

Canada Law Journal.

VOL. XLI.

MAY 15.

NO. 10.

LEGACIES TO SERVANTS.

Some of the decisions involving the right of a claimant to take under a clause in a will by which legacies are bequeathed to the testator's "servants," as a class, may perhaps be said to embody simply the conception that, unless a contrary intention is indicated by the context, a testator will be presumed to have used this word in its ordinary signification, and that the persons designated are to be determined with reference to the diagnostic elements, which serve to indicate, first, whether the relation between the testator and the claimant of the legacy was that of master and servant; and, secondly, whether he was the servant of the party alleged to be his master^(a). But in two cases in

(a) In *Billing v. Ellice* (1845) 9 Jur. 936 (bequest of one year's wages in advance to each of the testator's servants who should be in his service at his death and who should have lived with him five years or upwards), it was unsuccessfully argued that a farm-bailiff, who had lived in the home farm, rent free, all rates and taxes being paid for him by the testator, and whose sole remuneration consisted of his wages or salary, was an agent, rather than a servant. One special contention, rejected by the court, was that the claimant should be excluded from the benefits of the will merely for the reason that the amount of the bequests is expressly fixed with relation to the "wages" of the designated employees and the position occupied by him was of such a grade that, in common parlance, his remuneration would usually be described as a "salary."

In another case a clause by which the testator bequeathed to "all my servants and day laborers who shall be in my service at the time of my death one full year's wages above what may be then due to them respectively," was held to enure to the benefit of a man who had at first been appointed land agent of the testator, the owner of an extensive estate, at a salary of £300 a year, and had afterwards been entrusted with the duties of house-steward. The plaintiff shewed that, although it was customary for him to dine at the testator's table when he went to the latter's