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It must be a discouragement to a man who finds a library to find so many people taking out summer fiction instead of books of serious instruction.

POPULAR TALKS ON LAW

By Walter K. Towers, A. B., J. D., of the Michigan Bar

THE SERVANT'S DUTY

As a very large proportion of us must either direct the work of those who serve us or follow the direction of those whom we serve, the question of the duties which employee owes to employer is indeed vital.

The method that an employer usually adopts to enforce his authority is to dismiss from his service the employee who fails to obey his commands, or perform the duties expected of him. The fear of "losing the job" is what holds most employees to their duties. The employee usually enforces his rights by quitting when he is ordered to perform a task which he believes unreasonable. In cases where the employee has been hired for no definite period, and there is no understanding that the employment is to continue for any period, the relation of employer and employee is continued merely at the will of the parties and may be readily dissolved by either. But where there is a definite agreement—a contract—between employer and employee, fixing a term of employment, the employer may not discharge the employee without adequate grounds.

When we speak of "master" in the popular sense we usually think of one who has wide authority over the person of an employee who is in a decidedly inferior position. We are inclined to think of a "servant" as one serving in a somewhat menial capacity. But such is not the meaning of master and servant in legal terminology. The words master and servant are as broad as employer and employee, including all employers and all employees whatever their rank, whatever the importance or responsibility of their calling. The general manager with the widest authority employed at a salary of a hundred thousand dollars a year is, in law, a servant. The simplest employer is a master.

The duty of the servant to obey the master is fundamental. It is of the essence of the contract of employment and must always be recognized. "A promise by the servant to obey the master within the scope of his contract is implied by law," said a New York judge. "Submission to the master's will is the law of the contract." An authority on this subject has written, "Where a servant deliberately violates his master's orders, or refuses to obey them when given, he is clearly guilty of the grossest breach of contract. His duty is to obey the master in all things for which he became bound expressly, or in which obedience is implied from the nature of the service undertaken."

The employer's usual redress for a refusal to obey on the part of his servant is a dismissal from his service. This right of a master to dismiss a servant who has violated this duty of obedience is firmly settled. As to just what amounts to such a defiance of proper authority as to justify an employer in dismissing an employee whom it has been agreed to serve for a definite period is the question that is of most immediate interest and importance to employer and employee.

Spain was a farm laborer in the employ of Arnott for the usual term of one year. He usually breakfasted at 5 o'clock and dined at 2. One day Arnott ordered him to go with some horses to the marsh which was a mile off, before dinner, dinner then being ready. The plaintiff said that he had done his duty, and would not go until he had had his dinner. Arnott told him to go about his business, and he went without making any submission to the instructions. Spain later sued Arnott because of wrongful dismissal, seeking damages for the breach of contract of employment, but failed to recover.

"If Spain refused to obey his master's orders," said the judge, "I think he was warranted in turning him away. It would be exceedingly inconvenient if the servant were to be permitted to set himself up to control his master in his domestic relations, such as the time of dinner. After a refusal on the part of the servant to perform his work the master is not bound to keep him on as a burdensome and useless servant to the end of the year."

This case is rather extreme, and many courts would probably now rule such an order as unreasonable, and refusal to obey it not sufficient grounds for dismissal. It illustrates the undoubted principle that a master may dismiss his servant for a single act of disobedience. A farm laborer who refused to work during harvest time till 8 o'clock was held properly dismissed, as was also a coachman who, against his employer's express orders, carried friends of his own in his employer's carriage. A traveling salesman who refused to comply with the request of his employer to return his samples, the superintendent who refused to obey his superior's orders to reinstate an employee, and the teacher who refused to reinstate a pupil who was instructed to do so by the school board, were all held to be properly dismissed for such single acts of disobedience. Numberless examples might be discovered of instances of disobedience that have been held to justify a dismissal.

Not only may a master dismiss a disobedient servant, but he may also sue that servant and secure damages for any injury which may have been caused by reason of the servant's disobedience.

While the general rule is that the disobedience of any order is a breach of the duty which the employee owes to the employer, and so a justification for dismissal, there are certain circumstances which will justify a servant in his disobedience. A servant need not obey an order which is unreasonable, but an employee should be very certain that the instruction would be

deemed obviously and certainly unreasonable by a normal person before he disobeys for that reason. Nor need a servant obey instructions which are unlawful. Neither may an employee be dismissed for failure to obey orders instructing him to perform services which are not properly within the duties for which he was employed.

A servant may not be dismissed for the failure to obey an order in regard to a matter of small importance and so trivial that the contract of employment is not affected. If the disobedience was unintentional, and in regard to matters of no importance, and the instructions were in regard to matters of mere detail and not of a character to require in all circumstances, strict obedience the law will generally insist that there is not sufficient grounds for the severing of the relation of master and servant.

A master may dismiss a servant, though the act in question was not actually injurious to him—it is enough that there was a failure to obey in a matter of importance, or a willful disobedience of any character of a proper order.

As before stated, a servant may not be dismissed for failure to obey an instruction requiring services of a kind different from those which he was hired to perform. An employee is bound to perform the duties he was engaged to do and no others. Thus a boy hired to care for sheep and assist at hay time, cannot be required to perform the additional duty of taking charge of several cattle in the winter. A ballet dancer who has been engaged as premiere danseuse cannot be compelled to take an inferior position in the ballet, nor is a lady's maid expected to milk cows. But the master's requirements must be clearly beyond the scope of the servant's employment to justify a refusal.

Thus a man hired for general work on a farm is not justified in abandoning his employment because he is set to cutting flax with a machine and thinks this too hard work, nor because he is required to carry bricks.

The hours at which a servant is required to work are not infrequently fixed by the terms of the agreement between employer and employee. The length of a working day may also be prescribed by law. It may be understood from the nature of the employment, but a servant cannot be required to work at unreasonable times, nor for periods which considering all the circumstances are excessive.

As to holidays the laws of the state control. Other days off may be recognized and understood by custom or stated in the contract. Sunday is usually a legal holiday, or understood as a holiday, yet it may not be in exceptional callings as those of seaman or railroad employee.

Sickness or other urgent necessity is a recognized excuse for an employee's failure to work during periods of required labor. But a servant who absents himself from work, contrary to the instructions of his employer, for no good cause, is guilty of a breach of duty and may be dismissed.

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SENDS PAPER TO SON-IN-LAW

Fred Schwaderer came to Alliance last Friday to bring the children to the circus and while in town called at The Herald office to pay ahead on subscription. Altho already marked paid ahead he added another year to it and at the same time subscribed for the paper a year for his son-in-law, Charley Furness, Delmont, S. D.

JOINED MASONS IN 1864

The last issue of The Herald told of A. J. Marcy, of Hay Springs, who joined the Masons in April, 1865, in Woodstock, Illinois. On Monday our attention was called to Mr. R. H. Williams, father of Mrs. S. W. Thompson, of Alliance, who is visiting with them in Alliance this summer. Mr. Williams joined the A. F. & A. M. at Liberty, Illinois, in April, 1864.

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