ORIGINAL CIVIL.

Before Mr. Justice Robertson.

BALURAM RAMKISSEN AND OTHERS, PLAINTIFFS, *v.* BAI PANNABAI AND ANOTHER, DEFENDANTS.*

1910. *July* 26.

Practice—Procedure—Civil Procedure Code (Act V of 1908), Order V, Rule 25—Service of summons by registered post on defendant residing out of British India—Summons returned marked "Refused to take"—General Clauses Act (X of 1897), section 27.

A summons was sent by registered post addressed to the first defendant at Navalgarh in the State of Jaipur and purported to be sent in accordance with the provisions of Order V, Rule 25, of the Civil Procedure Code (Act V of 1908). The cover was returned with an endorsement in the vernacular which was translated as follows :—"Refused to take. The handwriting of Chunilal, postman."

Held, that as it appeared that the cover was properly addressed to the first defendant and had been registered, duly stamped and posted, the Court was entitled to draw the inference indicated in section 27 of the General Clauses Act and to hold that there was sufficient service.

Per Curiam.—The only rule, if it can be called a rule, to be laid down, is that the Court must be guided in each case by its special circumstances as to how far it will give effect to a return of a cover endorsed "refused" or words to the like effect.

Jagannath Brakhbhau v. *J. E. Sassoon*(1), distinguished.

THE FACTS of this case appear sufficiently from the judgment.

Kanga for the plaintiffs.

No appearance for the defendants.

ROBERTSON, J.:—In this case a question has arisen whether the service of the summons upon the first defendant is sufficiently proved.

It appears the summons was sent by registered post addressed to the first defendant at Navalgarh in the State of Jaipur, and purports to have been sent in accordance with the provisions of

* Suit No. 393 of 1910.

(1) (1893) 18 Bom. 606.

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Order V, Rule 25, of the new Code. The cover has been returned with an endorsement in the vernacular which has been translated as follows:—"Refused to take. The handwriting of Chunilal, postman."

Now, the question as to whether this is a good service or not is not altogether without authority. In *Jagannath Brakhbhau* v. *J. E. Sassoon*[1], a decision of Sir Charles Sargent and Mr. Justice Bayley, it was held, under similar circumstances, where a postal packet was returned endorsed "refused," that the service was bad, and the Small Cause Court in accepting it as good service had acted with material irregularity. At first sight that case appears to be directly in point. But it has been urged by Mr. Kanga that in two important respects it differs from the present case. In the first place the defendant in that case was residing in British territory and the Code did not provide for service on him by registered post, and secondly that the decision was prior to the last General Clauses Act. I, therefore, think I am entitled to deal with this case without being bound or precluded by this decision.

The next decision upon the point is *Aga Gulam Husain* v. *A. D. Sassoon*[2], the important passage in the case being at page 418. In that case Mr. Justice Candy held that the summons was duly served, although the postal cover was returned as "refused." Then he proceeds to say that there was in addition indirect evidence of the service of the summons or at any rate of the knowledge of the defendant of the suit.

In *Jogendro Chunder Ghose* v. *Dwarka Nath Karmokar*[3], very much the same point came before Messrs. Justices Pigot and Rampini. The difficulty of applying that case lies in a certain ambiguity in the judgment and in the head-note, which is not cleared up in the statement of facts. The head-note says that the cover (that is, the letter) that contained the summons was returned with an endorsement upon it purporting to be made by an officer of the Post Office stating the refusal of the

(1) (1893) 18 Bom. 606. (2) (1897) 21 Bom. 412 at p. 418.
(3) (1888) 15 Cal. 681.

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addressee to receive the letter. And the judgment of the Court is put in this way :—"With an endorsement upon it purporting to be by an officer of the Post Office stating the refusal by the defendant to receive the document." The exact terms of the endorsement are not given. If the endorsement stated in precise terms that the letter was refused, by the defendant, and not merely as in the present case "Refused to take" without saying by whom, then the decision loses most of its weight as applied to this case.

In *Fakhr-ud-din* v. *Ghafur-ud-din*[1] the same point was considered, and there the learned Judges, Sir Arthur Strachey and Mr. Justice Banerji, came to the decision that "where a summons is sent by post to a defendant residing out of British India, it is not, in the absence of evidence that the person to be served was at the time residing at the place to which the summons was sent, sufficient . . . to show that the summons was posted, but there must be some evidence of its having been received by the defendant."

Having regard to the terms of section 27 of the General Clauses Act, which, so far as I know, has not been referred to in any of the previous decisions, it would appear that when the expression used is "send", (which is the expression used in the rule under consideration), "then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered." The difficulty lies in the effect given to the words "unless the contrary is proved," and, in my opinion, having regard to the decisions that I have already quoted, the only rule, if it can be called a rule, to be laid down is that the Court must be guided in each case by its special circumstances as to how far it will give effect to a return of a cover endorsed "refused", or words to the like effect. It seems impossible to lay down any hard and fast rule either precluding the Court from accepting that

(1) (1900) 23 All. 99.

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as service or laying down any particular evidence supplemental to that return so endorsed on the cover, which would be sufficient to satisfy the Court that the summons has been served. To attempt to lay down any such rule, would, in my opinion, having regard to the provisions of the Code and the decisions that I have referred to, be to legislate and not to interpret the Acts and apply the previous decisions. Therefore it appears to me that it is open to the Court in each case on its own particular circumstances to be satisfied or not satisfied with such a return as the case may be. I may say that if the circumstances were such as to require further evidence, that the nature of such further evidence has already been indicated in the two decisions, to which I have referred, *i. e.*, *Aga Gulam Husain* v. *A. D. Sassoon*[1] and *Fakhr-ud-din* v. *Ghafur-ud-din*[2].

In this particular case, it appears that the cover was properly addressed to the first defendant. It appears to have been registered and duly stamped. There can be no question about the posting, because the cover bears the registration ticket and the post office stamp. Therefore I am entitled to draw the inference that is indicated in section 27 of the General Clauses Act, and in addition to that there is evidence that this lady, the first defendant, was residing at Navalgarh at about the time when the cover containing the summons was sent to her. I am entitled under the Code and under the authorities to hold that this is sufficient service and I accordingly do so.

Attorneys for the plaintiff: Messrs. *J. R. Patil & Co.*

No attorney for the defendant.

Decree for 1st and 2nd Plaintiff.

B. N. L.

(1) (1897) 21 Bom. 412.

(2) (1900) 23 All. 99.