

think I should have been unable to acquiesce in the ruling of the Full Bench reported in Vol. II., Weekly Reporter, page 21, which has been referred to, in which it is laid down that Act X. of 1859 (which it must be borne in mind, is the law still in operation in some districts subordinate to the jurisdiction of this Court) forms in itself a complete Code of law on the subject of rent suit and the other matters which fall within its provisions.

Although there are other grounds on which the plaintiff's case may be supported, I don't think it is necessary to go into them, as I am content to base our decision on those which have been stated at length by Mr. Justice Markby.

• The appeal will be dismissed and the decision of the Lower Court affirmed with costs.

The 25th April 1872.

Present:

The Hon'ble Louis S. Jackson and W. Markby, *Judges.*

Sale in Execution of decree—Application to set aside—Discretion of Judge as to time.

Case No. 26 of 1872.

Miscellaneous Appeal from an order passed by the Judge of Nuddea, dated the 21st December 1871.

J. H. Poulson (Judgment-debtor), *Appellant,*
versus

J. W. Dunn (Decree-holder), *Respondent.*
Mr. H. E. Mendes for Appellant.

No one for Respondent.

A Judge has the discretion to receive an application to set aside a sale in execution of a decree, when made to him after the lapse of thirty days, but before the confirmation of the sale.

Jackson, J.—Upon the authority of the case reported in III. Wyman, page 180,* we

* The 14th March 1867.

Present:

The Hon'ble J. P. Norman and W. S. Seton-Karr,
Judges.

Act VIII. of 1859, ss. 256 and 257—Sale in Execution—Time for Objection—Jurisdiction.

Miscellaneous Pétition.

Umirto Lall Bose and another, *Petitioners.*

Mr. Montrou and Baboo Chunder Madhub Ghose
for Petitioners.

The period of thirty days mentioned in section 256, Act VIII. of 1859, is the measure of the right of the parties to come in and object to the sale. Under section 257, however, the jurisdiction of the Judge is not limited to that period, but the Judge may

think that the Judge was wrong in saying that he had absolutely no discretion to receive an application made to him after the lapse of

receive such an application at any time before the confirmation of a sale.

Norman, J.—MR. MONTRIOU, on behalf of Umirto Lall Bose and Goroob Churn Roy, alleging themselves to be purchasers of a Sunderbund grant at a sale in execution of a decree against Raj Ranees Dabee and Byjenath Pundit, applied to this Court, alleging that Mr. Beaufort, the Judge of the 24-Purgannahs, had improperly refused to confirm the sale.

The sale took place on the 2nd of October 1866, it was stated by the officer conducting the sale that the Government had declared the rights of the judgment-debtor to be forfeited, and had taken *khass* possession. On the 30th of November, the decree-holder, Joo Bibee, presented a petition to the Judge, alleging that the order for resumption had long ago been cancelled; that some of the *amlah* of the Sunderbund Commissioner's office had fraudulently caused it to be stated that the estate had been resumed and was held *khass* by the Government; and that these people were the real purchasers.

The Judge, after making enquiries, was informed by the Sunderbund Commissioner that the order for resumption had not been cancelled; that the grant had been resumed; that the proceedings were still pending; but that he had recommended that the grant should be released, and the forfeitures waived. On the 15th December 1866 the Judge passed an order refusing to confirm the sale, and on an application for review of that order stated his reasons for so doing as follows:—

“The right and interest put up for sale was that of a Sunderbund grantee. Previous to the sale the Government pleader presented a petition in which he informed the Court, by order of the Sunderbund Commissioner, that the estate had been resumed, that is to say, that the Government had declared the rights of the judgment-debtor on the estate to be forfeited, and had taken *khass* possession. Notwithstanding this, the decree-holder desired that the sale should proceed, and it did proceed, but the officer conducting the sale was directed to inform the bidders of the representation made by the Sunderbund Commissioner.

“Subsequent to the sale it transpired that the facts had been misrepresented by the Government pleader; that the forfeiture of the estate was under consideration; that the Government had not *khass* possession; and that the misrepresentation arose in a *purwannah* addressed to him by the Sunderbund Commissioner.

“It appeared also that the purchasers at the sale were the sheristadar and head mohurrir of the Sunderbund Commissioner's office. Looking at this fact, I found there was a strong suspicion of fraud, and on that ground refused to declare the sale absolute. I have heard all that has been urged on the merits of the case, and I am confirmed in the opinion that the order of the 15th of December was just and proper. Perhaps I ought not to have stated that a fraud was committed by certain persons employed in the office of the Sunderbund Commissioner, but I was right in finding what I certainly did find, though it was not specifically so stated but rather implied, that the sale had been conducted under a misrepresentation of the facts. It is immaterial whence the misrepresentation arose, if it had the sanction of the Court, as happened in this case by the order directing the publication at the time of sale. It is certainly* the

thirty days but before the confirmation of the sale.

