1978 *Present:* **Samerawickrema, J., Udalagama, J. and Vythialingam, J.**

CEYLON INSURANCE COMPANY LTD., Defendant-Appellant

and

DIESEL AND MOTOR ENGINEERING COMPANY LTD., Plaintiff-Respondent

S. C. 700/69 (F)—D. C. Colombo 67797/M

Contract—Work and labour and materials supplied—Plea of prescription—Period of prescription when such contract in writing—Interpretation of Statutes—General and particular enactments in same statute—Whether later prevails—Prescription Ordinance, section 6, 7, 8.

1**—A 42660 (79/07)

The plaintiff-respondent firm sued the defendant, in insurance company, in respect of repairs carried out by it at the request of the defendant to three motor vehicles. The plea of prescription was taken and the sole issue for determination was whether the claims of the plaintiff on these three causes of action were prescribed. The relevant sections of the Prescription Ordinance were section 6 (claims on a written contract or promise), section 7 (claims on an unwritten contract or promise) and section 8 (claims for work and labour and for goods sold and delivered). The trial judge held with the plaintiff and entered judgment against the defendant. Although in the present case the claim was one undoubledly for work and labour done as well as materials supplied, such work could be done and materials supplied in terms of a contract written or unwritten between the parties, and the question arose as to what particular section of the Precription Ordinance would apply, and in the case of each section the period of prescription was different. It was found by the trial judge that the debts on all three causes of action arose more than one year prior to the date on which action was instituted, so that if section 8 of the Prescription Ordinance were to apply, in terms of that section, all three causes of action would be prescribed.

In regard to the first two causes of action, the plaintiff produced documents P1 and P4 being an estimate of the repairs and the acceptance of the defendant by letters P2 and P5. There was also oral evidence that on the receipt of letters P2 and P5 the plaintiff carried out the repairs and informed the defendant whose representative inspected the vehicles and approved the job done. The final bills P3 and P6 were also sent to the defendant thereafter. In respect of the third vehicle no estimate or acceptance thereof was produced by the plaintiff but a supplementary estimate marked P7 and a letter from the defendant marked P8 were produced. In P8 the defendant company stated with reference to document P7 that the sum of Rs. 1,545 would be paid by them.

It was argued on behalf of the defendant appellant that even if there was a written or unwritten contract, nevertheless, section 8 of the Prescription Ordinance must prevail and apply to the facts of this case as it provided for the prescriptive period applicable in respect of this particular class of contract. It was submitted, therefore, that in the case of any conflict Section 8 must prevail over both sections 6 and 7.

Held :

(1) That the plaintiff's first two causes of action were on the evidence based on written contracts and the third cause of action on a written promise to pay and therefore came within section 6.

(2) That in the case of written promises or contracts section 6 being the particular enactment must in keeping with the rules of interpretation prevail over section 8 of the Prescription Ordinance which is the general section. In the present case, therefore, the plaintiff's three causes of action fell within the prescriptive period of six years applicable and were not prescribed.

Held further : That, however, in the case of unwritten contracts, section 8 of the Prescription Ordinance would be the particular enactment to which the general section 7 must give way.

Cases referred to :

Walker Sons & Co. Ltd. v. Kandyah, 21 N.L.R. 317.
Urban District Council, Matale v. Sellaiyah, 33 N.L.R. 14.
Adamjee Lukmanjee & Sons Ltd. v. Abdul Careem Hallaje, 63. N.L.R. 407.
Pretty v. Solly, (1859) 26 Beav. 606; 53 E.R. 1032.
Amerasinghe v. De Alwis, 48 N.L.R. 519.
Markar v. Hassen, 2 N.L.R. 218.
Horsfall v. Martin, 4 N.L.R. 70.
Dawbarn v. Ryall, 17 N.L.R. 372.
Assen Cutty v. Brooke Bond Ltd., 36 N.L.R. 169.
Municipal Council, Kandy v. Abeyesekera, 31 N.L.R. 366.
Municipal Council, Negombo v. Fernando, 60 N.L.R. 157.
Louis de Silva v. Don Lewis, 4 S.C.C. 89.
Campbell & Co. v. Wijesekera, 21 N.L.R. 431.
Wijesuriya v. Ceylon Mineral Waters Ltd., S. C. 48/70 (F)—D. C. Colombo 67339/M—S. C. Mts. of 4.10.74.

