Mr. *Money*.—Technical objections ought not to be allowed to defeat the object of the Regulation. See *Sona Bibi* v. less) to be a sufficient period for giving such defaulter notice of the intended sale, and that without such notice no sale could be a sale duly held under that law. Again, the decision of this Court cited above does not seem to me to apply to this case at all, because in that case it was found as a fact that the notice was duly served, and that the mere absence of a *sûrathâl* would not, under the circumstances, vitiate the sale; but here o my mind, the lower Appellate Court finds as a fact that no notice whatever was duly served. It is necessary to observe that the defendant himself filed the *súrathal* as evidence on his own tehalf, and now comes and argues before us that, the provisions of s. 8, Regulation VIII of 1818, are not required in their entirety (including the *sûrathâl*) to be carried out.

In regard to the objection in the petition of special appeal that no irregularity vitiates a sale, so long as the defaulter does not show that there was any balancedue, the pleader for the appellant does not press the point, and it is unnecessary therefore to make any further remark on it.

The special appeal is dismissed with costs.

HOBHOUSE, J.—I agree in dismissing this appeal with costs.

The pleaders for the special appellant admit that, if we should hold that, as a matter of fact, the lower Appellate Court has found that notice was not served on the patnidar at any time, then they have no ground for special appeal, and the pleaders only took up the second point noticed by Mr. Justice Bayley, on the supposition that the Court might be with them on the first point. On considering carefully the judgment of the lower Appellate Court, I quite concur with Mr. Justice Bayley that the Court has substantially found that there was no proof of any notice at all having been served upon the plaintiffs, the patnidars.

This being so, the first objection taken in appeal on behalf of the special appellant falls to the ground, and on the second point the objection falls of itself.

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(1) *Before Mr. Justice Loch and Mr. Justice Mitter.*

RAGHAB CHANDRA BANERJEE AND OTHERS (PLAINTIFFS) *v.* BRAJANATH KUNDU CHOWDHRY AND OTHERS (DEFENDANTS).*

The 2nd December 1870.

Baboos *Hem Chandra Banerjee, Biprodas Mookerjer*, and *Iswar Chandra Chuckerbutty* for the appellants.

Baboos *Kali Prasanna Dutt, Mohini Mohun Roy*, and *Aubinash Chandra Banerjee* for the respondents.

The judgment of the Court was delivered by.

LOCH, J.—The present suit is for setting aside the sale of a patni and for the recovery of possession of the plaintiff's share in the said patni.

The objections taken by the plaintiff to the sale are that it has been informally made, and that the zemindar, when asking the Collector to bring the property to sale, should have recognized all the patnidars, and that the sale had been brought about by collusion between the zemindar and some of the co-sharers of the patni.

The lower Court have found that the sale was properly conducted by the zemindar, and there was no proof whatever of the collusion, and so dismissed the suit.

* Special Appeal, No. 1260 of 1870, from a decree of the Subordinate Judge of Nuddea, dated the 30th March 1870, affirming a decree of the Sudder Moonsiff of that district, dated the 31st December 1868.

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A special appeal has been preferred on the grounds—

First.—That the zemindar, when applying to the Collector for the sale of the patni tenure, was bound to recognize all the co-sharers of the patni; and,

Secondly.—That the sale proclamation was not issued as prescribed by law, and therefore the sale should be reversed.

After disallowing the first point, the Court proceeded:—

On the second point we find that the law (cl. 2, s. 8, Regulation VIII of 1819) requires that "a copy or extract of such part of the notice as may apply to the individual case shall be by him (the zemindar) sent, to be similarly published at the cutcherry, or at the principal town or village upon the land of the defaulter." By the words "similarly published" is meant that the notice is to be stuck up, as appears from the previous words of the section, in the cutcherry, or if there be no cutcherry, in the principal town or village upon the land of the defaulter. Then the law goes on to say that the notice is to be served by a single peon, who is to bring back the receipt of the defaulter, or of his manager, for the same; or if unable to procure this, he is to obtain the signatures of three substantial persons residing in the neighbourhood, in attestation of the notice having been brought and published on the spot. And further the law prescribes that, in case the people of the village should object or refuse to sign their names in attestation, the peon shall go to the "cutcherry of the nearest Moonsiff, or if there should be no Moonsiff, to the nearest thannah, and there make voluntary oath of the same having been duly published, certificate to which effect shall be signed and sealed by the said officers, and delivered to the peon."

