that the caretaker would have been at the least a tenant at will as to this portion of the land, a theory which it seems impossible to support by the authorities, as they stand. *Davis* v. *Clancy* (1826) 3 McCord L. (S.C.) 422.

An action for forcible entry cannot be maintained by a person whom a sheriff in pursuance of a writ of restitution has placed in possession as the representative of the party declared to be entitled to restitution. *Mitchell* v. *Davis* (1862) 20 Cal. 45, denying that the action could be prosecuted in the theory that an agent or servant having the care of real estate might be considered as a tenant at will of his principal or master.

In a case where the defendant promised the plaintiff that, in consideration of his services as caretaker of a building, he should have the occupation of certain rooms, and subsequently refused to let him into possession, the court said that, if there was any contract for the letting of the rooms, the remedy for a breach of it was by an action on the contract, not on an account annexed. *Bower* v. *Proprietors of the South Buildings* (1884) 137 Mass. 274.

See also § 6, note 5, post.

(*n*) *Employés in hotels, etc.*—A person engaged himself as waiter at an hotel, and had the tap or privilege of selling malt liquors there, and the use of the cellar for holding the liquors, which had a separate entrance and of which he kept the key, and paid for his situation of waiter and for the tap and cellar the yearly sum of £60. *Held*, that this was not such an occupation of the cellar as to confer a settlement. *R.* v. *Seacroft* (1814) 2 M. & S. 472. In answer to the contention that the servant should be considered as having rented the cellar during the time he was engaged as waiter, the court said that there did not appear to be any taking of the cellar as a tenant, but that the use of it was only a privilege allowed him in respect of the principal thing which was the hiring of himself as a waiter.

The employer of a bar-keeper who has the privilege of occupying a room on the premises is not liable to an action for forcibly ejecting him after his discharge, if no unnecessary violence is used. *De Briar* v. *Menturn* (1851) 1 Cal. 450.

(*o*) *Stewards of clubs, etc.*—In *Williams* v. *Herrick* (1849) 5 U.C.Q.B. 613, the court, without expressly deciding the point, inclined to the opinion that the agreement set out in the pleadings was a hiring of the plaintiff as a steward of a certain club, and that the permissive occupation of the rooms mentioned was not as under a demise thereof, but merely as an incident to the situation, the privilege depending upon the continuation of the service, and ceasing therewith.

Where one part of college buildings, the title of which is vested in the trustees, are partly occupied for the purposes of the institution by the students and teachers, and another part by a steward, who is not given any lease, his occupation is merely that of a servant. *Watson* v. *McEachm* (1855) 2 Jones L. (N.C.) 207, (holding that no indictment lay for expelling the steward).

(*p*) *Domestic servants.*—An action of trespass for the removal of goods after the termination of the employment will not lie, where the clear preponderance of the evidence is, that the plaintiff was employed by a number of students, sometimes spoken of as a club in the statement of facts, to act as housekeeper for them, they taking meals in the premises, she superintending the preparation of the same and receiving as her compensation, board for herself and daughters and if anything was realized over and above the expense of running this boarding house, a small compensation. *Meade* v. *Pollock*, 99 Ill. App. 151, 152).

Where the jury found that there was no engagement of any sort for the servant's occupation of the house assigned to him, and that he "merely used the lodging room in his character as servant," the obvious inference was held to be, that he was put to lodge in the room at the mere will of his master, that this was for the more convenient performance of the services to be rendered by him as a domestic, and for that reason his possession as servant was just as much the possession of his master as if they