1933 *Present :* **Garvin A.C.J. and Maartensz A.J.**

ALVARAPPA PILLAI *v.* PERERA.

349—D. C. Colombo, 41,145.

Prescription—Claim for money lent—Assignment of claim—Meaning of " book debt "—Ordinance No. 22 of 1871, ss. 8 and 9.

A claim for money lent, which is prescribed in three years, does not become a book debt within the meaning of section 9 of the Prescription Ordinance merely because the transaction is entered in the books kept by the lender in the ordinary course of business.

APPEAL from a judgment of the District Judge of Colombo.

N. Nadarajah (with him *J. E. Alles*), for plaintiff, appellant.

No appearance for defendant, respondent.

Cur. adv. vult.

November 30, 1933. GARVIN A.C.J.—

This is an appeal by a plaintiff whose action was dismissed in the view that it was a claim to recover a book debt within the meaning of section 9 of Ordinance No. 22 of 1871, and as such barred by lapse of time.

[1] *Law Rep.* (1910) 2 *K. B.* 66.

The amount claimed was Rs. 650. Of this sum the District Judge has found that with the exception of Rs. 41.74 which represents the value of goods sold, the balance was money lent and advanced to the defendant by the firm of Arumugam Brothers and had not been repaid. The partners of this firm were declared insolvent. In the course of the liquidation the assignee sold the book debts of the insolvents and duly assigned the same to the plaintiff by the deed P 4 filed of record.

The learned District Judge took the view that, notwithstanding that to the extent of Rs. 608.26 the claim represented money lent to the defendant, the action by the plaintiff must be regarded as a claim to recover a book debt because the original lenders' rights of action passed to the plaintiff under an assignment to him of book debts. The term book debt in the document of assignment appears in a context in which it is clear that it was used in a general sense so as to include in the assignment all debts of whatever kind which became due in the ordinary course of the business of Arumugam Brothers and were entered in their books. It cannot be doubted that there was a valid assignment of the debts due to that firm from the defendant which consisted partly of money lent and partly of the value of goods sold and delivered.

The plaintiff is therefore in the position of Arumugam Brothers; he is entitled to the same rights of action. As to the sum Rs. 41.74 for goods supplied, a year has elapsed since the cause of action arose and inasmuch as a claim in respect of goods sold and delivered is barred in one year the claim is no longer sustainable.

In the case of money lent the period of limitation is three years—*vide* section 8 of Ordinance No. 22 of 1871—and the claim is not therefore barred by that provision. Section 9 of the same Ordinance, however, prescribes a time limit of one year for the maintenance of actions "for or in respect of any goods sold and delivered or for any shop bill or *book debt* . . . ." The question for consideration is whether a claim for money lent, against which the time limit of three years prescribed by section 8 has not run is barred after the lapse of one year if the transaction is entered in the books kept by the lender in the ordinary course of his business. If the expression "book debt" as it appears in section 9 must be given the wide and general meaning of any debt entered or which should have been entered in books kept in the ordinary course of business then, however anomalous the result may be, the claim is barred.

An examination of the provisions of Ordinance No. 22 of 1871 shows that the legislature has grouped together various claims and causes of action in a series of sections, and prescribed a time limit in respect of each group. It then proceeds to make provision prescribing a time limit for the bringing of actions in respect of any cause of action not expressly included in these groups—*vide* section 11.

The various causes of action specified in these various groups would justify the inference that these groups were intended to be mutually exclusive. This should be borne in mind in the interpretation of the general words and expressions which appear in a few of these sections. To interpret the words "book debts" which appear in section 9 in the broad general meaning which they ordinarily bear would be to sweep into section 9 many of the cases specified and expressly provided for in other

sections of the Ordinance. The provisions of the Ordinance read as a whole strongly support what appears to be the settled view of this Court—that the expression " book debt " must be given a more restricted meaning and one which will not bring about a conflict with the other specific provisions of the Ordinance. In *Rantebe v. Peiris Silva*[1], Dalton J. when dealing with just such a case as the one now under consideration recapitulates most of the authorities and comes to the conclusion that the meaning to be attached to the words " book debts " in section 9 " should be limited by the previous specific words which have been coupled with the term ' book debt ' ".

As indicated above I have myself arrived at a similar conclusion. The claim for money lent is not therefore barred. This appeal is allowed and judgment will be entered for plaintiff for Rs. 608.26, together with interest thereon at 9 per cent. per annum from the date of action to this date and thereafter on the aggregate amount at 9 per cent. per annum till payment in full.

He is also entitled to his costs both here and below.

MAARTENSZ A.J.—I agree.

Appeal allowed.