Lal Chand Chowdhry (1). There can be no objection to the personal service on which the Judge has acted, as it is found that

Now, looking at the evidence which has been read to us, we think the lower Courts are wrong in holding that the notice was duly published. The evidence in support of the due publication of the notice is to the effect that the peon of the zemindar, who could neither read nor write, proceeded to the spot, found some people sitting together in the village, asked where the cutcherry was; on being told that there was no cutcherry, asked where was the gomasta; on being told that the gomasta was not in the village, he opened the notice given to him by the zemindar, and showd it to five or six people, who weresitting there, none of whom could read and write; and he then proceeded to the thannah and obtained from the head constable a certificate on the back of the said document, to the effect that he made such and such a statement of the publication of the notice. This is clearly not such a publication as the law requires. The notice should be stuck up in the cutcherry, or if there be no cutcherry in some conspicuous part of the principal village upon the land of the defaulter. It is evident from the evidence that the notice was not stuck up at all, and in fact the peon took it away with him, and had the certificate endorsed by the head constable. Now the object of the notice appears to be not merely to give information to parties wishing to purchase, but to geve information to the defaulter that, unless the arrear be paid by a certain day, the property will be sold; and the defaulter might well plead that he has been endamaged from the want of the proper publication of the notice as required by law. We think, therefore, that the lower Courts are wrong in finding that the notification had been published according to law, and we think also that the sale is consequently illegal.

(1) 9 W. R., 242.

on a previous occasion the patnidars had personally received the notice of sale, and paid in the rent then due. The reason urged by the appellants for a strict compliance with the letter of the law regarding the notices of sale will not apply in the present case, as there are in this estate no other holders of subordinate tenures under the patnidar. The plaintiffs, after unsuccessfully attempting before the Revenue authorities to prove irregularities in the procedure adopted by the zemindar, are bound, when they come into the Civil Court to have the sale cancelled, not simply to show that the letter of the law has not been complied with, but that, in fact, they had no knowledge of the sale. It is not denied that that there was an arrear due. The Judge was right in acting upon the fact, which he found on the evidence, *viz.*, that the patnidars had personal knowledge of the day of sale. The real object of the law is notice to the patnidar. The auction-purchasers have paid their purchase-money in good faith, and it is not proved that they acted in collusion with the zemindar's agents. They are entitled, in the event of the sale being cancelled, to get back their purchase money with interest from the zemindar under the provisions of s. 14 of Regulation VIII of 1819.

The judgment of the Court was delivered by

KEMP, J.—The special appellant in this case, the plaintiff below, is the patnidar of a certain mehal called Ichapore. The defendants, special respondents, are the Maharaja of Burdwan, the zemindar, and the auction-purchasers.

The suit was to set aside a sale made at the instance of the zemindar, the Raja, of a patni talook belonging to the plaintiff. Damages were also claimed.

The first Court, the Subordinate Judge of Hooghly, Baboo Jagabandhu Banerjee, found that the receipt of service of

As, however, the auction-purchaser does not press to be indemnified by a refund of his purchase-money, we think it sufficient to declare that the notice not having been published as prescribed by law, the sale is not binding upon the plaintiffs in this case, and that they are entitled to recover their share in the patni,

The question of costs which the plaintiffs will recover from the zemindar will be determined by the Court below, and the auction-purchaser will recover his costs from the zemindar.

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notice which was filed on behalf of the zemindar, the Raja, was a forgery, and his decision on this point is not interfered with by the Judge on appeal. The Subordinate Judge further found that the requirements of cl. 2, s. 8 of Regulation VIII of 1819 had not been complied with in this case, inasmuch as no notice was stuck up in the cutcherry of the Collector and no copy or extract of the notice was published at the cutcherry, or principal town or village upon the land of the defaulter. He therefore reversed the sale. On the question of damages he found that the plaintiffs were clearly defaulters, and that it was gross neglect on their part that they did not enquire whether a suit under the Regulation was instituted against them within the prescribed time, and that they are bound to abide by the loss which has accrued to them in consequence of their own laches.

On appeal to the Judge by the zemindar, there being no cross-appeal by the patnidar on the question of damages, we find that the points raised in appeal are not the point upon which the Judge's decision turns, namely whether personal service on the patnidar was sufficient, but the grounds of appeal were directed against the finding of the first Court on the question of fact, namely, whether the receipt of service of notice was a forgery or not. There were other grounds of appeal, but there was no such ground that personal service on the talookdar was a sufficient compliance with the requirements of the law. Now, as already observed, the Judge concurs with the first Court in finding that the receipt filed on behalf of the zemindar is a forgery; he says:—"There is no reason to differ from the lower Court's rejection of this receipt, inasmuch as it is not attested in any way, and that part of the evidence which relates to the act of signature is not credible." The Judge goes on to state that, looking at all the probabilities of the case, he is of opinion that personal service on the patnidars has been proved, and he infers that the evidence as to personal service must be accepted, because the patnidars knew that they were in arrears, because they knew their legal obligations with respect to their rents and lastly with reference to the weakness of their excuses for not having tendered the arrear due before the 6th or 7th of Jaishta,

