1958 *Present :* **Pulle, J., and Weerasooriya, J.**

K. L. FERNANDO, Appellant, *and* A. A. DE SILVA, Respondent

S. C. 274—D. C. Balapitiya, 572/M

Employer and employee—Action for wrongful dismissal—Contract of service—Notice of termination.

Under the Roman-Dutch Law no special form of notice is required for the termination of a contract of service between employer and employee.

What is reasonable notice of termination of a contract of service depends on the circumstances of each case

Where the Headmaster of a school gave notice to his employer, the Manager, in such terms and under such circumstances that the Manager could reasonably construe it as a month's notice—

Held, that an action for wrongful dismissal would not lie.

APPEAL from a judgment of the District Court, Balapitiya.

Sir Lalita Rajapakse, Q.C., with *C. V. Ranawake* and *D. E. V. Dissanayake*, for plaintiff-appellant.

A. L. Jayasuriya, with *M. Markhani*, for defendant-respondent.

Cur. adv. vult.

September 9, 1958. WEERASOORIYA, J.—

The plaintiff-appellant was the Headmaster of a school of which the defendant-respondent is the Manager, and he seeks in these proceedings to recover from the defendant a sum of Rs. 10,000 as damages on two causes of action. On the first cause of action a sum of Rs. 5,000 is claimed for wrongful dismissal of the plaintiff on or about the 2nd September, 1952, from the post of Headmaster. On the second cause of action a further sum of Rs. 5,000 is claimed for humiliation and disgrace inflicted on the plaintiff by the defendant on the occasion of the alleged wrongful dismissal.

After trial the learned District Judge rejected both claims and dismissed the action with costs. Hence the present appeal by the plaintiff. The appeal against the rejection of the claim on the second cause of action was not pressed by Sir Lalitha Rajapakse who appeared for the appellant, and the only matter on which we reserved judgment was in regard to the claim under the first cause of action.

Although the defendant's answer contained only a bare denial of the averments in the plaint, at the trial the position taken up by him on the first cause of action was that he did not dismiss the plaintiff but the plaintiff terminated his services after giving notice which was accepted by the defendant.

It would appear that for some time prior to August, 1952, feelings between the two parties were strained. In the letter D1 dated the 18th June, 1952, the plaintiff complained that the defendant was working against him. He also stated that he had in mind to leave the defendant's school " as early as possible " and that he had written to several schools applying for a post as head teacher or an assistant teacher. In D3 of the 2nd July, 1952, the plaintiff reiterated his decision to leave and added : " Sometimes I will be able to give notice of leaving on the 1st if I could obtain the privileges I am asking for. My intention is to conduct a teachers' swabasha newspaper while running my tutory also. If I am successful in these I think I will be able to give you notice on the 1st ". This letter was followed up by D4 dated 1st August, 1952, in which the plaintiff stated : " About my leaving I made arrangements. I am willing ", and having then said that his wife was against his leaving he continues : " However the matter may be I am not willing to stay back ".

The substantial point for decision is whether the letters D1, D3 and D4, read together, amounted to a notice given by the plaintiff on the 1st August, 1952, terminating his employment under the defendant. The learned trial Judge has answered that question in the affirmative, and if the letters can reasonably be so construed we would have no ground for reversing in appeal the finding of the trial Judge.

Under the Roman Dutch Law, which governs the case, no special form of notice is required for the termination of a contract of service between employer and employee. It is self-evident, however, that the party wishing to terminate the contract should communicate his intention to the other party in unambiguous terms, giving reasonable notice of termination where the contract itself does not provide for a specified period of notice or the matter is not regulated by custom. What is reasonable notice will depend on the circumstances of each case.

In the letter D3 dated the 2nd July, 1952, to which I have already referred, the plaintiff stated that if he is successful in making certain arrangements he hoped to be able to give the defendant notice " on the 1st ". The arrangements are those mentioned in the extract from D3 reproduced earlier. I think that " the 1st " means the 1st of August, 1952. That the plaintiff was able to make the arrangements referred to is confirmed in the next letter D4, dated the 1st August, 1952. In this letter too the plaintiff has stated that he was not prepared to stay on. The precise meaning of this letter is best given in the words of the plaintiff himself who on being questioned about it said : " I wrote the letter indicating that I was leaving school but intending not to leave ". But any mental reservation on the part of the plaintiff would not avail him if the letter can reasonably be regarded as a notice of termination of his employment under the defendant. The learned trial Judge has held that D4 taken in conjunction with D3 amounted to such notice. That these two letters constitute a notice given by the plaintiff on the

1st August, 1952, of the termination of his employment does not, in my opinion, admit of any doubt. The only uncertainty (for which the plaintiff alone is responsible) would appear to be in regard to the period of the notice so given. As appears from the " discontinuance " form P7 the defendant has treated the period of the notice as one month, i.e., from the 1st August (when D4 was received) to the 31st August, 1952. On the 9th August, 1952, he advertised the post of head teacher in his school as vacant and called for applications—(P8). The school was then in vacation and was not re-opening till the 2nd of September, 1952. The plaintiff thereupon wrote the letter P9 dated the 11th August, 1952, to the Education Officer, Galle, stating that he " did not give notice to discontinue the Headmastership " of the school. Curiously enough, this letter was not sent to the defendant as one would expect the plaintiff to have done if the action of the defendant in calling for applications for the vacant post of Headmaster had taken him by surprise. It is also significant that although the advertisement did not disclose the reason why the post had fallen vacant the plaintiff stated in P9 that he did not give notice of discontinuance.

In my opinion the letters D3 and D4 may reasonably be construed as a notice given by the plaintiff on the 1st August, 1952, that he was terminating his employment with effect from the 1st September, 1952. The plaintiff in his evidence did not suggest what other construction may be given to those letters.

Sir Lalita Rajapakse for the plaintiff has submitted that in the case of the employment of a head teacher of a school the reasonable period of notice should be at least three months. That may well be so, but I do not think it is necessary to decide the point since the plaintiff himself elected to give a shorter period of notice which the defendant accepted, as he was entitled to do.

I am unable to say that the learned trial Judge came to a wrong conclusion in regard to the construction of the letters D1, D3 and D4, and I would dismiss the appeal with costs.

PULLE, J.—

I agree. In the course of the argument I felt some doubt whether the plaintiff's letter D4 in particular of 1st August, 1952, was a valid notice of termination of the contract of service, because the actual date of termination was not specifically mentioned. I agree with my brother Weerasooriya that it is not possible to say that having regard to the letters D1, D3 and D4 the learned trial Judge was wrong in holding that the plaintiff had terminated his contract of service. If an employee gives notice to an employer in such terms and under such circumstances that the employer could reasonably construe it as a month's notice, as in this case, an action for unlawful dismissal would not lie.

Appeal dismissed.