original decree does not contain the last clause mentioned in section 92.

We are not prepared to follow the decision in *Poresh Nath Mojumdar* v. *Ramjodu Mojumdar*(1).

The appeal is dismissed with costs.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Muttusami Ayyar.

KRISHNA (PLAINTIFF), APPELLANT,

v.

CHATHAPPAN (DEFENDANT No. 2), RESPONDENT.*

1889. November 25.

Limitation Act—Act XV of 1877, ss. 5, 14—"Sufficient cause" to excuse delay—Error in law.

Land was sold in execution of a decree which was passed against the defendant for a sum exceeding Rs. 5,000. A suit to set aside the sale was instituted in a Subordinate Court and was dismissed. The plaintiff who desired to appeal against the decree dismissing his suit was advised that the appeal lay to the High Court in which a memorandum of appeal was accordingly filed. On its appearing that the value of the property sold was less than Rs. 5,000, the High Court returned the memorandum of appeal for presentation to the District Court. The District Judge rejected it on the ground that it was barred by limitation, holding that the delay caused by the error which the appellant committed in taking proceedings in the wrong Court could not be excused:

Held, that the District Judge should have decided whether the appellant under the special circumstances of the case in appealing to the High Court acted on an honest belief formed with due care and attention.

Per curiam: "We are not prepared to hold that a mistake in law is under no circumstances a sufficient cause within the meaning of s. 5 of the Limitation Act."

APPEAL against the order of J. H. A. Tremenheere, Acting District Judge of North Malabar, in miscellaneous petition No. 666 of 1888.

The order appealed against dismissed a petition which prayed that an appeal against a decree of the Subordinate Judge of North Malabar be ordered to be placed on the file, though presented after the period allowed by the law of limitation.

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(1) I.L.R., 16 Cal., 246. * Second Appeal No. 321 of 1889.

KRISHNA v. CHATHAPPAN.

The further facts of the case appear sufficiently for the purpose of this report from the judgment of the High Court.

Bhashyam Ayyangar and *Sankara Menon* for appellant.

Sankaran Nayar for respondent.

JUDGMENT.—In execution of the decree in original suit No. 2 of 1883 on the file of the Subordinate Court of North Malabar certain immoveable properties were sold. The appellant instituted original suit No. 5 of 1886 to set aside the sale and took the amount of the decree in the first-mentioned suit, which exceeded Rs. 5,000, as the value of the second suit.

The Subordinate Court dismissed his suit and he preferred an appeal to the High Court. This Court held that the property sold being less than Rs. 5,000 in value, it was the value of the property in litigation that was the value of the suit, and returned the petition of appeal for presentation to the District Court. The decree was issued on the 16th October 1886, and the affidavit filed by the petitioner states that the memorandum of appeal was returned to the appellant on the 30th October. It was presented to the District Judge on the 8th November, but it was rejected as being out of time. The Judge relied on the decision of *Jag Lal* v. *Har Narain Singh*(1). It is stated in the affidavit that before presenting his appeal to the High Court, the appellant obtained professional advice, and his counsel thought that the appeal lay to the High Court. It is urged before us that there was sufficient cause for the delay under section 5 of the Limitation Act. We are not prepared to hold that a mistake of law is under no circumstances a sufficient cause within the meaning of that section. In an unreported case to which we have been referred the appellant valued his partition suit at the amount claimed for his share instead of taking the value of the entire property to be the value of the subject matter of the suit, and a Divisional Bench of this Court admitted the appeal, though it was out of time. In *Huro Chunder Roy* v. *Surnamoyi*(2) the same view was taken. In that case the plaintiff valued his suit at Rs. 18,000, which was reduced by the Court of First Instance to less than Rs. 5,000. A decree was passed against the defendant, who was under the impression that the appeal would lie to the High Court and placed himself in communication with his Calcutta agent. On his mistake being

(1) I.L.R., 10 All., 524. (2) I.L.R., 13 Cal., 266.

pointed out, he filed his appeal in the District Court. It was held by a Divisional Bench of the High Court at Calcutta that the Court might admit the appeal in the exercise of its discretion under section 5. The true rule is whether under the special circumstances of each case the appellant acted under an honest, though mistaken, belief formed with due care and attention. Section 14 of the Limitation Act indicates that the Legislature intended to show indulgence to a party acting *bonâ fide* under a mistake. 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 do not consider that the Judge is concluded by the decision in *Jag Lal* v. *Har Narain Singh*(1), and we are of opinion that he must exercise his discretion under section 5 with reference to the special circumstances of each case. We set aside the order of the Judge and direct him to restore the petition of appeal to his file and deal with it in accordance with law.

The costs of the appeal will be provided for by the Judge in his revised order.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Parker.

APPA RAU (DEFENDANT No. 1), APPELLANT,

1889. August 28.

v.

VIRANNA (PLAINTIFF), RESPONDENT.*

Rent Recovery Act (Madras)—Act VIII of 1865, *ss.* 4, 11—*Acceptance of patta not in accordance with the Act.*

A tenant having accepted a patta (which did not give the particulars described in s. 4 of the Rent Recovery Act) and having executed to the landlord a muchalka which was registered, is not entitled to obtain in a summary suit an order setting aside a distraint by the landlord for arrears of rent.

(1) I.L.R., 10 All., 524.

* Second Appeal No. 1623 of 1888.