

1945

Present: Wijeyewardene J.

SUPPIAH PULLE, Applicant, and SAMARAKONE, Respondent

226—C. R. Kandy 34,431

Account stated—Credit memo referring to previous balance—Promise to pay.

Where a credit memo contained a statement of the value of goods sold "apart from a previous balance", which was given on an account stated previously between the parties,

Held, that the document may be deemed to contain a written promise to pay the sum, apart from the previous balance.

Sonnedara v. Weerasinghe (1 C. L. W. 328) followed.

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

S. R. Wijayatilake for plaintiff, appellant.

No appearance for defendant, respondent.

Cur. adv. vult.

March 1, 1945. WIJEYWARDENE J.—

Plaintiff sued the defendant for the recovery of a sum of Rs. 87.54 on account of goods sold and delivered as per credit bills, C 3729 of April 9, 1941, and C 4037 of May 8, 1941. He pleaded as an alternative cause of action that there was an account stated on May 8, 1941. This alternative plea was put forward, no doubt, because the claim on goods sold was clearly prescribed on March 9, 1944, when the plaint was filed.

In his answer the defendant stated that he paid and settled what was due from him to the plaintiff and pleaded further that the plaintiff's claim was prescribed.

The parties agreed to go to trial on the following issues:—

- (1) Was there an account stated between the parties on April 9, 1941, and May 8, 1941?
- (2) If not, is plaintiff's action prescribed?

The plaintiff produced in evidence the two bills C 3729 and C 4037 and the defendant admitted that he signed them. The material portions of those two bills are as follows:—

Credit Memo.

Bought of SP. K. Suppiah Pillai & Brothers, General Cloth Merchants,
12 and 13, Trincomalee street, Kandy, 9.4.41.

Mr. T. M. Samarakoon, Korala, Dehipe.

			Rs. c.		Rs. c.
3 yds. Long Cloth	...	...	@ 0 40	...	1 20
1½ ,, Fabrick	...	...	@ 0 65	...	0 98
1 ,, Brilliant Poplin	...	...	@ 0 45	...	0 45
1½ ,, Tricolin	...	...	@ 0 40	...	0 60
1 ,, Sarong, small	...	...	@ 0 65	...	0 65
1 ,, Poplin	...	...	@ 1 10	...	1 10
				Total ...	4 98
				To previous balance ...	54 98
				Total ...	59 96

C 3729

Sgd. T. M. SAMARAKOON.

Credit Memo.

Bought of SP. K. Suppiah Pillai & Brothers, General Cloth Merchants,
12 and 13, Trincomalee street, Kandy, 8.5.1941.

Mr. T. M. Samarakoon, Korala, Dehipe.

Apart from previous balance.

			Rs. c.		Rs. c.
10 yds. White Cloth	...	...	@ 0 40	...	4 0
2½ ,, Premeson Poplin	...	...	@ 0 60	...	1 50
8 rolls Thread	...	...	@ 0 12	...	0 96
					6 46

C 4037

Sgd. T. M. SAMARAKOON.

The Commissioner of Requests held that the plaintiff could not rely on the earlier account stated (C 3729) as they have pleaded a later account stated (C 4037), that the latter document showed only a balance of Rs. 6.46 "struck as being due from the defendant to the plaintiff" and that he was unable to attach any significance to the entry on that document reading "apart from previous balance". He then proceeded to say "It is on the account stated on May 8, 1941, that plaintiff sued in the alternative cause of action. The position is not the same as though plaintiff was suing on the account stated of April 9, 1941. Plaintiff must be held to be bound by his plaint". The Commissioner dismissed the plaintiff's action with costs.

I think the Commissioner has taken, to say the least, a highly technical view when he said that the plaintiff should be held to be bound by his plaint. It should not be forgotten that this is an action in the Court of Requests and special provisions relating to the pleadings in these Courts are found in the Civil Procedure Code. Moreover, the matter passed beyond the stage of pleadings when at the hearing the Commissioner allowed the parties to proceed to trial on the agreed issues one of which referred, in unambiguous terms, to the earlier account stated.

The document C 3729 is clearly an account stated (*Annamaley Chettiar v. Thornhill*)¹. It refers to an earlier balance of Rs. 54.98 and then a new balance of Rs. 59.98 is struck.

The document C 4037 may be regarded as an account stated when read in connection with C3729, but even, if it is not so read, it could be still considered as containing a written promise to pay Rs. 6.46 apart from "the previous balance" *Sonnadara v. Weerasinghe*².

I set aside the judgment of the Lower Court and direct judgment to be entered in favour of the plaintiff for Rs. 87.54 with legal interest from date of action to date of payment. The plaintiff will also be entitled to costs here and in the Court below.

Appeal allowed.

