

1913.

Present : Pereira J.

CASSIM v. ANDRIS

298—C. R. Galle, 7,038

Fiscal's sale—Material irregularity in the conduct of the sale—Land worth Rs. 400 sold for Rs. 7—Connection between irregularity and low price presumed.

Where a Fiscal advertised a property for sale at 12 noon, but sold it one hour earlier, and where the property which was worth about Rs. 400 fetched only Rs. 7, the sale was set aside on the ground of material irregularity in the conduct of the sale.

PEREIRA J.—It is, I think, palpable that there is a connection, as cause and effect, between the fact of the sale having taken place more than an hour before the appointed time and the fact of the realization by the sale of so small a sum as Rs. 7. No doubt it has been held that such a connection should be affirmatively established, but there is no reason why it may not be established by means of presumptions, permissible under section 114 of the Evidence Ordinance, as effectually as it may be by direct evidence.

THE facts appear from the judgment.

Zoysa, for appellant

A. St. V. Jayewardene, for respondent.

Cur. adv. vult.

September 16, 1913. PEREIRA J.—

1913.

*Cassim v.
Andris*

This is an appeal from an order of the Commissioner refusing to set aside a Fiscal's sale on the ground of material irregularity in the conduct of the sale. The appellant's case is that the time fixed for the sale was 12 noon, but that the sale took place about an hour before. As to the time when the sale took place, the evidence led by the appellant appears to me to be more precise, and therefore, *ceteris paribus*, entitled to greater weight than the evidence led by the respondent. The appellant and his witness Thevis say that they went to the land sold, and by their watches that they had with them the time was 11 or 11.5 A.M., and that the land had then been sold. On the other hand, all that the respondent's witnesses swear to is that the sale took place "at the proper time." The Fiscal's arachchi says: "I sold it at the proper time." Now, this is an evasive answer, and I am surprised that such an answer was elicited from the witness. The witness should have been asked to state the time that he was referring to. The question whether the sale took place at the proper time was a question for the Court to decide. So far there is no explanation of what in the opinion of the witness was the "proper time."

The next question—a question apparently not raised in the Court below—is whether the appellant can be said to have suffered loss as a consequence of the irregularity. The property sold appears to have been worth Rs. 400, while it fetched at the sale only Rs. 7. It is, I think, palpable that there is a connection, as cause and effect, between the fact of the sale having taken place more than an hour before the appointed time and the fact of the realization by the sale of so small a sum as Rs. 7. No doubt it has been held that such a connection should be affirmatively established, but there is no reason why it may not be established by means of presumptions, permissible under section 114 of the Evidence Ordinance, as effectually as it may be by direct evidence. To take an extreme case. Where a sale is appointed to take place at 6 in the evening, it is manifest that no bidder is likely to be present at the place appointed at 6 in the morning, and the fact of the sale falling through for want of bidders might well be presumed to be due to the irregularity. In the same way the relation of cause and effect between the two facts mentioned above in the present case may well be presumed. The case of *Khan v. Hussain*¹ cited by the respondent's counsel is not in point. There the sale was announced to take place on March 20, and it in fact took place on that day, the irregularity complained of being that the proclamations were not posted up thirty days at least before the day appointed for the sale.

I set aside the order appealed from with costs.

Set aside.

¹ *J. L. R. 21 Cal. 66.*