1981 December 14

[LORIS, STYLIANIDES, PIKIS, JJ.]

IOANNIS KATSIANTONIS,

Appellant-Applicant,

v.

KYRIACOS FRANTZESKOU,

Respondent.

(Civil Appeal No. 6055).

Landlord and tenant—Service of notice of demand of rent on tenant—Section 16(1)(a) of the Rent Control Law, 1975 (Law 36/75)—Service by "registered post"—Tenant receiving notice of the letter but declining to collect it—Validity of service—Section 23(1) of Law 36/75 and section 2 of the Interpretation Law, Cap. 1.

Landlord and tenant—Practice—Costs—Need not follow the event.

The respondent was a statutory tenant of a shop at a monthly rent of £7. When he fell in arrears of rent to the amount of £144.500 mils the landlord's advocate on 18.4.1979 dispatched, by registered post, a written notice of demand of the rent at the address of the shop. A slip notifying the addressee that a registered letter waited collection at the post office was left by the post office at the above address but the respondent failed to collect the registered letter and the postal authorities returned it to the sender on 7.9.1979 unclaimed.

On 12.7.1979 the landlord commenced proceedings to eject the tenant on the ground envisaged by section 16(1)(a)* of the Rent Control Law, 1975 (Law 36/75).

* Section 16(1)(a) provides as follows:

"16(1) No judgment or order for the recovery of possession of any dwelling house or business premises to which this Law applies, or for the ejectment of a tenant therefrom, shall be given or made except in the following cases:

(a) where any rent lawfully due is in arrear for twenty-one days or upwards after notice of demand in writing has been given to the tenant and there was no tender thereof before the institution of the action:

(b) ....."

At the trial counsel for the tenant admitted that the notice about the registered letter was received but the tenant did not claim or collect it. The trial Judge dismissed the landlord's application having held that for the landlord to succeed it has to be proved that the written notice of demand was not only posted but received by the tenant and he took notice of the contents thereof.

Upon appeal by the landlord the question that fell for determination was whether the prerequisite of service of written notice of demand required by section 16(1)(a) was satisfied.

Held, that having regard to the provisions of section 23(1)* of Law 36/75 and the provisions of section 2** of the Interpretation Law, Cap. 1, the prerequisite of a notice of demand, required by section 16(1)(a), has been satisfied; that as the rent has not been paid the landlord is entitled to the remedy of ejectment applied for but execution of this judgment will be suspended for 12 months (see s. 16(2) of Law 36/75).

(2) That as in cases for recovery of possession the practice that costs follow the event does not apply in the way it applies in other cases there will be no order as to costs.

Appeal allowed.

Observations by Mr. Justice Stylianides:

The Court has no discretionary power to grant or refuse an ejectment order under s. 16(1)(a). This mandatory statutory provision handicaps the Courts in doing justice between landlord

* Section 23(1) of Law 36/75 provides:

"..... any notice, request, demand or other document..... may be served on the person on whom it is to be served either personally, or by leaving it for him at his last known place of abode or business in Cyprus, or by sending it through the post in a registered letter addressed to him at his last known postal address in Cyprus, and the person on whom it is to be served shall include any agent of such person duly authorised in that behalf".

** Section 2 reads as follows:

"'Service by post'—where a Law or public instrument authorizes or requires any document to be served by post, whether the expression 'service', or the expression 'give' or 'send', or any other expression is used, then, unless a contrary intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting 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 in the ordinary course of post".

and tenant. The object of the Law would be better served if the Court was empowered to make an order, if it considers it reasonable so to do.

Observations by Mr. Justice Pikis:

(1) That the power to receive hearsay evidence under section 4 of Law 36/75 should be exercised with caution and great circumspection.

(2) That it would be more equitable and the interests of the society would be better served if the law was amended so as to remove the mandatory element in the provisions of s. 16(1)(a) and confer instead, a discretion on the Court to make an ejectment order depending on the magnitude of the default, its repetition and certainly the personal circumstances of the parties.

