

which, as it would seem, the will might have construed upon this footing, the actual considerations upon which the courts mainly relied were, in one of the cases, the improbability, and, in the other, the probability, that the testator intended to include the claimant among his beneficiaries (b).

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house, he had, on such occasions, been treated as a person in a dependent position and occupying the position of a confidential servant or secretary. *Armstrong v. Clavering* (1859) 27 Beav. 226.

(b) In *Chilcot v. Bromley* (1806) 12 Ves. 114 (bequests to "all my servants who shall be living with me at the time of my death"), the testator had been hiring a carriage and horses by the year from a job-master, who also supplied a coachman. The coachman did not board or lodge in the testator's house: but received from the testator 12s. a week, as board-wages, and a livery with the other male servants: the job-master also paying him 9s. a week. The plaintiff lived with the testator in that capacity and upon these terms about ten months previous to his death: having been procured for that purpose by the job-master; and was returned by the testator as his coachman under the act imposing a duty on male servants: and during that period he served no other person. Sir Wm. Grant, M.R., after remarking that the question to be determined was simply whether the plaintiff was a servant of the testator within the intent of the will, proceeded thus: "My opinion is, that there was no contract between them, out of which the relation of master and servant could grow. The contract was between the testator and the job-master. The latter engages to furnish the former with horses, and a man to drive them. The job-master has persons, whose duty it is to perform that service. The particular person serves the job-master by driving my carriage: and is so far in my service: but in consequence of a retainer by the other, and a contract with him. That contract would be fully satisfied, if he changed the coachman every week. Can the testator be supposed to include a person, whom he had not selected, and chosen to bring into his service for any definite period, and with reference to the continuance of his service utterly uncertain; for, as has been observed, the very week before the testator's death a different man, for whom the testator had no affection, might have been furnished by the coach-master? It is not probable, that a testator in such a situation as this testator, with the experience he had of the manner, in which these servants were changed, could have intended to put this person upon a footing with