

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Tasadduk Rasul Khan v. Ahmad Husain and another, from the Court of the Judicial Commissioner of Oudh, Lucknow; delivered 24th June 1893.

Present:

LORD WATSON.

LORD MORRIS.

SIR RICHARD COUCH.

HON. GEORGE DENMAN.

[*Delivered by Lord Morris.*]

In this case the Respondents, who were judgment-debtors of the Appellant, filed a petition in the Court of the District Judge of Lucknow on the 12th of April 1890, whereby they sought to set aside the sale of certain villages which had been sold by auction by an order of that Court. The principal ground relied upon by the Respondents for setting aside the sale was, that it took place before the expiration of thirty days required by Section 290 of the Civil Procedure Code to intervene between the date on which the copy of the proclamation had been fixed up in the Court-House and the day of sale. The matter of this petition came on for hearing before the District Judge on the 7th of June 1890 and subsequent days. On the 14th of October 1890 the District Judge dismissed the Respondents' petition and confirmed the sale. The Respondents appealed to the Judicial Com-

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missioner of Oudh, who on the hearing of such appeal on the 16th of March 1891 allowed the appeal and set aside the sale.

The Appellant was mortgagee of the four villages sold, and he had on the 12th of October 1889 obtained a decree on foot of his mortgage. In execution of this decree he caused a proclamation of sale to be issued from the Judge's Court on the 13th of February 1890, the sale being announced to take place on the 20th of March following. The main provisions of the Civil Procedure Code regulating sales are as follows :—

Section 274 provides that in the case of immoveable property the order of attachment “ shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be fixed up in a conspicuous part of the property and of the Court-House.”

Section 287 prescribes the statements and information to be given by the proclamation of sale.

Section 289 provides that “ the proclamation shall be made in manner prescribed by Section 274, on the spot where the property is attached, and a copy thereof shall then be fixed up in the Court-House.”

Section 290 provides that no sale shall take place “ until after the expiration of at least thirty days in the case of immoveable property, calculated from the date on which the copy of the proclamation has been fixed up in the Court-House of the Judge ordering the sale.”

It appears upon the evidence that the proclamation of sale was posted in the Court-House on the 15th of February 1890 by the officer who on the 18th and 19th of February posted the proclamation in the villages. The District Judge held that all the proclamations relating to the

sale were duly posted more than thirty days before the sale on the 20th of March 1890. Their Lordships cannot concur in that finding, for although the *terminus a quo* under Section 290 is the fixing up in the Court-House, and although that took place more than thirty days before the sale, yet the provision of Section 289 prescribes that the posting in the villages should precede the fixing up in the Court-House, and consequently the *terminus a quo*, from which the period of thirty days should run, became at the best the 19th of February which would be short of the thirty days required to intervene before the sale. On the appeal before the Judicial Commissioner he held that the provisions of Section 290, prescribing the thirty days, had not been obeyed, and that without anything more the Respondents were consequently entitled to relief under the provisions of Section 311.

That Section, under which the petition of the Respondents, owners of one-half of the villages, was presented, provides that “ the decree-holder
 “ or any person whose immovable property has
 “ been sold may apply to the Court to set
 “ aside the sale on the ground of a material
 “ irregularity in publishing or conducting it ;
 “ but no sale shall be set aside on the ground of
 “ irregularity unless the applicant proves to the
 “ satisfaction of the Court that he has sustained
 “ substantial injury by reason of such irregu-
 “ larity.”

It was contended on the part of the Respondents that the non-compliance with the interval of thirty days between proclamation and sale made the sale a nullity. Their Lordships cannot accede to that contention. The proceeding in this case was brought by the Respondents under Section 311, which deals with material irregularity. The non-compliance with the provisions for

posting was a material irregularity. But in the cases of *Olpherts v. Mahabir Pershad Singh* (L. R. 10 I. A. 25) and *T. R. Arunachellam Chetti v. V. R. Arunachellam Chetti and another* (L. R. 15 I. A. 171) it was held that in all cases of irregularity under Section 311 evidence must be given of substantial injury having resulted. In the present case the decree-holder failed to comply with the full requirements of Section 290, but both on principle and authority their Lordships are of opinion that the case must be treated as the Respondents themselves treated it, as one of material irregularity to be redressed pursuant to the provisions of Section 311, and in the application of that Section it was incumbent on the Respondents to have proved that they sustained substantial injury by reason of such irregularity. They gave no such evidence, and it would be extremely improbable that injury could have happened from the non-compliance with the strict letter of Section 290. Their Lordships cannot accept the judgment of the Judicial Commissioner, that loss is to be inferred from the mere fact that a sale was had without full compliance with the provisions of Section 290. The Section clearly contemplates direct evidence on the subject.

The other objections to the sale were mostly formal and were over-ruled by the District Judge on the facts.

Their Lordships are of opinion that the Order of the District Judge dismissing the petition and confirming the sale was right, and they will humbly advise Her Majesty that the judgment of the Judicial Commissioner ought to be reversed, and that the appeal to the Judicial Commissioner ought to be dismissed with costs, and the Order of the District Judge restored. The Appellant will have his costs of the appeal.
