

APPELLATE CIVIL.

Before Mitter and Akram J.J.

ABDUL JABBAR

v.

JITENDRA KUMAR PAL CHAUDHURI.*

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Aug. 2, 3, 4, 7,
8, 17.

Revenue-sale—Annulment by civil Court—Separate account in arrear—Rights of the purchaser—Sale of entire estate—Assam Land and Revenue Regulation (I of 1886), ss. 70, prov. (2), 76, 82.

Where a person, who has been declared to be the purchaser at a revenue-sale, does not immediately deposit twenty-five per-cent. of the purchase money, as required by s. 77 of the Assam Land and Revenue Regulation, 1886, but deposits the same five hours after the sale, the civil Court cannot annul revenue-sale under s. 82, sub-s. (1) of the Regulation, unless the proprietor, whose estate has been sold, has sustained substantial injury by such late deposit.

Any proprietor of the estate, who is not comprised in the separate account in arrear, may, under s. 76 of the Regulation, purchase the share or lands comprised in the separate account, by paying the amount in arrear and, on such purchase, he acquires it free from all incumbrances.

If the arrear has accrued on a separate account opened under s. 65 of the Regulation and a sale of the entire estate has been directed under s. 70, prov. (2), and if thereafter, under s. 76 of the Regulation, no co-proprietor has exercised his right to purchase the separate account in arrear, the entire estate can be sold without publication of the notice of sale separately in respect of all the separate accounts. But such sale of the entire estate can be effected only if all the arrears of revenue in respect of the total number of separate accounts making up the entire estate are summed up into a single amount and the provisions of s. 72 of the Regulation relating to notice of sale are complied with.

In selling the entire estate under s. 70, prov. (2), the Deputy Commissioner has jurisdiction to include all arrears of revenue subsequent to the arrear of revenue for which the separate account was previously put up for sale.

Sheikh Haji Mutasaddi Mian v. Mahomed Idris (1) referred to.

Obiter. Under s. 82, sub-s. (2), a civil Court cannot entertain a suit for annulling a revenue-sale, unless it is brought within one year after the sale has become final under s. 80, sub-s. (1) of the Regulation and unless the

*Appeal from Original Decree No. 303 of 1937, with cross-objection, against the decree of Satya Saran Guha, First Subordinate Judge of Sylhet, dated Aug. 14, 1937.

ground on which the civil Court is invited to set aside the sale was specified in an application under s. 81 of the Regulation. In spite of the use of the word "or" for the second time in sub-s. (2) of s. 82 of the Regulation both the above conditions must exist in order that the civil Court may have jurisdiction for annulling the revenue-sale.

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APPEAL FROM ORIGINAL DECREE preferred by the defendants.

The material facts of the case appear from the judgment.

Sarat Chandra Basak, Priya Nath Datta, and Amiya Kumar Som for the appellants. The sale of the entire estate was ordered under s. 70, prov. (2), of the Regulation for the non-payment of the arrears of the separate accounts in respect of the May *kist* of 1933. The foundation of the judgment of the learned Sub-Judge is that the sale of the entire estate for arrears not only of May *kist* of 1933 but also for the September *kist* of 1933 is an irregularity. I submit that this is not an irregularity. The Regulation nowhere forbids it. The estate can be sold for all arrears due if the advertisement for sale include the said arrears. I rely on *Sheikh Haji Mutasaddi Mian v. Mahomed Idris* (1).

The property was sold at the revenue-sale for Rs. 2,300. On the evidence, I submit that this is an adequate price. Hence the point on which the Sub-Judge bases his judgment loses all its force.

Amarendra Nath Bose, Hemendra Kumar Das, Ramaprasad Mukhopadhyaya and Hitendra Kishore Roy Chowdhury for the respondents. The revenue-sale for arrears of the May *kist* and September *kist* was irregular. The learned Sub-Judge was right in his decision on this point. It is not necessary that this ground ought to have been taken in the application under s. 81 of the Regulation. I rely on s. 82, sub-s. (2) of the Regulation. The price fetched at the sale was quite inadequate. I submit that, in order

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to sell the entire estate under s. 70, prov. (2) of the Regulation, all the separate accounts should have been separately advertised for the sale. Otherwise the sale is irregular. The case relied upon by the appellants is not a case under the Regulation and as such it has no application.

