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rule, because the Courts were not quite agreed on the grounds of their decision—the Subordinate Judge relying on the oral testimony, whilst the High Court based its finding on the documentary evidence. But the rule is none the less applicable, because the Courts may not have taken precisely the same view of the weight to be attached to each particular item of evidence.

A further point which does not appear to have been expressly raised in the Courts below was pressed on their Lordships. It was contended that Mahan Soonder Koer, Sheo Churn's mother, under whom the defendant claims and who entered into possession of the property upon her son's death and enjoyed it, until her own death, which happened shortly before the institution of this suit, acquired an absolute title by adverse possession against the heirs of Sheo Churn. Their Lordships are of opinion that the possession of Mahan Soonder Koer must be referred to her title as heiress of her son, in which capacity she would take a life interest and that no case of adverse possession has been established.

For these reasons their Lordships will humbly advise His Majesty that the appeal ought to be dismissed. The appellant will pay the respondent's costs.

Appeal dismissed.

Solicitors for the appellant: *Watkins & Lempriere.*

Solicitors for the respondent: *Dallimore & Son.*

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[309] PRIVY COUNCIL.

RAM NARAIN JOSHI *v.* PARMESWAR NARAIN MAHTA AND OTHERS.*

[20th November and 13th December, 1902.]

[*On appeal from the High Court at Fort William in Bengal.*]

Privy Council, Practice of—Appeal—Delay —Mistake—Court—Orders—"Sufficient cause"—Limitation Act (XV of 1877) s. 5—Analogous appeal.

The appellant preferred two appeals from a decision of a Subordinate Judge, one of which, instead of presenting to the High Court, he had filed in the District Court, which on a true valuation of the appeal had no jurisdiction to hear it. While the other, which was an analogous case raising the same question, he had correctly filed in the High Court.

It appeared:—

(*a*) that when the mistake was brought to the appellant's notice, great delay occurred in the taking of any steps by him to rectify it;

(*b*) that the High Court had refused to admit the appeal out of time on the ground of such delay, and because the appellant had not satisfied them that he had made a *bona fide* mistake, nor that he had sufficient cause under s. 5 of the Limitation Act (XV of 1877) for not presenting the appeal in time;

(*c*) that the High Court had transferred to their own files the appeal from the District Court, but no objection taken that they had no power to transfer a case that was not properly before the District Judge, they had dismissed the appeal; and

(*d*) that the analogous appeal had been decided by the High Court in the appellant's favour.

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* *Present*:—Lords Macnaghten and Lindley, Sir Andrew Scoble, Sir Arthur Wilson, and Sir John Bonser.

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On appeal from the orders of the High Court in the wrongly-filed appeal which, it was contended, were under the circumstances erroneous :—

Held, by the Judicial Committee that they could not interfere, unless they were satisfied that the refusal of the High Court to admit the appeal out of time was wrong and they were not so satisfied; and that the delay which had occurred since the rejection of the appeal by the High Court and which was not accounted for, militated against any interference.

[Ref. 34 Cal. 216=5 C. L. J. 380; 32 Bom 108=9 Bom. L. R. 566; 5 N. L. R. 25; 15 C. W. N. 848=13 C. L. J. 90=9 I. C. 183.]

APPEAL from an order (19th January 1897) of the High Court at Calcutta, and a decree (20th July 1897) of the same Court, made in the exercise of the Appellate Jurisdiction in appeal 304 [310] of 1895, which had been transferred for hearing to the High Court from the Court of the District Judge of Muzufferpore by an order of the High Court dated 9th August 1895.

Appeal by the plaintiff, Ram Narain Joshi, to His Majesty in Council.

The appellant having purchased a share in certain property from the respondent, Bibi Sahodra, subsequently instituted in the Court of the Subordinate Judge of Mozufferpore two suits to set aside two attachments of the property made by different creditors of his vendor. In the first suit (100 of 1892) the market-value of the property in suit was stated to be Rs. 9,855, the price paid by the plaintiff, and the valuation of the suit for the court-fee was Rs. 4,514. Under the second attachment a sale took place at which the property in suit was sold for Rs. 5,650, and in the second suit (18 of 1893) that sum was stated as the valuation for the purpose of assessing the Court fee. By consent the two suits were tried together, and both suits were on 25th June 1894 dismissed by the Subordinate Judge.

