

FEBRUARY 2ND, 1905.

DIVISIONAL COURT.

FRENCH v. LAWSON.

*Master and Servant—Contract of Hiring—Breach—Dismissal
of Servant—Grounds for—Evidence.*

Appeal by defendant from judgment of MACMAHON, J., in favour of plaintiff in action for wrongful dismissal of plaintiff from the service of defendant. Plaintiff was employed as a baker in defendant's restaurant at Copper Cliff. Defendant justified the dismissal on the ground that plaintiff was careless and produced inferior bread.

J. H. Clay, Sudbury, for defendant.

A. H. Marsh, K.C., for plaintiff.

The judgment of the Court (BOYD, C., STREET, J., IDINGTON, J.), was delivered by

BOYD, C.—This case turns entirely upon the evidence. . . . I see no reason to challenge, but rather to support the conclusion of MacMahon, J. Plaintiff was proved to be a competent baker, and his work was admittedly good for over a month. His work was done also to the satisfaction of the manager . . . while he was in charge. . . . There were, no doubt, complaints as to bad bread . . . after the cold nights set in, in October, but the explanation on the evidence is that at first the flour was musty, and then the fresh car-load of flour was of poor quality . . . and there was, besides, the ill-protected bake-house, which was of wood, and one part of which admitted cold draughts during day, and became cold altogether at night. The flour, besides, was at times procured in small quantities from Sudbury, and became cold in its transmission, and no proper means of its being warmed to the proper point before it was required for baking. When better flour was obtained during Wakeman's time, at the beginning of 1903, plaintiff made bread as good as Wakeman's (which is conceded to be good), and Wakeman then recommended that defendant should keep on plaintiff in his employ. But he was dismissed, and hence this action, which has been rightly determined, and the appeal should be dismissed with costs.