

“have paid the full amount of the purchase-money according to the conditions of sale, and shall have supplied the Fiscal or Deputy Fiscal with stamped paper of the proper amount required by law for the conveyance of the land sold to him (which stamped paper he shall be bound to supply when he pays the purchase-money in full), the Fiscal or Deputy Fiscal shall make out and execute a conveyance of the property according to the form hereunto annexed, and marked J, in duplicate.”

On the 10th May, 1893, the Fiscal assigned and delivered to the appellant the conveyance of property which had been judicially sold on the 31st August, 1871, the property being a reversion of the interest in the land on the expiry of a lease for a long term of years. It was the duty of the Fiscal to grant the conveyance and a privilege of the purchaser to compel the performance of that duty.

This is not a case under the 58th section of that Ordinance, in which an express order of the Court was required before the Fiscal could deliver a conveyance to the purchaser.

The Ordinance No. 2 of 1889, in section 2, expressly declares that the repeal of the Ordinance in the third column thereof (including, therefore, No. 4 of 1867) should not affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment hereby repealed. The right to call for the Fiscal's conveyance of the property sold in 1870 had accrued to the plaintiff before the Ordinance No. 2 of 1889 had come into operation.

In my opinion it is only sales of property held after the Civil Procedure Code came into operation that require an order of confirmation as a condition precedent to a Fiscal's conveyance, all other necessary conditions being fulfilled. To hold otherwise would be to give a retrospective effect to the Civil Procedure Code.

I would answer the District Judge's issue in the negative, and therefore in favour of the plaintiff, who is entitled to succeed.

[The foregoing judgment having been read, WITHERS, J., continued as follows :—]

I venture to adhere to the foregoing opinion which I first formed on the question submitted to us for decision, and that is, to quote the words of the District Judge, “Is the Fiscal's conveyance in plaintiff's favour void by reason of there being no authority of Court for its issue?” I would therefore, for the reasons advanced in my former opinion, answer this question in the negative, and send the case back for all other questions properly raised in the pleadings or settled, as the case may be, to be decided in the Court below.

The appellant is entitled to his costs in appeal.