

The appeal was heard by BOYD, C., MAGEE and LATCHFORD, JJ.

G. S. Gibbons, for the defendant.

P. H. Bartlett, for the plaintiff.

BOYD, C., set out the facts at length, shewing that the plaintiff had been for seven years in the employment of the defendant as confidential assistant in his (the defendant's) business of raising and selling a high breed of sheep; that the plaintiff, in the course of his duties, was frequently in the defendant's dwelling-house when the defendant himself was absent from home; that the defendant's family and household consisted of his wife, his daughter, younger children, and a maid-servant; that the defendant, from the plaintiff's own admission or boasting, believed that the plaintiff had been guilty of two acts of immorality, one committed in the defendant's house; that one of these was not denied by the plaintiff, who explained it as "an accident."

The act not denied by the plaintiff was said to have occurred shortly after he entered the defendant's service, but was related to the defendant only a few days before the dismissal.

The Chancellor said that, judging from the whole of the evidence, he should deem the defendant to be more worthy of credit than the plaintiff; but, taking it that only the first statement was made, he was not able to agree with the view of the law which requires the master to keep a servant who so "boasts," in his confidential service. . . . That the occurrence, whatever it was, happened eight years ago, and that it was apparently an isolated episode in the servant's history, are by no means sufficient exculpations in a legal point of view—if the master's knowledge is but recent, as in this case. . . .

[Reference to *Lomax v. Arding*, 10 Ex. 734, 736; *Pearce v. Foster*, 17 Q. B. D. 536, 542; *Clouston & Co. Limited v. Corry*, [1906] A. C. 122, at p. 129; *Baster v. London and County Printing Works*, [1899] 1 Q. B. 901, 904; *Boston Deep Sea Fishing and Ice Co. v. Ansell*, 39 Ch. D. 339, at pp. 358, 363, 370; *Callo v. Brouncker*, 4 C. & P. 518; *Read v. Dunsmore*, 9 C. & P. 588, 594.]

The master may well have inferred that the mind of the servant was dwelling with satisfaction on this indecent occurrence—and very outspoken in reference to it—though he only knew of it shortly before the dismissal. The plaintiff was judged from his own admissions or boastings, and the master thought him a person of lewd mind and habit whom it was not desirable to admit into the family circle. I cannot account this to be setting too