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of price may be inferred to be the result of such irregularity, there can, I should say, be no question in the face of the decisions of the Judicial Committee. The connection must be established by evidence, but I do not see how, upon a reference like the present, we can lay down any rule [508] as to the amount, or nature, of the evidence. Each case must depend upon its own circumstances.

The case will be remitted to the Division Bench for decision.

GHOSE, J. I agree with my Lord in the observations he has made upon this reference. There is, however, one word that I should desire to say with reference to the two cases mentioned in the second question submitted to the Full Bench. Those cases simply lay down that the specification of the estate, or share of the estate, as the case may be, should be such as to inform intending purchasers what may be the precise property that is to be sold. And it was held, with reference to the facts and circumstances of those cases, that the specification of the share as given in the sale notification was not sufficient.

RAMPINI, J. As this second appeal is to be returned to the Referring Bench for disposal, I say nothing in respect of the first question propounded for our decision.

As I read the decisions in the cases referred to in the second question put to us, they lay down a general rule, viz., that "merely advertizing that the 'residue' of an estate is to be sold without giving further particulars, and stating what that residue is cannot be considered a sufficient description," and they have been so understood by the Lower Courts before whom the case, from which this second appeal arises, came. In so far as they lay down such a general rule, I think they have not been correctly decided. Such a rule is opposed to the terms of section 6 of Act XI of 1859 and the ruling of this Court in *Ramnarain Koer* v. *Mahabir Pershad Singh* (1). I would therefore answer the second question in the negative.

It is unnecessary to answer the third question, as the point it raises will be dealt with by the Bench, to which the appeal is returned.

HARINGTON, J. I agree in the judgment delivered by my Lord.

BRETT, J. I agree in the judgment delivered by the Chief Justice.

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[509] APPELLATE CIVIL.

Before Mr. Justice Rampini and Mr. Justice Mitra.

ISMAIL KHAN *v.* ABDUL AZIZ KHAN.*

[7th February, 1905.]

Sale for arrears of revenue—Separate shares, sale of—Notification of sale—Specification of share—Residue—Setting aside sale—Material irregularity—Substantial injury resulting, proof of—Evidence—Act XI of 1859 ss., 6, 10, 33.

The non-specification in a notification under section 6 of Act XI of 1859 of the exact share to be sold in a case where separate accounts had been opened under section 10 of the Act, is not a material irregularity, if the notification was sufficient to give notice to an intending purchaser as to what was about to be sold.

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* Appeal from Apppellate Decree, No. 1874 of 1902, against the decree of Bipin Behari Sen, Subordinate Judge of Dacca, dated July 9, 1901, reversing the decree of Mohini Chandra Sarkar, Munsif of Dacca, dated March 7, 1901.

(1) (1886) I. L. R. 13 Cal. 208.

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Ram Narain Koer v. *Mahabir Pershad Singh* (1) followed.

Where there is no evidence, direct or otherwise, on which the relation of cause and effect between a material irregularity and an inadequacy of price could be held to be established, it cannot, under the provisions of section 33 of Act XI of 1859, be inferred that the one was due to the other.

Per RAMPINI, J. *Semble*; Such relation must be proved by direct evidence.

Macnaghten v. *Mahabir Pershad Singh* (2); *Arunachellam* v. *Arunachellam* (3), *Tasadduk Rasul Khan* v. *Ahmad Husain* (4), referred to.

Per MITRA, J. It is open to a Court to consider whether upon the whole case, having regard not only to the irregularity and to the inadequacy of price, but to other circumstances, there could be a necessary inference of substantial loss resulting from the irregularity.

[Fol. 6 C. L. J. 163; Ref. 10 C. W. N. 137=2 C. L. J. 325; Dist 32 Cal. 542=9 C. W. N. 487.]

SECOND APPEAL by the defendant No. 1, Ismail Khan.

