

1932

Present : Dalton and Jayewardene JJ.

RANTEBE *v.* PEIRIS SILVA.

232—D. C. Kandy, 37,447.

*Prescription—Money advanced for purchase of tea leaf—Book debt—Ordinance No. 22 of 1871, s. 9.*

Where the plaintiff entered into an agreement with the defendant for the purchase of tea in the course of which he advanced money to him and an account of the transaction was entered in the plaintiff's books.

*Held*, that a debt due in respect of the transaction was not a book debt within the meaning of section 9 of the Prescription Ordinance and that an action for recovery of the money advanced was prescribed in three years.

THE plaintiff sued the defendant for the recovery of a sum of Rs. 784.14, alleged to be balance due of money advanced to defendant for the supply of green tea leaf. The District Judge dismissed the action on the ground that the sum claimed was a book debt and was prescribed in one year under section 9 of the Prescription Ordinance.

*Garvin*, for plaintiff, appellant.—This is an action for money lent and advanced. The books are merely evidence of such advances. All entries in books do not constitute book debts, see *Municipal Council, Kandy v. Abeysekere*<sup>1</sup>. The words "book debt" in Ordinance No. 22 of 1871 is used in a restricted sense. The fact that defendant-respondent was credited with the value of tea leaf supplied can have no effect on the original contract.

*Navaratnam*, for defendant, respondent.—From the evidence both oral and documentary, it is clear that (1) the parties had entered into a contract of purchase and sale of green tea leaf, (2) the details of the transaction are duly recorded in books, and (3) advances made are set off against the price. These three elements are sufficient to bring the transaction within the meaning of book debts. The cases of *Pate v. Mack*<sup>2</sup> and *The Municipal Council, Kandy v. Abeysekere* (*supra*) support these submissions.

July 29, 1932. DALTON J.—

This appeal raises a question under the Prescription of Actions Ordinance, 1871. The plaintiff sued the defendant for a sum of Rs. 798.14, alleged to be balance due of money advanced to defendant for the supply

<sup>1</sup> 31 N. L. R. 866.

<sup>2</sup> 28 N. L. R. 321.

of green tea leaf to the plaintiff. The trial Judge held that the sum was due to plaintiff, but he dismissed plaintiff's action on the ground that the sum claimed was a book debt and prescribed in one year, under section 9 of the Ordinance. Plaintiff appeals, it being urged on his behalf that the transaction falls under section 8 of the Ordinance, under which the period of prescription is three years.

The evidence shows that plaintiff owns a tea estate and also purchased green tea leaf from outsiders which was manufactured in his factory. For a period of years he had been in the habit of making advances to defendant for the purpose of purchasing tea leaf for delivery at the factory. He apparently dealt with a number of other persons in the same way, but the arrangement or agreement between the parties was not put in writing. Plaintiff of course kept books, day book and ledger, in connection with all these transactions, which were produced, whilst defendant had a pass book in which entries of tea delivered at the factory were made at the time of delivery. The pass book was not produced, defendant alleging that it was handed over by him to plaintiff in 1924 when the alleged accounts were settled in May, 1924, between the parties. The trial Judge rejects defendant's evidence on this point, holding that the entries in plaintiff's books subsequent to May, 1924, were genuine. The last entry of a cash advance is December 31, 1927, and this action was launched on January 9, 1929.

Whilst accepting plaintiff's version of the facts alleged, the learned Judge has, however, come to the conclusion that the action is in respect of a book debt, and the claim is prescribed in one year. From that decision plaintiff appeals. It is urged on his behalf that the action falls under section 8 of the Prescription of Actions Ordinance, the period there being three years.

In my opinion, the appeal must succeed. The facts show that in terms of an agreement which was not reduced to writing plaintiff from time to time advanced sums of money to defendant to enable the latter to purchase tea for the plaintiff. This is a matter which seems to me to fall within section 8 of the Ordinance.

The question of what is a "book debt" as the term is used in the Ordinance has been before the Court before, and is not an easy question to decide. The term appears to have been first used, so far as I can ascertain, in Regulation No. 13 of 1822, section 7 of that Regulation being with one slight addition, in practically the same terms as section 7 of Ordinance No. 22 of 1871. Regulation No. 13 of 1922 was repealed by Ordinance No. 8 of 1834 which was repealed by Ordinance No. 22 of 1871. In all these three enactments it is to be noted that the term "book debt" is coupled with the term "shop bill." In its general sense, the term "book debt" is very much wider than the term "shop bill," but having regard to the provisions of the previous sections and also to the wording of section 9, I am inclined to think that here the principle *noscitur a sociis* applies. If that is so, the meaning of the term must be limited by reference to the previous specific word which has been coupled with the term "book debt." I appreciate the fact that this doctrine must be applied with caution, since it implies a departure from the natural meaning of the

words, but it is clear from previous judgments of this Court that the term as used in section 9 has not been given its natural and general meaning.

The case of *Mahalingam & Co. v. Muttiah Pillai*<sup>1</sup> was an action for goods sold and delivered. Goods had been sold and money lent to a third person on account of the defendant. The items were all entered in the accounts, to which the term "book debts" might in its natural sense apply, but the Court (Bertram C.J. and Ennis J.) held that, whereas the price of goods sold and delivered more than a year prior to the action could not be recovered, different considerations applied to sums entered in the account as money lent and advanced, the prescriptive period for which is three years under section 8 of the Ordinance. The learned Judges were of opinion that the argument that these items could be regarded as book debts under section 9 was not sound. The reasons for that conclusion are not given, but in the result the term "book debt" must clearly in their opinion have a much narrower meaning in the section than is usually given to it.

In *Municipal Council, Kandy v. Abeysekere*<sup>2</sup> it was also pointed out that the term "book debt" as used in section 9 could not be given the usual wide meaning of the words. There the Council carried on the business of selling electric current, fittings, and lamps, and also of hiring out lamps for illumination. Books were kept for the purpose of the business in which the accounts of customers were kept. The amount sued for there from one of the customers was held to be a book debt within the meaning of section 9. In *Pate et al. v. Mack*,<sup>3</sup> it was held by me that a sum claimed by the plaintiff, who carried on the business of veterinarians and shoeing smiths, for medicine, diet, kennelling and other services also came within the term "book debt," as used in the section, although this case was more difficult to decide. I also expressed the opinion there that from the context the kind of "book debt" contemplated was one that had arisen in connection with a shop or similar trade or business.

In the case under appeal before us, so far as the evidence goes, the plaintiff was a tea estate proprietor, who, in addition to growing and manufacturing his own tea, entered into agreements with others for the purchase of tea, in the course of which transactions he made advances for such purchases. Although the transactions and accounts were entered in books, I am unable to agree that the trial Judge was correct in holding that debts shown by the books to be due in respect of such transactions were book debts within the meaning of section 9 of the Prescription Ordinance. The transaction falls under section 8 and the period of prescription is three years.

In the event of this Court holding that the trial Judge was wrong on this point, it was urged that the item entered under date January 16, 1926, was wrongly entered and it should have been entered in November, 1925.

<sup>1</sup> 2 *Times of Ceylon L. R.* 129.

<sup>2</sup> 31 *N. L. R.* 366.

<sup>3</sup> 28 *N. L. R.* 321.

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The trial Judge has found that the books are correct and after an examination of them in respect of this and similar transactions I have no reason to disagree with his conclusion.

The appeal must therefore be allowed, the decree entered in the lower Court being set aside and judgment entered for the sum of Rs. 798.14 found to be due to the plaintiff, who will be entitled to costs in both Courts.

JAYEWARDENE A.J.—I agree.

*Appeal allowed.*

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