

But certain other decisions in which such a description was pronounced correct cannot, as it would seem, be satisfactorily explained on this footing; and it is only by the aid of extremely subtle distinctions, if at all, that some of them can be reconciled upon the facts with a portion of those decisions in which, as shewn in note (2), the dwelling was viewed as being in the occupation of the master. That the construction put upon evidence similar to that which was presented in the case cited below would have been different, if the civil rights and liabilities of the parties had been in question, seems to be scarcely open to controversy.

* Though a servant live rent free for the purpose of his service in a house provided for that purpose, yet if he has the exclusive possession, and it is not a parcel of any premises which his master occupies, it may be described as the house of his servant. *R. v. Canfield* (1824) 1 Moo. C.C. 42 (servant was a toll collector in the employ of the lessees of the tolls).

If a servant lives in a house of his master at a yearly rent, the house cannot be described as the master's house though it is on the premises where the business is carried on, and although the servant has it because of his service. *R. v. Jarvis* (1824) 1 Moo. C.C. 7 (servant was a warehouseman occupying a dwelling within the walls which enclosed the warehouseyard).

Though a servant lives as a servant in a house belonging to his master who pays the rent and taxes and whose business is carried on in the house, yet, if the servant and his family are the only persons who sleep in the house, and the part in which the master's business is carried on is at all times open to those parts in which the servant lives, the house may be stated as the servant's house, though the only part entered by the thief was that in which the master's business was carried on. The judge refused to say that the house might not also have been described with propriety as that of the master. *R. v. Witt* (1829) 1 Moo. C.C. 248.

The house which was broken in was one in which G. & Co. carried on their trade; M. their servant, lived with his family in the house, and paid £11 per annum for rent and coals, such rent being below the value; M. was allowed to live there because he was a servant; G. & Co. paid the rates and taxes. Held, that, as M. stood in the character of tenant, and G. & Co. might have distrained upon him for rent, and could not arbitrarily have removed him, the occupation of M. could not be deemed their occupation and that the house was wrongly described in the indictment as the house of G. & Co. *R. v. Jarvis* (1824) 1 Moo. C.C.R. 7; 2 Russell on Crimes (6th ed.) p. 29.

Where a man after leaving his house, continues to use part of it as a shop, and permits a servant and his family to live in another part of it to protect it from robberies, the rest is being let to lodgers, the habitation by his servant is a habitation by him, and the shop may be laid as his dwelling-house. *R. v. Gibbons* (1821) Russ. & Ry. C.C.R. 442.

If a burglary be committed in the warehouse of a trading company, in the house belonging to which an agent of the company resides with his family for the purpose of carrying on the business, it may be laid to be the dwelling-house of the agent, although the rent thereof is paid, and the lease is held by the company. *R. v. Margett* (1801) 2 Leach, C.C. 930.

Upon an indictment for house-breaking, describing the house in the first count as the dwelling-house of one M., it appeared that M. had been put