

for 3 years, convinced him that the condition of the foot in 1903 was not produced by the injury to it in 1899. . . .

Plaintiff was almost continuously on duty for nearly 4 years after the accident, that is, from 1st February, 1899, to 7th December, 1902, and during that period I find that he made no complaint to any of his superior officers on the police force that he was suffering pain or was lame, or was in the slightest incapacitated from performing his duty as a policeman. This, together with the evidence of Dr. Edy, who attended him from the day of his injury up to December, 1902, satisfies me that the injury to plaintiff's foot on 19th January, 1899, did not result in his being permanently incapacitated from further service on the police force. And the evidence of Drs. Bingham and Powell and Mr. Irving Cameron points almost unerringly to the conclusion that plaintiff was from December, 1902, suffering from metatarsalgia, produced by other causes than the injury to his foot in January, 1899. . . .

There will be judgment for plaintiff in respect of the cause of action set forth in the 11th paragraph of the statement of claim, for \$20 with Division Court costs, being the amount retained by defendants as security for the return of plaintiff's clothing and equipment, which I find he did return. And there will be judgment for defendants dismissing with costs all the other claims. Plaintiff's debt and costs to be set off pro tanto against defendants' costs.

MARCH 17TH, 1905.

DIVISIONAL COURT.

GOULD v. MICHIGAN CENTRAL R. W. CO.

*Master and Servant—Dismissal of Servant without Notice—
Proof of Custom—Damages—Costs.*

Appeal by plaintiff from judgment of County Court of Elgin dismissing action brought by a machinist to recover damages for wrongful dismissal from the service of defendants, without notice, in breach of a contract to give plaintiff steady employment.

J. M. Ferguson, for plaintiff, contended that defendants should not have been permitted to give evidence that they were