Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Ram Narain Joshi v. *Parmeswar Narain Mahta and Others, from the High Court of Judicature at Fort William, in Bengal; delivered the* 13*th December* 1902.

Present at the Hearing:
LORD MACNAGHTEN.
LORD LINDLEY.
SIR ANDREW SCOBLE.
SIR ARTHUR WILSON.
SIR JOHN BONSER.

[*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

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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 made absolute; but the Order then made contains the important words:—"The "pleader for the Respondent objects to the "transfer of this 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 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 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 this 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.

Their Lordships are of opinion that they could not properly interfere in this case unless they were satisfied that the refusal 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 will humbly advise His Majesty that this Appeal should be dismissed.