

1898.
December 2.

RATWATTA *v.* APPUHAMI *et al.*

C. R., Kandy, 6,766.

Rules of procedure—Delivery of answer by post—Civil Procedure Code, s. 809.

Where a defendant took time to file answer and transmitted his answer to the Commissioner by post, *held*, that the answer should not have been sent to the Commissioner, but to the Chief Clerk, and that there was no irregularity in sending it by post.

Section 809 of the Civil Procedure Code requires a defendant to deliver to the Chief Clerk an answer in writing duly stamped, and delivery through the post is sufficient.

THIS was an appeal by the defendants against an order of the Commissioner rejecting their answer, which was sent by post, and refusing to set aside a judgment entered by default. The judgment of the Supreme Court fully sets out the facts.

Bawa, for appellants.

Maartensz, for respondent.

2nd December, 1898. LAWRIE, J.—

On the day fixed for the appearance of the defendants the first defendant appeared and stated that he and his sister did not admit the claim, but had a defence.

The Commissioner fixed the 15th July as the day for filing answer.

On the 15th the Commissioner received by post an answer with a proxy to a proctor, and a letter from the proctor that he would transmit the sum admitted in the answer.

The Commissioner filed answer, proxy and letter in the record, but he recorded that he rejected it, and on the same day in Court held that there had been no appearance and entered judgment by default.

The first and second defendants on 28th July filed affidavit and prayed that judgment by default be set aside, and that they be allowed to enter into their defence.

This was disallowed. Against this disallowance the present appeal is taken.

In my opinion, the application to set aside decree by default must be allowed and the decree set aside; the answer already filed may be taken to be answer of first and second defendants, and the case is remitted for trial.

In this case plaintiff sued in Kandy his *paravani* tenants residing in other districts for damages for breach of duty which plaintiff averred should have been performed in Kandy.

It may be that the Court in Kandy has jurisdiction, but it would be hard if defendants were obliged to go personally to Kandy at every step of the action.

The defendants should not have sent the answer to the Commissioner, but to the Chief Clerk. I see no irregularity in sending it by post. Section 809 requires a defendant to deliver to the Chief Clerk an answer in writing duly stamped, and I am of opinion that delivery through the post is sufficient. Every appeal which reaches the Supreme Court reaches it by the hand of the postman. Rules of process and procedure are surely meant for the maintenance of justice and order. They must not be turned into means of oppression. It would be oppression to force the personal delivery of an answer by defendants who live at a great distance. At the trial, I hope the claim plaintiff makes for so many journeys and services will be carefully scrutinized. The defendants are entitled to the costs of this appeal.

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