

Present: Dalton J.

MUNICIPAL COUNCIL, KANDY v. ABEYESEKERE

240—C. R. Kandy, 6,712.

Prescription—Supply of electric current—Book debt—Ordinance No. 22 of 1871, s. 9.

A claim for money due to the Kandy Municipality for the supply of electric current and for the hire of electric lamps is prescribed in one year.

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

Garvin, for appellant.

Gratiaen, for respondent.

February 26, 1930. DALTON J.—

This appeal raises a question under the Prescription Ordinance, 1871.

The Municipal Council of Kandy, the appellant, sought to recover the sum of Rs. 64.20 from the respondent for the hire of electric lamps and the supply of electric current for a *pirith* ceremony in December, 1927. The sum of Rs. 53.30 was paid on December 10, 1927, at the time of the order, leaving a balance due of Rs. 64.20. This action was brought on May 29, 1929, and defendant pleads the benefit of the Prescription Ordinance.

The Commissioner held that the debt was a book debt within the meaning of section 9 of the Ordinance, being prescribed within one year, and dismissed the Council's action, but without costs.

The question arising on the appeal is whether section 9 applies, as defendant pleads, or whether section 8 or section 11 are applicable as plaintiff urges.

The Council carry on the business of supplying electric current and fittings within the Municipality; they also hire out lamps for illumination. Books are kept for the purpose of this business, in which the accounts with the various customers are entered.

This particular order was supplied on the written request of the defendant. The lamps, some of variegated colours, were required for seven days for a *pirith* tent on the Victoria esplanade. This request was replied to in writing, the Municipal Electrical Engineer setting out the cost and stating that the work would be put in hand on receipt of a deposit. Defendant then paid the deposit asked for, which covered the whole cost of hiring the lamps and part of the cost of electric current. It is urged that this order and acceptance established a contract within the meaning of section 8, or else fell within section 11 as not being otherwise provided for.

The question arising here has been considered in *Walker, Sons & Co. Ltd. v. Kandyah*.¹ Whether or not such a contract as we have under consideration was a written or unwritten contract,

¹ 21 N. L. R. 317

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 Moncrieff J. pointed out in *Horsfall v. Martin*,¹ certain claims referred to in section 9 must be prosecuted within one year from the date at which they become due, whether they are based upon written promises or not. It will not therefore be sufficient here merely to ascertain whether the agreement was in writing or not.

It is obvious of course that every entry of a debt in a book is not a book debt within the meaning of that section. I also accept the correctness of Mr. Garvin's argument that statutes of limitation must be strictly construed. The defence of lapse of time against a just demand is not to be extended to cases which are not strictly within the enactment (*Roddam v. Morley*²). Having regard to all these considerations however I am of opinion that the Commissioner's decision was correct. This is a debt arising in a trade or business carried on by the plaintiff Council, in which it is usual to keep books, and which ought to be booked in the ordinary course. This conforms to the test applied by me in an earlier case (*Pate v. Mack*³). For these reasons the appeal must be dismissed with costs.

There is a cross-appeal by defendant on the question of costs. It was not pressed. As pointed out in *Roddam v. Morley (supra)*, one must not give encouragement to the notion that there is of necessity anything morally wrong in a defendant relying on a statute of limitation. In this case however there are circumstances that justify the Commissioner's order as to costs in the lower Court.

Appeal dismissed.

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DALTON J.

Municipal
Council,
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