1905.
October 12.

SADRIS APPU *et al.* *v.* CORNELIS APPU *et al.*

D. C. Galle, 7,096.

Estoppel—Judgment-creditor allowing his own property to be sold as property of his judgment-debtor—English Law—"Intentionally" —Evidence Act, section 115.

Some of the plaintiffs in this case were the execution-creditors, and the first defendant was the execution-debtor in another case. On a writ issued against him by his execution-creditors in the other case the first defendant pointed out for seizure and sale by the Fiscal a land belonging to the execution-creditors themselves. The execution-creditors did not object to the sale, but allowed it to proceed, and the property was purchased by the second defendant at the Fiscal's sale, and he sold it to the first defendant. In an action by the plaintiffs against the defendants to vindicate the said land—

Held (affirming the judgment of the District Judge), that the plaintiffs who were execution-creditors in the previous action were estopped by their conduct from showing that the property, at the date of sale, was their property and not the property of their judgment-debtor, the first defendant.

LAYARD, C.J.—Section 115 of "The Evidence Act" enacts the same law as the English law on the subject of estoppel.

APPEAL from a judgment of the District Judge of Galle.

Some of the plaintiffs in this case were the execution-creditors, and the first defendant the execution-debtor in another case. When writ issued at the instance of the execution-creditors in that case the judgment-debtor pointed out to the Fiscal for seizure and sale a land belonging to the execution-creditors, who allowed the sale to proceed without any objection, and the property was purchased by the second defendant, who sold it to the first defendant. The plaintiffs instituted this action against the defendants to vindicate the land sold by the Fiscal. The District Judge held that as many of the plaintiffs as were execution-creditors in the previous action, were estopped by their conduct from claiming their shares in the land. The plaintiffs appealed.

H. J. C. Pereira, for plaintiffs, appellants

H. A. Jayewardene, for defendants, respondents.

12th October, 1905, LAYARD, C.J.—

The plaintiffs, twenty-nine in number, who are co-owners, instituted this action to recover the land claimed in the plaint, and the District Judge on the 29th day of March, 1905, gave judgment for plaintiffs, excepting the shares claimed by the appellants, the first, third, eleventh, sixteenth, and eighteenth plaintiffs, and the first defendant was decreed entitled to these shares. The District Judge has decided that the first defendant surrendered for seizure and sale under a writ issued against him at the instance of the appellants the land claimed by the plaintiffs in this suit, although the first defendant had no title to the same, it being the property of the plaintiffs. The land was sold under the appellants' writ, and at the Fiscal's sale was purchased by the second defendant, who subsequently sold it to first defendant. The District Judge has held that the appellants cannot now claim their interest in the land sold under the writ, as the sale was confirmed by the Court and is therefore binding on the appellants, who were parties to the suit under which the execution issued. The respondents' counsel supports the judgment of the District Judge on the broad principle that the appellants have by their act in allowing the property to be sold under their writ, and by their omission in not staying the sale under their writ, caused or permitted the purchaser at such sale to believe that the property was not the appellants' property, and to act upon such belief, and that they cannot be allowed, in this suit between themselves and the purchaser at the Fiscal's sale and his vendee, to say that the property is their property and not the property of their execution-debtor, the first defendant.

It is clear that the appellants have been benefited by the transaction, because the amount due to them under their writ has been reduced by the proceeds realized by the Fiscal's sale. The appellants' counsel, however, argues that they have not drawn the money out of Court, but left it in Court standing to their credit. Even then they alone can draw that money, as the Fiscal's sale has never been set aside and is still subsisting, and was in force at the date of the bringing of this action.

It is a principle of natural equity that when A allows another to hold himself out as the owner of A's property and a third person purchases it for value from the apparent owner in the belief that he is the real owner, A shall not be permitted to recover unless he can prove that the purchaser had direct notice of the real title, or that there existed circumstances which ought to have put him on inquiry which, if pursued, would have led to a discovery of it. This has been enunciated by the Judicial Committee of the Privy Council.

1905. October 12.

LAYARD, C.J.

Applying the same principle to this case, it appears to me clear that the appellants, who actually permitted their own property to be seized and sold under their own writ, over which writ they had absolute control, as the property of the first defendant, cannot be allowed now to say against the purchaser, the second defendant, or his vendee, the first defendant, that the property seized and sold under their writ was their property and not the property of the first defendant. There is absolutely nothing to show that the second defendant had direct or constructive notice that the property sold was not that of the first defendant, or that there existed circumstances which ought to have put him on his inquiry. Why should a purchaser at a Fiscal's sale suspect that the property seized under an execution-creditor's writ is the execution-creditor's property and not that of his debtor? It would never enter into the head of any reasonable man to think that an execution-creditor would allow his judgment-debt to be levied out of his own property instead of his execution-debtor's.

It appears to me that this is clearly a case of estoppel, which is defined in our Evidence Ordinance (section 115) thus: " when one person has by his declaration act, or omission intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing." The appellants' counsel argues that the word " intentionally," as used in our Evidence Ordinance, makes it incumbent on the person setting up the estoppel to prove actual intention on the part of the person to make the other person believe a thing to be true and to act upon such belief. Respondents' counsel refers us to a Privy Council case in which the similar section of the Indian Evidence Act was discussed (*I. L. R.* 20, *Cal.* 291), and in which the Judicial Committee held that the word " intentionally " was rightly inserted in the section, and made no difference in the law of estoppel as it exists in England at this day. In this particular case there can be no doubt that the appellants intentionally permitted the sale to proceed. The first plaintiff was aware before the sale that his own property was seized and was advertised for sale. He ought at once to have told the Fiscal to stay the sale and withdrawn his writ and that of the other appellants. It appears to me they are all bound by the notice to the first appellant, and they cannot be said to have not permitted their land to be sold under their own writ as the property of the first defendant. The writ was entirely under their control, and they could withdraw it at any time. The Fiscal was their agent in carrying out execution,

and they are bound by his act in holding out their property to the purchasers as the property of their execution-debtor, and they cannot shirk responsibility by saying they allowed their agent to act without any supervision on their part.

The appellants' counsel has invited our attention to rulings of this Court, in which it has been held that sale of property of a person other than the execution-debtor under a writ of execution does not prevent such person from claiming his own property, and that no estoppel arises by reason of such person not having claimed his property before such sale. That case differs entirely from this. Here the execution-creditors stand by and allow their own property to be sold as that of another under a writ of execution over which they undoubtedly have control, and they allow by their act in selling such property through the Fiscal, and by permitting such sale to go on, the purchaser at such sale to believe that the property sold is not theirs, but that of their execution-debtor. Equity demands that under such circumstances they should not be allowed to deny that the property was not that of their execution-debtor, but their own property. I think for the above reasons the appeal should be dismissed with costs.

WENDT, J., agreed.