

that the contract is subject to a condition subsequent, which may possibly terminate the service before the end of the year, as where the continuance of the engagement is dependent upon the servant's being found to have sufficient physical strength for the work. (a)

As to the cases in which the presumption of a yearly hiring exists, but its effect is, for practical purposes, overcome by evidence of a custom which gives the parties a right to sever their relations by giving notice. (See sec. 11, *post*).

9. Inferences from stipulations as to manner in which the Compensation is to be Paid—(a) *Provisions for payment by the piece, effect of*—There seems to be no dispute as to the doctrine that a general hiring to do piece work is not a yearly hiring. (b) Thus a contract to serve from Michaelmas to Michaelmas and to make a certain number of bricks is not a contract for a year certain, but only to serve until a particular job is done. (c)

On the other hand, since the mere fact that the amount of wages due is computed with reference to the quantity of work actually done is immaterial where the question is merely whether the hiring is or is not for a specific period, (d) a general hiring will be regarded as a yearly hiring irrespective of the question whether the servant is paid by the year or according to the actual results produced by his services (e).

There is no evidence of a hiring for a year where it appears that payments were made to the plaintiff as assistant to a surgeon, but not according to any yearly amount, nor at any definite periods, that the parties separated at the middle of the year, and that the plaintiff was not required to return and complete the service. (f)

(b) *Stipulations as to an annual rate of compensation, effect of.*—As is plainly apparent the authorities cited in subd. I., *ante*, it cannot be contended that the mention of a lump

(a) *R. v. Northwold* (1823) 2 D. & R. 792.

(b) *Trimby v. St. Peters* (1764), 1 W. Bl. 443.

(c) *Rex v. Woodhurst* (1818), 1 B. & Ald. 325.

(d) See *Gregson v. Watson* (1876), 34 L.T.N.S. 143; *Warburton v. Heyworth* (1880), L. R. 6 Q. B. 1.

(e) *Inter King's Norton and Campden* (1850), 2 Strange 1139.

(f) *Bayley v. Rimmell* (1836), 1 M. & W. 506.