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the claim be timely? The general rule is well settled that in the absence of an express statute²² the claim for exemption must be made within a reasonable time and a claim made at any time before sale under execution comes within the rule.²³

The courts of Washington have held that a judgment against a garnishee defendant is the same as a sale under execution. In the case of *United States Fidelity Co. v. Hollenshead*²⁴ the defendant made no claim for exemption until after trial on the garnishment proceedings and announcement of the judgment against the garnishee defendant. On the day prior to the formal entry of the judgments, the defendant made his claim for exemption. *Held* That it was not timely. This case then merely holds that the defendant is bound to set up his every claim or demand before trial to the end that the court shall not render an improvident judgment. In the course of its opinion the court says that a garnishment is a proceeding *in rem* and that the effect of the judgment in such proceeding is to put the parties in a like position as if the sheriff had made a sale of personal property and paid the proceeds into the registry of the court to be applied in satisfaction of the judgment. This case was cited and affirmed in the case of *Hanson v. Hodge*.²⁵

A claim for exemption is therefore timely in Washington if made at any time before judgment in garnishment proceedings or before sale under execution or attachment.

Maurice W Orth.

POWER OF CORPORATION TO DISCHARGE THOSE EMPLOYED UNDER CONTRACT FOR TERM OF YEARS—This note will be limited to an exposition of the law of the state of Washington with only a brief reference to that of foreign states.

Unfortunately for the prospective employee of a Washington corporation, the right to discharge him, even though employed under written contract for a term of years, is regulated by statute. The pertinent clause reads that the corporation shall have power "to appoint such *officers, agents, and servants* as the business of the corporation shall require, to define their powers, prescribe their duties, and to fix their compensation.

"To require of them such security as may be thought proper for the fulfillment of their duties and to *remove them at will* except that no trustee shall be removed from office unless by a vote of two-thirds of the stockholders as hereinafter provided."¹

Whatever the law might be, in the absence of this express declaration of the legislature, is not in issue, for the law-making branch of

²² Washington has no express statute on this point.

²³ *State ex rel. Hill v. Gardner* 32 Wash. 550, 73 Pac. 690 (1903) *United States Fidelity Co. v. Hollenshead*, 51 Wash. 326, 98 Pac. 749 (1909) *Messenger v. Murphy*, 33 Wash. 353, 74 Pac. 480 (1903).

²⁴ 51 Wash. 326, 98 Pac. 749 (1909).

²⁵ 92 Wash. 426, 159 Pac. 388 (1916).

¹ Rem. Comp. Stat., § 3809 [5], P. C. § 4515 [5].

our state government has spoken in no uncertain terms. Even the slight ambiguity felt to be present by the first court interpreting this section has not been resolved.

The scope and intent of the provision of our law relative to corporations, cited above, was first questioned in *Llewellyn v. Aberdeen Brewing Co.*² decided in 1911. The plaintiff here had been employed for a term of three years as attorney and assistant manager and had been discharged by the trustees before the expiration of the term. The court in its opinion intimated that the only employees who could be discharged at will were those of a fiduciary character.³ As to these, however, the law so provided for the benefit of the stockholders, for in the absence of such a salutary enactment, the trustees could perpetuate policies of their own and leave the stockholders powerless to redress this abuse of power. The plaintiff was bound to be aware of this restriction on the authority of the trustees and made his contract subject to it.

After a consideration of the language the court had used in this opinion there were still two questions undecided. If this law were passed in the interests of the stockholders, could it be waived by them? Also, were not ordinary agents and servants exempt from the operation of this statute? The opinion in *Hewson v. Peterman Mfg. Co.*,⁴ rendered in 1913, followed the earlier case without limiting or enlarging its scope.

The first point was decided adversely to the interest of the employee four years later by the Supreme Court.⁵ The contract here involved called for the employment of plaintiff as general manager for a period of five years. The contract was authorized by the board of trustees and the unanimous vote of the stockholders. The opinion in the case recites the fact that the corporate laws of the state of Washington place the exercise of the corporate powers in the hands of the board of trustees.⁶ The reasoning continues to the conclusion that the stockholders, not having the power to compel or authorize the employment of any person, cannot ratify the employment so as to take away the discretion which is vested in the trustees. Granting the proposition that the stockholders can authorize contracts of employment, then the lack of objection on their part to any contract for personal service made by the board of trustees, would imply an authorization and defeat

² 65 Wash. 319, 118 Pac. 30, Ann. Cas. 1913 B 667 (1911).

³ The court used the following language (p. 321) "The expression 'officers, agents and servants' contemplates employees of a fiduciary character who are to occupy positions of responsibility and trust as subdivision 5 provides that such security as may be thought proper may be required of them for the fulfillment of their duties."

Again on page 323, "Our statute not only includes officers, but also agents and servants, evidently referring to such representatives as will occupy positions of responsibility and trust."

⁴ 76 Wash. 600, 136 Pac. 1158, 51 L. R. A. (N. S.) 398, Ann. Cas. 1915 D, 346 (1913).

⁵ *Murray v. MacDougall & Southwick Co.*, 88 Wash. 358, 153 Pac. 317 (1915).

⁶ Rem. Comp. Stat., § 3812.

the express policy of the law which is the safe-guarding of their interests.

