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Article 8

Corporations: Fire and Police Commissioners; Removal; Appointment

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damages must be proved. If the appellants were unable to secure insurance from any other company they were not damaged by appellees' negligence or refusal, even if such were present. The only evidence on the point is Wolff's communication that "we know of absolutely no company who will take on this risk." This was uncontradicted, and the burden was on the appellants to discredit it if they could; otherwise there could be no damages and it was useless to send the case to the jury.

Judgment affirmed.

CLAYTON CROOKS.

Corporations; Fire and Police Commissioners; Removal—Appointments.

The mayor of Watertown sent written notice to three members of the fire and police commission dismissing each of them from office. No further procedure ensued. The mayor immediately filed notice with the secretary of the fire and police commission, appointing two new members to replace those removed, and called a meeting of his appointees, now commissioners, and with them fixed a date for the trial of the charges filed by the mayor against the discharged commissioners. An action was begun which resulted in the writ of prohibition now questioned. 230 N. W. 43, *State ex rel. Piertz* v. *Hartwig, et al.*

The prime consideration here relates to the question of whether or not a mayor has the power to dismiss an appointed officer wihtout cause and whether such dismissals created vacancies to be filled by new appointees.

The Wisconsin statutes to be considered here are: 62:13 which vests the mayor with the power to appoint five citizens as members of a fire and police commission, each member to be appointed by him, annually for the term of five years, and that such appointment be filed in writing with the secretary of the board of fire and police commission; 62.09 (3) (c) provides that appointments by the mayor of a city shall be subject to confirmation by the council unless otherwise provided by law, and section 17.12 (1) (c) of the statutes requires that officers appointed by the mayor without confirmation of the council may be removed by such officer for cause when he deems it for the best interests of the city.

62.13 restricts the term of office of such appointee and requires a written notice of such appointment to be filed with the secretary of the board while 62.09 requires the confirmation of the mayor's appointment by the council. These last two statutes dispense with 17.12 (1) (c) which applies in cases where the mayor's appointments are not subject to the confirmation of the council.

Consequently this is an office for a definite term subject to the confirmation of the council. At common law, under such conditions, an officer could not be removed unless for cause and after a hearing.

"Throop" on *Public Officers.*

Elliot on the subject of "Removal" says that where the term of an appointive officer has been conferred in terms which do not import an absolute discretion, the officer, by the weight of authority cannot be removed except upon charges and after he has been given an opportunity to be heard. To the same effect are Throop, Article 354, Mechem on Public officers, Article 454, Dillon, *Municipal Corporations,* 4th Edition, Article 473.

The courts throughout the country are in practical unanimity on the subject and are in accord with the doctrine as set forth by common law. 39 N. J. Law 14; 66 N. E. 429, 106 N. Y. 64; 142 Mass. 90; 55 N. W. 118; 82 Mich. 255; 8 B Mon. (47Ky.) 648; 99 Mo. 361;

Our own state of Wisconsin has time and again observed this common law doctrine in 159 Wis. 295; 157 Wis. 5505; 171 Wis. 193; 127 Wis. 468; and 154 Wis. 157, *Ekern* v. *McGovern.*

In 154 Wis. (supra) the plaintiff while a commissioner of insurance for a four year term was charged before the governor with violation of a statutory duty. Upon notice of less than one hour a hearing was had. It was here held that such notice was unreasonable and further that an officer entitled to hold an office for a fixed term subject to removal for cause only, is by common-law rules, unless the same shall have been abrogated by statute, entitled to protection against danger of unjust removal, being so entitled by due process of law, which excludes interference with personal or property rights except according to established principles of justice. And established principles of justice except where constitutionally provided by statute secure to every person the right, before being condemned as to his person or his property, to reasonable notice of a hearing in respect to the matter, reasonable notice of a hearing in respect to the matter, reasonable notice of the charges against him, and reasonable opportunity to be heard by himself, his witnesses and his counsel, to know the opposing evidence and oppose it with evidence according to the principles of fair judicial investigation, and to have the final determination grounded on evidence in some reasonable view supporting it. This same case cites that where there is no express repeal of the common law is to prevail, event in case where there is a permissible choice in the construction of a statute, the statute is to be viewed favorable to the continuation of the common law rule rather than as a repeal of it. Since there is nothing in the statutes of Wisconsin that can be con-

strued to the effect of a repeal of the common law, the common law rule of requiring the dismissal of an officer for cause to be served with notice of a hearing, is to prevail in this state. And since this rule was not observed in the dismissal of the three fire commissioners in the case under comment, such removal was unauthorized and left no vacancies which the mayor might fill with new appointes.

If every new mayor on coming into office would be permitted to dismiss officers without cause, efficiency and merit in many instances would be the least of qualifications for such offices. Rather, would political alliance and personal friendship play a greater role. Such a situation is always to be avoided and the courts of Wisconsin are particularly cognizant of the mischief such complete power in an official might result and invariably rule against it.

MISS ELISHEVA IUSHEWITZ.

Negligence: Religious Societies, Charities.

Plaintiff attends a luncheon given by a church society in the basement of the church. Leaving early, the plaintiff proceeds down a hallway that is so dimly lighted that she fails to see the outer steps, falls down them, and sustains injuries. She sues the church. The above facts appearing in the complaint. Defendant demure on the ground that: (1) Plaintiff was merely a licensee and cannot recover because complaint fails to allege that defendant was guilty of active negligence, or maintained a trap upon the premises; (2) Plaintiff was guilty of contributory negligence as a matter of law in proceeding down and improperly lighted hall; (3) The doctrine of *respondeat superior* does not apply to cases where the 'superior" is a charitable organization as in this case. The demurrer was sustained in the Circuit Court; overruled in the Supreme Court. 230 N. W. 708.

The Supreme Court disposed of the defendant's grounds for demurrer in the order mentioned above. They will be so discussed in the following paragraphs.

It is of course elementary that a licensor owes no duty to a licensee other than refraining from active negligence or setting a trap for him, 144 Wis., 614. This principle is so well settled that it requires no further citation of authority. Upon the face of it, then, defendant's contention seems well taken; but he (as well as the plaintiff) overlooked the so-called "Safe Statute," which provides in 101.01 (12) that every building as a place of assemblage is a public building. The church being used for such purposes, was therefore a public building within the meaning of the statute. Section .06 of the same chapter (101) provides that the owner of a public building must maintain it in such a way as to render it safe for the frequenters thereof. The