

service to be performed within 365 days after that, the law did not count that half-day of the Monday, and therefore the contract was to be performed within 365 days after it was made, and that was within a year. This view was founded upon a fiction—namely, that the law does not take notice of part of a day. I am not prepared to say that under like circumstances one might not follow that dictum, and carry it to the length of a decision." The Divisional Court and Court of Appeal in *Smith v. Gold Coast and Ashanti Explorers Limited* (sup.) applied to the dictum referred to by Lord Justice Brett the force of a decision.

A curious point in connection with this subject, and one which must necessarily affect innumerable contracts of a certain class, arose in the case of *Reeve v. Jennings*, 102 L. T. Rep. 831; (1910), 2 K.B. 522. The facts of that case were that on the 11th April, 1908, the defendant entered the service of the plaintiff, who was a dairyman, upon the terms of a verbal agreement which provided that the employment might be determined by either party giving to the other one week's notice, and that the defendant should not within thirty-six months after leaving the plaintiff's service carry on the business of a dairyman within a certain specified area. On the 6th Feb., 1910, the defendant quitted the plaintiff's service, and started a dairyman's business within the prohibited area. It will thus be seen that the mere hiring was weekly, but the inclusion of a provision that the defendant would not within thirty-six months after leaving the plaintiff's service be concerned in a similar business turned it into an agreement which certainly could not be performed within one year of the making thereof. Mr. Justice Coleridge in the course of his judgment said he preferred to rely on the decision of Mr. Justice Abbott in *Bracegirdle v. Heald*, 1 B. & Ald. 722, where the learned judge defined a contract which does not fall within the statute as one where "all that is on one side to be performed . . . is to be done within a year."

Another case in which the contract of employment was for a period beyond that prescribed by the statute, but determinable