1919.

Present: De Sampayo J. and Schneider A.J.

WALKER, SONS & CO., LTD., *v.* KANDYAH.

150—D. C. Colombo, 50,802

Prescription—Action for repairs effected to motor car and materials supplied—Order by letter to effect repairs—Written contract—Work and labour done and goods sold—Acknowledgment of liability to pay part only—Ordinance No. 22 of 1871, ss. 7, 8, 9, and 13.

The plaintiffs filed this action on July 22, 1919, to recover a sum of Rs. 2,677.42 for repairs effected to a motor car and for materials supplied between June, 1916, and April, 1918.

The order of the defendant requesting the plaintiffs to effect the repairs was given by a letter, and the acceptance of the order by the plaintiffs was also by a letter.

Held, that the contract between the parties was not a written contract within the meaning of section 7 of Ordinance No. 22 of 1871, nor an unwritten contract falling under section 8, but fell under that class of unwritten contract specially provided for by section 9.

"The written contract (under section 7) is one in the nature of security, and must have a certain degree of formality, and it is difficult to say that the letters exchanged between the parties in connection with the motor car is a security in this sense."

Actions for work and labour done and goods sold and delivered, though these are unwritten contracts, come within section 9, and not under section 8.

When the plaintiffs pressed for payment, the defendant within year from date of action acknowledged his indebtedness, and promised to pay Rs. 2,000 in full satisfaction.

Held, that this acknowledgment entitled the plaintiffs to recover only Rs. 2,000, and not the full amount of the claim.

THE plaintiffs-respondents sued the defendant-appellant to recover the sum of Rs. 2,677.42 for repairs done to a motor car and for materials supplied in the work, including a sum of Rs. 250 for storage of the car. At the trial the plaintiffs waived the sum of Rs. 250 charged for storage, and the case went for trial on the issue, viz., whether the action was prescribed.

The learned District Judge held that, as a claim for work and labour done or for goods sold and delivered, the action was prescribed under section 9 of the Prescription Ordinance, but that the plea of prescription could not be maintained in view of the acknowledgment of the debt and the promise to pay contained in the correspondence between plaintiffs and defendant.

The defendant appealed from this judgment.

1919.

Walker, Sons & Co., Ltd. v. Kandyah

A. St. V. Jayawardene, for the defendant, appellant.—The defendant's promise to pay was only in respect of a sum of Rs. 2,000, which he had offered in full settlement of the claim by his letter P. 16, which offer plaintiffs had accepted by their letter P 17. Plaintiffs, therefore, could not get judgment for any sum in excess of Rs. 2,000. Counsel cited *Philips v. Philips.*[1]

L. H. de Alwis, for plaintiffs, respondents.—The action was not prescribed in one year. Section 9 of the Prescription Ordinance, which refers to actions for or in respect of work and labour or goods sold and delivered, does not apply. That section was held to refer only to manual labour, or work of a menial character. It would not include a case like the present, where the work of repairs required a certain degree of engineering skill. Counsel cited *Walles v. Philippu;*[2] *Brohier v. Kallehegamagey;*[3] *Don Mathes v. Daniel;*[4] *Alvapillai v. Sadayar;*[5] *Mack v. Wickremaratne;*[6] *Gunasekere v. Ratnayake;*[7] *Jayawardene v. Isu Lebbe.*[8] Again, before the plaintiffs commenced the work, they sent defendant an estimate of the cost of repairs and of the parts to be supplied and fitted on, and it was only on defendant's reply in writing agreeing to pay the amount specified that plaintiffs commenced the work. The agreement, therefore, being in writing, section 7 of the Prescription Ordinance applied, and the claim would not be prescribed inside of six years. Even if the contract were to be reckoned as an unwritten one, section 8 would apply, and the claim only prescribed in three years. Further, the claim neither fell wholly under the class of " work and labour " nor that of " goods sold and delivered," but contained elements of both. It formed a new class of case, and therefore section 11 of the Prescription Ordinance applied.

A. St. V. Jayawardene, in reply.—The correspondence do not constitute such a contract in writing as is contemplated by section 7 of the Prescription Ordinance. The documents are not stamped, nor are they in the solemn form taken by contracts generally. Section 8 does not apply in this case. No doubt every claim for work and labour is on an unwritten contract or agreement. But section 9 specifically provides for all such unwritten agreements as are for work and labour or goods sold and delivered. It would render that section nugatory, if its application in a case like this were denied on the ground that the claim was on an unwritten agreement.

