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 SAJIBULLAH  
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after taking all the steps available to him, may fail to compel the attendance of his witnesses, and it would be unreasonable to hold in a case of that description that the applicant was not entitled to the remedy by civil suit under s. 77. It seems to us that where it is found that the application was a *bonâ fide* application under s. 73, and where it does not appear that the applicant abandoned his application, he would not be precluded from pursuing his remedy under s. 77 by a civil suit merely on the ground that no evidence having been adduced by him before the Registrar, the Registrar refused registration.

We therefore agree with the District Judge in the view he has taken of the provisions of s. 77. The appeal will be dismissed with costs.

K. C. M.

*Appeal dismissed.*

*Before Mr. Justice Mitter and Mr. Justice Grant.*

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 May 31.

HURO CHUNDER ROY (DEFENDANT) v. SURNAMYOI (PLAINTIFF).<sup>\*</sup>  
*Limitation Act, s. 5—Discretion of Court—Appeal out of time, admission of.*

Section 5 of the Limitation Act gives a discretion to a Court to admit an appeal filed out of time.

A valued his suit at Rs. 18,000, which was reduced to less than Rs. 5,000 by the Court of first instance at Rajshahye. A decree, dated the 20th December 1883, was given against the defendant, who applied for copies on the 3rd of February, and the decree was ready on the 7th. The defendant was apparently under the impression that the appeal would lie to the High Court; but on the 16th of March a letter was despatched by his Calcutta agent informing him that he was mistaken and that the appeal lay to the District Judge. This letter reached Rajshahye on the 17th, and the appeal was filed on the 23rd of March.

*Held*, that under the circumstances the Court might admit the appeal in the exercise of its discretion under s 5 of the Limitation Act.

THIS suit, which was instituted in the Court of the Subordinate Judge of Rajshahye, was one for khas possession of certain mouzahs and valued at Rs. 18,000. The Court decreed the claim, but upon the objection of the defendant reduced the value to

\* Appeal from Appellate Decree No. 238 of 1886, against the decree of F. J. G. Campbell, Esq., Judge of Rajshahye, dated the 5th of October 1885, affirming the decree of Baboo Promotho Nauth Mookerjee, Subordinate Judge of that district, dated the 20th of December 1885.

Rs. 4,178-10-5 and allowed proportionate costs. The decree was dated the 20th of December 1883. The defendant (judgment-debtor) applied for copies on the 3rd of February and the decree was ready on the 7th; the defendant, on account of the valuation put by the plaintiff at Rs. 18,000, being then under the impression that the appeal would lie to the High Court. On the 17th of March a letter from his Agent at Calcutta reached him at Rajshahye informing him that he was mistaken, and that the appeal would lie to the District Judge. The appeal was filed in the District Court on the 23rd of March. On the above state of facts the appellant prayed for the admission of his appeal which was clearly beyond time.

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The District Judge passed the following judgment, and rejected the appeal with costs: "This appeal is admittedly out of time; but the appellant seeks to have it admitted on an affidavit purporting to account for the delay and of which the sum and substance (all verbiage stripped off) is this simpliciter, that he thought the appeal would lie to the High Court and so delayed filing it in this Court. Giving him credit for so thinking, his mistaken thoughts cannot override the law of limitation."

The defendant appealed to the High Court.

Baboo *Rasbehari Ghose* and Baboo *Girija Sunkur Mozoomdar* for the appellant.

Baboo *Srinath Das*, Baboo *Gurudas Banerjee* and Baboo *Jogesh Chunder Roy* for the respondent.

The judgment of the Court (MITTER and GRANT, JJ.) was as follows:—

It appears to us that the lower Appellate Court in this case has rejected the appeal as filed out of time and refused to admit it under s. 5, on the ground that a *bonâ fide* mistake made by the appellant in the respect of the limit of time within which according to law he is bound to file his appeal is under *no circumstances* a valid ground for admitting an appeal under s. 5.

We are of opinion that is not a correct view of the provisions of s. 5. It is for the Judge in each case to exercise his discretion, having regard to the particular facts established before him.

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We upon that ground set aside his order, rejecting the appeal and remand the case to him to decide that point again.

We may, however, point out that if the facts stated before us are correct, and if the matter had been left to us to decide, we should have been very much inclined to think that the appeal should be allowed to be filed under s. 5. We may here state the facts that have been stated before us. The decree of the lower Court is dated 20th December 1883; the suit was valued at Rs. 18,000, but on the objection of the defendant the Court decided that the value of the subject-matter of the suit was below Rs. 5,000. The appellant applied for copies on the 3rd of February, the decree was ready on the 7th of February; the appellant being then under the impression that the appeal would lie to the High Court. Then on the 16th of March a letter was received from his agent at Calcutta, informing the appellant that he was mistaken, and that an appeal would lie to the District Judge. This letter reached Rajshahye on the 17th, and the appeal was filed on the 23rd of March.

The costs of this hearing will abide the result.

K. C. M.

*Case remanded.*

## CIVIL REFERENCE.

*Before Mr. Justice Mitter and Mr. Justice Grant.*

BHAIRAB CHUNDRA CHOWDHRI (PLAINTIFF) v. ALEK JAN  
(DEFENDANT).\*

1886  
April 28.

*Stamp Act, 1879, s. 13—Suit on bond—Stamp, Sufficiency of.*

A bond stipulated that for the consideration of a loan of Rs. 80 the debtor should deliver to the creditor on a future day "800 arris of grain valued at Rs. 10 per 100 arris." The bond was engrossed on an 8-anna stamp paper. In a suit on the bond for the recovery of 800 arris, at 4 arris per rupee, or its price, Rs. 200 :

*Held*, that the bond was adequately stamped.

THIS was a reference in a suit which was brought to recover 800 arris of grain, or their value at 4 arris per Re. 1. The Munsiff disallowed the claim as to a moiety on the ground that

\* Civil Reference No. 5A of 1886, made by Baboo Baroda Prasanna Shome, Subordinate Judge of Chittagong, dated the 10th of February 1886.