1958 *Present :* **Sansoni, J., and Sinnetamby, J.**

THE MUNICIPAL COUNCIL OF NEGOMBO, Appellant, *and* BENEDICT FERNANDO, Respondent

S. C. 539—D. C. Negombo, 18,412

Prescription Ordinance (Cap. 55)—Supply of electricity—Written promise—Is it a book debt?—Sections 6, 7, 8, 10.

A claim by a supplier of electricity to recover the charges due to him is not a book debt if it is based upon a written promise. Such a claim falls under section 6, and not section 8, of the Prescription Ordinance.

An offer in writing made by a person to pay the monthly charges for consumption of electricity becomes a binding promise when the supplier accepts the offer and supplies electricity on the faith of the promise.

Municipal Council, Kandy v. Abeyesekera (1930)-31 N. L. R. 366, distinguished.

APPEAL from a judgment of the District Court, Negombo.

H. W. Jayewardene, Q.C., with *G. T. Samerawickreme* and *C. P. Fernando*, for the Plaintiff-Appellant.

Ronald Perera, for the Defendant-Respondent.

Cur. adv. vult.

June 3, 1958. SANSONI, J.—

The Municipal Council of Negombo sued the defendant to recover the sum of Rs. 537/37 which was said to be due on account of electricity supplied by the Council to the defendant during the period April to August, 1954. The Council pleaded that the defendant by his agreement dated 26th January 1954 (which was filed with the plaint) contracted for the supply of electricity to him and agreed to pay its charges for such

supply. The defendant filed answer pleading that the claim was prescribed, and asking for one year's time to liquidate the amount found due in the event of the plea of prescription failing.

At the trial the only issue suggested was whether the plaintiff's claim was prescribed. The only witness called was the accountant of the Council who stated in evidence that the amount claimed was due: he also produced the written application which the defendant had signed upon a 50 cents stamp. This application is a lengthy document containing the conditions under which electricity is supplied. It also contains an undertaking by the defendant to pay the monthly charges for consumption of electricity at the rates prescribed in the relevant tariff.

The learned District Judge dismissed the plaintiff's action, rejecting the submission that the claim fell under section 6; he held that the claim was in respect of a book debt, and fell under section 8 of the Prescription Ordinance (Cap. 55). He followed the decision in *Municipal Council, Kandy v. Abeyesekera* [1], a case in which the Kandy Municipality claimed money due for the supply of electric current and for the hire of electric lamps. Dalton J. held in that case that the debt was a book debt. There is a superficial resemblance between that case and the present one, but I think that a closer examination of the facts reveals that the decision of Dalton J. does not apply to the case now under consideration. In that case the only question which was considered was whether the section applicable was section 9 (now section 8), as the defendant there pleaded, or whether section 8 (now section 7) or section 11 (now section 10) applied, as the plaintiff there urged. It will be seen at once that the question whether the present section 6 applied was not specifically considered by the learned Judge. The reason may be that the plaintiff in that case relied only on sections 8 and 11 (present sections 7 and 10) as being applicable to the case. I have examined the record in that case and I find that the only document relied on was a letter written to the Electrical Engineer of the Kandy Municipal Council by the defendant requesting him to supply 56 lamps for a pirith tent, and stating that he would deposit the payment on hearing from the Engineer. I think the writing sued upon in the present case is easily distinguishable.

I do not regard that decision as authority for the proposition that every claim by a supplier of electricity to recover the charges due to him is a book debt. Each case must be considered in the light of the facts proved and the basis upon which the particular claim was presented in Court. I do, however, respectfully dissent from that part of the judgment of Dalton J. where the learned Judge says: "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 on certain classes of contract. As Moncreiff, J. pointed out in *Horsfall v. Martin* [2], certain claims referred to in section 9 must be prosecuted within one year from the date at which they became due, whether they are based upon written promises or not. It will not therefore be sufficient here merely to ascer-

[1] *(1930) 31 N. L. R. 366.* [2] *(1900) 4 N. L. R. 70.*

tain whether the agreement was in writing or not ". The learned Judge overlooked the earlier case of *de Silva v. Don Louis* [1] in which three judges decided that a claim due on a written contract fell under section 7 (now section 6) and not under section 8 (now section 7), even though the claim was in respect of rent which is specifically provided for in section 8 (now section 7). The particular passage in *Horsfall v. Martin* [2] which Dalton J. cited has been criticised and dissented from in later judgments, such as *Rodrigo v. Jinasena* [3] and *Assan Cutty v. Brooke Bond* [4]. In *Rodrigo v. Jinasena* [3] Maartensz A. J. applied the principle laid down in *de Silva v. Don Louis* [1] to a case where goods were sold and delivered upon an agreement in writing, and held that section 7 (now section 6) and not section 9 (now section 8) applied in such a case. The same principle was also applied in *Campbell and Co. v. Wijesekere* [5].

The learned District Judge does not seem to have had his attention drawn to these decisions, for he has quoted the passage in the judgment of Dalton J. as supporting his conclusion that " claims contemplated under section 8 must be prosecuted within one year from the date at which they become due, whether they are based on written promises or not ". It is thus clear that he was basing himself on an erroneous view of the binding effect of that judgment.

It only remains for me to find whether the writing P1 signed by the defendant falls within section 6 which relates to actions " upon any written promise, contract, bargain or agreement or other written security ". 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.

If the condition laid down by de Sampayo J. in *Walker Sons and Co. Ltd. v. Kandyah* [6] that the written contract contemplated in section 6 must have a certain degree of formality applies to a written promise also, it passes that test too, for it is a formal document signed by the defendant upon a 50 cents stamp. Whether that test which de Sampayo J. prescribed in the case of a written contract also applies in the case of a written promise I do not decide, but I would point out that Lyall Grant J. in *Urban District Council, Matale v. Sellaiyah* [7] held that a letter which had no particular formality attaching to it could constitute a written promise.

For these reasons I would set aside the judgment under appeal and give judgment for the plaintiff as prayed for with costs in both Courts.

SINNETAMBY, J.—I agree.

Appeal allowed.

[1] *(1881) 4 S. C. C. 89.*
[2] *(1900) 4 N. L. R. 70.*
[3] *(1931) 32 N. L. R. 322.*
[4] *(1934) 36 N. L. R. 169.*
[5] *(1920) 21 N. L. R. 431.*
[6] *(1919) 21 N. L. R. 317.*
[7] *(1931) 33 N. L. R. 14.*