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CONTRACTS - DURATION OF EMPLOYMENT WHEN NO TIME IS SPECIFIED

CONTRACTS — DURATION OF EMPLOYMENT WHEN NO TIME IS SPECIFIED — The plaintiff, claiming a contract from year to year, sued to recover for the unexpired portion of the second year of his employment which defendant had terminated. The offer, made and accepted by mail, was for "the position of General Sales Manager at a salary of $15,000 per year to begin with. . . ." It further appeared that plaintiff had moved from New York to Milwaukee, that he had been making more money per year prior to this employment, and that payment by defendant had been made monthly. *Held*, that the hiring was indefinite and terminable at the will of either party. *Brooks v. National Equipment Corp.*, 209 Wis. 198, 244 N. W. 598.

It is established by the overwhelming majority of American courts that a general hiring, indefinite as to time, is terminable at the will of either party.[1]

[1] *Federal:* The Pacific, (D. C. Md. 1883) 18 Fed. 703; The Rescue, (D. C. E. D. Pa. 1902) 116 Fed. 380; The Pokanoket, (C. C. A. 4th, 1907) 156 Fed. 241; Warden v. Hinds, (C. C. A. 4th, 1908) 163 Fed. 201; Clarke v. Atlantic Stevedoring Co., (C. C. E. D. N. Y. 1908) 163 Fed. 423; Thullen v. Triumph Elec. Co., (C. C. A. 3d, 1915) 227 Fed. 837; J. E. Hanger, Inc. v. Fitzsimmons, (App. D. C. 1921) 273 Fed. 348. *Contra:* The Hudson, (D. C. S. D. N. Y. 1846) Fed. Cas. No. 6831; Jones v. Vestry of Trinity Parish, (C. C. W. D. N. C. 1883) 19 Fed. 59. *Alabama:* Peacock v. Virginia-Carolina Chemical Co., 221 Ala. 680, 130 So. 411 (1930). *Contra:* Roddy v. McGetrick, 49 Ala. 159 (1873); Moss v. Decatur Land Improvement & Furnace Co., 93 Ala. 269, 9 So. 188 (1890); National Life Ins. Co. v. Ferguson, 194 Ala. 658, 69 So. 823 (1915). See also Liddell v. Chidester, 84 Ala. 508, 4 So. 426 (1887), and Clark v. Ryan, 95 Ala. 406, 11 So. 22 (1891). *Arkansas:* Haney v. Caldwell, 35 Ark. 156 (1879); Arkadelphia Lumber Co. v. Asman, 68 Ark. 526, 60 S. W. 238 (1900); Ashley, D. & N. Ry. v. Cunningham, 129 Ark. 346, 196 S. W. 798 (1917). *Contra:* Moline Lumber Co. v. Harrison, 128 Ark. 260, 194 S. W. 25 (1927). *California*: Lynch v. Gagnon, 96 Cal. App. 512, 274 Pac. 584 (1929). *Colorado:* Kansas P. Ry. v. Robertson, 3 Colo. 142 (1876). *Semble:* Bauer v. Goldman, 45 Colo. 163, 100 Pac. 435 (1909). *Delaware:* Greer v. Arlington Mills Mfg. Co., 1 Pennewill (17 Del.) 581, 43 Atl. 609 (1899). *Florida:* Savannah, F. & W. Ry. v. Willett, 43 Fla. 311, 31 So. 246 (1901). *Illinois:* Pfund v. Zimmerman, 29 Ill. 269 (1862); Orr v. Ward, 73 Ill. 318 (1874); Lynch v. Eimer, 24 Ill. App. 185 (1887); Chadwick v. Morris & Co., 170 Ill. App. 569 (1912); Marquam v. Domestic Eng. Co., 210 Ill. App. 337 (1918); Odell v. Chicago G. W. R. R., 212 Ill. App. 616 (1918). *Contra:* Great Northern Hotel Co. v. Leopold, 72 Ill. App. 108 (1897). *Indiana:* Old Reliable Paint Co. v. Storey, 83 Ind. App. 203, 144 N. E. 562 (1924). *Iowa:* Harrod v. Wineman, 146 Iowa 718, 125 N. W. 812 (1910).

