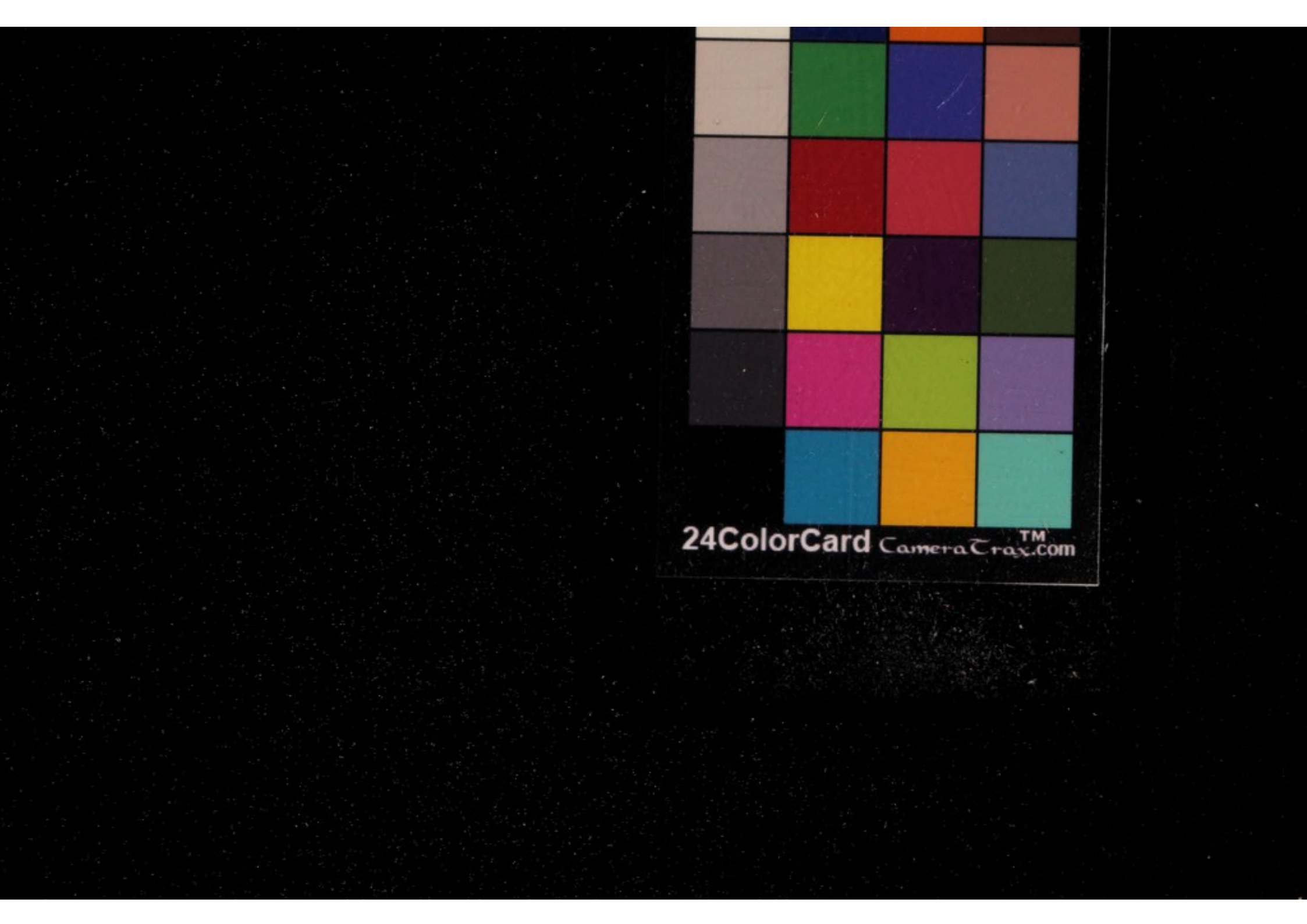
Parish settlements and the practice of appeals ... / Jellinger C. Symons.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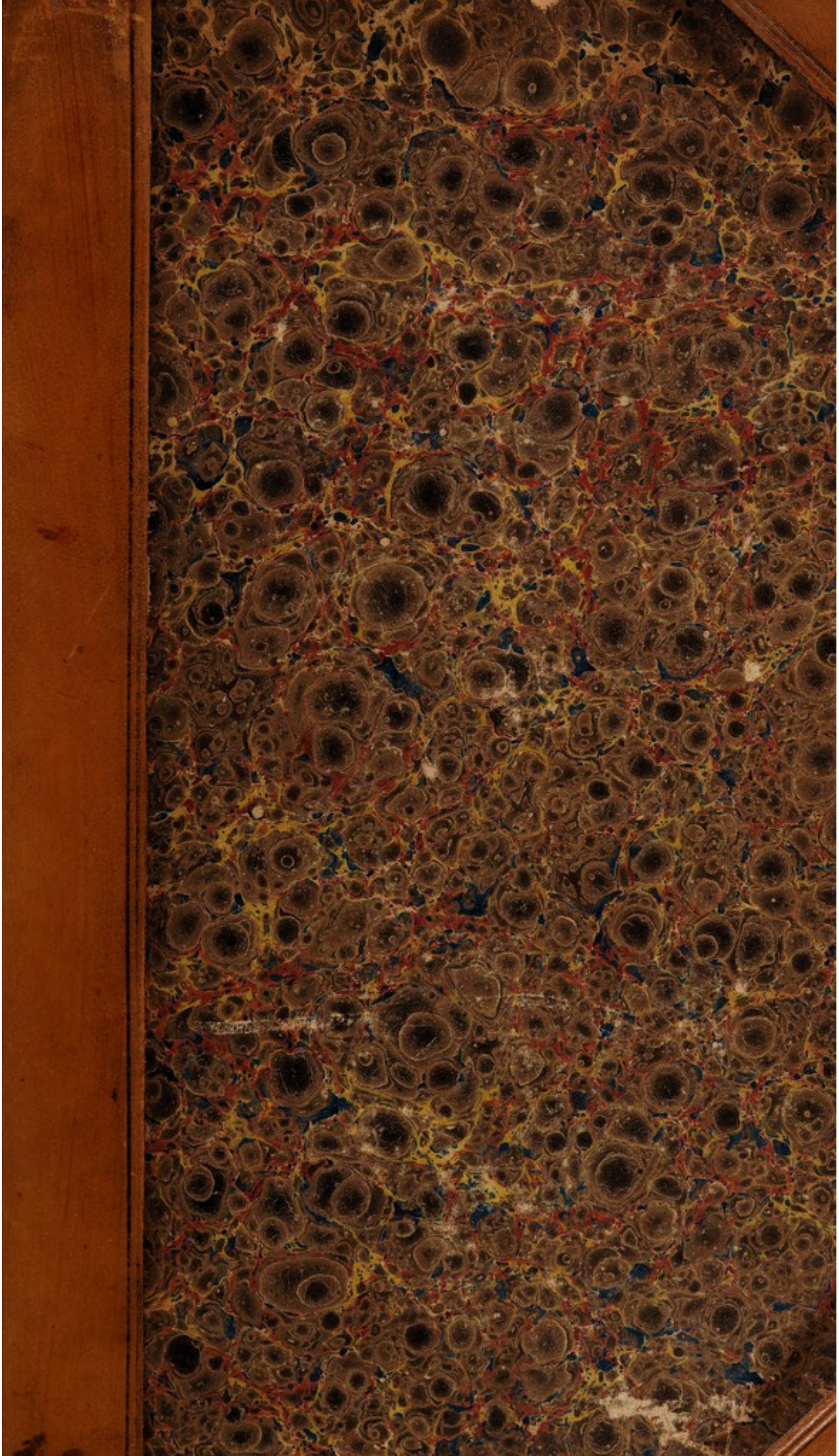

PARISH SETTLEMENTS

AND

The Practice of Appeals:

CONTAINING

THE LAW AND EVIDENCE OF EACH CLASS OF SETTLEMENT,

AND THE GROUNDS OF OBJECTION INCIDENTAL TO THEM;

WITH THE

LAW AND NEW STATUTES RELATING TO BASTARDS;

AND

Forms for all Proceedings.

BY JELINGER C. SYMONS,

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SECOND EDITION,

GREATLY ENLARGED AND RE-WRITTEN.

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TO

THE LORD DENMAN,

LORD CHIEF JUSTICE OF ENGLAND,

THIS ATTEMPT

TO EXPLAIN THE PRINCIPLES OF AN INTRICATE BRANCH OF LAW

IS,

WITH HIS LORDSHIP'S KIND PERMISSION,

HUMBLY INSCRIBED,

AS

A SLIGHT TESTIMONY OF THE RESPECTFUL ESTEEM

OF

THE AUTHOR.

INTRODUCTION

TO THE

FIRST EDITION.

SOME of the recent decisions on poor law appeal cases in the Court of Queen's Bench, and the frequency with which orders of removal have been quashed on grounds of informality, prove that a greater degree of accuracy than heretofore is required, alike in ascertaining settlements, in taking the evidence necessary to support them, and in stating the grounds of objection on which appeals are based. More practical guidance is consequently needed, especially by parish officers and country practitioners. It is chiefly to supply such want that this work is designed: whilst, by introducing every important principle of modification of the law, as altered by the latest decisions, we venture to hope the work may prove not unacceptable to the Bench and the Bar.

It is no depreciation of the excellent and elaborate works already existing on this subject, to say that there is no work before the public of the same practical utility to practitioners in this department of the poor law, as that which we intend

to render this little manual. Existing works are either so elaborate as to contain a vast deal of costly matter which the country practitioner does *not* want, rendering a laborious research essential for the discovery of what he *does* want, or they instruct only on particular branches of this department of parochial business.

It is our object to give a plain statement, first, of what the law and the practice is, as applied *generally* to all cases of removal and appeal; and having done this, then, under the head of each of the nine kinds of settlement, to state, *first*, the law creating and governing that particular settlement; *secondly*, the evidence necessary to support it; and *thirdly*, the grounds of objection to which the evidence of such settlement is commonly liable, with full directions and forms for the proper mode of stating them. By this means, the reader has merely to turn to the sort of settlement he is concerned with, and he finds the matter ready and connected for his use.

In all cases our aim has been to put ourselves in the position of the person needing information how to proceed, and to give it in the plainest terms. The reports and local experience have shown us the kind of difficulty which has been most felt in each of such cases, and the errors against which it is most useful to give the means of guarding.

Our positions are based on the decisions of the Queen's Bench, which are quoted from the *Law Journal*, and also from one of the standard reports.

We cannot too strongly impress on parish officers, as well as on the profession, the essential need of attending carefully, not merely to the necessary forms of procedure in all cases of removal and appeal, but to the accuracy and fulness of the statements and wording of all evidence, orders, and grounds of objection.

If well examined, it will be found that many of the objections, for instance, held fatal to orders, though apparently based on very slight grounds, are really founded on some serious verbal omission or error, which has the effect of leaving wholly mis-stated some important fact, which it is essential to express. The invalidity of orders or examinations is also very frequently caused by a slovenliness of expression, which arises from the absence of a clear and defined notion of what the law requires.

The law of settlements has been diversified by a succession of rather capricious statutes; but when once clearly understood, it is not difficult to apply it to any particular case. Neither are there any peculiar forms or technicalities to perplex the practitioner in drawing the orders or grounds in ordinary cases. The niceties of special pleading enter far less into the work than the two simple powers—first, of a comprehension of what the law requires; and, secondly, of stating all the required facts in plain English. It is quite true that omissions and inaccuracies which obtain in the haste and slovenliness of *conversation*, without preventing a

comprehension of what is meant, are not permissible in these documents. Nor is it fit they should. But because nothing can be left in them to be guessed at, it by no means follows that there is any great difficulty in stating what it is necessary to define clearly. An instance in point occurs in *Reg.* v. *Flockton* (*a*), where it has been thought a hardship to have held the following statement of a pauper's residence under an apprenticeship to be defective:—"My indentures were assigned to George Walker, of Flockton, in the said Riding, *with whom I went and resided with* three or four years, when I left him." Now to make out the case, it was essential to show that the pauper himself had resided at Flockton whilst in service. This is the gist of the matter—part of the sum and substance of the settlement. Is it stated? Certainly not. All that is stated is, that the master lived there *when* the pauper was hired, but it is quite consistent with this that both should have left the day after, which would not be a settlement. The fact is *implied*, it is true; but were the express statement of essential facts allowed to be omitted, because they might be inferred, a wide inlet would be opened to fraud and wrong.

J. C. S.

(*a*) 2 Gale & Dav. 664.

PREFACE

TO

THE SECOND EDITION.

THE design of the first edition has been carefully preserved in this enlarged work. In adding all the recent cases worthy of note, and in making the additions which seemed likely to enhance its utility, I have striven to maintain the character of a work aiming at a development of the principles of the law, instead of a string of notes of cases, according to the prevalent fashion of text books. I believe that although many defects may be observable in the execution of this design, it is one which can alone produce books of real value to the Profession. Where a work is confined merely to the citation of cases—that is, to decisions in individual cases, the deduction of a rule applicable to other cases is left to the reader, and with materials so incomplete, it is not easy to form just conclusions. These can be derived only from a patient consideration of the whole judgment compared with and elucidated by precedents; hence principles and rules may be given which will arm the practitioner with far more effective knowledge of the law than he can possibly derive from a pile of cases thrown

before him with little attention to analogy, and none to the means of harmonizing apparent discrepancies. I have anxiously endeavoured to avoid this evil, and to generalize and give principles as far as compatible with the nature of each branch of law, and the information requisite to its practical application.

It is not improbable that I may hereafter extend the same treatment to other branches of the Poor and Parish Law.

I have added a sketch of the Bastardy Law, and have given the new statutes affecting it in the Appendix: it seemed that this would be very useful to the profession, inasmuch as the law has undergone on this subject so entire and recent a change.

The cases are cited in the text from the chief or standard report in which they occur; but in the table of cases the references to all the other reports in which they are known to occur are collected together, and it is hoped that this will of itself afford a useful index to the student and practitioner.

The Practice of Sessions on all points likely to be of service in the conduct of appeals and their sequel, has been treated somewhat more at large than in the First Edition. In all other respects it has been my effort to fulfil the scheme indicated in the foregoing "Introduction," and though conscious of sundry imperfections, I am hopeful that the work may prove useful and acceptable.

I have not been deterred from publishing this edition by

any rumour of alteration in the law. If this takes place, it will scarcely diminish the utility of a work on the elements of a system, in which there is small chance of material change. It is very improbable that propositions (as mischievous as they are chimerical) to dispense with legal evidence, encourage fraud and protect misleading looseness of statements, will ever meet with the sanction of the legislature.

J. C. SYMONS.

1, Harcourt Buildings, Temple.
8th December, 1845.

CONTENTS.

PART I.

APPENDIX.

ABBREVIATIONS OF NAMES OF REPORTS.

A. & E. . . .	Adolphus and Ellis.
All.	Alleyn.
And.	Andrew.
B. & A. . . .	Barnewell and Alderson.
B. & Ad. . . .	Barnewell and Adolphus.
B. & C. . . .	Barnewell and Cresswell.
Bing.	Bingham.
Bing. N. C. . .	Bingham's New Cases.
Bit. & Sym. . .	Bittleston and Symons's (Verulam) Reports.
Bott	Bott's Reports.
Burr. S. C. . .	Burrow's Settlement Cases.
Cald.	Caldecott's Reports.
D. & M. . . .	Davison and Merrivale.
Doug.	Douglas.
Dowl.	Dowling.
D. & L. . .	Dowling and Lowndes.
East	East's Reports.
G. & D. . . .	Gale and Davison.
Jur.	Jurist.
L. J. M. C. . .	Law Journal; Magistrates Cases.
L. T.	Law Times.
M. & G. . . .	Manning and Granger.
M. & S. . . .	Maule and Selwyn.
M. & W. . . .	Meeson and Welsby.
N. & M. . . .	Neville and Manning.
N. & P. . . .	Neville and Perry.
New S. C. . .	Carrow, Hamerton and Allen's New Sessions Cases.
Nol.	Nolan's Poor Law.
P. & D. . . .	Perry and Davison.
Q. B.	Queen's Bench Reports.
Salk.	Salkeld.
Str..	Strange.
T. R.	Term Reports.
Wil. W. & H. .	Williams, Wollaston and Hodges.

TABLE OF CASES.

PARISH SETTLEMENTS;

OR,

The Practice of Appeals, &c.

PART I.

LAW AND PRACTICE OF REMOVALS.

Section I.—Origin of Removal.

History of the law of settlements.—The first statute which in any manner relates to the settlement of paupers, is that of 12 Rich. 2, c. 7. It provides that beggars, impotent to serve, shall abide where they are at the time of the proclamation of the statute; but that if the cities and towns are unable to maintain them, they shall then draw themselves to other towns within the hundred, or to the towns where they were born, within forty days after the proclamation was made, and there continually abide during their lives. This vague enactment, and its virtual license to beg, was enlarged by that of 11 Hen. 7, c. 2, which permitted the beggar to follow his vocation "where he was best known or born." The 19 Hen. 7, c. 12, however, speedily restricted this general and indefinite furlough, and settled beggars within their native cities, towns and hundreds, or else in the places where they made their last abode for the period of three years (*a*). This was a birth and residence settlement,

(*a*) Those of our readers versed in Anglo-Saxon laws will recognize in the domiciliated status of the *Hogenhyne*, the dawn of settlements. Secundum antiquam consuetudinem dici poterit de familia alicujus qui hospitium fuerit cum alio per tres noctes; qui primâ nocte dici poterit *Uncouth*; secundâ nocte *Gust* (our guest); tertiâ nocte Hogenhine." Bract. de Leg. fol. 124b. The third night rendered the comer *familiaris*.

and it was likewise the origin of settlements; for the preceding statutes in effect legalized vagrancy. Such continued the law of settlement for many years. The 1 Edw. 6, c. 3, and 14 Eliz. c. 5, directed the justices and others to appoint neat and abiding places to *settle* the aged and impotent poor, and provided for their *removal* to their places of settlement according to the existing law. The object of these later laws was to correct the vagrant habits which the older laws were so well devised to create. The 1 Jac. 1, c. 7, made a further alteration, ordaining that rogues, vagabonds, and sturdy beggars, should be sent to the place of their dwelling, if they had any, and if not, to the place where they last dwelt by the space of a year, if that can be known, by their confession or otherwise, and if that cannot be known, then to the place of their birth.

The power of removal was, however, clearly confined, during the reign of Elizabeth and subsequently, to cases of vagrants. It was held, "that no man is to be put out of the town where he dwelleth, nor be sent to his place of birth or last habitation, but a vagrant rogue; nor to be found by the town, except that the party be impotent(*b*)." Where paupers were not vagrants, they were by common law to be maintained *where they became chargeable.* Where the pauper had sojourned in the place, whether as householder or servant, Dalton says, "that such persons must not be sent out of the town where they so last dwelled or served; neither are they to be sent from thence to their place of birth or last habitation, but are to be settled there to work, being able of body; or being impotent, *are to be there relieved;* and yet if such persons shall wander abroad begging out of that parish, then they may be sent as vagabonds, from the place where they shall be taken wandering or begging, to their places of birth (*c*)."

The elements of settlement were more explicitly defined

(*b*) Resol. 9 Lamb. Eir. book 2, ch. 7, p. 209, edit. 1630.

(*c*) Dalt. Just. tit. Poor, 228.

by the resolutions of the judges of assize in 1633, which state that "the law unsettleth none that are lawfully settled, nor permits it to be done by a practice or compulsion; and every one who is settled as a native, householder, sojourner, an apprentice, or servant for a month at the least, without a just complaint made to remove him or her, shall be held to be settled (*d*)."

The effect of charging the maintenance of paupers on the funds of places was in effect to institute settlements in parishes, for parishes were the districts in which such funds were raised, and the word town was synonymous with parish.

We have thus traced the obligation to maintain the resident poor in the parish in which they are settled, and the power to remove the unsettled or vagrant poor, which continued to exist until the passing of the 13 & 14 Chas. 2, c. 12, which for the first time abolished the distinction between vagrants and paupers *quoad* removal and the means of gaining a settlement, and provided that a settlement once gained should continue until another was acquired. It also materially abridges the facility of acquiring settlements by residence, and gives the right of appeal. The object of this important statute is thus expressed in the preamble: "Whereas by reason of some defects in the law, poor people are not restrained from going from one parish to another, and therefore to endeavour to settle themselves in those parishes where there is the best stock, the largest commons or wastes to build cottages, and the most woods for them to burn and destroy, and, when they have consumed it, then to another parish, and at last become rogues and vagabonds, to the great discouragement of parishes to provide stocks when it is liable to be devoured by strangers: be it therefore enacted, by the authority aforesaid, that it shall and may be lawful, upon complaint made by the churchwardens or

(*d*) Dalt. Just. tit. Poor, 23; and *Weston Rivers* v. *St. Peter's, Marlborough*, 2 Salk. 492.

overseers of the poor of any parish, to any justice of the peace, within forty days after any such person or persons *coming to settle* as aforesaid in any tenement under the yearly value of ten pounds, for any two justices of the peace, whereof one to be of the quorum of the division where any person or persons that are likely to be chargeable to the parish shall come to inhabit, by their warrant to remove and convey such person or persons to such parish where he or they were last legally settled, either as a native, householder, sojourner, apprentice or servant, for the space of forty days at the least, unless he or they give sufficient security for the discharge of the said parish, to be allowed of by the said justices."

With this statute the early history of parish settlement may be said to close, and its practical enactments begin to run.

Certificates.—In order to modify the stringency of 13 & 14 Chas. 2, c. 12, and to avoid the total prevention of migration, that of 8 & 9 Will. 3, c. 30, was passed, whereby such poor as obtained a certificate from the parish they quitted, acknowledging their settlement to be in such place, were rendered irremovable from the parish they went to, until they became actually chargeable there, such certificate then forming evidence of their settlement. This statute was not found to answer its purpose, and was superseded by the 35 Geo. 3.

Paupers removable only when chargeable.—The 35 Geo. 3, c. 101, (called Mr. East's Act), materially modified the power given by the statute of Charles; and after reciting the evils which had been found to result from the check that statute imposed on the salutary migration of labour, repealed it, so far as related to the power of removal on the mere *likelihood* of chargeability. It enacted instead, that removal shall not be made until the pauper "shall have become actually chargeable," at the same time, as a necessary consequence, repealing the limit of forty days. Removals have been

since confined to paupers only, instead of to the poor at large. This change took place on the passing of the act, June 22, 1795.

It will be observed, that the words which require chargeability as the basis of the order in this act are in the past tense, "until such person *shall have become* chargeable." The question arises, whether it be necessary that the pauper shall be actually *then* chargeable when the order is made, or whether it is competent to remove him after he has been, but has ceased to be, chargeable. This question has not been judicially determined, and the practice has long prevailed of making the order during the chargeability; but it is obvious that the words of the statute, strictly construed, do not require that it should be a present chargeability. This view is in great measure borne out by the form of certificate of chargeability appended to 7 & 8 Vict. c. 101. "The board of guardians of the poor of the union [*or* parish of] do hereby certify, that on the day of , A B and his wife C B, and his child E B, *became chargeable* to the parish of , in the said union," &c. Here therefore the past tense again occurs, and the certificate holds good for twenty-one days (sect. 69), so that it may clearly avail after the pauper has ceased to be chargeable according to that act. But it is otherwise with the new act for the removal of Scotch and Irish paupers, 8 & 9 Vict. c. 117, which in the form of warrant of removal uses these words, "a person, &c. who hath become and *is now* chargeable to the parish," &c. Mr. Archbold inserts a mere dictum with respect to the general requirements of actual chargeability, in his very useful work on Poor Law, p. 550, edit. 1844, and says, "that the evidence must show that the pauper was chargeable *before and at the time* of the making of the order." He cites *Reg.* v. *Black Callerton*, (2 P. & D. 475,) which does not decide the question, for there no evidence at all of chargeability past or present was given. It is unlikely that parishes would avail themselves of the oversight, if

such it be, in the wording of these statutes, but if they chose it, it is submitted that they might do so successfully.

Chargeability, how constituted.—Chargeability now occurs wherever the pauper, being resident, or having come to reside, receives relief. Surgical or medical relief suffices, with the sole exception of vaccination. (4 & 5 Vict. c. 32.)

Who are removable.—In addition to all persons who are actually chargeable as above shown, all persons convicted of being idle and disorderly, or as rogues or vagabonds, are deemed chargeable and are removable. (5 Geo. 4, c. 83.)

Persons of property, when irremovable.—Persons having property in the parish where they reside, though purchased for less than 30*l.* and conferring no settlement (see post, title "Settlement by Estate"), have been held to be irremovable whilst residing on such estate, although they are liable to be, and may have become, actually chargeable. It is otherwise if the pauper does not reside on his estate. Formerly renting a tenement above 10*l.* yearly value gave a similar privilege, but that has ceased since the 35 Geo. 3, c. 101.

Husband and wife.—No removal is good which on the face of it separates the wife from the husband (*e*). Where the husband was in gaol, an order to remove a wife from a place where she could have intercourse with him, to his place of settlement, where she could not, was quashed on that ground; Lord Denman holding it to be against the policy of the law to interrupt such "consortium." Consent on the husband's part will, it seems, suffice to legalize the removal (*f*). If it does not appear on the order that the effect of it will be to separate the husband and wife, the court will not assume the separation, and it will be confirmed (*g*).

Children.—Children under seven years of age must remain with the mother for nurture, and cannot be removed

(*e*) *Rex* v. *Aythorp, Reading*, 2 Bott, 104.
(*f*) *R.* v. *Stogumber*, 9 A. & E. 622.
(*g*) *R.* v. *Stockton*, 5 B. & Adol. 546.

even if they have a separate settlement. Nor will the mother's consent wave the law, which is for the protection of the child, and inflexible (*h*). The age of nurture is under seven, above which age children, if legitimate, may be removed to their own settlements (*i*). If settled elsewhere, the parish where the child is settled may be compelled to reimburse the parish where it has become chargeable.

Casual poor.—It is clear from the wording of the statute, that paupers must be resident in, as well as chargeable to, the parish they are in, in order to be removed. Casual poor are not removable, as where a poor man meets with an accident whilst on his journey passing through the parish, nor is any distinction admissible between an accident and illness. But wherever a pauper takes up his abode, he is removable as soon as he becomes chargeable, "if he come for the purpose of inhabiting at all (*j*);" for it is clear "a pauper is never casual poor in a parish in which he resides;" nor is he casual poor in a parish "where he is come to settle (*k*)." And length of residence has nothing to do with the question of his intent to reside, which may be just as complete the hour he arrives as after prolonged residence. The intent, therefore, is the gist of the distinction, and must be clearly shown where necessary in evidence.

Such are the circumstances under which persons become, or are exempted from becoming, removable (*l*). An order of removal is the only mode by which a disputed settlement can be tested, and it must be finally decided by appeal. But a removal may take place voluntarily without an order; in all such cases it is essential that the parishes as well as the pauper should consent to the removal.

(*h*) *Reg.* v. *Birmingham*, 5 Q. B. 210.

(*i*) *Reg.* v. *Stafford*, 10 A. & E. 417.

(*j*) *R.* v. *Woolpit*, 4 A. & E., per Patteson, J.

(*k*) *R.* v. *Oldland*, 4 A. & E. 929, per Patteson, J.

(*l*) Pregnant unmarried women are, since 4 & 5 Will. 4, c. 76, s. 69, removable only when they become chargeable.

Removal is not obligatory.—There is no obligation on a parish to remove a pauper though he be elsewhere settled; but as it is obligatory on it to relieve every pauper remaining there, such obligatory relief, whilst not removed, and whilst the pauper is resident in the parish, will not constitute any evidence against such parish whenever it may desire to remove the pauper at a future time to his place of settlement (*m*). This being the case, it is often well worth the consideration of a parish, whether it may not incur less expense by affording relief, at least for a time, than by the risk and cost of a premature order of removal which may be likely to be contested.

Relief to a pauper residing elsewhere tends to establish his settlement where it is given.—If, however, the pauper relieved be residing out of the parish, affording such relief will, as we shall afterwards show, be cogent proof of the settlement of the pauper in it; for such settlement, with a few exceptions, is the only presumable ground on which relief would be given to non-resident paupers.

Effect of removal.—Wherever a pauper has been voluntarily received by a parish on an order of removal, or by the decision of an appeal, the receiving parish is concluded from disputing the settlement so established with any other parish, for it is presumed, that if it could have shown a later settlement elsewhere, it would have done so.

An order quashed, however, merely concludes the question between the removing and appellant parishes, and leaves the question open as to any other parish in which a settlement may have been gained.

Case where the pauper cannot be removed to his last legal settlement.—It would appear needless to say that paupers are removable to the parish where they are found to be settled, but for a singular and very important exception to this rule, es-

(*m*) *Reg.* v. *Colcorton*, 1 B. & Adol. 25.

tablished by several recent decisions of the Queen's Bench (*n*), in which it is held that all the settlements gained in an entire parish are lost upon its division into separate townships, each maintaining its own poor. The probable increase of this division of parishes, naturally resulting from the rapid growth of our urban population, renders this a very important matter for the consideration of parish officers and of rate-payers at large. All these cases relate to the parish of Hales Owen, situated partly in Worcestershire, but chiefly in Shropshire. Until 1832, the Shropshire part, though consisting of twelve townships, constituted from time immemorial one parish, having one set of overseers, described as of the poor of the parish of Hales Owen in the county of Salop, and jointly maintaining its poor. In 1832, this joint parish became divided, and to each township were appointed its own overseers, and from that time overseers ceased to be appointed for the *parish* of Hales Owen.

In both the cases in question a legal settlement had been gained by the paupers in the parish during its integral state. The only point of difference worth noticing is, that in *R.* v. *Oldbury* the pauper had been previously removed before the division into Hales Owen *parish*, and the order was executed without appeal. Subsequently to the division in 1832, and when there were no longer any overseers of the *parish* of Hales Owen to whom to direct orders of removal, an order in each case for the removal of the paupers in question was addressed to the overseer of the *township* in which the settlement was supposed to have been made. These orders were successfully resisted on the ground of the division of the parish, and on a settlement gained previously in the *parish*, giving no right of removal to a separate *township* after the division (*o*).

(*n*) *Reg.* v. *Oldbury*, 4 A. & E. 167; *Reg.* v. *Tipton*, 3 Q. B. 215; and *R.* v. *Hunnington*, 13 L. J. M. C. 24.

(*o*) The judgment given in *Reg.* v. *Oldbury* was substantially as follows:—

Removal of Scotch, Irish, Isle of Man, and Isle of Scilly, Jersey or Guernsey paupers.—These paupers are remov-

Denman, C. J.—" I think that Oldbury having since become a separate township, it is not estopped by that order. [The order unappealed against prior to the division] If it were so, persons removing a pauper under circumstances like the present might settle him in whichever district they chose to select. When the former order was made, the parish was the party charged; now it is the township of Oldbury." * * * " It seems to me that if this township is an ancient division, which might formerly have maintained its own poor, then when it obtained the right to have officers of its own, and to provide for its poor separately, it became liable to maintain those paupers whom it would have supported if it had been a separate division at an earlier period." Williams and Coleridge, JJ., concurred; Patteson, J., dubitante, held that " If Oldbury could be so discharged as to a third parish, any parish, by dividing itself, could get rid of the liability to maintain paupers which had then removed to it. On the other hand, if an estoppel arose here as to one district, it would as to more; and if a parish separated itself into a number of divisions, any one of those, under circumstances like the present, might conclude any other." The order of the sessions, which had upheld the removal, was then quashed.

In *R.* v. *Tipton* an error was made as to the township from which the pauper's mother was *sent* to a workhouse to be confined, and, therefore, in the township selected as the settlement; but the case was wholly decided on the grounds above stated. Lord Denman, C. J., gave the judgment of the court after deliberation. " The question is, whether she (the pauper) gained a settlement in the latter township by such birth; and that must depend upon this, how far before such subdivision each township ought to be considered as connected with or independent of the parish for purposes of settlement. Generally speaking, they are not so connected; any act by which a settlement may be gained has no reference to the township in which it may be acquired, but to the parish only." [Reference was then made to *R.* v. *Oldbury*, and to the prior case of *R.* v. *Oakmere*, 5 B. & Ald. 775, where a birth in a place extra parochial was held to give no settlement after it had been made a township.] " To sustain the order of removal into the township of Hales Owen, we must hold that a settlement by birth was gained equally in the parish and each of the townships composing it, for which we find no warrant of direct authority or analogy in the law of settlement. It has been suggested as a difficulty, that unless we so hold, the parish by subdivision will get rid of settlements, and that persons who would otherwise have gained them may have none. A similar result, under circumstances nearly the converse of the present, happened in the case of *R.* v. *Inhabitants*

able to their respective countries under certain regulations specially enacted for these cases in 8 & 9 Vict. c. 117, which will be found in a subsequent section of this Part.

of Laighton-on-the-Hill, 2 B. & Ald. 162. There the pauper had gained a settlement in Laighton, and afterwards in Gloverstone, *then a township*. Afterwards, by certain alterations in the Castle of Chester, all the houses in Gloverstone were pulled down, and it ceased to exist as a township. The removal was accordingly into Laighton, as the last practicable place of settlement. The court, however, decided that the settlement in Laighton was extinguished by that in Gloverstone, though the necessary effect of the decision was to leave the pauper without any settlement at all."—*Order of sessions quashing the order of removal confirmed.* These cases are conclusive as the law now stands. It is, however, not the less desirable that a settlement gained in an individual parish should be binding on the township containing that part of the parish in which the settlement was gained, without reference to whether such township was, before the division, connected with or independent of such parish for purposes of settlement. Authority on the point there can scarcely be any, for the division of parishes into townships has been chiefly the concomitant of the recent growth of population. In principle and in point of justice to the parties affected, there can scarcely be a question. Originally the individual township bore its share of the entire burden of the pauperism charged on the whole parish. It is now exempted from any share in that of the other townships, and it is no more than an equivalent for such exemption that it should now bear the undivided burden of its own. Whether such burden originated in its corporate or its individual state is of no moment; only confine its liability to its own settlements, arising from the self-same land from which they sprung, and borne by the same proportion of funds, and the *time* of their origin becomes wholly immaterial. Under this rule, the second part of the dilemma, so well put by Mr. Justice Patteson, in *Reg.* v. *Oldbury*, could not arise; for the admission of a pauper would occur only in the township whence he originally derived his settlement, and could conclude such township alone from appealing against his subsequent removal. Lord Denman's powerful objection, that "persons removing a pauper under circumstances like the present might settle him in whichever district they chose to select," would be similarly obviated.

The grievance and injustice done by the existing law, in allowing large parishes to escape from all their existing liabilities the moment they divide themselves into townships, is obviously great. None but populous and growing places ever are divided; they escape a charge, therefore, which the very cause of their division has enabled them to bear. It is from the smaller

Having thus sketched the general principles upon which the law of removal is founded, we proceed to the rules whereby the practice is governed.

Section II.—Preliminary Proceedings previous to Examination.

Complaint of chargeability.—The first step in order to the removal of a pauper is a complaint to any two justices, or to a single justice of the peace (*p*), acting in the division of the county where the pauper is, which must be made by the "churchwardens or overseers of the poor of any parish," and which it is advisable, but not necessary, should be in writing (*q*). This complaint must distinctly state the chargeability, the inhabitancy, and the supposed settlement of the pauper (*r*).

The Court of Queen's Bench is not astute to exact formality in complaints, for in the case of *Reg.* v. *Bedingham* (*q*) the complaint had been signed by only one overseer, but the order purported to have been made "by *the overseers* of the poor," &c., and the case found as a fact, that the complaint was made "on behalf of the parish officers, and with their consent," and this the court held to be sufficient, because "the statute does not require the complaint to be in writing; and the order showed the complaint was by all." But the material points above stated must be contained in the complaint; where the complaint was, that the paupers had lately *intruded* themselves, instead of come to *inhabit*, the court held this no sufficient statement of inhabitancy, as a tramping

scale of their antient liabilities that their modern strength is to be thenceforth exempted. The moment a parish is divided into townships, its five, ten, or twenty thousand inhabitants are enabled not only to divest themselves of the charge of every pauper their growth has flung forth on the country at large, but, as the burden must fall somewhere, to saddle it on other parishes.

(*p*) 13 & 14 Car. 2, c. 12.

(*q*) *Reg.* v. *Bedingham*, 5 Q. B. 683.

(*r*) *Reg.* v. *Bucks*, 3 Q. B. 800.

beggar, who had accidently broken his leg, would answer such a description (*s*).

The complaint is the foundation of the justice's jurisdiction. It gives to any two justices of the division of the county (of whom one must be of the quorum) power to inquire into the matter; and this jurisdiction of the justices arises not from the truth of the complaint, but from its being made. The justices, or justice, to whom the complaint is made, will then, if it be necessary, grant a summons, or a warrant, to bring the pauper before *two* justices of the peace for examination.

Form of complaint of chargeability.

County of } The information or complaint of , the over-
} seers [*or* (*or* and) churchwardens] of the parish of ,
to wit. } in the county of .

We the undersigned overseers [*or* (*or* and) churchwardens] do hereby complain and declare unto [and] being one [*or* two] of her majesty's justices of the peace, acting in and for the said county of , that [labourer], together with [*state the names of his wife and children according to the facts*] are now inhabiting our said parish of , and have become chargeable thereto, and we do further declare to the best of our knowledge and belief, that the said [and his said wife and children have] has not obtained or acquired any settlement in this our said parish of , but that the said [and, &c.] is [*or* are] legally settled in the parish of , in the county of , and therefore we pray that inquiry may be had and justice done in the premises. Dated this day of , A.D. 1846.

A B } Overseers of the poor [*or* (*or* and) church-
C D } wardens] of the said parish of .

Upon this, the ordinary summons to the pauper issues (*t*), and to such witnesses as may be requisite, to attend before *two* justices for examination.

After a summons in the ordinary form has been neglected, a warrant may be served, worded as follows:

Kent, to wit. To the Constable of the parish of .
Forasmuch as [*here set forth the complaint*] I [*or* we] therefore

(*s*) *Reg.* v. *Willats*, 1 Bit. & Sym. 331.

(*t*) It is, however, advisable in the first instance to examine the pauper privately, to ascertain the fitness of his evidence; for he is not necessarily a witness: but he may, if reluctant when required, be compelled by warrant to attend and give his evidence.

command you to bring the said D E on the day of , A.D. 184 , at o'clock, at , before such two or more justices as may then be there present, in order that the said D E may then and there be examined concerning his [*or* her] legal settlement, and to be further dealt with according to law. Herein fail not.

Given under our hands and seals this day of , A.D. 184 .

A B
C D

It is advisable to give due notice of the examination to the overseers and churchwardens of the parish to which the pauper is to be removed. It is not, however, advisable that any formal summons should be given(*u*). It is better in all cases that a friendly notice be given, such as shall not seem to anticipate resistance. It is believed that by a little amicable and open dealing in the first instance, litigation may be often avoided.

Section III.—The Examination.

Justices present. — Two justices of the division of the county in which the pauper is (of whom one must be of the quorum) must be present when the examination is taken, or it will be wholly void. Where, however, justices act for two or more adjacent counties, they can act in one of such counties for the other. There is an exception made in favour of paupers who are too ill or infirm to attend before the justices. In that case it is provided(*x*) that the pauper may be examined by one magistrate acting for the district where the pauper is, and who then reports his examination to any other magistrate of the same district.

Examination; its requisites.—The whole examination of each witness must be taken down in writing in the presence of the justices; the omission of the evidence of any one witness will vitiate the order. The examination must contain

(*u*) In Burn's Justice there is a form beginning, "You are *required* to appear *(if you shall think fit)!!*"

(*x*) 49 Geo. 3, c. 124, s. 4.

within itself a sufficient statement of a settlement, and of the grounds which warrant a removal (*y*). It must be as specific as the grounds of appeal are required to be (*z*); and no ground of removal omitted can afterwards be proved upon trial of an appeal against it.

The exact requirements of the evidence which must be given of each kind of settlement to support the order, will be stated under each head of settlement; it may, however, be well to give here such general rules as may be gathered from the more recent cases (many of which have occurred since the first edition of this work), in order to ground the practitioner in those general principles, without which no practice can make him secure, and no detail of direction guard him from error. We offer these rules:—the first point is to ascertain and understand thoroughly what in law is requisite to constitute the settlement to be made out. This I have endeavoured to show under the head of each settlement. Having done this, and put down the various points which go to make up, not only the settlement, but the right to remove, such as chargeability and so forth; the next step is to collect, elicit and state evidence which embodies all those points. In the statement or putting down of this evidence, the utmost care is clearly needed; for it often happens that the witnesses have really all that is requisite within their knowledge,—nay, may even have uttered it,—but owing to neglect in writing it down in sufficiently plain and precise terms, the order founded on it has been quashed; and thus parishes have been saddled with paupers, not because there was any defect of proof that they were settled elsewhere, but simply because the clerk did not put down fully and plainly what he heard! A strong instance of this occurred in the recent case of *Reg.* v. *Wymondham* (*a*), where a pauper stated only that he was single and unmarried; and

(*y*) *Reg.* v. *Middleton in Teesdale*, 10 A. & E. 688.
(*z*) *Reg.* v. *Eastville*, 1 Q. B. 828.
(*a*) 2 Q. B. 541.

the court held that this was no statement that he was *without children;* and the still more recent case of *Reg.* v. *St. Sepulchre, Northampton*(*b*), goes even further in requiring precision of language in stating the entire requirements of statutes. That was a case of tenement settlement. It is essential that the tenement "shall be *bonâ fide* rented at and for the sum of £10 a year at the least, *for the term of one year;* and that it shall be occupied under such yearly hiring, and the rent paid for the term of one whole year." This was what the statute required, but the examination stated this:—"On the 22d July, 1839, I let a house, situate, &c., to &c., at the rent of £10 per annum, exclusive of parochial rates; the said Thomas Adams occupied the house until the 22d of July, 1841, and paid me the whole of the rent during that time." It was objected that there was no statement here that the house was *hired for a year*, or that it was occupied under such yearly hiring, for although the occupancy was stated in general terms, and may be inferred to have taken place during the whole term, yet, as Mr. Justice Wightman observed, "there is no statement of any occupancy under a yearly hiring, this is so worded as to be consistent with an occupation under different lettings." Mr. Justice Coleridge differed, indeed, from the rest of the court, and said that, "under the allegation of payment of the whole of the rent during the term, he thought he ought in all fairness to infer the rent for the premises." But, said Lord Denman, *we cannot infer anything beyond what the examinations themselves disclose.* Again, in the case of *Reg.* v. *Leeds*(*c*), the statement was, "I paid rent for the whole time of my tenancy." Thus there was no statement that the tenant paid the whole rent; it might have been a small portion only. And the court said, "it is unfortunate that the omission of a word should make all the difference, but such is the case." A host of cases establish the same

(*b*) 14 L. J. M. C. 8.

(*c*) 13 L. J. M. C. 88.

principle, viz. that particularity and precision in stating all essential points is required, so as to preclude the possibility of mistake or evasion(*d*). Where the defect is merely one of bad English, or where one name has been accidentally inserted instead of another, so as not to mislead, or where all the necessary facts appearing, they are immethodically stated, these defects will not vitiate the order(*e*).

Though all necessary affirmative statements must be full, precise and plain, negative statements need not be severally made, for instance, where the facts stated show a good *primâ facie* settlement, although there may be other facts, not appearing on the face of the examination, which would be inconsistent with that settlement, it is not necessary that the examination should negative those other facts. For example, where out-parish relief was shown to have been given to the pauper's father, when the pauper was twenty-seven years old, there being nothing to raise the presumption that he was emancipated, it was held unnecessary to negative the fact of emancipation(*f*). Again, a statement that A is the child of B, is a sufficient statement that A is a legitimate child, for the law does not contemplate illegitimacy (*g*).

And where a married pauper was removed to her maternal settlement, it was held unnecessary to negative that her husband was born in Ireland, Scotland, &c., it being shown that inquiry had been made in vain to discover where his settlement was (*h*).

It is in all cases sufficient to set up a *primâ facie* settlement. It is for the appellants to set up a counter case (*i*); but if the removing parish on the other side shows a subse-

(*d*) *Reg.* v. *Flockton*, 2 Q. B. 535; *Recorder of Pontefract*, 2 Q. B. 548; *St. Olave, Southwark*, 13 L. J. M. C. 161.

(*e*) *Reg.* v. *Wooldale*, 14 L. J. M. C. 13.

(*f*) *Reg.* v. *Lilleshall*, 14 L. J. M. C. 97.

(*g*) *Reg.* v. *Totley*, 14 L. J. M. C. 138.

(*h*) *Reg.* v. *Leeds*, 13 L. J. M. C. 167.

(*i*) *Reg.* v. *Brighton*, 14 L. J. M. C. 137.

quent settlement to that on which they rely, this will not prejudice them in going upon the first settlement, so long as the second settlement be distinct and independent of the other. In a very recent case (*j*), the respondents in the examination showed a good birth settlement in the appellant parish, but they went on to show a subsequent settlement by apprenticeship elsewhere, and the court held that they were nevertheless entitled to prove and rely on their birth settlement, and leave it to the appellants to prove and support the subsequent settlement, and on this principle—that the respondents ought not to be precluded from their own case, because a witness may chuse to go on and state something which they, the respondents, are bound to send with the order, for *all* the examinations must be sent to the receiving parish (*k*). It was also decided by *Reg.* v. *Latchford*, that the respondents were not bound nor estopped by this evidence in their own examination, for that the examinations *are not to be regarded in the light of admissions.* The appellants were therefore required to prove the subsequent settlement *de novo* in the ordinary way, and were not allowed to take the facts proved by the respondents in their examination as admitted by them. The case of *Reg.* v. *Whitwick* (*l*) upheld the same doctrine. There the first as well as second settlements were by out-parish relief, and the court held the respondents entitled to show relief by the first parish. These somewhat startling decisions were speedily qualified by the still more recent case of *Reg.* v. *St. Margaret's, Westminster* (*m*), where the respondents relied on the pauper's maternal settlement in a parish in Bath, but at the same time showed that the pauper had a paternal settlement in some parish not stated. It was held that the respondents in this case were precluded from proving the maternal settlement, because they had shown a paternal one to exist. Mr. Jus-

(*j*) *Reg.* v. *Latchford*, 14 L J. M. C. 20.
(*k*) *Rex* v. *Outwell*, 9 A. & E. 836.
(*l*) 14 L. J. M. C. 25.
(*m*) 14 L. J. M. C. 131.

tice Coleridge thus attempts to distinguish this case from *Reg.* v. *Latchford*, "a settlement *ex parte maternâ* has this vice, that it can only be resorted to where no paternal settlement appears; but here the examinations do show a settlement *ex parte paternâ*, although the respondents have omitted to show in what parish the father was settled, a fact which, with the least possible investigation, might have been made clear.

The law, therefore, as it now stands, is this: Where the respondents disclose in their examinations two settlements, they are not precluded from relying on and going into the first, so long as it is a substantive settlement, such as birth, or distinct evidence of one, such as out-parish relief, existing independently of the second settlement; and it is for the appellant to produce evidence of the second settlement, the statement of it in the examination being neither an estoppel nor an admission. But where the first settlement is dependent on the non-existence of the second, then the appearance of the second vitiates the first, as that of a maternal settlement where there appears to have been a paternal one easily ascertainable. We say easily ascertainable, because there must always be a paternal settlement of a legitimate child, when there is a maternal one, if it could be discovered. The fact that it is easily discoverable, is what in effect nullifies the maternal settlement, for parishes are bound to inquire and present the best case in their power; but where it appears that the superior settlement cannot be ascertained, the statement that it exists does not affect the inferior settlement. Thus in *Reg.* v. *Yelvertoft* (*n*), the maternal settlement was relied on, though there was this evidence of a paternal settlement. "I (the father) was born, I believe, in London, but in what parish I never knew." This the court held to be too vague a statement to nullify the maternal settlement, for there was nothing really amounting to evidence to call for further inquiry, for the allegation of mere *belief*

(*n*) 1 New S. C. 476.

is not evidence. As it is useful to parishes to have as explicit rules as possible how to decide what will, and what will not, vitiate the settlement in these superflous statements, we subjoin Lord Denman's judgment in *Reg.* v. *Yelvertoft*, as it very plainly states the principle to be observed, and distinguishes it from the well known cases of *Reg.* v. *St. Mary, Leicester* (*o*), and *Reg.* v. *St. Mary, Beverley* (*p*). It is as follows:—

Lord Denman, C. J.—It appears to me that the case of *Rex* v. *Harberton* (*q*) should govern our decision in this case. There the court said, "that there could be no doubt but that the evidence offered by the respondents, of the wife's resident settlement, was *primâ facie* sufficient; and that it lay on the appellants to rebut it, by giving evidence of the husband's settlement in a different parish." None of the cases since decided have gone against that principle. It has been taken for granted, that some search was necessary, as in *Reg.* v. *Leeds* (*r*), where there was no question as to the principle, but the respondents simply asked us whether they had done enough, and we thought they had. So in *Rex* v. *St. Mary, Leicester* (*s*), they acted on the principle that some inquiry should be made; and in *Rex* v. *St. Mary, Beverley* (*t*), an actual settlement of the pauper's father elsewhere was shown to exist. In all these cases something was proved inconsistent with the settlement found by the removing justices. It appears that what I said (*u*) upon the decision in *Rex* v. *St. Matthew, Bethnal Green* (*x*), "that it was incumbent upon the appellants to prove either the father's settlement, or that inquiries had been made as to his settlement, and that none had been found," is not borne out by the authority of *Reg.* v. *Harberton* (*y*), though it is extremely desirable, and for the interest of the respondents, that such inquiries should be made before removal. But in the case before us, there is no evidence whatever of any other settlement than the one upon which the pauper was removed, so as to throw upon the respondents, as prudent men, the necessity of

(*o*) 3 A. & E. 644.
(*p*) 1 B. & Ad. 201.
(*q*) 13 East, 311.
(*r*) 1 New S. C. 257.
(*s*) 3 A. & E. 644.
(*t*) 1 B. & Ad. 201.
(*u*) 3 A. & E. 647.
(*x*) Burr. S. C. 485.
(*y*) 13 East, 311.

further inquiry. The reason for making such inquiry must always be with reference to the value of the inquiry when made, and what could be got from it. Here the pauper's father only says, "I was born, I believe, in London; but in what parish I never knew." These words of surmise as to what a man believes to have been his place of birth, would not raise any case calling upon the respondents to make any inquiry as to what he stated. We must assume, therefore, that every necessary inquiry was made, and I see nothing to induce us to say that the justices came to a wrong conclusion, or were not justified in doing what they have done.

Material errors in examination fatal.—The necessity for going into all settlements which are relied on is evident; for in appeal, evidence can alone be given of such grounds of removal as appear in the examination. Where the date of a hiring, for instance, was wrongly stated, the respondents were not allowed to prove the settlement under the correct date (*z*). Nor does the mischief stop here. The removing parish cannot afterwards retrieve a material error; the variance will be no less fatal on a second appeal against an amended order than on the first. "The removing parish," said Lord Denman, in a recent case (*a*), "must be cautious in sending notice of the settlement, which is to be relied upon, *and the appellants have a right to bind the respondents to that settlement. It is said that this is hard and unjust, but I think that there would be more hardship in allowing experimental removals on imperfect statements, which might leave one party free to prove any case, and wholly mislead the other* (*b*)."

(*z*) *R.* v. *Broseley*, 7 A. & E. 423.

(*a*) *R.* v. *Clint*, 11 A. & E. 624, (*n*).

(*b*) We trust that this sound and excellent principle, so emphatically laid down by the Lord Chief Justice, will be well considered in any schemes which may hereafter be propounded for relaxing the necessity of attending to what are often improperly called formal defects and technicalities. An attention to precision of language is often derided by persons who feel it inconvenient to be explicit, or difficult to write English; but it is not the less essential on that account that parishes be bound to give full, clear and precise information to each other, and, to ensure this, forms and particularity

Caption and form of examination.—The form of examination may be as follows:—

Devonshire, to wit. } The examination of W P, of Newton Abbott, labourer, and of [*here name the other witnesses, with their additions*] taken on oath this day of , A.D. 1844, at Newton Abbott, in the said county of Devon, before us(*c*), C T and A W, Esquires, two of her Majesty's justices of the peace acting for the said county of Devon, the said C T being one of the quorum [*or* both of us being of the quorum] concerning the place of the last legal settlement of the said W P and his wife Caroline, and their children, Sophia, Alfred and Alice.

This deponent, W P, upon his oath says that [*here state the facts as directed under the heads of the different sorts of settlement; and after finishing the deposition of one witness commence that of the next with the words*]

And this deponent, Z B, upon his oath says.

Sworn before us, this twelfth day of September, 1844.

Sealed and signed { C T. A W.

Where the singular pronoun was used in the caption and jurat of an examination signed by two justices, the presumption of *omnia rite acta* was allowed to prevail by the Queen's Bench (Williams *dubitante*); it is, however, a dangerous error, and is to be scrupulously avoided. *R.* v. *Silkstone* (*c*).

The jurat ought to be strictly in form. Where a jurat omitted the words "before me," but merely stated that it was sworn at a given place and time, with the signature of a commissioner, it is fatally defective; and the defect is not cured by another document annexed, and referring to the affidavit, stating it to have been sworn before the commissioner, and the court will not amend a fatal defect in a jurat. This was decided in the case of *Reg.* v. *Bloxham* (*d*), and equally applies to all jurats.

are often essential. We feel confident, if these be dispensed with, though trouble and an occasional failure of justice may be avoided, that very serious injustice will be done, by depriving parishes of proper information of what they have to meet, and by thus also opening a door to fraud and wilful misleading. If parish officers are not competent to frame this information themselves, nothing is easier than to take the assistance of those who are. We cannot too strongly deprecate interference with the law on this point.

(*c*) 2 Q. B. 520. (*d*) 1 Bit. & Sym. 123.

Where, owing to the illness and inability of the pauper to come to the petty sessions, a single justice takes his examination, and reports it under the powers of 49 Geo. 3, c. 124, s. 4, to two other magistrates, who then adjudge the settlement, the form must state the fact that the examination was so taken by the single justice, and, after the evidence, these words should be added:—"*This examination was duly reported by the said C T to A W, being one of her Majesty's justices of the peace, acting for the said county, on the day of* , A.D. 1844." Both justices must then sign this statement.

The sort of evidence required.—It is advisable that the evidence be taken, not only of the pauper himself, but of such other persons as may be able to prove his inhabitancy, chargeability and settlement. It is essentially necessary that the evidence thus taken, as we have seen, shall fully and plainly establish all the facts which are necessary to support the settlement it is desired to prove. And this must be done with great care, first, because the Poor Law Amendment Act (*e*) requires a copy of such evidence to accompany the order of removal, twenty-one days before the pauper is removed, as the ground on which the removal takes place, and on the validity of which it rests; secondly, because all the evidence which is taken must be sent to the receiving parish, and to omit to send any part is a good ground of appeal, (see *post*,) *Reg.* v. *Black Callerton* (*f*), *Rex* v. *Outwell* (*g*); and, thirdly, because the Court of Queen's Bench has increased the strictness and particularity required (*h*), and where the order is once quashed it cannot be afterwards renewed even on an amended and correct examination.

Under the head of each sort of settlement it is endeavoured

(*e*) 4 & 5 Will. 4, c. 76, s. 79.

(*f*) 10 A. & E. 679.

(*g*) 9 A. & E. 836.

(*h*) Having overruled *R.* v. *Kelvedon*, 5 A. & E. 687, in *R.* v. *Eastville*, *ante*.

hereafter to explain the precise matter and mode of stating it required in each case; but it is necessary here to treat generally on the mode of examining, and the sort of evidence wanted in all cases.

Most of the rules of evidence are involved in the examinations; for it is essential that the removal of the pauper be grounded on legal evidence. "We think," said Lord Denman, in a recent judgment, "we do a benefit to the public by declaring that for the future there must be no doubt that an order of removal is to be obtained on *legal evidence* (*i*)." Mere hearsay evidence will not suffice; and the testimony of parties knowing the facts *of their own knowledge* must be procured. Very many orders of removal have been quashed on this ground. Evidence of a pauper's birth-place, for instance, cannot be given by himself, because it must necessarily be hearsay. The statement, "I was born in the parish of Lydiard, St. Lawrence, as I have heard and believe," is no evidence (*k*). Also, where a pauper stated that she "was born illegitimate, at Stayley, Cheshire (*l*)." Witnesses who are mentally deficient—for instance, lunatics, idiots, or very young children—are incompetent to give evidence, but not so felons, though merely being in prison is no disqualification (*m*). Witnesses are no longer incapacitated from giving evidence on the score of interest in any case (*n*); and that of rated inhabitants, either of appellant or respondent parishes, was before rendered admissible by statute, and likewise that of the overseers and churchwardens of such parishes (*o*). Parol evidence is always inadmissible *to supply the place* of written evidence,

(*i*) *R.* v. *Rishworth*, 2 Q. B. 476.

(*k*) *R.* v. *Lydiard, St. Lawrence*, 11 A. & E. 616. See also *R.* v. *Eccleshall, Bierlow*, 11 A. & E. 607.

(*l*) *R.* v. *Rishworth*, 2 Q. B. 476.

(*m*) *R.* v. *Alternum*, 10 A. & E. 699.

(*n*) 6 & 7 Vict. c. 85.

(*o*) 3 & 4 Vict. c. 26, s. 1 and 2.

or to supply defects apparent on the face of any deed or written agreement. The writing itself must be produced (*p*), and this is necessary on the general principle that the best possible evidence is always to be given, and that secondary evidence is inadmissible until it be shown that primary evidence cannot be had. Where, however, it was proposed to prove the actual value and the occupation of a tenement by parol evidence, there being a lease, the parol evidence was admitted, because the value was a matter independent of the rent, which could alone have been shown by the lease (*q*). It is therefore necessary to distinguish between what is and what is not a material matter to be proved by the writing in question; and whether the writing is, in fact, the best means of proving it; if so, no parol evidence can supply its place. They who first prove the existence of the writing are bound to produce it, if they seek any advantage from it (*r*). All documents produced in evidence before the justices form part of the examinations, and must be sufficiently referred to to link them to the case, and to show that they were produced before the justices, though this need not be done in any set form of words (*s*). Where the deed cannot be produced, or where, on trial, the opposite party have it, and refuse to produce it on being called on to do so, secondary evidence is *then* admissible of its contents, but not till then. Care must be taken that the evidence sufficiently shows the chargeability and inhabitancy of the pauper, as well as his settlement elsewhere, for such omission is fatal on appeal (*t*). Nevertheless, the justices are bound to give the examinations the

(*p*) *R.* v. *Merthyr Tydvil*, 1 B. & Adol. 29; *R.* v. *Mildenhall*, 2 Q. B. 517.

(*q*) *R.* v. *Hall*, 7 B. & Cres 611; and *Rex* v. *Wrangle*, 4 N. & M. 375.

(*r*) *R.* v. *Padstow*, 4 B. & Ad. 208.

(*s*) *Reg.* v. *Mildenhall, supra*; *Reg.* v. *St. Anne's, Westminster*, 14 L. J. M. C. 113.

(*t*) *Reg.* v. *Bucks*, 3 Q. B. 88; *Reg.* v. *Rotherham*, 3 Q. B. 776.

benefit of reasonable intendment; and the admission of improper evidence will not vitiate good evidence (*u*), and such omissions, or mere clerical errors, as cannot mislead the opposite party, will not be held fatal (*x*). For example, the words "Mary Varley, *of* Sheffield," have been held by the Queen's Bench, when coupled with the statement that she was chargeable to Sheffield, and the order showing the time of these facts to have been when it was made, a sufficient statement of the inhabitancy of the pauper in Sheffield at such time. But the words "of Darton," when not so restricted and explained by the context, would not sufficiently express inhabitancy. That a pauper lately came to a place does not by itself express that he then is there. In all such matters, where the fact stated is an essential one, it is equally so to make the statement of it full, plain and positive (*y*).

Dates should always be carefully stated. Nothing tends more to mislead than a wrong date or a date omitted. The justices are the proper judges of whether dates are sufficiently stated, and whether the omission be maternal or

(*u*) *R.* v. *Black Callerton*, 10 A. & E. 679.

(*x*) *R.* v. *Wye*, 7 A. & E. 761.

(*y*) An instance in point occurs in *Reg.* v. *Flockton*, 2 Q. B. 535. where it has been thought a hardship to have held the following statement of a pauper's residence under an apprenticeship to be defective:—"My indentures were assigned to George Walker, of Flockton, in the said Riding, *with whom I went and resided with* three or four years, when I left him." Now to make out the case, it was essential to show that the pauper himself had resided in Flockton whilst in service. This is the gist of the matter—part of the sum and substance of the settlement. Is it stated? Certainly not. All that is stated is, that the master lived there *when* the pauper was hired, but it is quite consistent with this that both should have left the day after, which would not be a settlement. The fact is *implied*, it is true; but were the express statement of settlement of essential facts allowed to be omitted, because they might be inferred, one of the inlets would be opened to fraud and wrong, on which we have just ventured to comment in a preceding note.

not (*z*). The date may not be essential to the settlement, and yet it may be essential to show the history of the case. Where, for example, the pauper was a bastard, and the mother stated he was born "in or about the year 1833," the statement was held insufficient, for "in or *about* 1833" included 1834, in which year the settlement of bastards was changed, so that the date was material (*a*); but when the same phrase was applied to the time when a tenement was rented, it was held sufficient (*b*). As we have already stated, it is not necessary to negative mere presumptions, which would go to disprove the settlement relied on. This has been carried to a very great extent in the recent case of *Reg.* v. *Lilleshall* (*c*), which removed a pauper to his father's settlement, without stating that he was unemancipated at the time, though the son was twenty-seven years of age when out-parish relief was given to his father, on which the respondents relied for a derivative settlement of the son.

Attendance of witnesses.—Justices may compel the attendance of witnesses within their jurisdiction, under the following section 70 of 7 & 8 Vict. c. 101. "And be it enacted, that in any proceedings to be had before justices in petty or special sessions or out of sessions, under the provisions of this act or of any of the acts required to be construed as one act herewith, if any party to such proceedings request that any person be summoned to appear as a witness in such proceedings, it shall be lawful for any justice to summon such person to appear and give evidence upon the matter of such proceedings, and if any person so summoned neglect or refuse to appear to give evidence at the time and place appointed in such summons, and if proof upon oath be given of personal service of the summons upon such person, and

(*z*) *Reg.* v. *Charlbury Walcott*, 3 Q. B. 378 ; *Reg.* v. *Clint*, 11 A. & E. 886.

(*a*) *Reg.* v. *St. Paul's, Covent Garden*, 1 New S. C. 617.

(*b*) *Rex* v. *Derbyshire*, 1 Wil. W. & Hodg. 323 ; Arch. J. P. (Poor), 595.

(*c*) 14 L. J. M. C. 97.

that the reasonable expences of attendance were paid or tendered to such person, it shall be lawful for such justice, by warrant under his hand and seal, to require such person to be brought before him, or any justices before whom such proceedings are to be had; and if any person coming or brought before any such justices in any such proceedings refuse to give evidence thereon, it shall be lawful for such justices to commit such person to any house of correction within their jurisdiction, there to remain without bail or mainprize for any time not exceeding fourteen days, or until such person shall sooner submit himself to be examined, and in case of such submission the order of any such justice shall be a sufficient warrant for the discharge of such person."

Chargeability.—Chargeability, as it is the foundation of the order, stands at the threshold of the examination. The 7 & 8 Vict. c. 101, gives the following amended forms of certificate, whereby guardians of unions may attest the chargeability of paupers under their care.—Schedule C.

The board of guardians of the poor of the union [*or* parish of] do hereby certify, that on the day of A B and his wife C B and his child E B became chargeable to the parish of in the said union [*or* to the said union]. In testimony whereof the common seal of the said guardians is hereunto affixed at a meeting of their board, this day of , 18 .

(L. S.) (Signed) W J, presiding chairman of the said board.

(Countersigned) C D, clerk [*or* acting as clerk] to the board of guardians of .

Section 69 of the act thus provides for the sufficiency of this evidence of chargeability:—"And be it enacted, that it shall be lawful for any board of guardians or district board, at any meeting thereof, to make a certificate in the form or to the effect contained in the schedule of this act marked (C), and that every such certificate, and every copy of a minute of any order, complaint, claim, application or authority of any such board of guardians or district board, purporting respectively to be signed by the presiding chair-

man of such guardians or district board, and to be sealed with their seal, and to be countersigned by their clerk, shall, unless the contrary be shown, be taken to be sufficient proof of the truth of all the statements contained in such certificate, and of the directions respecting such order, complaint, claim or application having been given as alleged in the copy of such minute, and shall be received in evidence accordingly by and before all courts of justice and all justices, without any proof of the signatures or of the official characters of the persons signing the same, or of such seal, or of such meeting; and that for the purpose of making any order of removal or other order, no further or other evidence of chargeability than such certificate shall be required, provided that every such order bear date within twenty-one days next after the day of the date of such certificate."

This clause was intended to do away with the defects of certificates granted under 5 & 6 Vict. c. 57, s. 17, which were held to require proof of the chairman's signature and the board's seal (*d*), which are now needless. But the new statute leaves it doubtful whether there should not be some evidence to identify the pauper, when before the justices, as the person to whom the certificate refers. Some analogy, in default of any positive decision on this point, may be traced between this case and that of *Reg.* v. *St. Anne's, Westminster* (*e*), where letters of administration were sent with the examination, which the examinations did not identify as having been produced before the justices; but the court held that it was "impossible not to see that the letters of administration which were sent with the examination were those that were before the justices." If the order states, as it ought to do, that it was made upon evidence of chargeability of the pauper A B, and the certificate accompanies it, it is presumable that the court would hold this sufficient:

(*d*) *R.* v. *Farthinghoe*, 1 Bit. & Sym. 46.
(*e*) 14 L. J. M. C. 113.

but doubt ought to be avoided by giving identifying evidence in this or some similar shape:

I, A B, being the relieving officer of the union of , declare that the paupers A B, and B B and C B his children, now present, are the same persons named in the certificate of the board of guardians of that union, dated , which I now produce.

Evidence of chargeability where no certificate is produced.—Certificates are by no means essential. Where none is forthcoming, other evidence may be given. The case of *Reg.* v. *High Bickington* (*f*) fell like a thunderbolt upon parishes, and many an order perished under it. In that case a pauper stated—"I and my children are inhabitants of the parish of A, and are chargeable to the same parish of A." This statement was held to be insufficient, though numerous similar proofs had passed unquestioned. "This statement is not sufficient (said Lord Denman); the words made use of in the examination are a conclusion of law, and the appellants are entitled to ask for evidence that in point of fact the parties have been relieved:" and Mr. J. Patteson added, "The relieving officer may just as well use words that will put the matter beyond doubt, and say that he has relieved the paupers." *Reg.* v. *Lidford* (*g*) followed, in which the pauper said, "I am residing in the parish of W and chargeable to the said parish:" and this case shared the same fate. Then came *Reg.* v. *Manchester* (*h*), in which the pauper said, "I have lived in the township of Preston for some time, and am *now residing in the workhouse* in that town. I have been and now am chargeable to the said township of Preston." Here the order was upheld because here the fact is stated, and as Mr. Justice Williams remarked, "How could the pauper be in the workhouse without being chargeable? Here you have both a general and a particular statement of charge-

(*f*) 3 Q. B. 790, n.
(*g*) 1 New S. C. 244.
(*h*) 14 L. J. M. C. 126.

ability." And Coleridge, J. denounced the notion that there must be conclusive evidence of chargeability. "I am now residing in, and receiving relief from, and am actually chargeable to, the parish of B" (*i*), is sufficient. Hence it results that a fact specifying relief given, or a fact equivalent to it, such as being in the workhouse, must be stated in the examination as evidence of chargeability (*k*).

Although evidence of chargeability is essential to the order, there is this very material difference between orders quashed for want of evidence of chargeability and orders quashed for other defects in examinations. The former do *not* prevent a second order upon the same settlement, though the latter do. An order quashed for defective statement of chargeability is not quashed upon the merits as regards the settlement; the first decision does no more than determine that the pauper is not then shown to be chargeable. It does not follow that the pauper may not be chargeable afterwards, and therefore the new order is made on a new state of facts. This has been conclusively settled by the case of *Reg.* v. *Perranzabuloe* (*l*).

Notice of chargeability.—The 79th section of the 4 & 5 Will. 4, c. 76, provides, "that no poor person shall be removed or removable, under any order of removal, from any parish or workhouse by reason of his being chargeable or relieved therein, until twenty-one days after a notice in writing of his being so chargeable or relieved, accompanied by a copy or counterpart of the order of removal of such person, and by a copy of the examination upon which such order has been made, shall have been sent by post or otherwise, by the overseers or guardians of the parish obtaining such order, or of any three or more of such, to the overseers of the parish to whom such order shall be directed.

(*i*) *Reg.* v. *Great Bolton*, 14 L. J. M. C. 122.

(*k*) We have previously noticed the question how far chargeability must exist at the time of the order, p. 5, *ante*.

(*l*) 3 Q. B. 400.

The omission of any of these requirements is fatal to the order; that of sending notice of chargeability has been expressly so held in the case of *R.* v. *Brixham* (*m*). The notice must be signed as well as sent by the majority of the overseers and churchwardens. Where three out of six signed the notice, it was held fatal to the order, *Reg.* v. *Westbury* (*n*). But where a board of guardians is elected for a single parish under 4 & 5 Will. 4, c. 76, s. 39, a notice of chargeability signed by such guardians is sufficient, for they act as guardians of the single parish, but not so where they are guardians of a union containing several parishes, for there the guardians cannot be such of the parish in question (*o*).

The notice of chargeability may be thus worded:

To the churchwardens and overseers of the poor of the parish of Radnage, in the county of Buckingham.

We, the undersigned, being a majority of the churchwardens and overseers of the poor of the parish of Whitburn, in the county of Durham, do hereby give you notice, that one James Cottell, with his wife Sarah, and their children Jane, Edward, Sarah and Charlotte, have become chargeable to our said parish of Whitburn, and that an order of justices has been obtained for their removal to your said parish of Radnage as their last place of legal settlement, according to the form of the statute in that case made and provided, a copy of which said order, and the examination upon which such order was made, are sent herewith; and take further notice, that the said paupers will be removed to your said parish according to law. Dated this 20th day of May, A.D. 1846.

J B, E A, T M } Overseers and Churchwardens of the parish of Whitburn, in the county of Durham.

Whole examinations to be sent.—The 79th section of the statute above cited requires a copy of the examination upon which the order was made to be sent to the receiving parish. Now this has been held to mean the entire examinations. Examination is *nomen collectivum*, and the pur-

(*m*) 8 A. & E. 375.

