1929.

Present : Fisher C.J.

MANGO NONA *v.* MENIS APPU.

104—C. R. Gampaha. 1,036.

Prescription—Court of Requests—Plaint handed to Recordkeeper—Interpretation Ordinance, No. 21 of 1901, s. 9 (1).

Where, in a Court of Requests, the plaint in an action on a promissory note dated February 1, 1923, was handed to the recordkeeper on February 1, 1929, and accepted by Court on the following day.

Held, that the action must be deemed to have been instituted on February 1, 1929, and that it was not prescribed.

THIS was an action on a promissory note dated February 1, 1923. The plaintiff handed the plaint to the recordkeeper on February 1, 1929, and the Court accepted it on the following day.

Two questions arose for decision. What was the date of the institution of the action? and whether the action was prescribed?

The learned Commissioner of Requests held that the action must be deemed to have been instituted on February 1, 1929, and that the action was not prescribed.

Weerasooria, for defendant, appellant.—Promissory note is dated February 1, 1923. Action is prescribed if instituted after six years. Here the action must be deemed to have been instituted on February 2, 1929, on which date only, the Court accepted the plaint. The action cannot be deemed to have been instituted on February 1, 1929, on which date the plaint appears to have been handed over to the recordkeeper of the Court of Requests. The recordkeeper is not an officer of Court for such a purpose. The action is prescribed on February 2, 1929.

Even if action is held to have been instituted on February 1, 1929, still the action is prescribed. To avoid the effect of section 7 of Ordinance No. 22 of 1871, the action should have been instituted on or before January 31, 1929.

Council cited *Murukkupillai v. Muttulinkam*,[1] *Ratwatte v. Appuhami*,[2] and *English v.* Cliff.[3]

Rajapakse. for plaintiff. respondent.—Section 7 of the Prescription Ordinance, No. 22 of 1871, says, " no action . . . . . maintainable . . . . unless such action shall be brought within six years *from* the date of the promise . . . . " The action is brought or instituted once the plaint is presented to the Court or to the officer appointed by the Court. See section 39 of the Civil Procedure Code. The institution of an action must be differentiated from the entertainment or rejection of the plaint. The record-keeper is the officer appointed and the action must be deemed to have been instituted on February 1, 1929, the day on which the plaint was handed to him.

The 1st February, 1929, is within the six years' period, unless defendant proved that the note was given at a particular hour on February 1, 1923, and *that* particular hour on February 1, 1929, was past, when the plaint was handed over.

The position of the plaintiff is rendered stronger by section 9 (1) of the Interpretation Ordinance, No. 21 of 1901, which enacts that in *all* Ordinances (both before and after 1901) where the word " from " is used in reckoning the days, the first day of the series is to be omitted. *Murukkupillai v. Muttulinkam* (*supra*) was decided before Ordinance No. 21 of 1901, and the passage cited is *obiter*.

July 19, 1929. FISHER C.J.—

The only point for decision in this case is whether the plaintiff's action is prescribed. The action is based on a promissory note dated February 1, 1923, and the plaintiff handed his plaint to the recordkeeper of the Court of Requests on February 1, 1929. The two questions to be answered are, firstly, did the handing of the plaint to the recordkeeper constitute bringing the action ? If so, was the action brought within six years from February 1, 1923 ?

As regards the first question, in my opinion, the action was brought on the day that the plaint was handed to the recordkeeper. Section 39 of the Civil Procedure Code provides that an action " shall be instituted by presenting a duly stamped written plaint to the Court or to such officer as the Court shall appoint in this behalf. " The learned Commissioner, in his order, says that " The recordkeeper is the proper officer to receive plaints and to submit them to Court, " and there is no reason for saying that that pronouncement is

[1] *3 S. C. R. 135.* [2] *3 N. L. R. 270.*

[3] *(1914) 2 Ch. Div. at p. 376.*

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incorrect. On February 1, therefore, the plaintiff did all in his power in the direction of bringing an action, and subsequent dealings with the plaint, which was, in fact, duly accepted next day, cannot in my opinion affect the question of the time when the action was brought.

On the second question the view taken by the learned Commissioner as to the combined effect of section 7 of Ordinance No. 22 of 1871 and sub-section (1) of section 9 of Ordinance No. 21 of 1901 is, in my opinion, the correct view.

The appeal is therefore dismissed with costs.

Appeal dismissed.