APPEAL from a judgment of the District Court of Colombo.

H. W. Jayewardene, Q.C., with *Sam P. C. Fernando* and *Miss B. Walles* for the defendant-appellant.

P. R. Wickremanayake, for the plaintiff-respondent.

Cur. adv. vult.

March 28, 1978. VYTHIALINGAM, J.

The defendant-appellant, an insurance company was sued by the plaintiff-respondent, a motor repair and engineering firm on three causes of action, in respect of repairs carried out by it, at the request of the defendant to three motor vehicles. The defendant denied liability and the sole issue to be decided in this appeal, as at the trial, is whether the claims on all three causes of action were prescribed or not. The trial Judge held with the plaintiff and entered judgment against the defendant in a sum of Rs. 20,270.12 cents. The defendant has appealed against that judgment and decree.

The sections of the Prescription Ordinance (Cap. 68) which have a bearing on the case are section 6 which applies to claims on a written contract or promise, section 7 which governs claims on an unwritten contract or promise and section 8 which is in respect of claims for work and labour and for goods sold and delivered. In the instant case the claim undoubtedly is for work and labour done as well as for materials supplied. But such work may be executed and the materials supplied in terms of a contract between the parties and in such an event both sections 6 and 8 or 7 and 8 may apply depending or whether the contract was in writing or unwritten. In each case the period of prescription is different.

The debt on all three claims, as the trial Judge has found, arose more than a year prior to the date on which the action was instituted and if secion 8 were to govern the case then all three

claims are prescribed as the period of prescription under that section is one year. The trial Judge however, held that the plaintiff's claims were not prescribed on the basis of an unwritten promise or contract and that even if the correspondence produced cannot be regarded as amounting to a written contract or promise they can be regarded as supporting the unwritten promise to pay the bills.

Mr. Jayewardene submitted that this finding was not correct both on the facts and in law. In regard to the facts he submitted that the plaintiff's claims were not based on any unwritten promise or contract. In regard to the first two causes of action the plaintiff's claim was that it submitted an estimate of the repairs P1 and P4 to the defendants who by the letters P2 and P5 accepted them subject to the deletion of certain items and the payment by the insured of certain preportions of the cost of certain other items. In the letters P2 and P5 there is an implied promise to pay the cost of all the other items of repairs. The uncontradicted evidence of the plaintiff's works manager was that on the receipt of these letters they carried out the repairs and that when the repairs were completed they informed the defendants whose representative inspected the vehicles and approved the job done. Thereafter the defendants were sent the final bills P3 and P6.

For the purpose of constituting a written promise, contract, bargain or agreement no special form of writing is required. However there must be some degree of formality and a mere exchange of letters may not be enough. In the case of *Walker Sons and Co. Ltd. v. Kandyah,* 21 N.L.R. 317, the parties had exchanged letters in regard to the repairs to a motor car. This was held to be insufficient to constitute a written contract. As pointed out by Lyall Grant, J. in *Urban District Council Matale v. Sellayah,* 33 N.L.R. 14 at 15, " These letters however contained no promise to pay a fixed sum. They were merely evidence that a contract to do work and deliver goods existed ". In that case the plaintiff wrote to the defendant to contribute Rs. 120.83 towards the cost of construction of a drain and the defendant wrote back saying that the amount was excessive but agreed to contribute Rs. 60. It was held that the letter constituted a written promise to pay within the meaning of section 7 (now section 6).

In the instant case all the necessary elements of a contract are evidenced in the correspondence produced. In the estimates P1 and P4 there is an offer to carry out the repairs, the details and the cost of which item is set out. The letters P2 and P5 are an acceptance of the offer subject to the modifications set out therein and a promise to pay and on this faith the work was carried out. All the terms and conditions on which the

parties were agreed are set out in the correspondence. The first two causes of action are therefore based on written contracts.