(*n*) 5 Q. B. 500.

(*o*) *Reg.* v. *Lambeth*, and *Reg.* v. *St. Mary, Southampton*, 5 Q. B. 513.

poses of justice require that the whole be sent, for otherwise doubt and discussion might arise as to what portion was to be sent and what withheld, and the Court of Queen's Bench will not bend to the argument that respondents may by this rule be obliged to furnish evidence against themselves. It may be so; but the rule is inflexible and must be obeyed, and the removing parish has no discretion to withhold any evidence given before the justices. It is a good ground of appeal that it has been done (*p*). The examination includes all deeds or documents produced before the justices. In the late case of *Reg.* v. *East Rainton* (*q*), the respondents had failed to send the copy of a pit bond (in a case of settlement by hiring and service) with the order, but they sent it afterwards. The court held that the copy must be sent at the time the order went, and that the ground of appeal (that it was not sent) was in the nature of a special demurrer, to which amendment was no answer.

Punishment of paupers who return after removal.—Paupers who return to the parishes whence they have been removed from are clearly punishable, if they return without a certificate, and *become again chargeable* there under 5 Geo. 4, c. 83, s. 3, which empowers "any justice of the peace to commit such offender to the house of correction for any time not exceeding one calendar month, as an idle and disorderly person."

It therefore follows, that if a person returns after removal, though not in a state of pauperism, he becomes liable to commitment, unless he is provided with the certificate required by the act 13 & 14 Car. 2, c. 12. In an action for false imprisonment (*r*), the plaintiff could not recover damages on this ground, having returned unlawfully, though at the time he was maintaining himself by his own labour,

(*p*) *Reg.* v. *Outwell*, 9 A. & E. 836.
(*q*) 14 L. J. M. C. 135.
(*r*) *Mann* v. *Danvers*, 3 B. & Ald. 103.

working in the harvest fields, where he was taken up on the charge upon which he was convicted.

From the whole it appears that the persons intended by the different acts as "idle persons" are those who become chargeable to the parishes from which they have been removed, or have returned to the same without certificates.

It is necessary that a commitment should state the precise period of confinement, as the act directs, for the time must be definite (*s*).

And it is further necessary that the place be specified in the commitment to which the pauper has returned; the decision in the case of *Rex* v. *Elere Cole*, 2 Bott, 886, having annulled the commitment, from its not having stated the parish.

It is very desirable that parish officers should warn paupers who may be thus removed, of the consequences of after return to such parishes.

Sect. IV.—Order of Removal.

Order of removal.—The order of the justices to the overseers of the one parish to remove, and of the other to receive the pauper, embodies a statement in brief of the facts which give the justices jurisdiction, their adjudication thereon, and the warrant to the parish officers to carry it into effect. If it be defective in any of these essential points, such defect is a good ground of appeal. It is of course founded on the examination, and must be made by the same justices, and is substantially the result of their inquiry. As, however (unlike the examination (*t*)), the order is subject to the revision of the Court of Queen's Bench on a writ of *certiorari*, without a case granted, it is very essential that it should be correctly drawn.

Authority for the order, and on whose complaint made.—It must purport to be made on the complaint of the church-

(*s*) *Baldwin* v. *Blackmore*, 1 Burr. 595.

(*t*) *Ex parte Tollerton*, 3 Q. B. 794.

wardens or overseers of the *parish* or *township* where the pauper is (*u*). And the removal was formerly made under the following clauses of the 13 & 14 Car. 2, c. 12, "That it should and might be lawful, upon complaint made by the churchwardens and overseers of the poor of any parish, to any justice of peace, within forty days after any such person or persons coming so to settle as aforesaid, in any tenement under the yearly value of ten pounds, for any two justices of the peace, whereof one to be of the quorum, of the division where any person or persons that are likely to be chargeable to the parish shall come to inhabit, by their warrant to remove and convey such person or persons to such parish where he or they were last legally settled, either as a native, householder, sojourner, apprentice, or servant for the space of forty days at the least, unless he or they give sufficient security for the discharge of the said parish, to be allowed by the said justices."

This act, as we have already seen, was modified as far as related to prospective chargeability by the following clause of 35 Geo. 3, c. 101, s. 1, "that from thenceforth no poor person shall be removed, by virtue of any order of removal, from the parish or place where such poor person shall be inhabiting, to the place of his or her last legal settlement, until such person shall have become actually chargeable to the parish, township, or place, in which such person shall then inhabit, in which case two justices of the peace are hereby empowered to remove the person or persons, *in the same manner, and subject to the same appeal, and with the same powers, as might have been done before the passing of this act with respect to persons likely to become chargeable.*"

Upon these two statutes the power of making orders of removal is based.

An order made on the complaint of an unauthorised person who is not concerned, is a nullity (*x*), and it is equally

(*u*) *Day* v. *King*, 5 A. & E. 359.

(*x*) *Western Rivers* v. *St. Peter's*, 2 Salk. 254.

so, if less than the majority of the churchwardens *or* overseers complain, as *Reg.* v. *Bedingham* shows, though the complaint, as we have already seen, need not be in writing. (See "Complaint of Chargeability," *ante.*)

Statement of the jurisdiction of the removing justices.— The justices have of course no jurisdiction to make the order, unless they be justices acting in and for the county where the pauper is chargeable, and this must appear on the face of the order. The words "acting *in* the county" must be used. Where they were omitted, and the words were, "Her Majesty's Justices of the Peace for the said borough of K.," this was held insufficient (*y*). Lord Denman, C. J. said, "In all the precedents, the words 'in the county' are used; otherwise no jurisdiction of the justices is apparent. In the present complaint, the word 'in' is omitted. *I cannot see why we should encourage parties to depart from the ordinary forms which we find in the precedents, and introduce novelties which are uncalled for.*" The omission cannot be supplied by the caption of the examinations, or by reference to any part thereof. They must also be stated to be acting "for" the county in which they make the order (*z*). It must also appear that the justices are justices of the peace (*a*).

It is essential that the justices making the order be the same justices who take the examinations (*b*), and both justices must have been present at the examination, and any order made otherwise is voidable on appeal (*c*).

It is not necessary to state in the order that they are justices acting for the *division;* for the statute is only directory as to that (*d*), nor to state that one of them is of the quorum,

(*y*) *Reg.* v. *Stockton on Tees*, 14 L. J. M. C. 128.
(*z*) *Rex* v. *Owlton*, 1 Salk. 474.
(*a*) *Walton* v. *Chesterfield*, 2 Bott, 775.
(*b*) *Rex* v. *Wyke*, 2 Bott, 818.
(*c*) *Rex* v. *Stotfold*, 4 T. R. 596.
(*d*) *Anon.* 2 Bott, 795.

although the act requires that it shall be so in fact, it being provided by 26 Geo. 2, c. 27, that orders shall not be quashed for this defect of statement only.

In stating that the justices act in and for "*the said* county," care must be taken that the word "said" has the right antecedent; where two counties are named in the order, it is safest to repeat the name in each instance. The last case on this point is *Reg.* v. *Casterton* (*e*), where the county of Westmoreland was named in the margin of the order, and the justices were in the body of it stated to be in and for the said county, no other county being named; it was held that the margin is ever to be considered as part of the order, and that a clear plain reference to it is sufficient; but it would be otherwise if two counties were named, for then the reference might be doubtful (*f*).

Justices not disqualified by interest as rate-payers.—Justices are not disqualified from making an order of removal, because they are rate-payers of the removing parish: this is expressly provided for by 16 Geo. 2, c. 18. But if they are also churchwardens or overseers, they are disqualified, for they would have to adjudicate in their capacity of justices upon a complaint which they themselves must have made in their capacity of parish officers (*g*).

Signature of justices.—The order need not be signed by the justices with their christian names in full; the initials suffice (*h*).

No justice who is a churchwarden or overseer can make the order, but he is not disqualified from doing so because he is a rate-payer (*i*).

Inhabitancy of the pauper.—The order must distinctly

(*e*) 14 L. J. M. C. 5.

(*f*) See also *Rex* v. *Holbeck*, Burr. S. C. 198; *Rex* v. *Countesthorpe*, 2 B. & Ad. 487; *Rex* v. *Chilverscotton*, 8 T. R. 178.

(*g*) *Rex* v. *Great Yarmouth*, 6 B. & C. 646.

(*h*) *Reg.* v. *Worthenbury*, 14 L. J. M. C. 144.

(*i*) 16 Geo. 2, c. 18, s. 1. See "Appeal," post, as to right of interested justices to adjudicate.

state the inhabitancy, the chargeability, and the settlement, to have been adjudicated upon evidence taken on oath (*j*). Although in *R.* v. *Rotherham*, the words, "have come to inhabit in the said township of Sheffield," were by reasonable intendment taken to imply that the pauper was at the time of making the order then inhabiting Sheffield, it is not safe to leave the statement of matters to intendment, which are essential to the jurisdiction of the justices making the order.

The order must adjudicate and specify the settlement.—The order must also state and adjudge in express terms the settlement to be the last settlement of the person himself or herself to whom it relates. It is not sufficient to order the removal of the widow, for example, to her *husband's* last place of settlement, for she might have gained a subsequent one.

The order to remove need not embody the whole of the provisoes in the 79th section of 4 & 5 Will. 4, c. 76 (*k*), but it is submitted that it must be an order to remove only after twenty-one days, which is a positive and not a provisional requirement of the section. The *exceptions* only to this are provisional, and contingent on the consent of the receiving parish, and they alone need not be stated.

Names of the paupers.—The names of each pauper removed should be given at full length, and the order must be so worded that each fact adjudged may clearly apply to each individual pauper named in it. Two families, or parts of the same families, having different settlements, ought not to be included in the same order, it having been held inexpedient to change the usual form of proceeding, but it is not necessarily illegal to do so (*l*).

Where the order must be directed.—The order must be directed to the churchwardens and overseers of the removing parish, and also of the parish to which the pauper is to be

(*j*) *R.* v. *Rotherham*, 3 Q. B. 776, and *Reg* v. *Shipston-on-Stour*, 13 L. J. M. C. 128.

(*k*) *Reg.* v. *Bucks*, *ante*.

(*l*) *R.* v. *All Saints, Newcastle*, 1 Q. B. 428.

removed. If directed alone to the overseers it is not bad on that account (*m*). Where the removal is to townships, the churchwardens ought not to be named, but the order should be addressed solely to the overseers. Care must be taken to address the order to the exact township where the settlement is, wherever it is a township separately supporting its own poor, and having its own officers, for in such cases it will be wrong to direct to the parish. The township or parish wrongly addressed may appeal, and the variance will be fatal (*n*). [See Sec. 1, title "Cases in which the pauper cannot be removed to his last place of settlement."]

Manner and time of serving the order of removal.— There is no precise limit within which the order must be served, for an order has been held in time which was served a year after it was signed, there being no alteration in the circumstances of the pauper (*o*). Three years' delay has, however, been held unreasonable and nullifies the order (*p*).

The 4 & 5 Will. 4, c. 79, provides, as we have seen, that the removal shall not take place until twenty-one days after the order, &c. has been sent by post or otherwise to the overseers of the parish to whom the order is directed; subject, however, to this proviso: "Provided always, that if such overseers or guardians as last aforesaid, or any three or more of such guardians, shall by writing under their hands agree to submit to such order, and to receive such poor person, it shall be lawful to remove such poor person according to the tenor of such order, although the said period of twenty-one days may not have elapsed: Provided also, that if notice of appeal against such order of removal shall be received by the overseers or guardians of the parish from which such poor person is directed in such order to be re-

(*m*) *Rex* v. *Searle*, 1 Bott, 3.

(*n*) *R.* v. *Carmarthenshire*, 4 B. & Ad. 563; *R.* v. *Bishopwearmouth*, 5 B. & Ad. 942; *R.* v. *Cartmell*, 2 A. & E. 262.

(*o*) *Rex.* v. *Lanwinio*, 4 T. R. 474.

(*p*) *R.* v. *Lampeter*, 3 B. & C. 454.

moved within the said period of twenty-one days, it shall not be lawful to remove such poor person until after the time for prosecuting such appeal shall have expired, or in case such appeal shall be duly prosecuted, until after the final determination of such appeal."

Punishment for refusing to receive pauper.—The overseers of the opposite parish are liable to a fine of 5*l.* for refusing to receive the pauper, on summary conviction under 3 W. & M. c. 11, s. 10, and also to an indictment (*q*).

Enticing sick paupers, &c. away.—Gilbert's act, 22 Geo. 3, c. 83, s. 41, also provides, that they who entice sick paupers, young children and pregnant women from one place to another, without an order of removal, shall for every such offence forfeit a sum not less than 5*l.* and not exceeding 20*l.* (*r*).

Form of order of removal.—The following is a form of order of removal:—

To the churchwardens (*s*) and overseers of the poor of the parish [*or* township] of Monkland, (*t*) in the county of Hereford, and to the churchwardens and overseers of the poor of the parish [*or* township] of Loughton, in the county of Essex, and each and every of them.

Whereas a complaint has been made by the churchwardens and overseers of the poor of the parish [*or* township] of Monkland aforesaid unto us, being two of her Majesty's justices of the peace acting in and for the said county of Hereford, one [*or* both] of us being of the quorum, whose names are hereunder set and seals affixed, that L K has [*or* have] come to inhabit, and now is [*or* are] inhabiting the said parish [*or* township] of Monkland, without having gained any legal settlement there, and without having produced a certificate of his [*or* her *or* their] settlement elsewhere; and further, that the said L K has [*or* have] become, and now is (*u*) [*or* are] actually chargeable to the said parish [*or* township] of Monkland: Now we, the said justices, upon due proof thereof, and upon examination of witnesses upon oath, do hereby adjudge the premises to be severally true. And we do likewise adjudge, as well

(*q*) *Rex* v. *Davis*, 1 Bott, 338 ; and see 13 & 14 Chas. 2, c. 12.

(*r*) See 4 Burn's J. P. 1094, edit. 1845.

(*s*) Where there are no churchwardens this may be omitted, as in townships.

(*t*) Removing parish.

(*u*) It is as well to insert this, wherever it is the fact that the pauper is *then* chargeable.

upon examination upon oath of the said L K as otherwsie, that the last legal settlement of the said L K is [*or* are] in the said parish [*or* township] of Loughton, in the county of Essex. These are therefore to require you, the said churchwardens and overseers of the poor of the said parish [*or* township] of Monkland, in her Majesty's name, forthwith to send unto the churchwardens and overseers of the said parish [*or* township] of Loughton, a notice in writing, stating that the said L K is [*or* are] so chargeable as aforesaid, together with a copy or counterpart of this order, and also a copy of the examination on which this order is founded; and to require you to remove and convey the said L K from and out of the said parish [*or* township] of Monkland, into the said parish [*or* township] of Loughton, and him [*or* her *or* them] deliver, together with this our order, or a true copy thereof, unto the churchwardens and overseers, or one of them, of the poor of the said parish [*or* township] of Loughton, according to law: and the said churchwardens or overseers are hereby required to receive and provide for the said L K as an inhabitant of the said parish of B according to law.

Given under our hands and seals this day of , A.D. 184 .

G T
A W

We have endeavoured in this form to obviate objections lately made, and which, though in some cases frivolous (see *R.* v. *Bucks*), are always better avoided. We have also curtailed the form of the directions how and when to remove. These must be conditionally made, and require a lengthy statement: but the general expression "according to law" comprises all that is essential. This is fully authorised by the form in *Reg.* v. *Rotherham* (*v*), which Lord Denman, C. J. said was "unobjectionable."

Duplicates of order to be made.—Of this order, duplicate originals ought to be made, and each signed by the justices, one to be delivered to the overseers with the paupers, the other to be given to the clerk of the peace at the next quarter sessions, to be filed as a record of the settlement.

Section V.—Suspension of Orders of Removal.

Sickness.—Wherever a pauper is too ill to be removed, the removal is suspended, under the 35 Geo. 3, c. 101, s. 2,

(*v*) 3 Q. B. 787.

which provides that wherever it is made to appear(*x*) to any justice or justices that a pauper ordered to be removed is unable to travel by reason of sickness or other infirmity, the justices who made the order of removal shall suspend it until they are assured that the danger of removal is past. The 49 Geo. 3, c. 124, s. 3, extends the suspension of removal to the whole family to which the sick pauper belongs.

Form of indorsement of suspension.—The following is a form of an order of suspension:—

Kent, } Whereas it has been made to appear to us, A B. and
to wit. } C D, two of her Majesty's justices of the peace in and for the said county of , we being the justices making the within order of removal, that the within-named E F is unable to travel by reason of sickness and bodily infirmity: We, the said justices, do hereby suspend the execution of the said order of removal until we, or any two justices of the peace acting for the said county of , shall be satisfied that the said E F may be safely removed.

Given under our hands and seals the day of , A.D. 184 .

A B
C D

Notice to opposite parish—Costs, when recoverable.—The order of removal, with the order of suspension indorsed upon it, must be *served* (not sent by post) on the overseers of the opposite parish within a reasonable time after such order be made; and the 4 & 5 Will. 4, c. 76, s. 84, provides that no charges of the maintenance of such paupers during the suspension shall be recoverable unless notice and a copy of such order of removal and suspension be given within *ten* days of such order being made.

Form of notice of suspension.

To the overseers of the parish of Binfield, in the county of Berks.

Take notice, that the execution of a certain order for the removal of E F, a pauper, from our parish of Sheffield, in the

(*x*) The sick pauper need not appear personally before the justice, *R.* v. *Everdon*, 9 East, 101.

county of York, to your parish of Binfield aforesaid, made by and , esquires, two of her Majesty's justices of the peace for the said county of , and bearing date the first day of May, A.D. 1846, has been suspended by another order made by the said justices, on account of the sickness and infirmity of the said E F, and his inability to travel. A copy of the said order of suspension, and the examination on which it is founded, are hereto annexed.

Given under our hands this third day of May, A.D. 1846.

Overseers { M N / O P

Order in force until, and how, removed.—The suspension is in force until it be made to appear that such removal is safe and may be done, under 49 Geo. 3, c. 124, by any justices of the peace of the county, or other jurisdiction, within which the order of removal is made, who may direct it to be executed after suspension, and to direct the charges incurred to be paid as fully and effectually as can be directed by the justices who made the order. And the same statute provides, that when the execution of any such order of removal shall be suspended, the time of appealing against such order shall be computed according to the rules which govern other like cases, from the time of serving such order, and not from the time of making such removal under and by virtue of the same.

Permission to remove.—The form of permission to remove may be as follows:—

Berks, } Whereas it has been made to appear to us, A B and
to wit. } C D, two of her Majesty's justices of the peace for the said county of Berks, that the within order of removal may be safely executed now, we do therefore direct the execution thereof accordingly. *And we do further order and direct, that the sum of £ be paid by the overseers of the within named parish of , to the overseers of the within named parish of , being the amount of the charges proved on oath before us to have been duly and necessarily incurred by the said parish of , owing to the suspension of the said order of removal.

Given under our hands and seals this day of A.D. 184 .

Where the pauper dies.—Where the pauper dies, the rest

of the family may then be removed under the following form:—

Kent, } Whereas it has been made to appear to us, A B and
to wit. } C D, two of her Majesty's justices of the peace in and for the said county of Kent, since the making of the within named order of removal, to wit, on the day of , A.D. 184 , that the within named L K died; we do hereby order and direct the execution of the said order of removal forthwith, so far as it relates to B K, widow [*or* child] of the said L K. [*Then copy the last form from the asterisk* * *to the end.*]

No settlement obtainable during suspended order.—No act done by a pauper or his family during a suspension of removal will gain a settlement, whether the act be in part or wholly done under such period of suspension. It must be some act done by the pauper, which is thus vitiated; the descent of an estate would not be such act (sect. 2).

Costs, how enforced, and appeal given against.—When notice has been duly given, and the charges proved on oath to have been actually incurred by the removing parish, owing to the illness and suspension of removal of the pauper, they may be charged by an order of the justices on the opposite parish, when the pauper is actually removed, or if he die, but not otherwise. An appeal against such charges, if amounting to more than 20*l.*, is given by the 35 Geo. 3, c. 101; and if within three days after demand they are not paid, or notice of appeal given, the overseers of the removing parish may distrain under the warrant of a single justice of the county, and for costs not exceeding forty shillings.

Section VI.—Abandonment of Orders of Removal.

It is very essential to respondent parishes that they should avoid being forced into a trial of an appeal after discovering the insufficiency of the grounds of removal, inasmuch as it is often sought by the appellants to conclude the respondents from trying the merits upon an amended order.

The removing parish may, therefore, at its discretion, ab-

stain from carrying the original order into execution upon discovering some technical or other defect in the order or in the examination. And where the order of removal is found to be made thus defectively before an appeal is entered, a second order, made on another examination, ought to be served, after giving notice (as hereafter stated) of the abandonment of the first. The removing parish has an abstract right at any time to abandon the order of removal, and take back the pauper, if removed, whether before or after *notice* of appeal shall have been given; and this course has been frequently encouraged by the Court of Queen's Bench. But considerable difficulties and much perplexity have arisen how to do this, owing to the power of the appellants in many cases to bring the order, whether abandoned or not, to the sessions, under the pretext of having their costs settled. The exact points which determine the jurisdiction of the quarter sessions to hear or to refuse to hear these appeals, will be more appropriately set forth under the head of "Appeal." We purpose here merely to give summary and practical rules how to abandon orders at the different stages of the proceedings; for the power of doing so varies according to the notice of entry of appeal having taken place, and according to the payment of costs. We have dug these rules, with much care, out of a mass of complex cases, some of which we cite below for ease of reference (*y*).

Abandonment before notice of appeal.—In this case, whether the pauper has been removed or not, the respondents may abandon their order upon an offer to pay the receiving parish their reasonable costs, if any are incurred; and if this be done, the sessions, it seems, may refuse to enter any appeal against such order, according to *Rex* v. *Norfolk*,

(*y*) *Rex* v. *Llanrhydd*, Burr. S. C. 658; *R.* v. *Diddlebury*, 12 East, 359; *R.* v. *Norfolk*, 5 B. & Ald. 484; *R.* v. *Middlesex*, 11 A. & E. 809; *Reg.* v. *West Riding*, *Longwood* v. *Halifax*, 2 Q. B. 705; *Reg.* v. *Brighton*, 3 Q. B. 342; *Reg.* v. *Townstall* and *Reg.* v. *Stayley*, 3 Q. B. 357; *Reg.* v. *St. Pancras*, 3 Q. B. 347; *Reg.* v. *Overseers of Pontefract*, 3 Q. B. 391; *Reg.* v. *Merionethshire*, 13 L. J. M. C. 114.

per Bayley, J., and *Reg.* v. *West Riding* (*z*). The proper course, as suggested by Lord Denman in the last case, is "to give notice of the fact and motive of the abandonment both to the appellant parish and to the justice who made the order, before applying to a justice of the peace for a second order." In this case the following may be used as the

Form of notice of abandonment before removal, and before notice or entry of appeal.

To the churchwardens and overseers of the parish of All Saints, in the county of Hereford.

We, the undersigned, being the churchwardens and overseers of the parish of Crickhowel, in the county of Brecon, give you notice that we do hereby forego and abandon a certain order, a copy of which was duly delivered to you, made under the hands and seals of A L and B C, Esquires, two of her Majesty's justices of the peace for this county, and bearing date the 4th day of June, A.D. 1846, for the removal of the pauper, J B, from this parish to your parish of All Saints, Hereford, inasmuch as we have discovered and believe the said order to be informal [*or* the examination on which the said order is founded to be defective and insufficient to support the said order]; and we hereby offer to pay you your reasonable costs incurred by you or any of you in the matter of the said order, if any such there be; and we further give you notice, that we shall abstain from the execution thereof, and treat, and continue to treat, the said order as null and void. Given under our hands this 12th day of June, A.D. 1846.

[*Signed by the churchwardens and overseers of the removing parish.*]

Second form, where the pauper has been removed:

To the churchwardens and overseers of the parish of All Saints, in the county of Hereford.

We, the undersigned, being the churchwardens and overseers of the parish of Crickhowel, in the county of Brecon, give you notice that we do hereby forego and abandon a certain order, a copy of which was duly delivered to you by us, made under the hands and seals of A L and B C, Esquires, two of her Majesty's justices of the peace in and for this county, and bearing date the 4th day of June, A.D. 1846, for the removal of the pauper, J B, from this parish to your parish of All Saints, Hereford, inasmuch as we have

(*z*) It is important to remember that this case is confirmed in *Reg.* v. *Brighton*, and distinguished from it, though it is doubtful how far the sessions could refuse to enter an appeal to determine costs *under any case* where costs were still in dispute, after *Reg.* v. *Stayley and Townstall*, per Lord Denman, and *Reg.* v. *Merionethshire*.

discovered and believe the said order to be informal [*or* the examination on which the said order is founded to be defective and insufficient to support the said order]; and we further give you notice, that we are ready and willing to take back and receive, at our own cost and charge, the said J B, and hereby offer to pay you all reasonable costs and charges paid or incurred by you in consequence of such order and removal, and of the maintenance of the said J B, and we hereby request you to furnish us with a bill of such costs and charges, and we hereby further give you notice that we treat, and shall continue to treat, the said order as null and void. Given under our hands, this 12th day of June, A.D. 1846.

[*Signed by the churchwardens and overseers of the removing parish.*]

Where there has been notice but not entry of appeal before abandonment, and the costs are settled.—In this case, the settlement of costs being no longer in issue but already settled, it is clear that the notice of abandonment and the settlement of costs oust the appellants of all further power to make, and the sessions of any jurisdiction to entertain, the appeal; and the order thus abandoned cannot afterwards prevent a second order being obtained. In such case the foregoing forms of abandonment will suffice.

Where there has been notice of appeal and the costs are not settled, or wherever the appeal has been entered.—In either of these cases the power of the appellants to proceed to trial is unquestionable, *Reg.* v. *Merionethshire;* and it is prudent that the respondents should themselves take the case to the sessions, in order that it may be disposed of finally, and "*not on the merits.*" It then becomes matter of record, and easy of proof in case of a subsequent appeal. They should offer to the appellants to pay all reasonable costs incurred up to that time. This was done in the case of *Ex parte the Overseers of Pontefract.* The appellants, nevertheless, did enter the appeal, and at the sessions claimed to have the case heard, so that they might obtain a decision on the merits, which would, of course, be conclusive as to the settlement. But the decision of the sessions was, that the order should be quashed "*not on the merits,*" and that the case should not be heard; recognizing, at the same

time, the right of the appellant to bring the case to the court, by ordering the respondents to pay them the costs of coming there, as well as the costs of the pauper, up to notice of abandonment. The Queen's Bench upheld the decision of the sessions; and Mr. Justice Coleridge said, "I think if they (the sessions) had heard the witnesses they would have been unfit ever to try an appeal again." This case is in accordance with the law stated in *R.* v. *Tunstall and Staley*; *the "right to go to the sessions for costs"* (although they were tendered, being upheld. And quite consistent with this right is it that the sessions should resist the *wrong* to the respondents of so extending the power of the appellants as to force a final decision on the merits of the case.

A supersedeas gives the party who obtains it no power or advantage which he would not have equally had upon the mere abandonment (*Reg.* v. *Stayley*, per Lord Denman). We shall not therefore encumber this book with a form of that pedantic proceeding, but give in its stead forms of abandonment for this class of cases which we have moulded upon that used in the case of *Ex parte Pontefract*, and upheld by the Court of Queen's Bench.

Form of abandonment of order where there has been notice of appeal but no removal of the pauper.

To the churchwardens and overseers of the poor of the parish of Andover, in the county of Wilts.

In the matter of an appeal between, &c.

Berks, } Whereas a certain order for the removal of Jane Jones
to wit. } from our parish of West Ilsley, in the county of Berks, to your parish of Andover aforesaid, as her last legal place of settlement, was made by A B and C D, Esquires, two of her Majesty's justices of the peace acting in and for the said county of Berks, bearing date the 5th day of May, A.D. 1846, and was duly delivered to you on the 6th day of May, A.D. 1846: and whereas since the making and delivery of the said order as aforesaid, and notice given to us by you of the said appeal against the said order, we have discovered and are satisfied that the said order [*or* examinations on which the said order was made] is [*or* are] informal and defective, [*or* defective and insufficient to support the said order of removal]: Now we the undersigned, being the churchwardens and overseers of the said parish of West Ilsley, do hereby give

you and each and every of you notice that we have abandoned and do hereby abandon the said order of removal, and that at the next general quarter sessions of the peace to be holden at Reading on the 1st day of July, A.D. 1846, we shall enter the said appeal and apply to the said court of quarter sessions to quash the said order of removal, upon a special entry that the said order be quashed not upon the merits: and we further give you notice that we are now willing and ready to pay you all reasonable costs already incurred by you in the matter of the said appeal: and lastly, we further give you notice that all costs henceforth incurred by you in prosecuting or trying [this or] any appeal against the said order now abandoned by us, will be so incurred at your own charge and peril. Dated this twentieth day of May, A.D. 1846.

Given under our hands, &c.

Where there has been removal of the paupers, the following form should be used.

Form of abandonment of order after notice of appeal and after the removal of the pauper.

To the churchwardens and overseers of the poor of the parish of Andover, in the county of Wilts.

In the matter of an appeal, &c.

Berks } Whereas under and by virtue of an order of removal
to wit. } under the hands and seals of T B and E V, Esquires, two of her Majesty's justices of the peace acting in and for the county of Berks, bearing date May the 1st, A.D. 1846, Ann Auckland was removed from our parish of West Ilsley, in the county of Berks, to your said parish of Andover, as the place of her legal settlement, and whereas since the said removal and notice given to us by you of the said appeal against the said order of removal, we have discovered and are satisfied that the said order is informal and defective, [*or* the examinations on which the said order of removal was granted are defective and insufficient to support the said order of removal on the trial or hearing of the said appeal]: Now we the undersigned, being the churchwardens and overseers of the poor of the said parish of West Ilsley, do hereby give you and each and every of you notice that we have abandoned and do hereby abandon the said order of removal, and that at the next general quarter sessions of the peace to be holden at Reading on the 1st day of July, A.D. 1846, we shall apply to the said court of quarter sessions of the peace to quash the said order of removal upon a special entry "quashed not upon the merits," and we further give you notice that we are now ready and willing to pay to you the said churchwardens and overseers of the poor of the said parish of Andover all reasonable costs already incurred by you in the matter of the said appeal, together with all costs incurred by you for the maintenance and support of the said pauper since the execu-

tion of the said order of removal: and lastly, we further give you notice that all future costs incurred by you or any of you in prosecuting and trying the said appeal will be so incurred at your own charge and peril. Dated this tenth day of May, A.D. 1846.

Witness our hands.

Section VII.—Removal of Lunatic Paupers.

Lunatics not allowed to remain in workhouses.—The 4 & 5 Will. 4, c. 76, s. 45, forbids "the detention in any workhouse of any dangerous lunatic, insane person or idiot, for any longer period than fourteen days."

How removeable—Examination into sanity and settlement by justices.—The 9 Geo. 4, c. 40, provides that when an insane pauper becomes chargeable, the overseer, the board of guardians, or their relieving officer(*a*), must give notice to any justice of the peace, who must then require such insane person to be brought before two justices of the peace of the same county, who, with the assistance of a medical practitioner, being either a physician, surgeon or apothecary, must then examine into the fact of the pauper's insanity.

The 38th section of the statute sets forth the mode of proceeding, and is as follows:—"That upon its being made known to any justice of the peace of any county, that a poor person, chargeable to any parish or place within such county, is deemed to be insane, either by notice from the overseer of such parish or otherwise, it shall be lawful for the said justice, by an order under his hand and seal, if he shall so think fit, to require the overseer of the poor of the said parish or place to bring the said insane person before any two justices of the peace of the said county, at such time and place as shall be appointed by the said order; and the said justices are hereby required to call to their assistance a physician, surgeon or apothecary, at the charge of the said parish or place; and if upon view and examination

(*a*) 5 & 6 Vict. c. 57, s. 6.

of the said poor person, or from other proof, the said justices shall be satisfied that such poor person is insane, the said justices shall make inquiry into the place of last legal settlement of such insane person; and it shall be lawful for them, if they shall so think fit, by an order under their hands and seals, directed to the said overseer of the poor, according to the form in schedule (5) annexed to this act, to cause the said poor person to be conveyed to and placed in the county lunatic asylum established under the directions of this or any former act, for the county or district of united counties for which or any of which they shall act; and if no such county lunatic asylum shall have been established, then to some public hospital, or some house duly licensed for the reception of insane persons; and it shall be lawful for the said or any other two justices of the peace of the said county, from time to time as occasion may require, to make order on the overseer of the parish or place wherein such last legal settlement shall be adjudged to be for the payment of all reasonable charges of conveying such poor person to such county lunatic asylum, public hospital, or licensed house; and if such poor person shall be conveyed to such county lunatic asylum or public hospital for the payment of such weekly sum to the treasurer of such county lunatic asylum, or proper officer of such public hospital respectively, as shall be from time to time fixed upon by the visitors of such county lunatic asylum, or as may be required by the regulations of such public hospital; or if such poor person shall be conveyed to such licensed house, for the payment of such weekly or monthly sum to the keeper of such licensed house, for the maintenance, medicine, clothing, and care of such poor person, as such keeper shall be willing to accept, and as shall appear to the said justices to be a reasonable charge in that behalf; and the said last mentioned overseer shall not remove such poor person from the said house without an order for that purpose made by two justices of the peace for the county in

which such house shall be situated, after due inquiry into the circumstances of the case, unless such person shall have been discharged as cured; provided always, that the overseer or other person so conveying such insane person to such county lunatic asylum, public hospital or licensed house as aforesaid, shall and is hereby required to deliver a certificate from the physician, surgeon or apothecary so called to the assistance of the justice as aforesaid; which certificate such physician, surgeon or apothecary is hereby required to give, according to the form in schedule (6) annexed to this act, to the superintendent of such county lunatic asylum or public hospital, or keeper of such licensed house, as the case may be."

Where the settlement ascertained after removal.—Sect. 41 makes similar provision for cases where the settlement of the lunatic cannot be ascertained. Sect. 42 (*b*) (repealing the former statutes) enacts, "That where the legal settlement of any insane person, confined under any order of any two justices at any county lunatic asylum, public hospital or any licensed house, has not been ascertained, it shall and may be lawful for any two justices acting in and for the county in which such county lunatic asylum, &c. is situate, at any time to inquire into the last legal settlement of such insane person; and if satisfactory evidence can be obtained as to such settlement, it shall and may be lawful for such justices to make an order upon the overseers of the parish or township where such last legal settlement of such insane person shall be adjudged to be, for the repayment of the reasonable charges of the removing, maintenance," &c. of such lunatic, incurred within the previous twelve months and to provide for future expenses "herein before" (that is by sect. 38) directed.

(*b*) This section comes into operation only when the settlement is discovered after the lunatic has been sent to the asylum; *Reg.* v. *Darton*, 12 A. & E. 78.

Where asylum is supported by two counties jointly.—Sect. 43 enacts, "That in all cases where two justices are empowered to make an order on the overseer or overseers of any parish for the payment of reasonable charges of conveyance of pauper lunatics, or for the payment of weekly or monthly sums for the maintenance, clothing, and care of such poor persons, it shall be lawful for two justices of the county in which such county lunatic asylum shall be situate, to make such order on the overseer or overseers of any other county which shall jointly maintain such asylum."

Persons disordered in their senses to be proceeded with in like manner.—Sect. 44 enacts, in the case of an insane person, though not chargeable, brought before justices, that, "if upon the examination of such person deemed to be insane, or from other proof, the said justices shall be satisfied that such person is so far disordered in his senses that it is dangerous for such person to be permitted to go abroad, the said justices shall make inquiry into the circumstances and place of last legal settlement of such insane person, and it shall be lawful for such justices to proceed in such case in the same manner as has hereinbefore been directed in the case of a person chargeable to any parish within the jurisdiction of the said justices," &c.

The first proceeding is to send the pauper lunatic with all possible dispatch to an asylum by the following warrant, which is that named in sect. 38, and given by the act.

Form of warrant for conveying the lunatic to an asylum.

Whereas it appears to us , of his Majesty's justices of the peace for the county of , having called to our assistance , a physician [*or* surgeon, *or* apothecary, *as the case may be*], that , chargeable to the parish of , in the said county, is lunatic, [insane, *or* a dangerous idiot, *as the case may be*], you are hereby directed to cause the said to be conveyed to the county lunatic asylum established at or to the house of , situate at , in the county of , the said house being a house duly licensed for the reception of insane persons.

Given under our hands and seals this day of .

To the overseers of the poor of the parish of .

Borough justices.—The powers of this act do not enable borough justices to send paupers to the county asylum, under sections 38 and 41, or to make an order of adjudication of their settlement, and for the payment of costs under sect. 42 (*c*).

Power to send to private asylum only when there is no public asylum.—This provision of the act has been so strictly construed that in a recent case, *Reg.* v. *C. H. H. Ellis* (*d*), the Court of Queen's Bench quashed an order removing a lunatic to a private asylum, because the county one was full. This was held to be *casus omissus;* and that although the intention of the act was to get rid of the miserable parochial care to which such paupers were previously left, that wherever a public asylum exists, though it cannot accommodate the pauper, the act gives no power to remove to a private asylum, and that its terms must be strictly pursued.

The chargeability is to be taken for granted.—The justices are, according to ss. 38 and 45, to take the *chargeability* of the lunatic for granted, on the responsibility of the overseer.

Idiots.—Idiots are included in the act (s. 61).

Refusal of justices to make order.—If the justices refuse to make the order, they are bound to state their reasons in writing to the overseers (s. 45).

Costs, by, to whom, and how made payable.—The 5 & 6 Vict. c. 57, s. 6, dated 30 July, 1842, gives all the powers conferred on overseers by the 9 Geo. 4, c. 40, to boards of guardians under 4 & 5 Will. 4, c. 76 (*e*), and provides that the board of the union in which the pauper is settled "shall have the like powers as overseers have with respect to insane persons under the provisions of 9 Geo. 4, c. 40, or of any act or acts passed to amend the same; and every such board

(*c*) *Reg.* v. *Justices of Cornwall*, 14 L. J. M. C. 46.

(*d*) 14 L. J. M. C. 1.

(*e*) And 7 & 8 Vict. c. 101, s. 28, gives like powers to the guardians of every parish or union appointed under any local act.

of guardians shall from time to time pay, or cause to be duly paid to the treasurer, managers, or keepers of any county lunatic asylum, public hospital, or licensed house respectively, all costs lawfully due in respect of any poor person maintained in such county lunatic asylum, public hospital, or licensed house, and if such costs shall not be duly paid by such board of guardians or overseers of the parish, to which such poor person may have been chargeable, according to the provisions of the said recited acts, then and in such case it shall be lawful for any two justices to proceed to the recovery of the said costs, by making and enforcing an order for the same on the overseers of the aforesaid parish, according to the provisions of the said recited acts."

In the absence of any decision on this clause (it having been apparently overlooked in *Reg.* v. *Pixley*(*e*)), we speak with diffidence as to the course to be pursued under it. We, however, construe it to require a demand of payment of any costs to be first made upon the guardians of the union in which the ascertained parish of settlement is; and failing compliance with such demand, then an order may be made on the overseers. The nonpayment by either party seems to be a condition precedent to the power to order the overseers to pay.

When costs already incurred are claimed, they must be specified in the order; and an order may be similarly given for the *future* expenses of maintaining such pauper (s. 42), which we have seen enables the justices to make an order for past costs, but no such power of making a retrospective order is given by sect. 38(*f*). The 42nd section does give this power; it however omits to state to whom the costs are to be paid, but the 5 & 6 Vict. c. 57, as we have seen, supplies the direction. It is however decided that where a pauper, whose settlement was unknown, was removed under

(*e*) *Reg.* v. *Pixley*, 4 Q. B. 711.

(*f*) *Rex* v. *Maulden*, 8 B. & C. 78; *Rex* v. *St. Nicholas, Leicester*, 3 A. & E. 79.

section 38 at the cost of a parish to which he was then chargeable, the justices have no power afterwards to order those expenses to be repaid to the overseers of the removing parish, when his settlement is discovered under the 42nd section, for in none of the various sections of the act is there any provision enabling justices to direct the sum to be reimbursed to the overseer of the parish or place to which the pauper lunatic may have been chargeable (*h*). The order need no longer be made by the same justices who examined the pauper (*i*).

If the overseer shall neglect to pay the costs for twenty days after notice, they may be recovered, together with the expenses, by distress and sale of the goods of the overseer (*k*).

7 & 8 Vict. c. 101, s. 27 (which see in Appendix (B.)), provides that two justices may authorise the seizure of so much of the property of the pauper, if he have any, as shall exceed what is necessary for the maintenance of his family, to pay any charges incurred in the removal, care, medicine, clothes, &c. of the pauper, to any overseer or guardian, &c.

Order how to be made for costs, and by whom.—In all orders for costs and charges under section 41, it must clearly appear that the treasurer "incurred them by order of two justices to him directed for that purpose." It has been also decided that two justices may make an order under section 42, as well as where a legal settlement has not been ascertained, although a previous order has been made by other justices, adjudicating on the settlement, if such order has been quashed on appeal for want of form, and not on the merits (*l*). And also that the justices of one county may make an order on the overseers of a parish in another county, though the latter does not contribute to the maintenance of the county lunatic asylum (*l*).

(*h*) *Reg.* v. *St. Andrew's, Worcester*, 4 Q. B. 729.

(*i*) 5 & 6 Vict c. 57, s. 6, *supra*.

(*k*) 9 Geo. 4, c. 40, s. 48, reinforced by 5 & 6 Vict. c. 57, s. 6.

(*l*) *Reg.* v. *Pixley*, 4 Q. B. 711.

See title, "Notice of Appeal," and "Appeal in Cases of Lunatics," *post.*

Order for the removal of a lunatic pauper settled elsewhere than in the removing parish.—The order of removal may be thus worded:—

Kent } To the overseers of the parish of in the county
to wit. } of .

Whereas A B, a pauper, now residing in, and having become chargeable to, the said parish of , has been brought before us, whose names are hereto set and seals affixed, being two of her Majesty's justices of the peace in and for the said county of Kent, by , one of the overseers of the poor of the said parish of , to be examined touching his sanity and soundness of mind; and whereas the said A B has been duly examined by us with and by the assistance of , a member of the Royal College of Surgeons [*or as the case may be*], he being then and there present: We, the said justices, do hereby declare that we are satisfied that the said A B is a person insane, lunatic, and dangerous to go abroad. These are, therefore, to require and order you, the said overseers of the poor of the said parish of , forthwith to remove and convey the said A B from and out of your said parish of to the County Lunatic Asylum of , in the said county of Kent, and to deliver him, the said A B, together with this our order, or a true copy thereof, and a certificate of the insanity of the said A B signed by the said (*m*), to the superintendent or keeper of the said lunatic asylum, who is hereby required to receive, tend, and maintain the said A B according to law.* And we, the said justices, upon due inquiry by us made, and by the examination before us of witnesses on oath respecting the last legal settlement of the said A B, do hereby adjudge the same to be in the parish of , in the county of ; and we do further hereby require you, the said overseers, to send by post, or otherwise, a notice in writing to the overseers of the said parish of of the chargeability of the said A B in the said parish of , together with this order, or a true copy thereof, and the said certificate of the said , or a true copy thereof, and notice of the said removal of the said A B to the said lunatic asylum, and a copy of the examination on which this order is made. Given under our hands and seals the day of , A. D. 1844.

(*m*) The medical practitioner present.

Form of notice to be sent by the overseers of the parish of the settlement to the board of guardians of the union in which the settlement is.

To the board of guardians of the poor of the union of in the county of .

Whereas A and B, Esquires, being two of her Majesty's justices of the peace acting in and for the county of Kent, have, by an order under their hands and seals, dated the day of , A.D. 1844, upon due examination as therein stated, directed to , being the overseers of the parish of , in the county of Kent, to remove a certain pauper, C D, chargeable on the said parish, and duly proved to them to be insane, to the lunatic asylum at : And whereas, upon like due examination as in the said order stated, the said justices have adjudged the legal settlement of the said pauper A B to be in our parish of , and whereas our said parish of is within and forms part of the said union; and whereas the said pauper C D was, under and by virtue of the said order, conveyed to and now is kept and maintained in the said lunatic asylum; we hereby give you notice of the premises, and request you to pay the sum of £ : *s.* *d.*, being costs lawfully due in respect of such pauper incurred in conveying the said pauper to the said county asylum, to the treasurer of the said asylum, and also to pay on demand such weekly sum as shall from time to time be fixed by the visitors of the said asylum to the said treasurer for the maintenance, medicine, care and clothing of the said A B, so long as he shall be confined therein, according to the form of the statute in that case made and provided.

Dated this day of , A.D. 1845.

Where the costs remain unpaid, the order for costs on the overseers may be as follows:—

Form of order on overseers for payment of costs incurred.

Kent } To the overseers of the poor of the parish of , in the
to wit. } county of .

Whereas it has been duly made to appear before us, whose names are hereunto set and seals affixed, being two of her Majesty's justices of the peace in and for the said county of Kent, that on the day of , A.D. 1846, A B, a pauper, was brought and duly examined by us [*or* by and], Esquires being two of her Majesty's justices of the peace in and for the county of , and was then proved, to the satisfaction of us [*or* the said last-mentioned justices,] to be a person insane, lunatic, and dangerous to go abroad; whereupon we the said last-mentioned justices, by an order under our [*or* their] hands and seals, bearing date the day of , A.D. 1846, directed to the overseers of the poor of the said parish of , did order them to convey the said A B to the county lunatic asylum of in the

county of : And whereas the said A B was under and by virtue of the said last-mentioned order conveyed to and placed in the said pauper lunatic asylum, established at , on the said day of , A.D. 1846, and from thenceforth has been and now is confined therein under the said last-mentioned order. And whereas also the last legal settlement, after due inquiry made, was proved before us [*or* before the said and] to be in the parish of , in the county of .* Therefore we the said L T and D M did [*or*, therefore the said did] adjudge the legal settlement of the said A B to be in the said parish of . And whereas it has been proved before us upon oath that the sum of £ has been incurred within twelve calendar months next preceding the date hereof by the parish of , in and about the removal, maintenance, care and other costs lawfully due in respect of the said A B to the said lunatic asylum; and whereas also the board of guardians of the union of , to which the said parish of belongs, having been duly requested thereto, have not paid, nor have you the said overseers of the said parish paid the said sum of £ , or any part thereof, therefore we do hereby order and direct you the overseers of the said parish of , which place has been so ascertained and adjudged to be the last legal settlement as aforesaid of the said A B, to pay the said sum of £ to the treasurer, managers or keepers of the said lunatic asylum of , on demand. And we do further order and direct you the overseers of the said parish of to pay a certain sum weekly and week by week, to wit, the sum of *s.*, for the maintenance, care, medicine and costs of the said pauper as aforesaid, to the treasurer, manager, or keeper of the said lunatic asylum of . In default whereof the payment of the said several costs will be enforced according to the form of the statute in that case made and provided.

Given, &c.

Where the pauper is settled in the removing parish, omit what follows in the first of the above forms after the asterisk (*), and in the same case the last form must be altered by omitting the adjudication clause at the asterisk; and by also omitting the words "which place has been so ascertained and adjudged to be the last legal settlement as aforesaid of the said A B."

Time when the settlement is ascertainable.—It is not necessary that the settlement of the pauper should undergo inquiry or be adjudicated upon at the time of the examination into his state of mind. It may be made afterwards by the justices who make the order for the payment of the costs,

and the justices who make the examination of the settlement ought to make the order of payment likewise (*n*).

Appeals.—The parish receiving the order for the payment of costs will be concluded by it unless appeal is made against it. Ten days' notice must be given to the justices of an appeal against any act done or refused to be done under their order. The appeal against the adjudication of the settlement must be made in the same way as in the case of ordinary appeals; notice being given to the clerk of the peace who is the respondent (*o*). (See *post*, title "Appeal.")

Discharge from asylum.—No lunatic pauper is allowed to quit or to be discharged from any lunatic asylum until ordered to be discharged at a meeting of the visitors, not less than three concurring, or by order of two visitors with the advice of a physician attending such asylum, who shall certify the perfect recovery of the pauper.

Costs of removal from the asylum.—These costs are to be defrayed by the parish of the pauper's settlement (s. 53) on the order similarly made as above by two justices of the peace.

Insane prisoners.—The expense of maintaining insane prisoners may, by the 54th section of the 9 Geo. 4, c. 40, be similarly thrown on the pauper's parish. And the 1 Vict. c. 14, provides that where a pauper is discovered in a state of apparent insanity, and contemplating an indictable crime, two justices, on inquiry, may make a similar order upon the constable or overseers of the parish where the pauper is, to have him apprehended and removed to an asylum; proceeding precisely as in the case of the ordinary removal of insane paupers as to settlement and costs; unless it be shown that the prisoner is not a pauper, and has property sufficient for his maintenance, in which case sect. 44 provides for the seizure of such property.

(*n*) *Reg.* v. *Darton*, 12 Ad. & E. 78.
(*o*) 9 Geo. 4, c. 40, ss. 46 and 54.

Section VIII.—Removal of Scotch, Irish, Isle of Man, Scilly and Channel Island Paupers.

By the act 8 & 9 Vict. c. 117, (*vide* Appendix (A.)), all of the former acts bearing on the removal of non-English paupers have been repealed, with the exception as to the cases of all orders made under them, and not fully executed at the passing of this statute.

Power of removal.—The first enactment provides that any paupers born in Scotland, Ireland, the Isles of Man, Scilly, Jersey, or Guernsey, not already settled in England, and having become actually chargeable to any parish in England by reason of relief given to himself, herself, or to his wife, or to any legitimate or bastard child, shall be liable to be removed.—Sect. 2, *vide* Appendix.

Mode of complaint.—Complaint being made by guardians of any parish, or of any union in which the same may be comprised, or where there are no such guardians, by overseers, to any justice, paupers may be summoned before two justices to examine the case.

Costs of removal.—On the matter of complaint being made to appear to their satisfaction, they shall issue warrant to remove such persons forthwith, at the expense of such union or parish.—Sect. 2.

Mode of removal.—The persons to whom such warrant shall be delivered for the purpose of being carried into execution shall keep the custody of the pauper throughout to the place of removal, and be invested with the full powers of a constable for the time, and in every county and place through which he may pass in execution of such warrant.—Sect. 3.

Regulations for removal.—Justices of the peace of every county, at some general or adjourned quarter sessions, or at petty sessions, of every borough, shall make regulations for carrying into effect the provisions of this act, to be approved by a secretary of state.

Ports or places of removal.—By schedules (A.) and (B.) (*n*), the act provides a set of ports therein named for Ireland and Scotland, nearest to which the native abodes of the paupers may be situated, to which they are to be removed. But the persons removable may, if they so consent, be removed to any other port or place in their respective counties.

Until above regulations have been made and approved, all present rules and orders for removal to remain in force. —Sect. 4.

Repayment of costs in certain parishes.—In cases of parishes not in unions, with population not exceeding 30,000 per last census, the guardians or overseers by whom warrant of removal has been required, on delivering amount and items of expenses incurred, made on affidavit before some justice of such county or borough, to the clerk of the peace or town-clerk thereof, such account shall be laid before the quarter sessions, or borough council, as the case may be, who shall, if the regulations in force have been duly complied with, order the repayment of such expenses out of the county rate or borough fund.—Sect. 5, *vide* Appendix (A.)

Power of appeals.—In cases where any union board in Ireland, or kirk session, or borough magistrates in Scotland, feel aggrieved by any such removals aforesaid, they may forward to the Poor Law Commissioners a statement of the case, and the grounds for concluding such paupers to have been settled in England. The said commissioners may thus appeal within six months to the quarter sessions, giving, by post or otherwise, written notice to the guardians or overseers of such intended appeal. The parties appellant must, however, previously enter into good security in England to the commissioners for payments of all costs of such appeal. If, on hearing such appeal, the warrant of removal be reversed by such court, all the costs incurred shall be paid by

(*n*) *Vide* Schedules, Appendix (A.)

the guardians or overseers on whose application the same was obtained.—Sect. 6.

Abandonment of warrant.—It is provided, however, that the said guardians or overseers may, after such notice of appeal, give or send by post notice in writing, under the hands of two or more of them, to the commissioners, that they abandon such warrant, but must pay to the persons making the appeal the expenses incurred by them on account of such warrant and return of the pauper removed, and not paying the same within seven days after demand, the same may be recovered as penalties and forfeitures.—Sect. 6.

This act and the Poor Law Amendment to be considered as one act.—Sect. 7, *vide* Appendix (A.)

Cases of doubtful parentage settlement.—As cases of doubtful settlement by parentage may occur alike under the present as the prior act, questions will frequently arise how far the pauper *has* obtained a settlement by birth in England by parentage, where the parents are not themselves natives. The principle by which this doubt must be determined depends on the degree of severance existing between the pauper and his parents. The statute renders the parent removable wherever he has become chargeable by himself, "or his or her family;" and this condition has been held to be unaffected by the fact whether the individual who is chargeable is above sixteen years of age (*o*). The only question is, whether such individual forms part of the family of the parents. If so, the child who is chargeable cannot be removed to the place of its birth, though in England; but the parents with all their children who have not gained settlements, and are chargeable, must be removed together to the country whence the parents came (*o*). Where, however, the parent has done something to gain an English settlement, as where an Irish mother married an Englishman, her prior child took the settlement of its place of birth, because the mother could not be removed, for the parent is as it were

(*o*) *R.* v. *Mile End Old Town*, 4 A. & E. 196.

the meritorious cause of removal (*p*), so long as the chargeable child remains part of the parent's family. But where the child has severed the connection, as by marrying and residing apart from his parents, he obtains with his wife the settlement of his birth place (*q*). Had the pauper continued to reside in his parent's house with his wife, according to the principle laid down in *R.* v. *Mile End*, it would be questionable how far he would take the settlement of his birth place or not. It would, at least, be requisite to show that he was a mere lodger in his father's house, having earned a separate livelihood. The rule laid down by Mr. Justice Patteson in *R.* v. *Mile End* is, that he must have "done some act or contracted some relation inconsistent with the character" of being part of his father's family. Thus, subject to the rule that wives and children, being part of their parents' family, are to be removed with the head of the family, the children of non-English parents born in England are settled at their birth-place, until they have gained some other settlement.

Forms of procedure under this act (see Schedule (C.)) are as follow:—

Form of warrant of removal of persons born in Scotland or Ireland, or in the Isle of Man, or Scilly, or Jersey or Guernsey.

To .

County of } Whereas complaint hath been made by the
to wit. } board of guardians of the union [*or* of the parish of, *&c.*], in the said county of , unto us, whose names are hereunto set and seals affixed, two of her Majesty's justices of the peace acting in and for the said county, that a person born in Scotland [*or* Ireland, *or* the Isle of Man, *or* Scilly, *or* Jersey, *or* Guernsey], hath become and is now chargeable to the parish [township, *&c.*] of in the said [union, *&c.*]: And whereas, upon examination of the said taken upon oath before us (which examination is hereto annexed), it doth appear to our satisfaction that he was born in Scotland, *&c.*, and hath not a settlement in England, and that he hath a wife named and children, videlicet

(*p*) *R.* v. *Great Clacton*, 3 B. & Ald. 410.
(*q*) *R.* v. *Preston*, 12 A. & E. 822.

neither of which children has any settlement in England.

These are therefore to require you the said to convey the said his wife and family aforesaid to Scotland, *&c.*, in the manner directed by the regulations of the justices of the said county, *&c.*, and approved by J S one of her Majesty's principal secretaries of state, in pursuance of the provisions of a certain act made and passed in the year of the reign of Queen Victoria, intituled [*the title of this act*].

Given under our hands and seals this day of in the year of our Lord one thousand eight hundred and

[*Here copy the regulations of the justices of the county, &c., approved by the secretary of state, as applicable to the removal of the party.*]

Form of examination to which the above warrant refers.

} The examination of taken on oath before us,
to wit. } two of her Majesty's justices of the peace acting in and for the [county, riding, city, borough, town corporate, division *or* liberty,] aforesaid, this day of in the year of our Lord one thousand eight hundred and , who on oath saith, that according to the best of [his *or* her] knowledge and belief [he *or* she] was born in in that part of the united kingdom called Scotland [*or* Ireland, *or* in the Isle of Man, *or* Scilly, *or* Jersey *or* Guernsey], which [he *or* she] left about years ago, and hath no settlement in that part of the united kingdom called England, and hath actually become and is now chargeable to the [parish, township, *&c.*] of in the county of [and that he hath a wife named and children, neither of which children have gained a settlement in England.]

Sworn the day and year first above written, before us .

PART II.

APPEAL AGAINST REMOVALS.

Section I.—The Law of Appeal.

Origin of appeals.—The power of appealing to the quarter sessions against an order of removal takes its origin from the 13 & 14 Chas. 2, c. 12, which enacted, "that all such persons who shall think themselves aggrieved by any judgment of the said two justices, *may appeal to the justices of the peace of the said county at their next quarter sessions*," &c.; the 3 & 4 W. & M. c. 11, s. 10, enacts, "that all persons who think themselves aggrieved with any such judgment of the said two justices, *may appeal to the next general quarter sessions of the peace to be held for the county, riding, city, town corporate, or liberty, from which the said person was so removed.*" But it is enacted by 8 & 9 Will. 3, c. 30, s. 6, "that the appeal against any order for the removal of any poor person from any parish, township or place, shall be had, presented and determined *at the general or quarter sessions of the peace for the county, division or riding*, wherein the parish, township or place from whence such poor person shall be removed, doth lie, and not elsewhere, any former law or statute to the contrary notwithstanding."

Appeal against suspended orders.—Appeals lie not only against the order of removal, but also against an order for the payment of the charges of a suspended order.

35 Geo. 3, c. 101, s. 2, provides, that if the parish officers of the parish, &c. to which the order of removal is made, shall, upon the poor person's removal or death, refuse or

neglect to pay the charges proved on oath to be incurred by the suspension, and by the justices ordered to be paid, "within three days after demand thereof, and shall not within the said time give notice of appeal, one justice may by warrant order the money to be levied by distress, &c., provided that if the sum so ordered to be paid on account of such costs and charges exceed 20*l.*, the party or parties aggrieved by such order may appeal to the next general quarter sessions against the same, as they may do against an order for the removal of poor persons by any law now in being;" and if the sessions are of opinion that the sum awarded is more than ought to be paid, they may strike it out and insert such sum as in their judgment ought to be paid.

An appeal thus lies against an order of removal which was suspended, and against a subsequent order for costs, notwithstanding the pauper's death prior to her removal, and though the costs are under 20*l.*; for 3 W. & M. c. 11, s. 9, gives an appeal to the party aggrieved by the justices' determination respecting the pauper's settlement; and though the grievance grows by a subsequent statute, the party is still aggrieved by the order of removal. Before 35 Geo. 3 there was no grievance to the parish to which the order of removal was made until it was executed; but that statute attaches a contingent consequence to the order of removal, being coupled with the order for payment of costs, which makes it a grievance, though the pauper died before any removal in fact took place. Then the appeal against the order for costs is not against the *quantum*, but against the liability of the parish to pay any costs at all in this case, taking it as a consequence of the order appealed against (*a*).

Party to appeal.—The overseers and churchwardens represent the parish, and can alone appeal on its behalf. Except where parishes or townships are incorporated under Gilbert's Act, of which section 7 clothes the guardian with all

(*a*) *R.* v. *St. Mary-le-bone*, 13 East, 51, *per* Ellenborough.

the powers of overseers, the guardians must appeal and sign as guardians (*b*). Individual inhabitants cannot appeal; but to the pauper himself the right of appeal is expressly reserved, "for there may be inconvenience to him in being detained in any particular parish, or he may be aggrieved by being sent about from one to the other (*c*)." In the one case there can only be a corporate grievance; in the latter there is an individual one, clearly entitling the sufferer to his individual remedy.

Appeal, where to be made.—By 8 & 9 Will. 3, c. 30, s. 6, the appeal must be made to the general or quarter sessions of the county, or to the corporate borough where the removing parish is situated.

And it has been decided that notwithstanding the expression *general or quarter sessions*, the appeal must be made to the *quarter* sessions, even though a general sessions has intervened; for it appears from other parts of the act, as well as from other statutes made *in pari materia*, that the word *general* is not used with a view to those places that have both general and quarter sessions, such as London and Middlesex, but as another word for quarter sessions in contradistinction to a special sessions, every quarter sessions being a general sessions. In Middlesex and London, in fact, the appeal must be to the quarter sessions (*d*).

Jurisdiction of borough sessions.—The claim of borough sessions, under the Municipal Corporation Act, to try these appeals, gave rise to some conflict of jurisdiction, which has terminated in favour of the borough courts.

The statute of 8 & 9 Will. 3, c. 30, expressly deprived the borough sessions of the power of trying these appeals. The 5 & 6 Will. 4, c. 76, s. 105, (the Municipal Corporation Act,)

(*b*) *Reg.* v. *West Riding* (*Harnley* v. *Rothwell*), 13 L. J. M. C. 39.

(*c*) *Reg.* v. *Colbeck*, 12 Ad. & Ell. 161.

(*d*) *Reg.* v. *Middlesex*, 4 Q. B. 807; *Reg.* v. *Justices of London*, 15 East, 631.

gives to the borough sessions all the jurisdiction, and to the recorder all the powers, that formerly belonged not only to the quarter sessions of a town corporate, but to any county sessions; the power of hearing appeals being among the number. This statute, it has been decided, therefore annuls the other, not only on the strength of the maxim that *leges posteriores priores contrarias abrogant*,—but because the objection to the borough jurisdiction is removed by the provisions for judicial competency in the act. "The parliament in King William's time," says Lord Denman in *Rex* v. *Salop* (*e*), "may be supposed to address the borough justices of the peace thus:—'We cannot trust you with this power; we take it from you, and authorise the county justices of the peace to act in your place.' But the parliament of William the Fourth holds the opposite language:—'We wish you to be restored to the jurisdiction of which you were deprived, and have taken effectual means to prevent the abuse which led to the deprivation.'" And it is decided in the same judgment, that 5 & 6 Will. 4, c. 76, intended "to put an end" to the power of the county sessions over borough appeals, which the courts of such boroughs have "*exclusive right to try.*" There is no concurrent jurisdiction.

Appeal, when to be made.—The appeal must be made to the next practicable sessions (*f*), either after notice of removal has been received by the appellant parish, or next after the actual removal has taken place, according to the 13 Chas. 2, c. 14. Since the New Poor Law Act, it was at first thought necessary to appeal on the receipt of the order of removal, but

(*e*) 2 Q. B. 85. See also *Reg.* v. *St. Edmunds, Sarum*, 2 Q. B. 72.

(*f*) "*The next practicable sessions*" mean the first sessions in time for which the required notice of appeal and the statement of the grounds of appeal can be given after the decision to appeal is arrived at. It must be a sessions occurring at soonest fifteen days after such decision, for that is the period required for the delivery of the *grounds of appeal*, and it may be as many more days distant as the sessions may happen to require for the *notice of appeal*.

in subsequent cases the Court of Queen's Bench has several times held that the parish officers are not *bound* to avail themselves of the 79th section of the 4 & 5 Wm. 4, c. 76 (which enables the notice of appeal to be given within the twenty-one days after the receipt of the order of removal so as to prevent removal), but may suffer the twenty-one days to elapse, and appeal to the next practicable sessions after the actual removal. They have considered that the appellant parish may treat itself as a party aggrieved by the order of removal before actual removal by the necessary operation of the 4 & 5 Wm. 4, c. 76, *or* may wait until they are aggrieved by the *actual* removal (*g*), even though they may previously have given notice of appeal upon receipt of the order (*h*). But if the appellant parish does not act upon the receipt of the order, and give notice of appeal within the twenty-one days before removal, the removal will of course take place. It is, therefore, inexpedient to delay the notice when the decision to appeal and the evidence to support it can be obtained in sufficient time.

In a very recent case (*i*), an order of removal was served on the 7th of August, notice afterwards of appeal, dated September 6th, "for the then next sessions," was served on the 14th of October. The next sessions were held on the 17th of October. By the practice of sessions, eight days' notice of trial was required. Neither party attended at the October sessions, and no appeal was entered. At the Epiphany sessions, in the absence of the respondents, no further notice of trial having been given, the order of removal was quashed with 5*l.* costs, the appellants relying, it seems, on the notice they had given on the 14th of October. Lord Denman held that as the appellants were bound to go to the next practicable sessions, the October sessions were the

(*g*) *R.* v. *Middlesex*, 9 Dowl. 163, and *R.* v. *Herefordshire*, 8 Dowl. 638 *Reg.* v. *Cornwall*, 6 A. & E. 894.

(*h*) *Reg.* v. *Justices of Middlesex*, 4 Jurist, 1086.

(*i*) *Reg.* v. *Sevenoaks*, 14 L. J. M.C. 92.

next practicable ones, and that a party is not entitled to lie by and do nothing at the next sessions, and at his option treat the second sessions after the service of the order of removal as that to which he will appeal, and that the next sessions did not become impracticable simply because the appellants chose to keep the notice of appeal in their pocket till it was too late to try. And Patteson, J. added, "It is now settled that even where an appellant has plenty of time to try at the sessions next after the service of the order, if he does not chose to try, the sessions must enter and respite the appeal." (See "Notice of Appeal," *post.*)

Time when appeals are to be made against suspended orders.—The party may bring this appeal within the time allowed by law for bringing appeals against orders of removals, and is not limited to three days after the costs are demanded (*j*). The meaning of that part of the clause is, that if he does not give notice of appeal within three days, he subjects himself to the inconvenience of being distrained upon for the amount, but the right of appeal being given in the most general terms by a subsequent part of the clause is not thereby restrained. And by section 2, when the execution of the order is suspended, the time of appealing is to be computed according to the rules which govern other like cases, from the time of serving it, and not from that of making such removal under and by virtue of it.

Adjourned sessions do not count.—Adjourned sessions do not count as the next practicable sessions, though, if the appellants chuse, they may appeal to them if there is time (*k*).

How far the abandonment of an order precludes the trial of an appeal.—One of the objects of the Poor Law Amendment Act in compelling a mutual disclosure between the two parties of their respective cases was to afford facility for the abandonment of untenable orders, and with the express view of averting unnecessary contests. "Now that commu-

(*j*) *Rex* v. *Penkridge*, 3 B. & Ad. 538.

(*k*) *Rex* v. *Surrey*, 1 M. & S. 479.

nication," says Mr. Justice Patteson, in *R.* v. *West Riding*, "is required for the purpose of preventing litigation, it would be prejudicial to that purpose, as well as strange, if, after it has been pointed out to the respondents in the course of such communication that their order is bad, they should be obliged to take the case to sessions, and to increase costs." Strongly, however, as the Court of Queen's Bench has striven to favour this view, the difficulty of settling costs already incurred on abandoned orders has since involved the evil which it has been sought to avoid, and the result of the recent decisions is, that whether notice of abandonment be served by the respondents on the appellants before or after the appeal is entered, it is in either case the settlement of the costs between the parties which alone enables the sessions to refuse to hear an appeal on such abandoned order (*l*).

(*l*) As this point is one of considerable moment as well as of perplexity, we shall cite here the most important of the recent cases on it. In *R.* v. *Middlsex*, 11 Ad. & E. 809, after service of order and notice and entry of the appeal, the respondents gave notice of an abandonment of the order, and then served a copy of a *supersedeas* on the appellant, alleging a mistake in the examination. The sessions therefore refused to try the appeal. A rule *nisi* for a *mandamus* to hear the appeal was obtained and made absolute.

Lord Denman, C. J.—"We think the *supersedeas* was obtained too late. After the appeal has been entered and notice of trial given, the power of the justices who made the original order is at an end, and the proceedings are lodged before another tribunal."

Coleridge, J.—"The *supersedeas* seems to have been made simply on the ground that the respondents had discovered a better case than that on which they had originally removed the pauper, and which formed the subject of an appeal."

In this case the question of costs did not arise, and the decision, therefore, turned wholly on the time at which the abandonment had been made.

But in *R.* v. *West Riding*, *In re Longwood* v. *Halifax*, 2 Q. B. 705, *after* a *supersedeas* was served, the pauper taken back, *and the expenses paid*, the appellants entered the appeal (although an amended order had been served, and a fresh appeal entered against it), and moved to quash the abandoned order; which the respondents opposed, on the ground that the sessions had no jurisdiction over it since it had been superseded. The sessions overruled this objection, and proceeded to dispose of the case; but afterwards struck

Not only will the abandonment of the order, though made before the entry of the appeal, fail to prevent the necessity

out the appeal, on discovering that the original order had not been filed with the clerk of the peace, which they held to be a fatal informality.

A rule *nisi* for a *mandamus* to the justices to hear the appeal was then obtained, against which the original objection of the respondents was argued, that the *supersedeas* had taken away the jurisdiction of the sessions. Lord Denman, C. J.—"The object of this application is to make the sessions restore the appeal and hear it, so as to get a decision which may conclude the respondents on their first insufficient order, and shut them out from contesting an appeal against their second and amended order upon the merits. * * * We have nothing to do with the reasons on which the sessions have decided. If they had struck out the appeal in the first instance, they would have acted correctly, for the appeal was against an order of removal which had been superseded. Eventually they did strike out the appeal, they were right in doing so, and we will not inquire into their reasons.

"But it is said that the result itself which the sessions have come to (without reference to their reasons) is wrong, because an order of removal cannot be superseded after it has once been carried into execution. Bayley, J., in *R.* v. *Norfolk*, 5 B. & Alder. 484, lays it down that '*If* the parties removing *do not choose* to pay the expense of maintenance incurred previously to the *supersedeas*, they may then enter the appeal for the purpose of compelling them to do so; but if they are willing to do it, the sessions may refuse to enter the appeal.'"

