

1932

Present : Jayewardene A.J.

LABROOY *v.* THE WHARF LIGHTERAGE COMPANY.

16—C. R. Colombo, 72,680.

*Master and servant—Engagement from month to month—Monthly salary—
- Damages in lieu of notice.*

Where a person is employed on service from month to month, the salary being paid monthly, he is entitled on the termination of his services, to a month's salary in lieu of notice.

A PPEAL from a judgment of the Commissioner of Requests, Colombo.

H. E. Garvin, for defendant, appellant.

N. E. Weerasooriya, for plaintiff, respondent.

June 30, 1932. JAYEWARDENE A.J.—

The defendant, the Wharf Lighterage Co., Ltd., in March, 1931, engaged the services of the plaintiff as assistant manager of the defendant's business on a salary of Rs. 150 a month. On May 30, 1931, the

plaintiff's services were terminated without previous notice and plaintiff has brought this action to recover Rs. 300 as damages, being two months' salary for wrongful dismissal. The defendant pleaded *inter alia* that the plaintiff could claim only one month's salary in lieu of notice. The learned Commissioner of Requests gave judgment for plaintiff as prayed for with costs, holding that he was entitled to two months' salary as damages, considering the importance of his post. Leave to appeal having been refused on the facts the defendant has appealed on a point of law which is, that the plaintiff was employed on a monthly salary of Rs. 150 and there are no special circumstances which would entitle the plaintiff to obtain two months' salary as damages in lieu of notice of termination of his employment.

The plaintiff was employed as assistant manager of the defendant company and was authorized to do business at H. M. Customs and on board ships. He does not fall within the category of persons dealt with by the Labour Ordinances. The contract of service is governed by the Roman-Dutch law. Maasdorp says: "The employee will be entitled to a reasonable notice of the termination of the contract, and what is reasonable notice will depend on the circumstances of each particular case. When the service is from month to month, the salary being payable monthly, he will be entitled to a clear month's notice. (3 *Maasdorp*, p. 249.)

Nathan states the law thus: In the case of hiring of employees, where the hiring is not for menial or domestic service, and is for an indefinite period from month to month it only terminates at the end of one of the monthly periods. (2 *Nathan*, p. 902, 2nd ed.) There are no important differences between English and Dutch common law on the subject of contracts of service, *locatio operarum*. (*Morice's English and Roman-Dutch Law*, p. 172.) On the question of damages Roman, English, and Roman-Dutch law seem to be agreed. *Gringer v. Eastern Garage*¹. In English law where it is an express term of the contract that a servant who is dismissed without notice is to be paid his wages for a certain period in lieu of notice or where there is a custom to that effect, the measure of damages for the breach is the amount of such wages, which is to be regarded as liquidated damages. (20 *Halsbury* 112.) There is a custom in domestic service, that a general hiring may be terminated at any time by a month's notice or payment of a month's wages. If no custom nor stipulation as to notice exists, and if the contract of service is not one which can be regarded as a yearly hiring the service is terminated by a reasonable notice. (20 *Halsbury* 97.) In *Sirisena v. Kurugama Tea Co.*², the plaintiff, a dispenser on an up-country estate, claimed three months' salary in lieu of notice, and the District Judge held that the plaintiff was entitled to two months' notice, as it was by no means easy to secure a post with a salary of Rs. 140 a month. In appeal it was held that unless there are special considerations, a month's notice has been regarded as reasonable under our law, that there was no reason to depart from the regular rule that a month's notice is sufficient and that there was nothing to show that a dispenser *per se*, especially one

¹ 82 N. L. R. 261.

² 26 N. L. R. 208.

whose salary is a monthly one, is entitled to claim that his post is one which would entitle him to a longer notice than that accorded to the ordinary rule.

A month's notice has been held to be reasonable in *Kaule v. Galle Face Hotel*¹, and not necessarily a calendar month's notice. (*Perera v. Robertson*².)

In *Beveridge v. Boustead*³ the plaintiff was employed by the defendants as engineer of the tramway works and was dismissed without notice. The Commissioner held that he was entitled to a month's notice, or a month's salary holding that it was hard for an engineer in this country to be suddenly turned out of employment for the demand for their services is not a large one and that reasonable notice was necessary. Withers J. held that the decision was a just one.

The case of *Perera v. Malalasekere*⁴ is different. There it was argued that it was a monthly contract but the words in which it was drawn up were an indication that it was more than a monthly engagement and possibly for an indefinite period.

In *Forsyth v. Walker and Clark Spence*⁵ Macdonell C.J. laid down the rules as to termination of contracts of employment as follows:—"When the contract itself states the period of notice on which it may be determined, that statement governs the question. Where though the contract is silent on the period of notice on which it may be determined, still a custom is proved that a contract of such a character can be determined on such and such a period of notice, then that custom governs the question. Where the contract is silent on the period of notice on which it may be determined and where no custom as to such period can be proved but still it is shown to be a contract terminable on notice of some sort, then the period of notice on which the contract is terminable must be a reasonable one. But there remains a further category. If a contract of employment is expressed to be for a definite period and nothing as to terminability on notice can be discovered or read into it, then its termination by the employer without lawful cause before that definite period has elapsed is a case of wrongful dismissal, and an instance of the general rule that action will lie for unjustifiable repudiation of a contract whether of employment or of any other character. The remedy for such unjustifiable repudiation is damages".

In South Africa where there was no contract of service for a definite period, but the employee had been in the service of the employer as a merchant's clerk for more than three years and the salary having been paid at irregular intervals, there was nothing from which any inference could be drawn as to the term of the service, except the fact that the salary had been calculated in the books at so much a month for twelve months, the Court held that the service was by the month and that the clerk was only entitled to a month's notice. (*Venables v. Jarvis*⁶.)

¹ 7 *Tamb.* 146.

² 7 *C. L. Rec.* 92.

³ 309 *C. R. Colombo.* 6152, *S. C. M.* 5.12.98.

⁴ 281 *D. C. Colombo.* 32,307. *S. C. M.* 18.12.30.

⁵ 406 *D. C. Galle.* 29,137, *S. C. M.* 27.11.30.

⁶ 1 *Menzies* 314; and 3 *Maasdorp* 239.

In the present case the plaintiff says that he inquired as to the terms of his employment and he was told that he would be paid Rs. 150 a month to start with and that he would be doubled in three months and later on he would be given a share of the profits. I would hold that the service was from month to month, the salary being paid monthly.

The general rule is that notice need not be more extensive than the period of payment, in English law. (*Davis v. Marshall*¹.) According to Roman-Dutch law as laid down by Maasdorp, in an engagement of this character from month to month, salary being payable monthly, the plaintiff is only entitled to a month's notice. There is no reason to depart, as Ennis J. observed in *Sirisena v. Kurugama Tea Co.* (*supra*), from the regular rule that a month's notice is sufficient. In my view the plaintiff was not entitled to two months' notice. I would vary the decree accordingly. The plaintiff will be decreed entitled to Rs. 150, being a month's salary, with interest and costs in the lower Court as prayed. The defendant is entitled to the costs of the appeal.

Appeal allowed.

¹ (1861) 4 *Law Times Rep.* 216.