

Present: Mr. Justice Grenier.

JAYAWARDANA v. ISU LEBBE.

C. R., Ratnapura, 9,715.

1908.
October 16.

Prescription—Claim for hire of elephant—Work and labour done—
Ordinance No. 22 of 1871, ss. 9 and 11.

A claim for hire of an elephant falls under section 11 and not section 9 of Ordinance No. 22 of 1871, and is prescribed in three years.

APPEAL from a judgment of the Commissioner (W. H. B. Carbery, Esq.) dismissing the plaintiff's action on the ground that it was barred by prescription. The facts sufficiently appear in the judgment.

H. Jayewardene, for the plaintiff, appellant.

V. M. Fernando, for the defendant, respondent.

Cur. adv. vult.

October 16, 1908. GRENIER J.—

This was an action for the recovery of a sum of Rs. 230, which the plaintiff alleged was due to him as hire for work done for the defendant by the plaintiff's elephant. The learned Commissioner dismissed the plaintiff's action, holding that the claim was prescribed under section 9 of Ordinance No. 22 of 1871. In my opinion the Commissioner was wrong in applying section 9. The plaintiff was not suing in respect of any sum due for manual work or labour performed by the defendant, in which case section 9 would undoubtedly apply, but in respect of the hire due for work done by the plaintiff's elephant. The appellant's counsel referred me to a case in *Ramanathan's Reports, 1872-75 and 76, p. 103*, in which Mr. Justice Stewart held that a claim for carriage hire falls within the 11th and not the 9th section of Ordinance No. 22 of 1871. The judgment was contained in a very few words, and no reasons were given for the conclusion arrived at, but I accept it, in the absence of any authorities to the contrary, as definitively holding that a claim for carriage hire, which is closely analogous to the present claim, must be governed by section 11 and not by section 9. Certainly it cannot be said that the work done by an elephant or a horse is the same as work done by the owner of it. Section 9 clearly contemplates manual work and labour.

I would set aside the judgment of the Court below and send the case back for trial on the merits. The appellant will have his costs of this appeal.

Appeal allowed.