This view is contrary to the rule, long adhered to, of the English and Canadian courts which hold a general hiring to be a hiring for a year.[2] The earliest cases setting forth the accepted American view give no reasons for the departure from

Kentucky: Louisville & N. R. R. v. Harvey, 99 Ky. 157, 34 S. W. 1069 (1896); Louisville & N. R. R. v. Offutt, 99 Ky. 427, 36 S. W. 181 (1896); Hudson v. Cincinnati, N. O. & T. P. Ry., 152 Ky. 711, 154 S. W. 47 (1913); Hardy v. Myers, 206 Ky. 562, 267 S. W. 1110 (1925). *Louisiana:* Russell v. White Oil Corp., 162 La. 9, 110 So. 70 (1926). *Maryland:* McCullough Iron Co. v. Carpenter, 67 Md. 554 (1887). *Cf.* Babcock & W. Co. v. Moore, 62 Md. 161 (1884), and Norton v. Cowell, 65 Md. 359, 4 Atl. 408 (1886). *Missouri:* Davis v. Pioneer Life Ins. Co., 181 Mo. App. 353, 172 S. W. 67 (1914); Minter v. Tootle-Campbell Dry Goods Co., 187 Mo. App. 16, 173 S. W. 4 (1915); Hubbard v. Turner Dept. Store Co., 220 Mo. App. 95, 278 S. W. 1060 (1926). *New York:* Martin v. New York Life Ins. Co., 148 N. Y. 117, 42 N. E. 416 (1895); Watson v. Gugino, 204 N. Y. 535, 98 N. E. 18 (1912); Copp v. Colorado Coal & Iron Co., 20 Misc. 702, 46 N. Y. S. 542 (1897); Frankel v. Central R. R. of N. J., (N. Y. Sup. Ct. 1909) 114 N. Y. S. 137; Leifer v. Scheinman, 179 App. Div. 665, 167 N. Y. S. 105 (1917); Higgins v. Applebaum, 186 App. Div. 682, 174 N. Y. S. 807 (1919). *North Carolina:* Edwards v. Seaboard & R. R. Co., 121 N. C. 490, 28 S. E. 137 (1897); Currier v. W. M. Ritter Lumber Co., 150 N. C. 694, 64 S. E. 763 (1909). *Oklahoma:* Foster v. Atlas Life Ins. Co., 154 Okla. 30, 6 Pac. (2d) 805 (1931). *Oregon:* Christensen v. Pacific Coast Borax Co., 26 Or. 302, 38 Pac. 127 (1894); Barlow v. Taylor Min. Co., 29 Or. 132, 44 Pac. 492 (1896). *Pennsylvania:* Weidman v. United Cigar Stores Co., 223 Pa. 160, 72 Atl. 377 (1909); Hogle v. DeLong Hook & Eye Co., 248 Pa. 471, 94 Atl. 190 (1915). *Rhode Island:* Booth v. National India Rubber Co., 19 R. I. 696, 36 Atl. 714 (1897). *South Carolina:* Johnson v. American Ry. Express Co., 163 S. C. 191, 161 S. E. 473 (1931). *Texas:* East Line & R. R. Ry. v. Scott, 72 Tex. 70, 10 S. W. 99 (1888); St. Louis Southwestern Ry. v. Griffin, 106 Tex. 477, 171 S. W. 703 (1914); Island Lake Oil Co. v. Hewitt, (Tex. Civ. App. 1922) 244 S. W. 193; Hunter v. Strong, (Tex. Civ. App. 1924) 265 S. W. 539. *Contra:* Young v. Lewis, 9 Tex. 73 (1852). *Utah:* Price v. Western Loan & Savings Co., 35 Utah 379, 100 Pac. 677 (1909); Hancock v. Luke, 52 Utah 142, 173 Pac. 137 (1918). *Vermont:* Mullaney v. C. H. Goss Co., 97 Vt. 82, 122 Atl. 430 (1923). *Washington:* Davidson v. Mackall-Paine Veneer Co., 149 Wash. 685, 271 Pac. 878 (1928). *West Virginia:* Resener v. Watts, Ritter & Co., 73 W. Va. 342, 80 S. E. 839 (1914). *Contra:* Alkire v. Orchard Co., 79 W. Va. 526, 91 S. E. 384 (1917). *Wisconsin:* Prentiss v. Ledyard, 28 Wis. 131 (1871); Dickinson v. Norwegian Plow Co., 101 Wis. 157, 76 N. W. 1108 (1898); Kosloski v. Kelly, 122 Wis. 665, 100 N. W. 1037 (1904); Milwaukee Corrugating Co. v. Krueger, 184 Wis. 139, 198 N. W. 394 (1924). *Contra:* Kellogg v. Citizens' Ins. Co., 94 Wis. 554, 69 N. W. 362 (1896); Cronemillar v. Duluth-Superior Milling Co., 134 Wis. 248, 114 N. W. 432 (1908).