In its plaint the plaintiff claimed a sum of Rs. 11,340.50 in respect of repairs to vehicle No. 22 Sri 726. There is reference to an estimate dated 3rd November, 1964, which was said to have been accepted by the defendant. Neither this estimate nor the defendant's acceptance of it was produced. The only documents produced in respect of this claim are a supplementary estimate dated 10.2.1968 (P7) for Rs. 2,275 and a letter from the defendant dated 8th April, 1965 (P8). There was therefore no written contract in respect of this cause of action. But in P8 the defendant states " We refer you to your supplementary estimate of 10.2.1965 and have to inform you that a sum of Rs. 1,545 will be paid by us ". There is therefore an unconditional and unqualified promise in writing by the defendant to pay that sum.

Although it is a written promise to pay a debt due in respect of work and labour and for materials supplied it is not a mere acknowledgement in writing within the meaning of section 12 of the Ordinance. In the case *Adamjee Lukmanjee and Sons Ltd. v. Abdul Careem Hallaje,* 63 N.L.R. 407 at 408, the plaintiff Company sold to the defendant on credit 500 bags of cement. In an action for the recovery of the balance amount due on this transaction the defendant averred that as it was debt due for goods sold and delivered the action was prescribed as it had been filed more than an year after the debt became due. The plaintiff relied on the letter P 3 by which the defendant had acknowledged the debt due to the plaintiff and stated that " we shall definitely pay this bill by the end of this month. "

Counsel for the defendant argued that this letter amounted merely to an acknowledgement contemplated by section 12 of the Prescription Ordinance. In rejecting this argument K. D. de Silva, J. said " If that view is correct the plaintiff's claim is clearly prescribed. In my view section 12 contemplates merely an acknowledgment of the debt. In the letter P3 there is not only an acknowledgment that the amount is due but also a clear promise to pay this amount within a month. I would therefore construe the letter as a written promise to pay the amount. Accordingly section 6 and not section 8 of the Prescription Ordinance applies to the facts of the case. "

The plaintiff's three causes of action are based on written contracts and a written promise to pay and come within section 6. They are also in respect of work and labour and for goods sold and delivered and fall within the ambit of section 8. They provide

for different periods of prescription and in that sense are in conflict with each other. The question is which is to be applied in determining whether the action is prescribed or not. The rule of construction in such cases is clear. It was stated by Romilly, M.R. in an English case *Pretty v. Solly* (1859) 26 Beav. 606 at 610, as follows : " The rule is that whenever there is a particular enactment and a general enactment in the same statute and the latter taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply ". See also *Craies on Statute Law,* 7th Edition, p. 222. The rule of interpretation has been accepted in this country as well.

Mr. Jayewardene for the defendant-appellant submitted that for this purpose, while sections 6 and 7 set out the prescriptive period generally for written and unwritten contracts and promises respectively, section 8 provides for the prescriptive period in respect of the particular classes of contracts enumerated therein. He argued therefore that in the case of any conflict section 8 must prevail over both sections 6 and 7. However the former Supreme Court as well as this Court has rejected this argument. The former Supreme Court has consistently held that in the case of written contracts section 6 is the particular enactment and section 8 the general section while in the case of unwritten contracts section 8 prevails over section 7.

The two cases on which Mr. Jayewardene placed strong reliance were both cases in which the cause of action was based on unwritten contracts and it was there held that section 8 applied and not section 7. The first of these cases was that of *Walker, Sons & Co. Ltd. v. Kandyah* (*supra*). In that case it was held that there was no written contract, and de Sampaye, J. said at page 319 : " If the correspondence does not constitute a written contract it must be conceded that there was an unwritten contract. But then comes section 9, which appears to provide specially for actions in certain classes of unwritten contracts, and I think that actions for work and labour done and goods sold and delivered, though these are unwritten contracts, come within section 9. "

The other case relied on by Mr. Jayewardene was the case of *Amarasinghe v. De Alwis,* 48 N.L.R. 519, which was also a case of a claim for money due in respect of repairs to a car, and Howard, C.J. sitting alone said that he was bound by the decision in *Walker Sons & Co. Ltd v. Kandyah* (*supra*) as " The facts in regard to the nature of the claim are exactly the same as in this

case.....". The facts are not set out in the judgment but the judgment makes it quite clear that the contract was an unwritten one.

