

accordance with the judgment, whether that judgment was right or wrong in law. The decree as altered on the application under section 206 is not a decree in accordance with the judgment. The judgment did not decide that mauzas Khaura and Ganra should be sold: Salamat Ali had not asked in his plaint that they should be sold. In law he was not entitled to a decree for sale of those mauzas. He was not a mortgagee of those mauzas, and did not become a mortgagee of those mauzas by payment of the amount paid by Musamat Lakho Bibi in discharge of the first mortgage. If the result has been that he has paid more than he ought to have been compelled to pay in order to obtain the sale of mauza Sondhia, that result could have been avoided; it was due to his own laches in not appealing. He has brought that result upon himself. The law cannot be altered to relieve a man from the effect of his own laches. The application under section 206 of the Code of Civil Procedure should have been dismissed and not granted. Under section 622 of the Code we make the following order. We allow this application with costs. We set aside the order passed on the application under section 206 of the Code with costs. We dismiss that application, and we restore the decree as originally drawn up and signed.

*Application allowed.*

## REVISIONAL CRIMINAL,

1898

*March 12.*

*Before Mr. Justice Burkitt.*

QUEEN-EMPRESS v. AJUDHIA AND ANOTHER.\*

*Criminal Procedure Code, section 437—Order for further inquiry—Order to the prejudice of an accused person—Notice to show cause.*

Before any order is made to the prejudice of an accused person, notice should be given to that person to appear and show cause why the order should not be passed. *Queen-Empress v. Chotu* (1) referred to.

In this case the applicants Ajudhia and Punni had been charged before the Cantonment Magistrate of Allahabad with

\* Criminal Revisional No. 83 of 1898.

(1) I. L. R., 9 All., 52.

1898

QUEEN-  
EMPRESS  
v.  
AJUDHIA.

the offence of causing grievous hurt whilst committing house-breaking, under section 459 of the Indian Penal Code. The accused were discharged by the Cantonment Magistrate, and against this order the complainant filed an application in revision before the District Magistrate. The District Magistrate considered that there was sufficient evidence against both the accused and ordered them to be re-tried. This order was upheld by the Sessions Judge. The accused persons then applied in revision to the High Court on the ground that the Magistrate before ordering a re-trial ought to have called upon the applicants to show cause why a re-trial should not be ordered.

Mr. *W. Wallach* for the applicants.

The Government Pleader (*Munshi Ram Prasad*) and *Babu Parbati Charan* for the Crown.

BURKITT, J.—I think it would have been well if the District Magistrate had acted on several precedents of this Court which lay down that, before any order is made to the prejudice of an accused person, notice should be given to that person to appear and show cause why the order should not be passed. It is quite true, as remarked by the learned Sessions Judge, that there is no distinct provision to that effect in the Code of Criminal Procedure, but several able and experienced Judges of this Court have laid down the rule that it is most advisable that such notice should be given. I may refer to the cases of *Queen-Empress v. Chotu* (1) and *Queen-Empress v. Mushtaq Husen* (unreported), Criminal Revision No. 183 of 1897, decided on the 28th of April 1897. The order made in this case was undoubtedly prejudicial to the accused person, inasmuch as, whatever may be the result of the further inquiry, the accused person is subjected to the worry and nuisance of that further inquiry. I must set aside the order of the District Magistrate directing a re-trial, and I direct that, if he thinks it necessary to take any further action in this case, he should do so after notice to the accused person. I would further point out to the District Magistrate that he was

(1) I. L. R., 9 All., 52.

wrong in directing a re-trial of the case. All that the Code empowers him to do is to direct that further inquiry be made. I order accordingly.

1898

---

 QUEEN-  
EMRESS  
v.

AJUDHIA.

1898.

---

 March 14.
 

---



---

 APPELLATE CIVIL.
 

---

*Before Mr. Justice Banerji and Mr. Justice Aikman.*

TRIBHUWAN SUNDAR KUAR (PLAINTIFF) v. SRI NARAIN SINGH  
(DEFENDANT).

*Hindu law—Hindu widow—Succession—Legal representative—Civil  
Procedure Code, section 365.*

A reversioner succeeding to the estate of a deceased person after the death of the widow of that person would be bound by a decree obtained against the widow provided that there was a fair trial of the suit in which the decree was passed. Consequently the widow's right to sue survives to, and devolves on, the heir of her husband entitled to the estate, and such heir, and not her personal heirs, should be held to be her legal representative for the purposes of section 365 of the Code of Civil Procedure. *Katama Natchiar v. The Raja of Shicagunga* (1); *Hari Nath Chatterjee v. Mothurmohun Goswami* (2); and *Premnogi Choudhrani v. Preonath Dhur* (3); referred to.

THE facts of this case are fully stated in the order of the Court.

Mr. W. M. Colvin, Munshi Ram Prasad and Munshi Jwala Prasad for the applicant.

Mr. T. Conlan, Pandit Sundar Lal and Babu Jogindro Nath Chaudhri for the respondent.

BANERJI and AIKMAN, JJ:—Rani Tribhuwan Sundar Kuar, the appellant in this appeal, having died since the institution of the appeal, two applications have been presented, one by Rani Balraj Kuar, asking to have her name entered on the record in place of the deceased appellant, and the other by Babu Sri Narain Singh, respondent, praying that the appeal and the suit be declared to have abated. Similar applications have been made in the connected appeal No. 144 of 1896.

The suit out of which the two appeals arose, was instituted by Rani Tribhuwan Sundar Kuar for a declaration that the property in suit was the separate estate of her deceased husband

(1) 9 Moo. I. A., 543.

(2) I. L. R., 21 Calc., 8.

(3) I. L. R., 23 Calc., 636.