Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Girdhari Singh v. *Hurdeo Narain Sahoo, from the High Court of Judicature at Fort William, in Bengal; delivered* 19*th May* 1876.

Present:

SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

IN the present case, Girdhari Singh, the Appellant, was the judgment-debtor, and the Respondent, Hurdeo Narain Sahoo, was the purchaser at a sale in execution. The sale in question took place on the 9th September 1872, and the estate was sold to the Respondent for the sum of Rs. 55,000, he being the highest bidder at the auction. On the 1st October 1872 the judgment-debtor, under the provisions of Act VIII. of 1859, section 256, made objections to the sale. The 256th section says, "No sale "of immoveable property shall become absolute "until the sale has been confirmed by the "Court. At any time within 30 days from the "date of the sale application may be made to "the Court to set aside the sale, on the ground "of any material irregularity in publishing or "conducting the sale; but no sale shall be set "aside on the ground of such irregularity unless "the applicant shall prove to the satisfaction "of the Court that he has sustained substantial "injury by reason of such irregularity." The judgment-debtor, therefore, under this section was bound to show that some material irregu-

larity in publishing or conducting the sale had taken place, and that he had sustained substantial injury by reason thereof.

One of the objections which the judgment-debtor made to the sale was that the attachment purwannah showed "the amount of the decree "to be Rs. 51,677, and the Government revenue "of the mouzah sold to be Rs. 8,146; contrary "to this the amount of the decree has been "specified as Rs. 54,000, and the Government "revenue as Rs. 3,000 in the sale notification. "This is wrong and contrary to the real facts." Now, instead of the proclamation stating the Government revenue to be Rs. 8,146, it stated it to be Rs. 3,146, the irregularity occasioned being, in all probability, the substitution of the figure 3 for the figure 8. The case came on to be heard upon the petition of the Appellant before the subordinate judge, who says, "Whereas "there is no reason to decide the sale to be "irregular, it is ordered that this petition be "rejected." Having rejected the petition and treated the objections as insufficient, he ought to have done something further; he ought to have proceeded under section 257 to pass an order confirming the sale. That section says, "If no such application as is mentioned in the "last preceding section be made, or if such "application be made and the objection be "disallowed, the Court shall pass an order con-"firming the sale; and in like manner if such "application is made, and if the objection be "allowed, the Court shall pass an order setting "aside the sale for irregularity. If the objec-"tion be allowed, the order made to set aside "the sale shall be final; if the objection be "disallowed, the order confirming the sale shall "be open to appeal." If the subordinate judge had followed the directions of the Act, and having disallowed the objections had made

an order for confirmation, that confirmation would have been appealable to the High Court. But the Judge not having made an order of confirmation, the judgment-debtor applied to the subordinate Judge to review his decision under section 376 of the Code of Civil Procedure. That section speaks merely of decrees, and not of orders. But even admitting that a review of judgment in this case could have taken place, the auction purchaser was never summoned. He had no opportunity of showing cause against a review of judgment. Section 378 of the Act says: "Provided that "no review of judgment shall be granted with- "out previous notice to the opposite party to "enable him to appear and be heard in support "of the decree of which a review is solicited." The order passed upon the review was this: "This petition has been filed anew under the "provisions of section 376, Act VIII. of "1859. It appears that the judgment-debtor "has put in the entire amount of the decree "Rs. 54,232. 2. 1½ pie, hence there is no necessity "for the holder to get the sale confirmed;" the word "holder" meaning the decree-holder; but he says nothing as to the right of the auction purchaser to come in and have it confirmed; he says, "Hence there is no necessity for the "decree-holder to get the sale confirmed. It "appears that the sale has not been as "yet confirmed, and the judgment-debtor has "also paid the interest of the consideration "money for the auction purchase. From these "facts it appears that the judgment-debtor has "really sustained a great loss by this sale, and "has paid the decretal amount, together with "the interest of the purchase-money. The pro- "perty sold is the ancestral estate of the judg- "ment-debtor, and seems to have been sold at "an inadequate price; and on reference to the

