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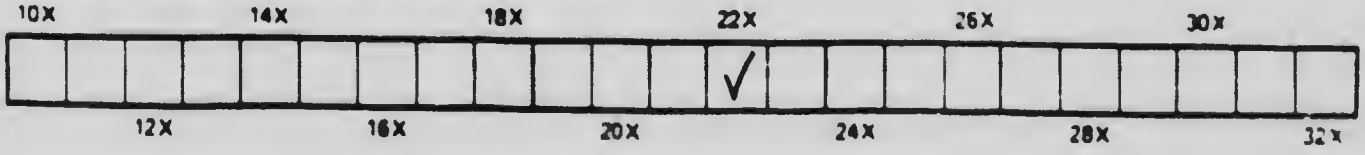

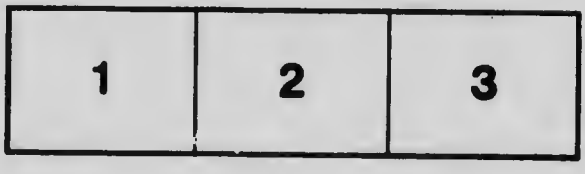

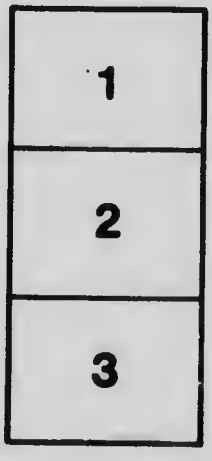

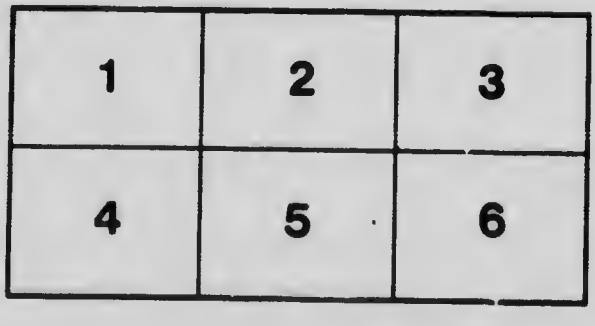

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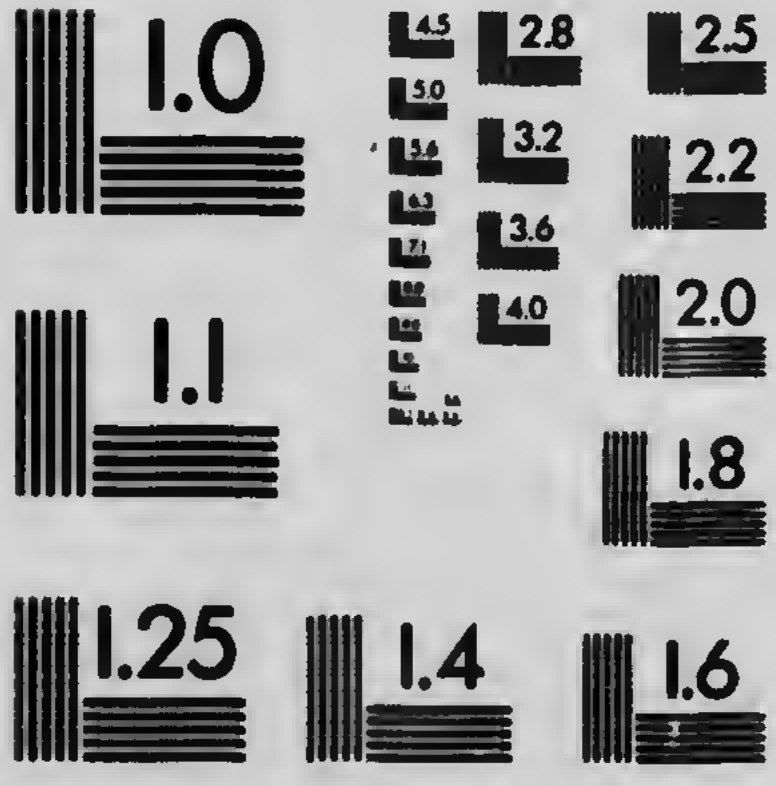

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LABOUR LAWS

OR THE

RIGHTS of EMPLOYER and EMPLOYED

— BY —

WALTER EDWIN LEAR

Barrister-at-Law

Price 25 Cents

LAW BOOKS LIMITED
152-154 Bay Street
TORONTO
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PREFACE

This little treatise has been written in the interest of the workingman. His employer has but little need for this or any other book on the subject; he is wealthy; he has his telephone and his solicitor at the other end, whom he may consult at any time day or night. But the working-man, he has no time to consult a solicitor; he has to work all day and at night sleep so he may come to work the next day. Even if he can find time to consult a solicitor, he seldom can find the necessary fee, therefore, he goes on day after day, and year after year, without the slightest knowledge of his legal rights and remedies. I have tried to write in plain, simple language, which any working-man can understand, and I trust that the information herein given will, at least in some slight degree, help to alleviate the condition of my less fortunate brethren.

W. E. Lear.

LABOUR LAWS
OR THE
RIGHTS OF EMPLOYER AND EMPLOYED

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1. Historical

Labour laws, including all sorts of contracts wherein one person engages to labour for another, are commonly known as the law of Master and Servant. Blackstone treats the law of master and servant as a domestic relation, saying that it is founded in convenience, whereby a man is directed to call in the assistance of others, where his own skill and labour will not be sufficient to answer the cares incumbent upon him. But at the common law, in the time of Blackstone, and previous, there was reason to class the relation between the worker and the employer as that of master and servant. Of the several classes of servants, two at least were directly concerned with the household or family of the employer. Menial or domestic servants and apprentices were practically a part of the family, and their regulation, control, privileges and duties might well be classed within the bounds of domestic relations.

But the respective conditions of the master and servant have changed since the days of Blackstone and of the incidents which at common law made it a domestic relation, or warranted the designation of the parties as master and servant, none now apply. The obsolete expression of *master* and *servant* does not sound very harmoniously to democratic ears; therefore, I have chosen a more modern title for this treatise.