Basak, in reply.

MITTER J. This appeal by two of the defendants is directed against the judgment and decree of the Subordinate Judge, first Court, Sylhet, dated August 14, 1937. The suit was instituted by nine plaintiffs to set aside a revenue-sale held on January 23, 1934, in the alternative for a reconveyance of the plaintiffs' share from defendants Nos. 6 and 7. The learned Subordinate Judge has granted the first prayer.

Mehâl Syed Muhammad Nazir, *hisya tâluk* Md. Batir, bearing *touzi* No. 54721/1 of the Sylhet Collectorate, is a permanently-settled estate with a total annual revenue of Rs. 3,152-3 as. The total local rate payable at the material time was Rs. 754-11-7 pies. The proprietors of the said *mehâl* had opened separate accounts under the provision of s. 65 of the Assam Land and Revenue Regulation (I of 1886). Before September, 1933, thirteen separate accounts had been opened, the first seven in respect of aliquot shares of the *mehâl* and the remaining six in respect of specific lands of the same. With the residuary there were thus fourteen separate accounts. Another separate account (No. 14) was opened in November, 1933. The revenue and local rates were payable in two *kists*, eleven annas in May and the remaining five annas in September of each year.

Separate accounts Nos. 2 and 6 as also other separate accounts were in arrear for the May *kist*, 1933. The remaining separate accounts, except Nos. 2 and 6, cleared up the arrears by payment before September 12, 1933, the date fixed for sale, for the arrears of May *kist*, but separate accounts Nos. 2 and

6 were still in default on that date. In the sale statement (Ex. 23, II-1) prepared by the Deputy Commissioner under s. 72(1) of the Regulation, the arrears stood thus:—

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No. of separate account.	Arrears of revenue.	Arrears of local rate.	Total.
	Rs. a. p.	Rs. a. p.	Rs. a. p.
No. 2 ..	634 8 2	151 9 6	786 1 8
No. 6 ..	102 14 7	24 7 11	127 6 6
Total ..	737 6 9	176 1 5	913 8 2

In the course of the sale, the said two separate accounts were reached on September 15, 1933. No bids were offered for them, with the result that the Deputy Commissioner stopped the sale and directed under s. 70(2) the sale of the entire estate at the sale date to be fixed for the sale for the arrears of the September *kist* of 1933. Within ten days of this direction, none of the proprietors of the remaining separate accounts came forward to pay up the arrears due for the said separate accounts Nos. 2 and 6 as provided for by s. 76. January 23, 1934, was later on fixed as the sale date for the arrears of the September *kist* of 1933. On that day, the entire estate, *taluk* Muhammad Batir, was put up to sale and was purchased by defendants Nos. 3 and 4 for Rs. 2,300. On January 17, 1935, after the confirmation of the sale (which was on November 8, 1934), defendants Nos. 3 and 4 executed a deed of release in favour of defendant No. 7, Syed Abdul Jabbar, in which they admitted that the latter had 12 annas share in the estate purchased by them, as he had contributed 75 per cent. of the price. (Ex. B, II-33.) Defendants Nos. 3 and 4, on the same date, sold the remaining four annas share to defendant No. 6, Rabindra Lal Das Chaudhuri, son of defendant No. 5 (Ex. H, II-35). Defendant No. 7 on the next day

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(January 18, 1935) sold 4 annas out of his 12 annas share to defendant No. 6 (Ex. I, II-37). The position then at the date of the suit, which was filed on September 25, 1935, was that the entire estate so purchased by defendants Nos. 3 and 4 had passed to defendants 6 and 7, who held it in equal shares. The learned Subordinate Judge has held the sale of January 23, 1934, to be an irregular one. In the sale statement and in the proclamation of sale the arrears of the entire estate for the September *kist*, 1933, were also shown and lumped together with arrears of May *kist* of 1933 due in respect of separate accounts Nos. 2 and 6. This according to him could not be done by the Deputy Commissioner. This is the only irregularity he found. He held that the estate was worth much more than Rs. 2,300 (about Rs. 32,000), and that the irregularity on which he proceeded in decreeing the suit had been mentioned by the plaintiffs in their memorandum of appeal to the Commissioner filed under the s. 79. Before us, Mr. Bose, appearing for the plaintiffs respondents, besides supporting the reasons of the Subordinate Judge, has placed three other points, which according to him vitiate the questioned sale. The points accordingly are:—

(i) that the Deputy Commissioner had no jurisdiction to sell the entire estate on January 23, 1934; in any event, the sale statement, not being in accordance with the law, the sale was an irregular one;

(ii) that the acceptance of the earnest money four or five hours after the bid was a material irregularity;

(iii) that the sums of rupees thirty-six and rupees nine paid after September 15, 1933, and before the advertisement on account of revenue and local rates respectively were not credited; that was also a material irregularity.

