANEKSHA SORABJI (ORIGINAL DEFENDANT), RESPONDENT.*

Limitation—Limitation Act (XV of 1877), Sec. 5—Sufficient cause—Appeal—Time for presenting appeal—Appeal to wrong Court.

The presentation of an appeal to a wrong Court under a *bonâ fide* mistake may be "sufficient cause" within the meaning of section 5 of the Limitation Act (XV of 1877).

Sitaram v. *Nimba*(1) explained.

SECOND appeal from the decision of T. Hamilton, District Judge of Surat.

The plaintiff sued the defendant in the Court of the First Class Subordinate Judge of Surat. His suit was dismissed on the 21st August, 1891.

On the 24th November, 1891, the plaintiff presented an appeal to the High Court, and it was duly admitted by a Judge on the 12th February, 1892. On the 9th January, 1893, the appeal was heard by a Division Bench of the High Court, which held that it did not lie to the High Court, and ordered that the petition of appeal should be returned for presentation to the proper Court.

On the 10th January the petition was returned to the plaintiff, and it was presented by him to the District Court at Surat on the 11th of January, 1893.

The District Judge of Surat dismissed the appeal on the ground that it had been presented after the period allowed by law for the presentation of appeals had expired. He observed:—

"The appeal was presented to the High Court just within the prescribed period for appeal, *viz.*, 3 months, *i.e.*, 2 months beyond the time allowed for appeal to the proper Court, *viz.*, the District Court.

"Plaintiff's pleader says that his client was taken ill immediately after the judgment of the lower Court was pronounced and wants to be allowed to file affidavits to that effect. But it is not pretended even that plaintiff would have presented his appeal to the High Court earlier than he actually did, or rather that it was actually presented for him by his step-brother. The appeal was in time for the High Court in spite of plaintiff's dangerous illness, and no number of affidavits can affect the defendant's contention that the appeal is barred here.

* Second Appeal, No. 77 of 1895.

(1) I. L. R., 12 Bom., 320.

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"The whole time which clapsed before plaintiff presented his appeal in the wrong Court cannot be deducted under the clear ruling in I. L. R., 12 Bom., 320, which is binding on this Court. The appeal is two months beyond time, and must be dismissed with costs."

From this decision the plaintiff preferred a second appeal to the High Court.

Govardhanram M. Tripathi, for the appellant (plaintiff) :—The plaintiff believed that his appeal lay to the High Court. He presented it there in time, and it was admitted. The High Court, however, subsequently held that it was not the proper Court for the plaintiff's appeal. The plaintiff's mistake was made in good faith, and the circumstances constitute "sufficient cause" within the meaning of section 5 of the Limitation Act (XV of 1877)—*Huro* v. *Surnamoyi*(1) followed in *Krishna* v. *Chathappan*(2). The case of *Sitaram* v. *Nimba*(3) relied on by the District Judge is no authority in this case. In that case the memorandum of appeal was not returned by the Court, as here, for presentation to the proper Court: see also *Shrimant Sagojirav* v. *S. Smith*(4).

Nagindas T. Marphatia for *Ganpatrao S. Rao*, for the respondent:—The time for presenting an appeal to the District Court is one month [thirty days] from the date of the judgment appealed against. But in the present case the appeal was not presented to any Court until after the lapse of one month from the date of the judgment. The plaintiff was negligent; he must suffer the consequences. The period that elapsed between the 21st August, 1891, the day on which judgment was pronounced in the suit, and the 9th January, 1893, when the High Court decided that no appeal lay to it, was wasted by the plaintiff. He ought during that time to have discovered his mistake without waiting for the High Court to find it out for him. Ignorance of law is no excuse—*Jag Lal* v. *Har Narain*(5); *Ramjiwan* v. *Chand*(6); *Husaini Begam* v. *The Collector of Muzaffarnagar*(7); *Bechi* v. *Ahsan-ullah Khan*(8); *Govinda* v. *Bhandari*(9).

(1) I. L. R., 13 Cal., 266.
(2) I. L. R., 13 Mad., 269.
(3) I. L. R., 12 Bom., 320.
(4) I. L. R., 20 Bom., 736.
(5) I. L. R., 10 All., 524.
(6) I. L. R., 10 All., 587.
(7) I. L. R., 9 All., 11.
(8) I. L. R., 12 All., 461.
(9) I. L. R., 14 Mad., 81.

