

and enjoy it as the absolute owner. That may or may not be so. My brother BROWNE would save him from the possible consequences of an affirmance of the judgment he appeals from, by allowing him for his protection to put in evidence the orders of confirmations and the conveyances which it seems he has acquired in the course of the cause. I would co-operate with my brother if I thought the law of the procedure admitted it.

But I know of no provision which allows a plaintiff who has no title (*i.e.*, here a legal estate) when he institutes a suit, and who gains one in the course of a cause to make use of that acquisition in support of his claim, which is dependent on the particular title acquired. In *re Tottenham Local Board*, 2 *Times Reports*, 410, it was considered doubtful whether *matter not in existence at the date of issue of writ* can be introduced by amendment, but this is not an application for leave to amend.

The only satisfactory reason I can assign for the order in appeal in the Negombo case relied on is that, under Ordinance No. 4 of 1867, a purchaser, after thirty days from the Fiscal's sale, who had fulfilled all his conditions of sale, became the absolute owner of the land purchased under the contract of purchase and sale, and that the conveyance from the Fiscal was only evidence of the contract which it was indulgently permitted him to secure.

No doubt the grantee of the conveyance is vested with the legal estate from the time of the sale, but not for the purpose of saving a plaintiff who makes a claim before a Fiscal and institutes an action to establish that claim, without that which gives him a good cause of action.

The judgment must be affirmed, with costs.

LAWRIE, A.C.J.—

When a plaintiff comes into Court praying for a declaration of title, he must possess at that time the title which he asks the Court to decree to be his. When this plaintiff brought this action he had not got a conveyance : he was not entitled to possession, he was not the owner of the land.

The action must necessarily be dismissed, with costs.