2. Relation of Employer and Employed

The relation of master and servant to-day is simply that of employer and employed, and rests wholly upon contract, expressed or implied, and with but few exceptions may be treated the same as any other contract. In many respects the law of employer and employed is the same as that of principal and

agent. In labour contracts the employed is bound to render the service and the employer is bound to pay the stipulated wages, or in the absence of stipulation the employer must pay a fair value for the services rendered, such as is usually paid for the class of work performed.

3. Capacity to Contract

It is essential that the parties to a labour contract have the capacity to contract; otherwise, the contract cannot be enforced. Thus if a person who is under age binds himself to work for a specified time at a fixed wage, he is not bound by his bargain and may abandon it at any time he feels so disposed. Where such a person abandons his contract he cannot recover upon his contract, but he is entitled to what his services were reasonably worth to his employer, without deduction therefrom of any damages for his breach of the contract. Parents are not entitled to be paid the wages earned by their minor children.

4. Alien Labour Act

The Alien Labour Act, R.S.C. (1906), ch. 97, prohibits all contracts, express or implied, written or verbal, by any person, firm, or corporation, for the employment of foreign labour in Canada, if the contract is entered into before such foreigner arrives in Canada. If a foreigner comes to Canada under such a contract, or in answer to an advertisement in a foreign country and enters on the employment promised, then the employer is liable to a fine not exceeding $1,000 nor less than $50. This Act applies to all countries which have similar Alien Labour Acts, which apply to workmen from Canada, but it does not apply to foreigners living in Canada, who wish to employ private secretaries, servants or domestics. Neither does it apply to professional actors, artists, lecturers or singers, nor to strictly domestic or other personal servants. Residents in Canada may assist foreign relatives or personal friends to come to a position in Canada, if the intention is that such foreigner will become a Canadian citizen. Where any new industry is established in Canada, then foreign skilled labour may be employed to operate such industry, if it cannot be engaged in Canada.

5. Volunteer Labour

As the relation of employer and employed is founded on contract, one who volunteers to work for another is not entitled, in law, to any pay for such service. The assent of both parties is essential to the contract of hiring, but where a man has an opportunity to accept or reject services offered, and he does not reject them he is presumed, in law, to have accepted the services, and therefore, is liable to pay for them. This presumption does not arise where the parties are related to each other, and there is no intention of paying for the services rendered. In such cases an express agreement to pay wages must be proved before they can be collected. But an orphan minor, brought up in a family, not as a member, but rather in a menial capacity, was held entitled to reasonable payment for services, less board, clothing, and other necessaries furnished him. (*Lockwood* v. *Robbins,* 125 Ind. 398.)

6. Hiring at Will

Where there is no definite period of employment agreed upon, there is a hiring at will—the employer having the right to discharge and the employed the right to leave at any time without any cause; but if there be no special bargain as to wages, the employer must pay a reasonable value for the services rendered, dependent upon the current rate of wages for similar services at the time and place where they were rendered. Wages are due at the end of the service unless there is a special agreement providing otherwise. If no time is limited, expressly or impliedly, for the duration of a contract of hiring and service, then the hiring is considered to be for a year, according to the Common Law. However, the Courts will look such a contract over pretty carefully and usually they find a peg in it somewhere, on which to hang the law. This is an expression well known to lawyers and means that when a case is not clear to a Judge, he will pick out some point (peg) in it on which to base his decision, or as lawyers say, hand the law. What I want you to understand is, that the Judge will in such cases look at the contract in the light of how wages were paid, or agreed to be paid; if for instance he finds that wages were paid, or agreed to be paid by the week, or month, then he will, in the absence of evidence to the contrary, use that as a peg on which to hold that the hiring

was by the week, or by the month, and he will "hang the law on that peg," viz., apply the law applicable to a weekly or monthly hiring. General custom will also be considered by the Judge in determining the duration of the hiring.

7. Oral Contracts of Hiring

The fourth section of the Statute of Frauds (1677), 29 Car. II., enacts, among other things, that "No action shall be brought upon an agreement that is not to be performed within a year from the making thereof unless the promise, contract, or agreement, upon which such action is brought, or some memorandum or note thereof, is in writing and signed by the party to be charged therewith, or by some person thereunto by him lawfully authorized." As this Statute is in force practically everywhere the English language is spoken, all contracts for personal service which cannot be performed within a year, must be in writing in order to be legally enforced. If an oral bargain is made for service for a year, and the service can be performed within that time, it is binding, but if the service cannot be rendered within a year from the day on which the contract was made, owing to the fact that the service is to commence on a future day, then the contract cannot be enforced. Yet it seems that an oral contract of service for a year, the service to commence the next day, is good, and where under a contract for a year's service, the employed party has gone on from year to year, without objection by the employer, a presumption arises that both parties have assented to the contract for another year, and it need not be in writing.

8. Written Contracts of Hiring

If all contracts of hiring were put in writing, much expensive and vexatious litigation would be avoided. When entering into a written contract of hiring and service be sure that all the terms and stipulations agreed upon are embraced in the document and that both parties sign it before a witness.

In Manitoba and Ontario, no voluntary contract of service is binding on either of the parties for a longer term than nine years from the date of the contract.

In Prince Edward Island, by chapter 26 of the Act Wm. IV., all contracts relative to the employment of labour, if for the

term of one month or longer, must be in writing and signed by the parties thereto; or made verbally in the presence of one or more creditable witnesses.

9. Profit Sharing Agreements

Employers sometimes agree to pay a stated percentage of their profits to their employed in lieu of or in addition to salary or wages. These agreements should always be carefully prepared and reduced to writing, in order that the contract may not be construed as one of partnership, with all its incidents, such as the employee's right of demanding an account of the business, etc., and on the other hand, his liability for the debts of the employer.

In Ontario such agreements are governed by R.S.O. (1914), ch. 144, sec. 3, which declares that unless a contrary intention may be reasonably inferred from the agreement, it shall not be construed as one of partnership; that the employed shall not have the right to examine into the accounts or interfere in the management or affairs of the trade, calling or business of the employer; and that any statement by the employer of the net profits of his business shall be final and cannot be impeached except for fraud.

