

*Present* : Lascelles C.J.

**1912.**

SOLOMONS *et al.* v. HENDUHAMY.

12—C. R. Badulla, 1,120.

*Accession—Roots of tree projecting into the soil of another—Such soil owner has no right to the tree.*

When the roots of a tree project into the soil of another, such soil owner acquires no right in the tree, though possibly he may cut the roots of the tree.

**I**N this case the plaintiffs-appellants sued the defendant for the recovery of Rs. 25 for damages caused by the defendant having tapped and destroyed a flower of a kitul tree which plaintiffs claimed.

*J. W. de Silva*, for the appellants.

No appearance for the respondent.

1912. February 12, 1912. LASCELLES C.J.—

*Solomons v.  
Henduhamy*

This case was argued on the footing that the Commissioner of Requests had found that the disputed tree was common property, because, although it grew on the plaintiff's fence, its roots extended to, and derived sustenance from, the ditch and land belonging to George Mendis.

If the decision merely rested on this ground it could not be sustained, for when the roots of a tree project into the soil of another the soil owner acquires no right in the tree, though possibly he may cut the roots of the tree (*Masters v. Pollie*<sup>1</sup>). But I do not think that the learned Commissioner of Requests meant to hold this, though there are passages in the judgment which would bear this construction. I think he meant to hold that the tree grew on the place where the lower slope of the plaintiff's fence comes into contact with, and is undistinguishable from, George Mendis's ditch, so that the tree cannot be said to grow wholly on the plaintiffs' fence. On this finding the conclusion that the tree is common property is right. It is immaterial whether the defendant cut the flower on his own responsibility or with the authority of Mendis. In either case his action would be an invasion of the plaintiffs' legal rights, for which the plaintiffs are entitled to claim damages from him.

The defendant, on the Commissioner's findings, is liable to indemnify the plaintiffs against the damages which they have suffered owing to the defendant's wrongful action. I understand that the Commissioner accepts Rs. 25 as a reasonable estimate of the plaintiffs' loss of profit.

I set aside the judgment, and order the defendant to pay to the plaintiffs Rs. 12.50 damages and the costs of the trial in the Court of Requests and also the costs of appeal.

*Set aside.*