

1946

*Present : Soertz A.C.J.*PODIHAMY, Appellant, *and* JAYARATNE, Respondent.*174—C. R. Galle, 25,622.**Tort—A neighbour's right to sue for damages incurred by fall of tree.*

The plaintiff sued the defendant for damages sustained by him in consequence of a coconut tree which was in the possession of the defendant falling across the roof of the house of the plaintiff. The plaintiff was aware of the dangerous nature of the tree and had drawn the defendant's attention to it.

Held, that although the tree stood on a common land the defendant was liable to repair the plaintiff's damage.

¹ (1900) 6 N. L. R. 133.² (1911) 5 *Leader L. R.* 39.³ (1926) 28 N. L. R. 266.

A PPEAL against a judgment of the Commissioner of Requests, Galle.

Ivor Misso (with him *A. E. Keuneman (Jnr.)*), for the plaintiff, appellant.

N. M. de Silva (with him *G. T. Samarawickreme*), for the defendant, respondent.

Cur. adv. vult.

September 12, 1946. SOERTSZ A.C.J.—

This was an action brought to recover damages sustained by the plaintiff in consequence of a coconut tree which, admittedly, was in the possession of the defendant by arrangement among the co-owners of this land, falling across the roof of the house of the plaintiff, himself a co-owner in occupation of another portion of the land that is to say the portion on which this house stood.

The plaintiff appears to have entertained an apprehension that this tree was dangerous and he, failing to have it cut down by the defendant, invoked the aid of the Village Committee. That body, in pursuance of its powers, called upon the defendant to cut it down and intimated to him that if he failed to do so, they would have it felled. The defendant did nothing. Before the Village Committee could bestir itself into action, the fears of the plaintiff came true. The tree fell across his house.

The Commissioner dismissed the plaintiff's action on the ground that in as much as he had elected to invoke the assistance of the Village Committee he was committed to that course and had no other remedy against the defendant. He also held that the plaintiff himself could have cut down the tree and that, for that reason too, the defendant was absolved from liability. These are entirely erroneous views and Mr. Samarawickreme appearing for respondent declared that he could not support them. He, however, sought to uphold the decree on the ground that there was contributory negligence on the part of the plaintiff. I shall deal with that in a moment, but before doing that I should wish to say that apart from the principle involved in the maxim *sic utere tuo ut alienum non laedas*, there devolved on the defendant a duty to take care at least from the time his attention was drawn to the dangerous nature of the tree. The tree, although standing on a common land, was, so far as the questions that arise in this case are concerned, his responsibility. He is, therefore, liable to repair the plaintiff's damage.

There are circumstances in which a threatened neighbour may resort to self-help and cut down a dangerous tree, but the fact that he may do so does not involve the proposition that he must do so or suffer the consequences. The fact that the plaintiff has a certain right in respect of a matter does not absolve the defendant from his obligation in respect thereof.

In regard to the plea set up for respondent that there was contributory negligence on the part of the plaintiff, there is nothing I can find to support it. I allow the appeal and direct that decree be entered for the plaintiff for the sum of Rs. 90 agreed upon with costs in both Courts.

Appeal allowed.