1972 *Present :* **Wimalaratne, J.**

B. W. PODISINGHO, Appellant, *and* **P. A. W. PERERA**, Respondent

S. C. 178/69—C. R. Colombo, 98558/R. E.

Rent Restriction Act (Cap. 274)—Section 2 (4) (5) and Regulation 2 of Schedule—"Excepted premises"—Point of time at which premises may be regarded as excepted premises—Notice to quit sent by registered post—Denial by tenant of receipt of it—Burden of proof—Evidence Ordinance, s. 114 (e).

(i) Where an action in ejectment is instituted in respect of "excepted premises" within the meaning of section 2 (4) of the Rent Restriction Act (Cap. 274), the annual value of the premises must be determined as at the time of the institution of the action, irrespective of the fact that an inquiry is pending before the Municipal Council concerning an objection taken by the tenant that the premises are not excepted premises.

(ii) The defendant, a tenant of the plaintiff, denied that he received a notice to quit the premises let. In proof of the notice to quit, the plaintiff relied upon the copy of the notice and the registered postal article receipt. Although the copy of the notice to quit contained the full address of the defendant, there was no evidence that the same address was inserted on the envelope enclosing the notice. In the postal article receipt neither the name of the road nor the number of the premises was inserted.

Held, that the evidence was not sufficient to prove that the notice to quit had been properly addressed. The postal receipt was only proof of the posting of a letter, but not proof of the posting of a letter properly addressed.

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

C. Ranganathan, Q.C., with *F. C. Perera*, for the defendant-appellant.

H. W. Jayewardene, Q.C., with *M. Somasundaram* and *S. Sinnetamby*, for the plaintiff-respondent.

Cur. adv. vult.

May 12, 1972. WIMALARATNE, J.—

The defendant was the plaintiff's tenant of premises No. 507/9, Prince of Wales Avenue, Colombo 14, on a monthly rent of Rs. 60. The defendant had been carrying on the business of a tinker in the premises for about 20 years. The Municipal Council of Colombo re-assessed the premises in 1968 and increased the annual value to Rs. 7,845. P3 is a copy of the Assessment Register dated 22.4.68 giving the new annual value.

The plaintiff's case was that the premises became "excepted premises" within the meaning of Section 2 (4) of the Rent Restriction Act (Chapter 274), that by his Proctor's letter dated 23.4.68—a copy of which is the document P1—he terminated the tenancy from the end of 31st May 1968, and that notwithstanding such termination the defendant continued in occupation to the plaintiff's loss and damage at Rs. 250 per month.

The defendant denied receipt of the notice terminating tenancy. He also pleaded that the annual value of Rs. 7,845 was not final, as he objected to the same and an inquiry was pending before the Municipal Council, and that the premises were not excepted premises.

Two questions arose for determination by the learned Commissioner of Requests, namely—(1) Whether the premises were "excepted premises" within the meaning of the Rent Restriction Act, and (2) Whether the tenancy had been duly terminated.

With regard to the first question, the contention of learned Counsel for the appellant is that the annual value referred to is the final annual value, and not any preliminary annual value to which a tenant has objected. The contention of learned Counsel for the respondent is that the annual value referred to is the annual value " for the time being " that is at the date of the institution of the action.

Section 2 (4) of the Rent Restriction Act was to apply to all premises within the declared area of operation not being excepted premises. Section 2 (5) provided that the Regulations in the Schedule to the Act were to determine the premises which were to be excepted premises. Regulation 2 provided that if the annual value as assessed for the purpose of any rates levied " for the time being " by the Municipality of Colombo in respect of business premises exceeded the sum of Rs. 6,000, then such premises were to be excepted premises.

The annual value for the time being simply means, in my view, the annual value at the time of institution of the action, irrespective of the fact that any objection has been taken to it. If a contrary view is taken the Rent Restriction Act cannot be properly implemented, for a tenant has only to raise an objection to the assessment each year and take up the position that there has been no finality in the assessment. The finding of the learned Commissioner that the premises were excepted premises was therefore correct.

In proof of the fact that the tenancy had been duly terminated the plaintiff relied upon the copy of the notice P1, and the registered postal article receipt P2. He said that his Proctor sent the notice by registered post. The defendant denied receipt of the notice. The plaintiff himself carries on business in the adjoining premises, namely 507/6 and 507/8. It was suggested to the plaintiff that he or his employees had every opportunity of intercepting letters meant for the defendant. The plaintiff denied this suggestion, but took no steps to prove that the letter had been taken delivery of by the defendant or his agents. The plaintiff relied upon the presumption laid down in Section 114 (*e*) of the Evidence Ordinance—" that the common course of business has been followed in particular cases ".

In P1, the copy of the notice, the address of the defendant is given thus: " B. W. Podisingho, Globe Tinker Works, No. 507/9, Prince of Wales Avenue, Colombo 14." The plaintiff's Proctor did not give evidence to say that the same address was inserted in the envelope enclosing

the notice. In the postal article receipt P2 the address is given as, " B. W. Podisingho, Globe Tinker Works, Colombo 14:"; neither the name of the road nor the number of the premises has been inserted. The learned Commissioner has held that, " what is set out in the registered postal article receipt P2 is a summary of the address of the defendant given in P1, and that the registered letter contained the full address given in it." He also held that " Globe Tinker Works is the name of the business which the defendant carries on in the premises in suit ". Now, there was no evidence that the business the defendant carried on was known as Globe Tinker Works ; nor was that the address of the defendant as given in the pleadings.

Learned Counsel for the respondent contends that it must be presumed that the Proctor or the clerk who inserted the address of the defendant in P1 would have inserted the same address in the envelope in which P1 was enclosed. I am unable to draw such a presumption. It is only where " a letter is proved to have been *properly addressed* and posted " that the presumption arises that " it reached the addressee in due course, even if the signature on the acknowledgment receipt be not proved."[1] It has not been proved in this case that the notice of termination of tenancy has been properly addressed. The postal receipt P2 does not give an adequate description of the address of the defendant. P2 is only proof of the posting of a letter, but not proof of the posting of a letter properly addressed. The conclusion I have arrived at is that the plaintiff has not proved that the defendant's tenancy was duly terminated.

The appeal of the defendant is allowed, and the plaintiff's action is dismissed with costs. The defendant will have the costs of appeal.

Appeal allowed.