

1897.

October 21
and

November 3.

PERERA v. PONNATCHI.

D. C., Chilaw, 1,101/1,390.

Agreement of sale of tobacco crop—*Fructus industriales*—Evidence—
Interest in land.

A tobacco crop is *fructus industriales*, and is not an interest in land requiring that any agreement respecting it should be notarial.

THE plaintiff sued the defendant for the recovery of the sum of Rs. 1,030, being balance purchase money of a tobacco crop which the plaintiff alleged had been sold by him to the defendant. The crop had not been severed from the plants at the date of the alleged sale. The defendant denied the sale, and the plaintiff led oral evidence in support of it, and obtained judgment in his favour.

On appeal by the defendant—

Dornhorst and *Rudra*, for appellant.

Wendt, for respondent.

3rd November, 1897. BROWNE, A.J.—

Till I read in the evidence in this case that tobacco leaves were plucked from “trees,” I never previously had heard that this member of the vegetable kingdom was a “tree.” I had always thought it would not be called even a “shrub,” but only a “plant.” And when in the district wherein it is largely cultivated the learned District Judge, without contradiction from parties or counsel, characterizes the thing grown as “plants,” which must be planted annually, I must hold his description to be correct, and that we are still concluded by the decision in 10,286, Negombo (Nell, 112), repeated in 1,056, C. R. Ratnapura (Ram. 1860-62, p. 101), that a tobacco crop is *fructus industriales*, and is not an interest in land requiring that any agreement respecting it should be notarial. As regards the other matters suggested in argument, I have perused the evidence and fail to find there exists contradictions which would leave me to infer the decision is erroneous.

I would affirm the judgment with costs.

LAWRIE, A.C.J.—I agree.
