

ation he may desire to offer regarding any fact stated by a witness, or after the close of the case, how he can meet what the Judge may consider to be damnatory evidence against him. In one of these cases now before us, we observe that the Judge was engaged, during the whole of the first day, in examining the accused. In like manner, in the second case, he examined the accused at considerable length before the case for the prosecution was opened. Such proceedings appear to us to be an abuse of the power given under the law.

We cannot consider that trials so commenced have been fairly conducted. The minds of both the Judge and jury are at the outset prejudiced by irresponsible statements made by the accused, while subject to this system of cross-examination, before their guilt has been established by the examination of a single witness. We trust that the Sessions Judge will discontinue this practice which has been repeatedly condemned by this Court, and is, in our opinion, quite opposed to the spirit of our law in India.

Convictions set aside, and retrial ordered.

APPELLATE CIVIL.

Before Mr. Justice White and Mr. Justice Maclean.

IN THE MATTER OF THE PETITION OF RAMESSURI DASSEE.*
 RAMESSURI DASSEE (REPRESENTATIVE OF JUDGMENT-DEBTOR) *v.*
 DOORGADASS CHATTERJEE (EXECUTION-CREDITOR).

1880
 May 25.

Execution of Decree—Civil Procedure Code (Act X of 1877), ss. 248 and 311.

When a judgment-debtor has died after decree, but before application has been made to execute the decree, the Court, before directing the attachment and sale of any property to proceed, must issue a notice to the party against whom the execution is applied for to show cause why the decree should not be executed against him, and its omission to do so will invalidate the entire subsequent proceedings.

* Appeal from Order, No. 295 of 1879, against the order of Baboo Radha Krishna Sen, Munsif of Raneegunge, in Zilla East Burdwan, dated the 24th September 1879.

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A judgment having been obtained by *A* against *B*, and *B* having died before application was made for execution, *A* applied for execution of his decree upon a tabular statement, in which the judgment-debtor was stated to be *C*, widow of *B*, and *C* was also described as the person against whom execution was sought. Upon this application the property mentioned in the tabular statement was directed to be attached and sold, and it was accordingly sold in execution, and purchased by *A*. No notice under s. 248 of the Civil Procedure Code had been served upon *C* before issue of execution.

Held, that the application was improper; that the order for attachment and sale should not have been made; and that the Court which made it should have set the execution aside as soon as it became aware that no notice had issued previous to its issue. The fact of there being no section in the Code expressly authorizing a Court to set aside its proceedings is immaterial, as every Court has an inherent right to see that its process is not abused or does not irregularly issue, and may set aside all irregular proceedings as a matter of course, provided that the interests of third parties are not affected.

Semble.—Under s. 248, the fact that application to execute the decree had been made in the life-time of *B* would make no difference, unless an order had been made and the property actually attached under it; as whenever an application is made for execution against a legal representative of the judgment-debtor, the notice required by the section must be issued to him, unless the Court has already ordered execution to issue against him upon a previous application.

Baboo Rashbehary Ghose for the appellant.

Baboo Bama Churn Bonnerjee for the respondent.

THE facts of this case sufficiently appear from the judgment of the Court (WHITE and MACLEAN, JJ.), which was delivered by

WHITE, J.—The respondent in this case obtained a decree against the husband of the appellant on the 8th April 1878, and before application was made for execution the husband died. On the 29th March 1879, the respondent applied for execution of the decree upon a tabular statement. In the judgment-debtor column of this statement, the appellant's name is entered under the description of Ramessuri Dasi, widow of Ram Koomar, and in the column for the name of the person against whom execution is sought, the appellant's name is introduced as being that person. Upon this application the Munsif directed the property mentioned in the tabular statement to be attached and sold. The property was accordingly sold in June 1879, and bought

by the respondent himself. Within a month of the sale the appellant applied to set it aside on the ground of irregularity.

One of the objections raised is, that the sale was not duly proclaimed at or near the spot where the attached property is situate.

We pronounce no opinion upon the validity of this objection, as it appears to us that there is a ground upon which the appellant ought to have succeeded in the Court below, and it is this, that the Court directed the attachment and sale of this property to proceed without having previously served a notice upon the appellant in accordance with s. 248 of the Code. This section directs that the Court shall issue a notice to the representative of a deceased judgment-debtor before directing the decree to be executed.

An excuse for the Court, so far as directing attachment to issue is concerned, may, no doubt, be found in the form of the tabular statement. Such a tabular statement ought not to have been put in unless the widow had actually been herself a party to the suit and had been sued as heir of her husband. It was calculated to mislead the Court. It is said by the appellant that it was put in with the intention of misleading the Court; but, whether that was the intention or not, it did not in fact mislead the Court. But, when the irregularity was brought to the attention of the Court, we think it ought at once to have allowed the objection of the appellant. Instead of that, the only notice which the Court takes of the objection in its judgment is this—“It is pointed out that no notice was served on the person against whom the execution was applied for as required by s. 248 of the Procedure Code, but this omission cannot vitiate the sale.”

We think that the omission to give such notice affects the validity, or at all events the regularity, not only of the sale, but of the entire proceedings of the respondent in applying for execution; and that, quite irrespective of whether the irregularity was one under s. 311, the Court should have set the execution aside as soon as it became aware that no notice had issued.

No question arises in this case as to whether the interest of any third party would be affected by setting aside the execu-

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tion-proceedings, because the judgment-creditor is himself the purchaser, and he is the very party who has led the Court into the irregularity which had been committed.

It has been objected that there is no section in the Code which authorises the lower Court to set aside these proceedings; but we think it is not necessary to invoke a section of the Code for the purpose. Every Court has an inherent right to see that its process is not abused or does not irregularly issue, and may set aside all irregular proceedings as a matter of course, provided that the interests of a third person are not affected.

The order that we shall make, therefore, is one reversing the Munsif's order, and directing that the proceedings taken against the appellant in execution of this decree, including the sale, be set aside *ab initio*.

It may be necessary, unless the appellant admits assets and pays the amount of the decree, to take hereafter proceedings to execute it; but these proceedings must be commenced afresh. A tabular statement must be put in in proper form, and a proper notice must be sent to the appellant, so that she may have an opportunity of paying the money or setting forth any defence she may be advised to make.

The appeal is allowed with costs.

The respondent will not be allowed the costs of any of the execution-proceedings taken against the appellant which we set aside by this our order.

Appeal allowed.

ORIGINAL CIVIL.

Before Mr. Justice Wilson.

RAJENDER DUTT *v.* SHAM CHUND MITTER AND OTHERS.

1880
 May 21.

Hindu Law—Partition—Trust—Agreement restraining Partition—Right of Purchaser of Share—Trust for Idol.

By an agreement entered into between five brothers, who formed a joint Hindu family, it was provided, that none of the parties, "nor their representatives, nor any person, should be able to divide the real and personal pro-