Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rajah Muhesh Narain Sing v. *Kishramund Missar and Rughobur Dyal Sing, from the Sudder Dewanny Adawlut for the North-Western Provinces of Bengal; delivered 9th December,* 1862.

Present:

LORD KINGSDOWN.
SIR EDWARD RYAN.
SIR JOHN T. COLERIDGE.

SIR LAWRENCE PEEL.
SIR JAMES W. COLVILE.

THIS is an Appeal from a Decree of the Sudder Dewanny Adawlut at Agra, which reversed a Decree of the Civil Court of Zillah, Jounpore, in favour of the Appellant. The suits in which these Decrees were made respectively on the 23rd February, 1855, and the 10th May, 1856, were brought by the Appellant to recover back possession of an estate, called the Talooka Bazar Rajah, Pergunnah Gudwarra, which had been the property of his father, Rajah Surnam Sing, and which had been sold in execution of a Decree obtained by one Petumber Mookerjee in May 1830 in a suit first instituted by him in 1822 for the recovery of a debt. One Barwise, in 1837, had become, by purchase, the holder of this Decree; and the Respondents claimed by purchase for a valuable consideration, and through mesne conveyances, from his representatives, who had been purchasers at the sale held in execution of the Decree. The claim in the present suit was rested not upon any supposed miscarriage in the determination of the original suit, nor any defect in the title of Barwise to the benefit of the Decree,

but on certain alleged informalities and defects in the course of executing that Decree, and the sale under it.

In order to understand the questions now raised, a short statement of the material facts will be necessary.

It will be observed that the litigation commenced in 1822, and that the Decree in favour of the original Plaintiff was obtained in 1830; seven years were then passed in fruitless attempts by him to carry it into effect; his hopes or his means becoming exhausted, he was induced, for a valuable consideration, to make over this Decree to an Englishman of the name of Barwise, who, being in the service of the Government, it was supposed, probably by both parties, might be more successful in defeating the various devices by which its execution had been up to that time prevented. It is immaterial to the decision of this case whether he purchased on too favourable terms, or succeeded in obtaining too great advantages. It may have been so—on that we pronounce no opinion. It was not, however, until the 6th June, 1845, and after he had been murdered, as alleged, by the Appellant, that his representatives obtained the order from the Zillah Court of Jounpore, on which the sale actually took place, the validity of which is questioned in the present Appeal.

We propose now to examine the objections to this sale, adverting only, as we proceed, to the previous circumstances, so far as may be necessary for the understanding and disposing of these objections. The order for this sale will be found in page 26 of the joint Appendix, No. IV, and is as follows, dated June 6, 1845:—

"This case was brought up this day. It was found from the Report of the Moonshee of Execution of Decrees, that 48,522 rupees 0 annas 1 pice, the total estimated value of the claim, composed of 46,856 rupees 14 annas entered in the Report of the 22nd November 1844, and 1,664 rupees 11 annas on account of present interest up to the 22nd May 1845, and 8 annas for costs, is quite correct. As it appears from the accounts to be right and proper that Talooka Bazar Rajah, embracing sixty-three original and dependent villages, be sold to realize the amount above specified, it is

therefore ordered that a copy of this proceeding be sent to the Collector of this Zillah, to apprize him of the above-mentioned facts, in order that the said Collector, after the issue of the second notification, may put up to sale the aforesaid estate, the property of the Defendant the Debtor, for the sum claimed as above, and afterwards inform this Court of the result."

It will be observed that this order dealt directly with the Collector of the Zillah, and is silent as to the Board of Revenue. This, it is said, is in breach of the Regulations on this matter, then in force, of 1795, Regulation 20, which direct that, when any Court of Civil Judicature shall have occasion to sell lands in satisfaction of a Decree, it shall transmit a copy thereof to the Board of Revenue, which is, with all practicable dispatch, to cause the lands to be disposed of at the Presidency, or in the district in which the lands are situated, as they may deem most advantageous to the proprietor. The objection founded on the apparent non-compliance with this Regulation was taken, both in the Zillah and Sudder Courts, in this action, and overruled by both—and, their Lordships think, quite properly. It appears that, when a former order for sale had been made by the same Court in 1843, this Regulation had been fully complied with; that the Commissioner had authorized the sale of the whole Talooka; that as many as four sales had taken place, ineffectual and nominal only because the best bidders on each occasion were men of straw, who had, no doubt, been put forward for the very purpose of rendering the Decree abortive. It is said that the order directing these former sales must be considered as having been made in a different suit from that in which the order now in question was made, for that the Proceedings had been taken off the file, and the lands to be sold and the sums to be recovered were different in the two orders. There is no foundation for either of these assertions. It would be contrary to general principles, and a senseless addition to all the vexations of delay in the course of procedure, to hold that, when, for any reason, satisfactory or not, the execution of a final Decree in a suit fails, or is set aside, and the proceedings as regards that execution are taken off the file, the whole suit is discontinued thereby, and the

