1909.
October 27.

Present: The Hon. Sir Joseph T. Hutchinson, Chief Justice, and Mr. Justice Wood Renton.

RAMASAMY PULLE v. DE SILVA.

D. C., Colombo, 2,310.

District Court—Irregular or improper order—No inherent power to set aside its own order—Civil Procedure Code, s. 189.

A Court has no jurisdiction (except as provided by section 189 of the Civil Procedure Code) to vacate or alter an order after it has been passed.

Preston Banking Co. v. Allsup & Sons [1] and *Ainsworth v. Wilding* [2] followed.

Mohideen v. Cader [3] over-ruled.

APPEAL from an order of the Additional District Judge (H. A. Loos, Esq.). The facts and arguments sufficiently appear in the judgment of Wood Renton J.

H. A. Jayewardene, for the appellant.

Sampayo, K.C. (*F. M. de Saram* with him), for the respondent.

Cur. adv. vult.

October 27, 1909. WOOD RENTON J.—

The respondent was adjudicated insolvent in the District Court of Colombo on July 13, 1908. On October 15 a deed of composition was filed on his behalf. The first and second sittings were closed, and a special meeting of creditors to accept the deed of composition was fixed for November 12. On that day no creditors appeared. As the deed had been signed by nine-tenths in number and value of the respondent's creditors, it was accepted; and on November 14 an order was made annulling the adjudication and dismissing the sequestration. On May 10, 1909, the respondent's proctors moved that the order of November 14, 1908, should be vacated on the ground that section 140 of Ordinance No. 7 of 1853 requires that two meetings, after twenty-one days' notice of each has been given in the *Government Gazette*, should be held before a deed of composition can be accepted and the adjudication annulled; whereas in these proceedings there had only been one meeting. Notice of this motion was issued to the creditors, who had not signed the deed of composition. The present appellant, who is one of such creditors,

[1] *(1895) 1 Ch. 141.*
[2] *(1896) 1 Ch. 673.*
[3] *(1893) 3 C. L R. 13.*

appeared and opposed the motion. But on July 26 last the District Judge allowed it, and set the order of November 14, 1908, aside. This appeal is against the order of July 26, 1909.

In my opinion that order is wrong. Neither under Ordinance No. 7 of 1853 nor under the Civil Procedure Code had the District Judge any power to make it. Ordinance No. 7 of 1853 contains no provision bearing on the point at all. Section 189 of the Code enables the Court making a decree to amend it, on reasonable notice of the proposed amendment to the parties or their proctors, where the decree is found to be at variance with the judgment, or contains some clerical or arithmetical error. It has, indeed, been held by Withers J. in *Mohideen v. Cader* [1] that a Court has an inherent right to vacate an order or decree into which it has been surprised by fraud, collusion, or mistake of fact. But the case of *Davenport v. Stafford*, [2] on which Withers J. relies in support of his ruling, has been explained in *Preston Banking Co. v. Allsup & Sons* [3] as turning (if it can be upheld at all) on the former inherent power of the Court of Chancery to re-hear cases after the drawing up and passing of decrees, and the modern English decisions (see *Preston Banking Co. v. Allsup and Sons*; [3] *Ainsworth v. Wilding* [4]) negative the existence of any such inherent power as has been exercised by the learned District Judge in this case even when a decree has been obtained by fraud (*Flower v. Lloyd* [5]). I think that *Mohideen v. Cader* [1] should be over-ruled.

I would set aside the order of July 26, 1909. The appellant should have his costs of opposition to the motion of May 10, 1909, and of this appeal.

HUTCHINSON C.J.—I concur.

Appeal allowed.

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[1] *(1893) 3 C. L. R. 13.*
[2] *(1845) 5 Beav. 503. 522.*
[3] *(1895) 1 Ch 141.*
[4] *(1896) 1 Ch. 673.*
[5] *(1877) 6 Ch. 297.*