"In some instances the nature of the contract is, in fact, so well understood that it is often put as matter of law. Still it is always a matter of fact." (*a*)

But the case in which this distinction is brought out in the clearest relief is *Baxter* v. *Nurse* (*b*), the great importance of which justifies an extended statement of its incidents and effect.

The plaintiff declared in a special contract to employ him as editor of a certain periodical, for a year, at a salary of £3 3s., to be raised progressively when the work should reach a certain circulation, and assigned as a breach his dismissal before the expiration of the year. At the trial the terms on which the plaintiff was engaged were not proved; but it was shown that, after the commencement of the publication, the defendant had paid him three guineas a week. The defendant abandoned the enterprise after the third number of the review had been issued, but the publication was continued by another person. The plaintiff called several witnesses to prove that, in the absence of any stipulation to the contrary, a general engagement as an editor of such a work is understood to be an engagement by the year; but, upon cross-examination, they admitted that they spoke with reference to established works, and not to new speculations. Tindal, C.J., left it to the jury to say whether there had been a contract for the period of a year, observing that the rule spoken of by the plaintiff's witnesses might be useful and proper in the generality of cases, but that it might not be so applicable in the case of a newly started work where it might be uncertain whether it would be continued for the period of a year. The verdict being for the defendant, a new trial was moved for, on the ground that the trial judge had refused the request of the plaintiff to charge the jury that an indefinite hiring was, as a general rule of law, a yearly hiring.

Creswell, J., said: "Then, that ground failing, the rule of law was referred to in the second instance, namely, that a general hiring,—or to use more correct terms, a hiring for an indefinite period,—is to be taken as a yearly hiring. But what is the evidence of the hiring in this case? There is nothing to show that it was an indefinite hiring. The progressive increase of salary would apply as well to the second as to the first year."

Tindal, J., said: "Upon the first ground on which the present motion was made, namely, that the jury ought to have been directed, as upon a general rule of law, that the hiring in this case must be taken to have been by the year, it appears to me that the principle on which contracts of this nature,

(*a*) *Williams* v. *Byrne* (1837), 7 A. & E. 177 (p. 182). The American rule is the same. In *Tatterson* v *Suffolk Mfg. Co.* (1870), 106 Mass. 56, the principle was recognized that the duration of a general hiring was "an inference of fact to be drawn only by the jury." In a New York case it has been held that a finding by a referee that the parties intended a yearly hiring by a continuance of the service after the expiration of the original term will, for the purpose of upholding the judgment, be regarded as a finding of fact, although it is form classified as a finding of law: *Adams* v. *Fitzpatrick* (1891), 125 N.Y. 124.

(*b*) (1844) 6 M. & G. 935.