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Agency-Master and Servant-Term of Contract When No Definite Time is Specified

AGENCY—MASTER AND SERVANT—TERM OF CONTRACT WHEN NO DEFINITE TIME IS SPECIFIED.—The defendant through its agent by telephone called the plaintiff offering the plaintiff a position in its legal department. During the conversation the defendant's agent informed the plaintiff that, "This job pays a salary of $2,600 per annum, which figures out something like $50 per week." The defendant's agent wished for the plaintiff to come to work immediately, but the plaintiff asked for time to consider. The next day, November 4, 1930, he telegraphed his acceptance and that he would be at work Monday, November 11th. The plaintiff left his position in Cleveland to enter the employment of the defendant in Indianapolis, but was discharged on July 14, 1931. The plaintiff contends that there was a contract of hiring for a year and that the defendant breached same when it discharged him before the end of the year. Held, there was a contract of employment from November 4,

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12 Burns 1933, Secs. 64-901 ff.

13 Lutz v. Arnold (1935), 208 Ind. 480, 193 N. E. 840.

14 Safe Deposit and Trust Co. v. Virginia, supra, note 9.

15 Baltimore v. Gibbs (1934), 166 Md. 364, 171 A. 37. This case is commented upon favorably by Robert C. Brown, supra, note 2, and adversely criticized in Developments in the Law, Taxation—1933, 47 Harvard L. Rev. 1224.

1930, to November 4, 1931, which was breached by the discharge of the plaintiff before expiration of the contract.[1]

There are four distinct doctrines as to the duration of an employment contract when no definite time is specified; three in the United States and the English view. The English view is set down by Blackstone in his commentaries, "If the hiring be general without any particular time limited the law construed it to be a hiring for a year, upon the principal of natural equity, that the servant shall serve and the master maintain him throughout all the revolutions of the respective seasons, as well when there is work to be done as when there is not."[2] The later English cases, following Blackstone, have held that a general hiring is to be regarded as a hiring for a year.[3]

The English rule has generally been repudiated in the majority of the states,[4] and has been replaced by three different doctrines. One theory which many United States cases take is that given by Wood on Master and Servant, ". . . With us, the rule is inflexible that a general or indefinite hiring is, prima facie, a hiring at will. . . . A hiring at so much a day, week, month or year, no time being specified, is an indefinite hiring, and no presumption attaches that it was for a day ever, but only at the rate fixed for whatever time the party may serve. . . ."[5]

The leading case upholding this theory is the famed New York case of *Martin v. New York Life Insurance Company*.[6] The only Indiana case on this subject prior to the instant case appears to follow this doctrine, for there Wiley, C. J., speaking for the appellate court, held, "Where, by the terms of a contract, whether it be written or verbal, the contract is one of employment,

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[1] a. Holcomb & Hoke Co. v. Young (Ind. App., 1937), 8 N. E. (2nd) 426.

b. Case upheld the lower court's instruction to the jury that the jury would be at liberty to find that such employment was an employment for a full year, provided they further found to have been present at the time of such oral agreement any one or more of the following circumstances: (1) If the appellee gave to the appellant consideration aside from his promise to serve the appellant; (2) if appellee's employment was an important one and of a kind such that a temporary and indefinite employment of appellee would not likely have been made; (3) if, to the notice of appellant, the appellee had made, or was required by the employment to make, and did make, an important change in his general relations in order to accept the position with appellant, such as the removal of himself and his things to a new place; (4) if, to the notice of appellant, appellee had given up, or was required by the employment to give up, a position or occupation of some value in order to enter into the employment of appellant.

c. Case also includes an interesting problem concerning the Statute of Frauds, but since the purpose of this note is only to discuss the agency problem involved the writer has avoided this question; however, this problem is discussed by Willis, The Statute of Frauds—A Legal Anachronism, 3 Indiana L. Jl. 427.

[2] 1 Blackstone Commentaries 425.

[3] Fawcett v. Cash (1834), 3 Nev. & M. 177, 5 Barn. & Ad. 904; Buckingham v. Surrey & H. Canal Co. (1882), 46 L. T. N. S. 885.

