Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Maharajah of Burdwan (now by order of revivor the Maharani of Burdwan) v. *Krishnakamini Dasi and others (now by order of revivor Murtunjoy Singh and others) (ex parte), from the High Court of Judicature at Fort William, in Bengal; delivered 5th February* 1887.

Present:

LORD HOBHOUSE.
SIR BARNES PEACOCK.
SIR RICHARD COUCH.

The only questions on which it is necessary for their Lordships to express any opinion in this case are, first, what is the true construction of the Regulation VIII. of 1819, Section 8, para. 2; and secondly, whether the Maharajah of Burdwan, who is the selling Zemindar, has done what is necessary for a sale under that Regulation.

The material facts are not in dispute. The requisite petition and notice were stuck up at the Collector's kucheree, and the requisite notice at the Zemindar's kucheree. The copy or extract which is next directed by the Regulation to be similarly published was not stuck up at the Plaintiff's kucheree at Amerpore, or anywhere else in Amerpore, which is the putni talook in question. Service of that notice was effected on Radhabullub, the Plaintiff's nephew and co-sharer in the talook, at her kucheree in Mahanud, about

nine miles from Amerpore. The Plaintiff's Mahanud kucheree is in the same house with that of Radhabullub. It has been strongly urged at the bar that this service must be taken to be service on the Plaintiff herself; but their Lordships do not think it necessary to decide this matter, which, for the purposes of the judgement, they will assume in favour of the Zemindar. Would such a service relieve him from giving notice on the lands at Amerpore?

The directions of the Regulation are, that a copy or extract of the notice which is stuck up at the Zemindar's kucheree "shall be by him "sent to be similarly published at the kucheree, "or at the principal town or village on the land "of the defaulter." It is argued that these terms do not require publication on the land of the defaulter, but that they are satisfied by publication at his kucheree, wherever it may be. And it must be allowed that the grammar of the sentence, taken alone, admits of such a construction.

The High Court have decided four points, first, that if there is a kucheree on the land of the defaulting Putnidar, the notice must be published there; secondly, that by the land of the defaulter is meant that land which the Zemindar is seeking to sell for default of rent; thirdly, that if there is no such kucheree, the notice must be published at the principal town or village on the land in question; and fourthly, that it must be published in the manner required, and that service on the Putnidar is not sufficient. In all four of these propositions their Lordships agree.

To hold otherwise might defeat some of the substantial objects of this Regulation. It appears from the preamble that one of the objects is to establish "such provisions as have "appeared calculated to protect the under lessee

" from any collusion of his superior with the " Zemindar, or other, for his ruin, as well as to " secure the just rights of the Zemindar on the " sale of any tenure." And immediately afterwards occurs the statement that it has been deemed indispensable to fix the process by which the said tenures are to be brought to sale. The object of directing local publication of notices is to warn the under lessees of the contemplated proceedings which may result in sweeping away their property, and also to act as advertisements to persons who may bid at the sale. Both these objects might, and in many cases would, be frustrated, if it were sufficient to publish notice at any kucheree which the Putnidar may happen to possess, however distant it may be, or to serve it personally on the Putnidar.

Moreover, the notice in question is described as " the notice required to be sent into the " mofussil." The word mofussil is doubtless opposed to the sudder kucheree of the Zemindar. It may be used to signify the subordinate estate which is the subject of the proceedings, and in their Lordships' opinion it does point to that estate.

Then it is suggested that this suit is brought by the Putnidar, and that an objection founded on the interests of the under lessees is not available to her. But that suggestion proceeds on a misconception of the nature and force of the objection. Their Lordships have to construe the regulation. They find a process prescribed by it, which its framers thought it indispensable to fix, for the observance of which they have declared the Zemindar to be exclusively answerable, and which is calculated to protect all persons interested in the estate against injury by the working of a very swift and summary remedy given to the Zemindar. The Zemindar has neglected to observe a substantial

portion of that process. There is therefore material irregularity in his procedure, and of that irregularity the Putnidar is entitled to avail herself as a "sufficient plea" within the meaning of the Regulation. Of course there may be cases in which one who might otherwise be entitled to avail himself of an irregularity has so conducted himself as to have waived or forfeited his right. But no such case is suggested here.

