

PERERA v. RODRIGO.

1878.  
Jan. 17.

*D. C., Kandy, 76,122.*

*Lease—Specific performance of—Holding over.*

A lessee is not entitled by virtue alone of the title to possession passed to him by the lease to maintain an action of ejectment against a stranger to the lease in respect of lands, of which he, the lessee, was never put into possession by his lessor.

*Semble*, that where a person is put into possession of land by the owner in pursuance of an invalid parol lease for a term of years, he cannot be ejected by that owner until his holding, whatever it is, has expired, or has been put an end to by a proper notice.

THE plaintiff, by virtue of a deed of lease dated 30th January, 1878, executed by persons not made parties to the suit, sought in his libel to be put and placed in possession of certain lands, alleging that defendant was in forcible possession of the same. The defendant resisted the action on the ground that he had a prior verbal lease from the plaintiff's lessors yet to run for five years, and that, having effected material improvements on the demised premises, he was entitled to retain possession of them, if not for the full period of the lease, at all events until he was repaid a proper compensation for the improvements in question.

The District Judge gave judgment for plaintiff as prayed.

On appeal this decree was reversed.

*Van Langenberg*, for appellants.

*Dharmaratne*, for respondents.

17th January, 1878. PHEAR, C.J.—

The plaintiff in this case has shown no cause of action against the defendant. He has entered into a contract of lease with the owner of the lands which are the subject of suit, and has not yet obtained from that owner performance of the contract. To obtain specific performance he must bring his suit against the person

1878. with whom he made the contract, not against a stranger to that  
*Jan. 17.* contract, as the defendant is. And so far as the evidence which has  
HEAR, C.J. been given in the case goes, it would appear that even as against  
the owner of the land the defendant is in rightful possession. He  
appears to be holding over after the expiration of a definite term,  
and as he has been allowed to hold over, he can only be called upon  
to give up possession by the owner after his present indefinite term  
had been duly put an end to by such notice as under the circum-  
stances may be requisite. In other words, as against the owner of  
the land who let him into possession, he does not become a tres-  
passer until the period of his holding, whatever it be, has elapsed.  
And the plaintiff in this suit does not even represent the owners.  
At best he has got such right of action against the owner as the  
contract of lease gives him.

The decree which is appealed against is set aside, and the  
plaintiff's suit dismissed with costs.

