

1902.
January 15
and 16.

GOONEWARDANA v. PEREIRA.

D. C., Colombo, 12,864.

Possessory suit by a person ousted by violence—Evidence necessary to support such a suit.

BONSER, C.J.—When a person in possession of a property has been forcibly ousted, he is entitled to maintain a possessory suit. Proof of possession and violent ouster is all that is required to support the Plaintiff. It is not necessary to prove possession for a year and a day.

WENDT, J.—In a possessory action, plaintiff may take advantage of the possession of his predecessor in title. It is not necessary that he himself should have had a year and a day's possession, where that is one of the requirements for bringing a possessory action.

ONE Jusey Perera leased the land in dispute to the plaintiff for a period of three years, commencing from 15th February, 1898. The lessor died on 18th January, 1899, and the defendants ousted the plaintiff in the following month, and plucked the nuts from the coconut trees on the land. Plaintiff brought a possessory suit on the 18th February, 1899, and prayed to be restored to possession.

The Additional District Judge (Mr. N. E. Cooke) found as follows:—

“ The defence that was pressed most at the trial was that the plaintiff had not had quiet and undisturbed possession of the premises for a year and a day immediately preceding the 18th February, because of a Police Court case in which the plaintiff was charged with causing hurt with a knife to one Hendrick. There is no doubt that Hendrick, when picking nuts in this garden on the 12th February, was hurt by the plaintiff and the plaintiff was fined for it. Hendrick states that he picked nuts on that occasion at the request of the third defendant. That solitary act by one of the defendants six days before the ouster laid in the

plaint does not amount to such a separate disturbance as precludes the plaintiff from maintaining this possessory action. (D. C., Kurunegala, No. 20,724, 3 S.S.C. 151.)

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"The evidence adduced by the plaintiff establishes that the defendants plucked nuts from the trees on the 18th February, 1899, and that the plaintiff was turned out of the land. I find that the possession by the plaintiff and the ouster by the defendants are proved.

"It is ordered that the plaintiff be restored to the possession of the premises described in the plaint, and that the defendants pay to the plaintiff as damages at the rate of Rs. 10 per month from the 18th February, 1899, until the plaintiff is restored to possession. The defendants to pay the costs of this action."

Defendants appealed.

Seneviratne, for appellants.—Plaintiff cannot maintain a possessory suit, because he has not proved quiet and undisturbed possession for a year and a day. [BONSER, C.J.—Why quiet and undisturbed possession, and why should he wait for a year and a day?] 2 *Thomson's Institutes*, pp. 513, 514, based on Vander Linden, justifies that principle. [BONSER, C.J.—Thomson has interpolated the words "by force" without good reason. They do not occur in Vander Linden.] Plaintiff alleged in his plaint quiet and undisturbed possession, but failed to prove that allegation. [BONSER, C.J., referred to the *mandament van spolie*, *Juta's Vander Linden*, pp. 101, 303; *Voet*, 43, 6, 7.]

Jayawardene, for respondent.—There was a violent forcible ouster. The police were appealed to. Plaintiff is entitled to maintain the suit.

16th January, 1902. BONSER, C.J.—

In this case we see no reason to dissent from the opinion which was formed by the District Judge on the evidence before him as to the possession of the plaintiff and the ouster by the defendants.

As regards possession for a year and a day, speaking for my own part, I am not prepared to assent to the proposition that, where there is an ouster by violence of the person who is in possession of the property, anything more is required to be proved by him than that he was in possession and that he was violently ousted.

WENDT, J.—I agree. I may add that this Court has ruled that in a possessory action plaintiff might take advantage of the possession of his predecessor in title, and that it is not necessary that he himself should have had a year and a day's possession, where that is one of the requirements for bringing a possessory action. *Noona Umma v. Ismail Lebbe* (4 S. C. C. 75), per Clarence, J., approved by Bonser, C.J., in D. C., Negombo, 2,795, 30th August, 1898.