

SITTRAVELU v. SINNETAMBY.

C. R., Batticaloa, 3,069.

1903.

June 9.

Prescription—Action for damages for breach of an agreement—Ordinance No. 22 of 1871, ss. 7, 10.

An action for damages for non-fulfilment of an agreement in writing is not prescribed within two years, and is not within the scope of section 10 of the Ordinance No. 22 of 1871. It comes under section 7.

IN this case the plaintiff sued the defendant for damages for breach of an agreement in writing. The agreement was that the defendant should build a house for the plaintiff before the end of August, 1899, and in default to pay him Rs. 150 as damages. The plaintiff brought the action on the 24th November, 1902. The Commissioner held that the action was prescribed and dismissed the plaintiff's action.

He appealed.

1903. *Wadsworth*, for appellant, submitted that the action was one for breach of an agreement, and thus falls under section 7 of Ordinance No. 22 of 1871. The actions for damages mentioned in section 10 of the Ordinance only refer to cases where there is no contract, express or implied. *Williams v. Baker*, 8 S. C. C. 166. Though the plaintiff prays for damages, still the cause of action is the non-fulfilment of the agreement.

H. A. Jayawardene, for respondent.—Section 10 says that no action for damages can be maintained unless brought within two years. There is no restriction as to the class of actions (5 S. C. C. 29).

Cur. adv. vult.

9th June, 1903. GRENIER, A.J.—

I am of opinion that this action falls under section 7 of Ordinance No. 22 of 1871, and that it is therefore not barred. The action is clearly on an agreement in writing, and the plaintiff seeks to recover the sum of Rs. 150 as damages for breach of it.

I find that the plea was not taken in the answer, but was put forward for the first time on the day of trial. I would set aside the judgment of the Court below and send the case back for trial. The appellant will have his costs of this appeal.
