

quently mentioned among the evidential elements both in cases where the employé was held to have been occupying the premises

of being allowed a house, though not immaterial, is by no means decisive; for such a fact might exist in a case in which the house was occupied for the purpose of the service, and not in the character of tenant. It may well happen that something in the service which renders it less onerous or more pleasant may cause a reduction of the salary, without being a part of the salary itself. A master may give lower wages in consequence of lodging his servants in his house, instead of requiring them to find lodgings out of it, without making them his tenants." *Hughes v. Overseers of Chatham* (1843) 5 Mann. & Gr. 54 (79).

"While a deduction from wages of a specified sum for the use [of the premises] or the absence of such an arrangement, would be a material circumstance, it would not be in all cases conclusive either way." *Kerrains v. People* (1873) 60 N.Y. 221.

In *Fox v. Dalby* (1874) L.R. 10 C.P. 285, Brett, L.J., is reported to have said: "The result of those three cases [i.e., of *Hughes, Dobson*, and *Clark* as stated in § 5, note 1, subd. (h), (m), ante] seems to be this that, where a person sits like the respondent is permitted, (allowed, if so minded), to occupy premises *by way of reward for his services, or as part payment*, his occupation is that of tenant." This statement, however, appears to be somewhat lacking in precision. By consulting the note specified above, it will be seen that all that is really decided by these cases with regard to the significance of the situation described by the words italicized is that, if a tribunal empowered to draw inference of fact finds that an employé in that situation occupied the premises as a tenant, a court of review should allow the finding to stand, unless there is evidence which goes conclusively to shew that the occupation was ancillary to the service. The real effect of these cases is more correctly indicated by the following passage in a judgment delivered by Cockburn, C.J., in a case where it was held that a man who occupies as servant is not a "householder" in the sense in which that term is used in 43 Eliz., c. 2, § 1: "I think the facts are not sufficiently found, the most essential element in the consideration of that question being omitted, namely, whether this occupation was an occupation for the purpose of the service or not—whether it was necessary to the service or not. If the occupation of the servant be necessary to the service, then I think his occupation is the occupation of the master. although the remuneration which the servant receives is the less on account of his having the advantage of premises or a house of the master for the purpose of his habitation. On the other hand, if the occupation be not necessary to the service, then the fact, that the advantage of the occupation is part of the remuneration for the service, will not render that occupation less an occupation qua tenant, than it would have been if the man had paid rent. It may be that it happens to be convenient both to the master and to the servant, that the servant requiring some place of habitation shall, by agreement with the master, instead of receiving so much for his wages, out of which wages he would have to find himself a separate habitation, inhabit some premises of the master as part of the remuneration for his services; but it is only an equivalent for wages. He would be receiving in the one instance the whole amount of his wages, and out of those wages he would have to find himself a habitation, for which he would have to pay rent; in the other he inhabits premises of his master, and instead of paying the master the rent the master deducts it from the wages. Although, therefore, the relation of master and servant happens to exist between the parties by a subordinate arrangement, and the servant occupies premises of the master rent free, as part of the wages that he would otherwise receive if he paid the rent, it does not follow, from the relation of master and servant happening to exist between the parties, that