1931

Present: **Lyall Grant J.**

URBAN DISTRICT COUNCIL, MATALE *v.* SELLAIYAH.

238—C. R. Matale, 532.

Contract—Agreement to contribute towards cost of constructing drain—Binding promise—prescription—Written agreement—Jurisdiction—Ordinance No. 11 of 1920, s. 224.

An Urban District Council informed the defendant that it proposed to construct a drain and asked him to make a contribution towards the cost. The defendant agreed to contribute a certain sum of money. The Council, thereupon, constructed the drain.

Held (in an action by the Council to recover the money), that the agreement was binding upon the defendant.

Held further, that the cause of action falls for prescription under section 7 of Ordinance No. 22 of 1871, as being upon a written promise.

Held also, the jurisdiction of the Court of Requests was not ousted by section 222 of the Local Government Ordinance, No. 11 of 1920.

APPEAL from a judgment of the Commissioner of Requests, Matale.

Nadarajah (with him *Abeyesekere*), for defendant, appellant.

Navaratnam, for plaintiff, respondent.

June 10, 1931. LYALL GRANT J.—

The plaintiff in this action, the Urban District Council of Matale, sues to recover the sum of Rs. 60 with interest from the defendant in pursuance of an agreement by the defendant to contribute that sum towards the construction of a certain drain. The drain was duly completed but the defendant failed to pay.

The issues on which the case went to trial were:—

(1) Has the Court of Requests jurisdiction?
(2) Was the claim prescribed?
(3) Did the defendant agree to pay a contribution?
(4) Was the agreement conditional?
(5) If so, was there a violation by the plaintiff of such condition or conditions?
(6) Amount due?

The Court of Requests answered all the issues in the plaintiff's favour and gave decree for the sum sued for with interest.

It was argued in appeal that the learned Commissioner was wrong on each issue.

On the first, that of jurisdiction, it was argued that section 222 of the Local Government Ordinance, No. 11 of 1920, excluded the jurisdiction of the Commissioner of Requests and gave exclusive jurisdiction to the Police Magistrate in claims for less than Rs. 100.

I do not think that is the meaning of the section which deals only with the assessment and apportionment of sums payable under the provisions of the Ordinance as damages, costs, or expenses; that is to say that before a Court proceeds under this section it must already have been decided that money is payable.

It was aruged that section 224 extended the provisions of section 222.

Section 224 empowers the Court to review in the manner prescribed by section 222 the amount of any expenses incurred in executing a work which by Ordinance or rule the owner of any house, building, or land is required to execute.

In the present case it has not been shown that the defendant was required to make this drain, and it cannot therefore be successfully maintained that this section applies.

The Court of Requests is the tribunal having ordinary jurisdiction in claims of this nature and I am not satisfied that its jurisdiction has been ousted.

The plea of prescription is based on section 9 of the Prescription Ordinance, No. 22 of 1871. It is alleged that this is an action for work and labour done and that it is not maintainable, since it was not brought within one year after the debt became due.

It is agreed that the debt became due on April 9, 1929—the date of the letter of demand, and the plaint was not filed till September 24, 1930.

The plaintiff maintains that this is not an action for work and labour but is one on a written promise or bargain prescribing in six years (section 7) or alternatively on an unwritten promise or bargain, prescribing in 3 years (section 8).

Defendant's counsel referred me to *Walker, Sons & Company, Limited v. Kandyah.*[1] where a claim for repairs effected in a motor car was held to prescribe in an year as being an action for work and labour done and goods sold and delivered although the order to effect repairs and the acceptance of the order were in writing.

These letters, however, contained no promise to pay a fixed sum. They were merely evidence that a contract to do work and deliver goods existed.

I do not think section 9 applies to the present case. The plaintiff sues on a written promise to pay Rs. 60, contained in a letter of November 27, 1928. Such a claim in my opinion falls under section 7 and was not prescribed at the date of action.

On the remaining issues I think the learned Commissioner of Requests has also come to a correct conclusion.

By letter P1 dated November 16, 1928, the plaintiff Council intimated to the defendant that it proposed to construct a certain drain and asked him to contribute Rs. 120.83, mentioning the total cost and the amount to be contributed by others. By letter P4 dated November 27, 1928, the defendant replied that he felt the contribution asked was too much but intimated that for the sake of co-operation he was willing to contribute Rs. 60.

The drain was thereupon built by the plaintiff Council and on April 9, 1929, the defendant was called upon to contribute Rs. 60. The defendant thereupon raised objections. After considerable correspondence he on September 11, 1930, said that his consent had been conditional on the outlet drain not being used to serve the purpose of conservancy.

There is nothing in P4 to suggest that the promise was subject to this or any other conditions.

[1] *(1919) 21 N. L. R. 317.*

The question of the binding effect of a promise under our law was discussed very fully by the Privy Council in *Jayawickreme v. Amarasuriya*[1]. "*Justa causa debendi*," it was observed by Lord Atkinson "is much wider than the English word 'consideration'. It comprises motive or reason for a promise and also purely moral consideration."

Here the motive for the promise was a desire to co-operate, possibly backed by a wholesome anxiety lest the Council might exercise compulsory powers in the matter. The Council evidently regarded the promise as definite and binding and proceeded to construct the drain. As the drain was at the side of the defendant's house he must have been aware of the process of construction from its inception.

Even if the letter P4 was, as the defendant maintains, nothing more than an offer, acceptance of the offer was shown by the Council proceeding to construct the drain alongside the defendant's house. In the circumstances, however, I think it was more than an offer. It was a binding promise.

The appeal is dismissed with costs.

Appeal dismissed.