

1935

Present : Soertsz A.J.

KARUNARATNE *v.* VELAIDEN.

112—C. R. Negombo, 41,539.

Prescription—Action by proctor to recover fees—Three years from cause of action—Completion of services.

An action by a Proctor to recover his fees is prescribed in three years from the time of the completion of his services.

A PPEAL from a judgment of the Commissioner of Requests, Negombo.

N. Nadarajah, for defendant, appellant.

Croos da Brera, for plaintiff, respondent.

Cur. adv. vult.

October 17, 1935. SOERTSZ A.J.—

This action was brought by the plaintiff-respondent to recover from the defendant a sum of Rs. 21 being the amount of costs taxed by the officer of the Court as payable by the defendant to his proctor the plaintiff.

On the question of fact, I agree with the Commissioner that the defence has not proved payment. But on the question of law, namely, whether the "plaintiff's claim is prescribed", I think the defendant is entitled to succeed. There is no evidence on the record to show that the plaintiff's services as proctor were retained by the defendant on any other than the usual terms, that is to say, on the terms that he would be entitled to be paid when his work is completed.

In this case, it is clear that in October, 1925, the plaintiff completed his work for the defendant in connection with this case and a cause of action accrued to him to recover his dues. That cause of action enabled him to bring an action for recovering the amount due to him before three years had elapsed from the date of its accrual. But this action was not instituted till November, 1934, over nine years after the cause of action had arisen. The contention that the cause of action arose only upon the taxing of the bill is not sound. In *Coburn v. Colledge*¹ Lord Esher M.R. said as follows:—"In the case of a person who is not a Solicitor, and who does work for another person at his request on the terms that he is to be paid for it, unless there is some special term to the contrary, his right to payment arises as soon as the work is done; and thereupon he can at once bring his action. Before any enactment existed with regard to actions by the Solicitors for their costs, a Solicitor stood in the same position as any other person who has done work for another at his request, and could sue as soon as the work which he was retained to do was finished without having delivered any signed bill of costs or waiting for any time after the delivery of such a bill. Then to what extent does the Statute alter the right of the Solicitor in such a case, and does the alteration affect or alter the cause of action? It takes away, no doubt, the right of the Solicitor to bring an action directly the

¹ (1897) 1 Q. B. 702.

work is done, but it does not take away his right to payment for it, which is the cause of action. The Statute of Limitations itself does not affect the right to payment, but only affects the procedure for enforcing it in the event of a dispute or refusal to pay. Similarly, I think that section 37 of the Solicitor's Act deals not with the right of the Solicitor, but with the procedure to enforce that right".

Now section 37 of the Solicitor's Act is the same as section 215 of our Code of Civil Procedure which enacts that "no proctor shall commence or maintain any action for the recovery of any fees until the expiration of one month or more after he shall have delivered unto the party charged therewith a bill of such fees subscribed by such proctor". That is the procedure to be taken to enforce the right which accrued on the completion of that work, and the proctor has to follow that procedure and sue for his fees within three years of the right accruing.

I would, therefore, allow the appeal. The defendant is entitled to the costs of this appeal, but there will be no costs in the lower Court because the defendant failed on the issue of payment.

Appeal allowed.

