

17th April, 1895. LAWRIE, A.C.J.—

The plaintiff averred that on the 31st August, 1871, he purchased the land in question at a Fiscal's sale held in execution of a writ against Martelis Perera.

The defendants in the present action said that they could not admit the fact of the sale in execution, and they put the plaintiff to the proof of it.

The only evidence of the sale adduced at the trial was a conveyance by the Fiscal dated in 1893 (twenty-two years after the alleged sale).

I shall, however, for the purposes of this judgment, assume that it has been proved that the sale in execution in 1871 was in all respects regular, and that the plaintiff, as purchaser at that sale, had a right then to get a conveyance from the Fiscal if he paid the price, supplied the stamps and survey fees, &c., required by the Ordinance No. 4 of 1876.

The plaintiff did not apply for or get a conveyance.

He was in possession of the land as lessee under a lease for twenty years, which expired in 1892; the former owner of the land transferred the land to the defendant in this action, who registered the transfer.

The plaintiff made two attempts to get the Court to authorize the Fiscal to grant a conveyance, and he failed. In one of these attempts the order of the District Judge was brought to this Court in appeal, and the order was affirmed.

Burnside, C.J., observed that in his opinion "no right exists to call on a Fiscal to execute a conveyance . . . outside the action in which the property has been sold," and he added he "knew of no law by which the Fiscal becomes liable to the whole world to make a conveyance."

These observations were *obiter*, but they are valuable as having been expressed in regard to the right of this very plaintiff to get the conveyance on which he now founds his case.

Notwithstanding the refusal of the Court to compel the Fiscal to grant him a conveyance, the plaintiff went to the Fiscal, who (either ignorant of the proceedings already taken, or thinking that he was bound to grant a conveyance, or that he was entitled to do so) granted the conveyance of the 10th May, 1893, which recites that the sale was held on the 31st of August, 1871.

The learned District Judge framed this issue :—

"Is the Fiscal's conveyance in the plaintiff's favour void by reason of there being no authority of Court for its issue?"

The learned Judge decided in the affirmative. I think he was right. Fiscals have no common law rights, and are under no