

1901.
June 21

MACK v. WICKREMARATNE.

C. R., Colombo, 12,762.

Tuition fees—Prescription.

Work and labour contemplated by section 9 of Ordinance No. 22 of 1871 is manual labour. A claim for fees for teaching falls under section 11 of the Ordinance, and is not prescribed for three years.

PLAINIFF sued defendant for the recovery of Rs. 15. being fees for instructing the defendant's nephew during the months of February and March, 1899. The action was brought on 31st May, 1900.

The Commissioner dismissed the suit on the ground that it was prescribed under section 9 of Ordinance No. 22 of 1871.

H. Jayawardana, for appellant.—Defendant pleaded prescription under section 9 of No. 22 of 1871, and the Commissioner upheld the defendant's plea, but that section does not apply. Either section 8 or section 11 applies, because it is either a claim on an unwritten promise or a claim not expressly provided for. Section 9 only applies to manual or menial labour, and not to professional work (*8 S. C. C. 186*). [LAWRIE, A.C.J.—There was a case in which a superintendent's salary was held not to come under section 9.] There are other cases (*1 Lorenz 22 and 115; 2 Lorenz 67; 4 S. C. C. 47*).

Bawa, for respondent.—Section 9 applies, as the section says nothing about manual work only (*2 Thomson's Institutes*, p. 194). The cases from Lorenz applied to artisan's wages. This is a claim for work done. In the case cited from *8 S. C. C.* the application of section 9 was not properly discussed. As regards unwritten promises, *4 N. L. R. 70* applies.

Jayawardana, in reply, cited *Ramanathan*, 1877, p. 79.

21st June, 1901. LAWRIE, A.C.J.—

Doubtless teaching is work, and when the pupils are stupid or unwilling it becomes a labour; but I follow older decisions when I hold that the work and labour contemplated by the Prescription Ordinance is manual labour, at least that it does not include the more important and honourable work of educated men, so that a claim for fees for teaching falls under the 11th section, and is not prescribed for three years.