He has further contended that, even if the sale cannot be reversed, the plaintiffs are on the facts proved entitled to a conveyance of their respective shares on payment of proportionate prices. We will first deal with this point and the question whether the sale has fetched an adequate price. We may at once say that we agree with the learned Subordinate Judge on both these points.

The plaintiffs' case is that defendants Nos. 1, 2 and 8 to 23, for brevity's sake called the Sultanshi *zemindárs*, were men of influence, but some of them, especially defendant No. 9, were involved in debts and some others had created unprofitable tenures. They intentionally defaulted to pay their share of revenue with a view to purchase in *benâmi* at the revenue-sale, so that the encumbrances which they had created may be got rid of. On the date of the sale, two of them, defendants Nos. 1 and 2, and their *nâib*, Musrabulla, dissuaded the officer of plaintiff No. 1 from offering bids by holding out allurements, and later on the agents of the Sultanshi *zemindárs* after the sale, at which they purchased the property in the *benâmi* of defendants Nos. 3 and 4, induced the plaintiffs by false promises not to deposit the arrears and the compensation within thirty days of the sale under s. 78A. This case has been developed in the evidence of Hari Mohan Das, *nâib* of plaintiff No. 1, and Girish Chandra Pal, another officer of plaintiff No. 1. The case made in the lower Court that there was a concluded contract between the plaintiffs and the Sultanshi *zemindárs* by which the latter promised to convey to the former their respective shares for proportionate prices was not pressed before us by the respondents' advocate and so need not be considered.

On the case so presented, the first question of importance is whether defendants Nos. 3 and 4 were *benâmdárs*, and if so, whether they were *benâmdárs* for the Sultanshi *zemindárs*. The evidence in support of *benâmi* consists of the evidence of Hari Mohan Das, Girish Chandra Pal, Surendra Lal Das,

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the *nâzir* and treasurer of the Subdivisional Officer, Rai Mohan Das, an officer of plaintiff No. 2, Satish Chandra Bhattacharya, an officer of defendant No. 9, Abdul Karim, an officer of defendant No. 42 and Kamini Kumar Chakrabarti, an officer of the plaintiffs Nos. 3 to 9.

The evidence given by Hari Mohan, Girish Chandra, Rai Mohan and Kamini Kumar is of the same type. They say that, at the date of sale, defendants Nos. 1, 2 and their *nâib* Musrabulla told them that they would purchase at a small price in *benâmi* and asked the plaintiffs' men not to compete with them as that would only raise the bid and that they would return the plaintiffs' share if they were successful. Hari Mohan, who had Rs. 5,000 with him and had definite instructions from his master to bid for the property up to Rs. 20,000, agreed to the proposal and offered no bids, with the result that the Sultanshi *zemindârs* purchased the property in the name of defendant No. 4, their servant. It is hard to believe this story. It is also hard to believe that Hari Mohan would break his master's definite instructions, without having obtained something in writing. It is also hard to believe that Hari Mohan would take this great responsibility without any reference to his master. We cannot, accordingly, believe this story.

