1906. *October* 2.

Present: The Hon. Mr. A. G. Lascelles, Acting Chief Justice, and Mr. Justice Middleton.

PLESS POL *v.* LADY DE SOYSA *et al.*

D. C., Kandy, 17,549.

"Cause of action," meaning of—Where it arises—Contract made in one place—Performance at a different place—Jurisdiction of Court of place of performance—"Cause of action"—"Wrong"—Civil Procedure Code, ss. 5 and 9 (c).

The plaintiff and the defendants entered into a contract at Colombo which was to be performed at Kandy. The plaintiff, alleging a breach of the contract by the defendants, sued them for damages in the District Court of Kandy. On objection taken to the jurisdiction of the court to entertain the action,—

Held (affirming the judgment of the District Judge), that the District Court of Kandy had jurisdiction to entertain the action.

LASCELLES A.C.J.—In order to give a Court jurisdiction it is not necessary under the Code that the whole cause of action, namely, both the agreement and the breach, should have taken place within its jurisdiction.

LASCELLES A.C.J.—A failure to perform a contract is a "wrong" within the meaning of the definition of the expression "cause of action."

English decisions as to the meaning of the expression "cause of action" not followed.

THIS was an action instituted by the plaintiff in the District Court of Kandy for damages for breach of contract. The plaintiff alleged that the defendants agreed at Colombo to lease to the plaintiff the premises called Haramby House, situate at Kandy, for a period of ten years commencing from 15th June, 1905, as soon as certain works, buildings, alterations, and improvements had been effected; that the defendants agreed to finish the said works, buildings, alterations, and improvements, at their own expense, on or before the 15th May, 1905, and in default to pay damages at the rate of Rs. 150 a day for each and every day beyond that date that the said works, buildings, &c., or any of them shall remain unfinished. The plaintiff further alleged that the defendants had committed a breach of the said agreement at Kandy, and claimed a sum of Rs. 32,400 as damages and further damages at the rate of Rs. 150 per diem till the works were completed.

The defendants pleaded, *inter alia*, that the District Court of Kandy had no jurisdiction to entertain the action, inasmuch as the whole cause of action did not arise within its jurisdiction.

On this point the District Judge (J. H. de Saram, Esq.) delivered the following judgment:—

" The first issue is one of law, whether this Court has jurisdiction to hear and determine this action.

" The plaintiff's claim is founded on a deed, whereby the defendants contracted to do certain works, and make alterations and improvements, to the house known as Haramby House, situate in Kandy. He claims Rs. 32,400 as liquidated damages, and a further sum of Rs. 150 a day from the date this action was instituted, for breach of the agreement. The alleged breach is the failure to complete the works stipulated for in the contract.

" The defendants reside, and the contract was made, in Colombo. The only circumstance therefore that will give this Court jurisdiction is that the cause of action arose within its territorial limits.

" The defendants contend that the cause of action did not so arise, because by ' cause of action ' must be understood the whole cause of action, and that is compounded of the contract and the breach. They rely upon *Allhusen v. Malgarejo* (1), where the Court had to interpret the provisions of ' The Common Law Procedure Act, 1852 ', which entitled a plaintiff to issue a writ of summons against a party resident abroad, in cases where ' there is a cause of action which arose within the jurisdiction ', and it was held that ' cause of action ' meant the whole cause of action, and therefore included both the contract and the breach. They also relied upon the definition of ' cause of action ' given by Brett J. in *Cooke v. Gill* (2) in these words: " ' Cause of action ' has been held from the earliest times to mean every fact which is material to be proved to entitle the plaintiff to succeed—every fact which the defendant would have a right to traverse ".

" Now, if the enactment upon which the jurisdiction of this Court depends was in the same words as those which the Court had to consider in *Allhusen v. Malgarejo* (1) and in similar cases, I should be disposed to adopt the interpretation there given, but, while section 9 of our Civil Procedure Code gives that Court jurisdiction within whose local limits the ' cause of action arises ', the term ' cause of action ' itself is expressly defined by section 5 to be " the wrong for the prevention or redress of which an action may be brought, and to include the denial of a right, the refusal to fulfil an obligation, the neglect to perform a duty, and the infliction of an affirmative injury ".

" The English Common Law Procedure Act contained no definition whatever. The cases cited, therefore, cannot be regarded as

(1) *L. R.* 3 *Q. B.* 340. (2) *L. R.* 8 *C. P.* 107 *at p.* 116.

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ruling authorities. Our section 9 must be construed in the light of our own definition.

" What then is the wrong for the redress of which the present action brought? It is the refusal to fulfil the obligation to execute the stipulated works at Haramby House, and as the obligation had to be fulfilled in Kandy, the failure to do so constitutes a wrong done in Kandy, and therefore the cause of action arose in Kandy.

" The definition in the Code of ' cause of action ' leaves no room for the contention that the making of the contract is part of the wrong for the redress of which the action is brought.

