

defendant as soon as obtained, who in consideration thereof agreed to employ the plaintiff for two years from the date of the agreement for the purpose of demonstrating and placing the patents on the market, and to pay him a certain sum for salary and also his expenses, and the plaintiff and defendant were to share the profits in certain proportions.

The tenth clause of the agreement was as follows :

"It is further agreed that the party of the first part (the defendant) is to be the absolute judge as to the manner in which the party of the second part (the plaintiff) performs his duties under this agreement, and shall have the right at any time to dismiss him for incapacity or breach of duty, in which event the party of the second part shall only be entitled to be paid his salary up to the time of such dismissal, and shall have no claim whatever against the party of the first part."

The defendant dismissed the plaintiff within three months of the date of the agreement for alleged disobedience and incapacity, without communicating to the plaintiff his reasons for so acting, or calling upon him for any explanations.

Held (HAGARTY, C.J.O., dissenting), that the plaintiff had certain rights of property under the agreement; that the parties to it therefore did not occupy merely the relation of master and servant, and that the tenth clause did not give the defendant a right arbitrarily to dismiss the plaintiff, but that he occupied a quasi-judicial position, and was bound to act in good faith, and to enquire into the circumstances upon which he based his determination to dismiss, this necessarily involving notice to the plaintiff and an opportunity of being heard.

Russell v. Russell, 14 Chy.D., 471, distinguished.

Judgment of the Queen's Bench Division, 16 O.R., 495, affirmed.

McCarthy, Q.C., and *J. J. Scott* for the appellant.

Moss, Q.C., and *Carscallen* for the respondent.

THORNLEY v. REILLY.

Liquor License Act—Sale of liquor after notice—Notice how given—R.S.O., c. 194, s. 125.

This was an appeal by the defendant from the judgment of the County Court of York, reported 26 C.L.J., 26, and came on to be heard

before this Court (HAGARTY, C.J.O., BURTON, OSLER, and MACLENNAN, JJ.A.) on the 13th of February, 1890.

The plaintiff, a married woman, brought the action under R.S.O., c. 194, s. 125, to recover from the defendant, an hotel-keeper, damages because of the sale by him to her husband of intoxicating liquor after notice not to sell. The notice was signed by the plaintiff and served by her agent.

The action was tried before MACDOUGALL, Co.J., and a jury, and the damages were assessed at \$100. The defendant contended that notice signed and served as aforesaid was not sufficient, and that notice by the Inspector was necessary. The learned judge decided against this contention, and judgment was entered for the plaintiff.

This Court was divided in opinion, and the appeal was dismissed with costs.

Per HAGARTY, C.J.O., and BURTON, J.A. The right of action for damages depends on the notice being given by the person filling the public position of Inspector, though the liability as far as the penalties are concerned will be incurred upon notice being given by the private individual. This is the reasonable construction of the words, "person requiring the notice to be given," in themselves, and would appear to be the intention of the Legislature, these narrower words having been substituted for the wider ones of the former section.

Per OSLER and MACLENNAN, JJ.A. The whole scope and effect of the section must be looked at, and liberal constructions given to it. The notice must in all cases be signed by the private individual, and whether served by the Inspector or not, the private individual gives the notice, and the words may fairly be construed to mean "person requiring to give the notice," and there is a right of action whether the notice is served in one way or the other.

Murdoch for the appellant.

LeVesconte for the respondent.

TEMPERANCE COLONIZATION SOCIETY v. FAIRFIELD.

Contract—Fraud—Rescission—Repayment of consideration—Statute of Frauds—Uncertainty.

This was an appeal by the plaintiffs from the judgment of the Common Pleas Division,