confined to pre-emption of houses and it may well have been, considering the uncertainty of the Mahomedan law, they did not adopt any such law with regard to agricultural land.

It is certainly not advisable, in my opinion, to extend any customary law which is in conflict with the personal law of the parties unless there is evidence that such alien law has been adopted and it is certainly desirable and right that the issue set out by the learned appellate Judge should be tried.

I think, therefore, both the appeals fail and should be dismissed with costs.

Appeals dismissed.

R. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Fawcett.

1920.

August 16.

DATTATRAYA SITARAM GAIHARI (ORIGINAL PLAINTIFF), APPELLANT *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL (ORIGINAL DEFENDANT), RESPONDENT*.

Indian Limitation Act (IX of 1908), section 5—Presentation of appeal in wrong Court—Appeal subsequently presented in proper Court—Excuse of delay—Sufficient cause—Good faith—Acting on advice of pleader—Bombay Civil Courts Act (XIV of 1869), section 16.

An Assistant Judge having dismissed a suit in which the claim was valued at Rs. 248, the plaintiff relying on the advice of his pleader filed an appeal in the High Court. The appeal was eventually returned to the plaintiff for its presentation to the District Court, where it was presented long after the prescribed time. The District Judge refused to excuse the delay in presenting the appeal, as he was of opinion that the plaintiff had no sufficient cause since the question as to which Court the appeal lay was not involved in any doubt. The plaintiff having appealed :—

Held, that the plaintiff had under the circumstances shown sufficient cause for not presenting the appeal in time, since in acting upon the advice of his pleader he was to be regarded as having acted in good faith.

* Second Appeal No. 906 of 1919.

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Dadabhai v. *Maneksha*[1], explained.

Ram Ravji Jambhekar v. *Pralhaddas Subkarn*[2], referred to.

SECOND appeal from the decision of P. J. Taleyarkhan, District Judge of Thana, on appeal from the decree passed by J. A. Saldanha, Assistant Judge at Thana.

The plaintiff sued the Secretary of State for India in Council to obtain a declaration that he held his lands free of assessment, or in the alternative that they were only liable to assessment originally fixed, and to recover the assessment recovered from him. The claim in the suit was valued at Rs. 248-1-0 for the purposes of Court-fees and jurisdiction and at Rs. 618-1-0 for pleader's fees. The Assistant Judge, who tried the suit, dismissed it, on 5th March 1916.

The plaintiff took the advice of his pleader, and filed the appeal in the High Court on the 3rd July 1916. It was admitted; but on final hearing, on the 30th September 1918, it was returned to the plaintiff for being presented to the District Court at Thana. The appeal was presented to that Court on the 2nd October 1918.

The District Judge was of opinion that the plaintiff had not shown sufficient cause for not presenting the appeal in time, and dismissed it, for the following reasons :—

The appellant must satisfy the Court that he had filed the appeal in the High Court, *bona fide*, i. e., under the honest though mistaken belief, formed with due care and attention, that he was appealing to the right Court, vide I. L. R. 34 Cal. 216...The appellant has put in an affidavit made by a pleader. In this affidavit the pleader states that after the suit was decided the plaintiff had come to him for advice as to appealing from the decree and that as his honest understanding was that an appeal from a decree of the

(1) (1896) 21 Bom. 552. (2) (1895) 20 Bom. 133.

District Court lay to the High Court, he advised the plaintiff to file the appeal in the High Court...It may be the pleader's honest belief that the appeal lay to the High Court, but it cannot be said that the belief was formed with due care and attention. On the contrary, his mistake was due to gross carelessness and want of diligence...The learned pleader for the appellant relies upon a passage in I. L. R. 21 Bom. 552, at page 554 where Jardine J. observes :—" We are satisfied that in acting in 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." From this it is clear that the fact of admission of the appeal by a learned Judge was relied upon merely as confirming their Lordship's view that the appeal was filed in the High Court in good faith, i. e., with due care and attention. That shows that the question as to which Court the appeal lay must be involved in doubt. Such was, however, not the case here.

The plaintiff appealed to the High Court.

