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Evidence: Receipt of Mailed Letters: Overcoming Presumptions

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EVIDENCE—RECEIPT OF MAILED LETTERS—OVERCOMING PRESUMPTIONS.—The plaintiff brought suit on an accident policy. The defendant insurance company denied that the policy was in force at the time of the insured's injury. It was stipulated that the policy could be renewed annually with a 31 day period of grace at the company's option, and the defendant claimed that the policy had not been renewed for the period in question because of a written notice alleged to have been mailed to the plaintiff, stating their inability to renew his policy for the coming year. The point of issue in the case was whether the plaintiff had been duly notified since he claimed that he never received the letter allegedly sent by the defendant. It was established that the letter was dictated, signed, directed to plaintiff's address, placed in an envelope and given to the mail boy to send out in his usual manner. The envelope was marked to be returned within five days but was never returned. There was no evidence as to whether the letter was ever mailed or not and no testimony of the office boy as to his recollection of compliance with the office custom in that particular instance. Upon an erroneous instruction in the civil court, the judgment in favor of the defendant was reversed on appeal to the circuit court. On appeal, *held,* judgment affirmed. There was not sufficient compliance with the defendant's office custom to create the presumption that the notice of non-renewal was received by the insured. *Frank* v. *Metropolitan Life Ins. Co.,* (Wis. 1938) 277 N.W. 643.

Proof of custom in the sender's office whereby letters deposited in a particular place are taken by an employee and mailed by him, in connection with proof that the letter was so deposited and probably taken and mailed as usual, may support a presumption of due receipt. 22 C.J. 99, n. 13. The test of the rule was met when the stenographer typed and addressed a letter and placed it in a mail basket where the office boy collected and stamped it and personally brought it to the post office. *Kluck* v. *State,* 223 Wis. 381, 269 N.W. 683 (1937). In *Oregon Steamship Co.* v. *Otis,* 100 N.Y. 446, 3 N.E. 485 (1885), the court pointed out the dependability of the mail service even then by stating that the great bulk of letters sent in the mail reach their destination and that a failure to do so, while possible, occurs only with great infrequency and that the letters are transported by government officials acting under oath, and upon a system framed to secure regularity and precision. But this presumption is a prima facie one and can be rebutted and made a question for the jury, or can be fully overcome by positive evidence to the contrary. This positive evidence can be at times found in the mailman delivering to the addressee's residence. A letter which was supposed to have been received the same day it was sent, both parties living in the same city, was conclusively shown not to have been delivered, by testimony of the mailman that he did not deliver any mail to the addressee that day, and also by the fact that the post mark on the letter when it was received, showed that it was mailed at such a late hour that delivery on the same day was impossible, thereby destroying any presumption of receipt by the time stated. *Beeman* v. *Supreme Lodge,* 215 Pa. 627, 64 Atl. 792 (1906). Where there was ample evidence to the effect that a letter was not received, the presumption of its having been received was destroyed, as presumptions disappear when confronted with facts. *American Cent. Ins. Co.* v. *Heath,* 29 Tex. Civ. App. 445, 69 S.W. 235 (1902). Where it was shown that official recording of a policy would have followed in the ordinary course of the business, if the letter had been received, non-recording defeated the presumption that the letter had been received, the court construing this as positive knowledge. *Leahy* v. *United States,* 10 F. (2d) 617 (D. Mont. 1926). It has even been held that a simple denial by

the addressee will overcome the presumption of receipt. *Grade* v. *Mariposa County,* 132 Cal. 75, 64 Pac. 117 (1901). Testimony denying receipt of a letter does not render evidence of its mailing inadmissible, but such rebuttal overcomes the presumption sufficiently to make it a question for the jury. *Corinth Bank & Trust Co.* v. *Cochran,* 219 Ala. 81, 121 So. 66 (1929). The presumption that the letter was received by a corporation was completely rebutted by the undisputed testimony of an agent of the corporation who had entire charge of all of its correspondence, that the letter was never received. *W. T. Rawleigh Medical Co.* v. *Burney,* 25 Ga. App. 20, 102 S.E. 358 (1920). It has also been decided that denial of receipt destroys the presumption arising from mailing, where evidence of the sender's using an incorrect address is shown. *Gagliostro* v. *Indelli,* 53 Misc. 44, 102 N.Y. Supp. 918 (1907). It has been further held that no presumption of receipt will arise where it does not appear that the letter was properly addressed. *Diehl* v. *Becker,* 227 N.Y. 318, 125 N.E. 533 (1919). But the Wisconsin rule on this point has been held to be that a denial of the receipt of the letter duly stamped and mailed, is not sufficient to overcome the presumption that it was received, without being accompanied by further positive proof. *Small* v. *Town of Prentice,* 102 Wis. 256, 78 N.W. 415 (1899). Later it was held that a presumption of receipt arises from proof that the letter was mailed, and that this presumption is not conclusively rebutted by the testimony of the addressee that he did not receive it. *Reeves* v. *Midland Casualty Co.,* 170 Wis. 370, 174 N.W. 475 (1920). Perhaps the best and the easiest available method of destroying the presumption of receipt is by showing a lack of compliance with any one phase of the office custom. The law has become well established in cases where the office is large that proof of mailing must be made by showing the existence of an office custom with respect to mailing and also full compliance with such custom in the specific instance. *Farrow* v. *Dept. of Labor & Industries,* 179 Wash. 453, 38 P. (2d) 240 (1934). Compliance with the office custom as to mailing must be fully proved. The person whose duty it is to deposit the letters at the post office should be called to the stand, or his absence accounted for. *Brailsford* v. *Williams,* 15 Md. 150, 74 Am. Dec. 558 (1859). Proof of an existing office custom is not sufficient to show the mailing of a letter which the addressee denies receiving, without some corroborating evidence to warrant an inference that the office custom was complied with in respect to that particular letter. *Fed. Asbestos Co.* v. *Zimmermann,* 171 Wis. 594, 177 N.W. 881 (1920). A new step in overcoming the presumption of receipt upon mailing was inaugurated in a case where it appeared that by office custom it was the duty of the office boy to put each letter into its proper place, seal, stamp and mail it. And in that case where it appeared that over 150 letters were sent out at once and the addressee denied receipt of the letter, the court said, "It is more probable that the office boy neglected some one of the several details of his duty, than to believe that the defendant has wilfully sworn to an untruth." *Elmore* v. *Busseno,* 175 App. Div. 233, 161 N.Y. Supp. 533 (1916). This would seem to be a fair application of the rule on the presumption of receipt, depending upon the individual circumstances surrounding each case, and the apparent fidelity of each party, and it seems especially fair in view of the fact that the addressee has so few means of overcoming the presumption after the sender once says that he has complied with all mailing requirements and deposited the letter in the mailbox. At that point it is the word of one person, on oath, against that of his adversary, also on oath, and any well-regulated method of overcoming this presumption will tend to lessen any undue advantage in favor of either party.

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