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each case. I am therefore of opinion that there is no ground in the present case for interference with the decision of the court below.

The appeal fails and is dismissed with costs.

Appeal dismissed.

MISCELLANEOUS CIVIL.

*Before Sir Louis Stuart, Kt., Chief Judge, and
Mr. Justice Wazir Hasan.*

1927
March, 4.

SYED KASHIF HUSAIN (JUDGMENT-DEBTOR OBJECTOR-APPELLANT) v. GANGA BAKHSH SINGH (DECREE-HOLDER-RESPONDENT).*

Civil Procedure Code, order XXI, rules 69 and 90—Postponement of sale to another date, fresh proclamation whether necessary—Omission to issue fresh proclamation, whether by itself sufficient ground to set aside sale.

Where a sale is adjourned by the sale officer for another date the sale cannot be held without fresh proclamation.

An omission to issue a fresh proclamation is an irregularity, but even if it is a material irregularity the sale cannot be set aside on that ground alone unless the court is satisfied that the applicant sustained substantial injury by reason of that irregularity.

Mr. *Zahoor Ahmad*, for the appellant.

Mr. *Niamat-ullah*, for the respondent.

STUART, C. J., and HASAN, J.:—This is the judgment-debtor's appeal in execution proceedings from the order of the Subordinate Judge of Partabgarh, dated the 7th of August, 1926. The judgment-debtor's immovable property has been sold in execution of the decree held by the respondent, Ganga Bakhsh Singh, against him. The proceedings were before the court below for confirmation of the sale.

* Miscellaneous Appeal No. 49 of 1926, against the order of Gokul Prasad, Subordinate Judge of Partabgarh, dated the 7th of August, 1926.

The judgment-debtor objected to the confirmation by an application, dated the 3rd of June, 1926. The objections were overruled by the learned Subordinate Judge and the sale confirmed by the order under appeal.

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It is argued that the sale held on the 20th of May, 1926 was not concluded on that day; that it was adjourned within the meaning of order XXI, rule 69 of the Code of Civil Procedure, and that consequently it could not be held without a fresh proclamation.

Stuart,
C. J., and
Hasan, J.

It is agreed that no fresh proclamation was issued, and on the evidence we are satisfied that the officer conducting the sale, who was a Deputy Collector in the district of Partabgarh, did adjourn the sale and intended to hold it again on the 20th of the following month. That being so, the argument that the sale could not be held and concluded without a fresh proclamation is right. The omission, however, to issue a fresh proclamation was an irregularity which might also be a material irregularity. But that alone is not sufficient to justify an order for setting aside the sale. As provided by rule 90 of order XXI of the Code of Civil Procedure the sale shall not be set aside on the ground of irregularity unless upon the facts proved the court is satisfied that the applicant has sustained substantial injury by reason of such irregularity. Upon the facts proved in this case we are not so satisfied. In an adjudication between the parties the value of the property, which has been sold, was fixed at Rs. 36,500, and this value was entered in the sale proclamation under which the sale was initiated. The last bid, which was the decree-holder's bid under the permission obtained from the court, was for the sum of Rs. 32,371. The difference between the two figures does not, in our

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opinion, amount to substantial injury, nor can it be directly connected with the irregularity mentioned above.

We accordingly dismiss this appeal with costs.

Appeal dismissed.

APPELLATE CIVIL.

*Before Sir Louis Stuart, Kt., Chief Judge, and
Mr. Justice Wazir Hasan.*

1927
March, 24.

RAJA RAGHURAJ SINGH AND OTHERS (DEFENDANTS-APPELLANTS) v. WALI MOHAMMAD AND OTHERS (PLAINTIFFS-RESPONDENTS).*

Oudh Rent Act (XXII of 1886), section 108, clauses 10 and 9(c)—Jurisdiction of civil and revenue courts—Suit for possession and damages by an under-proprietor against superior proprietor for illegal ejection by cutting wood from his jungle is cognizable by rent courts.

Where an under-proprietor brought a suit for possession alleging that the superior proprietor had cut down wood from his jungle plots and thus dispossessed him, held, that the suit was for possession on account of illegal ejection of an under-proprietor by the landlord and so was cognizable by a Rent court, and its cognizance by civil court was barred by section 108(10) of Oudh Rent Act, and the claim for damage was equally barred under clause 9 (c) of the same section.

Messrs. *Aditya Prasad and Mahabir Prasad*, for the appellants.

Mr. *Hyder Husain* (holding brief of Mr. *M. Wasim*), for the respondents.

STUART, C. J., and HASAN, J.:—This is the defendants' appeal from the decree of the Subordinate Judge of Gonda, dated the 16th of March, 1926.

* First Civil Appeal No. 69 of 1926, against the decree of Ziauddin Ahmad, Subordinate Judge of Gonda, dated the 16th of March, 1926.