Cases referred to:

Tenax Steamship Co. Ltd. v. *Owners of the motor vessel Brimnes* [1974] 3 All E.R. 88;

Xenopoulos v. *Constantinides* (1979) 1 C.L.R. 519;

Sharpley v. *Mamby* [1942] 1 All E.R. 66;

Tenant v. *London County Council* [1957] 55 L.G.R. 421;

Stylo Shoes Ltd. v. *Prices Taylor Ltd.* [1960] 1 Ch. 396;

Lord Newborough v. *Jones* [1974] 3 All E.R. 17;

T.O. Supplies (London) Ltd. v. *Jerry Creighton, Ltd.* [1951] 2 All E.R. 992 at p. 993;

R. v. *London Quarter Sessions, Ex parte Rossi* [1956] 1 All E.R. 670;

Beer v. *Davies* [1958] 2 All E.R. 255;

Layton v. *Shires* [1959] 3 All E.R. 587;

Hosier v. *Goodall* [1962] 1 All E.R. 30;

R. v. *Kensington and Chelsea Rent Tribunal* [1974] 3 All E.R. 390;

Galatariotis v. *Polemitis and Another*, 20 C.L.R. (Part II) 70;

Electricity Authority of Cyprus v. *Georghallettos and Others* (1972) 1 C.L.R. 77.

Appeal.

Appeal by the landlord against the judgment of the District Court of Nicosia (A. Ioannides, D.J.) dated 12th January, 1980 (Rent. Appl. 550/79) whereby his application for an order of ejectment and /or recovery of vacant possession of a shop at Nicosia was dismissed.

P. Frakalas, for the appellant.

N. Ioannou (*Mrs.*), for the respondent.

Cur. adv. vult.

The following judgments were read:

PIKIS J.: The facts of the case raise no controversy. On 17.4.1979, the head tenant, the appellant-applicant before the trial Court, addressed to the sub tenant in occupation, the respondent, a letter requiring him to pay arrears of rent, amounting to £144.500 mils, covering a long period of occupation, reflecting that the monthly rent was only £7.–. Apart from reminding the tenant of his obligations the letter purported to warn him of the consequences that might befall him in the event of failure to make good his default. Notice was given pursuant to the provisions of s. 16(1)(a) of the Rent Control Law 1975, entitling the landlord to recover possession of the premises let where the tenant fails to pay the rent due within 21 days, after notice, and continues to be in default by the time that proceedings are instituted. The notice need not adhere to any particular form; it is valid so long as it reminds the tenant of his obligation to pay rent due (see, *inter alia*, *Xenopoulos* v. *Constantinides* (1978) 1 C.L.R. 519). The notice addressed to the respondent had this effect.

In accordance with the practice of the postal authorities, as the evidence before the trial Court revealed, the letter itself was not delivered at the address of the recipient, but in the absence of the respondent a slip was left at his address, notifying the addressee that the letter awaited collection at the post office. This procedure is apparently designed to eliminate the possibility of loss of the letter or its falling into unauthorised hands. The post office slip was left at the address of the tenant on 24.4.1979. A second attempt was made to trace the tenant on 28.4.1979 that proved equally unsuccessful. Thereafter, the effort to reach the respondent was given up and the letter

was eventually returned on 7.9.1979, some time after proceedings were instituted for the eviction of the tenant. Evidence on the subject emerges from the testimony of Andreas Yiannakis, a post office employee, apparently in custody of the record for the registered post, who, evidently, was allowed to give hearsay evidence on the fate of the letter addressed to the respondent. Section 4 of the 1975 Law makes possible the admission of hearsay evidence, but such power, as conferred upon the Court, to receive, evidence other than the best available in the circumstances, must be exercised with caution and great circumspection. It is invariably wise for the Court to record its reasons for admitting hearsay evidence, particularly the circumstances that render difficult, impractical or impossible the production of firsthand evidence. The discretion of admitting hearsay evidence must be exercised in the interests of justice that are normally best served by the production of the best evidence available in the circumstances.

Notwithstanding the non collection of the letter, the respondent paid, a short while after its dispatch, the sum of £60.– towards his indebtedness to the applicant and paid off the balance on 5.10.1979, some three months after the institution of the proceedings. On both occasions the money was received without prejudice to the rights of the appellant to raise and then pursue the present proceedings.

