

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Mac-
naghten and Olpherts v. Mahabir Pershad
Singh and another, from the High Court of
Judicature, at Fort William, in Bengal; de-
livered November 24th, 1882.*

Present:

LORD FITZGERALD.

SIR BARNES PEACOCK.

SIR RICHARD COUCH.

SIR ARTHUR HOBHOUSE.

THIS was an application to set aside a sale of certain property in execution of a decree in consequence of irregularity. The application was made under section 311 of the Civil Procedure Code of 1877, chapter 10. By that section it is enacted that "The decree-holder or any
" person whose immovable property has been
" sold under this chapter may apply to the
" Court to set aside the sale on the ground of a
" material irregularity in publishing or conduct-
" ing 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 irregularity." Irregularity, therefore, alone is not a ground for setting aside a sale. There must be some substantial injury in consequence of the irregularity, and that must be proved by the applicant. It has also been held that inadequate price of itself is not a sufficient ground for setting aside a sale, unless there is irregularity. The question, therefore, in this case is whether an irregularity did occur, and, if so, whether that irregularity caused injury to the

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applicant; the injury complained of being the inadequacy of the price which was realised at the sale. The principal irregularity complained of was that no notification of the sale was properly published. Section 286 of the same code provides that "Sales in execution of decrees shall be conducted by an officer of the Court or by any other person whom the Court may appoint, and, except as provided in section 296, shall be made by public auction in manner herein-after mentioned." Then section 287 says— "When any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court. Such proclamation shall state the time and place of sale, and shall specify as fairly and accurately as possible the property to be sold; the revenue assessed upon the estate, or part of the estate, when the property to be sold is an interest in an estate or a part of an estate paying revenue to the Government;" and certain other things.

In addition to the irregularity as regards the notification of the sale, another alleged irregularity was complained of, viz., that the attachment was not properly notified. Whether the notice of attachment not having been properly published would affect the sale, or be an irregularity in conducting the sale, it is not necessary to inquire, inasmuch as that point was given up by the applicant on the trial before the judge. The question then is solely in respect of the alleged irregularity in the proclamation of the sale. The applicant contended that the proclamation had not been published. He did not contend that in the proclamation the particulars were not properly described as required by the Act. He said in effect that no proclamation had been published. The parties went down to trial upon that point, evi-

dence was given, and the learned judge of the First Court held that the proclamation had been published, and the High Court affirmed the decision of the First Judge in that respect. There are, therefore, two concurrent findings of the Courts that a proclamation was published.

The judge consequently refused to set aside the sale. The parties appealed to the High Court. They never took any objection in their grounds of appeal to the form of the proclamation, or stated that there was an irregularity in not having stated all that was required by the Act, and, amongst other things, the revenue which was assessed upon the estate. When the case came before the High Court it was discovered that in the proclamations which were published the amount of revenue had not been stated, and the High Court at that time considered that all the proclamations were alike, and that in each of the proclamations with regard to the 20 mouzals which were sold the amount of revenue had not been stated. It may be inferred from the grounds of review that the Court themselves first took the point; but whether it was taken by the Court or by the applicant is immaterial, because their Lordships are of opinion that the objection could not be taken for the first time in the Court of Appeal. Even if the objection could have been properly taken at that stage of the proceedings, if no question was raised before the Lower Court as to whether any injury had been sustained by the applicant by reason of the proclamation's not stating the amount of revenue, that question was never tried in the Lower Court, and no evidence had been given with reference to it.

The objection, if it had been properly taken in the first instance, would have been good to this extent, that not stating the amount of revenue was an irregularity; but even then there would have been something more to be proved than the

mere irregularity,—it would have been necessary to go on and show that substantial damage had been sustained by the applicant in consequence of that irregularity. No evidence was given upon that subject before the Lower Court, though by section 311 the onus lay upon the applicant to prove to the satisfaction of the Court that he had sustained substantial damage in consequence of the irregularity; nor was there any finding of the Lower Court upon it, because the question was never raised.

