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Master and Servant—Right of Principal or Employer to Discharge for Disrespectful Language

Perhaps the leading early American case upon this subject is that of *Martin v. New York Life Insurance Co.* (1895), 148 N. Y. 117, 42 N. E. 416, where it was held that a hiring at so much per year, no time being specified, is a hiring at will which may be terminated at the election of either party. However, this is not the first decision where the same conclusion was reached, as indicated by the cases of *De Briar v. Minturn* (1851), 1 Cal. 450; *Finger v. Koch & Schilling Brewing Co.* (1883), 13 Mo. A. 310; *Haney v. Caldwell* (1879), 35 Ark. 156, 168.

It is a cardinal rule in the construction of contracts that the intention of the parties must be inquired into, and if not forbidden by law, is to be effectuated. *French v. Carhart* (1847), 1 N. Y. 96. So in *Hotchkiss v. Godkin* (1921), 63 App. Div. 468, 71 N. Y. S. 629, it was held that there was a contract for a year where the agreement stated that a salary of $1200 for one year's service should be paid from the date of the agreement, payable in twelve monthly installments of $100.

Unless it is shown that the understanding of the parties was mutual that the service was to extend for a certain fixed and definite period, it is an indefinite hiring and is determinable at the will of either party. *Resener v. Watts* (1913), 73 W. Va. 342, 80 S. E. 839; *Bascom v. Shillitto* (1882), 37 Ohio St. 431; *Greer v. Arlington Mills Co.* (1899), 1 Pennewill (Del.) 581, 43 A. 609.

Other cases in support of the American doctrine that in the absence of proof of custom or usage to the contrary, a general hiring cannot be regarded as a contract for a year's service are *Kansas Pacific Railway Co. v. Roberson* (1876), 3 Colo. 142, 146; *Higgins v. Applebaum* (1919), 186 App. Div. 682; 174 N. Y. S. 807; *Orr v. Ward* (1874), 73 Ill. 318. Present California decisions are governed by Sec. 2010 of the Civil Code, where it is provided that a servant is presumed to have been hired for such length of time as the parties adopt for the estimation of wages.

The principal case is in accord with American precedents as to the abstract principle of law involved. Yet, none of the decisions relied upon embraces the circumstances of this particular case. The plaintiff in reliance upon the contractual communications had journeyed from a distant country to accept this employment but the court says that he is without remedy.

C. R. S.

MASTER AND SERVANT—RIGHT OF PRINCIPAL OR EMPLOYER TO DISCHARGE FOR DISRESPECTFUL LANGUAGE.—Plaintiff, a director, vice-president, and manager of a branch house of the defendant, was discharged three months prior to the expiration of his twelve-months' contract on the charge of insubordination or affrontery to the president, as evidenced by caustic letters communicated between them and a failure of the branch house to prosper. *Held*, that it is the duty of the employee to refrain from acts or conduct of insubordination and the use of disrespectful language towards his employer. A violation of such duty would justify his discharge unless reasonably pro-

voked or brought about by the employer's conduct. *Griffin Grocery Co. v. Thaxton* (Ark., 1928), 11 S. W. (2d) 473.

The decision of the case seems wholly in accord with the rule at common law except for the added feature that the plaintiff was not only a salaried employee but an officer and stockholder in the defendant company. However, the courts do not seem to draw this distinction where there is also a dominating head. *Lubriko Co. v. Wyman* (1923), 290 F. 12, where plaintiff although not a director was sales manager and vitally interested in every sale of the organization's product. Labatt, MASTER AND SERVANT, 2d ed., at p. 930, lays down the general rule in the following manner: "Every servant impliedly stipulates that both his words and behavior in regard to his master and his master's family shall be respectful and free from insolence. A breach of this stipulation is unquestionably a valid reason for dismissing the servant, especially when it is accompanied by other conduct which of itself would justify a rescission of the contract. In order to justify his dismissal on this ground, it must be shown that what he said or did was incompatible with the continuance of the relationship. Previous provocation by the master will sometimes render words or behavior excusable which apart from that element would constitute a good ground for dismissal. As the various kinds of language and behavior which constitute a breach of the duty now under discussion are described by terms which are not susceptible of any precise legal definition, the question whether in any given instance a breach was committed, is essentially one of fact and therefore primarily for the jury." Similar language may be found in 26 Cyc. 1016; 20 Am. & Eng. Ency. of Law 32.

