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pellant relied upon the language of the 132nd article of the second schedule, "For money charged upon immoveable property, 12 years." His contention was that that period of 12 years applied to every remedy which the instrument carried with it, and gave 12 years for the personal remedy against the mortgagor as well as against the mortgaged property.

Looking at the previous language with reference to personal suits, and at the language of art. 132, their Lordships think great inconveniences and inconsistencies would arise if they did not read the latter as having reference only to suits for money charged on immoveable property to raise it out of that property. That seems to their Lordships what the Legislature intended, and they are therefore of opinion that the decision of the High Court was right.

That being so, their Lordships will humbly advise Her Majesty to affirm the decree appealed from. There being no appearance for the respondent here, there will be no costs.

Their Lordships desire to add that their opinion on this appeal also applies to the separate appeal on the mortgage-bond of the 10th June, 1871.

Decree affirmed.

Solicitor for the appellant:—Mr. *T. L. Wilson.*

P. C. * 1884 *December* 12.

RAM DAYAL (PLAINTIFF) *v.* MAHTAB SINGH AND OTHERS (DEFENDANTS).*

[On appeal from the High Court for the North-Western Provinces.]

Irregularity in warrant of attachment preceding execution-sale—Act VIII of 1859, *s.* 222.

An execution-sale of the right, title, and interest in land was set aside by the Court, on the ground that the warrant for the execution of the decree and order of attachment of the property sold had not been signed by the Judge, but by the Munsarim of the Court; and at a second sale the property was sold to other purchasers, who, as well as the judgment-debtor, were sued by the purchaser at the first sale for a declaration of his right to have the first sale confirmed.

The High Court having held that, with reference to s. 222 of Act VIII of 1859, the first sale had been rightly set aside, an appeal to the Judicial Committee was dismissed with costs.

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* *Present:*—Lord FITZGERALD, Sir B. PEACOCK, Sir R. P. COLLIER, Sir R. COUCH, and Sir A. HOBHOUSE.

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RAMDAYAL *v.* MAHTAB SINGH.

APPEAL from a decree (27th April, 1881) of the High Court (1) affirming a decree (30th June, 1879) of the Subordinate Judge of Aligarh, whereby the appellant's suit was dismissed. The object of this suit was to have effect given to a purchase made by the appellant, on the 21st August, 1876, of a portion of villages Raipur and Manipur, in the Aligarh district, at a sale in execution of a decree obtained by a third party against the first respondent, Mahtab Singh This involved the setting aside an order of the District Judge of Aligarh (20th April, 1877), allowing an objection of the judgment-debtor to the confirmation of the sale.

On the 14th September, 1876, Mahtab applied to the Subordinate Judge, in whose Court the execution had taken place, for cancellation of the sale. The District Judge, to whom the application was transferred for hearing, gave judgment upon it on the 20th April, 1877, setting aside the sale, and permitting application to be made for another sale of the property. His judgment was the following :—

"The first contention on the applicant's part is, that no sale, properly so called, took place, that is, that all proceedings were vitiated *ab initio* by the irregularity of the warrant of execution, which ought not only to bear the seal of the Court, but also 'shall be signed by the Judge.' On examination, I find that the document in question was signed by the Munsarim and not by the Judge : an exactly similar irregularity in a notice of foreclosure, was held by the High Court in the case* marginally noted, to vitiate all subsequent proceedings in the case. In the face of such a clear ruling, I do not see that it is possible to reject the application to set aside the sale. The application is, therefore, admitted, and the sale is set aside, with permission to the decree-holder to move for a new sale. Each party to bear his own costs."

* Seth Har Lal *versus* Manik Pat and others, July 13th, 1873, No. 69.

At another sale, held on the 27th June, 1877, certain of the respondents purchased the property in dispute as being that of Mahtab Singh, judgment-debtor; and, thereupon, on the 15th April, 1878, the appellant sued both Mahtab Singh and the purchasers at the second sale, to obtain a declaration of his right to have the sale

(1) I. L. R., 3 All. 701.

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to him confirmed, notwithstanding the order of the 20th April, 1877.

