

term of twenty years, and put him in possession thereof. On the 31st August, 1871, the Fiscal of Negombo, in pursuance of a writ of execution issued against Martelis Perera, seized the land and sold it by public auction to the plaintiff, who bought it subject to the lease in favour of Domingo Fernando. On the death of the lessee, his legal representatives, by deed dated 11th August, 1874, assigned to the plaintiff the unexpired term of the lease and put him in possession of the land. He continued to hold it till the expiry of the lease, and thereafter on the 11th May, 1893, obtained from the Fiscal a conveyance of the premises in his favour, as purchaser in execution. The plaintiff averred in his plaint (filed on the 5th September, 1893) that the defendants, on the 28th February, 1892, entered upon the land, and, having ousted the plaintiff's lessee, were in unlawful possession thereof; and he prayed for declaration of title and for ejectment of defendants.

The second defendant only appeared, and in his answer he averred that the Court, by its order dated 7th February, 1893, had refused to confirm the sale in question, which was therefore no sale. He also pleaded that the Fiscal's conveyance was obtained by fraud; and denying the ouster and unlawful possession complained of, he claimed the land as his own by right of purchase from Martelis Perera (from whom the plaintiff also professed to derive his title) by deed dated 11th March, 1892, and duly registered on the 12th March, 1892. He prayed for declaration of title and for dismissal of the plaintiff's action.

The Court framed the following issues :—

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

(2) If valid, what is the effect of its registration?

(3) If the conveyance be void, does the plaintiff's possession enure to his benefit?

Upon argument, the plaintiff's action was dismissed with costs, and judgment was entered for the second defendant, declaring him owner of the land.

The plaintiff appealed.

The appeal was argued first on the 12th March, 1895, before LAWRIE, A.C.J., and WITHERS, J. And their Lordships not being able to agree to a judgment, it was argued again on the 5th April, 1895, before LAWRIE, A.C.J., and WITHERS and BROWNE, JJ.

*Wendt and Dornhorst*, for appellant.

*Bawa*, for respondents.

*Cur. adv. vult.*