

1948

Present : **Canekeratne and Nagalingam JJ.**BABUN NONA *et al.*, Appellants, and STARREX, Respondent*S. C. 83—D. C. Kandy 2,415**Prescription—Contract to pay money on the happening of an event—When prescription begins to run.*

In the case of a contract to pay a sum of money upon the happening of a certain event, prescription does not begin to run until the event has occurred.

APPPEAL from a judgment of the District Judge, Kandy.

E. B. Wikramanayake, K.C., with *M. Markhani*, for plaintiffs, appellants.

Cyril E. S. Perera, with *M. A. M. Hussein*, for defendant, respondent.

October 6, 1948. CANEKERATNE J.—

This is a question relating to compensation for clearing and planting a land, against the defendant. The defendant took up several defences, as the learned Judge states, in his answer, some of which were that the agreement was unenforceable as it was non-notarial, that the land was not planted by the plaintiffs, and that the action was prescribed. The learned Judge has found that the land had been planted in terms of the agreement and that the defendant had the benefit of the plantation and of the work done by the planters. He, however, held in favour of the defendant on the question of prescription and dismissed the action giving no costs to the defendant. The action was instituted on September 16, 1946.

The agreement was entered into on October 4, 1937, and "the lease" was for a period of five years. The persons who agreed to plant the land undertook after receiving payment for the trees planted to give over the land to the defendant; the rate of compensation was to be determined according to the height of the trees, at the time of delivery. To assess the sum payable it was thus necessary to count the number of trees and ascertain their height. The evidence of the plaintiffs' conductor shows that the land was planted and handed to one Dingiri Banda in 1943, or according to one of the plaintiffs at the end of 1942. The defendant's evidence was that he took possession of the land at the end of 1944 after he obtained a report from Kapuwatte (D1); he denied that Dingiri Banda took charge of the land from the plaintiffs. It can hardly be contended that Dingiri Banda had authority from the defendant to agree on the amount of compensation for an examination of the plantation and an assessment had to be made previously. Dingiri Banda in taking charge of the land may have acted in an independent character or in a derivative character. If he took charge of the land intending to do so on behalf of the defendant, it would be competent for the defendant to accept this act or to repudiate it. The proper inference to be drawn from his evidence and the other circumstances is that he refused to accept the act of Dingiri Banda. The latter then

would be holding the land in an independent character or by permission of the plaintiffs. The contract being to pay a sum of money upon the happening of a certain event, where the amount payable had to be determined in a certain way by the defendant with the assent of the planters, the statute of prescriptions would be inoperative until the particular event has occurred. A reasonable time must elapse after the handing over of the land to Dingiri Banda even if he had implied authority to take charge of the land. The defendant did not visit the land for at least eighteen months after the middle of 1942. The learned Judge comes to the conclusion that the defendant did not send a letter to the heirs of James Silva and that anticipating a claim for compensation he requisitioned the services of Kapuwatte. All these circumstances lead one to conclude that the action was filed within the period required by the statute.

Judgment will be entered in favour of the plaintiffs as prayed for with costs in both Courts.

NAGALINGAM J.—I agree.

Appeal allowed.