Lord Denman then added, "When the costs of maintaining the pauper after removal have not been paid to the appellant parish, there may remain something for the decision of the sessions to operate upon. * * * It is a beneficial rule to lay down, that where a good objection is pointed out to an order of removal, the respondents may bid adieu to it, and make another."—*Rule discharged.*

Here the question of costs began to assume an importance as a criterion of the jurisdiction of the sessions. Still more strongly does this appear where an appeal is entered and respited unknown to the respondents, and a supersedeas is then served without offer of costs. In *R.* v. *Brighton*, 3 Q. B. 342, after the removal of the pauper an appeal was entered and respited, notice of appeal not being given to the respondents until long after, and till near the next sessions. The respondents then obtained a *supersedeas*, and served it, together with the notice of abandonment on the appellants, but made no offer of paying expenses. The appeal was heard, and the order quashed with costs. This order of the sessions having been

of trying it, for the sake of determining the costs; but where the appeal has been entered, even without any notice to the

brought up by *certiorari*, and a rule *nisi* obtained for quashing it, it was contended for the rule, "that this was a manœuvre on the part of the appellants to get the order quashed, and to conclude the respondents upon the merits. No notice of appeal was given till after the removal, and the appeal was entered and respited behind the backs of the respondents. The order was abandoned when the notice of the appeal was given, and therefore the principle of *R.* v. *West Riding* is applicable." But the Court held:—

"That the case of *R.* v. *West Riding* was not in point: there it was attempted to compel the sessions to quash a non-existing order; here the order was in existence, and the sessions were properly in possession of the appeal. On the question of jurisdiction, the case of *R.* v. *Middlesex* is quite conclusive. Any hardship that has arisen is the fault of the parties who complain. The dates of the proceedings, the facts of the *supersedeas* and of the notice of abandonment, raised for the sessions a question of costs and of terms on which the appeal should be settled. *The respondents might also have applied to the sessions to make a special entry that the appeal was not disposed of upon the merits.*"—*Rule discharged.*

The decision here again turns on the costs, for had they been paid, though the court of quarter sessions might still have had jurisdiction, there would have remained nothing for their decision to operate upon, according to the principle in *R.* v. *West Riding*, and they could not have entertained the appeal. The hardship upon the respondents in this case was that of having no notice of the entry of the appeal in time to abandon their order and pay the costs, and Coleridge, J., remarked, that a wholesome practice had sprung from *R.* v. *Middlesex*, of disallowing costs where such notice was not given.

It was reserved for the following cases to carry the question of payment of costs to its extreme length, *where an order was abandoned before entry of appeal, and costs had been offered but were refused and not paid.*—In *R.* v. *Townstall* and *R.* v. *Stayley*, 1 Q. B. 376. In both these cases the appeal was entered for trial after a notice of abandonment of the order without a *supersedeas* had been received by the appellants. In *R.* v. *Townstall* there was an offer of reasonable costs made by the respondents and refused by the appellants. In *R.* v. *Stayley* no mention of paying costs was made. And in each case the appeal was tried and the orders quashed, with costs, subject to cases for the Queen's Bench. Lord Denman, C. J., held:—"I think the observation of Bayley, J., that the sessions in certain cases have a discretion to allow an appeal to be entered or not, cannot be supported. A party has a right to try his appeal if he has a proper case. We

respondents, their power of preventing the appeal is precluded.

In either case, the discretion of the sessions, aided by a special entry of "*quashed not on the merits,*" as in the case of *Ex parte Pontefract,* can alone enable the respondents to escape from the hardship of the decision in *R.* v. *Brighton,* and defeat the manœuvre of neglecting to give the notice and statement of the grounds of appeal, for the express purpose of precluding the power of amending a defective order, and attempting to conclude the respondents upon

have recommended the abandonment of orders, where it is discovered that they cannot be maintained, *but it is much to be lamented that there is no power of securing the proper costs payable on such abandonment, without allowing an appeal to the sessions. For this reason I think we are bound to say that the parish, against which an order has been made, has a right to go to the sessions for costs.* We are upon strict legal rights." Patteson, J.:—"The question of costs necessarily creates a difficulty in these cases. In the first of these cases there was an offer to pay 'reasonable costs,' but no particular amount of costs was mentioned, and I do not see how the amount can be ascertained except by a competent court." Williams, J.:—"The refusal of the offer does not vary the case."

But where there has been no mention made of costs incurred, the sessions are justified in refusing to allow an appeal to be entered *after* an order has been superseded. In the case of *R.* v. *Anglesea,* Coleridge, J., states, that a supersedeas is "undoubtedly most convenient as a mode of authenticating satisfactorily the abandonment of an order of removal;" but it is there admitted that Lord Denman, in *R.* v. *Townstall,* placed abandonment by the parties "on the same footing" with a supersedeas, and we cannot but deem it a superfluous step, having no virtue beyond the abandonment, which can be as easily proved as the *supersedeas.*

In the case of *Ex parte Pontefract,* 3 Q. B. 391, where the appeal had been entered, the respondents served notice of abandonment, but the appellants refused to consent. The respondents then applied to the sessions to quash not on the merits, which the court did, and in so doing was upheld by the Court of Queen's Bench. The recent case of *Reg.* v. *Merionethshire,* 13 L. J. M. C. 114, clearly confirms all the cases we have above cited as to the right of the appellants to bring the case to the sessions *for the settlement of costs.*

their error before they are aware of its commission. By the former case, it appears that appellants have merely to refuse costs, if reasonable costs are tendered, to effect the same purpose. A special entry may and ought in each case to be made to the effect that the appeal has not been tried on the merits, so that the respondents may serve an amended order afterwards. It is difficult to see any reason why the respondents who abandon an order should be in a worse position than a defendant who takes out a summons to stay proceedings on payment of debt and costs, or a plaintiff who enters *nolle pros.*

The clerk of the peace might easily have jurisdiction given him to settle the proper amount of costs, and act as a taxing master.

The mere existence of a prior order abandoned is no ground of appeal against a subsequent order.—The fact that a prior order of removal exists, of which notice of abandonment has been given, is no ground of appeal (*m*).

Entry of appeal, when to be made.—The appeal ought not to be entered for trial until after notice of appeal has been given; for otherwise the respondents have not the power to obtain a *supersedeas* or to abandon their order if they choose it, before they are saddled with costs. In consequence of this result, as established by *R.* v. *Middlesex* (*n*), the sessions of that county have refused to give costs to the appellants where they neglect to give notice before they enter the appeal. (See *R.* v. *Brighton*, per Coleridge, J. (*o*).) Where this is not done, and the appeal is tried in spite of abandonment, so made after the entry of the appeal, the respondents ought to make a special entry, as we have seen above.

Respite of appeal.—The sessions have full discretionary

(*m*) *R.* v. *St. Pancras*, 3 Q. B. 347.
(*n*) 11 A. & E. 809.
(*o*) 3 Q. B. 342.

power to respite an appeal, and may refuse to do so unless the costs of the day are paid, wherever due notice of appeal has been given (*p*). The sessions may also adjourn an appeal for further hearing, and will at all times do so upon reasonable grounds. They must adjourn it wherever the grounds of appeal have been sent, but due notice of appeal has not been given according to 9 Geo. 1, c. 7, s. 8, which see *post*, "Notice of Appeal."

The usual practice is, that the motion to enter and respite an appeal is a mere motion of course, on which the appeal is put into a particular paper, without any communication to the respondents (*q*).

Entry of order whilst a prior appeal against the same order is pending.—It is irregular, without the consent of the respondents, for the appellants to enter and respite an appeal against an order confirmed at the same sessions, subject to a case. Such first appeal is either conclusive against them, or is then pending, and the sessions to which the second appeal is respited are justified in refusing to recognize such second entry. It is to be viewed in the light of an *ex parte* substitute for the first appeal (*q*).

Case where order quashed may be abandoned.—Where the *order* is *quashed*, subject to a case, the respondents need not pursue it, for "there is nothing final and conclusive in the respondents having applied for and obtained from the quarter sessions liberty to state a case, so as to preclude them from having recourse to any other form of proceeding which might be open to them. It is a benefit they may forego (*r*)."

Therefore, where the order has been quashed on a point of form, and *not on the merits*, as was the case in *Reg.* v. *Great Bolton*, it was held competent to the respondents to disregard the case, and obtain a fresh order upon the same

(*p*) *R.* v. *Monmouthshire*, 1 B. & A. 859.
(*q*) *Reg.* v. *Oundle*, 3 Q. B. 353, n.
(*r*) *Reg.* v. *Great Bolton*, 14 L. J. M. C. 122.

settlement. This is a course always open to the respondents, who are defeated on a point of form; and it is one which it is much better for them to pursue than to adopt the litigious and expensive plan of fighting a point of form at Westminster, in which it is two to one that they are beaten, even when they have obtained a case; for so long as they have taken the precaution of having the entry made, "quashed not on the merits," parishes may rely on it that the first evil is the least; they must be content to put up with the loss of the comparatively slight cost their blunder has occasioned, and at once abandon that order and make another. "*Quashed not on the merits*" is a panacea for blundering respondents, and *Reg.* v. *Great Bolton* has made it doubly useful and available.

Appeal in cases of lunatics.—Appeal is given in the same manner against orders charging the cost of lunatics as against ordinary orders of removal, by the 9 Geo. 4, c. 40, s. 54(*s*). Where the appeal is made by the parish, the 54th section directs it to be made, heard and determined in like manner, and under like restrictions and regulations, as against orders of removal. Where it is made by any "person" aggrieved by the order, the 46th section provides that the sessions shall "hear and determine the matter of such appeal in a summary way, and to make such determination as they shall think proper, and every such determination shall be final and conclusive to all intents and purposes whatsoever."

When an order is appealed against which was made by the justices for the removal of a lunatic to an asylum, on the complaint of an overseer that the lunatic is chargeable upon his parish, stating the settlement to be unknown, such order is conclusive as to the pauper's chargeability on that parish, but leaves the question of his settlement open (*t*). (See

(*s*) *Reg.* v. *Justices of Kent*, 2 Q. B. 686.
(*t*) *Reg.* v. *Houldsworth*, 1 Q. B. 221.

"Notice of Appeal in Case of Lunatic Paupers," *post*, and "Removal," *ante*.)

An appeal against these orders lies also to borough quarter sessions against an order of borough justices, under the same statute, sect. 48, for paying the expenses of removing the pauper to a lunatic asylum, although the charter granted to the borough, under 5 & 6 Will. 4, c. 76, confers criminal jurisdiction only (*u*).

Sect. II.—Notice of Appeal.

Origin of notice.—The 9 Geo. 1, c. 7, provides, that no appeal from any order of removal shall be proceeded upon in any court of quarter sessions, "unless reasonable notice be given by the churchwardens or overseers of the poor of such parish or place to which such poor person or persons shall be removed, who shall make such appeal, to the churchwardens or overseers of the parish or place from which such poor person or persons shall be removed, the reasonableness of which notice shall be determined by the justices of the peace at the quarter sessions to which the appeal is made; and if it shall appear to them that reasonable time of notice was not given, then they shall adjourn the said appeal to the next quarter sessions, and then and there finally hear and determine the same."

The sessions must adjourn, if no reasonable notice has been given.—Before the stat. 9 Geo. 1, it was supposed, that if a parish to which a removal was made, appealed to the next sessions after the order of removal was served upon it, the sessions were bound to hear and determine the appeal, although the removing parish had not had sufficient time to prepare itself; to remedy which that act was passed, which directs that no appeal from any order of removal shall be proceeded upon, unless reasonable notice be given, of which the justices in sessions are to judge; that is, they are to

(*u*) *Reg.* v. *St. Lawrence, Ludlow*, 3 P. & D. 155.

judge whether such reasonable notice has or has not been given *as will entitle either party to proceed upon the appeal;* but the act goes on expressly to direct, that if it shall appear to the justices *that reasonable notice was not given, then they shall adjourn the appeal to the next quarter sessions* (*x*). In these cases it is not optional with the sessions to respite or not, as they please. If reasonable notice has not been given, they are compelled to do so always, provided the grounds of appeal have been delivered; if not, the sessions may refuse or not to *enter* and respite at their discretion, for in that case the statute does not operate. The 4 & 5 Will. 4, c. 76, s. 81 (*y*), says, that the appellants cannot be *heard,* unless they have given a statement of their grounds of appeal, but it does not say the appeal cannot be adjourned (*z*).

What is reasonable notice of appeal.—The 8th section of 9 Geo. 1, c. 7, also leaves it to each sessions to determine what in their discretion is "reasonable notice." In consequence of this useless discretionary power, all periods between eight and twenty-eight days are fixed in different places as the required period of notice. It is therefore essential that the attorney should inform himself of the rule adopted at the sessions, where the appeal is to be heard.

Time of giving notice.—As the 4 & 5 Will. 4, c. 76, makes no provision as to the time of appeal, and does not compel the appellant parish to give its notice of appeal within the twenty-one days after the service of the order of removal, it will be sufficient, if the notice of appeal be served soon enough, according to the practice of the sessions, to try the appeal at the "next practicable" sessions after the actual removal has taken place (*a*).

(*x*) *Rex* v. *Justices of Bucks,* 3 East, 342.

(*y*) Cited in next section.

(*z*) *Reg.* v. *Kimbolton,* 6 A. & E. 603; *Reg.* v. *Oundle,* 3 Q. B. 353, n., per Patteson, J. (See *post,* sect. 4.)

(*a*) See title "Appeal when to be made," *ante.*

The time previously to the sessions when notice of appeal must be given, depends entirely on the rule of each sessions, with which the Poor Law Act was not intended to interfere (*b*). Unfortunately the Court of Queen's Bench feel under a restriction from interfering, and unless the absurdity of the sessions is absolutely insupportable, there is no remedy, and no course open but to obey them. This is put beyond a doubt by the refusal of Wightman, J., to interfere where the Montgomeryshire sessions refused to entertain a respited appeal, because they had not had twenty-eight days' notice of it (*c*)!! When the determination to appeal is made too late to try it at the next sessions, as it is a useless waste of time and money to enter and respite it at such next sessions, notice should be given in proper time for the sessions following (*d*). Moreover, a notice of appeal, given during the twenty-one days after notice of removal, may be tacitly abandoned without depriving the appellants of their remedy, upon the actual removal of the pauper, if they then give notice of appeal for the next following sessions (*e*).

The time of sending notice has no reference to the time of the removal. If the pauper be not removed after the twenty-one days have elapsed, the appellants may send their notice then, just as they might before, or upon removal afterwards. There is no vacuum of disability to give notice between the expiration of the twenty-one days and the actual removal afterwards (*f*).

By a local act, an appeal was given to the quarter sessions, on the appellant giving seven days' notice, at least, of his intention to bring such appeal. Notice of appeal was served on the respondents at half-past nine o'clock, A.M., on

(*b*) *R.* v. *Suffolk*, 4 A. & E. 319; *R.* v. *Draughton*, 2 P. & D. 224.

(*c*) *Reg.* v. *Justices of Montgomeryshire*, 14 L. J. M. C. 142.

(*d*) *R.* v. *Justices of Herefordshire*, 8 Dowl. 638.

(*e*) *R.* v. *Justices of Middlesex*, 9 Dowl. 163.

(*f*) *Reg.* v. *Justices of West Riding* (*Stanley* v. *Alverthorpe*), 14 L. J. M. C. 11.

the 31st December. The sessions commenced at ten o'clock, A.M., on the 7th of January, at which time the appeal was entered, but by the practice of the sessions the hearing of the appeals was adjourned until the 30th of January: held, that the notice of appeal was given one day too late, as the words "at least" exclude both the day of giving the notice and the first day of the sessions: and it was held also, that the fraction of a day could not be considered, so as to render the service of the notice good: held also, that the time within which notice of appeal was to be given ought to be computed up to the day on which the appeal was entered, and not to the day on which the appeals were heard (*g*). This is a useful rule of computation.

Notice, how to be signed and served.—The notice must be signed by a majority of the parish officers (*h*); and the mere fact that one has refused to act, or asserts an exemption from his office, will not justify the omission; such overseer, not having legally claimed his exemption, and appealed to a proper tribunal against the appointment, still remains a good overseer (*i*).

A guardian of a union cannot sign *quâ* guardian, neither can one person sign it for another, unless it be proved that the proxy had the authority of the overseer to sign it for him (*k*).

But where a parish is incorporated under 22 Geo. 3, c. 28, the notice must be signed by *the guardian*, and he must describe himself as such, and not as overseer (*l*).

The 7th section enacts, "that all notices and applications directed by this or any other act of parliament to be given

(*g*) *Reg.* v. *Justices of Middlesex*, 14 L. J. M. C. 139.

(*h*) *Reg.* v. *Justices of West Riding, St. Pancras* v. *Bradford*, 14 L. J. M. C. 119; *Reg.* v. *Justices of Warwickshire*, 6 A. & E. 873.

(*i*) *Reg.* v. *Justices of Cheshire*, 8 Dowl. 617.

(*k*) *Reg.* v. *Justices of Surrey*, 1 New S. C. 124.

(*l*) *Reg.* v. *Justices of West Riding, Harnley* v. *Rothwell*, 13 L. J. M. C 39.

or made by the overseers of the poor, with respect to the care and management or removal of the poor, shall be given and made to the guardian of the poor where any such guardian shall be appointed under the authority of this act." "It seems to me perfectly clear (says Mr. Justice Patteson, in *Reg.* v. *West Riding* (*Harnley* v. *Rothwell*),) that as soon as a guardian is appointed, the whole of the powers of the parish officers as to these matters become vested in him. This is in his capacity of guardian, and *quà* overseer he has no authority. A notice of appeal ought, therefore, to be signed by him in his character of guardian; and if he omits to sign it as such, it is a blunder. The sessions, I think, were quite right, and there will, therefore, be no rule."

It seems obvious that the principle to be deduced from these last cited cases is, that the parties who sign notices of appeal must do so in the capacity of the offices which the law invests with power to sign them, and that if this is not done, the notice is invalid. This being so, it is difficult to reconcile with this conclusion the case of *Reg.* v. *Leominster* (*m*), to which it is impossible not to advert. The notice was signed by two persons only, one of whom signed first as churchwarden, and then again as overseer. The notice was also signed by the other overseer. At the time of signing the notice, one of the churchwardens having died, no successor had been appointed. The notice nevertheless began, "We, the churchwardens and overseers," &c. It was argued by Mr. Greaves as counsel for the respondents, on a case granted, that this notice was insufficient, for that by the 43 Eliz. c. 2, s. 1, there must be at least two distinct persons independent of the churchwardens, to constitute legal overseers, that the appellant parish did not therefore bring itself before the court of quarter sessions as the law requires, and that therefore the notice was insufficient. This was not disputed, for Mr. Justice Patteson said (*n*), "The question is not whether these are bad officers, but whether

(*m*) 5 Q. B. 640. (*n*) See 13 L. J. M. C. 56.

supposing them to be so, they yet may not give a good notice of appeal:" and the court held they could. Lord Denman, C. J. in giving judgment, said, " We think the sessions perfectly right in proceeding to try the appeal in spite of this novel objection, for which there could be no reasonable foundation, unless the appellant parish were free to repudiate the acts of their officers. But we are clearly of opinion that they are bound by their acts, and must submit to any judgment against those whom they have represented as having power to act for them, unless the document were invalid on its face. The respondents, therefore, would have had all the benefit of a decision on the merits, if in their favour, and are not at liberty to enter into the legality of the several appointments in the adverse parish." But in *Reg.* v. *West Riding*, just cited, the proper officer (the guardian) had signed, and yet simply because he had not described himself in his proper capacity, it was held that he could not give a good notice of appeal. Yet in that case it might have equally been advanced, that the parish would have been bound by his acts, and therefore the notice ought to have been held good, if the doctrine in *Reg.* v. *Leominster* were tenable; but with great deference we submit that that doctrine is pregnant with the *petitio principii*. If the order is not properly signed, the question may well arise whether the parish *would* be bound by such an instrument? It has been held times out of number, that all notices under parish law must be signed by the proper officers in their proper capacities, as required by law, or the notice is invalid; but an invalid notice is no notice, and can bind neither the party who sends nor the party to whom it is sent; and though we have the greatest deference for the considered judgments of the Court of Queen's Bench, we must,—having regard to the prevailing tenour of its decisions on this point,—warn parishes not to rely on *Reg.* v. *Leominster*, in allowing one parish officer to sign notices in the capacity of another, or to make church-

wardens perform functions to which they are legally incompetent (*n*).

Mere clerical defects and immaterial omissions are unimportant. The object of the notice is to give the opposite party intimation that the appellants have been aggrieved by an order of removal perfectly agreeing with the one actually made. The question is, whether variances and defects be such as to show that there was no order of removal at all corresponding with the one mentioned in the notice of appeal, or otherwise to mislead the respondents. But where a notice described the order to be signed by R. H. Cunliffe, instead of B. Cunliffe (*o*), and where the notice omitted the names of the justices altogether who made the order (*p*), the Court of Queen's Bench held these to be small matters, and Williams J. said in *Reg.* v. *Denbighshire*, "the sessions have got into *apices juris* and nice questions of variance, instead of doing what would be more consonant with the justice of the case: it was quite unnecessary that they should consider such nice points." Nevertheless parishes should not neglect to state these points correctly.

The service ought to be on the respondent overseers, and service on their attorney is clearly insufficient (*q*); but service on any one of the parish officers is good, if there be no fraud (*r*).

Notice of respited appeals.—When an appeal is respited, if the practice of the sessions require it, notice of such second appeal must be given to the respondents. There is no necessity for giving notice of the entry and respite. Care must be taken to give notice, however, of the appeal itself thus respited in due time, for in the case of a respited appeal the sessions are not bound to re-adjourn, nor will ignorance of

(*n*) See also *Reg.* v. *Lambeth*, and *Reg.* v. *St. Mary, Southampton*, 5 Q. B. 513, as to notices of chargeability.

(*o*) *R.* v. *Denbighshire*, 10 L. J. M. C. 79.

(*p*) *Reg* v. *West Houghton*, 5 Q. B. 300.

(*q*) *Reg.* v. *Kimbolton*, *ante*.

(*r*) *Reg.* v. *Warwickshire*, *ante*.

the time required for notice by the attorney, attested on affidavit, induce the Queen's Bench to grant a *mandamus* to compel the justices to have a respited appeal dismissed by them on grounds of insufficiency of notice (*s*). It was formerly otherwise (*t*); but such interference has been "cautiously abstained from in later cases."

Notice of appeal, in case of a lunatic pauper, by the parish.—Wherever an appeal is made against an order for charging the expenses of a lunatic on the parish where the pauper is adjudged to be settled under the 42nd section of 9 Geo. 4, c. 40, the 54th section directs "reasonable notice thereof" to be given to the clerk of the peace, who shall be respondent in such appeal, and which the sessions are directed to hear and determine in the same manner as appeals against orders of removal.

Notice of appeal by a person aggrieved.—Wherever an order has been made under the 44th and 45th sections, relating to a lunatic wandering about the country, which adjudges his property to be seized and sold, and where any "*person*" shall appeal against the order, in all such cases *ten days'* notice is required by the 46th section to be given *to the justice or justices who made the order*. In the one case the contest is between the parish and the county, properly represented by the clerk of the peace; in the other, the grievance is an individual one, and the justices who caused it are the fittest respondents, and it is right that they should have notice of appeal against their order (*u*).

For Forms, see the next section, for notices are best conjoined with grounds of appeal.

Section III.—Grounds of Appeal.

Authority for grounds of appeal.—To inform the removing parish fully of the case against it, the appellant

(*s*) *R.* v. *Monmouthshire*, 3 Dowl. 306.
(*t*) *R.* v. *Wilts*, 10 East, 404.
(*u*) *Reg.* v. *Justices of Kent*, 2 Q. B. 686.

parish is compelled to state the grounds of its appeal, by 4 & 5 Will. 4, c. 76, sec. 81, which provides, that "the overseers or guardians of the parish appealing against such order, or any three or more of such guardians, shall, *with* such notice, *or* fourteen days at least before the first day of the sessions at which such appeal is intended to be tried, send or deliver to the overseers of the respondent parish a statement in writing under their hands of the grounds of such appeal, and it shall not be lawful for the overseers of such appellant parish to be heard in support of such appeal unless such notice and statement shall have been so given as aforesaid. Provided always, that it shall not be lawful for the respondent or appellant parish, on the hearing of any appeal, to go into or give evidence of any other grounds of removal or of appeal against any order of removal than those set forth in such respective order, examination, or statement as aforesaid."

Objects and requisites of statement.—It is essential that the statement of the grounds of appeal should explicitly and fully acquaint the respondents with the grounds the appellants intend to rely upon, so that the respondents may fully know what they have to answer, and prepare themselves to do so. It is not enough to show merely the *cause* of appeal; that which forms the justification of it must be shown, at least the *primâ facie* case which the appellants intend to set up must be stated, and by it they must stand or fall. The greater the obscurity attending the facts, the more specific must be the statement. For instance, the constituent facts of a subsequent settlement must be given; if it be a hiring and service, the name of the master and the date of the hiring must be specified (*x*), and it must also state the hiring to have been for a year (*y*); for though this would be naturally guessed, nothing must be left to inference (*y*);

(*x*) *R.* v. *Bridgewater*, 10 A. & E. 693.
(*y*) *R.* v. *Bovey North*, 2 Q. B. 500.

neither must it be left to the examination to explain the statement; so that where a person is named in the latter who is also named in the examination, the identity must be stated in the grounds of appeal (*z*) under the head of each kind of settlement. We shall hereafter specify the particularity required in each case.

Suffice it here to quote Lord Denman's statement that "at least the same degree of strictness is to be used in deciding upon the sufficiency of such statements as deciding on that of the examination. Both are to be treated candidly, and with a view to advance the objects of the statute in requiring their mutual delivery. The examination, construed fairly, must show that the justices have *primâ facie* been justified in making the order; the grounds of appeal, construed in the same way, must disclose the nature of the objections to the order, or the new matter, as the case may be, which induces the appellants to resist the removal (*a*)."

Where the examination is defective.—Wherever the examination is substantially bad; wherever it fails in fulness as to date, name, place, or fact, in any of the particulars required in order to complete the necessary evidence of the settlement it professes to set up, and where such defect is not merely one of form, but a substantial defect, and apparent on the face of the examination, it is sufficient, on the authority of recent decisions (*b*), to state, as an objection merely, *that the examination, upon which the said order is founded, is bad on the face thereof.*

This enables the sessions to inquire into the sufficiency of the examination, and to it may be added any other grounds of objection which do not relate to any defect in evidence. Care must, however, be taken *not to specify any particular formal defects together* with this general demurrer, the in-

(*z*) *R.* v. *Stowford*, 2 Q. B. 526.

(*a*) *R.* v. *Staple Fitzpaine*, 2 Q. B. 488.

(*b*) *R.* v. *Flockton*, *R.* v. *Middleton Teesdale*, *ante*; and *Reg.* v. *Llandeblig*, 1 Bit. & Sym. 59.

troduction of which would in such case be held to limit the scope of the demurrer to them alone (*c*).

Seeing the manifest advantage to the appellants of the curt form of ground, which gives no definite information to the respondents, and is open to no hazard of informality, we are at a loss to conceive why it is not oftener adopted. The love of prolixity seems, however, to be inveterate in the old school of draughtsmen and parish pleaders.

But wherever the appellants adopt the other course, and persist in setting forth specific objections to defects apparent on the face of the examination, they must do so with strict particularity and precision. Likewise, wherever the ground of appeal merely traverses a settlement in the words of the examination, it is not competent to the appellants to take objection thereunder to a variance of date, no date having been specifically named. In *Reg.* v. *Killerbey* (*d*) it appeared that the examinations set up a settlement by hiring and service with Thomas Booth, and service thereunder for two years, from November, 1819, to November, 1821, and a further settlement in the same parish by hiring and service with John Booth, the son of Thomas Booth, "after the expiration of the said service with Thomas Booth," &c., and service thereunder for a year. The examination showed that the pauper had married in March, 1822. One ground of appeal traversed the first settlement; another traversed the second settlement, stating that the pauper did not gain a settlement, &c. by hiring and service "after the expiration of the said service with Thomas Booth," &c. At the trial of the appeal, it appeared that the first service had been from 1817 to 1819, and the first settlement fell to the ground, and the court held, that they had traversed the specific service, and not the specific year; and, indeed, could not do so by a traverse in the pauper's own words, because he did not give a date to the period of

(*c*) *R.* v. *Staple Fitzpaine, ante.*

(*d*) 5 Law Times, 195.

the second service, except by implication. If the appellants meant to rely on the specific variance, they should have pointed it out specifically. This is an important decision, and certainly increases the nicety with which grounds must be drawn.

Grounds of appeal against orders to remove lunatics.—The same rules apply to these cases. Where the objection is that some requirement of the acts has been omitted, it is not sufficient to state generally that the order has not been made in conformity with their provisions, but the particular omission or variance of procedure must be specified (*e*).

Statement when to be given.—The simple interpretation of the 81st section, as regards the time when the statement is to be delivered, would be whenever the notice of appeal is given, if both are given together; but if the statement be given *alone, then* fourteen days before the appeal. Such is obviously the effect of the disjunctive word "*or*," which annexes the period of fourteen days only to the case of the statement of grounds being delivered apart from the notice of appeal.

It has, however, been held otherwise, and the fourteen days' period is required "at all events;" it being held that the fourteen days' notice of grounds is obligatory, even where the practice of sessions requires less than fourteen days' notice of appeal (*f*).

It follows, therefore, that wherever *less* than fourteen days' notice of appeal is required, the statement of the grounds of appeal must be delivered before it is *necessary* to give any notice of the appeal itself. The most rational course in such cases is to give notice of trial before it is required by the practice of the sessions, together with the statement of the grounds of appeal.

It has been said, in one of the judgments on this clause, that if there be any absurdity in requiring the grounds of

(*e*) *Reg.* v. *Pixley*, 4 Q. B. 711.

(*f*) *R.* v. *Suffolk*, 4 A. & E. 319; and *R.* v. *Draughton*, 2 P. & D. 224.

appeal before the notice, that absurdity is introduced by the act itself. It may, however, be doubted, whether the absurdity does not consist rather in the construction put upon it; and whether it is not reasonable to suppose that the act contemplated that whatever time the sessions decided as sufficient for notice of the appeal would suffice for the statement of the grounds of it; and that it provided merely for the few cases in which the grounds could not be stated so soon as the notice, where the notice required was long before the trial. The probability is, that a statement of the grounds at the same time as the notice (even where the notice is required only eight or ten days before the appeal) would be held to meet the requirement of the act, were the construction of clause 81 properly submitted to the consideration of the Court of Queen's Bench. But the existing decisions hold otherwise, and must be followed until they are overruled.

The fourteen days' period of service of the statement of the grounds of appeal, mean clear days, exclusive of the day of service and of appeal (*e*).

How to be signed, served, and sent.—The statement, if signed by a *majority* of the overseers and churchwardens, suffices (*f*); or if signed by three guardians. These officers must themselves sign, and cannot, either for the purposes of sending or receiving the grounds of appeal, be represented by attorney (*g*). The statement of the grounds ought properly to be signed by the same officers as the notice of appeal; but if they are a majority, a difference may be explained, and does not nullify the statement (*h*). The statement ought to be sent or delivered to the overseers; but sending to one of two overseers has been held sufficient (*f*); but service on the attorney of parish officers is bad (*i*).

When statement wholly omitted.—When the statement is

(*e*) *R.* v. *Salop*, 2 Q. B. 85.
(*f*) *R.* v. *Warwickshire*, 6 A. & E. 879.
(*g*) *R.* v. *Worcester*, 1 W. W. & H. 152.
(*h*) *R.* v. *Church Knowle*, 7 A. & E. 471, 597.
(*i*) *R.* v. *Kimbolton*, *ante*.

wholly omitted, the sessions are not only prohibited from hearing the appeal, but are justified in dismissing it, and may refuse to respite it (*k*).

When faulty, power of respite.—An error in a matter of form, vitiating the statement, does not *preclude* the sessions from respiting the appeal if they choose to do so, but only from *hearing* it (*l*). If after the appeal has been respited, the first statement of the grounds of appeal be found to be faulty, a second and amended statement may be given (*m*); but if the appeal has been heard on the original statement, and is adjourned in order to be re-heard, the appellant in the interim cannot give a fresh statement of grounds for such re-hearing (*n*).

Improper rejection of statement, how remedied.—Although the Queen's Bench will not usually interfere with the decision of the sessions where it has gone into the merits of an appeal, yet, where they come to a decision on a preliminary point, shutting out the merits, the court will always interfere; as in a case where the grounds stated were that the removing parish by relieving the pauper had acknowledged the pauper to be settled there, but did not state the dates of such relief—the sessions held such statement too vague, and confirmed the order; but the Court of Queen's Bench, considering the dates of such relief more within the knowledge of the respondents than the appellants, granted a *mandamus* to the justices to hear the appeal (*o*).

That case however is now expressly overruled. The sessions are themselves to judge of the requisite particularity of the grounds of appeal, and to decide upon their sufficiency, because this depends upon many circumstances of which the sessions can alone judge, and where they have done so, a

(*k*) *R.* v. *Oundle*, 3 Q. B. 353.
(*l*) *R.* v. *Kimbolton*, *ante*; and see "Adjournments."
(*m*) *R.* v. *Derbyshire*, 6 A. & E. 612, 885.
(*n*) *R.* v. *Arlecdon*, 11 A. & E. 87.
(*o*) *R.* v. *Carnarvonshire*, 2 Q. B. 325.

mandamus will not issue to review the decision or to order them to hear an appeal (*p*). But where the justices choose to reserve a case as to the sufficiency of ground of appeal, they are at liberty to do so, and the Court of Queen's Bench will decide the point (*q*). (See *post*, tit. "Practice.")

Whenever the grounds of appeal do not point either generally to an apparent defect, or specifically to some *non*-apparent ground of appeal, the sessions have no power to hear it (*r*). But wherever the objection made before the sessions can be brought under any of the grounds by reasonable intendment, that suffices, as for instance, where the examination set out a settlement by hiring and service and also several instances of out-parish relief, and among other grounds of appeal, the appellants denied that the said Peter Q ever acquired a settlement in the said parish of E, either by hiring or service, "*or by any other means*," they were held entitled to show that the relief mentioned by the respondent was in effect given under a mistaken belief that the pauper was settled in the appellant parish; it not being necessary that the grounds should expressly confess and avoid with the precision of special pleading (*s*). The appellants are also at liberty to establish a subsequent settlement by cross-examining the respondent's witnesses (*t*).

Summary classification of appeals against removals.— All these appeals, or rather the grounds of appeal, fall within three great and clearly distinguishable classes.

1. Where the objection is to the form or statement in the order or examination.

2. Where the facts stated in the order or the examination are traversed.

(*p*) *Reg.* v. *Justices of Kesteven*, 3 Q. B. 810 (overruling *Reg.* v. *Carnarvonshire* and *Reg.* v. *West Riding*, 2 Q. B. 331.) See also *Reg.* v. *Cornwall*, 1 New S. C. 161, n.

(*q*) *Reg.* v. *Cumberworth Half*, 5 Q. B. 484.

(*r*) *Reg.* v. *Hockworthy*, 7 A. & E. 493.

(*s*) *Reg.* v. *Bedingham*, 5 Q. B. 683.

(*t*) *Reg.* v. *Wrexham Regis*, 1 Bit. & Sym. 49.

3. Where a new and subsequent settlement is advanced.

The first consists only of objections to form, the second and third are objections founded upon facts.

It is very essential that parishes should bear this distinction clearly in mind, because it is one which will often assist them in arriving at a conclusion how far a decision would be on the merits, and also how far it would be conclusive upon a second removal. The rules however for arriving at a conclusion upon these somewhat knotty points must be reserved for the section entitled "Practice," which see for further information upon this point.

The form of notice and grounds of appeal.—These are usually given in one document, and may be thus stated:—

Form of notice of appeal and statement of grounds.

To the churchwardens and overseers of the parish of Irton, in the county of Cumberland.

This is to give notice to you and each of you, that we the undersigned, being a majority of the churchwardens and overseers of the poor of the parish of High Wycombe, in the county of Bucks, do intend at the general quarter sessions of the peace now next ensuing [*or as the case may be*], to be holden at K, on the day of , A.D. 1846, in and for the said county of Cumberland, to commence and prosecute an appeal against a certain order, founded on an examination therewith sent to us, for the removal of A B, and M, his wife, from your said parish of Irton, to our said parish of High Wycombe, made by C D and E F, Esquires, two of her Majesty's justices of the peace in and for the said county of Cumberland, and we, the said churchwardens and overseers of the poor of the parish of High Wycombe aforesaid, do hereby state that the grounds of such appeal are [*for each case see that head for the form in which such particular ground of appeal is to be stated, stating all such grounds which it is intended to insist on seriatim, and concluding as follows*]: and we the undersigned do hereby further give you notice, that we, as appellants on behalf of the said parish of High Wycombe, shall avail ourselves of all or any of the said grounds in the support of the said appeal, and we hereby likewise give you notice to have and produce this notice at the trial of the said appeal.

Witness our hands this day of , A.D. 1846.

[*Signed by churchwardens and overseers.*]

The statement ought to be "sent or delivered to the overseers."

Section IV.—Adjournment of Appeals.

Adjourning or respiting of appeals.—The 9 Geo. 1, c. 7, s. 8, provides that wherever "reasonable time of notice" of appeal had not been given, the justices "shall adjourn the said appeal to the next quarter sessions, and *then* and *there* finally hear and determine the same," and in such case it is obligatory on the justices so to adjourn it. This provision is now less operative than it was, for wherever there is not time to give reasonable notice (*u*) according to the practice of the court, the useless expense of entering the appeal at the next sessions, merely for the sake of adjourning it, has been discountenanced, and is virtually abandoned, the practice being in such cases to await the proper time for giving notice, and till the following and next practicable sessions (*x*).

This section, we have seen, merely obliges the court of quarter sessions to adjourn appeals of which notice of appeal in due time has not been given. In *all* other cases the sessions retain full discretionary power of adjourning or not, as the circumstances of each case seem in their judgment to require. Where the appellants could have been heard at the sessions at which they enter an appeal, and due notice of it has been given, if in short they are practicable sessions, there is no longer any obligation on the court to respite such appeal. For instance, where notice of appeal had been given and grounds stated in due time, but those grounds proving insufficient, the appellants desired, but the sessions refused, to respite the appeal, the Court of Queen's Bench would not interfere, the sessions having in such a case full discretion, *and not being bound* to adjourn (*y*). Where also due notice had been given and both parties attended, but the appeal was entered at a late hour, when

(*u*) See "Notice of Appeal," *ante*.

(*x*) *R.* v. *Justices of Essex*, 1 B. & Ald. 210; *R.* v. *Kent*, 8 B. & C. 639; *R.* v. *Herefordshire*, 8 Dowl. 638.

(*y*) *R.* v. *Staffordshire*, 12 L. J. M. C. 9.

the appellants moved that it be adjourned, on an affidavit of the absence of a material witness, refusing at the same time to pay the costs of the day, the sessions refused the adjournment, and the King's Bench upheld their decision (*z*).

The 9 *Geo.* 1, *c.* 7, *s.* 8, *does not apply to a respited appeal.*—Neither does the section apply to a second session or a respited appeal, but only to the first. If the notice the sessions require for respited appeals be not given, the sessions are not bound to adjourn such appeal. The act is satisfied by the first adjournment, and goes no further; and it is a matter of discretion for the justices whether they will adjourn again or not. Thus, where the appellant attorney was not aware that the practice of the sessions was to require fourteen days' notice of a respited appeal, though only eight for the first appeal, his ignorance of such rule was held as no sufficient reason by the sessions for adjournment, which they refused on a rule for a *mandamus* to hear the appeal being moved for. Patteson, J., held it was a matter for the discretion of the sessions to adjourn or not, and that there was nothing illegal or sufficiently absurd in such a regulation, to warrant the interference of the Court of Queen's Bench (*a*).

Nor where statement of grounds is not duly given.—Neither does the section apply, as we have seen, where no statement of grounds of appeal is made; for in case it is not delivered in time, the sessions have full power to enter and respite or not, at their discretion. (See *ante*, "Notice of Appeal.")

In *R.* v. *Cheshire* (*b*) an order was sent by post on the 25th February, 1841. The next sessions were held on the 29th March. No notice of appeal being served, the pauper was removed on the 12th April. At the midsummer, being the then next practicable sessions, the appellants entered and respited an appeal, and afterwards gave notice of trying the appeal

(*z*) *R.* v. *Monmouthshire*, 1 B. & Adol. 859.
(*a*) *R.* v. *Monmouthshire*, 3 Dowl. 306.
(*b*) 11 L. J. M. C. 84.

at the October sessions, when the justices refused to hear it. It was contended, against a rule for a *mandamus*, that the appellants had no right so to enter and respite the appeal. The rule was, however, made absolute, on the authority of *R.* v. *Justices of Middlesex*, which decided, that the removal having taken place in April, the sessions were bound to hear the appeal at the ensuing July sessions, which were the next practicable sessions at the time of removal; a decision which scarcely supports the latitude given to the appellants in *R.* v. *Cheshire*, where they clearly missed the next practicable sessions.

Form of notice where the appeal has been respited.

To the churchwardens and overseers of the poor of the parish of Stroud, in the county of Gloucester.

Whereas at the last general quarter sessions of the peace holden at Gloucester [*if by adjournment state it*] in and for the said county of Gloucester, on the day of last, we, the undersigned, being the churchwardens and overseers of the parish of Cheltenham, in the said county, did enter an appeal against a certain order for the removal of A B and C D from the said parish of Stroud to the said parish of Cheltenham, made by E K and C B, Esquires, two of her Majesty's justices of the peace acting in and for the said county, bearing date the day of A.D. 1846, and the hearing of the said appeal was by the said court of quarter sessions respited until the next quarter sessions of the peace to be holden at Gloucester aforesaid, on the day of instant. Now we, the undersigned, do hereby give you notice, that we intend to prosecute and try the said appeal at the said next general quarter sessions of the peace to be holden at Gloucester for the said county, on the said day of instant, and the following are the grounds of our appeal. [*Then as in the last form.*]

PART III.

OF SETTLEMENTS.

Section I.—Of the several Classes of Settlements, and the General Rules which govern them.

Origin of each settlement.—A place of settlement is a district maintaining its poor, to which persons become removable for the purpose of obtaining the relief given by the poor laws.

The famous statute of the 13th and 14th Chas. 2, c. 12, originated the existing settlements. It enacted that, in furtherance of the objects stated in Part I., as to the power of removal, that it should be lawful, in the manner already described, for two justices by their warrant "to remove and convey such person or persons to such parish where he or they were last legally settled, either as a *native, householder, sojourner, apprentice, or servant, for the space of forty days* at the least, unless he or they give sufficient security for the discharge of the said parish, to be allowed by the said justices."

Subsequent acts have modified and enlarged the scope of this statute, and have effected two main changes in its provisions. The restriction as to the period during which removal might be made has been abolished, and the condition of the actual chargeability of the pauper imposed. To the settlements of birth, renting a tenement, apprenticeship, and service, those of parentage and marriage have been annexed, as derivative from that of birth, and naturally resulting from the grievous dismembering of families. Payment of rates and taxes, and the exercise of a public office, have been

added by 3 W. & M. c. 11; and the possession of an estate in land with residence in the same parish for forty days was deduced as another species of settlement, from the principles of Magna Charta; for by the common law, no man can be removed from his own; and the right is under Magna Charta, that none shall be disseised of his freehold.

There are, therefore, nine sorts of settlement, all now in force, with the exception of hiring and service and the office settlement, but under which paupers are still removable, whose settlements were thus gained prior to August 12th, 1834, when the 4 & 5 Will. 4, c. 76, was passed. Of these nine settlements, one, birth, is a *native* settlement; two, parentage and marriage, are *derivative* settlements; and the remaining six are *acquired* settlements.

The following table developes their origin and the chief modifications and changes, with their dates, to which they have been subjected.

1. BIRTH SETTLEMENT.

STATUTE.	DATE OF OPERATION.	SUBJECT OF CHANGE.
13 & 14 Chas. 2, c. 12.....	1662.....	Origin.
54 Geo. 3, c. 170	July 30, 1814.....	Children born in Prisons and Workhouses.
59 Geo. 3, c. 12.....	March 31, 1819.....	Children of Irish and Scotch Parents.
11 Geo. 4, c. 5.....	March 19, 1830.....	Children of Guernsey and Jersey Parents.
3 & 4 Will. 4, c. 40.....	January 1, 1834.....	*Idem* of Irish and Scotch Parents, further provision.
8 & 9 Vict. c. 117.....	August, 1845	*Idem*, (see "Removal of Scotch Paupers," *ante*).
4 & 5 Will. 4, c. 76, s. 71...	August 14, 1834	Bastards to follow Mother's Settlement.

2. PARENTAGE SETTLEMENT.

26 Resol. of Judges	1633	Origin.
4 & 5 Will. 4, c. 76, s. 71...	August 14, 1834	Bastards to follow Mother's Settlement.

3. MARRIAGE SETTLEMENT.

26 Geo. 2, c. 33.....	March 25, 1754.....	Marriages to be performed in Church or Chapel, and by Prayer Book.
21 Geo. 3, c. 53, and subsequent acts	July 10, 1781.....	Marriages valid in Churches erected since last Act.
3 Geo. 4, c. 75.....	September 1, 1822...	Marriages not void for want of Parents' consent before the Act.
4 Geo. 4, c. 76	November 1, 1823 ...	Required Banns or License, and by Persons in Holy Orders.
5 & 6 Will. 4, c. 54.....	August 31, 1835	Relating to Marriages barred by Consanguinity.
6 & 7 Will. 4, c. 85.....	March 1, 1837.....	Provides other Forms of Marriage than by the Church.

4. HIRING AND SERVICE SETTLEMENT.

13 & 14 Chas. 2, c. 12.....	1662	Origin.
3 Will. & Mary, c. 11, s. 7..	1692.....	To be Persons Unmarried, and without Unemancipated Child.
8 Will. 3, c. 30, s. 4.....	1697.....	To serve One whole Year.
12 Anne, c. 18, s. 2.....	1713.....	Certificated Men cannot give Settlement by Hiring.
13 Geo. 2, c. 29, s. 7.....	October 17, 1739....	Nurses of Foundling Hospital gain no Settlement.
9 Geo. 3, c. 31, s. 8.....	1769.....	*Idem*, as to Magdalen Hospital.
52 Geo. 3, c. 72, s. 8	June 20, 1812.....	*Idem*, as to Foresters of Alice Holt.
4 & 5 Will. 4, c. 76, s. 64...	August 14, 1834.....	Settlement abolished.

5. APPRENTICESHIP SETTLEMENT (*a*).

STATUTE.	DATE OF OPERATION.	SUBJECT OF CHANGE.
13 & 14 Chas. 2, c. 12.....	1662.....	Origin.
3 & 4 Will. & Mary, c. 11, s. 8	1698.....	Binding by Indenture required.
8 Anne, c. 9, s. 35.....	May 1, 1710.....	Full Sum of Money given to be inserted in Indenture.
12 Anne, c. 18, s. 2.....	June 24, 1713.....	No Certificated Person to gain Settlement.
31 Geo. 2, c. 11, s. 1.....	May 1, 1758.....	Deed not being Indented rendered immaterial retrospectively and prospectively.
5 Geo. 3, c. 46, s. 19	July 5, 1765.....	Memorandum on Indentures.
33 Geo. 3, c. 54.....	June 21, 1793.....	Friendly Societies' Apprenticeship insufficient for Settlement.
3 Geo. 4, c. 126, s. 51.....	August 6, 1822.....	Likewise Toll Collectors.
4 & 5 Will. 4, c. 76, s. 67...	August 14, 1834.....	Likewise Sea Service.
5 & 6 Vict. c. 99, s. 2.....	August 10, 1842.....	Likewise Females in Collieries, and Boys under Ten.
43 Eliz. c. 2, s. 1.....	1601.....	Origin. Assent of Justices.
2 & 3 Anne, c. 6.....	March 25, 1704	Sea Service.
10 Geo. 2, c. 31, s. 5.....	June 27, 1737.....	Watermen's Apprentices.
18 Geo. 3, c. 47	1778.....	Binding to extend only to Twenty-one years of age.
28 Geo. 3, c. 48	July 5, 1778.....	*Idem* to Chimney-sweepers, not before Eight.
56 Geo. 3, c. 139	October 1, 1816.....	Further Regulations as to Assent of Justices, &c., and Transfer of Apprentices; to be bound not before Nine years old.
1 & 2 Geo. 4, c. 32.....	May 28, 1821	Signatures of Churchwardens.
3 & 4 Will. 4, c. 63.....	August 28, 1833.....	Further Regulations as to Assent of Justices, and Transfer of Apprentices.
4 & 5 Will. 4, c. 35, s. 2....	July 25, 1834.....	Binding to Chimney-sweepers not before Ten.
4 & 5 Will. 4, c. 76.....	August 14, 1834.....	Sea Service Apprenticeships abolished.
3 & 4 Vict. c. 85.....	August 7, 1840.....	*Idem*, not before Sixteen years; and all Indentures already entered into to be void as to Apprentices under Sixteen, on July 1st, 1842.

(*a*) For Stamp Acts, see *post*, "Law of Apprenticeship Settlement."

6. TENEMENT SETTLEMENT.

13 & 14 Chas. 2, c. 12	1662.....	Origin.
49 Geo. 3, c. 50	July 2, 1819.....	Separate and distinct Tenement *bonâ fide* hired for One whole Year, at 10*l.* Rental; Building to be held, and Land occupied, by Person hiring.
6 Geo. 4, c. 57.....	June 22, 1825.....	Building to be occupied, and Rent to the amount of 10*l.* paid, omitting by the Person hiring. Value need not be proved.
1 Will. 4, c. 18.....	March 30, 1831	Person hiring must occupy Tenement, and pay Rent prospectively.
4 & 5 Will. 4, c. 76, s. 66...	August 14, 1834.....	Assessment to and payment of Poor Rate, added to Conditions of the Settlement.

7. RATE SETTLEMENT.

3 Will. & M. c. 11, s. 6.....	1693.....	Origin.
35 Geo. 3, c. 101.....	June 22, 1795	Tenement rated to be of Yearly value of 10*l.*
6 Geo. 4, c. 57.....	June 22, 1825	As above, applied equally to Rate and Tenement Settlement.
1 Will. 4, c. 18.....	March 30, 1831.....	Did not affect this Settlement, and therefore left the 6 Geo. 4, c. 57, in full force.

8. ESTATE SETTLEMENT.

STATUTE.	DATE OF OPERATION.	SUBJECT OF CHANGE.
4 & 5 Will. 4, c. 76, s. 68...	Retrospective	Inhabitancy within Ten Miles of Estate.
9 Geo. 1, c. 7, s. 1	March 25, 1723	Purchase of Estate must be for 30*l.*

9. OFFICE SETTLEMENT.

3 Will. & M. c. 11, s. 6.....	1692.....	Origin.
4 & 5 Will. 4, c. 76, s. 64...	August 14, 1834.....	Abolished.

CERTIFICATES.

13 & 14 Chas. 2, s. 3	1662	Origin.
8 & 9 Will. 3, c. 30.....	1697.....	Further provision.
9 & 10 Will. 3, c. 11.....	1698.....	Taking Tenement or Office defeats Certificate.
12 Anne, c. 18, s. 2.....	June 24, 1713.....	Hired Servant of certificated person gains no Settlement.
3 Geo. 2, c. 29, s. 8.....	1730	Execution by Churchwardens, &c.
54 Geo. 3, c. 107.....	1815	*Idem.*
1 & 2 Geo. 4, c. 32.....	May 28, 1821.....	Execution by one Churchwarden.

A more specific statement of the origin of these settlements will be given under the head of each in the subsequent sections of this Part.

Residence.—It was necessary by the old law, that the person who migrated from one parish to another should be a settled inhabitant, in order that he should be entitled to relief; and it is still required that he must reside there for a limited period in order to become so. In 1633 a month's residence seems to have been sufficient (*b*); this probably increased into one for the space of forty days, previously to 13 & 14 Car. 2. It does not appear whether such was the case, or whether the enactment of that statute was considered as raising an inference that such time of residence was necessary, but forty days' residence is now positively required to be proved, in order to have acquired a settlement either by hiring and service, by apprenticeship, serving an office, renting a tenement, by holding an estate, or payment of rates. These are the *acquired* settlements, under each of which residence is an essential element for forty days. But residence is *not* required for the *native* or the *derivative* settlements, birth (*c*), parentage and marriage.

A subsequent settlement alone destroys a previous settlement.—This is a cardinal rule, and contending parishes must look to this as the only means whereby a settlement once gained can be defeated; for a man can neither give away or release, or suspend his settlement; neither can any settlement be legal, which is obtained by fraud, connivance, or compulsion (*d*).

Various modifications have been introduced from time to time by various acts of parliament into each of the other

(*b*) Resol. of Judges of Assize, 1633.

(*c*) In the case of birth settlements, the words of the 26 Resol. of Judges, 1633 (Dalton, 236), and of 13 & 14 Car. 2, seem at first view to imply that there should be a residence, according to the resolution, for a month, and the statute for forty days, in the parish where the individual is born, in order to confer a settlement; but they have been considered as applying not to the original birth settlement, but to cases where, after that settlement is destroyed, the party returns to his native parish, and resides there forty days. See 1 Nolan, P. L. 255.

(*d*) 26 Resol. of Judges, 1633.

settlements, which the decisions of the courts are frequently augmenting. These will be specially noticed under each settlement, together with the evidence necessary to establish it, and the ground on which objection may be made to defects in such evidence.

Section II.—Settlement by Birth.

Birth settlement the last resort.—It is common to call the settlement by birth the *primâ facie* settlement. It would be perhaps more appropriately called the last resort. "The birth-place is the place of settlement, because no better can be found (*e*)," and is, in point of fact, the weakest. Where the pauper has acquired no settlement in his or her own right, the settlement to be next sought is that of the parent, and only on its failure does the settlement by birth take effect, which Le Blanc, J., in *R.* v. *Wakefield* (5 East, 335), properly called "the weakest evidence of settlement." Nevertheless the place where the individual is born is as it were pointed out by nature, and acknowledged by every statute which regulates the subject, as one in which he is accounted settled by the mere circumstance of birth, and proof thereof is sufficient to throw the burthen on the other side of establishing a later settlement either by parentage or in some other way (*f*), even where the pauper is a widow; but it is expedient to negative the existence of any subsequent settlement. In one case only the birth settlement is not defeated by the parent's settlement.

Bastards born before August 14, 1834.—Before the Poor Law Amendment Act, all bastards took the settlement of their place of birth, and the act has made no change as to bastards born before it passed, viz. on the 14th Aug. 1834 (*g*), in which case they do not take their mother's settlement, or

(*e*) *R.* v. *St. Mary, Leicester*, 3 Ad. & E. 644, *per* Patteson, J.
(*f*) *R.* v. *Heaton*, 6 T. R. 653.
(*g*) *R.* v. *Spitalfields*, 1 Ld. Raym. 567; *R.* v. *Rishworth*, 2 Q. B. 476.

follow it if she acquire or derive a fresh one; as, for instance, where the mother marries afterwards, although on this point much doubt was entertained, for the 57th sect. of the act charges the *maintenance* of the illegitimate as well as legitimate children of a woman who marries on the husband, whether born before or after the act passed; but this clause does not affect the *settlement* of those born *before* 1834.

Bastards born after August 14, 1834.—These take the mother's settlement, and not their birth place as a settlement, and fall therefore within the consideration of the law of parentage settlements (see *post*, p. 120), but where the mother's settlement cannot be found, they are still removeable to their birth settlements.

Bastards of members of friendly societies.—The illegitimate children of members of the friendly societies, born etween the passing of the 33 Geo. 3, c. 54, s. 25 (in 1793), and its repeal by the 10 Geo. 4, c. 56 (in 1830), were not to take the settlement of the place of birth, but that of the mother. This was enacted to prevent the abuse of the indulgence given to such members by the former act of irremovability, when they became chargeable to the parish in which they lived, by burdening such parishes likewise with their illegitimate children. Under the operation of this act, a parish may sometimes escape a settlement.

Of vagrants.—Likewise where the birth took place whilst the mother was wandering and begging, from the passing of the 17 Geo. 2, c. 5, s. 25 (in 1744), and where the mother was a disorderly person, rogue, or vagabond, under the vagrant act, from the passing of the 3 Geo. 4, c. 40 (in 1823), in both cases, till their repeal by the 5 Geo. 4, c. 83 (in 1825), the illegitimate children so born were settled in their mother's parish, and not in their place of birth. See Appendix D.

Child cannot be removed from its mother.—It must be borne in mind that during the age of nurture (under seven years old) the child cannot be *removed* from its mother,

whether it be settled where she is or not, and whether she consents or not. This rule is inflexible (*h*).

No birth settlement gained except under ordinary circumstances.—In order to make the actual birth place the place of birth settlement, the mother must have been residing there under ordinary circumstances at the time.

Children born in prisons, hospitals, and workhouses.—Where the mother was delivered whilst in prison, or in a lying-in hospital, the child gains no settlement there (*i*). Where she was delivered in a workhouse out of the parish which sent her there, her child shall be deemed to be born in the parish so sending her, and on whose account she was received (*k*). And this will be equally the case, whether the child is illegitimate or not; for it is in accordance with the provisions of the 4 & 5 Will. 4, c. 76, s. 71, which requires a bastard child to follow its mother's settlement; the parish sending the mother to the workhouse being *ipso facto* a proof of her settlement therein.

Illegitimate children born in *hospitals* are also expressly settled in the parish where the mother was last settled, as well by the 13 Geo. 3, c. 82, s. 5, as by the above section of the Poor Law Act.

A doubt has arisen as to the settlement of children born in prison, and of legitimate children born in hospitals, it being merely provided in the act, that they shall not be settled in the parish of the prison; but these have been also determined to take the settlement of the mother, and not necessarily of the place sending. For it is clear, that the committal of the mother to prison, or even sending her to a hospital, form no proof of her settlement where she is sent from.

Foundlings.—The 13 Geo. 2, c. 29, leaves the settlement

(*h*) *R.* v. *Birmingham*, 5 Q. B. 210, see *post* "Parentage Settlement."

(*i*) 54 Geo. 3, c. 170, s. 2.

(*k*) 54 Geo. 3, c. 170, s. 3; and see 20 Geo. 3, c. 36, s. 2.

of foundlings to be determined by the same rule as prevails in other cases, and if neither their parentage nor birth settlement is discoverable, they must be provided for where they become chargeable, like casual poor, and as in all cases where no settlement can be ascertained (*l*).

Children born in lunatic asylums.—The provisions as to children born in workhouses are applied to those born in lunatic asylums (*m*).

Cases of fraud.—There are other circumstances also, where, without any enactment on the subject, the actual place of birth is not the birth settlement. In all cases where the mother has removed to the place of birth at the instigation of any parish officer, in order to shift the settlement of birth on another parish, the child is settled in the parish whence the mother was so induced to remove. The inducement must, however, have been offered by a parish officer, to vitiate the birth-place settlement (*n*).

Birth pending removal.—Where the mother was, at the time of birth, residing in the parish in a state of abeyance (*o*), either under a suspended order of removal, or pending an appeal against an order for her removal afterwards confirmed, the birth place is not the settlement of the child, but the parish where the mother's settlement is decided to be (*p*).

Children of Irish, Scotch, &c. parents.—The unemancipated children born in England of all Irish, Scotch, Isles of Man, Scilly, Guernsey, or Jersey parents, not settled in England, immediately on their becoming chargeable, are removable with the parents and their other unemancipated children to their native country, the chargeability of an unemancipated child being considered the chargeability of the

(*l*) 4 Burn's J. P. 410, edit. 1845.

(*m*) 51 Geo. 3, c. 79, s. 7 ; and 9 Geo. 4, c. 40, s. 49.

(*n*) *R.* v. *Mattersey*, 4 B. & Adol. 211 ; and *R.* v. *Halifax*, 2 B. & Ad. 211.

(*o*) *Jane Grey's Case*, Set. & Rem. 66.

(*p*) *R.* v. *Great Salkeld*, 6 M. & Selw. 408.

parents (*q*). But all such children, *when emancipated*, become immediately entitled to their birth settlement, though neither they nor their parents have acquired a settlement in England. And this birth settlement is, to all intents, of the same force as in ordinary cases. Where the husband of a pauper was born of Irish parents at Preston, and removed from his parents to Manchester, and married there, his widow and children, after his death, were adjudged to be settled at Preston, as the husband's birth place, neither he nor his parents having acquired a settlement (*r*). But where a girl had a bastard child, and thereby became chargeable on the parish of Shoreditch whilst she was living with her parents, as part of their family, she having no settlement where she was born, was removed with her parents to Ireland (*s*).

Emancipation.—The only remaining question is, what is meant by emancipation? It is not determinable by age, nor entirely by the fact of residence under the parents' roof, but by the child's contracting some relation inconsistent with the character of being part of their family (*t*). Any such act, after attaining the age of twenty-one or marriage, would be evidence of emancipation (*u*). It is also expressly determined that the limitation as to the age of sixteen in the 4 & 5 Will. 4, c. 76, s. 51, has no application to this point (*t*).

This subject is fully treated of under the head of "Parentage Settlement," *post*, which see.

Sect. III.—Evidence of Birth Settlement.

Where according to the foregoing law his birth place is the pauper's legal settlement, the two chief facts to be proved are the place and time of birth and the identity.

(*q*) See title "Removal of Scotch and Irish Paupers," *ante*.
(*r*) *R.* v. *Preston*, 12 A. & E. 822.
(*s*) *R.* v. *Mile End Old Town*, 4 A. & E. 196.
(*t*) *Per* Patteson, J., in *R.* v. *Mile End*.
(*u*) *R.* v. *Bleasby*, 3 B. & Ald. 377; *R.* v. *Everton*, 1 East, 526.

The evidence required is generally of the simplest character, and consists in the *personal knowledge* of the witness that the birth of the pauper occurred at the place stated. It is one of the few cases in which the evidence of the pauper can be of no avail, except negatively, in showing that no other settlement exists, for the party himself cannot be cognizant of his own birth. "I was born illegitimate at Staley, in Cheshire," is no evidence whatever of a birth there, for the pauper can *know* nothing about it (*y*).

Hearsay evidence.—The great danger to be avoided in the examinations on this and all other kinds of settlement is hearsay evidence. "I was born in Lydeard St. Lawrence, as I have heard say and believe (*z*)," is no evidence whatever. (See title "Examination," *ante*). Even when declarations of the father and mother as to the birth place of their child were tendered by the persons to whom they were made, after their death, they could not be received in evidence (*a*).

Registers.—Registers of baptisms *per se* are not evidence of a birth place, for it may have been that the child was not *born* where it was *baptized* or *christened;* though where it appears that the child has been baptized when very young, and that the parents were then in the parish, this coupled with the register will suffice (*b*).

Examinations need not negative other settlements.—It is not *essential* that the examination should go into any evidence to show that there was no subsequent settlement. The removing parish may rely upon the *primâ facie* case of the birth, which is a good settlement until another can be shown. They are not bound to prove a negative; it is for the appellants to prove that there is another (*c*); at the same

(*y*) *R.* v. *Rishworth*, 2 Q. B. 476.
(*z*) *R.* v. *Lydeard St. Lawrence*, 11 A. & E. 616.
(*a*) *R.* v. *Erith*, 8 East, 539.
(*b*) *R.* v. *North Peverton*, 5 B. & C. 508.
(*c*) *R.* v. *St. Mary, Leicester*, 3 A. & E. 644.

time it is right to include in the pauper's evidence that he is ignorant of his parent's settlement, and that he has gained none since.

Illegitimate births. — Illegitimate children born before Aug. 14, 1834, derive their settlement, not from parentage, but from birth. The birth place and the time having been proved, the fact of the illegitimacy can be shown by proving there was no marriage before birth; and of this the parents are admissible witnesses (*d*). It happens in such cases that sometimes the woman is reputed to be married to the child's father, in which case it is the more necessary to give primary evidence of the non-marriage. Such evidence must in general rest with the parents, for few third persons can have had the means of negativing with certainty the existence of a marriage between other people.

Although birth is *primâ facie* evidence of a settlement, without any reference to the legitimacy of the pauper, yet questions on the latter point frequently arise between contending parishes, for the purpose either of getting rid of this birth settlement by proving one by parentage; or *vice versa*, of establishing conclusively that which arises from birth, by destroying the presumption that a preferable one is derived from the parents.

Bastards of married women.—By the law of the land no one can be a bastard who is born after marriage, unless for special matter (*e*). If therefore a man marries a woman that is with child, it raises a presumption that the child is his own; for by marrying one whom he knows to be in that situation, he may be considered as acknowledging that the child is his (*f*), and it will be legitimate till it is proved to be otherwise; for this presumption of legitimacy may be rebutted, and the law admits of positive proof that such child was not the offspring of the husband, and therefore

(*d*) *Rex* v. *Bramley*, 6 T. R. 330.

(*e*) 1 Roll. Abr. 358, Bastard B.

(*f*) *Rex* v. *Luffe*, 8 East, 210, *per* Lawrence, J.

illegitimate. In this case non-access must be distinctly shown during the requisite period; but of this fact neither the husband nor the wife are admissible as witnesses (*g*), nor are facts testified by either of them from which non-access may be *inferred*. The Queen's Bench will not tolerate such evidence (*h*). Non-access will be inferred from circumstances, such, for instance, as the continued residence of the man at such a distance, and under such circumstances, within the personal knowledge of the witness, that he could not have been where his wife was at the time; and she may similarly be shown to have been then absent from her husband; to which evidence, proof of her cohabitation or connexion with another man may be added; but this alone will not suffice; for though adulterous intercourse may be proved, the access of the husband is not thereby disproved, which it is essential to do in order to the establishment of the illegitimacy of the offspring of a married woman, even where her cohabitation with another man has lasted constantly for fourteen years (*i*). The witnesses must also speak to the identity of the pauper, whose birth place or illegitimacy they attest.

With reference to this and all other settlements, it is necessary, in selecting the evidence and conducting the examination of the witnesses, to have constant reference to the law of that particular kind of settlement, as well as to the general principles of evidence.

It is especially necessary that the date of the birth of illegitimate children be given at least with sufficient particularity to show that they were born before Aug. 14, 1834. It will not do, for instance, to say that the pauper "was born out of wedlock in or about the year 1833 (*k*)." The errors to be avoided will be further seen by reference to the

(*g*) *Reg.* v. *Sourton*, 5 A. & E. 180.
(*h*) *Ibid.*; *Goodright* v. *Moss*, Cowp. 591.
(*i*) *R.* v. *Mansfield*, 1 Q. B. 444.
(*k*) *Reg.* v. *St. Paul's, Covent Garden*, 14 L. J. M. C. 109.

following grounds of objection which indicate those most usually made. (See also the "Evidence of Parentage Settlement," *post*).

Section IV.—Grounds of Objection to Birth Settlements.

The most frequent grounds for objecting to birth settlements are those which set up some other settlement subsequently attained, and which of course would apply to all settlements. The validity and requirements of such grounds and the mode of stating them will be found under the head of the law and examination relating to the class of settlement it is thus sought to establish. The statement of the settlement may be introduced with the words—

(*l*) That the said parish of is not the last place of settlement of the said as is in the said examination stated, inasmuch as the said derived a settlement in the parish of subsequently to his alleged birth in our parish of ; and we hereby further state that , the father of the said , was and is now settled in the said parish of , where he acquired a settlement by [*here correctly and fully setting forth the settlement of the father*], and that the said , the pauper, has thereby also derived a settlement in the said parish of .

Where the pauper has been born in the parish under grounds which do not give birth place.—If the pauper has been born in any other parish than that stated, or being born in it was born there in a workhouse or a prison, or whilst the mother was awaiting the decision of an appeal or an order of removal, or was sent fraudulently into the parish expressly to be there confined, any of these grounds as shown above in section 1, on the law of birth settlement, will invalidate the settlement of the birth place, such facts being specially stated as grounds of objection, and showing the parish

(*l*) See title "Form of Notice of Appeal" *ante*, for form in which this may be introduced.

in which such birth under such circumstance respectively charges the settlement. The form may be as follows:—

Form of Objection where birth was in Workhouse.

That the birth of the said A B in the examination mentioned took place in the workhouse situate and being in the said parish of L, belonging to the union of ; and we do further state that the said A B was born of the body of one M C, then being an inmate of the said workhouse, and that the said M C, the mother of the said A B, was sent to the said workhouse by the parish of X, on whose account the said M C, before and at the time of the said birth of the said A B, was received and maintained therein; and therefore, that the settlement by birth of the said A B is not in our said parish of L, but is in the parish of X aforesaid, according to the statute in that case made and provided.

Where the pauper is illegitimate.—When illegitimate children whom it is sought to remove to their birth place are discovered to be born after the 14th August, 1834, the mother having a settlement elsewhere, the ground of objection may be thus worded:—

That the said A B is not settled in our said parish of L, as is in the said examination stated, and that the said A B was born illegitimate in our said parish of L of the body of M C, after the passing of a certain act made and passed in the parliament holden in the 4th and 5th years of the reign of his late Majesty King William the Fourth, entitled "An Act for the amendment and better administration of the laws relating to the poor in England and Wales," to wit, on the day of , A.D. 18 ; and we do further state that the said M C, the mother of the said A B, acquired a settlement by [*here state whatever is requisite to describe and constitute the kind of settlement derived or acquired by M C in some other parish*], and the said A B is not settled by birth or otherwise in our said parish of L (*m*).

Where the mother has a settlement elsewhere than the child's birth place, it is expedient to state it, although the mere fact that the child was born after the act passed defeats the birth settlement; but where the mother's settle-

(*m*) There is no necessity to state that the pauper is settled in the parish where his mother is shown to have gained a settlement, for that may not have been the *last* settlement of the mother, and it is sufficient to show that the mother had at any time a settlement elsewhere to disprove the settlement of the child in the appellant parish.

ment is in the same place, such an objection would amount in fact to a mere objection to matter of form. As we have already seen in section 1, the child, till it acquires a settlement of its own or attains the age of 16, follows the settlement of its mother, however derived, and retains it after 16.

Where the mother resided under a suspended order.—Where the mother of the pauper was at the time of the birth residing under a suspended order, or awaiting the decision of an appeal against an order, afterwards confirmed, the form may be as follows:—

That the said A B was born of the body of C D, in our said parish of L, on the day of , A.D. 18 , she, the said C D, then being in the said parish of L, under a suspended order for the removal [*or* pending an appeal against a certain order for the removal] of the said C D from and out of our said parish of L into the parish of X, which said order was [confirmed and] executed afterwards, to wit, on the day of A, .D. 18 , without any appeal having been made against the suspended order or the execution thereof, and the said A B is not settled by birth or otherwise in our said parish of L.

Where the child is not illegitimate.—Wherever the child's birth settlement depends on its illegitimacy, and it is not illegitimate, the denial of such fact must be accompanied by a statement of the date and place of the parents' marriage. Where the pauper is an unemancipated child of Irish parentage, the form of the statement of grounds of objection may be as follows:—

Form where child is Irish.

That the said A B is the child of and forms part of the family of C D, and resides with him at , the said A B being unemancipated of Irish parents, and we do further state that the said C D was born in Ireland [*or as the case may be*], and that he, the said C D, has never acquired any settlement in this country, and that therefore the said A B is not settled, by birth or otherwise, in our said parish of L.

Or it is open to the appellants simply to negative the birth in their parish.

General negation of facts.—The cases in which the grounds of removal are untrue need no comment, as the objection will then consist of a simple negation of the facts

alleged. An objection to the identity of the pauper may also be similarly stated "that the said A B was not born in our said parish, as in the said examination is alleged."

