

it is by no means certain that this case can be regarded as an authority for the broad doctrine which is required by sustain such a ruling. The probability is that, in view of the terms in which such clauses are usually drawn, there were words which clearly shewed that only menial servants were to be benefited (compare note *k*, *supra*, as to the supposed imperfection of the report).

In *Townshend v. Windham* (1706) 2 Vern. 646, the Lord Keeper refused to narrow the meaning of the general word "servants," so as to make it comprise such servants only that lived in the testator's house or had diet from him."

In *Blackwell v. Pennant* (1852) 9 Hare 551, 16 Jur. 420, where the bequest was to each of my servants '*living with me* at the time of my decease, it was argued "that the words italicised imported 'living in my house,' and that no servant who was not living in the house could be entitled under the bequest." The Vice-Chancellor declined to adopt this construction, saying: "The words 'living with me,' as applied to servants, may, I think, well be understood to mean living in my service, and this, I am much disposed to think, is the ordinary import of the words: but it is not necessary to go as far in the present case, for here the plaintiff (a gardener) was actually living in a cottage belonging to the testator, on the grounds adjoining to the testator's mansion; and it cannot, I think, reasonably be held that he was not living with the testator in the sense in which servants live with their masters, because he was not actually living in the same house with his master."

A testator gave to each person as a servant in his "domestic establishment" at the time of his decease, a year's wages beyond what should be due to him or her for wages:—*Held*, that a head gardener, who lived in one of the testator's cottages, and was not dieted by the testator, was not entitled to a legacy. *Ogle v. Morgan* (1852) 1 De G., M. & G. 359; 16 Jur. 277. The Court remarked: "For the purpose of ascertaining in what sense the testator used the expression 'domestic establishment' it appears to me to be important to distinguish between a servant in the establishment and one out of the establishment, between what is called an indoor and an outdoor servant; and I cannot but think that the testator had this very distinction in view."

A similar decision was rendered as to a gardener where the bequest was one of two year's wages to "each of my domestic servants." *Vaughan v. Booth* (1852) 16 Jur. 808. R. (following the case last cited).

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