10. Duties of Employed to Employer

When any person contracts to render any service to another, he must enter upon his duties at the time agreed; he must be punctual, courteous and honest in his employment, and at all times be ready and willing to obey any reasonable order. He must perform all services as he may have contracted to perform, or if these were not specified, then he must do what is usually done by other persons engaged in similar employment, but he cannot be required to do more, nor to serve in a capacity not contemplated at the time the contract was made. He must use in a reasonable manner and properly care for all animals, machines, implements, tools and other things, with which he works, or otherwise has in his charge, and he must take reasonable precaution to see that they are not injured, lost or stolen. His failure in these respects may subject him to dismissal, or to an action by his employer for breach of contract. If the ser-

vice in which he is engaged is one requiring a certain amount of skill, the fact that he entered upon such employment is taken as an implied warranty on his part that he possesses such necessary skill, and his lack of it is a breach of the contract.

In the Province of Manitoba, any hired clerk, journeyman, apprentice or servant or labourer, who is guilty of ill-behaviour, drunkenness, refractory conduct, or idleness, or of deserting service or duties, or absenting himself without leave of his employer, or refusing to perform his duties, or to obey the lawful commands of his master or mistress, or who is guilty of dissipating the property of his master or mistress, or of any unlawful act injuriously affecting their interests, is liable, upon conviction before a Justice of the Peace, to a penalty not exceeding $20 and costs. There is a similar provision in the Statutes of Quebec, Saskatchewan and Alberta; in Quebec the fine is the same, but in Saskatchewan and Alberta the fine is not exceeding $30 and costs. In all these four provinces the Statutes make provision that in case payment of the fine and costs is not made forthwith, the Justice may order imprisonment for any term not exceeding one month, unless the fine and costs and the costs of committment and conveying to gaol be sooner paid.

In Prince Edward Island, servants engaged for one calendar month or longer may be punished for misconduct, absence from duty, etc., upon complaint before two Justices of the Peace, by confinement in gaol for any term not exceeding one calendar month.

The Manitoba Statute goes further and makes it an offence for any person, to knowingly harbour or conceal a servant or apprentice who has abandoned the service of his master or mistress, or to instigate any servant or apprentice to abandon such service. The penalty is the same $20 and costs.

I cannot help but mention in passing that these laws are an insult to British free institutions; they bring to my mind the days of slavery and blood-hounds on the trail of runaway slaves. I cannot find language sufficiently strong to express my contempt for all such laws as these. Damn such laws and damn the working-man who votes for any candidate as a Member of the Legislative Assembly in these provinces, who will not openly pledge himself to work for the repeal of these barbaric laws. I must go

further and say that if I had a voice in the Councils of the Labour Unions I would vote to call a general strike of all labour in these provinces, until the Legislative Assemblies had repealed these laws, which make it a crime to be poor and work for an honest living.

11. Duties of Employer to Employed

All employers of labour must receive into their employment any person or persons, whom they have engaged and permit them to earn their wages, unless they have grounds for refusing so to do, which would justify their immediate dismissal if they had been received. They must retain and employ them during the stipulated time, or until the contract is legally dissolved by notice or otherwise. They must protect and indemnify the employed from all civil liability in damages to other persons, incurred by doing any act apparently lawful, or not lawful, to the knowledge of the employed, when done in obedience to an order of the employed, or within the scope of the employment. But the employer is not so bound, if the employed knowingly commits a criminal act, even in obedience to his employer's order.

The employer must exercise due care in providing suitable buildings, implements, tools, machinery and appliances for the carrying on the work for which the employed has been engaged. He is bound to explain to the youthful and inexperienced the nature of the work or machines on which they are to be employed; disclose the dangers of the employment, and point out any dangers of employment not obvious, but known to the employer; and otherwise instruct the employed how to keep clear of danger. He must employ a suitable number of other workmen, and after he has been notified that any of his workmen are incompetent he must discharge such incompetent workmen and thus prevent accidents to the other workmen. He is also bound to repair all machines and appliances, when notified that they are defective.

The employer's duty extends to, and he is liable for, breaches of the above duties by those to whom he has delegated their performance. This is called the doctrine of vice-principal. Whether or not a workman is a vice-principal depends upon the character of the act in the performance of which the injury arises, without regard to the rank of the employed performing it. For a breach

of any of the above specified duties the employer is liable in damages to the employed, and he cannot contract beforehand with the employed for release from liability for the neglect of any of the above duties.

12. Dangers of Employment

After the employer has performed his duty as stated in the previous section, the employed, as a general rule, assumes all ordinary risks arising from his employment, or from the acts of omissions of his fellow-servants that he knew, or by the exercise of prudence might have known, were naturally and probably incident thereto. Fellow-servants are those engaged in the same common work performing duties for the same general purpose and for the same employer. If the employed learns of defects in the machinery or appliances, or of the incompetency of his fellow-servants, and makes no complaint, he also assumes the risks incident to such defects and incompetencies. If he notifies the employer of the defects or incompetencies, and is given to understand that the matter will be remedied, he may wait a reasonable time for this to be done and not lose his right of action to recover damages for any injury which he may sustain by reason of such defects or incompetencies. The employer is at all times liable for any accident occurring through his own personal negligence, which may cause injury to the employed, but he is not liable at any time for accidents which happen to the employed through no fault of the employer or of his vice-principals.

13. Ontario Workmen's Compensation Board

What I have just said in the two previous sections as to the rights and liabilities of the employer and employed is based on the general law of Canada and the United States; however, it has no application in Ontario. The right of the employed to recover damages for personal injuries are dealt with, in Ontario, by the Workmen's Compensation Board, Normal School Building, Toronto. As the proceedings of the Board are conducted without the intervention of lawyers, there is no object in taking space for further explanations, but if the reader will write to the Board he may obtain a copy of the Ontario Workmen's Compensation Act and copies of any rulings which the Board has made under that Act.

14. Medical Attendance

As a general rule the employer is not bound to provide medical attendance for those whom he employs, in case they become ill or meet with an accident.

In British Columbia, if thirty or more workmen engaged in any work request their employer in writing to deduct from their wages a sum to provide for medical attendance, the employer must give immediate effect to such request, the amount to be retained by the employer being fixed by the employed and the physician. Each workman may enter in a book the name of the physician he desires to attend him. If the employer refuses to carry out these provisions he is liable to a penalty of $50.

