

issue to be decided in actual litigation is usually whether this is one of the incidents of the service. For this reason the boundary line between the two branches of the inquiry is apt to be lost sight of in actual trials. The exigencies of a logical analysis, however, demand that proper account shall be taken of the fact that there really is such a boundary line, and in the following article, therefore, the cases will be arranged with due reference to its existence.

2. Theory upon which the Duration of a General Hiring is determined—As in all other cases where the construction of a contract involves the necessity of ascertaining the intention of the parties in respect to some essential matter for which they have made no express provision, the duration of a hiring which is indefinite as to time is, as a question merely of practical procedure, susceptible of determination either as a question of law, or as dependent on a rebuttable presumption, or as an entirely open issue to be settled by the jury or other triers of facts, in view of all the testimony introduced.

The theory that the duration is properly one to be settled as a matter of law emerges in some of the cases, and has even been deemed sufficiently important to deserve a formal refutation (sec. 5, *post*); but, according to the great weight of authority, both in England and the United States, the proper starting point in an inquiry of this description is a presumption of fact. Manifestly, however, the line which separates the domain of the theory that the question is to some extent controlled by a presumption of fact, and the domain of the theory that it is to be determined from all the circumstances, is difficult to fix with precision, except in those not very numerous cases in which no testimony is offered which can, by any possibility, overcome the *prima facie* inference that the service was intended to continue for a certain period (*a*). When any such testimony has been introduced, the correctness of that inference obviously becomes a disputable point, and the duration of the engagement must then be decided

(a) See for example *Buckingham v. Surrey Canal Co.* (1882), 46 L.T.N.S. 885 [sec. 4, *post*].