

BAIJNATH SAHAI (DEFENDANT) v. RAMGUT SINGH AND OTHERS  
(PLAINTIFFS.)

P. C. \*  
1896  
February 12.

[On Appeal from the High Court of Judicature at Fort William  
in Bengal].

*Limitation—Act XV of 1877, Schedule II, Art. 12—The Public Demands  
Recovery Act (Bengal Act VII of 1880)—Confirmation of sale—Collector's certificate.*

Where the Board of Revenue discharged an order of the Commissioner, dated January 25th, 1884, which had confirmed a sale by the Collector in 1882, but afterwards on August 21st, 1886, discharged its own order and revived that of the Commissioner,

*Held*, that the confirmation of sale dated only from August 21st, 1886, and that a suit brought in July 1887 to set aside the sale was not barred by Act XV of 1877, Art. 12.

*Held*, that according to the true construction of section 7 of Bengal Act VII of 1880, there is no foundation for a sale thereunder, until a certificate has been made by the Collector strictly in manner prescribed thereby, specifying the sum due and the person from whom it is due.

*Held*, that such certificate, when duly made, has, after service of notice thereof under section 10, the effect of a decree so far as regards the remedies for enforcing it.

APPEAL from a decree (September 12th, 1890) of the High Court, affirming a decree (April 19th, 1888) of the Subordinate Judge of Shahabad.

The plaintiffs, now respondents, were the proprietary body, one hundred and ten in number, at the filing of this suit on the 26th July 1887 owning mehal Bhadwar, comprising six *mouzas* in the Shahabad district.

On the 25th September 1882 the Collector of the district, in virtue of Act VII of 1880, brought this mehal to a judicial sale under section 286 of the Code of Civil Procedure, for arrears of road cess and public works cess due by the plaintiffs for June and September 1881, amounting to Rs. 516-8-0. Of this mehal the defendant Baijnath Sahai, a neighbouring proprietor, had been declared purchaser at the price of Rs. 1,500. The property, however, had been found on this suit by the first Court to be worth not less than Rs. 1,00,000.

\* *Present*: LORDS WATSON, HOBHOUSE and DAVEY and SIR R. COUCH.

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The two principal questions now raised were : First, whether this suit, brought by the defaulting proprietors to have the sale of the mahal set aside as invalid, was barred by limitation ; secondly, whether the sale had been valid, with reference to the requirements of the Public Demands Recovery Act (VII of 1880) ; or, by reason of there having been no certificate of unpaid demand as required by section 7 of the Act to precede it, the sale had been invalid and without effect.

In 1881 arrears were claimed from the proprietors under the Cess Act (IX of 1880), whereby the cesses in question were enforceable as public demands. Such cesses were also held in *Sulhusaran Singh v. Panch Deo Lal* (1) to be recoverable as a public demand.

The Act for the recovery of those demands, Bengal Act VII of 1880, is to be read as one with the Revenue Sale Law XI of 1859, and with the Act relating to the recovery of land revenue, Bengal Act VII of 1868, so far as the provisions of these Acts are consistent with one another. And by section 7 of the Public Demands Recovery Act, 1880, when arrears are due from an owner, the Collector of the District may make a certificate to that effect under his hand, specifying the debt and from whom it is due.

This certificate is, as regards the enforcement of the certified debt, to have the effect of a decree for money in a Civil Court, in accordance with the Code of Civil Procedure. By section 2 of the Act the Secretary of State for India in Council takes the place of the decree-holder, and the person named as debtor is deemed to be the judgment-debtor.

From the time of the sale in 1882 to the end of 1886, the owners and the purchaser of the property were litigating in the Revenue Courts as to the validity of the purchase.

On the 10th October 1882 the owners' petition to the Collector to have the sale set aside on the ground of material irregularity (Code of Civil Procedure, section 311) was rejected by him.

The owners then appealed to the Commissioner, under Act VII of 1880, whose order of the 25th January 1884,

(1) I. L. R., 14 Cal., 1.

rejecting their appeal, though, at first reversed, was in the end supported in the Revenue Department.