" I am confirmed in this view by the decision of the Supreme Court in the case of *Ranghamy v. Kirihamy* (1), which was an action under the Buddhist Temporalities Ordinance to set aside an improvident lease, and the jurisdiction of the Court depended on the fact that the lease was executed within its territorial limits. Layard C.J. citing the definition of ' cause of action ' in our Code, said that the wrong alleged was the execution, within the Court's jurisdiction, of a lease whereby an injury was inflicted to the temple revenues, payable to the trustee within such jurisdiction, and the execution of the lease constituted the cause of action in that case. He then referred to the cases of *Cooke v. Gill* (2) and *Jackson v. Spittal* (3), apparently relied upon by the defendant, and pointed out that even accepting the definitions of ' cause of action ' there adopted, the Kandy Court had jurisdiction. He did not mean to decide, and did not decide, that these definitions were decisive of the interpretation to be put upon our Code, and Wendt J. pointed out that the definition in the Code was apparently intended to embody that interpretation which was put upon it in the case of *Jackson v. Spittall* (3) and afterwards adopted at a Conference of all the Judges, viz., the act on the part of the defendant which gives the plaintiff his cause of complaint.

" The case of *Ranatte v. Sirimal and others* (4), cited on behalf of the defendants, was an action against some *Praveni Nilakarayas* of the Maha Dewale in Kandy for failure to perform services. The tenants were bound to perform certain services in Kandy and certain other services in Alutnuwara in the District of Kegalla. It was then held that as the whole cause of action did not arise within the jurisdiction of the Court of Requests of Kandy, that Court had no jurisdiction.

" The decision in that case does not apply to the present action.

(1) (1903) 7 *N. L. R.* 357.
(2) *L. R.* 8 *C. P.* 107.
(3) *L. R.* 5 *C. P.* 542.
(4) (1891) 1 *S. C. R.* 57.

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"For these reasons I answer the first issue in the affirmative and fix the case for hearing on the 16th instant."

The defendants appealed.

Walter Pereira, K.C., S.-G., for the defendants, appellants.

Van Langenberg, for the plaintiff, respondent.

[The following cases were cited in the course of the argument: *Allhusen v. Malgarejo* (1); *Jackson v. Spittall* (2); *Vaughan v. Weldon* (3); *Read v. Brown* (4); *Paullick Pulle v. Casi Chetty* (5); *Narayen Chetty v. Fernando* (6); *Ranatte v. Sirimala* (7); and *Ranghami v. Krishamy* (8)].

Cur. adv. vult.

2nd October, 1906. LASCELLES A.C.J.—

The claim in the action is for damages in respect of an alleged breach by the defendants of an agreement to carry out certain works at Kandy.

The question now before us is whether the District Court of Kandy has jurisdiction to try the case. The defendants reside in Colombo, where the contract was made; but the agreement was to be performed at Kandy. The District Judge has decided that by virtue of section 9 (*c*) and the meaning assigned to the term "cause of action" by section 5 of the Civil Procedure Code, the District Court has jurisdiction to try the action. The appellants relying on certain decisions of the English Courts, contend that it is not enough that the breach of the agreement should have taken place within the jurisdiction of the District Court of Kandy, and maintain that it is necessary, in order to give that Court jurisdiction that the whole 'cause of action' namely, both the agreement and the breach, should have taken place within its jurisdiction. In my opinion the decision of the District Judge is right. Section 9 (*c*) of the Civil Procedure Code provides that actions shall be instituted in the Court within the local limits of whose jurisdiction "the cause of action arises." "Cause of action" is defined by section 5 to be "the wrong for the prevention or redress of which an action may be brought, and includes the denial of a right, the refusal to fulfil an obligation, the neglect to perform a duty, and the infliction of an affirmative injury." The term "action" is defined as "a proceeding for the prevention or redress of a wrong." It is clear to me that the words "the wrong

(1) *L. R.* 3 *Q. B.* 341.
(2) *L. R.* 5 *C. P.* 542.
(3) *L. R.* 10 *C. P.* 47.
(4) *L. R.* 22 *Q. B. D.* 128.
(5) (1891) 1 *C. L. R.* 102.
(6) (1891) 2 *C. L. R.* 30.
(7) (1891) 1 *S. C. R.* 57.
(8) (1903) 7 *N. L. R.* 357.

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for the prevention or redress of which an action may be brought " states generally what is connoted by the term " cause of action," and that the remainder of the sentence enumerates some—not necessarily all (for the word used is " includes ")—of the acts of defendants which constitute causes of action.

Taking the first part of the definitions alone—namely, the words " the wrong for the prevention or redress of which an action may be brought "—I cannot doubt that a failure to perform a contract is a " wrong " within the meaning of these words. It is clear from the definition of the word " action " that the word " wrong " in the definition is not restricted to " torts. " If the plaintiff had averred an express refusal to fulfil the contract the jurisdiction of the Court of Kandy could not have been disputed, for refusal to fulfil an obligation is specified in the definition as a cause of action. But it is clear that failure to fulfil an obligation is, equally with refusal to fulfil the obligation, a wrong for the prevention or redress of which an action may be brought.

