

to be ready to start his train when the road was clear. One of the cars of the train was broken into at this time, and a case of liquor taken therefrom. The plaintiff had been without sleep for over 50 hours. It was discovered that the car had been broken into and some bottles extracted, and the superintendent searching the plaintiff's caboose found one bottle and part of another bottle in the caboose. The plaintiff was arrested and charged with stealing liquor, and immediately suspended. The case was tried before Judge Kehoe, and the plaintiff honourably acquitted. He was, however, dismissed the day before the Judge had appointed to give his decision.

Upon the evidence before me I was satisfied that the plaintiff was not guilty of the theft, and did not know that the liquor had been secreted in his caboose. In my opinion, under the evidence disclosed he was wrongfully dismissed, under such circumstances having regard to his hiring, as to entitle him to three months' notice. *African Association v. Allen*, [1910] 1 K. B. 396; *Harmwell v. Parry Sound Lumber Co.*, 24 A. R. 110; *Bain v. Anderson*, 27 O. R. 369, 27 A. R. 296, 28 S. C. R. 481; *Gould v. McRae*, 14 O. L. R. 194; and see *Green v. Wright*, 1 C. P. 591, *Speakman v. Calgary*, 1 Alta. L. R. 454; *Henderson v. British Columbia Saw-Mills*, 12 B. C. R. 294.

The certificate given by the defendants to the plaintiff shewing the time he had served the company, without which it was difficult to get employment in another company as conductor, was worse than useless, as it contained a statement that he was dismissed on account of liquor having been found in his car.

I suggested on the trial that the plaintiff having been honourably acquitted by the County Judge, the company might so modify the certificate as to shew the facts, and thus enable an engagement with another company.

Upon the whole case, I think, the conduct of the company towards the plaintiff was harsh and unfair in dismissing him the day before judgment was to be given. The costs in the case were not appreciably increased by the other issues raised, and under all the circumstances of the case, I do not think the defendants should have the costs of the issues in which they were successful, viz., those arising out of the charge of false imprisonment and malicious prosecution.