Estate Lall Buktear, bearing Towzi No. 1896 of the Dacca Collectorate, belonged to the plaintiffs and the defendant No. 1. [510] A separate account was opened under section 10 of Act XI of 1859 in respect of the 5 annas 18 gundas share belonging to the defendant No. 1; the remainder 10 annas 2 gundas, belonged to the plaintiffs. This remainder fell into arrear in respect of the March kist of the Government revenue for the year 1898-1899. It was accordingly sold on the 26th June 1899 under Act XI of 1859 for the recovery of the arrear amounting to Re. 1-6-7, and was purchased by the defendant No. 1 for Rs. 230. The notice issued by the Collector under sections 6 and 13 of Act XI of 1859 was in the following terms :—

"NOTICE

Is hereby given under sections 6 and 13 of Act XI of 1859 that the under-mentioned mehals comprised within the district of Dacca shall be sold by auction at 12 o'clock after 26th June 1899 in the office of the Collector of the said district for the realization of the arrears of revenue and other amounts of claim, which are realizable as Government revenue according to law :—

1	2	3	4	5	6	7	8	9
Number of towzi.	Names of Mehals and parganas.	Revenue of the entire Mehal	Whether the entire Mehal will be sold or not.	If only a share or shares are to be sold, full description of the said share or shares.	Name of the Malik (proprietor) of the property to be sold.	If only a share is to be sold, the revenue of that share.	If the entire Mehal is to be sold, the arrears of revenue thereof.	If only a share is to be sold, the arrears of revenue thereof.
		Rs. a. p.				Rs. a. p.		Rs. a. p.
1896	Pargana Isokabad, taluk Lal Boktar.	2 10 8	...	Remainder	Matabuddi Gazi and others.	1 10 11	...	1 6 7

DACCA COLLECTORATE; *The 8th May* 1899. J. T. RANKIN."

(1) (1868) I. L. R. 13 Cal. 203.
(2) (1882) I. L. R. 9 Cal. 656; L. R. 10 I. A. 25.
(3) (1888) I. L. R. 12 Mad. 19; L. R. 15 I. A. 171.
(4) (1893) I. L. R. 21 Cal. 66; L. R. 20 I. A. 176.

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The plaintiffs applied to the Commissioner praying to have the sale set aside, but the application was refused ; they then instituted the present suit under section 33 of Act XI of 1859 to have the sale set aside on the ground of non-compliance with the provisions of sections 5, 6 and 7 of the Act ; the plaintiffs further alleged that the notices required by the aforesaid sections were not duly published on account of the fraud of the purchaser, [511] and that the property had been sold at an inadequate price. The defendant No. 1 alone appeared and pleaded *inter alia* that there was neither any illegality nor any irregularity in publishing the sale-notifications, and that the notices under sections 5, 6 and 7 were duly published; that the plaintiffs had not suffered any substantial injury in consequence of any irregularity, and that the charge of fraud was wholly false. The principal issue was the third, which was as follows :—

(3) Whether notices under Act XI of 1859 were duly served, and whether there were any irregularities and illegalities in publishing the sale-notifications, and whether the plaintiffs have suffered any substantial injury in consequence thereof ?

The Munsif, who tried the suit, held at the first trial that as in the sale-notification the property was described merely as the residue without giving further particulars and stating what that residue was, the sale was void, and he accordingly set aside the sale without going into the other questions raised. On appeal the Subordinate Judge held that the defect in the notification was only an irregularity, and that the sale could not be set aside, unless it was found that the plaintiffs had sustained substantial injury by reason thereof. He accordingly remanded the suit to the first Court for decision of the other question raised. On remand the Munsif found that the property had been sold for a very inadequate price, and he held that the plaintiffs had succeeded in proving that they had suffered substantial injury in consequence of the irregularity. He therefore set aside the sale.

On appeal the Subordinate Judge found that the share sold was worth at least Rs. 1,500, and he held that as there was a material irregularity in the notification of sale "a Court of justice may reasonably and legitimately infer that it was due to irregularity that the property was sold at an inadequate price." He accordingly dismissed the appeal.

The defendant No. 1 appealed to the High Court, and the appeal came on for hearing on September 1, 1903, before Mr. Justice Mitra sitting alone. The only question argued before him was that there was no irregularity in the publication of the sale notice. His Lordship, considering that there was a conflict between the decision in *Ram Narain Koer* v. *Mahabir Pershad* [512] *Singh* (1) and the decisions in *Annada Charan Mukhuti* v. *Kishori Mohon Rai* (2) and *Hem Chandra Chowdhry* v. *Sarat Kamini Dasya* (3), and that the question was one of general importance referred the case to the Division Bench. The appeal then came to be heard before Rampini and Mitra, JJ., who referred it to a Full Bench, propounding the following questions for decision.

