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this Court under similar circumstances that such an order made by the Court was one under section 281, and therefore Article 11 of the Second Schedule to the Limitation Act applied. It is unnecessary for us to go into the other cases cited by the learned vakils. They have all been discussed in Appeal from Original Decree No. 28 of 1902, to which we have referred.

The learned vakil for the respondent has relied mainly on *Kallar Singh* v. *Toril Mahton* (1). In that case there was no appearance for the claimant ; the decree-holder was present. The [541] Court ordered that the claim should be disallowed. That case is distinguishable from the present one, and without saying that we agree with the learned Judges with reference to some of the observations made therein, we are of opinion that the decision of the Privy Council, which has been referred to and the latest case decided by this Court, are in favour of the contention raised by the appellant. The plaintiff omitted to bring the suit within the period of one year, and the suit ought to fail.

We are, therefore, of opinion that the order of the Subordinate Judge must be set aside, and that of the Munsif restored with costs.

Appeal allowed.

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32 C. 542 (=3 C. W. N. 487.)

[542] APPELLATE CIVIL.

Before Mr. Justice Pratt and Mr. Justice Mitra.

NIBARAN CHANDRA CHOWDHRY *v.* CHIRANJIB PRASAD BOSE.*

[24th February, 1905.]

Sale—Sale for arrears of revenue—Separate shares—Notification of sale—Specification of share—Residue—Material irregularity—Substantial injury resulting, proof of—Evidence—Revenue Sale Law (Act XI of 1859) ss. 6, 10, 11, 33—Act VIII (B. C.) of 1876, s. 70.

Where separate accounts had been opened under ss. 10 and 11 of Act XI of 1859 and s. 70 of Act VII (B. C.) of 1876, and the sale notification did not specify the share to be sold as required by s. 6 of Act XI of 1859 but merely described it as the residue, and stated the amount of the revenue of the entire estate and that of the share to be sold.

Held, that, as the amount of revenue would not correspond with an *aliquot* share of the lands in the estate, the sale notification was insufficient, and the non-specification was a material irregularity.

Ram Narain Koer v. *Mahabir Pershad Singh* (2), *Dil Chand Mahto* v. *Baij Nath Singh* (3), *Ismail Khan* v. *Abdul Aziz Khan* (4) distinguished.

Annada Charan Mukhuti v. *Kishori Mohan Rai* (5), *Hem Chandra Chowdhry* v. *Sarat Kamini Dasya* (6) followed.

The question whether the relation of cause and effect between an irregularity and a substantial injury is proved, is essentially one of fact. The connection must be established by evidence. The presumption of cause and effect from

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* Appeal from Original Decree, No. 301 of 1903, against the decree of Hari Nath Roy, Subordinate Judge of Dacca, dated May 30, 1903.

(1) (1895) 1 C. W. N. 24.
(2) (1886) I. L. R. 13 Cal. 208.
(3) (1903) 8 C. W. N. 337.
(4) ante p. 509.
(5) (1898) 2 C. W. N. 479.
(6) (1902) 6 C. W. N. 526.

circumstances irrespective of direct evidence may occasionally be so violent as to exclude the hypothesis of any other cause and may thus be *prima facie* proof.

Sadatmand Khan v. *Phul Kuar* (1) referred to.

[Ref. 6 C. L. J. 163 ; 10 C. W. N. 137=2 C. L. J. 325 ; 132 P. R. 1906=11 P. L. R. 1907.]

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APPEAL by Nibaran Chandra Chowdhry and another, defendants Nos. 2 and 3.

[543] The appeal arose out of a suit brought by the plaintiffs for the recovery of possession of land by setting aside a sale for arrears of revenue. The material allegations in the plaint were as follows. The estate bearing *tauzi* No. 328 of the Collectorate of Dacca was held in five separate shares. Separate accounts had been opened in respect of four of these shares and the residue in which was included 16 annas of kismut Gobindapur appertaining to the said estate, belonged to the plaintiffs and defendants in this suit. The Collector alleging an arrear of revenue to be due in respect of the residue share for the January kist of 1901 put it up for sale on the 25th March 1901, when it was purchased by the defendants Nos. 2 and 3 in the benami of defendant No. 1 for Rs. 10,000. It was alleged that in opening the separate accounts the Collector had acted illegally and had fixed the revenue payable for the residue at a much higher amount than what was really payable in respect thereof and that, if the revenue had been correctly assessed on the residue, no arrear would be demandable in respect of it : that the sale notifications under sections 6 and 13 of Act XI of 1859 and section 7 of Act VII (B.C.) of 1868 were incorrectly written out and had not been duly published : that the notification under section 6 of Act XI of 1859 described the share to be sold merely as the residue without mentioning the extent of that share or giving its proper description and that " for that reason and on account of various irregularities in the sale proclamation property of the value of at least Rs. 39,000 was purchased for only Rs. 10,000 and the plaintiffs have suffered considerable injury thereby." The plaint also alleged fraud against the defendants Nos. 1 to 3. An appeal to the Commissioner specifying all these circumstances having failed, the plaintiffs brought this suit, making the rest of the co-sharers in the residue *pro forma* defendants.

