hiring from year to year, and will not support a count in a declaration which is based on the theory that it is one determinable at any time on reasonable notice. (*a*)

Under the old rules of pleading it was held that, if the servant was dismissed without cause during the currency of the year embraced by the contract, he could not recover in the common counts, but must either wait till the end of the year, or declare specially (*b*).

See also the cases in III. *post*, as to the termination of the service by notice.

5. Presumption that general hiring is yearly, not a presumption of law—That the presumption of a yearly hiring which is indulged when there is no mention of time is really regarded as a mere presumption of fact and not one of law, is sufficiently indicated by the circumstance that even the most unqualified statements of the rule occur as parts of opinion reviewing the findings of juries or other triers of facts. (*c*) Some of the decisions cited above show that the court is warranted in taking the case from the jury, or in directing a verdict, upon the theory that there is no evidence to rebut the presumption,—though even in very clear cases trial judges have declined to take either of these courses (*d*). But more direct expressions of judicial opinion as to the true nature of the presumption are not wanting. Thus in one case we find Lord Denman remarking:

(*a*) *Lilley* v. *Elwin* (1849), 11 Q.B. 742. Compare the remark of Gaselee, J., to the effect that the understanding that a contract for domestic service may be dissolved before the end of the year merely by giving notice, (see sec. 11, (*c*.) *post*) does not seem to prevail in regard to servants in husbandry. *Beeston* v. *Collyer* (1827), 4 Bing. 309. The same doctrine is assumed without any argument in many of the settlement cases cited in this article. See for example: *Rex* v. *Birdbrook* (1791) 4 T.R. 245; *Rex* v. *Lyth* (1793) 5 T.R. 327: *Rex* v. *St. Mary* (1815) 4 M. & S. 315.

(*b*) *Broxham* v. *Wagstaffe* (1841), 5 Jur. 843.

(*c*) The numerous affirmations of the general rule which we find in the settlement cases refer, it should be remembered, to the findings of justices of the peace, whose functions in this regard were identical with those of a jury. It has been expressly ruled that whether there was a hiring for a year is in most cases a question of fact for the justices to determine: *Rex* v. *Bottesford*, 4 B. & C. 84.

(*d*) In *Foxall* v. *International, etc., Co.* (1867), 16 L.T.N.S. 637, we find the following remarks in the charge of Byles, J.: "I am very strongly of opinion that a hiring simply for a year, as in the present case (of a clerk) cannot be determined by a three months' notice, and my only doubt is whether I should not direct the jury that, if they believe the evidence given, there was an absolute hiring for a year. It is perhaps safer to leave the question to the jury."