

1966 Present : Abeyesundere, J., and G. P. A. Silva, J.

**THE ATTORNEY-GENERAL**, Appellant, and **A. JAMES**,  
Respondent

*S. C. 45/65-D. C. (Grim.) Batticaloa, 151/7338 Evidence-Carbon copy of  
a written document- Weight of it as primary evidence.*

*A carbon copy of a handwritten document is, for the purpose of the Evidence Ordinance, a duplicate original and is primary evidence of its contents.*

**APPEAL** from a judgment of the District Court, Batticaloa.

*L. E. T. Premamtne, Senior Crown Counsel, with Wakeley Paul, Crown Counsel, for the Attorney-General-Appellant.*

*M. Hussein, for the Accused-Respondent.*

January 25, 1966. **ABEYESUNDERE, J.-**

This is an appeal by the Attorney-General from an order of acquittal made by the District Judge of Batticaloa. The appeal is made on the ground that the learned District Judge did not permit the prosecution

to lead in evidence carbon impressions of receipts bearing the signature of the accused in this case and also carbon impressions of the schedule of Local Government Department Receipts. The appellant pleads that the documents sought to be led in evidence would have supported the case for the prosecution. The learned District Judge has disallowed the production of the aforesaid documents on the ground that they constitute secondary evidence. He appears to hold the view that the carbon impression of a writing by hand is a copy of that writing.

There is evidence in this case that the documents in question were made in duplicate. Where a sheet of carbon paper is placed between two sheets and a writing is made by hand on the outer sheet, then a carbon facsimile is produced on the sheet underneath the carbon paper. In such a case, if the writing is not copied from another document, the handwritten paper and its carbon facsimile are duplicates and each such duplicate is, for the purpose of the Evidence Ordinance, a duplicate original. Therefore each such duplicate is primary evidence of its contents. This view finds support in the following passage quoted by Wigmore from a judgment of an American Court in the case of *International Harvester Co. v. Elfstrom* (Wigmore on Evidence, 3rd Edition, page 448):-

" In making the carbon copy of a contract here offered, a sheet of carbon paper was placed between two sheets of order paper, so that the writing of the order upon the outside sheet produced a facsimile upon the one underneath. The signature of the party was thus reproduced by the same stroke of the pen which made the surface, or exposed, impression. We think that a clear

distinction exists between letter-press copies of writings and duplicate writings produced as was the contract in the case at bar. It is well settled that, where a writing is executed in duplicate or multiply, each of the parts is the writing which is to be proved, because of the act of the parties each is made as much the legal act as the other. It is very generally held that a reproduction of a writing by a letter-press cannot be considered as a duplicate. The distinction between letter-press copies and instruments produced by the use of carbon paper, as in this instance, seems reasonably clear and satisfactory. What makes two numbers of an instrument duplicates and equivalents is the fact that the legal act of the parties as consummated embraces them both. Letter-press copies are produced by an act distinct from and subsequent to the consummation of the legal act of execution. It may or may not be the act of the parties to the contract. We know from common experience that such copies are ordinarily produced by the labour of clerks and other employees, and that the results are not always satisfactory. But all the numbers of a writing result from the completion of the legal act of the parties, although aided by mechanical devices or chemical agencies, meet the requirements of originals. If the reproduction is complete, there is no practical reason why all the products of the single act of writing the contract and affixing a signature thereto

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should not be regarded as of equal and equivalent value. In this instance the same stroke of the pen produced both signatures. The argument that the recognition of these instruments as duplicates would encourage fraudulent practices does not touch the principle involved. "

I hold that the learned District Judge has misdirected himself in disallowing the production of the documents referred to above. The prosecution is entitled to lead in evidence those documents. I set aside the order of acquittal made by the learned District Judge and direct the District Court of Batticaloa to re-try this case according to law.

**G. P. A. SILVA, J.-I agree.**

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*Acquittal set aside.*

*- End -*