

L'UNION ST. JOSEPH DE MONTREAL (defts. below), Respondents.

Benefit Society—Expulsion of Member—Mandamus.

Held, that a member of an incorporated benefit society is entitled to due notice before he can be expelled for non-payment of dues; and where a member is expelled without notice a writ of mandamus will issue to restore the expelled member, subject to payment by him of arrears due.

The appellant had been expelled from membership in L'Union St. Joseph, an incorporated benefit society, for being in default to pay six months' contributions. The question was whether the member was entitled to notice. The by-law of the society did not provide for notice, the rule applicable to the case being as follows: "When a member neglects for six months to pay his contributions, or the entire amount of his entrance, the society may strike his name from the list of members; thereupon he no longer forms part of the Association. To that end at each regular general meeting, the collectors-treasurers are bound to make known the names of those thus indebted for six months' contributions or for a balance of their entrance fee; and thereupon any member may make a motion that such members be struck from the list of the society's members."

The Superior Court having held notice to be unnecessary, and the expulsion to be legal, the plaintiff appealed.

CROSS, J., for the majority of the Court, pointed out that the rule was not so framed that default of payment for a specified time of itself operated a forfeiture of the rights of membership. In England, prior notice is matter of right; *Rez v. Richardson*, 1 Burrows' Rep. 517; *Rez v. Mayor of Liverpool*, 2 Burrows' Rep. 734. The same rule had been applied in the United States; 2 Serg. & Rawle, 141. The safest rule, and the one justified by precedents, was to hold that notice is necessary.

Judgment reversed.

Doutre, Doutre, Robidoux, Hutchinson & Walker, for Appellant.

Mousseau, Chapleau & Archambault, for Respondent.

BEAUCHEMIN *et al.* (defts. below), Appellants; and SIMON (plff. below), Respondent.

Master and Servant—Unjustifiable Discharge—Action for Wages.

Held, that a servant, discharged without sufficient

cause before the expiration of his term of hire, cannot, if he sues for wages, claim for more than the portion of the term which has expired at the date of the institution of the action; but, *semble*, he may bring an action of damages for breach of contract, and then the length of the unexpired portion of the term may be taken into consideration in estimating the damages.

Simon, the respondent, was engaged as a skilled workman, and not giving satisfaction to his employers, the appellants, was discharged. He brought an action at once for his wages for the whole term of hire, only a small portion of which had expired. The Superior Court dismissed the action on the ground that the plaintiff's discharge was justifiable, but in Review this decision was reversed, Mondelet, J., dissenting; and judgment went for the plaintiff for the wages of the whole term. The defendants having appealed,

DORION, C. J., for the majority of the Court, considered that the judgment must be reformed. The respondent had sued for his wages for the whole term, but he had not made any proof of damages, except the fact that he was discharged. Under the circumstances he was only entitled to \$30.40 for the portion of the term which had expired at the date of the institution of the suit. He could not claim to be paid in advance wages which were not due. But his recourse would be reserved for any further claim which he might be able to establish.

MONK, J., concurring, remarked: I think the rule is settled that where a man claims wages, if he sues for wages he makes wages the measure of his damages, and he must wait until the wages are due. Here the action was brought for wages, and the plaintiff was only entitled to the \$30.40 actually due. A variety of reasons may be assigned why he should not recover wages in anticipation. He may die before the term has expired, or in some other way the wages may never become due. If he wishes to recover more than is due, he must allege that he has suffered damage through the breach of contract, and must proceed to prove positively that the amount of damage claimed has been suffered. The distinction is perfectly plain. In the latter case the servant has to show that he tendered his services, and he must also show as a matter of fact that he could not get other employment.

RAMSAY, J., dissenting, considered that a servant unjustifiably discharged may claim his