

1946

Present : Canekeratne J.

THASSIM, Appellant, and CABEEN, Respondent.

*4—C. R. Colombo, 97,559.**Landlord and tenant—Monthly tenancy—Notice to quit—Length of notice necessary.*

Where the circumstances showed that a clear month's notice of termination of the tenancy ought to have been given—

Held, that a letter sent by the landlord asking the tenant to quit at the end of December was not sufficient notice if it was posted on November 30 but reached on December 1.

Fonseka v. Jayawickrema (1892) 2 C. L. Rep. 134 followed.

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

E. B. Wikramanayake, for the plaintiff, appellant.

T. Paramasothy, for the defendant, respondent.

Cur. adv. vult.

August 28, 1946. CANEKERATNE J.—

This case raises the question of the length of notice to which the defendant is entitled. It is admitted that the defendant held these premises, No. 134, Wilson street, Colombo, on a monthly tenancy and that the tenancy began on the first of a month, and the landlord sent a notice to quit dated November 30, 1944; this reached the tenant on December 1, 1944.

The period of the notice to quit must correspond with the length of the tenancy ; it is clear that a monthly tenant is entitled to a month's notice¹. The notice must determine at the end of a periodic month from the commencement of the tenancy. In a case decided in 1892² Withers J. came to the conclusion that notice must be given before the commencement of the month at the expiry of which the tenancy is to determine : he was influenced in his view by what he considered to be the prevailing custom of the country. Parties are presumed to contract with reference to the known usages of the place.

The contention of the defendant was that an implied term of the contract between the plaintiff and himself was that he should receive a clear month's notice of termination, this being one of the usual terms on which premises are let on a monthly tenancy in this district. That the defendant was entitled to such a notice was also the view of the plaintiff till the close of the trial (see paragraph 2 of the plaint and his evidence) ; it was unfortunate for him that his expectation that the letter would be received on the same day as it was posted was not realised. The decision in *Fonseka v. Jayawickrama* (*supra*) applies to the case.

In these circumstances the discussion of the question whether the rule formulated in the case of *Tiopaziu v. Bukwayo Municipality*³ is part of the Law of Ceylon, serves no purpose.

The appeal is dismissed with costs.

Appeal dismissed.