(1) Whether the description of the share of the estate to be sold given in the sale proclamation in this case was sufficient or not?

(2) Whether the cases of *Annada Charan Mukhuti* v. *Kishori Mohon Rai* (2) and *Hem Chandra Chowdhry* v. *Sarat Kamini Dasya* (3) were rightly decided so far as regards the sufficiency of the description of the property sold in these cases?

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

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(3) Whether, when there has been an irregularity in the publishing or conducting of a sale under Act XI of 1859, the inadequacy of price may be inferred to be the result of such irregularity or must be established to be so by direct evidence?

The case then came on before a Full Bench* (Maclean, C. J., Ghose, Rampini, Harrington and Brett, JJ.) who remitted it to the Division Bench for trial.

Dr. *Rash Behary Ghose* and Babu *Jnanendra Nath Bose* for the appellant.

Moulvi *Abdul Jawad* (Babu *Nilmadhab Bose* and Moulvi *Serajul Islam Khan Bahadur* with him) for the respondents.

RAMPINI, J. This second appeal has been returned to us by a Full Bench of this Court in order that we may dispose of it, as we think proper.

The two points to be considered are :—

(1) Whether there was any irregularity in connection with the proclamation of sale, and

(2) Whether, because the price obtained at the sale was inadequate, it may be reasonably and legitimately inferred, as the **[513]** Subordinate Judge has done, that it was due to the irregularity that the property was sold at an inadequate price.

With regard to the first point, I consider that there was no material irregularity in the proclamation of sale, and that the share of the estate about to be sold was sufficiently specified in the proclamation. That proclamation has been printed at page 3 of the paper-book ; and I need not describe it in detail, because its contents have been fully set forth in the judgment of the Subordinate Judge, before whom the case first came. The passage of that judgment, in which they are described, is as follows :—

" In the present case a separate account was opened only under section 10 of the Sale Act in respect of the 5 annas 18 gundas share of the defendant No. 1. The remaining 10 annas 2 gundas share of the plaintiffs was meant to be sold by the word ' residue ' in the sale notification. Here the entire revenue for the 16 annas share was stated as Rs. 2, 10 annas 8 gundas in column 3 of the notification, and the revenue for the residue share was given as Rs. 1, 10 annas 11 gundas. So by simple calculation, the intending purchasers could know what share was actually going to be sold. Section 6 of the Sale Act, however, requires specification of the share to be sold. This evidently means that the extent of the share, as so much, is necessary to be clearly specified, so that the intending purchasers might, at a glance ; know what was the exact share going to be sold, without having recourse to any calculation for themselves. As however, the share in the present case could be ascertained, as shown above, by the intending purchasers by a simple rule of proportion calculated on the entire revenue and the revenue of the residue share given in the sale notification. the ruling cited above does not seem to apply in all fours to the present case, for at best the non-specification of the exact share in the sale notification (though it could be ascertained from other particulars given there) is only an irregularity and not an illegality."

It therefore appears to be the finding of the learned Subordinate Judge before whom the case first came, that the sale proclamation was sufficient to give notice to any intending purchaser as to what was about to be sold. He says that there was an irregularity in the proclamation, but it evidently, in his **[514]** opinion did not amount

* See *ante* p. 502.

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to a material irregularity; and I am certainly of the same opinion. I think there has been in this case sufficient compliance with the provisions of section 6 of Act XI of 1859, as explained in the case of *Ram Narain Koer* v. *Mahabir Pershad Singh* (1). That being so, it appears to me that there was no material irregularity, and that the suit should not have been remanded by the Subordinate Judge, before whom the case first came, to the lower Court to have evidence as to the inadequacy of price recorded. However, he *did* remand the suit to the first Court; and an appeal was preferred to the Subordinate Judge, who ultimately decided the case, and who has pointed out that the price realised was inadequate and has then gone on to say that "a Court of justice may reasonably and legitimately infer that it was due to this irregularity that the property was sold at an inadequate price." He has, therefore, set aside the sale and decreed the suit.

