MUTTU NATCHIA *et al v.* PATUMA NATCHIA *et al.*

D. C., Kalutara, 1,032.

Landlord and tenant—Denial of tenancy and of notice to quit—Evidence—Averment and proof of notice, when not necessary.

A tenant, who disclaims to hold of his landlord and puts him at defiance, is not entitled to have the action against him dismissed for want of a valid notice to quit.

And in such action the plaintiff need not aver and prove any notice to quit.

THE plaintiffs raised this action for the recovery of arrears of rent of a house alleged to be due from the defendants and for ejectment of the defendants therefrom. It was averred that the defendants occupied the house as their monthly tenants on condition of paying rent monthly till the end of the year 1891, but that in January, 1892, they questioned plaintiffs' title to the premises and refused to pay rent, and had been since then unlawfully withholding possession of the same, though they had received notice to quit.

The defendants, in their answer, traversed these allegations, and setting up title in themselves prayed for dismissal of the plaintiffs' action.

Two issues were framed:—(1) Had Plaintiffs a right of ownership to the house, and (2) did defendants hold under plaintiffs.

After examination of the plaintiffs, the Proctor for defendants contended that the notice given to the defendants was bad, as it was not a full calendar month's notice (*1 S. C. R. 352*). Upon further argument the District Judge dismissed the plaintiffs' action upon the ground that the plaintiffs had "no standing in "view of the valueless notice to quit said to have been served "upon defendants."

The plaintiffs appealed.

Pieris, for appellants.

Perera, for respondents.

1st March, 1895. BROWNE, J.—

The plaint in this case sufficiently averred that the defendant, after entering and holding as tenant of the plaintiff, had disclaimed to hold of him and put him at defiance. It was unnecessary therefore that the plaintiff, as he did, should have averred or have sought to prove any notice to quit given by him to defendant, and defendant was not entitled to have the action dismissed because no valid notice was given.

The decree of dismissal must therefore he set aside and the action remitted for trial, but as the plaintiff himself acted throughout as if such notice was necessary until apparently after the decree was pronounced, when he more clearly apprehended his position, he is not entitled to recover any costs of the proceedings up to and inclusive of this appeal from the defendant.

LAWRIE, A.C.J.—

I agree.