15. Length of Working Days

The question as to what length of time constitutes a working day is generally fixed by the contract of employment and based upon the custom of the particular trade or business in which he employed is engaged. In case of domestic servants and farm labourers there is no set time for a day's work; they must work when reasonably requested so to do by their employer. As to what is a reasonable request must be governed by the season of the year, the nature of the work to be done, and what other employers expect of their servants and hired men who are engaged in the same kind of service.

16. Wife Agent of Husband

While it is customary for the mistress of the house to engage maidservants and to pay them their wages, it does not necessarily follow that she is personally responsible for such payments. Where a wife is living with her husband, the presumption is that she acts as her husband's agent, and this may be so in rare cases, when she is living apart from her husband. If, at the time of the engagement of a servant, the wife intimates that she has separate property and is binding herself personally and not her husband, then she is naturally liable for the payment of the wages, and she can be sued in the event of the non-payment, or on breach of the contract of employment. She is also liable if she has a sufficient separate income, out of which she pays the household expenses, or if her husband makes her a sufficient allowance for

the payment of her personal and household expenses including servants' wages. But she is not liable out of her own separate estate unless her income or allowance is sufficient to maintain the household according to her station in life or the state in which her husband chooses to live. Where her husband makes his wife a moderate allowance of housekeeping money, sufficient to live quietly, but gives frequent dinner parties or incurs other extravagant expenditure in the household which renders her housekeeping allowance insufficient, she is not liable for servants' wages upon the facts being proved. In these circumstances, and indeed in the generality of cases, the husband alone is responsible, and he is the party to be sued. Where the husband makes his wife no allowance, and she does not pay for the upkeep of the household out of her own separate estate, but is obliged to apply to him whenever servants' wages become due, then the husband is always responsible for those wages, even though the servant has been engaged by the wife without the husband's knowledge, for she is nevertheless her husband's agent contracting on his behalf. In every case where husband and wife are living together the law presumes the husband to be liable unless the contrary can be shown.

17. Who Are Domestics?

Besides the ordinary domestics, such as housemaids and cooks, it has been held that a head gardener living in a separate cottage on his employer's premises—a man receiving a salary of $500 a year—is a domestic servant, and therefore liable to be discharged on a month's notice to leave. A huntsman who performs certain household duties for his employer comes under the same category. Taken broadly, any servant who lives on the premises, and is engaged in the duties of the household, is a domestic servant and subject to the law applicable to such.

18. Engagements of Domestics

Writing is scarcely necessary in engaging domestic servants proper, because most mistresses and servants know something of the customs which have become law. Unless special stipulations are made the following conditions usually prevail;—

(1) Either party may, during or at end of the first two weeks, give notice to terminate the engagement at the expiration

of one calendar month from the commencement of the service. However this is not a notorious custom of which the Courts will take judicial notice; it must be proved in each case as a question of fact. (*Moult* v. *Halliday*, 67 L.J.Q.B. 451; [1898] 1 Q.B. 125.)

(2) Either party may, at any time during the employment, terminate the service by giving one calendar month's notice. This is a well established custom.

19. Governesses and Tutors

A governess is not a domestic servant, nor is a tutor, even though they reside in their employer's house, and are not, therefore subject to the law relating to domestics. They are not liable to dismissal at a month's notice, as are domestics, nor is the first month's service considered a trial one, terminable by either party intimating to the other his or her intention of leaving, or to quit, after the expiration of the first month.

20. Engagement of Governesses and Tutors

It is surprising how few of these engagements are put into writing. A verbal agreement is always unsatisfactory; it may be contradicted, misunderstood, or forgotten, therefore it is very desirable for both parties that engagements with governesses and tutors should be noted in writing. Undoubtedly the best way is for each party, after verbally agreeing to the conditions, to confirm them by letter, so that both parties may hold the other's signed acknowledgment of the terms. When this is done it avoids the possibility of future misunderstanding or dispute, for both parties know exactly what their rights and responsibilities are, and will never have that uncomfortable feeling of uncertainty which sometimes exist under verbal arrangements.

If no period of employment, or notice to terminate, is agreed upon when a governess or a tutor is engaged, then her or his engagement will be presumed to be yearly and a reasonable notice to quit or leave must be given on either side. Three month's notice has been held to be reasonable notice, but less may be sufficient or more required in exceptional cases. The quarter's notice will terminate the engagement at any time, not necessarily the end of a current year, and likewise the payment or

forfeiture of three months' salary, in lieu of notice, will terminate the engagement.

21. Servants Are Not Tenants

A chauffeur, groom or coachman, occupying rooms over a garage, coach-house or stable, or a lodge-keeper or a hired man on a farm living in a separate house upon his employer's premises, does not thereby become a tenant, and he is not entitled to any notice to quit and deliver up possession, after his contract of service has expired or been otherwise legally ended, by notice or discharge for cause, etc. However there are times when such a servant may be also a tenant of his employer, and the question whether such a person is a tenant or not is sometimes difficult to decide, but if no lease is given, or rent paid by the servant (even though the benefit of the occupation of such premises be taken into account in fixing the wages), and if the occupation be for the more convenient rendering of the required services, then the employed is not, generally speaking, a tenant; and his possession is that of his employer.

22. Enticing from Employment

Where any person knowingly entices, hires, or persuades another to leave his or her employment, without proper notice, during the term of the contract, the employer has a right of action to sue to recover damages against such person so enticing, for all the inconveniences and loss suffered. But a mere attempt to entice a workman away is not actionable, unless some damage is actually sustained by the employer, as, for instance, the employer being compelled to raise his workman's wages in order to induce him to stay. It is not actionable to induce a workman to leave his employer at the end of the term contracted for, although the workman had no intention at the time of leaving him.

In Manitoba, a person who entices another to abandon his or her employment is liable to a fine of $20 and costs; in Quebec the penalty is $30 and costs and in Prince Edward Island the penalty is £5, the Act having been passed when English money was in use in the Island.

23. Employer's Action for Injury to Servant

As an employer is bound to pay wages to his servants or workmen during temporary illness, it follows that if an outsider does some injury to his servants or workmen, which deprives him for a time of their services, he has a right of action against such outsider to recover damages sustained by the loss of such services. The employer's right of action is independent of any right of action which the servant or workman may have against the person causing the injury to him or her.

