

1896.
November 13
and 24.

MARKAR v. HASSEN.

D. C., Colombo, 7,780.

“Goods,” meaning of, as used in s. 9 of Ordinance No. 22 of 1871—Sale of movable property—Prescription—Ordinance No. 22 of 1871, ss. 8 and 9—Practice relating to motions in Court.

The word “goods” in section 9 of Ordinance No. 22 of 1871 means “movable property”; and so an action for the recovery of the balance purchase money of a steam launch (not registered as a British ship under the Merchant Shipping Act) sold and delivered cannot be maintained, unless brought within one year of such sale and delivery.

Observations by BONSER, C.J., against the practice of filing motion papers in cases in order to move the Court to do certain acts which it is required by the Code to do without being so moved.

THE facts of the case appear sufficiently in the judgment of
BONSER, C.J.

Dornhorst and Jayewardene, for appellant.

Sampayo and Bawa, for respondent.

24th November, 1896. BONSEN, C.J.—

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This is an action *actio venditi* and the simple question involved in this appeal is whether this action to recover the balance of the purchase money of a steam launch which was sold and delivered by the plaintiff to the defendant is an action "for or in respect of any goods sold and delivered."

It was contended by the plaintiff that a steam launch is not "goods," but that that expression must be restricted to things which are commonly the subject of sale in shops and markets.

It is much to be regretted that the local Legislature should use words which recall the anomalies of the English law respecting the sale of goods, and are unsuited to the scientific precision of the civil law. But I am of opinion that "goods" in section 9 of Ordinance No. 22 of 1871 means "movable property," which latter is the expression used in Ordinance No. 7 of 1840, in the place of the expression "goods, wares, and merchandise" of the corresponding English Statute of Frauds. It may be that "goods" would not include a British ship, the property in which cannot be transferred by mere sale and delivery, but it is unnecessary to decide this, for in the present case there is no proof that this launch is a British ship. The Master Attendant, with whom this launch is said to have been registered, is not the Registrar of British Ships. That being so this action is not maintainable, for it was not brought within one year after the debt became due.

There is no necessary inconsistency between sections 8 and 9 of the Ordinance. An action "for or in respect of goods sold" and "delivered" may be, as in the present case, an action "upon an unwritten contract."

I read section 8-as providing that the period of prescription applying to the *actio venditi* in general is to be three years, and section 9 as providing that in the particular case of a sale of movables where there has been a delivery to the buyer of the thing sold the period is to be reduced to one year.

It was suggested that the action might have been brought in another form, which would not render it obnoxious to section 9.

But in this connection it is curious to note that in the old Prescription Ordinance, No. 8 of 1834, the phrase was an "action for goods sold and delivered."

It would seem as though the words "or in respect of" were specially inserted in the present Ordinance for the purpose of anticipating and negating any such suggestion.

The appeal will be allowed and the action dismissed with costs.

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BONSER, C.J.

I regret to have again to call attention to the way in which the business of the District Court of Colombo is carried on. On pages 29, 30, 31, 32, and 33 of the record are five motion papers, the first of which—a motion that a summons be ordered to issue for service on the defendant—was unnecessary, and the other four are not only unnecessary, but ridiculous. They are motions that the case be fixed for *ex parte* hearing, although the summons had not been served on the defendant. If these practices are continued this Court will have to take serious notice of the matter.

No costs of these motions are to be allowed on taxation, either between party and party or proctor and client.

LAWRIE, J.—

The District Judge held that a steamer, though only a small one, and mostly used for harbour work, which had been registered by the Master Attendant as a registered ship, could not be treated as “goods,” and that section 11 of Ordinance No. 22 of 1871 was the section which applied, and he ordered the case to be tried on the merits.

The register referred to was of boats licensed to ply in the harbour.

This steamer was not registered as a British ship under the Merchant Shipping Act.

The fact that the steamer had been sold by plaintiff to defendant was admitted; I presume it was a sale attended with the formalities (if any) required for the legal transfer of a vessel of this kind.

The 9th section of our local Ordinance is, “no action shall be maintainable for or in respect of any goods sold and delivered.”

In my opinion the 9th section includes actions for the price of all movables except money, bonds, &c., sold and capable of physical delivery and actually delivered. The section applied to the sale of such movables, whether the sale has been effected by word, or by letter or other writing, for the question how a sale can legally be effected is separate from the question within what time must an action for the price of a movable sold and delivered be brought.

The plaintiff put his claim as one for the price of a steamer “sold and delivered,” and as the action was not brought within a year of the sale and delivery the 9th section applies, and the order appealed against must be set aside, and the action dismissed with costs.