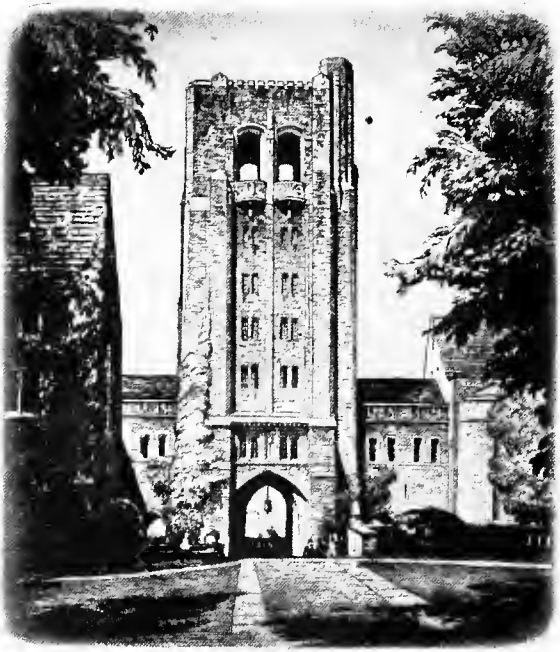

BURN'S

JUSTICE OF THE PEACE

AND

Parish Officer.

THE THIRTIETH EDITION.

IN FIVE VOLUMES.

EDITED, EXCEPT THE VOLUME OF "POOR,"

BY J. B. MAULE, ESQ., Q.C.,

RECORDER OF LEEDS.

VOL. IV.

CONTAINING TITLE "POOR."

BY J. E. DAVIS, ESQ.,

BARRISTER-AT-LAW, AND STIPENDIARY MAGISTRATE FOR STOKE-UPON-TRENT.

And yet it is said, Labour in thy vocation; which is as much to say as, Let the Magistrates be labouring men.—SECOND PART OF HENRY SIXTH.

Sapientis est Judicis cogitare tantum sibi esse permissum quantum sit commissum ac creditum.—CICERO.

LONDON:

SWEET, MAXWELL & SON, & STEVENS & SONS,

Law Booksellers and Publishers.

HODGES, FOSTER & CO., GRAFTON STREET, DUBLIN.

1869.

LONDON:
C. ROWORTH AND SONS, PRINTERS,
NEWTON STREET, HIGH HOLBORN.

PREFACE.

HE lapse of nearly a quarter of a century since the appearance of complete edition of Burn's Justice of the Peace, title "POOR," rendered the task of the Editor extremely laborious. In order present anything like a Poor Law Code, it became necessary to sert, to a great extent, the old form of arrangement, and to introce a number of new heads. Moreover, it was impracticable to conue the system adopted in the last Edition, of inserting the decided ses at full length. In abridging them, pains have been taken to ain everything of practical utility to the lawyer.

Although the Law of Settlement is daily becoming of less importce, it is impossible at present to omit any branch of this great ision of the Poor Laws. Endeavours have nevertheless been ade to reduce the bulk of this part to its proportionate value.

July, 1869.

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THE

JUSTICE OF THE PEACE,

AND

PARISH OFFICER.

The Poor Laws.

CHAPTER I.

Of the Origin and Progress of the Poor Laws.

Relief of the poor anciently an ecclesiastical concern.

ACCORDING to the early writers upon the subject of the *poor*, and *their relief*, one of the first consequences of the establishment of the Christian religion in this kingdom was a provision for the maintenance of the poor. It is stated that a fourth part of the tithes of every parish was devoted to this purpose under the direction of the minister, assisted by the churchwardens and other principal inhabitants; and as it was regarded as a matter of *ecclesiastical concern*, the whole was under the supervision and control of the bishop whenever his interference became necessary.

Funds were collected from voluntary contributions.

