

treated as the appropriate criterion for determining whether he was entitled to the benefits or subject to the burdens of statutes regulating the contract of employment (*yy*).

If the agreement is essentially one for personal services, the employé is not removed into the category of "independent contractors" by the fact that he was left free to employ assistants, and did employ them (*zz*); nor by the fact that he was to be paid by the piece (*aaa*), or with reference to the amount of the sales of

(*yy*) In *Riley v. Warden* (1848) 2 Exch. 59, 18 L.J. Exch. N.S. 120, Parke, B. laid it down that a "labourer," within the meaning of the Truck Acts, is one who has entered into a contract to give his personal services and to receive payment in wages. See also to the same effect *Weaver v. Floyd* (1852) 21 L.J.Q.B.N.S. 151, 16 Jur. 289; *Sharman v. Sanders* (1853) 13 C.B. 166, 22 L.J.C.P.N.S. 86, 3 Car. & K. 298, 17 Jur. N.S. 765. Under these Acts a labouring man who enters into a contract to make as many bricks as the contractee required, such contractee supplying the materials and paying so much a thousand for the finished bricks, is not a workman, since there is no contract binding him to do the work personally. *Stuart v. Evans* (1883) 49 L.T.N.S. 13, 31 Week. Rep. 706. In the Employer's Liability Act of New South Wales, the intention of the legislature is indicated with more precision than in the English and Canadian Statutes, as its provisions are expressly declared to be applicable to those who enter into a "contract of service or a contract personally to execute any work or labour." It has been held that a contract, to fall within this description, must be a contract to serve personally or to serve for some period, or to do some particular work, and that no action can be maintained by a man who, being the owner of two carts, went, when it suited him, to the brick-kiln of the defendant and conveyed bricks to different places on the defendant's premises, not being bound to do the work, but being entitled to receive a specified sum of money if he thought fit to do it. *Loob v. Amos* (1886) 7 New South Wales L.R. (L) 92. See also *McElroy v. Australian Forge & Engineering Co.* (1899) 24 Vict. L. Rep. 953, where it was laid down, that the Employers and Employés Act of Victoria is not applicable to persons entering into a contract which can be performed by deputy.

(*zz*) *Weaver v. Floyd* (1852) 21 L.J.Q.B.N.S. 151, 16 Jur. 289. (Workman held to be "artificer"); *Howers v. Lovelock* (1856) 25 L.J.Q.B.N.S. 371, 6 El. & B.L. 584, 2 Jur. N.S. 1187 (see next note); *Lowther v. Radnor* (1806) 8 East, 113 (see next note); *Whiteley v. Armitage* (1864) 13 Week. Rep. 144; *Pillar v. Llynvi Coal & I. Co.* (1869) 38 L.J.C.P.N.S. 294, L.R. 4 C.P. 752, 20 L.T.N.S. 923, 17 Week. Rep. 1123. Iron rivetters paid at a fixed price per ton with liberty to employ other workmen of inferior skill to themselves have been held to be "handicraftsmen" within the Stat. 4 Geo. IV, chap. 34, sec. 3. *Lawrence v. Todd* (1863) 32 L.J.M.C.N.S. 238, 14 C.B.N.S. 554, 10 Jur. N.S. 178, 8 L.T.N.S. 505, 11 Week. Rep. 835. (Convicted for absence from work.)

(*aaa*) In *Bowers v. Lovelock* (1856) 25 L.J.Q.B.N.S. 371, 6 El. & Bl. 584, 2 Jur. N.S. 1187, "butty-men" held to be entitled to the benefits of the Truck Acts. The evidence was that they had bound themselves to do the work personally. Contrast *Sleeman v. Barrett* (1864) 2 Hurlst. & C. 934, 33 L.J. Exch. N.S. 153, 10 Jur. N.S. 476, 9 L.T.N.S. 834, 12 Week. Rep. 411, cited in note (*zz*), supra. So also a working tailor engaged to make clothes, each garment to be paid for according to a price list has been held to be an artificer within the Masters & Servants Act, 4 Geo. IV, chap. 34, sec. 3. *Ex parte Gordon* (1855) 25 L.J.M.C.N.S. 12, 1 Jur. N.S. 683. (Convicted for failure to finish a piece of work which he had begun.) One who digs a well at so much a foot has been held to be a "labourer" within the meaning of 2 Geo. II, chap. 19. *Lowther v. Radnor* (1806) 8 East, 113. See also *Lawrence v. Todd* (1863) 32 L.J.M.C.N.S. 238, 14 C.B.N.S. 554, 10 Jur. N.S. 178, 8 L.T.N.S. 505, 11 Week. Rep. 835, cited in last note.