further proceedings for the same purpose are to be considered as taken in a new suit. Nor is it true, in any material sense, that either the properties to be sold or the sums to be recovered were different; in both the same whole Talooka, rendering to the Government the same Jumma, was directed to be sold, and for the same principal sum; but the number of villages comprised in it, owing to some inaccuracy, was differently stated, and the total sum was increased in the later order by adding the interest which had accrued, due in the interval between the two, with a few annas for the costs. The principal object of the Regulation in question was the security of the public revenue, as appears not merely from its own preamble, but by the modifications which were made in it by Regulation 7 of 1825, tit. ii; and this object had been fully answered by the communication to the Commissioner in 1843, and the proceedings which were taken by him upon it. If this, therefore, had been a question raised between the original parties to the suit, and if the objection had been made promptly after the sale had taken place, their Lordships would still have been of opinion that it had received its proper answer in the Courts below; but it must never be forgotten that they are now called upon to give effect to it as against a purchaser for a valuable consideration, and, so far as appears, entirely without notice, in a suit commenced in July 1854, the disputed sale having taken place in July 1845. What safety could there be, except by the statute of limitations, for any man's title, where a judicial sale had taken place, if he were bound to satisfy himself of the Decree-holder's compliance with every one of the many formalities prescribed by law for the conduct of it. This is a remark which their Lordships must bear in mind in considering the objection to which they now pass.

The next objection to be noticed is the alleged want of due notification of the time and place of sale. At the time when this sale was to take place this matter was regulated by Regulation 20, section 12, of 1795, which requires notices to be affixed one month before the day of sale in the Court Room of the Dewanny or Zillah, the Collector's office, in the principal town or village, and in the office of the Secretary of the Revenue. Now if it be taken that the burden of proof in respect of these notices can be properly

cast on the Respondent, it certainly does not appear to their Lordships that in respect of all of them it is clearly made out that they were duly given ; but they are of opinion that it cannot be so cast, considering how he claims, at what distance of time the objection is made, and the extreme difficulty, if not impossibility, of satisfactorily proving a fact of this nature under such circumstances as are before them. In this country it is in many cases required by statute that notices should be affixed on the walls or doors of Courts, or in other specified places, and for certain specified times, in order to give jurisdiction to Magistrates to do certain acts which are speedily to follow. In such cases there is no injustice in calling upon the party who moves the Magistrates to exercise their statutory jurisdiction, to prove that these requirements have been complied with. But it would be monstrous to make the title to land in a purchaser depend, years after it has accrued, and possession has been enjoyed under it, on his proving the same affirmatively. In the nature of the thing all traces of the evidence may be expected, as to some of the particulars, to perish in a short time ; in others, where the document ought in strictness to be filed, it is but too common for the officer whose duty it would be to file it to be neglectful.

Their Lordships are of opinion, therefore, that the onus lay upon the Appellant, and that he has not discharged himself of it.

It was said in regard of another objection, and might be said in regard of this, that at the time in question he was in prison on the charge of murder ; and that was so : but it is clear that he at least knew of the time fixed for the sale, and was able to apply to the Court, because he presented a petition on the 14th July, 1845, to the Zillah Court, for its postponement for two months, which was heard and rejected by the Sudder Ameen of that Court.

