

his claim ; but what was his claim ? I suppose to the land as his own absolutely, but I have to guess at this fact. I shall assume that he did claim the land as one who had purchased it at a sale in execution, but had not obtained a Fiscal's transfer.

It appears that at some stage of the proceedings in this action the plaintiff procured from the Fiscal a transfer of the thirty-two trees and a transfer of the soil which had been judicially sold in June and July as above stated, but on the 16th of July, 1894, certain preliminary issues of law and of fact were discussed between the parties to this action, with the result that the District Judge dismissed the action with costs, on the ground that, when the plaintiff instituted the action, he had no cause of action, having no title in the land which defendant had seized, and the seizure of which was opposed by the plaintiff.

The Acting Chief Justice supports this ruling, but my brother BROWNE would allow the case to be remitted for plaintiff to prove his Fiscal's transfers to the said land and the said thirty-two trees, relying, as regards this course, on a judgment of this Court in appeal from a dismissal of a plaintiff's action in ejectment, on the ground that she had no proprietary title in the absence of a Fiscal's transfer, when the Court of appeal set aside the judgment and remitted the case, with liberty to the plaintiff to produce and prove her Fiscal's transfers, which in point of fact seem not to have been made out for a long time afterwards. This was an unreported case from Negombo in 1882 (*Perera v. Julihami*). My brother BROWNE also relied on those judgments of this Court which give effect to a Fiscal's transfer, so as to make it speak from the date of the sale under the writ.

There were no reasons given for the judgment in the Negombo case of 1882, and as that was before the Civil Procedure Code, I do not think it can help us. We have to consider the 289th section of the Civil Procedure Code, which enacts, "the right "and title of the judgment-debtor, or of any person holding under "him, or deriving title through him to immovable property sold by "virtue of an execution, is not divested by the sale until the "confirmation of the sale by the Court and the execution of "the Fiscal's conveyance. But if the sale is confirmed by the "Court and the conveyance is executed in pursuance of the sale, "the grantee in the conveyance is deemed to have been vested "with the legal estate from the time of the sale." What is meant by the words "legal estate," which are foreign to the Roman-Dutch law ? This section must be construed in reference to those which follow it, which limits the mode of user to the person in possession, be he the execution-debtor or the Fiscal as the purchaser's agent.