

1897.

August 13.

SULYMAN *v.* SOMANADEN *et al.*

D. C., Batticaloa, 1,662.

Substitution—Assignment of decree—Remedies of assignee—Institution of fresh action—Res judicata.

It is discretionary with a District Judge to substitute on the record the assignee of a final decree in place of his assignor. When such substitution is disallowed by the Judge, the assignee may resort to the remedy of a fresh action against the judgment-debtor.

THE plaintiff in this case was assignee of a decree in another action against the defendant. He applied to be substituted plaintiff in that action, and the application was disallowed. Thereupon he instituted the present action to recover from the defendant the amount of the decree in the former. The District Judge, being of opinion that the plaintiff having failed in his application in the former action was estopped upon instituting the present action, dismissed the present action with costs. The plaintiff appealed.

13th August, 1897. WITHERS, J.—

It seems to me that this case is covered by the decision in *Y. B. Dinguruhamy v. P. Guruge Sinno*, D. C., Galle, 53,288, reported in 8 S. C. C. 100.

As Chief Justice Burnside there observed, it is within the discretion of the Judge whether he will substitute on the record the assignee of a final decree.

The Court refused to substitute the present plaintiff in the place of his assignors on the record. What other remedy has he than an *actio judicati*? The District Judge says that having elected to apply for substitution in order to execute the decree assigned to him, he is estopped from bringing an action on the decree. He

ought, in the opinion of the Judge, to repeat his application on further and better material. But such leave was not granted to him. It seems to me that the plaintiff is quite within his rights. I would set aside the judgment of the lower court and remit the record for the trial and determination of the remaining issues. Costs of appeal to go to the successful party.

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WITHEBS, J

BROWNE, A.J.—

I agree that the judgment should be set aside and remitted for the trial of the issues already settled, and any further issues which may appear necessary. As *8 S. C. C. 100* was decided before the Civil Procedure Code came into operation, I prefer to say we are concluded by the decision in *2 C. L. R. 207*, and I think it not impossible that the judgment of my brother therein may suggest to the present District Judge additional issues for trial.