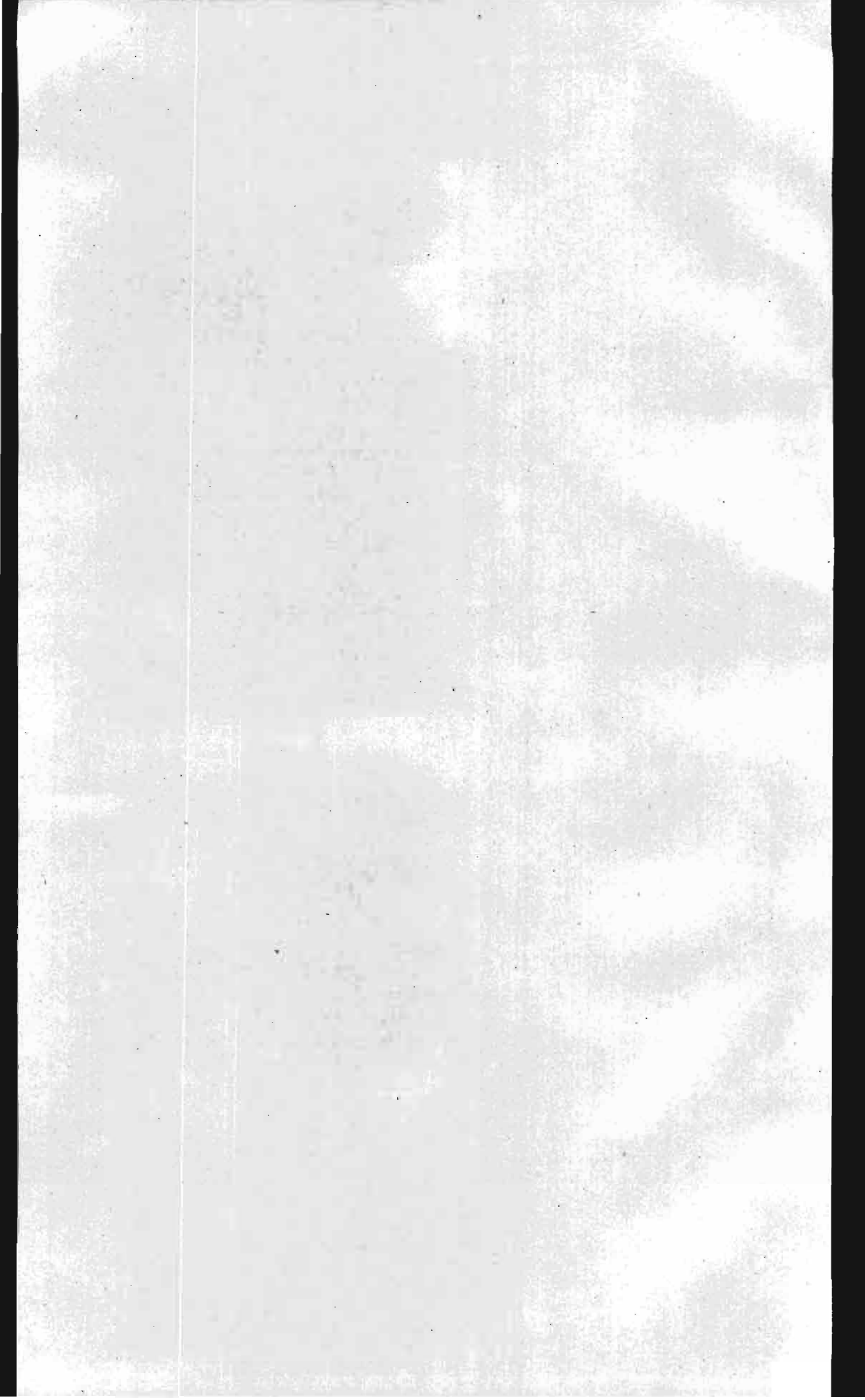
The High Court, having held that the non-statement of the amount of revenue in the proclamation was an irregularity, proceeded to try the question whether the irregularity had caused substantial injury to the applicant. They say:—“ But it may be reasonably supposed “ that the non-specification of the Government “ revenue in the sale proclamations published is “ one of the causes which caused the diminution “ in the price.” There was no evidence at all on the subject. It appears to their Lordships that the High Court could not, without evidence and upon a mere supposition, properly find that the non-statement of the revenue in the proclamation did cause an injury to the applicant by causing an inadequate price to be bid at the sale.

The High Court, however, upon the ground that there was an irregularity, and that it had caused substantial injury to the applicant, reversed the decision of the Lower Court. Upon that a review was applied for, and then it was discovered that the objection as to the non-statement of the revenue did not apply to six of the mouzahs and six of the sales; and the High Court, having found that the proclamation in respect of those six did contain the amount of the revenue, set aside their former decision as to them, and upheld it as to the other 14. But when they upheld the sale as to the six they never

adverted to the fact that, as they had fallen into a mistake as to them, they might equally have fallen into a mistake as to the other 14. They found that the inadequacy of price as regards the six did not arise from the non-statement of the amount of revenue. They might, therefore, have reasonably supposed that their former supposition, that the inadequacy of price as to the 14 was occasioned by the non-statement in the notice of sale of the amount of revenue, was as much without foundation as it was as to the six; but, instead of that, they upheld their decision as to the 14, and set it aside as regarded the six. The question now is whether the judgment of the High Court as regards the 14 is correct in holding that there was an irregularity in the non-statement of the amount of revenue in the proclamation which could be relied on upon appeal, and that the Appellant had sustained substantial injury by reason of that irregularity.

Their Lordships think that it was too late for the applicant to make the objection; and even if it were not too late for him to make the objection before the High Court, there was no evidence to justify the High Court in arriving at the conclusion that there was an inadequacy of price occasioned by the non-statement of the revenue in the sale proclamation.

Under these circumstances, their Lordships will humbly advise Her Majesty to reverse the decision of the High Court, and to affirm the decision of the First Judge. They think that the Respondent must pay the costs of this Appeal and the costs in the High Court.



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