1919.

*Present:* Schneider A.J. and Loos A.J.

BUULTJENS *v.* CAROLIS APPU.

*45—D. C. Matara, 8,467.*

*Informal lease—Is lessee to be treated as a trespasser? Monthly tenancy—Ordinance No. 7 of 1840, s. 2.*

By an informal writing which did not comply with the requirements of section 2 of Ordinance No. 7 of 1840, the plaintiff leased to the defendant one hundred and fifty coconut trees for a period of one year, and also granted him permission to put up a hut to be used as a tavern.

*Held*, that the defendant, who was in possession, must be treated as a lessee "for a period not exceeding one month" and not as a trespasser, and that the plaintiff was not entitled to institute an action for ejectment against the defendant until the contract of monthly tenancy was terminated by a month's notice.

THE facts appear from the judgment.

*Bawa K.C.* (with him *Keuneman*), for defendant, appellant.

*G. Koch*, for plaintiff, respondent.

June 17, 1919. SCHNEIDER A.J.—

From the plaint, owing to its prolixity, it is not quite possible to understand clearly what was the position which the plaintiff meant to assume in regard to what is called an "informal lease" which she had granted to the defendant. In her plaint she states that she informally leased to the defendant one hundred and fifty coconut trees, standing on an estate called Silverdale, for the purpose of drawing toddy for a period of one year, and also granted him permission to put up a "hut" to be used as a tavern and that she received the consideration in full. She alleged that the defendant coupled seventy-seven trees of those which she had actually leased, and wrongfully coupled seventy-three trees which were not leased. In respect of the trees wrongfully coupled she claimed Rs. 365.08 as damages. She prayed for an injunction restraining the defendant from tapping any trees at all; that the informal lease be declared of no force or effect in law; and that the defendant be ejected from the land. I was at first inclined to regard her plaint as indicating that the plaintiff was willing to abide by the terms of what is called the informal lease, that is, that the defendant was entitled to the possession of the one hundred and fifty trees leased, but on appeal her counsel took up the position that as the lease was informal, it was therefore invalid in law; that the defendant was not entitled to be in possession at all; and that the plaintiff's action must be regarded as one against a wrongful trespasser.

This must have been the position taken up on behalf of the plaintiff at the trial in the District Court also, because the learned District Judge has decided the case having only considered the informality of the agreement. The defendant in his answer pleaded that, in pursuance of the agreement between him and the plaintiff, he expended Rs. 600 in coupling the trees preparatory to tapping them. He claimed this sum of Rs. 600, and a further sum of Rs. 50 per day as damages sustained by him by reason of the defendant obtaining the injunction and restraining him from possessing the trees or tapping them. He also pleaded that as the plaintiff has stood by and permitted him to incur expense in coupling the trees which he had coupled, that she was estopped from pleading the Ordinance No. 7 of 1840. The parties went to trial upon six issues. No evidence was called. The learned District Judge after hearing argument made order that the plaintiff do refund the amount advanced by the defendant, and that the defendant be ejected forthwith from the land where the coconut trees leased were standing. The defendant has appealed, and the plaintiff has also raised certain objections to the decree. As the fact is that there was no lease of the coconut trees and of the "hut" for the tavern by a formal writing in conformity with the provisions of section 2 of Ordinance No. 7 of 1840, the defendant must be regarded as a lessee "for a period not exceeding one month" of the one hundred and fifty coconut trees and of the "hut," according to the provisions of section 2. This being so, the defendant cannot be treated as a trespasser until the contract of the monthly tenancy is terminated by due notice, that is, by a month's notice in terms of the law. It is a fact that no such notice was given.

Therefore, the plaintiff was not entitled to institute this action for ejectment, and the defendant is entitled to remain in possession of what was leased to him until his contract with the plaintiff is terminated legally, that is, by due notice. As the trial already had was in regard to the class of the plaintiff for ejectment, I direct that she should pay all the defendant's costs of that trial. Her action them reduces itself to one for damages, for the wrongful coupling of seventy-three trees not included in the lease, and an injunction restraining the defendant. On part of the defendant the claim is reduced to one for damages caused by the wrongful act of the plaintiff in restraining him by injunction from possessing and enjoying what was leased to him upon the footing of a monthly tenancy. I would remit the case for trial of the issues which arise upon this aspect of the case. The cost of the trial of such issues will be in the discretion of the District Judge.

The defendant will have the costs of this appeal.

Loos A.J.—

I agree to the order proposed.

*Sent back.*