1900.
September 18 21, and October 19.

SINNO APPU *v.* DE SILVA.

D. C., Galle, 5,172.

Fiscal's sale—Irregularity in publication and conduct of sale—Substantial injury to judgment-debtor—Civil Procedure Code, s. 282.

Where the boundaries of the land seized by the Fiscal were fully described in the seizure report, but not so fully given in the notice of the sale,—

Held that, as the circumstances connected with the attendance of bidders and competition between them showed that there was no substantial injury directly traceable to any irregularity in publication of the sale, the sale was one that could not be set aside under section 282 of the Civil Procedure Code.

Per BROWNE, A.J. (*dissentiente* MONCREIFF, J.), that the District Judge was right in holding that the meagre description in the notice of sale was a material irregularity.

THE only issue in this case was whether any material irregularity in publication or conduct of a Fiscal's sale held on the 24th July, 1899, had resulted in substantial injury to the petitioner, who had complained to the District Judge under section 282 of the Civil Procedure Code.

The land in question was sold on the 24th July, 1899, being 105 acres in extent, of the appraised value of Rs. 10,000. The amount realized was Rs. 5,000. The judgment-debtor moved the Court to set aside the sale, chiefly upon the ground that the sale was not properly advertised, and that it was held about half an hour before the appointed time.

As regards the first irregularity, it was said that in the seizure report the land was fully described as " all that Mahagoda-" mukalana, the houses, stores, plantations, and the citronella oil

1900.
September 26 21, and October 19.

" mill standing thereon, exclusive of the portion bearing Nos. " 947, 957, and the portion marked letter B appearing in the plan " No. 1,573 thereof, situated at Mirigama in Weligam korale, " containing in extent 105 acres, and bounded on the north by " boundaries fully given."

In the notice of sale, the land was described as follows:—

" At Midigama all that land called Mahagodamukalana, with all " the buildings, stores, and citronella oil mill standing thereon, " excluding the lots marked Nos. 947, 957, and B in plan No. 1,573, " containing 105 acres, Rs. 10,000."

As regards the second irregularity, it was said that the sale was commenced and concluded before 12 noon, whereas it should have been held at 12 noon.

The District Judge found as follows:—

" I cannot say I believe the petitioner and his witnesses, who state that the sale took place before 12 noon.

" They made no complaint of this to the officer who conducted the sale or to the Fiscal.

" I think it is an after thought, and I see no reason to disbelieve the officer who conducted the sale, who says it took place at the advertised time.

" The land should have been described in the notice of sale as fully as it was described in the seizure report. Section 255 of the Procedure Code requires the notice of sale to specify as fairly and accurately as under the circumstances is reasonably practicable the property to be sold.

" The meagre description of the land in the notice of sale is, I think, a material irregularity.

" I therefore set aside the sale, and respondent will pay petitioner's costs."

The purchaser in execution, who was respondent to the petition of the judgment-debtor, appealed.

In appeal, the case was argued on the 18th and 21st September, 1900.

Pieris, for appellant.

Wendt, Acting A.-G., for judgment-debtor, respondent.

Cur. adv. vult.

19th October, 1900. MONCREIFF, J.—

The order of sale in this case cannot be set aside under section 282 of the Civil Procedure Code, unless the notice of sale contained a material irregularity by reason of which substantial injury resulted to the petitioner. I doubt whether there was any material irregularity in the notice. The Fiscal is not required by section

1900.
September 18 21, and October 19.

MONCREIFF J.

255 to mention the boundaries in his notice of sale, as he is required by section 237 in regard to his notice of prohibition; nor do I see any proof that the petitioner sustained any substantial injury if the fact that the property was appraised at Rs. 10,000 and realized only Rs. 5,000 is proof of substantial injury. I fear that few debtors whose land is sold by the Fiscal escape substantial injury. But whether there was substantial injury or not, I can see neither presumption nor proof that it was due to the supposed deficiency of the notice of sale. I think the District Judge's order should be reversed.

BROWNE, A.J.—

Under two writs against the debtor, respondent, a land of his, which the Fiscal had appraised at Rs. 10,000, was put up to auction by the Fiscal, and after the biddings between six bidders had risen in twenty-one bids from Rs. 1,000 to Rs. 5,000, it was knocked down at that price to the appellant. On petition by the debtor the learned District Judge has, however, set aside the sale to him, holding there was irregularity in that the notice of sale had not described the land as fairly and accurately as under the circumstances was reasonably practicable, especially in that its particulars of boundaries, &c., were not at all as full as those which he had given in his notice of seizure. From that order the purchaser has appealed.

It is to be regretted that the learned District Judge did not divide the first issue—"Was there any material irregularity in publication by which the petitioner sustained substantial injury?"—into two issues, viz., Was there such irregularity? and Did substantial injury result therefrom?—for then his judgment doubtless would not have omitted to make the specific findings as to whether there was such injury, and did it result therefrom, as has been done. Indeed, not only is there neither such findings, but the judgment even suggests that the price bid, Rs. 5,000, may have fallen short of the appraisement Rs. 10,000 by reason of there having been an outstanding lease with two years yet to run.

Now, the rule of procedure deduced from section 282 by Withers, J., (*Amerasakere v. Menika, 3 C. L. R. 30*), is clear and simple: "You must prove both the material irregularity and the material injury, and connect the two as cause and effect." Lawrie, J., following the Calcutta decisions, held (myself concurring) that when ten days' notice of sale had not been given it was sufficient to show that the irregularity would naturally cause the injury complained of—that, if substantial injury had been sustained, the presumption is that it was due to the irregularity;

1900.
October 19.
BROWNE, A.J.

and so it was not unreasonable for the Court to presume that, had the full period expired, more persons would have known of it (436, D. C., Tangalla, *S. C. M. 5th February, 1900*). In 803, C. R., Matara, (*S. C. M. 20th October, 1893*), Withers, J. however held there was nothing to show that the difference between the bid and the true value was the natural consequence of an omission to advertise in the *Government Gazette*.

Here the notice of sale in the *Government Gazette* was of " all the land called Mahagodamukalana, with all the buildings, stores, and citronella oil mill standing thereon, with the specification by numbers of certain lots excluded," containing (query, the whole property or the exclusions?) 105 acres;" but the boundaries fully given in the notice of seizure were not given. When these were thus well known to the Fiscal, but not published by him in the notice of sale, I would hesitate to say his description in that notice was " as fairly and accurately made as under the circumstances was reasonably practicable," for it was not as full *qua* the boundaries as the notice of seizure had been. In that view I would agree with the learned District Judge.

But on the issue of whether or not there was substantial injury sustained thereby that was ascribable thereto, I consider this case is taken out of the presumption allowed in 436, D. C., Tangalla, by (1) substantial and progressive bids which were made, showing the notices did attract bidders, and by (2) the equal possibility of the cause that the bidding did not reach the appraisement being the outstanding term. There was need in this doubt for the evidence of the other cause, and effect usually given that certain intending bidders were not sufficiently apprised of the approaching sale.

I therefore agree with my brother that the order of the learned District Judge setting aside the sale should be reversed, with costs.