The defendant No. 1 in his written statement disclaimed all interest in the subject-matter of the suit and stated that the defendants Nos. 2 and 3 were the real purchasers. The defendants Nos. 2 and 3 pleaded *inter alia* that the correctness of the Collector's action in opening separate accounts could not be questioned in the suit, that the residue was in arrears, that there was no irregularity in the conduct of the sale, that the [544] sale-notification and all other requisite notices were correctly drawn up and duly published, that the proper value of the residue was less than Rs 10,000, that the allegation in the plaint that the property was sold at an inadequate price in consequence of the irregularities in the conduct of the sale was groundless and that the allegations of fraud were altogether false.

From the papers in connection with the opening of separate accounts it appeared that the shares in three of the cases consisted of shares in some only of the mauzas comprised in the estate. Gobindapur being one of

(1) (1898) I. L. R. 20 All. 412.

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the mouzas not included. The notice under section 6 of Act XI of 1859 was in the following terms :—

NOTICE (*Ka*)

Notice is hereby given under sections 6 and 13 of Act XI of 1859 that the undermentioned mehals in the district of Dacca and the shares thereof shall be put up to sale by auction at 12 o'clock on the 25th March 1901 in the office of the Collector of the said district for realization of arrears of Government revenue and for other demands which are realizable under the law like Government revenue.

1	2	3	4	5	6	7	8	9
Tauzi No.	Names of mehal and Pargana.	Government revenue of the entire mehal.	Whether the entire mehal is to be sold or not.	Particulars of share or shares if such share only is to be sold.	Names of the proprietors of the property to be sold.	If only a share is sold then the Government revenue thereof.	If the entire mehal is sold, the arrears thereof.	If only a share is sold, the arrears thereof.
328	Taraf Mirakpur Shahbundar in the possession of Raja Ram.	Rs. A. G. K. 56 13 10 2	...	Residue.	Chiranjib Prasad Basu and others.	Rs. A. G. K. 48 3 6 2	...	Rs. a. p. 10 15 4.

DACCA COLLECTORATE ;
The 19th February, 1901.

The Subordinate Judge, who tried the suit, held that the correctness of the Collector's action in respect of the opening of separate accounts could not be questioned. He held, however, that the sale-proclamation was not in compliance with the provisions of section 6 of Act XI of 1859; he found that the value [545] of the property was about Rs. 22,000 and he held that there being the irregularity and the deficiency in price, a Court would not be wrong in attributing the deficiency to the irregularity and, referring further to some evidence adduced by the plaintiff to the effect that certain bidders desisted from bidding because of the want of specification of the share that was being sold, which evidence he believed, he decided that the plaintiffs had sustained substantial injury by reason of the irregularity. He accordingly set aside the sale.

The defendants Nos. 2 and 3 appealed to the High Court.

Babu *Dwarka Nath Chakravarti*, Babu *Satis Chandra Ghose*, and Babu *Krishna Prasad Sarvadhikary* for the appellants:

There was no material irregularity in this case, the nature and extent of the residue share could be ascertained by an intending purchaser by mere calculation from the particulars given in the notice. *Ram Narain Koer* v. *Mahabir Pershad Singh* (1): *Dil Chand Mahto* v. *Baij Nath Singh* (2). The case of *Ram Narain Koer* (1) was not cited in *Hem Chandra Chowdhry* v. *Sarat Kamini Dasya* (3).

Babu *Sarat Chandra Basak* for the respondents. In *Ram Narain Koer* v. *Mahabir Pershad Singh* (1) and *Dil Chand Mahto* v. *Baij Nath Singh* (2) separate accounts had been opened under section 10 of Act XI

(1) (1886) I. L. R. 13 Cal. 208.
(2) (1903) 8 C. W. N. 337.
(3) (1902) 6 C. W. N. 526.

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of 1859; in the present case separate accounts were opened under sections 10 and 11 of the Act, so that the nature of the property described as the "Residue" could not be ascertained by calculation from the facts stated in the notice: *Annada Charan Mukhuti* v. *Kishori Mohan Rai* (1); *Hem Chandra Chowdhry* v. *Sarat Kamini Dasya* (2).

