

panies, 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. 3. 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 employment of the assignor . . . 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 of 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 of \$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 facts before him was justified in disputing the claim: *Zimmerman v. Sproat*, 26 O.L.R. 448.

DIVISIONAL COURT.

OCTOBER 26TH, 1912.

BURNEY v. MOORE.

Way—Private Way—Conveyance of Landlocked Lot—Agreement to Convey Right of Way when Survey Made—Vendor and Purchaser—On whom Duty of Making Survey Rests—Tender of Conveyance—Waiver—Action—Costs—Trifling Value of Right in Question—Importance to Parties—Duty of Court.

Appeal by the plaintiffs from the judgment of the Junior Judge of the District Court of the District of Nipissing, dissenting to make a survey and deliver a conveyance of a right of way, which was brought to compel the defendant to do so, or for damages.