

Present : Shaw J. and Schneider A.J.

1920.

KADIRAVELPILLAI v. PAARIS.

32—D. C. Negombo, 13,679.

*Account stated—Oral acknowledgment of balance—Prescription Ordinance, s. 8.*

Plaintiff was a lessee of the defendant. On the termination of the lease in June, 1917, plaintiff and defendant came to a settlement of the business transactions between them. Plaintiff owed six months' rent (Rs. 450), and had received Rs. 275 by the sale of an old oil engine which was on the land. He spent Rs. 1,500 for a new engine. It was agreed that the accounts should be settled by payment of Rs. 400 by the defendant. The plaintiff sued for this sum.

*Held*, that this amounted to an account stated between the parties, and that the claim fell under section 8 of the Prescription Ordinance.

“Where there have been mutual dealings between parties and a balance has been struck by consent between them, the plaintiff is entitled to sue on an account stated, and this notwithstanding the absence of any written acknowledgment of the debt on the part of the defendant.”

THE facts appear from the judgment.

*A. St. V. Jayawardene* (with him *Croos-Dabrera*), for plaintiff, appellant.—The Judge was wrong in holding that the action was one for goods sold and delivered. The evidence shows that the plaintiff and defendant had mutual accounts. An account was stated between them, and the plaintiff's claim is based on this. Under section 8 of the Prescription Ordinance the claim would only be prescribed in three years. When there are mutual dealings and an account is struck, no writing is necessary. Counsel cited *Manthira Nadan v. Kulanthivel*,<sup>1</sup> *Ashby v. James*,<sup>2</sup> and 7 *Halsbury's Laws of England* 489.

*Zoysa* (with him *Canakeratne* and *Ameresekara*), for defendant, respondent.—The plaintiff came into Court claiming the balance due to him on the sale of the engine. In his evidence, too, he puts his claim on the same footing. Under section 9 of the Prescription Ordinance his claim is clearly barred. The theory of an account stated was only put forward by plaintiff's counsel in the lower Court long after the plaintiff's case had been closed. The evidence does not support this theory.

<sup>1</sup> (1905) 8 N. L. R. 372.

<sup>2</sup> 11 M. & W. 542.

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In this case the plaintiff, in June, 1915, took a lease of certain premises from the defendant for the term of two years at Rs. 75 a month. Upon the premises there was an old Kundal oil engine of 24 horse power. After the plaintiff had been a short time in possession of the premises, he found that this engine was not suitable for his purpose, and he sold it for the sum of Rs. 275, and himself bought a new engine for the sum of Rs. 1,000, and had it fitted up on the premises at the cost of another Rs. 500. In June, 1917, the lease came to an end, and the plaintiff vacated the premises, leaving upon them the new engine, which had cost him Rs. 1,500 to instal. Shortly after the termination of the lease the Judge has found as a fact there was an interview between the plaintiff and the defendant as to settlement up of business transactions between them. At this date there was due from the plaintiff to the defendant six months' rent for the premises—Rs. 450. There was also an amount which he had received for the sale of the old engine, Rs. 275, making Rs. 750 due from the plaintiff to the defendant. On the other hand, the plaintiff claimed from the defendant the sum of Rs. 1,500, the cost of providing and installing the new engine, which had been left on the premises. There was thus a balance of Rs. 775 in favour of the plaintiff on the claims of the two parties one against the other. It was then agreed between them that the account should be settled by the payment of Rs. 400 from the defendant to the plaintiff. These facts have been found as being the true account of what took place by the District Judge, and I see every reason on the evidence to think that this finding as to this is entirely correct. The plaintiff commenced this action on June 26, 1919, claiming this sum of Rs. 400. The defendant contested his claim, and put in a counter claim for the amount of rent which was due at the termination of the lease. The question, and the only question that really arose at the trial, was as to the true effect of the arrangement made in June, 1917, as to the Rs. 400. Was it an agreement for the sale of the engine provided by the plaintiff for the sum of Rs. 400, or was it an account stated between the parties? If it was merely an agreement for the sale of the engine for Rs. 400, then the plaintiff's claim is barred under section 9 of the Prescription Ordinance. If, on the other hand, what took place in June, 1917, amounted to an account stated between the parties, then the plaintiff's claim would come under section 8 of the Prescription Ordinance, and would not be barred. The District Judge, although he has found the facts in the way that I have stated and as the plaintiff contended, has, nevertheless, found the claim was really a claim for the sale of the engine, and was, therefore, barred. There can be no doubt that where there have been mutual dealings between the parties and a balance has been struck by consent between them, the plaintiff is entitled to sue on an account stated, and this notwithstanding the

absence of any written acknowledgment of the debt on the part of the defendant. The law as to this is laid down in the local case of *Manthira Nadan v. Kulanthivel*.<sup>1</sup> That case follows certain English decisions, which show what the settled law upon the subject is in England. Here, on the finding of the Judge himself, there were mutual accounts between the parties in June, 1917, and there was a balance agreed upon by them for the sum of Rs. 400, which is the sum sued for in this action. It is clear, therefore, that there was at that date a new agreement between the parties, and that the plaintiff in the present case, however he may have stated his claim in his plaint, is in reality suing on a new contract of that date, which is entirely independent of the defendant's liability to pay for the price of the engine as goods sold and delivered.

In my opinion the plaintiff's claim is therefore not barred by the Prescription Ordinance, and he is entitled to recover the amount agreed from the defendant.

I would therefore allow the appeal, with costs, here and in the Court below.

SCHNEIDER A.J.—I agree.

*Appeal allowed.*

1920.

SHAW J.

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