

case a waiver should have been implied from the defendant's failure to demur or file a motion to quash, *People v. England* (1912), 170 Ill. A. 587; *Green v. Commonwealth* (1915), 164 Ky. 396, 175 S. W. 665.

Hence it is seen that the court in the principal case stretched the law to disproportion in order to set the defendant free. S. M. W., '29.

**MASTER AND SERVANT—CONTRACT OF EMPLOYMENT AT YEARLY SALARY DETERMINABLE AT WILL.**—Defendant cabled plaintiff in Sweden to become superintendent of his veneer plant in the State of Washington at an annual salary of \$6,000. Upon plaintiff's arrival in New York, he was informed that his services were not needed. *Held*, that this type of contract constitutes an employment for an indefinite period and may be abandoned at will by either party without resulting liability. *Davidson v. Mackall-Paine Veneer Co.* (Wash., 1928), 271 P. 878.

Although not in accord with decisions of early English cases, the principal case is clearly in line with the trend of modern authority. Wood, **MASTER AND SERVANT**, 2d ed., sec. 136, at p. 282, gives an accurate survey of and fined \$200.00. He later appealed on the ground that the information held that a general hiring or a hiring by the terms of which no time is fixed is a hiring for a year and that rule applies to all contracts of hiring and service, *Lilly v. Elwin* (1848), 11 Q. B. 742; *Fawcett v. Cash* (1834), 5 B. & Ad. 904, except where there is some custom relating to the matter in reference to which the parties are presumed to have contracted, or where the terms of the contract or the nature of the service is such as to rebut the presumption that a yearly hiring was intended. But according to English decisions, such general hiring is merely presumed to be a hiring for a year and may be rebutted by proof or even by other presumptions raised by circumstances surrounding the transaction. *Williams v. Byrne* (1837), 7 Ad. & E. 177; *Baxter v. Nurse* (1844), 6 Man. & G. 935. So where either party reserves the right to put an end to the contract at any time, *Rex v. Bowden* (1827), 7 B. & C. 249; or if the master does not have entire control over the servant during the specified period, *Queen v. Ravenstonedale* (1840), 12 Ad. & E. 73.

"In the United States 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 arises that it was even for a day, but only at the rate fixed for the services actually rendered. It is competent for either party to show what their mutual understanding was concerning the contract in question."

Similar language may be found in Labatt, **MASTER AND SERVANT**, 2d ed., sec. 159, in which he states: "The doctrine applied by the great majority of courts which have so far [1913] expressed an opinion on the subject, consists essentially in a complete repudiation of the presumption that a general or indefinite hiring is the hiring for a year, and the substitution of another presumption, viz., that such a hiring is one at will. Under this doctrine, the burden of proving that such hiring was obligatory for a year rests on the party who seeks to establish that the contract covered that period."

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.

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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-