

*termination of contract—Employees of municipal corporation.*

**HELD:—1.** *That article 1642 of the civil code does not apply to the lease and hire of personal services.*

**2.** *That when the term of the engagement of an employee is indeterminate, neither the employer nor the employee has the right to terminate it without giving notice to the other, with the delay fixed by law for the locality, or, when none is fixed, with a reasonable delay; and that in default of such notice, the party breaking the contract is liable in damages to the other, unless the conduct of the other gave reason for an immediate resiliation of the contract.*

**3.** *That while this rule of law does not apply to the public officers or functionaries of a municipal corporation, it applies to their ordinary employees.*

**PER CURIAM.**—The Fire and Water Committee of the municipal council of the city of Hull submitted a report to the council, recommending “that the application of Lactance Paquin for the position of engineer of the water-works be accepted, . . . . ., with “a salary of two dollars per day”; and, on the 9th May, 1887, the report was adopted by the council, and the plaintiff forthwith entered upon the duties of the position.

He now complains that on the 1st August, 1887, he was dismissed without notice and without legitimate reason, and he claims damages for this breach of contract.

The corporation demurs to the action, alleging that he was engaged at the rate of two dollars a day, and that his engagement was, therefore, terminable from day to day, without any notice being required, and without giving rise to any claim for damages. At the argument, the defendant’s counsel cited article 1642 of the civil code, which gives the rule for the termination of the lease of a house when no time is specified for its duration, as authority for this pretension of the corporation.

The council fixed the salary at two dollars a day, but did not specify any time for the duration of the engagement; and three questions now arise on the issue submitted.

The first is whether the article cited ap-

plies to a contract for the lease and hire of personal services? A glance at the code determines this question in the negative. The article in question is one of those which lay down certain “rules particular to the “lease or hire of houses,” and while its wording specifically refers to that particular contract, article 1645 also expressly defines and limits its application. The rules laid down by this article are restricted to the lease and hire of houses, and have therefore no application whatever to the lease and hire of personal services.

The next question is whether either the employer or the employee can, at will and without notice, terminate an engagement of which the duration is indeterminate? Article 1667 declares that the contract of lease and hire of personal services can only be for a limited term, and when, therefore, the term is not fixed by the engagement it must be in the power of either party to put an end to it at will. Article 1670 provides that the rights and obligations arising from the lease and hire of personal services are subject to the rules common to contracts; and among them is the rule, to be found in article 1022, that contracts can be set aside only by the mutual consent of the parties, or for causes established by law, and the rule, to be found in article 1657, that when the term of a lease is uncertain, neither of the parties can terminate it without giving notice to the other, with a certain delay. Then article 1065 enacts that every obligation renders the debtor liable in damages in case of a breach of it on his part, and further provides that a contract may be set aside on the demand of one of the parties, when the other does not perform his obligations under it. That is to say, in the words of article 1184 of the French civil code, that a resolute condition is always implied in bi-lateral contracts, for the case where one of the two parties does not perform his engagement. As to the delay, that is established in cities, towns and villages by their by-laws, and in country parts, and in such towns and villages as may not have passed by-laws, by the statute 44-45 Vict., chap. 15; when neither a by-law nor the statute apply, the delay is established by custom, and if there should be none, then