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On the appeal of the owners, the Board of Revenue, on the 12th August 1884, reversed the Commissioner's order, and directed the Collector to inquire as to the validity of the proceedings.

On the 21st August 1885 the Collector, after hearing the case, decided that the sale should be set aside on the ground alleged, finding substantial injury to the owners by the irregularities that had occurred. An appeal from this order to the Commissioner was dismissed on the 11th March 1886.

Bajnath Sahai then petitioned the Board of Revenue who, on the 21st August 1886, following a ruling of the High Court in *Sadhusaran Singh v. Panch Deo Lal* (1) decided that there had been an error in procedure in their former order of the 12th August 1884. The Board were of opinion that they should have then decided that an appeal from the order of the Collector who had brought the property to sale could not be preferred to any tribunal other than that of the Commissioner under section 2 of Act VII of 1880.

The Board, therefore, deemed the Commissioner's order of the 25th January 1884 to be final and conclusive, and themselves to be empowered to cancel their order of the 12th August 1884 in virtue of provisions in Regulation III of 1822. The result was that this last order of the Board re-established the Commissioner's order of 1884, and left, in effect, the sale of the 24th September 1882, confirmed and valid, so far as the Revenue Department was concerned.

The proprietors having thus failed to get the sale of their mehal set aside by the administrative authorities, brought this suit in the Court of the Subordinate Judge. They asserted the invalidity of the sale, on account of informalities and omissions in the proceedings leading up to it, alleging that there had been no certificate of unpaid demand made as prescribed by section 7 of Act VII of 1880, and that two documents put forward to supply the place of such certificate were not certificates at all.

(1) I. L. R., 14 Calc., 1.

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One of these documents, described as a notice of demand, and said to have been issued in pursuance of section 9 of that Act, did not state in respect of what period the sum claimed was due. This was Rs. 197-4. The other document, dated May 20th, 1882, was for Rs. 176 claimed for June 1881.

The Government, who entered no appearance, were sued with Baijnath Sahai, who alone defended, one other defendant answering in support of the plaintiffs. The following were among the questions raised by the issues: First, whether the suit was barred by time; and, secondly, whether the sale had been validly carried out.

The Subordinate Judge, holding the suit not to be barred by limitation, decided in favour of the plaintiffs and declared their right to the possession of the property ineffectively made the subject of sale.

He stated that "there had been material irregularities preceding the sale, causing substantial injury to the plaintiffs. Of these one was that the sale proclamation had not been made thirty days before the sale, as required by section 290 of the Code of Civil Procedure, but only twenty-two days, and it did not set forth the incumbrances on the property, these omissions causing an inadequate price to be obtained." The sale was, in his opinion, invalid and he decreed in favour of the plaintiffs with costs.

On the appeal of Baijnath Sahai, the High Court (PRIGOR and GORDON, JJ.) affirmed the decision of the first Court. Their reasons were not identical with those of that Court, though they supported the Subordinate Judge's opinion as to the effect of shortening the time between the sale proclamation and the sale, and of other material irregularities citing *Sadhusaran Singh v. Panch Deo Lal* (1). The ground of their decision was, mainly, the absence of proof of the certificate of unpaid demand according to the requirements of section 7. As to this they said:—

"We need not repeat at length the view already stated in other cases, one of them being *Gujraj Sahai v. The Secretary of State* (2), that the provisions of Act VII of 1880 must be strictly followed.

"The certificate procedure allows, to put it shortly, a demand written down

(1) I. L. R., 14 Calc., 1.

