

1960 Present: K. D. de Silva, J., and Sansoni, J.

ADAMJEE LUKMANJEE & SONS LTD., Appellant, and ABDUL CAREEM HALLAJE, Respondent

S. C. 222—D. C. Colombo, 42144/M

Prescription—Goods sold—Letter written by debtor to creditor—“ Acknowledgment ”—“ Written promise ”—Prescription Ordinance (Cap. 55), ss. 6, 8, 12.

On March 27, 1954 plaintiff sold to the defendant, on credit, certain goods valued at Rs. 4,300. By letter dated 3rd August 1954 the defendant acknowledged that a sum of Rs. 4,300 was due from him to the plaintiff, and then proceeded to state: “ We shall definitely pay this bill by the end of this month ”.

Held, that the letter constituted a written promise within the meaning of section 6 of the Prescription Ordinance.

APPEAL from a judgment of the District Court, Colombo.

C. Ranganathan, with *S. Sharvananda* and *R. Rajasingham*, for plaintiff-appellant.

V. J. Martyn, with *N. R. M. Daluwatte*, for defendant-respondent.

October 7, 1960. K. D. DE SILVA, J.—

On March 27, 1954, the plaintiff's company sold to the defendant, on credit, 500 bags of cement valued at Rs. 4,300/-. The defendant delayed in making payment for the goods purchased by him. By letter P3 dated 3rd August, 1954, he acknowledged his liability to pay this amount to the plaintiff and agreed to pay it by the end of that month. Thereafter, two payments aggregating to Rs. 2,500/- were made by the defendant. The balance due on this transaction is Rs. 2,800/-.

This action was instituted on the 25th of September, 1957, to recover this amount. When the case came up for trial, the counsel for the defendant took up the position that the cause of action was prescribed. The proctor for the plaintiff however stated that he relied on the letter P3 referred to earlier, and he also submitted that the cause of action was based on this letter. The only defence set up at the trial was one of prescription. It was submitted on behalf of the defendant that this action was to recover money due for goods sold and delivered and that the claim was prescribed within one year as it fell within Section 8 of the Prescription Ordinance, Cap 55. On the other hand, it was argued on behalf of the plaintiff that this cause of action arose under Section 6 of the Prescription Ordinance in view of the letter P3. It is conceded that the defendant wrote this letter.

The learned District Judge, after hearing the arguments of counsel, held that this letter P3 was a mere acknowledgment of the debt due to the plaintiff and that it would not bring the plaintiff's claim under Section 6 of the Prescription Ordinance. Therefore, he dismissed the plaintiff's action with costs. The learned District Judge in coming to this decision purported to follow the judgment of De Sampayo, J., in the case of *Walker, Sons & Co. Ltd. v. Kandyah*¹. In that case De Sampayo, J., stated that a certain degree of formality was required in the case of a written contract, and he proceeded to hold that the letters exchanged between the parties in that case could not be construed as a contract.

In the instant case, however, it is not suggested that the letter P3 constituted a contract. It was relied on by the plaintiff to establish that there was a written promise made by the defendant to pay this amount to the plaintiff. At the commencement of the letter the defendant acknowledges that a sum of Rs. 4,300/- is due from him to the plaintiff, and he then proceeds to state: "We shall definitely pay this bill by the end of this month". Mr. Martyn who appeared for the respondent at the hearing of this appeal argued that this letter amounted merely to an acknowledgment contemplated by Section 12 of the Prescription Ordinance. If that view is correct then the plaintiff's claim is clearly prescribed. In my view Section 12 contemplates merely an acknowledgment of the debt. In the letter P3 there is not only an acknowledgment that the amount is due but also a clear promise to pay this amount within a month. I would, therefore, construe this letter as a written promise to pay the amount: accordingly, Section 6 and not Section 8 of the Prescription Ordinance applies to the facts of this case. If Section 6 applies it is not denied that the plaintiff is entitled to succeed.

I would set aside the judgment appealed against, and enter judgment for plaintiff as prayed for with costs. The plaintiff-appellant is entitled to costs in this appeal.

SANSONI, J.—I agree.

Appeal allowed.

¹ (1919) 21 N. L. R. 317.