It may be noted that under Ordinance No. 11 of 1868, which regulated the Procedure of our Courts before the Civil Procedure Code, the action would have been triable at Kandy. Section 65 of that Ordinance gave jurisdiction to District Courts in cases where the cause of action arose wholly or in part within their local jurisdiction. The Civil Procedure Code seems to have continued this system. Further, the decision of the District Court is in harmony with the decision of this Court in *Paulickpulle v. Casie Chetty* (1) and in *Narayen Chetty v. Fernando* (2). As the Civil Procedure Code in my opinion affords a complete answer to the question before us, it is only necessary briefly to refer to the English authorities cited by the Solicitor-General in support of the appeal.

The Solicitor-General referred to a line of cases upon the construction of section 18 of the Common Law Procedure Act, which provided for the maintenance of actions against defendants, being British subjects, residing out of the jurisdiction, in cases where " the cause of action arose within the jurisdiction. " In these cases there was a conflict of opinion among the Courts, the Queen's Bench holding in *Allhusen v. Malgarejo* (3) that in order to bring a case within the section both the contract and the breach must have been within the jurisdiction; the Common Pleas holding in *Jackson v. Spittall* (4) that it was enough if the breach arose within the jurisdiction. Ultimately, in *Vaughan v. Weldon* (5) the Judges agreed to follow the Court of Common Pleas in *Jackson v. Spittall* (4).

(1) (1891) 1 *C. L. R.* 102.
(2) (1892) 2 *C. L. R.* 30.
(3) *L. R.* 3 *Q. B.* 341.
(4) *L. R.* 5 *C. P.* 542.
(5) *L. R.* 10 *C. P.* 47.

I very much doubt if any of these decisions are a safe guide to the meaning of the expression " cause of action " in our Code. A perusal of the judgments show that they are largely based upon considerations which have no bearing upon the question now before us, such as the jurisdiction of the English Courts to try transitory actions, the previous practice of the Courts, and the policy of the Common Law Procedure Act. These observations apply to *Read v. Brown* (1), which turned upon the construction of the words "cause of action arising wholly or in part within the city of London or the Liberties thereof " in the Mayor's Court Procedure Act. There the decisions turned largely upon the construction of section 25 (*b*) of " The Judicature Act, 1873 ," regarding the assignment of debts.

If the provisions of the Civil Procedure Code are sufficient, as I think they are, to determine the question before us, it is unnecessary, and may be dangerous, to have redourse to the decisions of the English Courts as to the meaning of the term " cause of action " in English Statutes. I entirely agree with the decision of the District Judge, and would dismiss the appeal with costs.

MIDDLETON J.—

I entirely agree. As we have a definition of the term " cause of action " in section 5 of our Civil Procedure Code, which is capable of interpretation from its context, I think it is not necessary to put forward the constructions of its meaning in the English Courts, which from the authorities quoted by the learned Solicitor-General has clearly differed as a basis for its exposition.

Those constructions it would appear have been founded on the wording of different Acts of Parliament.

Looking at section 5, the general meaning of the term " cause of action " there is the " wrong for the prevention or redress of which an action may be brought, " including amongst other things the refusal to fulfil an obligation. This shows that the word " wrong " is not confined to torts.

In the present case the wrong the redress of which is sought is the failure to fulfil an obligation. This failure occurred at Kandy.

The Solicitor-General argues that the word " wrong " implies the contract as well as the breach. To a certain extent it does, but it seems to me to be putting an artificial construction on the word to imply it here, and to say that the word " wrong " means anything more than the act of breach, omission, neglect, injury, &c., which gives the right to bring the action. The location of the wrong, or what is argued to be a part of the cause of action alone, gives the

(1) *L. R.* 22 *Q. B. D.* 128.

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jurisdiction. This would be in harmony with *Jackson v. Spittal* (1), said at one time to have been acquiesced in by the majority of the Judges, *Vaughan v. Weldon* (2), and in consonance with Ordinance No. 11 of 1868, section 65, our former Procedure Ordinance.

Blackburn J.'s reasons given in *Cherry v. Thompson* (3) for adhering to his own construction of section 18 of " The Crown Law Procedure Act, 1852, " in *Allhusen v. Malgarejo* (4) seem to me, if I may be permitted to say so, extremely sound, but in that case he was considering the term " cause of action " with reference to the scope and meaning of a particular statute as it might affect a foreigner and the usurpation by the English Courts of foreign jurisdiction.

In *Read v. Brown* (5) Lord Esher was contemplating the jurisdiction of the Mayor's Court under the Mayor's Court Procedure Act, 20 and 21 Victoria, ch. 157, s. 12, and gave a definition of " cause of action " which would include the contract for the breach of which a person was suing.

In the present case we are construing a definition in our Code of Procedure which seems to show that the location of the wrong, or what may be argued to be part of the cause of action, as defined in *Allhusen v. Malgarejo* and *Read v. Brown* will, and indeed in the old Ordinance of 1868 did, give jurisdiction.

I think that the decision of the learned District Judge is correct, and that the appeal must be dismissed with costs.

(1) *L. R.* 5 *C. P.* 542.
(2) *L. R.* 10 *C. P.* 48.
(3) *L. R.* 7 *Q. B. at p.* 577.
(4) *L. R.* 3 *Q. B.* 341.
(5) 22 *Q. B. D.* 129.