

deemed essential for the performance of the duties" of the servant"; "for the purpose of performing his duties"; "for the more convenient performance of the service"; "with a view, not to the remuneration of the occupier, but to the interest of the employer and to the more effectual performance of the service required"; "convenient for the purposes of the service" and "obtained by reason of the contract of hiring", for the purpose of "facilitating the business" of the employer".

that the appellants and other workmen are only entitled to occupy the houses during the time of their service at the colliery; the occupation terminates at the time the service terminates. Still, the appellants are tenants, though not tenants for any fixed time. They occupy as tenants at will as long as they reside in the houses by the arrangement between themselves and their masters." *Smith v. Seghill* (1875) L.R. 10 Q.B. 422 (428, 429). See also the extract quoted in § 5, note 1, subd. (j), post, from the opinion of the same judge.

In *Fox v. Dalby* (1874) L.R. 10 C.P. 285 (294) Lord Coleridge, C.J., expressed his approval of the doctrine enounced by Cresswell, J., and Crowder, J., in *Clark v. Overseers of Bury St. Edmunds* (1856) 1 C.B. (N.S.) 23, 31, 26 L.J. (C.P.) 12, that "if either ingredient exists—if the occupation be necessary for the better performance of the duties required to be performed by the party, or if, though it be not necessary for their performance, he is required by the authority by which he is appointed to reside there in order to perform them—the occupation is not an occupation as tenant." In the same case (p. 295) Brett, J., considered the effect of the authorities to be, that the occupation is not that of tenant, where the employé "is required to occupy them for the better performance of his duties, though his residence there is not necessary for that purpose" or where his residence there is "necessary for the performance of his duties, though not specifically required." See also *Mead v. Pollock* (1901) 99 Ill. App. 151, where the phraseology of *Kerrains v. People*, supra, is adopted,

¹² *School Dist. No. 11 v. Batsche* (1885) 106 Mich. 330, 29 L.R.A. 576, 64 N.W. 196.

¹³ *Smith v. Seghill* (1875) L.R. 10 Q.B. 422 (428).

¹⁴ *R. v. Bardicell* (1823) 2 B. & C. 161; *R. v. Minster* (1814) M. & S. 278; *R. v. Cheshunt* (1818) 1 B. & Ald. 473.

¹⁵ *Robson v. Jones* (1854) 5 Mann. & G. 112. In *Smith v. Seghill* (1875) L.R. 10 Q.B. 422, it was observed that the ground of the decision in this case was that the occupation was "for the purpose of enabling him [the employé] the more readily to perform the services required of him."

The situation opposed to that which is expressed by the phrase in the text is indicated by the following remarks of Denman, C.J., in a poor law case: "This settlement, [i.e., that based on 'coming to settle' on a tenement] is usually acquired by renting, because the renting shews the occupation to be independent, and for the convenience of the occupier, and not for that of the landlord; and on this principle, many of the cases, where a distinction has been taken between an occupation as tenant, and an occupation as servant, proceed."

¹⁶ *Bowman v. Bradley* (1892) 151 Pa. 351 (361), 24 Atl. 1062 denying it to be indispensable "that occupation of a house, or apartments, should be a necessary incident to the service to be performed, in order that the right to continue in possession should end with the service." It is enough if such occupation is convenient for the purposes of the service and was obtained by reason of the contract of hiring.

¹⁷ *Morris Canal and Bkg. Co. v. Mitchell* (1864) 31 N.J.L. 99.