Sect. V.—Parentage Settlement.

Nature and origin of this settlement.—The child has this settlement at its birth (always excepting the cases of bastards born before Aug. 14, 1834, who have a birth settlement in virtue of their birth). It takes the father's last settlement that can be ascertained up to the time of the pauper's emancipation. For the child not only takes the settlement of the father at the time of birth, but follows such settlements as the father may acquire till the child is emancipated, and the settlement the parent then had will continue to be the child's parentage settlement, until he acquires a subsequent one (*n*).

This settlement rests on no statute, and is derived from C. J. Holt's decision in 2 Salkeld, 528, and which expressly goes on the ground "that the children's settlement shall not be divided from the father, for that would be unnatural."

The law (we are told), with observance of the social principle, casts the first duty of watching over the child's education and providing for its support upon the parents. Children, during pupilage, form natural parts of that family of which the father, and upon his decease the mother, are the head; to disjoin those whom nature and policy had thus united, would be equally inconvenient and cruel; and the law preserves the economy of private families, in holding that the parent's settlement is communicated to their legitimate offspring until they are emancipated (*o*).

(*n*) 2 Salkeld, 528; Vin. Abr. 382; 2 Lord Raym. 1332; Andr. 345; 2 Bott, 38.

(*o*) *Harrow* v. *Edgeware*, 2 Bott, 465, pl. 485; 1 Nolan, P. L. 255. And Mr. Archbold also thinks, that if the members of a family "were allowed to have different settlements, they would, in case of their removal

Maternal settlement.—Where the father has not a know settlement, that which the mother had previously to her mar-

from any parish, be separated and dispersed. The wife would probably be deprived of the protection of her husband, and the husband deprived of the society of his wife, and their children deprived of the fostering care of both."

This sounds very wise and social, but the law far exceeds what nature requires. Whilst the child is of the age of nurture, and even until he be emancipated and earning a separate livelihood, no one can deny the justice and humanity of this respect for family ties. But the rule goes far beyond this; for a person (as we have seen) not only follows each settlement his father may acquire *till he is emancipated*, but may take what is in point of fact his grandfather's or his great grandfather's settlement, though they have been fifty years in their graves. (*R.* v. *Clifton*, Vin. Ab. 382; and see *R.* v. *Stone*, 6 T. R. 56.) What becomes of the family-tie principle here? It is clear that parentage settlement is nominally, rather than really, a consequence of the respect for family ties. Whilst the positive evil accrues of having in some cases to search for evidence of a birth in the former generation, and at any rate the subsequent settlements acquired by a man probably long since dead.

The present law, in fact, creates the very division it professes to avoid; for wherever the father being dead, the mother re-marries, her children above seven years old are removable to their father's settlement, whilst she retains her second husband's! Her children are thus severed at an early age from their only parent, by the law which denounces the severance. So much for general principles, without discretion to apply them!

We should not have thought it worth while to repeat in this edition the remarks we made on this point in the first, but there is a disposition to tinker the law of settlement, and suggestions of practical improvements may not be found useless; and seeing that as under this class of settlement the unnatural character of the division cannot extend beyond the father's life, nor even beyond the time when the division of a family is natural, and not unnatural, it is much to be regretted that the law does not limit the parentage settlement, both of legitimate and illegitimate children, to the age of sixteen or say even twenty-one years, *making it a temporary settlement, terminating then*, and thenceforth giving the *birth* settlement till a new one is acquired. This would prevent a great deal of useless trouble in searching for evidence of distant facts, and violate no principle of nature. It is clear that, abstractedly, the nearer the period at which settlements arise, the less expensive and difficult it is to trace them, and where no injustice is thereby done, that consideration is well worthy of regard.

riage is communicated in the same manner, and subject to the same rules (*p*).

But as the father's settlement, where he has one, must always fix that of his child, it is obvious that recourse should be had to the settlement of the father's mother, prior to that of the pauper's own mother, for it is the father's settlement, if his father have acquired none; and upon the same principle, that of the grandfather's mother precedes that of the father's own mother, and so on to the more remote degrees of lineal ancestry (*q*).

But when the father's mother's settlement cannot be found, the child takes his own mother's settlement. But this settlement must be the mother's own settlement, and not such settlement as she may have gained by a second marriage, after the death of the pauper's father; for in that case, where the settlement of the child's father cannot be found after due inquiry, the child will take the settlement the mother may have had *prior* to her second marriage (*r*).

There have been many decisions on this subject of which the upshot is, that it matters not whether the failure of the father's settlement result in his being a foreigner (*s*), or an Irishman (*t*), or from whatever cause, the mother's settlement is then that of the pauper. And he follows the mother's settlement equally when acquired during her widowhood (*u*). But if the mother gains her subsequent settlement by intermarriage, the children of her former husband do not follow the settlement she gains by her second marriage, but continue to have that which was hers before it took place (*x*). Nevertheless the second husband is bound

(*p*) Burr. S. C. 367.

(*q*) Burr. S. 4C. 82.

(*r*) *St. Giles* v. *St. Clement's*, Burr. S. C. 2; *Reg.* v. *Leeds*, 13 L. J. M. C. 107.

(*s*) 2 Old Sess. Ca. 113.

(*t*) 2 Bott, 107.

(*u*) 2 Bott, 47, 52; and 2 Str. 746.

(*x*) *St. Giles's* v. *St. Clement's*, Burr. S. C. 2; 2 Salk. 482; and 2 Bott, 49.

to maintain such children of the prior marriage, as well as the illegitimate children which his wife may have previously had, according to the 4 & 5 Will. 4, c. 76. The object of the 57th section has been held to be not to keep the mother and children together after the age of nurture, but to throw on the husband the expence of supporting them. Such legitimate children are therefore removable to their father's place of settlement (*y*). But under no circumstances can the child be dissevered from the mother during the age of nurture (*z*).

Parentage Settlement of Bastards.

Illegitimate children.—The 71st section of the 4 & 5 Will. 4, c. 76, enacts, "that every child which shall be born a bastard, after the passing of this act, shall have and follow the settlement of the mother of such child, until such child shall attain the age of sixteen, or shall acquire a settlement in its own right, and such mother, so long as she shall be unmarried or a widow, shall be bound to maintain such child as a part of her family until such child shall attain the age of sixteen."

Consequently, bastard children, born after August 14, 1834, when the act passed, have now a parentage settlement, and not only do they take the settlement the mother has at the birth of the child, but they *follow it* until they attain the age of sixteen years. It is now decided by the Queen's Bench that owing to the express words "*follow* the settlement," which occur in the 71st section (but not in the 57th), bastards acquire a settlement obtained by their mother's marriage after their birth, although legitimate children do not. This was long doubtful, but is distinctly decided in the case of *Reg.* v. *St. Mary, Newington* (*a*).

(*y*) *Reg.* v. *Walthamstow*, 6 A. & E. 301 ; and *R.* v. *Stafford and Costock*, 10 A. & E. 417.

(*z*) *Reg.* v. *Birmingham, ante.*

(*a*) 4 Q. B. 581.

But bastards *born before* the Poor Law Act passed are removeable, not to their parents' settlement, but, as we have already stated, to the place of their birth, and so rigidly has this been observed, that even where the child was still within the age of nurture, *seeing that she was living apart from her mother*, the Court of Queen's Bench held in that case the child must be removed to the place where it was born, and not to the mother's settlement or that acquired by her second marriage (*b*).

Emancipation.—What is emancipation becomes a very important question in all parentage settlements. The general rule as to the time when emancipation begins is thus stated by Abbott, C. J. (*c*): "It is of importance to lay down a general rule for the guidance of magistrates on this subject of emancipation, and the best I can suggest is this, that *during the minority of a child there can be no emancipation unless he marries, and so becomes himself the head of a family, or contracts some other relation, so as wholly and permanently to exclude the parental control.* I say nothing about his acquiring a settlement of his own, because that does not, as it seems to me, properly fall under this head. There can be no question that in that case he is only removeable to his own acquired settlement."

Lord Kenyon also said "That if the child be separated from the parents, and, without marrying or obtaining any settlement for himself, return again during the age of pupilage, he is to all intents a part of his father's family, and his settlement will vary with that of his father; but if when that time arrives when in the estimation of law the child wants no further protection from the father, the child remove from the father's family, he is not for the purposes of a derivative settlement to be deemed part of that family; this rule (adds

(*b*) *Reg.* v. *Wendron*, 7 A. & E. 817.
(*c*) *Rex* v. *Wilmington*, 5 B. & Ald. 520.

Lord Kenyon) will reconcile all cases and will be found to be an intelligible one (*d*)."

These rules are in full force. It has been decided that within them fall the cases where the child earns an independent and permanent livelihood, though *under* twenty-one years of age. But parental control does not necessarily cease at the age of twenty-one, as in a recent case, though he be twenty-seven (*e*); for if the child still remain with his parent, or earning his own separate livelihood, he is not emancipated, but a temporary employment apart from his father suffices *after* twenty-one, and also when after that age he lives apart from his parent he is emancipated (*e*).

Thus where an adult removed from her father's house and went into service (*f*); and where she continued in her uncle's family doing service for him after coming of age (*g*); where having left her father's house after twenty-one, for three weeks at a time, to work for wages at harvest work, the pauper returned to her father's house giving him her wages (*h*); and where a son left his father for the sea service under age, and remained voluntarily in it after he was of age, whether the original leaving was voluntary or not (*i*); in all these cases the pauper was held to be emancipated. Not so however where being under age he was hired and serving on board ship, during which time his father happened to acquire a new settlement, which the son was held to follow, because he had only rendered himself liable to a double control, the authority of his father being paramount over that of the captain of the ship, and he therefore did not contract any relation inconsistent with subordination to his

(*d*) *Rex* v. *Roach*, 6 T. R. 247.

(*e*) *Reg.* v. *Lilleshall*, 14 L. J. M. C. 97.

(*f*) *Rex* v. *Roach*, (*ante.*)

(*g*) *Rex* v. *Cowhoneyborne*, 10 East, 88.

(*h*) *Rex* v. *Oulton*, 5 B. & Ad. 958 (Littledale, J., dissentiente, because there was no intentional "severance of the child from the family of the parent.")

(*i*) *Rex* v. *Lawford*, 8 B. & Cr. 271.

father, but until he attained twenty-one, he continued part of his father's family, and his settlement shifted with that of his father (*k*). But it was held otherwise, where the pauper, though a minor, entered into the army, for the State will be entitled to his services, and against the public the father cannot claim them, and he therefore contracts a relation inconsistent with subordination in his father's family, and is emancipated (*l*).

Where the child becomes the head of another family by marrying, that is a relation always inconsistent with a subordinate situation in that of the parents (*m*). Thus a son, of full age and married, afterwards removed into another parish with his father, where he continued to live with him, but was held not to follow a settlement which the father subsequently acquired there (*n*).

An actual separation seems necessary in all other cases, for a child after attaining the age of twenty-one remains unemancipated, provided he remains a member of the father's family, with an unbroken continuance; and marriage seems necessary to make a child the head of a family when there is no separation, for a son who after he was of age continued to live with his mother, then a widow, and residing under a certificate granted to the husband, was held not to become the head of a new family, nor to be emancipated by setting up in business for himself and hiring servants of his own (*o*). It would however be otherwise

(*k*) *R.* v. *Lytchet Maltravers*, 7 B. & Cr. 226.

(*l*) Same case, in which *Rex* v. *Woburn*, 8 T. R. 479, is distinguished from the principle above stated.

(*m*) At in nepotes avi potestas hodie nulla est quia nuptiis per universam Europam patria potestas solvitur, nec reviviscit matrimonio liberorum soluto, quia quod semel extinctum est sine nova causa non potest renasci; proinde viduæ nihilo magis in potestate sunt quam nuptæ seu minores sive majores. Hub. Prelect. lib. i. tit. ix. s. 3, De Patria Potest.

(*n*) *Rex* v. *Everton*, 1 East, 526; *Bugden* v. *Ampthill*, Burr. S. C. 270; *Rex* v. *Mortlake*, 6 East, 397.

(*o*) *Rex* v. *Sowerbey*, 2 East, 276.

where the son paid for his own maintenance and lodging to his father, at the same time earning a separate maintenance.

We have thus seen that whilst the child is a minor, nothing will emancipate him but marriage, or contracting a relation which entirely exempts him from all parental control, and that even if he returns to it whilst a minor he reverts to his subordinate relation and takes his father's settlement, unless indeed he has acquired one by hiring and service, in which case he is emancipated. But after he is of age he is emancipated by any severance from his father's family, but not so long as he remains an unmarried member of it.

Where the child is an idiot or incapacitated, as where he remains in a workhouse through an accident, he is unemancipated though of age, for he is incapable of taking care of and maintaining himself (*p*).

Children of Irish, Scotch and British Isle Parents.— These, if unemancipated, follow their parents, who are removeable to their country. But such children, when emancipated, obtain a birth settlement, if born in England (*q*). Where however a girl of Irish parents living with her family had a bastard child, and became chargeable to Shoreditch, she was removeable with her family to Ireland, and obtained no settlement in England, though born here, because she was not emancipated (*r*).

Section VI.—Evidence of Parentage Settlement.

The evidence in support of this settlement consists, first, in that which proves the parentage, and, secondly, in that which proves the settlement of the parent. The evidence of the parentage consists, of course, in the evidence which supports the birth, and the second place, in that which sup-

(*p*) *Rex* v. *Much Cowarne*, 2 B. & Ad. 861, and see 4 Doug. 241.
(*q*) *Reg.* v. *Preston*, 12 A. & E. 822.
(*r*) *Reg.* v. *Mile End Old Town*, 4 A. & E. 196.

ports the particular kind of settlement which the parent had. There is, therefore, little evidence to be treated of under this particular head which will not be found either under the head of birth settlement, *ante*, or some other of the settlements hereafter treated of.

The child's birth.—This will be proved precisely as directed under that head, and the legitimacy or the illegitimacy of the child will be similarly proved. The date of the birth will of course be material, and also the proofs and time of the marriage of the parents, where the child is legitimate.

Where the father had only a parentage settlement.—In case the father derived his settlement from either of his parents, the settlement of such grand-parent must be similarly proved. This will rarely be the case.

The father's settlement may be shown by the admisson of an order removing a brother of the pauper, which is conclusive against the receiving parish as to the father's settlement there (*s*).

Non-emancipation.—The requirements of the statement in these cases has been somewhat relaxed by *Reg.* v. *Lilleshall*, which decides that where the facts stated show a good *primâ facie* settlement, although other facts may exist which would be inconsistent with that settlement, it is not necessary that the examinations should negative those other facts, and although the pauper was twenty-seven years old at the time the father was proved to be settled in the appellant parish, it is not necessary to rebut the presumption that the son was previously emancipated, unless it arise on the examinations (*t*).

It is however still advisable that distinct evidence be obtained that the parent had the settlement claimed at the time when the parental control terminated; or, if such be the case, that it has not yet terminated; prove this by the evidence of the pauper himself or others, that at such time he was un-

(*s*) *Reg.* v. *Sowe*, 4 Q. B. 93. (*t*) *Reg.* v. *Lilleshall, ante.*

married, and under twenty-one years of age, not in the army, navy, or militia, and that he was living with and under the control of his parent; and if above twenty-one, then state precisely the fact of residence as part of the family with the parent. There must be also a distinct negation of any settlement having been acquired by the pauper himself.

Upon such evidence the sessions must act, unless there is evidence of the son's subsequent settlement elsewhere (*u*).

Mother's settlement.—Where this is relied on for a legitimate child, the inability to trace the father's settlement ought to be stated. Where the widow has gained a settlement during widowhood, her husband's death must be proved; for otherwise her act would not constitute a settlement. The register of his burial and the personal knowledge of his death by the widow, or son, or other person, will be evidence of this. If the mother's maiden settlement be relied on, it must be stated that she has acquired none since; and it is sufficient to give evidence that the father's settlement is unknown by the persons most likely to know it; for, of course, the onus lies on the appellants of showing that there is a paternal settlement, rather than on the removing parish to prove a negative (*x*).

It is thus sufficient in point of law to set up a maternal settlement, if there be no evidence of a paternal one, or anything to show the necessity of making inquiry for one; the respondents having set up a *primâ facie* case, it is a matter of discretion whether to go further or not (*y*). The necessity of inquiry "depends upon the value of it—upon what could be got from making it." The statement by the husband, "I believe I was born in London upwards of sixty-four years ago, but in what parish I never heard," is not such evidence as necessitates such inquiry (*z*).

(*u*) *Reg.* v. *Brighton*, 14 L. J. M. C.

(*x*) *Reg.* v. *St. Mary, Beverley*, 1 B. & Ad. 201.

(*y*) *Rex* v. *Harberton*, 13 East, 311.

(*z*) *Reg.* v. *Yelvertoft*, 14 L. J. M. C. 78; see also *Reg.* v. *Leeds*, 13 L. J. M. C. 107.

Where the child is illegitimate, the date of its birth since August 14, 1834, is material, and the fact that it was illegitimate, of which see the evidence under the head of "Birth Settlement," *ante*. The evidence of the mother's subsequent marriage will, of course, suffice, if such be the fact, for which see "Marriage," *post*.

In removing mothers who have children within the age of nurture, such children must be removed whether named in the order or not. "Parties would subject themselves to very serious consequences, who removed the one without the other," *per* Lord Denman, C. J. (*a*).

Hearsay evidence of the parent's settlement.—We should deem it needless to repeat that *hearsay* evidence of the facts constituting this settlement is *no* evidence, were it not for the frequency of its admission, and the sanction given to this mistake by a recent work on settlements. In the case of *Ecclesall Bierlow*, on the removal of a pauper, the examinations of his father and himself were sent with the order of removal. The father said:—"I am sixty-two years of age, and was born at Doncaster; but the place of my father's settlement was at Ecclesall Bierlow, *as I have heard him say*, and believe to be true; and *I have heard my father say* that he has had relief from the overseers of Ecclesall Bierlow." But Lord Denman, C. J., held that "the removal of a pauper should be grounded on legal evidence. It is contended that his statement is, at all events, legal evidence against himself; but the answer is, that he is not a party within the rule that makes such admissions evidence: and if he were, this is not an admission *of a fact known to himself, but only a statement of what he had heard another say.*" In *R.* v. *Lydeard St. Lawrence* (*b*) the same sort of evidence was given, when Lord Denman, C. J., said:—"If there be no evidence but hearsay, there is in effect no evidence at all, and therefore no

(*a*) *Reg.* v. *Stockton-on-Tees*, 14 L. J. M. C. 128.
(*b*) 11 Ad. & El.

evidence upon the oath of any credible witness. * * * * I feel very strongly that by holding most strictly the necessity of a proper examination, we shall keep the justices to regularity."

Section VII.—Grounds of Objection to Parentage Settlements.

Usual objections.—In addition to the general objections as to defects apparent in the form or on the face of the order and examination, it will be found that the objections to orders founded on parentage settlements will be usually one of these. As to *paternal* settlements:—1. That the pauper has obtained a settlement of his own. 2. That he is not legitimate. 3. That he was emancipated when his father obtained the settlement claimed. 4. That his father obtained a later settlement before he was emancipated. 5. That his parent gained no such settlement. And as to *maternal* settlements:—1. That as to *legitimate* children the father had a settlement. 2. That the mother acquired a subsequent settlement. 3. That the settlement claimed is derived by the mother from her second marriage. 4. That the alleged settlement was gained during coverture. And as to *illegitimate* children:—5. That the child was born before August 14th, 1834. 6. That the mother is since married; together with the objections stating settlements gained by the child, and which are equally applicable to maternal and paternal settlements.

The following are forms of the statement of the grounds above named. (For commencement, end, &c., see p. 94.)

Form 1.—*That the pauper has obtained a settlement of his own.*

That the said pauper A B has acquired a settlement in his the said pauper's own right, by [*state the settlements fully, with the dates, &c.* (*c*)]. And we, &c.

(*c*) For the form in which each of the kinds of settlement may be stated, see the last section under the head of the settlement to be set up against the order of removal. Birth is of course excepted, for it never can be a subsequent settlement to any other.

Form 2.—*That the pauper is illegitimate* (*d*).

That the said B C is not the legitimate son of the said A C, having been born illegitimate at L, in the county of , on the day of , A.D. 1833, of the body of D M, before the said marriage of A C with the said D M, in the said examination alleged to have taken place, and is therefore settled in the place of his birth, and not in our said parish of . And we, &c.

Form 3.—*That the pauper was emancipated.*

That at the time when his said parent D C is alleged to have gained the said settlement in the said examination mentioned, to wit, on the day of , A.D. 1840, he, the said A B, was then emancipated from the control of his said parent, the said D C, and then was upwards of twenty-one years of age, and was then earning a livelihood independently of all parental control, he then being in the service of and in the receipt of wages from one E F, farmer, of [*or* being then married to Mary, his wife, *or* being then in the service of her Majesty, having been duly enlisted as a private in the regiment of foot, *or as the case may be.*] And we, &c.

Form 4.—*That the father had a later settlement.*

That afterwards, and since the settlement so acquired by the said A B, father of the said D C, on the day of , A.D. 1840, as in the said examination is alleged, and whilst the said D C was still unemancipated, and had contracted no relation inconsistent with parental control, to wit, on the day of , A.D. 1843, he, the said A B, father of the said D C, acquired a settlement. [*Here state the settlement, with places, names, &c.*] And we, &c.

Form 5.—*Where the maternal settlement is alleged, and the father had a settlement.*

That A B, the father of the said C D, on the day of , A.D. 1840, acquired a settlement by [*here state the setlement, with names of places, &c., or* was born at , in the county of , &c., *or as the case may be.*] And we, &c.

Form 6.—*Where the mother acquired a later settlement.*

That A D, the mother of the said C D, since she gained the maiden settlement in our said parish of , in the said examination mentioned, and whilst she, the said A B, was sole and unmarried, being since the decease of her husband, the said X Y

(*d*) This would be no ground of objection, if the pauper were born since August 14th, 1834.

[*or* before her marriage with the said X Y, *as the case may be*], on the day of , A. D. 1840, acquired a settlement by [*here state the settlement, with place, names, &c.*] And we, &c.

Form 7.—*Where the mother's settlement is that of her second husband.*

That the said A B, mother of the said pauper, C D, gained the said settlement in our said parish of , in the said examination mentioned, by her marriage with one Y Z, and not otherwise, on the day of , A.D. 1840 [*or* rented the said tenement, (*or as the case may be,*) on the said day of , A.D. 1840, as in the said order is alleged, during her coverture, then being the wife of one Y Z], and that the said C D is the legitimate son of A B by her former husband, L T, since deceased, and is therefore not settled in our said parish of . And we, &c.

Section VIII.—Statement of a Parentage Settlement when alleged by Appellants.

It is expedient to give one or two forms for the statement of each kind of settlement (save birth) when it is advanced by the appellants to defeat a prior settlement in their parish, set up by the removing parish. A parentage settlement can, of course, alone defeat a birth settlement, for every other one would be binding before a parentage settlement.

Form 1.—*That the pauper derives a parentage settlement from his father by the father's birth.*

That the said pauper, A B, has a parentage settlement in the parish of , in the county of , in which parish his father, D C, was born (*e*) on the day of , A.D. 1799,* and that he, the said A B, is the legitimate son of the said D C, by Mary, his wife, and was born of her [as is in the said order alleged, *if the case be so*] on the day of , A.D. 1820, they, the said D C and Mary, the parents of the said A B, having been first duly married on the day of , A.D. 1819, at the parish church of , in the county of . And we, &c.

Form 2.—*Where the parent acquired a settlement in his own right.*

That the said pauper, A B, has a parentage settlement in the parish of , in the county of , in which D C, the father of the said A B, whilst the said A B was a minor and uneman-

(*e*) It is immaterial, and will be so for some years, whether the father was legitimate or not. In either case, if born before 1834, he equally had a birth settlement.

cipated from parental control, to wit, on the day of , A.D. 1830, acquired a settlement by [*here state the sort of settlement, with places, names, &c., and conclude in the words of the last form stating the legitimacy of the birth, &c., from the asterisk downwards.*]

Form 3.—*Where there is a maternal settlement and the pauper is legitimate* (*f*).

That the said pauper, A B, has a parentage settlement in the parish of , in the county of , in which parish M B, the mother of the said A B, was born on the day of , A.D. 1800, and that [*here add the statement of her marriage and the legitimate birth of the pauper as in the first form, adding*], and that the said D C, the husband of the said M B, and father of the pauper, is since deceased, or has since absconded [*or as the case may be*], and that his settlement cannot, after due inquiry made, be ascertained. [*Where an acquired settlement is set up, state it as in the preceding forms, taking care to add the words* "and the said settlement was so acquired as aforesaid by the said M B whilst she was sole and unmarried."] And we, &c.

Form 4.— *Where there is a maternal settlement, and the pauper is illegitimate.*

That the said pauper, A B, was born illegitimate in the parish of , in the county of , in which parish he was born illegitimate of Mary B, his mother, on the first day of September, A.D. 1834 (*g*) [*here proceed to state the settlement of the mother by birth or otherwise, as before, taking care to annex the statement that she was sole and unmarried at the time that she gained any acquired settlement; then add*] Therefore the said settlement so gained as aforesaid by the said M B is the settlement of her illegitimate son, the said pauper, A B, according to the form of the statute in that case made and provided.

Section IX.—Law of Marriage Settlement.

Reasons for, and origin of, this settlement.—These are the same we have already stated as to parentage settlements, with this difference, that the marriage settlement is really, whilst the parentage settlement is only nominally, in accordance with the family-tie principle. It is the real effect of

(*f*) This would be good against a birth settlement, though the appellants could not disprove that the father had a settlement; *R.* v. *St. Mary, Leicester*, 3 A. & E. 644.

(*g*) Of course this would only be a valid parentage settlement if born after Aug. 14, 1834.

the marriage settlement to operate only as long as the tie itself lasts which it is designed to respect, neither of which virtues belong to the parentage settlement. It may be termed a female settlement, for it is the only one which belongs exclusively to women.

The wife has the husband's settlement.—On marriage, if the husband has a settlement, the wife takes it, and continues during his life to take any fresh settlement he may acquire, and keeps it after his death (*h*). If he have no settlement, or his settlement be unknown, the wife retains her last maiden or other settlement acquired prior to her marriage, be it what it may. But she can acquire no fresh settlement during her husband's life, though he have none of his own (*i*). The wife is not, however, removable to her antenuptial settlement simply because her husband has none, unless they be living in separate parishes, or they both consent to the separation (*k*); nor even then, if the husband be not an Englishman and be living with his wife (*l*). Wherever the husband therefore has a settlement, that which the wife had previous to marriage is absolutely superseded by her marriage. But when the husband has none, hers remains in abeyance during his life, and whilst he is living with her.

The wife when removable from the husband.—The wife is irremovable from her husband (*m*). This rule is liable to no exception, unless indeed *both* husband and wife consent to the severance, and that clearly appears; for the Court of Queen's Bench have very recently decided, that where a husband had no settlement, and *he* agreed that his wife and children should be removed to her maiden settlement, the order was bad, because the wife was not shown to have consented likewise (*n*). But where both consent, there is no

(*h*) 1 Strange, 580; Cald. 42.

(*i*) 2 Bott, 33; 1 Nolan, 260; Burr. S. C. 412.

(*k*) See *post*.

(*l*) *R.* v. *Leeds*, 4 Barn. & Ald. 490.

(*m*) *R.* v. *Stogumber*, 9 A. & E. 622; and see *ante*, p. 6.

(*n*) *Reg.* v. *Leeds*, 13 L. J. M. C. 107.

doubt that they may be separated. Servants and other persons, members of the same family, who are to subsist by their own labour, must frequently be separated for that purpose; and where *both* parties consent, there is neither a public nor a private injury, and the wife is separately removable (*o*). Perfectly consistent is it with this, that no presumption of separation is made, if nothing appears on the face of the examinations to show it, even although the order states that the husband was examined at the time of making it; for he might be before the magistrates, without residing in the parish. On the contrary, where the wife is removed alone to the place of her last legal settlement, it shall be intended to be that of her husband, and that he is at the place where he is legally settled (*p*). But mutual consent forms the only ground of *separation*.

When the wife, being separate, is removable to her maiden settlement.—When the husband and wife are already apart, the wife is removable to her maiden settlement; or whenever her husband dies; or leaves his wife, and it is not known whether he is living or dead; or running away, lives separately from her; the settlement she had previous to marriage continuing, so that she may be removed thither when chargeable. It is therefore suspended in these cases, as being liable to be destroyed if the husband shall gain one subsequently, although he has deserted her; or to be revived under these circumstances (*q*).

Where the husband, having no settlement, is Irish, &c.—In this case, as we have previously seen, the 8 & 9 Vict. c. 117, requires the removal of the whole family to the country of the father when any one member becomes chargeable; and as the rule not to sever husband and wife is inflexible, although the husband has no English settlement, and the wife has, she cannot be removed to her own settlement, but must go with him to his country. If, however, the

(*o*) *Rex* v. *Eltham*, 5 East, 113.
(*p*) 2 Nolan, 140.
(*q*) 1 Nolan, 259.

husband be already living apart from his wife, no separation ensues, and the wife is then, as in ordinary cases, removable to her own settlement, if she have one; and after the husband's death, in this case, the English wife takes her maiden settlement.

The marriage must be valid.—Sometimes, but very rarely, where a marriage ceremony has been performed, it is nevertheless void. The marriage law has undergone a variety of changes; and there are, under the different provisions of the statutes, a number of informalities, which, though contrary to the law, do not invalidate the marriage or the settlement. Others, again, invalidate both. It is, therefore, expedient to give an abstract of the law during the last century.

The law of marriage during the last century.—Prior to the 25th of March, 1754, marriages were legally performed in any house or church, either by a clergyman of the Church of England or a Roman Catholic priest (*r*), and in any form of words. In that year was passed the Marriage Act of 26 Geo. 2, c. 33, which *rendered void* all marriages performed under the following forbidden circumstances:—

1. Marriages performed in any other church or chapel than where banns were at the passing of the act usually published. (Sect. 8.) *Restricted* by 21 Geo. 3, c. 53 (1781), which legalized all churches and chapels erected since 1754, which provision has been extended to all duly licensed places by sundry subsequent statutes (*s*). The 4 Geo. 4, c. 76, s. 22, passed July 18, 1823, and taking effect November 1, 1823, confines the voidance of the marriage to cases where the parties themselves knowingly and wilfully thus intermarry.

2. Marriages performed other than by the form set forth in the Prayer Book, with exceptions in favour of Jews and Quakers. (Sect. 18.) *Repealed*, except as to this excep-

(*r*) Burr, S. C. 232; 10 East, 288.

(*s*) 44 Geo. 3, c. 77; 48 Geo. 3, c. 77; 59 Geo. 3, c. 134, s. 6; 4 Geo. 4, c. 76; 6 Geo. 4, c. 92; 6 & 7 Will. 4, c. 85, s. 1.

tion, by 6 & 7 Will. 4, c. 85, passed August 17, 1836, of which see *post*.

3. Marriages performed without license, or previous publication of banns. (Sect. 8.) *Restricted* to cases where both parties knew of this defect, by 9 Geo. 4, c. 76, s. 22, passed July 18, 1823, but taking effect November 1, 1823. [The old act also required *residence* of the parties prior to marriage; but violation of this law alone did *not* invalidate the marriage under its provisions. (Sect. 10.)]

4. Marriages of minors by license without consent of parents or guardians. (Sect. 11.) *Repealed* by 3 Geo. 4, c. 75, (passed July 22nd, 1822,) as to such parties as had lived together as man and wife till death, or the 1st September, 1822. This was again virtually extended by the 4 Geo. 4, c. 76, s. 16 (*t*), taking effect Nov. 1st, 1823. This latter act, though it repealed that of 3 Geo. 4, c. 75, "saved all acts, matters or things done under its provisions," and so far as it repealed any former act. Therefore, the spirit of it confirmed the retrospective effect of the 3 Geo. 4, c. 75, as above stated, and continued to render valid marriages without consent of parents, &c. The 16th section is merely to *require* consent, and does not make the marriage void if performed without consent (*u*).

These were the illegalities which rendered marriages void under the old Marriage Act of the 21 Geo. 2, c. 33, and, of course, no settlement would be good dependent on *quasi* marriages so celebrated up to the times above specified. In addition to these, invalidity attaches to—

5. Marriages celebrated without license or banns, or by any person not in holy orders, with knowledge of parties, but not otherwise, which are void by 4 Geo. 4, c. 76, s. 22. *Modified* by 6 & 7 Will. 4, c. 85 (*v*).

The 26 Geo. 2, c. 33, required also that marriages shall

(*t*) This section is held merely directory as to the necessity of licenses, &c.; 8 B. & C. 29.

(*u*) *R.* v. *Birmingham*, 8 B. & C. 29.

(*v*) Peake, 45.

be solemnized in the presence of two or more credible witnesses, besides the minister who shall celebrate the same; and that it shall be entered on the registry, in which entry shall be expressed whether the marriage was celebrated by banns or license, and signed by the minister and the parties married, and attested by two witnesses; but this entry in the register is not of the essence of the marriage, so that where there was an entry of a marriage by banns, and neither the minister, the parties, nor the witnesses had signed it, the marriage was held valid for the purposes of settlement (*x*).

But where false names were published by mistake in 1817 it vitiated a marriage and voided the settlement (*y*), for the woman had never gone by it; but it is otherwise where the party was known under the name assumed (*z*).

Marriages under 6 *&* 7 *Will.* 4, *c.* 85.—This act came into operation on the 1st March, 1837. It provides for marriages by the superintendent registrars in duly registered buildings, or offices, or other place within his district, and that of the parties (*a*), as follows:—A notice of the intended marriage must be given to the superintendent registrar by either of the parties; both of whom must have resided seven days previously in his district: or if they reside in different districts each must give notice, in either case, in the form given by the act. (Sect. 4.) Due publication of the notice is then made. After twenty-one days the parties, on request, receive a certificate setting forth all particulars, and stating that its issue has not been "forbidden," signed by the superintendent registrar. (Sect. 7.) He may also grant a *license* for the performance of the marriage in any duly registered building within his district, under the same provisions as above, only that the license may be issued within seven days

(*x*) *Rex* v. *St. Devereux*, Burr. S. C. 506.

(*y*) *Rex* v. *Tibshelf*, 1 B. & Ad. 190.

(*z*) *Rex* v. *Billingshurst*, 3 M. & Sel. 250. And see 3 M. & S. 537.

(*a*) 3 & 4 Vict. c. 72, ss. 1, 2; *Ex parte Brady*, 8 Dowl. 332. Notice may be indorsed that there is no place of worship in the district of the sect of the parties, when leave may be given to celebrate it where there is.

after the same notice, as above-named, has been given. (Sect. 7.) Both are good for marriage in churches.

The marriage may be solemnized in three ways, on production either of the licenses or certificate.

1st. In the Established Church, according to its ordinary form. (Sect. 1.)

2nd. In any duly licensed places of worship (*b*), it being essential that the registrar be present in all dissenting places of worship, and also two credible witnesses, with open doors, between eight and twelve o'clock, A.M., any form being used between the parties, but the following words must be used: —"*I do solemnly declare, that I know not of any lawful impediment why I, A. B., may not be joined in matrimony to C. D.;*" and each must say, "*I call upon these persons here present to witness that I, A. B., do take thee, C. D., to be my lawful wedded wife* [or *husband*]." (Sect. 20.) The registry is then made. (Sect. 23.)

3rd. In the presence of the superintendent registrar of the district, and one registrar of the district, at the office of such superintendent registrar, at the same hours as above, and with open doors.

Marriages, when void, under 6 *&* 7 *Will.* 4, *c.* 85.—Sect. 42 enacts that all marriages shall be null and void, except as hereafter stated, when any persons

"Shall knowingly or wilfully intermarry after the said 1st of March, 1837, under the provisions of this act, in any place other than the church, chapel, registered building, or office, or other place specified in the notice and certificate as aforesaid, or without due notice to the superintendent registrar, or without certificate of notice duly issued, or without license, in case a license is necessary under this act, or in the absence of a registrar or a superintendent registrar, where the presence of a registrar or superintendent registrar is necessary under this act."

(*b*) According to s. 18 of the act.

The exceptions extend merely to marriages of the royal family, and to marriages out of England. (Sect. 45.) Jews and Quakers are specially excepted from some of the provisions here mentioned. (See *post.*)

The actual dwelling of the parties in the district, or the consent of parents, &c., is not, however, essential to the validity of the marriage after it has taken place. (Sect. 25.)

Marriages of Jews and Quakers.—Their marriages, where both are of the same persuasion, may be performed according to their own forms, provided notice thereof be given to the *superintendent* registrar, according to sec. 4, a .d to the *registrar*, according to sec. 2 of the act, and a certificate be obtained from the superintendent registrar or registrar. (Sect. 2.) These provisions only apply where both parties are Jews or Quakers; otherwise they must be married like other people.

Marriages in Scotland.—Marriages valid there are valid here. No consent of parents or guardians is needed for legalizing the marriage of minors. A contract to be man and wife is alone required. (See "Evidence of Scotch Marriages," sect. 10, *post.*)

Marriages in Ireland.—Between Roman Catholics a marriage according to the ritual of Rome, by a priest in holy orders, is valid, celebrated at any time or place (*c*), and between members of the Established Church, according to its marriage ceremony, at any time or place, and whether performed by a clergyman or other person. Marriages among dissenters, whether of the same or different creeds, are valid in Ireland, when performed by "Presbyterian or other Protestant Dissenting Ministers or Teachers." (5 & 6 Vict. c. 113.) This act legalizes all past marriages (not already declared invalid by a competent court,) and renders them of "the same force and effect as if they had been had and solemnized by clergymen of the Established Church of England and Ireland." Marriages between Catholics and

(*c*) 2 Burn's Ecc. L. 466.

Protestants are valid when performed by a clergyman of the Established Church according to its ritual subsequent to and by 32 Geo. 3, c. 21 (Irish,) (1792). Prior to that act such marriages were void by 19 Geo. 2, c. 13 (Irish,) (1746). By 9 Geo. 2, c. 11 (Irish), marriages of minors are voidable, without due consent, where either of the parties is entitled to property, but not void.

Marriages abroad.—These marriages are valid here if performed according to the rites, forms or usages (*d*) of the foreign country where celebrated, provided the parties can conform to them. And marriages performed in the house or chapel of a British ambassador, or within the British lines, by any chaplain under the orders of the commanding officer, are rendered valid by various statutes as to different countries, and by 4 Geo. 4, c. 91, s. 1.

Fraudulent marriages.—Fraud assented to by both parties nullifies a marriage; as, for instance, the publication of the banns under false names, assumed for the purpose of concealing the marriage. But, if assumed for other purposes, would not invalidate the marriage either formerly or now (*e*). Where parish officers procure a marriage to be performed fraudulently, it will not be void: for the fraud will be fatal to the marriage only where *both* parties married are privy to it (*e*).

Marriages within prohibited degrees of kindred. — The 5 & 6 Will. 4, c. 54 (1835), legalizes all marriages within forbidden degrees of *affinity*, performed before it passed, but renders all such void which were celebrated afterwards; but those within the prohibited degrees of *consanguinity* are left as they previously were, voidable upon suit in the Ecclesiastical Court, if performed before the act passed, but voids all such marriages performed since.

(*d*) Lord Stowell is reputed to have said that if a man married in South Africa according to the marriage forms of the Hottentots, it would be valid here. And see 3 Stark. 178, per Lord Tenterden.

(*e*) *R.* v. *Wroxton*, 4 B. & Ad. 640; *R.* v. *Tibshelf*, 1 B. & Ad. 190.

Bigamy voids the second marriages, and it continues void after the decease of one of the parties to the first marriage. (See sections 10 and 11, *post.*)

Marriages of the insane.—Except when performed during a lucid interval, the marriage of a lunatic is void.

Sect. X.—Evidence of Marriage Settlement.

Where either parish means to rely upon a settlement by marriage, it must be prepared to prove, 1st, the marriage; 2nd, the husband's settlement.

The marriage how proved.—The marriage may be proved by an examined copy of the register, or by the evidence of persons present at the ceremony, who can prove the identity of the pauper, and this would suffice without the registry (*f*). The husband or the wife are themselves admissible witnesses where the fact has no tendency to criminate them, as in cases of bigamy; but the former wife may be called to prove the second marriage a nullity (*g*). Certified copies of entries, sealed or stamped with the seal of the register office established by 6 & 7 Will. 4, c. 86, s. 38, are to be received as evidence of the birth, death or marriage to which they relate, with further or other proof of the entry; and by the 3 & 4 Vict. c. 92, s. 6, all registers and records deposited in the general register office by virtue of that act. Non-parochial registers shall be deemed to be in legal custody, and be receivable in evidence in all courts of justice; and provision is made for the production of them by the registrar-general.

The marriage of Jews is by a written contract, which is afterwards ratified in the synagogue. To prove such a marriage, the contract itself must be proved; parol evidence of the ceremony will not suffice (*h*).

Reputation of coverture has been held sufficient to esta-

(*f*) *R.* v. *Allison*, R. & R. 109.
(*g*) *Rex* v. *Bathwick*, 2 B. & Ald. 639
(*h*) *Horne* v. *Noel*, 1 Camp. 61.

blish a *primâ facie* case of marriage(*i*). Sometimes the parish against which it is sought to establish the marriage have so far admitted the fact as to be estopped from controverting it. As where it has granted a certificate in which it acknowledges the parties to be man and wife(*k*); although she is only described as his wife generally, without being named therein, and has a former husband living(*l*). Also where the man and woman have been removed as husband and wife(*m*); or where the woman is removed as married, without her supposed husband, and the parish to which the removal is made has not appealed against the order(*n*). So if she is removed by the name and description of "E. Smith, widow," it is conclusive of her husband's settlement, if he is then alive, and the order unappealed from(*o*); for the presumptive conclusion to be drawn from her being removed as a married woman, or as a widow, where nothing is stated in the order to contradict it, is, that she is removed to her husband's settlement; and if the parish did not mean to acquiesce in that conclusion, they should have controverted it by an appeal.

Where the marriage was by license before the 1st of September, 1822, and one of the parties a minor, consent of parents or guardians ought to be alleged, but it will be supported by evidence of subsequent countenance by parents or guardians, or reasons for presuming consent(*p*).

(*i*) *Morris* v. *Miller*, 4 Burr. S. C. 2057.

(*k*) *Rex* v. *Headcorn*, Burr. S. C. 253; *Rex* v. *Ullesthorpe*, 8 T. R. 465.

(*l*) *Rex* v. *Lubbenham*, 4 Term Rep. 251.

(*m*) *Rex* v. *Silchester*, Burr. S. C. 551; *Rex* v. *Berkswell*; *Rex* v. *Binegar*, 7 East, 377, where the order was stated to be made on the evidence of the wife only, for she may know the fact as well as any other witness.

(*n*) *Rex* v. *Hinxworth*, Cald. 42; *Rex* v. *Leigh*, Dougl. 45; *Rex* v. *Towcester*, 2 Bott, 679, Pl. 740; *Rex* v. *St. Mary, Lambeth*, 6 T. R. 615.

(*o*) *Rex* v. *Rudgely*, 8 T. R. 620; and as to the effect of orders of removal unappealed from, see *post*.

(*p*) R. & R. 61, n.

Marriages abroad.—If the marriage were solemnized abroad, it will suffice to show that it was performed according to the usual forms of the country; so, also, in Ireland. (See sect. 9, *ante*.) In Scotland it is sufficient if it be shown that the parties said they were married before witnesses, without proving any ceremony; and in one case it was held sufficient to produce an acknowledgment privately made that the parties were married (*q*). In fact, wherever the marriage has taken place out of England, slight evidence suffices as to the actual marriage; and the general reputation that the parties were man and wife is sufficient. Lord Mansfield "laid it down as a general rule, that proof of an actual marriage was necessary only in two cases—namely, in a prosecution for bigamy, and an action for criminal conversation; in all other cases, proof of cohabitation, name, reception of the woman by the world as the man's wife, or the like, were sufficient." Proof will suffice that the ceremony was performed abroad by a person appearing like and wearing the robes of a priest, and the understanding of the parties to the marriage that it was the marriage ceremony according to the rites and custom of the country, is sufficient presumptive evidence of the validity of such marriage, to throw the onus of impugning it upon the appellants (*r*). For further evidence of what are such rights, see sect. 11, *post*.

Facts requiring statement.—The date of the marriage must be given, and the statement where and how it took place. Where the place was one of those legalized by the 6 & 7 Will. 4, c. 85, obtain from the witnesses the fact that it was a duly licensed place of worship, or the superintendent registrar's office, or as the case may be. State in evidence

(*q*) *Dalrymple* v. *Dalrymple*, 2 Haggard, 54.

(*r*) *R.* v. *Brampton*, 10 East, 282; *Morris* v. *Miller*, 4 Burr. S. C. 2057; 3 Starkie, 178.

also that the marriage was performed in the presence of the proper officers, as stated in sect. 9, *ante*. State also whether the ceremony was performed by banns, license, or registrar's certificate, *together with such facts as at that period and place of marriage were then and there essential to give it validity*. In this case we have seen it must be shown that the husband has abandoned his wife, is living in another parish, that he consents to the separation, or is dead. The mere evidence of the wife suffices, but it is always well to support her statement by any other witness knowing the fact. If dead, the certificate of registry of the burial should be put in evidence. Next, the settlement of the husband must be stated, and the facts essential to support it, as given under the head of that settlement, for it will be observed that these derivative settlements are necessarily compound ones. First must be proved the right of derivation (in this case the marriage); and, secondly, the existence of the thing derived. It ought also to be stated in evidence that the husband had no later settlement at the time of his death, or if he be alive and absent, then at the time of the examination; for the wife derives all the husband's settlements, whether he be absent or not.

As a general rule, it is sufficient to state the facts which show a valid marriage, and establish the woman's *primâ facie* right either to her husband's or her ante-nuptial settlement; and of course it is not necessary to show any of the facts to have been done which it would not invalidate the marriage to have omitted. Thus it is not necessary to prove any of the preliminaries not essential to a valid marriage, such as banns, license and consent of parents, since 4 Geo. 4, c. 76. It is enough to set up a good *primâ facie* case; and it is for the appellants to rebut it by showing an informality or defect *fatal* to the validity of the marriage, or otherwise an answer to the settlement claimed.

Where the husband's settlement is not known.—In this

case the wife is removeable to her maiden settlement, if the husband be living apart, or both consent to the severance. (See the last section.) And the consent of both must be stated, to establish the right to remove the wife to her maiden settlement where the severance appears (*s*).

It has been several times ruled, that in order to make out a *primâ facie* case, there is no need that the respondents, who set up the maiden settlement of the wife, should show on the examination that inquiry has been made for the husband's settlement. In *Rex* v. *St. Mary, Beverley* (*t*), Bayley, J. said, "Where the respondent's evidence makes out a maiden settlement, and contains nothing to show that any subsequent settlement has been gained, which could supersede the maiden settlement, that constitutes a *primâ facie* case, and the *onus* of proof that the pauper was not settled there lies on the appellants." Lord Denman's remark, in giving judgment in *Reg.* v. *Leeds* (*u*), must be taken to indicate rather what it is prudent in respondents to do, than as obligatory to prove in the examination. "An inquiry," he says, "into the father's settlement was necessary in this case (of a married woman and her children), and was the foundation of the proceeding; for until it appears that his settlement could not be discovered, the wife's settlement would be immaterial." It would be immaterial, because the appellant would be sure to ascertain and set it up if it existed. In *Reg.* v. *Yelvertoft* (*x*), his lordship's judgment is quite in accordance with the view taken by Mr. Justice Bayley, even where, as in that case, there had been some

(*s*) *Reg.* v. *Leeds*, 13 L. J. M. C. 107.

(*t*) 1 B. & Ad. 201; see also *Rex* v. *Harberton*, 13 East, 311; *Rex* v. *Ryton*, 2 Bott, 114; *Rex* v. *Edisore*, Cald. 371; *Rex* v. *Woodford*, 2 Bott, 118; *Rex* v. *Hensingham*, Cald. 206.

(*u*) 13 L. J. M. C. 107.

(*x*) This judgment and the same point will be found treated of at length, p. 19, *ante*.

mention made of the husband's settlement, though not enough to make it necessary for a prudent man to inquire further into it. But in *Reg.* v. *St. Margaret's, Westminster* (*y*), as in *Rex* v. *St. Mary, Beverley* (*z*), enough did appear to show that the husband's settlement was easily ascertainable, and on that ground the orders were quashed. Mr. Justice Coleridge, in *Reg.* v. *St. Margaret's, Westminster*, said, "a settlement *ex parte maternâ* has this vice, that it can only be resorted to where no paternal settlement appears. But here the examinations do show a settlement *ex parte paternâ*, although the respondents have omitted to show in what parish the father was settled; a fact which, with the least possible investigation, might have been made clear."

The rule we deduce from these cases is simply this. If parishes choose to remove to the maiden settlement, without stating any thing about the husband's settlement, they are at liberty to do so; but if they say any thing about it, let them beware that they do not say what shows that they could have said more had they made inquiry enough. We have already endeavoured to distinguish these cases from those where independent settlements are imperfectly stated. See Part I. sect. 3, p. 17.

Section XI.—Grounds of Objection to Marriage Settlements.

That no marriage took place.—This is a *traverse* of the order, and is a denial of the fact on which it rests. (For commencement and end of these forms see p. 94.)

Form 1.

That the said pauper, A B, was not married to the said C D, as in the said examination is alleged. And we, &c.

(*y*) In *St. Mary, Beverley*, there was positive evidence that the pauper was born in Ipswich, but the parish was not stated; in *Reg.* v. *St. Margaret's*, as we have seen, there was similar evidence that there was a subsequent settlement in Bath, though the parish was imperfectly stated.

(*z*) 14 L. J. M. C. 131.

It will be remarked that it is only necessary to deny and disprove the marriage having taken place on the particular day stated. The respondents are bound to prove the marriage as laid; and a quashing of the order on the ground of an omission or misstatement of a material date is a quashing on the merits (*z*).

To support this objection, evidence must be procured from the parties themselves, or the register, the then officiating clergyman, or the clerk, to the effect that no such marriage then took place; some other persons, not having official means of knowing the fact, could perhaps also equally well prove the negative required.

Invalidity of the marriage.—This is one of the chief objections to the orders based on this settlement. It would be a useless repetition to restate the various circumstances which at different periods invalidated a *quasi* marriage, for they have been already defined in sect. 9, to which reference must be made. Great care must be taken not to rely on defects in marriages as grounds of objection, which, though they were *illegalities*, did not, and do not *invalidate* the marriage, as for instance, the non-residence of either of the parties in the parish at the time of the publication of banns, or the being married in church by a person not in holy orders, *where the parties were ignorant of it*, since the 1st November, 1823. Likewise the non-consent of parents to the marriage of minors, where the banns had been duly published, even under 26 Geo. 2, c. 33, s. 3, there having been no dissent at the time of publication, though it would be otherwise if the marriage were by license, as shown in sect. 9, for then the parents would have no means of forbidding the marriage, which appears to constitute the difference between the two cases of banns.

In none of these and equally in many other cases (to be gathered from sect. 9, *ante*), would there be any valid objection to the marriage. We have endeavoured to state all the

(*z*) *R.* v. *Charlbury and Walcott*, 3 Q. B. 378; *R.* v. *Clint*, 11 A & E. 624.

circumstances which *do* void the marriage, and any defects which are not so stated, it may be inferred, *do not* void it, and cannot be safely made grounds of objection. Caution must also be used before any objection, valid in itself, be made, that adequate evidence can be procured to support it.

It is by no means an easy matter to do this; and the evidence of the fact must be conclusive, although chiefly of a negative kind, in order to rebut the validity of a marriage. The difficulty of obtaining, and the danger of trusting to evidence of the invalidity of marriages performed *prior* to the 4 Geo. 4, c. 76 (1823), are so manifestly great, that the cases of objection on such grounds will be too rare to justify the enlargement of this work with forms or rules for statement of more than such one or two cases prior to that Act as may be deemed likely to occur in practice.

Form 2.— *Where one of the parties was a minor, married by license in England without consent of parents, prior to* 3 *Geo.* 4, *c.* 75. (1*st September*, 1822.)

That the said alleged marriage between the said A B and C D in the examination mentioned was performed by license at , in the county of , whilst the said A B was a minor, and without the consent of his parents or guardians being first had and obtained, on the day of , A.D. 1816; and therefore the said alleged marriage was and is null and void according to the form of the statute in that case made and provided, and then being in full force and effect. And we, &c.

The parents, guardians or parties themselves, may prove the absence of consent, but as we have seen in the last section, it will be fatal to this objection, if in the absence of this distinct proof, the parents are shown to have given such subsequent countenance to the marriage as that assent may be assumed.

Form 3.— *Where the banns were not published or license duly obtained prior to* 4 *Geo.* 4, *c.* 76. (*November* 1, 1823.)

That the said alleged marriage between the said A B and C D on the said day of , A.D. 1819, in the examination mentioned, was performed at , in the county of ,* without due license previously obtained, or banns between the said A B and C D having been first duly published, therefore the said

alleged marriage was and is null and void according to the form of the statute in that case made and provided, and then being in full force and effect. And we, &c.

The parties themselves, and the register book of banns showing the absence of a proper entry, will afford evidence in this case.

Form 4.— *Where the names were fraudulently assumed before* 4 *Geo.* 4, *c.* 76, *or wholly differed.*

[*Copy preceding form to the asterisk, then as follows*] by banns, who were therein and thereby described, and afterwards married as aforesaid, under the names of and , which said names were not the proper names of the said A B and C D, or of either of them, nor were they names the said A B or C D had ever been called or known by, but were fraudulently and with intent to deceive and to frustrate the law, then assumed by the said A B and C D for the purposes aforesaid [*omit these words where the names wholly differed but there was no fraud*] therefore, &c. as in Form 3.

If in this case the names *wholly differ*, though it arose by accident, proof is required only of the fact, *without* proof of fraudulent intent, for it wholly invalidated the banns at the time, and therefore the marriage to which banns were essential. Where the names only partially differ, as the alteration merely of a letter or letters, leaving the word sounding the same or a Christian name were omitted, then fraudulent intent must be shown; just as much as if the marriage had taken place since 4 Geo. 4, c. 76. The production of the entry in the register or a certified copy will be the best evidence of the variance, and the admission of either party of the fraudulent intent. The fraud of other parties will not invalidate the marriage.

Form 5.— *Where both parties wilfully marry without banns or license, since* 4 *Geo.* 4, *c.* 76. (*November* 1, 1823) (*a*).

That the said A B and C D knowingly and wilfully intermarried on the day of , A.D. 18?5, as in the examination mentioned, without due publication of banns or license [*if since March* 1, 1837, *add*—or certificate of notice], from a person or persons having authority to grant the same, first had and obtained, according to the form of the statute in that case made and provided. Therefore the said marriage was and still is null and void. And we, &c.

(*a*) Still in full force as to church marriages.

Form 6.

That the said A B and C D knowingly and wilfully consented and acquiesced in the solemnization of the marriage between them on the day and year in the said examination mentioned, by one X Z, he then not being a person in holy orders, according to the form of the statute in that case made and provided. Therefore the said marriage was and still is null and void. And we, &c.

The evidence necessary to support both these objections is exceedingly difficult to be obtained; it is not sufficient to prove the facts, there must be evidence of the guilty knowledge of *both* parties to the marriage. This will be best shown by admissions, and by such other facts as leave no reasonable doubt of the knowledge of the illegal circumstances. Proof must be given that the banns were not published in the first case, by calling the clerk (the clergyman cannot be called to prove what would be felony in himself), and producing the register of the banns. Failing the admission of the parties, it may be shown that they were present at church when the banns ought to be published. The absence of the license or certificate under the new Act may be more easily shown, because the superintendent registrar's books or registry will at once prove that none such were granted. (See last section as to their production).

The proof that the person officiating was not in holy orders is not easily attained, but if he has been convicted of felony, it will be sufficient to produce a certificate of the conviction, and strong evidence to show that he was following an inconsistent avocation at the time, and generally known not to be in holy orders, would perhaps suffice. The guilty knowledge must be equally proved against both parties to the marriage.

Invalid marriages under 6 *&* 7 *Will.* 4, *c.* 85.

Form 7.—*Where the marriage was in a wrong place.*

That the said A B and A C knowingly and wilfully intermarried on the day and year in the said examination mentioned, under the provisions of a certain Act, intituled "An Act for Marriages in England," passed in the Parliament holden in and during the 6th

and 7th years of the reign of his late Majesty King William the Fourth,* in a certain place [church *or* chapel, *as the case may be*] other than the church [chapel, registered building, *or* office, *as the case may be*] specified in the notice of certificate [*or* license], in the said examination mentioned [*or* in the certificate, &c. obtained for the purpose of the said marriage], to wit, in the [*here state the place where they were married*], according to the said statute in that case made and provided; therefore the said marriage was and is null and void. And we, &c.

Form 8.—*Where no certificate, &c. was taken, &c.*

[*Copy the last form to the asterisk, then continue thus:*] without due notice being first given to the superintendent registrar of the district [*or* without certificate of notice duly issued without license; *or* in the absence of a superintendent registrar or registrar,] according to the said statute in that case made and provided; therefore the said marriage was and is null and void. And we, &c.

Proof of these objections might be given, by showing that the party applied to the registrar to be married in the place specified in the license, &c. and if so, he must have knowingly married in another. The woman must equally be proved to have had this knowledge, of which her admission would be the best evidence either at the time or since. The absence of the certificate, as before stated, would be proved by the superintendent registrar's books.

The wilfulness of these illegal acts is among the number of those cases in which the intent may be inferred as a necessary, or at least highly probable, conclusion, from the knowledge of the facts and subsequent act done.

In cases of bigamy.—This of course voids the second marriage, and is a valid objection to the settlement where it can be shown that the former husband or wife were living at the time of the second marriage, and that such prior marriage was not then released by a divorce.

Form 9.—*Where there has been a previous marriage.*

That the said A B prior to his [*or* her] alleged marriage with the said C D, as in the said examination mentioned, was duly married by banns to one E F in the parish church of , in the county of , on the day of , A. D. 1820, and that the said E F was still living at the time of the marriage of the said A B and C D on the day of , A. D. 1834; and

that the bond of the said marriage between the said A B and E F had not then been released by divorce or declared void by any court of competent jurisdiction; therefore the said marriage between A B and C D was and is null and void (*b*). And we, &c.

The first marriage must be proved; and though the person twice married cannot be called to criminate himself (or herself) by evidence of it (it being evidence of a felony), the innocent party to it may, since the husband (or wife) who is guilty of the second marriage is not then criminally charged (*c*). The *time* of the first marriage is not material, so long as it be shown to have taken place *before* the second marriage; nor does it signify whether it was here or abroad (*d*). The first marriage may be proved in the same manner as stated in the last section, observing all the facts necessary at the period of the first marriage to constitute its validity. The fact, moreover, that such marriage was voidable for consanguinity will not waive the bigamy or make good the second marriage; nor will any of the illegalities which do not absolutely make void the first. It will not unfrequently happen that the party twice married will assume another name at the second marriage to conceal the fact. In this case evidence must be produced of his or her identity.

If the first husband or wife have been seven or a greater number of years unheard of at the time of the second marriage, it is no less *void* (though not punishable) on that account, if the first consort be proved to have been then alive. But of this proof must be given. It will, however, suffice to show that he or she was alive within a period sufficiently short before the second marriage (*e. g.* twenty-five days), and under circumstances such as to raise a strong presumption of life at the time it took place. There is no rigid presumption of law on such questions, without reference, moreover, to the age, health and likelihood of life of the party. A

(*b*) The invalidity remains after the death of the first party; *Westbrook* v. *Stratville*, 1 Strange, 79.

(*c*) *R.* v. *Bathwick*, 2 Barn. & Ad. 639.

(*d*) 1 Hale, 692.

presumption of life, if well supported, cannot be shut out by the presumption of innocence (*e*).

Form 10.— *Where the marriage was performed abroad, and was not, or does not appear to have been, legal.*

That the said alleged marriage between the said A B and the pauper, C D, was not performed according to the rites and customs of the kingdom of , wherein the said marriage is alleged in the said examination to have been performed, for that [*here state the defect or deviation invalidating the marriage there.*] Therefore the said marriage was, and still is, null and void in this country [*or* it does not sufficiently appear by the examination that the said alleged marriage was performed according to the rites and customs of the said kingdom of , in which the said marriage is alleged to have taken place.] Therefore, &c. And we, &c.

The evidence in these cases will generally consist, first, in the statements of the parties themselves, or those who may have been present at the marriage, as to the mode in which it was performed; and secondly, in what are the rites and customs of marriage in the country where it is stated to have taken place.

The marriage laws of foreign countries, if not written, may be proved by the parol evidence of witnesses of competent skill; and if they are written, copies of them, properly authenticated, must be produced (*f*). Marriages invalid in Scotland (*g*), Ireland and the colonies, are objectionable in like manner, when performed so as to invalidate them there. (See sect. 9, *ante*.) The same form will serve.

Form 11.— *Where the marriage is void, since* 5 *&* 6 *Will.* 4, *c.* 54, 1836, *for relationship.*

That the said alleged marriage between the said A B and C D, in the said examination mentioned, was performed on the day of , A. D. 1843, the said A B and C D then being related to each other as uncle and aunt [*or as the case may be*], and within

(*e*) *R.* v. *Harborne*, 2 A. & E. 540, virtually overruling *R.* v. *Twyning*, 2 Barn. & Ald. 306.

(*f*) *Clegg* v. *Levy*, 3 Campb. 166; *Millar* v. *Heinrich*, 4 Campb. 155; *Lacon* v. *Higgins*, 3 Stark. 178.

(*g*) See 12 Haggard, 54, 2 W. Bla. 145, and Bul. N. P. 113, as to Scotland; and *R.* v. *Orgil*, 9 Car. & P. 80, as to Irish Catholics.

the degrees of consanguinity [*or* affinity, *as the case may be, which renders marriage illegal*] ; therefore their said marriage was and is null and void according to the form of the statute in that case made and provided. And we, &c.

The evidence of the relationship may be given by the parties, the parents or relatives, or any one cognizant of the fact ; the time of the marriage will be admitted by the order of examination. Marriages within the prohibited degrees of *consanguinity alone*, which have been solemnized *before* the act, are void only if voided by an ecclesiastical court.

Objections to the husband's settlement.—These fall under the head of the settlement which may be set up. Where the objection is that the husband had a subsequent settlement, it may be thus stated :

Form 12.

That since the said C D, the husband of the pauper A B, gained [*or* acquired] the said settlement in this our parish of , on the day of , A. D. 1830, as in the said examination is alleged, he the said C D, on the day of , A. D. 1842, gained a settlement in the parish of B, in the county of , by [*here state the settlement.*] And we, &c.

Where the wife has gained a settlement since her husband's death.—This may be similarly stated, alleging his death, and the settlement subsequently gained by the widow "whilst sole and unmarried." The objection requires evidence of the death of the husband, unless it is admitted ; and of the subsequent settlement, in the way stated under its head hereafter.

Section XII.—Statement of a Marriage Settlement when alleged by Appellants.

A woman's marriage settlement defeats any one previously gained, be it what it may, and may be thus stated as a ground of objection to any such :—

Form 1.—*Where the husband is dead.*

That the said pauper A B, after the time when she is alleged in the said examination to have gained the said settlement in our pa-

rish of B, by hiring and service [*or as the case may be*], on the . day of , A. D. 1820, was duly married* by banns first duly published [*or* by licence] in the parish church of , in the county of L, to one C D, since deceased, of the parish of , and county of , and the said C D was then legally settled by [*state this settlement as the case may be*] in the parish of M, in the county of , in virtue whereof the said A B has a settlement by marriage in the said last-mentioned parish, subsequent to the settlement in the said examination alleged to have been acquired by her. And we, &c.

Form 2.—*Where the marriage was under* 6 *&* 7 *Will.* 4, *c.* 85.

[*Copy last form to asterisk, and then add*] in the chapel, being duly registered for the performance of marriages, of [*state its usual designation*], in the parish of , in the county of , before the registrar of the district, certificate of notice [*or* license] being first duly obtained, to one C D, &c. [*then as in the last form.*]

Section XIII.—Law of Hiring and Service Settlement.

Origin and termination of this settlement.—This settlement was created by the 3 & 4 W. & M. c. 11, s. 7, which enacts, "that if any *unmarried* person *not having child or children* shall be lawfully *hired* into any parish or town *for one year*, such service shall be adjudged and deemed a good settlement therein."

To remove the inconveniences arising from this lax law, a clause was introduced into 8 & 9 Will. 3, c. 30, which provides, "that no such person so hired as aforesaid shall be adjudged or deemed to have a good settlement in any such parish or township, unless such person shall continue and abide in the same service *for the space of one whole year.*"

Thus the first of these statutes regulates the description of persons by whom a settlement may be gained; the lawful hiring for a year; and the place into which the servant is to be hired. The second prescribes the service, and the continuing in it for one whole year, and the 3 & 4 Will. 4, c. 76, extinguishes the settlement prospectively.

We shall set forth the law under five heads:—

1. The parties to the contract.
2. The contract of hiring.
3. The year's service.
4. The residence and place of service.
5. The termination of the settlement.

1. THE PARTIES TO THE CONTRACT.—It was not necessary that the pauper should have been of age at the time of the contract. It was enough if he were seven years old. Such contracts of minors would be voidable only and not void; and so long as they were not voided were valid. A man's own son, under age, might be hired by himself, and so gain this settlement (*h*).

The pauper must have been unmarried.—The servant must have been unmarried at the time of the contract. Therefore, if a servant married during service (*i*), or after the binding but before his year begins (*k*), it will not prevent his settlement. Neither does it make any difference, that both parties think the servant married at the time of hiring; as where the husband being abroad, died before the wife entered upon her second year's service, and she was unacquainted with the fact (*l*); or although they know that the servant is to be married before his service commences (*m*).

The servant's being married at the time of making the agreement is likewise immaterial, if he be single when it becomes complete. As where a married man was hired conditionally on the 16th, to serve for a year from the 24th of the month, if the intended master should approve the terms, and his wife died in the intermediate time, he was held to gain a settlement for a year's service; for the master had a

(*h*) *Rex* v. *Chillesford*, 4 B. & C. 94.
(*i*) *Rex* v. *Clent*, Fol. 148.
(*k*) *Rex* v. *Allendale*, 3 T. R. 382; *Rex* v. *Stannington*, 3 T. R. 385.
(*l*) *Rex* v. *Hensingham*, Cald. 206.
(*m*) *Rex* v. *Allendale*, *supra*, n. (*k*).

power to dissent until the 24th, when the servant was unmarried, and the hiring was considered as taking place on that day (*n*).

Without children.—A child who is emancipated at the time of the contract is not within the meaning of the statute, which refers alone to children who, by following their parent's settlement, might become chargeable to that parish in which one may be acquired under a new servitude (*o*). But the emancipation must be complete (*p*).

The servant must have been sui juris.—A person must not have been under any legal incapacity to contract at the time. Neither soldiers, sailors (*q*), or deserters (*r*), apprentices (*s*), or persons then being under prior engagements of service, could gain a hiring and service settlement. And the hiring must have been with the consent of the person hired; so that where a pauper lad was hired out without his consent by the overseers, it was held to be no sufficient hiring and service (*u*).

A pauper being in the militia or a volunteer corps, could not lawfully hire himself for a year, without disclosing the fact (*x*); but it is otherwise if he did disclose it (*y*).

Who might hire.—It is immaterial whether the agreement were to serve one or more masters (*z*), or is made by a third person, if subsequently ratified by the parties (*a*),

(*n*) *Rex* v. *Banknewton*, Burr. S. C. 455.

(*o*) *Anthony* v. *Cardigan*, 2 Bott, 257.

(*p*) *Rex* v. *Cowhoneyborne*, 10 East, 88.

(*q*) *Rex* v. *Beaulieu*, 3 M. & S. 229.

(*r*) *Rex* v. *Norton*, 9 East, 206.

(*s*) *Rex* v. *Dawlish*, 1 B. & Ald. 281.

(*u*) *Rex* v. *Stowmarket*, 9 East, 211.

(*x*) *Rex* v. *Holsworthy*, 6 B. & C. 283; *Rex* v. *Witnesham*, 2 A. & E. 648.

(*y*) *Rex* v. *Elmley Castle*, 3 B. & Ad. 826; and *Rex* v. *St. Mary, Colchester*, 5 B. & Ad. 1023.

(*z*) *Rex* v. *Eldersley*, 2 Bott, 274, pl. 317; *Rex* v. *Elstack*, Cald. 489.

(*a*) *Per* Lord Kenyon, *Rex* v. *St. Matthew's, Ipswich*, 3 T. R. 449.

but it must be so ratified; and parish officers can neither hire out adult (*b*) nor infant paupers (*c*), unless such pauper afterwards adopts the contract (*d*). It is of no importance whether the master has a settlement in the parish; for the servant does not derive his settlement from the master, but from the service (*e*). The degree of relationship makes no distinction, unless in the case of husband and wife. The agreement by a daughter, who was emancipated, to perform the offices of a servant to her father for a certain reward, is equally within the statute as where the parties are strangers to each other in blood and connexion (*f*).

Public bodies might hire, as well as persons not rated to the poor (*g*); but certificated persons could not, nor members of friendly societies, nor toll-collectors.

2. The Contract of Hiring.—The hiring was merely a simple contract between the parties, and might have been express or implied, and entered upon at any time. It must have been rigidly one constituting the relation of master and servant between the parties, and it is essential that it should have been distinguishable from an apprenticeship, which settlement we shall next describe. The essence of service, on the contrary, is implied in the name, and may always be determined by ascertaining whether the *main* object of the servant was *wages and board* for service to be rendered, or *instruction*. It did not vitiate the service that the servant should receive some instruction, as long as that was not the main object of the contract. It need scarcely be stated that the service to be rendered must have been lawful; neither did the services of a relation in the family suffice, unless

(*b*) *Rex* v. *Rickinghall Inferior*, 7 East, 373.
(*c*) *Rex* v. *Stowmarket*, 9 East, 211.
(*d*) *Rex* v. *Norton*, 9 East, 206; *Rex* v. *Dunton*, 15 East, 352.
(*e*) *Chesham* v. *Missenden*, 2 Bott, 173.
(*f*) *Rex* v. *Chertsey*, 2 T. R. 37.
(*g*) *Rex* v. *Sandhurst*, 7 B. & C. 557.

there was an *express* contract. It could not be implied in that case.