The evidence given by the *nâzir* is that two of the Sultanshi *zemindârs* asked him for a loan to pay the earnest money and were with defendant No. 4 when the earnest money was actually deposited. The last statement by itself is not of much value on the question of *benâmi*. The *nâzir* was besides under the influence of plaintiff No. 1 and the learned Judge did not consider his evidence to be reliable. The evidence given by Mr. Nosib Ali Majumdar, Extra Assistant Commissioner, does not push the case of the plaintiffs far enough. He cannot say whether the defendant No. 1, whose tenant he was, approached him for an advance before or after the sale. Satish Chandra

Bhattacharya was an officer of the Sultanshi *zemindârs*. He deposed for the plaintiffs, as he says, with the permission of defendant No. 9, one of the Sultanshi *zemindârs*. That shows that some of the Sultanshi *zemindârs* are siding with the plaintiffs. His evidence is that defendant No. 1 paid Rs. 200 towards the earnest money. The evidence of Abdul Karim is that defendants Nos. 1 and 2 paid the balance of the price on the 15th day of the sale. The evidence, however, establishes the fact that the purchasers at the revenue-sale, whoever they be, were short of money. The earnest money was Rs. 575 (one-fourth of Rs. 2,300). They had to run from place to place and the plaintiffs' case is that the money could not be collected before 8 p.m., that is, five hours' time had been taken to find the money. If an understanding was arrived at with plaintiffs' officers just before the sale, as alleged by them, we fail to see why the Sultanshi *zemindârs* had to run from place to place for raising money to meet the deficit, and did not apply to Hari Mohan who had with him, as is the plaintiffs' evidence, Rs. 5,000, or why Hari Mohan did not offer to accommodate them. We cannot also believe the statement that defendants Nos. 1 and 2 paid any portion of the earnest money and deposited the balance on the 15th day of the sale. It seems to us that defendants Nos. 3 and 4 were of that class of speculators who usually attend revenue-sales. They offered the bid, but were short of money. Anyhow they managed to deposit the earnest money and for the balance of seventy-five per cent. had to find another person. They approached defendant No. 7, a wealthy *zemindâr*, who advanced the same on the understanding that he would be given three-fourths share. This is the effect of the oral evidence adduced by the defendants, which evidence is supported by the deed of release (Ex. B, II-33). The remaining one-fourth share, which defendants Nos. 3 and 4 still had, were disposed of by them at some profit to defendant No. 6. There is no evidence to show that defendant No. 7 only lent his name for the

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Sultanshi *zemindârs*. We hold that defendants Nos. 3, 4 and 7 purchased for their own benefit. None of them were the *benâmdârs* of any of the Sultanshi *zemindârs*. The plaintiffs are not entitled to any reconveyance from them.

We hold that the price fetched at the revenue-sale was not adequate. The reasons given by the learned Judge are, however, not sound. The amount of revenue or local rate, which is levied on an acreage basis, is no index of value. But there is evidence that the income of the estate was considerable. The 2 annas share, which plaintiff No. 1 had, gave him a return of Rs. 800 to Rs. 900 a year. Prasanna, the manager of plaintiff No. 1, mentioned that figure at p. 71, l. 10, but no suggestion was made in cross-examination that the profits were not so much. The dealings of defendant No. 7 also point out that the property was worth much more than Rs. 2,300. He demanded large *selâmis* (Rs. 7,000 to Rs. 8,000) for settlement of fractional parts of the estate (p. 100, l. 20 and p. 134, ll. 1 to 20). The sale will have to be reversed if material irregularity is established. This leads us to the question of material irregularities. We will now deal with them.

We do not see any substance in the contention that Rs. 36 paid as revenue and Rs. 9 as local rate after the 15th September were not credited by the Deputy Commissioner. The arrears of revenue for the May *kist* of 1933 for separate account Nos. 2 and 6 was Rs. 737-6-9 and of the local rate Rs. 176-1-5 as shown in Ex. 23 (II-1), the sale statement prepared for the sale fixed for September 12, 1933. In the sale statement, Ex. 21 (II-5) prepared for the sale fixed for January 23, 1934, the arrears of revenue and local rates for the May *kist* of 1933 are shown as Rs. 699-8-3 and Rs. 165-15-1, respectively. The arrears were thus reduced by a little more than Rs. 36 and Rs. 9, respectively. There is no evidence on the side of the respondents to show that the arrears were