24. Employer's Liability on Servant's Contracts

Employers are liable on contracts made by his servants and workmen in the course of their employment about the employer's business; but such contracts in order to be binding on the employer must be within the scope of the authority of such servants or workmen, either expressly conferred or implied from the conduct of the employer. The employer is liable to pay for goods ordered by a servant or workman who is habitually sent to order such goods. This is so even when such goods are ordered without any express authority, and where the servant or workman receives and converts such goods to his own use; the reason being that the tradesman or merchant recognizes the servant or workman merely as an agent of the employer. An employer is not, however, liable for goods ordered by a person who never performed such errands for him, simply because his servant or workman pretended to have authority. In a case where a coachman was paid a weekly sum for forage and shoeing of the horses, and the coachman obtained credit for the forage and wrongly retained the weekly allowance, the employer was held not liable to pay the blacksmith's account, because the coachman had no ostensible authority to pledge his employer's credit. If a servant or workman assumes to act for his employer in which he has no authority, the employer may ratify his acts, and then they will be as binding as if he had previously been given authority.

25. Employer's Liability for Servant's Wrongs

The employer is liable to third parties for any damage done them by the negligence, fraud, deceit, or even wilful misconduct of his servant or workman, when it is done within the scope of

his employment; and it makes no difference that the employer did not authorize or even know of such act or neglect. If a servant or workman, acting under his or her employer's direction or authority, is unfortunate enough, whilst pursuing his or her ordinary duties, to cause some accident or incur some liability, the employer must pay the damages so caused.

In the case of *Tuel* v. *Weston*, 47 Vt. 634, a farmer put a bag containing barley into his wagon under his shed. Two or three days later his hired man took the bag from the wagon, supposing it to contain oats, and carried it to a place where he was drawing logs for the farmer, intending to feed it to his horses. Finding his mistake, he used some of the barley, and then put an iron bolt, which he had been using as a clevis-pin, into the bag, carried the same home and put it back where he had found it without informing the farmer of what he had done. Soon after the farmer, not knowing that the bolt was in the bag, filled it with ears of corn and carried it to the plaintiff's mill to be ground. In the grinding the bolt injured the corn-cracker and the miller sued for damages. The Court held that the farmer was liable for the damage done.

The employer is liable in damages, even when the commission of the act causing the damage is done in wilful violation of his orders, so long as the act was within the course of the employment of his servant or workman. But he is not responsible for any act or omission of his servant or workman, which is not connected with the business for which he was engaged, and does not happen in the course of his employment. If a servant or workman commits an assault upon a third party, without being directed or authorized so to do by the employer, the servant or workman is alone answerable for the consequences.

26. Liability to Employer for Negligence

Where an employer has been compelled to pay damages to a third person in consequence of the negligence or misconduct of his servant or workman, such servant or workman must reimburse the employer. The measure of recovery is the judgment which the employer has had to pay, with costs and such reasonable counsel fees as he has paid or become liable to pay.

Servants and workmen are liable to their employers for gross negligence in the eare of his property, but not for ordinary aecidents. Domestie servants are not liable to pay for plates, eases, or other goods aeeidently broken or injured during their employment, nor for aeeidental injuries to their liveries. If payment for sueh things are dedueted from their wages, they ean reeover the amount so dedueted by suing their employer. Neither ean other workmen be compelled to pay for the aeeidental breakage of tools, or other goods intrusted to their eare. But if a servant or workman wilfully break or injure his or her employer's property, the value or damage ean be dedueted from the wages. Servants and workmen eannot be made to pay for things stolen from them unless through their own fault.

27. Liability of Employed to Third Parties

The employed is always personally responsible for any erime he may eommit; he eannot take refuge behind his employer and say that he did the aet under express orders from his employer, or in the interests of his employer, beeause the law does not permit any one to eommit erime.

The employed is also liable in damages to all persons who may suffer through the joint fraud of himself and his employer, because eontraets of serviee do not require the employed to be a party to any fraudulent transaetion. And if the employed, even in the eourse of his employment, does an injury to some third party he is personally liable for the injury, as well as the employer.

When the employed is making a eontraet on behalf of his employer, he may make himself personally liable on the eontraet if he does not say that he is eontracting on behalf of his employer, and if the eontraet be in writing it should state on the faee of the eontraet that the employe is eontracting for his employer, and he should sign his employer's name to the eontraet like this:—

JOHN T. BYERS,
per Henry M. Wager,
Agent.

28. Termination of Service

A contract for service is dissolved by the expiration of the term for which the labour was engaged, and as such contracts are personal they are dissolved by the death of either party. It may be terminated before the expiration of the contract, by mutual agreement, whether so provided in the contract or not, and if the mutual agreement to terminate is anticipated in the contract, it is competent for either party to agree that the other may terminate the contract abruptly, while he agrees to do so only on notice.

The employer may terminate the contract by discharging the employed, and it may be terminated by the employed by quitting the service.

In case of the death of the employed, the employer must pay the personal representatives of the employed what his services were reasonably worth.

29. Notice to Quit or Leave

Unless the contract of service otherwise provides, all notices to quit or to leave may be given by word of mouth, but witnesses or writing is advisable when any dispute is anticipated. The mistress of a house and the foreman in a factory, etc., are considered the agents of the employer, and as such may give legal notice to quit to a servant or workman, and notice by a domestic to the mistress, or a workman to the foreman is sufficient and need not be communicated to the employer direct.

Where the contract of service has been fully completed, or the time of its duration has expired, then the employer may discharge the employed without giving any notice, and the employed may likewise quit without giving any notice. But where the contract is not made for any definite time, then the employer or the employed must give the other a reasonable notice to quit or leave, if either party wishes to terminate the contract. What is reasonable notice is governed by the contract of hiring; if the hiring is by the week, then a week's notice is sufficient; if the hiring is by the month, then a month's notice is required; but if the hiring is by the year, then three months' notice must be given. In some exceptional cases a person employed by the year is entitled to six months' notice, for instance, the editor of

a newspaper or magazine, and it is very doubtful if the compiler of an annual publication could be discharged at any time during the course of its compilation, because the compiler would not only lose his wages, but would also lose the reputation he would gain by being the compiler of the publication. On the other hand he would not be justified in quitting the compiling of the work by giving notice, because the publisher is entitled to have the work finished by the compiler so he may use his name as a selling asset.

