

ANDRIS APPU v. SILVA *et al.**C. R., Galle, 3,945.*

1896.

September 21.*Time, calculation of—Term of lease.*

In the case of a lease for three years commencing from the 16th December, 1892, where the lessee had entered into possession of the land leased on that day, *held*, that in the calculation of the term of the lease that day was to be included, and that the lease terminated on the 15th December, 1895.

THE facts of the case appear in the judgment.

Jayawardene, for appellant.

Asserappa, for respondent.

21st September, 1896. BONSER, C.J.—

This is an action by the plaintiff against the defendant for unlawfully plucking certain cocoanuts which the plaintiff alleges were his. The Commissioner found for the plaintiff and has given him Rs. 5 as damages. The defendant appeals. It seems that the plaintiff on the 18th August, 1892, took the lease of a garden from the owner, which lease was for a term of three years commencing from the 16th day of December, 1892. The question is, on what day did the lease expire? If the 16th of December is to be included the lease would expire on the night of the 15th December, 1895. If that day is to be excluded, the lease would expire on the night of the 16th December. Now, the plucking complained of took place on the 16th December, 1895. It appears that the defendant took a lease of this garden from the owner as from the expiration of the plaintiff's lease. As I said before, it was on the 16th December, 1895, that the defendant plucked the nuts; so that the question whether he was justified or not in plucking the nuts will depend on whether the plaintiff's lease had been determined or not. Now, it appeared in evidence that the plaintiff entered into possession of the garden on the 16th December, 1892, which shows that that day ought to be included in the lease, and that that was the intention of the parties. That being so, at the time that the defendant plucked these nuts the plaintiff's lease had expired and the defendant's lease had begun to run. It was not suggested that there was any custom of the country which allowed the lessee, after the expiration of his lease, to pluck cocoanuts which had ripened during his lease. In the absence of any such custom or usage I must hold that the right to the nuts on the trees passed to the defendant with his lease.

The judgment is set aside and the plaintiff's action dismissed.