less than what has been shown in Ex. 21. We accordingly overrule this point urged by the respondents. The next point is with regard to the alleged delay in depositing the earnest money. The evidence leads us to the conclusion that the bidding in respect of this estate, *táluk* Muhamed Batir, was over at about 2 p.m., but other sales were taken up thereafter and those sales were finished at 5 p.m. The *názir* who was conducting the sale was also the treasurer. It is not likely that he would have or could have accepted the earnest monies before 5 p.m. But the fact remains that the earnest money was deposited at about 7 p.m. The question is whether this constitutes an irregularity for which the sale is to be set aside. Section 77 provides that the person declared to be the purchaser shall be required to deposit immediately 25 per cent. of his bid and in default of such deposit the property is to be forthwith put up to sale again. This provision was not strictly observed, but there is no evidence that the neglect of this provision has caused the plaintiffs respondents substantial injury. There possibly may have been a case of injury if defendants Nos. 3 and 4 were given time and they ultimately failed to pay in the earnest money and a resale was held after the intending bidders had left. The sale cannot, in our judgment, be annulled in view of the provisions of the first paragraph of s. 82.

It now remains to consider the two parts of the argument involved in the first point raised by Mr. Bose.

The first branch of the argument as put forward by him is as follows: The Deputy Commissioner could have put up to sale on January 23, 1934, the entire estate for the arrears of separate accounts Nos. 2 and 6 for the May *kist* of 1933, *i.e.*, the 11 annas *kist*, as no bids had been offered when those two separate accounts had been put up to sale on September 15, 1933, and as the Deputy Commissioner

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in terms of s. 70, sub-s. (2) had directed the sale of the entire estate and no other proprietor had paid the same within the time limited by s. 76. But the Deputy Commissioner, says he, had not in fact put up the entire estate to sale for those arrears. He had put up for sale the entire estate for the arrears of September *kist* of 1933, *i.e.*, the five annas *kist*. In support of his contention, Mr. Bose has relied upon the heading of the sale statement (Ex. 21, II-5) and of the advertisement in the Gazette, which is an exact copy of the same. The heading runs as follows: "Instalment on account of which arrear is "due—five annas *kist* of 1933". Then follow in a tabular form the details of a large number of estates which were in arrears including the estate, *táluk* Muhammad Batir. Against *táluk* Muhammad Batir, however, two sums are shown as arrears, namely, Rs. 985-1-0 as current arrears of revenue and Rs. 235-13-8 as current arrears of local rate, that is, arrears for the September *kist*, 1933 (5 annas *kist* of 1939) and Rs. 699-8-3 as *bakeyá* arrears of revenue and Rs. 165-15-1 as *bakeyá* arrears of local rate, that is, arrears for the May *kist* of 1933 (11 annas *kist* of 1939). The heading, therefore, was amplified in relation to this estate by the above details contained in the body of the statement. The sale statement and the advertisement taken as a whole and read fairly indicate that the sale of this estate was advertised not only for the arrears of the September *kist*, but also for those of the preceding May *kist*. It is admitted in the plaint that, at the time when the Deputy Commissioner made the order on September 15, 1933 under s. 70, sub-s. (2), he declared that the entire estate would be put up to sale at the sale date to be fixed for the arrears of the 5 annas *kist* of 1939 (September *kist*, 1933) and in the sale statement Ex. 21, and in the notification that was in fact done. No doubt the arrears of the September *kist* of 1933 were added to the arrears of the May *kist*, 1933, but that raises a separate question which we deal with later on.

On the opening of a separate account under s. 65, the liability of all the proprietors still continues to be joint and several. But the separate account in default must first be put up to sale and not the entire estate for such default. If no bids are offered or the bids offered are insufficient to wipe off those arrears the entire estate is to be put to sale, but after giving an opportunity to the other proprietors to pay up the same within ten days. As soon as the above mentioned circumstances combine with the non-payment of the arrears in terms of s. 76, the Deputy Commissioner is empowered to put up the entire estate to sale and he cannot again be required to advertise for sale the separate accounts separately and to put them up separately for the default of the next *kist*. In the case of *Narendra Nath Ray v. Midnapur Zemindári Co.* (1) the matter has been examined in detail in reference to the provisions of the Bengal Land Revenue Sales Act, XI of 1859. The provisions of the Assam Land Revenue Regulation are similar. The last mentioned Regulation, however, is more solicitous for the rights of the Crown, for, unlike Act XI of 1859, it continues the joint and several liability of the proprietors even after the opening of separate accounts. It further holds out a greater inducement to the other proprietors to pay up the arrears of a separate account and so purchase it, when for the separate account in arrears either no bids or insufficient bids had been offered, for the proprietor, who comes forward and pays up the arrears, acquires the separate account free from encumbrances. We cannot, accordingly, agree with Mr. Bose's argument that for the arrears of the September *kist* of 1933, each separate account had to be advertised separately for the September *kist*, 1933, and had to be put up to sale separately on January 23, 1934, and whole gamut of procedure as laid down in s. 70, sub-s. (2) read