See also Tatterson v. Suffolk Mfg. Co., 106 Mass. 56 (1870); Harper v. Hassard, 113 Mass. 187 (1873); Emerson v. Ackerman, 233 Mass. 249, 124 N. E. 17 (1919); Maynard v. Royal Worcester Corset Co., 200 Mass. 1, 85 N. E. 877 (1908).

[2] *England:* Rex v. Dedham, Burr. Set. Cas. 653 (1769); Rex. v. Macclesfield, 3 T. R. 76, 100 Eng. Repr. 463 (1789); Beeston v. Collyer, 4 Bing. 309, 130 Eng. Repr. 786 (1827); Rex v. St. Andrew, 8 B. & C. 679, 108 Eng. Repr. 1195 (1828); Fawcett v. Cash, 5 B. & Ad. 904, 110 Eng. Repr. 1026 (1834); Lilley v. Elwin, 17 L. J. (N. S.) 132 (1848). *Canada:* Dickinson v. Rural Munic. of Stonehenge, [1920] 1 W. W. R. 235; Johns v. Winnipeg Elec. Ry., [1925] 2 W. W. R. 282. But see Strickland v. North Am. Collieries, Ltd., [1926] 2 W. W. R. 529.

the common law rule consistently applied in England;[3] nor do the more recently decided cases furnish substantial explanations.[4] The basis of the American rule seems to be the virtual *ipsi dixit* of Wood in his text, Master and Servant,[5] followed by widespread adoption through the convenient means of inter-jurisdictional citation. This opinion has already found expression.[6] A general hiring is found: (1) when it is clear that the parties did not express or intend a definite period of employment,[7] (2) when the circumstances will not justify a finding in fact of a mutual and definitely intended employment period,[8] (3) when there is no controlling custom.[9] In the principal case the circumstances of plaintiff's removal from New York to Milwaukee, the lower earnings, and the payment of a *pro tanto* share of a yearly salary each month were considered not enough to justify a variation from the rule. The case does present another problem over which there is some conflict of authority between States and concerning which there is confusion within certain jurisdictions.[10] Employment agreements generally provide for the payment of a specified amount for a specified period of service, as, for example, a specified amount per day, week, month, or, as in the principal case, per year. What "intention" can be discovered in this language? A minority of the courts hold that a stipulation of this kind raises a presumption that the parties intended the contract of employment to be definite for the named period.[11] This view has found support on the ground that "such a construction

[3] Prentiss v. Ledyard, 28 Wis. 131 (1871); Haney v. Caldwell, 35 Ark. 156 (1879); Greer v. Arlington Mills Mfg. Co., 1 Pennewill, (17 Del.). 581, 43 Atl. 609 (1899).

[4] "But this was a rule far better adapted to English society and customs than to America and has never been adopted in this country." Milwaukee Corrugating Co. v. Krueger, 184 Wis. 139 at 147, 198 N. W. 394 at 397 (1924). "It is often said the presumption now so widely indulged in favor of indefinite employment grows out of employment conditions, social and economic in this country." Peacock v. Virginia-Carolina Chemical Co., 221 Ala. 680, 130 So. 411 (1930).

[5] WOOD, MASTER AND SERVANT, sec. 134 (1877).

[6] 11 A. L. R. 469 at 475 (1921).

[7] Fellows v. Fairbanks Co., 205 App. Div. 271, 199 N. Y. S. 772 (1923). This principle becomes apparent upon reading the cases following the so-called American rule.

[8] Roddy v. McGetrick, 49 Ala. 159 (1873); M. Hemingway & Sons Silk Co. v. Porter, 94 Ill. App. 609 (1900); Babcock and W. Co. v. Moore, 62 Md. 161 (1884); Chamberlain v. Detroit Stove Works, 103 Mich. 124, 61 N. W. 532 (1894); Jones v. Manhattan Horse Manure Co., 91 N. J. L. 406, 103 Atl. 984 (1918); Mason v. New York Produce Exchange, 127 App. Div. 282, 111 N. Y. S. 163 (1908), aff'd without opinion, 196 N. Y. 548, 89 N. E. 1104 (1908).

