

Full Court.] ELLYN v. CROW'S NEST PASS COAL CO. [Nov. 6, 1903.  
*Practice—Test action.*

Appeal from an order of Forin, Lo. J., consolidating this and 43 other actions with one other action, which had been selected out of 29 other similar actions for trial as a test action. Forty-four actions were brought by different persons against defendants for damages caused by the death of relatives in an explosion extending over a large area of defendants' coal mine, and plaintiffs applied to consolidate these actions with twenty-nine other actions, one of which had been chosen as a test action. On account of workmen who were killed not all being of the same class and also on account of the different conditions in the different parts of the mine where death occurred the defendants contended that one action would not be a fair test of all the others.

*Held*, that the defendants should have the right to select four actions as test actions for those of the same class. Order of Forin, Lo. J. set aside. Appeal allowed, costs in the cause.

*Bodwell*, K.C., for appellants. *S. S. Taylor*, K.C., for respondents.

Full Court.] HOPKINS v. GOODERHAM. [January 25.  
*Master and servant—Dismissal of servant—Breach of contract—Damages—Action before expiration of term for which engagement was made—Practice—Condition precedent—Rule 168—Evidence—Wrongful rejection of—Duty of counsel to put evidence squarely before judge—New trial.*

Appeal from judgment in plaintiff's favour in an action for damages for wrongful dismissal. The plaintiff, who had been engaged for one year from August, 1902, by defendants at a monthly salary, was dismissed wrongfully, as the jury found, in December. He sued for damages for breach of contract, and the action was tried in May, 1903:—

*Held*, by the Full Court, affirming the judgment entered at the trial, that plaintiff was entitled to recover damages covering the unexpired term of his engagement.

The statement of claim alleged a contract of hiring plaintiff as superintendent of a mill arising from two letters, without setting them out, and without alleging the continuance of the construction of the mill, which was one of the conditions stated by defendants in their second letter. The defence denied the allegations in the statement of claim, and alleged the contract was contained in the second letter.

*Held*, that it was not necessary for the plaintiff to prove the continuance of the construction of the mill.

Where a party seeks a new trial on the ground of wrongful rejection of evidence he should shew that the evidence sought to be adduced was put squarely before the judge so that his mind was applied to the point. Appeal dismissed.

*A. C. Galt*, for appellant. *C. R. Hamilton*, for respondent.