

money was to be refunded. The agreement in England was in writing, and was made on 8th September, 1903. Plaintiff at once left England and came to Toronto and entered into the employment of defendants, who were wholesale manufacturing jewellers.

A new agreement, prepared by defendants, was submitted to plaintiff in Toronto, and was signed by the parties. The agreement is full, carefully drawn, and properly so, for the protection of the employer, and it contains many stipulations not material for the purposes of this action, but it contains this as to dismissal: "Notwithstanding anything herein contained, the said company (defendants) may instantly dismiss the said W. Clark from their employment before the expiration of the term of his engagement if he is guilty of disobedience to orders, theft, drunkenness, or other misconduct, and in the event of such dismissal shall not be bound to repay the said sum of \$45.67 hereinbefore referred to."

In this new agreement defendants agreed to employ plaintiff and plaintiff agreed to serve "as a mounter," or in any other branch of the business carried on by defendants for the time being, etc.

Plaintiff worked until about 26th February, 1904, when he was summarily dismissed. . . .

Plaintiff was directed to make a silver miniature case, and he did it so badly that it was not merchantable, and it was broken up, and plaintiff was informed that he would have to make it over "in his own time." Plaintiff made it over, and, according to the evidence of defendants' manager, he took 12 hours to do it, but, instead of "docking" plaintiff for 12 hours, the manager "docked" him for 6 hours. Plaintiff was charged \$1.45 for 6 hours' time, and on getting his pay, on pay day, 20th February, 1904, he received his proper wages, less \$1.45. . . . Plaintiff called attention to his pay being short, and Capp told him "he had been docked for that miniature." Plaintiff said nothing to Capp in reply, but went to a firm of solicitors, who on 24th February wrote a courteous letter to defendants. What happened next is best told by Capp himself:—

Q. What happened on Friday night? (That is Friday 26th February, 1904.)

A. Friday night he (plaintiff) was told to come into the office, that I wanted to see him, and when he came in I shewed him the letter, and I asked him if he had sent the letter to me, and he said "yes." I asked him if he would withdraw it, and he refused to do so . . . and after doing so I said, "Well, I will pay you back what I deducted from you," and I offered him the full amount, 12 hours'