At the trial the respondent maintained that he never received the letter; on the other hand, he was vague and not very informative whether he received the post office slip. This ambiguity was resolved by counsel stating before that the notice was received. The learned trial Judge found that the letter was never received by the addressee, whereupon he dismissed the application, holding that, as a matter of construction of the provisions of s. 16(1)(a) of the 1975 law, receipt and, in fact, actual knowledge of the notice itself is a prerequisite to the valid invocation of the provisions of s. 16(1)(a). It is upon the correctness of this interpretation of the law that the outcome of this appeal turns.

For the appellant it was submitted that proof of neither receipt nor knowledge of the notice itself is essential in order to support an application for recovery of possession founded on the provisions of s. 16(1)(a). Service of the notice, it was

argued, is regulated by the provisions of s. 23(1) of Law 36/75 that dispenses with personal service, and invited the Court to hold that the deposit of the post office slip at the address of the respondent absolved the owner of further responsibility in the matter. On the other hand, for the respondent it was submitted that the construction placed upon the relevant section of the law, notably s. 16(1)(a), by the learned trial Judge is both warranted by the wording of the law and in accord with the objects of the law.

Section 23(1) of Law 36/75 provides alternative ways of effecting service of a notice envisaged by the law. It leaves the initiative of choice of one or other mode of service to the addresser. Indeed, there is authority on the interpretation of analogous English provisions that the enumeration of alternative ways of service is not exhaustive of the manner in which service may be effected, and that notice may be served in any other appropriate manner (see, *inter alia*, *Sharpley* v. *Mamby* [1942] 1 K.B. 217, and *Stylo Shoes* v. *Prices Taylors* [1960] Ch. 396). The concept of notification is not identical or synonymous with that of informing the addressee of the contents of the notice. It falls short of that; it casts an obligation to take reasonable steps in the direction of bringing the notice to the attention of the person to be notified. Certain passages in the *Brimness* [1974] 3 All E.R. 88 (C.A.) (particularly at pp. 113, letter B, and 115, letters *O*–J), illustrate the nature and extent of the obligations of the person under a duty to serve notice and the consequences that may attend the default of the addressee to gain knowledge of the contents of the notice. The addressee cannot set up lack of knowledge as a defence where it is due to wilful or negligent default on his part to receive the notice or duly read it.

Section 23(1) does not make the effectiveness of the notice dependent either on receipt of the notice or acquaintance with its contents. The onus cast on the addresser is discharged by posting the notice in the manner indicated by the law, that is, by registered post directed to the last known address of the tenant. It is not the landlord's duty to go further and seek out the tenant and apprise him of the contents of the notice. It is implicit from the provisions of the law that the tenant shall keep open avenues of communication with the landlord so that there may be unimpeded postal communication between them. There-

fore, if the tenant fails to communicate to the landlord any change of address, and in consequence thereto fails to receive a notice sent to him he has only himself to blame. In this case, the letter was properly dispatched by registered post and addressed to the address of the tenant. So, no dispute arises on this score. What must be resolved is whether the non deposit of the letter itself but the deposit instead of a notice signifying its existence in safe custody, invalidates the communication, notwithstanding the failure of the tenant deliberate or otherwise to collect the letter.

Section 2 of the Interpretation Law, Cap. 1, renders when postal service is deemed to be effected, that is, at the date when the letter would ordinarily, having regard to the ordinary course of the post, reach the addressee. It puts the burden of proving the contrary, that the letter was not received as expected, on the addressee. In *T. O. Supplies, Ltd.* v. *Jerry Creighton, Ltd.* [1951] 2 All E.R. 992, Devlin, J. inclined to the view that the word "post" construed in its ordinary and natural meaning is wide enough to include both ordinary and registered post. The learned Judge was concerned to interprete virtually an identical provision to that of s. 2, Cap. 1, notably s. 26 of the Interpretation Act, 1889. I need not examine whether the word "post" in the context of the definition of "service by post" merits any other construction in view of the practice of the Cyprus postal authorities not to deliver the letter itself unless the addressee is personally found. I would not venture to disagree that the word "post" in its ordinary connotation encompasses both ordinary and registered post. Whether this meaning should be deemed to be qualified in the light of the postal practices in Cyprus, I reserve judgment for another date. Proceeding on the assumption that "service by post" regulates ordinary as well as registered post, and that, in consequence, the provisions of s. 23(1) must be read subject to the above definition, we must next determine when a registered letter under s. 23(1), in the ordinary course of the post and events, is deemed to reach the addressee. The answer is, shortly after the deposit of the post office slip at the last known address of the tenant. It cannot have been the intention of the legislature, in enacting Law 36/75, to have made effectiveness of service dependent on a factor beyond the control of the sender nor on the readiness of the tenant to collect the registered letter. Any such construction would