I am of opinion, however, that the decision of the Subordinate Judge on this point was erroneous. It appears to me clear from section 311 of Act XIV of 1882 that it is only when substantial injury is proved to have been sustained "*by reason of the irregularity*," that the Court is justified in setting aside a sale; and there can be no doubt that the rulings of their Lordships of the Privy Council have clearly laid down that there must be direct evidence to connect the substantial injury resulting from the inadequacy of price with the irregularity. This has been pointed out in three cases. First, in the case of *Olpherts* v. *Mohabir Pershad Singh* (2) their Lordships say as follows:—"The High Court, having held that the non-statement of the amount of revenue in the proclamation was an irregularity proceeded to try the question whether the irregularity had caused substantial injury to the applicant. They say:—'But it may be reasonably supposed that the non-specification of that Government revenue in the sale proclamation published is one of the causes which caused the diminution in price.' There was no evidence at all on this subject. It appears to their Lordships that the High Court could **[515]** not, without evidence and upon a mere supposition, properly find that the non-statement of the revenue in the proclamation did cause an injury to the applicant causing an inadequate price to be bid at the sale."

The next case is that of *Aruna Chellam* v. *Aruna Chellam* (3). Their Lordships there observe:—There is another objection to this decree of the High Court. The law provides by section 311 of Act XIV of 1882 that an objection may be taken by the judgment-debtor to an irregularity in the sale, but then it says that no sale shall be set aside on the ground of irregularity, unless the applicant proves to the satisfaction of the Court that he has sustained substantial injury by reason of such irregularity. The Subordinate Judge, finding, as he says, that no complaint had been made of this irregularity, did not receive evidence that there was any injury occasioned by it. If he was wrong, in the opinion of the High Court, in doing that, they ought to have sent back the case to him to take that evidence. Instead of doing this, when the case comes before them, and they give judgment, they assume that there was a substantial injury, and that the property in consequence of the misdescription had sold for less value than it would otherwise had fetched. There seems to be no ground for an assumption of that kind by the High Court, and therefore, both as

(1) (1889) I. L. R. 13 Cal. 208.
(2) (1882) L. R. 10 I. A. 25 at p. 30; I. L. R. 9 Cal. 656.
(3) (1888) I. L. R. 12 Mad. 19; L. R. 15 I. A. 7.

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to the objection to the non-description or not mentioning the mortgage in the attachment proceedings and that there was no proof, that any special injury was occasioned, their Lordships think that the judgment of the High Court was wrong, and that it must be reversed.

The third case is the well known case of *Tasadduk Rasul Khan* v. *Ahmad Hussain* (1). In this case their Lordships say :—" The proceeding in this case was brought under section 311, which deals with material irregularity. The non-compliance with the provisions for posting was a material irregularity. But in the case of *Macnaghten* v. *Mohabir Pershad Singh* (2) and *Aruna Chellam* v. *Aruna Chellam* (3) it was held that in all cases of irregularity **[516]** under section 311 evidence must be given of substantial injury having resulted. In the present case the decree-holder failed to comply with the full requirements of section 290, but both on principal and authority their Lordships are of opinion that the case must be treated, as the Respondents themselves treated it, as one of material irregularity to be redressed pursuant to the provisions of section 311, and on the application of that section, it was incumbent on the respondents to have proved that they sustained substantial injury by reason of such irregularity. They gave no such evidence and it would be extremely improbable that injury could have happened from the non-compliance with the strict letter of the section. Their Lordships cannot accept the judgment of the Judicial Commissioner, that loss is to be inferred from the mere fact that a sale was had without full compliance with the provisions of section 290. The section clearly contemplates direct evidence on the subject."

In the present case it appears to me that there is absolutely no direct evidence to connect the alleged irregularity with the inadequacy of price. There is no evidence on the point. There is only evidence as to inadequacy of price. There is no evidence, direct or otherwise, on which we could hold the relation of cause and effect to be established between these two facts. That being so, it appears to me that under the provisions of the section, and in accordance with the rulings of the Privy Council the Subordinate Judge was not justified in inferring that the inadequacy of price was due to the irregularity, which he considers to have occurred in the proclamation of the sale of this property. Furthermore, I would observe that it stands to reason that before it can be logically concluded that one event is the result of another, all the other causes which may have produced the latter event must be excluded. No Court is justified in finding that one event is the result of another, simply because it follows the other. To do so is to commit the well known fallacy of *post hoc ergo propter hoc*. The Subordinate Judge, from whose decision this appeal has been preferred, would seem to me to have fallen into this error.