What amounts to a contract.—The following cases will illustrate the general nature of the requirements of these contracts:—

The turnkey of a bridewell, at an annual salary, was not held to be a *servant* either to the justices or the keeper (*h*). The hiring might be in an extra-parochial place (*i*); and a contract of hiring made on a Sunday was lawful (*k*); but the contract must have been legal, and it must have been a contract for *service;* cohabitation was insufficient (*l*).

A boy living several years with his uncle, and working at his trade for his board, clothes, &c., but without any *contract,* did not thereby gain a settlement (*m*); and if it appear that there was no contract, no hiring could be presumed; but where a contract appeared, it was presumed to have been regular, till the contrary was proved (*n*). The contract must have been for the interest of both parties; charitable employment was insufficient (*o*), and the contract must have been between the parties.

An assistant to a waiter at an inn, without agreement with the innkeeper for instance, did not gain a settlement by such service (*p*). So if a person went to live with a relation, "as such and not under any hiring," and afterwards go to live with him *as before,* this was not a hiring (*q*).

Express contracts.—An express agreement may be in writing, or by word of mouth; it requires in neither case any technical form of expression to render it valid. Like

(*h*) *R.* v. *Sparsholt,* 4 A. & E. 491.
(*i*) *R.* v. *St. Peter's, in Oxford,* Fol. 193.
(*k*) *R.* v. *Whitnash,* 7 B. & C. 596.
(*l*) 1 B. & Ad. 912.
(*m*) *R.* v. *St. Mary, Guildford,* 2 Bott, 275.
(*n*) *R.* v. *Weyhill,* Burr. S. C. 491.
(*o*) *R.* v. *Rickenhall Inferior,* 7 East, 373.
(*p*) *R.* v. *St. Matthew's, Ipswich,* 3 T. R. 449.
(*q*) *R.* v. *Stokesley,* 6 T. R. 757.

all other contracts, it is to be interpreted according to its general purport, so that if the intention to bargain for a year's service be clear, no matter in what terms it is expressed.

Implied contracts.—Any acts leading to an inference of service and hiring, sufficed to support the settlement, without express agreement.

Thus the mere acts of service, either in husbandry (*r*), or as a menial servant (*s*), or as an ostler (*t*), are sufficient to warrant the inference of a contract of hiring. So where an express contract has existed and expired, if the servant continues the succeeding year with his master, without coming to any other agreement, the law implies, from the fact of service, an agreement to serve for that year on the same terms (*u*); and that although the previous contract was under unstamped articles of agreement to work with his master for three years at so much per week, to increase in the successive years. For a contract of a yearly hiring is to be presumed from a subsequent sufficient service, as we shall presently show.

But it must not be forgotten that a hiring cannot be implied where the service is rendered to the parent or near relation of the party hired. It must then be express, or it gives no settlement (*x*).

Quasi apprenticeships do not give hiring and service settlements.—The contract must have been originally for service, not for apprenticeship; so that whenever the forms required to confer a settlement of apprenticeship have not been observed, it becomes necessary to inquire whether the person claiming a settlement has been hired as a servant, or engaged as an apprentice. But an invalid contract of apprenticeship by

(*r*) *Rex* v. *Lyth*, 5 T. R. 327.
(*s*) *Rex* v. *Long Whatton*, 5 T. R. 447; *Rex* v. *Hales*, 5 T. R. 668.
(*t*) *Rex* v. *Holy Trinity in Wareham*, Cald. 141.
(*u*) *Rex* v. *St. Giles, Reading*, Cald. 54; *Rex* v. *Hensingham, ante.*
(*x*) *Rex* v. *Sow*, 1 B. & Ald. 178.

a minor does not destroy a valid contract of hiring previously entered into (*y*). It is not always easy to ascertain this fact; for a servant may hire himself for the purpose of being instructed in some particular business, as well as an apprentice. A pauper agreed to let himself to his brother, who was a carpenter, for a year; by his agreement he was to receive no money by way of wages, but his brother was to teach him as much as he could of the trade during the time, and provide him with meat, drink, washing, and lodging, the pauper to do all his brother's lawful business in the farming way. This has been held a contract for service and an hiring for a year (*z*). But an agreement with a stonemason *to take the pauper apprentice for six years, and to teach him the trade,* and provide him with meat, drink, washing, lodging, and clothing, the pauper to live and work with him as an apprentice, and *indentures to be executed between them accordingly,* will not entitle the pauper to a settlement, the indenture never having been executed (*a*). The agreement in the first case was to work as a servant; but, in the second, the pauper was not an apprentice for want of a binding by deed, and therefore not settled in that capacity; but neither was he an hired servant, as the agreement declares that he was to be an apprentice; he could not therefore resort to this branch of the statute, when the terms of his contract prove that he meant to come in under another, to which different provisions apply. But in a recent case, a boy became an apprentice to a wheelwright for five years, but after less than two years the indenture was cancelled, and he agreed to serve another wheelwright for more than two years; this latter was held to be a contract of hiring (*b*), and in all such cases the settlement is gained.

What is a hiring for a year.—Whether the contract were

(*y*) *Rex* v. *Shinfield*, 14 East, 541.
(*z*) *Rex* v. *Hitcham*, Burr. S. C. 498.
(*a*) *Rex* v. *Whitechurch Canonicorum*, Burr. S. C. 540.
(*b*) *Rex* v. *Billinghay*, 5 A. & E. 676.

express or implied, it is equally essential that the time of service should have been one whole year in the *bonâ fide* contemplation of the parties at the time they made the contract, containing no special exception of which the tendency is to exempt the servant from the master's control during any part of that time. This is a frequently mooted point, for it is not always in cases of implied contracts easy to gather the intent of the parties from the facts, and we must not only lay down rules for the purpose, but illustrate them by cases both ancient and modern.

Indefinite hirings.—These imply hirings for a year (*d*); hiring for eleven months "and then on an end" gives a settlement, because it is indefinite (*e*); but not "from a few days after Old Michaelmas to the following Old Michaelmas;" for the expressions used must leave the term indefinite (*f*).

Customary hirings.—The only cases of customary hirings which give rise to any general distinction, are contracts for service from one moveable feast to the same in the ensuing year. Where such hirings have been interpreted by the practice of the country to mean a year, it is considered as sufficient to give a settlement, although the intervening period of time was less than 365 days, as where the hiring was from Whitsuntide to Whitsuntide (*g*). But hiring two days after Michaelmas till the following Michaelmas, of course gains no settlement (*h*); nor though such hirings be according to local custom (*i*); nor at statute fairs, however customary, is any settlement gained (*k*).

Cases which are hirings for a year.—Wherever the term completes a year it suffices: a hiring on October 11th till the Michaelmas day following, it being the 10th of October,

(*d*) *Rex* v. *Wincanton*, 2 Bott, 289; *Rex* v. *Seaton and Beer*, 2 Bott, 297.
(*e*) *Rex* v. *Macclesfield*, 3 T. R. 76; *Rex* v. *South Newton*, 10 B. & C. 838.
(*f*) *Rex* v. *Ardington*, 1 A. & E. 260.
(*g*) *Rex* v. *Newstead*, Burr. S. C. 669.
(*h*) *Coombe* v. *West Woodhay*, 1 Str. 147.
(*i*) *Rex* v. *Lowther*, Burr. S. C. 674.
(*k*) *Rex* v. *Hanwood*, Doug. 439.

is a hiring for a year; for "if a man," said Lord Mansfield, C. J., "is born on the 10th, he is of age on the 9th (*l*)." Thus, the day of entering upon the service, and that of leaving it, are usually considered as included in the contract; for the law makes no fraction of a day, and the servant is under his master's control during a part of each. Hiring the day after Michaelmas day till the Michaelmas day following gains a settlement (*m*); or from Martinmas day till the Martinmas day following is a hiring for a year, for the word *till* is for this purpose inclusive (*n*).

The hiring need not be by one entire contract.—If by any number of contracts the master, at the beginning of the year, obtain dominion over the servant for a whole year to come, it is sufficient (*o*).

Cases which are not hirings for a year.—A pauper hired himself, without specifying any time, and entered into service the day before New Year's day, and quitted two days after Christmas, receiving his full wages, that being the usual time that servants go into and leave their places. The sessions having expressly found this to be a hiring and service for a year, the court considered themselves bound by that finding, but deemed it erroneous (*p*).

The time must be wholly at the master's disposal. A pauper had been hired for three years at 20*l.* per annum as a looker. The duty of a looker is to superintend the flocks and fences of his employer. When he was hired his master told him that he should not have full employment for him, but that he would employ him as much as he could. He was not to do any work for his master, other than that belonging to the office of looker, without extra wages. This was no hiring for a year (*q*).

(*l*) *R.* v. *Syderstone Cum Bermer*, Cald. 19.
(*m*) *R.* v. *Navestodes*, Burr. S. C. 719.
(*n*) *R.* v. *Skiplam*, 1 T. R. 490.
(*o*) *R.* v. *Ravenstonedale*, 12 A. & E. 73.
(*p*) *R.* v. *Tyrley*, 4 B. & Ald. 624.
(*q*) *R.* v. *Lydd*, 4 D. & R. 295.

A hiring for two half years in succession will not make a yearly hiring (*r*).

Hiring for less than a year, although a year's wages be paid, is not a yearly hiring (*s*).

Hiring for fifty-two weeks is not a hiring for a year (*t*).

Hiring three days after Michaelmas till the Michaelmas following will not gain a settlement, although there be a service for three hundred and sixty-five days (being leap year) (*u*).

In leap year the hiring must be for three hundred and sixty-six days (*x*).

Special hirings—Weekly and monthly wages.—There are many instances in which no particular period is mentioned for the continuance of service; such cases have been distinguished by the appellation of general hirings. When the contract is thus silent, and nothing appears upon the face of the transaction, from whence its duration can be deduced, the law, as we have stated, infers that it is made for a year.

There were however other hirings, where some other facts were stated, but not enough to determine the exact intent of the parties. These were special or particular hirings. Whether such an agreement amounts to a hiring for a year is rather a matter of fact. This conclusion may be inferred, not only from the expressions used, but the manner in which wages are to be paid, the condition of the parties, the nature of the service, its actual duration, and perhaps the general practice of the district in which the hiring takes place as to the usual period of service. Where, either from the original inaccuracy of the parties at the time of making the agreement, or their want of recollection when called upon to give it in evidence, they seem to contradict each other, magis-

(*r*) *Dunsford* v. *Ridgwick*, 2 Salk. 555; S. P. *Horsham* v. *Shipley*, Fol. 134.

(*s*) *R.* v. *Little Coggleshall*, 6 M. & Sel. 264.

(*t*) *R.* v. *Astley*, M. 1815.

(*u*) *R.* v. *Ackley*, 3 T. R. 250.

(*x*) *R.* v. *Worminghall*, 6 M. & Sel. 350.

trates must endeavour to explore their way as well as they can; yet leaning, as the cases seem to do, towards the legal presumption in favour of a yearly contract, if the conclusion is otherwise doubtful (*y*).

Such cases divide themselves chiefly into those where the payment of wages has been reserved at less periods than a year, as weekly or monthly, and also those where there was reserved power to terminate the service before the year is expired.

The rule as to the effect of reserving wages at short intervals is, that if there be anything in the contract to show that the hiring was intended to be for a year, such a reservation of wages will not controul it: but if the payment of wages weekly or monthly be the only circumstance from which the duration of the contract is to be collected, it must be taken expressly to be only a hiring by the week or month, the wages becoming due at the end of these periods, the contract is held to be then terminated.

Weekly or monthly wages and notice.—Where nothing more is expressed, a hiring at so much a week is not a general hiring (*z*); and a hiring, which either master or servant may determine when he pleases, is not a general hiring for a year, and confers no settlement (*a*).

A servant in husbandry, hired at the weekly wages of 4*s*., board, washing and lodging, except in the harvest month, when his wages were to be increased to 10*s*. 6*d*. *per* week, does not gain a settlement, that being only a weekly hiring (*b*).

Where nothing is said as to term of service, but that the servant shall have weekly pay, it is only a weekly hiring (*c*).

So where the servant asked yearly wages, and the master offered *weekly* wages, which were accepted (*d*).

(*y*) See *R.* v. *Overnorton*, 15 East, *ante*.
(*z*) *R.* v. *Newton Toney*, 2 T. R. 453.
(*a*) *R.* v. *Great Bowden*, 7 B. & C. 249.
(*b*) *R.* v. *Dodderhill*, 3 M & Sel. 243.
(*c*) *R.* v. *Pucklechurch*, 5 East, 382.
(*d*) *R.* v. *Warminster*, 6 B. & C. 77; 9 D. & R. 70.

A pauper agreed with an innkeeper to serve him as ostler, at 2*s.* a week in the summer, and 1*s.* 6*d.* a week in the winter: held, that this was a weekly hiring only (*e*).

A contract for wages at 6*s.* a week, summer and winter, is a *weekly* and not a yearly hiring (*f*). So is a hiring for so much a week, as long as the master and servant could agree, and it gives no settlement (*g*). And a pauper ten years old went to service "for meat and clothes, *as long as he had a mind to stop*, to do what he could, and what he was bid," and he remained two years. This is not a yearly hiring (*h*).

A hiring to work at 3*s.* 6*d.* *per* week, and a week's notice, does not gain a settlement (*i*).

Notices or warnings to leave when introduced into the contract tend materially to explain the intent. For wherever the relation of master and servant is to continue for an indefinite time, and cannot be put an end to at the election of either party without notice, the hiring must be understood to be a hiring for a year (*k*); but where the time of notice corresponds with that at which the wages are rendered payable, the contract is no longer indefinite, but is a hiring for the precise time at which the wages are payable. Thus where the pauper agreed to work for one S as a blacksmith, at 3*s.* 6*d.* a week, with meat, drink, washing and lodging at S's house, and to part on a week's notice by either party; no notice being given, he served S for six years, without any alteration in the terms, except that after he had served about four years, the wages were raised from 3*s.* 6*d.* to 4*s.* per week; this is a hiring by the week (*l*). And where a

(*e*) *R.* v. *Rolvendon*, 1 M. & R. 689.
(*f*) *R.* v. *Dedham*, Burr. S. C. 653.
(*g*) *R.* v. *Mitcham*, 12 East, 351.
(*h*) *R.* v. *Christ's Parish, York*, 3 B. & C. 459.
(*i*) *R.* v. *Hanbury*, 2 East, 423.
(*k*) *Per* Lord Kenyon *R.* v. *Hampreston*, 5 T. R. 205.
(*l*) *R.* v. *Hanbury*, 2 East, 423.

pauper let herself at 6*s*. per month, with a month's wages or a month's warning; after a month's service, she removed with her mistress into another parish, who then told her, that if she would *stay on*, as there would be some additional work, *she should have eight shillings per month, and live on with a month's wages or a month's warning as before:* this was held to be a hiring for a month, upon the authority of the former case (*m*).

So also where the warning is coupled with other circumstances tending to show the nature of the bargain, as where a journeyman miller hired himself "*by the month*, at the wages of 8*s*. a month, to be at liberty to depart from his service at a month's wages or month's warning," with an agreement that if he continued in the service the harvest time he should be at liberty to let himself for the harvest month to any person he chose; it is an express hiring for a month (*n*).

In this and many similar cases the presumption of a yearly hiring is negatived by the circumstances which of necessity exclude the conclusion which might otherwise be drawn in favour of a yearly hiring, when the time of giving notice exceeds in duration that at which wages becomes payable, and in which case the settlement is held to be gained. For not only does a hiring at 3*s*. a week "the year round," each to be at liberty on a fortnight's notice, give a settlement (*o*), but hiring at so much per week, and liberty to part on a month's notice, is a general hiring, and gives a settlement (*p*). A month's notice, in fact, rebuts the presumption of a weekly hiring, for the duration is clearly unlimited (*q*).

Some cases afford still more direct inference of a yearly hiring, because the terms used, although introduced for an-

(*m*) *R.* v. *Tollishunt Knights*, 1 Const. App. 750; Pl. 1071.
(*n*) *R.* v. *Clare*, Burr. S. C. 819.
(*o*) *R.* v. *Birdbroke*, 4 T. R. 245.
(*p*) *R.* v. *Hampreston, ante*; *R.* v. *Great Yarmouth*, 5 M. & Sel. 114.
(*q*) *R.* v. *St. Andrew, Pershore*, 8 B. & C. 679.

other purpose, prove the parties to have meant that the service should continue for a year. Thus where the agreement expressed that the servant was to have 5*l.* a year wages (*r*); where the master told a boy coming into his service that if he stayed a year, and behaved well, he would give him a livery and wages the next year (*s*); these are clear yearly hirings, although nothing else passed about time. The reference to wages for a year in the first case, and to a conditional continuance of service for a year in the second, show that the parties intended to continue their relation of master and servant for so long.

So where the head keeper of a chase, having parted with one Hill, who had been many years his servant, at yearly wages and a keeper's livery, &c., asked the pauper, "Do you like the life of a keeper?" and being answered "*Yes*," said, "then go into Ned Hill's place, and you shall want no encouragement; I'll give you a suit of clothes directly." Here the reference to the terms upon which the former servant had lived with him manifest an intention to engage the new servant for the same period as Hill had been hired, which was for a year (*t*).

Hiring by the job.—In this case no hiring is gained unless a yearly hiring by the job is specified; as for instance hiring for a year to spin yarn at so much *per* stone, which gained a settlement (*u*). And a hiring "for a year" to make screws at so much *per* gross, "good earn good hire," will gain a settlement (*x*). But hiring to make a limited quantity of bricks gives no settlement (*y*), for it is a contract for that individual job.

Retrospective hiring.—Where the agreement is made so that past time is to be calculated as part of the year, this is

(*r*) *R.* v. *New Windsor*, Burr. S. C. 19.
(*s*) *Wandsworth* v. *Putney*, 2 Bott, 188.
(*t*) *R.* v. *Berwick St. John*, Burr. S. C. 502.
(*u*) *R.* v. *King's Norton*, 2 Stra. 1139.
(*x*) *R.* v. *Birmingham*, 2 Bott, 217.
(*y*) *R.* v. *Woodhurst*, 1 B. & Ald. 325.

a retrospective hiring, and no settlement can be gained by service under it. Thus where a servant went into a place upon liking, and *after* he had lived there eight weeks, his master hired him for a year, *to commence from the beginning of the said eight weeks*, it is a retrospective hiring (*z*).

Hirings made purposely to avoid a settlement.—This, if the contract be *bonâ fide* for a shorter term than a year, avoids a settlement. Thus hiring three days after Michaelmas till the Michaelmas following, gains no settlement, although such contract be made with a view to prevent a settlement (*a*).

But a hiring for eleven months, and to give one month over, gains a settlement (*b*).

Of conditional hirings.—Under a conditional hiring the servant may acquire a settlement; though under an exceptive one he does not.

It suffices if there be a *conditional* hiring for a year, *determinable on a certain condition* by either party, if accompanied with an *actual service* for a year. The distinction between a *conditional* and an *exceptive* hiring is laid down by Bayley, J. (*c*): "A *conditional* hiring is where the contract is for an entire year, but a provision is introduced that, on a given event, it shall be competent to either party to suspend or put an end to the service. If neither party avail himself of the condition, the contract becomes absolute. But in an *exceptive* hiring, the relation of master and servant cannot subsist through the year, unless they enter into some further arrangement." It is no objection to the contract, that there is an *implied* exception by the custom of the county in a particular trade, or by the general

(*z*) *R.* v. *Ilam*, Burr. S. C. 304; *R.* v. *Hoddesdon*, Cald. 23; *R.* v. *Marton*, 4 T. R. 257; *Coombe* v. *Westwoodhey*, 1 Stra. 143.

(*a*) *R.* v. *Meersley*, 1 T. R. 694.

(*b*) *R.* v. *Milwich*, 2 Burr. S. C. 433, where the only question was whether eleven and one make twelve; for it was substantially a hiring for a year.

(*c*) *R.* v. *Byker*, 2 B. & C. 114.

law of the land. But any limitation as to the number of working hours is an exceptive hiring.

A pauper was by indenture hired for a year as a driver in a colliery at the wages of 1*s.* 10*d.* for a good day's work, not exceeding fourteen hours, and 2*d.* a day more when that time was exceeded; and he was to forfeit 10*s.* 6*d.* for every act of disobedience, and 2*s.* 6*d.* per day for lying idle (to be deducted out of his wages.) The master, about Christmas, to repair any engine, might stop the working for seven days without paying any wages. This is a conditional and not an exceptive contract (*d*).

A hiring for five years, to be paid 10*s.* a week for the first two years, 11*s.* for the third, 12*s.* for the fourth, and 13*s.* for the fifth, hours of working to be from six in the morning till seven in the evening, to be paid for all over time, and a deduction to be made for all short time, is not an exceptive hiring, but for five years *absolutely*. Taunton, J. *diss.* (*e*).

An agreement to work constantly in a colliery from 4th February, 1815, to 4th February, 1816, or to forfeit 1*s.* for every day's absence from work, or for working a reasonable day's work to the satisfaction of his master, is not exceptive (*f*); and hiring conditionally as to liking is a good hiring for a year, where the service continues so long (*g*).

If particular times of the year are excepted, and the servant is left to his own disposal, so that the master cannot exercise any degree of authority over him, the service is short of a year by the sum total of these exceptions. It is therefore necessary, to render the contract of hiring sufficient for the purpose of gaining a settlement, that it contains no special exception to exempt the servant from the control and authority of his master at specified periods. These are exceptive hirings, of which the following cases are examples.

(*d*) *R.* v. *Byker*, 2 B. & C. 114.
(*e*) *R.* v. *Ossett-cum-Gawthorpe*, 4 B. & Ad. 216.
(*f*) *R.* v. *St. Helen's Auckland*, 4 B. & Ad. 718.
(*g*) *R.* v. *Lidney*, Burr. S. C. 1.

Hiring for a year, with liberty to be absent for eleven or twelve days sheep shearing, is exceptive (*h*).

If the stipulation be that the servant shall have "during the year two or three days to see her friends," it is exceptive (*i*).

A stipulation for a holiday, though *no time* specified, is exceptive (*k*).

Hiring a man for a year at weekly wages, with liberty to be absent in the sheep shearing season, but to find a man at his *own expense* to do his work during his absence, *but his own wages to go on during the whole time,* is exceptive (*l*).

Hiring for a year, to go away a month at harvest, and to make up the time after Michaelmas, is not hiring for a year (*m*); and an exception of certain hours or days is an exceptive hiring (*n*); but if the written contract is silent as to holidays, a custom to have holidays may be proved by parol (*o*).

In a contract from Michaelmas to Michaelmas, the servant was to have a month to himself in harvest, and if he and his master could not agree for the harvest month, he was to harvest where he pleased; he afterwards agreed with his master to work for the month. This was exceptive (*p*).

The owner of a colliery hired his workmen for a year, and agreed to find work for them, except during ten days in the Christmas holidays. They were to receive 2*s.* 6*d.* per day wages, and to forfeit a penalty for neglect; they were to do such a quantity of work as was equal to a full day's work,

(*h*) *R.* v. *Empingham*, Burr. S. C. 791.
(*i*) *R.* v. *Leamington Priors*, 8 D. & R. 329.
(*k*) *R.* v. *Threkingham*, 7 A. & E. 866.
(*l*) *R.* v. *Arlington*, 1 M. & S. 622.
(*m*) *R.* v. *Turvey*, 2 B. & Ald. 520.
(*n*) *R.* v. *Edgmond*, 3 B. & Ald. 107.
(*o*) *Reg.* v. *Stoke-upon-Trent*, 5 Q. B. 303.
(*p*) *R.* v. *Althorne*, 3 D. & R. 375.

there was a reservation of the jurisdiction of the justices in case of any disputes. This is an exceptive contract (*q*).

A hiring to work from 5th April, 1816, to 5th April, 1817, except when prevented by sickness or other unavoidable cause, and to perform a full day's work on every *working day, except a single shift on the pay Saturdays*, and in default thereof, for every such default to pay 2*s.* 6*d.*, is an exceptive hiring and confers no settlement (*r*).

A bargain for specific hours excludes all other hours.

An agreement to serve for three years, at 1*s.* per day when the master had work to do, and when he had no work the servant not to be paid, is not a hiring for a year (*s*).

Hiring with limitations of working hours.—These are all exceptive hirings: A hiring for seven years, to work only thirteen hours a day (and Sundays excepted) is not a hiring for a year (*t*). A hiring to serve five years as a shearman, and to work shearman's hours only, is not for the year (*u*). A hiring at 4*s.* per week, to work from 6 A.M. to 7 P.M., with liberty to do as much overwork as he pleased, is not for a year (*x*).

These cases have led to two or three important decisions on hirings in factories. It depends on how the same contract is worded whether it gives a settlement or not. In *Reg.* v. *Holbeck* (*y*) it has been held that an agreement to work for four years as a hired servant in turning ironwork, or any other employment as an artizan, and to devote his whole time and attention to such business during the usual working hours, which were from 6 A.M. till 6 P.M., is exceptive, and cannot be qualified by evidence of the services actually given.

(*q*) *R.* v. *Gateshead*, 2 B. & C. 117, n.
(*r*) *R.* v. *Cowper*, 6 N. & M. 559.
(*s*) *R.* v. *Polesworth*, 2 B. & C. 715.
(*t*) *R.* v. *Kingswinford*, 4 T. R. 219; S. P., *R.* v. *North Nibley*, 5 T. R. 21.
(*u*) *R.* v. *Buckland Denham*, Burr. S. C. 694.
(*x*) *R.* v. *Birmingham*, 9 B. & C. 925.
(*y*) *Reg.* v. *Holbeck*, 4 Q. B. 590.

In *Reg.* v. *Preston* (*z*) the pauper had served for a year under a general hiring in a factory where there were general rules, one of which was that the hours of work were from 6 A.M. till half-past 7 P.M., except on Saturdays, when to cease work at half-past 4. There were no express terms of hiring, but the pauper served under these rules for a year. It was again held by the Court of Queen's Bench that this was an exceptive hiring, even admitting the full work to have been done. It was argued that the rules were a mere necessary compliance with the statute regulating labour in factories, and that as no time was allowed to the servant which the master had any power to claim, in effect the pauper's whole services were given to the master. To this cogent argument the court replied, "There is no doubt in this case. *It may be that the regulating acts which render such contracts as this necessary prevent any settlement being acquired under them.* But if the effect of the statutory regulations is such that persons are induced to hire servants to work at particular hours only, we cannot say that the hirings are not exceptive." And Mr. Justice Williams said, "a written document is referred to here which makes certain rules part of the contract of every one who serves in the factory." This very pertinent remark points out the only distinction, if any there be, between this case and that of *Rex* v. *St. John, Devizes* (*a*).

In that case, a hiring for four years *to work according to the rules of the factory, which were at the master's discretion,* was held *not exceptive,* though the pauper was told she was to work twelve hours a day. Littledale, J., remarked, "it has been held in several cases, that a hiring in terms for a year, the servant to work for so many hours a day, is an exceptive hiring. These cases have gone to a great extent. It seems to me, that unless by the terms of such a contract there is an *express exception,* showing that the relation of master and servant *is not to subsist* during

(*z*) 4 Q. B. 597. (*a*) 9 B. & C. 896.

the whole year, *or during the whole of every day in the year*, it is a yearly hiring. By this contract the servant is to conform to the rules of the factory, *that is a stipulation which the law would imply in every contract of hiring*, and we cannot from that infer that there was an exception of any period of time during which the relation of master and servant was not to exist." This case was cited in the argument in *Reg.* v. *Preston*, in which latter case the contract must be deemed to fall within the exception above named by Littledale, J., and to contain an express exemption of the service during part of the whole day; but we must confess this to be a very shadowy and questionable distinction. It would be difficult to exact more of a servant's time or labour than the factories obtain, and in many instances far less is obtained where a settlement is gained. It much more resembles a case of exaction than exemption; there must be a limitation of labour in every case, and whether the specific amount of it be regulated by the master or by parliament creates a distinction of which it is difficult to perceive the principle. However, after *Reg.* v. *Holbeck* and *Preston*, it comes to this, that no factory service will confer a settlement, for all factories have fixed times of labour which fall short of twenty-four hours per diem. This is virtually new law, and opposed to many of the older cases; for instance, a clerk in a merchant's house, hired by the year, but serving only during the usual hours of mercantile business, it was held, thereby gained a settlement, although these hours never occupied the whole day (*b*).

3. The Year's Service.—*Of connecting services under distinct hirings.*—The 8 & 9 W. & M. c. 30, s. 4, enacts, "that no person so hired shall be adjudged or deemed to have a good settlement in any such parish or township *unless such person shall continue and abide in the same service during the space of one whole year*," yet the service need not

(*b*) *R.* v. *All Saints, Worcester*, 1 B. & Ald. 322.

be performed under the same yearly hiring. But both must be co-extensive in duration, but need not be cotemporaneous; for the statutes do not expressly declare that the service shall be *for that year for which the servant is hired*, or even for a whole year afterwards. The words are satisfied, if there be an hiring and a service for a year; but a year's service may be under different contracts of hiring, performed with different masters, and in different places. It is therefore necessary to examine how far it is considered as *the same*, notwithstanding the occurrence of any or all these circumstances.

The mere circumstances of the number and duration of the hirings are immaterial to the connection of services, provided one is for a year; the rest may be for successive years, or months, or even weeks. Neither is it necessary that the services to be performed under each should be *of the same kind*. It may be as an outdoor servant under one, and a family servant under the other. He may be employed, first, to milk and plough; and secondly, as a carter (*c*).

Services will connect in all cases of distinct contracts, where they constitute one entire unbroken year's service. But any interruption, though but for a single day, during which the servant is *legally exempt from his master's control*, will defeat it. As where a person five days after Michaelmas was hired from thence to the Michaelmas following, on which day *he departed* from his master's service, and was paid his wages to that time. *On the day after* his departure he returned, and covenanted with his said master to serve him for another year, and lived with him for eleven months. The services here will not connect so as to give a settlement; for there is no hiring for a year, *nor service for a year pursuant to the hiring* (*d*).

(*c*) *R.* v. *Croscombe*, Burr. S. C. 256; *R.* v. *Sutton*, 1 East, 656; *R.* v. *Chilton*, 5 T. R. 672.

(*d*) *R.* v. *Caverswall*, Burr. S. C. 461.

But where the first service terminates, and a new contract is made upon the same day, and the servant is under his master's control by the original agreement for the whole of that time, a departure from service during that day has been held not to amount to such a discontinuance as will disconnect the services; nor where the pauper made a new contract, and obtained an increase of wages. There is no abandonment nor discontinuance of the service; for the law will not make a fraction of a day (*e*).

In all these cases the authority of the master must continue.

But dissimilar services may be connected (*f*), and services for a year, partly under a weekly and partly under a yearly hiring, give a settlement (*g*).

Service under a hiring, void at first, the pauper being then an apprentice, may be connected with service under a second hiring, provided there be a whole year's service after the indenture had expired (*h*).

Service on a day intervening between the end of the first service and the commencement of the last may be included (*i*); but the whole year's service must be under contracts creating the relation of master and servant (*k*).

A hiring for a year, and a service continued beyond the year, for six months, without a new agreement, gains a settlement in the place where the service was performed for the last forty days (*l*).

A settlement can be gained by hiring und service only in that parish where the party has the character of a servant

(*e*) *R.* v. *Fifehead Magdalen*, Burr. S. C. 116; *R.* v. *Ellisfield*, Cald. 4.
(*f*) *R.* v. *Sutton*, 1 East, 656.
(*g*) *R.* v. *Bagworth*, Cald. 179; Bott, 378.
(*h*) *R.* v. *Dawlish*, 1 B. & Ald. 280.
(*i*) *R.* v. *Harbury*, 1 B. & Ad. 36.
(*k*) *R.* v. *St. Mary, Kedwelly*, 2 B. & C. 750.
(*l*) *R.* v. *Croscombe*, Burr. S. C. 256.

hired for the year (*m*); but if a part of the year's service is abroad, still if the pauper serves forty days in the same service in a parish in this country, he will gain a settlement (*n*). And a service under a hiring for fifty-one weeks may be coupled with a service under a previous hiring to the same party for a year so as to confer a settlement (*o*).

Dispensations and dissolutions.—We have seen that the year's service must be fulfilled; but it may be constructively fulfilled wherever the master dispenses with a portion of the service. Nor is the dispensation of service confined to the time when the servant actually resides with his master; he may be occasionally absent altogether, neither employed in his business, nor ready to be so if called upon. The power of the master is unquestioned to dispense with personal attendance, and forgive temporary absence. "The necessity," says Nolan, "of leaving somewhat of discretionary indulgence to the head of the family, and the impossibility of placing any bounds to it short of fraud, require that this should be considered as constructive service, sufficient to satisfy the statute."

The servant may be likewise absent for an excusable cause, to which the master's consent is not required; such are illness, the master's inability or refusal to let him serve the remainder of the year, and even unavoidable imprisonment. In such cases, the law does not require the master's consent, but looks upon the service as constructively performed for the purpose of a settlement.

But dispensations from service must either arise out of the master's consent, or are created by operation of law. Those with the master's consent are express, where his leave is asked and obtained; and implied or constructive, when, though not given in terms, they are to be inferred from the circumstances of the case. But this power of assent exists

(*m*) *R.* v. *Apethorpe*, 2 B. & C. 892; 4 D. & R. 487.
(*n*) *R.* v. *Buckingham*, 5 B. & Ad. 953.
(*o*) *R.* v. *Fillongley*, 1 B. & Ald. 319.

only during the contract's continuance, if that is dissolved, and the servant absents himself, the power to dispense is gone; for the contract being at an end, the master has no right to command attendance, and consequently no authority to dispense with it; and a chasm is created, which no return nor subsequent act of the parties can cure.

It is essential to distinguish dispensations from dissolutions, which of course terminate the contract and annul the settlement. Again, dispensations sometimes assume the character of a postponement rather than a part of the contract. In all these cases regard must be had to the intent of the parties, to be gathered no less from their language than from the attendant circumstances. Some of the older cases decided upon the subject do nothing but perplex it, and show that the judges of that day had no definite notion on the point. Confining ourselves, however, to the leading and most clear-sighted judgments, we hope to be able to evolve sound and simple rules, not the less trustworthy because no rule on this subject can be made quite reconcilable with all the cases which encumber the text-books on this point; one which would give rise to no difficulty if the leading cases alone had been taken as a practical standard. We shall endeavour to do this.

In *R.* v. *Thistleton* (*p*), Lord Kenyon thus laid down the law: "The distinction between the different cases seems to be this; if the pauper be *absent from the service with the concurrence, remaining however subject to the control of his master, he may acquire a settlement;* because this only amounts to a dispensation with the service: *but if the master ever parts with his control over the servant,* then no settlement is gained; and *the receiving the whole year's wages does not make any difference. Here he had given up all control over his servant;* he was instrumental in enabling

(*p*) 6 T. R. 185. In this case the pauper left short of his time, the master letting him go and paying the full year's wages.

the servant to obtain another master; and from what passed between the parties, it was evidently *the intention of both that the pauper should become* sui juris, and should be enabled to contract with another master. *The relation of master and servant no longer continued*, for he could not have insisted on the pauper's returning into his service after the wages were paid."

Lord Ellenborough afterwards further illustrated the distinction by this test: "The rule which the court has laid down as the test whether the circumstances attending the departure of a servant before the end of the year amount to a dissolution of the contract, or only to a dispensation of the service, is this, whether the master has the power afterwards of compelling the continuance of the service; if he have not, there is an end of the contract; if he have, but choose to dispense with it, it is a dispensation (*q*)."

These judgments contain the gist of the law. The application of it to each case must of course mainly depend on the attending circumstances; the actual condition of the parties, the reasons for leaving each other, the manner, and, as it were, temper of parting, are of importance in leading to such a conclusion where what passed between the master and his servant is equivocal and inconclusive. It is from these minute particulars that the conclusion must be drawn, if there are none of a more marked characteristic, such as the servant's going into another service; or the master's engaging a new servant in his place; or their parting upon notice given under the terms of hiring; wages, whether paid in full or not; consent, whether given or not, and if so, how given; are points which may assist in arriving at a conclusion, but they do not determine the point.

Dispensations arose chiefly owing to mutual consent to part, illness, absence, and imprisonment. We shall briefly

(*q*) *R.* v. *Rushall*, 7 East, 471; and *R.* v. *King's Pyon*, 4 East, 351.

apply the above principle and test to each of these cases, illustrating them by a few leading authorities.

Dispensation by consent.—There may be consent to a dissolution just as well as consent to a dispensation, and consent therefore is no test of settlement. Where, however, consent appears to have been asked and given, and nothing more, it is presumable that the absence is in consequence of a dispensation, and not of a dissolution. As where a yearly servant, three days before the expiration of his year, went to his father's, with his master's consent, and whilst he continued there, his year's service expired; after which he went to receive his wages, when his master deducted for a former absence, but not for the latter. This was deemed a good constructive service (*r*).

But in the great majority of instances the consent has been given to the absence of the servant under circumstances which amount to a termination of the relation of master and servant (*s*). These circumstances in each case determine the question, and not the consent, or the payment of the whole wages, which may equally exist in either case.

Dispensation by discharge.—This rarely happens without dissolution, when it does, it is generally an act of the master alone. As where a servant, hired at yearly wages, continued in the service till within four or five days of the expiration of a year, when her master becoming a bankrupt, and the messenger taking possession of the house, her mistress discharged her, paying her the whole year's wages. Bankruptcy does not dissolve the contract of hiring, *without the servant's consent*, and therefore the pauper gained a settlement (*t*).

It is a similar case, where the master discharges the servant without his consent, or having lawful cause, and thus

(*r*) *R.* v. *Undermilbeck*, 5 T. R. 387.

(*s*) *R.* v. *Caverswall*, Burr. S. C. 461; *R.* v. *Sheen and Godalming*, 2 Bott, 310; *R.* v. *St. Peter, Mancroft*, 8 T. R. 477, &c.

(*t*) *R.* v. *St. Andrew's, Holborn*, 2 T. R. 627.

prevents the servant from performing his service, which he continues ready to render.

In this case, on the principle that a contract cannot be broken by one party only, it was held not to be a dissolution (*u*). But it does not make any difference that the master insists upon dissolving the contract without just cause, and makes use of undue means to influence the servant's consent, provided it clearly appears that his consent is actually obtained.

These circumstances may sometimes have weight to induce a presumption that the action was rather submitted to, than any actual consent given to dissolve the contract. But where it appears to have been *dissolved* before the year's service was completed, a settlement cannot be acquired, although the law would have implied such service if the master alone had refused to permit its being performed (*x*). The dismissal of a servant for immorality by the master amounts to a dissolution of the contract, although it takes place without a magistrate's intervention, and against the servant's consent. Where a master found his maid-servant to be with child, and turned her away three weeks before the expiration of the year, and paid her the whole year's wages, and half-a-crown over, whereupon she went home to her father's, though the pauper was willing to stay her year out, and was able to do the work, Lord Mansfield, C. J., said, "The question is, is this contract dissolved within the year? The answer depends upon this, has the master done right or wrong in discharging the servant for this cause? I think he did not do wrong (*y*)."

If the master applies to a justice to have his servant discharged, and his cause of complaint does not warrant it, the servant's dismissal against his consent will not vitiate the

(*u*) *R.* v. *Hardhorn-cum-Newton*, 12 East, 51.
(*x*) 1 Nolan, 379.
(*y*) *R.* v. *Brampton*, Cald. 11.

service, where the magistrate makes no order, although he should be of opinion that it is a valid cause of discharge (*z*).

On the other hand, if the master and servant voluntarily go before a magistrate, and the latter is discharged, it amounts to a solemn dissolution of the contract (*a*).

Dispensation by substitution of contract. — Where one contract is substituted for another, the question is whether the new contract annuls the old one. If it does, it is a dissolution, if not a dispensation ; a mere variance of wages is no such dissolution, nor is any change that does not alter the substance and object of the service (*b*). But it is otherwise where the sort of service or the term of service is changed (*c*).

A pauper was hired by his uncle to serve for a year in his trade of a turner, to be found in board, lodging, pocket-money, and clothes. After serving six months, his master finding him idle, he and the pauper came to a new agreement, by which he was to work in the said trade, and be paid by the piece, and find himself in board, lodging, pocket-money, and clothes. Upon these terms he continued with his master till the end of the year, sometimes working by the piece, lodging and boarding out of his master's house, and at other times serving in the house as a servant, when he was lodged and boarded with his master. The court were of opinion, that the original contract was not interrupted and wholly done away, but only the terms of it varied. The servant was to work by the piece instead of the gross, and the conduct of the parties subsequent to the new agreement shows that, with respect to the mode of performing the service, in the understanding of the parties, the original contract still continued to subsist (*d*). Also, if a minor hires

(*z*) *R.* v. *Hanbury*, Burr. S. C. 322.
(*a*) *R.* v. *North Basham*, Cald. 556.
(*b*) *R.* v. *Overnorton*, 15 East, 347.
(*c*) *R.* v. *Great Chilton*, 5 T. R. 672.
(*d*) *R.* v. *Alton*, Cald. 424.

himself for a year, and three months afterward enters into a contract of apprenticeship with the same master by an invalid instrument, it does not do away the former contract of hiring, and he acquires a settlement by continuing in service during the rest of the year (*e*).

Dispensation by absence.—In these cases consent is a material ingredient. If the servant be absent with the leave of his master, and there be no evidence that they intended the service to terminate, it is a dispensation (*f*); nor does it matter though the servant be employed in other work, and that his wages be diminished so long as the master consent (*g*). But it is a dissolution if the master gave up the service *in toto* (*h*); and where the absence, though permissive, and though the full wages were paid, was of such a nature as to leave the parties free to make fresh contracts before the year's service had expired, it was *not* a dispensation but a dissolution of the contract (*i*).

In some cases of dispensations at the end of the service it is evident that the relation of master and servant is not determined by the absence. Where the servant asks leave to go, and puts another in his place to perform those duties which he must otherwise have done, and the master assents upon that condition, they acknowledge the continuance of their contract by the terms under which they dispense with its execution (*k*). But where no leave is given, and the master and servant act inconsistently with the continuance

(*e*) *R.* v. *Shinfield*, 14 East, 341. Where the master dies, and the servant continues with the widow, son, executor, or even lessee of the farm, the service continues, and the settlement is gained.

(*f*) *R.* v. *Bray*, Burr. S. C. 682.

(*g*) *R.* v. *Beccles*, Burr. S. C. 230; *R.* v. *Under Milback*, 5 T. R. 387; *R.* v. *Goodnestone*, Burr. S. C. 251.

(*h*) *R.* v. *Bray*, 3 M. & S. 20.

(*i*) *R.* v. *Thistleton, ante*; *R.* v. *Maidstone*, 12 East, 550, which modify and overrule *R.* v. *Richmond*, Burr. S. C. 740; *R.* v. *St. Bartholomew*, Cald. 48; *R.* v. *St. Philip, Birmingham*, 2 T. R. 624.

(*k*) *R.* v. *Westerleigh*, Burr. S. C. 753.

of any control on the one part or servitude on the other, there is an end of the contract and no settlement is gained. It thus depends wholly on what happens afterwards whether this is a dispensation or not. If the servant comes back under the old contract it is a dispensation (*l*). Thus where the servant went during his year, without leave, to see his mother, and stayed away four days, and then returned into the service, it was adjudged that the master *dispensed* with the attendance by taking him again (*m*).

But where absence continues during the last days of the year, the master's permission cannot be implied from a subsequent return to the service, and it becomes more difficult to determine how far the absence is a dispensation or a dissolution of the relation which existed between them.

In these cases the discretion of the justices must be exerted to ascertain how far the relation of master and servant was put an end to or not. Where there has been disagreement, and the two finally part without any further intention of resuming the service, it is a dissolution (*n*), otherwise it is a dispensation. The rule laid down by Lord Kenyon, in *R. Thistleton* (*o*), will in all these cases afford a safe clue to the right decision.

Where the absence is to avoid a settlement, it is to be presumed to be merely a dispensation, where the circumstances do not clearly show that the contract has been in fact put an end to.

Where the hiring is made short of a year the case is different, as we have already seen, but absences merely to avoid the settlement are fraudulent, and the settlement is gained if the relation of master and servant continue (*p*).

(*l*) *R.* v. *Shefford*, 4 T. R. 804.

(*m*) *R.* v. *Islip*, 1 Strange, 423.

(*n*) *R.* v. *Upwell*, 4 T. R. 438, and *R.* v. *Corsham*, 2 East, 303.

(*o*) See *ante*.

(*p*) *R.* v. *Sulgrave*, 2 T. R. 376; *R.* v. *Frome Selwood*, Burr. S. C. 565; *R.* v. *Market Bosworth*, 2 B. & C. 757; *R.* v. *Fillongley*, 1 B. & Ad. 319.

Dispensation by illness.—Where the service is interrupted by illness, the settlement is gained.

The service must have actually commenced under the contract, in order to let in the period of sickness to count as part of the yearly service (*q*); but where absence occurs, it is immaterial whether it is with (*r*) or without the master's consent (*s*). Neither will it make any difference that the master does all in his power to put an end to the contract (*t*); or that the servant is paid the whole year's wages (*q*); or has a deduction made (*u*); provided it does not appear to be the intention of *both* parties to dissolve it.

Where the illness, as it often is, is the cause of a termination of the service, there is of course a dissolution, and no dispensation. Thus where the pauper lived under a yearly hiring (*v*) till about the middle of April, 1796, when, being too ill of a fever to work, his master paid him his whole year's wages, *when he left his master's service*, and went down to Lincoln hospital, and never returned into the service again, it was held to be a dissolution of the contract, and that no settlement was gained; for it being stated that he *voluntarily left his master's service before the end of the year*, it must be taken to be a relinquishment of the service altogether, and not merely that he left his master's house, and this could not be, unless the contract was meant to be dissolved. After that, neither party could maintain any action against the other for the affirmance of the contract or continuance of the service. Neither did the payment of the whole year's wages in advance make any difference; to which, *R.* v. *Godalmin* (*x*), and *R.* v. *Castlechurch* (*y*), and

(*q*) *R.* v. *Winterset*, 2 Bott, 379.
(*r*) *R.* v. *Christchurch*, Burr. S. C. 494.
(*s*) *R.* v. *Islip*, 1 Str. 423.
(*t*) *R.* v. *Sharrington*, 2 Bott, 33.
(*u*) *R.* v. *Maddington*, Burr. S. C. 675.
(*v*) *R.* v. *Sudbrooke*, 4 East, 356.
(*x*) 2 Const. 497.
(*y*) Burr. S. C. 68.

R. v. *Thistleton* (*z*), are in point; and the court distinguished this case from *R.* v. *Christchurch* (*z*), for it did not appear there that the servant left the service when she quitted her master's house, and if another person could not take her in, she was again to return thither.

Dispensation by imprisonment.—Where the servant is imprisoned, dispensation depends on whether the master takes the servant back. If he does not, it is a dissolution. A female servant was fined for a malicious trespass, but was advised by her mistress not to pay it, but to go to prison, and was afterwards received back into her service. Lord Denman, C.J., said, "The consent of the master to dispense with such service may be either express or implied; and it is implied, where the servant, having absented himself for a time, has returned to the service, and been received by the master, and had his full wages paid. I think in this case the absence of the pauper, during the imprisonment, must be taken to have been with the consent of the mistress. It may be collected from the statement that the pauper could have paid the fine, and that the mistress interfered to prevent her. After the term of imprisonment expired, the mistress received her back, and paid her her full wages. It has been ingeniously argued that the absence here was not permissive, because the law compelled the pauper to to be imprisoned unless she paid a fine. But she had her election either to pay the fine or go to prison, and she did the latter by the advice of her mistress, who supplied her with provisions during her confinement. It seems to me, therefore, that the service was dispensed with by the mistress. *R* v. *Westmeor* (*a*), and *R.* v. *North Cray* (*b*), are distinguishable, for there the masters did not consent to the absence, and showed their dissent in the most effectual way by deducting

(*z*) *Ante*; *R.* v. *Whittlebury*, 6 T. R. 464, bears out the same rule.
(*a*) Cald. 129.
(*b*) 2 Bott, 334.

from the wages (*c*)." And in neither of those last-mentioned cases was there any dispensation, for the loss of service was the servant's wrongful act, *not waived by the act of the master*, and this dissolves the contract.

Where the imprisonment takes place under the 20 Geo. 2, c. 19, on the application of the master, and the magistrate who commits *does not* exercise the power given him by the 2nd section of putting an end to the service, the service continues, and, although the year expires before the imprisonment, yet, as the master would be obliged to receive the servant back if it expired before the year, the imprisonment is held to be a dispensation, and the settlement is gained. In *R.* v. *Hallow* (*d*), where this case occurred, Holroyd, J. observed, "There is a great difference where the servant's absence from actual service arises, as in this case, *at the instance of the master*, and where it is occasioned by any criminal act done by the servant and independently of the master. The ground of the commitment of the servant was absence from his duty for a day; possibly the master might have had a right to discharge him for that neglect; but he neither did that of his own authority, nor applied to the justice to do it, so that the relation of master and servant continued. I think that the service also continued just the same as if the imprisonment had happened in the middle of the year. The servant being imprisoned and punished as a servant, might have insisted upon going back to his master, or the master might have compelled him to return, as soon as he was discharged out of custody."

The sole question therefore in cases of imprisonment is, has the master availed himself of the servant's conduct so as to dissolve the contract or not?

4. The Place of Settlement by Service.—*Residence.*—It has been frequently decided that the requirement of forty days' residence to perfect a settlement, according to

(*c*) *R.* v. *Coningsby*, 4 B. & Ad. 156. (*d*) 2 B. & C. 739.

the old statutes (*e*), applies to this settlement of hiring and service. And this is a material point in determining the settlement, for it might be that the pauper shifted the place of his residence during the year, in which case the place in which he *last* completed a residence of forty full days, whether consecutive or not, was the place of his settlement; in fact, where he slept the last night of the forty, and had his place of rest (*f*).

It has been decided that if there is a hiring for a year, and service for a year, it is not necessary the whole of the service shall be under the yearly hiring; but service not under a yearly hiring may be connected with service under a yearly hiring, and both services, if uninterrupted, may be taken into the account; but it has never been decided that residences beyond the compass of a year can be connected; and as the legislature, by requiring a hiring for a year, and a continuance and abiding in the same service during the space of one whole year, seem to have contemplated something which was not to be complete in less than a year, but was to be complete within that period, "we think," said Lord Ellenborough, in *R.* v. *Denham* (*g*), "we abide most closely by the words, and give effect to the most probable intention of the legislature, by holding that the whole residence must be within the compass of a single year. Suppose the same service to continue uninterruptedly for twenty years, and the servant to sleep twice in every of such twenty years at the same inn in travelling, and to be at that inn the last night of his service, would it be expedient and reasonable that an inquiry extending over so long a period of time at detached intervals should be gone into for the purpose of ascertaining the settlement of a pauper? What notice could the officers of that parish have had that he was come to settle there? And yet there his settlement would be if we

(*e*) 13 & 14 Car. 2, c. 12, s. 1; and Jac. 2, c. 17, s. 3.

(*f*) *R.* v. *Mildenhall*, 3 B. & Ald. 374.

(*g*) 1 M. & S. 221.

were to hold that residence for forty days beyond the compass of a single year would do."

The forty days' residence need not have been continuous (*h*), nor need the master live at all where the service was (*i*); it might be a watering place or wherever the servant happened to be (*k*), or in an extra-parochial place (*l*); and the residence need have no relation to the service (*m*); and a residence during a dispensation is a residence under the service, even if from illness the servant be residing at his father's house (*n*).

5. The Effect of 4 & 5 Will. 4, c. 76.—*Extinction of the settlement.*—This statute (passed 14th August, 1834) enacts by sect. 64, "that from and after the passing of this act, *no settlement shall be acquired by hiring and service, or by residence under the same, or by serving an office;*" and by sect. 65, "that no person under any contract of hiring and service *not completed* at the time of the passing of this act, shall acquire, or be deemed or adjudged to have acquired, any settlement by reason of such hiring and service, or of any residence under the same." In the case of *R.* v. *Rettenden* (*o*), a pauper was hired in June, 1833, at a monthly hiring, and served under it till Michaelmas, and then was hired on a yearly hiring till Michaelmas, 1834, under which she served. Her contract of hiring not being completed at the time of the passing of the 4 & 5 Will. 4, c. 76, she gains no settlement; and a similar decision was given in *R.* v. *St. John, Tralborey* (*p*).

(*h*) *Greenwich* v. *Longdon*, Burr. S. C. 243.

(*i*) *St. Peter's, Oxford*, v. *High Wycombe*, 1 Stra. 528; *R.* v. *East Ilsley*, Burr. S. C. 722.

(*k*) *R.* v. *Batheaston*, Burr. S. C. 774.

(*l*) *R.* v. *St. Andrew, Holborn*, 2 Bott, 408.

(*m*) *R.* v. *Dremerchion*, 3 B. & Ad. 420.

(*n*) *Reg.* v. *East Winch*, 12 A. & E. 697.

(*o*) 6 A. & E. 296.

(*p*) 6 A. & E. 300.

In the case of *Reg.* v. *St. Pancras* (*q*), a pauper was hired as a yearly servant on the 30th November, 1828, and served her mistress continually until 1837. On the 30th November, 1833, and for forty days previous, she resided with her mistress in St. Pancras; for forty days previous to the day on which the 4 & 5 Will. 4, c. 76, passed, she resided with her mistress in St. Marylebone: it was held that the settlement there was not gained.

Particular disabilities by statute.—The disabilities which prevent the settlement of servants in certain situations created by statutes, are as follows:—

1. By 9 & 10 Will. 3, c. 11, servants coming into a parish under a certificate gain no settlement there, unless they take the lease of a tenement of the value of 10*l.* a year, or execute some annual office there.

2. By 12 Ann. st. 1, c. 18, s. 2, persons hired and living with persons who reside in the parish under a certificate.

3. By 33 Geo. 3, c. 54, s. 24, servants to a member of a benefit society.

4. By 13 Geo. 2, c. 29, s. 7, no child, nurse or servant received, maintained, educated or employed within the Foundling Hospital shall gain any settlement in the parish or place where such hospital is situate, by virtue of such their reception, continuance, hiring or residence in such hospital.

5. By 9 Geo. 3, c. 31, s. 8, no person who shall be admitted into the Magdalen Hospital as a penitent prostitute, or who shall be employed therein as an hired servant, shall by reason of such admittance or service gain a settlement in the parish in which the said hospital is or shall be situate.

Section XIV.—Evidence of Hiring and Service Settlement.

To establish a settlement by hiring and service it is necessary to prove, 1. An hiring for a year. 2. Service for a year. 3. Residence of forty days.

(*q*) 3 Q. B. 347.

Sort of proofs.—Where the agreement is in writing, it is generally necessary to produce the written instrument; but a copy or parol evidence of the contents may be given in evidence, where the writing cannot be found; where it is in the custody of the adverse party, who refuses to produce it after being served with a proper notice; and where customs are to be shown, parol evidence may explain the contract; for where the pauper was hired to work in a particular trade under a written agreement, parol evidence is admissible to explain what are customary holidays and absences, on the ground that the notoriety of general usage makes it virtually part of the contract. (Per Coleridge, J.(*r*)).

Capacity of the parties to contract.—This must be stated in evidence, according to the law above laid down, and will not be presumed (*s*). The pauper himself is a competent witness, or his parent, if cognizant of the facts, though he be in the country (*t*), and may prove that he was, when hired, single and without any unemancipated children. Care must be taken to state this fully; for where the pauper merely stated that he was "single and unmarried," the Court of Queen's Bench held that the examination "left it open to doubt, at least, whether the pauper was not a widower with children (*u*)."

And where the pauper merely stated that "whilst unmarried and not having child or children, she lived at," &c. this was held insufficient, because she did not state that she was unmarried *at the time of the hiring*, which is indispensable (*x*).

The age of the pauper ought also to be put in evidence at

(*r*) *Stoke upon Trent*, 5 Q. B. 303.
(*s*) 1 Wm. Black. 206.
(*t*) *R.* v. *Yspitty*, 4 M. & S. 52.
(*u*) *R.* v. *Wymondham*, 2 Q. B. 541.
(*x*) *Reg.* v. *St. Paul's, Covent Garden*, 5 Q. B. 669, n.

the time of the hiring; and if a minor, it should be stated that he was hired with the consent of his parents.

The contract.—The hiring must be distinctly proved, and this may be done either by the pauper or his master. The date is essential. It is also necessary to state that the hiring was for a year, for this must not be left to inference (*y*), though it has been often held that where a servant has lived a length of time with the master, it is presumptive evidence of the hiring for a year, and there is no doubt that the evidence of an implied contract for a yearly hiring was admissible (*z*); but whenever this is so, it must be expressly *stated* that the hiring was for a year, and with whom it took place.

An indenture of hiring is good evidence of a settlement, even if executed by the servant alone if the master received the service (*a*). Any person cognizant of the fact may prove the hiring.

Service.—The examination must explicitly state the service to have been given for the whole year. Here it will be prudent to examine as to any absences, and the circumstances which showed the dispensation by the master. If the servant was received back again, that will, in the absence of stronger proof, be sufficient evidence that there was a dispensation.

In the recent case of *Reg.* v. *Pilkington* (*b*), the pauper gave the following evidence: "When I was about fifteen years of age I went to work at Messrs. Crompton and Ditchfield's factory, called Ringley Mill, in Outwood, in the township of Pilkington. It was about the latter end of the year 1828. There was a custom in the mill, requiring the workpeople to give a fortnight's notice before leaving their employment. I remained in their employment better than two years, during the whole of which time I resided in Outwood, in the said township of Pilkington, and slept there. I worked under the custom as to giving notice. The works consisted of two mills adjoining each other; and when I

(*y*) *R.* v. *North Bovey*, 2 Q. B. 500.
(*z*) 5 T. R. 327.
(*a*) 2 B. & Ald. 375.
(*b*) 5 Q. B. 662.

wanted to leave the first mill (in which I had been working for about a year) to go to the other mill, I was compelled to serve a fortnight's notice before leaving. The second mill was under a similar custom; and after I had worked in it better than a year, I had a dispute with the overlooker, and wanted to leave at once, but was not allowed. The overlooker afterwards gave me a fortnight's notice, at the end of which time I left the factory. I have not since done any act to gain a settlement in my own right. I was lawfully married about six years ago." It was objected to this examination, that it did not disclose the yearly hiring positively, but only matter consistent with a hiring for a fortnight as well as for a year: but the court held otherwise. Lord Denman, C. J. said, " We think there is no valid objection to this examination. It may be that when a settlement depends on a simple fact known to the pauper, he ought to state that fact in his examination; but it is very different when the settlement depends upon a fact which is itself a legal consequence of the facts known to the pauper. That is the case with respect to a contract of hiring. A pauper may not know what constitutes such a contract, and can state no more than the facts within his knowledge On these the justices must form their opinion. And on this examition there were facts sufficient to warrant them in inferring the contract."

If the service were under different hirings to the same master, so state it; and refer to the various points of law in the last section, and obtain and state evidence of the facts requisite to support it.

Residence.—The residence for the forty days completed last before the end of the year must also be distinctly stated to have taken place in the settlement parish. In a late case (*c*) it was thus sufficiently stated,—" I did go on that day, and I served the said Mrs. Whitmore, in the said parish of Stonleigh, from that time till the 12th of October following,

(*c*) *R.* v. *Stonleigh*, 2 Q. B. 530.

&c." The Queen's Bench held it to be quite consistent with this that the pauper had never resided a single day in Stonleigh. And so it clearly was. In fact, in all these material points it cannot be too often stated, as laid down by Lord Denman, C. J., in this case, that "*the court is bound to see that both examinations and grounds of appeal in stating a settlement set out most distinctly* ALL *the requisites necessary to constitute it.*" This is a golden rule, and would, if it had been adhered to, have saved parishes large sums squandered in noxious litigation.

Inasmuch as the sleeping in a particular parish is the gist and test of residence, it is wise to state it in evidence. Let it be remembered that the forty days, though they must have been within the space of a year, need not have been under the same hiring any more than the service (*d*).

Section XV.—Statement of Grounds of Objection to Hiring and Service Settlements.

The objections to this settlement by appellants flow so naturally from the law which regulates it, that it suffices to state the forms in which they may be made, always premising that objections to any omission apparent on the face of the examination may be made in the general terms directed in page 88.

Form 1.—*Where the servant was incompetent to gain a settlement.*

That at the time of the said hiring in the said examination mentioned, the said A B was not competent to enter into any sufficient contract for the purposes of the said settlement, he then being married [*or* under articles of apprenticeship bearing date the day of , A.D. 1825, *or as the case may be*]. And we, &c.

Form 2.—Contracts insufficient in time.

That the said hiring in the said examination mentioned was not for one whole year; but [*as the case may be*]. And we, &c. [*Or*, that the said A B did not continue and abide in the said service during the period of one year; but the said contract was dissolved at the expiration of eleven months, to wit, on the day of , A.D. 1845]. And we, &c.

(*d*) *R.* v. *Findon*, 4 B. & C. 91.

Form 3.—*Non-residence.*

That the said A B did not complete his last forty days' residence in our parish of L under the said service, and within the space of one year, as in the said examination is alleged. And we, &c.

Form 4.—*Where there was a later residence.*

That after the said residence of the said A B in our said parish of L, under the said hiring and service in the said examination mentioned, the said A B, to wit, between the 10th March and the 21st April, A.D. 1826, completed a residence for forty days, under the service aforesaid, in the parish of T. And we, &c.

Form 5.—*Where the service was interrupted by the act.*

That the said year's service of the said A B in the said examination mentioned, was not completed until after the 14th day of August, 1834; [*or*, that the said residence of the said A B in our said parish, in the said examination mentioned, was, within a year's service by the said A B, interrupted by the passing of a certain act, intituled "An Act to Amend the Laws for the Relief of the Poor," passed in the parliament holden during the fourth and fifth years of the reign of his late majesty King William the Fourth, and therefore gave no settlement in our said parish]. And we, &c.

Section XVI.—Statement of Hiring and Service Settlement when set up by the Appellants.

Form.

That since the time when the said A B gained the said alleged settlement in the said examination mentioned, he acquired a settlement by hiring and service in the parish of L, where, on the day of , A.D. 1830, he, the said A B, being then unmarried and without any unemancipated child, hired himself to one C D, farmer, of L, to serve him as a farm labourer for one whole year at wages of 7*s.* weekly, and the said A B abided and continued in the service of the said C D, from the said day of , A.D. 1830, until the day of , A.D. 1831, without any interruption of the said contract; and the said A B resided in the said parish of L, for upwards of forty days during the said year's service, therein sleeping on the day on which he last completed the forty days' residence under the said service.

Section XVII.—Law of Apprenticeship Settlement.

Substance and origin of this settlement.—A legal binding and inhabitation for forty days under the contract consti-

tute this settlement, which was created by 13 & 14 Chas. 2, c. 12, and further enforced by 3 & 4 W. & M. c. 11, s. 8. It enacts, that "if any person shall be bound an apprentice by indenture, and inhabit in any town or parish, such binding and inhabitation shall be adjudged a good settlement, though no such notice in writing be delivered and published."

The only exception is that created by 4 & 5 Will 4, c. 76, s. 67, which enacts, that no marine apprenticeship, or one anywise connected with the service or trade of the seas, shall confer settlements which were not complete at the passing of that act (Aug. 14, 1834).

Personal competency of apprentice.—Any one may be an apprentice who is not already bound, subject to limitations as to age in certain trades and as to binding by parish officers.

Gains settlement only as apprentice.—But as persons are enabled to acquire a settlement by these means, they cannot gain one in a capacity which is inconsistent with the relation they have covenanted to stand in towards the master.

This is most clearly stated by Lord Kenyon, in what he lays down as "axioms in this branch of settlement law." His words are: "It is clear that, in general, an apprentice is not capable of contracting the relation of servant (or apprentice) to any other master, until the end of the term for which he was bound. But it is equally clear, that if the master and apprentice put an end to the apprenticeship by mutual consent, it is the same as if the indentures had never been executed, and the latter may gain a settlement by hiring and service (or under a new indenture of apprenticeship) (*e*) with any other master, before the expiration of the time which he was bound to serve as an apprentice. Then there is a third case, that is where the apprentice leaves his master and enters into the service of another, if the indenture still subsist, he is not *sui juris*, but is incapable of gaining a settlement by serving another master, unless he serve with the

(*e*) *R.* v. *Weddington*, Burr. S. C. 766.

consent of his former master, and in such case he gains a settlement, not as an hired servant, but as an apprentice(*f*)."

But although the parties intend a contract of apprenticeship, it will not enure as such if defective in substance or in form. Another rule is applicable therefore to persons in this situation, viz. that " where a contract clearly appears to be intended as a contract of apprenticeship, and not as one of hiring and service as a servant, it shall not, if defective as a contract of apprenticeship, be converted into a contract of hiring and service, so as to gain the party a settlement as a servant.

Persons incompetent to take apprentices.—In addition to fishermen, since 1834, toll-collectors can take no apprentices, by 3 Geo. 4, c. 126, and 4 Geo. 4, c. 95; neither can persons living under certificates (12 Anne, c. 18), nor married women, nor friendly societies, from the passing of 33 Geo. 3, c. 54 (June 21, 1793), to 10 Geo. 4, c. 56 (June 10, 1829).

Apprenticeships in mines and collieries, of males under ten years old, and for more than eight years' duration, made after the passing of the 5 & 6 Vict. c. 99 (Aug. 10, 1842), are void; and all apprenticeships of females then bound, and under eighteen years of age, were made void at the ex-expiration of three calendar months afterwards; and all other such apprenticeships of females were absolutely void on the 1st March, 1843.

To *chimney sweepers,* children could be bound only after attaining the age of eight years, by the 28 Geo. 3, c. 48 (1788), till the 4 & 5 Will. 4, c. 35 (1834), when the minimum age was extended to ten years, until the 3 & 4 Vict. c. 85 (1840), by which all such apprenticeships were prohibited of children under sixteen years of age.

To *parish officers* children cannot be bound till they are nine years of age (56 Geo. 3, c. 139).

Apprenticeships to watermen.—According to the 10 Geo.

(*f*) Per Lord Kenyon, C. J. *R.* v. *Chipping Warden,* 8 T. R. 108.

2, c. 31, it shall not be lawful for any waterman or his widow to take an apprentice unless he or she be the occupier of a house or tenement to lodge himself or his apprentice. Neither can he take more than two apprentices at once.

All other persons and bodies might take apprentices, whether they exercised a trade or not, and the indentures may be assigned.

Period of binding.—This might and may be for any length of time. Originally, by an old statute of Elizabeth, it must have been for seven years, but a less period suffices (*g*).

How bound.—Apprentices are bound, 1st, by voluntary consent, without the intervention of parish officers; and this is usually under 5 Eliz. c. 4.

2nd, By virtue of the power given to parish officers by 43 Eliz. c. 3, in which case they are called parish apprentices.

Neither statute was enacted with a view to settlements The first was designed to regulate trade, and the latter to instruct and maintain children actually settled and recognized as parochial poor. But a settlement may be gained not only by a binding under either, but likewise by a voluntary binding, although not within the 5 Eliz. c. 4, as also by one under 43 Eliz. c. 2, where the directions of that act are not literally fulfilled. The reason is, that some deviations from these statutes render the instrument void, while others make it only voidable. If void, no settlement can be acquired under it; if voidable, it is otherwise. Because, in the first case, the deed is bad as to the whole world, and for all purposes whatever; but in the latter, it is only to be avoided at the election of the parties, and no other person can take advantage of the defect. The validity of indentures, so far as respect questions of settlement, depends upon the foregoing rule.

Legality of voluntary bindings.—To this a deed is essential; and apprenticeships without it were and are void. They must show the relation of apprentice and master to

(*g*) Burr. S. C. 95; 3 Geo. 3, c. 96.

form the essence of the contract, and this consists in the *undertaking to teach*, though there need be nothing actually taught, and service is not material. As long as the deed be sealed and delivered, the indenting is not necessary since 31 Geo. 2, c. 11. It must be executed by the apprentice himself, whether he be a minor or not, and is invalid if he do not execute it.

The deed should contain the date of the execution of the articles (*h*). It is essential that the amount of the consideration, if any, be set forth, and that it bears in all cases, except parish apprenticeships, the proper stamp.

Stamps on indentures of apprenticeship.—These stamp duties are numerous and complex; and it being essential to the settlement that the indenture was properly stamped, the following tables are given, dividing the duties into two periods, for ease of reference as well as clearness of statement; the *first* period being previous to, and the *second* since, October 10, 1804. During the first period there were separate duties on indentures and the premiums. In the second they were blended, though otherwise complicated.

Table of Indenture and Premium Duties payable previously to October 10, 1804.

Statute.	Date of Operation.	Indenture Stamp where Premium was					
		Below 10*l.*		Above 10*l.*			
		s.	*d.*	£	*s.*	*d.*
12 Anne 82, c. 9, and prior Acts.	1714.	1	6	0	1	6
30 Geo. 2, c. 19.	July 5, 1757	2	6	0	2	6
16 Geo. 3, c. 34.	July 5, 1776	3	6	0	3	6
17 Geo. 3, c. 50.	Aug. 1, 1777	5	0	0	5	0
23 Geo. 3, c. 58.	Aug. 1, 1783	6	0	0	6	0
35 Geo. 3, c. 30.	July 5, 1795	7	0	0	7	0
37 Geo. 3, c. 90.	July 5, 1797	10	0	0	10	0
37 Geo. 3, c. 111.	Aug. 1, 1797	10	0	1	0	0

(*h*) Burr. 95, and 54 Geo. 3, c. 96.

To all indenture stamp duties the 8 Anne, c. 9, added a duty of sixpence in the pound on the premium where it did not exceed 50*l.*, and of one shilling in the pound where it exceeded 50*l.*

Both these stamp and premium duties were repealed, and terminated on the 10th October, 1804.

Table of Stamp Duties on Indentures of Apprenticeship since October 10, 1804.

	From Oct. 10, 1804, to Oct. 10, 1808, under 44 Geo. 3, c. 98.
Premium not exceeding £10	£0 15
Above £10 „ 20	1 10
„ 20 „ 50	2 10
„ 50 „ 100	5 0
„ 100 „ 300	12 0
„ 300 and upwards	20 0

	From Oct. 10, 1808, to Oct. 31, 1815, under 48 Geo. 3, c. 149.	From Oct. 31, 1815, under 55 Geo. 3, c. 184.
Premium, &c. being under £30	£0 15	£1 0
„ £30 and under 50	1 10	2 0
„ 50 „ 100	2 10	3 0
„ 100 „ 200	5 0	6 0
„ 200 „ 300	10 0	12 0
„ 300 „ 400	15 0	20 0
„ 400 „ 500	20 0	25 0
„ 500 „ 600	*25 0	30 0
„ 600 „ 800	——	40 0
„ 800 „ 1000	——	50 0
„ 1000 and upwards	50 0	60 0

* And £5 for each additional £100 premium.