Babu *Satis Chandra Ghose* in reply. Distinction between a case under section 10 and a case under section 11 was suggested in the judgment in *Ram Narnain Koer* v. *Mahabir Pershad Singh* (3). 32 C. 542=9 C. W. N. 487.

PRATT AND MITRA, JJ. On the 25th March 1901, the residue share of estate No. 328 of the Collectorate Revenue Roll of [546] Dacca, was sold for non-payment for the January instalment of revenue and was purchased by the appellants in the *benami* name of defendant No. 1 for the sum of Rs. 10,000. The sale was followed by the usual appeal by some of the defendants to the Commissioner of Revenue, who dismissed the appeal on the 2nd August 1901.

The suit under appeal for getting rid of the effect of the sale was based on the grounds of material irregularity in the publication of the sale and consequent inadequacy of price.

The Lower Court has held that the sale-notification did not specify the share advertised for sale as required by section 6 of Act XI of 1859, that the market value of the share was Rs. 22,650, and that the inadequacy of price was due to the non-specification of the share in the sale-notification.

The findings of the Lower Court have been contested before us.

The notice of sale under section 6 of Act XI of 1859, which was issued on the 19th February 1901, contains the number of the estate, the name of the *Mehal* and the *Pergana*, the names of the proprietors, the revenue of the entire estate and that of the share advertised for sale and the arrears then payable to Government. The share to be sold was not specified the only information given in column (5) being that the residue was to be sold. What was this residue?

If the separation of shares had taken place under the provisions of section 10 only of Act XI of 1859, there would have been no difficulty in ascertaining the share intended to be sold. The share could be easily found out by applying the rule of proportion. The materials contained in the notice of sale would have been sufficient for the purpose. But the separation of shares had been effected under sections 10 and 11 of the Act or, speaking more accurately, under section 70 of Act VII (B. C.) of 1876. The parent estate consisted of a number of villages bearing a revenue of Rs. 56 13-10½. Different shares in different villages were separated on four different occasions in the years 1898 and 1899, and thus the revenue payable in respect of the residue was reduced to Rs. 49-3-3½. But the reduced revenue did not correspond to an aliquot share of the lands in the estate or of all the [547] villages. The sale-notification itself was, therefore, insufficient for determining the share to be sold. Not only was the share not specified as required by section 6 of the Act, but it was not easily ascertainable, and was not certainly ascertainable from the notice itself.

Thus the present case is dissimilar to *Ram Narain Koer* v. *Mahabir Pershad Singh* (3) relied on by the appellants. In that case it appears, the separation of shares had taken place under section 10 only and the residue could be easily ascertained.

(1) (1892) 2 C. W. N. 479.
(2) (1902) 6 C. W. N. 526.
(3) (1886) I. L. R. 13 Cal. 208.

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In *Dil Chand Mahto* v. *Baij Nath Singh* (1) the residue sold was also easily ascertainable. We are disposed to hold, in accordance with the view expressed by the majority of the Judges in *Ismail Khan* v. *Abdul Aziz Khan* (2), decided by a Full Bench of this Court on the 30th January last, that the non-specification of the share in cases like *Ram Narain Koer* v. *Mahabir Pershad Singh* (3) and *Dil Chand Mahto* v. *Baij Nath Singh* (1) is merely an irregularity. But whether the non-specification of the share in any particular case is a material irregularity or not should be determined having regard to its own facts.

In *Annada Charan Mukhuti* v. *Kishori Mohon Rai* (4) and *Hem Chandra Chowdhury* v. *Sarat Kamini Dasya* (5) the separation of shares had evidently taken place under section 70 of Act VII (B.C.) of 1876, and the mere working out of proportion would not have enabled the purchasers to find out what the residue shares advertised for sale were. It was held in these cases that the irregularity was *material*.

Ismail Khan v. *Abdul Aziz Khan* (2) referred to above was remitted by the Full Bench to the Division Bench for decision. The questions raised were whether the irregularity in the non-specification of the share in that case was material and whether there was a consequential inadequacy of price at the sale. The separation of shares in that case had been made under section 10, and the lower Appellate Court had held that the irregularity was not material, and the Division Bench accepted the finding, following *Ram Narain Koer* v. *Mahabir Pershad Singh* (3) [548] and *Dil Chand Mahto* v. *Baij Nath Singh* (1). The present case is, however, clearly distinguishable from *Ram Narain Koer* v. *Mahabir Pershad Singh* (3), *Dil Chand Mahto* v. *Baij Nath Singh* (1) and *Ismail Khan* v. *Abdul Aziz Khan* (2), and its facts closely resemble those in *Annada Charan Mukhuti* v. *Kishori Mohan Rai* (4) and *Hem Chandra Chowdhry* v. *Sarat Kamini Dasya* (5).

