

Upon the evidence before me I am unable to say what damages were sustained by plaintiffs by reason of the wrongful use made by defendants of the water, which, under the foregoing declarations, they were not entitled to use. Their right to recover such damages as they have suffered I affirm: *Runnels v. Bullen*, 2 N. H. 523, 535. Unless plaintiffs are prepared to accept a judgment for nominal damages of \$25, which, if so advised, they may enter, they may, by electing to take it within ten days, have a reference to the local Master at Hamilton to ascertain the damages to which they are entitled.

Though not wholly right in their contentions, plaintiffs in obtaining a judgment enjoining wrongful and excessive use by defendants of dammed water and for damages, have had a substantial measure of success. They should have their costs of this action down to the present time.

Costs of the reference and further directions, should the plaintiffs elect to take a reference, will be reserved.

JANUARY 31ST, 1905.

DIVISIONAL COURT.

CLARK V. CAPP.

Master and Servant—Dismissal of Servant—Justification—Grounds—Misconduct—Solicitor's Letter—Negligence or Incompetence—Condonation—Revival.

Appeal by defendants from judgment of MORGAN, JUN. J. Co. Court York, in favour of plaintiff in an action for wrongful dismissal from the service of defendants.

The appeal was heard by FALCONBRIDGE, C.J., BRITTON, J., IDINGTON, J.

W. R. Smyth, for defendants.

W. T. J. Lee, for plaintiff.

BRITTON, J.—Plaintiff resided in England, and was engaged by the agent of defendants as "a general mounter" to come to this country and work for defendants at 50 shillings per week, 55 hours of work to constitute the week. Plaintiff agreed to conform to the rules and regulations of defendants. He was to come out at his own expense, but, if he gave satisfaction and remained with defendants 12 months, his passage