

WITHERS, J.—

I understand the facts to be briefly as follows.

In the execution of a judgment against one Podi Sinho and one Avis de Silva, the execution-creditor, Harmanis Appu, caused to be seized and sold some thirty-two trees growing in a garden known as Maginagewatta, and himself became the purchaser at the Fiscal's auction. The sale under the writ took place on 7th June, 1893.

Before obtaining a Fiscal's certificate of transfer the buyer assigned his interest in the said thirty-two trees to the plaintiff. Indeed, his assignment was made on the 8th of June, the very next day.

Harmanis, the said execution-creditor, on the same day assigned the unsatisfied balance of his judgment against the said Podi Sinho and the said Avis de Silva to the plaintiff. In the following month, *i.e.*, the 11th July, 1893, the soil of the said Maginagewatta was sold in execution of a writ of the said Harmanis and purchased by the plaintiff.

The plaint is so carelessly drawn up, as not to say in execution against whom—Podi Sinho or Avis de Silva—or to whom the trees first and then the land were judicially sold as described.

I imagine it to be Podi Sinho's, as the cause of action is the seizure by the defendant on the 13th of September, 1893, of this very land in execution of a judgment he had recovered against the said Podi Sinho.

The plaintiff confesses that, when he instituted this action, he had not procured a transfer from the Fiscal either of the said thirty-two trees of the land Maginagewatta or of the soil of the said garden sold under his vendor's writs.

If the Fiscal had already sold this land in July, 1893, as Podi Sinho's property, how he came to seize it again in September under a writ against that person I find it difficult to understand, as I do his conduct in selling growing timber one day and the next the soil on which the timber grows; but in that district houses and growing trees are not regarded apparently as being attached to the soil.

However, as a matter of fact, the Fiscal did on the 13th September, 1893, seize this garden and advertise it for sale at the instance of the defendant. Nine days after the seizure plaintiff objected to the Fiscal selling this land. He claimed it as his, though I cannot find the terms of his claim or of the Fiscal's reference of it to the Court. He says that after inquiry his claim so referred to the Court was dismissed. Within fourteen days, under the 247th clause of the Code, he comes forward to establish