

dence being admissible for the purpose of establishing that fact(d). A clause of this tenor is strictly interpreted and is held to contemplate actual service. Proof of what might be termed constructive service will not suffice(e). Moreover it may

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death have been in my service twelve calendar months or longer, one year's wages in addition to anything owing by me, and to my gardener, P.G., £300 in addition. In August, 1880, P.G., who had been in the testator's service thirty-three years, left the service, and on his leaving the testator made him a present of £100. Held by Hay, J., that, as P.G. was not in the service at the death of the testator, he had not fulfilled the condition, and was not entitled to the £300. *Benyon v. Grieve* (1884), cited in Smith, Mast. & S., p. 573.

Where a legacy was bequeathed to the two servants "that might live with the testatrix at the time of her death," and she had three at that time, all of them were held entitled to take. *Sleech v. Thorington* (1754) 2 Ves. Sen. 560.

(d) In *Herbert v. Reid* (1810) 16 Ves. 481, where the claimant was no longer residing in the testator's house at the time of the latter's decease, the legacy was established upon evidence that the testator had referred to it, after the claimant's departure, in language which shewed that he regarded it as being still due. What he said was deemed to be competent evidence to shew that, in spite of appearances, the claimant had continued to be in his service.

(e) A master bequeathed an annuity to his servant Sarah, "provided she shall be in my service at the time of my decease," and a few days before his decease he, without any good cause, dismissed her from his service, and at his death she was not in his service:—Held, that she was not entitled to the legacy. *Darlow v. Edwards*, (Exch. Ch. 1862) 1 H. & C. 547; 9 Jur., N.S. 836; 32 L.J. Exch. 51; 10 W.R. 700; 6 L.T., N.S. 905. Blackburn, J., remarked during the argument: "The contract may continue so as to enable the servant to bring an action for the breach of it, but the service does not continue." He also compared the case to one in which a person commits a breach of a stipulation not to revoke the authority of an arbitrator, the revocation under such circumstances being valid.

A testator bequeathed a legacy to M.V. in case she should be in his service at his decease. The testator was shortly afterwards removed to a lunatic asylum, and M.V., who was a yearly servant, voluntarily quitted the house, receiving from the family her