(2) I. L. R., 17 Calc., 414, affirmed on appeal under the name of *Mahomed Abdul Haij v. Gujraj Sahai*, I. L. R., 20 Calc., 826; I. R., I. A., 70.

by a Government officer and sent to the person on whom the demand is made to have the force of a decree under which, as in the present case, a huge property may be sold for a demand of a few rupees, the Act being framed with the intention, as far as possible, to exclude proceedings duly taken under it from being reviewed in Courts of Justice. The safeguards provided by the Act for the exercise of these powers may or may not be sufficient to prevent those powers from being sometimes used harshly and improperly; but, such as they are, they must be strictly enforced, and the form of procedure laid down in the Act must be strictly followed. In the present case, the documents called certificates are really notices issued under section 9 of the Act. We allowed this case to stand over, that the voluminous record, containing, as it does, proceedings relating to this multitude of persons who are parties to the suit, should be examined; and the result is that the 'certificates' are throughout only notices in Form III in the schedule to the Act. This notice under section 9, in Form III, relates to the case of demands payable to a public officer other than a Collector, or to a manager under the Court of Wards; it is to be given to the Collector by such officer or manager, (having been previously, in the case of a manager, verified by him in the manner provided as to plaints by the Civil Procedure Code); and on receipt of it, the Collector, if satisfied that the demand is justly recoverable, may make a certificate under Form II and cause it to be filed. This notice is, as its purpose implies, addressed to the Collector, to the issue of whose certificate under the Act it is a preliminary for the cases contemplated by it. It is not a certificate under the Act at all. There is a form at the end of it, which certifies that the amount is due. This is a certificate, or rather an assurance, to the Collector by the person applying to him, that the amount demanded is really due. It is a singular instance of the slovenliness with which this Act is often administered (though the only justification for the existence of such powers is the presumption that everything is regularly done in the offices to which they are entrusted), that this form of assurance or certificate to the Collector, at the end of this notice, has been apparently treated as a certificate under the Act by some one in the Collector's office, and that it was solemnly argued before us that it was such a certificate. It was argued that, substantially, taken with the notices accompanying them, these 'certificates,' though not quite regular in form, did really call on the different plaintiffs to pay the road-cess demanded, and we were asked to disregard the irregularity as not really material. We decline to accept this argument or to apply, in aid of the sale of the plaintiffs' property for Rs. 1,500, the principle *ut res magis valeat quam pereat*. We find conditions laid down in the Act for the exercise of the powers conferred by it, and we should require them to be strictly followed, without speculating as to their object at all.

"But one very substantial ground, as it appears to us, does exist, upon the merits, if one may use that expression, for requiring accuracy of procedure in this matter. It is one referred to in the case already referred to (1)."

(1) I. L. R., 17 Calc., 414.

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The judgment then referred to section 7, sub-section (9), as follows :—

“That sub-section does not require the Collector of the district to issue the certificate : the word used is ‘may.’ The obvious intention is that he shall use his discretion as to the issue of the certificate, and determine whether the case is a proper one for it. We do not dwell further on this, as we shall insert later on a passage from a minute of the Board of Revenue as to this case. This is a good illustration of the object which, we gather, the Act has in view in this particular, though of course no guide for us in construing the Act.”

The Judges concluded their judgment as follows :—

“We think that some observations in the Board’s minute of August 12th, 1884, with reference to this case, may here be stated with advantage. So long as this certificate procedure continues, we think it plain that it ought to be applied with regard to the views expressed there, and that on some points the Act must be construed with regard to the existence of such considerations as are contained in some of the passages we now quote.

“The Board, however, do not think it right to confine their remarks to the legal questions involved in this appeal. They have already observed in their Resolution of the 5th March that the Collector seems to have gone out of his way to surround his proceedings with every attendant circumstance which could afford a handle for objection, both on the ground of irregularity and of hardship. And now that the facts are more fully before them, they would be justified in reiterating this opinion in still stronger terms. There could be no necessity for selling the rights and interests of 87 persons in a valuable estate for a petty arrear of Rs. 517. The result has been that a property said to be worth more than Rs. 10,000 a year has been sold for Rs. 1,500, though it would probably be a matter of endless litigation to say exactly what the Collector sold and what the auction-purchaser has bought. The notices were not properly served. Indeed, it was impossible to serve them, as it is admitted that many of the registered proprietors are dead. The sale-proclamation was not properly worded ; in fact, the Collector had not before him the information necessary for drawing up the proclamation, and it was not issued in the Mofussil in proper time before the sale. But without dwelling further on specific irregularities, the Board cannot but think the Collector failed to appreciate the spirit of those sections of the law which relate to executions, and, in particular, to sales of immovable property. The whole tendency of the law is to proceed to sale only in the last resort, and to give the judgment-debtor every opportunity of saving his property. In this case an order under section 305 would have obviated the necessity for sale, and there is even reason to think that, if the proceedings had been adjourned for a few hours, the claims of Government would have been satisfied.

