

Present: Middleton J. and Wood Renton J.

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ABEYARATNA v. PERERA.

191—D. C. Colombo, 32,296.

Sale by an auctioneer—Order to Fiscal under s. 287, Civil Procedure Code, to deliver possession—Inherent power of Court to enforce sale.

A purchaser at an execution-sale held by an auctioneer under section 201 of the Civil Procedure Code is not entitled to an order under section 287 directing the Fiscal to deliver over to him possession of the property purchased, as section 287 is concerned only with Fiscal's sales.

The Court has an inherent power to direct delivery of possession to the purchaser and render the sale effectual.

THE facts are set out in the judgment of Wood Renton J.

H. A. Jayewardene, for the substituted plaintiff, appellant execution-purchaser.—The fact that the sale was held by an auctioneer does not deprive the execution-creditor of his right to get a writ of possession. Section 287 of the Civil Procedure Code is not confined to Fiscals' sales only. In any case the Court has an inherent power to render the sale held under its orders effectual. Counsel cited *Kalamea v. Harperink*.¹

No appearance for the respondent.

Cur. adv. vult.

January 31, 1912. WOOD RENTON J.—

In this case the original plaintiff obtained a judgment against the defendant on a mortgage bond, and an order that the sale of the mortgage properties should be conducted by a private auctioneer who was specially authorized under section 201 of the Civil Procedure Code to grant conveyances to purchasers. Subsequently the plaintiff assigned the decree in his favour to the substituted plaintiff, who is the present appellant. The decree in the action on the mortgage bond was one for payment of the sum secured by it, or in default thereof for the sale of the mortgaged properties in the mode above mentioned. At the sale the appellant, with the sanction of the Court, bid for and purchased part of the property sold, and obtained a conveyance from the auctioneer. The question raised by this appeal is whether he is entitled, under section 287 of the Civil Procedure Code, to an order directing the Fiscal to deliver over to him possession of the property purchased. The defendant was examined, at the instance of the appellant, under section 219 of the Code of Civil Procedure, in the District Court, and gave the following evidence: "What I did mortgage was a coconut and cinnamon property that is now in my possession. I have leased it

¹ 36 Cal. 320.

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out on a notarial lease. It was prior in date to the mortgage, but I did not mention the lease to the mortgagee."

The learned District Judge held that there is nothing in the evidence to show who is in possession of the property, and that, in any case, section 287 applies only to Fiscal's sales. He accordingly disallowed the appellant's application under section 287. I agree with the learned District Judge that section 287 is concerned only with Fiscals' sales. But I venture to think that there is evidence that the defendant, in view of what he himself said on the subject, is in possession of the property in question, and I do not see why he should not be noticed by the District Court to show any cause that he may have against his being ordered to deliver over possession to the appellant. The sale has taken place in conformity with the directions contained in a decree which is certainly binding on him, and the Court must have inherent power to render that sale effectual.

I would set aside the order under appeal, and send the case back to the District Court for the purpose of the defendant being noticed to show cause, if he has any to show, why the appellant should not be put in possession of the property purchased. There should be no costs of this appeal or of the original proceedings in the District Court, since the appellant was not entitled to the remedy for which he applied under section 287. The costs of the subsequent proceedings in the District Court should be in the discretion of the District Judge.

MIDDLETON J.—I concur.

Set aside and sent back.