30. Giving of Characters

No employer is bound to give a character to any servant or workman, but if he choose so to do, it must be a true and fair one. An unfair and libellous character given maliciously would entitle the servant or workman to damages, notwithstanding that the communication was made on a privileged occasion.

In Prince Edward Island, any employer who refuses to give a discharge to a servant, justly demanding the same, may be fined £5. This is so, because the servant cannot obtain other employment on the Island without producing a discharge from his or her last employer. Any person employing a servant not having such discharge is liable to a similar penalty of £5.

31. Discharging for Cause

The right to discharge for cause is based upon the assumed breach of the contract by the employed himself. It implies the right of the employer to dismiss the employed immediately, without waiting for the expiration of the stipulated term of service, and without giving the ordinary notice to leave. In order to justify such dismissal there must be on the part of the employed:—

(1) An unreasonable disobedience of a lawful order; or,

(2) Moral misconduct, pecuniary or otherwise; or,

(3) Habitual or gross neglect of duty; or,

(4) Permanent illness preventing further discharge of service; or,

(5) Gross incompetence in case of skilled labour.

32. Unreasonable Disobedience

As to disobedience, no person can be discharged for refusing to obey an illegal or totally unreasonable order, nor for refusing to do work quite outside his or her duty as contemplated by the engagement. The disobedience which would authorize a dismissal by the employer, as laid down in some old cases, was seemingly any disobedience, whether unreasonable or not. In one case a farmer ordered his hired man to go with horses a mile off just as dinner was ready, and he refused to go until he had his dinner; and in another case a housemaid persisted in going to see her sick mother, though forbidden to go by her employer. The disobedience in both cases was held as justifying a dismissal. However, I am safe in saying that no Court would go this far at the present day. In all cases where the disobedience is slight and a first offence, there is a strong tendency to excuse the employed. In *Shaver* v. *Ingham*, 58 Mich. 649, the absence of a servant for a single day, which caused the employer no serious consequences, was held not to justify a dismissal. Hence the word disobedience should be qualified to the expression, unreasonable disobedience. Still a wilful disobedience of a lawful order, as well as insulting language used by the employed, is sufficient ground for his dismissal.

33. Moral Misconduct of Employed

As to moral misconduct, a maidservant discovered to be with child, or a manservant becoming the father of a bastard, may be immediately dismissed from the house. Drunkenness and unchastity are also grounds for instant dismissal. If a person robs his or her employer, or engages in the same business during the term of the service, or accepts secret commissions to the detriment of the employer, or in fact does any act which indicates fraudulent behaviour towards the employer, he or she may be immediately dismissed without notice or wages in lieu of notice. There is, however, no general rule of law which defines the degree of misconduct which justifies dismissal without notice. When a person is once engaged, and it is afterwards discovered that he or she robbed a former employer, or was guilty of dishonesty, such person may not be summarily dismissed for that cause, unless he or she induced the employer to engage him or her by concealing or fraudulently misrepresenting the former misconduct.

34. Habitual or Gross Neglect of Duty

Mere neglect of duty would not seem to be a ground for dismissal without notice or wages in lieu of notice. The neglect must be either habitual or of a gross character, and each case will depend entirely on its own merits. This ground should therefore only be relied on in bad cases, and, if there is any doubt, it is always better for the employer to pay the wages to date and wages in advance for the length of time notice should be given.

35. Permanent Illness of Employed

If smitten with some disease, feebleness, or malady which permanently disables a person from performing the particular work for which he or she was engaged, the employer may discharge him or her without notice by payment of wages to date, unless the illness was caused by and in the course of the employment. As this is an inhuman step to take, it should only be exercised on strong ground, as the sympathy of any Court would undoubtedly be with a person so discharged. Wages cannot be suspended during the temporary illness of the employed. When injuries or illness arise from the ordinary employment of a person the employer is liable under the Workmen's Compensation Act. See Sect. 13.

36. Gross Incompetence

Incompetence should not as a general rule be relied upon as a reason for summary dismissal. Where it is possible so to do the employer should satisfy himself or herself that the person who is being engaged is reasonably competent to perform the required service. But where skilled labour is contracted for, gross incompetence forms a good ground for dismissal without notice. By skilled labour I do not mean only such labour as requires skill which is practically professional. I mean any labour which requires any special skill. If, for instance, a cook or chef prove to be incapable of cooking, there is no doubt that instant dismissal would be justifiable.

37. Condoned Offences

It should be pointed out that a person cannot be summarily discharged for an offence which the employer has already waived

or pardoned. If such offence is brought to the employer's notice and is waived and the employed is still retained, it may not be made a pretext for summary dismissal at some future time; there must be a new cause sufficient in itself to dispense with the payment of wages in lieu of notice. That cause may be, however, a repetition of the pardoned offence, unless it was pardoned in such a manner as to practically invite or permit its repetition.

38. Ejectment After Discharge

Where a person has been discharged he becomes a trespasser, if he persist in remaining, and the employer may use such force to eject him as may be necessary, but no unnecessary force should be employed. When a person, through his or her own resistance, receives some unavoidable injury during the ejectment, the ejector will not be held liable in any way.

39. Quitting Service for Cause

There are many instances in which a person is justified in quitting service before the expiration of the term agreed upon, without giving any notice, but it is impossible to enumerate them all. In every case it is a question for the jury to decide whether there was reasonable excuse for quitting the service, and the burden of proof is upon the employed to establish that he had such reasonable excuse. Where a good cause exists for quitting, the employed may do so, and may compel the employer to pay wages for the time he has actually worked. Among the many instances in which a person is justified in quitting service are the following:—

(1) Non-payment of wages.

(2) Serious illness of employed.

(3) Moral misconduct of employer.

(4) Ill-treatment of employed.

(5) Employer requiring service not contemplated in the contract.

(6) Being compelled to work on Sunday.

(7) Being exposed to danger from negligent fellow-servants, or dangerous machinery.

40. Non-Payment of Wages

The main reason why any person enters into a contract of service is to receive wages; if they are not paid according to the terms of the contract, the employed is justified in quitting the service without giving any notice of his intentions so to do. However, he should first make a demand for payment before quitting.

