

1900.  
June 23.

HORSFALL v. MARTIN.

C. R., Colombo, 3.

*Action for goods sold and delivered on three months' credit—Money due upon an unwritten agreement—Prescription—Ordinance No. 22 of 1871, ss. 8, 9.*

Though money due for goods sold and delivered on three months' credit may be money due upon an unwritten promise, yet the action brought for the recovery of it falls under section 9 of the Ordinance No. 22 of 1871, and as such is prescribed within one year after the debt became due.

THIS was an appeal from an order of the Commissioner rejecting the plaint tendered by the plaintiff's proctor, as the claim therein mentioned appeared to be prescribed.

The plaint set out that in the month of May, 1898, M. M. B. & Co., whose liquidator was plaintiff, sold and delivered to the defendant certain goods on the agreement that the defendant should pay the price within three months from the date of the sale and delivery. The due date of payment was not specified. It appeared to fall in August, 1898. The action was brought on the 18th April, 1900.

After the Commissioner had rejected the plaint, plaintiff's proctor submitted that the plaintiff was suing, not for goods sold and delivered, but on an unwritten agreement.

The Commissioner was "unable to distinguish this action from an action for goods sold and delivered."

Plaintiff appealed.

*Elliott*, for appellant.—This is not an action within the scope of section 9 of Ordinance No. 22 of 1871. If it were so, it would be prescribed in one year. But the value of the goods was payable on an unwritten agreement, namely, within three months from the date of the sale. Hence, the action falls within section 8, and is not prescribed within three years from the date of the cause of the action. [MONCREIFF, J.—But why did the Legislature use the words "in respect of any goods sold" in section 9?] Section 9 was not meant to limit the operation of section 8, which is complete in itself as to claims for money due upon an unwritten promise.

*Cur. adv. vult.*

3rd July, 1900. MONCREIFF, J.—

The appellant, the liquidator of Messrs. Murdoch, Miller, & Branwell, filed a plaint in the Court of Requests of Colombo for the price of goods sold and delivered to the defendant by Messrs.

Murdoch & Co., alleging that "it was agreed between the said Murdoch, Miller, & Branwell and the defendant, at the time when such sales were made, that the defendant should pay them the prices mentioned in the said account particulars for the said goods within three months from the date of the sale and delivery thereof."

The Commissioner said that he could not distinguish the claim from one for goods sold and delivered, and rejected the plaint, because the action was brought after the time was prescribed in accordance with section 9 of the Prescriptive Ordinance.

I agree that it is a claim for goods sold and delivered in the ordinary sense of the term with which I am familiar. The fact that three months' credit was given would not ordinarily alter the nature of the claim. The common *indebitatus* count for goods sold and delivered lay where credit had been given or a bill taken, but not until the credit expired or the bill became due. But we are here in presence of certain statutory provisions.

Section 8 of Ordinance No. 22 of 1871 provides that actions shall not be maintainable for "money due upon any unwritten promise, contract, bargain, or agreement," unless they are commenced within three years from the date of the cause of action. If this claim falls within section 8 it is not prescribed, because the money is alleged to have become due less than two years ago.

There can be no doubt that the money became due upon an unwritten promise and that, if the provisions of the Ordinance went no further, the plaintiff might bring his action at any time within three years from the date at which the money became due.

We have, however, to consider section 9, which runs thus:—  
"No action shall be maintainable for or in respect of any goods sold and delivered, or for any shop bill or book debt, or for work and labour done, or for the wages of artisans, labourers, or servants, unless the same shall be brought within one year after the debt shall have become due."

If this is a claim "for or in respect of goods sold and delivered" within the sense of section 9, it is of course prescribed.

Mr. Elliott argued with some plausibility that the Legislature meant to distinguish claims for money due upon unwritten promises from claims for the price of goods sold and delivered; and that, if we have here to do with a claim founded upon an unwritten promise, the intention was to confine the words "goods sold and delivered" in the 9th section to cases in which there is at least no unwritten promise or agreement. We must, however, consider whether the Legislature did not feel that the same

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transactions might come under both heads, and did not specially provide for the exclusion of cases of goods sold and delivered from the operation of the 8th section.

In the first place, are the words " or in respect of " used in the 9th section due merely to a flourish of the draftsman's pen, or were they inserted with the intention of adding a substantial meaning to the provision?

If they are intended to add to the meaning, I can only conjecture the intention to be that, although the price of goods sold and delivered is due on an unwritten promise, no action can be brought *for* it, or *in respect of* it (that is, under the name of money due upon any unwritten promise, contract, bargain, or agreement), unless within one year from the date at which the debt became due. Is there anything to render this meaning intelligible or reasonable?

The phrase does not run through the section, the word " for " alone is used in the case of shop bills, book debts, work and labour done, and wages. I cannot understand why the restriction, if intended, was not applied to (for example) work and labour done as well as to goods sold and delivered. I can see no principle in the particular application. In the next place, the section is carelessly drafted. Actions are not brought *for* shop bills or work and labour done. They may be brought in respect of or for payment of work and labour done, in respect of or upon shop bills. The draftsman has had a very loose hand on the very point in question, and seems to me to have been somewhat indifferent in his application of the phrases in *respect of* and *for*. The words " in respect of " are used again in sections 11 and 12, but there I can detect no subtle significance in them. I think that they possess no particular meaning in section 9.

I think, however, that the question may be put to a simple test. Section 8 provides that claims for money due upon unwritten promises—and therefore claims for money due upon unwritten promises for goods sold and delivered—must be brought within three years of the date at which the money becomes due. But it may be urged that, having said so, the Legislature proceeds at once in section 9 to except from the terms of section 8 certain money claims, amongst which are those for goods sold and delivered; and that, whether these money claims are based upon unwritten promises or not, they must be prosecuted within one year from the date at which they became due.

To test this we must bring the 7th section also into consideration. If the contention is just, we must be prepared to hold not only that the claims mentioned in section 9 are excluded from

the operation of section 8, even when they are founded upon unwritten contracts, but that those same claims, together with the claims enumerated in section 8, are excluded from the operation of section 7, although they may be founded upon written contracts. Having gone carefully through the terms of the three sections, I think that such was the intention of the Legislature, and that the Commissioner was right in rejecting the plaint in this case.

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