There are certain circumstances in the present case which seem to make it desirable that the whole of the facts relating to the attachment and sale of the property should be enquired into, and we think that the case should go back to the District Court in order that the matters alleged by the judgment-debtor may be considered. Both he and the judgment-creditor will be at liberty to adduce such evidence as they may have to offer, and the purchaser is also entitled to be heard.

duty of the Court to take care that every sale is properly conducted, fairly as regards both the debtor, the decree-holder, and the purchaser; and the discretion which is given to the Court of withholding confirmation is to be exercised in all cases in which the proceedings have been conducted unfairly as well as irregularly. It is urged that I had no power to cancel the sale; but the question is merely whether I had power to withhold confirmation under section 256. Under the circumstances, I think, I was bound in justice to withhold it, and that I had jurisdiction to do so; a Court has always an inherent power to remedy a wrong about to be committed under its order, by the arrest of the proceedings."

Mr. Montriou contended that, under section 256, the Judge had no power to receive an application for setting aside the sale, except within thirty days from the date of the sale; that that application to set aside the sale, on the ground of fraud not being such an application as is provided for by section 256, the Judge, under section 257, had no alternative, but was bound to confirm the sale.

And he asked the Court to set aside his order, and to compel the Judge to confirm the sale referring to section 15 of the 24 & 25 Vic. c. 104, as giving jurisdiction to this Court to interfere.

We think that the period of thirty days mentioned in section 256, is the measure of the right of the parties to come in and object to the sale. But that the jurisdiction of the Judge to receive such an application is not limited to that period. The words "such application" in section 257 refer to the application of the nature described in section 256; section 257 does not say if such application shall not be presented within the period mentioned in section 256, the Court shall pass an order confirming the sale, though we might have expected that language of this sort would have been employed, had the object been to tie the hands of the Judge. We think, then, that there is nothing to lead to the inference that the Judge had not jurisdiction to receive such an application at any time before the sale was confirmed.

Secondly, the objection having been that the sale had taken place under a material misstatement as to the condition of the property, and under circumstances which threw doubt on the *bona fide* of the purchasers, we cannot say that the Judge was not right in considering that there had been a material irregularity in publishing and conducting the sale. It is a question which it is clear he had jurisdiction to determine, and his order setting aside the sale on that ground is final under section 257.

The application is rejected.

Ston-Karr, J.—I concur in rejecting this application.

The 25th April 1872.

Present:

The Hon'ble F. B. Kemp and F. A. Glover,
Judges.

Co-sharers—Improvement of Puteet Land by one—Right of another to Possession of Specific share—Partition.

Case No. 794 of 1871.

Special Appeal from a decision passed by the Subordinate Judge of Dacca, dated the 21st April 1871, affirming a decision of the Moonsiff of Manick-gunge, dated the 7th September 1870.

Gokool Kishen Sen (Defendant), Appellant,
versus

Issur Chunder Roy and others (Plaintiffs),
Respondents.

Baboos Kalee Mohun Doss and Nuleet
Chunder Sen for Appellant.

Baboo Gopeenath Mookerjee for
Respondents.

Defendant having spent large sums of money in improving what was originally *puteet* land by locating ryots and building houses upon it and turning it into a village called after his name,—HELD that plaintiff, his co-sharer, was not entitled to claim possession of a specific share in that village, but only to demand a partition in which plaintiff would obtain compensation by receiving elsewhere lands equivalent to that brought into cultivation by the defendant at his own expense.

Kemp, J.—THE plaintiff sued, alleging that the lands in dispute appertained to Mouzah Ijlail, in Pergunnah Boykuntpore; that they were the *ijmalee* lands of the plaintiff and his co-sharers amongst whom was the defendant No. 1, special appellant before us; that the plaintiff's share was 4 annas 3 gundahs 3 cowries; and that the plaintiffs sued certain ryots for rent, whereupon the defendant intervened, and the suit was unsuccessful. Hence the present suit.

The defendant's case was that a portion of the lands were *ijmalee* lands, but that the rest of the land belonged to Pergunnah Mokimpore; that the lands in dispute were originally *puteet* lands; that the defendant has been in the occupation of these lands separately from his co-sharers for many years; that he has located ryots on the lands, and established there a village, which is called Gokoolnuggur after the name of the defendant, who, we may observe, is Baboo Gokool Kishen Sen.

Both Courts have found that the lands in dispute belonged to Pergunnah Boykuntpore