neutralise the principal objective of the legislature, which is, to dispense with personal services. We can, as in the case of the Court, credit the legislature with knowledge of postal practices, regarded as a notorious fact (See Phipson, 11th ed., para. 298).

Summarising, it appears to me that s. 23(1) read alone or in combination with the definition of "service by post" in s. 2, Cap. 1, validates service of a notice by registered post whenever the letter is sent by (a) registered post to (b) the last known address of the tenant, and (c) the slip signifying the existence of the letter in safe postal custody, is duly left at such address.

In the light of the facts of the case culminating in the admission before us that the tenant received the postal slip but failed to collect the letter, there is no alternative but to make an order for recovery of possession in view of the unambiguous provisions of s. 16(1)(a), making the issue of such order mandatory whenever the prerequisites, earlier referred to, to its invocation are satisfied as they have been in this case. However, in the exercise of our discretion the order will be suspended, pursuant to the provisions of s. 16(2)—Law 36/75, for the maximum period of one year in order to enable the tenant to make the necessary arrangements for moving his business elsewhere. The Supreme Court has the same powers as the trial Court to suspend the enforcement of an order whenever it concludes that an order for recovery of possession is warranted by the facts of the case. The discretion is judicially exercised, having regard to the facts of the case and the personal circumstances of the parties. And the personal circumstances of the tenant are indeed extreme, meriting every consideration from the Court.

It is my considered opinion that the law in its present state is unduly drastic with regard to the implications of failure to pay arrears of rent. It would be more equitable and the interests of the society would be better served if the law was amended so as to remove the mandatory element in the provisions of s. 16(1)(a) and confer instead, a discretion on the Court to make an ejectment order depending on the magnitude of the default, its repetition and certainly the personal circumstances of the parties.

In the result, the appeal is allowed. In proceedings under the Rent Control laws the rule that costs follow the event does

not apply in the inelastic way it does elsewhere (*Galatariotis* v. *Polemitis & Another*, 20 C.L.R. (Part II) 70; *Electricity Authority* v. *Georgallettos & Others* (1972) 1 C.L.R. 77). The reason is that under the Rent Control legislation a large element of discretion is left to the Court making the outcome of litigation less predictable than other areas of the law. So a party who has misjudged his rights should not necessarily be penalised. No order as to costs.

STYLIANIDES J.: The appellant (hereinafter referred to as "the landlord") appeals against the judgment of the District Court of Nicosia (A. Ioannides, D.J.) dismissing his application for an order of ejectment and/or recovery of vacant possession of a shop at Nicosia.

The respondent is a statutory tenant of a shop situate at 20, Hector Street, Nicosia, within a rent controlled area. The monthly rent is £7.–. The tenant fell in arrears of rent; on 17.4.1979 the arrears amounted to £144.500 mils.

On 18.4.1979 the landlord's advocate dispatched by registered post a written notice of demand to the tenant at the address of the shop in question.

Andreas Yiannakis, a post office employee, testified on the fate of this letter. His evidence is hearsay. The Court established by s. 4 of the Rent Control Law, 1975 (No. 36/75) for reasons well understandable is not bound by the law of evidence in force for the time being.

