

9. Inferences from special incidents of the business in which the servant is employed—In one class of cases under this head the essential factor is that the parties presumably intended to refer the duration of the engagement, not to the divisions of the calendar, but to some event which would recur at irregular intervals as long as the employment lasted.

In *Green v. Wright* (a) a master mariner accepted the command of a ship under a written agreement running as follows: "I hereby accept the command of the ship City Camp, on the following terms: salary to be at and after the rate of 180*l.* sterling per annum. Should owners require captain to leave the ship abroad, his wages to cease on the day he is required to give up the command, and the owners have the option of paying or not paying his expenses traveling home. Wages to begin when captain joins the ship." While in England, he was dismissed without notice, and in an action for wrongful discharge, the lower court directed a verdict for the defendant on the ground that, as the contract was specific, and there was no evidence of a custom, as in the case of clerks and servants, the plaintiff was not entitled to any notice. In the Common Pleas Division the questions discussed were these: (1) What was the *prima facie* duration of an indefinite hiring of a shipmaster? (2) Was the engagement under general common law principles terminable by notice? (3) What were the plaintiff's rights as to notice under the actual provisions of the contract? In its decision of the first of these questions, (the others will be referred to below; see sec. 10) the court apparently intends to adopt the view of one of the counsel who had argued that the case of a master of a ship was an exceptional one, as it would be extremely inconvenient if the service were to determine in the middle of a voyage, and therefore it could not be intended to be a service for a year: Coleridge, C. J., said: "The relation of the master of a ship to his employer, the ship owner, is not one in which, in the case of an indefinite hiring, the law has made, and there was no evidence of any custom making the hiring for a year, or for any other definite time, nor the notice by which the service is to be determined certain." The following dictum of Pollock, C.B., in *Fairman v. Oakford* (b), was quoted as embodying a correct principle: "There is no inflexible rule that a general hiring is a hiring for a year. Each particular case must depend on its own circumstances. From much experience of juries I have come to the conclusion that usually the indefinite hiring of a clerk is not a hiring for a year, but rather one determinable by three months' notice."

In yet another class of cases the circumstance which tends to rebut the presumption of a yearly hiring is that the enterprise for which the servant is engaged is so essentially lacking in the elements of stability and permanence, that the

(a) (1876) 1 C.P.D. 591.

(b) (1860) 5 H. & N. 635; 29 L.J. Ex. 429.