For these reasons I do not think that the decree of the learned Subordinate Judge can be upheld, and I would set it aside and decree this appeal with costs.

[517] MITRA, J. I am of opinion that the suit should be dismissed and this appeal decreed on the ground that there was no such irregularity in the proclamation of sale as would entitle the plaintiffs to say that the sale had been effected contrary to the provisions of Act XI of 1859.

My learned brother has pointed out the nature of the irregularity complained of and the finding of the Subordinate Judge on the point. The

(1) (1893) I. L. R. 21 Cal. 66 ; L. R. 20 I. A. 176.

(2) (1882) I. L. R. 9 Cal. 656.

(3) (1888) I. L. R. 12 Mad. 19 ; L. R. 15 I. A. 7.

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Subordinate Judge holds that non-specification of the exact share in the sale-notification is an irregularity. His judgment, however, shows that in his opinion it is not a material irregularity; and, unless the irregularity was such as would be considered material and would necessarily induce inadequacy of price, I do not think that the sale should be set aside. The mere fact that the share was not specifically given in the proclamation is not sufficient to show that the sale did not take place in accordance with the provisions of section 6 of Act XI of 1859.

This, in my opinion, is quite sufficient for the disposal of the case; and it is not necessary for us to go into the other question, namely, whether substantial loss resulted on account of the irregularity.

If I were to decide the question under what circumstances there may be a necessary inference of substantial loss on account of any irregularity, the mere inadequacy of price cannot certainly be the sole ground upon which we can conclude that the one is the cause of the other. If I had not agreed with my learned brother in dismissing the suit on the first ground, I would have remanded the case for a retrial of the question as to whether, upon the whole case, having regard, not only to the irregularity in the sale proclamation, if any, and to the inadequacy of price, but to other circumstances, as well, there could be a necessary inference of substantial loss resulting from the irregularity.

Since I agree with my learned brother on the first point, it is not necessary for me to say anything further on the second point.

The appeal is decreed with costs.

Appeal allowed.

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32 C. 518 (=9 C. W. N. 504=1 C. L. J. 239.)

[518] APPELLATE CIVIL.

Before Mr. Justice Ghose and Mr. Justice Pargiter.

SUDHENDU NARAIN ACHARJYA CHOWDHRY *v.* GOBINDA NATH SIRCAR.*
[27th February, 1905.]

Record-of-rights—Bengal Tenancy Act (VIII of 1885), ss. 101 to 106—Settlement officer, jurisdiction of.

The particulars specified in s. 102 of the Bengal Tenancy Act, when recorded and compiled under s. 103, amount to a "Record-of-rights" as contemplated in Chapter X of the Act; and proceedings taken by a Revenue Officer, after making a record of the particulars under s. 103, including those under s. 105 of the Act are not therefore void for want of jurisdiction.

***Dharani Kanta Lahiri* v. *Gaber Ali Khan* (1) relied upon.**

***Per* PARGITER J. The difference between s. 103 of the old Act and the present section is, that, under the former, the Revenue Officer was to record the particulars specified in s. 102; but under the present Act, s. 103 gives an applicant the right to select what particulars he may wish to have recorded. If the applicant asks that all or almost all the particulars mentioned in s. 102 be recorded, the record would constitute a "Record-of-rights"; but if only the particulars mentioned in clauses (a) and (c) of s. 102 be recorded, they not involving any rights, the record could hardly be called a "Record-of-rights."**

[Ref. 16 C. L. J. 67=16 I. C. 935.]

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* Appeal from Appellate Decree, No. 2100 of 1902, against the decree of B. V. Nicholl, Special Judge of Mymensingh, dated April 21, 1902, reversing the decree of Bhaba Taran Chatterjee, Settlement Officer of Mymensingh, dated September 28, 1900.

(1) (1902) I. L. R. 30 Cal. 339.