

Present: Ennis J.

1922.

PERERA v. MACKINNON, MACKENZIE & Co.

193—C. R. Colombo, 1,289.

Motor launch driver—Notice to terminate service—One month from date of notice—Ordinance No. 23 of 1912—Ordinance No. 11 of 1865

A motor launch driver may be regarded as a chauffeur, and Ordinance No. 11 of 1865 applied to him (Ordinance No. 23 of 1912). He is, therefore, entitled to only one month's notice from the day of issuing such notice. Where he was given notice on February 11 and dismissed on March 11—

Held, that the notice was sufficient.

THE facts appear from the judgment.

Croos-Da Brera, for defendants, appellants.

September 28, 1922. ENNIS J.—

This is an action by a motor launch driver against his employer for a month's wages for dismissal without notice, and another month's salary in lieu of notice.

The learned Judge has found that the plaintiff was given notice on February 11, 1922, and was dismissed on March 11. The learned Judge has held that the notice was not adequate, and that the plaintiff is entitled to wages up to end of March. From that decision this appeal is taken.

If the plaintiff is regarded as a chauffeur, the Ordinance No. 23 of 1912 would apply to him, and that Ordinance says that Ordinance No. 11 of 1865 is to apply for all purposes to chauffeurs as if they were domestic servants.

I see no reason why the plaintiff in this case should not be regarded as a chauffeur, as it appears he is a driver of a motor launch. That being so, section 3 of Ordinance No. 11 of 1865 would apply to him, and he would be entitled to one month's notice, i.e., notice of one month from the day of issuing such notice. The case of *Burns v. Munisamy*¹ decides this point. The plaintiff would be entitled to payment of one month's wages.

It appears from the evidence of the witness Campbell that wages up to March 11 were offered to the plaintiff, which he refused to take, and the amount has been paid into Court.

In the circumstances the plaintiff would be entitled to succeed in this appeal.

I accordingly set aside the decree, and enter judgment for the plaintiff for the sums paid in. The plaintiff to pay the appellants' costs in the Court below.

The appellants do not press for costs of appeal.

Set aside.

¹ (1896) 2 N. L. R. 193.