Blackstone upon this subject says, "The poor of England till the time of Henry VIII. *subsisted entirely upon private benevolence and the charity of well disposed Christians.* For though it appears by the Mirrour, that by the common law the poor were to be 'sustained by *parsons, rectors of the church, and the parishioners*, so that none of them die for default of sustenance; and though by the statute 12 R. II. c. 7, and 19 Hen. VII. c. 12, the poor were directed to abide in the cities or towns wherein they were born, or such wherein they had dwelt for three years (which seem to be the first rudiments of *parish settlements*), yet till the statute 27 Hen. VIII. c. 25, I find no compulsory method chalked out for this purpose; but the poor seem to have been left to such relief as the *humanity* of their neighbours would afford them" (1 Bla. Com. 359) (*a*). Still, however, if the contributions were voluntary, the method was, in

(*a*) In *Strype's Annals of Church and State, under Queen Eliz.*, No. 213, there is a letter, which was addressed to Lord Treasurer *Burghley*, by a justice of the peace for the county of *Somerset*, which shows that the great evils arising from habits of idleness amongst the poor began then to be understood, and strengthens the idea that one great object of the legislative provisions for the poor, made about that time, was to prevent able-bodied men from being unemployed. After observing upon the great increase of crime, and the number of wandering idle vagabonds, then committing depredations in that part of the country, the writer proceeds: "and when these lewd people are committed to the gaol, the poor country that is robbed by them are forced there to feed them, which they grieve at: and this year there hath been disbursed, to the relief of the prisoners in the gaol, 73*l.*, and

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the course of time, so far reduced to a system, as to be sanctioned and upheld by acts of parliament; for, by the statute last cited, the *churchwardens* or *two others* of every parish were to make *collections* for the poor on Sundays. By 5 & 6 Ed. VI. c. 2, the minister and churchwardens were annually to appoint two able persons or more to be *gatherers* and *collectors of alms* for the poor. By 5 Eliz. c. 3, the *parishioners* were to choose these collectors, and by 14 Eliz. c. 5, the appointment was to be made by the *justices*, who were also to appoint *overseers*. And the 18 Eliz. c. 3, is to the like effect. By 39 Eliz. c. 3, the churchwardens of every parish, and four substantial householders, were to be nominated yearly in Easter week by two justices, and called *overseers of the poor*.

43 Eliz. c. 2.

Next followed the important statute 43 Eliz. c. 2, out of which, more litigation, and a greater amount of revenue, have arisen, with consequences more extensive and more serious in their aspect, than ever were identified with any other act of parliament or system of legislation whatever. By that act "the churchwardens of every parish (*b*) and four, three or two substantial householders there, as shall be thought meet, having respect to the proportion and greatness of the same parish and parishes, to be nominated yearly in Easter week, or within one month after Easter (*c*), under the hand and seal of two or more justices of the peace in the same county, whereof one to be of the *quorum*, dwelling in or near the same parish or division where the same parish doth lie, shall be called overseers of the poor of the same parish, and they, or the greater part of them, shall take order from time to time, by and with the consent of two or more such justices of peace as is aforesaid, for setting to work the children of all such whose parents shall not by the said churchwardens and overseers, or the greater part of them, be thought able to keep and maintain their children; and also for setting to work all such persons, married or unmarried, having no means to maintain them, and use no ordinary and daily trade of life to get their living by; and also to raise, weekly or otherwise (by taxation of every inhabitant, parson, vicar and other, and of every occupier of lands, houses, tithes impropriate, propriations of tithes, coal-mines, or saleable underwoods, in the said parish, in such competent sum and sums of money as they shall think fit), a convenient stock of flax, hemp, wool, thread, iron, and other necessary ware and stuff, to set the poor on work; and also competent sums of money for and towards the necessary relief of the lame, impotent, old, blind, and such other among them being poor and not able to work, and also for the putting out of such children to be apprentices (*d*), to be gathered out of the same

Who shall be overseers; their office, &c.

Who shall be taxed towards relief of poor.

A convenient stock shall be provided to set the poor to work.

yet they allowed but 6*d*. a man weekly. And if they were not delivered at every quarter sessions, so much more would not serve, nor two such gaols would hold them. But if this money might be employed to build some houses adjoining to the gaol for them to work in, and every prisoner, committed for any cause, and not able to relieve himself, compelled to work; and as many of them as are delivered upon their trials, either by acquittal of the grand jury or petty jury, burning in the hand, or whipping, presently transferred thence to the houses of correction, to be kept in work, except some present will take any into service; I dare presume to say, the tenth felony will not be committed that now is." This letter also shows that at that time prisoners committed for trial, although they could not be compelled, and were not willing to work, were, in point of fact, in some places supported at the expense of the public. It seems, however, that they could not legally claim to be so maintained. See the case of *The Justices of the North Riding of Yorkshire*, 2 B. & C. 286; S. C. 3 D. & R. 510; Burn's Justice, Vol. II. tit. "GAOLS," &c.

