1914.

*Present:* Pereira J. and De Sampayo A.J.

WADURALA *v.* THE SUNDERLAND RUBBER CO.

*393—D. C. Ratnapura, 2,240.*

*Prescription—Silting up of field—Action for damages by a co-owner—Cause of action arises on date of silting, and not when plaintiff's turn to cultivate arises.*

In a case for the recovery of damages for a tort committed by the defendant, the period of prescription commences from the actual physical interference by the defendant with the property of the plaintiff, and not from the date of the actual accrual of damage to the plaintiff. And so, where by reason of the defendant's wrongful act a field of which the plaintiff was entitled to a share silted up and became uncultivable, the term of prescription commenced then, and not when the plaintiff's turn to cultivate, the field as a part owner arrived.

*A. St. V. Jayewardene*, for the plaintiff, appellant.—The field silted was possessed in *tatu maru*. The plaintiff's turn to cultivate the field fell within the prescriptive period. The act of the defendants was not in itself wrongful, so that the damage is the cause of action. Plaintiff only sustained damage when he could not cultivate the field when his turn came round, so that the plaintiff's claim is not prescribed. "Where damage is part of the cause of action, and no act is committed which is of itself wrongful, the statute runs from the date of the damage, and not of the act which caused the damage." (*Halsbury's Laws of England, vol. XIX., s. 81.*) Further, the cause of action was a continuing one, and the learned District Judge finds that the field got silted by degrees; and that although a part of it had got silted some time ago, another has got silted recently. "Where there has been a continuance of the damage, a fresh cause of action arises from time to time as often as damage is caused" (*ibid*). The plaintiff's field has been rendered useless owing to the silting caused by the act of the defendants.

*Bawa, K.C.*, and *Drieberg*, for defendant, respondent, contended that the District Judge was right in holding that the plaintiff's claim was prescribed. The law as laid down in *Halsbury*, and cited by appellant's counsel, has no application to the facts of this case.

*Cur. adv. vult.*

December 7, 1914. PEREIRA J.—

From the District Judge's personal observations noted by him in his judgment it is clear that the silting up of the plaintiff's field was not of recent date. He thinks that the field must have first silted up and become useless for cultivation in 1908 or 1909. Mr. Byrde's evidence shows that the field has not been cultivated since 1907. The plaintiff himself does not say when the field first became so silted as to be uncultivable. The other evidence in the case does not, in my opinion, negative the conclusion arrived at by the District Judge. There is, therefore, no reason to doubt that the plaintiff's field became uncultivable five or six years ago. But it has been argued by the appellant's counsel that the plaintiff's cause of action accrued when his turn to cultivate came round and he was not able to cultivate. I do not think that that is a correct view to take. The authorities cited do not support that view at all. The passage from *Halsbury's Laws of England, vol. XIX., p. 52*, shows that when damage is part of the cause of action, and no act is committed which is of itself wrongful, the statute of limitations runs from the date of the damage, and not of the act which causes the damage. The principle is illustrated by the case of *Backhouse v. Bonomi.* [1] There a lessee of minerals worked them and left insufficient support for the surface, which belonged to another person, and damage in consequence occurred to the surface more than six years after the working of the minerals, and it was held that the statute ran from the occurrence of the damage, and not from the working of the mine or from the leaving of insufficient support. The *ratio decidendi* here was that nothing actually happened to the surface, and, indeed, there was no interference with it until six years after the working of the minerals. A similar observation would apply to the case of *Nelson v. The Municipal Council, Colombo.* [2] In the present case, however, actual interference with the plaintiff's land took place when it first silted up. It was then that the field became uncultivable, and the owner or owners might then have recovered the damage that accrued from the depreciation of the field by reason of that fact. I agree with the District Judge that the plaintiff's claim is prescribed, and I would dismiss the appeal with costs.

DE SAMPAYO A.J.—I agree.

*Appeal dismissed.*

[1] *(1861) 9 H. L. Cases 503.*

[2] *(1909) 13 N. L. R. 43.*