

dent of the discharge of their duties". Manual work so performed does not constitute their normal employment, and, as a general rule, it is only when they have been hired to do that

"In *Oliver v. Macon Hardware Co.* (Ga. 1896) 25 S.E. 403, the same court remarked: "Every human being who follows any legitimate employment, or discharges the duties of any office, is, in a very broad sense, a labourer. The president of the United States, the governor of this state, and the justices of this court are all labouring men, in the sense that they do a great deal of hard work, much of which is, indeed, attended with physical and muscular exertion; but at the same time they cannot properly be termed 'manual labourers,' either in the popular sense in which these words are used and understood, or in the sense in which the term 'labourer' was employed in the statutes under consideration." In that case the general principle here indicated was, in the headnote written by the court, expressed in the following language with reference to the particular facts under discussion: "Primarily, a clerk in a mercantile establishment is not a 'labourer,' in the sense in which that word is used in § 1974 of the Code, even though the proper discharge of his duties may include the performance of some amount of manual labour. If the contract of employment contemplated that the clerk's services were to consist mainly of work requiring mental skill or business capacity, and involving the exercise of his intellectual faculties, rather than work the doing of which properly would depend upon mere physical power to perform ordinary manual labour, he would not be a labourer. If, on the other hand, the work which the contract required the clerk to do was, in the main, to be the performance of such labour as that last above indicated, he would be a labourer. In any given case, the question whether or not a clerk is entitled, as a labourer, to enforce a summary lien against the property of his employer, must be determined with reference to its own particular facts and circumstances."

This decision and the arguments by which it was sustained seem to indicate some departure from the position taken in *Richardson v. Langston*, 68 Ga. 658. There it was ruled that an affidavit to foreclose a labourer's lien, in which it was alleged that the defendants, merchants selling dry goods and groceries, were indebted to the deponent "for services rendered as clerk, labourer, and general service in said store," was not demurrable as not sufficiently setting out the fact that the plaintiff was a labourer. From the opinion of the court, which was written by a dissenting judge, the court in *Oliver v. Macon Hardware Co.* quoted the following passage: "I do not understand that clerks, or persons doing general service, although they may labour, are therefore labourers, in legal contemplation. If they are to be included in the general term 'labourers,' then I see no limit to the exercise of this extraordinary right of having execution on oath, by all agents and employes, such as cashiers, tellers, and bookkeepers of banks, secretaries, treasurers, bookkeepers, salesmen, and superintendents of manufacturing companies, as well as all the officials of railroads below the president, whether in the offices or on the roads. To enlarge upon class legislation by implication should not be the policy of courts, and especially so where *ex parte* summary remedies are allowed."

An inspector of lumber, although his work requires him to perform a small amount of manual labour, is not a "labourer." *Re Sayles* (1892) 92 Mich. 354, 52 N.W. 637. (How: Mich. Ann. Stat. § 8749m.) The court remarked that what is compensated in such a case "is not the labour, but the judgment and integrity of the inspector. The inspector is nothing less than an arbitrator between the parties, and to hold this class of services within the meaning of the statute would, we think, require that all pro-