The remaining objection is to the manner in which the sale was conducted. It will be remembered that on several preceding occasions, when sales were attempted, the highest bidders had turned out to be unable or unwilling to complete them, and so they had been rendered illusory ; the Collector, therefore, had been very properly cautioned to satisfy himself of the trustworthiness of a bidder,

before he concluded the sale in his favour. On the present occasion, after the representatives of Mr. Barwise had bid a sum of 48,000 rupees, being a little below the amount of the Decree, one Hunnooman Pershad bid 49,000. The Collector asked if he was prepared with the deposit money; he was not. He was asked who and what he was: he said he was a servant, and was bidding for Ramdas, of Sultanpore. He was asked whether he held a mooktarnama from Ramdas, and he said he did not. On this he was rejected as a bidder. Thereupon one Shunker Loll bid 50,000 rupees, and he was questioned as Hunnooman Pershad had been. It does not appear whether he answered that he was prepared with the deposit or not, but he stated that he was biddiug for one Sheo Lall, a banker of Dostpoor. Like the former bidder he had no mooktarnama. The Collector rejected both their biddings, and there being no other bidder, knocked the estate down to the representatives of Barwise for 48,000 rupees.

Both Nurain Sing and these two persons, but not either Ramdas or Sheo Lall, petitioned the Court against this proceeding of the Collector. It was urged that a production of the deposit ought not to have been insisted on before the estate had been knocked down, and that the effect of the proceeding was to deter bidders, and so diminish the amount for which the estate was sold. Certainly the payment of the deposit could not be required before the acceptance of the bidding, and the knocking down of the estate; but the Collector was bound, in their Lordships' opinion, to satisfy himself reasonably that these persons were, what they professed to be, real bidders, and that the course which he took for that purpose was perfectly justifiable; and so it was held in the Court below—their Lordships think quite correctly: they see not the least reason for believing that it was calculated to deter persons really wishing to buy from offering their biddings, or in any way to damp the sale. It might be unusual; but the circumstances were unusual; as practices had been suffered before in this case, which had made the sales under the order of the Court mere mockeries, available only for the purpose of defeating the course of justice, the Collector, forewarned, was bound to take care that this sale should be a reality; which it could not be unless care was taken to distinguish

between real and sham biddings. The result shows that his conclusions were correct: if there were such persons as Ramdas or Sheo Loll, or if either of them had, however irregularly, deputed Hunnooman Pershad or Shunker Loll to bid for them, we may be quite certain that claims would have been made on their behalf by way of petition to the Court. It is said that the estate was sold for less than its value. It may have been; it was certainly sold, some time afterwards, at a great advance by the purchasers: but considering the character of the previous attempts to sell, and all the previous circumstances of the litigation, this is not to be wondered at. As a fact in itself, it is immaterial to the decision of the case: it is enough that the sale was a real one, conducted justly and regularly.

Their Lordships, in a Judgment necessarily so long, have thought it right to take no notice of several matters, important in themselves, but not affecting their decision; they have now disposed of the various points relevant to that decision, and which were urged by the learned Counsel for the Appellant with their usual zeal and ability; but they cannot pass from this case without the expression of their surprise and deep regret that such a case should have been possible under the system of jurisprudence prevailing in any country under the British dominion.

"——— pudet hæc opprobria nobis,
"Et dici potuisse et non potuisse refelli."

The subject-matter of the original suit a debt, it should seem, undisputed, or at least as to which, in substance, no serious dispute was possible; where the Plaintiff's difficulty had not been to establish his right to the Judgment of the Court in which he sued, but to make that Judgment available when obtained, though the funds were ample for the purpose. By fraud and chicanery, by every possible abuse of the forms and procedure of law, by force and violence, even, it is to be greatly feared, to the shedding of blood, justice was evaded and defied for fifteen years, from 1830, when the Decree was pronounced, to 1845, when the final sale took place. The original Plaintiff, wearied out with the long delay and expense, fain to sell the benefit of his Decree; the unhappy man who had been substituted for him losing his life, while vainly striving to realize its

fruits. And now, in 1862, their Lordships have been called on to dispose of a suit, in which it is sought to invalidate that whole proceeding as against a purchaser for value, the second in succession from the execution creditor, against whom, or the party from whom he immediately purchased, no fraud, no collusion, no knowledge of the supposed defects in the title, is alleged. They have had to deal with a Record of nearly three hundred pages in folio, setting out more than three hundred documents and depositions. Their Lordships do not intend hastily to cast censure on any individuals; the materials are not before them for that purpose, nor is it within their province to do so: but it is useful to point out that a system under which all this is possible loudly called for amendment, and, administered as it here has been, defeated the very object for which it was instituted.

They will humbly recommend to Her Majesty that this Appeal ought to be dismissed, with costs.