Where there was no consideration, from 1810 to 1815, where the deed contained less than 1080 words, 15*s.*; where more, 1*l.* 10*s.*; and since 1815, where less than 1080 words, 1*l.*; where more, 1*l.* 15*s.*

Indentures binding parish children are and were exempt under all these acts from all duty.

It was not necessary that these stamps should have been affixed at the time of the execution of the deed (*i*).

Sea apprenticeships required a stamp of 2*s.* only (*k*).

An assignment of apprenticeship where there is a premium must be stamped.

Where indentures are assigned, they require a new stamp of 1*l.* only, though they extend the term of apprenticeship, but new conditions do not require another stamp (*l*).

Great care must be taken to see that the stamp is correct; many a settlement may be evaded through an improper stamp. "An indenture not duly stamped is void for the purposes of settlement (*m*)."

Although no stamp is required for apprenticeships by charities and parishes, this does not apply to cases where the master makes an assignment or transfer, to which the trustees or parish are parties (*n*).

Imperfect contracts.—These settlements are often voided by imperfect contracts. They occur whenever the object the parties had in view—that is, that the one party should teach and the other learn—was not carried out by properly executed indentures. As we have seen, the *hiring and service* settlement is lost because learning and teaching are, in these cases, the primary object, and the settlement by apprenticeship is lost because there is no deed (*o*). It is not, however, essential to an apprenticeship that there should be any consideration on either part beyond that of teaching and learning.

Where the apprentice is bound by the parish as a pauper.—It is enacted by the 43 Eliz. c. 2, s. 5, and the 56 Geo. 3, c. 139, s. 1, that the parish officers may bind out any pauper

(*i*) *Smith* v. *Agett*, 8 Dowl. 412.

(*k*) 7 & 8 Geo. 4, c. 56, s. 17.

(*l*) *Morris* v. *Cox*, 2 M. & Gr. 659.

(*m*) *R.* v. *Amersham*, 4 A. & E. 508, per Lord Denman, C. J.

(*n*) *R.* v. *Fakenham*, 2 A. & E. 528, 388.

(*o*) *R.* v. *Igtham*, 4 A. & E. 937.

child as an apprentice, such child having been taken before two justices of the peace of the place where the parish shall be situate, who shall inquire into the propriety of the binding to the proposed master, and at the distance proposed from the child's parish. In case the child be bound in a different county or jurisdiction from its own, the binding must then be allowed by two justices in each county or jurisdiction, including borough and town corporate jurisdiction. The justices, after making their order to the above effect, are required to sign their allowance of the indenture altogether; and they ought to do so before it is executed by the other parties. The justices need not seal it unless the apprenticeship is at the cost of the parish. (See sect. 11 of the statute.) Compliance with any rules or orders made by the Poor Law Commissioners must be certified at the foot of the indenture (*p*).

Notice must be given to one of the overseers of the parish where the pauper was bound before the justices could legally allow the binding in any case. The allowance on the part of the justices was indispensable to the validity of the settlement, in all cases where children were apprenticed by parish officers at any cost to the parish funds, but not to adults (*q*). It is not fatal to the settlement even if the pauper child has not signed the deed of apprenticeship (*r*). It was deemed that the justices would sufficiently protect the interests of the child, and "could not be supposed to sanction an arbitrary proceeding." These allowances are still requisite where parishes are not in unions.

No allowance of apprenticeship needed since Oct. 1st, 1844.—By 7 & 8 Vict. c. 101, s. 12, the power of binding out pauper children of parishes in unions is given to the *guardians*, who are alone to execute the indentures, which "*shall not need to be allowed, assented to, or executed by any*

(*p*) 4 & 5 Will. 4, c. 76, s 61.
(*q*) 56 Geo. 3, c. 139, s. 5; and see 5 B. & Ad. 169.
(*r*) *R.* v. *St. George's, Exeter*, 3 A. & E. 373, 395.

justice or justices of the peace." (See the section in Appendix B). It is presumed (though the statute improperly omits any such requirement) that the Court of Queen's Bench will deem it incumbent on the guardians as it was on the justices, "to examine, with the most minute and anxious attention, the situation of the master to whom the apprentices are to be bound, and to exercise their judgment solemnly and soberly, before they allow or disallow the act of the parish officers; for which purpose it is necessary that they should confer together (*s*)."

General rules as to parish bindings.—The child must be nine years of age at the least.

No child can be bound to any parish more than forty miles from his home, unless it be itself more than forty miles from London, and the justices make a special order to that effect.

No justice engaged in the trade to which the child is apprenticed was competent to allow the binding.

Premium need not be stated in these indentures (*t*).

It has been above observed, that only in case the binding is at the *cost* of the parish is it a parish apprenticeship, and therefore required the fiat of two justices (*u*).

The indentures ought to bear reference to the order of the justices by date and names. Omission of this is fatal (*v*).

Parish apprenticeships include all cases where the parish is put to expense in regard to them; but merely giving clothes to the apprentice does not constitute such expense (*x*).

Parties who may bind pauper apprentices.—The 43 Eliz. c. 5, required the indentures to be signed by a majority of the churchwardens and overseers. The statute has been explained and extended by various others, the general effect of which was, that where there are in townships and elsewhere a less number of churchwardens or overseers than usual, a

(*s*) *R.* v. *Hamstall Redware*, 3 Term Rep. 380, per Lord Kenyon.
(*t*) 1 B. & Ald. 477.
(*u*) 7 Barn. & Cres. 563.
(*v*) *R.* v. *Rawberg*, 2 B. & C. 222.
(*x*) *R.* v. *Quainton*, 1 A. & E. 133.

majority of such officers as there happen to be sufficed. Churchwardens for a parish, who acted for a township in the parish, might join with the overseers of the township in executing the indentures. If there were no churchwardens the overseers sufficed.

Since October 1st, 1844, poor law guardians are alone competent to bind parish apprentices. 7 & 8 Vict. c. 101, s. 12. (See Appendix B).

Sea service bindings by parishes.—These, till the recent act, were regulated by 2 & 3 Anne, c. 6, s. 1. It chiefly provided that the child should be ten years old or upwards. The parish officers having, with the consent of the justices, conveyed the boy to the port where the master was to whom the binding was to take place, the indenture was to be sealed and signed by the master, in the presence of and attested by the collector of customs at such harbour, and by the parish officers, or their agent appointed to convey the boy there (*y*). Any indenture might be assigned to any other master with consent of two justices. This remained in force till August 14, 1834, when 4 & 5 Will. 4, c. 76, s. 67 enacted that "no settlement should be gained by being apprenticed in the sea service or to a householder exercising the trade of the seas as a profession or otherwise, or by any person now being such an apprentice in respect of such apprenticeship."

Apprenticeships to chimney-sweepers by parishes.—The 28 Geo. 3, c. 48, gave the power of binding out any boy aged eight years, with consent of two justices, or the parent's consent with the usual allowance by the justices, until the age of sixteen years. Their age was to be stated in a separate schedule. Since the 25th of July, 1834, the boy must have been ten years old, till the 3 & 4 Vict. c. 85, August 7, 1840, when it was enacted that none under sixteen years of age should be apprenticed. No master can take an apprentice who is not the rated occupier of a house where he resides (*z*). Neither can he have more than four apprentices

(*y*) 2 & 3 Anne, c. 6, s. 11.
(*z*) 4 & 5 Will. 4, c. 35, s. 3.

at once. The justices must indorse their consent on the indenture.

Residence.—As under hiring and service, the parish in which the apprentice shall have *last* completed a residence by sleeping, under his contract of apprenticeship, for forty days, is his settlement (*a*). They need not be consecutive days (*b*).

It is, however, essential that the residence shall have been in pursuance of the contract of apprenticeship, and under indenture. Where the apprentice left his master's house and went to his father's, but the master allowed him to remain, that was a residence under the indenture, the relation of master and apprentice having continued (*c*). There must have been a positive and express assent on the part of the master to the residence, wherever it was (*d*); and it clearly ought to be a residence, in some way or other, in furtherance of the object of the apprenticeship. A residence elsewhere part of the time, by way of indulgence, does not suffice; but if, with the consent of the first master, the apprentice be transferred to another, without breach or assignment of the original indentures, residence with the second, under such constructive service to the first, suffices, being merely a continuance of the object of the original apprenticeship (*e*).

Hence we gather the principle whereby residence giving settlement may be distinguished from that which does not give it. Whether the service be given to the original or the second master matters not; neither is it, in point of fact, so material whether the object of the residence be maintenance or not. But the real question is, *was the residence in any way in furtherance of the object of the apprenticeship, and with the master's assent?* This simple test determines all cases, and will be found, in fact, the governing

(*a*) *R.* v. *Castleton*, Burr. S. C. 569.
(*b*) *R.* v. *Brighton*, 5 T. R. 188.
(*c*) *R.* v. *Gwinnear*, 1 A. & E. 152; *R.* v. *Somerby*, 9 A. & E. 310.
(*d*) *R.* v. *St. Martin's, Exeter*, 2 A. & E.
(*e*) *R.* v. *Sandhurst*, 6 A. & E. 130.

principle of numerous decisions on this perplexed point (*f*). And it holds good where there is no service, but where the object of the apprenticeship was furthered by a residence with a parent at the master's request, in order that the apprentice might be the sooner restored to health (*g*).

Service.—It is not necessary that the apprentice be employed in the particular business he was bound to, as long as the relation of apprenticeship continue (*h*).

Assignment of indentures.—Indentures are assignable; and in such cases the second master merely occupies the relation of the first. Where the assignment is informal, the settlement is not affected by it in voluntary cases, because it then assumes the character of a transfer of services with consent of the first master. Mr. Lumley rightly observes, "that the common case of continued apprenticeship under a second master, with the assent of the first, is in effect an informal and irregular assignment," and yet it is valid for the purposes of a settlement, as we have seen in *R.* v. *Sandhurst, ante.* The stamp required is the same as in original indentures.

Assignment of parish apprenticeships.—It was otherwise with parish apprenticeships, for the obvious reason, that the necessary consent of the justices to the apprenticeship with one master was not transferable to another (*i*). The 32 Geo. 3, c. 57, therefore, provides for such assignment, with consent of two justices testified by them; the assignment and consent to be indorsed on the indentures, or by other instrument specified. The master receiving the apprentice must also, at the same time, testify his acceptance of the apprentice and adoption of the terms of the original contract,

(*f*) *R.* v. *Charles,* Burr. S. C. 706; *R.* v. *Ilkeston,* 4 B. & C. 64; *R.* v. *Brothon,* 4 B. & Ald. 84; *R.* v. *Banbury,* 3 B. & Ad. 707; and cases last cited.

(*g*) *R.* v. *Linkinhorne,* 3 B. & Ald. 411; *R.* v. *Barmby, contrà,* is not law, 7 East.

(*h*) *R.* v. *Burslem,* 11 A. & E. 412.

(*i*) See *ante; R.* v. *Gwinnear,* 1 A. & E. 152; *R.* v. *Somerby,* 9 A. & E. 310.

by writing under his own hand; and his implied consent will not suffice. These provisions were further enforced by 56 Geo. 3, c. 139, of which section 9 enacts, that "no settlement shall be gained by any service of such apprentice" assigned otherwise than by the sanction directed in the last-named act. This came in force October 1, 1816, prior to which, settlements were not voided by defective assignments.

These provisions, however, applied only to cases where a premium, not exceeding 5*l.*, was paid; and the 5 & 6 Vict. c. 7 (*k*), also includes cases where *no premium at all is paid;* for by the wording of the former acts, it was held, in *R.* v. *Mabe* (*l*), that though evidently contrary to the meaning of those statutes, their clumsy language excludes all apprenticeships *without* premiums.

Now since 7 & 8 Vict. c. 101, s. 12, the guardians must be taken to have power to assent to the assignment; though, in express terms, the act gives them only the same power then possessed by the overseers.

Notice to the receiving parish need not be given in cases of assigned apprenticeships (*m*).

No stamp is required where the premium is paid by the parish, or out of any charitable fund; but this does not extend to assignments by the master for some new consideration to himself, with which the parish or charity has nothing to do (*n*).

Assignment of parish indentures where the master dies or removes.—Where the master dies, the apprenticeship is at an end three months after his death; unless it be assigned, with the consent above mentioned, to the widow, executors or son of the deceased master for the residue of the term. The relation of master does not pass to his representatives without a formal assignment; and such assignment cannot take place

(*k*) This statute does not extend the limit as to premium.

(*l*) 3 A. & E. 531.

(*m*) *R.* v. *Exminster*, 6 A. & E. 598.

(*n*) *R.* v. *Fakenham*, 2 A. & E. 528.

unless the apprentice formed part of the deceased master's family, or was in his actual employment (*o*).

When the master of a parish apprentice removes out of the county, or to any place forty miles distant from the parish where he resided at the time of the binding, such removal must be made with the renewed consent of justices, or guardians, who shall so consent, assign or discharge as they see fit. The neglect to do this does not, however, void the settlement, a penalty of 10*l.* being alone attached to it (see section 8 of 32 Geo. 3, c. 57.) But it is otherwise where a parish apprentice is either put away, placed out or transferred, without consent, in each of which cases the settlement is voided (*p*).

In cases of voluntary apprenticeships, where the master dies, the contract is at an end three months after, but may be continued by the executor or widow, or transferred or assigned by them, without voiding the settlement.

The bankruptcy of the master discharges the apprenticeship, by 6 Geo. 4, c. 16 (May 2, 1825), but not so previously.

Discharge of contract of apprenticeship.—In voluntary cases the contract may be at any time terminated, where the apprentice *is of age*, by mutual consent, or when under age, it being for his benefit.

Discharge of parish apprenticeships.—A number of statutes empower two justices to do this; without whose sanction it cannot be done (*q*).

The two justices were, in fine, the supreme arbiters of what may or may not be done with parish apprentices, and the guardians now have similar power.

Fraud.—Wherever the contract was fraudulent, or made with a view to fabricate a settlement or evade a statute, though the parishes were not parties to it, the settlement is voided (*r*).

(*o*) 32 Geo. 3, c. 57, ss. 2, 3, 4, 5.

(*p*) *R.* v. *Wainfleet, All Saints,* 11 A. & E. 656.

(*q*) 5 Eliz. c. 4; 20 Geo. 2, c. 19; 32 Geo. 3, c. 57; 4 Geo. 4, c. 29; extending this power to all cases where the premium paid does not exceed 25*l.*

(*r*) *R.* v. *Barmston,* 7 A. & E. 858; 7 L. J. M. C. 31.

Section XVIII.—Evidence of Apprenticeship Settlement.

In order to establish a settlement by apprenticeship, it is necessary to prove,—1st. The binding by indenture; 2d. The identity of the apprentice; 3d. His service and residence of forty days in the town or parish; 4th. If the service is with any other than the original master, his consent.

The binding.—To prove the binding, the deed of apprenticeship, if in existence, and not in the hands of the opposite party, must be produced. If in the custody of a third person, he should be served with a *subpœna duces tecum* to bring it with him on the hearing of the appeal. If possessed by the opposite party, he should be served with notice to produce it.

The deed is the main evidence of the settlement. The capacity of the pauper to be apprenticed may be assumed. It is, however, essential that the deed itself be produced. The signature of the apprentice being material, it must be proved where the indenture is less than thirty years old, and where attested it must be proved by the attesting witness, unless he be out of the country, insane or dead; in either of which cases evidence of his handwriting is admissible (*s*), which will prove the execution of the deed by the parties whose signatures such witness attests. At the same time proof of the handwriting of the principal party is satisfactory evidence of their identity (*t*), which ought then to be given (*u*), and the pauper himself is a good witness of such identity. The handwriting of a person may be proved by any one who has seen him write, if even once; and it is enough if he *believes* it to be the writing of the person; and if he has corresponded with him, so as to know his hand, the witness need not have seen him (*x*). But the handwriting cannot be proved by comparison with other writing

(*s*) 2 Phil. Evid. 210.
(*t*) *Ibid.* 214.
(*u*) *Nelson* v. *Whittal*, 1 B. & Ald. 19.
(*x*) *Rex* v. *Slaney*, 5 Car. & Payne, 213.

known to be genuine (*y*), unless it forms part of the document in question.

But no such proofs are needed where the indenture is thirty years old, and there is no interlineation, erasure or other cause to suspect its correctness (*z*). It need only be shown that the deed is produced from the proper place of custody.

Obvious errors in the indenture, which the context shows to be mere mistakes, and not calculated to mislead, do not vitiate the instrument.

An ambiguity as to the term of binding is holpen by the date of the indenture, and by covenants for yearly payment of wages, which may assist to show that the binding was for above forty days, on the principle of *id certum est quod certum reddi possit* (*a*).

Where the parent, guardian, parish officer or trustee of a charity are the parties who have apprenticed a child, their signatures must be proved as well as the child's (*b*). If it is a case not requiring a stamp, the circumstances which create the exemption should be put in evidence. This has been frequently a matter of doubt, but the point is decided in an important case in the Common Pleas (*c*), which will govern all cases where advantage is taken of the saving clauses of acts applying to similar cases.

The examinations in support of a settlement by apprenticeship under statute 56 Geo. 3, c. 139, s. 1 (for binding parish apprentices), stated the production of the indenture before the removing magistrates, and proof of the execution thereof by the parish officers and the master. The order and allowance of the justices at the binding were recited in the indenture, but were not otherwise proved than by the above proof of the execution of the indenture.

(*y*) 2 Phil. Evid. 251.
(*z*) Arch. Plead. and Ev. Civil Act. 428.
(*a*) *Reg.* v. *Wooldale*, 14 L. J. M. C. 13.
(*b*) *R.* v. *Arnesby*, 3 B. & Ald. 584.
(*c*) *Chanter* v. *Dickenson*, 12 Law Journ. 147, C. P.

The court quashed the order of removal, on the ground that it did not appear on the face of the examination that the order and allowance required by the statute had been made by the justices (*d*).

Where the deed is not to be had.—Wherever this is the case, evidence must be given that the deed is destroyed (*e*) or cannot be obtained, so as to comply with the rule that the impossibility of obtaining the best evidence will alone let in secondary evidence. It suffices to show that the deed is not where it ought to be, and naturally would be were it in existence (*f*). Direct, and not hearsay, evidence must, however, be given of the loss or absence of the deed (*g*), and also of the endeavours fruitlessly made to find it, if lost, of which the justices ought to be satisfied.

It will be assumed that the indenture was properly stamped when not forthcoming, unless the contrary appear, in which case, of course, the settlement is not gained except where no stamp is required.

Where the indenture is in the possession of the opposite party, give them notice to produce it at least a month before, and on their failing to do so, secondary evidence may be given.

If there be two parts of a deed, both must be accounted for, to let in secondary proofs (*h*). Where the original is in the possession of the opposite party, that should be proved, to let in a copy as evidence.

A counterpart of a deed is not properly a duplicate original, for it is executed only by one party. It is admissible evidence against any person who signs it, without giving him (*i*) or his assignee (*k*) notice to produce the original;

(*d*) *Reg.* v. *Chiswick*, 1 New S. C. 117.
(*e*) *R.* v. *Cumberworth-Half*, *ante*.
(*f*) 8 B. & C. 96; 3 B. & Ad. 460.
(*g*) 2 A. & E. 156.
(*h*) *R.* v. *Castleton*, 6 T. R. 236.
(*i*) *Burleigh* v. *Stubbs*, 5 T. R. 465.
(*k*) *Roe ex dem. West* v. *Davis*, 7 East, 363.

for it recites the execution of the original, and in the first case is executed by the party, and in the second by one who is bound by his acts, as deriving title under him. But it cannot be read in evidence against a third person, without accounting for the want of the original (*l*).

Deed in hands of opposite party.—Slighter evidence is required to establish the contents of a deed, which is proved to be in the hands of the opposite party, than if it is shown to be lost or destroyed, for in the former case, if the party is wronged by the evidence, he may set it right by producing the real instrument (*m*). If it be produced by the opposite party, it will not be necessary to prove its execution, where no sufficient time has been allowed for the purpose of obtaining the necessary evidence; and parol evidence is sufficient, where a deed of indenture (*n*) or order of removal is lost (*o*); and where parol evidence is given of an indenture, and a consideration paid with the apprentice, the sessions should take it for granted that they were stamped, and the duty paid; for a fraud is not to be presumed (*p*).

In all cases it is essential to show, either by primary or secondary evidence, that there was a sealed and stamped indenture, because without it, as we have seen, the contract was imperfect, and invalidates the settlement, though the service took place.

By 42 Geo. 3, c. 46, s. 1, overseers of the poor, and by sect. 6 all other persons having the like powers, are directed to keep a book at the expense of the parish, &c. and enter therein the name of every child bound out by them as an

(*l*) 1 Nolan, 544; and see per Holt, C. J., *Anon.* Salk. 287; 6 Mod. 225; *Sir Wm. Poole's case*, 12 Vin. Abr. (27), pl. 4; per Grose, J., *R.* v. *Middlezoy*, 2 T. R. 41.

(*m*) *Sir Edw. Seymour's case*, 10 Mod. 8; 12 Vin. (T. b. 65), pl. 22; *Eccleston* v. *Speke*, Carth. 80; *Young* v. *Holmes*, 1 Str. 70.

(*n*) *R.* v. *Badby*, 1 Bott, 547; *R.* v. *Wantage*, 1 East, 601.

(*o*) *R.* v. *Metheringham*, 6 T. R. 556.

(*p*) *R.* v. *East Knoyle*, Burr. S. C. 151.

apprentice, together with several other particulars, according to a schedule annexed to the act, and this register is to be laid before the justices, who assent to each indenture at the time the indenture is laid before them; and each entry in the register, if approved by the justices, is to be signed by them.

By sect. 3, all persons may inspect this book, and take a copy upon payment of sixpence; "and every such book shall be and be deemed to be sufficient evidence in all courts of law whatsoever in proof of the existence of such indentures, and also of the several particulars specified in the said register respecting such indentures, in case it shall be proved to the satisfaction of such court that the said indentures are lost or have been destroyed."

By sect. 5, where an apprentice is assigned under 32 Geo. 3, c. 57, "the overseer or overseers, party or parties to the assignment, shall insert the name and residence of the master or mistress to whom such apprentice shall be assigned or bound over, together with the other particulars, in the book herein directed to be provided and kept by them."

Secondary evidence.—It is a general rule that parol evidence is inadmissible to contradict or substantially to vary a deed or other written instrument, or to explain an ambiguity that is patent, *i. e.* apparent, on perusal of the instrument itself, such as the total omission of a devisee's name in a will.

But it may be given, 1st, to explain a latent ambiguity, that is, where the uncertainty does not appear on the face of the instrument. Thus parol evidence may be given to ascertain a fact which does not contradict but is collateral to the deed; as in *Reg.* v. *Stoke upon Trent*, cited in section 15, on the evidence of a hiring, where parol evidence was admitted to explain or ascertain an independent fact explanatory of a written agreement. But this rule must not be carried further. It must not be attempted to supply defects in what constitutes the material parts or ingredients so to speak of

the binding. But parol evidence is admissible to show fraud or imposition practised on the party in executing the instrument, upon the same principle that it is admissible to prove an extrinsic fact. Parol evidence may be given in the second place, where better cannot be had.

The way having been opened for secondary evidence by proof of the necessary absence of better evidence, it will then suffice to show that the indenture was duly executed by parties who were present, the pauper being an admissible witness. The fact of service under it will be a further attestation of the fact.

General facts to be proved.—The fact of the binding (*q*), the length of service contracted for, the names, additions and residences of the parties contracting, and likewise the premium paid, and the trade to be learnt, should be stated in the examination. The sessions are the judges whether the date is material or not on appeal (*r*).

If the parish or the trustees of a charity are the parties who contract, state the facts accordingly, and show this as a ground for the absence of the stamp as above stated.

In cases of assignment there is no difference in the evidence required, which should fully show the necessary facts, to complete it as described in the last section.

Inhabitation.—So also as to the inhabitation. Care must be taken to state expressly and fully that the apprentice completed the *last forty days of his residence under the apprenticeship in the parish of , in virtue of the contract, and whilst in the service under it.* The case of *R.* v. *Flockton* (*s*) ought to be ever before the eyes of the parishes who are henceforth concerned in apprenticeship settlements. It will not suffice to state generally that the apprentice resided

(*q*) The indenture ought to bear this date; but the 5 Geo. 3, c. 46, which expressly declares indentures void that omit it, has been overruled by *R.* v. *Harrington*, (4 A. & E. 618), it being there deemed a notice *in terrorem* only.

(*r*) *Reg.* v. *Cornwall*, 1 New S. C. 161.

(*s*) 2 Q. B. 535.

in the parish of the master. Nothing but a plain and full statement of all the facts required in order to the settlement will suffice.

In ascertaining residence it is, as we have seen, necessary to refer to the gist of the contract, in order to be sure that the residence, whether with the original or another master, was directly or constructively in virtue of, or according to, the original contract. But it is enough to state in evidence that the residence was thus in conformity with the contract as above, unless there has been an assignment, in which case the assignment must be proved, and the fresh names, dates and circumstances explicitly stated. Where there has been a service without assignment by express consent with a second master, prove and state the consent of the parties and the second service, as in other cases; the pauper will be a good witness to this; but if there were a written agreement, it must be produced and proved. (See last section as to stamps of assignment.) In cases of second service, it is not essential to show that the second service is the same as the first, so long as it appears that the general purpose of the parties to the original contract is carried out, and with their full consent.

Parish bindings.—The notice to the opposite parish need not be proved (*t*). The formalities as to the justices' jurisdiction and consent stated in the last section, and all the requirements there laid down as essential, must be given in evidence as having been duly observed. If bound out of his county, state the distance of the place where the pauper was apprenticed. Prove the binding as before, the service and the residence. The pauper apprentice need not be shown to have executed the deed himself. State also the capacity of the officers who bound the pauper, it being remembered that the 51 Geo. 3, c. 80, legalizes the binding by two persons only, "purporting to act in the capacity of churchwardens as well as overseers." This refers, however, chiefly to cases where, owing to the smallness of the parish, two or three

(*t*) *R.* v. *Whiston*, 4 A. & E. 607.

only are appointed (*u*). And churchwardens acting for townships and hamlets, though not sworn in for such parts of parishes, may, if sworn in for the parish itself, legally bind apprentices. And so likewise as to overseers who are appointed for, and act in, such part alone, without being overseers of the whole parish, whose bindings are legalized by the 54 Geo. 3, c. 107.

The following forms may be used in parishes not in unions:

Form of allowance of the indenture by the two justices.

We, A B and C D, esquires, whose names are hereunder written, two of her Majesty's justices of the peace for the county of , (whereof one is of the quorum), do consent to the putting forth W. J. of , as an apprentice, according to the intent and meaning of this indenture (*x*), [it having been proved, upon oath before us, that due notice in writing has been given by the overseers of the poor of the parish of (*the parish binding such apprentice*), to the overseers of the poor of the parish of (*the parish in which such apprentice is to serve*), of such binding being intended], [*or* it having been admitted by A B, present before us, and one of the overseers of the parish of , that he had received due notice, in writing, of the intended binding], and do sign this our allowance of such apprenticeship before the same hath been executed by any of the other parties thereto, in pursuance of the statutes in such case made and provided.

Dated this day of , in the year of our Lord one thousand eight hundred and forty-five.

A B
C D

Signed, sealed, and delivered in the presence of

I K
L M

Form of assignment of apprentice on removal of the master from the county, or forty miles from the parish.

County of Bucks, to wit. } Whereas A B, the master of the apprentice in the within indenture mentioned, is about to quit his present residence at , in the county of Bucks, and to remove out of the said county of [*or* forty miles from the place of residence] where the said was bound apprentice, and

(*u*) And the 2 Geo. 4, c. 32, provides for *all* cases where less than the proper number of overseers and churchwardens have been for a long period of time appointed, and by it their bindings are made valid.

(*x*) The clause within the brackets is necessary whenever the binding parish is different from that in which the apprentice is to be bound.

has given fourteen days previous notice, in writing, to the churchwardens and overseers of the poor of the parish of (*y*). And whereas the said the apprentice, as also the said , and the overseers of the poor of the said parish of , did, on the day of the date hereof, appear before us the justices aforesaid, and upon inquiry we do find (*z*) .

And we, the said justices, do hereby order that the said , the apprentice aforesaid, may (*z*) . And we do further order, that the said A B, the former master of the said , do pay to C D, the intended new master of the said , the sum of , as and for the expense of assigning or binding of the said apprentice to the said C D as aforesaid, being in our judgment a reasonable part and proportion of the original apprentice fee paid to the said A B on h being bound an apprentice to the said A B.

Given under our hands and seals this day of , in the year of our Lord one thousand eight hundred and forty-five.

[*To be signed by the parties and also the parish officers.*]

Form of justices' order to bind a poor apprentice within forty miles, under 56 *Geo.* 3, *c.* 139.

County of Bucks, to wit. } Whereas E F and G H, the overseers of the poor of the parish of Bledlow, in the county of Bucks, have, on this day of , in the year of our sovereign lady the now queen, at the parish of Bledlow, in the said county, brought before us, A B and C D, two of her Majesty's justices of the peace acting in and for the said county of Bucks, K L, a poor child of the age of (*a*) years and upwards, belonging to the said parish of Bledlow, in the said county, and whose parents, M N and N P, are not able to maintain such child: and the said E F and G H, as such overseers of the poor of the parish of Bledlow aforesaid, have proposed to us, the said justices, to bind such child to be an apprentice to one R S, of the parish of , in the county of , and residing within the distance of (*b*) miles from the parish and place to which the said child belongs, and as an apprentice with him the said R S to dwell and serve until the said K L shall attain the age of years (*a*), according to the statutes in such case made and provided: And whereas we, the said justices, having inquired into the propriety of binding such child apprentice to the said R S; and having particularly inquired and considered whether such person doth reside or have his place

(*y*) The parish in which the apprentice resides at the time of removal.

(*z*) Here it is to be inserted in each place whether the apprentice is to continue with his master in another parish, or whether to be assigned or discharged.

(*a*) The child's age must exceed nine years.

(*b*) If in another county, insert *forty*.

of business within a reasonable distance from the place to which such child doth so belong as aforesaid, and having regard to all needful circumstances that make it fit in the judgment of us, the said justices, that such child should be placed apprentice at a greater distance, and having also inquired into the circumstances and character of the said R S, we, the said justices, upon such examinations and inquiry, do think it proper that such child should be bound apprentice to the said R S.

Now therefore we, the said justices, do declare that the said R S is a fit person to whom the said K L may be properly bound apprentice as aforesaid; and we do, therefore, hereby order that the said E F and G H, the overseers of the parish of Bledlow aforesaid, are at liberty to bind such child apprentice accordingly.

Given under our hands and seals this day of , in the year of our Lord one thousand eight hundred and forty-five.

A B (L.S.)
C D (L.S.)

The following four forms are given by 32 Geo. 3:

Form of the order of two justices directing a parish apprentice to continue with the widow [or as the case may be] *of his deceased master, by indorsement on the indenture or counterpart thereof; on which binding no more was paid than the sum for that purpose mentioned in this act.*

County of } Whereas F M, the master within named, late of the parish of , in the said county, died on the day of , being within three calendar months now last past, we, two of his Majesty's justices of the peace for the county aforesaid, whose names are hereunto subscribed, on the application and at the request of A M, widow [*or as the case may be*] of the said F M, living with and being part of the family of the said F M at the time of his death, do hereby order and direct that A P the apprentice within named, who was in the service and actual employment of the said F M at the time of his death, shall serve the said A M as such apprentice for the residue of the term of such apprenticeship within mentioned, according to the provisions of an act passed in the thirty-second year of the reign of King George the Third, intituled "An Act for the further Regulation of Parish Apprentices." Witness our hands, this day of .

I, the above-named A M, do hereby declare that the above order is made at my request, and that I do accept the said A P as my apprentice, according to the terms of the covenants contained in the said indenture, and according to the provisions of the said act. Witness my hand, the day and year above written.

Form of the like order, by a separate instrument.

County of } Whereas it appears unto us, two of his Majesty's justices of the peace for the said county, that A P [*the apprentice*] was bound an apprentice by the churchwardens and overseers of the poor of the parish of , to F M, [*the master*], late of the said parish, and that the said F M died on day of being within three calendar months now last past: Now we, the said two justices, on the application and at the request, &c. [*Then to the end, as before, mutatis mutandis.*]

Form of the assignment of such a parish apprentice, with the consent of two justices, by indorsement on the indenture or counterpart.

County of } Be it remembered, that the within-named F M [*the master*] by and with the consent and approbation of I P and K P, two of his Majesty's justices of the peace for the said county, whose names are subscribed to the consent hereunder written, doth hereby assign A P, the apprentice within named, unto N M, [*the new master*], to serve him during the residue of the term within mentioned; and that he the said N M doth hereby agree to accept and take the said A P as an apprentice for the residue of the said term, and doth hereby acknowledge himself, his executors and administrators, to be bound by the agreements and covenants within mentioned on the part of the said F M to be done and performed, according to the true intent and meaning thereof, and pursuant to the provisions of an act passed in the thirty-second year of the reign of King George the Third, intituled "An Act for the further Regulation of Parish Apprentices." In witness whereof, we, the said F M and N M, have hereunto set our hands, this day of .

We, two of his Majesty's justices of the peace above-mentioned, do consent thereto. Witness our hands, this day of .

I P
K P.

Form of the like assignment, by a separate instrument.

County of } Whereas it appears unto us, I P and K P, two of his Majesty's justices of the peace for the said county, whose names are subscribed to the consent hereunder written, that A P was bound an apprentice by the churchwardens and overseers of the poor of the parish of , to F M of the same parish, by indenture bearing date on or about the day of until the said A P should attain his age of twenty-one years. Now be it remembered, that the said F M by and with the consent, &c. [*And so to the end as before, mutatis mutandis.*]

Section XIX.—Statement of Grounds of Objection to Apprenticeship Settlement.

The grounds on which valid objection may be made to an apprenticeship settlement are chiefly as regards matter of fact: that the contract was not an apprenticeship, being for purposes to which teaching and learning were foreign; that it was a fraudulent contract; that it was for an illegal purpose, as for cohabitation, is also a valid ground, although there might have been some of the elements of apprenticeship; that the pauper was certificated; that the master was a toll-collector, or other person incapacitated from contracting. The following forms will serve in these cases:

Form 1.—*That there was no binding.*

That the said A B never was bound to the said D F as in the said examination is alleged.

Form 2.—*That the service was under a second master without consent.*

That the said service of the said A B was under a second master, to wit, C D, without the consent first had and obtained of the said E F, the former master of the said A B, to whom he had been previously duly apprenticed under articles bearing date the day of , A.D. , and then being in full force and effect at the time of the said second service, to wit, on the day of , A.D. . And we, &c.

Form 3.—*Non-residence.*

That the said A B did not reside in our said parish for forty days under the said apprenticeship [*or* did not complete the last forty days' residence under the said apprenticeship in our said parish.] And we, &c.

Form 4.—*Where there was subsequent residence elsewhere.*

That the said A B, whilst under the indenture of apprenticeship in the said examination mentioned, completed forty days' residence in the parish of , in the county of , on the day of , A.D. 1842, and after the time when the said residence in our said parish of T is in the said examination alleged to have been completed. And we, &c.

Form 5.—*That the apprenticeship was to a colliery owner, &c.*

That the said apprenticeship of the said A B was an apprenticeship to serve in a certain colliery, to wit, the , in the parish of , and county of [*or* in the sea service, &c.] and that the indenture of the said apprenticeship was made on the 25th day of October, 1843, the said A B then being under the age of ten years, and is therefore null and void, according to the statute in that case made and provided. And we, &c.

Form 6.— *Where the stamp is defective.*

That the said indenture of apprenticeship of the said A B, in the said examination mentioned, was not duly stamped according to the statutes made and provided, and then being in full force and effect, to wit, on the day of A.D. . And we, &c.

Form 7.—*That is was a parish apprenticeship.*

That the premium and other expenses attending the said apprenticeship of the said A B in the said examination mentioned were (partly) defrayed by the parish officers of the said parish of T, and that notwithstanding, the consent of any two justices was not had and obtained to the said apprenticeship according to law. And we, &c.

Form 8.—*That the master resided elsewhere.*

That the said X Y, the master to whom the said pauper A B was bound, as in the said examination is alleged, was resident and had his place of business in the parish of L, and not in the parish of F in the county of G, and that the said parish of L is in another jurisdiction from that in which the said parish of F is situate, and the said allowance of the said indenture was not made by any justices acting in and for the division or jurisdiction in which the said parish of F is situate. And we, &c.

Form 9.—*That the justices did not duly inquire.*

That the said justices, A B and C D, Esquires, who signed the allowance in the said examination mentioned, did not duly inquire into the place of residence and circumstances and character of the said X Y, the master to whom the said pauper was bound, nor did they make any order for or allowance of the said indenture according to law. And we, &c.

Form 10.—*Where parish apprentice is informally bound forty miles from London.*

That the said A B was bound apprentice by the overseers and churchwardens of the parish of without an order of the justices declaring the master to be a proper person to whom such

binding might be made [*or* assigned to D C, without &c. ; *or* was bound out of the county of the said A B's parish into the parish of , which is more than forty miles from London, without any special order of two justices stating the grounds thereof, and allowing the same ; *or* without any reference in the said indenture to the order and consent of the justices to such binding ; *or* without any notice to the overseers of the master's parish of such binding being proved before its allowance by the justices was given according to the statutes in that case made and provided.] And we, &c.

Form 11.—*Consent not given to assignment.*

That the said pauper A B did not serve the said X Y with the consent duly given of the said L F, his former master. And we, &c.

Form 12.—*That the pauper apprentice was under nine years old.*

That the said A B was, at the time of making the indenture in the said examination, under the age of nine years. And we, &c.

Section XX.—Statement of an Apprenticeship Settlement when alleged by Appellants.

Form 1. —*Ordinary apprenticeship.*

That the said pauper, A B, after when he is alleged in the said examination to have gained the said settlement by hiring and service in our said parish of B, afterwards, to wit, on the day of , A.D. 1840, was duly bound an apprentice by indenture of covenant (*c*) to C D, tailor, of L, in the county of , (*) for a premium of 20*l.*, until he, the said A B, should attain the age of years, the said indenture being dated the day and year last aforesaid, and duly stamped, signed, sealed and delivered in the presence of E F, and the said A B served the said term with the said D E, and resided during the forty days last completed under the said service in the parish of L aforesaid.

Form 2.—*Parish apprenticeship.*

[*Copy the last form to the asterisk, and add*] by the churchwardens and overseers (*d*) of the parish of L, with the consent and allowance of two justices of the peace acting for the said county of , by indenture dated the day and year last aforesaid, the said consent being duly indorsed thereon under the hands and seals of the justices aforesaid. And the said A B served &c.

(*c*) These words are sufficiently descriptive of an ordinary apprenticeship; *R.* v. *Cumberworth Half*, 5 Q. B. 484.

(*d*) Name the parish officers, as well as the justices who allowed the binding, if possible.

Section XXI.—Law of Tenement Settlement.

Origin.—This settlement originates in a deduction from that clause of 13 & 14 Chas. 2, c. 12, s. 1, which authorizes the removal of a stranger who comes to settle in a tenement under the value of 10*l.* yearly rental, which rendered him irremovable if he settled in one above that value, and thus created a settlement.

Parties who may gain this settlement.—Any person not having been a prisoner, or in custody for debt in the King's Bench prison or within the rules, nor being a toll-keeper renting a toll-house or turnpike-road (*e*), nor residing in any almshouse or house provided by any charitable institution (*f*). (See *post* as to the joint or sole occupancy of the tenants.) A certificate-man might gain this settlement also.

General elements of this settlement.—The law of this settlement divides itself into five branches, which it is again necessary to divide into periods during which certain alterations in the law regarding them were made by divers statutes. They are as follow, and must be taken to be still in force where they are not afterwards stated to be altered:

1. What constitutes a tenement.
2. Its situation.
3. The occupation and rent.
4. The residence.
5. The payment of rates.

1. What constitutes a Tenement.—*Any thing is a tenement which is a profit out of land.* In order to take a tenement, it is not necessary that the party should have a fee simple or fee tail; any minute interest in land is *parcel* of a tenement. Such minute interest, indeed, cannot be entailed, but all the parcels, when consolidated together, may (*g*).

(*e*) 54 Geo. 3, c. 170, s. 5.

(*f*) *Ibid.*

(*g*) *R.* v. *Tolpuddle*, 4 T. R. 671, *per* Lord Kenyon.

Houses, outhouses (*h*), or parts of houses (*i*), give a settlement; so do mills, where fixed to the land (*k*), but not otherwise (*l*). Stalls in a market, if regularly occupied (*m*), and kilns (*n*). Land of all sorts is a tenement, whether incorporeal hereditaments pass with it and increase its value or not (*o*). And not only the land, but the renting of hay, grass, aftermath, cattlegates, or other pasturage, were and are also tenements (*p*). Right of common and right of agistment of cattle, so long as there is a pernancy of the profits of the land by the mouth of the cattle, are tenements giving settlement (*q*). But otherwise, where it is not expressly stipulated that the cattle shall be pasture-fed, or in some mode fed on and by the land, so as to give the hirer an interest in the land (*r*). This is essential; and where the master *gave* the pauper the agistment of a cow, it created no settlement, for the pauper had no interest in the tenement either as tenant or occupier (*s*).

The mere purchase of a particular crop will not give a settlement; it must be an interest corporeal or incorporeal, *rented* by the tenant (*t*).

Not merely does the agistment of cattle confer a settlement by tenement, but the hiring of the animals agisted also creates it where they belong to another person, so long as the

(*h*) *R.* v. *St. Margaret's, Fish-street-hill*, Burr. 677.

(*i*) *R.* v. *Whitechapel*, 2 Bott, 100.

(*k*) *R.* v. *Buttley*, 2 Str. 1077.

(*l*) *R.* v. *Otley*, 1 B. & Ad. 161.

(*m*) *R.* v. *Caversham*, 4 B. & Cr. 683.

(*n*) *R.* v. *Iken*, 2 A. & E. 147.

(*o*) *R.* v. *Hockworthy*, 7 A. & E. 493.

(*p*) *R.* v. *Stoke*, 2 T. R. 451.

(*q*) *R.* v. *Cherry Wellingham*, 1 B. & Cr. 626; *R.* v. *Cumberworth-Half*, 5 Q. B. 484.

(*r*) *R.* v. *Bardwell*, 2 B. & Cr. 161; *R.* v. *Sutton St. Edmund's*, 1 B. & Cr. 536; *R.* v. *Cumberworth*, *ante*.

(*s*) *R.* v. *Langriville*, 10 B. & Cr. 899.

(*t*) *R.* v. *Bowness*, 4 M. & S. 210.

hirer receives that which is the profit of the land on which animals thus hired are fed. This applies to the hiring of dairies, the milk being the produce of the land on which the cows are depastured (*u*). But this land itself must have been of the annual value required, and it must have been also specially agreed that the cow should be fed on it (*x*).

Rabbit warrens (*y*), mines (*z*), rights of fishery, and beds of rivers, ponds, &c., and flags or rushes there growing (*a*), tolls at fairs and markets (*b*), are all tenements within the meaning of the act. Ferries, also, have been recently held to be tenements as well as tolls (*c*).

Value of the tenement before 59 Geo. 3, c. 50 (2nd July, 1819 (*d*)).—Under the statute of Charles it was simply required that the tenement should be of the annual value of 10*l.*, and it did not depend upon the amount of the rent, where rent was paid. "If a man hire a house at a small rent, and pay a fine, yet, if the house be worth 10*l.* per annum, it makes a settlement (*e*)." Such was the law of that time; rent, however, was held to be the fair criterion of value, unless the tenement was shown to be worth more or less; and the annual value alone was material (*f*). If it were worth 10*l.* a year, and a tenant occupied five months, paying 4*l.*, he gained a settlement (*g*). And the value was

(*u*) *R.* v. *Piddletrenthide*, 3 T. R. 772; *R.* v. *Tolpuddle*, 4 T. R. 671.

(*x*) *R.* v. *Minworth*, 2 East, 198.

(*y*) *R.* v. *Piddletrenthide, supra.*

(*z*) *R.* v. *Bedburn*, Cald. 452.

(*a*) *R.* v. *All Saints, Derby*, 5 M. & S. 90; *R.* v. *Old Alresford*, 1 T. R. 368.

(*b*) *R.* v. *Chipping Norton*, 5 East, 239.

(*c*) *R.* v. *Fladbury*, 10 A. & E. 706.

(*d*) The law of each period of course holds good *now* for all settlements therein gained.

(*e*) *Per* Parker, C. J., *South Sydenham* v. *Lamerton*, 2 Bott, 128; *R.* v. *Yokeford*, Burr. S. C. 140.

(*f*) *R.* v. *Tissington*, Burr. S. C. 499; *R.* v. *Yokeford, ante; R.* v. *Bilsdale Kirkham*, 2 Bott, 137.

(*g*) *R.* v. *St. Botolph's*, Burr. S. C. 574.

calculated without deducting taxes, rates and charges, usually deemed tenants' taxes (*h*).

Nothing was to be considered but the worth of the tenement itself, without reference to that of any personal chattels upon it. The value of stock on a tenement was not material.

But it was otherwise where the value of the land was raised by the amount of things erected thereon, or which were so connected with the land as to fall (in legal contemplation) within the description of a tenement (*i*).

Likewise a thing movable in its nature might be attached to a tenement as an accessary, so as to constitute a part thereof, and go to the heir as a member of the inheritance; in which case, the annual value of such things are part of the yearly worth of the tenement, and to be estimated as such in questions of settlement. Thus, although cows fed on particular lands were not considered as increasing the value of the tenement, *i. e.* the produce of the land, yet rabbits in a warren (*k*), the fish of a fishery (*i*), and, upon the same principle, doves in a dove-cot (*k*), which are attached to the tenement, and would have gone to the heir as part of it, are to be considered as augmenting its value.

Where the sessions find that the amount of the rent paid was more than 10*l.* per annum, the court will conclude that the tenement was of that value, although it is stated that some personal chattels were likewise demised, unless the value at which they are rented was expressly stated (*l*).

Distinct and separate building or land, since 59 *Geo.* 3, *c.* 50, 2*nd July*, 1819.—This act required, among other things to be presently noticed, that the tenement should thenceforth consist "*of a house or building within such parish or township, being a separate and distinct dwelling-house or*

(*h*) *R.* v. *Framlingham*, Burr. S. C. 748.
(*i*) *R.* v. *Minworth*, 2 East, 198.
(*k*) Co. Litt. 8 b.
(*l*) *Per* Buller, J. *R.* v. *Whitechapel*, 2 Bott, 102.

building, or of land within such parish or township, or of both, bonâ fide hired by such person," &c.

Such are the words of the statute; but Lord Denman's remark on the 13 & 14 Chas. 2, in *R.* v. *Aberdaron* (*m*), applies forcibly *here*—"If we followed exactly the words of the statute, we should be very far from the decisions." *A* house, being *a* separate and distinct house, certainly seems to mean a single house, and not two or more houses. The Court of Queen's Bench has, however, decided otherwise (*n*), and we gather the following dicta from the several decisions on the subject. In *R.* v. *Macclesfield* (*o*), Tenterden, C. J., says, "the whole was under *one roof;* that being so, it is a distinct building." Taunton, J., in the same case, thinks, "it may be too much to say that two dwelling-houses can constitute one distinct dwelling-house;" but Parke, J., "inclined to think otherwise." In *R.* v. *Tadcaster* (*p*) a house and separate shed had been rated. Lord Denman, C. J., "thinks it would be too much to say that the collocation of the words in this sentence will prevent the acquisition of a settlement by the occupation of any two of the three things there enumerated." Littledale, J., "thinks that a house and building may be connected; and will even go further," and holds "that the word *both* may mean all three put together." If it were not so, says Parke, J., "a distinct house and a pig-sty taken at one entire rent of 100*l.* would not confer a settlement." But in *R.* v. *Wootton* (*q*) there were two distinct houses, in different parts of the parish. Lord Denman, C. J., says, "Looking at the words 'distinct and separate,' &c., it makes no difference whether two or more of these descriptions of tenement be held, or one distinct and separate one of either kind; all that is requisite is that the

(*m*) 1 Q. B. 671.

(*n*) *R.* v. *North Collingham*, 1 B. & C. 578; *R.* v. *Gosworth*, 1 A. & E. 226, &c.

(*o*) 2 B. & Ad. 870.

(*p*) 4 B. & Ad. 703.

(*q*) 1 A. & E. 232.

tenement shall be either one or another of those three, or several of any." The meaning of the legislature it was there held, was that there should be "entire holdings, and settlements should not be gained by a split or subdivided tenement." And Patteson, J., says, "a separate and distinct dwelling-house or building in these statutes meant separate and distinct as to any other *person*, that the tenant should not hold part of a house. But the renting to give a settlement may be of *more* than 'a dwelling-house, or building, or land, or both.'" In short, the building must be separately and distinctly held by the tenant.

The minor distinctions will be found well illustrated by the following cases, in all of which the court found that a settlement had been gained. In *R.* v. *Macclesfield* (*r*) the pauper took a house, consisting of a house, place, a chamber over it, and above that a garret, which extended over the lower rooms in the adjoining house. He afterwards took the adjoining house, in addition to the rest of the premises, from the same landlord, for a year, at 10*l.* rent. The whole was under the same roof, though there was no internal communication. The pauper dwelt in the first part, and put a journeyman in the other.

In *R.* v. *Tadcaster* (*s*), a pauper, in November, 1827, took a dwelling-house of A., at a rent of 6*l.* 10*s.* In May, 1828, he took of B. a separate shed, at a rent of 5*l.* He occupied both until September, 1830, and gained a settlement.

In *R.* v. *Iver* (*t*), a person rented two houses under one continuous roof, having distinct outer doors, and no internal communication: he took the whole at one hiring, but paid distinct rents for them of 6*l.* each per annum; he occupied one house himself, and allowed his son exclusive possession of the other, and gained a settlement.

In *R.* v. *Gosworth* (*u*), a person hiring a house and stable for a year in a parish, under different landlords, at rents

(*r*) 2 B. & Ad. 870.
(*s*) 4 B. & Ad. 703.
(*t*) A. & E. 228.
(*u*) 1 A. & E. 226.

amounting together to 10*l.*, holding such house and stable, and residing in the house for the year, and paying the whole rent, though the house and stable were entirely separate from each other, gained a settlement.

In *R.* v. *Great and Little Usworth* (*v*), where the middle floor of a house had been rented, having a distinct staircase, this was held so be a distinct settlement.

In all these cases the settlement was gained. But in the following cases it was held that the settlement was not gained.

In *R.* v. *Rickinghall Inferior* (*x*), a shop was held jointly with a house. The shop had an internal communication with an adjoining house. This is not a distinct and separate building.

In *R.* v. *Henley on Thames* (*y*), where a granary was rented, forming an entire floor, having no internal communication with the rest of the building, and only to be entered by a ladder from the ground, no settlement was gained.

In *Reg.* v. *Caverswall* (*z*), the pauper's late husband rented *bonâ fide* a dwelling-house in Burslem, at the rent of 7*l.* a year. During all the time he so rented and occupied the dwelling-house, he also rented *bonâ fide* a building called a potwork jointly with one E A, at the rent of 15*l.* a year for part of the time, and 17*l.* a year for the remainder of the time, and occupied the same jointly with E A under such renting. In none of these was the building held to be sufficiently distinct.

Thus wherever there was a distinct and separate holding by the pauper of tenement or tenements, it suffices; but where any part of them were held jointly with any one else no settlement was gained.

Though the dwelling-house must, under these statutes, have been distinctly and separately held, the land need not. The statute has expressly guarded against this construction by the words "of a separate and distinct dwelling-house or

(*v*) 5 A. & E. 261.
(*x*) 1 N. & M. 47.
(*y*) 6 A. & E. 294.
(*z*) 10 A. & E. 270.

building, *or of* land;" the words "*or of*" disjoin land from "separate and distinct," which apply to dwelling-house or building only, and not to land, which may therefore be held by any number of joint tenants, so long as the value be enough (*a*).

In all other respects the definitions of a tenement remain as they were under 13 & 14 Car. 2, for the subsequent acts of 6 Geo. 4, c. 57, and 1 Will. 4, c. 18, make no difference.

2. The Situation of the Tenement under the Statute of Charles.—Distinct tenements, when of sufficient conjunct value, are within the 13 & 14 Car. 2 (*b*), and that, whether situated in the same or in different parishes, or taken at different times, and of different landlords, or held by distinct titles, as by renting part, and holding part in right of a wife (*c*), residing in a tenement in one parish, of which possession was obtained under a treaty to purchase, and occupying his own freehold property in another (*d*). No more in fact was necessary but that the party should be a lawful occupier to the yearly value of 10*l.* during a residence of forty days (*e*).

But the tenant must actually occupy the premises sought to be united; for an occupation as tenant in one parish could not be coupled with an interest as landlord in another. It was essential that it should have been the renting or occupancy of a tenement or tenements.

The situation of the tenement between July 2, 1819, *and June* 22, 1825.—The 59 Geo. 3, c. 50, requires that the tenement should be situated within the parish or township where the settlement is gained, and also that the *land* con-

(*a*) *Reg.* v. *St. Lawrence, Appleby*, 14 L. J. M. C. 56.
(*b*) *R.* v. *Whixley*, 1 T. R. 137.
(*c*) *R.* v. *Donnington*, Burr. S. C. 744.
(*d*) *R.* v. *Culmstock*, 6 T. R. 730.
(*e*) *R.* v. *Hooe*, 4 East, 368, Grose, J.

stituting the tenement "shall be situate within the same parish or township as the house wherein the person hiring such land shall dwell and inhabit."

Since June 22, 1825.—By the 6 Geo. 4, c. 57, if the rental was 10*l.* of land, it was not necessary to prove the actual value of the tenement. Under this statute it has been decided that though the land extend into two parishes, a house and *part of the land* in one will confer the settlement; for were it otherwise, a man who paid 400*l.* a year for his land could not gain a settlement by it, if one acre of it were in another parish (*f*).

3. The Occupation and Rent previous to July 2, 1819.—There must have been a *bonâ fide* occupation as tenant. Mere occupation by indulgence did not avail. But it was not necessary that the tenant should take possession for any given time, or even that he should do so with any intention of retaining his tenancy permanently. It was enough, as we shall afterwards see, if he actually resided for forty days (*g*). A removal by justice's order would not determine the tenancy or prevent the tenant from returning and gaining his settlement (*h*). The tenure must have been legal, and where incorporeal property was held by lease without seal, the settlement was not gained (*i*). It was and is immaterial to the settlement, however, that the tenement was given in lieu of wages. A servant in such case gained the settlement (*k*). It was and is otherwise where the servant occupied the tenement for the service and convenience of his master (*l*). It was not necessary that any rent should

(*f*) *R.* v. *Pickering*, 2 B. & Ad. 267.

(*g*) *R.* v. *Helsham*, 2 B. & Ad. 620; *R.* v. *Shenston*, Burr. S. C. 474.

(*h*) *R.* v. *Willoughby*, 4 A. & E. 143.

(*i*) *R.* v. *Chipping Norton*, 5 East, 239.

(*k*) *R.* v. *Benneworth*, 2 B. & C. 775; and *R.* v. *Nacton*, 3 B. & Ad. 543; *R.* v. *Bishopston*, 9 A. & E. 824; and see *post*, p. 233.

(*l*) *R.* v. *Shipdam*, 3 D. & R. 384; *R.* v. *Snape*, 6 A. & E. 278.

have been actually *paid* according to the law prior to July 2, 1819, if the annual value of the tenement were 10*l.*, for this was all that was required.

Occupation, &c., under 59 *Geo.* 3, *c.* 50, (*July* 2, 1819, *until June* 22, 1825.)—This act enacted, "that no person shall acquire a settlement in any parish or township maintaining its own poor in England by or by reason of his or her dwelling for forty days in any tenement rented by such person unless such tenement shall consist of a house or building within such parish or township, being a separate and distinct dwelling-house or building, or of land within such parish or township, or of both, *bonâ fide* hired by such person at and for the sum of ten pounds a year at the least, for the term of one whole year; nor unless such house or building shall be held, and such land occupied, and the rent for the same actually paid, for the term of one whole year at the least, by the person hiring the same:" thus, upon the wording of this statute, it was construed, that as a tenant need not *occupy* a *house*, he might underlet part of it; or, holding it for a whole year, need not occupy it for that time (*m*). But it is otherwise as to land, or the produce of land, which must be *occupied* the whole time (*n*). The holding or occupation, as well as the term of the taking, must have been a whole year, but it was not necessary that the occupation should cover the exact term of the taking (*o*).

The rent under this statute was to be "10*l.* a year at the least," and to be "*actually paid* for the term of one whole year, at the least, *by the person hiring the same.*" It has been held immaterial whether the tenement were really worth 10*l.* rental, so long as it was "actually paid." Nor does it matter whether, under the statute, the tenant paid the 10*l.* free of rates and taxes, or not (*p*). If two tenants

(*m*) *R.* v. *Stow Bardolph*, 1 B. & Ad. 219.
(*n*) *R.* v. *Ockley*, 1 B. & Ad. 818.
(*o*) *R.* v. *Stow*, 4 B. & Cr. 87.
(*p*) *Reg.* v. *St. John's, Bedwardine*, 8 A. & E. 192.

held jointly, a moiety of the rent was deemed to be paid by each, and it required, therefore, a 20*l.* rental to give a settlement. The *entire rent* must, moreover, have been actually paid. Recovery of rent by distress did not comply with the terms of the statute (*q*).

Occupation, &c., under 6 *Geo.* 4, *c.* 57, *from June* 22, 1825, *to March* 30, 1831.—This statute aimed to put an end to the distinction between holding of houses and occupation of land. By it no settlement could be gained by house, building, *or* land, unless "*bonâ fide* rented by such person in such parish or township, at and for the sum of 10*l.* a year at the least, for the term of one whole year; nor unless such house, or building, or land, shall be occupied under such yearly hiring, and the rent for the same *to the amount of* 10*l. actually paid* for the term of one whole year at the least."

It has been held, also, that so long as a man rented and occupied land and house separately, together amounting to 11*l.* 10*s.*, for periods of a year each, but beginning at different times, and, therefore, not corresponding, this satisfied the statute (*r*). This, it is submitted, is a construction too questionable to be safely followed. It is true that the statute does not expressly say that house and land, or both, shall be rented and occupied for the term of one *and the same* whole year, but this is apparently implied, for it is clearly the intent that a certain money payment by way of qualification shall have continued during the space of one whole year. But where a man hires a house at 5*l.* from July, 1844, to July, 1845; and land at 5*l.* from January, 1845, to January, 1846, he has paid the 10*l.* it is true, but he has completed the payment of it during a period of *eighteen* instead of *twelve* months. Thus the money qualification is not that which the act requires, and the decision in

(*q*) *R.* v. *Ramsgate*, 6 B. & Cr. 712.
(*r*) *R.* v. *Ormsby*, 4 B. & Ad. 214.

R. v. *Ormsby* we submit is therefore fallacious in principle, and not to be relied on.

It is essential that the tenement should have been hired for a whole year; but the rent might be paid weekly (*s*) and the pauper might hire for a year of a tenant from year to year (*t*).

Where a pauper became tenant for the term of six months from January 1, 1830, and so on from six months to six months until six calendar months' notice to quit at the rent of for every six months, &c.; this was held to be a taking for a year although *primâ facie* the word month alone would mean a lunar month (*u*). The tenancy must be *bonâ fide* and not a permissive occupation, as servant, where the occupation is ancillary to the service (*x*). If an independent relation of landlord and tenant exists it suffices though the tenant was his servant (*y*).

Under this statute joint tenancy defeated the settlement as at present (*z*).

The statute, however, omits the words relating to the occupation "by the person hiring the same." It was therefore held not to be necessary that the same person who hired should himself occupy the whole tenement (*a*), or any part of it, so long as it was occupied by his sub-tenant.

The distinction between holding and occupying was set forth with great clearness and force in the judgment in *R.* v. *Ditcheat* (*b*), where it was held, that occupation by the wife of the tenant and of a part by a lodger entitled the

(*s*) *R.* v. *Herstmonceaux*, 7 B. & C. 551.

(*t*) *R.* v. *Wainfleet*, 8 B. & C. 227.

(*u*) *Reg.* v. *Chawton*, 1 Q. B. 245.

(*x*) *Reg.* v. *Bishopton*, 9 A. & E. 824; and *R.* v. *Bardwell*, 2 B. & Cr. 161; but otherwise if in payment of wages. See p. 230.

(*y*) *R.* v. *Iken*, 2 A. & E. 147.

(*z*) *R.* v. *Caverswall*, 10 A. & E. 270.

(*a*) *R.* v. *Great Bentley*, 10 B. & Cr. 520.

(*b*) 9 B. & Cr. 176.

husband to a settlement: and Littledale, J., said, "there is a material difference between a holding and an occupation. A person may hold though he does not occupy. A tenant of a freehold is a person who holds of another: he does not necessarily occupy. In order to occupy, a party must be personally resident by himself or his family." Thus a constructive occupation satisfied that statute.

The payment of the rent was subject to the same omission, and it need not have been paid by the pauper so long as it was actually paid by some one during his lifetime (*c*). The payment of 10*l.* of the rent, where it exceeded that sum, was rendered sufficient by the retrospective effect of sect 2 of 1 Will. 4, c. 18 (*d*).

The rent might even be paid up after the order of removal and after the occupation had terminated, for the order does not put an end to inchoate settlements (*e*), and the payment might have been made by the parish officers if not made fraudulently (*f*).

Occupation, &c., under 1 *Will.* 4, *c.* 18.—This statute is still in operation, and took effect and was passed on the 30th of March, 1831, chiefly to amend the blunders and supply the omissions of its predecessor. It enacted that "no person shall acquire a settlement in any parish or township maintaining its own poor by or by reason of such yearly hiring of a dwelling-house or building, or of land, or of both, as in the said act expressed, unless such house, or building, or land, shall be actually occupied under such yearly hiring in the same parish or township, by the person hiring the same, for the term of one whole year at the least, and unless the rent for the same to the amount of 10*l.* at the least, shall be paid by the person hiring the same."

(*c*) *R.* v. *Carshalton*, 6 B. & Cr. 93.

(*d*) *R.* v. *Dursley*, 3 B. & Ad. 465.

(*e*) *R.* v. *Willoughbey*, 4 A. & E. 143, overruling *R.* v. *Ampthill*, 2 B. & C. 847.

(*f*) *R.* v. *Knibworth Harcourt*, 7 B. & Cr. 790; and *R.* v. *St. Sepulchre, Cambridge*, 1 B. & Ad. 924.

Under this statute, therefore, the occupation must be by the person hiring the tenement, whether it were land or house; and such occupation must be for one whole year as before. The effect of this is, that any underletting to lodgers defeats the settlement, as the subject-matter of the demise, whatever it is, must now be entirely occupied by the party renting (*g*). The statute underwent close examination soon after it was passed by the Court of Queen's Bench, and it was held that it had studiously introduced the words "*actually occupied by*," &c. to ensure an *exclusive occupation*. "If there be," said Lord Denman, "a clear underletting by the party of any portion of the house, for however short a period of time, and however small a sum, it seems to me that it cannot be said that there was an actual occupation of a separate and distinct dwelling-house by the hiring the same (*h*). And the act applies to all cases where a contract had been made previous to its passing, but the occupation then subsisting (*i*)." But this rule does not affect the case of letting out nightly lodgings (*k*). Where, however, any other party or person acquired a right of occupancy, as the assignee of an insolvent, the settlement is defeated (*l*). Distinct occupations of less than a year, though of sufficient joint duration, cannot be joined under this statute, so as to give a settlement (*m*); and these provisions affect all settlements not completed, but in the course of completion, when the act passed.

Similar provisions affect the rent under this statute, which must be to the amount of 10*l*. on a hiring for a whole year, to be paid by the party hiring, it being the object of the act to put an end to constructive payments of rent.

(*g*) *R.* v. *Berkswell*, 6 A. & E. 282.

(*h*) *R.* v. *St. Nicholas, Colchester*, 2 A. & E. 599; *R.* v. *St. Nicholas, Rochester*, 5 B. & Ad. 219.

(*i*) *R.* v. *St. Nicholas, Colchester, ante.*

(*k*) *R.* v. *St. Giles*, 4 A. & E. 495.

(*l*) *R.* v. *Pakefield*, 4 A. & E. 612; *R.* v. *Melsonby*, 12 A. & E. 687.

(*m*) *R.* v. *Banbury*, 1 A. & E. 612.

In January, 1831, in the case of *Reg.* v. *Melsonby* (*n*), M being in possession of premises as tenant from year to year upon a taking from Martinmas to Martinmas, at the yearly rent of 10*l.*, payable half-yearly at May-day and Martinmas, gave up the premises to the pauper, and the landlord then agreed to take the pauper as his yearly tenant, provided he would answer for the current half-year's rent. The pauper then entered, and continued to occupy till October, 1832. At May-day, 1831, he paid 5*l.* for the rent then due, and at Martinmas, 1831, he paid another 5*l.* for the rent due up to that time. He continued in the occupation until October, 1832, without paying any more rent. He then agreed with R that R should have possession, and should take his fixtures at 5*l.* and his furniture at 4*l.* 5*s.*, and should pay the landlord 9*l.* 5*s.* for the rent due since Martinmas, 1831. R took possession, and shortly after, the landlord agreed to accept R as tenant, and received from him an undertaking that he would pay the rent due from the pauper. At Martinmas, 1833, R having failed to pay that or any subsequent rent, the landlord distrained for the whole amount. The distress, which consisted in part of the fixtures and furniture transferred by the pauper to R to the value of 5*l.*, paid the rent: Held (*o*), that there had not been a payment of a year's rent by the pauper, so as to satisfy 1 Will. 4, c. 18, s. 1. It is, however, expressly provided by sect. 2, that it shall not be necessary to the acquirement of a settlement that more than 10*l.* should be paid where the rent exceeds it, nor that it should be paid within the year (*p*).

The 4 & 5 Will. 4, c. 76, has made no difference as to occupation or rent, and 1 Will. 4, c. 18, is still in force.

4. Residence.—Under the statute of Charles, residence for forty days in the parish where the tenement is situated

(*n*) 12 A. & E. 687.

(*o*) *R.* v. *Pakefield*, and *Reg.* v. *Melsonby*, *ante*.

(*p*) *R.* v. *Willoughby*, 4 A. & E. 143; 5 L. J. M.C. 35.

was always essential to the settlement. Residence, as before stated, means sleeping, and is distinct from mere occupation; so that a man need not have resided on or in the tenement he occupied, but his residence for forty days and his tenement must be in the same parish, or he gains no settlement (*q*). The residence may be continuous, or broken by intervals, but it must be the residence of the party himself, and not merely that of his family. It matters not in what capacity he resides; and these provisions remain in force.

5. Rate Payment since August 14, 1834.—No rates need have been paid to gain this settlement, until the 4 & 5 Will. 4, c. 76, which provides (s. 66) that "from and after the passing of that act no settlement shall be acquired or completed by occupying a tenement unless the person occupying the same shall have been *assessed* to the poor rate, and shall have paid the same in respect of such tenement for one whole year." These rates must have been literally paid by the tenant; for where the landlord paid them, receiving a higher rent on that account from the tenant, whose name was entered in the rate book, it was nevertheless held by the Queen's Bench, in a very recent case, that this was not a payment of the rates *by the tenant*, and that the settlement was not gained (*r*). This decision was grounded on the case of *R.* v. *Weobley* (*s*) on a similar statute. It is on the principle that the rate was paid out of funds over which the pauper had no control, and by virtue of an antecedent contract. The payment by the landlord did not therefore enure to the benefit of the tenant, as was the case where the landlord, *being a party rated*, paid the rates, as in *Wright* v. *Stockport Town Clerk* (*t*).

(*q*) *R.* v. *Ditcheat*, 9 B. & C. 176.
(*r*) *R.* v. *South Kilvington*, 5 Q. B. 217.
(*s*) 2 East, 68.
(*t*) 13 Law Jour. C. P. 50.

Section XXII.—Evidence of Tenement Settlement.

The evidence required to support this settlement is in itself simple and easily attained. It will of course vary slightly with the law of the period at which the tenement was taken. The personal capacity of the tenant need not be proved; and it will be sufficient to state in evidence those facts which show a tenement of the requisite value, &c., to have been hired for the requisite period, and, under the circumstances, conferring a settlement at the time in question, without negativing those facts which would vitiate the settlement if they existed, and which it is for the appellant parish to set up, if it can do so, when it will be time for the re-removing parish to rebut them. The respondents need not anticipate objections, but must nevertheless establish a *primâ facie* case, by proving the elements of the settlement. A few brief remarks will suffice to show, under the same division of the matter as previously used, what evidence is necessary.

1. *The tenement.* — It must be distinctly stated by the pauper, or any person cognizant of the fact, that the tenement was one of the descriptions stated in the last section. Where it was a house or land, it will be easily stated as such; but where it consisted of agistment or dairy, it must be expressly shown that the animals agisted were fed with the produce of the particular land which is to confer the settlement. It is necessary to be very cautious in wording this accurately and fully. When the appellants stated that the pauper, in 1812, "rented and occupied a tenement consisting of the feed and keep of a cow of which he was the owner, by and on the land and premises of J. Haigh, for one whole year," &c. it was held that this was not sufficient, for the natural construction of the words was that the cow was to be kept and fed by Haigh on his premises, so that she might be fed with the produce of other land than that which gave the settlement(*t*). An accurate and full

(*t*) *Reg.* v. *Cumberworth-Half*, 5 Q. B. 484.

description of the tenement must be given with landlord's name, and if in a town, with street and number (*u*).

After the 2nd July, 1819. — Prove that the tenement, whether a house or building, or land, or both, was separate and distinct as to the persons occupying it. Prove also to whom it belonged.

2. *The situation of the tenement.*—It must be shown that the tenement was in the parish of the settlement, at whatever period it took place.

3. *The occupation, rent, and term of tenure, before 2nd July*, 1819.—During this period it is only necessary to prove that the tenant came to settle in the parish, that he occupied the tenement either himself or underlet it to another. The rental value must be shown, but it need not be proved that rent was paid as long as the tenement was *bonâ fide* hired. The rent will be evidence of the value, but may be rebutted. The letting, *in all cases and periods*, must be proved either by the lease or written agreement, if there were one; or by proof of assent of the landlord, if there were not.

In the case of *R.* v. *Castle Morton* (*x*), it was decided, that an agreement in writing, unstamped, for the letting a tenement at a certain rent, having been lost, parol evidence of its contents was not admissible for the sake of proving thereby the value of the tenement.

