

in the character of a servant, a stipulation that he should not be obliged to leave the premises unless he had notice to quit at a certain date will not of itself convert his occupation into that of a tenant³. Nor is the circumstance that the right of occupation terminates with the abrogation of the contract of service, by consent or by the discharge of the servant, deemed to be decisive as to the character of the occupation⁴. But it is undoubtedly a material element for consideration⁵.

8. —to the fact that the privilege of occupation represents a certain amount of pecuniary compensation.—From a logical standpoint, the fact that an employé received either a smaller pecuniary compensation than would otherwise have been given, or no pecuniary compensation at all, on account of his having obtained the privilege of occupying the premises in question, is obviously susceptible either of the construction that the arrangement which relieved the employer altogether of the obligation of paying any compensation in money, or diminished to a certain extent the amount payable, was adopted as a convenient mode of discharging the whole or a part of the servant's wages, or of the construction that the sum which would otherwise have been paid as wages was represented by the rent of the premises⁶. Accordingly we find not only that the courts have explicitly recognized the inconclusive quality of this fact⁷, but also that it is fre-

³ In a settlement case where the finding of the justices that the pauper occupied as servant was approved, Williams, J., remarked that they appeared "to have thought the stipulation as to notice was an indulgence granted, without any view of conferring such an interest as would make the pauper a tenant." *R. v. Snape* (1837) 6 Ad. & El. 278.

⁴ *Kerrains v. People* (1873) 60 N.Y. 221; *People v. Annis*, 45 Barb. 304.

⁵ See *R. v. Chestnut* (1818) 1 B. & Ald. 473 (§ 5, note 1, subd. (b), ante).

One of the facts which in a case involving the right of the franchise was relied upon, as tending to shew that the employé occupied as servant was that, if he had ceased to be employed, he would have had to give up the possession of the house at once. *Ferar's case* (1836) Alcock R.O.R. 248; S.C. Rogers, Elections, 81.

⁶ In *Bertie v. Beaumont* (1812) 16 East 33, Lord Ellenborough remarked in the course of his judgment: "If the man had been in the occupation before, as a tenant paying rent, I should have thought that he still continued to occupy it in the same character, if no new agreement had been entered into in that respect, when he was taken into the plaintiff's employ, and that he was only to pay his rent in service instead of money."

⁷ In a case the fact of which are stated in § 5, note 1, subd. (b), ante, it was remarked: "The fact also of having a lower salary in consequence