The appellant appealed in both suits, (but acting as was alleged under a mistaken belief that the test of the value of the relief for the purpose of jurisdiction was the same as that for the purpose of assessing the court-fee on institution) filed his appeal in suit 100 of 1892 in the Court of the District Judge of Mozufferpore as an appeal in value below Rs. 5,000, the limit of jurisdiction of a District Judge in appeals. His appeal in the other suit, 18 of 1893, in which the valuation for the Court-fee had been put above Rs. 5,000, he filed in the High Court.

In the appeal in this District Judge's Court, the District Judge made an entry in the order sheet that as the value of the claim was Rs. 9,855, the appeals should be filed in the High Court. It was, however, admitted on 4th September 1894, and an entry was made in the order sheet postponing its hearing for an application to be made for its transfer to the High Court, to be tried with the appeal in suit No. 18 of 1893 filed in the High Court. This application was made to the High Court on 9th August 1895, and on the hearing of the application an objection was for the first time made that the appeal to the District Judge was not within his jurisdiction and should have been brought [311] in the High Court. The High Court, however, directed the transfer, "leaving it open to the parties at the hearing of the appeal to raise the objection." Subsequently on 16th September 1895 and before the hearing of the appeal in suit 18 of 1893, the appellant applied that the memorandum of appeal in suit 100 of 1892 (which had been filed in the District Court and transferred as abovementioned to the High Court) might be admitted as a memorandum of appeal to the High Court.

This application was rejected by the High Court (BEVERLEY and

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AMEER ALI, JJ.) on 19th January 1897. In rejecting it they observed as follows :—

"We are of opinion that there are several grounds, which debar the applicant from succeeding in this rule.

"This is not an application for the admission of an appeal after time, which is being presented in proper form to this Court. There is no fresh memorandum of appeal now before us What we are asked to do is to treat an appeal which was presented to the District Judge, and which was called up for trial by this Court, as an appeal to this Court direct, and that in the face of the order of the Division Bench, which called up the appeal for hearing. We are of opinion that we cannot do that. The appeal as presented to the District Judge has been called up to the Court and is now an appeal to this Court, numbered 304 of 1895, and we are at a loss to see how we can interfere in any way with the order made as regards that appeal.

"But even supposing that a fresh memorandum of appeal had been presented and we were asked to admit it after time, we are of opinion that the applicant has not satisfied us that he had sufficient cause for not presenting the appeal before. It may be that in certain cases a mistake made by the parties as to jurisdiction or other matters may be a sufficient cause for admitting an appeal after time; but in the present case it is difficult to see how such a mistake can have occurred. The two suits were in respect of the same property, and it is to be presumed that they were of the same value. They appear to have been instituted on different dates, and that is probably the reason why the values of the suits are put down at different figures; but the applicant, who was the plaintiff in those suits, must have known very well that the value of this suit was above Rs. 5,000 and that the appeal in this, as in the other case, lay to the High Court.

"But even supposing that that mistake could be overlooked and could be treated as a sufficient cause for not having filed this appeal within time, still there is another circumstance which, we think, would preclude the applicant from having this rule made absolute, and that is, that although he became aware of this mistake on the 9th August 1895, he made, no application to this Court, until the 16th of September, or more than five weeks afterwards, and then only in the form of the application to which we [312] have referred. There was no reason whatever why the application could not have been made within a few days of the discovery of the mistake. Of course, had a fresh memorandum of appeal accompanied by copies of the judgment and decree of the Lower Court been filed, it might have been urged that time was necessary to procure the copies and to prepare the memorandum; but in this case there was absolutely nothing to be done but to file the application. That being so, we are of opinion that due diligence was not shown in making this application.

"For all these reasons we think that the application fails and that the rule must be discharged. The rule is accordingly discharged with costs."

The analogous appeal filed in the High Court in suit 18 of 1893 was heard and decided in favour of the appellant on 22nd March, 1897.

The appeal in suit 100 of 1892, which had been transferred from the District Judge to the High Court and had been numbered 304 of 1895, came up for consideration on 20th July 1897, when it was dismissed with costs.

The judgment of the Court (TREVELYAN and STEVENS, JJ.) dismissing it is reported in I. L. R. 25 Cal. 39, where the facts are fully stated.

