

TWA YAMMÁL respondent not having appeared, there will be no costs of the
 V. appeal.
 VENKATA-
 RÁMÁ.

Appeal dismissed.

Solicitors for appellants: Messrs. *Burton, Yeates, Hart and Burton.*

APPELLATE CIVIL.

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

REFERENCE UNDER S. 39 OF ACT V OF 1882.*

1887.
 January 21.
 March 4.

*Madras Forest Act,—Act V of 1882, ss. 14, 39—Indian Limitation Act,—
 Act XV of 1877, ss. 5, 6—Period of limitation—Power to excuse delay.*

Delay in preferring an appeal under the Madras Forest Act beyond the period prescribed by s. 14 of that Act, may be excused under s. 5 of the Indian Limitation Act, 1877.

THIS case was referred by the Collector of Salem, under Madras Act V of 1882—the Madras Forest Act, s. 39.

The question referred and the circumstances under which it arose appear sufficiently for the purpose of this report from the judgment of the Court (Collins, C.J., and Parker, J).

Counsel were not instructed.

JUDGMENT.—The appeal as to which this reference is made is preferred under s. 14 of the Madras Forest Act V of 1882, which prescribes the term of 60 days as the period within which the appeal must be preferred.

The appeal was preferred two days out of time.

The question referred by the Collector is whether he has power to excuse the delay under paragraph 2, s. 5 of the Limitation Act of 1877, regard being had to the provisions of s. 6 of the same Act that, when a period of limitation is specially prescribed by any special or local law, nothing in that Act (*i.e.*, the general Limitation Act) shall affect or alter the period so prescribed.

The Collector has recorded his opinion that the general provisions of the Limitation Act cannot apply to a case in which the period of limitation is fixed by a special or local law, and the decision in *Thir Sing v. Venkatardmier*(1) would at first sight

* Referred Case 2 of 1886.

(1) I.L.R., 3 Mad., 92.

appear to support that view. But it must be noted that the decision in that case was governed by the Limitation Act of 1871, s. 6, of which differs in its wording from the corresponding section (also s. 6) of the present Act.

REFERENCE
UNDER FOREST
ACT V OF
1882.

In the Act of 1871, the concluding words of s. 6 were "nothing herein contained shall affect such law," but in the present Act the words are "nothing herein contained shall affect or alter the period so prescribed."

It was held in *Behari Loll Mookerjee v. Mungolanath Mookerjee*(1) and *Golay Chand Nowluckha v. Krishto Chunder Dass Biswas*(2) that the object of the alteration was to give persons suing the benefit of the rules contained in the present Act for computing the period within which the suit must be brought, and in *Nijabutoolla v. Wazir Ali*,(3) the Judges went further and held that the provisions of s. 5 were generally applicable to all suits and appeals notwithstanding anything contained in s. 6.

We think that the Collector is at liberty to excuse the delay under the second paragraph of s. 5. To do so does not alter the period prescribed by any special law, but is merely the exercise of a discretion which is not expressly prohibited and which is generally applicable.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

MUTTIRULANDI AND OTHERS (DEFENDANTS), APPELLANTS,

and

KOTTAYAN (PLAINTIFF), RESPONDENT.*

1887.
Feb. 11, 28.

Civil Procedure Code, s. 57—Plaint presented in a wrong Court.

In all cases where no option as to the selection of the Court is allowed by law to the plaintiff, a plaint presented in a wrong Court must be returned for presentation in the proper Court.

APPEAL from the decree of A. J. Mangalam Pillai, Subordinate Judge of Madura (West), affirming the decree of P. S. Guru-

(1) I.L.R., 5 Cal., 110.

(2) I.L.R., 5 Cal., 314.

(3) I.L.R., 8 Cal., 910.

* Second Appeal 743 of 1886.