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JARDINE, J.:—The admitted dates are as follows:—On the 21st August, 1891, the Subordinate Judge passed a decision. On the 24th November, the plaintiff presented an appeal to the High Court, which was duly admitted by a Judge on the 12th February, 1892. The High Court decided on the 9th January, 1893, that the appeal did not lie to it, and ordered the return of the petition for presentation to the proper Court, which return was made on the 10th, and presentation on the 11th January, 1893.

We are satisfied that, in acting on the opinion that the appeal lay to the High Court, the plaintiff used good faith; and the admission of the appeal by a learned Judge confirms this view. The District Judge has, however, ruled as follows:—"The whole time which elapsed before plaintiff presented his appeal in the wrong Court cannot be deducted under the clear ruling in *Sitaram* v. *Nimba*(1) which is binding on this Court. The appeal is two months beyond time, and must be dismissed with costs." We are of opinion that the learned Judge is wrong, and that under the circumstances there was sufficient cause to extend the time for admitting the appeal within the meaning of that phrase in section 5 of the Limitation Act (XV of 1877).

But we find that in the case cited, *Sitaram* v. *Nimba*(1), West and Birdwood, JJ., held on the construction of section 5 of the Limitation Act (XV of 1877) that mere ignorance of law cannot be recognized as a sufficient reason for delay; and although such a *dictum* must be taken as made with reference to the particular case, *Richardson* v. *Mellish*(2), the use of general expressions led the District Judge to treat the judgment as ruling that the maxim "*Ignorantia legis non excusat*" excludes from section 5 all cases where the cause of not presenting an appeal in time is that it had first been presented to a wrong Court. Mr. Nagindas has relied on *Jag Lal* v. *Har Narain*(3) in support of this view; but we think it clear from the report that the learned Judges held that, if the presentation to the wrong Court was shown to have been attended with *bona fides*, section 5 might apply; although the mere profession of ignorance of the law was not enough by itself. In *Ramjiwan* v. *Chand*(4) it is said: "It

(1) I. L. R., 12 Bom., 320.
(2) 2 Bing. at p. 248.
(3) I. L. R., 10 All., 524.
(4) I. L. R., 10 All., at p. 594.

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is no excuse merely to say that they preferred their appeal to a wrong Court by mistake" and also that to get the indulgence of section 5, they must show *bona fides*. *Huro* v. *Surnamoyi*[1] is an authority for holding that where the period was exceeded by a *bona fide* mistake as to which Court the appeal lay, although the appeal was not presented to the wrong Court, section 5 might be applied by the Court. That case is followed by the High Court of Madras in *Krishna* v. *Chathappan*[2], a case on all fours with the present. The learned Judges say: "We think that section 5 gives the Courts a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words "sufficient cause" receiving a liberal construction so as to advance substantial justice when no negligence, nor inaction, nor want of *bona fides* is imputable to the appellant."

We think the above is a correct interpretation of section 5. The words "sufficient cause" are wide; and as is said *In re Manchester Economic Building Society*[3] per Brett, M. R., "the Court has the power to grant the special leave, and, exercising its judicial discretion, is bound to give the special leave, if justice requires that leave should be given." At page 503, Bowen, L. J., relies on the judicial nature of the discretion as meeting the argument from inconvenience. *Pritchard* v. *Pritchard*[4] is another authority of the same tenor.

We do not think the learned Judges who decided *Sitaram* v. *Nimba* intended to lay down that the maxim of law quoted must be imported into every matter arising under section 5; and the language used does not necessarily mean that. We, therefore, agree with the other High Courts in their construction of the section.

The Court now reverses the order of the District Judge and admits the appeal and refers it to the District Court for disposal according to law. Costs of this appeal on the respondent.

Order reversed. Appeal admitted and referred for disposal.

(1) I. L. R., 13 Cal., 266.
(2) I. L. R., 13 Mad., 269.
(3) 24 Ch. D., 488 at p. 497.
(4) 14 Q. B. D., 55.