

into the house by one P. to take care of it till it could be let, and she was to have coals for firing found by P.; she paid no rent for the house; she had been occasionally a servant of P. for thirty or forty years, and done work for him, for which she had always been paid. Littledale, J., said: "I think the evidence is sufficient to support the first count. The prosecutrix has had the exclusive occupation of the house, and although there are very nice distinctions between the cases, I think this was her dwelling-house. She was not put in as a servant, to take care of the furniture or goods, which has generally been the case where such questions have arisen." *R. v. George James* (1830) 2 Russell on Crimes (6th ed.) pp. 31, 32.

Where a gardener lived in a house of his master quite separate from the dwelling of his master, and had the entire control of the house, it was held that in an indictment for burglary the gardener's house might be laid, either as his, or as his master's. *R. v. Ross* (1836) 7 C. & P. 568.

Where a policeman was allowed to live in a house, in order to take care of it, and a wharf adjoining, it was held that the house was properly described as the dwelling-house of the policeman, on the ground that he must live somewhere, and that he was not otherwise the servant of the owner than in the particular matter. *R. v. Smith*, cited in *R. v. Rawlins* (1834) 7 C. & P. 160; 2 Russell on Crimes (6th ed.) p. 31.

In *State v. Curtis* (1839) 4 Dev. & B. (N.C.) 222 the court remarked, *arguendo*, that, "even where there is no stipulation for rent, yet the premises occupied by the servant may be so far removed and distinct from those in the personal occupation of the master that they may be deemed and stated to be in the possession of the servant in a indictment for burglary." This observation indicates an element which is plainly not material in any case in which the test discussed in s. 982, would be regarded as controlling.

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