

of the plaintiff bank, the manager of the transferring bank authenticating the change by his initials;

Held, STREET, J., dissenting, that there had been a valid transfer and that the plaintiffs were holders of the notes in due course.

Judgment of MORGAN, Co. J., affirmed.

Grayson Smith, for appellants. S. B. Woods, for respondents.

Falconbridge, C.J.K.B., Britton, J., Idington, J.] [Jan. 31.

CLARK v. CAPP.

Master and servant—Wrongful dismissal—Writing solicitor's letter—Imperfect workmanship—Isolated instance.

Action for wrongful dismissal. The plaintiff entered into a written agreement to serve the defendants, who were wholesale manufacturing jewelers, as a general mounter. The agreement provided that the defendants might dismiss the plaintiff instantly "if guilty of disobedience to orders, theft, drunkenness or other misconduct."

The plaintiff, after being in the defendants' service for some months, was instructed to do a particular piece of work and did it so imperfectly that it was found unmerchable, and the defendants told the plaintiff he would have to make it over again "in his own time." The plaintiff made it over and took 12 hours to do it, and the defendants' manager fined him on the next pay day \$1.45, the equivalent of 6 hours' time. The plaintiff went to a solicitor, who wrote the defendants a letter asking payment of the \$1.45. The defendants asked the plaintiff to withdraw this letter, and on his refusing, paid him the \$1.45, but instantly dismissed him.

Held, that complaining through his solicitor about the \$1.45 was not "disobedience to orders or other misconduct" within the meaning of the agreement, and the plaintiff was entitled to judgment.

Per IDINGTON, J.:—Even if it were open to the defendants to justify their dismissal by reference to the imperfect piece of workmanship, above mentioned, an isolated failure to maintain perfection in workmanship, even though tainted with negligence would not suffice to justify dismissal. It was not evidence of habitual neglect. It was not such evidence of incompetence, as might within the cases be held to be misconduct of one offering to do a certain class of work and failing to do it.

Lee, for plaintiff. W. R. Smyth, for defendant.