

6. Character of occupation tested with reference to its beneficial or non-beneficial quality.—The circumstance that the occupation of a servant was beneficial as regards him, or as regards the owner, is sometimes adverted to in cases where the actual ground of the decision that he held as a servant was that his occupation was, or was not, ancillary to his service in the sense explained in §§ 4, 5, ante¹. Such language is readily accounted for by the fact that an occupation which is connected with the service must be one which is principally or wholly for the advantage of the owner, and that an occupation which is disconnected from the service must be one which is principally or wholly for the advantage of the servant. In this point of view the beneficial or non-beneficial quality of the occupation is a circumstance of a merely secondary and derivative character. But there is one particular class of cases in which it has been treated as a primary factor for the purpose of differentiation, viz., those involving the liability of "occupiers" to the Poor-rates assessable under 43 Eliz. c. 2, § 1, and other enactments relating to taxes upon realty. On the one hand the beneficial character of the occupation has been assigned as the ratio decidendi in cases where liability for such taxes has been imposed on persons occupying property belonging to the Crown², and on employés of charitable institutions for

had occupied separate rooms under the same roof. *State v. Curtis* (1830) 4 Dev. & B. (N.C.) 222, (holding that no indictment for forcible entry would be for excluding the servant from the house after he was dismissed).

(q) *Servants of charitable institutions*.—See § 6, note 3, post.

(r) *Persons employed to effect sales*.—The right to occupy the tenement under a contract by which the tenant is to deliver milk for the landlord at a certain price per week, with the right "to live in the house," for which a dollar a week should be deducted for rent, terminates when the tenant leaves the landlord's service. *Eichengreen v. Appel* (1891) 44 Ill. App. 19, (action for trespass, in ejecting plaintiff, after he had voluntarily left the service, held not to be maintainable).

¹ In *R. v. St. Mary Newington* (1833) 3 B. & Ad. 540, a case where a tenancy was inferred, it was remarked that the occupation was "independent and for the convenience of the occupier."

In *Kerrains v. People* (1873) 60 N.Y. 221, that the occupation was described as being "for the benefit of the owner."

In *Dobson v. Jones* (1854) 5 Mann. & Gr. 112, the occupation was held to be that of a servant partly on the ground that it was not "with a view to the remuneration of the occupier."

² "The Ranger of a Royal park was held to be rateable, as such, to the poor for inclosed lands in the park, which he cultivated and which yielded certain profits. *Bute v. Grindall* (1786) 1 T.R. 338. Lord Mansfield held that it made no difference quo nomine the ranger was "occupier"—whether