Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The General Manager of the Raj Durbungah, under the Court of Wards v. *Maharajah Coomar Ramaput Singh; delivered 21st March* 1872.

Present:

SIR JAMES W. COLVILE.
LORD JUSTICE JAMES.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

THESE proceedings certainly illustrate what was said by Mr. Doyne, and what has been often stated before, that the difficulties of a litigant in India begin when he has obtained a decree. When, however, the actual question which is at issue between the Appellant and the Respondent on this Appeal is eliminated from the rest of the record, it does not appear to their Lordships to present any very great difficulty.

The Appellant and the Respondent had each, it must be assumed, a good claim against the estate of the deceased, Gourpershad. The Respondent had obtained a decree according to the practice then existing in the Civil Court in the lifetime of Gourpershad. The Appellant, pursuing his remedy for rent under Act X. of 1859 in the Collector's Court, had obtained a decree for the arrears of rent in respect of which he sued against the widow as the widow of the deceased and the guardian of her infant son. It was a suit brought against those who were supposed to be the representatives of the debtor, Gourpershad. In that suit the case set up by the Defendants was that the infant was not the heir of his father; that he had been adopted into another family, and that consequently the widow was the sole heiress and representative. The

decree was against the widow in that capacity. It declared that the son was not liable, and ended with a declaration, which clearly pointed to the realization of the demand out of the estates of the deceased, Gourpershad, and showed that the decree was made against the person supposed to be the heir and representative of Gourpershad. Other difficulties being interposed in the way of executing that decree, the Respondent thought it necessary to go to the Zillah Court in order to get rid of certain deeds as well as of the alleged kritima adoption of Hurpersad, the son, and he succeeded in obtaining a decree, which was afterwards affirmed by the High Court, the result of which may be taken to be to affirm that Hurpersad was the heir of his natural father. The execution of the Collector's decree had in the meantime been suspended. When the decree of the Civil Court became final, an intimation was sent to the Collector that the stop order which had been put upon the execution should be removed, and that the execution might go on. Execution of that decree was accordingly had under the conjoint provisions of Act X. and Act XI. of 1859, and perhaps it is owing to the operation of those statutes, and in particular to the fact that the execution took place under Act XI. of 1859 by putting up the property for sale in the same way that an estate would be sold for arrears of revenue, and did not proceed under the ordinary Civil Code Act VIII. of 1859, that some of the confusion and difficulties which have taken place in this case have arisen. However that may be, the estates in question were sold under the Collector's order, and purchased by the judgment creditor. That took place in November 1867. In the meantime certain proceedings had taken place in the suit of the Respondent. The Respondent had originally applied for execution of his decree obtained in the lifetime of Gourpershad against the widow and the infant son. He was met by the same allegation that had been made in the Appellant's suit, that Hurpersad had no

interest in his father's estate, and a miscellaneous order was made, which held that Hurpersad was not liable for his father's debt, and treated the widow as the sole representative. Afterwards the Respondent attempted to get the benefit of the decree which had been obtained by the Appellant, and to proceed against Hurpersad, and on that occasion the Appellant intervened as an objector. The Judge disallowed the objection, but, at the same time, held that the former execution proceedings were invalid, and directed them to be struck off the file. The Respondent then commenced other proceedings against Hurpersad, and although there was no formal discharge of the miscellaneous order, the Judge appears to have considered that as swept away with the former execution proceedings and no longer operative, and directed a sale in execution, which, if there were nothing else in the way of it, would probably have been regular against Hurpersad as the heir of his father. However, when the Respondent was proceeding to carry out that order, the Appellant came in and objected that the estates had already been sold under his decree, and had been purchased by him, and that in fact they could not be any longer sold as the estates of Hurpersad. That objection prevailed, and the result was that the Respondent's only remedy was to bring the regular suit out of which this Appeal has arisen.

From the above statement it is clear that unless there be some fatal irregularity in the mode in which the decree of the Appellant was obtained or drawn, or some fatal irregularity in the mode in which that decree has been prosecuted, the estates have been regularly sold, and that the suit of the Respondent, seeking to set aside the order for sale and to get the benefit of his own execution as against Hurpersad as the heir of his father, must fail.

Their Lordships are of opinion that no case has been made upon which they can say that there has

been that irregularity in the proceedings before the collector and the sale which took place which would justify them in setting aside the sale, and upon that point they must differ from the Judges of the High Court. The proceedings took place under Act XI. of 1859, and that Act appears to contemplate that the estate should be put up for sale, and that the person whose interest should be nominally sold should be the registered proprietor. In this case, so far as the proceedings show, it appears that the widow was the registered proprietor. But the case does not rest there, because in the certificate of sale there is a distinct reference to the decree obtained by the Appellant from the Zillah Court, and therefore the whole proceeding, if fairly looked at, amounts to this,—that the estate of Gourpershad was sold under that decree in execution for his debt, and that the interest of his widow the registered proprietor and ostensible owner of the estate, and also the interest of his son, if he had any interest, was bound by that decree. If that be so, the question arises whether the Respondent, the Plaintiff in the suit below, has any ground upon which he can come in and impeach the sale? It appears to their Lordships that he can claim only what interest remained in Hurpersad, and that substantially the proceedings would be a bar to any claim on the part of Hurpersad. It is unnecessary to consider whether in any question between the Respondent and Hurpersad, who in this suit came in and continued to dispute his heirship, the decree in the suit which had been obtained by the Appellant would be any binding adjudication between the Respondent and Hurpersad. It appears to their Lordships clearly to be a mere decree *inter parties*, and that there is no ground for giving it the effect of a decree *in rem*, which is the effect which one passage in the judgment of the High Court appears to attribute to it. But without going into that, it seems sufficient to their Lordships for

the determination of this Appeal to say that there was in their judgment no substantial irregularity in the sale before the Collector, and that therefore, that as between the Appellant and Respondent, the Appellant is entitled to and cannot be deprived of the benefit which has resulted to him from his greater diligence in enforcing his demand.

Their Lordships also desire to add that they are unable to see any substantial distinction between this case and that reported p. 614, *Marshall*. They entirely agree in the principles expressed by Chief Justice Peacock in that case, and think that they govern the present case.

The result therefore must be that their Lordships will humbly recommend to Her Majesty that this Appeal be allowed, the judgment of the High Court reversed, and the judgment of the Lower Court affirmed. The costs of the Appeal will, of course, follow the result, and the Appellant will be entitled to the costs of the Appeal in the Court below.