[9] Pfiester v. Western Union Tel. Co., 282 Ill. 69, 118 N. E. 407 (1917). This principle plays an important part in many of the cases.

[10] See especially the Alabama and Wisconsin cases, supra, n. 1.

[11] *Massachusetts:* Maynard v. Royal Worcester Corset Co., 200 Mass. 1, 85 N. E. 877 (1908). *Minnesota:* Horn v. Western Land Ass'n, 22 Minn. 233 (1875). But see also Bolles v. Sachs, 37 Minn. 315 (1887). *New Jersey:* Beach v. Mullin, 34 N. J. L. 343 (1870); Larkin v. Hecksher, 51 N. J. L. 133, 16 Atl. 703 (1888); Pfeil v. Feigenspan, Inc., 97 N. J. L. 3, 116 Atl. 793 (1922); Willis v. Wyllys Corp., 98 N. J. L. 180, 119 Atl. 24 (1922). *Nevada:* Capron v. Strout, 11 Nev. 304 (1876). See also cases *contra*, supra, n. 1. *Ohio:* Red Star Yeast & Products Co. v. Hague, 25 Ohio App. 100, 157 N. E. 393 (1927).

should, if possible, be put upon the language of parties who enter into an agreement as will give rise to a legal obligation." [12] The same result has been reached by statute in a number of jurisdictions.[13] However, an increasing number of courts treat employment under this type of provision as a hiring for an indefinite period:[14] the language of amount per specified period is held to determine the rate of pay, without effect upon the term of the employment, each party being free to terminate the relationship at will. It is submitted that the stipulation of a definite amount for a named period, standing alone, cannot be treated as more than an ordinary and convenient method of setting a rate. Nor will a careful legalistic weighing of the relative presumptive value of such words as "pay" or "wage" or "salary" [15] reflect the casual and often careless use made of words during employment negotiations. Neither is it clear that the English rule is indisputably reasonable. It seems to have been based mainly upon the problems arising in settlement cases brought by the Crown.[16] Once set up, it was applied to controversies involving master and servant.[17] However, if, as is often suggested, the English rule is grounded upon the customs of an agricultural country,[18] then the variance by many of the American courts becomes all the more bewildering.[19] The change to the American view might be explained in terms of our economic history: the existence of the frontier; the mobility of the population; the peculiar needs of an unsettled country. But whatever the explanation might be, a study of the development of the American rule discloses the growing acceptance of a legal principle without serious discussion of its reasonableness and without any apparent question as to its merit.[20] The dependence upon clearly signified intention, upon controlling custom, and upon meaningful circumstances is sound. But the use of presumptions in the field of contracts for a general hiring should be based more upon a careful study of social and economic needs than upon an unexplained adherence to precedents which may or may not be sound.

N. L.

[12] 1 WILLISTON, CONTRACTS, sec. 39 (1920).

[13] Calif. Civ. Code (1931), sec's 2010, 2011; Ga. Ann. Code (Park 1914), sec. 3133; Mont. Rev. Codes (Choate 1921), sec's 7795, 7796; N. D. Comp. Laws (1913), sec's 6135, 6136; S. D. Comp. Laws (1929), sec's 1101, 1102.

[14] See cases supra, n. 1.

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

[16] See supra, n. 2. WOOD, MASTER AND SERVANT, sec. 134 (1877).

[17] See supra, n. 2.

[18] Magarahan v. Wright & Lamkin, 83 Ga. 773, 10 S. E. 584 (1889).

[19] Among the earliest American courts to repudiate the English view were those in agricultural sections. This fact, together with the legislative action taken in several States (see supra, n. 13), tends to show that the courts gave no real thought to the social and economic problems involved in the type of contracts under consideration.

[20] The problem has too often been approached by the courts wholly as a matter of precedent. The rapidily changing economic life of the country has not figured in the reasons set forth by the courts in their decisions. 1 LABATT, MASTER AND SERVANT, 2d ed., ch. 5, sub-sec. C., p. 526 (1913).