1959 *Present :* **Basnayake, C.J.**

ZAHIR, Appellant, *and* DAVID SILVA, Respondent

S. C. 202—C. R. Matara, 6379

Landlord and tenant—Monthly tenancy—Notice to quit—Validity—Evidence—Admissions—Duty of Court to record them with care—Evidence Ordinance, s. 58.

(i) In the absence of an agreement to the contrary, the notice of termination of a monthly tenancy must run concurrently with the term of the letting and hiring and must expire at the end of that term.

The tenancy commenced on 12th March 1952. Notice to quit was given on 30th January 1957 requesting the defendant to vacate the premises on or before 1st March 1957.

Held, that, inasmuch as the tenancy commenced not on the 1st day of the month but on the 12th, the notice was bad.

(ii) In view of the provisions of section 58 of the Evidence Ordinance, Judges should record with the utmost care any admissions made by the parties.

H. W. Jayewardene, Q.C., with *G. T. Samerawickreme* and *N. R. M. Daluwatte*, for Plaintiff Appellant.

D. S. Jayawickreme, Q.C., with *R. D. B. Jayasekera*, for Defendant-Respondent.

Cur. adv. vult.

October 28, 1959. BASNAYAKE, C.J.—

The only question for decision on this appeal is whether the defendant's tenancy has been terminated by a valid notice. It is clear from the receipts, P1 a to P1 j, spread over the period 1952 to 1956, produced by the plaintiff that the tenancy was one that commenced on the 12th day of the month. The first of them (P1a) dated 12th March 1952 reads: "Received from Mr. K. H. M. T. David Silva the sum of Rupees Thirty Nine only being house rent for three months due in respect of premises No. 140 at Kotuwegoda for the month commencing from 12th March 1952 to 11th June 1952", and the last of them (P1j) dated 29th May 1956 reads: "Received from Mr. K. H. M. T. David Silva of Kotuwegoda the sum of Rupees Thirty Nine being house rent due for three months in respect of premises No. 140 at Kotuwegoda for the month commencing from 12th August 1954 to 11th November 1954". The plaintiff's own evidence is also to the effect that the tenancy commenced on 12th March 1952. He states: "I say that this defendant came into occupation of these premises on 12.3.52, the amount shown in P1a is the first payment made by him to me when he came into occupation of these premises". The defendant appears to have been a most unsatisfactory tenant who never paid his rent regularly. His rent was always in arrears and was paid at irregular intervals. On 31st January 1957 the total amount of his arrears was Rs. 325 and on that day the plaintiff's Proctor sent the following letter terminating his tenancy:—

"I write this on instructions from your Landlord Mr. M. I. A. M. Zahir of Kotuwegoda, Matara.

"I am instructed by my client to request you to pay forthwith the sum of Rupees Three hundred and twenty-five (Rs 325) due as arrears of rental in respect of the premises occupied by you as my client's tenant.

"I am further instructed to request you to leave and quit the above premises on or before the first day of March this year (1957).

"If you fail to comply with this legal action will be taken against you."

The defendant's Proctor replied on 20th February 1957 denying that he was in arrears. He nevertheless forwarded a money order for Rs. 325 and demanded a statement showing the standard rental and the permitted increases.

Of the issues tried by the learned Judge issues 7 and 10 alone are material to this appeal. They read—

" 9. On what date did the tenancy commence ?

" 10. If the tenancy commenced on 12th March 1952 is the notice to quit dated 30.1.57 requesting the defendant to quit and vacate the premises on or before 1.3.57 valid in law ? "

The learned Judge has held that the tenancy commenced on 12th March 1952 and that the notice is bad in law.

The tenancy is undoubtedly a monthly tenancy which ran from the 12th day of one month to the corresponding day of the succeeding month.

It is settled law that in the absence of an agreement to the contrary the notice of termination of a tenancy must run concurrently with a term of the letting and hiring and must expire at the end of that term. In the instant case the tenancy being one that ran not from the 1st day of the month but from the 12th day the landlord was not entitled to terminate it except at the end of one of the monthly periods. The learned Judge is right in holding that the notice is bad in law. The plaintiff is himself to blame for the predicament in which he finds himself. For if he had given the full facts to his Proctor when he instructed him to send the notice terminating the defendant's tenancy it is not likely that the notice would have gone in the terms in which it was sent.

Before I conclude this judgment I think it is necessary to refer to one other point. Before the issues were determined the following admission was recorded : " Tenancy is admitted and the notice to quit is also admitted ". The cryptic form of this record created difficulties as the trial proceeded. The words " notice to quit is also admitted " was understood by the plaintiff's lawyers as being an admission that the notice was valid and by the defendant's lawyers as being an admission that a notice was given but without any admission of its validity.

On account of this uncertainty as to the meaning of the admission when at the end of the plaintiff's case defendant's counsel sought to raise issue No. 10 it was vehemently opposed ; but the learned Judge rightly accepted it.

Now the whole purpose of admitting facts in a legal proceeding is to avoid having to prove them. Judges should therefore record them with

the utmost care because the admissions take the place of proof. Trial Judges should bear in mind the precise terms of section 58 of the Evidence Ordinance which reads—

> "No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings :
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> "Provided that the court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions."

The judicious and careful use of the above provisions will go a long way to shorten civil trials.

The appeal is dismissed with costs.

Appeal dismissed.