

pied, and the question to be determined is, whether he should be regarded as a servant or a tenant in respect to some matter extrinsic to the stipulated work¹.

Both these questions are primarily for the consideration of the jury or other tribunal whose function it is in the given instance to determine issues of fact², the conclusion arrived at being, of course, subject to review in a higher court, which has all the facts before it³. If the action is being tried in a court consisting of a judge and jury, it is unnecessary to submit to the jury the character of the occupation, if that depends upon the significance of substantially undisputed facts⁴; but this question cannot be determined, as one of law, if the evidence is conflicting, or diverse inferences may be drawn therefrom⁵.

“The terms of the contract, so far as the parties differ, it is the duty of the jury to determine; but the terms being fixed, their legal import is for the court to declare. This should be determined upon a consideration of the nature and purpose of the contract, and the character of the business to which it relates”⁶.

2. *Service or tenancy*.—The manner in which the former of the questions stated in the preceding section has been answered

¹“There is no inconsistency in the relation of master and servant with that of landlord and tenant. A master may pay his servant by conferring on him an interest in real property, either in fee, for years at will, or for any other estate or interest; and if he do so, the servant then becomes entitled to the legal incidents of the estate as much as if it were purchased for any other consideration.” *Hughes v. Overseers of Chatham* (1843) 5 Mann. & Gr. 54 (78).

²*Hughes v. Overseers of Chatham* (1843) 5 M. & G. 14; 7 Scott N.R. 581; *Clark v. Bury St. Edmonds* (1856) 1 C.B.N.S. 23, 26 L.J.C.P. 12; *R. v. Hardis* (1789) 3 T.R. 497.

In *R. v. Snape* (1837) 6 Ad. & El. 278, (a settlement case), Williams, J., remarked that the court would not be critical in examining the grounds of the finding of the inferior tribunal.

In *R. v. Seacroft*, 2 M. & S. 472, it was declared that the court of sessions was the proper forum to determine the effect of the evidence and the contention of counsel that a certain presumption might be drawn by the court of review from the facts stated was rejected.

³*R. v. Field* (1794) 5 T.R. 587 (ratibility of occupier, as determined by court of sessions) and cases cited *passim* in the ensuing sections.

⁴*Kerrains v. People* (1873) 60 N.Y. 221.

⁵*Kerrains v. People* (1873) 60 N.Y. 221.

⁶*Bowman v. Bradley* (1892) 151 Pa. 351, 24 Atl. 1062.

In *Kerrains v. People* (1873) 60 N.Y. 221, the effect of the arrangement was determined by the court as a question of law upon the contract and facts, as stated, and the conclusion so arrived at was upheld by the court of review.