

RODRIGO v. LIVERA.

D. C., Negombo, 763.

1896.

July 17.

Crown grant—Facts to be proved by grantee in an action rei vindicatio.

In an action *rei vindicatio* by a person deriving title from a grantee under the Crown, the plaintiff must prove some entry on, or exercise of right over, the land by his vendors "in addition to the bare fact of its being included in the Crown plan" attached to the grant.

THE plaintiff claiming title to a parcel of land under a grantee of the Crown complained that the defendant had encroached on a portion of the land. He sought to be declared entitled to the portion encroached upon and to eject the defendant therefrom. The defendant claimed the portion in question by right of prescriptive possession for over thirty years. The District Judge held as follows:—"The encroachment in question is within the boundary of the Crown grant to plaintiff's predecessors in title, and the *onus* is on defendant to show that he has acquired a better title by prescription, in spite of the total failure on plaintiff's part to prove the alleged act of encroachment by defendant." He further held, on the facts, that the defendant had satisfactorily proved prescriptive possession as averred by him, and dismissed the plaintiff's claim. The plaintiff appealed.

Wendt, for appellants.

Dornhorst, for respondent.

Cur. adv. vult.

17th July, 1896. WITHERS, J.—

I would affirm this judgment, though not perhaps for the reasons given by the District Judge.

I am prepared to hold that the plaintiff ought to have proved some entry on, or exercise of right over, the disputed piece of land by his vendors in addition to the bare fact of the land being included in the Crown plan of 1864.

But there is no evidence that any of his predecessors in title ever had possession or enjoyment of the piece of land in dispute.

On the other hand, it is proved by plaintiff's witnesses that the defendant soon after his purchase cleared the land, planted it up, and put up a fence on the site of the old badawetiya.

The fence was put up, they say, some eight years ago.

Further, there is evidence that this fence of the old badawetiya had been for many years recognized as the southern boundary at the point of contact of the plaintiff's purchased property with the little piece in dispute.

LAWRIE, J.—Agreed.