

Both parties appealed from the judgment of FALCONBRIDGE, C.J.K.B.

The appeal and cross-appeal were heard by MEREDITH, C.J. O., MACLAREN, MAGEE, and HODGINS, JJ.A.

W. C. Mikel, K.C., for the plaintiff, contended that, when the agreement was broken, instead of being terminated according to its provisions, the plaintiff was entitled to recover as damages the difference between the amount he could have earned under the contract for the period of hiring and the amount he actually earned. The agreement does not give the employer the option of paying the month's salary in lieu of notice, but requires that he shall do both. Two of the articles which the defendant counterclaims have been returned by the plaintiff.

E. G. Porter, K.C., for the defendant, opposed the appeal and supported the cross-appeal.

At the close of the argument the judgment of the Court was delivered by MEREDITH, C.J.O.:—We think we cannot, upon the appeal by the plaintiff, interfere with the judgment except as to the value of the saw-table and the counter-sink, which were returned three weeks after they were taken away by the appellant—after the action but before the trial. It is not suggested that any damage was done to them while in the appellant's custody. Therefore, the \$41.50 allowed for these articles should be deducted.

Mr. Mikel's argument upon the main branch of the appeal—that is, as to the damages awarded for breach of contract in dismissing the appellant—eliminates altogether the provision of the agreement which entitles the respondent to put an end to the hiring upon giving 30 days' notice to the appellant, and paying him the wages then due, the appellant being bound to work that month.

Upon the question of damages, this right of the respondent was properly considered by the learned Chief Justice in finding as to what the appellant really lost by his dismissal without notice, which he fixed at the month's wages which he would otherwise have received, in addition to the arrears of wages which were allowed to him by the judgment. In that respect the appeal fails.

We think also the cross-appeal fails and should be dismissed.

No costs of the appeal or cross-appeal to either party.

[A short note of the result of the judgment of the Appellate Division was previously published: see ante 179.]