(*b*) Applied to townships by stat. 13 & 14 Car. II. c. 12, s. 21.

(*c*) Altered by the 54 Geo. III. c. 91, to the 25th March, or within fourteen days after.

(*d*) See the further provision of this statute as to binding out apprentices, post, tit. "PARISH APPRENTICES."

parish, according to the ability of the same parish, and to do and execute all other things, as well for the disposing of the said stock as otherwise concerning the premises, as to them shall seem convenient." The churchwardens and overseers were required (by sect. 2) to "meet together at the least once every month in the church of the said parish, upon the Sunday in the afternoon, after divine service, there to consider of some good course to be taken, and of some meet order to be set down in the premises." They were also required at the end of their year of office to make and deliver to two justices of the peace a true account of all monies received by them, or rated and assessed and not received, and of stock in their hands, and of all other things concerning their office (*e*). Sect. 2.

The act enabled justices, if they perceived that the inhabitants of any parishes were unable "to levy among themselves sufficient sums of money for the purposes aforesaid," to rate any other parishes in the same hundred, or if the hundred were not able, then the justices at quarter sessions might rate any parishes in the county. (See more fully, post, "RATE IN AID.") Sect. 3. Rate in aid.

The churchwardens and overseers, under agreement with the lords of manors, or under order of the court of quarter sessions, with the like leave of the lords of manors, were empowered to build "convenient houses of dwelling for the said impotent poor" on wastes or commons, "and also to place inmates, or more families than one in one cottage or house." Sect. 5. Poor-houses.

The same statute further enacted, "that the father and grandfather, and the mother and grandmother, and the children, of every poor, old, blind, lame and impotent person, or other poor person not able to work, being of a sufficient ability, shall at their own charges relieve and maintain every such poor person in that manner, and according to that rate, as by the justices of peace of that county where such sufficient persons dwell, or the greater number of them, at their general quarter sessions, shall be assessed (*f*), upon pain that every one of them shall forfeit twenty shillings for every month which they shall fail therein." Sect. 7. Maintenance by relatives.

By the statute 7 Jac. I. c. 4, s. 8, reciting, "that many wilful people, finding that they, having children, have some hope to have relief from the parish wherein they dwell, and being able to labour, and thereby to relieve themselves and their families, do, nevertheless, run away out of their parishes, and leave their families upon the parish," it was enacted "that all such persons, so running away, shall be taken and deemed to be incorrigible rogues, and endure the pain of incorrigible rogues; and if either such man or woman, being able to work, and shall threaten to run away, and leave their families as aforesaid, the same being proved by two sufficient witnesses upon oath, before two justices of the peace in that division, that then the said persons so threatening shall by the said justices of peace be sent to the house of correction (unless he or she can put in sufficient sureties for the discharge of the parish), there to be dealt with and detained as a sturdy and wandering rogue, and to be delivered to the said assembly or meeting, or at the quarter sessions, and not otherwise" (*g*). 7 Jac. I, c. 4. A remedy for them that run away and leave their children to the charge of the parish.

(*e*) The marginal note of this section is "The names of such as receive collection to be registered in a book." See post, stat. 3 W. & M. c. 11, s. 11. See also the various subsequent provisions as to overseers' accounts, post.

(*f*) The power here given to quarter sessions was extended to petty sessions by the 59 Geo. III. c. 12, s. 26.

(*g*) By the 5 Geo. IV. c. 83, all provisions theretofore made "relative to idle and disorderly persons, rogues and vagabonds, incorrigible rogues or other vagrants, in England," were (except as to passes of convicted persons) repealed, and fresh provisions made.

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The next statute requiring special notice in the history of legislation on this subject is the 13 & 14 Car. II. c. 12 (*h*).

13 & 14 Car. 2, c. 12.

The occasion of increase of poor.