It remains to look at some decided cases which were cited as authority against the foregoing conclusions.

In the case of Looftonissa Begum *v.* Kowur Ram Chunder (S. D. A. Reports of 1849, p. 371), the prescribed formalities had not been observed by the Zemindar, and the sale by him was set aside. But in the course of their judgment the Sudder Dewanny Adawlut expressed an opinion that the kucheree of the defaulter may be any kucheree in which the collections of the tenure are made. Their Lordships however observe that the learned Judges do not cite the words of the Regulation correctly. They appear to mix up the sentence which relates to the mode of publication with the next one which relates to the evidence of it, two very distinct things. Moreover, they rely on the presence of the comma placed after the word "kucheree." Even if the punctuation were of the importance ascribed to it, it so happens that as the sentence is pointed the word "kucheree" may be applied to the whole expression "upon the land of the "defaulter," just as easily as to the last three words only. But their Lordships think that it is an error to rely on punctuation in construing Acts of the Legislature. They find that the reasons given do not support the conclusion, from which they feel no difficulty in dissenting.

In the case of Mungazee Chaprassee *v.* Sreemutty Shibo, 21 W. R. 369, a Division

Bench of the High Court decided, with much hesitation, that the regulation was satisfied by publication at a kucheree of the defaulter which, though not on the land to be sold, was on adjacent land, and was the office at which all the business of the estate to be sold was carried on. If that decision were right it would not govern this case, in which there has been no publication in the mofussil at all. Independently of that difference, the decision appears to have been rested on the dictum of the Sudder Dewanny Adawlnt in 1849, and on the reason given for that dictum. But for the reasons above given their Lordships prefer the conclusion that the kucheree meant is one on the land to be sold, and that if there is none, as was the fact in the case under consideration, the publication should be in the principal village on that land preferably to a kucheree on other land. If there should be no village at all, an adjacent kucheree might be the proper place of publication, but no such case appears to have occurred.

The only case cited which is directly in favour of the contention in this case is that of Gouree Lall *v.* Joodhistir, 25 W. R., 141, where it was decided that the Regulation was satisfied by service of notice at the house of the defaulter. But the authority of that decision is undermined by its being rested mainly on the case of Soma Beebee *v.* Lall Chand Chowdhry, 9 W. R., 242, and the recognition of that case by this Committee in 2 Ind. App., p. 77. The same case has been again recognized by this Committee in 10 Ind. App., p. 20, but it is no authority for the proposition for which it is cited. It has been above pointed out that the formalities which the Zemindar has to observe, and the evidence by which that observance has to be proved, are two totally distinct things. All that Sir B. Peacock

decided was that if the observance of the requisite formality was distinctly proved, it was not necessary to have the mode of proof which the Regulation directs. In the case in 10 Ind. App., this Committee found that the question whether the requisite formality had been observed depended on conflicting evidence, but that the statutory mode of proof had clearly not been followed, and they held that the decision must go against the Zemindar, whose business it was to follow the prescribed method. They did not differ from Sir Barnes Peacock, nor did they hold that the statutory proof was the only proof that could be given. Neither did Sir Barnes Peacock decide or intimate any opinion that one of the important formalities required as preliminary to a sale could be dispensed with. Mr. Justice Glover rests his decision wholly on that of Sir B. Peacock, and its recognition by this Committee. And their Lordships observe that Mr. Justice Romesh Chunder Mitter, who adds other reasoning, is a party to the judgment now appealed from, apparently without dissent.

The result is that their Lordships will humbly advise Her Majesty that this appeal should be dismissed, and the judgment of the High Court affirmed.