In the case of *R.* v. *Kingston-upon-Hull* (*y*), it was held, that a tenancy under a written contract may be proved by the payment of rent.

In the case of *R.* v. *Merthyr Tydvil* (*z*), it was decided that the agreement, if in writing, must be produced, to show a tenancy under 6 Geo. 4.

(*u*) *R.* v. *Sussex*, 10 A. & E. 682.
(*x*) 3 B. & Ald. 588.
(*y*) 7 B. & C. 611; 1 M. & R. 444.
(*z*) 1 B. & Ad. 29.

In the case of *R.* v. *Rawden* (*a*), it was held, that a presumption of tenancy, arising from occupation, cannot be negatived without proving the written agreement.

In the case of *Doe* v. *Pettat* (*b*), it was decided, that if the occupier was dead, proof of his occupation and evidence of his declarations as to the terms on which he held will suffice.

Thus, by these cases, payment of rent is good evidence of the letting. Prior payments are assumed from later payments. There has been much difference of opinion how far parol evidence could be given of a demise where a lease existed. It is now quite clear that it cannot, unless the lease be proved to be destroyed or lost. The unqualified and very proper decision of the Court of Queen's Bench, in *R.* v. *Eastville*, and *R.* v. *Ecclesal Bierlow*, discards all secondary evidence where primary evidence can be had, *R.* v. *Holy Trinity* (*c*), notwithstanding. So strictly is the rule that secondary evidence is inadmissible where primary evidence exists adhered to, that where a written agreement between and signed by the parties is shown to be in existence, and, owing to its not being stamped, it cannot be produced, the letting cannot be proved at all, and the order must be quashed founded on such insufficient and inadmissible evidence (*d*); but where it was merely a memorandum, and *not* signed by the parties, parol evidence may be given nevertheless (*e*). The lease or agreement being produced will at once prove several of the requisite facts. Where the hereditament is incorporeal, it cannot have been demised without a lease, and confers no settlement without one (*f*).

(*a*) 8 B. & C. 708 ; 3 M. & R. 426.
(*b*) 5 B. & A. 223.
(*c*) 7 B. & Cr. 611.
(*d*) *R. v. Bathwick*, 4 D. & R. 335.
(*e*) *R.* v. *St. Mary, Leicester*, 2 A. & E. 210
(*f*) *R.* v. *Chipping Norton*, 5 East, 239.

The tenement need not be shown to have been hired for any length of time.

After 2nd July, 1819.—A *bonâ fide* renting must be proved as before, and in addition, it must be shown that the tenement was taken for a whole year at 10*l.* annual rental, and also that the pauper held a house, or *occupied* land, and paid the rent himself for a whole year. A statement in these terms was held insufficient: "I paid rent for the whole time of my tenancy," after stating previously, "I took the house for a year as, I believe, at 19*l.*" Had he said he paid *the* rent, or the whole rent, it would have sufficed. "It is unfortunate," said Lord Denman, C. J., "that the omission of a word should make all the difference, but such is the case (*g*)."

The occupation need not have been concurrent with the hiring. These latter facts cannot be all shown by the lease, even if there be one, but must be obtained from receipts (of which prove the signature) to the pauper, or the evidence of the landlord, or of persons aware of the fact. If land were in two parishes, show that 10*l.* value in rental was in the parish of the settlement; and so of all the facts essential in law to the settlement at this period. The hiring or holding must be stated to be by the pauper alone.

Between 22nd June, 1825, *and 30th March*, 1831.—The chief difference as to evidence of occupation during this period is, that it need not be shown that the person hiring is the person actually occupying. Hiring suffices, as we have before stated, and the tenement may be stated to have been occupied by a sub-tenant, and thus *constructively* by the lessee; and being possessed of the key of the premises, and leaving some things on them, has been held sufficient evidence of the occupancy required by 6 Geo. 4, c. 57, at this period, although the tenant had taken and entered another house (*h*).

(*g*) *Reg.* v. *Leeds*, 13 L. J. M. C. 88.

(*h*) *R.* v. *St. Mary Kalendar*, 9 A. & E. 626.

It must, however, be shown that the occupancy was under one and the same hiring, but it need not be shown what was the actual value, but only what was the *rental* of the tenement under this statute.

Rent to the amount of 10*l.* only (even supposing the whole rent to have been more) need be shown to have been paid even in this period (*i*) and since. This is essential, but it need not be shown that the rent was paid by the parties hiring. It is admissible at this period to show that it was paid by others, who are, of course, the best witnesses. The rent must be expressly shown to have been paid for the *same term* as the hiring.

An examination, stating that the pauper *occupied* a cottage and land belonging to A B in the appellant parish, *at the yearly rent of* 9*l.* and a shop *at the yearly rent* of 1*l.* 11*s.* 6*d.*, *all which premises he occupied for three years, paid the several rents* as they became due, and resided the whole time in the cottage, does not show a renting at 10*l.* for one year and an occupation under such yearly hiring, within stat. 6 Geo. 4, c. 57, s. 42, and will not sustain an order of removal. And in this case Lord Denman said, "the statement in this examination does not follow the statute. It does not say that the pauper rented at 10*l.* for one whole year, or occupied under a yearly hiring. Mr. Hall has put a case where the facts stated in the examination might be true, and the premises not rented according to the statute. The statements might be true if the pauper had occupied and paid rent, as stated in the examination, under a tenancy at will (*k*)." See also *Reg.* v. *St. Sepulchre, Northampton, post.*

Proof of occupation, &c. after the 30*th March,* 1831.—A very material change now takes place in the evidence required, which must distinctly show that the tenement, whe-

(*i*) 1 Will. 4, c. 18, s. 2, which is retrospective; *R.* v. *Dursley*, 3 B. & Ad. 468; and *R.* v. *Ruthin*, 5 B. & Ad. 215.

(*k*) *Reg.* v. *Recorder of Pontefract*, 2 Q. B. 548.

ther of land or building, was actually occupied, and rent to the amount of 10*l.* actually paid by the person hiring, and by himself alone.

The occupation of house or building must be shown to have been exclusively by the party hiring; there must have been no joint hiring, even to above the joint amount of rental. Constructive occupation no longer suffices. The same particularity of statement is required as before.

In a very recent case (*l*), witness said, "on the 22nd of July, 1839, I let a house, situate at No. 10, in Leicester-street, in the parish of St. Sepulchre, in the town of Northampton, to Thomas Adams, the husband of the pauper, Ann Adams, at the rent of 10*l.* per annum, exclusive of the parochial rates. The said Thomas Adams occupied the house till the 22nd of July, 1841, and paid me the whole of the rent during that time." This seems, at first sight, explicit enough, but the court held that it did not expressly state that the occupation was under the yearly hiring, and that nothing was to be left to intendment; and that the examination ought to contain a conclusion against all those circumstances, which would prevent a settlement within the statute. Coleridge, J., however, dissented from the judgment, and it must be deemed to have carried the law to the extremity of strictness.

4. *Residence.*—The acts having at all periods required a residence of forty days, as stated in the last section, it must be expressly proved in all its requirements. It is enough to prove residence in any part of the parish where the tenement was. This may be done by the pauper, or by any person cognizant of the fact, and cognizant also of what are the boundaries of the parish, which may occasionally be necessary.

Great care must be taken where there were two holdings,

(*l*) *Reg.* v. *St. Sepulchre, Northampton*, 14 L. J. M. C. 8.

so to express the evidence of residence as to make it apply to the whole period of both holdings. "I resided at the same time," is not sufficient for instance; for it does not imply "for or during *all* the same time," or for any particular time (*n*)."

*** In stating the evidence of a tenement, attention must always be paid to the requirements of the law at the particular period when the renting took place, and great care must then be taken to express the facts that meet them fully and clearly. This is most of all needful for this settlement.

Section XXIII.—Statement of Grounds of Objection to Tenement Settlements.

It will suffice to give the forms in which objections may be stated, founded on the chief flaws to which tenement settlements have been shown to be liable, and for ease of reference, they are classed for the most part under the heads and periods previously used.

Form 1.—*Incapacity to hire (at any period).*

That the said A B was not, at the time of the making of the contract in the said examination mentioned, competent to gain a settlement, she then being a married woman [*or*, he then being a collector of tolls, residing in the toll-house of , which is the tenement alleged to have been hired in the said examination, and to which the said contract above relates, and which said contract therefore confers no settlement according to the statute in that case made and provided.] And we, &c.

Form 2.—*That the tenement is insufficient.*

That the tenement alleged in the said examination to have been hired by the said A B consisted of a windmill, resting on certain pillars and framework, and nowise attached to them or fixed to the land [*or*, of the going, milking and general feed of certain cattle, such feed not being feeding on and by the produce of the land; *or*, of winter feed for the said cattle, they not being fed on the said land itself; *or*, of certain standing for the grinding-stones of a

(*n*) *Reg.* v. *Henley*, 1 New S. C. 397.

certain mill, with the use of steam power to turn and use the same], which confers no settlement as a tenement in law. And we, &c.

Form 3.—*The tenement not situated in the parish.*

That the said tenement so alleged to have been rented by the said A B in the said examination was not situated in our said parish of , as in the said examination is alleged, but in the parish of [*or*, that part only of the said tenement, &c., was situated in our said parish of , such part being of a less yearly value than 10*l.*, and therefore no settlement was so gained as aforesaid in our said parish]. And we, &c.

Form 4.—*That the value of the rent was insufficient (before July* 2, 1819) (*o*).

That the rent of the said tenement, so alleged to have been hired by the said A B in this our parish, at the time in the said examination mentioned, was less than 10*l.* And we, &c.

Form 5.—*Generally, that the rent was insufficient.*

That the said tenement in the said examination mentioned was rented by the said A B at a yearly rental of less than 10*l.*, to wit, the sum of 8*l.* 18*s.* 6*d.* And we, &c.

Form 6.—*That the rent was not properly paid (either before July* 2, 1819, *or after March* 30, 1831).

That the said rent of 14*l.* 10*s.*, in respect of the said tenement in the said examination mentioned, was not paid by the said A B, he being the person hiring the same; and therefore no settlement was thereby gained by the said A B, according to the statute in that case made and provided, and then being of full force and effect. And we, &c.

Form 7.—*That the whole rent had not been paid (before June* 22, 1825).

That the said A B did not pay the whole of the rent for and at which the said tenement had been let to the said A B, to wit, the sum of 15*l.*, and due for the year ending at the said Michaelmas-day, A. D. 1822; but that he paid only a part thereof, to wit, the sum of 11*l.* 10*s.*, the remainder never having been paid either at the time or since by him, the said A B, he being the person so hiring the same as aforesaid (*p*). And we, &c.

(*o*) This objection, as to *value*, cannot be safely made after 59 Geo. 3, c. 50, was passed, though its intent is doubtful.

(*p*) This objection is equally valid, though the residue were paid by another person.

Form 8.—*That the tenancy was not single* (*after July* 2, 1819).

That the said A B was not the sole tenant of the tenement alleged to have been hired by him in the said examination; but that one C D was joint tenant with him in and during the said tenancy, paying and being liable to pay part of the rent thereof. And we, &c.

Form 9.—*That the tenement was not separate and distinct* (*since July* 2, 1819) (*q*).

That the said tenement so let to the said A B as in the said examination mentioned, consisted of part of a certain house let to one John J., and of which the tenement in the said examination mentioned was part thereof, and not a separate and distinct building, according to the statute in that case made and provided. And we, &c.

Form 10.— *That the occupation was insufficient* (*before June* 22, 1825 (*r*), *or after March* 30, 1831).

That the said A B, the person hiring the said tenement in the said examination mentioned, did not occupy, but underlet the same to one J L during the said tenancy when the said settlement is alleged to have been gained; wherefore no settlement is gained thereby by the said A B, according to the statute in such case made and provided, and then being in full force and effect. And we, &c.

Form 11.—*That the hiring was insufficient* (*at any period*).

That the said hiring by the said A B of the said tenement of the said C D, as in the said examination alleged, was not a *bonâ fide* hiring, and was fraudulent [*or*, without the assent of the said C D, *as the case may be*], and that the relation of landlord and tenant did not lawfully exist between them during the said alleged tenancy. And we, &c.

Form 12.—*That the occupation was not for the whole term.*

The said A B did not continue in the occupation of the said tenement in the said examination during the whole term of the said tenancy, and under the said hiring, according to the statute in that case made and provided, so as to acquire a settlement thereby, but only during eight months thereof, to wit, from the said day of A. D. 1825, till the day of , A. D. 1826. And we, &c.

(*q*) This objection must be used with great caution, since the decisions cited in the section on the law of this settlement.

(*r*) This objection applies only to the non-occupancy of *land* before 1825 After 1831, it applies to both land or houses.

Form 13.—*That there was no sufficient residence.*

That the said A B did not reside for forty days in our said parish of , during the year of the tenancy in the said examination mentioned, so as to gain a settlement thereby according to law. And we, &c.

Form 14.—*That there was no payment of rates* (*since Aug.* 14, 1834.)

That the said A B, at the time when he rented the said tenement in the said examination mentioned, was not assessed to the poor rate [*or*, being assessed to the poor rate, did not pay the same] in respect of such tenement for one year, and therefore gained no settlement, according to the statute in that case made and provided. And we, &c.

Section XXIV.—Form of Stating a Tenement Settlement when alleged by Appellants.

That the said A B, subsequently to the settlement which he is alleged in the said examination to have gained in our said parish of B by hiring and service, on the day of , A. D. 1825, acquired a settlement by hiring of one D E a separate and distinct dwelling-house in the parish of F for the term of one year, commencing on the 25th day of March, 1839, at the rent or sum of 12*l.* per annum; and that the said A B actually occupied the said dwelling-house for the whole period of the said year, and under the said hiring, and that he, the said A B, paid the sum of 10*l.* 10*s.* of the said rent for the said term to the said D E, and that he, the said A B, was duly assessed to the poor rate of the said parish of T in the sum of 1*l.* 2*s.*, and paid the same, in respect of such dwelling-house as aforesaid, for one year; and that he, the said A B, resided for more than forty days during the said tenancy in the said parish of T. And we, &c.

Section XXV.—Law of Rate Settlement.

Relation of the rate to the tenement settlement.—This settlement has, since Aug. 14, 1834, virtually superseded and taken the place of the tenement settlement; for less than is now required to constitute a settlement by renting a tenement gives one by payment of rates. The difference now is, that the tenement need not be occupied by the hirer, to give the latter settlement. It is a feature worth remarking in the clashing career of these two settlements, that from

June 22, 1825, to the 30th March, 1831, the tenement settlement nearly superseded the rate settlement, as we shall presently see. Rates have, however, of late years, set tenements a good deal aside in their turn.

Origin of rate and tax settlement.—This settlement takes its origin in the 3 Will. and Mary, c. 11, s. 6, which enacts that "if any person who shall come to inhabit in any town or parish shall be charged with and pay his share towards the public taxes or levies of the said town or parish, then he shall be adjudged and deemed to have a legal settlement in the same."

Latitude of the law.—It was nowise necessary that there should be any particular period during which the rates were assessed until June 22, 1825 (*s*), or that they should be even legally levied, as to the liability of the party; neither does the badness, through informality or irregularity, of the rate affect the settlement; but if the rate itself be void, it is otherwise (*t*).

It is not necessary that the party should be rated in his own name, as long as it be clear he was the party intended to be charged (*u*). Nor is it required that any precise amount should be paid; one or two payments will suffice (*x*).

It is, however, essential that the rate should be both charged and paid (*y*).

Rates giving the settlement.—Any parochial rate or tax suffices which has the effect of informing the parish that the party was rated, which is said to be the "principle" of this settlement. It appears that the poor rate, land tax, and church rate do give this information to the parish, but that

(*s*) *R.* v. *Bramley*, Burr. S. C. 75.

(*t*) *R.* v. *St. Bees*, 9 East, 203; Burr. S. C. 787.

(*u*) "Assessed" in the Poor Law Act, and "charged" in this, are synonymous, and the party need not be named.

(*x*) *R.* v. *Hulme*, 2 Gale & Dav. 682; 12 L. J. M. C. 100.

(*y*) Burr. S. C. 98, 488.

the highway, scavengers, and county rate (prior to 55 Geo. 3, c. 51) do not. Neither do the property or assessed taxes.

A party, therefore, must be assessed to the poor or church rates, or to the land tax to gain a settlement.

Value of tenement rated.—It was immaterial what was the value of the tenement on which the rates were levied until the 22nd June, 1795, when the 35 Geo. 3, c. 101, enacted that such tenement must be of the yearly *value* of 10*l.*, a provision applicable to all then existing rates. The 59 Geo. 3, c. 50 (1819), which altered the tenement settlements, left the rate settlements untouched.

From 1795 to 1819 the two settlements were nearly identified, and the tenement which gave one was almost sure to give the other. In 1819, however, the restrictions were imposed by 59 Geo. 3, c. 50, which are detailed above in sect. 21, and which had the effect of rendering the tenement settlement less accessible than the rating one; for there was no necessity by the latter that the ratepayer should occupy, or pay the whole rent himself for the tenement he hired, nor that he should have taken it for a whole year. It often happened, however, that the landlord, and not the tenant, paid the rates and taxes, and thus the tenement settlement was kept alive.

The assessment might have been on a sum for less than the real value of the tenement, without affecting the settlement, so long as the *value* amounted to 10*l.*

No length of occupation or number of rates was required, any sufficed.

Merger of this settlement (from June 22, 1825, to March 30, 1831).—The 6 Geo. 4, c. 57, placed both settlements under the same conditions which have been detailed in section 21, as imposed by that statute, and thus blended them. What conferred the one conferred the other. A tenement must have been rented in either case, but neither actual occupation nor actual payment of rent was required by the person hiring.

Since March 30, 1831.—On this day the 1 Will. 4, c. 18, revived a distinction; for the first section, as we have seen, rendered it thenceforth essential to a *tenement* settlement that there should be actual occupation of the whole demise, and payment of rent *by the person hiring the tenement*. But it says nothing of rate-payment settlements. In *R.* v. *Stoke Damarel* (*z*) it was held, that though the legislature, in 1 Will. 4, c. 57, "recite two grievances, they leave one untouched," and though they intended to get rid of rate-payment settlements, have left it subsisting. Lord Denman justly says, "the 1 Will. 4, c. 18, recites all stat. 6 Geo. 4, c. 57, s. 2, but confines its own enactments to settlements by reason of yearly hiring. How, then, can we apply those enactments to settlement by payment of rates (*a*)?"

So much for the prospective part of the act. The 2nd section is retrospective, and applies, as will be remembered, to the payment of 10*l.* of the rental when the whole rental amounts to more, and enacts that 10*l.* shall be sufficient for the purpose of gaining a settlement "*under the said recited act*," 6 Geo. 4, c. 57. Now that act embraced both settlements, and there is no exclusive mention of tenement settlement in the section of 1 Will. 4, which thus refers to 6 Geo. 4. Therefore, it is held to be quite sufficient to gain a rate-payment settlement, ever since 6 Geo. 4, that 10*l.* only of the whole rental shall have been paid (*b*). The real value of the premises is immaterial.

(*z*) *R.* v. *Stoke Damarel*, 6 A. & E. 308.

(*a*) Mr. Gael, in his Book of Precedents, denounces this as a "most singular misconstruction," because the former act "reduced" renting and payment of rates under one heading, viz. "yearly hiring;" and then deals with yearly hiring as including both settlements in one common case. But hiring does not mean paying rates, and the misconstruction is in supposing that it can. Whatever the act may have intended to do, it provides only for one thing, and, in naming it, does not and cannot be construed to have meant another thing.

(*b*) *R.* v. *Brighton*, 1 Q. B. 674.

The legislature having made apparently two abortive efforts to destroy rate settlement, have been somewhat more successful in their last effort to swamp tenements. The 4 & 5 Will. 4, c. 76, has in effect done so. For the *tenement* settlement must now be shown to have every requisite to the rate settlement (s. 66), in addition to those of personal occupation of the entire holding, as well as personal payment of the 10*l.* by the hirer and payment of rates for one whole year; whereas the rate settlement is free from any exception on the score of underletting or payment of rent by third parties. It thus embraces the numerous cases where 10*l.* householders take lodgers: and rates need not be paid during a whole year (*c*). The important point to be observed is, that the rates must be actually paid by the tenant in both cases (*d*), and have been *charged* to him during his occupation (*e*).

The various provisions as to a distinct and separate building, &c., and the construction put thereon by the courts, under 6 Geo. 4, c. 57, must be observed as laid down under the law of tenement settlement. There must not, therefore, be a joint tenancy (*f*). Reimbursement of the rate does not invalidate the settlement (*g*).

Residence.—There must have been residence for forty days in the parish, as under the tenement settlement.

Section XXVI.—Evidence of Rate Settlement.

Notice should be given to produce the rate book. If lost or destroyed, or if notice to produce be given and it is not produced, then secondary evidence may be given. Parol

(*c*) *R.* v. *St. Mary Kalendar, ante;* and *R.* v. *Stokes, ante.*

(*d*) *R.* v. *S. Kilvington, ante.*

(*e*) *Reg.* v. *St. Olave's,* 13 L. J. M. C. 161.

(*f*) *R.* v. *Great Wakering,* 5 B. & Ad. 971.

(*g*) *R.* v. *Lower Heyford,* 1 B. & Ad. 75; *R.* v. *Corhampton,* Dougl. 599.

evidence may explain any defect openly appearing on the rate book. It will suffice to prove the identity of the party, and that he is the party meant where not named.

The payment of the rate must be proved to have been made either by the party, or some one who acted purely as his agent, for otherwise it is insufficient (*h*), and it must have been charged to him, it is not sufficient to state that he paid it (*i*).

The tenement must, since 1795, be proved to have been of the actual (not rateable) value of 10*l.* yearly (*k*).

The names of both landlord and tenant appearing on the assessment, as being the parties rated, is a presumption that the occupier was the party intended to be charged. This will, however, be rebutted by counter evidence, such as a receipt given to the landlord (*l*).

The evidence under the subsequent statutes is precisely that required to support the tenement settlement, which see.

Care must be taken to state all the particulars required in the tenement settlement as to locality of tenement rated, name of landlord, date, &c. The abuttals need not be given. If in a metropolitan parish, the street and number of the house should be given (*m*).

Section XXVII.—Statement of Grounds of Objection to Rate Settlement.

Several of the grounds of objection relating to tenement settlement apply to rate settlements. Let it be seen that the proper objection for the period applies according to the law then in force, and the same forms will suffice where the tenement was defective as to value, &c.

(*h*) *R.* v. *Weobley*, 2 East, 68.
(*i*) *Reg.* v. *St. Olave's*, *ante*.
(*k*) *R.* v. *St. Dunstan's*, 4 B. & C. 687.
(*l*) *R.* v. *St. James*, Cald. 385.
(*m*) *R.* v. *Sussex*, 10 A. & E. 682.

The following forms will meet most of the cases exclusively applying to the rate settlement:—

Form 1.—*Where the payer was not charged to the rate.*

That the said A B was not by name or otherwise duly charged with the said poor rate, or any other public tax or levy of the said parish of , as in the said examination is alleged, according to the statute in that case made and provided. And we, &c.

Form 2.—*That the party did not pay the rate.*

That the said A B did not, either by himself or any one as his agent, pay the said poor rate or any other public tax or levy of the said parish of , as in the said examination is alleged, and according to the statute in that case made and provided. And we, &c.

Form 3.—*That the rate was not a public tax.*

That the said rate in the said examination alleged to have been charged on and paid by the said A B was a ward rate, and not a public tax or levy of the said parish of , whereby the said parish can be held to have been informed of the rating of the said A B according to law. And we, &c.

Form 4.—*That the rate was void.*

That the said rate, dated the day of , A.D. 1829, to which the said A B was assessed, as in the said examination mentioned, was bad and absolutely void. [*State the defect.*]

Form 5.—*Non-residence.*

That the said A B has not completed a residence of forty days in the said parish of R since the payment by him of the said rate so assessed upon him, as in the said examination is alleged, And we, &c.

Section XXVIII.—Statement of Rate Settlement when alleged by Appellants.

That the said A B, subsequently to the said date of his acquiring a settlement in our parish, in the said examination mentioned, gained a settlement by rating in the parish of L, in the county of D; for that he, the said A B, was duly assessed to the poor rate of the said parish of D, published on the day of , A.D. 1838, being first duly made and allowed, in respect of a certain tenement, to wit, a dwelling-house, situate near the church, in the

said parish of L, and rented at Michaelmas, A.D. 1837, by the said A B of J T, he being the landlord of the said house, at the sum of 15*l.* for a whole year, which said tenement he, the said A B, occupied for and during the whole of the year then next ensuing, under such hiring as aforesaid, and he, the said A B, has paid above 10*l.*, to wit, the sum of 12*l.* 10*s.*, of the said rental to the said J. T., his landlord, in respect of the said tenement so hired as aforesaid: And that he, the said A B, being duly assessed in respect of the said tenement to the said poor rates of the said parish of L, duly paid the same, amounting to 1*l.* 4*s.* 2*d.* on the day of , A.D. 1838, and of 1*l.* 4*s.* 2*d.* on the day of , A.D. 1839, to T R, one of the overseers for the time being of the said parish of T. And that he, the said A B, resided in the said parish of T during more than forty days after the payment of the said rates by him as aforesaid, to wit, from the day of , A.D. 1838, to the day of , A.D. 1839. And we, &c.

Section XXIX.—Law of Estate Settlement.

The possession of any sort of estate, with forty days' residence in the parish where it is, and since 4 & 5 Will. 4, c. 76, inhabitation within ten miles of it, suffices to give this settlement.

Magna Charta having declared that no man shall be removed from his land, and Lord Holt, in later times, having also laid it down that "the Statute of Removal never was intended to banish men from the enjoyment of their own lands," it has become, in progress of time, an established deduction, not only that he who has an estate, but that he who ever had one, may be removed back to the parish where his estate once was; and by a still further refinement, executors and trustees of those who had or have such estates are similarly privileged. Without stopping to criticise this legal logic, it is expedient to state, in the threshold of this section, by what conditions this law has been qualified.

Inhabitation.—The 4 & 5 Will. 4, c. 76, s. 68, had a retrospective effect, and, inasmuch as it invalidates a large number of ancient settlements, gained before it passed, it stands in the threshold of the subject, and must be first dealt

with. The act took effect on the 14th August, 1834, and s. 68 is as follows:

"No person shall be deemed, or adjudged, or taken to retain any settlement gained by virtue of any possession of any estate or interest in any parish, for any longer or further time than such person shall inhabit within ten miles thereof; and in case such person shall cease to inhabit within such distance, and thereafter become chargeable, such person shall be liable to be removed to the parish wherein previously to such inhabitancy he may have been legally settled, or in case he may have subsequently to such inhabitancy gained a legal settlement in some other parish, then to such other parish."

This disqualification is not derivative. If a son became emancipated while his father continued to hold and to inhabit, his father's ceasing to inhabit afterwards does not destroy the parental settlement gained by the son in respect of such estate, but only the father's. Were it otherwise, as Lord Denman justly says, "it might be possible to go back three or four generations, and destroy an existing derivative settlement by proof that some ancestor had ceased to reside on his estate (*n*)." The words "*cease to inhabit*" are held to be so strong and are so strictly construed, that where a pauper was removed owing to madness, that was held to fall within their meaning, and to vitiate the settlement (*o*). That the pauper shall have ceased to hold the estate is of no importance so long as he has not ceased to inhabit within ten miles of the parish or of it, whilst and since he had it (*p*).

This ten miles' distance will, most probably, be held to mean ten miles by the nearest mode of access which a person on foot, making the best of his way, would, according to the then existing roads and paths, be supposed to take; and it has been so held in *Leigh* v. *Hind* (*q*), in interpreting an

(*n*) *R.* v. *Hendon*, 2 Q. B. 455.
(*o*) *R.* v. *Whissendine*, 2 Q. B. 450.
(*p*) *R.* v. *St. Giles*, 2 Q. B. 446.
(*q*) *Leigh* v. *Hind*, 9 B. & C. 774.

agreement having the words "within the distance of half a mile." This is clearly the proper construction. Crows fly neither up hill nor down, and afford no standard of distance by land in their flights from place to place. "Burn's Justice" says, the distance is to be measured from the parish, and not from the estate (*r*). The words "in any parish," however, may be used as an addition to the estate or interest, and as descriptive of them; the sentence, and not merely the last word in it, may be the antecedent to which the word "thereof" is meant to refer. On the one hand it is more specific as to distance that it should be so; and more likely to have been intended; for there are parishes of some fifteen or twenty miles in extent; and, supposing the estate to have been at one extremity of the parish, and the pauper's residence ten miles from the other, he might be inhabiting nearly thirty miles from his estate, and yet retain his settlement; while by living eleven miles only from it on the same side of the parish as that on which his estate was, he would lose it. This would not be consistent with the principle (if there be any) in the provision, which seems to have been designed to connect the pauper with his estate. But on the other hand the pauper might be in the parish and yet lose his settlement if he were in it and yet eleven miles from his estate. In *R.* v. *St. Giles* (*ante*), Lord Denman, C. J., clearly treats the *estate* as the point of measurement; and in *R.* v. *Hendon* (*ante*), Coleridge, J., the *parish*.

The pauper, by returning and residing forty days, regains his settlement if he retains his estate until he again "ceases to inhabit within ten miles."

Estates which give the settlement. — We shall briefly describe these sorts of estate; but we shall not attempt to go deeply into the numerous and complex points of law which may arise in determining the due acquisition and tenure of estates, as this would lead us to endless disquisition. Wher-

(*r*) Vol. iv. p. 855, n. (*a*), edit. 1845.

ever the case presents these difficulties, it ought not to be relied or acted upon without sound professional advice, and general rules are of little use here except for plain cases.

Estates may be freehold, leasehold, copyhold or customary. They may consist in possession of the soil itself; or may be incorporeal hereditaments, as a right of common actually enjoyed; but they cannot be any interest which, though arising out of land, is not identified with any specific part of it. A rent-charge is an example of this; for it may be paid anywhere, and is a mere annuity, which gives no estate settlement (*s*), nor burgess rights of common.

Extent and duration of estate.—The estate may be fee simple, fee tail, or for a term of years. A customary estate for life gives a settlement (*t*).

If leasehold, there must be a lease for years. A mere tenancy at will gives no estate settlement; and the devisee of an estate equally gains a settlement as well if it be leasehold as fee simple or copyhold (*u*). The devisee of copyhold property has a settlement on possession before admittance as tenant. He is an occupier, who, by doing an act, can obtain the legal estate, and this suffices (*x*).

There may be several tenants in common.

Next of kin.—A person who is sole next of kin gains a settlement where one possessed of an estate for years dies intestate, and where administration is not taken out (*y*).

Administrators and executors' interest in estates.—Where, however, administration has been taken out, the legal interest in a term of years passes to the administrator, the next of kin having no other right than that of making the administrator account (*y*). This interest gives a settlement. A joint interest in an estate occupied by one of the sons of an intestate

(*s*) *R.* v. *Pomeroy*, Burr. S. C. 762.
(*t*) *R.* v. *Ingleton*, Burr. S. C. 560.
(*u*) *R.* v. *St. Mary, Whitechapel*, Burr. S. C. 55.
(*x*) *R.* v. *Thruscross*, 1 A. & E. 126.
(*y*) *R.* v. *Birkeswell*, 1 B. & Cr. 542.

would, in fact, give him no sufficient estate until assigned, or until he had taken out administration (*a*).

Mortgaged estates.—These give a settlement both to mortgagor and mortgagee, *if in possession.* The legal estate is in the one, and the right to the equity of redemption in the other, but not unless there be possession (*b*).

Guardians in socage.—These, and others having an interest in the lands of their wards, gain this settlement by residence; but it is otherwise with mere natural guardians, for they have no interest in the estate of their wards (*c*).

Trustees and cestuis que trust—Stand in a similar position: and the former having a legal, and the latter an equitable interest in the estate, both gain a settlement by residence (*d*); but it is not necessary that where there has been a devise to trustees to sell and apply proceeds to pay debts, with residue to the widow, that it should be shown that there was a residue. She has, at any rate, an equitable interest (*e*).

And where, after the creation of the deed of trust, the pauper held copyhold property until it was conveyed by him to the trustees for payment of his creditors, it was held that he had the legal estate, and therefore gained a settlement (*f*). But in a recent and similar case it was well laid down as a "broad rule," that the court "*will notice nothing but a clear right, and will not go into doubtful cases of equity;*" as where nine persons were interested in an estate left in trust for their benefit, and nothing had been done by agreement to turn it into real estate, no particular part of which belonged to the pauper (*g*).

(*a*) *R.* v. *Wideworthy*, Burr. S. C. 109.
(*b*) *R.* v. *Cregina*, 2 A. & E. 536. See also 3 T. R. 771.
(*c*) *R.* v. *Sherrington*, 3 B. & Ad. 714.
(*d*) *R.* v. *Holme*, 16 East, 127.
(*e*) *R.* v. *Aslackly*, 5 A. & E. 200.
(*f*) *R.* v. *Ardleigh*, 7 A. & E. 70.
(*g*) *R.* v. *St. Margaret, Leicester, ante.*

Estate by purchase.—Formerly the amount paid for an estate was immaterial, and the estate purchased always gave the settlement; but this led to abuse, and small sums were paid to buy estates, and obtain settlements by parishes elsewhere. Therefore the 9 Geo. 1, c. 7, was passed, which enacts that after the 25th March, 1723, no person shall have a settlement by virtue of any purchase of any estate or interest whereof the consideration of such purchase shall not amount to 30*l.* *bonâ fide* paid; and the right to settlement lasts only so long as the pauper inhabits in the estate. There is an exception where natural love and affection formed part of the consideration, and a less sum was taken, owing to that consideration (*h*).

Purchase has no virtue in rendering any interest in an estate valid for settlement, which would not otherwise be so.

Where the transfer has not been wholly effected, it is important to ascertain, that although let into possession, the purchase-money has been paid or provided for; this being the case, the purchaser has an equitable estate, although the property has not been conveyed to him, but not otherwise. It must be carefully remembered, that as purchased estates do not give the purchaser, properly speaking, any settlement at all, but merely make him irremovable while on it, none can be derived from him by his children who are emancipated while he is on it (*i*). But this does not affect those who inherit or succeed to the property.

Reversionary interests.—No remainder or reversionary interest of any sort—none not actually present—suffices to give a settlement (*k*).

Tenancy in dower.—A widow being entitled to a share of the land left by her husband has a settlement by residence on it, but only in case it is assigned to her, and she in fact

(*h*) *R.* v. *Ufton*, 3 T. R. 251; and *R.* v. *H. Broadoak*, 3 B. & Ad. 566.
(*i*) *R.* v. *Salford*, Burr. S. C. 516.
(*k*) *R.* v. *Willoughby-cum-Sloothby*, 10 B. & Cr. 62.

possesses the land or estate herself; so long (as is usually the case) as she derives merely an annuity in lieu of it from the heir, she has no settlement thereby (*l*).

Widow's quarantine.—Though the widow has no right to enter as tenant in dower until dower is assigned, there is a law which allows her to remain upon and renders her irremovable from her husband's estate for forty days after his death. This is called the widow's quarantine, and if she resides the whole time she gains her settlement (*m*).

Estate by right of marriage.—This is the case of a husband who holds an estate, of which his wife was or becomes actually seised, for his own life. It gives a settlement to the husband, where the wife had reduced the estate into possession during her life, but not otherwise (*n*). Where it is vested in trustees during the wife's life for her use, it is sufficient; and it has been even held that, where the widow is guardian in socage to her child, and she marries a second husband, she by residence on the child's estate thereby gains a settlement (*o*). So where she is sole next of kin to an intestate; also where the husband marries, and resides in a house previously rented by his wife; even although the rent were 3*l.* yearly, which would not have given the woman or the man a settlement before marriage (*p*). This principle has been extended to a case where the husband destroyed a lease by which a house was demised to him and his wife for their joint lives and to the survivor; it was held that the wife could not consent to the destruction of the lease, and the settlement was good for both (*q*).

Adverse Possession.—Estates may be gained by adverse

(*l*) *R.* v. *Northweald Bissett*, 2 B. & Cr. 724.
(*m*) *R.* v. *Long Whittenham*, 2 Bott, 38.
(*n*) *R.* v. *Great Farringdon*, 6 T. R. 679.
(*o*) *R.* v. *Toddington*, 1 B. & Ald. 560.
(*p*) *R.* v. *North Cerney*, 3 B. & Ad. 463.
(*q*) 2 Bott, 610.

possession for twenty years; and as in recent cases paupers have actually claimed parish houses as their own, in which they had been allowed to live undisturbed, and in one case claimed a settlement by estate in the parish which they thus endeavoured to rob of its property, it becomes very necessary to give an outline of the mode in which the Statute of Limitations may so operate as to give estates by what is termed adverse possession. An old case, *R.* v. *Wyley*, throws out a dictum that the justices are not to try titles; neither are they, nor will the title to the property be, the least affected by their judgment. An ejectment would lie the next day, just as if they had never adjudicated on the matter; but when the question becomes whether they are to remove a pauper or not, it may be essential that they should at any rate remove him or not, according to their judgment of whether he has or has not the estate he claims to have. And we purpose aiding that judgment by a brief outline of the law as it exists. Adverse possessions give estates by means of the Statute of Limitations.

The statutes are as follow:

By the statute of 21 James 1, c. 16, no person could make an entry into any lands, tenements or hereditaments, but within twenty years next after his right or *title* first descended or accrued. The plaintiff, therefore, in ejectment must have proved either actual possession or a right of entry within twenty years, or have accounted for the want of it; for, by force of that statute, an uninterrupted adverse possession for that period operated as a complete bar, except in those cases which fell within the second section, which comprehend five disabilities, viz. infancy, coverture, non compos mentis, imprisonment, and absence beyond seas. Under this clause, if the party to whom the right of entry first accrued was under disabilities at that time, he was allowed to bring his action, although the twenty years might have expired, if he brought it within ten years after the removal of the

disability; and in the case of his death the heir had ten years from that time to bring his action (*r*).

But now by statutes 3 & 4 Will. 4, c. 27, s. 2, "no person shall make an entry or distress, or bring an action to recover any land or rent, but within twenty years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to some person through whom he claims; or if such right shall not have accrued to any person through whom he claims, then within twenty years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to the person making or bringing the same (*s*)." In the construction of this act, the right to make an entry or distress, or bring an action to recover any land or rent, shall be deemed to have first accrued at such time as hereinafter is mentioned. The only rule that affects the question is this: when the person claiming such land or rent, or some person through whom he claims, shall, in respect of the estate or interest claimed, *have been in possession or in receipt of the profits of such land, or in receipt of such rent, and shall, while entitled thereto, have been dispossessed or have discontinued such possession or receipt*, then such right shall be deemed to have *first* accrued at the time of such dispossession or discontinuance of possession, or at the last time at which any such profits or rent were so received.

It has been long held that the *jus proprietatis*, or mere right of property, is unnecessary to the gaining a settlement; if the party has the right of possession, which he can maintain in a possessory action, it is sufficient, although he has not a complete indefeasible title, or, as it is called in the old books, *juris et seisinæ conjunctio* (*t*), for not only the right to occupy renders the party irremovable, but also length of possession is *primâ facie* evidence of title, though the court

(*r*) *Doe* v. *Jesson*, 6 East, 80.
(*s*) Sect. 3.
(*t*) See 2 Black. Com. 195 *et seq.*

will not permit the title to the estate to be *determined* in an order of removal (*u*).

An undisturbed possession for twenty years is in itself sufficient to acquire a settlement, and the court does not require that strict statutory title by adverse possession of twenty years, which is necessary in questions of title in ejectment. But they will presume a conveyance to legalize the possession in cases of long and uninterrupted enjoyment, unless the contrary appears. Thus, where R O, having purchased a piece of land in fee, gave his son-in-law, J H, the pauper's father, a part of it, but it did not appear that he ever executed any conveyance thereof. J H built a house on it, which cost him above 100*l.*; resided on it fourteen or fifteen years without paying rent or acknowledgment to R O, when he quitted it, and received the rent until his death, three years after. R O died in the lifetime of J H, leaving another daughter and grand-children by a son pre-deceased. Lord Kenyon, C. J., said, "As twenty years have nearly elapsed since the time when this land was given to the pauper's father, and as no claim has ever since been made, either on the pauper or his father, the case of *Ashbrittle* v. *Wyley* (*u*) is an authority to show that the court ought not to permit the title to the estate to be determined on an order of removal. The strict rules to be observed on the trial of ejectment ought not to be applied to settlement cases. After such a length of time as this, perhaps a conveyance may be presumed to be executed." And in *R.* v. *Cold Ashton* (*x*), and *R.* v. *Calow* (*y*), (where it was held that an emancipated son gains a settlement from his father's possession,) confirm the same rule.

In the case of *R.* v. *Butterton* (*z*), a grantee of land, without conveyance, built a house, and occupied it eighteen years, and gained a settlement.

(*u*) *Ashbrittle* v. *Wyley*, 1 Str. 608; *R.* v. *Butterton*, 6 T. R. 554.
(*x*) Burr. S. C. 444.
(*y*) 3 M. & S. 22.
(*z*) 6 T. R. 554.

In the case of *R.* v. *Wooburn* (*a*), inclosure of waste and occupation for twenty years, it was held a settlement was gained, though interrupted by parochial perambulation. And also in the case of *R.* v. *Pensax* (*b*), A inclosed a piece of the waste, and built a cottage, the parish giving him the materials; after fourteen years he gave, by parol, a part of such land to B, and B built a cottage and took in another piece of the waste, and occupied them sixteen years; the copyholders, in the course of removing encroachments, twice broke down B's fences: Held, that B gained a settlement by estate.

The adverse possession must, however, have lasted full twenty years (*c*), and in *R.* v. *Chew Magna*, Bayley, J., says, "Undisturbed possession for twenty years confers an estate" [not being a tenancy at will at less than 10*l.*]

Fraud will vitiate the title; as where a lessee, *R.* v. *Axbridge* (*d*), for years during three lives held over on a false pretence that one of the lives is continuing: this is not such an adverse possession as will gain a settlement. And where it appeared that the pauper, having originally built a house on waste land, and paid 2*s.* 6*d.* yearly to the lord, it was held, that this did not give a settlement, as the rent was an acknowledgment of tenancy (*e*).

Where the pauper claims parish houses.—Of these cases there are two instances, which we must insert at some length, as they tend to throw considerable light on the danger of allowing paupers to occupy parish houses without an acknowledgment of tenancy.

In the first of these cases, *R.* v. *Staplegrove* (*f*), the facts were these: the father of the pauper's wife had a freehold

(*a*) 10 B. & C. 846.
(*b*) 3 B. & Ad. 815.
(*c*) 10 B. & Cr. 747.
(*d*) 2 A. & E. 520.
(*e*) *Reg.* v. *Cuddington*, 5 Law Times, 172.
(*f*) 2 B. & Ad.

cottage in Creech; in 1795 he let it to the parish officers for 1000 years, and they took possession. In 1813 he was placed in it by the parish officers, and the pauper's wife came to nurse him. He died there that year, and his daughter continued in the cottage, and at the end of six weeks the pauper joined his wife, and laid claim to the cottage as his wife's property. The parish officers had mislaid the conveyance to them, and therefore could not withstand his claim; and the pauper and his family resided there from 1813 to 1818, when the pauper having become chargeable, and the officers having found the conveyance, they were removed, and the point submitted to the Court of Queen's Bench was, whether the pauper gained a settlement by this residence? Bayley, J., said, "We are of opinion that he did. The sessions have found no fraud in the pauper or his wife in acquiring or retaining possession; and if we were at liberty to infer fraud, which we are not, there are no premises from which such an inference could properly be drawn. The husband comes to the cottage under a claim of right, and for anything which appears he might really believe he had that right. The parish officers who alone can gainsay it do not gainsay it or take any steps to oppose his occupation, but acquiesce in it for more than four years. There is no decision under circumstances in any respect like the present. *R.* v. *St. Michael's, Bath* (*g*), and *R.* v. *Catherington* (*h*), were cases where the pauper had nothing which he had a colour for calling his own, and if not, we must look to the words of the statute whether this is within the mischief against which that statute meant to provide. The 13 & 14 Car. 2, c. 12, recites, &c. [here he read the recital and enactment, and added] is then the pauper within the words, the spirit, or the mischief of the provision? He comes to Creech, not for any of the motives this statute meant to repress, but because he has a freehold in the parish;

(*g*) Doug. 630. (*h*) 3 T. R. 771.

not to prey upon the parish stock, but to live upon that of which he is the freeholder, and as to which he was warranted in concluding that he was entitled to the possession. This is not a case of fraud, nor a case in which the pauper is conscious at the time he is taking possession wrongfully, nor a case in which the person entitled to possession takes prompt measures to displace him. Leaving such cases to be decided when they arise, it is sufficient for us to say that in this case there does not appear to have been fraud or consciousness of wrong; and where no measures were taken within the forty days, or afterwards, to dispute the occupation, we are of opinion that the residence was sufficient."

From this case it clearly appears that no matter how groundless the legal title to the property in the first instance, if the pauper gains possession without any fraudulent conduct in the first instance, and retains the property under a claim of right, undisturbed possession for twenty years gives him the estate.

And this doctrine is clearly upheld in the following very recent case, where the property was saved on the narrow ground that the pauper had rung the parish bell as a *quasi* rent for the house.

Two actions of ejectment were brought by the parish officers of Whitchurch, to regain possession of two cottages, which the defendants claimed as parish property. The defendant in the first action and the previous occupier of the cottage had been in the habit of sweeping the church within twenty years from the commencement of the action, and the defendant in the second action had tolled the church bell within the same period. It was contended for the defendants respectively that the lessors of the plaintiffs were barred by stat. 3 & 4 Will. 4, c. 27, because the parish had not had any occupation of the house within twenty years, and that neither the sweeping of the church nor the tolling of the church bell were to be regarded as rent within sec. 8 of stat. 3 & 4 Will. 4, c. 27.

In the second action a lease of 1752 was put in, which appeared to be between the mayor and burgesses of the borough of Whitchurch and the churchwardens of the said parish of the one part, and John Batchelor of the other part, by which the parties of the first part, "in consideration of the covenants and services thereinafter mentioned, devised all that messuage, &c. situate, &c. to John Batchelor and his assigns for twenty-one years, and in consideration thereof the said John Batchelor did covenant and grant to and with the mayor and burgesses of the said borough, and to and with the churchwardens of the said parish, that he should and would at the hours of four in the morning and eight in the night perform the services of beadman in the ringing of the four and eight of the clock bell; with covenant by John Batchelor to yield up and surrender the messuage to the said mayor and burgesses and their successors at the end or other sooner determination of the said term." Batchelor died in 1798, and was succeeded by the defendant.

Lord Denman, C. J., in giving judgment, said, "The sole question in the case of *Doe* dem. *Edney* v. *Benham*, is whether a tenant holding a house of the parish officers upon condition of sweeping the church, is a tenant from year to year, within the 8th section of 3 & 4 Will. 4, c. 27. That section speaks of rent, and the first section or interpretation clause enacts that 'the word "rent" shall extend to all heriots and to all *services* and suits for which a distress can be made.' Can a distress be made for omitting to sweep a church? It is laid down in Co. Litt. 142 a, 'And the rent may as well be in the delivery of hens, capons, roses, spurres, bowes, shafts, horses, hawkes, pepper, comine, wheat, or other profit that lyeth in render, *office*, *attendance*, and such like, as in the payment of money, or for these things there may be a distress.' So in Co. Litt. 96 a, it is said, 'A man may hold of the lord to show all the sheep depasturing in his lord's manor.' So, in 96 B. S. 137, it is laid down, 'If

an abbot or prior holds of his lord by a certain divine service in certain to be done, as singing mass every Sunday, or to distribute in alms to an hundred poor men 100 pence on such a day; in this case, if such divine service be not done, the lord may distrain for not doing it.' Lord Coke observes, 'For this divine service certain the lord hath his remedy, and may distrain.' We think these authorities sufficient to show a distress might be made for non-performance of the service of sweeping the church, and therefore this comes within the 8th sect. of 3 & 4 Will. 4, c. 27. No question was made at the trial as to the sweeping being not at fixed times, and the rule must be discharged."

"In the case of *Doe* dem. *Edney* v. *Billett*, a house was held by the service of ringing the church bells; this point is the same as in the last case. There was a further point, that the reversion was shown to have been in the mayor and corporation of Whitchurch, and the mayor and churchwardens jointly; and it was contended that the property did not pass to the parish officers (*i*). The cases of *Allason* v. *Slark* (*k*); *Attorney-General* v. *Lewin* (*l*); and the *Paddington Charity* case (*m*); and *Gouldsworth* v. *Knight* (*n*); were relied on for this purpose. We think that the finding of the jury was conclusive on the point; that was, that the mayor and corporation were trustees only for the parish, and as no special trust was found, they might have been trustees for general parochial purposes. If so, none of the above cited cases will apply, and the rule will therefore be discharged in this case."

Thus some species of service or rent payment or other acknowledgment of tenancy will alone defeat these claims. Repairs done to the house by the parish within twenty years would, however, be strong evidence against such claim.

(*i*) 5 Law Times, 408; 9 Jurist.
(*k*) 9 A. & E. 255.
(*l*) 8 Simons, 366.
(*m*) 8 Simons, 629.
(*n*) 11 M. & W. 337.

Possession may be always recovered within twenty years, by 59 Geo. 3, c. 12, s. 24.

These form the main conditions for the attainment of a settlement by estate. In cases of disputed title, and where there is a doubt as to the exact nature of the estate, it is always advisable that advice be had of counsel how to proceed on the precise facts of the case.

Section XXX.—Evidence of Estate Settlement.

Deeds.—The main evidence, of course, depends on the deeds whereby the estate was held. If such deed or deeds be thirty years old, they prove themselves; and by showing in whose custody they have been, all their contents are evidence of the facts set forth. If subsequent to thirty years, prove the execution of them as directed under the head of Evidence of Apprenticeship, attending to the rules there given.

Chief facts to be stated.—Let it be distinctly stated what was the nature of the estate, the date of the demise, descent, purchase, &c., to the pauper, or the party from whom he derives his settlement. Show also actual possession. Prove forty days' residence in the parish, as under the tenement settlement. Show inhabitancy within ten miles of the estate. In all ordinary cases the evidence of the pauper himself, or others acquainted with the facts, or the deed, will sufficiently attest them to support the settlement; especially where the property is freehold, twenty years' possession suffices as to title, even if disputed; and it may be taken as a general rule, that it is sufficient to show a *bonâ fide* claim of right, with possession for forty days.

A few general remarks will suffice as to particular classes of estate.

Inheritance.—In this, and various similar cases, it is expedient to produce the probate of the will; to prove, where necessary, the descent of the pauper by certificates of registry of the births and deaths, which must be proved to show the

descent. The evidence of registries has been already stated under the family settlements.

Dower, &c.—Similar proofs are requisite that the husband was seised of the estate, and put in the registry of his marriage and death; and similarly with tenancies by curtesy.

In cases of executorship, &c., produce the will or letters of administration, with actual possession.

Purchased estates.—The purchase must be proved by the deed of conveyance or other instrument whereby the sale was effected. This will prove the consideration, and it is for the other party to prove that it was different. So it is said that it may be shown also, by parol evidence, that the consideration paid was either more or less than is stated in the deed (*o*). It is very questionable whether this would be admitted since the requirement of "*legal evidence*" by the Court of Queen's Bench. It is necessary to show in some mode that 30*l.* was paid, of which evidence will be best given by the receipt, or by the purchaser, or by any person who saw the payment.

It will suffice to show that as much as 30*l.* was paid; and where love and affection formed part of the consideration, show the relationship between the vendor and the vendee, so as to account for the deficit in the amount actually paid. Add in this case some evidence to show the value of the premises to have been 30*l.*; but, under ordinary circumstances, the value need not be proved at all. Prove also that the pauper still resides on and retains the estate.

Inhabitation.—Evidence of this must be given as to the ten miles by the nearest mode of access, and which the pauper may prove; but this fact being essential, cannot be left to inference.

The residence for forty days in the parish must also be proved in like manner. There need be no residence shown on the estate itself (*p*), except where purchased, nor need the days be consecutive.

(*o*) *R.* v. *Cheadle*, 3 B. & Ad. 833; *R.* v. *Olney*, 1 M. & S. 387.

(*p*) *R.* v. *Ardleigh*, *ante*, per Denman, C. J.

Section XXXI.—Grounds of Objection to Estate Settlements.

Unless the estate be clearly not held by the pauper, in virtue even of a claim of right, it will be dangerous to object on such a ground.

The following forms meet the ordinary cases of defective settlement by estate:—

Form 1.—*Defective title.*

That the said A B was not the heir of the said C B [*or*, the said C B did not die seised of the said estate of , in the said examination mentioned; *or*, the said A B was not the executor of the last will and testament of the said B D; *or*, the said M B, the wife of the said A B, was not possessed of the said estate of in her lifetime and during her coverture, as is in the said examination alleged; *or according to the case*]; nor was the estate so held, such as to confer the said settlement according to law. And we, &c.

Form 2.—*Estate in remainder or reversion.*

That the said A B, by the said devise of the said C D, in the examination mentioned, devised the said estate for life to one L N, with remainder to the said A B in tail [*or as the case may be*], who took and has only a residuary interest in the said estate, and derives therefrom no settlement according to law. And we, &c.

Form 3.—*Imperfect purchase.*

That the said estate, alleged in the said examination to have been purchased by the said A B, was sold to him for a less sum than 30*l.* *bonâ fide* paid, to wit, for the sum of 28*l.* 10*s.*; [*or*, that though the sum of 30*l.* was agreed to be paid by the said A B for the said estate in the said examination, yet the said sum has not been *bonâ fide* paid either by the said A B, or by any other person for him, to the said D E, but only 28*l.*, part thereof.] Therefore, no settlement by estate was thereby gained by the said A B, according to the statute in that case made and provided. And we, &c.

Form 4.—*Where the estate is an annuity, or no definite interest in the land.*

That the said estate in the said examination mentioned is an unassigned interest in the said property so devised, which has not been by agreement or otherwise turned into a real estate; and that C D and E F, the children of the said testator, are jointly interested in the said devise with the said A B, who has not taken out letters of administration, and has therefore no clear equitable right or legal estate therein, so as to confer any settlement according to law. And we, &c.

Form 5.—Imperfect letting.

That the tenancy by the said A B of the said premises in the said examination mentioned, was a tenancy at will and not by lease, or for a term of years, and therefore confers no settlement according to law. And we, &c.

Form 6.—Non-residence.

That the said A B did not, during his possession of his said estate reside for forty days in the said parish of X., where the said estate was situate, and cannot therefore gain a settlement by estate according to law.

Form 7.—Non-inhabitation within ten miles.

That the said A B, after he held the said estate of V in the said examination mentioned, ceased to inhabit within ten miles of the said estate, whereby the said A B retains no settlement in the parish of L according to law. And we, &c.

Section XXXII.—Statement of an Estate Settlement when alleged by Appellants.

Form 1.—Leasehold estate.

That the said A B, after the time when he is alleged in the said examination to have gained a settlement by parentage in our said parish of R, gained a settlement by estate in the parish of S, in the county of C,* in respect of certain land called and known by the name of the Knocton Farm, in the said parish of S, rented on the day of , A. D. 1845, by the said A B, of and from T N, upon a lease for a term of twenty-one years, which said lease was duly executed by and between them on the day of , A. D. 1845, and the said A B continued to hold and enjoy the said leasehold estate until the expiration of the term thereof as aforesaid, and resided more than forty days in the said parish of S, and during all that time and since inhabited within ten miles thereof. And we, &c.

Form 2.—Devised estate.

Copy last form down to the asterisk, then as follows:]—In respect of a certain freehold estate, situated in the said parish of S, called the Brixey Farm, acquired on the day of , A. D. 1835, by the said A B by devise, under the last will and testament of L T, of , farmer, deceased; and he, the said A B, thereupon took possession of the said estate, and continued in such possession from thence until the day of , A. D. 1845, being a period of ten years, residing upwards of forty days in the said pa-

rish of S, and during all that time inhabited, and has since continued to inhabit, within ten miles of the said estate. And we, &c.

Form 3.—*Equitable interest in property held in trust.*

Copy the first form to the asterisk, then as follows:]—In respect of a certain copyhold [*or* freehold] estate [*describe it as before*], on the day of , A. D. 1842, devised by D B, the father of the said A B, to certain trustees, to wit, L F and C D, of , in trust to pay the lawful debts of the said D B, and the entire residue to the said A B for his sole use and benefit. That after the death of the said D B, on the day of , A. D. 1845, who died seised of the said estate, and during the time whilst the said property and the legal estate therein became and was vested in and was possessed by the said trustees under the trusts aforesaid, the said A B having a clear equitable interest therein, resided for forty days in the said parish of , where the said estate was situate; and the said A B inhabited, during the whole time of the continuance of his the said A B's interest therein, and since, within ten miles thereof, to wit, at the parish of B. And we, &c.

Form 4.—*Where the estate was purchased.*

Copy form 1 *to the asterisk, then as follows:*]—In respect of certain dwellinghouses, situate and being numbers 2 and 3 in the High Street of our said parish of Barnewell, in the county of C, purchased by the said A B of and from D E, publican, of the said parish, by written agreement between them, bearing date the 1st day of January, 1840, on which day the said purchase was completed, the consideration of which amounted to the sum of 30*l.* then [*or* since] *boná fide* paid, and that the said A B still continued to reside, and has constantly resided, in one of the said dwellinghouses, and is therefore irremovable from your said parish of B, according to the statute in that case made and provided. And we, &c.

The great variety of cases whereby an estate may be possessed would require a large number of forms, which would probably occur too rarely to be usefully inserted here.

Section XXXIII.—Law of Office Settlement.

Origin and repeal.—This settlement was created by 3 Will. & Mary, c. 11, and extinguished by 4 & 5 Will. 4, c. 76, s. 64, but not retrospectively, so that all settlements in virtue of offices served one year before 14th August, 1834, still exist.

The statute of Will. & Mary enacted that "if any person who shall come to inhabit in any town or parish shall *for himself* and on his own account execute any *public annual* office or charge in the said town or parish during one whole year, then he shall be adjudged and deemed to have a legal settlement in the same, though no such notice in writing (*q*) be delivered and published as is hereby before required."

The office or charge.—This must have been public and annual, and a variety of decisions have determined the offices conferring this settlement to be as follows:—

Ale-taster of a borough, and inspector of weights and measures.

Assistant overseers.

Bailiffs of a borough.

Borsholders.

Boroughwarden.

Churchwardens.

Collectors of land-tax, or of duties on births and burials under 6 & 7 Will. 3, c. 6.

Constables (parish).

Criers (town).

Crane porters at public wharfs.

Haywards.

Hog-ringers.

Overseers.

Parish clerks.

Pinders (if properly chosen) (*r*).

Sextons.

Tithing-men.

The office must be one of long establishment and regularly filled; or one created by the crown or by statute. It must not be one, the existence of which depends on the conveni-

(*q*) Alluding to the notice under the statute of 1 James 2, c. 17, of persons coming to inhabit.

(*r*) *R.* v. *Newmarket*, 3 A. & E. 151.

ence or will of individuals, as a curate (*s*), or an organist (*t*), which partake of the character of salaried services, and are not properly official. Neither is the office sufficient of masters of workhouses, charity schoolmasters, deputy clerks, or deputy constables, because in some of these cases the appointment is not for a year; and the two last are offices not executed for the pauper himself on his own account.

Appointment.—It has been held (difficult as it is to perceive any such requirement in the statute) that the party must have been legally appointed. But in the case of *R.* v. *Bobbing* (*u*), a rector merely said to a person who had acted as parish clerk, "I shall appoint you my regular clerk, &c.," and without any further appointment he filled the office and received the emolument: here the settlement was gained. It is clear that the *act* is fulfilled by the *execution* of the office; the appointment not being even named in it. The *decisions*, however, have generally held appointment necessary. This case of the parish clerk shows that the office need not be literally an annual one; it being held that no office under an annual one suffices, and that this was the intent of the act (*x*).

Service.—There is no doubt that the office must have been served for a full year, and the appointment be for a year at least (*y*); and even wrongful discharge does not excuse or supply defect of service (*z*).

The office may be performed by deputy, and the principal retains his settlement, but the deputy gains none (*a*). An assistant overseer's office is a substantive one.

(*s*) *R.* v. *Wantage*, 2 East, 65.
(*t*) *R.* v. *St. George's, Hanover Square*, 5 B. & Ad. 571.
(*u*) 5 A. & E. 682.
(*x*) *R.* v. *Gatton and Milwich*, 2 Salk. 536.
(*y*) *R.* v. *Middlewich*, 3 A. & E. 156.
(*z*) *R.* v. *Holy Cross, Westgate*, 4 B. & Ald. 619.
(*a*) *R.* v. *Hope Mansel*, Cald 252.

The sphere of service need not be *throughout*, but must be "*in*" a parish, and part of a parish is in it (*b*).

Residence.—It is quite settled that the pauper must have resided in the parish where he served the office (*c*), but residence is satisfied by lodging in part of a house (*d*).

Section XXXIV.—Evidence of Office Settlement.

The evidence is as simple as the settlement.

Ascertain who were the parties empowered to appoint; and produce or account for the non-production of any written record by them of such appointment. In default of such written proof, give the parties appointing; or if that cannot be had, the pauper's evidence that he was appointed, strengthened by that of some one who, of his own personal knowledge, knew that he discharged the office, and that he held it for a year at least. It is not necessary to show that all the formalities of appointment were observed, as long as it substantially took place and effect (*e*). Show clearly that the office was an office, and not a mere service, as that of an organist (*f*).

Prove residence in the parish during the service of the office.

Section XXXV.—Grounds of Objection to the Office Settlement.

The following forms indicate and state the usual objections:—

Form 1.—*That the office does not confer the settlement.*

That the said office in the said examination alleged to have been held as therein set forth by the said A B, in our parish of Radnall, was the office of organist, and none other, which was a salaried

(*b*) *R.* v. *Littleworth*, Burr. S. C. 238.
(*c*) *R.* v. *Woodbridge*, 4 B. & Ad. 711.
(*d*) *R.* v. *Corfe Mullen*, 1 B. & Ad. 211.
(*e*) *Ibid.*
(*f*) *R.* v. *St. George's, Hanover Square, ante.*

service, and not such public office, or charge, as alone confers a settlement according to law. And we, &c.

Form 2.—That the pauper was not appointed.

That the said A B was not legally appointed, either in form or effect, to the said office of town crier, in our said parish of B, as in the said examination is alleged, so as to gain a settlement therein according to law. And we, &c.

Form 3.—That the office was not held a year; or no residence.

That the said A B, so appointed to the public office of constable, in our said parish of L, as in the said examination alleged, did not* serve the said office in the said parish a full year, but was discharged therefrom, and, therefore, gained no settlement according to law [*or from asterisk*, reside in the said parish during the time he held the office aforesaid.] And we, &c.

Form 4.—That the pauper did not execute the office.

That the said A B did not execute the office of sexton in our said parish of M, as in the said examination mentioned, for himself and on his own account, but as deputy for one J T. And we, &c.

Form 5.—That the office was held since August 14, 1834.

That the said office in the said examination mentioned was not held and executed for one full year by the said A B before the passing of a certain act made and passed in the parliament held in the fourth and fifth years of the reign of his late Majesty King William the Fourth, intituled "An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales." And we, &c.

Section XXXVI.—Statement of Office Settlement when alleged by Appellants.

Form.

That subsequently to the time when the said settlement by hiring and service in our said parish of T is alleged in the said examination to have been gained by the said A B, he gained a settlement by executing for himself and on his own account the office of bailiff and ale-taster in the borough of W, in the county of K, to which said office he the said A B was duly appointed on the day of , A.D. 1845, by the Court Leet of the said borough; and that he held and served the said office for more than a whole year after the said appointment; and that he resided in the said borough and parish during the said service of the said office. And we, &c.

Section XXXVII.—Certificates.

There are three modes in which settlements may be determined, which must be separately and briefly noticed.

1. Certificates.
2. Relief furnished extra-parochially.
3. The quashing of a former order.

These all partake of the nature of evidence of anterior settlements.

Certificates how granted.

Certificates were, as we have seen, acknowledgments on the part of a particular parish that a person going elsewhere was duly settled in such parish; so that he might, whenever he became chargeable, on the strength of such certificate, be sent back without further proof or trouble. This was sanctioned by 8 & 9 Will. 3, c. 30. They are nearly obsolete and were rendered so by 35 Geo. 3, c. 101, which required actual chargeability before removal. They are however still liable to be granted. The direct effect of the certificate was to invalidate any settlement gained by the person who bore it, in the parish to which it was addressed, though he might gain a valid one in any other. But to this rule there soon grew up three exceptions.

1. Hiring a tenement, by 9 & 10 Will. 3, c. 11.
2. Taking an office, idem.
3. Becoming possessed of an estate otherwise than by purchase.

These gave a settlement in spite of the certificate, which was alone proof against hiring and service, apprenticeship, and the rate payment settlements; and the unemancipated children and wife of a certificated man derived his settlement accordingly, as well as his after-born legitimate children, and any subsequent wife and their children. If the children be named, however, it seems that then the certi-

ficate extends to no children intentionally omitted (*g*). In no case does it apply to emancipated children.

It is a very important part of this proof of settlement, that it outlives the original possessor, and applies not only to the widow and her unemancipated children, but is a lasting proof of the parental settlement of those children, or grand-children, who have obtained or derived no subsequent settlement since their own or their father's emancipation.

Persons themselves certificated cannot, as we have seen, confer settlements by apprenticing others.

The certificate, to be regular, must have been under the hands and seals of the churchwardens and overseers, or the major part of them, whose signatures were to be attested on oath before two justices of the peace of the county or city where given (*h*). It was to be directed to some parish, but was transferable to another, and ought to have been personally served on the parish officers to whom it was directed.

It was defeasible by the acquirement of any other settlement; by the return of the pauper whence he derived it; or by a new certificate from another parish.

It may be safely assumed that few remain in force. Some there are, however; and where they are applicable, they may be used as a ground of objection on appeal to another settlement, as well as evidence on which to base an order of removal.

Evidence of certificate.—Where a pauper has a certificate from the parish to which he is to be removed, it must be proved by its production. If it be thirty years old, its execution need not be proved. If less than that age, the justices' signature who allowed it, and administered the oath to the authenticating witnesses, used to be proved by any persons who knew them, but this is now rendered unnecessary by 8 & 9 Vict. c. 113. See title "Practice," *post*.

If the certificate can be proved to be lost or destroyed,

(*g*) *R.* v. *Storrington*, 7 T. R. 133.
(*h*) 3 Geo 2, c. 29, s. 8, June, 1730.

good evidence is admissible of its existence; but it must be evidence from uninterested parties, and not purely that of the removing parish officers (*i*). This, of course, does not apply to the delivery, which may be proved by those who received it, and no particular form of direction need be proved, so long as it appear to have been contemplated to be to a given parish or district (*j*). The execution must be by the majority of the existing officers; but if there be two signatures only, it seems that it will be presumed they were a majority (*k*).

Grounds of objection.—These are chiefly, that the pauper gained some other settlement since the date of the certificate, for which the previous forms for stating subsequent settlements will serve. Objection may be taken to the informality of the certificate, as set forth in the examination, which may be given under the general form of objections to examinations bad on the face thereof; or where it does not appear, the defect in fact must be stated, and afterwards proved. This will very rarely occur.

Form of stating a certificate when alleged by appellants.

That the said A B, before and at the time when he was hired and performed the said service as in the said examination mentioned, was living in our said parish of D, it then being protected by a certain certificate in writing of the settlement of the said A B, and of his wife and family, in the parish of P, in the county of L, which said certificate bears date the day of A.D. , directed to the then overseers and churchwardens of our said parish of D, under the hands and seals of C D and E F, churchwardens, and of G H, one of the overseers of the said parish of P, duly attested by M N and O P, two witnesses on oath thereto, and duly allowed and subscribed by R S and T V, Esquires, two of the then justices of the peace for the said county of L, which said certificate was duly delivered as directed, and has ever since been in the charge and custody of the officers of our said parish of P. And we, &c.

(*i*) *R.* v. *Debenham*, 2 B. & Ald. 185.
(*j*) *R.* v. *Lubbenham*, 4 T. R. 251.
(*k*) *R.* v. *Catesby*, 2 B. & Cr. 814.

Section XXXVIII.—Extra-parochial Relief.

This, sometimes improperly termed a settlement, is merely a *proof* of a settlement. The certificate is a direct, and the extra-parochial relief an implied admission on the part of the parish in question.

Wherever therefore a parish has relieved a pauper who was residing out of it, this is held to be *primâ facie* evidence that he is settled there, or the relief would not have been given to him (*l*). But of course to constitute this evidence, the relief must have been given to the pauper whilst he was residing out of the parish giving it to him, otherwise it would be no evidence at all, for the bare fact of a pauper's having been relieved by the parish he was in, is no proof of his being settled where he was relieved. He might be relieved as casual poor; and if in want of relief while in the parish, the parish officers were bound to give it, whether settled there or elsewhere (*m*).

Lord Ellenborough, C. J. thus stated the rule and its principle:—"On subjects of this sort it is important that there should be one uniform rule, as far as is consistent with law; and the rule having been laid down by Lord Kenyon, in *The King* v. *Chadderton*, that the bare fact of giving relief to a pauper within the parish was no evidence of his settlement there, because it might be given to him as casual poor, it is proper to abide by it. In that case, indeed, the relief was only administered once; and it seems necessary to consider, whether its having been administerd more than once, or several times, alters the case, and differs this in substance from the other; for each instance in itself might not be evidence of the settlement, and yet it might be difficult to say that several instances might not furnish the conclusion. At the same time, however, it is to be observed, that

(*l*) *R.* v. *Wakefield*, 5 East, 335.

(*m*) *Per* Lord Kenyon, C. J., *R.* v. *Chadderton*, 2 East, 27. The relief was applied for and obtained when the pauper buried his wife.

though the relief were given for any length of time, the inference may be, either that the party receiving it was a settled inhabitant, or that his settlement could not be known. But that would bring it to an alternative case, on which the sessions might draw their own conclusion, and the difficulty would still exist. Upon the whole, therefore, it appears to me as the better rule to adopt, that it does not amount to evidence of the settlement, and there would be great impolicy in admitting it to have any weight; for if the parish officers, by giving relief to a pauper, were to be making evidence against themselves, as to his settlement in their parish, it would make them perform their duty to casual poor with great reluctance, and therefore it is more consonant to humanity and policy, and to the rule of law laid down by Lord Kenyon, to say at once that it is no evidence of the settlement, than to leave it as a matter of inference in each case." The order of removal founded upon this evidence, and an order of sessions confirming it, were therefore quashed (*n*).