“The Board will not say that the sale of immovable property in execution of a certificate is a proceeding which should never be resorted to. But they

believe that cases will seldom occur in which the actual completion of a sale is necessary ; and they are certainly of opinion that all officers should exercise the stringent powers which the Public Demands Recovery Act puts into their hands in a lenient and considerate spirit.

“ We affirm the decision of the Court below, and dismiss the appeal with all costs.”

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Mr. C. W. Arathoon for the appellant.—It was the fact, and was not denied, that arrears of road cess and of public works cess were due from the plaintiffs for the instalments of June and September 1881. For these arrears the sale that took place on the 25th September 1882, being, as it was now submitted, substantially in accordance with the requirements of the Public Demands Recovery Act, 1880, was a valid sale. In the first place, however, there was limitation. This sale having been confirmed by the Commissioner on the 25th of January 1884, his order of that date, although in the first instance, in 1884, reversed by the Board of Revenue, was upheld by the latter in 1886, in review of their former judgment. Thus the 25th January 1884 being the date when the sale was confirmed, that date was the commencement of limitation for the purpose of applying Article 12 of Schedule II of Act XV of 1877, but not until the year 1887 was this suit brought.

In the next place, Act VII of 1880 having to be “ read as one with ” the Revenue Sale Law, Act XI of 1859, the requirement of section 33 of the latter Act was that no objection to a sale should be taken if it had not been “ declared and specified ” as a ground of appeal to the Commissioner. This was applicable to this suit, and barred the ground of objection founded on the alleged non-existence of the Collector’s certificate. Reference was made to *Raja Gobind Lal Roy v. Rajaram Misser* (1), where it was held that section 33 of Act XI of 1859 was applicable, not merely to cases where irregularity had occurred, but to those where illegality or contravention of some express provision of law had taken place in the proceedings preliminary to the sale.

Again, as a ground for having the sale set aside, the plaintiffs should have shown some substantial injury to their interests,

(1) I. L. R., 21 Cal., 70 ; L. R., 20 I. A., 165.

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connecting that injury with the irregularity complained of, as an effect resulting from that cause. But no evidence had been given establishing any direct connection between the low price obtained, which was the injury alleged, and any of the irregularities that had occurred. As to this was cited *Tasadduk Rasul Khan v. Ahmad Husain* (1). Another point was that, by their omissions after the sale, the plaintiffs were estopped from raising their present contention as to the absence of a certificate of unpaid demand from the record, as well as the objections put forward on other grounds. The plaintiffs had allowed the execution sale to proceed, and had appealed to the Revenue Courts, without raising any objection on the main ground on which the High Court has given judgment, *viz.*, that no certificate had been shown to have been made. As to this, however, the main point insisted on for the appellant was that the notice afforded ground for a fair inference that the certificate had been made; and that the requirements of section 7 had been substantially complied with. The sale therefore should not have been set aside, and the decrees below should be reversed.

Mr. *J. H. A. Branson*, for the respondents, was not called upon.

Their Lordships' judgment was delivered by

LORD DAVEY.—Their Lordships do not think it necessary to call upon the learned Counsel for the respondents to address them in this case. It comes before this Board on an appeal from a judgment of the High Court of Calcutta, which affirmed, with costs, the judgment and decree of the first Subordinate Judge of zillah Shahabad, dated 19th April 1888.

