

10. Occupancy of a dwelling "by virtue of an office, service, or employment."—The following provision is contained in § 3 of the English Representation of the People Act, 1884: "Where a man himself inhabits any dwelling house by virtue of any office, service, or employment, and the dwelling house is not inhabited by any person under whom such man serves in such office, service, or employment, he shall be deemed for the purposes of this Act and of the Representation of the People Acts to be an inhabitant occupier of such dwelling house as a tenant." The construction put upon this provision is shewn by the cases collected in the note below. Its importance with relation to the doctrine established

be supposed to have undergone a change, when, after having been for some time in the service of the owner of the estate, he obtained the privilege of cultivating the garden for his own benefit, and at his own cost; that, when the new arrangement was entered upon, he took over at a valuation a horse and van, belonging to the landowner, which had been used for conveying produce to the market; that, when the plaintiffs were looking for a person to take the defendant's place, they advertised that the garden was to let; that the plaintiff's local agent returned the defendant's name as "tenant," and that he was so entered on the valuation roll of the county. *Dunbar's Trustees v. Bruce* (1900) 3 Sc. Sess. Cas., 5th Ser., 137.

A. employed B. to work for him at \$50 per month for a period of eight months agreeing also to furnish him a house free of charge from the expiration of that period to a subsequent date specified. A. subsequently permitted B. to sublet this house to C. *Held*, that after eight months B. occupied the house as tenant and not as servant, and that C. was liable to B. for the rent. *Snedaker v. Powell* (1884) 32 Kan. 396. The court said: "Powell had the right to occupy the house of Burnham to March 1, 1884, free of charge. He was to work, for eight months from March 6, 1883. This time expired prior to November 13, 1883. After he moved away, and perhaps quit work, the house belonging to Burnham was not an accessory or aid to the performance of Powell's duties as a servant. Under the contract Powell had paid by his labour and services for the use of house to March 1, 1884; and even if the occupancy of the dwelling during his eight months' service was that of a servant and not of a tenant, yet after he had performed that service, the relation existing between Burnham and Powell was that of landlord and tenant. There is no evidence shewing or tending to shew that after November 13, 1883, the occupancy of the house was for the benefit of Burnham, or as an accessory or aid to the performance of the duties of Powell as a servant. For aught that appears, after the eight months had expired there was no service to be performed by Powell, and yet Powell was entitled to the house for nearly four months thereafter. If the services of Powell had expired, clearly Burnham had no right to enter forcibly and oust him of the possession of the house, for he had expressly agreed with Powell that the latter should have the house until March 1, 1884, although his services as a servant might expire November 6, 1883. As Burnham permitted Powell to transfer his interest or sublet the house to Snedaker, the latter held under Powell and not under Burnham. Snedaker was therefore liable for the rent which it was adjudged he must pay."

See also the passage quoted in § 8, note 1, ante, from Lord Ellenborough's judgment in *Bertie v. Beaumont* (1812) 16 East 33.