

as a servant, and in cases where his occupation was held to have been that of a servant'.

the occupation may not be an occupation qua tenant, independent of the master. As I said before the essential element in the determination of the question is, whether or not the servant simply occupies as part remuneration for his services, or whether the occupation is subservient to and necessary to the service." *R. v. Spurrell* (1865) L.R. 1 Q.B. 72.

That this element is essentially non-discriminative in its characters is also indicated by the remark of Lord Denman in *R. v. Lynn* (1838) 8 Ad. & El. 379, that "it would be strong to say that an allowance by the master, in part payment for services, made the occupation of a house auxiliary to the services."

* (a) *Occupation as servant inferred.*—In *White v. Bayley* (1861) 10 C.B.N.S. 227; 7 Jur. N.S. 948; 30 L.J.C.P. 253, it was held that an employé who was allowed under his agreement to occupy a building rent free, and to have at the same time the privilege of carrying on an independent business, was liable to be turned out of the premises whenever his employment should come to an end, and that he could not maintain an action of trespass against his employer for breaking and entering the premises. Willes, J., said: "Upon the correct construction of the documents, it appears to me—and on the facts there is no dispute—that no interest in the premises even to the extent of a tenancy at will ever did vest in the plaintiff. My reason for thinking so, is, that, looking at the whole of the arrangement between the parties, it resulted in an agreement that the plaintiff was to give his services to the Swedenborg Society as manager for the purpose of selling the Swedenborg publications. The main object and principle of the arrangement was that; and the part upon which my Brother Parry relies for the purpose of shewing that an interest in the premises was vested in the plaintiff was merely accessory to that arrangement, and part of the machinery for carrying it into effect—a mere mode, in short, of paying the plaintiff in part for his services as manager. Taking the agreement to have been that the plaintiff should be employed as manager to be paid a certain salary in moneys numbered, there could have been no doubt whatever that his occupation would have been an occupation merely as a servant of a society. Can it make any difference, that, as part of the remuneration for his services, he was to have liberty to carry on the retail bookselling business on the premises on his own account? Clearly not. Whether the whole amount of his salary was paid to him in money, or part in money and part in the permission to occupy himself and the premises in the carrying on that limited trade, can, as it seems to me, make no difference in the construction of the contract between the parties." See also the following cases, the effect of which has been stated in §§ 5, 7: *R. v. Kelstern* (1816) 5 M. & S. 136, (part of the proof was that, if the pauper for whom a settlement was claimed had not obtained the privilege of occupying the house, he would have had more wages); *R. v. South Newton* (1830) 10 B. & C. 438 (employment of land "in lieu of wages which would otherwise have been given for his service"); *Bertie v. Beaumont* (1812) 16 East 33 (servant was allowed to occupy a cottage with less wages on that account); *Young v. Paton* (Sc. Ct. of Sess. 1808) Hume 582 (rent deducted from wages); *Hunt v. Colson* (1833) 3 Moore & Sc. 790 (certain sum deducted from wages by way of rent); *R. v. Snape* (1837) 6 Ad. & El. 278 (privileges allowed were spoken of as being in part remuneration of the services); *Doe v. Derry* (1840) 9 C. & P. 424 (employé allowed to have the use of house free of rent); *Dobson v. Jones* (1854) 5 Mann. & Gr. 112 (employé, if he had not lived upon his employer's premises, would have received a certain sum as lodging money); *Lake v. Campbell* (1862) 5 L.T.N.S. 582 (servant had a house to live in, or so much per annum in lieu of it); *Fox v. Dalby* (1874) L.R. 10 C.P.