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with s. 76 had to be followed again before the entire estate could be put up to sale. We, accordingly, overrule his contention that the Deputy Commissioner had no jurisdiction to sell the entire estate, as he did, on January 23, 1934. The default of separate accounts Nos. 2 and 6 gave the Deputy Commissioner power to declare that the entire estate would be put to sale at a future date and the default of the other proprietors in not paying up those arrears within the time limited by s. 76 gave the Deputy Commissioner jurisdiction to put into effect what he had previously declared. The entire estate could, however, be put up to sale, if, and only if, on merging the accounts of the separate accounts into one account, an arrear appeared. The nett balance has to be struck up to the *kist* date for which he intends to put it up for sale. He would have jurisdiction to include the arrears of the next *kist* provided that the advertisement be for the sale of that *kist* also. This has been laid down in *Sheikh Haji Mutasaddi Mian v. Mahomed Idris* (1). That was a case under Act XI of 1859 but the principles laid down there apply to this case with the same force. The next question is whether lumping the arrears for the May *kist* of 1933 with the arrears for the September *kist* of 1933 constitutes an irregularity. In our judgment it does not. This is not contrary to any provision of the Regulation. The Deputy Commissioner is required under s. 72 to prepare a sale statement. He must include therein the following particulars, namely, (i) description of the property, (ii) its annual revenue and (iii) time and place of the sale. What other particulars are to be included is left to his discretion. He has, therefore, the discretion to show in the statement the total arrears due up to that time.

Assuming that the inclusion of the arrears of the September *kist* in the sale statement amounts to an irregularity, the plaintiffs have to face two points.

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They did not specify this irregularity in their application made before the Commissioner under s. 79. We do not think that grounds Nos. C and N mentioned at pp. 12 and 13 of Part II or the corresponding grounds in the other application cover the point. Section 82 in effect lays down that a civil Court can annul a sale on the ground of irregularity resulting in substantial injury. The section, however, is worded in a negative form. Sub-s. (2) puts further limitations on the powers of the civil Court. The suit for annulment must be brought within a year of the finality of the questioned sale and (2) the irregularity complained of must be specified in the application made to the Commissioner under s. 79. We cannot accept Mr. Bose's construction of the second sub-section to the effect that the particular ground must be specified in the application to the Commissioner only in the case where the suit is instituted *beyond* a year of the finality of the sale, but need not be specified where it is *instituted* within a year. For this contention he puts emphasis on the word "*or*" used in that sub-section. That contention would have had some force if a suit to annul a revenue-sale could have been instituted beyond a year. Apart from the provision contained in the last portion of that sub-section, which, in our opinion, prescribes the period of limitation, the period of limitation to set aside a revenue-sale has been prescribed by the Indian Limitation Act itself. Article 12, cl. (c) of the first schedule prescribes one year's limitation from the date of the confirmation of the sale.

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The second obstacle in the path of the plaintiffs is that they have not been able to prove resulting injury. We cannot agree with the Subordinate Judge when he says that if the arrears for the September *kist* had not been included in the sale statement and in the advertisement the plaintiffs could have saved the estate from sale on January 23, 1934, by paying up the arrears for the May *kist* only.

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At that date that right was gone. It was gone on September 26, 1933. That right could have been exercised only in terms of s. 76.

We do not decide the question, and keep it open as to whether defendants Nos. 3, 4, 6 and 7 or any one of them can be considered defaulters within the meaning of the Assam Regulation, as that question is not relevant to this suit.

We, accordingly, hold that the sale is a valid sale. The appeal is accordingly allowed. The plaintiffs respondents must pay defendants Nos. 6 and 7 their costs of this Court and of the lower Court. We allow one set of costs here and of the Court below to be divided equally between them.

As we have discharged the decree of the lower Court it is not necessary to make a separate order on the cross-objection.

No order is made as to costs on the cross-objection.

AKRAM J. I agree.

Appeal allowed; no order on cross-objection.

N. C. C.