

1956

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

MRS. C. F. SENEVIRATNE, Appellant, and J. L.
TISSAVERESINGHE, Respondent

S. C. 45—C. R. Colombo, 56,680

Landlord and tenant—Payment of rent—Agreement by landlord to accept cheques sent by post—Computation of date of payment—Rent Restriction Act, No. 13 of 1948, s. 13 (1) (a).

Where a landlord had expressly agreed that payment of rent should be made monthly by means of a cheque posted to his address—

Held, that the posting of the cheque by the tenant on a particular date operated as payment of the rent on that date, for the purpose of ascertaining whether the tenant was in arrear of rent.

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

N. K. Choksy, Q.C., with *Miss M. Seneviratne*, for the defendant appellant.

E. R. S. R. Coomaraswamy, with *B. A. R. Candappa*, for the plaintiff respondent.

Cur. adv. vult.

March 14, 1956. GRATIAEN, J.—

This was an action to have the defendant ejected from a residential bungalow situated in Colombo, of which she had been the monthly tenant for several years, on the ground that the rent for August 1954 had been "in arrears for more than one month after the same became due" within the meaning of section 13 (1) (a) of the Rent Restriction Act, No. 13 of 1948.

There is no dispute as to the facts. The plaintiff, who is the landlord, resided and carried on his profession as a Proctor in Batticaloa, and the contract of tenancy had originally provided that the rental for

each month should be paid on or before the 10th day of that month. It was subsequently agreed, however, that the rental should be paid before the last date of each month, and that, in order to suit the plaintiff's convenience, each payment should be made on the defendant's behalf by her Proctor (who lived in Colombo) by means of his cheque posted to the plaintiff's office at Batticaloa.

At the end of August 1954 the defendant's Proctor omitted through inadvertence to post a cheque as usual to the plaintiff. On 30th September 1954 he became aware of this omission, and immediately wrote to the plaintiff a letter apologising for the delay and enclosing a cheque for Rs. 194/32 which represented the total amount due as rental for August and September. This cheque was received by the plaintiff at Batticaloa on 1st October 1954.

Upon these admitted facts, the learned Commissioner of Requests took the view that, as the rent for August 1954 should have been "paid" not later than the last date of that month, the plaintiff had lost her statutory protection at the time when the cheque actually reached the plaintiff on 1st October—that is to say one month and one day after the rent "became due" within the meaning of section 13 (1) (a). The learned Commissioner rejected the defendant's contention that, having regard to the terms of the contract, the actual posting of the cheque in Colombo on 30th September operated as payment on that day itself. It is common ground that, if this latter view be correct, the defendant's protection under the Act has not been lost.

The issue must be determined by reference to the terms of the contract between the parties. In this case the plaintiff, as creditor, had expressly agreed to accept payment of the debt due to him in some form other than cash, and it was agreed that payment should be made by means of a cheque posted at Colombo to his address in Batticaloa. In other words, he constituted the postal authorities his agents to receive on his behalf at Colombo the letter containing the cheque. In these circumstances, the posting of the cheque must be taken as the equivalent in law of delivery to the plaintiff himself. In the result, the posting of the cheque on 30th September operated as a payment of the debt on that date. *Norman v. Ricketts*¹; *Pennington v. Crossley*²; *Baker v. Lipton*³; *Thairwall v. The G. N. R. Co.*⁴. The legal position would, of course, have been different if the agreement between the parties had merely provided for payment of the rent on or before a particular date, in which event the unilateral decision of the debtor to send the rent by post at his own risk would not have sufficed to constitute payment until the money actually reached the landlord.

I would allow the appeal, and dismiss the plaintiff's action with cost in both Courts.

GUNASEKARA, J.—I agree.

Appeal allowed.

¹ (1886) 3 T. L. R. 132.

² (1897) 13 T. L. R. 513.

³ (1899) 15 T. L. R. 435.

⁴ (1910) 2 K. B. 509 at 515.