The litigation out of which the appeal has arisen concerned a sale purporting to be made by the Collector of Shahabad of an estate called Bhadwar on the 24th of September 1882. The plaintiffs in the action, the present respondents, were the owners of that estate. They are very numerous, and are alleged to be more than one hundred in number. The defendant, and present appellant, was the purchaser at that alleged sale. The sale was impeached by the owners on various grounds which may be sum-

(1) I. L. R., 21 Cal., 66; L. R., 20 I. A., 176.

marised by saying that they are to the effect that the sale did not comply with the requirements of the statute under which it purported to be made.

Before discussing that question there is another question which requires decision. The defendant pleaded in the Court below, and his learned Counsel before their Lordships has argued that the suit is barred by the law of limitation ; and it is necessary for this purpose to consider the dates. The sale which it is sought to set aside was made on the 24th of September 1882. It purported to have been confirmed by the Commissioner on the 25th of January 1884. The present plaint was not filed until the 26th of July 1887, and therefore if there were nothing more in the case than that, and if it was really confirmed in a final and conclusive manner on the date mentioned in 1884, the suit would be barred under the provisions of the law of limitation. It would come within Article 12 of the second Schedule, namely, a suit "to set aside any of the following sales: A sale in execution of a decree of a Civil Court ; a sale in pursuance of a decree or order of a Collector or other officer of revenue," as to which the time of limitation is only twelve months from the time when the sale is confirmed, or would otherwise have become final and conclusive had no such suit been brought. It was decided in the Court below that a certain time, particulars of which will be referred to presently, should be excluded from the period of limitation under the 14th section of the Act, which provides that "in computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action, and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it."

Now the proceedings which gave rise to the argument which has been addressed to their Lordships are of a complicated character, and their Lordships do not think it necessary, for the purpose of the advice they propose to tender to Her Majesty, to express any opinion upon the merits of the litigation in the

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Revenue Court, or to consider the various provisions of the different Acts relating to the matter. Suffice it to say that these present respondents, being dissatisfied with the sale of the property which had been purported to be made on the 24th September 1882, presented a petition to the Commissioner on the following 26th September, asking that the sale might not be confirmed. Their petition was referred back to the Collector for this report. He gave his report to the Commissioner, and finally the Commissioner, on the 25th of January 1884, refused the petition which had been tendered to him, and confirmed the sale. The present respondents were not satisfied with the decision of the Commissioner, and being, as their Lordships presume, advised that they had the right to do so, they presented a petition for revision, which was in the nature of an appeal to the Board of Revenue, and asked the Board of Revenue to reconsider, and, if necessary, discharge the order which had been made by the Commissioner confirming the sale.

On the 12th of August 1884 the Board of Revenue considered the petition addressed to them, and made an order setting aside the Commissioner's previous order confirming the sale, and they referred the matter back to the Collector to consider the case upon its merits. Whether they were right or whether they were wrong in holding that the proceedings of the Commissioner had been irregular, and that the petition to themselves was irregular on the ground of want of jurisdiction, is not material for the present purpose, because it is not disputed that the parties were proceeding in good faith; and it is apparent from the judgment of the Board of Revenue that the question was one of very considerable difficulty. It is to be observed that the effect of that order of the 12th of August 1884 was to leave the sale unconfirmed. The order of the Commissioner confirming the sale was discharged, and the sale therefore was left unconfirmed. There was no actual sale (supposing it had been otherwise regular) which would give the purchaser a title to enter into possession or to enjoy the fruits of the sale, or, in other words, there was no real sale to the benefit of which the purchaser was entitled.

Their Lordships now come to the proceedings before the Collector. The Collector made an order declining to confirm the sale from

which there was an appeal to the Commissioner who, on the 11th March 1886, held that he had no jurisdiction to entertain the appeal; and therefore the order of the Collector refusing to confirm the sale stood. From that decision the present appellant appealed to the Board of Revenue, and it came a second time before the Board. The Board of Revenue then reserved their previous decision in consequence, apparently, of some decision which in the meantime had been given in the High Court at Calcutta, and they discharged the order of the Collector apparently on the ground that it was made without jurisdiction, and that they themselves had no jurisdiction to entertain the question. The effect of these proceedings was to revive—to use the language of the Board of Revenue—the order of the Commissioner of the 25th of January 1884, which from that date became an operative order.