[4] Martin v. New York Life Ins. Co. (1895), 148 N. Y. 117, 42 N. E. 416; Finger v. Koch & S. Brewing Co. (1883), 13 Mo. App. 310; Edwards v. Seaboard Ry. Co. (1897), 21 N. C. 490, 28 S. E. 137; Putman v. Producers Live Stock Marketing Assoc. (1934), 256 Ky. 196, 75 S. W. (2nd) 1075.

[5] Second edition, Section 136.

[6] Supra, note 4.

and by its terms, the tenure of service cannot be determined, such contract is one at will, and may be terminated at any time, at the election of either party."[7]

The second theory, which seems exactly opposite to the New York view and closely analogous to the English doctrine, is that laid down by the Arkansas court that "where a unit of time is described in mentioning the compensation, without any other reference to time, it is fairly inferable that the parties intended to contract for that period of time. . . . In absence of countervailing circumstances the court should hold the contract to be for hiring for the unit of time specified in fixing the wages."[8] However, this view is very much in the minority in the United States.

The third doctrine, although recognizing the presumption of an indefinite hiring as a hiring at will, presents an intermediate flexible rule that the term of the agreement must be ascertained by considering the circumstances of each particular case. The Restatement of Agency, in adopting this rule, presents the different circumstances to be considered.[9] Although this is not the majority rule today it seems to mark the present trend toward putting the question of duration of the contract of employment to the jury and for the jury to consider all of the circumstances of each particular case.[10] There is a substantial authority upholding this view, as shown by the leading Massachusetts case on this subject, which went so far as to say that the use of the word salary was more frequently applied to annual employment than to any other, and was one of the facts to be considered.[11] The Minnesota court, in the case of a hiring of an attorney at $1,000 a year, payable quarterly, considered the nature of employment and character of the service, and held same to be at least a contract for a year.[12] This third doctrine is also stated very well by the Kentucky court, which, after admitting the English doctrine has

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[7] Speeder Cycle Co. v. Teeter (1897), 18 Ind. App. 474, 48 N. E. 595. Same doctrine is upheld in Warden v. Hinds (1908), 163 F. 201, 25 L. R. A. (N. S.) 529; Haney v. Caldwell (1879), 35 Ark. 156; Davidson v. Mackall-Paine Veneer Co. (1928), 149 Wash. 685, 271 P. 878, noted in 14 St. Louis L. Rev. 333; Hogle v. Delong Hook & Eye Co. (1915), 248 Pa. 471, 94 A. 190.

[8] Moline Lumber Co. v. Harrison (1917), 128 Ark. 260, 194 S. W. 25. Same doctrine set forth in Jones v. Trinity Parish (1883), 19 F. 59.

[9] Note to Sec. 442, of the Restatement, p. 1031, "The fact that payment is to be made in accordance with a time unit is evidence, in connection with other relevant facts, indicating that the agreement is for such unit. Thus, an agreement for the period of time mentioned as that for payment, or as the basis for payment, is indicated if one party pays consideration aside from his promise to employ or to serve; or if the agency is an important one and of a kind such that a temporary appointment would not be likely to be made; or if, as the principal has notice, the employee has made an important change in his general relations in order to accept the position, such as the removal of himself and his things to a new place, or if he has given up a position of some value in order to enter the employment. In the absence of other facts, a custom in the business of which the parties should know, or a usage by the principal as to periods of employment of which the agent should know, is controlling."

[10] Dallas Hotel v. McCue (1930, Tex. Civ. App.), 25 S. W. (2nd) 902.

[11] Maynard v. Royal Worcester Corset Co. (1908), 200 Mass. 1, 85 N. E. 877.

[12] Horn v. Western Land Assoc. (1875), 22 Minn. 233.

been repudiated by the American view of a prima facie hiring at will, said, "There can be no flexible rule in this respect. . . . It is an open question to be determined by the circumstances of each particular case, or as one which is dependent upon the understanding and intent of the parties to be ascertained by influence from their negotiations, usages of business, nature of the employment, and all of the surrounding circumstances."[13] In the case before us, the Indiana Appellate Court in adopting this third doctrine has altered the view that it set forth in 1897.[14]

Since our law is a scheme of social control for the betterment of social interests,[15] we must look for a rule which will be most beneficial to society and also give the best results. The third doctrine which is set out by the Indiana Appellate Court appears to fall into this category in that by using this rule the objective understanding of the parties to the contract will be enforced.[16]

I. K.