This power of the trustees being settled beyond question, the scope of the phrase "officers, agents and servants" was next submitted for review. Two cases,⁷ one involving the employment of an assistant horticulturist and the other of a railway switchman, gave to the word "servant" its generally accepted meaning so that this phrase under the present adjudications includes all employees of a corporation. Whether the legislature contemplated or realized the effect of such a broad inclusion, it is impossible to determine, but having spoken, it has placed those who contract with corporations for employment in this state upon a more unfavorable plane than such persons residing in any other jurisdiction.

In the absence of statute or by-law, officers and directors can be removed for cause only.⁸ Servants and lesser agents employed under contract for a definite term, cannot be removed at will and if discharged are entitled to damages. Many states have a statute, or the corporation itself a by-law, to the effect that directors and officers are removable at the pleasure of the board.⁹ This does not, however, give the board the right to remove others employed under contract for a definite term without redress.¹⁰ Even under such a statute or by-law officers when bound by definite contract can not be discharged at will in the majority of jurisdictions.¹¹

⁷ *Barager v. Arcadia Orchards Co.*, 91 Wash. 294, 157 Pac. 675 (1916). *Williams v. Great Northern R. Co.*, 108 Wash. 344, 184 Pac. 340 (1919). In the *Barager* case the court treated as *dictum* the statement in the *Llewellyn* case, as to officers, agents and servants, as including only employees of a fiduciary character. The court said in part, "Conceding for argument's sake, that respondent (an assistant horticulturist) was not an officer or agent of appellant, it seems to us that he was, in any event, a servant of appellant within the commonly accepted meaning of that term." 35 Cyc. 1430. If the word "servant" as here used means only some employee of a corporation inclusive of the terms "officers" or "agents" then the word "servants" must be considered of some force as here used, under well recognized rules of statutory construction.

⁸ FLETCHER'S CYCLOPEDIA OF CORPORATIONS, § 1814.

⁹ *Douglas v. Merchants Insurance Co.*, 118 N. Y. 484, 7 L. R. A. 822 (1890).

¹⁰ *Munn v. Wellsburg Banking & Trust Co.*, 66 W. Va. 204, 66 S. E. 230 (1909).

This case decided that a bookkeeper was not an officer or an agent and so did not come under the statute. The court went on to say, "It has been held in this and other states that while the power and authority to remove or discharge a servant of a corporation exists the corporation is nevertheless liable in damages for a breach of the contract with such servant."

¹¹ In *Cuppy v. Stollwerck Bros.*, 216 N. Y. 591, 111 N. E. 249, the opinion contained the following:

"While the by-law empowered the board of directors to remove a director or officer, it did not authorize them to terminate a contract with one whom they had employed for a definite term. The power to remove him from the office to which he had been elected did not carry with it the right to discharge him from the employment of the defendant in view of the special contract for a fixed term under which he was employed."

Also *Hand v. Clearfield Coal Co.*, 143 Pa. 408, 22 A. 709.

It would seem that a statute rendering nugatory a contract of employment between a corporation and a stranger for a fixed and definite term is harsh and not consonant with business practices. Law is unceasingly harmonizing itself with customs and rules extant in the marts of trade and adopting them as its own after they have been firmly established. Under present conditions, the person who offers his personal services to a corporation is penalized and placed at a disadvantage suffered by no other one dealing with a corporate body. All others who enter into a contract with a board of trustees receive a valid instrument even though it extends over a period of time.

The interests of the stockholders should weigh no more heavily in connection with the employee to his prejudice than with the countless others dealing with the corporation. The evils of allowing the trustees to contract for supplies, equipment and kindred commodities have never been so great that they have been placed under the attention of the legislators of this state. The privilege, allowed in other jurisdictions but denied in this, has not been disastrous to the well-being of foreign corporations. Neither has it been irksome to the stockholders nor the cause of diminishing profits.

W Harold Hutchinson.

THE EVIDENTIAL FORCE OF HABIT AND REPUTE AS OPPOSED TO THE SUBSTANTIVE LAW CONCERNING MARRIAGE—The Washington decisions have settled beyond a doubt that a valid marriage can not take place in this state in any manner other than that prescribed by statute. The statutes were originally enacted in 1854 and have come down to us with practically no alterations and with but few additions.¹ As early as 1892 it was decided that the statutory requirements were mandatory, that a ceremony was essential and that common law marriages, in this state, were invalid. Thus the substantive law has become fixed.²

The necessary consequence of the recognition by the common law of the validity of marriage by private consent, was that such a marriage could be proven by co-habitation and reputation, such co-habitation and reputation being required as the equivalent of a contract in present words between the parties and as effective to render them husband and wife.³ It was not the public acknowledgment of each other as husband and wife, nor the assumption of the marital rights and duties, nor the general reputation of the parties as husband and wife that constituted a marriage. The substantive common law required a present agreement between the parties to take each other as husband and wife. Yet, because of the private nature of the marriage, there was rarely an eye witness to prove such consent. To foster wholesome living, the law therefore adopted a rule of evidence allowing

¹ Rem. Comp. Stat., §§ 8437-8454, inc.

In re McLaughlin's Estate, 4 Wash. 570, 30 Pac. 651, 16 L. R. A. 699 (1892).

³ *Travers v. Reinhardt*, 205 U. S. 423, 51 L. Ed. 865, 27 Sup. Ct. Rep. 563; *Eaton v. Eaton*, 66 Nebr. 676, 92 N. W. 995, 1 Ann. Cas. 199 (1902).