A

ATTORNEY-GENERAL

v.

ANAND PRASAD

B

[SUPREME COURT, 1975 (Mishra J.), 17th October]

Appellate Jurisdiction

Practice and procedure—failure by counsel for landlord through inadvertance to adduce evidence in support of claim for rent due—submission by defendant of no case to answer—subsequent application to call fresh evidence after case closed—whether proper for Court to grant such application.

C

In an action for rent owing by the respondent to the Government of Fiji, counsel for the appellant, due to an advertance, failed to adduce any evidence of how the rent had accrued and how the rent set out in the writ was made up. The respondent submitted no case to answer and called no evidence. Counsel for the appellant then applied for leave to call fresh evidence but leave was refused.

D

Held : The respondent had already closed his address when the appellant made his application. To grant such an application would have destroyed the submission already made and would have resulted in grave injustice to the respondent.

Case referred to :

E

Murray v. Figge [1975] A.L.R. 612.

Appeal against the decision of the Magistrate's Court dismissing the appellant's claim in respect of rent due.

M. J. Scott for the appellant.
H. M. Patel for the respondent.

MISHRA J. : [17th October 1975]—

F

This is an appeal from a decision of the Magistrates Court Suva, dismissing the appellant's claim for $160.25 in respect of rent allegedly owing by the respondent to the Government of Fiji.

The defendant, by his defence, denied owing this, or any, sum to the appellant.

G

There was uncontradicted evidence before the Court that the respondent, a public servant, occupied a house at Navua belonging to Government of Fiji for some time in 1972. There was also uncontradicted evidence that during this period no rent was paid in respect of this house. Evidence was led to show that, when a public servant occupied a house belonging to Government, rent payable by him was deducted from his salary. In this case no deductions had been made from the respondent's salary during the relevant period. No evidence, however, was led to show what rent was payable by the respondent and how it was calculated. There was no evidence even of the salary received by the respondent.

H

In support of the appeal the appellant alleges several grounds some of which, on their own, would appear to have some substance. The main ground, however, on which this appeal must succeed or fail, relates to the learned Magistrate's refusal to allow fresh evidence to be adduced by the appellant after he had closed his case. The appellant concedes that, without this additional evidence his claim at the trial could not have succeeded.

This situation arose in a rather unusual way. At the close of the appellant's case counsel for the respondent submitted that there was no case to answer and, when put to his election, elected to call no evidence for the defence. He then addressed the Court in support of his submission. When the appellant came to address the Court in reply, it became clear that, even if the learned Magistrate wanted to make an order in his favour, he would be prevented from so doing because the appellant had, through inadvertence, omitted entirely to adduce any evidence of how the alleged rent had accrued and how the amount alleged in the writ was made up. As a result there was no sworn evidence before the Court to show what amount, if any, the respondent owed to the appellant. It was then that the appellant applied for leave to adduce further evidence. Leave was refused.

Learned counsel for the appellant submits that a Court ought not to allow a genuine claim to be defeated merely because of such inadvertence and that in certain cases leave to call fresh evidence ought to be granted even after the case has been closed. In support of this contention he cites *Murray v. Figge* [1975] A.L.R. 612). The head note in that case reads :

> " Where, by reason of counsel's inadvertence, evidence clearly admissible has not been tendered, a case may be reopened so as to admit that evidence provided :—
>
> (i) it can be admitted on conditions which ensure there is no prejudice to the other party by reason of its introduction at a late point of time, and
>
> (ii) interests of justice so require. "

In that case the application to adduce fresh evidence was refused. In the instant case the defendant submitted no case to answer and, due to his election, was precluded from calling any evidence. He had elected to stand or fall by the weaknesses in the appellant's evidence. He may have incurred a considerable risk in so doing or he may have obtained a definite advantage. As it turned out, his submission of no case came to acquire considerable strength and seemed bound to succeed. He had, in fact, already closed his address when the appellant made his application. To grant such an application would necessarily have amounted to destroying the submission already made by the defendant and leave, therefore, could not have been given without grave prejudice to the defendant. For this reason the learned Magistrate was, in my view, correct in refusing the appellant's application.

Some grounds relate to the issue of Quantum Meruit. I do not consider them to have much substance on the facts of this case. As for costs, they were awarded within the scope of Order XXXIII rule 3 of the Magistrates' Courts Rules.

The appeal is dismissed with costs.

Appeal dismissed.