

Present : Jayewardene A.J.

THE IMPERIAL TEA CO., LTD., v. ARAMADY.

192—C. R. Nuwara Eliya, 7,352.

*Landlord and tenant—Notice to quit “within” a month—Good notice—Date for which month’s notice should run—Reasonable notice.*

The plaintiff on February 28 gave notice to his tenant to quit the premises “within a month from the said date.”

*Held*, that this was a good notice, as the tenant had the whole of the last day of the month within which to leave the premises.

The time from which a month should be calculated for the purposes of a notice to quit does not depend upon the date of the commencement of the tenancy.

The law requires that the tenant should have a reasonable notice, and a notice otherwise reasonable is not rendered unreasonable and invalid merely because it expires on some day other than the last day of the month calculated from the commencement of the tenancy.

THIS was an action for ejectment and rent by a landlord.

The facts are set out in the judgment of the Commissioner of Requests (M. T. Archibald, Esq.) :—

Defendant in this case is a monthly tenant. He admits that he was given a month’s notice as far back as February 28 last. Defendant has been a monthly tenant since 1918, but he now turns round and says : “I am a pawnbroker. Therefore I must have at least one year’s notice.”

Now, it appears that defendant has Rs. 1,400 worth of articles in pawn, and certain sums outstanding which he has to recover. But this is no fault of the plaintiff company.

In 3 *N. L. R.* 340 it was held that the notice must be reasonable enough to admit of a tenant having an opportunity to secure another house. In this case defendant says he is unable to secure another house, as all the boutiques and houses belong to plaintiff company. On the terms of his tenancy defendant seems to me to have no case. I would enter judgment for plaintiff as prayed for at (a), (b), and (d) of the plaint, and for a further sum of Rs. 10 per month as rent from June 1, 1923, till possession.

*Peri Sunderam*, for the defendant, appellant.

*H. E. Garvin*, for plaintiff, respondent.

October 4, 1923. JAYEWARDENE A.J.—

This is a case of landlord and tenant. The plaintiff, the landlord, sued the defendant his tenant, who occupies a boutique at Nanu-oya, for ejectment and rent. Questions have been raised with regard to the sufficiency, reasonableness, and waiver of the notice to quit

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given. The defendant is admittedly a monthly tenant. The plaintiff, on February 28, 1923, gave the defendant notice to quit the premises "within a month from the said date." The first question is: Is this a month's notice? On consideration, I think it is. "Within," with reference to time, means "not longer ago than," "not later than." So that the tenant had the whole of the last day of the month within which to leave the premises. It amounts to the same thing as giving a tenant a month's notice. He is not entitled to stay beyond the last day of the month. In my opinion the notice is a good month's notice. Then it is contended that in order to ascertain whether this is a month's notice, it is necessary to find out when the tenancy commenced, and reliance is placed on *Warwick Major v. Fernando*,<sup>1</sup> in which De Sampayo J. said:—

"It is well settled that a monthly tenant is entitled to a month's notice, and the time from which the month should be calculated would depend upon the commencement of the tenancy."

But in the present case no question was raised in the lower Court as to the date on which the tenancy commenced, and the parties appear to have assumed that the tenancy commenced on the first of a month. Mr. Sunderam asks that the case be sent back for the purpose of ascertaining the date of the commencement of the tenancy, but I see no reason to accede to his request. It has also been held in several cases that to terminate a monthly tenancy, it is necessary to give the tenant a month's notice, terminating at the end of a current month of the tenancy (*C. R. Colombo 87,694*,<sup>2</sup> *Fonseka v. Jayawickrema*,<sup>3</sup> *Warwick Major v. Fernando (supra)*, and *Loku Menika v. Charles Sinno*<sup>4</sup>). Thus, if premises are let to a tenant on the 15th of a month, and notice is given on the 24th of a subsequent month requiring the tenant to quit the premises on the 31st of the next month, this is not a month's notice in law (*Warwick Major v. Fernando (supra)*), as in a monthly tenancy the lease runs from month to month, and not for broken periods. This principle was first laid down locally in a case reported in *Grenier's Reports*, by Creasy C. J., where he said:—