If the employer fails to pay wages according to the contract, the employed may procure his discharge and recover his wages, by laying a complaint before a Justice of the Peace. In order to give the Justice the right to try the case the complaint must be laid, in Ontario and most of the other provinces, within one month after the engagement has ceased, or after the last instalment of wages became due, which ever event happened last. In Manitoba, Saskatchewan, Alberta, and the North-West Territories, the employed has three months in which to lay the complaint.

When a complaint for non-payment of wages is properly laid, the justice will summons the employer to appear before him and will inquire into the complaint, and if he considers that the charge has been proved, he will discharge the employed from the service of such employer, and will order him to pay any wages found due, but not exceeding two months' wages in Alberta and the North-West Territories, $100 in Manitoba and Saskatchewan, $80 in the provisional judicial districts in Ontario, and $40 in counties of Ontario.

In most of the provinces the Justice is allowed to deal with a set-off or counterclaim set up by the employer to the extent of the wages found due, but in Saskatchewan, when the employer sets up a counterclaim or a set-off the proceedings must be taken out of the hands of the Justice and sent to the Supreme Court for trial.

In Alberta, Saskatchewan and the North-West Territories, in case the Justice finds that the employed has been improperly dismissed, he may direct the employer to pay such additional wages as to him seems reasonable, but not to exceed four weeks' wages at the rate he was being paid when improperly dismissed.

In case of discharge for cause, the wages to be paid are not necessarily in proportion to the time the employed has served.

Wages that are due must be paid, but wages that have been earned but not yet due need not necessarily be paid.

The above remedy before a Justice in no wise affects any other remedy for the recovery of wages which the employed may have against his employer. If the employd has a lien on any property of the employer he may choose to hold the property until his claim is paid, or he may choose to sue the employer in some other Court for his wages, and in some cases it would be better so to do.

41. Serious Illness of Employed

A contract for labour is no exception to the rule of law, that all contracts are discharged where the act of God renders the performance absolutely impossible, therefore, actual inability to perform the work, arising from illness at the commencement of the time, although it may not continue during the whole term contracted for, will excuse the performance of the labour. And if after a person has entered upon his employment he is smitten with some disease, feebleness, or injury which renders him incapable of performing the service, he is justified in quitting the employment, and he is entitled to payment of wages up to the time he so quit. Thus in Maine, where a party agreed to work on a farm for seven months, at $13 per month, and in making the contract it was estimated that his services would extend through haymaking time, but the workman became ill before that time, the Court held that a contract for the performance of manual labour for a stipulated time, requiring strength and health, must be understood to be subject to the implied condition that health and strength continue. The workman was given judgment for his wages up to the time he became ill.

42. Moral Misconduct of Employer

Not every moral misconduct on the part of the employer will justify a person in quitting his service; the moral misconduct must be in some way prejudicial to the morals, or reputation of the employed. A domestic servant would be justified in quitting her service the very minute she discovered that her mistress was the keeper of a house of ill-fame, and she could collect wages for the time she had worked. Any person would be justified in quitting his or her service as soon as he or she discovered that

any crime was being committed on the premises where the service was rendered, such as the making of counterfeit money, selling liquor without a license, using the premises to receive stolen goods or goods smuggled into the country, or permitting gambling on the premises, etc. The habitual use of blasphemous language by the employer, or by any one else on the premises after the attention of the employer has been called to the fact, will exonerate a person in leaving his employ.

43. Ill-treatment of Employed

It is an implied condition in the hiring of every menial servant that he or she will be properly fed, and if clothes are to be provided, properly clothed. To insufficiently feed or clothe such a servant would be sufficient ground for him or her to leave the house and demand wages at least to date. The failure to provide suitable and comfortable lodgings, bedding and other necessaries, would likewise be a sufficient reason to quit, and so would any act or neglect of the employer prejudicial to the reasonable comfort, safety, or health of the employed justify him or her in quitting the service. But harsh language used to the employed, or the fact that he had a difficulty with another servant or workman, would not justify him in leaving before his time had expired. No employer has any right to inflict corporal punishment upon a servant, and such an act would be sufficient grounds for leaving at once, and also for laying a charge of assault against the employer.

In Saskatchewan, Alberta and the North-West Territories, any employer who ill uses any employee, servant or labourer, may be summoned before a Justice of the Peace, who upon due proof of the cause of complaint may discharge the employed from his service and direct payment of any wages found due, not exceeding $100 in Saskatchewan, or two months' wages in Alberta and the North-West Territories, together with costs of prosecution. In Prince Edward Island two Justices may convict an employer for ill-treating his servant, and punish him by fine.

44. Requiring Service not Contemplated

No employer has any right to require any person to do work which he or she did not contract to perform. While the employed

must obey all lawful commands of his or her employer, and perform all such services as are usually required of one in his or her class of employment, or such as he or she has specially agreed to perform, still he or she cannot be required to go beyond this, or to serve in a capacity not originally contemplated in the contract of hiring.

45. Sunday and Holiday Labour

No employer has any right to require labour to be performed on Sunday, nor on legal holidays, unless the nature of the service is one of necessity and contemplated by the parties when the contract of service was entered into. Some kinds of labour require something to be done every day, particularly so in the case of persons employed in hotels, restaurants, private residences and on the farm. The hired man on the farm is required to care for live stock, do milking, etc., on Sundays and holidays, unless there is a special agreement otherwise. Contracts which require labour on Sundays, other than work of necessity, are illegal and cannot be enforced, and unless there is an agreement to the contrary, persons working by the week, month, or year, are entitled to take the legal holidays off. They cannot be discharged for not working on holidays, and they are entitled to be paid their full wages for the week, month, or year.

46. Being Exposed to Danger

Every person is justified in refusing to work where his life or limb is in danger. Where a person is employed with other men, some of whom are careless to such an extent as to endanger his fellow-workmen, then a complaint should be made to the foreman, and if such careless workman is not discharged, then the other men are justified in quitting.

Again, no person is compelled to work at a dangerous machine which is out of order. When a workman finds that his machine is out of order, or in any way fails to do the work for which it was made, or fails to do so in a proper manner, he should immediately notify the foreman, and if he refuses to put the machine in a proper condition then the operator is justified in leaving his work.

