

HON. MR. JUSTICE CLUTE.

OCTOBER 25TH, 1912.

HALLIDAY v. CANADIAN PACIFIC R.W. CO.

4 O. W. N. 162.

Master and Servant — Wrongful Dismissal of Servant — Contract of Hiring — Right to Notice — Damages — False Imprisonment — Malicious Prosecution — Costs.

Action against the C. P. R. and James H. Hughes, for wrongful dismissal of plaintiff by the railway company from his employment as a conductor and for false imprisonment and malicious prosecution.

CLUTE, J., allowed \$480 damages for plaintiff's wrongful dismissal, being equivalent to three months' wages, dismissed plaintiff's claim on the other branches of the case and allowed full costs of action.

Action was tried at Sudbury, without a jury, on September 30th, 1912.

R. R. McKessock, K.C., for the plaintiff.

W. H. Williams, K.C., for the defendants.

HON. MR. JUSTICE CLUTE:—I disposed of the action at the trial in so far as the issues were concerned arising out of the charge for false imprisonment and malicious prosecution. I further found that the plaintiff had been wrongfully dismissed. The plaintiff had been in the employ of the defendant company for some 12 years, and during that period had borne a good character. His engagement with the company had been continuous, and as stated by the superintendent, he was during all that period in the employ of the defendant company. Under the custom and practice of the company with their men an employee in the grade of the plaintiff was not to be dismissed without inquiry. The occasion of his dismissal was on account of liquor having been found in the caboose of the train of which he was conductor. This train started from Cartier to White river. There was a collision and the train was delayed. At the place where the collision occurred the debris arising therefrom had to be removed, and a number of workmen, 20 or 30, were engaged in this work. The night was very cold, some 50 degrees, it was stated, below zero, and the men were constantly in the habit of going into the caboose to get warmed. The plaintiff, as was his duty, was at the station