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It is not disputed by the Counsel for the appellant that, if that confirmation of the sale took effect only from the last order of the Board of Revenue on the 21st August 1886, the suit is brought within twelve months, and the law of limitation is not an answer to it.

Now the present suit is a suit to set aside the sale on the ground of non-compliance with the provisions of Bengal Act No. VII of 1880, and was instituted within a year after the final order of the Board of Revenue. The Subordinate Judge, and the High Court agreeing with him, have held that the case before the Collector, the Commissioner and the Board of Revenue comes within the description of a civil proceeding for the same cause of action in the 14th section of the Limitation Act, and that the time occupied by those proceedings ought therefore to be excluded in the computation of time for the purpose of limitation. Their Lordships do not intend to express any opinion upon the question whether the proceedings taken by the parties to stay the confirmation of the sale was such a civil proceeding as referred to in section 14, because in the view which they take of the present case that question does not arise.

Their Lordships are of opinion that there was no final, conclusive and definitive order confirming the sale, while the question whether the sale should be confirmed was in litigation, or until the order of the Commissioner of the 25th January

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1884 became definitive and operative by the final judgment of the Board of Revenue on the 21st August 1886, or (in other words) that for the purpose of the law of limitation there was no final or definitive confirmation of the sale until that date.

The second Schedule, Article 12, says : " When the sale is confirmed, or would otherwise have become final and conclusive had no such suit been brought." It cannot be said in the opinion of their Lordships when the parties were litigating before the Revenue Courts as to whether the sale should be confirmed or not, because that was the object of the litigation before the Revenue Courts, that the sale had become either final or conclusive. In fact, their Lordships are of opinion that there was not during the period which had elapsed between the date of the sale and the 21st of August 1886 any sale to set aside which a suit could have been brought by the present appellant and respondents. Therefore their Lordships are of opinion that the confirmation dates only from August 1886, and that the law of limitation is not a defence to this action.

Passing to the merits their Lordships do not think it necessary to say very much with regard to them. Various grounds were mentioned in the proceedings and pleadings in this suit, and in the judgments of the Subordinate Judge and of the High Court, in which the case was very fully discussed and considered, upon which it was alleged by the present respondents that the sale was invalid. Their Lordships do not think it necessary to express an opinion upon all those grounds, because there is one ground upon which they entirely agree with the view taken in the High Court, which cuts away the whole basis of the proceedings for the sale.

It should be here mentioned that the 7th section of Bengal Act VII of 1880 under which the sale took place contains this provision, that " when any arrears of the following public demands," and this was undoubtedly a public demand under the Road Cess Act, " are unpaid by the persons liable to pay the same," then, leaving out the immaterial provisions, " the Collector of the district may make under his hand, and in Form No. 2 in the second Schedule annexed to this Act, a certificate of the amount of of such arrears so remaining unpaid, and may cause the same to

be filed in his office : provided that no such certificate shall be made in respect of any such demand, the recovery of which is barred by any law of limitation for the time being in force." Then section 8 provides that : "Subject to the provisions of this Act, every certificate made under the provisions of section 7 shall, as regards the remedies for enforcing the same, and so far only, have the force and effect of a decree of a Civil Court." Then section 10 provides that when the certificate is filed notice shall be given to the judgment-debtor, and upon service of the notice the certificate has the effect of binding the immoveable property of the judgment-debtor. Now it is obvious that those are very stringent provisions. The proceeding in the first instance is apparently *ex parte*. The certificate is to be made by the Collector in a certain form, and filed, and when the certificate is filed it has the effect of a decree against the persons named as debtors in the certificate, so far as regards the remedies for enforcing it, and when served it also binds their immoveable property. It is unnecessary for their Lordships to point out the necessity there is when power is given to a public officer to sell the property of any of Her Majesty's subjects that the forms required by the Act, which are matters of substance, should be complied with, and that if the certificate is to have the extraordinary effect of a decree against the persons named in it as debtors, and to have the effect of binding their immoveable property, at least it should be in a form such as provided by the Act, which enables any person who reads it to see who the judgment-creditor is, what is the sum for which the judgment is given, and that those particulars should be certified by the hand of the proper officer appointed by the Act for the purpose.

