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accepted it or not, unless its correctness had been admitted by the party to whom it was adverse, viz., the defendant in this case. There is nothing to show there was such admission, and the Judge has not expressed any opinion on the matter in question. There is therefore no judgment as prescribed by the Code. We must, therefore, reverse the decree and remand the appeal to be disposed of according to law. (See *Umed Ali* v. *Salima Bibi*(1), *Mumtaz Begam* v. *Fateh Husain*(2), *Bhagvan* v. *Kesur Kuverji*(3), and see also *Ramchandra Govind Manik* v. *Sono Sadashiv Sarkhot*(4).) Costs will abide and follow the result.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Davies.

1897. September 1, 2.

OLIVER (DEFENDANT No. 1), APPELLANT,

v.

ANANTHARAMAYYAR (PLAINTIFF), RESPONDENT.

Rent Recovery Act—Act VIII of 1865 (Madras), ss. 18, 39, 40—Attachment for arrears of rent—Suit to set aside attachment—Subsequent sale.

A landlord attached his tenant's holding for arrears of rent in 1889, and within the time prescribed by Rent Recovery Act, section 18, put in an application for sale to the Collector, and otherwise complied with the procedure prescribed by the Act. The land was sold, but the sale was set aside as having been irregularly conducted. The landlord then made in 1894 an application to the Collector for a fresh sale (which was granted); a fresh sale took place without a fresh notice being given to the tenant under section 39 of the intention to sell. The tenant now sued to have this sale set aside:

Held, that the plaintiff was not entitled to have the sale set aside.

SECOND APPEAL against the decree of F. H. Hamnett, District Judge of Tanjore, in Appeal Suit No. 122 of 1896, reversing the decree of N. Sambasiva Ayyar, District Munsif of Tiruvadi, in Original Suit No. 348 of 1895.

The plaintiff was a tenant on the Tanjore palace estate, of which defendant No. 1 was the receiver. Defendant No. 2 was the purchaser of the lands, which the plaintiff had occupied, at a sale which took place in January 1895.

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(1) I.L.R., 6 All., 383. (2) I.L.R., 6 All., 391. (3) I.L.R., 17 Bom., 428.
(4) I.L.R., 19 Bom., 551. * Second Appeal No. 89 of 1897.

The plaintiff now sued to set aside the sale. It appeared that the receiver had attached the plaintiff's holding for arrears of rent in July 1889. The plaintiff instituted a summary suit to have the attachment raised. This suit terminated in favour of the receiver, who thereupon brought the property to sale in December 1892. The plaintiff then instituted a regular suit to have the sale set aside and succeeded on the sole ground that the sale had not been held on the date originally fixed, but on an adjourned date. The receiver then caused fresh notice of sale to be issued and had the attached property brought to sale. Hence this suit.

The District Munsif was of opinion that the attachment was not cancelled as the result of the previous decree setting aside the sale and held that the sale now in question was a valid sale and he passed a decree dismissing the suit.

The District Judge on appeal reversed his decree and set aside the sale on the ground that the application for the sale had not been made within the period prescribed by Rent Recovery Act of 1865, section 18. He held that the intermediate proceedings did *not operate* to extend the time allowed by that section, and he made the following observations :—

"The application for the second sale was only made in 1894 "and the attachment of the property sold is alleged to have taken "place in July 1889. The Lower Court considers that there is no "limit as to the time within which application for sale may be "made after attachment. In the view the Lower Court appears "to me to be quite wrong. Section 40 clearly provides that the "sale of immovable property shall be conducted under the rules "laid down for sale of movable property. One of those rules is "contained in section 18. There must be an application to the "Collector for an order directing the sale and that application "must be made within the time prescribed in section 18. There is "nothing in section 40 which implies that the provisions of section "18 do not apply as regards the time within which the application "is to be made. The wording of Act VIII of 1865 is no doubt "vague and unscientific, but the Act must be interpreted reason-"ably. It is clear that the framers of the Act, in providing in "section 40 that the sales of immovable property 'should be con-"'ducted under the rules laid down for movable property' intended "that the same procedure should be adopted in both cases, not "only at the time of sale itself, but also in the preliminary steps

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"to be taken to bring the attached property to sale through the "Collector. It would be monstrous to suppose that the Legis- "lature intended that, after once issuing a notice under section 39 "of the Act, the landlord could, years afterwards, have the pro- "perty sold without the issue of any fresh notice, except the general "proclamation of the sale prescribed in section 18 of the Act."

Defendant No. 1 preferred this second appeal.

Pattabhirama Ayyar for appellant.

Sundara Ayyar for respondent.

JUDGMENT.—It is admitted in this case that the first application to the Collector for sale under section 40 of the Act (VIII of 1865) was made within the time prescribed by section 18, and that the sale which took place in pursuance of that application was set aside on the ground of an irregularity in the conduct of the sale by the officer carrying it out. After the sale was thus set aside, the landlord applied again to the Collector for a fresh sale without giving a second notice to the tenant of his intention to sell under section 39. The Lower Appellate Court has held that such notice was necessary, in other words that all that had been done up to the irregular sale was practically void, and that the landlord must begin '*de novo*.' We are unable to accept this view. The landlord was in no way responsible for the irregularity in the sale, and he was entitled to ask the Collector to rectify what had gone wrong by giving orders for a proper sale. The second application to the Collector must be considered in the light of a continuation of the original application for sale, which was admittedly in order. It is contended that a fresh notice of intention to sell ought to be insisted on in the interest of the tenant. But the tenant being the party in default, is entitled to less consideration than the landlord who would necessarily be delayed by the adoption of such a procedure. We must therefore hold that a second notice to the tenant under section 39 of the Act was not necessary in law before the landlord's application to the Collector for a regular sale in lieu of the invalid one. We accordingly reverse the decree of the District Judge and restore that of the Munsif. The respondent must pay the appellant's costs in this and in the Lower Appellate Court.