47. Discharging Without Cause

If a workman has conducted himself with propriety and lived up to all the conditions of his contract of service, nevertheless, the employer may discharge him without any notice whatever, by paying wages to date and in advance for the length of time he should have given notice, and the employer is not required to give any reason for taking such action. When a domestic servant is so dismissed he or she is not entitled to board wages, or any other compensation than his or her ordinary wages to date and one calendar month's in advance. Domestics discharged during the first month of their employment are only entitled to wages to the end of that month, but in such cases it is usual to give warning during the first fortnight. Domestics so discharged may be required to leave their employer's residence within a reasonable time, say three or four hours.

48. Wrongful Discharge of Employed

Where any employer discharges an employee, servant or workman, without giving him the required notice and without paying wages in lieu of notice, such discharge is wrongful, and the employer is liable to the employed for breach of contract. In such case the employed is entitled to wages for the balance of the term of the contract, providing that he is in the meantime unable to obtain like employment elsewhere. But it is the duty of the employed to honestly seek like employment elsewhere, and if he is successful, whatever he so earns must be deducted from what he would have earned had his employer kept him on to the end of the term; therefore, the employed is entitled to only whatever he has actually lost by being wrongfully discharged.

In Alberta, Saskatchewan and the North-West Territories, a Justice of the Peace may order an employer to pay wages up to date and an additional four weeks' wages as penalty for improperly discharging an employee, servant or labourer.

49. Quitting Service Without Cause

In the event of a workman quitting his employment without giving proper notice, and without any reasonable excuse, but for his own convenience, caprice, or profit, he is liable to his employer for any damage which he may have sustained by reason

of his breach of contract. These damages are as a general rule practically nil, but they might conceivably be very substantial damages. It is not necessary for the employer to prove actual pecuniary loss; compensation could be awarded him for the inconvenience and loss of time to which he had been put. It is no defence that the workman thought that his term was ended; and the employer is not obliged to take the workman back if he has given notice that he does not intend to return, even though he returns to work at the usual time the next morning. As a rule employers do not care to sue their ex-workmen, and indeed there is little object in so doing, since in the large majority of cases they would be unable to pay if judgment were given against them.

When a workman leaves without notice or proper cause, the employer cannot be called upon to pay any wages at all—not even those already earned and due, since he is not justified in in leaving before rendering the entire service which he contracted to perform. If the employer has made partial payment to a workman, who has left his employ without legal excuse before his term expired, he cannot recover back the money, even though it was not due at the time of payment. And where he has given a promissory note for the amount already earned, although the workman has failed to complete his full term, he will be obliged to pay the note. (*See section* 10 *as to penal consequences of abandoning service without lawful excuse.*)

50. Holding Servant's Trunk

I believe that it is by no means an uncommon practice, when a servant has left without giving proper notice, for the employer to hold his or her trunk until paid a month's wages in lieu of notice, which should have been given. In such cases possession of the trunk is nine points of the law *against* the employer; for the servant can recover not only the trunk and its contents, but also damages for its wrongful detention.

51. Insolvent Employer—Priority of Wages

When an employer makes an assignment for the benefit of creditors, or a company is ordered to be wound up, the wages or salary of the employed, not exceeding three months' wages or

salary, ranks upon the assets in priority to the claims of ordinary or general creditors. For the balance of any wages or salary owing, the employed may rank as ordinary or general creditors. It matters not how the wages were earned, whether by the day, week, or month, by the job or piece or otherwise; in all cases the employed is entitled to his priority.

In Saskatchewan, Alberta and the North-West Territories, labourers have priority over all other claims and liens on growing crops to the extent of $75.

52. Accident Insurance

It would be prudent for any employer, particularly those of small means, to insure their employees against accidents and illness, with a reliable accident insurance company. Policies are issued to cover every possible liability of the employer to his employees. While it is true that accidents seldom happen to careful workmen, still it would be far from pleasant to know that if an accident did happen to an employee in the course of his employment, the employer would be liable to pay a large sum as damages.

I would also advise all workmen to carry a policy of accident insurance, because even if they are given damages for any injury sustained, the amount of such damages is never sufficient to place the workman in the same position as he was before the accident happened. The premiums may at times be a bit burdensome, but when the eventful day comes and you are lying helpless on your back, the weekly cheque from a reliable accident insurance company will be your most welcome visitor.

53. Contract Engaging Governess

This Agreement Witnesseth that *Mr. Ivan Gotrocks*, of *Toronto*, has engaged *Miss Dolly Dimples*, of *Montreal*, as Governess to his daughter *Clara*, for the term of *one year* from *to-day*, at a salary of *Three Hundred Dollars* per annum, payable in monthly instalments of *Twenty-five Dollars*, due on the *last* day of each month she may be so engaged, the first instalment to be due on the *last* day of *July next*, 1919;

Miss Dimples is to be allowed *three weeks'* holidays during the year, besides every other Sunday and half of the legal holidays;

This engagement is to terminate on *three months'* notice by either party, which may be given at any time.

Dated this *first* day of *July*, A.D. 1919.

Witness:

Anna Hunter.

Ivan Gotrocks, per his wife.
Mary E. Gotrocks.
Dolly Dimples.

54. Contract Engaging Farm Hand

This Agreement Witnesseth that *Hiram Grower*, of the township of *Whitehurch*, has engaged *Henry O. Burleigh*, of the same place, as a general farm hand for the term of one year from the *first* day of *Mareh* next, 1919, at *Three Hundred Dollars* per annum, payable in *monthly* instalments of *Twenty-five Dollars*, due on the *last* day of each month he may be so engaged, the first instalment to be due on the *last* day of *March* next, 1919;

It is understood and agreed that *Burleigh* is not to work on Sundays and legal holidays other than to do the ordinary barn chores and in connection with the care of live stock, and is to have good and sufficient board and lodgings supplied him and all reasonable laundry work done for him, free of charge, during the time he continues in the employment of *Grower;*

This engagement is to be terminated on *three months'* notice by either party, which may be given at any time.

Dated this *twenty-fourth* day of *February*, A.D. 1919.

Witness:

John T. Dudley.

Hiram Grower.
Henry O. Burleigh.