

placed in possession of premises as a mere caretaker has no interest which is capable of being assigned to another person¹⁹.

(h) The right of the servant to be let into possession of the premises which he is to occupy.

(i) The liability of the servant to have his property distrained as being that of a servant.

(j) The question whether the master or the servant is the proper party to bring an action for trespass committed on the premises.

(k) Eligibility for office. An employé occupying premises as a servant merely is not a "substantial householder" within the Statute 43 Eliz. c. 2, § 1, so as to be eligible for the office of overseer of the poor²⁰.

(l) The requirements of Stamp Acts. In England it has been held that a lease stamp is not necessary to validate an instrument which provided, among other things, for an employé's occupation of premises as a part of the compensation for his services²¹.

(m) The correct wording of indictments in prosecutions for the crime of embezzlement.

Whatever may be the character or duration of the title under which a servant occupied his employer's premises, he is entitled to the benefit of those rules of law which enable a rightful occupant or his licensees to recover damages for personal injuries caused by negligent acts committed on adjoining premises²².

4. Character of occupation tested with reference to its being ancillary or not to the service performed.—The doctrine upon which a large number of decisions are based is that an employé should be regarded as occupying the premises of his employer in the character of a servant, or in the character of a tenant, according as his occupation is or is not susceptible of being described by one of the following phrases: "ancillary to the service"; "ancillary

¹⁹ *Reynolds v. Metcalf* (1863) 13 U.C.C.P. 382.

²⁰ *Rea v. Spurrell* (1865) L.R. 1 Q.B. 72, 35 L.J.M.C. 74.

²¹ *Doe v. Derry* (1840) 9 C. & P. 494.

²² *The Defiance Water Co. v. Olinger* (1896) 54 Ohio St. 502, holding that an action could be maintained by a guest of a servant for injuries caused by the bursting of a large stamp-pipe on the land of a water company.

²³ *R. v. Bishopton* (1839) 9 Ad. & El. 824.