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might, on the child beginning to cry, have felt alarm, and to avoid discovery have thrown the child into a well, without waiting to pull the anklets off the legs. In the absence of evidence, it is not a necessary assumption that the prisoner had previously joined in a plan to murder. The confessions indicate that the murder may have been committed by the other person in order to stop the child's cries and prevent the probable discovery. The theory set forth in the confession may have been thought by the jury the most probable, because there is nothing but a suggestion of the prisoner's having hid the bangles in the house where they were found, to invalidate the inference arising from that finding, *viz.*, that there was some other person concerned. We have heard the whole case argued and the evidence read. I am of opinion that here are many considerations which might induce a jury of reasonable men to take the confessions as a whole, and to refrain from convicting the prisoner of the murder. I would, therefore, acquit him of that offence, and convict him of the offence under section 411 of the Indian Penal Code (Act XLV of 1860).

Verdict of the jury upheld.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nánábhái Haridás.

1886.
January 25.

TRIMBAK RAVJI, (ORIGINAL PETITIONER), APPELLANT, *v.* NÁNÁ AND OTHERS, (ORIGINAL OPPONENTS), RESPONDENTS.*

Execution—Decree—Sale in execution—Civil Procedure Code (Act XIV of 1882), *Secs.* 274 *and* 289—*Omission to beat drum—Material irregularity.*

Omission to have a drum beaten as required by sections 274 and 289 of the Civil Procedure Code (Act XIV of 1882) *held* to be a material irregularity so as to render a sale held in execution of a decree liable to be set aside.

THIS was an appeal from an order passed by Ráv Sáheb Tribhuvandás Lakhmidás, Second Class Subordinate Judge of Satára, in Miscellaneous Application No. 68 of 1884.

On the 2nd October, 1884, the appellant's interest in certain property was put up for sale in execution of a money decree for

*Appeal No. 26 of 1885 from order.

Rs. 110, obtained against him and purchased by the first respondent. Thereupon the appellant made an application to the Subordinate Judge to set aside the sale, alleging, among other things, that the property was of greater value than the price for which it was sold, and that the sale was not attended by persons other than those interested on behalf of the respondents, the sale not having been proclaimed by beat of drum. The Subordinate Judge rejected the application.

Dáji A'báji Khare for the appellant:—The omission to beat drum as required by sections 274 and 289 of the Civil Procedure Code (Act XIV of 1882) was a material irregularity, and prejudiced the appellant. The property was worth more than it was knocked down for. The purchaser was the *gumastá* of the decree-holder, and the property was purchased on behalf of the decree-holder, who had not previously obtained permission of the Court.

Mánekshá Jehángirshá for the respondents:—The reason of the small attendance at the sale was that the property was not a marketable property, and was also encumbered. To set aside a sale the injury must be the direct result of irregularities in publishing the sale. See *Olpherts* v. *Mahábir Pershad*(1).

SARGENT, C.J.:—We think that the evidence can leave little doubt that the drum was not beaten as required by sections 274 and 289 of the Civil Procedure Code (Act XIV of 1882). No witness called by the auction-purchaser speaks to having heard it himself; nor was the *pátil* called whose business it was to have it beaten. The attendance, moreover, seems to have been confined to the judgment-creditor and his friends. We think, therefore, that the omission to have the drum beaten, which was a material irregularity, in all probability prejudiced the sale. We must, therefore, reverse the order of the Subordinate Judge, and cancel the sale. Respondents to pay appellant his costs of this appeal.

Order set aside.

(1) L. R. 10 I. A., 25.