

objection itself is to plaintiff's omission to give in this marginal note, which is called by the defendants a "second chef," the day and the place on which the defendants did these things. That would be no ground of demurrer. At most it would be ground of objection to form as deficient in particularity. The demurrer is dismissed with costs.

Défense en droit dismissed.

Longpré & Co. for plaintiff.

Archambault & Co. for defendants.

SUPERIOR COURT.

MONTREAL, JAN. 31, 1881.

Before TORRANCE, J.

LEONARD V. JOBIN.

Wages—Services rendered to a near relative without agreement as to remuneration—Prescription—Evidence.

The demand was to recover remuneration as housekeeper of Marie Sophie Jobin, deceased. Mlle. Leonard had lived with the deceased from 28th October, 1876, until 28th December, 1878. She claimed at the rate of \$12 per month, which would make a sum of \$312, but the demand was reduced to \$100 by reason of prescription under C. C. 2261, s. 3. It was made against the legatee. The defendant pleaded 1st. prescription of one year under C. C. 2262, s. 3; 2nd. that Mlle. Leonard resided with deceased as a friend and without any engagement.

PER CURIAM. The plaintiff left the house of the deceased in December, 1878. The deceased died in July, 1879, and the action was only instituted on the 4th September, 1880. The deceased had a small store and the post-office in Isle Perrot, and for some time the head of the establishment was the Curé Ricard who was towards the end without means, and must have depended upon the kindness of the deceased for board and lodging. He was the uncle of the plaintiff. She herself was daughter of a well-to-do notary of Beauharnois, and at her father's, wanted for nothing, and was under no obligation to go elsewhere for a living. She states in her testimony that the curé promised to make her his heir, but that he had nothing. She also frankly states that she had never stipulated from the curé or the deceased a price for her services in the household, nor any agree-

ment for salary or wages, and she had never made any demand upon either for salary or wages. She added that Mlle. Jobin, the deceased, had told her that if she had the means to pay her in her lifetime, she would pay her, and if she had not the means, her heir, the defendant, would pay her. She had not thought of making any demand in the lifetime of the deceased. Joseph St. Maurice, a witness, says he heard a conversation between the deceased and the father of plaintiff, deceased, saying to him, "let me have Alma (meaning plaintiff), I will pay her, and if I do not, my family will." The deceased also sent a message to plaintiff, saying that Mme. Masson (defendant) wished her to be there, and had conscience to pay her, and would pay her well. These are the main facts. Next as to the prescription of one year. I do not see how I can avoid applying it. Plaintiff was an employee, if such at all, for less than a year. And even if it did not apply, I have difficulty in allowing verbal evidence of a promise to pay on the part of the deceased. It is a matter over \$50 and not commercial. Lastly, the parties were friends. The curé and the deceased lived jointly on the produce of an orchard and establishment, and the ferry to the island, and plaintiff was niece of the curé. I apply here a dictum to be found in Addison on Contracts (738): "But if the service has been with parent or uncle, or other near relation of the party serving, a hiring cannot be implied or presumed from it, but an express hiring must be proved in order to support a claim for wages, for the law regards services rendered by near relations to one another as gratuitous acts of kindness and charity, and does not presume that they are to be paid for unless there is an express contract to that effect." Action dismissed.

Longpré & David for plaintiff.

Duhamel & Co. for defendant.

SUPERIOR COURT.

MONTREAL, JAN. 31, 1881.

Before TORRANCE, J.

BHEAUME V. BOUCHARD.

Action en déclaration d'hypothèque — De'endant exposed to trouble entitled to security.

The action was *en déclaration d'hypothèque* to recover \$251 with interest and costs amounting