When the servant's conduct is not in dispute and is not affected by mitigating or extenuating considerations, it is for the court to determine as a matter of law whether it constitutes cause for discharge. *Peniston v. Huber Co.* (1900), 196 Pa. 580, 46 A. 934. But where the facts are in dispute, what constitutes a ground justifying a discharge is a question for the jury. *Ernst v. Grand Rapids Engraving Co.* (1912), 173 Mich. 254, 138 N. W. 1050; *Thomas v. Beaver Dam Mfg. Co.* (1914), 157 Wis. 427, 147 N. W. 364. The same principle was applied in *Jordan v. Weber Moulding Co.* (1898), 77 Mo. A. 572, 577.

In determining a question of justification for a discharge grounded on breach of duty arising from improper language or conduct, the element of provocation must be considered. *Ross v. Grand Pants Co.* (1913), 170 Mo. A. 290, 156 S. W. 92; *Wade v. Hefner* (1915), 16 Ga. A. 106, 84 S. E. 598.

In the case of *Lubriko Co. v. Wyman, supra,* it was also held that the question of justification was properly submitted to the jury. Under the existing circumstances it was held that there were not sufficient grounds to justify discharge. Not every act of discourtesy or every slight disrespect justifies a termination of the relationship of employer and employee. Insubordination implies a willful disregard of express or implied directions and refusal to obey reasonable orders. *MacIntosh v. Abbot* (1918), 231 Mass. 180, 120 N. E. 383. In *Berg v. Just Because, Inc.,* (1923), 205 App.

Div. 31, 199 N. Y. S. 66, it was held that where the plaintiff was employed as a general manager and director of a musical comedy and by conduct and derogatory statements abused his employer, that such were sufficient grounds to justify a dismissal.

The use by a salaried employee of a corporation of insulting, disrespectful or abusive language to any officer or superior employee thereof in connection with the duties of the former, or his refusal to obey, or his advice to other employees to disobey the orders of any superior, is a good ground for discharging him. *Darst v. Mathieson Alkali Works* (1896), 81 F. 284. A servant owes to a master respectful and decorous treatment. Unprovoked insolence and disrespect for him or his representatives will usually justify the servant's discharge. This is clearly illustrated in *Darden v. Nolan* (1849), 4 La. Ann. 374; and in *Board of Education of City of Lawton v. Gossett* (1916), 56 Ok. 95, 155 P. 856.

Therefore, in view of these numerous authorities, it would seem that there was no error committed in the principal case, and that the question of the right to discharge an employee who uses disrespectful language towards his employer was properly left to the jury for determination as to whether justifiable under the existing facts and circumstances. C. R. S., '30.

PARTNERSHIP-SERVICES AND COMPENSATION OF PARTNER.—Plaintiff and defendant were partners in a filling station run by hired hands with occasional supervision by themselves, each of them living in another town and working at his individual business. After three years, the business being in a bad condition, defendant suggested that plaintiff visit the oil station. Plaintiff gave his whole time and attention to the management of the business for four years. Until dissolution of the partnership plaintiff made no claim for salary for the management, while defendant was absent and devoting himself to his personal business. *Held,* that plaintiff is entitled to a salary on implied contract for services rendered, and that the co-partner failing in his duty of giving his services to advance the business should pay the plaintiff who gave his whole time. *Montgomery v. Burch* (Tex. 1928), 11 S. W. (2d) 545.

The rule at old common law is that one partner can make no claims for compensation for services from his partner, since each has the duty to devote his time and energy to the partnership. This applies today to the ordinary case of partnership where each partner works in and for the business, or where one advances capital and the other gives his time. Lindley, PARTNERSHIP, p. 454; *Frazier v. Frazier* (1883), 77 Va. 775; *Caldwell v. Lieber* (1839), 15 N. Y. Ch. 483; *Peck v. Alexander* (1907), 40 Colo. 392, 91 P. 38; *Talbert v. Hamlin* (1910), 86 S. C. 523, 68 S. E. 764, 17 L. R. A. (N. S.) 412.

By express contract one partner may charge the other partner for services rendered. There seems little reason to restrict the power of contract to exclude this definite, deliberate agreement. Mechem, LAW OF PARTNERSHIP,