S. R. Bakhale, for *B. V. Desai*, for the appellant.

S. S. Patkar, Government Pleader, for the respondent.

MACLEOD, C. J. :—We think that this appeal must be allowed.

The learned Judge thought that because the question as to which Court the appeal lay was not involved in doubt, therefore there was not sufficient cause for the appellant not preferring the appeal to the Court of the District Judge within time. But that is not, in my opinion, the right criterion in cases of this kind. I do not think that the learned Judge has read the remarks of Mr. Justice Jardine (*Dadabhai* v. *Maneksha*[1]) in the way in which they should be read. He has not attached the right meaning to the words "in good faith." I think that the appellant was entitled to rely upon the advice of his pleader that the appeal lay to the High Court, and a party cannot be said to be acting without good faith because he relies upon a person whose status

[1] (1896) 21 Bom. 552.

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entitled him to give advice to litigants. It may be that the pleader ought to have known that the appeal lay to the District Judge. But there again some questions may appear to be so entirely free from doubt to one person, that only one opinion is possible, and yet another may equally well come to a different conclusion. I do not think it can be said that the appellant has acted in such a way that he should be debarred from his right to appeal. In *Ram Ravji Jambhekar* v. *Pralhaddas Subkarn*[1] their Lordships say :—"We feel unable to accept the argument for the appellant that because the mistake made in filing the suit at Cawnpore was an error of law, that the suit was not a *bona fide* one. It was a stupid, though not an unaccountable, blunder ; but the ignorance of law, or the ill-advice of a pleader, does not, in our opinion, necessarily or *prima facie* establish a want of good faith" and I do not think that Mr. Justice Jardine (*Dadabhai* v. *Maneksha*[2]) used the words "good faith" in the sense that the District Judge thought he did, that is to say, as meaning without due care and attention. Usually no doubt the presiding Judge has to use his discretion whether there is sufficient cause or not in excusing delay ; but in this case I think the Judge erred in law.

The appeal must be allowed and the case sent back to the District Judge to be heard on its merits.

Costs to be costs in the appeal.

FAWCETT, J. :—I agree. The Allahabad High Court no doubt has ruled that the presentation of an appeal to a wrong Court through a mistake in or ignorance of law is not a "sufficient cause" within the meaning of section 5 of the Indian Limitation Act : *Jag Lal* v.

[1] (1895) 20 Bom. 133 at p. 143. [2] (1896) 21 Bom. 552.

Har Narain Singh[1]. But this view has not been adopted by the Calcutta, Madras and Bombay High Courts, which treat the matter as depending upon the circumstances of each particular case. This is not a case in which the appellant lost time in appealing against the judgment that the appeal lay to the District Court and not to the High Court, so as to fall within the view taken in *Daudbhai Musabhai* v. *Emnabai*[2]. Though no doubt there was carelessness in the matter, yet I think there is no reason to believe that the appeal in the High Court was not filed "in good faith," using those words in the sense given to them by the definition in the General Clauses Act, that is to say, honestly, though it may be negligently.

I concur, therefore, in allowing the appeal.

Appeal allowed.

R. R.

[1] (1888) 10 All. 524. [2] (1903) 28 Bom. 235.

APPELLATE CIVIL.

Before Mr. Justice Shah and Mr. Justice Crump.

AMBALAL SARABHAI SHETH (ORIGINAL PLAINTIFF), APPELLANT *v.* THE AHMEDABAD MUNICIPALITY (ORIGINAL DEFENDANT), RESPONDENT*.

1920. *August* 16.

Bombay District Municipal Act (Bombay Act II of 1884), section 32, clause (h)†—*Bombay District Municipal Act (Bombay Act III of 1901),*

* Second Appeal No. 882 of 1919.

† The material portions of the section run as follows :—

32. Every municipality shall, as soon as conveniently may be after it has been constituted, make and may from time to time alter or rescind rules, consistent with this Act and with the principal Act :—

(*h*) prescribing, subject to the provisions of section 21 of the principal Act, the tolls, cesses, taxes or other imposts to be levied in the municipal district for municipal purposes, and the fees to be charged for licenses or permissions granted under section 22 of the said Act, and the times and mode of levying or recovering the same.