On 24.4.1979 the postman went to 20, Hector Street, for the delivery of the said registered letter but, as he could not trace the addressee, he left there a slip notifying the addressee that a postal packet was waiting to be collected by him at the post office. As the addressee-tenant did not attend the post office, a second notice was left by the postman at the same address on 28.4.1979. The letter eventually was on 7.9.1979 returned to the sender as unclaimed.

Early in May, 1979, the tenant offered to pay to the landlord £60.– on account. The latter referred him to his advocate but on 15.5.1979 he accepted, with reservation of his rights, payment of the £60.– on account. The balance of the rent in arrears was paid on 5.10.1979.

On 12.7.79 the landlord commenced proceedings to eject the tenant on the ground that rent, which was lawfully due, was in arrears for 21 days or upwards after notice of demand in writing had been given to the tenant and there was no payment or tender thereof before the institution of the proceedings.

The rent control legislation is a social measure. It has a twofold object: to afford security of tenure to the tenants and to keep the rents at a reasonable level. Rent control laws were, due to scarcity of business premises, necessary before 1974. The need for such legislation has become imperative after the calamity which befell on this country in the summer of 1974, when the Greek population was compressed to the South.

The ingredients of the ground of ejectment on which the landlord relies are:-

(a) Arrears of rent lawfully due;

(b) Service of written notice of demand. The notice need not be drafted in any particular form; it is enough if the wording of such notice constitutes a reminder to the tenant that he is in arrears of rent lawfully due and that he is expected to pay same. (*Xenopoulos* v. *Constantinides*, (1979) 1 C.L.R. 519); and,

(c) Non-payment or tender thereof after the lapse of 21 days from that notice and no tender before the commencement of proceedings for recovery of possession.

The tenant at the trial maintained that he did not receive the letter. His evidence about the post office notices was very vague and evasive. Counsel appearing for him admitted that the notices about the registered letter were received but the tenant did not claim or collect it.

The learned trial Judge held that for the landlord to succeed it has to be proved that the written notice of demand was not only posted but received by the tenant and he took notice of the contents thereof; one of the ingredients of this ground, which is a condition precedent to the success of the landlord, was not proved and he dismissed the landlord's application.

The duty cast upon the landlord is to give a written notice of demand. The question that falls for determination is whether the prerequisite of service of written notice of demand required by s. 16(1)(a) was satisfied.

Section 23(1) of the Rent Control Law, 1975, provides that:-

> "..... any notice, request, demand or other document..... may be served on the person on whom it is to be served either personally, or by leaving it for him at his last known place of abode or business in Cyprus, or by sending it through the post in a registered letter addressed to him at his last known postal address in Cyprus, and the person on whom it is to be served shall include any agent of such person duly authorised in that behalf".

This is a permissive provision. The verb "may" is used and that is in clear contradistinction to the imperative "shall".

Similar provision in England, s. 23(1) of the *Landlord & Tenant Act*, 1927, was construed as being a permissive provision so far as the mode of service is concerned. It follows that the modes set in the subsection are not to be regarded as being exhaustive. (*Sharpley* v. *Mamby*, [1942] 1 All E.R. 66; *Tenant* v. *London County Council*, [1957] 55 L.G.R. 421; *Stylo Shoes Ltd.* v. *Prices Taylor Ltd.*, [1960] 1 Ch. 396).

The notice must be given in a manner which a reasonable person, minded to bring the document to the attention of the person to whom the notice is addressed, would adopt. (*Lord Newborough* v. *Jones*, [1974] 3 All E.R. 17).

"Sending" through the post in the context used does not mean "despatching". A period of 21 days is fixed by the law, which must elapse after the service of the notice before the landlord can take steps.

Service by post is the subject of section 2 of the Interpretation Law, Cap. 1, which provides:-

> " 'Service by post'—where a Law or public instrument authorizes or requires any document to be served by post, whether the expression 'service', or the expression 'give' or 'send', or any other expression is used, then, unless a contrary intention appears, the service shall be deemed

to be effected by properly addressing, prepaying and posting 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 in the ordinary course of post".

No contrary intention appears in the Rent Control Law No. 36/75.

