*Judgment of the Lords of the Judicial Com-
mittee of the Privy Council on the Appeal
of Babu Birj Mohun Thakoor and another v.
Rai Uma Nath Chowdhry and others, from
the High Court of Judicature at Fort William,
in Bengal ; delivered 23rd June 1892.*

Present :

LORD HOBHOUSE.
LORD MORRIS.
LORD HANNEN.
SIR RICHARD COUCH.
LORD SHAND.

[*Delivered by Lord Hannen.*]

It is now conceded that Sections 311 to 313
of the Civil Procedure Code do not apply in this
case. Section 311 is limited strictly to " the
" decree-holder or any person whose immove-
" able property has been sold," which the
present Appellant is not. Section 313 applies
to the purchaser, and its scope is limited to the
case of a person whose property is purported to
be sold, and who had no saleable interest therein,
which is not this case.

Here there was an order for sale, and the
property was put up for sale, but there was no
order confirming the sale. Under Section 312,
if no such application as is mentioned in Sec-
tion 311 is made, there is only one duty left to
the Court, namely, to pass an order confirming
the sale as regards the parties to the suit and the
purchaser. The Subordinate Judge refused to

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do that, and set aside the sale, and directed the purchase money to be refunded on certain terms. In so doing he declined to exercise a jurisdiction which he had, and exercised one which did not belong to him, and consequently his judgment was liable to be reviewed by the High Court under the 622nd section of the Code of Civil Procedure.

It does not, however, follow that the Appellant is without remedy, but he must select the appropriate remedy. Not having a remedy under the Code, which provides only for the particular cases named therein, he still has the right to have the sale set aside, if it be true that he has been induced by fraud to pay a larger sum for the property purchased than he would have had to pay if he had not been so deceived.

For these reasons their Lordships will humbly advise Her Majesty that this appeal should be dismissed.