

1924.

Present: Ennis J. and Jayewardene A.J.

SIRISENA *v.* KURUGAMA TEA CO.

489—D. C. Kandy, 31,004

Contract of service—Estate dispenser given one month's notice—Action for three months' salary in lieu of notice—What is reasonable notice.

A dispenser who was employed on an estate on a monthly salary of Rs. 140, and who was discharged after one month's notice, claimed in this action three months' salary in lieu of notice. The District Judge awarded him two months' salary in lieu of notice.

Held, that in the absence of special circumstances, he was entitled to only one month's notice.

THE plaintiff was employed as a dispenser on Kurugama estate on June 30, 1920, on a monthly salary of Rs. 140. On February 23, 1923, he was given notice that his services would be dispensed with from and after March 31, 1923. The plaintiff alleged that he was not given sufficient notice, and claimed three months' salary in lieu of notice.

The District Judge (Dr. P. E. Pieris) held :—

1924.

*Sirisena v.
Kurugama
Tea Co.*

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The main question is as to the amount of notice plaintiff was entitled to receive. Notice should be such as would enable the party noticed to have a reasonable opportunity of securing a suitable post by the date of the expiry of the notice. It is by no means easy to secure a post, with a salary of Rs. 140 a month. I think it would be reasonable to hold plaintiff entitled to two months' notice from February 23, 1923. Therefore, in the nett result, I allow plaintiff balance due for March Rs. 46.30, salary in lieu of notice till April 23, Rs. 107. Of this, Rs. 46.30 has been deposited in Court. Plaintiff can draw that sum, and have judgment for a further Rs. 107 with Court of Requests costs in that class.

Garvin, for defendant, appellat.

H. V. Perera, for plaintiff, respondent.

July 21, 1924. ENNIS J.—

In this case the plaintiff claimed three months' salary in lieu of notice. The plaintiff was a dispenser on an up-country estate. He was given one clear month's notice. He claimed three. The defendant brought into Court sufficient money to pay on the basis that the defendant was entitled to one month's clear notice. The learned Judge held that "Notice should be such as would enable the party noticed to have a reasonable opportunity of securing a suitable post by the date of the expiry of the notice. It is by no means easy to secure a post with a salary of Rs. 140 a month. I think it would be reasonable to hold plaintiff entitled to two months' notice." On this basis he gave the plaintiff judgment for an additional month's pay. For the purpose of the judgment, the learned Judge counted the two months' notice as from the day when notice was actually given. The appeal is from that decision. The contract of service in this case is one governed by Roman-Dutch law, as a dispenser does not fall within the categories of persons dealt with by the Labour Ordinances. Maasdorp says in connection with contracts of this type: "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, such month to terminate at the end of a month of the service, so that when notice has been given during the currency of a month, the contract will only terminate at the end of the following month. Again, in the case of an indefinite hiring where the contract is of an yearly character, it would appear that three months' notice is sufficient, such notice to terminate at the end of the current year." It would seem, then, that where the contract does not expressly

1924.

ENNIS J.

*Sirisena v.
Kurugama
Tea Co.*

say whether the hiring is for a year or a month, in such a case we must look to the service and the salary to see what compensation would be reasonable. The salary affords the best indication as to whether the service is from month to month or of a different character. In this case the plaint shows that the salary was one payable from month to month, and there is nothing in the evidence to show that the post held by the plaintiff was one which would indicate that the contract had a yearly character. The character of the office does not turn on the professional nature of the services, although that may be a feature in general circumstances. For instance, a teacher of music might or might not hold a post of a yearly character. The question would depend not on the professional character of the service, but on the tenor of the engagement. There is, therefore, nothing to show that the ordinary rule that a clear month's notice terminating at the end of a month of the service should be departed from in this case. Had the post been one of a yearly character, then the plaintiff should have been given salary on the basis on three months' notice and not on two months' notice, if one must follow the rule laid down in *Maasdorp*. The rule is laid down by *Nathan* in *vol. II., 2nd ed., p. 902*, in terms almost identical with the terms used by *Maasdorp*, except that he makes no mention whatever of services of a yearly character. The only instance cited by *Nathan* where the month's rule is departed from was an instance in which it was held that the engagement was a daily one. In the absence of any evidence that the post in this case was one which could be deemed to be one of a yearly character, there is no reason to depart from the regular rule that a month's clear notice is sufficient. There is nothing to show that a dispenser, *per se*, especially one 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 by the ordinary rule. I would accordingly allow the appeal, with costs, and set aside the decree of the lower Court, and dismiss the plaintiff's action, but make no order for costs in that Court.

JAYEWARDENE A.J.—

I agree. I think that the Roman-Dutch law rules on the point involved in this case are based on the principle that a servant is entitled to reasonable notice. Unless there are special considerations, a month's notice has been regarded as reasonable under our law. There is no evidence in the present case to justify a departure from the general rule, and the learned Judge's reasons for holding that the plaintiff is entitled to two months' notice are not supported by the evidence in the case.

Appeal allowed.