

Defendant, in answer, objected to the sufficiency of the declaration, in that the sale of the trees to plaintiff "is null and void, "plaintiff's vendor not having any title in them to convey, he not "having taken out Fiscal's transfers for the same." And at the trial a preliminary issue of law was stated apparently by the Court : "Is the sale of 8th June, 1893, to plaintiff good, in absence of Fiscal's transfer?" Defendant further answered that plaintiff had not acquired title to the soil, in that he had not been substituted plaintiff on the original record, nor obtained the sanction of the Court to bid, and the Court framed another "preliminary issue of law and fact" thereon : "Did plaintiff's purchase of 11th July, 1893, pass title to plaintiff?" But defendant did not offer the proofs necessary to sustain such plea, and it is unnecessary to consider it.

Apparently plaintiff had obtained his transfers ere the trial and was ready to produce them, but the learned District Judge held that, as under section 289 the right and title of the judgment-debtor to property sold is not divested by the sale until the confirmation of the sale by the Court and execution of the plaintiff's conveyance, plaintiff had no title to the land when he filed his plaint, and so had no right to institute his action, which he accordingly dismissed with costs.

Now, as regards actual title to the land, this Court has, in accordance with the subsequent provision in section 289 that on subsequent execution of the Fiscal's conveyance the grantee is deemed to be vested with the legal estate from time of sale, frequently upheld as good a title originally imperfect for want of intermediate Fiscal's conveyance, but subsequently perfected by its having been obtained (*9 S. C. C. 32 and 92, 1 S. C. R. 73, 2 C. L. R. 192*), and I see no reason whatever why a plaintiff may not, before so perfecting a title, *i.e.*, when he has, not no title at all to land, but an imperfect title, capable of being easily perfected, institute an action to enforce his rights under that title against a disputant.

The action 11,092, District Court of Negombo (*S. C. M., 15 June, 1888*), was remitted by this Court with liberty to plaintiff to *obtain and* produce the Fiscal's conveyance necessary to complete her title, and apparently the plaintiff in 16,716, District Court of Negombo (*9 S. C. C. 92*), on being ousted in January, 1889, instituted that action ere he obtained his Fiscal's conveyance on 19th March, 1889. Such an action is of course instituted at the risk of the title being still imperfect at trial, and of its dismissal by reason thereof.

I would set aside the decree, with costs, and remit the action for trial.