

SILVA v. HENDRICK APPU.

*D. C., Galle, 2,540.*

*Action for declaration of title by purchaser at a sale in execution, without conveyance from Fiscal—Validity of such action—Civil Procedure Code, s. 289—"Right and title"—"Legal estate."*

Where a purchaser at an execution sale came into court praying for declaration of title, without having a Fiscal's conveyance in his favour at the time of the institution of the action, and undertook to procure and produce such conveyance at the trial of the case :—

*Held, per* LAWRIE, A.C.J., and WITHERS, J. (*dissentiente* BROWNE, J.), that the action was not maintainable.

WITHERS, J.—Under the Code, the right and title of the judgment-debtor to immovable property sold by virtue of an execution writ is not divested by the sale until the confirmation of the sale by the Court and the execution by the Fiscal's conveyance.

The expressions "right and title" and "legal estate" used in section 289 are synonymous.

THE facts of the case appear sufficiently in the judgments delivered by their Lordships.

The plaintiff appealed against the dismissal of his action.

*Pieris and Jayawardana*, for appellants.

*Wendt and Blazé*, for respondents.

*Cur. adv. vult.*

19th March, 1895. BROWNE, J.—

One Harmanis, having recovered judgment and issued writ against his debtors, was declared purchaser of the trees of a land at an execution sale held on 7th June, 1893. Before he obtained the Fiscal's conveyance, he on the next day assigned to plaintiff all his rights in the action and land, and empowered plaintiff to obtain the Fiscal's conveyance. In further execution of the writ plaintiff himself on the 11th July purchased the soil of the land.

Ere thirty days from the time that reports of the Fiscal to the Court could well have been made and orders confirmatory of sales and conveyances themselves thereafter could have been obtained, and in fact before these preliminaries were completed, the Fiscal on the 13th September seized for resale the same debtor's interest in the same land, and plaintiff thereupon claimed the land. His claim was rejected on the 21st December, and he instituted this action stating these facts in full, and thereby showing his title to the trees and soil was still imperfect, but expressly undertaking to perfect his titles ere trial and then to produce the Fiscal's transfers in his favour.