Present: Lascelles C.J.

1912.

PERERA *v.* PERIES *et al.*

9—C. R. Colombo, 24,247

Lease—Action for cancellation—Abuse of property leased by lessor—Cancellation of planting agreement.

Plaintiff sued the defendants for the cancellation of a lease or planting agreement, and for damages caused by the failure of the defendant to plant coconut plants supplied to him by the plaintiff, and for further damages caused by the defendants destroying the coconut trees of the first plantation.

The defendants objected on the ground that the action was premature, as six years of the term of nine years granted by the agreement had still to run.

Held, that the plaintiff was justified in demanding the cancellation of the contract, as defendants' conduct evinced an intention no longer to be bound by the contract.

Although the conductor cannot ordinarily be ejected from the property which he has taken on lease before the expiry of the appointed term, this is permitted when the conductor has abused the thing hired to him. "Whether the destruction of the trees is attributable to malicious action on the part of the defendant, or whether it is due merely to negligence on his part, the defendant is liable to be ejected."

THE facts are set out in the judgment.

Bawa, K.C. (with him *E. W. Perera*), for the defendants, appellants.—The action is premature, as the Plaintiff is not entitled to recover damage from the defendants until after the expiration of the lease. See *De Fonseka v. Fernando*.[1] The non-fulfilment of the terms of the agreement would not justify a cancellation of the agreement. The agreement does not provide for a forfeiture.

E. W. Jayewardene (with him *F. H. B. Koch*), for the plaintiff, respondent.—The conduct of the defendants shows an unmistakable intention to ignore the terms of the agreement and not to carry out the contract. It is needless to wait till the expiration of the nine years for bringing this action. The facts in *De Fonseka v. Fernando*[1] were different.

[1] (1891) 15. *C. R.* 35.

1912.

Perera v. Peries

Apart from the terms of the contract, the plaintiff is entitled to get the agreement cancelled, as the defendants have caused great damage to the plantation.

The first defendant had no right to assign this contract to another without the consent of the plaintiff.

Counsel cited: *Voet 19, 2, 16 (Berwick 212 and 218); Halsbury's Laws of England, vol. VII., p. 438; General Bill Posting Co. v. Atkinton;*[1] *Kemp v. Beerselman;*[2] *Hoare v. Rennie.*[3]

Bawa, in reply.

Cur. adv vult.

May 31, 1912. LASCELLES C.J.—

In this case the plaintiff has sued for and recovered judgment ordering the cancellation of a lease or planting agreement between the plaintiff of the one part and the defendant of the other part, and also ordering the first defendant to pay Rs. 140 as damages for the failure of the first defendant to plant 290 coconut plants supplied to him by the plaintiff in accordance with the agreement, and also Rs. 110 for damages caused by the first defendant by destroying the coconut trees of the first plantation. From this judgment the first defendant now appeals, on the ground that the action is premature, being brought before the expiry of the term of the agreement, and when over six years of the term of nine years granted by the agreement is still to run. In my opinion the judgment is justified on either of the two following grounds. In the first place, the conduct of the defendants is inconsistent with an intention to be bound by the agreement and to carry out its terms. The learned Commissioner has found—and I entirely agree with his finding—that the plaintiff duly supplied the defendants, in pursuance of the agreement, with 290 coconut plants. The first defendant not only denies the receipt of these plants, but puts forward the alleged failure of the plaintiff to supply them as an excuse for his failure to plant the land in accordance with the agreement. Further, from the evidence of the first defendant it is plain that he has no intention of honestly carrying out the agreement. The first defendant has thus, by his acts and conduct, evinced an intention no longer to be bound by the contract. In these circumstances the plaintiff is justified in demanding the cancellation of the contract (*General Bill Posting Co. v. Atkinton*[1]). The other ground on which I am of opinion that the judgment is sound is to be found in the principle of the Roman-Dutch law, that although the conductor cannot ordinarily be ejected from the property which he has taken on lease before the expiry of the appointed term, this is permitted

[1] (1909) *A. C. 118.* [2] (1906) *2 K. B. 604.*
[3] (1859) *29 L. J. Exch. 73.*

when the conductor has abused the thing hired to him *in re conductâ male versetur* (*Berwick's Voet 212*).

In the present case the learned Commissioner has found that the defendants are responsible for the destruction by fire of the greater part of the trees of the old plantation. Now, whether the destruction of these trees is attributable to malicious action on the part of the first defendant, as there is reason to suspect, or whether it is due merely to negligence on his part, it is clear that the defendant, under the rule of the Roman-Dutch law which I have cited, is liable to be ejected. The damage caused is not of a trivial nature, or such as might easily be repaired. The destruction of these trees must inevitably detract from the value of the property at the termination of the lease. The conduct of the defendants in allowing the property to be so injured is clearly such an abuse of the position of the lessee as the Roman-Dutch law contemplates as a ground for the recision of the lease. In the view which I take of the legal effect of the first defendant's conduct, it is unnecessary to consider how far the defendants were justified in assigning to others a share of the planting agreement or lease. In my opinion the judgment of the Commissioner is justified on the grounds which I have stated, and I dismiss the appeal with costs.

Appeal dismissed.