

burden was clearly upon the relator in these proceedings to establish by positive evidence that the actual value of the property in which appellant had a leasehold interest was less than \$2,000. In my opinion, the relator entirely failed to sustain this burden.

It was further argued . . . that, upon the evidence, the appellant had in fact no leasehold interest whatever in the property, but that he was only an occupant of the property as a servant of the company, or at most was only a monthly and not a yearly tenant, as required by sub-sec. 5 of sec. 76. . . .

I think the appellant's interest was that of a yearly tenant. The evidence shews that appellant was engaged as manager 13 years ago for an indefinite term. . . . As to the tenancy he says: 'I am paying a rental of \$72 per year for the use of the premises. I charge myself with \$6 per month for rent. Hamilton (the company's inspector) told me I could stay forever or as long as I behaved myself. There is no agreement that I have a right to occupy if I cease to be agent.' . . . Mr. Hamilton says: "He is renting it from us at \$72 per year payable monthly, no time specified."

Upon the undisputed facts and evidence it is quite clear that appellant is a tenant and not a mere occupant as servant of the company. His occupancy of the house and land in question was not necessary for the performance of his duties as manager. If the occupancy be strictly ancillary or subservient to the performance of the duties which the occupier has to perform, his occupation is that of a servant and not that of tenant. . . .

[Reference to *Dobson v. Jones*, 5 M. & G. 112; *Hughes v. Overseers of Chatham*, 5 M. & G. 54; *Smith v. Seghill*, L. R. 10 Q. B. 422; *Redman & Lyon's Landlord and Tenant*, 5th ed., p. 15.]

I am also of opinion, upon the evidence, that appellant was a yearly and not a monthly tenant or tenant at will.

[Reference to *Bastow v. Cox*, 11 Q. B. 122; *Pope v. Garland*, 4 Y. & C. at p. 399; *Redman & Lyon*, p. 34.]

The fact that the rent is, by agreement, payable monthly, or that the contract of service may be terminated at the will of either party, cannot affect the nature of the estate which the appellant has in the property, which . . . is clearly . . . that of a yearly tenant.

. . . Appeal allowed with costs and order set aside with costs.