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APPELLATE DIVISION.

NOVEMBER 9TH, 1914.

COWPER-SMITH v. EVANS.

*Master and Servant—Wages—Assault—Wrongful Dismissal—
Agreement of Hiring—Construction—Notice — Damages—
Counterclaim—Costs.*

The plaintiff was employed by the defendant for a year, and was dismissed without notice after serving for about four months. The plaintiff claimed \$315 as the balance due to him for his services; \$1,500 damages for wrongful dismissal; and \$500 damages for assault.

The defendant counterclaimed from the plaintiff the value of certain articles alleged to have been taken away by the plaintiff; and also \$1,500 for negligence of the plaintiff in the performance of his work.

By the written agreement between the plaintiff and the defendant it was provided that if the work of the plaintiff was not satisfactory to the defendant, "this agreement will become null and void upon the party of the first part" (defendant) "giving 30 days' notice in writing to the party of the second part" (plaintiff), "and upon payment to the party of the second part of the amount of salary due at the time the notice is given, and, in addition, one month's salary, for which the party of the second part agrees to give a month's work."

The trial Judge, FALCONBRIDGE, C.J.K.B., gave judgment for the plaintiff for \$200.81, the balance due for wages; \$125 damages for dismissal—one month's wages in lieu of notice; and \$10 damages for assault: total, \$335.81. Upon the counterclaim, the learned Chief Justice allowed the defendant \$73.25 for a grinding attachment taken by the plaintiff; \$39.50 for a saw-table; and \$2 for a counter-sink: total, \$114.75. Judgment was given for the plaintiff for the difference between the two totals—\$221.06—with County Court costs, and a set-off of costs in favour of the defendant. See *Cowper-Smith v. Evans*, 6 O.W.N. 722.