

1932

Present : Garvin S.P.J. and Maartensz A.J.

DIAS *v.* KACHINONA.

114—D. C. (Inty.) Ratnapura, 5,588.

Account stated—Action for goods sold—One-sided account—No acknowledgment in writing—Ordinance No. 22 of 1871, s. 8.

Where in an action for the value of goods sold and delivered, a one-sided account was alleged to have been stated and acknowledged as correct,—

Held, that there was no account stated within the meaning of section 8 of the Prescription Ordinance, No. 22 of 1871.

Where there have been mutual dealings and accounts between parties and it is averred that accounts between them were verbally stated and settled it would constitute an account stated within the meaning of the section.

A PPEAL from an order of the District Judge of Ratnapura.

This was an action to recover a sum of Rs. 350.69, the value of goods sold and delivered, brought against the administrator of the estate of one Singho Appuhamy.

The defendant filed answer, pleading that the claim was prescribed. The plaintiff then sought to amend the plaint by the addition of a new cause of action upon an account stated alleged to have been made between the deceased and the plaintiff and thus to bring the case within the provisions of section 8 of Ordinance No. 22 of 1871.

The learned District Judge allowed the amendment.

N. E. Weerasooria, for defendant, appellant.—The original action was not for an account state, it was an action for goods sold and delivered. See *Saibo v. Baas*¹. The claim is prescribed; to take the claim out of prescription something has been pleaded which cannot be pleaded.

E. G. P. Jayatilleke, for plaintiff, respondent.—An account can be stated orally; in such a case, it comes under section 8 of the Prescription Ordinance. The account in the case was filed with the original plaint. In *Kadiravelpillai v. Paaris*² a claim under an account stated was held as falling under section 8.

In this case the judge has exercised his discretion. There is no evidence before this Court which would justify a conclusion that this is not an account stated. The policy of the law has always been to avoid a multiplicity of actions. An amendment should be allowed at any stage, if it does no injustice to the other side (*Casilebbe v. Natchiar*³).

N. E. Weerasooria, in reply.—The point that the original action was not for an account stated was specifically taken by appellant's Proctor in the lower Court. The point is taken also in the petition of appeal.

December 6, 1932. GARVIN S.P.J.—

The plaintiff brought this action on September 17, 1931. He claimed a sum of Rs. 350.69 which was alleged to be due to him in respect of transactions which took place between him and one Singho Appuhamy,

¹ 6 N. L. R. 216.² 22 N. L. R. 91.³ 21 N. L. R. 205.

deceased. To his plaint is annexed an account which shows clearly that he claims to have supplied goods to this Singho Appuhamy between July 31, 1929, and July 3, 1930. That statement also shows that after giving credit to Singho Appuhamy for certain cash payments made, the last of them on July 3, 1930, there remained this balance of Rs. 350.69 still due and unpaid. The action was brought against the administratrix of the estate of Singho Appuhamy. The defendant filed answer pleading *inter alia* that the claim was prescribed. That answer was filed on November 16, 1931. Nearly a year later, on June 13, 1932, the Proctor for the plaintiff moved to amend his plaint by adding the following paragraph:—“That the deceased John Singho Appuhamy and the manager of the plaintiff company examined the accounts on July 3, 1930, and, on finding that the sum of Rs. 330.89 was due, and that an account of Rs. 330.84 was stated as due to the plaintiff Company from the defendant”. The motion came up for hearing on June 30, 1931. It was opposed by the defendant, and it is to be noted that in the course of that proceeding the Proctor for the plaintiff admitted “that if not for the account stated (which is not in writing) his claim would be prescribed”. The learned District Judge makes no reference to the point which quite evidently was taken in opposition to this motion, but has allowed the application upon the general ground that a plaint may be amended at any time before judgment. At the hearing to which I have just referred, the Proctor for the plaintiff made the further admission—the fact, of course, is obvious—that the claim on the plaint as originally drafted and filed was barred by time. The sole purpose of the amendment was to add a further count to the plaint based upon the allegation of an account stated so that the argument may be urged that the case falls within section 8 of the Prescription Ordinance, No. 22 of 1871, and as such is not barred until three years have elapsed. In effect, then, what the plaintiff was seeking to do was to institute as at the date of the motion a new action upon the allegation of an account stated. But it is evident from the admissions that the statement of account is not evidenced by any writing and from the account filed with the plaint which is purely an account for goods sold and delivered that this is not a case in which there were mutual dealings and transactions between the parties and that the true nature of the claim is that it is merely a claim for goods sold and delivered. There may, of course, be in a sense an account stated even in such a case, but the question which the judge had to determine before allowing such an amendment was whether, where the allegation is that the account was stated verbally, the fresh claim which it was sought to make was not in itself statute-barred.

In the case of *Kappoor Saibo v. Mudalihami Baas*¹ it was clearly held that a verbal statement of accounts in such a case as this did not take the case out of the provisions of section 9 and bring it within the provisions of section 8 of Ordinance No. 22 of 1871. We find the same view of the law taken in the case of *Manthira Nadan v. Kulanthivel*², and in the still later case of *Kadiravelpillai v. Paaris*³.

Where there have been mutual dealings and mutual transactions and accounts between parties and it is averred that accounts between them

¹ 6 N. L. R. 216.² 8 N. L. R. 372.³ 22 N. L. R. 91.

were verbally stated and settled, that constitutes an account stated which would bring the case within the provisions of section 8. But where, as here, it is merely a one-sided account that is said to have been stated and acknowledged to have been correct and where there have been no such mutual dealings, then it would seem to be well settled law in Ceylon that in the absence of a written settlement a claim which in substance is a claim for goods sold and delivered is barred by the provisions of section 9 and cannot be taken outside the bar imposed by that section except by some written acknowledgment.

The position in which we are left, therefore, is that the claim upon the original plaint was statute-barred, and that the new cause of action which it was sought to introduce into this plaint by means of an amendment is in itself statute-barred. Under such circumstances the only possible order, it seems to me, is to direct that the plaintiff's action be dismissed with costs.

The appellant is also entitled to the costs of this appeal.

MAARTENSZ A.J.—I agree.

Appeal allowed.