That statute recites, that "the necessity, number, and continual increase of the poor, not only within the cities of London and Westminster, with the liberties of each of them, but also through the whole kingdom of England and dominion of Wales, is very great and exceeding burthensome, being occasioned by reason of some defects in the law concerning the settling of the poor, and for want of a due provision of the regulations of relief and employment in such parishes or places where they are legally settled, which doth enforce many to turn incorrigible rogues, and others to perish for want, together with the neglect of the faithful execution of such laws and statutes as have formerly been made for the apprehending of rogues and vagabonds, and for the good of the poor." And further, that "by reason of some defects in the law poor people are not restrained from going from one parish to another, and therefore do 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, where it is liable to be devoured by strangers."

Poor people going from one parish to another.

Power to remove persons.

The remedy devised for these evils, so graphically described, was the enabling two justices, on the complaint of the churchwardens or overseers of the poor of a parish, to remove by warrant any person coming to inhabit in the parish in any tenement under the yearly value of ten pounds, and likely to be chargeable to that parish; the complaint was required to be made within forty days after such person coming so to settle (*i*), and the removal was directed to be made to such parish where the person was "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."

A right of appeal was given to persons aggrieved by any such order of justices.

Origin of the law of settlement.

In this way the law of settlement arose, with its numerous complications and modifications engrafted by subsequent legislation on this its original trunk.

Exception in favour of persons going to work in harvest, &c. with a certificate.

The statute of Charles, however, allowed (sect. 3) any person "to go into any county, parish or place, to work in time of harvest, or any time to work at any other work," provided he took with him "a certificate from the minister of the parish, and one of the churchwardens, and one of the overseers for the poor for the said year, that he or they have a dwelling-house or place in which he or they inhabit, and have left wife and children or some of them there (or otherwise, as the condition of the persons shall require), and is declared an inhabitant or inhabitants there." In such case, if the person did not return to his parish when his work was finished, or if he fell sick, it was not "counted a settlement," and he was therefore removeable.

Special provisions for London.

This statute of Charles also made special provision for the establishment of corporate bodies and workhouses, for setting the poor to work, and for carrying out the poor laws in London and Westminster and the parishes comprised within the bills of mortality (*k*). Funds raised

(*h*) Continued by 1 Jac. II. c. 17, s. 1; 3 W. & M. c. 11, s. 2; made perpetual by 12 Anne, st. 1, c. 18, s. 1.

(*i*) Altered by 1 Jac. II. c. 17, to forty days from the delivery of a written notice of the house of abode and number of family to one of the churchwardens or overseers. And this notice was, by the 3 W. & M. c. 11, s. 3, required to be read in church, and registered by the parish officers.

(*k*) Among various provisions contained in this act for the more effectually apprehending and executing the laws against rogues and vagabonds, courts of quarter sessions were em-

for the relief of the poor in the city of London were, however, previously in the hands of a corporate body for that purpose (*l*).

The recitals of succeeding statutes afford an insight into the various abuses that crept into the administration of the poor laws from time to time.

Abuses of the law.

Stat. 3 W. & M. c. 11.

Squandering of money by churchwardens and overseers.

The 3 W. & M. c. 11, s. 11, recites that "many inconveniences do daily arise in cities, towns corporate and parishes, where the inhabitants are very numerous, by reason of the unlimited power of the churchwardens and overseers of the poor, who do frequently, upon frivolous pretences (but chiefly for their own private ends), give relief to what persons and number they think fit; and such persons being entered into the collection bill (*m*) do become after that a great charge to the parish, notwithstanding the occasion or pretence of their receiving collection oftentimes ceases, by which means the rates for the poor are daily increased." As a remedy for this, the section proceeds to enact that "there shall be provided and kept in every parish (at the charge of the same parish) a book or books, wherein the names of all such persons who do or may receive collection shall be registered, with the day and year when they were first admitted to have relief, and the occasion which brought them under that necessity; and that yearly in Easter week (or as often as it shall be thought convenient) the parishioners of every parish shall meet in their vestry, or other usual place of meeting in the same parish, before whom the said book shall be produced, and all persons receiving collection to be called over, and the reasons of their taking relief examined, and a new list made and entered, of such persons as they shall think fit and allow to receive collection; and that no other person be allowed to have or receive collection at the charge of the said parish, but by authority under the hand of one justice of peace residing within such parish, or (if none be there dwelling) in the parts near or next adjoining, or by order of the justices in their

A register to be kept of the admittances of the poor.

