1967 *Present :* **T. S. Fernando, A.C.J., and Siva Supramaniam, J.**

M. HANIFFA and others, Appellants, *and* K. SELLAMUTHU and others, Respondents

S. C. 387 of 1966—D. C. Kandy, 7742/L

Landlord and tenant—Monthly tenancy—Notice to quit—Computation of time.

Where, in a monthly tenancy of premises commencing on the first day and ending on the last day of a calendar month, the landlord gave the tenant a notice before the end of August 1964 requiring him to quit the premises on or before 1st December 1964—

Held, that the notice given by the landlord was a valid notice to quit at the end of November 1964, i.e. at midnight on 30th November/1st December—with an offer by the landlord to the tenant to accept a termination of the tenancy at the latter's option at any time before the end of November.

Ismail v. Sheriff (68 N. L. R. 19) and *Robert v. Fernando* (69 N. L. R. 572) not followed.

APPEAL from a judgment of the District Court, Kandy.

S. Sharvananda, for the plaintiffs-appellants.

W. D. Gunasekera, for the defendants-respondents.

Cur. adv. vult.

November 27, 1967. T. S. FERNANDO, A.C.J.—

Many legal problems have mushroomed in the wake of the shortage of housing, not the least vexed of which is the question of the validity of the notice to quit which a landlord is required to give his tenant preparatory to the institution of a suit for ejectment. That question, like a bad coin, has the disconcerting habit of cropping up with unwelcome regularity in our courts. Court decisions, unfortunately, have not been uniform in their effect and have left landlords in no little uncertainty as to the terms in which a valid notice to quit to be served on their tenants should be framed. The appeal now before us seeks to question the correctness of a recent decision of this Court in the case of *Ismail v. Sheriff* [1].

In the case upon which the appeal has arisen, the landlord of a tenant occupying premises on a month to month tenancy commencing on the first day and ending on the last day of a month, gave to the tenant a notice dated August 27, 1964 requiring him to quit the premises on or before the first day of December 1964. There is no dispute that this notice was received either on the date specified in the notice itself or, in any event, before the end of August 1964. The tenant, however, disputed the validity of the notice ; and the issue as to its validity was by agreement of the parties tried as a preliminary issue and decided by the

[1] *(1965) 68 N. L. R. 19.*

learned trial judge against the landlord. In so deciding, the trial judge correctly felt obliged to follow the decision of this Court in *Ismail v. Sheriff* (*supra*). That case dealt with a monthly tenancy commencing on the first day of a month, where the notice to quit had been given on May 11, 1963 requiring the tenant to quit the premises on July 1, 1963. The Court there held that the notice to quit was not valid because the requisite month's notice did not terminate at the end of a current month of the tenancy. As Alles J. who sat alone there put it, " the notice had been given before the due date from which it operates, and the notice would run from 1.6.63 until midnight of 30.6.63." He went on, however, to add that " at midnight a new tenancy on the same terms and conditions would have commenced which would expire at midnight on 31.7.63. According to the notice in the present case, a new tenancy was created from midnight on 30.6.63 to midnight on 1.7.63 (a broken period), a tenancy which is not recognised by the Roman-Dutch Law."

A monthly tenancy is a periodic tenancy ; it is a tenancy which by agreement between the contracting parties runs from month to month, and is terminated by a month's notice. The question in *Ismail v. Sheriff* (*supra*) depended on a correct interpretation of so much of the expression in the notice as required the tenant to quit *on July 1, 1963*. With respect, I find myself unable to agree with the view taken by the learned judge who decided that case when he held that " a new tenancy was created from midnight on 30.6.63 to midnight on 1.7.63—a broken period." The substantial question in all cases of this kind is the intention of the person giving the notice as expressed therein. It appears to me, again with all respect, to have been quite unreal to have attributed to the person giving the notice an intention to create a tenancy for that broken period ; nor could it fairly be said that the receiver of the notice could reasonably have so understood it.

Much assistance on the interpretation of this expression, and indeed expressions of a like nature, is to be gained by a reference to certain authorities to which my brother drew my attention during the argument. While it is essential to the validity of a notice to quit that it should be certain, and that there should be plain unambiguous words claiming to determine the tenancy at a certain time, the Court of Appeal in *Dagger v. Shepherd* [1] held that the insertion of the words " on or before " a specified date in a notice to quit was, on a proper construction, an offer to the tenant to accept from him a determination of the tenancy on any earlier date than that named on which he would give up possession of the premises. In a later case, *Crate v. Miller* [2], the same Court quoted with approval a dictum of Lindley L. J. in *Sidebotham v. Holland* (1895) 1 Q.B.D. 378 that—

" The validity of a notice to quit ought not to turn on the splitting of a straw. Moreover, if hypercriticisms are to be indulged in, a notice to quit at the first moment of the anniversary ought to be just

[1] (*1946*) *1 A. E. R. 133.* [2] (*1947*) *2 A. E. R. 45.*

as good as a notice to quit on the last moment of the day before. But such subtleties ought to be and are disregarded as out of place."

As Somervell L.J. put it (see p. 46), " in other words, a notice to quit on either day could be construed as a notice to quit when the current period in question ended. As a matter of language, a notice ' terminating a tenancy ' on the last day of a current period (which was the form used in the present case) may, apart from *Sidebotham v. Holland*, fairly be said to mean the same thing as a notice to quit and deliver up possession on the following day, for in both cases the landlord is intimating that the last day of the current period is to be the last day of the tenancy."

I would apply the interpretation adopted in the English cases referred to above, and hold that the notice given by the landlord-appellant on the present appeal was a valid notice to quit at the end of November, 1964, i.e. at midnight on 30th November/1st December — with an offer by the landlord to the tenant to accept a termination of the tenancy at the latter's option at any time before the end of November. To place any other interpretation would be to defeat the clear expressed intention of the landlord.

Our attention was drawn to another and a more recent decision of this Court in *Robert v. Fernando* [1], also of a judge sitting alone, which is to the same effect as that in *Ismail v. Sheriff* (*supra*). It was there held that, where a monthly tenancy commenced on the first day of January 1963, and the notice given dated 22nd February 1966 required the tenant to vacate the premises on or before 1st April 1966, the notice was invalid. The Court interpreted the notice as one in which the time of termination was in the alternative, either on 1st April 1966, or before that date. Having so interpreted the notice, the Court went on to hold that as the notice required vacation of the premises before 1st April 1966, the time of termination of the tenancy was uncertain and that the notice was therefore bad. Alternatively, it held that if the notice terminated the tenancy on 1st April 1966, the notice was bad as the termination of tenancy is not at the end of a month. The reasoning contained in the English cases I have quoted above, which I have already said I would apply, renders it necessary that I should now decline, with respect, to follow the ruling in *Robert v. Fernando* (*supra*) as well.

The appeal is allowed, the judgment of 22.7.66 dismissing the plaintiff's action is set aside, and the case is remitted to the District Court for trial to be held on any remaining issues. The plaintiff is entitled to the costs of this appeal and to the costs of the trial date (22.7.66) in the District Court.

SIVA SUPRAMANIAM, J.—I agree.

Appeal allowed.

[1] *(1967) 69 N. L. R. 572.*