

1947

Present : Howard C. J.

AMERASINGHE, Appellant, and DE ALWIS, Respondent

S. C. 143—C. R. Colombc, 4,531

Prescription—Repairs to motor car—Work and labour done—Chapter 55, sections 7 and 8.

A claim for repairs effected and materials supplied to a motor car falls within section 8 of the Prescription Ordinance and is barred after one year.

Walker Sons & Co., Ltd. v. Kandiah (1919) 21 N. L. R. 317, followed.

APPEAL from a judgment of the Commissioner of Requests, Colombo.

E. S. Amerasinghe, for the plaintiff appellant.

S. Canagarayer, for the defendant, respondent.

Cur. adv. vult.

October 10, 1947. HOWARD C.J.—

The plaintiff appeals in this case from a decision of the Commissioner of Requests, Colombo, dismissing his action with costs. The plaintiff who carries on business at No. 128, Lauries Road, Bambalapitiya, under the name and style of British Motors, brought this action against the defendant for a sum of Rs. 70 on account of certain repairs effected and materials supplied to the defendant's motor car on or about January 28, 1944. The defendant filed answer pleading, *inter alia*, that the cause of action was prescribed under the provisions of the Prescription Ordinance (Chapter 55). It was agreed that this issue of prescription should be tried as a preliminary issue. The Commissioner considering himself bound by the case of *Walker Sons & Co., Ltd., v. Kandiah*¹ held that the plaintiff's claim is barred by prescription under section 8 of the Prescription Ordinance.

Section 8 of the Prescription Ordinance is worded as follows :—

“No action shall be maintainable for or in respect of any goods sold and delivered, or for any shop bill or book debt, or for work and labour done, or for the wages of artisans, labourers, or servants, unless the same shall be brought within one year after the debt shall have become due.”

Counsel for the appellant contends that this section only applies to manual labour and that the question of prescription in the present case is governed by section 7 of the Ordinance. In *Walker Sons v. Kandiah* (*supra*) the plaintiffs instituted an action to recover a sum of Rs. 2,677.42 for repairs effected to a motor car. 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. It was held that the contract between the parties was not a written contract within the meaning of section 6 of the Prescription Ordinance nor an unwritten contract falling under section 7, but fell under that class of unwritten

¹ (1919) 21 N. L. R. 317.

contract specially provided for by section 8. Actions for work and labour done and goods sold and delivered, though these are unwritten contracts, come under section 8 and not under section 7. It was also held that, as the defendant within a year from the date of action acknowledged his indebtedness and promised to pay Rs. 2,000 in full satisfaction, the plaintiffs were entitled to recover only Rs. 2,000 and not the full amount of the claim. The facts in regard to the nature of the claim are exactly the same in this case as in *Walker Sons v. Kandiah* (*supra*). Counsel for the appellant has pointed out that the latter decision was contrary to a long line of cases which decided that section 8 referred only to manual labour or work of a menial character. It did not refer to a case where the work of repairs required a certain amount of engineering skill. In view of the fact that it was held in *Walker Sons v. Kandiah* that there was an acknowledgment as to Rs. 2,000 of the amount claimed Counsel for the plaintiff asked me to say that the decision in regard to the ambit of section 8 was *obiter* and not binding on me. I am unable to say that the decision is *obiter*. If it had been, the plaintiff would have had judgment for Rs. 2,677.42 the whole amount claimed.

Counsel for the plaintiff has cited a number of cases decided before the decision in *Walker Sons v. Kandiah* to show that previous to that case the Courts had held that section 8 referred only to manual labour or work of a menial character. The cases cited in *Walker Sons v. Kandiah* are *Alvapillai v. Sadayar*¹; *Gunasekera v. Ratnaike*²; *Mack v. Wickremaratne*³; *Silva v. Ritche*⁴; and *Baker v. Siman Appu*⁵. In spite of these decisions the Court held that the plaintiffs' claim was within the ambit of section 8 of the Ordinance and not within sections 7 or 8.

Counsel for the plaintiff has also suggested that I should not follow *Walker Sons v. Kandiah* (*supra*) by reason of the fact that de Sampayo J. in his judgment has misinterpreted the judgment of Moncrieff J. in *Horsfall v. Martiņ*⁶. In the latter case it was held that though money due for goods and delivered on three months credit may be money due upon an unwritten promise yet the action brought for its recovery falls within section 8 of the Prescription Ordinance and as such is prescribed within one year after the debt became due. In his judgment Moncrieff J. held that any action "for or in respect of goods sold and delivered" whether it be upon an unwritten or even on a written contract is excluded from the operation of sections 6 and 7 respectively by the provisions of section 8. It was to this part of the judgment of Moncrieff J. that de Sampayo J. referred in his judgment in *Walker Sons v. Kandiah*. As pointed out by Garvin S.P.J. in *Assen Cutty v. Brooke Bond, Ltd.*⁷ at p. 139, the extent to which Moncrieff J. held that an action for or in respect of goods sold and delivered fell under section 8 to the exclusion of section 6 when the action was based on a written contract his judgment was in conflict with the principle of the decision in *K. P. V. Louis de Silva v. A. P. Don Louis*⁸ which is a judgment of the Full Court. It would

¹ (1905) 1 *Balasingham* 143.

² (1909) 1 *Current Law Reports* 264.

³ (1901) 5 *N. L. R.* 142.

⁴ (1858) 3 *Lorenz* 115.

⁵ (1888) 8 *Supreme Court Circular* 185.

⁶ (1900) 4 *N. L. R.* 70.

⁷ (1934) 36 *N. L. R.* p. 169.

⁸ (1881) 4 *S. C. C.* 89.

appear that the judgment of Moncrieff J. went further than the law warranted so far as written contracts are concerned. But this fact does not in my opinion afford a reason for not following the judgment of de Sampayo J. in *Walker Sons v. Kandiah*. The learned Judge in that case was not relying on that part of the judgment of Moncrieff J. which Garvin J. states in *Assen Cutty v. Brogke Bond, Ltd.* (*supra*) was not in accordance with the law.

Like the Commissioner I feel I am bound by *Walker Sons v. Kandiah*. In reaching the decision that I have, I do not in any way depart from the principle laid down by Lawrie A.J. in *Mack v. Wickremaratne* (*supra*) that work and labour contemplated by section 8 does not include the work of educated men. The work and labour done in the present case would not fall into this category.

The appeal is dismissed with costs.

Appeal dismissed.
