

to the performance of the duties which the occupier has engaged to perform"; "auxiliary to the service"; "connected with the service"; "referable to the service"; "incidental to and inseparable from the service"; incidental to the employment"; a "privilege allowed in respect to the principal thing" (viz., the hiring); "in aid of or necessary to the performance of his service"; "necessary for the performance of the service"; "necessary to the service"; "connected with the service," or "required, expressly or impliedly, by the employer for the necessary or better performance of the service"; "incident to, and

⁸ *Smith v. Seghill* (1875) L.R. 10 Q.B. 422.

⁹ *R. v. Lynn* (1838) 8 Ad. & El. 397; *Petersfield Case* (1874) 2 O'M. & H. 97.

¹⁰ *R. v. Bishopston* (1839) 9 Ad. & El. 824; *R. v. Chestnut* (1818) 1 B. & Ald. 473; *R. v. Minister* (1814) 3 M. & S. 278. The phrase "necessarily connection with the service" was used by Bayley, J., in *R. v. Kelstern* (1816) 5 M. & S. 138.

¹¹ *R. v. Iken* (1834) 2 Ad. & El. 147.

¹² *R. v. Bishopston* (1839) 9 Ad. & El. 824.

¹³ *Rowman v. Bradley* (1892) 151 Pa. 351, 24 Atl. 1062.

¹⁴ *R. v. Seacroft*, 2 M. & S. 472. According to Taunton, J., in *R. v. Iken* (1834) 2 Ad. & El. 147, where the above cited case was distinguished, the rationale of the decision was that the cellar "a privilege attached to the waiter in reference to the principal thing; that is, to his contract as a waiter."

¹⁵ *Snedaker v. Powell*, 32 Kan. 396, 4 Pac. 869.

¹⁶ *R. v. Kelstern* (1816) 5 M. & S. 138; *Smith v. Seghill* (1875) L.R. 10 Q.B. 422.

¹⁷ *R. v. Spurrell* (1865) L.R. 1 Q.B. 72.

¹⁸ *Kerrains v. People* (1873) 60 N.Y. 221 (225). In another part of the opinion in this case it was remarked that the question, what is the character of the holding under the contract, depends upon "whether it is exclusive and independent of, and in no way connected with the service or whether it is so connected, or is necessary for its performance."

In a case where the question was, whether certain workmen were ratable under the Poor Law Assessment Act of 1869, Mellor, J., said: "Where the occupation is necessary for the performance of services, and the occupier is required to reside in the house in order to perform those services, the occupation being strictly ancillary to the performance of the duties which the occupier has to perform, the occupation is that of a servant. . . . It is quite true that the present appellants, in one sense, were required to reside in the houses of their employers because the owners of the houses, engaging the appellants in their employment and paying them by piece-work, desired them to reside in the houses while engaged in their service, and in that sense they were required to reside in the houses, while engaged in their employer's service; but that is not the meaning of the words as used in *Hughes v. Overseers of Chatham*, 5 M. & G. 54 (78), [see 5, note, subd. (g), post.] 'Required' means more than the master saying, 'You must reside in one of my houses, if you come into my service.' The residence must be ancillary and necessary to the performance of the servant's duties; and unless he is required for that purpose to reside in the house, and not merely as an arbitrary regulation on the part of the master, I do not think he is prevented from occupying as a tenant. Then it appears