

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,

v.

VIRANNA (PLAINTIFF), RESPONDENT.*

1889.
August 28.

*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.

APPA RAU
v.
VIRANNA.

SECOND APPEAL against the decree of G. T. Mackenzie, Acting District Judge of Kistna, in appeal suit No. 582 of 1887, reversing the decree of L. M. Wynch, Acting Head Assistant Collector of Kistna, in summary suit No. 156 of 1887.

Suit to set aside a distraint by the first defendant for rent due to him by the plaintiff. The Head Assistant Collector dismissed the suit. His decree was reversed on appeal by the District Judge against whose decree the first defendant preferred this appeal.

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

Mr. Subramanyam and *Subramanya Ayyar* for appellant.

Rama Rau for respondent.

JUDGMENT.—The District Judge has lost sight of the fact that in this case the patta has been accepted and a registered muchalka given in exchange. The case is, therefore, distinguishable from *Ramanjulu v. Ramachandra*(1), in which the landlord relied upon his having tendered a proper patta to justify his distraint. Had the defendant in this case merely tendered the patta and received no muchalka, it may be admitted that the Court would not hold the patta a proper one, inasmuch as the rates of rent are not given as required by section 4 of the Rent Recovery Act.

An express contract having been made between the parties, it should be enforced (section 11).

Had the patta not been accepted, this stipulation would have made the patta void for uncertainty, *Ramasami v. Rajagopala*(2), but in that case no muchalka had been given. The rate charged by the landlord was the highest wet rate in the village, which was not in itself an illegal or unreasonable charge. Under the circumstances we must reverse the decree of the Lower Appellate Court and restore that of the Head Assistant Collector. The appellant is entitled to his costs in this and in the Lower Appellate Court.

(1) I.L.R., 7 Mad., 150.

(2) I.L.R., 11 Mad., 200.