The Subordinate Judge dismissed the suit, holding that the Judge in making the order of 20th April, 1877, was acting in accordance with the provisions of s. 256 of Act VIII of 1859. The dismissal of the suit was held to be correct by the High Court (OLDFIELD and STRAIGHT, JJ.), who dismissed an appeal, for the reasons appearing in their judgments which were the following: OLDFIELD, J., said—

"The decision of the majority of this Court in *Diwan Singh* v. *Bharat Singh* (1) has been pressed upon us as an authority for holding that the present suit is not barred by the terms of s. 257, Act VIII. of 1859. I myself dissented from the view taken by the majority of the Court in that case, but I feel myself bound to accept the ruling so far as it is applicable to the case before us. Assuming, however, that it is an authority for holding that the present suit is maintainable, and we are at liberty to determine if the Judge's order setting aside the sale was properly made or not, and if not, to set it aside and declare plaintiffs' right to have the sale confirmed to him, I am not disposed to do so, with reference to some of the grounds on which the Subordinate Judge proceeds.

The fact that the order of attachment and notices of sale were not issued under the signature of the Judge, but of the Munsarim, as though emanating from him, constituted serious illegalities of procedure: orders so issued could, properly speaking, have no legal effect, since s. 222, Act VIII of 1859 requires that the warrants for execution shall be signed by the Judge, and the Munsarim had no power to sign them, having regard to his duties as declared in s. 24, Act III of 1873 (Civil Courts Act), and the orders of this Court made in pursuance of the provisions of s. 24.—(C. O. No. 9, 1867, No. 11, 19th August, 1870.)

Moreover the sale could not now be confirmed in plaintiff's favour without serious injustice to the respondents who have purchased the property from Mahtab Singh *bonâ fide* and for value, and to whom at the time of the sale Mahtab Singh was able to

(1) I. L. R., 3 All. 206.

confer a good title, since the sale at which plaintiff bid could not become absolute without confirmation.

Since the date of the auction-sale also the liabilities on the property have been satisfied, and the state of things has materially changed, and it would be inequitable to allow plaintiff, after standing by for a year and permitting dealings to be made with the property, to come in and take advantage of the change of circumstances, and obtain a property become much more valuable at the price he originally offered.

I refuse, therefore, to give a declaration of his right to have the sale confirmed to him, and I would dismiss the appeal with costs."

STRAIGHT, J., said :—" I concur with my honourable colleague, that the plaintiff's claim should be disallowed and this appeal dismissed. I am of opinion that the sale in execution at which the plaintiff bought was wholly void, and that the absence of the signature of the Judge from the warrant and attachment vitiated the proceedings in execution *ab initio*. The language of s. 222 of Act VIII of 1859 is plain and positive, and it seems to me impossible to hold that the order directing attachment is not a warrant within the meaning of that section, whether it was directed to the nazir or other person to seize the moveable property of a judgment-debtor, or to the judgment-debtor himself, prohibiting him from alienating his immoveable property : it was an order essentially in the nature of a warrant, and as such required the Judge's signature under the old law. It was contended for the appellant at the hearing that this objection was not taken by the judgment debtor in the grounds upon which he asked for cancelment of the sale, and that the Judge had no right to entertain it of his own motion. I am by no means sure that this plea has any foundation in fact ; for I find that the Judge remarks in his judgment that the first contention on the appellant's part is, ' that no sale, properly so called, took place, that is, that all proceedings were vitiated *ab initio* by the irregularity of the warrant of execution, which ought not only to bear the seal of the Court, but also 'shall be signed by the Judge.' "

" Even if this point had not been started by the judgment-debtor, I think it would have been competent for the Judge himself

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to take notice of it, going as it does to the very root of the proceedings; but, under any circumstances, we, in a suit like the present, which practically invites us to confirm a sale by declaring the plaintiff's right to have it confirmed, are in my opinion not only entitled, but bound to closely scrutinise all the proceedings in execution, to ascertain whether such sale was a valid and binding one. This I have already said it was not, and the foundation of the plaintiff's claim therefore falls away. I say nothing as to his conduct in holding back until almost the very last moment from instituting his suit, though I am glad to think that, from the point of view from which I regard the case, the subsequent innocent purchasers from the judgment-debtor will retain the property they have not only bought and paid for, but the incumbrances upon which they have discharged."

The plaintiff appealed to Her Majesty in Council.

For the appellant, Mr. *J. F. Leith*, Q.C., and Mr. *R. V. Doyne*.

For the respondent, Mr. *H. Cowell*.

The case for the appellant having been opened, and argument heard to the effect, generally, that the irregularity must be dealt with as waived by an application for the postponement of the first sale made by the judgment-debtor, and that other matters had rendered it immaterial, Sir B. PEACOCK, referred to s. 222 of Act VIII of 1859.

Their Lordships concurred in an intimation that the judgment of the High Court was correct, and the appeal proceeded no further.

Appeal dismissed with costs.

Solicitors for the appellant: Messrs. *Ford, Ranken Ford & Ford*.

Solicitor for the respondents: Mr. *T. L. Wilson*.