1898.
September 25

NEVETHIHAMY *v.* DON ANDRIS.

C. R., Matara, 5,194.

Ordinance No. 11 of 1878—Certificate of sale issued under section 22—Evidence in support.

To entitle a plaintiff to succeed in an action *rei vindicatio* founded upon a certificate of sale granted under the Ordinance No. 11 of 1868, it is incumbent on him to prove that the grain duty was in arrear, that a seizure was duly made, that the sale took place twenty days after the seizure, and that the certificate of sale is in order.

PLAINTIFF prayed for restoration to quiet possession of a field which she claimed under her late husband. Defendant, admitting plaintiff's original title, pleaded that the field in question was sold by public auction at the instance of the Assistant Government Agent, Matara, on the 14th July, 1885, for default of payment of grain tax, when he became the purchaser. He produced the certificate of sale granted to him under the Ordinance No. 11 of 1878 in support of his title.

The Commissioner held that, though the certificate of sale was in order, it was not obtained with due notice to plaintiff, nor had he been permitted to take the produce of the field, and that his first attempt to exercise rights under the certificate was in 1898, immediately previous to plaintiff's action.

The Commissioner entered judgment for plaintiff.

Defendant appealed.

Elliott, for appellant.

Schneider, for respondent.

Cur. adv. vult.

25th September, 1898. BROWNE, A.J.—

It has been held by BONSER, C.J. (374, D.C., Ratnapura, *S. C. M. 26th Sept., 1896;* and 100, C. R., Galle, *S. C. M. 9th March, 1898*), that the mere production of a certificate of sale issued under section 22 of Ordinance No. 11 of 1878 does not dispense with proof that the duty was in arrear, and that a sale took place in accordance with the Ordinance. For what the Ordinance, section 22, says is, " If immovable property be sold for non-payment, &c., " the certificate shall vest the property sold in the purchaser free " from all encumbrances."

It is essential under section 18 for a sale under the Ordinance that the property should be seized, and when sold should be sold at a time not less than twenty days from the time of such seizure.

Therefore it is necessary always to prove that the seizure was made, and that the sale was not held until twenty days thereafter

had expired. No such proof was here adduced, and proof of title thereby fails, even allowing that the other defect in the first line of certificate was cured by the oral testimony.

Then, has defendant proved title by prescriptive possession? He is brother of plaintiff's deceased husband, and has to give clear proof that he has created by possession adverse to her a title superseding that which originally belonged to her husband. In view of the evidence adduced by the plaintiff, I cannot say that he, as defendant, has apparently been careful to swear distinctly, in addition to his evidence "I possessed" (which of course in one sense he, as a male, would do, and she would not), that he retained the whole benefit of the cultivation for himself for over ten years.

I do not assume or suspect aught against him. I say only he has failed in his proof to show plaintiff has been divested of whatever title she originally had.

I affirm with costs.