1942 *Present :* **Howard C.J.**

TISSAHAMY *v.* PERERA.

188—C. R., Badulla, 10,307.

Estoppel—Fiscal's sale—Bid by plaintiff—Purchase by defendant—estoppel against plaintiff.

At a Fiscal's sale, the plaintiff made two bids for a property, which was knocked down to the defendant. The substituted defendant stated in his evidence that "whether plaintiff bid or not we would have purchased unless the price went very high".

Held, that the plaintiff was estopped from claiming title to the property as against the defendant.

APPEAL from a judgment of the Commissioner of Requests, Badulla.

N. K. Choksy (with him *Ivor Misso*), for the plaintiff, appellant.

Cyril E. S. Perera, for the defendant, respondent (substituted).

Cur. adv. vult.

[1] *33 N. L. R. 71.*

June 1, 1942. HOWARD C.J.—

This is an appeal by the plaintiff from a judgment of the Commissioner of Requests, Badulla, dismissing his action with costs. The learned Commissioner has decided in the plaintiff's favour an issue as to whether the latter had prescribed to the land in dispute. He has also held that the plaintiff is estopped from denying the title of the original defendant who bought the land in question at a Fiscal's sale. The only question for decision is whether the Commissioner was right in coming to the conclusion that the plaintiff was estopped from denying the title of the defendant.

It is conceded by the plaintiff that he was present when the land was sold by the Fiscal. The sale took place on the land itself. The plaintiff, though present, made no claim to any portion of the land. In fact he offered two bids. In spite of this conduct on the part of the plaintiff his Counsel contends that he is not estopped from denying the title of the original defendant, who purchased the property at the auction. He bases this contention on certain statements made by the substituted defendant when he gave evidence. In cross-examination, the latter stated as follows :—

> "On a writ against brother-in-law the land was sold and my wife bought. The plaintiff bid twice. His bidding did not influence my conduct. I knew the land when it belonged to father-in-law and that it was bequeathed to brother-in-law. Whether plaintiff bid or not we would have purchased unless the price went very high."

Counsel for the plaintiff maintains that the inference to be drawn from this evidence is that the defendant's purchase at the sale was independent of the conduct of the plaintiff in bidding. The defendant was not therefore induced to purchase by the conduct of the plaintiff. The latter, in these circumstances, is not estopped from denying the title of the defendant.

A number of authorities have been cited. In *Ukku Banda v. Karupai*[1] it was held that, in order to establish an estoppel by conduct by silence, the person who is sought to be estopped by reason of his silence must be proved to have intended to create a false impression on the person who sets up the estoppel and that he caused him thereby to do a particular act. The facts in this case were that a puisne incumbrancer, who was not bound by a mortgage decree, was present at the execution sale and was silent. De Sampayo A.C.J. gave the judgment of the Court and held that in the circumstances of the case the defendant was not estopped from asserting his title. In the course of his judgment, the learned Judge in referring to the conduct of the defendant says :—

> "Even assuming that she was among the circle of people who were attracted to the spot by the sale, it is quite certain that she was not there as a bidder, nor did she say or do anything to indicate to any person that she had no objection to the sale. She was in fact only silent, and it is contended on behalf of the plaintiff that she should have made her claim to the land publicly. Now, this class of estoppel

[1] *25 N.L. R. 204.*

> by conduct is generally very difficult to apply. From all the decisions on the subject, two clear propositions emerge: (1) that the person who is sought to be estopped by silence must be proved to have intended to create a false impression on the person who sets up the estoppel, and (2) that he caused him thereby to do a particular act."

In the present case the plaintiff was not only silent but bid twice, thereby indicating that he had no objection to the sale. In *Rodrigo v. Karunaratne*[1] it was held that, to establish an estoppel, it must be proved that the action taken by the party seeking to establish the estoppel was directly connected with the false impression caused by the representation or conduct of the party sought to be estopped. The representation or the conduct producing the impression must be, in effect, an invitation to the person affected by it to do a particular act. But it need not be proved that the party sought to be estopped knew the truth about the facts which he by his statement or his conduct misrepresented. In the course of his judgment in this case, Bertram C.J. cited with approval the following passage from the judgment of Brett J., in *Carr v. The London & North-Western Railway Coy*[2]:—

> "Another proposition is that, if a man, whatever his real meaning may be, so conducts himself that a reasonable man would take his conduct to mean a certain representation of facts, and that it was a true representation, and that the latter was intended to act upon it in a particular way, and he, with such belief, does act in that way to his damage, the first is estopped from denying that the facts were as so represented."

The case of *Caruppen Chetty v. Wijesinghe*[3] is also very much in point. In this case the defendant was present at the Fiscal's sale but deliberately refrained from notifying his title to the purchaser. The Commissioner of Requests, however, held on the evidnce that the defendant's silence on the occasion of the sale to the plaintiff was due to a deliberate intention on his part to deceive the plaintiff for his own emolument. Wood-Renton J. was not prepared to say that the finding was wrong. It was argued for the defendant that there was nothing to show that the defendant's silence was the proximate cause of the plaintiff's purchase. Wood-Renton J. dealt with this argument in the following words:—

> "One has merely, I think, to ask the question whether if the respondent had disclosed his interest in the land, the appellant would have purchased it as if it were an unencumbered property, in order to see the untenable character of this argument."

Wood-Renton J., in these circumstances, held that the defendant was estopped from setting up his title against the plaintiff. In *Fernando v. Fernando*[4] it was held that it was essential, in order to create an estoppel by acquiescence, to show that the plaintiffs, knowing that a violation of their rights was in progress, stood by and so misled the first and second defendants. In this case there was no evidence of any silence or inaction on the part of the plaintiffs on any occasion when it was their duty to assert their rights.

[1] *21 N. L. R. 360.*
[2] *(1875) 10 C. P. 307.*
[3] *14 N. L. R. 152.*
[4] *14 N. L. R. 155.*

Applying to the present case the principles formulated by the various authorities I have cited, the evidence proved that there was more than mere silence on the part of the plaintiff. He actually made two bids for the property. Any reasonable person would take such conduct to mean that the plaintiff had no interest in the property. Was the defendant intended to act upon it in a particular way, that is to say, by a purchase of the property ? The answer to this question is supplied by the passage I have cited from the judgment of Wood-Renton J. Would the defendant have purchased if the plaintiff had disclosed his interest in the land? The substituted defendant also stated in re-examination that if plaintiff claimed the land or part of it the Fiscal would not have sold it and that, by his bidding, he, the defendant, thought plaintiff admitted title of Pablis Appuhamy.

For the reasons I have given, I have come to the conclusion that the Commissioner came to a right decision. The appeal is, therefore, dismissed with costs.

Appeal dismissed.