

As a matter of ultimate analysis, the test thus indicated may be regarded as the only appropriate one in most of the cases belonging to the class with which we are now concerned". But it is apparent from §§ 964-966, post, that even where this test would, so far as the circumstance indicate, have been not only applicable, but sufficient, the Courts have not infrequently preferred to rely either partially or exclusively upon other elements.

5. Cases illustrating the application of this test.—In the subjoined note we have collected under convenient headings the cases in which the doctrine referred to in the preceding section may be said to have furnished the actual ratio decidendi.

"In one instance the real character of the occupation was held to be impossible to determine, for the reason that the statement of facts received from the trial court did not shew whether or not the occupation was "necessary to the service." *R. v. Spurrell* (1865) L.R. 1 Q.B. 72 (see § 8, note 2, post).

¹ (a) *Employés cultivating land or tending live stock*.—The pauper, a married man, agreed to serve S. for a year as a labourer, and was to have £20 a year, a house and garden, a piece of land for potatoes, the milk of a cow, and feeding of a pig, which were to run on a neighbouring field; and under this agreement the pauper served, and had the exclusive occupation of the house for himself and family, the house being about 100 yards from the house of S., and being necessary for the performance of his service; and if he had not had it he would have had more wages. Held, that this was not such "a coming to settle" on a tenement as conferred a settlement. *R. v. Kelatarn* (1816) 5 M. & S. 136. Lord Ellenborough, C.J., said: "I own I have no doubt in this case that the only occupation of this house was the occupation of the master and not of the servant, whom the master placed there for the mutual convenience of both parties. The master's house was about a hundred yards distant from it, and the servant had it thrown into the bargain in cumulation of wages. This may be compared to rooms allotted to a coachman over the stables of his master, or to an out-house, where being a family man it is more convenient that he should be out of the dwelling house; but that is nothing more than the occupation of the master. So here I cannot see that the occupation goes farther."

The owner of a mansion house and gardens, agreed with the pauper to take care of the garden, and for doing so he was to take the issues and profits of part thereof, and to live in a cottage contiguous thereto, belonging to his master; and he was to continue in the premises for a year, unless some other person before that time should occupy the mansion, in which case the gardens were to be delivered up. The pauper continued in the occupation of the garden on these terms for more than a year, the produce being worth to him £70 per annum. Held, that the pauper being only a servant, and the residence not being his own, he did not "come to settle" within the meaning of the statute. *R. v. Shipdham* (1823) 3 D. & R. 384.

The pauper was hired for a year as a shepherd. He was to have a house and garden rent-free, 7s. a week, and the going of thirty sheep with his master's flock, as wages. He served for two years at those wages in the parish of I., during all which time the sheep went on his master's farm, the whole of which was situated in that parish. The feed of the sheep was