There are however observations made by certain Judges which seem to support Mr. Jayewardena's contention. But all of them are obiter and in view of criticism of these observations in later judgements they cannot be regarded as being satisfactory. Thus in the case of *Marker v. Hassen,* 2 N.L.R. 218, which was in respect of a claim for the price of a steamer sold and delivered Lawrie, J. said at page 220, "The section (i.e. the present section 8) applied to the sale of such moveables, whether the sale has been affected 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 moveable sold and delivered be brought."

But Bonser, C.J. pointed out at page 219, "There is no necessary inconsistency between section 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 moveables where there has been a delivery to the buyer of the thing is to be reduced to one year".

Then again *Horsfall v. Martin,* 4 N.L.R. 70, Moncrieff, J. said at page 72 and 73 "If the contention is just we must be prepared to hold not only that the claims mentioned in section 9 (new section 8) are excluded from the operation of section 8 (new section 7) but that those same claims are excluded from the operation of section 7 (new section 6) although they may be founded on written contracts. Having gone carefully through the terms of the three sections I think that such was the intention of the Legislature". In that case the money was due on an unwritten promise.

In the case of *Dawbarn v. Ryall,* 17 N.L.R. 372, which is a decision of the Full Court, Lascelles, C.J. with whom the other two Judges "entirely agreed" pointed out referring to this case at page 375: "But the reasoning of this decision is not easily reconciled with the decision of the Full Court in *Kalahe Parene Vitanege Louis de Silva v. Akmimene Palliagurugey Don Louis*". In Amarasinghe's case (*supra*) Howard, C.J. said at page 521 "It would appear that the judgment of Moncrieff, J. went further than the law warranted as far as written contracts are concerned" and in *Assen Cutty v. Brooke Bond Ltd.,* 36 N.L.R. 169 at 189, Garvin, S.P.J. pointed out that "The decision in *Horsfall v. Martin* (*supra*) can no longer be regarded as authority

for the proposition that an action for or in respect of goods sold and delivered based upon a written contract comes within the operation of section 9 (new section 8) to the exclusion of section 7 (new section 6)."

Lastly there is the observation of Dalton, J. in *Municipal Council, Kandy v. Abeyasekera,* 31 N.L.R. 366, where he said "Whether or not such a contract as we have under consideration was a written or unwritten contract within the meaning of either section 7 or section 8 there is no doubt that section 9 provides specially for actions in certain classes of contracts. As Moncrieff, J. pointed out in *Horsfall v. Martin* certain claims referred to in section 9 must be prosecuted within one year from the date at which they become due whether they are based upon written promises or not. It will not therefore be sufficient here merely to ascertain whether the agreement was in writing or not." That was a case arising out of the supply of electricity on a written request made by the defendant and accepted in writing by the plaintiff Council. The question which arose for decision in the appeal was whether section 9 applied as the defendant had pleaded or whether section 8 or section 11 applied as was urged by the plaintiff. It was held that as it was a book debt section 9 applied. Here again the question as to a claim based upon a written contract or promise did not arise for decision.

In the case of the *Municipal Council of Negombo v. Benedict Fernando,* 60 N.L.R. 157, which was also a claim for electricity supplied Sansoni, J. with Sinnethamby, J. agreeing, expressed his respectful disagreement with that part of Dalton, J.'s judgment quoted above. In this case the electricity was supplied on the application of the defendant containing the conditions under which the electricity was supplied and an undertaking by the defendant to pay the monthly charges for the consumption of electricity at rates prescribed in the relevant tariff. Sansoni, J. said at page 159 "I do not see how it can be regarded as anything short of a written promise, though no definite sum is mentioned. The promise was at the stage it was made, only an offer in writing, but it became a binding promise when the Council accepted the offer and supplied electricity on the faith of the promise". It was held that the claim fell under section 6 as there was a written promise on which it was based and not under section 8.

All divisions of the former Supreme Court other than a Full Court were of course bound by the decision of the Full Court in the case *Louis de Silva v. Don Louis,* 4 S.C.C. 89. In that case there was a claim for rent due on a written lease. It was argued that as

section 8 (new section 7) expressly speaks of rent, section 7 (new section 6) must apply to agreements other than agreement to pay rent under a lease. Cayley, C. J. with whom Dias, J. agreed, said at page 90 " We think, however, that the converse is the case, and that the word rent in the 8th section means rent payable under obligations other than such as are mentioned in section 7,..... ". Grenier, J. in a separate judgment also agreed.