If no such certificate is given, then the whole basis of the proceeding is gone. There is no judgment, there is nothing corresponding to a judgment or decree for payment of the amount, and there is no foundation for the sale. The authority to proceed to the sale is based on the certificate which has the effect, as has been already pointed out, of a judgment or decree, and, if no judgment or decree is given, and no certificate is filed having the force or effect of a judgment or decree, there can be no valid sale at all.

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In the present case Mr. Arathoon, who certainly argued this case for his client with as much zeal as any Counsel could bring to bear upon it, utterly failed to point out to their Lordships in this voluminous record any document corresponding with the certificate which was required by the Act as the foundation for the statutory sale. The documents he referred to are at pages 39 and 43 of the Record, and when those are examined they are found not to purport to be certificates under section 7 at all, nor do they comply with the requirements of the form stated in the second schedule of the Act No. 2.

In the first place they purport to be mere notices for the amount demanded, not under section 7, but under section 9 of the same Act which relates to a different subject matter, that is "in case of arrears of public demand payable to an officer other than the Collector, such officer may give notice to the Collector," and they have nothing to do with the sections of the Act now in question. The document at page 39 contains these headings, "Names of Debtors," "Residences of Debtors," "Amount due to Government for which this notice is given," (it purports to be a mere notice) and "Nature of the demand made by Government for which this notice is given."

It does not contain, as Form No. 2 in the Schedule requires, any certificate at all. Form No. 2 is in this form: "I hereby certify that the above-mentioned sum of Rs. mentioning the sum "is due to the Secretary of State for India in Council," "from the abovenamed (blank)" with the date, signed by the Collector in his name, describing himself as Collector of the place in question. There is no certificate at all here in which the Collector undertakes the responsibility of finding a sum due, and the person from whom it is due in the manner required by the Act. To the document on page 42 the same observations apply that it neither purports to be nor is it in form or in substance a certificate of the character required by the Act in order to constitute a judgment in execution of which a statutory sale could take place.

Their Lordships, therefore, cannot admit these documents as certificates in compliance with the provisions of the Act. Mr. Arathoon also referred to a document at page 1 of the Appendix to the Record, and that is a document of this kind. It is addressed

to Hurdyal Singh, proprietor of mehal Bhadwar, and it says :  
 “ You are hereby informed that under the provisions of an Act of 1880 passed by the Lieutenant-Governor of Bengal in Council, a certificate has been drawn up by me for Rs. 197-4, which you have to pay as road and public works cesses, and that the said certificate has been filed in this Court.” Then it calls upon him to show cause why he should not comply with the certificate. If there had been such a certificate, that notice would have been in compliance with the Act, but notice that a certificate has been made is not equivalent to a certificate having been made ; and if there was, as their Lordships have already expressed their opinion, no certificate, then notice to the proprietor that a certificate had been made and filed, which was erroneous, would not, of course, be a compliance with the Act.

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It is further to be observed that by section 10 a true copy of the certificate is to be transmitted by post, and only binds the immoveable property of the debtor after the notice has been served. If there was no certificate, of course there could be no notice of the certificate, and therefore there could be nothing to bind the immoveable property of the debtor, and enable the Collector to sell.

Their Lordships do not think it necessary to go into the other grounds which are mentioned and very fully discussed in the judgment of the High Court in this case for holding the sale to be invalid ; but they entirely concur in the observations regarding the necessity for caution in sales of this description by public officers, with which the Judges of the High Court conclude their judgment.

Their Lordships will therefore humbly advise Her Majesty that the appeal in the present case be dismissed. The appellant will pay to the respondents, who have appeared, their costs of the appeal.

*Appeal dismissed.*

Solicitors for the appellant : Messrs. *T. L. Wilson & Co.*

Solicitor for the respondents : Mr. *J. F. Watkins.*

C. B.

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