"We must read the *Nisi Prius* case of *Huffel v. Armistead*<sup>5</sup> in connection with the subsequent case of *Jones v. Mills*, which came before the Court of Common Pleas in Banc, and which is reported in *31 L. J. (C. P) 66*. I should have been glad of more express authority on the subject, but as at present advised, I think, with Mr. Justice Williams, that the notice must be one commensurate with

<sup>1</sup> (1917) 4 C. W. R. 221.<sup>2</sup> (1873) 2 *Grenier's Rep.* 23.<sup>3</sup> (1892) 2 *Ceylon L. R.* 134.<sup>4</sup> (1918) 5 C. W. R. 281.<sup>5</sup> 7 C. & P. 57.

the term for which the letting was, that is, a month for a month ; and I also think that it must be a notice expiring at the expiration of a current month after the date of the notice. Evidence of custom might be given in these cases, and might have the effect of varying the presumption arising from the mere nature of the tenancy."

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However, in *Weeraperumal v. Davood Mohamad*<sup>1</sup> Bonser C.J. held that what was required was "reasonable notice," and not "notice of any definite length of time." He said :—

"As I understand the law, no notice of any definite length of time is required. It must be reasonable notice—reasonably sufficient in the opinion of the Judge to admit of a tenant having an opportunity of securing another house. A month's notice has been in several cases considered reasonable, and in this case the tenant had more than a month's notice."

In *Loku Menika v. Charles Sinno* (*supra*), Shaw J., remarking that there was not any very considerable strength of authority upon the point, preferred to follow the judgment of Creasy C.J. and the decisions based on it. The judgment of Creasy C.J. was based on certain English cases, but recently the cases on which Creasy C.J. relied have been referred to and commented on by a Divisional Bench of the High Court in England (*Swift and Acton JJ.*) in *Simmons v. Crossley*.<sup>2</sup>

There Swift J. said :—

"In this conflict of judicial opinion it seems to me that the view held by Wright J. is the more correct. I think that to determine a monthly or weekly tenancy reasonable notice must be given, and that such notice, if in other respects reasonable, is not rendered unreasonable and invalid merely because it expires on some day other than the last day of the month or week calculated from the commencement of the tenancy."

And Acton J. said :—

"All we are deciding is that a notice to determine a monthly tenancy, limited in duration by calendar months and beginning on the first day of a calendar month, is sufficient if it is a reasonable notice ; and that if it is in all other respects sufficient and reasonable, it does not become unreasonable merely because its expiry does not precisely coincide with the expiry of a calendar month."

<sup>1</sup> (1898) 3 N. L. R. 340.

<sup>2</sup> (1922) 2 K. B. 95.

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The English authority, in my opinion, throws considerable doubt on the judgment of Creasy C.J. and the judgments based on it, and shows that the view taken by Bonser C.J. is the more correct one. In this view, too, it is undesirable to send the case back for the purpose indicated by counsel for the appellant. As regards the reasonableness of the notice, a month's notice has been considered to be reasonable notice in the case of monthly tenancies, and I see no reason why the same test should not apply here. The boutique was not let to the defendant to be used as a pawnbroker's shop, for he started his business as a pawnbroker after he began to occupy the boutique as tenant. The considerations referred to in paragraph 4 of the answer do not, in the circumstances of the case, render a month's notice unreasonable. The defendant must have been aware all along that he would have to quit the premises on a month's notice. As regards the question of waiver of notice to quit, by the receipt of rent after notice to quit had been given by the plaintiff, no such question was raised at the trial. The question of waiver is a question which depends on the circumstances under which the rent was received. The rent might have been received conditionally, or as part payment of the rent claimed in the action. The plaintiff is entitled to prove that the rent was received under circumstances which do not amount to a waiver. It has often been held that this Court sitting in appeal will not allow questions to be raised here for the first time, unless the Court is satisfied that it has before it all the facts and no satisfactory explanation can be given of those facts by the opposite party. Here, again, I see no reason to send the case back to ascertain the facts necessary to decide the question of waiver. The facts on which it arises were known to the defendant's legal advisers at the trial, but they did not think it fit to raise the question. They may have done so for very good reasons. The appeal fails on all points, and it is accordingly dismissed, with costs.

*Appeal dismissed.*