The decision in this case has been accepted and consistently followed ever since. In the case of *Campbell and Co. v. Wijesekera* 21 N.L.R. 31, the plaintiff's claim was for the breach of certain contracts to ship copra and coconut oil. The defendant counter claimed in respect of shipments already made. The contention for the plaintiff was that this claim in reconvention was prescribed under section 9 (new section 8) as it was for goods sold and delivered. The contracts were in writing. It was held that this was not a case of goods sold for which an action lies owing to the fact of delivery but rather a case where the action is brought on the written contract. Citing the passage from *Pretty v. Solly* (*supra*) Ennis, J. said " The Full Court case of *Silva v. Lewis* held that section 7 (new section 6) was such a particular enactment as compared to section 8 (new section 7) while the case of *Marker v. Hassan* decided that as between section 8 and 9 (new sections 7 and 8) section 9 was the particular enactment ".

Mr. Jayewardene submitted that if section 6 applied to contracts or promises in writing for work and labour and for goods sold and delivered, then on the same reasoning section 7 would apply to all unwritten contracts in such cases and this would exhaust the entire field of such contracts and section 8 would be rendered completely nugatory. That this is not so is shown by the case of *Assen Cutty v. Brooke Bond Ltd.* (*supra*). The plaintiff's claim arose on three contracts for the sale and purchase of tea. The defendants resisted on the ground that there was breach of warranty as the sale was not up to sample and it counter claimed for a portion of the purchase price it had paid on one of the contracts. It was argued that defendant's claim was prescribed in terms of section 8.

In dealing with this submission Garvin, S. P. J. said (36 N.L.R. 189) " The principle of *K. P. Louis de Silva v. A. P. G. Don Louis* (*supra*) which is that actions when based on written contracts come within the operation of section 7 (new section 6) cannot be relied on to exclude from the operation of section 9 (new section 8) all actions for or in respect of goods sold and delivered based on unwritten contracts or agreements. To do so would be to give no effect whatever to section 9 since all such actions must be based either upon a written or unwritten contract, whether

express or implied. The action for goods sold and delivered contemplated by section 9 in so far as they are not based on written contracts are embraced by the general words of section 8—'or upon any unwritten promise, contract, bargain or agreement'. But if we read these two sections as I think we must, so as to give a distinct interpretation to each of these sections we are driven to the conclusion that the object of the legislature was to exclude from section 8 the actions for which special provision is made by section 9. Thus, it only remains to ascertain what actions, though they may be actions on unwritten contracts, are by section 9 excluded from the operation of section 8".

It was accordingly held in that case that a claim for damages for breach of warranty of goods delivered upon an unwritten contract of sale is not an action "for or in respect of goods sold and delivered" within the meaining of section 9 (new section 8) but one under section 8 (new section 7).

These principles have now been followed by this Court in the case of *Mrs. C. Wijesuriya v. Ceylon Mineral Waters Ltd.* (S.C. 48/70 (F)—D. C. Colombo 67339 delivered on 4/10/74) in which the claim was for balance amount due in respect of the sale of mineral waters on a written agreement. The trial Judge had held that since the action was brought within one year from the date of the last payment in respect of these sales the action was not prescribed. This Court uphold the judgment but went on to say that since the action was inrespect of a written agreement the action was not prescribed as section 6 would apply. The judgments referred to by me above were all considered and the line of authorities in respect of written contracts and promises were approved and followed.

It is therefore abundantly clear and well established that in the case of written promises, contracts, bargains or agreements section 6 is the particular enactment to which the general section 8 has to give way but that in the case of unwritten contracts, promises, bargains, or agreements section 8 is the particular enactment to which the general section 7 has to give way. Since in the instant case the first and second causes of action are based on written contracts or agreements and the third cause of action is in respect of a written promise to pay section 6 applies and as the action was filed well within the prescriptive period of six years the causes of action are not prescribed. The judgment and decree appealed from are affirmed and the appeal is accordingly dismissed with costs.

SAMERAWICKREME, J.—I agree.

UDALAGAMA, J.—I agree.

Appeal dismissed.