On this appeal, which was heard *ex parte*—

A. Phillips for the appellant contended that the Judges of the High Court were in error in not, under the circumstances of the case, exercising all the powers vested in them to enable the appellant to prosecute an appeal, which had been shown by his success in the analogous case to have been justified, and which had only failed through a *bona fide* mistake. The two suits had been heard together, and had been dealt with in one judgment with the consent and for the convenience of all parties, and neither the want of a fresh memorandum of

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appeal, nor the delay which occurred in realizing and taking steps to correct the *bona fide* mistake, which had been made, ought to be allowed to deprive the appellant of the full benefit of his appeal, in the case in which he was successful. He had, it was submitted, shown sufficient cause for not applying earlier for the admission of his appeal in suit 100 of 1892 to the High Court: the refusal of that Court to bring up the appeal in that case and hear it with the other was wrong; and the defects of form in the appellant's endeavours to prosecute the appeal were not such as to disentitle him to the assistance of the Court, which had subsequently decided in the [313] other appeal that his claim was a just one. The Limitation Act (XV of 1877) s. 5 was referred to.

The judgment of their Lordships was delivered by

SIR ARTHUR WILSON. The appellant filed his suit on the 9th June 1892, in the Court of the Subordinate Judge of Mozufferpore. He alleged that he had purchased a share in a certain property from Bibi Sahodra. He complained that, notwithstanding his purchase, the property had been attached in execution by a creditor of his vendor, and he asked to have his title established and the property released from attachment.

In the following year the appellant brought a second suit in the same Court with respect to the same property, asking for similar relief against another attachment by another creditor. The two suits were heard together, and the Subordinate Judge held that the appellant had failed to prove the genuineness of his purchase, and accordingly dismissed both suits on the 25th June 1894.

The present suit had originally been valued at a sum under Rs. 5,000, while the second suit was valued at a sum over Rs. 5,000. After the decision by the Subordinate Judge of the two suits against the appellant, he filed an appeal in each case. In the second case he correctly valued the appeal above Rs. 5,000 and filed the appeal in the High Court, the proper tribunal to entertain it. But in the present suit, by an unfortunate error, as it is said, he undervalued his appeal, placing it below Rs. 5,000, and presented it on the 3rd September 1894 in the Court of the District Judge, a Court which on a true valuation had no jurisdiction to hear it. This mistake on the part of the appellant or his advisers has been the source of all his subsequent difficulties.

On the 10th January 1895, upon the petition of the appellant, a Division Bench of the High Court issued an order to show cause why the appeal in this case should not be transferred to the High Court under section 25 of the Civil Procedure Code, and heard with the other appeal already pending in the High Court. The rule to show cause came on for hearing before another Bench on the 9th August 1895, and on that day the order was [314] made absolute; but the order then made contains the important words: "The pleader for the respondent objects to the transfer of his appeal to this Court on the ground that it has been wrongly preferred to the District Judge of Mozufferpore and that upon its proper valuation the appeal should have been made to this Court. As no objection has been raised in the Court to which the appeal has been made, we direct the transfer of the appeal to this Court, leaving it open to the parties, at the hearing of the appeal, to raise this objection. The appellant must understand that should the objection be allowed, he must take the consequences in regard to the course taken by him."

Thus whatever misconception the appellant's advisers may have laboured under prior to the 9th August 1895, on that day at all events

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their attention was distinctly called to the mistake which had been made and to the consequent difficulties in which the appellant was involved.

The next step taken was on the 16th September 1895. By a petition verified on that date, and presented on behalf of the appellant, it was prayed that the memorandum of appeal, which had been filed in the District Court, might be admitted in the High Court and duly registered and numbered. An order to show cause was issued in the terms of the petition, and this came on for argument on the 19th January 1897.

At the time when this application was made to the High Court the period limited by law for appealing against the original decision of the Subordinate Judge had long expired. And the most favourable light for the appellant in which his petition can be viewed is to regard it as an application to the Court to exercise the power conferred upon it by section 5 of the Limitation Act by which an appeal may be admitted after date "when the appellant satisfies the Court that he had sufficient cause" for not appealing in due time.