This is almost a replica of s. 26 of the *English Interpretation Act*, 1889. In construing this section, Devlin, J., in *T. O. Supplies (London), Ltd.* v. *Jerry Creighton Ltd.*, [1951] 2 All E.R. 992, had this to say at p. 993:-

"In my view, the word 'post', construed in its ordinary and natural meaning, is wide enough to cover both registered post and ordinary post. I do not think that as a matter of construction it is possible to limit it to one or the other".

And further down:-

"I think the word 'ordinary' in the Interpretation Act, 1889, s. 26, does not qualify the word 'post' but qualifies 'course of post'. In my judgment, s. 26 does not draw any distinction between categories of post; it is dealing simply with time as measured by 'the ordinary course of post".

The Court of Appeal in *R.* v. *London Quarter Sessions, Ex parte Rossi*, [1956] 1 All E.R. 670, had decided that where a notice is to be served by registered post, though it is prima facie enough to prove that it was correctly directed, stamped and posted, yet, if it can be shown that the notice was never delivered, there has been no service under s. 26 of the *Interpretation Act*, 1889. (See also *Beer* v. *Davies*, [1958] 2 All E.R. 255; *Layton* v. *Shires*, [1959] 3 All E.R. 587; *Hosier* v. *Goodall*, [1962] 1 All E.R. 30. These cases turn on service by registered post of notice of intended prosecution under the *Road Traffic Act*, 1930, and the *Interpretation Act*, 1889, s. 26).

Lord Widgery, C.J., in *R.* v. *Kensington and Chelsea Rent Tribunal*, [1974] 3 All E.R. 390, after referring to the provisions of s. 26 of the *Interpretation Act*, 1889, said at p. 395:-

"The authorities show that, notwithstanding the terms

of s. 26, if a notice required to be served is a notice of the kind where the date of service is important, it is always open to a person who has failed to receive a notice in the ordinary course of post to prove that it was not received by him at the relevant time, the time relevant to the particular matter with which the notice is concerned. It has further been decided that in notices of that character it is possible to prove that the notice was not served in time by showing that it was not served at all".

The general rule is that the notice must reach the person to whom it is addressed. If the addressor elects to send it through the post in a registered letter, service is deemed to be effected when the letter is claimed and received by the addressee. There are exceptions, however, to this rule: for example, if the tenant refrains from claiming and collecting the registered letter or if he evades service, then such notice is deemed to have been delivered by post on the day that in the ordinary course of human affairs a reasonable person would have received the letter from the post. A tenant is not entitled to take advantage of his neglect or failure to attend the post office and collect the letter, after receiving the slip or notice for a registered letter. He is precluded from saying that he did not receive the notice.

We are fortified to this view by the dicta of Megaw and Cairns, L.J.J., in *The Brimnes*, [1974] 3 All E.R. 88.

The Law does not require of the landlord to bring the contents of the notice to the knowledge of the tenant; it is sufficient for the letter containing the notice to reach the addressee. If it be the case that one cannot show good service of this document sent by post, unless one can also prove that the notice itself was brought to the knowledge of the tenant, I can see a pleasant future opening up for the evasive tenants in the Courts. This would be contrary to good sense, justice and the provisions of the Law.

Having regard to what I have said and the admission of receipt of the slips of the post office for the registered letter containing the notice of demand of payment of the rent lawfully due, the prerequisite of the service of a notice of demand has, in my opinion been satisfied.

As the rent was unpaid on the date of the filing of the applica-

tion, the landlord is entitled to his remedy provided by Law. The Court has no discretionary power to grant or refuse an ejectment order under s. 16(1)(a). This mandatory statutory provision handicaps the Courts in doing justice between landlord and tenant. The object of the Law would be better served if the Court was empowered to make an order, if it considers it reasonable so to do.

I would allow the appeal. In the exercise of the power of the Court under s. 16(2),having regard to all the circumstances of the case, execution of the judgment to be suspended for a period of 12 months, provided the tenant pays regularly the monthly rent.

In the light of the view expressed in *Galatariotis* v. *Polemitis & Another*, 20 C.L.R. (Part II) 70, reiterated and applied in *The Electricity Authority of Cyprus* v. *Georghios Georgallettos & Others*, (1972) 1 C.L.R. 77, to the effect that the practice that costs follow the event need not be the same in cases for the recovery of possession of premises protected by the rent restriction legislation, I make no order as to costs in these proceedings, either before the trial Court or on appeal.

