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cured by section 537 of the Code of Criminal Procedure and that I ought not to interfere with the learned Magistrate's order unless I am satisfied that the irregularity has occasioned a failure of justice. It is to be noted that the provisions of section 537 of the Code are applicable merely to errors of procedure arising out of mere inadvertence and not to substantive errors of law. Section 537 has no application to cases where there has been a disregard of the mandatory provisions of the Code.

For the reasons given above I accept the reference, set aside the order of the learned Magistrate, dated the 15th of July, 1926, and direct that he should proceed to dispose of the case according to law.

*Order set aside.*

### REVISIONAL CIVIL.

*Before Mr. Justice Lindsay.*

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GIRDHARI LAL (APPLICANT) v. JHAMAN LAL (OPPOSITE PARTY).\*

*Act No. V of 1920 (Provincial Insolvency Act), section 60—Insolvency—Sale of insolvent's property by Collector—Civil court not competent to interfere with sale proceedings.*

Where the sale of revenue-paying property of an insolvent has been made over to the Collector under the provisions of section 60 of the Provincial Insolvency Act, 1920, the civil court has no authority of any kind over the Collector in respect of the sale proceedings so entrusted to him.

THIS was an application in revision from an order of the District Judge of Saharanpur. The facts of the case are fully stated in the judgement of the High Court.

Dr. *Kailas Nath Katju* and Pundit *M. N. Raina*, for the applicant.

The opposite party was not represented.

\* Civil Revision No. 101 of 1926.

LINDSAY, J. :—This application has its origin in certain proceedings in the insolvency court at Saharanpur.

It appears that one Abdul Rahim was declared an insolvent and after the receiver had been appointed, steps were taken for the realization of the assets of the insolvent for the purpose of discharging his debts. After other property of the insolvent had been disposed of, it became necessary to resort to sale of his zamindari property paying land revenue, and consequently under the provisions of section 60 of the Provincial Insolvency Act (Act V of 1920) the sale of the insolvent's immovable property was entrusted to the Collector. Under the section in question, when the Collector is entrusted with the duty of selling property of this kind in insolvency proceedings, he exercises the powers which are conferred on him by paragraphs 2 to 10 of the third schedule to the Code of Civil Procedure. The Collector is, moreover, subject to such rules as have been made by the Local Government in the exercise of the powers conferred upon it by section 70 of the Code of Civil Procedure.

It appears that before the Collector was asked to sell the immovable property of the insolvent, some negotiations had been going on between the receiver and one Shah Muhammad Nazir for the purchase of the zamindari property by private sale and in the report of the receiver, dated the 30th of January, 1926, it is stated that this gentleman was willing to give Rs. 11,000 for the property.

On the 21st of December, 1925, the sale officer who, I understand, is a subordinate of the Collector, brought to sale the zamindari property of the insolvent by public auction. The property was bought by

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Girdhari Lal for a sum of Rs. 200, subject to a mortgage the debt under which amounted to Rs. 3,400.

On the 30th of January, 1926, the receiver addressed a petition to the presiding officer of the insolvency court, the first Subordinate Judge of Saharanpur. He pointed out that the price which had been realized by the sale of the property was inadequate, regard being had to the offer of the Rs. 11,000 which had been previously received. The receiver asked the Subordinate Judge not to sanction the present sale but to ask the sale officer to put the property again to sale free of mortgage and to advertise the sale properly. On this application the Subordinate Judge recorded in the margin the following order:—"Yes, let it be done." This order was objected to by the auction-purchaser, Girdhari Lal, who went to the Judge in appeal. The learned Judge is of opinion that the order of the Subordinate Judge was a legal order. I do not agree with the opinion of the learned Judge. It is quite clear that, having regard to the fact that the sale proceedings in this case had been transferred to the Collector, the civil court had no authority of any kind to interfere with the proceeding of the sale officer; the Subordinate Judge had no authority to sanction a sale made by the Collector or his subordinate, nor had the sale officer any authority to refer the case to the Subordinate Judge and to ask for sanction. In his judgment the learned Judge says that the sale of the 21st of December was never confirmed by the sale officer, who expressly referred the matter to the Subordinate Judge requesting an early sanction of the same. This procedure is altogether unauthorized. As I have already said, the civil court has no authority

whatever over the Collector or his subordinate in these proceedings.

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This is made clear by reference to sections 70 and 71 of the Code of Civil Procedure and is also apparent from the rules which have been made by the Local Government in the exercise of its powers under section 70 of the Code of Civil Procedure. It follows, therefore, that the order passed by the Subordinate Judge and which is complained of in the present application for revision was an unauthorized order which the Subordinate Judge had no jurisdiction to make. I allow this application, set aside the order of the Subordinate Judge and direct that the case be sent back again through the Subordinate Judge to the court of the Collector. If the receiver has any complaint to make regarding the inadequacy of the price obtained at the auction sale, his duty is to represent the matter to the sale officer, who is the only person who is authorized to deal with a question of this kind. The applicant is entitled to his costs in all courts.

*Application allowed.*