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there was no period of time during which the plaintiff was properly in possession of the share, and entitled to profits from the defendant in his character of lambardár. It seems to me that the defendant must be presumed to have been in possession and entitled to the profits from the date of the sale to the plaintiff. The appeal is therefore decreed, and the suit dismissed with costs.

TYRRELL, J., concurred.

Appeal allowed.

1885
April 28

Before Sir W. Comer Petheram, Kt., Chief Justice and Mr. Justice Brodhurst.

CHEDAMI LAL (JUDGMENT-DEBTOR) v. AMIR BEG (PURCHASER.)*

Execution of decree—Sale—Property sold before advertized time—Sale invalid.

A sale by public auction in execution of a decree, which is conducted at a time and place other than those properly notified, is not a sale at all within the meaning of the Civil Procedure Code.

The time to be notified for a sale by public auction in execution of a decree must be the time of the commencement of the sale, in order that all intending purchasers may be enabled to be present during the whole of the proceedings, and that all who are interested in the property sold may see that there is a fair competition and a good sale.

Where property which was advertized for sale by public auction in execution of a decree at 11 A. M. was sold at 7 A. M.,—*held* that the mistake was more than a mere irregularity in conducting the sale, and that the whole of the proceedings were invalid.

THIS was an appeal from an order refusing to set aside a sale of a house in execution of a decree. The judgment-debtor applied to have the sale set aside on the ground that the property had been advertized to be sold at 11 A. M., whereas it had been sold at 7 A. M., whereby the property was sold for much below its proper value. The Court executing the decree refused the application. The judgment-debtor appealed to the High Court.

Babu *Ratan Chand*, for the appellant.

Shah *Asad Ali*, for the respondent.

PETHERAM, C. J.—I think that this appeal must be allowed, and the sale set aside. It may be—I am not in a position to say whether it is so or not—that in this particular case no harm has been done. Whether that is so or not, this way of dealing with

* First Appeal No. 1 of 1885, from an order of Babu Baij Nath, Munsif of Agra, dated the 27th November, 1884.

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property is, in my opinion, a dangerous one, and such as should not be allowed by the Court. The statute says that when the immoveable property of a judgment-debtor is to be sold in execution of a decree, the time and place of the sale are to be notified, in order that the whole of the neighbourhood may be made aware of it, so that the debtor's property may be sold to the best advantage. Further, the time to be notified must be the time of the commencement of the sale, in order that all intending purchasers may be enabled to be present during the whole of the proceedings, to see how the biddings go, and that all who are interested in the property sold may see that there is a fair competition and a good sale. This being so, I consider that a sale which was advertized to begin at 11 A. M., but in fact began at 7 A. M., was vitiated by more than a mere irregularity in conducting the sale, for the mistake went to the very root of the whole proceeding. The statute authorizes a sale which is to be conducted at a time and place properly notified, and a sale otherwise conducted is not a sale at all within the meaning of the statute. I am therefore of opinion, not merely that there was an irregularity in the sale, but that there was, practically speaking, no sale at all. The whole proceeding must therefore be set aside, and the parties will revert to the rights which they had before. The appeal is allowed, but without costs, as the purchaser was wholly innocent.

BRODHURST, J., concurred.

Appeal allowed.

Before Sir W. Comer Petheram, Kt., Chief Justice, and Mr. Justice Straight.

RADHA PRASAD SINGH (PLAINTIFF) v. BHAJAN RAI AND OTHERS
 (DEFENDANTS).*

1885.

May 6.

Limitation—Burden of proof—Instalment bond—Indorsement of payment of instalments.

Where a defendant sets up the defence of limitation, he must plead it, and show that the claim is barred. If, when the plaintiff has proved his case, the facts show that the cause of action accrued at a date earlier than the period of limitation, and the plea of limitation has been set up by the defendant, the plaintiff will be entitled to take advantage of the plaintiff's evidence that the claim is barred, and to have judgment given in his favour.

* First Appeal No 13 of 1884, from a decree of Babu Mitonjoy Mukerji, Subordinate Judge of Ghazipur, dated the 27th September, 1883.