LORIS J.: I had the opportunity of reading the judgments prepared by my brethren and I find myself in agreement with the result.

The crucial point which falls for determination in the present appeal is whether the respondent will be treated as having received the written notice of demand sent to him by registered post on 18.4.79.

The undisputed facts on this issue are the following:-

On 17.4.1979 the advocate of the plaintiff prepared a letter of even date demanding on behalf of his client—the appellant—the rents lawfully due by the respondent. This demand in writing appears on record (*exhibit* 1).

Exhibit 1 was sent through the post by registered letter addressed to the respondent at his last known postal address, i.e. the shop subject-matter of this case; this registered letter was delivered at the post office on 18.4.1979.

The postal authorities following their usual practice, in the

absence of the respondent, left on 24.4.1979 at his above mentioned address a slip notifying the addressee that a registered letter waited collection at the post office; as the respondent failed to appear at the post office and collect the registered letter in question, the postal authorities likewise left a second slip at the same place on 28.4.1979. The respondent failed again to collect same, whereupon the postal authorities returned *exhibit* 1 to the sender as unclaimed on 7.9.1979.

In the meantime on 12.7.1979 the appellant filed the application for ejectment invoking the provisions of s. 16(1)(a) of Law 36/75.

At the trial the respondent maintained that he never received the registered letter itself; on the other hand, he was quite vague as to whether he received either of the two postal slips, whilst counsel appearing for him conceded before us, that the postal slips were received by the respondent.

From these facts it is abundantly clear that the appellant having elected to make use of one of the alternative ways of effecting service of the notice envisaged by the provisions of s. 23(1) of Law 36/75, did deliver at the post office on 18.4.1979 *exhibit* 1, i.e. his notice of demand in writing, by registered letter addressed to the respondent. In short the appellant did everything required of him so that he would be enabled to invoke the provisions of s. 16(1)(a) of Law 36/75.

The respondent failed to collect the registered letter–notice, in spite of the fact that he was served twice with a slip by the postal authorities requiring him to attend the post office and collect the registered letter waiting for him there.

What we must now decide is whether the failure of the tenant to collect the registered letter entitles him to assert that he received no notice.

In the case of *Tenax Steamship Co. Ltd.* v. *Owners of the motor vessel Brimnes*, [1974] 3 All E.R. 88, there are certain passages which illustrate the consequences that may attend the default of the addressee to gain knowledge of the contents of the notice.

In his judgment Cairns, L.J., (p. 115, letters e–f) stated the following:–

"... In my opinion, the general rule is that notice must reach the mind of the charterer or of some responsible person on his behalf. There must be clearly exceptions to this rule; for example, if the charterer or his agent deliberately keeps out of the way, or refrains from opening a letter with a view to avoiding the receipt of notice. How much further than this do exceptions go? I feel little doubt that if an office were closed all day on an ordinary working day, though without any thought of a notice of withdrawal arriving, such a notice delivered by post on that day must be regarded as then received.....".

And Megaw, L.J., had this to say (at p. 113, letter b of the report):-

"..... With all respect, I think the principle which is relevant is this: if a notice arrives at the address of the person to be notified, at such a time and by such a means of communication that it would in the normal course of business come to the attention of that person on its arrival, that person cannot rely on some failure of himself or his servants to act in a normal businesslike manner in respect of taking cognisance of the communication, so as to postpone the effective time of the notice until some later time when it in fact came to his attention.....".

In the case in hand the tenant either wilfully or negligently was in default of receiving the notice—the registered letter itself; he has to blame himself for such default. Definitely he cannot be allowed to gain a benefit out of it; he cannot take advantage of his own default by setting up lack of knowledge as a defence.

In the result the appeal is allowed; for the reasons given by my brethren the order for recovery of possession is hereby suspended for one year as from today, provided the respondent pays regularly the rent due.

There will be no order as to costs.

Appeal allowed. No order as to costs.