

examined. The case was adjourned and endeavours were made to obtain the presence of persons named by the accused as witnesses. During the adjournment Mr. *Garstin* resumed his appointment, and having examined one fresh witness concluded the trial.

We are compelled to pronounce the proceedings void. It is only in view of the necessarily frequent changes in the office of Magistrate the *Criminal Procedure Code* provides specially that a Magistrate may pronounce judgment on evidence partly recorded by his predecessor and partly by himself, but there is no such provision in the case of Sessions Judges.

The conviction must be set aside and a new trial directed.

[3 Mad. 113.]

APPELLATE CIVIL.

The 1st March, 1881.

PRESENT :

MR. JUSTICE INNES AND MR. JUSTICE KERNAN.

Chedumbara Pillai.....(Defendant), Appellant

versus

Ratna Ammal.....(Plaintiff), Respondent.*

Civil Procedure Code. Section 258—Satisfaction of decree not certified.

An adjustment of a decree not certified to the Court by either party within the time limited by law, cannot be recognized as a bar to execution.

IN this case the plaintiff, as judgment-creditor, sent her agent to bid at an execution sale of property of the defendant. The agent, upon condition that one *Mutturama Pillai* would satisfy plaintiff's debt, did not bid. *Mutturama* bought the property without competition for Rs. 945, and gave the agent a promissory note for Rs. 1,500 in favour of plaintiff, to be deposited with one *Govindasami* till plaintiff certified satisfaction to the Court, and, upon default, to be returned to *Mutturama*. Plaintiff declined to take the promissory note and put her decree in execution against the defendant.

[114] No application was made to the Court by plaintiff or defendant under Section 258 of the *Civil Procedure Code*.

The Munsif held that plaintiff had waived her right against the defendant under the decree through the conduct of her agent.

The District Judge set aside this order as the alleged adjustment was not certified to the Court.

Defendant appealed.

A. *Ramachandrayyar* for the Appellant.

T. *Rama Rau*, for the Respondent.

The Court (INNES and KERNAN, JJ.) delivered the following

Judgment:—The adjustment alleged is not admitted by the decree-holder, and the facts found by the Munsif negative the statement of the judgment-debtor that any adjustment took place.

* C.M.S.A. 658 of 1880 against the order of F. H. Woodroffe, District Judge of North Tanjore, reversing the order of the District Mansif of Shiyali, dated 25th April 1880.

These facts distinguish the case from that of Miscellaneous Petition No. 465 of 1880.

An adjustment not having been certified by either party within the time limited by law, the District Judge was right in setting aside the order of the District Munsil, as under the provisions of Section 258 of the *Civil Procedure Code* the Court could not recognize an alleged adjustment in such circumstances.

We dismiss the appeal with costs.

NOTES.

[I. UNCERTIFIED ADJUSTMENT NOT TO BE RECOGNIZED BY THE EXECUTING COURT :—

(1897) 25 Cal. 86 ; (1911) 24 M. L. J. 541, *dissenting* from HEATON, J. in (1910) 12 Bom. L. R. 686.

II. EVEN WHEN IT IS PUT FORWARD BY JUDGMENT DEBTOR—

24 M. L. J. 541 ; (1908) 12 C. W. N. 485.]

[3 Mad. 114]

APPELLATE CIVIL.

The 4th March, 1881.

PRESENT :

SIR CHARLES A. TURNER KT., CHIEF JUSTICE, AND MR. JUSTICE KINDERSLEY.

Nattu Achalai Ayyangar and another.....(Defendants), Appellants
versus
 Parthasaradi Pillai.....(Plaintiff), Respondent.*

Rent Recovery Act (Madras Act VIII of 1865)—Sale of immoveable property, irregularity in, Effect of.

A suit lies to set aside a sale of immoveable property irregularly conducted under the provisions of Act VIII of 1865.

If notice of sale is not served in the way prescribed by Section 39 the sale must be set aside.

[115] In this suit the plaintiff sought to set aside the sale of certain lands irregularly brought about by the first defendant under the *Rent Recovery Act*, and to recover possession thereof from the second defendant, the purchaser at the revenue auction sale.

The defendants contended that sales of immoveable property under Act VIII of 1865 could not be set aside. This contention was founded on Section 40†, which prescribes that the sale of the interest of defaulters in land shall be conducted under the rules laid down for the sale of moveable property distrained

* Second Appeal No. 707 of 1880 against the decree of A. L. Lister, Acting District Judge of Chingleput, reversing the decree of the District Munsif of Tiruvallur, dated 16th August 1880.

† [Sec. 40:—When no appeal has been made to the Collector against such notice by preferring a summary suit within one month from the date of service upon the defaulter, or as above specified, or when an appeal has been decided against the defaulter, the party entitled to the arrears shall be authorized to take measures for the sale, which shall be conducted under the rules laid down for the sale of moveable property distrained for arrears of rent.]