Thus the continuance of *in*-parish relief, for however long a time, is not conclusive evidence of settlement, not even when the child of the pauper has been apprenticed out. In the case of *Rex* v. *Chatham*, and also in *Rex* v. *Coleorton*, it was so held (*o*). In the case of *Reg.* v. *St. Giles in the Fields* (*p*), a pauper being chargeable to parish A was placed by the overseers of that parish at an establishment of a contractor for the maintenance of paupers, which was locally situate in parish B, and there maintained at the expense of parish A: Held, that this could not be considered as relief by parish A out of the parish, and therefore that such relief, however long continued or often repeated, did not amount to any evidence of an admission by parish A that the pauper was settled in that parish. And in giving judgment, Mr. Justice Patteson, said, " If a man, passing

(*n*) *R.* v. *Chatham*, 8 East. 498.

(*o*) 1 B. & Ald. 25. See also *R.* v. *Trowbridge*, 7 B. & C. 252.

(*p*) 13 L. J. M. C. 89.

through a parish were to break his leg, and were sent by the overseers there to a doctor out of the parish, could it be said that the parish so sending him made him one of their own poor?" And Lord Denman, C. J. said, "The case then comes within the principle laid down in *The King* v. *Chadderton*(*q*), *The King* v. *Chatham*, and *The King* v. *Coleorton*, and the reasons on which those decisions were founded is most important, as the overseers are bound to relieve casual poor; and it is highly necessary that they should not be prevented from exercising the duties of common humanity, by the fear of having the settlement of a pauper established against them. I think it is quite clear that the relief given in this case must be considered as relief given within the appellant parish; and with a view to this question it is not material to consider whether the provisions of the acts of parliament relating to parish workhouses situate out of the parish were complied with or not, as the house in which the pauper was lodged in each instance was in fact a parish house."

It is not always safe to remove solely on this evidence, but it may be most advisably added to strengthen other evidence of a settlement, or to remove on, where the case is a strong one.

Evidence.—The pauper, or any one aware of the fact, may prove the residence of the pauper in the one parish, and whilst there, the receipt of relief by him from the other parish. The rate book of the relieving parish must be called for; if it be produced, it is the best evidence; if refused, secondary evidence may be given from the parish of the relief. This evidence, however, is not an estoppel(*r*), it is merely evidence, and cogent of its kind, but still it is only *primâ facie* evidence of settlement, as it amounts to no more than showing the opinion of the parish that the pauper was settled with them(*s*); the parish may

(*q*) 7 East, 27.

(*r*) See *per* Lord Ellenborough in *R.* v. *Barnsley*.

(*s*) *Per* Lord Ellenborough, C. J., *R.* v. *Maidstone*, 12 East, 553.

rebut it therefore by proving that the person so relieved was settled at that time in some other place. And they may also show, which amounts to the same thing, that the relief was given by mistake; or that relief was afterwards given by some other parish (*t*). And it has been also held, that it is allowable to show a subsequent settlement by cross-examination of the respondent's witnesses, if there be a ground of appeal under which such evidence can be given (*u*). In *Reg.* v. *Bedingham* it was held that the simple denial that any settlement had been gained in the appellant parish, sufficed to let in proof that the relief was given by mistake.

Grounds of objection.—One of the most valid and usual objections to this mode of establishing settlement is the allegation that the relief was given under a mistake of the law, as where an apprentice was relieved by the parish where he served, though by residence he had really obtained a settlement where he was (*v*). Thus extra-parochial relief is merely evidence of a settlement, but does not constitute one where the law gives none; and the presumption it creates may always be rebutted by counter-evidence.

Statement of grounds of objection.

That the said A B was not legally entitled to receive, nor was our said parish of T legally bound to afford, the relief in the said examination alleged to have been given, at the said times therein mentioned, to the said A B, whilst resident at the parish of R as aforesaid, but that the said relief was given in error and under the belief that the then place of settlement of the said A B was in our said parish of R, whereas, in fact, the said A B had then gained a settlement by—[*here state the settlement as before*].

Statement of the receipt of relief when alleged by appellants.

That in addition to the above-named grounds of the said settlement, the said parish of L has acknowledged the said A B to be legally settled therein, by giving him parish relief at divers times

(*t*) *Reg.* v. *Bedingham*, 5 Q. B. 653.
(*u*) *Reg.* v. *Wrexham*, 1 Bit. & Sym. 49.
(*v*) *R.* v. *East Winch*, 12 Ad. & Ell. 697.

during the years 1825, 1826, and 1830 (*x*), and whilst he the said A B was living in the parish of F, in the county of B.

Section XXXIX.—Orders unappealed against, or determined on Appeal.

An acknowledgment by relief is no more than *primâ facie* evidence of settlement in all cases. But an order of removal, executed and unappealed from, is conclusive on the parish upon which the order is made against all the world (*y*). And where an order is confirmed on appeal, or quashed, except when for want of proof of chargeability (*z*), it is final and conclusive between the parties where the trial has been upon the merits; but where it has been decided on some point not affecting the merits of the settlement itself or the sufficiency of the evidence, and a special entry is made of the grounds on which the decision was given, in such case it does not conclude the party against whom it is given.

When an order is confirmed on the merits, it is conclusive, not only in favour of the parish removing, but in favour of all other parishes, inasmuch as at the appeal it was open to the appellants to have shown the settlement to be in any third parish; and having failed to do so, they are concluded from removing afterwards on the ground of any settlement gained at such time in any other parish. Whatever has been decided on a prior appeal, is conclusive evidence afterwards, and such matters are not to be reopened, unless a change of circumstances shall have since occurred to which the former finding shall be inapplicable (*a*).

What are merits?—This is a very important question;

(*x*) The times being more within the knowledge of the respondents than the appellants, need not be further particularized; *R.* v. *Carnarvonshire*, 2 Q. B. 325.

(*y*) *R.* v. *Charlbury and Chipping Farringdon*, 2 Salk. 488; per Buller, J., *R.* v. *Kenilworth*, 2 T. R. 598; *R.* v. *Corsham*, 11 East, 388.

(*z*) *R.* v. *Paranzabuloe* (*post*).

(*a*) *R.* v. *Wye*, 7 A. & E. 761.

and one on which there has been much unnecessary conflict. We believe the simple rule to be this, that it is anything which is really material to the point at issue on appeal, anything which constitutes an essential part in the evidence of removability or settlement.

Mr. Justice Williams, in *Reg.* v. *Charlbury and Walcott*, gave a pithy explanation of the point in a few words—"Wherever a case is entered into, it is heard on the merits. Where else are we to stop?" This is not a bad rule, as we shall find by the decided cases, but somewhat broad.

To form an answer to a second appeal, it is essential that the former decision should have been on the settlement, not on the mere question of chargeability, for chargeability is a question though on the merits, yet merely affecting removability at the time of the order, the decision therefore is one upon the merits, but only as they then existed. A new state of things may since have arisen, and the former order cannot affect them (*b*). This is, however, the only exception.

Where an appeal is entered merely to determine costs, as we have seen, it is not a decision on the merits, and ought to be so entered. (See "Appeal," p. 75, *ante*.)

Defects in preliminary matter of form are never on the merits, and the Court of Queen's Bench will, if necessary, compel the sessions to try an appeal against a second order of removal, the first having been quashed merely on such matter. In *Reg.* v. *Charlbury and Walcott* (*c*) the remark of Coleridge, J. is worthy of note, that "if the sessions improperly refuse to let a party go into evidence, then a *mandamus* is the proper remedy." The point, however, must be purely preliminary, and the case must not have been entered upon at all, otherwise the Queen's Bench will not interfere.

Any defect touching the settlement is on the merits, although it be a mere omission; in *Reg.* v. *Charlbury and Walcott* the sessions had quashed the first order, owing to the omission of a date, which they held to be material: the

(*b*) *R.* v. *Paranzabuloe*, 3 Q. B. 400. (*c*) 3 Q. B. 378.

first order being quashed on the merits, was deemed fatal to the second order, on an amended examination; and Mr. Justice Patteson there says, "wherever there is a material omission in the examination, and the order of removal is quashed for that, there is a decision on the settlement itself. It is quite different from a decision on a preliminary point of form." But all defects in statements material to the settlement are on the merits. Thus where the defect is a variance, though but a mistake in a date, the order should be quashed on the merits (*d*). Also, where the appellants omit to allege a residence in stating a tenement settlement, that of course is on the merits, as Mr. Justice Coleridge remarked, "as all decisions are, which are made after receiving all that can be legitimately offered (*e*)." Wherever an order is quashed by consent, the grounds not being made known or gone into on the application of the respondents, the order of sessions being *general*, it is held to be on the merits, for if the order be discharged because the respondents do not chuse to enter into their case, that is a quashing on the merits (*f*). And this decision is easily distinguishable from the case of *R.* v. *Wick, St. Lawrence* (*g*), where an order was quashed by consent on the express ground that the pauper was at that time irremovable, and this reason was communicated to the appellants, though not to the sessions.

The Sessions are to judge of what are merits.—The sessions are to judge of the materiality of a defect in the examination: and this was further upheld in *Reg.* v. *Kingsclere* (*h*), where the sessions, having exercised their jurisdiction, and decided that an order was quashed, not on the merits, sent up a case for the opinion of the Queen's Bench, which it refused to give, the sessions having decided it themselves.

(*d*) *Reg.* v. *Clint*, 11 A. & E. 886.
(*e*) *Reg.* v. *Evenwood Barony*, 3 Q. B. 370.
(*f*) *Reg.* v. *Church Knowle*, 7 A. & E. 471.
(*g*) 5 B. & Adol. 526.
(*h*) 3 Q. B. 388.

The finality of the decision of the sessions as to what is a quashing upon the merits, is very strongly shown in the recent case of *Ex parte the Overseers of the Township of Ackworth* (*i*). The examination set forth a prior suspended order of removal to the appellant parish, which had not then appealed, but did not state that such order had ever been served, or the pauper removed. The appellants objected that the examination was bad on the face of it for this omission; the sessions, however, quashed the order on this ground, but with a special entry that it was quashed "not on the *merits*." A *mandamus* being moved for to erase the entry or hear the appeal, Patteson, J., after consideration, held that it was quite clear that the sessions were wrong in their decision, it having been a decision "on the merits;" but said, that the appeal was properly entered, and the Court (of Quarter Sessions) had jurisdiction over it, and had decided it, and the court of Q. B. could not compel them to rehear a case on which they had decided. It might be true that their decision is erroneous, "but it is an error we cannot correct." The law, in such a case, has provided no means of redress.

In *R.* v. *Evenwood Barony* (*j*), the court held that there is a regular mode of proceeding at sessions which it is presumed will be adopted by the justices—viz. that where a case is disposed of on a point of form, they will make an entry of their judgment accordingly. *If no such entry is made, the judgment will be binding*, unless the party against whom it is given can show that it did not proceed on the merits. And the court will not compel the sessions to make a special entry of the grounds of their judgment (*k*).

So that all depends on the decision of the sessions, who ought to be careful that their decision is on the merits, according to the definition above given.

Where an order is quashed without any special entry, if

(*i*) 3 Q. B. 370; and see *Reg.* v. *Lancashire*, 3 Q. B. 367.

(*j*) *Ante*; also *R.* v. *Guisawdra*, 7 Jurist, 1057.

(*k*) *Reg.* v. *Lancashire*, n. (*i*), *supra*.

not stated to be for matter of form, it will be assumed that it was quashed on the merits (*l*).

Where the facts are new.—Wherever there is a new state of facts, it is obvious that the quashing of the first order cannot affect the validity of the second, as in the case of *R.* v. *Peranzabuloe* (*ante*).

Evidence.—Parol evidence is admissible to show the ground on which a former order was disposed of (*m*).

Evidence of a prior order of the sessions may be given by calling the clerk of the peace, who has the record or minute-book of the sessions (*n*).

Evidence of prior order unappealed against.—Prove the order, its due execution and reception by the other parish, and its submission to it. The pauper is a competent witness of his removal. If the order is in the hands of the opposite parish, give notice to produce it; and if not produced, give secondary evidence of it, as by a copy or otherwise. The handwriting of the justices must be proved, where the order is in the hands of the appellant parish.

Statement of objection.—Where the order has been quashed on the merits, and notwithstanding such quashing, the same pauper is again removed to the same parish, on the strength of the same facts better stated, the former decision is a ground of objection, and may be thus stated:—

Form—Where prior order has been already quashed.

That before the making of the said order and examination for removing the said A B from your said parish of R to our said parish of B, dated the said tenth day of April, A. D. 1844, a certain other order, made and signed by J B and A S, esquires, justices of the peace for the county of L, for removing the said A B from your said parish of R to our said parish of B, dated the first day of May, A.D. 1843, and based on and relating to the same alleged settlement named in your present and first above-named order and examina-

(*l*) *R.* v. *Gnisawdra*, 7 Jurist, 1057.
(*m*) *R.* v. *Wheelock*, 5 B. & Cr. 511.
(*n*) *R.* v. *Yeoveley*, 8 A. & E. 806.

tion, was appealed against by us on behalf of our said parish of B, at the general quarter sessions of the peace in and for the county of Rutland, holden on the third day of June, A.D. 1843, and was then and there quashed on the merits thereof by order of the said Court of Quarter Sessions; which said order of the said court is binding and conclusive against the said subsequent order for the removal of the said A B, dated the said tenth day of April, A.D. 1844.

PART IV.

PRACTICE AT SESSIONS.

A KNOWLEDGE of practice points is so essential to counsel and attorneys practising in session courts, that we cannot omit some mention of them, and shall extend our remarks to cases which do not exclusively apply to appeals against removals but to other appeals likewise.

SECTION I.—APPEALS AGAINST REMOVALS.

Order of proceeding.—This varies with the practice of each court, it being the custom of each sessions to frame its own rules. We have copied those of one of the best regulated of these courts (*a*), and it may serve, not only as a model for others, but to give a general notion of the system pursued, though in few counties, if any, will it be found to be exactly similar. Wherever general rules of practice on appeals have obtained, they cannot be varied so as to render compliance with such varied rules obligatory; thus where the sessions required the original order of removal to be filed with the clerk of the peace before the sitting of the court—a violation of such rule does not empower them to strike an appeal out; but the original order of removal must be produced by the appellants where the practice of the sessions requires it; it cannot be proved by the copy filed with the clerk of the peace. It is, however, a preliminary matter of practice, like a notice of appeal, and subject to the interference of the Queen's Bench

(*a*) See Appendix, D.

if they think the sessions wrong. The 4 & 5 Will. 4, c. 76, s. 79, has not altered the practice in this respect (*b*).

Entry of appeal and respite.—We have already stated the time when and manner in which this may be done (*c*). Whenever due notice of appeal has not been given, but the grounds have been delivered, the sessions are bound to respite the appeal, but they are not bound to *enter* or respite it where the grounds have not been delivered, and there has, in the discretion of the sessions, been undue delay. In all such cases they must abide by their discretion. *Reg.* v. *Sevenoaks* (*d*) clearly shows that where appellants make it impossible to try an appeal at the next practicable sessions after the service of the order by their own neglect, they cannot treat such sessions as a nullity, and enter it at the following sessions.

Proof of notice of appeal.—This is the first step at the trial of the appeal, and the appellants are always bound to prove it, unless the respondents admit the service.

Summons to witnesses.—A degree of uncertainty prevails as to the power of summoning witnesses. Section 70 of 7 & 8 Vict. c. 101, cited in p. 27, *ante*, does not in express terms apply to trial of appeals against removals but only to petty sessions cases, but it rather assumes that power to exist already in the superior jurisdiction, with which it clothes the inferior. In the case of *Reg.* v. *Orton* (*e*), where a summons (signed by a magistrate) had been served on an overseer to attend the trial of an appeal at quarter sessions, *and to produce the books of rates, &c.* it was held that this could not be done, and that secondary evidence could not be given in the absence of the books, but Lord Denman, C. J., said—"*There are means by which a party is compellable to produce documents*, and these means should have been resorted

(*b*) *Reg.* v. *Justices of Sussex*, 9 Dowl. 125.
(*c*) Page 76—79.
(*d*) 14 L. J. M. C. 92.
(*e*) 14 L. J. M. C. 89.

to; this has not been done." This was since the 7 & 8 Vict. c. 101, and previously to it his lordship had said, that justices may summon in their own jurisdiction. His words were—"*They may summon within their jurisdiction, and with respect to witnesses out of their jurisdiction we will do our best to assist them* (*f*)."

This form may serve for summoning witnesses within the jurisdiction of justices.

County of Rutland, to wit. } To
You are hereby required, in her Majesty's name, to be and appear before me and such other of her Majesty's justices of the peace acting in and for the said county of Rutland, as shall be present on , the day of , next, at o'clock in the forenoon, at the general quarter sessions to be then holden at , in and for the said county of Rutland, to give evidence touching the place of settlement and other matter thereto appertaining, of L B, formerly of the parish of , in the county of Lincoln, and now residing in the parish of , in the said county of Rutland. Herein fail not at your peril. Dated this day of , A. D. .

T R, (L. S.)

Where documents are to be produced, a subpœna duces tecum seems to be the only course (*g*).

The voting of justices interested in a contending parish.—The 5 & 6 Vict. c. 57, s. 15, provides that, doubts having existed on the point, "no justice of the peace shall be disabled from acting as such justice at any petty, or special, or general, or quarter sessions, in any manner, merely on the ground that such justice of the peace is an *ex officio* member of any board of guardians complaining, interested or concerned in such matter, or has acted as such at any meeting of such board of guardians." This relates only to guar-

(*f*) *Reg.* v. *Lydeard St. Lawrence*, 11 A. & E 616. In *Reg.* v. *Rishworth*, 2 Q. B. 476, his lordship suggests a legislative measure. It therefore appears that the legislature conceived the object answered, as to magistrates acting in their own jurisdiction, and merely applied the act to cases not provided for by his lordship's judgment.

(*g*) For form of warrant, where the summons is disobeyed, see Bastardy Forms, *post*.

dians; but no justice must take a part in the decision of any matter in which he is directly interested, and he must not be present at the time the case is heard. Lord Denman, C. J., said, in *Reg.* v. *Hertfordshire* (*h*), "the true principle is this, that the fact of any person taking a part in the decision of a court of justice upon a matter in which he is interested, vitiates that decision. I cannot enter into any analysis of the motives of the parties or the possible particulars of the discussions which may have taken place. Any judgment of a court of justice is void, if an individual interested in the subject be a party to the judgment." In that case, the magistrate in question did not vote, and had left the court when the votes were taken, but, said Lord Denman, "It is quite consistent with his having left the court before the determination of the appeal, that what he said to his brother magistrates during the discussion might have had considerable influence on their decision (*i*)."

Very recently, Mr. Justice Patteson gave no judgment in an appeal case, because the parish in which he lived in London was a party concerned. Justices cannot too scrupulously adhere to this rule.

The chairman of the sessions has not a casting vote (*j*), and if it happens that the sessions are equally divided they must adjourn the case until there is a majority (*k*).

The judgment.—The judgment on appeal must do neither more nor less than confirm or quash the original order, and award costs, which form part of their order (*l*). Nothing extraneous or explanatory is admissible (*m*), nor can they make an original order of removal (*n*).

(*h*) 14 L. J. M. C. 73.

(*i*) See also *Reg.* v. *Rishton*, 1 Q. B. 47, and *Reg.* v. *Cheltenham Commissioners of Paving*, 1 Q. B. 467.

(*j*) *Reg.* v. *Hadbury*, 10 A. & E. 706.

(*k*) *R.* v. *King's Langley*, 2 Salk. 605.

(*l*) See *post*.

(*m*) *R.* v. *Luffington*, 1 Wils. 74.

(*n*) *R.* v. *Winsley*, 3 Salk. 254.

They cannot be called upon to state the grounds of their decision (*o*).

Entry of judgment for form or on the merits.—We have already discussed the *effect* of an entry of an order as quashed for form or on the merits (*p*). It is here only necessary to consider the duty and power of the sessions court in this matter. The sessions have supreme discretion therein; where they once determine that a decision is not on the merits, their judgment is final, though it be erroneous; *Reg.* v. *Ackworth* (*q*). And in *Reg.* v. *Lancashire* (*r*), it was held, that the Court of Queen's Bench could not compel the sessions to make a special entry. From the cases of *Reg.* v. *Evenwood Barony* (*s*), *Charlbury* and *Walcott* (*t*), and *Ex parte Pontefract* (*u*), it is clearly the proper course for the sessions to make a special entry of quashed for want of form where it is so, in order that there may be plain evidence of the fact in case of another removal. Where no such entry is made, it is also clear, as Mr. Justice Patteson said in *Reg.* v. *Charlbury* and *Walcott*, that parties may afterwards give parol evidence as to the ground of the decision (*x*). If it can be thus shown that the decision was upon a particular point and new matter has subsequently arisen, the judgment does not conclude the parties from obtaining another, but this should be set at rest by the entry. Wherever the merits are not decided, the court should invariably enter the order "quashed not upon the merits," or, if it be so, "quashed for matter of form." But the former is the best because it is the most comprehensive entry.

Entry final.—The entry is final after the sessions is over, though it may be altered while it lasts (*y*), and the court, at a subsequent sessions, has no power to erase an entry already

(*o*) *Reg.* v. *Lancashire*, 3 Q. B. 367.
(*p*) See pp. 75, 287. (*r*) 3 Q. B. 367. (*t*) *Ante*, p. 286.
(*q*) *Ante*, p. 288. (*s*) *Ante*, p. 288. (*u*) *Ante*, p. 75.
(*x*) *R.* v. *Wick St. Lawrence*, 5 B. & Ad. 526.
(*y*) *R.* v. *Justices of Leicestershire*, 1 M. & S. 442.

made, however wrongly made, but the Queen's Bench will in extreme cases grant a mandamus to do so (*z*), although it will not grant a mandamus merely to compel a special entry to be made, as we have seen (*a*). The sessions have, in fact, a large discretion in the matter with which the Queen's Bench will not interfere. And even where they entered an order as "quashed not on the merits" for a defect which was on the merits, it was held conclusive (*b*).

Section II.—Jurisdiction of the Court of Queen's Bench.

Granting a case.—Wherever the Court of Quarter Sessions has entered into a case and has determined it, it is decisive, unless it chooses to state a case for the opinion of the Queen's Bench. This ought always to be done where any degree of doubt prevails as to the law of the case and especially as to the sufficiency of the examination or grounds of appeal (*c*). The sessions may grant a case upon any point material to the judgment. The Court of Queen's Bench will not compel the sessions to state a case (*d*).

How the case is to be drawn.—The case must contain a positive finding of the facts and not merely the evidence. By the facts, the Court of Queen's Bench is bound; and the sessions must draw its own conclusion from the facts and give judgment provisionally upon the opinion of the Queen's Bench, which when given shall leave nothing to be adjudicated. The sessions must not so state the case that in the event of the Court of Queen's Bench finding one way the order shall be quashed, and if another way that it shall then

(*z*) *Reg.* v. *Justices of West Riding* (*Sheffield* v. *Crich*), 5 Q. B. 1.
(*a*) *Reg.* v. *Lancashire*, 3 Q. B. 367.
(*b*) *Reg.* v. *Kingsclere*, 3 Q. B. 388.
(*c*) *R.* v. *Preston on the Hill*, Burr. S. C. 78.
(*d*) *R.* v. *Pembrokeshire*, 2 B. & Ad. 391.

be sent back to be reheard (*c*). Nothing must be reserved to be done after the judgment of the superior court is given (*d*).

The Court of Queen's Bench will confirm the finding of the sessions whenever they arrive at a right conclusion, although on wrong grounds (*e*).

Fraud.—Fraud will not be inferred unless expressly found by the case (*f*), and it is for the superior court to decide whether it avoids the settlement when found (*g*).

Case sent back for restatement.—Sometimes the court will send the case back to the sessions to be restated, but merely when there is a defective statement, and then only when justice will be thereby done. The rule is thus laid down in *R.* v. *Rickinghall* (*h*), per Abbott, C. J., "If upon a case stating evidence only, the Court of King's Bench should think the conclusion drawn by the sessions wrong, they would probably deem it better to send it back for revision; but where the conclusion appears to be right, it would be useless to send it down again." The court is therefore guided by the utility of doing so. When the case is sent back to be restated it must be reheard (*i*).

The case should be drawn by counsel, if they can agree, and if not, by the chairman (*k*).

Interference by mandamus.—The Court of Queen's Bench will grant a mandamus to enter continuance and hear an appeal only when the appeal has not been heard; and will

(*c*) *Reg.* v. *Stoke-upon-Trent*, 5 Q. B. 303.

(*d*) *Reg.* v. *Wistow*, 3 Q. B. 815, n. (*d*); *Reg.* v. *West Houghton*, 5 Q. B. 300; *Reg.* v. *Kesteven*, 3 Q. B. 810.

(*e*) *Reg.* v. *Justices of West Riding*, 2 Q. B. 713; *R.* v. *Great Wishford*, 4 A. & E. 216.

(*f*) *R.* v. *Llanfihangel Abircowin*, 4 N. & M. 355.

(*g*) *R.* v. *Mursley*, 1 T. R. 694.

(*h*) 1 N. & M. 47.

(*i*) *R.* v. *Bloxam*, 1 A. & E. 386.

(*k*) *R.* v. *Woolpit*, 4 A. & E. 216; *R.* v. *Great Wishford*, 4 A. & E. 224.

not do so on the mere ground that it has been wrongly decided. This was, as we have already stated, formerly otherwise, but the law is now inflexible. If the sessions refuse to hear upon *a preliminary objection* which is a point of practice and *matter of law*, the court will grant a mandamus. But if even on a preliminary objection a *matter of fact* has been decided, no mandamus will go. And in all cases where the question is whether the examinations or notices give sufficient information to entitle parties to go into their case the decision of the sessions is final (*l*).

No mandamus will issue where the sessions are equally divided if they at length decide (*m*), nor even where one of the votes was that of an interested justice (*n*), for the Court of Queen's Bench is not a court of error from the sessions, nor will it rectify mere mistakes by mandamus (*o*), nor of entries of orders "quashed *not* on the merits" which *are* on the merits (*p*).

But wherever it is necessary to defeat a fraud attempted to be practised by one parish on the other, the Court of Queen's Bench will not hesitate to grant a mandamus. The mandamus then becomes—not a coercion of the sessions, but a power and privilege conferred on them to do what is right (*q*). As a general rule, wherever there has been an improper refusal to hear an appeal a mandamus will issue. Where an appeal has been improperly dismissed and not heard, even though the evidence was slight, if there were any at all, a mandamus will be granted (*r*), for the sessions are bound to hear in such a case, but a mandamus will not be granted to compel the sessions to hear any particular

(*l*) *Reg.* v. *Kesteven*, 3 Q. B. 810.
(*m*) *R.* v. *Justices of Monmouthshire*, 4 B. & C. 844.
(*n*) *R.* v. *Justices of Monmouthshire*, 8 B. & C. 137.
(*o*) *R.* v. *Justices of Leicestershire*, 1 M. & S. 442.
(*p*) *Exparte Ackworth*, 3 Q. B. 397.
(*q*) *Reg.* v. *Justices of West Riding*, 1 New S. C. 247.
(*r*) *Reg.* v. *Justices of West Riding*, 2 Q. B. 331; *R.* v. *Justices of Cumberland*.

point of evidence they may reject (*s*), nor in short in any case where they have exercised a discretion on the merits of the case, but only where they have shut themselves out from doing so; as, for example, where they refused to admit evidence to explain the circumstances under which a previous order had been quashed. This shut them out from forming a judgment and a mandamus was granted (*t*).

A mandamus will not be granted to compel justices to make an order of removal, for it is a judicial act and their discretion is conclusive (*u*).

In order to obtain a mandamus it must be very clearly shown that every thing was done to conform with the requirements of the sessions as to its rules (*v*).

It will be seen that the case of *Reg.* v. *Kesteven* has greatly narrowed the sphere of cases in which a mandamus might issue. It has in fact introduced a new, and we humbly think, a much improved system. In a subsequent case (*x*), the Court of Queen's Bench have thus defined the principle on which their decision was made and will be maintained: "In a former term, cause was shown against a rule for a mandamus (*Reg.* v. *Justices of Kesteven*) requiring the Court of Quarter Sessions to enter continuances and to have an appeal, on the ground that it had improperly refused to do so when the case was called on for trial. The cause shown was, that that court had heard the appeal and decided upon it, and that we could not subsequently enter upon any inquiry as to whether their judgment was right. In giving effect to this argument we were under the necessity of reconsidering some former decisions of this court, by

(*s*) *R.* v. *Justices of Cambridgeshire*, 1 D. & R. 325.

(*t*) *Reg.* v. *Justices of Flintshire*, 13 L. J. M. C. 163.

(*u*) *Reg.* v. *Rogers*, 12 L. J. M. C. 50.

(*v*) *Reg.* v. *Warwickshire*, 14 L. J. M. C. 39.

(*x*) *Reg.* v. *Justices of West Riding* (*Beckington* v. *Elland*), 1 New S. C. 247.

which it was determined that a mandamus would be the proper mode for compelling the sessions to correct their error; and we felt it our duty to overrule, expressly, the case of *Reg.* v. *The Justices of Carnarvonshire* (*y*); and *Reg.* v. *The Justices of the West Riding* (*z*), and perhaps some other cases.

"The more the question is considered the more clearly will be shown the propriety of our last decision. The practice which had crept in, from the desire entertained by the court, that in all cases a fair trial of the issue between the parties should be had, would have led to perpetual interference with every proceeding of the Quarter Sessions, both embarrassing and derogatory to a tribunal exercising very important functions. All now understand that when any such tribunal declines to exercise a jurisdiction imposed on it by the law, this court will enforce its proceeding, but that, when it has acted, its judgment can only be reversed here on a case stated by itself for our opinion. There is certainly no want of facility in granting such cases, and they are conveniently disposed of on grounds well understood between the parties, while the conflict of affidavits on such matters is of itself a real evil.

"As soon as the said rule was discharged, another, involving the same point, was brought before us; we inquired of the learned counsel who appeared in support of it, whether the two cases could be distinguished; the learned counsel did not attempt to show that our preceding decision was wrong, and that the former authorities ought still to prevail; but he expressed an opinion that the two cases might probably be distinguished, and that he might have the opportunity of distinguishing them if the rule was enlarged to this term. When, however, it was called on, no attempt at such distinction was made. It was then thought right to inform us, at much length, that the parties had been misled by our

(*y*) 2 Q. B. R. 325. (*z*) Id. 331.

mistake in former decisions, and that hardship and injustice would result to the losing parish, if we should now refuse them those means of questioning the judgment below, which we had led them to suppose that they possessed. But we cannot allow any weight to these observations; parties must indeed act on the authority of our decisions, but those decisions when pronounced erroneous cannot give them any shadow of right against their adversaries who have acted on that which is now declared to be the law, in spite of that erroneous decision, even at the moment when it was pronounced."

Where a mandamus lies, it is no answer to the application for it that the justices had offered to grant a case (*a*), and a mandamus will go to compel them to state one where they granted it (*b*).

Time for applying for mandamus. — The application should be made in the term after the subject of it has occurred; but this rule will be probably relaxed where circumstances have occasioned unavoidable delay (*c*).

Costs of mandamus.—By 1 Will. 4, c. 21, s. 6, it is provided, that in all cases of any application for any writ of *mandamus* whatsoever, the costs of such application, whether the writ shall be granted or refused, and also the costs of the writ, if the same shall be issued and obeyed, shall be in the discretion of the court; and the court is thereby authorized to order and direct by whom and to whom the same shall be paid.

This discretion is so freely used by the court, that it is impossible to define the application of that which must depend on the circumstances of each individual case.

(*a*) *Reg.* v. *Justices of West Riding*, 13 L. J. M. C. 80, 984.

(*b*) *R.* v. *Justices of Pembrokeshire*, 2 B. & Ad. 391; *R.* v. *Justices of Suffolk*, 1 Dowl. 163.

(*c*) *Idem.*

Section III.—Certiorari.

When granted.—A writ of certiorari is that whereby the proceedings or orders of an inferior jurisdiction are brought up to the Court of Queen's Bench; and it must in all such cases be resorted to, even when the sessions have granted a case, and notice must be also given to the justices who were present; for "admitting," said Lord Ellenborough, C. J., in *R.* v. *Justices of Sussex* (*c*), "that the magistrates may have wished at the time when they settled the case to have brought it up, still there may be reasons why they might think fit to show cause."

Cases in which a certiorari will not be granted.—When the objection to reverse the decision of the sessions, or to examine the evidence and ascertain if the justices had jurisdiction, no case having been granted (*d*).

Neither will a *certiorari* issue, where there is a power of appeal to the sessions, or as a substitute for appealing.

On whose application issued.—Either party may apply for a *certiorari*. A judge's fiat is requisite to the writ. And when a case has been granted, the fiat is granted absolute in the first instance.

Time for the application.—13 Geo. 2, c. 18, s. 5, enacts, "that no writ of *certiorari* shall be granted, issued forth, or allowed, to remove any conviction, judgment, order, or other proceeding had or made before any justice or justices of the peace of any county, city, borough, town corporate, or liberty, or the respective general or quarter sessions thereof, unless such *certiorari* be removed or applied for within six calendar months next after such conviction, judgment, order or other proceedings shall be so had or made; and unless it be duly proved upon oath that the

(*c*) 1 M. & Sel. 631.

(*d*) *Reg.* v. *Tollerton*, 3 Q. B. 792; *Reg.* v. *Bucks*, 3 Q. B. 800; *Reg.* v. *Rotherham*, 3 Q. B. 776.

said party or parties suing forth the same hath or have given six days' notice thereof in writing to the justice or justices, or to two of them (if so many there be), by and before whom such conviction, judgment, order or other proceedings shall be so had or made, to the end that such justice or justices, or the parties therein concerned, may show cause, if he or they shall so think fit, against the issuing or granting such *certiorari*."

This rule is rigidly enforced, although the delay may have been unavoidable (*e*). The six months run from the time of *making the order* (*f*).

Where the order was made on the 20th of April, and the application on the 20th of October, it was in time, if the fiat be signed then (*g*).

It in nowise varies the rule, if the *certiorari* be quashed for insufficiency in the affidavit of notice (*h*).

The *certiorari* to remove orders for the purpose of quashing them, ought not to be issued until the matter is determined on the appeal; and if any order is removed by the respondents before the time for appealing has expired, it will be sent down again (*i*). This, however, does not apply to the appellants, who may remove the order as soon as they please, for it is solely for their benefit that the time is reserved for the purpose of appealing (*j*). But when motion is made to quash the certiorari for want of formal notice, mere lapse of time is no answer to the application (*k*).

Requirements of the notice itself.—It must state the name of the party applying for the writ on the face of it, and an

(*e*) *R.* v. *Bloxham*, 1 A. & E. 386.
(*f*) *R.* v. *Justices of Sussex*, 1 M. & S. 631, 734.
(*g*) *Reg.* v. *Whitechapel*, 2 Dowl. N. S. 964.
(*h*) *Reg.* v. *Cartworth*, 1 Dowl. & L. 842.
(*i*) Reg. Gen. B. R. Pasch. 1 Ann.
(*j*) *Reg.* v. *Willats*, 14 L. J. M. C. 157.
(*k*) *Reg.* v. *Cartworth*, 5 Q. B. 201.

affidavit to identify the party as the same who issued it (*l*). An attorney may sign it for the parish (*m*); but a churchwarden may not sign for the other parish officers.

Notice of an intention to move "on the first day of next term, or so soon after as can be heard," if served on the first day of that term, is insufficient, although the motion is not in fact made until after the expiration of six days (*n*).

How the notice is to be served.—The notice must be served on two or more justices who made the order, and *were actually present at the sessions;* and where this is not expressly stated in the affidavit of service, the writ may be quashed, however long after it issued the application is made (*o*). It must be served personally; but may be left with any one at the house, if the justice cannot be seen (*p*). See *post.*

Affidavit of the service of the notice.—This requires great particularity. It must be made by the same party who is applying for the *certiorari,* and state that the notice was served on two of the same justices who were present at the time the order, &c. was made.

An affidavit stating that the notice of motion under 13 Geo. 2, c. 18, s. 5, was served upon A B and C D, two of the justices for the county, "and that the said A B and C D were two of the justices present at the sessions" at which the order was made, is insufficient, though it appears that the order was made on an appeal against an order of removal, subject to a special case, for it is consistent with the magistrates having been present at the sessions that they were not present at the hearing of the appeal in question (*q*). The

(*l*) *R.* v. *Justices of Lancashire,* 4 B. & Ald. 289; and *Reg.* v. *How,* 11 A. & E. 159.

(*m*) *Reg.* v. *Abergale,* 5 A. & E. 795; *R.* v. *Cambridgeshire,* 3 B. & Adol. 887.

(*n*) *In re Flounders,* 4 B. & Ad. 365.

(*o*) *Reg.* v. *Cartworth,* 5 Q. B. 201; *Reg.* v. *Gilberdike,* 5 Q. B. 207.

(*p*) *Reg.* v. *Nunn,* 1 New S. C. 49.

(*q*) *Reg.* v. *Darton,* 14 L. J. M. C. 41.

affidavit must also state that the justices were two of those who were present when the order was made (*r*), and were members of the court (*s*); merely stating them to be justices of the county will not suffice (*t*).

But where the party applying for the *certiorari* was not present at the sessions when the order was made, but was served with a copy of the order, the caption of which contained the names of the two justices upon whom service was sworn to be made, an affidavit stating that these two justices were present at the sessions, was, as against the opposite party, held sufficient (*u*).

If the justice be ill, and cannot be personally served, the affidavit must state the service to have been made at his dwellinghouse. To show how strictly this is adhered to, we annex the following instance of informality in this respect. An affidavit was thus worded:—"That the deponent did, on, &c. *serve R N*, Esq., one of the justices, &c., *at the dwellinghouse and usual place of abode of him the said* R N, at, &c., by leaving a duplicate or counterpart of the said notice with W R, the medical assistant of the said R N, he the said R N being then ill in bed." This was held to be wholly insufficient, for it did not show that the service of the notice upon W R was at the dwellinghouse of the said R N (*v*).

The writ should particularise the documents to be returned: where the original order of removal is to be returned, it should be expressly named, for it is not incumbent on the justices otherwise to return it (*x*).

Jurat of the affidavit.—Care must be taken that the affidavit have a proper jurat. In *Reg.* v. *Bloxam* (*y*) the jurat

(*r*) *Reg.* v. *Justices of Salop*, 9 Dowl. 501.

(*s*) *R.* v. *Justices of Wilts*, 9 Dowl. 524; *Reg.* v. *Justices of West Riding*, 12 L. J. M. C. 148.

(*t*) *Reg.* v. *Cartworth*, 5 Q. B. 201.

(*u*) *R.* v. *Sevenoaks*, 14 L. J. M. C. 92.

(*v*) *Reg.* v. *Nunn*, 1 New S. C. 49.

(*x*) *Reg.* v. *Justices of Cornwall*, 1 New S. C.

(*y*) 1 New S. C. 370.

of an affidavit, on which a certiorari to bring up an order of sessions was granted, was as follows:—Sworn at B, this 8th day of February, 1844, (signed) W M, a commissioner of the Court of Queen's Bench," omitting the words " before me." In the body of the affidavit was a reference to a notice " hereunto annexed." The notice was annexed to the affidavit, and at the foot of it were these words, " This is the notice referred to in the annexed affidavit, sworn before me this 8th day of February, 1844. (Signed) W M." It was held, that the absence of the words, " before me," in the jurat was fatal to the affidavit, and that the defect could not be supplied by reference to the annexed notice, " there being," said Lord Denman, C. J, " no rule more wholesome and proper than that the jurat of an affidavit should *state* that which is essential to its validity, namely, that the oath was taken before a party who had proper authority to administer it."

Form of notice.

To J L and A B, Esquires, two of her majesty's justices of the peace in and for the county of Essex.

Take notice, that on the day of , A.D. 1846, or as soon after as counsel can obtain audience, her Majesty's Court of Queen's Bench will be moved on behalf of the parish of in the said county of , that a writ of certiorari may issue to remove into the said court a certain order, together with all proceedings thereto appertaining, made at the general quarter sessions of the peace held in and for the said county on the day of , A.D. 1846, which said order quashed another order for the removal of one J D, a pauper, from the said parish of to the parish of in the said county of Essex, and in quashing which said order a special case was granted by the said court of quarter sessions for the opinion of her Majesty's said Court of Queen's Bench. Dated this day of , A.D. 1846.

Signed .

Form of affidavit.

The affidavit of , appellant's attorney, &c., says, that at the quarter sessions of the peace for the county of Essex, held, &c., a certain appeal against an order of removal came on to be tried, at which said sessions a certain order was made, quashing a certain other order for the removal of one J D, a pauper, from the parish of to the parish of in the said county of Essex: And deponent further says, that he did, on the day of

instant, duly and severally serve J L and A B, Esquires, two of her Majesty's justices of the peace in and for the said county of Essex, and belonging to the said court of quarter sessions, and who were present at the hearing of the said appeal, and at the making of the said first-mentioned order, with a copy of the notice hereto annexed, by delivering such copy to each of them the said justices personally.

Form of certiorari.

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland queen, defender of the faith, to the keeper of our peace, and our justices assigned to hear and determine divers felonies, trespasses and other misdemeanors committed within our county of Hereford, and to every of them greeting:

We being willing, for certain reasons, that all and singular orders made by you or some of you, between the inhabitants of in our city of appellants, and the inhabitants of in our said county of , respondents, touching the settlement of , single woman, be sent by you before us, do command you and every one of you, that you, or one of you, do send under your seals, or the seal of one of you, before us on the Morrow of All Souls, wheresoever we shall then be in England, all and singular the said orders, as well the original order for the removal of the said , as all orders subsequently made by you, with all things touching the same, as fully and perfectly as they have been taken or made by and before you, or some of you, and now remain in your custody or power, together with this our writ, that we may cause further to be done thereon, what of right, and according to the law and custom of England, we shall see fit to be done. Witness, *Thomas, Lord Denman*, at Westminster, the day of , in the year of our reign.

By the Court,

Recognizance.—By statute 5 Geo. 2, c. 19, s. 2, no certiorari shall be allowed to remove judgments or orders (of justices) unless the party or parties prosecuting such certiorari, before the allowance thereof shall enter into a recognizance, with sufficient sureties, before one or more justices of the peace of the county or place, or before the justices at their general quarter sessions, or general sessions, where such judgment or order shall have been given or made, or before any one of his majesty's justices of the Court of King's Bench, in the sum of 50*l.*, with condition to prosecute the same at his or their own costs and charges with effect, without any wilful or affected delay, and to pay

the party or parties in whose favour and for whose benefit such judgment or order was given or made within one month after the said judgment or order shall be confirmed, their full costs and charges, to be taxed according to the course of the court where such judgments or orders shall be confirmed, and in case the party or parties prosecuting such certiorari shall not enter into such recognizance, or shall not perform the conditions aforesaid, it shall and may be lawful for the said justices to proceed and make such further order or orders for the benefit of the party or parties for whom such judgment shall be given, in such manner as if no *certiorari* had been granted. The recognizance must be in one entire sum of 50*l.*(*y*), entered into by some inhabitant of the parish on behalf of the rest, with two sureties(*z*). The recognizance must be certified into the Queen's Bench, and there filed with the certiorari. It may be enforced by attachment.

Return to the certiorari. — The return is made by the justices, and not by the clerk of the peace, and must be on parchment; but need not be sealed or subscribed with the signatures of the justices. *Responsio justiciarum* suffices, if it appears to be made by the justices of the county. It need not be in any particular form, but should be *in hæc verba*, and not by way of recital. The documents returned must be properly named, though misnamed in the writ, for the variance is not material(*a*).

Where the writ asks only for certain documents, such only must be sent, otherwise the return may be quashed for setting out more than was ordered(*b*); and, as we have already seen, the examinations must not be asked for where no case is granted.

Proceedings on the return being made.—If the original order be not brought up, the Queen's Bench cannot quash it,

(*y*) *R.* v. *Dunn*, 8 T. R. 217.
(*z*) *Reg.* v. *Abergale*, *ante*.
(*a*) *Reg.* v. *Fordham*, 11 A. & E. 73.
(*b*) *Reg.* v. *Abergale*, *ante*.

although they have quashed the order of sessions confirming the original order(*c*). The court will not travel out of the record as to matter properly within it, but will admit affidavits to show that the justices acted without jurisdiction in the matter, although the proceedings appear to be regular on the face of them(*d*).

Where the sessions have quashed the order on matter of form, and the Court of Queen's Bench deem them wrong, the appeal is sent back to be reheard on the merits(*e*). We have previously stated the circumstances under which the court quashes or confirms the order.

The writ may be superseded for internal informality, but the motion must be separately made before argument to do so(*f*). Where the recognizance is defective, the writ itself will not be quashed, but only the allowance of the recognizance, and the writ will be enlarged(*g*).

Costs of certiorari.—The successful party is not entitled to costs, they must be paid as taxed by the party who sues out the certiorari when the rule is discharged.

Section V.—Costs.

Statute.—It is not compulsory on the sessions to award costs at all, but the 8 & 9 Will. 3, c. 30, s. 3, provides, "that the justices of the peace of any county or riding, in their general or quarter sessions of the peace, upon any appeal before them there to be had for or concerning the settlement of any poor person, or upon any proof before them there to be made of notice of any such appeal to have been given by the proper officer to the churchwardens or overseers of the poor of any parish or place (though they did not afterwards prosecute such appeal), shall at the same

(*c*) *Reg.* v. *Justices of Middlesex*, 9 A. & E. 540.

(*d*) *Reg.* v. *Bolton*, 1 Q. B. 66.

(*e*) *Reg.* v. *Ridgway*, 5 B. & Ald. 527; *Reg.* v. *Arleedon*, 11 Ad. & E. 87.

(*f*) *Reg.* v. *Fordham*, 11 Ad. & E. 73.

(*g*) *Reg.* v. *Abergale, ante.*

quarter sessions award and order to the party for whom and in whose behalf such appeal shall be determined, or to whom such notice did appear to have been given as aforesaid, such costs and charges in the law as by the said justices in their discretion shall be thought most reasonable and just, to be paid by the churchwardens, overseers of the poor, or any other person against whom such appeal shall be determined, or by the person that did give such notice as aforesaid."

By stat. 4 & 5 Will. 4, c. 76, s. 82, upon every such appeal "the court before whom the same shall be brought shall and may, if they think fit, order and direct the parish against whom the same shall be decided, to pay to the other such costs and charges as may to such court appear just and reasonable, and shall certify the amount thereof; and in case the overseers of the poor of the parish liable to pay the same shall, upon demand, and upon the production of such certificate, refuse or neglect to pay the same, the amount thereof may be recovered from such overseers, in the same manner as any penalties or forfeitures are by this act recoverable." And by sect. 83, "if either of the parties shall have included in the order or statement sent as hereinbefore directed, any grounds of removal or of appeal, which shall, in the opinion of the justices determining the appeal, be frivolous or vexatious, such party shall be liable, at the discretion of the said justices, to pay the whole or any part of the costs incurred by the other party in disputing any such grounds, such costs to be recovered in the manner hereinbefore directed as to the other costs incurred by reason of such appeal."

It is only upon the actual trial of an appeal that the latter section empowers the sessions to award costs. None can be given upon an adjournment (*h*). And where notice of appeal was given, and was afterwards countermanded, but not in time, which by the practice of the sessions entitled the

(*h*) *R.* v. *Justices of Monmouthshire*, 1 B. & Ad. 897; *R.* v. *Stansfield*, Burr. S. C. 205.

respondents to the costs incurred by them in attending the court to support their order; at the sessions, the appellants not having entered the appeal, the respondents entered it, and upon motion the sessions confirmed the order and adjudged the appellants to pay the costs incurred by the respondents in attending the court to support their said order; but this order of session being removed by *certiorari*, the court upon motion quashed it, holding that the sessions had no jurisdiction to confirm the order under such circumstances, and that the order for costs, being ancillary to the order of confirmation, was bad also (*i*).

The costs ought to be inserted in the order (*k*), but it is no objection to it that the amount of the costs is inserted in the order at an adjournment of the sessions on a day subsequent to that on which the order was made; as both parties must be taken to have assented that the exact sum should be fixed at a day subsequent to the making of the order by the officer of the court (*l*), and this indeed is the course. The sessions in fact directs its officer to tax, and adopts the taxation as its own act.

The costs of maintenance may be similarly ascertained by the clerk of the peace, if the justices during the sessions order the amount to be paid (*m*).

An arbitrary rule, common at sessions, to allow no more than 40*s*. costs, has been denounced by the Court of Queen's Bench, in the recent case of *Reg.* v. *Merionethshire* (*n*), where only 30*s*. was awarded.

Costs of maintenance.—By stat. 9 Geo. 1, c. 7, s. 9, if the quarter sessions, upon appeal, determine in favour of the appellant that the pauper was unduly removed, the justices shall at the same sessions order and award to such ap-

(*i*) *Reg.* v. *Stoke Bliss*, 13 L. J. M. C. 151.
(*k*) *Reg.* v. *Long*, 1 Q. B. 740; *Ex parte Holloway*, 1 Dowl. 26.
(*l*) *Reg.* v. *Mortlock*, 14 L. J. M. C. 153.
(*m*) *R.* v. *Higgins*, 5 A. & E. 554.
(*n*) 1 New S. C. 277.

pellant so much money as shall appear to them to have been reasonably paid by the parish, &c. on whose behalf such appeal was made for or towards the relief of such pauper, between the time of such undue removal and the determination of such appeal.

By stat. 4 & 5 Will. 4, c. 76, s. 84, the parish to which any poor person, whose settlement shall be in question at the time of granting relief, shall be admitted or finally adjudged to belong, shall be chargeable with and liable to pay the costs and expense of the relief and maintenance of such poor person: provided always, that such parish, if not the parish granting such relief, shall pay to the parish by which such relief shall be granted the cost and expense of such relief and maintenance from such time only as notice of such poor person having become chargeable, shall have been sent by such relieving parish to the parish to which such poor person shall be so admitted or finally adjudged to belong.

It is imperative on the sessions to grant costs of maintenance even when the order has been suspended, but the appeal was against the subsequent removal of the pauper; and a mandamus lies to compel the sessions to allow them if the appeal has been entered and determined (*o*).

How costs may be recovered. – By stat. 8 & 9 Will. 3, c. 30, s. 3, if the person ordered to pay costs under this act happens to live out of the jurisdiction of the court ordering them, any justice of the peace of the county, &c. where such person shall inhabit, is required, on request to him made, and a true copy of the order for the payment of such costs produced and proved by some credible witness, by warrant under his hand and seal, to cause the money mentioned in that order to be levied by distress and sale of the goods of the person ordered to pay the same, and if no such distress can be had, to commit such person to the common gaol, there to remain by the space of twenty days.

(*o*) *R.* v. *Justices of Monmouthshire*, 1 Dowl. & L. 145.

By stat. 9 Geo. 1, c. 7, s. 9, costs of maintenance are to be recovered in the same manner as prescribed by 8 & 9 Will. 3, c. 30, s. 3.

By stat. 4 & 5 Will. 4, c. 76, s. 99, costs are to be recovered by distress and sale of the goods of the person ordered to pay the same, by warrant under the hands of two justices of the county, &c. and if no such distress can be had, any such justices may commit the offender to the common gaol or house of correction, there to remain for a term not exceeding three calendar months, unless such costs shall be sooner paid and satisfied.

Costs on abandoned orders, see pp. 47 and 71, *ante.*

Section VI.—Amendment of formal Defects in Orders of Removal.

Statutable power to amend.—A most important though dormant statute exists, empowering justices to amend orders of removal. The 5 Geo. 2, c. 19, s. 1, gives the sessions this power to amend defects of form in orders of removal:—"Whereas in many cases his majesty's justices of the peace by law are empowered to give or make judgments or orders, great expenses have been occasioned by reason that such judgments or orders have, on appeal to the justices of the peace at their respective general or quarter sessions, been quashed or set aside upon exceptions or objections to the form or forms of the proceedings, without hearing or examining the truth and merits of the matter in question between the parties concerned; therefore, to prevent the same for the future, be it enacted, that after the 24th day of June, 1732, upon all appeals to be made to the justices of the peace at their respective general or quarter sessions to be holden for any county, riding, city, liberty or precinct, within that part of Great Britain called England, against judgments or orders given or made by any justices of the peace as aforasaid, such justices so assembled at any general or quarter sessions

shall and they are hereby required from time to time within their respective jurisdictions, upon all and every such appeals so made to them, to cause any defect or defects of form that shall be found in any such original judgments or orders to be rectified and amended without any cost or charge to the parties concerned, and after such amendments made shall proceed to hear, examine, and consider the truth and merits of all matters concerning such original judgments or orders, and likewise to examine all witnesses upon oath, and hear all other proofs relating thereto, and to make such determinations thereupon as by law they should or ought to have done in case there had not been such defect or want of form in the original proceedings; any law, usage or custom to the contrary notwithstanding."

It is much to be lamented that the power thus given has fallen into disuse (*p*). It might be exercised within certain limits with very great benefit, and would go far, if discreetly applied, to remedy many of the evils which are charged on the astuteness of the law as it stands.

Nothing can be easier than to restore it to what was its original design, and of which Lord Kenyon thus spoke in the case of *Rex* v. *Chilverscoton*(*q*):—"I verily believe that if the legislature had been asked what was their intention when they passed statute 5 Geo. 2, c. 19, they would have said they meant, that if upon inquiry it appeared that the pauper had been removed to his proper parish, the sessions would have power to correct *all defects* in the order."

Ten years however after the passing of this act a counter remark fell from Lee, C. J. in the case of *Rex* v. *Great Bedwin*(*r*), *in which there was no complaint or adjudication of chargeability.* The sessions having amended under the act,

(*p*) It in fact gives almost exactly the same power to the proper party to exercise it which an absurd bill proposed to give to a barrister sitting within half a mile of Temple Bar.

(*q*) 8 T. R. 178.

(*r*) 2 Sess. Ca. 142; 2 Strange, 1158.

Lee, C. J. said, that "these amendments might be the real merits on which this case depended; and it would be a detrimental construction of the act to take it so largely; and it would be giving the sessions an original jurisdiction." Undoubtedly in such cases it would. But where the defect consists not in the omission of material evidence but in the accidental omission or misuse of a word, as, for instance, designating justices "*of* and for," instead of "*in* and for" a county, surely the sessions might amend such errors without exceeding the intended limits of the statute, and likewise in hundreds of similar cases. Nothing more appears to be be needed *than that the sessions should exercise the power.* We believe it could be successfully upheld in the Court of Queen's Bench, and we earnestly recommend that the experiment be made.

Every one must feel that on the one hand it is most desirable that orders be not defeated by what are little more, if anything, than mere clerical errors; whilst on the other, it is still more essential that precision of statement and general fulness of legal evidence be required, and that these vital matters should be rescued from the destructive innovations of persons who have a morbid desire to alter what they lack the skill to amend. In our humble judgment, the existing statute of 5 Geo. 2, c. 19, affords a safe and effective resource from both these evils.

PART V.

THE LAW RELATING TO BASTARDS.

THIS law has undergone many changes. It is needless to recur to the old system, when the mother had the power of charging the putative father with the full cost of the maintenance of her illegitimate children, and whose means were thus increased with the number of her bastards.

This state of things terminated with the Poor Law Amendment Act in 1834.

SECTION I.—THE LAW UNDER 4 & 5 WILL. 4, C. 76, AND 2 & 3 VICT. C. 85.

The 4 & 5 Will. 4, c. 76, repealed the then existing law (s. 69), and enacted, that all securities and recognizances for indemnity of parishes against children likely to be born bastards should be null and void, and that persons in custody for not giving indemnity should be discharged.

Liability of mother.—Section 71 then enacted that the mother, "so long as she shall be unmarried or a widow, shall be bound to maintain such child as a part of her family, until such child shall attain the age of sixteen; and all relief granted to such child, while under the age of sixteen, shall be considered as granted to such mother; provided always, that such liability of such mother as aforesaid shall cease on the marriage of such child, if a female."

This was the deathblow to the old system. That which superseded it will be found detailed in the 72d and four

following sections of the act, which for convenience of reference are inserted verbatim in Appendix E.

The general features of these provisions were to empower the quarter sessions, on the application of the *overseers* of a parish or the guardian of a union for an order of maintenance of any bastard child, which had become chargeable to their parish or union, on the person whom they might charge with being the putative father of the child, and if the court should be satisfied of the truth of the charge, and the mother's evidence should be corroborated in some material particular by other testimony, then to make an order for the payment by the father of the sum actually incurred, which was not to be paid to the mother: such order to remain in force only until the child was seven years old. Retrospective costs might be given for six months (s. 73). Fourteen days' notice of the hearing of any such case was required to be given to the party charged; and in the event of his not appearing, section 74 gave the sessions power to enter upon the case without him.

If suspected of absconding, the party charged might be required to enter into recognizance to appear, and in default thereof was liable to be committed to the gaol or house of correction.

Arrears might be recovered by distress or attachment of wages (s. 76). There were other minor provisions, for which see the Act.

Application to the petty sessions.—By 2 & 3 Vict. c. 85, the power of application to the quarter sessions was given to the petty sessions, which had all the powers given by 4 & 5 Will. 4, c. 76, to the quarter sessions.

The overseers and guardians by this act were precluded from going to the quarter sessions; but the putative father was not; and might still, if he preferred it, go to the quarter sessions, for which section 3 provided, if he chose to enter into recognizances to pay the costs; and if so, then the petty sessions had no further power to proceed in the matter.

No appeal was given by this act, and the decision of the sessions was therefore final (*a*).

Costs.—The former act required the applicants to pay the full costs incurred by the party charged, whenever the quarter sessions did not make an order. And it was held that under the subsequent act of 2 & 3 Vict. c. 85, the same provision applied whenever the case was heard by the quarter sessions (*b*), with seven instead of fourteen days' notice, although no power of granting costs is given to the petty sessions.

Such was the substance of the law as it existed for ten years after the 4 & 5 Will. 4, c. 76. On the 9th of August, 1844, the 7 & 8 Vict. c. 101, took effect, and from that time all orders in bastardy could alone be obtained according to the provisions of the new act, which renders it needless to cite any of the very few cases which throw light on the provisions of the late law.

Section II.—The Law under 7 & 8 Vict. c. 101, and 8 Vict. c. 10.

As the second of these statutes was explanatory of the first, and modified it only in slight particulars, we shall treat them as one, together with the cases which have occurred on them. Both as far as relates to Bastardy Law will be found in Appendix B and C.

Object of the change.—The preamble of the 7 & 8 Vict. c. 101, throws no light on the object of the change, of which it suffices to state that the effect is again to enable the mothers of bastard children to throw a portion of their maintenance upon the father, at their own instance, and without the intervention of parish officers.

Application of the mother before the birth.—The first step is the application of the mother for a summons on the putative

(*a*) *Reg.* v. *Justices of West Riding*, 1 Q. B. 325.
(*b*) *Reg.* v. *Recorder of Exeter*, 13 L. J. M. C. 7.

father, which application must be made by her to any justice of the peace acting within the petty sessional division she resides in.

The act gives the woman an option either to apply before or after the birth. The object in applying before it, is to serve the summons on the man at once, in case he was suspected of an intent to abscond. When the application is thus made before birth, it must be accompanied by a deposition on oath stating who the father is. Upon which the justice is empowered to grant a summons upon the father, which, by the fourth section of the last act, is to require him to appear at a petty session for which the justice usually acts, on some day after that on which the woman expects to be delivered. Mr. Lumley, of the Poor Law Commission (who has published a useful little edition of the Amendment Act), prudently suggests to the justice the necessity of making inquiries when the woman expects to be confined, and to be well enough to attend the petty sessions, to which the man is to be summoned accordingly.

Adjournment of the hearing.—If the woman be not sufficiently recovered to attend the petty sessions on the day fixed (provided it is within the space of two calendar months of her confinement), the hearing is to be adjourned under the same section, although more than forty days have elapsed since the summons was served. The mother can insist on a summons, though she be not near the time of her confinement, though it is expedient to postpone it to near the time.

Application of the mother after the birth.—In this case there need be no deposition on oath, but merely an information in the form given by the last act, and inserted in Appendix. The time of this application must be within twelve months after the birth of the child (*c*), unless the father has paid money for the maintenance of the child within twelve months of its birth, and in which case the ap-

(*c*) The clause providing for cases of children born within six months before the act passed is already superannuated.

plication may be made "at any time thereafter." In fact, the word "thereafter" is superfluous. In such cases the application may be made *at any time;* and with reference to a child born years ago, if still under thirteen years, to which the act limits the period of maintenance, so wide is the wording of this part of the section (2 of the first act).

The summons.—On the application being made, the summons, in the form given, must be issued to the person alleged to be the father, to appear at a sessions to be held not less than six days after the service of the summons, for the petty sessional division where the justice usually acts, and in cases of birth after application, as above stated. But section 4 of the first act enacts, that "no such order shall be made unless applied for at such petty sessions within the space of forty days from the service of the summons," except only when the hearing is adjourned to give the woman time to recover from her confinement. (Section 4 of the Amendment Act.) Care, therefore, must be taken that the sessions to which the man is summoned shall in all cases fall between six and forty days from the service of summons. The awkwardness of summoning to a sessions, when, perhaps, the child may not be born, is got over by the power of adjournment. The petty sessions to which the man is summoned, where there are more than one in the division, shall be that which the justice "shall deem fit." (Section 10 of Amendment Act.) See also in the same section a definition of what a "*petty sessional division*" is.

Proceedings at the hearing.—Parties may be heard by counsel or attorney (sect. 7 of last act). The evidence must be on oath, and the woman's statement must be corroborated in some material particulars.

Many doubts are likely to arise as to the construction of what material evidence is. It is impossible to define it; for everything must depend on the character of the woman, together with the particulars of each case. Evidence of mere intimacy with the party charged, perhaps, would suffice with respect to a woman of comparatively good character, whilst

it would amount to nothing with respect to a woman of loose general conduct, and whose amours were promiscuous. This can be safely affirmed, that great latitude will be given to the discretion of the justices at petty sessions, who are supposed to hold an equitable jurisdiction and to inquire minutely into the circumstances of each case, and are certainly a fitter tribunal than any more general body to decide justly. Defences of alibi will be of course often set up, which will involve the necessity of separately examining the witnesses called to support it, testing their accuracy by the correspondence or variance of their relative statements in matters which, though collateral, may be sufficiently notable to test their memories as well as their veracity.

Upon evidence deemed by them to be satisfactory, the justices make the order upon the man, of which the statutable forms will be found in the Appendix (*d*).

The sum awarded for maintenance must be not above 2*s.* 6*d.* per week, and 10*s.* for the expences of funeral, and 10*s.* for midwife, &c., subject to various minute provisions, for which see section 3 of the first act.

Costs may be adjudicated by the petty sessions. The Secretary for the Home Department having been applied to, stated, "that the magistrates were justified in ordering the payment of reasonable professional charges in all such cases, for the conducting of which they may consider the employment of a professional man necessary."

Means of enforcing the order.—The order may be enforced by warrant of distress wherever the payment of costs is a month in arrear, provision being also made for the man's apprehension for the purpose, and his detention till return can conveniently be made to such warrant of distress, unless he

(*d*) These forms had some blunders and omissions, and the orders were being rapidly quashed (See *Reg.* v. *Bucks*, 13 L. J. M. C. 45; *Reg.* v. *Wroth*, 1 New S. C. 494), when 9 Vict. c. 10, s. 1, came to the rescue, and legalised the blunders, of which now, therefore, no advantage can be taken.

give security; in case of *nulla bona*, the father may be imprisoned for three months. This power may be exercised whenever the father has goods out of the justice's jurisdiction. (See section 8 of the Amendment Act.) No arrears of the payment to the mother for more than thirteen weeks are however recoverable.

The money is to be paid to the woman, or a person appointed by the justice when she is incompetent to receive and apply it. (See section 5 of the first act.)

Cessation of the order.—The order ceases when the child attains the age of thirteen years, or when the mother marries, or when it dies. (Section 5 of the first act.)

Mother punishable for the neglect of her child.—The mother may be punished as a disorderly person for neglecting her child, under 5 Geo. 4, c. 83, "as a rogue and vagabond."

Officers of unions and parishes are not to interfere in any manner, or cause any application to be made, or procure evidence in support of one, under a penalty of 40*s.*, unless the mother becomes incapacitated as above provided (see sect. 5), in which case they may apply to enforce the order; but they are forbidden to do anything to obtain an order or to enforce it when the mother remains competent to receive the money. It is a misdemeanour in any officer to promote by threat the marriage of the mother, to misapply the monies, or to maltreat the child; and a penalty not above 10*l.* may be inflicted. (See sect. 8 of the first act.)

Appeal.—Section 4 of the first act gives the *father* the power of appealing to the quarter sessions to be holden after the period of fourteen days next after the order is made, when it shall be heard and determined and costs given. The father is bound, however, to enter into recognizances and must give notice to the woman within twenty-four hours of the making of the order.

Recognizance.—As some doubt exists as to this provision of the act, it is expedient to allow Mr. Lumley to explain it

himself, who thus treats of it in his preface to his edition of the Amendment Act, p. ix.

"The next provision relates to the recognizance to be given by the father when he appeals against the order. The 7 & 8 Vict. c. 101, s. 4, required the putative father who appealed against the order to give security by recognizance for the payment of costs to the satisfaction of some one justice of the peace. Now it was a matter of doubt how the condition of the recognizance should be framed—as the costs were to be awarded by the quarter sessions, the only effectual condition appeared to be that the party should be required to appear at the sessions, there try his appeal, and abide the judgment for the payment of the costs. In this manner I framed the form of the recognizance which I published, but it was urged that this exceeded the terms of the statute.

"The doubt is, however, removed by the provision in the third section of the following statute, which requires the condition of the recognizance to be as above stated.

"A practical inconvenience was felt in regard to the appellant's entering into recognizance before *any one* justice. The appellant might give notice of appeal to the woman, but she could not tell whether or not he had entered into any recognizance, as that could be done before *any justice*. Accordingly she attended at the sessions, and probably found that the appellant was not there, and had not entered into any recognizance. It is now provided that the party entering into the recognizance shall give notice forthwith to the woman and to one of the justices who made the order of his having entered into the recognizance, otherwise the appeal shall not be allowed, and to avoid expensive service he may send this notice by the post. This provision, however, only applies to the cases of orders made *after the passing of the act*.

"The recognizance as now to be framed binds the party to appear at the sessions and try his appeal, consequently he would be bound to do so, although he may be satisfied that

he could not succeed on the trial, or would forfeit his recognizance. This hardship is avoided by the new enactment, which in sect. 5 enables him to abandon the appeal by giving notice in writing, and paying to the mother the money due on the order, and the costs which she may have incurred in preparing to meet the appeal.

"I take this opportunity of mentioning with reference to the notice of appeal, that it appears from the case of *Q.* v. *The Justices of Derbyshire* (*e*), that it is not necessary to set out in that notice *the grounds* of appeal."

The evidence of the mother.—This is rendered admissible on the trial of the appeal by sect. 6 of the Amendment Act. Mr. Lumley thus states the reason:—

"A formidable objection was taken on the hearing of an appeal at the East Riding sessions, and was held to be valid. If it had prevailed generally, the provisions of the statute must have been entirely defeated. That sessions held that the mother was a party to the appeal, and could not be heard as a witness. Opinions of weight were given against this judgment, but it was nevertheless supported by some legal arguments, and it is by no means clear what would have been the decision of the Court of Queen's Bench, if the point had been brought before that court."

It may be safely laid down, that any witnesses examined by the petty sessions may be heard at the quarter sessions, though Mr. Lumley thinks them "rather in the nature of new trials than writs of error, and different evidence may be submitted there from that which was before the justices whose order is appealed against." But in the case of appeals against orders in bastardy (Mr. Lumley says) at the quarter sessions, though not the same witnesses, with the exception of the mother, the same amount of evidence will now be required to be produced by the mother. This is consistent with the provision in the 4 & 5 Will. 4, c. 76, s. 72, though the language of the new statute did not make the production

(*e*) 9 Jurist, 181.

of the corroborative testimony necessary, whatever may have been intended.

Mother may apply again.—It appears that the mother has no power of appeal in case the order is quashed on the merits (*f*); but if it be quashed "for any defect therein, and not upon the merits," the woman may apply again any time within six calendar months of the passing of the Amendment Act, see sect. 2. It is not necessary to enlarge on a clause of the act which expires so soon. As to what are merits is a vexed question, for which see p. 285, *ante*.

The putative father may abandon his appeal, and his recognizance shall not be estreated.—This is contingent upon the payment of all sums due under the order.

Magistrates of police courts may act alone in cases of bastardy.—This is provided for in sect. 9 of the Amendment Act.

Warrant of distress.—Mr. Lumley thus comments upon the merits of his form of warrant:—"I may here notice that the form in the schedule of the distress warrant, No. 12, clears up an obscurity which existed in the third clause of the 7 & 8 Vict. c. 101, as to the justices to whom the return of the distress warrant is to be made. In the 5 Geo. 4, c. 18, s. 1, the party was to find security for appearance before the justices who took his recognizance; but in the former statute the appearance is to be *before two justices* on the day of the return. The constable and the putative father might not therefore come before the same justices. It will be seen, however, that the warrant requires the return to be made before two justices in such a manner as will prevent any inconvenience arising in this respect."

The insertion in the statute of nearly all the forms much facilitates the practical application of the act, and in like manner dispenses with the necessity of comment.

In the recent case of *Reg.* v. *The Justices of Westmore-*

(*f*) This appears hard, for an improper refusal to make the order may be as great a hardship as an improper order of payment made on the father.

land (*g*), where an order of bastardy set out that the mother had applied "to J M, one of her Majesty's justices of the peace usually acting *in* this division, for a summons," not stating that the said justice was acting *for* the said division; it was held, that the allegation was sufficient under the 8 Vict. c. 10; and Coleridge, J., said "I think the spirit of this act of parliament is to discountenance those merely verbal inaccuracies which prevented these orders from being effectual; I mention this, not because I think that such objection may not properly be taken, but only that we may view them in the proper light. Mr. Bliss says, that the word 'in,' made use of in the order, does not show that the justice had any jurisdiction to grant the summons, and that it should have stated that he was acting 'for' the division. The words, however, are 'usually acting,' which is strong presumptive evidence that the justice was acting for the division. But I really think that there is sufficient evidence to show that the legislature intended these words to be synonymous, for the form in the act goes on to say, 'and the said justice thereupon issued his summons to the said to appear at a petty sessions to be holden on this day for this division, in which the said justice usually acts," so that here, where you would expect to have the jurisdiction most strongly marked, the word 'in' is used. I think the rule must be discharged."

(*g*) 5 Law Times, 220.

THE END.