

(1868) 01 CAL CK 0006

Calcutta High Court

Case No: None

Lalmohun Holdar

APPELLANT

Vs

Mahadeb Katee

RESPONDENT

Date of Decision: Jan. 31, 1868

Judgement

Sir Barnes Peacock, Kt., C.J.

Two questions were put to this Court by the Judge of the Small Cause Court (reads). The Bench before which the case first came decided that the Judge was right in holding it to be a wholesale transaction; that the goods were not sold by retail, but were sold wholesale, and the question was referred to this Bench to know whether, if goods are sold by wholesale, and not by retail, six years or three years is the period of limitation.

2. We are of opinion that three years, and not six years, is the period of limitation. Cl. 8 of s. 1 of Act XIV of 1859 enacts that to suits to recover the price of any articles sold by retail, the period of three years, from the time the cause of action arose, is the period of limitation. Suits, therefore, for articles sold by retail, whether in writing, or not in writing, whether by a contract registered or not registered under the provisions of cl. 10, come within s. 1, cl. 8, and must be brought within the period of three years. Actions for goods sold wholesale do not come within cl. 8, and the question to be determined is whether they fall under cl. 16, as being suits for which no other limitation is expressly provided by the Act, or under cls. 9 and 10 as being provided for by those clauses. It is clear that a suit brought for nonpayment of the price of goods sold by wholesale is a suit for breach of contract. A suit brought for the non-delivery of the very same goods under the very same contract would be a suit for the breach of contract. A suit for the non-acceptance of these same goods under the very same contract would be a suit brought for the breach of contract. Therefore it appears to me that, whether the suit is for the price of the goods, or for the non-acceptance of the goods, or for the non-delivery, it is a suit for the breach of a contract, and falls within cls. 9 and 10, not within cl. 16. Cl. 9 says:--"Suits brought for the breach of any contract, the period of three years from the time when the

breach of contract in respect of which the suit is brought first took place, unless there is a contract in writing signed by the party to be bound thereby, or by his duly authorized agent."

3. An action for non-payment of the price of goods sold by wholesale is within s. 9, unless the contract is in writing, and the limitation is three years. If the contract is in writing, then we must go to cl. 10 to see what is the period of limitation. That cl. (10) provides that "to suits brought for the breach of any contract in cases in which there is a written engagement or contract, and in which such engagement or contract could have been registered by virtue of any law or regulation in force at the time and place of the execution thereof, the period of three years from the time when the breach of contract in respect of which the action is brought first took place, unless such engagement or contract shall have been registered within six months from the date thereof." In this case, the Judge who referred the case has not found that there was any written contract, and, consequently, assuming that there was no written contract, the case does not come within cl. 10 of the Act. Under these circumstances, the Judge must be informed that the limitation in this case, provided there was no written contract, was three years from the time when the cause of action accrued. The Judge of the Small Cause Court will be told that the Division Bench have decided that he was right in holding that it was a sale of goods sold by wholesale, and that the Full Bench upon that finding have held that three years was the period of limitation under cl. 9, unless there was a written engagement.