" record there also appears to be some mistake " in the account. It is therefore ordered that " the sale be set aside, that the decretal amount " paid by the judgment-debtor be paid to the " decree-holder, that the purchase-money paid by " the auction purchaser be returned to him, and " that the interest on the purchase-money paid " by the judgment-debtor be also paid to him." Upon that order being made, the auction purchaser came in; and on the 11th November 1872 he petitioned, and said, " 1. When the objec- " tions of the judgment-debtor to the sale were " disallowed, my right for the confirmation of " the sale became absolute and perfect. Against " that order only an appeal could be preferred " to the High Court. 2. The order rejecting " the objections in respect of the sale cannot, " under the provisions of section 376, Act VIII. " of 1859, be held to be in the nature of a decree, " hence the review of such an order is out of the " jurisdiction of the Court. 3. If for the sake " of argument it be granted that such an order " is fit to be reviewed, it was nevertheless " necessary to have carried out the entire pro- " vision of the law in respect of review, and it " was necessary to issue a notice under section " 378, Act VIII. of 1859, to me the petitioner, " and it was proper to hear my pleader's argu- " ments regarding the disallowing of the review. " 4. The grounds under which the Court has set " aside the sale are not sufficient according to " law. For this reason I beg to file this petition, " and pray that the order of the 9th November " idem being set aside, the sale be confirmed and " a certificate of sale be granted to me." Upon that the Judge refused to confirm the sale or to grant the certificate. He says, " In the notifi- " cation the sum of Rs. 3,146. 11, has been speci- " fied in the place of the sum of Rs. 8,146. 11." Therefore he alludes to the mistake in

the proclamation which he had already overruled. He says, "There is no doubt that this "estate has been sold at a very low price for "Baboo Koonj Lal, the gomashta of Baboo, "Hurde Narain, the auction-purchaser, him-"self admitted to me that the estate sold by "auction is leased on a jumma of Rs. 18,000 "or 19,000."

The sale having been effected at a low price would in itself be no ground for refusing to confirm the sale. But it appears that under section 249 of Act VIII. of 1859 it was necessary to state correctly in the notification of the sale what was the amount of the Government revenue assessed upon the estate. The subordinate judge having refused, under his order of the 11th November 1872, to confirm the sale or to grant a certificate of confirmation, an application was made to the High Court, not by way of appeal, but under the provisions of the 24 & 25 Vict. cap. 104, sec. 15, which enacted that "Each of the High "Courts established under this Act shall have "superintendence over all Courts which may be "subject to its appellate jurisdiction." The subordinate judge then having refused to confirm the sale, he having disallowed the objections, it was competent to the High Court, by a proceeding in the nature of a mandamus, to order the Lower Court to do that which it ought to have done, namely, having rejected the objections to the sale, to confirm it; and the High Court proceeded upon that section and made the order. But the High Court did not merely treat the judgment of the subordinate Judge upon the application for review as a nullity; they entered into the question as to whether the objections to the sale were valid or not valid. In fact they treated the case in their decision as if the Lower Court had actually confirmed the sale, and there had been an appeal to them—against that confirma-

tion. Their Lordships think that they may look at the case now in the way in which the judges looked at it then, to see whether there were really any objections to the sale which would have been a ground for setting aside the confirmation of the sale if the subordinate Judge when he rejected the objections had passed an order confirming it.

Now the only material objection to the notification of the sale was that to which allusion has already been made, namely, that the sudder jumma was stated to be Rs. 3,000 odd instead of Rs. 8,000 odd. Section 249 directs that the notification of the sale shall state the amount for the recovery of which the sale is ordered, specifying the time and place of sale, the property to be sold, and the revenue assessed upon the estate. Not specifying the amount of the revenue correctly was an irregularity for which the sale might have been set aside, provided the judgment-debtor had satisfied the Court that he had sustained a substantial injury in consequence of it. The subordinate judge says that in the notification the sum of Rs. 3,146. 11. was specified in place of Rs. 8,146. 11., and that there is no doubt that the estate has been sold at a very low price. The High Court deals with that objection. They say, "What are the "alleged irregularities?" One of the objections is the mistake with regard to the Government revenue, which was payable upon the estate. Then they say, "The error as to the sudder jumma "was, if an error at all, and of this there is no "evidence, an error in favour of the judgment-"debtor, for if the sudder jumma was quoted "at a lower figure in the proclamation than the "recorded sudder jumma, it was not a material "error likely to depreciate the bids, but rather "to stimulate the bidders at the sale, for intend-"ing purchasers could refer to the towji; more-

