

An action brought by the assignee of a claim for wages against two companies and their assignee for the benefit of creditors.

L. Heyd, K.C., for the plaintiff.

J. P. MacGregor, for the defendants.

HON. MR. JUSTICE RIDDELL:—I held that the plaintiff had established by evidence that his assignor had been duly employed by the companies, and I gave judgment for the amount of the balance of the claim.

As against the assignee of the companies the question arose as to the amount for which the said claim is a preferential claim under R. S. O. (1897), ch. 156, sec. 2, now 10 Edw VII., ch. 72, sec. 2. I should not have thought it necessary to write a judgment had I not been informed by counsel that it has been by Referees, etc., more than once ruled that the amount of the preference is to be found by taking the amount of the last three months' wages and deducting therefrom the amount of wages paid during the same time. This I think an error; the assignee is to pay "the wages of all persons in the employ, etc., not exceeding three months' wages . . ." It is not the balance of the last three months' wages; but "the wages . . . not exceeding three months' wages." In other words the servant may venture to leave in the master's hands a balance on his wages so long as that balance does not exceed three months' wages.

The wages were \$35 per week—3 months—13 weeks at \$35 per week—\$455.

Accordingly of the amount \$873.77 found due at the trial, the plaintiff will have a preference to the amount of \$455, and a claim for the remainder.

The plaintiff is also entitled to his costs as against the defendant assignee although the assignee on the fact, before him was justified in disputing the claim.

Zimmerman v. Sproat, O. L. R.