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powered "to signify unto his majesty's privy council the names of such rogues, vagabonds, idle and disorderly persons and sturdy beggars, as they shall think fit to be transported to the English plantations; and upon the approbation of his majesty's privy council to the said justices of peace signified, which persons shall be transported, it shall and may be lawful for any two or more of the justices of the peace then to transport or cause to be transported from time to time, during the space of three years next ensuing the end of this present session of parliament, to any of the English plantations beyond the seas, there to be disposed in the usual way of servants, for a term not exceeding seven years" (s. 6). A subsequent section (s. 23) gave power to the majority of justices in quarter sessions to transport "such rogues, vagabonds and sturdy beggars, as shall be duly convicted and adjudged to be incorrigible, to any of the English plantations beyond the seas." (See note (*g*), ante, p. 3.)

(*l*) As connected with the general subject of the poor it may be mentioned, that by the same statute provision was made for buying and selling the property of putative fathers as well as of the mothers of deserted bastard children, and applying the proceeds to the maintenance of such children. The stat. 18 Eliz. c. 3, s. 2, had already made the parents liable for the support of bastards, and the mother was further liable by the 7 Jac. I. c. 4, s. 7, to a year's imprisonment for having a bastard chargeable to the parish. A later statute, 6 Geo. II. c. 31, went the length of making a man liable to be apprehended and committed to prison upon a woman declaring herself to be with child, and that such child was likely to be born a bastard and to be chargeable, and by oath (ex parte) before a justice charging the man with having gotten her with child. The man was only entitled to be released on giving security to indemnify the parish, or by the woman's dying, or miscarrying, or marrying before the birth, or if no order were made within six weeks after the birth. The maintenance of bastards is, however, treated of elsewhere. (See post, tit. "BASTARDS.")

(*m*) See note (*e*) to sect. 2 of the stat. 43 Eliz. c. 2, ante, p. 3.

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respective quarter sessions, except in cases of pestilential diseases, plague or small-pox, for and in respect of such families only as are or shall be therewith infected" (*n*).

Sect. 12 discloses the prevalence of still more dishonest acts on the part of the parochial authorities. It recites, that "many churchwardens and overseers of the poor, and other persons intrusted to receive collections for the poor, and other public monies relating to the churches and parishes whereunto they do belong, do often misspend the said monies, and take the same to their own use, to the great prejudice of such parishes, and the poor and other inhabitants thereof," and then makes the evidence of parishioners admissible in actions brought to recover the money so misapplied (*o*).

Settlement of various kinds.

The same statute made provision relating to the settlement of persons by executing any public annual office or charge for a year, by the payment of taxes or levies, by hiring and service (*p*), and by apprenticeship; the provisions respecting which, with various amending statutes, will be found noticed fully under their various heads of settlement in a subsequent part of this volume.

Parish officers compelled to receive persons removed.

The statute also imposed a penalty on churchwardens and overseers refusing to receive persons under orders of removal.

Injurious effects of the restraints imposed by the law of settlement of Charles II.

In consequence of the increase of the manufacturing industry of the country, inconvenience was produced by restraint especially imposed by the statute 13 & 14 Car. II.

8 & 9 Will. 3, c. 30.

The act 8 & 9 Will. III. c. 30, recites, that "forasmuch as many poor persons chargeable to the parish, township or place where they live, merely for want of work, would in any other place where sufficient employment is to be had, maintain themselves and families without being burthensome to any parish, township or place, but not being able to give such security as will or may be expected and required upon their coming to settle themselves in any other place, and the certificates that have been usually given in such cases having been oftentimes construed into a notice in handwriting (*q*), they are for the most part con-

