

manager of the manufacturing department of a large fur business. The trial judge, however, found that this defence had not been proved. Defendant also set up another ground of dismissal, viz., the alleged insolence and insubordination of plaintiff. About a week after the engagement began, plaintiff asked defendant for \$25 which had been promised him on account of transportation from Toronto. When directing payment of the \$25, defendant said it was "another case of paying a man who was not worth it." To this plaintiff replied that defendant would have to prove him incompetent before a judge and jury, or words to that effect. Defendant then dismissed the plaintiff from his employment.

Held, that, even if the expression complained of, considering the circumstances, and that it was provoked by defendant's own remark, could be regarded as insolent, it was only a single isolated instance, there being no complaint of any unbecoming conduct on the plaintiff's part on any other occasion, and would not justify a dismissal. A single disrespectful retort by an employee, which has been provoked or called forth by an unbecoming remark on the part of the employer, is not a good ground for dismissal. *Edwards v. Levy*, 2 F. & F. 94, followed.

Judgment for plaintiff for \$650 and costs.

Haggart, K.C., and *Whitla*, for plaintiff. *Pitblado* and *Hoskin*, for defendant.

Full Court.

HAVERSON *v.* SMITH.

[July 14.]

Sale of goods—Delivery—Bills of Sale and Chattel Mortgage Act, R.S.M. 1902, c. 11, s. 3—Agreement that purchaser should bear any loss by fire, effect of.

John Burnett agreed to deliver to defendant, free on board cars at Carman, 195 cords of wood, in exchange for four mules. The wood was at another station on the same railway, and was to be taken from two piles containing 200 cords. It was agreed that, if the wood should be burned, defendant should bear the loss, and that if the mules died the loss would fall on Burnett. The mules were delivered to Burnett; but, before anything was done towards delivery of the wood or separating the 195 cords from the rest of the wood in the piles, Burnett assigned to plaintiff for the benefit of his creditors.