

I wish to add that I am quite unable to understand how the action in which the premises were bought and sold in execution of the judgment can be considered a pending one, so as to be affected by the provisions of section 3 of the Civil Procedure Code. Execution happened more than twenty years ago.

BROWNE, J.—

On 16th May, 1870, Martelis leased the land for twenty years. On 31st August, 1871, under a writ against him in the action 4,567, D. C., Negombo, plaintiff, not as execution-creditor, but as an outsider, bought the lessor's reversionary interest, but did not cause the Fiscal to execute a conveyance in his favour. On the 11th August, 1874, the plaintiff purchased the unexpired term of the lease and entered into possession, and possessed by himself or his lessee for the rest of the period of the original lease, *i.e.*, to 16th May, 1890, and thereafter until 28th February, 1892, when he was evicted by defendant. Martelis, eleven days subsequently to this eviction (11th March, 1892), professed to sell to defendant the land by a deed which defendant registered on the following day, the 12th. On the 10th May, 1893, plaintiff obtained his Fiscal's conveyance, and sued on the 5th September, 1893, for declaration of his title and ejectment of defendant.

Question has been raised whether the Fiscal, after the passing of the Civil Procedure Code, could legally have executed this conveyance without the sale having been confirmed by the Court under the provisions of section 283.

For the defendant it is submitted that the granting of the conveyance was a step in the procedure of the action, and that, as under section 3 of the Civil Procedure Code every action pending in any court on the 1st August, 1890, should be proceeded with to final judgment and execution, under the provisions of the Code confirmation of the sale was necessary, since the Code had repealed the provisions of part 9, sections 47-58, of the Fiscals' Ordinance, No. 4 of 1867.

For the plaintiff it is contended that the right or privilege of the plaintiff to obtain this conveyance, and the liability of the Fiscal to execute and grant it, was saved from repeal in his favour by section 2 of the Code.

I hold that the latter contention must prevail. It is not shown that the action 4,567 was still pending on the 1st August, 1890. The last entry in its journal is of date 12th December, 1871, and apparently shows that the creditor then received payment in satisfaction of his decree.