

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Markar Tamby Mohideen Bawa v. Sana Madar Saibo, and others, from the Supreme Court of the Island of Ceylon, delivered 25th June, 1878.

Present:

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THIS was an action brought to set aside a sale under an execution purchase. The Plaintiff was the execution debtor, and the Defendants were the execution creditors and the purchasers of the property.

The material allegations of the declaration are to this effect: "That the said Defendants, before
" the day fixed for the sale of the said property,
" acting together in fraud and collusion for the
" purpose of underselling the said estate (which
" was of the value of 1,000*l.*) and preventing the
" said estate from being sold at its full and
" proper value, abstained from and did not cause
" the said estate to be advertised as by law
" required, and did not give notice by beat of
" tomtom or cause any notice of sale to be
" posted on some conspicuous spot on the said
" estate. And on the day of the said sale, to
" wit, on the 10th day of June 1869, the defen-
" dants prevented and hindered intending bidders
" from offering and bidding at the said sale, by
" reason whereof there were only two bidders
" at the said sale, and the said estate was
" sold to the said second Defendant for a
" sum far below its real and proper value,"

and so on. There is a further allegation of a supposed arrangement between the different Defendants and another allegation that a subsequent sale of the property by a local authority called the Provincial Road Committee was invalid. The last question however does not arise if the first part of the declaration which has been read is not proved.

There appears to have been no evidence whatever of all or any of the main allegations on which the Plaintiff rested his case. There was no evidence of fraud or collusion for the purpose of underselling. There was no evidence that in consequence of fraud or collusion the proper proceedings were not taken, or that the sale was thereby irregular, and there is no evidence whatever that any intended bidders were fraudulently prevented or prevented at all from bidding at the sale. The Plaintiff's case, which is based upon fraud and collusion, altogether fails. Whether or not the Plaintiff could have sustained his declaration merely on the ground of irregularity it is not necessary to determine, inasmuch as both Courts have found as a fact that there was no sufficient proof of irregularity.

On every ground it appears to their Lordships that the Plaintiff's action fails, and that the Courts of Ceylon were quite right in the decision which they gave. Under these circumstances their Lordships will humbly advise Her Majesty that this Appeal be dismissed with costs.