We are, therefore, of opinion that the lower Court is right in holding that there was a material irregularity in the notice of sale issued under section 6 of the Act.

There can be no doubt on the evidence that the market value of the share intended to be sold was considerably over Rs. 10,000. The Road-cess papers and the valuation roll prepared by the Collector afford sufficient corroboration to the oral evidence adduced as the income of the property, and we agree with the lower Court that the general effect of the evidence is to show that 25 years' purchase is the generally current price in the locality. We, therefore, accept the finding of the lower Court as to the market value. The price fetched at the sale was very low.

The last question is whether the inadequacy of price was the result of the irregularity in the non-specification of the share intended to be sold.

Substantial injury may be due to various causes and not necessarily to material irregularity in the publication or conduct of a sale. As held by the Judicial Committee in *Macnaghten* v. *Mahabir Pershad Singh* (6) *Aruna Chellam* v. *Aruna Chellam* (7) and *Tasadduk Rasul Khan* v. *Ahmad Husain* (8), no sale can be set aside, unless it be proved that the substantial injury is the direct result of material irregularity in publication or conduct of sale

(1) (1903) 8 C. W. N. 387.
(2) (1905) I. L. R. 32 Cal. 502.
(3) (1886) I. L. R. 13 Cal. 208, 10 I. A. 25.
(4) (1892) 2 C. W. N. 479.
(5) (1902) 6 C. W. N. 526.
(6) (1882) I. L. R. 9 Cal. 656 ; L. R. 10 I. A. 25.
(7) (1888) I. L. R. 12 Mad. 19 ; L. R. 16 I. A. 171.
(8) (1893) I. L. R. 21 Cal. 66 ; L. R. 20 I. A. 176.

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The one must in the words of section 33 of the Act XI of 1859, be the " reason " of the other and there should be " proof " of it. The cause or causes of phenomena or events, especially in political economy, are generally numerous and complicated and not unfrequently difficult of detection. The true motives of human [549] action are also often mysteriously shrouded from the public, and material evidence, as frequently happens in Courts of law, is withheld from a desire to conceal the truth. Scientific precision in the discovery of causes according to the strict rules of inductive logic is thus rarely attainable in law. But Courts are enjoined to exclude all other causes of substantial injury and confine the ground of relief to proof of the relation of cause and effect between irregularity and substantial injury. The connection must be established by evidence. As regards the amount or nature of evidence there is an apparent conflict of authorities. But we do not think it necessary in this case to enter into the vexed question or attempt to reconcile the apparently conflicting decisions. The question is essentially one of fact and must be decided in each case with reference to the evidence direct as well as circumstantial. The presumption of cause and effect from circumstances irrespective of direct evidence may occasionally be so violent as practically to exclude the hypothesis of any other cause and may thus be *prima facie* proof. Such was evidently the case in *Saadatmand Khan* v. *Phul Kuar* (1), in which the Judicial Committee allowed the application to set aside a sale without reference to any direct evidence as to the irregularity complained of being the cause of substantial injury as provided in section 311 of the Code of Civil Procedure.

Taking, therefore, the question raised before us to be one of fact, we see no reason to differ from the Court below in its estimate of the evidence. The evidence is both direct and circumstantial.

Two of the witnesses say that they would have bid at the sale if they could have ascertained what the share intended to be sold was and that they were deterred on account of the non-specification of the share. These witnesses have been believed by the lower Court and their credibility is strengthened by the fact of the great inadequacy of price. It has not been suggested, much less proved, that the low price fetched at the sale was due to any other cause except the irregularity complained of, and we do not find our way to disregard the direct testimony in proof of the case set up by the plaintiffs.

The appeal, therefore, fails, and it is dismissed with costs.

Appeal dismissed.

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32 C. 550 (=2 Cr. L. J. 405)

[550] CRIMINAL APPEAL.

Before Mr. Justice Henderson and Mr. Justice Geidt.

SADANANDA PAL *v.* EMPEROR.*

[26th January, 1905.]

Confession—Accused—Signature—Thumb impression—General Clauses Act (X of 1897), s. 3, cl. (52)—Criminal Procedure Code (Act V of 1898) s. 164.

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* Criminal Appeal No. 1068 of 1904, against the order of A. Goodeve, Sessions Judge of Birbhum, dated Nov. 28, 1904.

(1) (1898) I. L. R. 20 All. 412.