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(*n*) The statute 9 Geo. I. c. 7, reciting that, under colour of the proviso in this stat. 3 W. & M. c. 11, "many persons have applied to some justices of peace, without the knowledge of any officers of the parish, and thereby, upon untrue suggestions, and sometimes upon false or frivolous pretences, have obtained relief, which hath greatly contributed to the increase of the parish rates," prohibited justices from ordering relief, until proof on oath of some reasonable ground, and two overseers had been summoned before him. The names of such persons were required to be entered in the parish books so long as the cause for such relief continued, and "no officer of any parish shall (except upon sudden and emergent occasions) bring to the account of the parish any monies he shall give to any poor person of the same parish, who is not registered in such book or books to be kept by the said parish as a person entitled to receive collection," under a penalty of 5*l*. See further, Gilbert's Act, 22 Geo. III. c. 83, s. 35, reciting, that, "from a want of proper descriptions of the poor who wish to be the objects of such relief, from the want of proper accommodations in many parishes, townships and places, and from a want of the means of enforcing the orders of the justices for such relief," the act 9 Geo. I. hath not "had its proper effect, and the poor have been frequently reduced to hardships and distresses." Further provisions are made, but they are only applicable to parishes adopting that act.

(*o*) Disgraceful as was the state of things revealed by this statute, it was exceeded before the reign of George the Third, as is evidenced by the necessity of an act, 9 Geo. III. c. 37, to prevent parish officers from paying the parish poor in base or counterfeit coin! See also the recital in the 22 Geo. III. c. 83, noticed post, p. 8.

(*p*) By the 8 & 9 Will. III. c. 30, s. 4, the service as well as the hiring was required to be for a year.

(*q*) That is to say, that the certificates given under the statute 13 & 14 Car. II. s. 3, which protected persons working in the harvest from being removed, were treated as notices under

fined to live in their own parishes, townships or places, and not permitted to inhabit elsewhere, though their labour is wanted in many other places, where the increase of manufactures would employ more hands."

Remedy by requiring formal certificates, and prohibiting removal until chargeability.

The remedy for this evil was requiring certificates to be authenticated by attesting witnesses and allowed by justices (so that their purport should be no longer equivocal), and preventing the parish to which the bearers went from removing them until they became chargeable or asked for relief. (See post, "SETTLEMENT BY CERTIFICATE.")

Sect. 2.

Badges worn by paupers.

"And to the end that the money raised only for the relief of such as are as well impotent as poor may not be misapplied and consumed by the idle, sturdy and disorderly beggars," persons receiving parochial relief, and their wives and children, were required (sect. 2) (under the punishment, for refusal, of imprisonment and whipping, or of having the relief abridged or withdrawn) to wear a badge on the shoulder of the right sleeve, that is to say, a large P, together with the first letter of the name of the parish or place, cut in red or blue cloth; and a penalty was imposed on churchwardens and overseers relieving poor persons not wearing such badge (*r*).

5 Geo. I, c. 8.

The statute 5 Geo. I. c. 8, recites that "divers persons run or go away from their places of abode into other counties or places, and sometimes out of the kingdom, some men leaving their wives, a child or children, and some mothers run or go away, leaving a child or children upon the charge of the parish or place where such child or children was or were born or last legally settled, although such persons have some estates, which should ease the parish of their charge in whole or in part," and gives power to two justices to issue a warrant or order to seize so much of the goods and chattels and rents and profits of such husband or parents as they shall direct, and upon confirmation by the court of quarter sessions of such warrant or order and an order of such court, the churchwardens or overseers are empowered to make sale and to receive rents, &c., for bringing up and providing for such wife, child or children. (See more fully, post, "OF PERSONS DESERTING OR ABSENT FROM THEIR FAMILIES.")

9 Geo. I, c. 7. Farming the poor.

The statute 9 Geo. I. c. 7, introduced the system of "farming" the poor. Sect. 4, "for the greater ease of parishes in the relief of the poor," made it "lawful for the churchwardens and overseers of the poor in any parish, town, township or place, with the consent of the major part of the parishioners or inhabitants of the same parish, town, township, or place, in vestry or other parish or public meeting for that purpose assembled, or of so many of them as shall be so assembled upon usual notice thereof first given, to purchase or hire any house or houses in the same parish, township or place, and to contract with any person or persons for the lodging, keeping, maintaining and employing any or all such poor in their respective parishes, townships or places, as shall desire to receive relief or collection from the same parish, and there to keep, maintain and employ all such poor persons, and take the benefit of the work, labour and service of any such poor person or persons who shall be there kept or maintained;" and any poor persons refusing to be so lodged were not to be entitled to relief. Small parishes were empowered to unite for the same purpose, or to contract with another parish for the maintenance of the paupers.

