

1941

Present : **Soertsz J.**PERERA *v.* WICKREMARATNE.97—*C. R. Kandy, 28,950.*

Prescription—Acknowledgment of debt—Promise to pay—Ordinance No. 22 of 1871 (Cap. 55), s. 12.

Where the defendant wrote to the plaintiff as follows :—

“I wish to sell it (a property) as early as possible and also to settle your account”,—

Held, that the writing constituted an acknowledgment of a debt from which a promise to pay the debt could reasonably be inferred.

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

C. E. S. Perera (with him *S. W. Jayasuriya*), for the defendant, appellant.

G. P. J. Kurukulasuriya (with him *S. P. C. Fernando*), for the plaintiff, respondent.

Cur. adv. vult.

August 8, 1941. SOERTSZ J.—

The sole question that arises on this appeal is whether the learned Commissioner of Requests took a correct view of the document P 1 when he held that it amounted to an acknowledgment of a debt which had become statute barred, and so gave the plaintiff, by virtue of section 12 of the Prescription Ordinance, the right to recover that debt.

P 1 is in these terms so far as the relevant part of it is concerned:

“Mr. D. R. de Silva wrote to me asking at what price I want to sell it as there is a man known to him who wants to buy it. There are some more people who are willing to buy it. I wish to sell it as early as possible and also to settle your account.”

The plaintiff has given evidence and has testified to the fact that **"your account"** refers to a sum of money due to him as fees in two cases **in** which he acted for the defendant. That statement has not been challenged. The question, then, is whether the words "I wish to settle your account" constitute an acknowledgment of the defendant's debt to the plaintiff from which a promise to pay the debt can reasonably be inferred. I can see only one answer to that question. In the context the words "your account" clearly mean the "account" given by the addressee to the writer of what is due to him. In other words, his bill: "I wish to settle" is not merely an acknowledgment of that debt from which a promise to pay can be inferred, but it is an acknowledgment with an express declaration of a desire to pay. It has frequently been laid down that when there is an acknowledgment of a debt without any words to prevent the possibility of an implication of a promise to pay it, a promise to pay is inferred. Much more, then, must such a promise be inferred when the acknowledgment is coupled with an expression of desire to pay.

This case is clearly within the rule of the House of Lords case of *Spencer v. Hemmerde*¹.

The trial Judge, therefore, came to a right conclusion and this appeal **must be dismissed with costs.**

Appeal dismissed.

¹ (1922) 2 A. C. 507.