The Judges of the Division Bench, which dealt with the matter on the 19th January 1897, first considered certain points, which it is not necessary now to examine, and then they came to the questions arising under the section above cited. They said: "The applicant has not satisfied us that he had sufficient [316] cause for not presenting his appeal before." They were not convinced that the appellant had really mistaken the value of his appeal; and they further thought that the delay between the 9th August and the 16th September, for which no reason was shown, would preclude the applicant from having the rule made absolute, and it was accordingly discharged.

The appeal in this case came on for hearing before a Bench of the High Court on the 20th July 1897, and the objection was at once raised that the Court had no jurisdiction to hear it. It appears that some time before this date the appeal in the other case had been heard, and the decision of the first Court reversed, and a decree made in the appellant's favour.

In dealing with the appeal in this case the learned Judges before whom it came held that, as to admitting the appeal to the High Court out of time, the matter was concluded by the decision of the Division Bench in discharging the order to show cause on the 19th January 1897, and after considering the other points raised before them, they dismissed the appeal for want of jurisdiction.

Against the dismissal of the appeal to the High Court, the present appeal has been brought, and has been heard *ex parte*.

It has been pressed upon their Lordships that the case is one of apparent hardship, inasmuch as in two cases raising the same question on the merits the appellant has a decree in his favour in one, and a decree against him in the other, and that, though the whole difficulty has arisen from the mistakes of the appellant or his advisers, those mistakes were venial, and he ought, if possible, to be relieved from the serious consequences, which they have entailed. In particular it was urged that the refusal of the Division Bench on the 19th January 1897 to admit the appeal out of date, which was treated as conclusive at the hearing, was wrong. And it was suggested that the dismissal of the appeal by the High Court ought to be set aside and the case remitted to that Court, in order that it may again consider the question decided on the 19th January 1897.

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Their Lordships are of opinion that they could not properly interfere in this case, unless they were satisfied that the refusal [316] by the Division Bench on the 19th January 1897 to admit the appellant's appeal after date was wrong, and they are not so satisfied. And the long interval of time which has elapsed between the 19th January 1897 and the hearing of this appeal before their Lordships would enhance the danger of such interference. The appellant may or may not be responsible for this delay, but at least it has not been accounted for.

Their Lordships would humbly advise His Majesty that this appeal should be dismissed.

Appeal dismissed.

Solicitors for the appellant: *T. L. Wilson & Co.*

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30 C. 317 (=7 C. W. N. 329.)

[317] ORIGINAL CIVIL.

TULLARAM *v.* THE CORPORATION OF CALCUTTA.*

[20th January, 1903].

Building—Calcutta Municipal Consolidation Act (B. C. II of (1888), *ss.* 247, 250, 427—*Sanction—Limitation—Damages.*

A sanction to build, given by the Municipal Corporation of Calcutta under s. 247 of the Calcutta Municipal Consolidation Act (B C. II of 1888), is absolute and when such sanction is once given there is nothing in the Act which enables the Corporation to revoke it.

The Corporation having granted sanction to the plaintiff, after the site had been duly inspected and approved of by its officer, to erect a mill on his giving an undertaking, is not entitled, in an action for damages caused by the withdrawal of the sanction, to plead in defence that the officer made a mistake, and that the sanction is not binding.

The Corporation, after granting sanction under s. 247 of the Act, withdrew it on the ground that the plaintiff had not complied with what it believed to be his undertaking.

Held that the withdrawal of the sanction was not done, nor did it purport to have been done under the Act; and that the suit for damages having been based upon such withdrawal, the special limitation of three months, as provided by s. 427 of the Act, did not apply to it.

ORIGINAL SUIT.

ON December 6, 1898, the plaintiffs, Tullaram and Rajendro Nath Sanyal, instituted this suit against the Municipal Corporation of Calcutta, for damages, for a declaration that the order withdrawing the sanction given to the plaintiffs by the Corporation for erecting a mill was invalid, and for an injunction restraining the Corporation from interfering with the working of the mill.

The plaintiffs alleged that on June, 17, 1897, the Corporation of Calcutta granted sanction for the construction by the plaintiffs of a soorkey and flour mill upon plans submitted with the application for sanction, at 102, Amherst Street, in the town of Calcutta, after the site for the said mill had been duly inspected and approved of by the officers of the Health, Roads and Buildings [318] Departments of the Corporation, on the plaintiff Rajendro Nath Sanyal giving an undertaking to acquire

*Original Civil Suit No. 856 of 1898.