SIDORIS SILVA *v.* PALANIAPPA CHETTY.

1902.
February 17.

D. C., Kalutara, 1,710.

Drawing up of formal decree—Civil Procedure Code, s. 188—Power of judge to sign decree according to judgment pronounced by his predecessor.

Nothing in section 188 of the Civil Procedure Code disqualifies a judge of a District Court to draw up and sign a decree according to judgment pronounced by his predecessor in office.

IN this action plaintiff prayed for a release of the seizure of certain lands made under writ No. 1,545. The issue agreed to was "whether plaintiff at date of seizure was in possession of "three-tenths of Addaragewatte and house thereon, one-twelfth "of Bulugahawatta, and the entirety of Oduwaragewatta."

By consent of parties, plaintiff was allowed on the trial day (24th April, 1897) to confine his evidence to Oduwaragewatta.

The District Judge (Mr. J. D. Mason) found in favour of plaintiff as regards his title to Oduwaragewatta and the house thereon, and ordered their release from seizure. He fixed a day for trial as regards the other two lands.

The case was then heard by Mr. Mason's successor, Mr. S. G. Roosmalecocq, who, by his judgment dated 27th February, 1900, dismissed the plaintiff's action "so far as it concerns the seizure of the lands called Addaragewatte and Bulugahawatta." He refused to enter a decree in plaintiff's favour as to Oduwaragewatta and the house thereon, because he thought that section 188 of the Civil Procedure Code, which enacted that "a formal decree bearing "the same date as the judgment shall be drawn up as soon as may "be after the judgment is pronounced," did not permit him to enter a decree in terms of Mr. Mason's judgment delivered on 3rd May, 1897.

Plaintiff appealed.

H. Jayawardene, for appellant.

Dornhorst and *Van Langenberg*, for respondent.

17th February, 1902. BONSER, C.J.—

This is an action under section 247 of the Civil Procedure Code, in which an unsuccessful claimant in the execution proceedings is the plaintiff, and the judgment-creditor is defendant. The judgment-creditor sought to make out that a garden called Oduwaragewatta and a house were the property of the plaintiff's

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brother Sadris. The plaintiff also complained that certain lands in which he held shares had been seized, and as regards this last matter, I think the District Judge was right in holding that there was no cause of action, because what was seized left enough to satisfy the shares claimed by plaintiff. But the District Judge dismissed the plaintiff's action altogether.

It appears that this case came on originally before Mr. Mason, who was then District Judge, and he tried one of the issues first, viz., the issue as to the title to the garden, and the result of this trial, in the opinion of Mr. Mason, was that the plaintiff had made out his case, and he accordingly gave judgment in his favour, and adjourned the hearing of the other issues to another day. Before that day arrived he ceased to be District Judge, and was succeeded by Mr. Roosmalecocq. Mr. Roosmalecocq found that the plaintiff was clearly entitled to the house, but declined to enter up a decree in accordance with his predecessor's judgment as to the garden, on the ground that "if Mr. Mason failed "to have a decree entered according to the judgment, he alone was "responsible."

It seems to me that he took an erroneous view of his duty. The drawing up of a decree is a ministerial act, not a judicial act. It is merely stating in legal language the judgment already delivered, and that that judgment was delivered by his predecessor makes no difference. The decree can be drawn up by any person who for the time being was holding the office of District Judge.

We think, therefore, that the appeal should be allowed and a decree entered up in respect of the garden and the house. Mr. Dornhorst, who appeared for respondent, did not attempt to contest the plaintiff's right to the house, but he did attempt to contest Mr. Mason's finding as to the ownership of the garden. We see no reason for holding that Mr. Mason came to a wrong conclusion. The decree will be reversed as to the garden and the house, and plaintiff will have his costs in the Court below, and he will have no costs in this Court.