

1971 Present: Samerawickrame, J., and Wijayatilake, J.

M. SAVARIMUTTU, Appellant, and EDWIN DE SILVA, Respondent

S. C. 448/67—D. C. Negombo, 83/R.E.

*Evidence Ordinance—Sections 16 and 114 (e)—Registered letter—Letter returned by Postal Authorities with endorsement “Refused”—Presumption that addressee refused to receive it—Landlord and tenant—Notice to quit—Proof.*

In plaintiff's action in ejectment against his tenant, the question arose whether notice to quit was given to the defendant. Plaintiff's Proctor gave evidence that he sent the notice to quit by registered letter and that the letter was returned to him by the Postal Authorities with the endorsement “Refused”. The defendant, in his evidence, did not speak to facts which might have shown that the letter was refused otherwise than by him or at his instance.

*Held*, that, having regard to sections 16 and 114 (e) of the Evidence Ordinance, the facts proved gave rise to the presumption that the notice to quit was served on the defendant.

**A**PPEAL from a judgment of the District Court, Negombo.

*C. Ranganathan, Q.C.*, with *C. Chellappah*, for the plaintiff-appellant.

*Izadeen Mohamed, Q.C.*, with *M. L. de Silva*, for the defendant-respondent.

*Cur. adv. vult.*

October 27, 1971. SAMERAWICKRAME, J.—

The learned District Judge accepted the plaintiff's position that the defendant had been in arrears of rent from November 1961 and granted him a money decree on that footing, yet he dismissed his claim for ejectment of the defendant on the ground that no valid notice to quit had been given.

He held that the notice to quit relied on was not valid because the period of notice ended on the first day of a month. In *Haniffa v. Sellamutthu*<sup>1</sup>—70 N. L. R. 200—a Bench of two Judges held that a notice to quit on or before the 1st December, 1964, was valid and declined to follow earlier decisions which had held otherwise. The judgment in *Haniffa v. Sellamutthu* (supra) had not been given at the date of the judgment of the learned District Judge in the present action.

The learned District Judge also held that notice had not been served on the defendant. The plaintiff had instructed Proctor Jayatilake to send a notice to quit to the defendant. Proctor Jayatilake gave evidence and said that he sent the notice to quit to the defendant by a letter properly addressed to him by registered post. The letter was returned

<sup>1</sup> (1967) 70 N. L. R. 200.

to him by the Postal Authorities with the endorsement "refused". No question was put to Proctor Jayatilake in cross-examination. As against his evidence there was one question put to the defendant at the end of the examination-in-chief and his answer to it. They were :—

" Q. Did you receive any letter from the plaintiff requesting you to vacate and quit the premises from any date ?

A. No. "

The defendant neither stated that he did not refuse to accept the registered letter nor that he did not instruct anyone else to do so nor did he seek to speak to facts which might have shown that the letter was refused otherwise than by him or at his instance. In the circumstances his evidence can be regarded as no more than an assertion that as he neither accepted nor opened the letter, no notice to quit was given to him. I do not think, however, that a party who has refused to accept a letter in such circumstances can be heard to plead want of knowledge of its contents. Such knowledge must be imputed to him. Sarkar (10th Edition) at page 164, states :—" A person refusing a registered letter cannot afterwards plead ignorance of its contents." Learned counsel for the respondent stressed that there was no proof that the endorsement had been made by a Post Office employee. The unchallenged evidence of Proctor Jayatilake was that the letter bore the endorsement when it was returned to him and having regard to the known practice of the Postal Authorities to endorse on a letter the reason for its non-delivery when a letter is returned it may be presumed that the endorsement was made by a Postal employee in the ordinary course of business.

Having regard to Sections 16 and 114 illustration (e) of the Evidence Ordinance it appears to me that the facts proved give rise to the presumption that the notice to quit was served on the defendant. Monir on Evidence (4th Edition) at page 685, states :—" If a letter properly addressed and posted is returned with the endorsement 'refused', the presumption is that it was presented to the addressee and that he refused to receive it ; . . ." Accordingly where it was proved that a notice to quit was sent by a registered letter and was returned with the endorsement "refused" it was held that there was sufficient service of the notice to quit—vide *Jogendro v. Dwarka*<sup>1</sup>—15 Calcutta 681—and *Bapayya v. Venkataratnam*<sup>2</sup>—A. I. R. (1953) Madras 884. Such a presumption will not of course be drawn in every case in which there is evidence of the return of a registered letter with the endorsement "refused". The Court will consider, in each case, the facts proved relating to the posting of the letter, the denial of receipt, even the diligence or want of it commonly shown by postal employees and all other relevant matters and decide whether in the circumstances it will or will not draw the presumption. In this case, apart from the rather inconclusive answer of the defendant to a single question, there was nothing that seemed to weigh against the drawing of the presumption.

<sup>1</sup> 15 Calcutta 681.

<sup>2</sup> A. I. R. (1953) Madras 884.

I allow the appeal, set aside the dismissal of the plaintiff's claim for ejection and grant the prayer for the ejection of the defendant, his servants and agents from the premises. The plaintiff-appellant will also be entitled to a sum of Rs. 546 and continuing damages at Rs. 14 per month from 1st March, 1965, until he is restored to and quieted in possession of the premises as well as to costs in both Courts.

WLJAYATLAKE, J.—I agree.

*Appeal allowed.*

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