1956 *Present :* **Gratiaen, J., and Gunasekara, J.**

S. K. MARIMUTTU, Appellant, *and* COMMISSIONER FOR REGISTRATION OF INDIAN AND PAKISTANI RESIDENTS, Respondent

S. C. 101—Indian and Pakistani Residents (Citizenship) Application No. Z 3,079

Indian and Pakistani Residents (Citizenship) Act No. 3 of 1949—Sections 9 and 20—Application for citizenship—Refusal under Section 9—Notice by registered post—Effect of non-delivery—" Shall be deemed ".

A registered letter was posted to an applicant for citizenship informing him, under section 9 (1) of the Indian and Pakistani Residents (Citizenship) Act, that unless he showed cause within three months his application would be refused. As the applicant was temporarily absent from his place of residence the letter never reached him and was returned to the Commissioner as " unclaimed ".

Held, that the words " shall be deemed to have been duly served " in section 20 rendered the mere act of posting the registered letter equivalent to personal service ; accordingly, the proved non-receipt of the letter could not assist the applicant in re-opening the matter of the refusal of his application for citizenship.

APPEAL under section 15 of the Indian and Pakistani Residents (Citizenship) Act No. 3 of 1949.

N. K. Choksy, Q.C., with *Lyn Weerasekara* and *Maureen Seneviratne*, for the appellant.

Walter Jayawardene, for the respondent.

Cur. adv. vult.

February 2, 1956. GRATIAEN, J.—

The appellant had made an application on 25th July 1951 for the registration of himself, his wife and his children as citizens of Ceylon under the provisions of the Indian and Pakistani Residents (Citizenship) Act No. 3 of 1949. The application was in the first instance referred to an investigating officer who furnished his report to the Deputy Commissioner under section 8 (2) (*b*). The Deputy Commissioner formed the opinion that a *prima facie* case for registration had not been established and took steps to call upon the appellant to show cause why his application should not be refused. Accordingly, a notice in the form prescribed by section 9 (1) was posted on 8th February 1955 in a registered letter addressed to the appellant at Lemas Estate, Koslanda, which was the address furnished by him (in his original application and in all subsequent correspondence with the department) as his place of residence. Unfortunately the appellant was temporarily absent from Lemas Estate throughout February 1955, and the registered letter containing the notice dated 8th February 1955 never reached him. It was returned to the Deputy Commissioner as "unclaimed" on 24th February 1955. Three months later, the Deputy Commissioner made an order under section 9 (2) refusing the application for registration on the ground that the applicant had failed, within the period specified in section 9 (1), to show cause against the provisional order made against him on 8th February 1955.

Notice of this decision was posted to, and was received by, the appellant at Lemas Estate, and he promptly applied to the Deputy Commissioner for the inquiry to be re-opened on the ground that he had in fact not received the notice dated 8th February, 1955. This application was refused and he now appeals to this Court for a mandatory decree directing the Commissioner to give him an opportunity to show cause (on the merits) against the refusal of his application for registration.

The provisions of the Act which must be examined for the purposes of this appeal are as follows :

Section 9 (1) : Where upon the consideration of any application, the Commissioner is of opinion that a *prima facie* case has not been established, he shall cause to be served on the applicant a notice setting out the grounds on which the application will be refused and giving the applicant an opportunity to show cause to the contrary within a period of three months from the date of the notice.

9 (2) : Where no cause is shown by the applicant within the aforesaid period, the Commissioner shall make order refusing the application and cause a copy of the order to be served on the applicant.

Section 20 : Any order, notice or other document which is required by or under this Act to be served on an applicant or on a person who has lodged an objection shall, where it is not served personally on him, be deemed to have been duly served if it has been sent to him by post in a registered letter addressed to his last known place of residence or of business.

Mr. Choksy argued that section 20 merely raises a rebuttable presumption that the notice which was posted to the appellant had been received by him, and that in the present case the initial presumption had, to the knowledge of the Deputy Commissioner, been conclusively displaced before the order of refusal under section 9 (2) was made in May, 1955. Mr. Jayawardene's contention, however, is that the mere act of posting a notice in a registered letter to a person's " last known place of residence or of business " constitutes the statutory equivalent of personal service ; accordingly, the proved non-receipt of the document could not assist the appellant. The Act does not empower the Commissioner or a Deputy Commissioner to extend the time for showing cause under section 9 (2) if three months have expired since the date of personal service or alternatively, due posting (under section 20).

In some legislative enactments the words " shall be deemed " merely introduce a rebuttable presumption, but in other contexts the presumption is conclusive. It is " not an impossible conception to *deem* that a thing happened even when it is known positively that it did not happen ". per Romer J, in *Batchellor's case* [1]. Such a case arose in *The King v. The Westminster Unions Assessment Committee—Ex parte Woodward* [2]. Section 65 of the Valuation (Metropolis) Act of 1869 provided that, in lieu of personal service, any notice under the Act " may be served and sent by post, by a pre-paid letter . . . . and if sent by post, *shall be deemed to have been served and received respectively* at the time that the letter containing the same would be delivered in the ordinary course of post ". Lord Reading, C.J., rejected the argument that the section merely raised a presumption of fact until the contrary was proved. " It is ", he said , " a presumption of law which cannot be rebutted by showing that in fact the notice had not been received . . . . The intention is to treat as a fact something that has not been established as a fact—even something which can be shown not to be a fact. " Lord Justice Denning has explained the term " conclusive presumption " in his article entitled " Presumptions and Burdens " [3]. " It is a misuse of language, " he said ", to speak of any presumption being conclusive, but the meaning is clear. On proof of certain facts, the Court must draw a particular inference, whether true or not, and it cannot be rebutted. "

Conclusive presumptions or inferences of this kind sometimes work hardship to the individual, but I am satisfied that Parliament considered the application of the rule to be essential to the smooth working of the machinery of the Act now under consideration. In the absence, therefore, of some provision whereby relief may be granted to an applicant who can establish that the notice had failed to reach him through no fault of his own, the Courts are powerless to assist him. I would therefore dismiss the appeal with costs fixed at Rs. 105.

GUNASEKARA, J.—I agree.

Appeal dismissed.

[1] *(1945) Ch. 169.* [2] *(1917) 1 K. B. 832.*
[3] *(1945) 61 L. Q. R. 379 at 381.*