Evidence: Proof of office custom of mailing letters: Sufficiency

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poration liable to a forfeiture of its franchise to do business in the state.\(^2\)

Generally, to warrant the judgment of ouster, there must have been a wilful and improper act or neglect such as to work or threaten a substantial injury to the public. Where a foreign corporation commits acts dangerous to the public, and which were forbidden by its franchise or by a general rule of law, the state may ask for the revocation of its license to do business within the state.\(^4\)

Foreign corporations in Wisconsin are subjected to all liabilities and restrictions that are imposed upon domestic corporations,\(^6\) and for a failure to comply with such provisions, the attorney general is authorized to institute ouster proceedings against such a corporation.\(^6\)

R. W. Ruehl


—Ponder v. Jefferson Standard Life Insurance Company, 6 Fed. (2d) 300, (1925), was an action upon three policies of life insurance taken out by plaintiff’s husband with the defendant company. The defense interposed was that certain checks given by the insured for premiums were dishonored and that the policies had thus lapsed for non-payment of the premiums. The defendant claimed that proper notices of the dishonors had been given to the insured. Plaintiff denied that any such notices had been given, none being found among the insured’s effects. Employees of the defendant company testified that these notices were sent out in the usual course of business, carbon copies having been retained. The court held that evidence that the notices were mailed according to the custom of the business was sufficient to constitute evidence of delivery, and it was not necessary that the identical person who deposited the letters should testify from personal knowledge that the letters were in fact mailed.

The efficient operation, methods, and adequacy of the government postal service have generally been considered sufficient to raise the prima facie presumption of due delivery to and receipt by the addressee of mail matter placed within the control of the service.\(^1\) The presumption does not arise, however, until there has been due proof of the addressing, stamping and mailing of the letter or matter claimed to have been sent.\(^2\)

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\(^1\) State v. Standard Oil Co., 111 Minn. 85, 126 N.W. 482.

\(^2\) State v. Am. Sugar Refining Co., (La.) 71 So. 137.

\(^3\) Sec. 226.02, Wis. Stats.

\(^4\) Sec. 226.09, Wis. Stats., Williams v. Brewster, 117 Wis. 370, 93 N.W. 479.

\(^5\) McDermott v. Jackson, 97 Wis. 64, 72 N.W. 375; Small v. Town of Prentice, 102 Wis. 265, 78 N.W. 415; Corry v. Sylvia y Cia, 192 Ala. 550, 68 So. 891. Ann. Cas. 1917E, 1052 and note; Keogh v. Peck et al., 316 Ill. 318, 147 N.E. 265, 38 A.L.R. 1151. In the two Wisconsin cases cited it was held that “proof of the mailing of a letter in time to reach the person to whom it was addressed in the regular course of the mails, prima facie establishes the fact that it was so received.” For an extensive note upon presumptions as to receipt of communications sent in the mails see 49 L.R.A. (NS) 458.

\(^6\) Wigmore on Evidence, 2nd ed. sec. 95.
In cases generally involving large business houses, it sometimes de-
volves upon such concerns to prove that a certain individual letter or
notice had been properly mailed so that the presumption of receipt by
the addressee thereof can arise. Usually from the volume of business
carried on by such companies it is generally impossible to prove posi-
tively that a certain letter or notice had been duly mailed. Thus it is
that resort is made to the proof of an office custom or habit as proof
of the due mailing of a specific letter or notice. The instant case is an
illustration of this method of proof.

As a consequence of the presumption of certainty of operation of
the government postal system, it has been held that upon proper evidence
of the habit of an individual commercial house as to addressing and
mailing, the mere execution of a letter in the usual course of business
is sufficient evidence of its subsequent receipt by the addressee. There
are numerous cases which hold that the mere proof of the
execution of a letter coupled with proof of an office custom of mailing
is not sufficient to raise the presumption of receipt thereof by the
addressee. There cases hold that there must be a further showing that
the office custom, if there was one, was complied with. As was said
in Federal Asbestos Company v. Zimmerman, (supra) "proof of the
custom of the office with reference to the mailing of letters, without
any proof from which it may be inferred that in the particular instance
the custom was complied with, does not constitute proof of mailing." Thus
the mere proof of execution of a letter coupled with proof of an
office custom is insufficient to constitute proof of receipt by the addressee.
In the absence of some corroborating proof that the letter was, at least,
placed where, in the ordinary course of business, it would be taken to
the postoffice. It is well settled that proof of the deposit of a letter in
a street letter box established by the United States postal authorities
is equivalent to proof that the letter was mailed in the postoffice, and
proof of the depositing of a letter in a mail chute in a private building

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this case, the ruling of the District court (of northern Texas) was sustained
mainly upon the ground that it was in harmony with the decisions of the Texas
courts bearing upon this question. In McKay v. Myers, 168 Mass. 312, 47 N.E.
98, besides proof of the custom of the office from which the letter was sent, a
subsequent letter from the defendant to the plaintiff contained indications that
the letter claimed to have been mailed to the addressee had been received by him.
This case turned upon this bit of evidence and it is thus distinguishable from

Pierson-Lathrop Grain Co. v. Barker, 223 S.W. 941 (Mo.); Brailsford v.
Williams, 15 Md. 150, 74 Am. Dec. 559; Gardam v. Batterson, 198 N.Y. 175, 91

10 Cases and note last cited. Also see note in 25 A.L.R. 9, 13.

Zimmermann, Gardam v. Batterson, Brailsford v. Williams, supra note 4.

12 Corry v. Sylvia y Cia, supra; see note in 25 A.L.R. 9, 11.
is sufficient showing of a mailing thereof, where the chute is under the control of the Postoffice Department.8

Upon due proof being made of the execution of a letter and of its stamping, addressing, and mailing, a prima facie presumption of its receipt by the addressee arises. Being prima facie only, the presumption is rebuttable by proof to the contrary,9 and the effect of rebutting evidence is to make the question of receipt a subject for determination by the jury.10

In line with the principal case it has been held that the presumption arising from proof of mailing a communication is not overcome by evidence that it was not found among addressee's effects after his decease.11

In general, it may be said that there is a division of authority in the courts as to what constitutes sufficient proof of mailing by means of proof of office custom, with the weight favoring those courts which hold that mere proof of execution of a letter plus proof of a general office custom is insufficient as a matter of fact to raise the presumption of due delivery into the hands of the addressee. It would seem that this doctrine places undue hardship upon those who have to resort to this method of proof, and it will be an ever increasing hardship in view of the enlarged scale upon which business is being conducted.

L. A. P.

Municipalities: How far Home Rule Amendments effective.—Since the passage of the so-called Home Rule Amendment to the state constitution there has been much speculation both as to the extent of the changes that would result in municipal government and as to the limitations that might be placed thereon by the courts. The decision recently handed down by the Supreme Court in the controversy between the common council of the city of Milwaukee and the school board of Milwaukee, State ex rel. Harbach v. Mayer and Members of the Common Council of the City of Milwaukee, (Wis.) 206 N.W. 206, limits considerably the powers which the municipality was deemed to have been extended to it by the amendment.

The legislative act creating section 66:001 of the statutes provides in subsection four, (4):

Any city or village may elect in the manner prescribed in this section that the whole or any part of any laws relating to the local affairs or government of such city or village other than such enactments of the legislature of state-wide concern as shall with uniformity affect every city or every village shall not apply to such city or such village, and thereupon such laws or parts thereof shall cease to be in effect in such city or village.

10 Case and note last cited.