

The inference of a weekly hiring may sometimes be strengthened by proof of something said or done by the employer at the time he was negotiating with the servant, indicating that he preferred not to enter into a more permanent contract, as where he asked the person who was about to enter his service what wages he expected per week, and upon the latter's replying £20 a year, the employer refused to give him that, but offered a certain weekly sum. (a)

Conversely the inference that would otherwise be drawn from the payment of the compensation weekly may be rebutted by some other provision of the contract, going to show that the parties contemplated a longer duration than a week. Thus in one case Coleridge, C.J., considered that the appointment of a manager of a company at so much per week was an annual one, for the special reason that a portion of his salary was to be a percentage of the profits, as ascertained by the auditor. (b)

The inference of a weekly hiring would seem to be less cogent where no evidence is given as to what transpired between the parties before the service began, and it is merely shown that some services were performed, and that for a certain period the servant was paid his wages every week. Such evidence is regarded as equally consistent with the theory of a weekly or of a yearly hiring, and presents an open question for the jury. Thus in *Baxter v. Nurse*, (c) already noticed: (see sec. 5, *ante*.)

Erskine, J., said: "Assuming that the general rule of presumption, arising from an indefinite hiring, might apply to such a case as the present, and that, if a general hiring had been proved, the jury ought to have been told that it should be taken to be a yearly hiring, still it is enough to say that a general hiring was not proved in this case. The facts in evidence clearly do not amount to such proof. It appears that the plaintiff was paid three guineas a week, with a prospect of increase of salary, and there is the fact of some

(a) *Rex v. Warminster* (1826), 6 B. & C. 77; 9 D. & R. 70.

(b) *Levy v. Electrical Wonder Co.* (1893), 9 Times L. Rep. 495.

(c) (1844) 6 M. & G. 935. In *Rettinger v. McDougall* (1860) 9 U. C. C. P. 485, the court refused to disturb the verdict of a jury who found that, where the employer of a foreman of a printing office was shown to have settled the wages weekly, the hiring was by the week, but intimated that a finding that it was yearly would also have been justified by the evidence.