

The trial Judge simply left to the jury the question as to the hiring, and whether plaintiff had sustained damage by his dismissal.

Defendants moved for a nonsuit at the conclusion of plaintiff's case, and again asked the Judge to instruct the jury that there was no evidence of any contract of hiring, but took no further objection to the charge, and the jury found for plaintiff \$110 damages, for which judgment was ordered to be entered with costs.

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

H. M. Mowat, K.C., and J. M. Mowat, Kingston, for defendants.

H. L. Drayton, for plaintiff.

STREET, J.:—The motion here is to set aside the verdict and judgment entered for plaintiff and to enter judgment for defendants. It is not, and could not be, under sec. 51 of the County Courts Act, an application for a new trial either alone or coupled with any other relief. The sole question, therefore, which we have to consider is whether plaintiff made out a case which he was entitled to have submitted to the jury. In my opinion, the Judge was right in refusing to withdraw the case from the jury, and he could not properly have done so. It appeared that the captain of the "Caspian" was in need of four additional men, and that he had telegraphed ahead to the agent of defendants at Belleville to try to get them for him. When the steamer arrived there at about midnight, the agent had plaintiff and three other men on the wharf ready to go if required. There was evidence that upon the arrival of the steamer the agent called out to the captain that he had four men for him and asked whether he should send them on board, and was told to do so. Thereupon plaintiff was told to go on board, and did so, and he says that he assisted in hauling the gang plank on board when the steamer left, and that he was willing to do any work he was directed to do. He had been previously employed on the steamer at \$20 a month, and had left or been discharged. He was not put to work, but was ordered to leave the steamer, which he did. . . . These statements were to some extent contradicted, but there was evidence in support of them all which could not be withdrawn from the jury, and the jury might fairly find upon them that defendants had hired plaintiff to work for them either for the trip or for a month, that being the nature of his former hiring by them. . . .