namely, that their mooktear at Midnapore said that the sale would not take place before the 10th of Jaishta. On these presumptions the Judge overrules the decision of the first Court and holds that the personal service having been proved, the object of the law has been fulfilled; that the defaulters had an opportunity of saving the estate, if so minded, and not having done so the sale must be upheld. The decision of the first Court was therefore reversed. The only question we have to decide in this appeal is whether the finding of the Judge, that the personal service on the patnidar was a sufficient service under the terms of cl. 2, s. 8, Regulation VIII of 1819, is correct. The clause enacts that istahars or notices of sale shall be stuck up in some conspicuous part of the cutcherry, that a similar notice shall be stuck up at the cutcherry of the zemindar himself, and a copy or extract of such part of the notice as may apply to the individual case shall be by him sent, to be similarly published at the cutcherry, or at the principal town or village upon the land of the defaulter. The clause then goes on to enact that the zemindar shall be exclusively answerable for the observance of the forms above prescribed. It further enacts that if it shall appear, from the tenor of the receipt or attestation of three substantial persons residing in the neighbourhood, that the notice has been published at any time previous to the 15th of the month of Baisakh, it shall be a sufficient warrant for the sale to proceed upon the day appointed. Now in this case it appears to us very clear, that the first requirement of this clause of the law, namely, that the notice of sale shall be stuck up on some conspicuous part of the cutcherry of the Collector, has not been carried out. It is admitted that the notice was not stuck up in the cutcherry, but that it was pasted into some book which, it is said, remains in charge of the sheristadar, and which is not accessible to the public without the permission of the sheristadar. It does not require much reasoning to see that that is not a compliance with the requirements of the law. We also think that the copy or extract of the notice, which requires to be stuck up at the cutcherry, or at the principal town or village upon the land of the defaulter, has not been so published as

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directed by law. The evidence of the two piadahs of the Raja, namely, Sheikh Amanat and Ruhumu, *alias* Filu, in the case of Amanat, goes to show that they went to Daspore, and not to Ichapore, although the notice was directed to be served at Ichapore; and in the case of Ruhumu, *alias* Filu, he deposes that he went to Daspore, and that he did not go to the Ichapore cutcherry; he also states that although he has seaved notices several times on this patnidar he never went to the cutcherry; he does not certainly say Ichapore cutcherry, but as he had already said that he did not go to Ichapore, it may be safely inferred, that he means that he never went to Ichapore cutcherry. The learned counsel for the appellants has called our attention to many decisions in which it has been ruled that the requirements of cl. 2, s. 8 of Regulation VIII of 1819, must be strictly carried out, and that the responsibility of carrying them out according to the letter of the law is with the zemindar. We think it sufficient to refer on this point to a decision of the late Sudder Court of the 28th August 1849—*Lootf-o-nissa Begum* v. *Kowur Ram Chunder* (1). That was a decision before three Judges, who were very competent to pass an opinion upon the construction to be put upon the Regulation. Those learned Judges held, that the duty of the zemindar under cl. 2, s. 8 of Regulation VIII of 1819, was an indispensable duty; that he is bound to serve notice on the defaulter, either at his cutcherry or at the principal town or village of the land of the defaulter; and they further give it as their opinion that the land of the patni in arrear is what is meant in the Regulation by the words "land of the defaulter." We therefore think it very clear that the requirements of the law have not been complied with in this case, and that the sale must be reversed. Mr. Money, who appears for the auction-purchaser, who has been made a party to this suit, has called our attention to s. 14 of Regulation VIII, more particularly to the latter portion of the section which enacts that "The purchaser shall be made a party in such suits and, upon decree passing for reversal of the sale, the Court shall be care-

(1) S. D. D. for 1849, p. 371.

ful to indemnify him against all loss at the charge of the zemindar or person at whose suit the sale may have been made."

We are informed that the purchase-money is still in the hands of the Collector. We therefore decree the special appeal, reverse the decision of the Judge, and restore that of the first Court. The plaintiff's costs of both Courts including the costs of this Court will be paid by the Raja with interest. The purchaser defendant will also be entitled to recover his costs from the Raja, including the costs of this Court, and the purchase-money will be refunded to him. The plaintiffs and the purchaser will recover separate costs from the Raja.

Appeal decreed.

Before Mr. Justice Kemp and Mr. Justice Glover.

MADAN MOHAN BISWAS AND ANOTHER (PLAINTIFFS) *v.* WILLIAM STALKART AND OTHERS (DEFENDANTS).*

1872
March 4.

Suit for Rent at enhanced Rates of Land situated in a Town—Act VIII of 1869 (*B. C.*)

A suit cannot be maintained under Act VIII of 1869 (B. C.) for rent at enhanced rates of land, not used for agricultural or horticultural purposes, but situated in a town.

Baboos *Bhairab Chandra Banerjee* and *Bama Charan Bose* for the appellants.

Baboo *Rajendra Nath Bose* for the respondents.

THE facts of this case and the arguments are sufficiently stated in the judgment delivered by

KEMP, J.—This is a suit brought by the agent of Rani Lalan Mani upon a notice dated the 24th of Chaitra 1276 (5th April 1870), addressed to Messrs. John and William Stalkart of Sulkea. The notice was issued under the provisions of s. 13

* Special Appeal, No. 721 of 1871, from a decree of the Additional Judge of Hooghly, dated the 27th March 1871, affirming a decree of the Moonsiff of that district, dated the 28th December 1870.