" over, this objection was overruled by the " subordinate Judge." Their Lordships do not agree in this reason which was given by the High Court. If an estate is said to be held at a certain Government jumma, the auction purchaser may not know what the real value of the estate is, or what are the rents which are receivable from it. He may, perhaps, have had no opportunity before coming into the auction room and bidding, to refer to the towji; if the Government revenue were stated to be much less than it really was, he would suppose that the estate was a much less valuable one. In the ordinary mode of assessing the value of estates for the purpose of paying stamp duty or court fees upon the institution of a suit, it was formerly taken that three times the amount of the Government revenue of a permanently settled estate was a fair estimate of the value of the estate; but that was found to be much too low; and in the Court Fees Act, VII. of 1870, it was enacted that in assessing the value of estates for the purpose of suits, the value of the estate should be taken as ten times the amount of the Government revenue; and in those cases in which there was no Government revenue, that 15 years purchase of the actual rents should be treated as the estimated value of the estate. Therefore it appears to their Lordships that the High Court was not correct in holding that the error was in favour of the judgment-debtor; they think that the error might have been against the interest of the judgment-debtor, and that if the sale had been confirmed, and he had proved that he had sustained actual damage by the irregularity, it would in an ordinary case have been a sufficient ground for setting aside the confirmation upon an appeal against it.

But their Lordships must look to another portion of this case. It appears at page 21 of

the Record that the sale was fixed for the 5th of August; that the judgment-debtor applied to the Court to postpone the sale, and stated that he wished to raise the money, and added, "Under "such circumstances it is prayed that a post- "ponement of one month be granted, *the attach- "ment and the notification of sale being main- "tained.*" Now the notification must have been stuck up at the Court House, and he must have had an opportunity of seeing what the real notification was; and if there was a clerical error in inserting Rs. 3,146. 11 as the Government revenue instead of Rs. 8,146. 11, he ought at that time to have made objection to the notification, and not to have consented to allow the notification to remain and be maintained as the notification under which the sale was to take place. Upon that petition an order was passed which was as follows: "It is ordered that the post- "ponement be granted; that in case of non- "payment of the decretal amount the property "of the judgment-debtor be sold, *without the "issue of a second notification of sale*, on the "2nd September 1872; and that a copy of the "notification be suspended in a conspicuous "place of the Court House." So that on the application of the judgment-debtor himself the sale was postponed, he agreeing that the attachment and the notification of sale should be maintained.

Their Lordships think that the judgment-debtor could not properly take objection to that notification by stating that there was an error in it. The petition amounted to an admission on his part that the notification was correct, or that at any rate there was no such mistake or irregularity as would be likely to mislead. Under these circumstances their Lordships think that the High Court was right in ordering the confirmation of the sale.

But it is said that the High Court had no power themselves to confirm the sale. Although the learned Judges in their judgment say, "We "reverse the order of the subordinate Judge "dated the 9th November 1872, and confirm "the sale," the order merely directs that the order of the Lower Court be reversed, and the sale confirmed. Their Lordships interpret the order of the High Court as meaning that the sale be confirmed by the officer who ought to confirm it, namely, by the subordinate Judge, who ought to have confirmed the sale when he disallowed the objections. That is the mode in which the subordinate Judge himself interpreted the order of the High Court; for upon the order being sent to him he passed an order confirming the sale.

Their Lordships see no reason to interfere with the order of the High Court, and they think that this Appeal ought to be dismissed. The case must take the usual course, and the Appeal will be dismissed with costs.