In *Clay v. Yates* [9] it was held that the printing of a book fell under the class of " work and labour done," although a certain degree of skill was required in the task.

Cur. adv. vult.

[1] *3 Hare 299.*
[2] *Ram. 1872, 103.*
[3] *2 Lor. 57.*
[4] *3 Lor. 22.*
[5] *1 Bal. 143.*
[6] *(1901) 5 N. L. R. 142.*
[7] *1 Cur. L. R. 264.*
[8] *(1908) 11 N. L. R. 321.*
[9] *(1856) 1 Hur. & Norm. 73.*

October 1, 1919. DE SAMPAYO J.—

The plaintiffs are an engineering firm, and sue the defendant for repairs effected to a motor car of the defendant and for materials supplied. We have to decide a question of prescription which the defendant has raised. The repairs were effected between June, 1916, and April, 1918, and this action was brought on July 22, 1919. The defendant pleads that this is an action for work and labour done and goods sold and delivered, and comes under section 9 of the Ordinance No. 22 of 1871, and is therefore barred by prescription. The order of the defendant requesting the plaintiffs to effect the repairs was given by a letter, and the acceptance of the order by the plaintiffs was also by a letter, and the plaintiffs' counsel contends that the contract between the parties was a written contract within the meaning of section 7, and the action will only be prescribed in six years. Section 7 relates to actions " upon any deed for establishing a partnership, or upon any promissory note, or upon any written promise, contract, bargain, or agreement, or other written security." The written contract, it would seem, is one in the nature of a security, and must have a certain degree of formality, and it is difficult to say that the letters exchanged between the parties in connection with the motor car is a security in this sense. The plaintiff's counsel next refers to section 8, which limits actions upon an unwritten contract to three years. If the correspondence does not constitute a written contract, it must be conceded that there was an unwritten contract. But then comes section 9, which appears to provide specially for actions on certain classes of unwritten contracts, and I think that actions for work and labour done and goods sold and delivered, though these are unwritten contracts, come within section 9. See the concluding part of the judgment of Moncrieff J. in *Horsfall v. Martin.* [1]

However this may be, there are one or two matters which in any case appear to enable the plaintiffs to avoid the plea of prescription. The plaintiffs' bill against the defendant was for Rs. 2,268.95, and the claim, with the addition of certain other charges, has now amounted to Rs. 2,677.42. When the plaintiffs pressed for payment, the defendant replied by letter and acknowledged his indebtedness, and promised to pay Rs. 2,000 in full satisfaction. This was within a year from the date of action. It amounts to an acknowledgment in writing within the meaning of section 13 of the Ordinance, and is evidence of a new contract whereby to take the case out of prescription. But Mr. Jayawardene is, I think, right in contending that, granting that to be so, the plaintiffs can, nevertheless, recover only Rs. 2,000 which was promised, and no more. " The legal effect of an acknowledgment of a debt barred by the Statute of Limitations is that of a promise to pay the old debt.

[1] *(1900) 4 N. L. R. 70.*

1919.

DE SAMPAYO J.

Walker, Sons & Co., Ltd. v. Kandyah

and for this purpose the old debt is a consideration in law. It is revived as a consideration for the new promise. But the new promise, and not the old debt, is the measure of the creditor's rights " (*Philips v. Philips*[1] *per* Wigram V.C.). As the plaintiffs are obliged to depend on the defendant's new promise, judgment can only go for Rs. 2,000, and not for the full amount for which the District Judge has entered a decree in favour of the plaintiffs. At the trial the plaintiffs waived a sum of Rs. 250, which they had charged as store rent, and Mr. Jayawardene suggests that the plaintiffs' claim should be still further reduced by deducting this sum from the Rs. 2,000. But I do not think this is right. The waiver was made in respect of the plaintiff's full claim, and not in respect of the amount of Rs. 2,000 promised by defendant. As a matter of fact, the question of restricting the plaintiffs to the amount of the defendant's promise does not appear to have been mooted in the District Court.

I would vary the decree by reducing the amount to Rs. 2,000. The defendant's success in appeal is not substantial, and I would give the plaintiffs the costs of appeal.

SCHNEIDER J.—I agree.

---

[1] *3 Hare. p. 299.*