

presented itself on the trial was over the nature and extent of Bowman's right to the house from which he was ousted by the defendant. Was that right an incident of the hiring and dependent on the continuance of the relation of employer and employé, or had it an independent separate existence, so that he was to be treated as a tenant for years with a right to remain in possession for one whole year whether he remained in the employment of the owner or not? The subject of this contract was labour. Labour was what Bradley needed and undertook to pay for. It was what Bowman offered to furnish him at an agreed price. The labour was to be performed upon the land in its cultivation, in the care of the cows and the delivery of the milk. As Bowman was not a cropper, or a tenant paying rent, his possession of the land and the cows, and the implements of farm labour, was the possession of his employer. The barn was used to stable the cattle and store their feed. The house was a convenient place for the residence of the labourer. The house, the barn, the land, the cattle, the farming tools were turned over into the custody of the man who had been hired to care for the property; but he had no hostile possession, no independent right to possession. His possession was that of the owner whom he represented and for whom he laboured for hire. This is not denied as to the farm, the barn, the stock, or the tools, but an attempt is made to distinguish between the house and everything else that came into the possession of the employé in pursuance of the contract of hiring. There is no solid ground on which such a distinction can rest. If the possession of the house be regarded as an incident of the hiring, the incident must fall with the principal."

A contract was entered into between H., the owner of a farm, and one M., by which the latter agreed that he and his wife should work for H. one year—M. to labour on the farm, and his wife to perform the duties of housekeeper. M. with his wife accordingly moved into a house on the farm, carrying with them their household furniture, and entered upon the performance of the contract. Subsequently H., having become dissatisfied with M.'s conduct, ordered him to quit and leave the house, which he declined to do; whereupon H. entered the house and put the furniture out of it. *Held*, in trespass by M. against H., that the contract between them did not create the relation of landlord and tenant, but only that of master and servant; and that, consequently the remedy, if any, was only by an action of assumpsit for a breach of the contract. *Haywood v. Miller* (1842) 3 Hill (N.Y.) 90.

On the authority of this case it was held that the plaintiff occupied as servant merely, where he had agreed with defendant to work for him as labourer, and he was to have toward his wages the use of a cow and pasture for her, the use of a house and other property and privileges, and twenty dollars per month as long as they could agree. *Doyle v. Gibbs* (1871) 6 Lans. 180 (replevin suit for goods removed by employer on resuming possession).

When a farmer employs a labourer for a year, at a stipulated price per month, agreeing to furnish him a house at \$12 per month, and keep his cow for \$1 per month, payable monthly, the occupation of the labourer is merely incident to the contract of hiring, and so soon as he fails to labour, his tenancy is determined. *McGee v. Gibson* (1840) 1 B. Mon. 105 (action of the trespass not maintainable against landlord for entering without notice).

Where one person hired another to work for him one year on his farm, for the sum of \$270, and agreed to furnish him house room for himself and family and a garden and pasture for a cow, it was held that the relation created was simply that of master and servant, the house room, garden and pasture being a portion of the consideration of the contract. *People v. Annis* (1866) 45 Barb. 304 (employer held not to be entitled to assert his right to possession by means of summary statutory proceedings applicable to landlord only).

On the ground that a contract under which one person agreed to do certain work on the vineyard of another, in the way of caring for, pruning,