Gilbert's Act, 22 Geo. 3, c. 83.

A few years sufficed to develop the injurious effects of this mode of dealing with the poor, and the accumulated evils of the working of the poor laws led in 1783 to the passing of the statute 22 Geo. III, c. 83,

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1 Jac. II. c. 17, of the persons coming to settle (see note (*i*), ante, p. 4), the effect of which was that unless the persons were removed within forty days after such notice they became irremoveable. Hence the parish officers, to prevent the acquisition of that status, removed them under sect. 1 of the statute of Charles.

(*r*) This provision continued in force down to 1810, when it was repealed by the 50 Geo. III. c. 52.

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better known as "Gilbert's Act;" the principle of which has been extensively adopted in subsequent legislation.

Sect. 1. Recitals.

The act significantly recites that "notwithstanding the many laws now in being for the relief and employment of the poor, and the great sums of money raised for those purposes, their sufferings and distresses are nevertheless very grievous; and by the incapacity, negligence or misconduct of overseers, the money raised for the relief of the poor is frequently misapplied, and sometimes expended in defraying the charges of litigations about settlements indiscreetly and unadvisedly carried on." It then recites the provision of the 9 Geo. I. c. 7, relating to contracts for the maintenance of the poor, and that such provisions, "from the want of proper regulations and management in the poor-houses or workhouses that have been purchased or hired under the authority of the said act, and for want of due inspection and control over the persons who have engaged in those contracts, have not had the desired effect, but the poor in many places, instead of finding protection and relief, have been much oppressed thereby."

"For the remedy of these grievances and inconveniences, and in order to make better and more effectual provision for the relief and employment of the poor, and to introduce a prudent economy in the expenditure of the parish money," the provisions hereafter enumerated were enacted.

The act was not enforced upon the country. On two-thirds in number and value, according to the poor-rate, of the owners or occupiers within any parish, township or place, (or of two or more parishes uniting,) at a public meeting (*s*) signifying in the form of an agreement provided by the act their approbation of the provisions of the act and of their desire to adopt them, and nominating three "able and discreet persons qualified for guardians of the poor for such parish," and three other fit and proper persons qualified to be governors of the poor-house (one of each to be selected by justices), and fixing the salaries of such guardian and governor, and procuring the consent and approbation of two justices of the peace in the adoption of the act and the salaries, and registering the agreement with the clerk of the peace; from that time the parish or united parishes were declared entitled to the benefits of the act (sects. 3, 4).

The agreement included an undertaking to provide a proper workhouse either by fitting up an existing one or erecting or hiring a new one; so much of the act 9 Geo. I. c. 7, as respected the maintaining or hiring out the labour of the poor by contract within any parish or place adopting Gilbert's Act, being repealed (sect. 1).

Two justices were empowered to appoint one (*t*) of the persons recommended to be guardian of the poor for each parish, and one of the persons recommended as governor for each poor-house. Such guardian was invested with all the powers and authorities, duties and liabilities of overseers of the poor, except with regard to the making and collecting of rates, the churchwardens and overseers being forbidden, except as to the making and collecting poor-rates, to interfere or intermeddle in the care or management of the poor.

The governor of the poor-house had the care, management and employment of the poor.

A treasurer was appointed in the case of united parishes (*u*).

A visitor of the poor-house was required to be appointed by two jus-

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(*s*) I. e., two-thirds of those actually attending the meeting. 33 Geo. III. c. 35.

(*t*) Or in large or populous parishes two or more guardians may be appointed, if the inhabitants so recommend. 33 Geo. III. c. 35; 41 Geo. III. c. 9.

(*u*) By the amending act 41 Geo. III. c. 9, a treasurer might be appointed for a single parish.

tices out of three nominated for that purpose by the guardians of united parishes, and the visitor might appoint a deputy.

If all three persons nominated as visitor declined to act, the guardians were required to serve that office in rotation.

And the rate-payers of a single parish might at their option have a visitor appointed.

Various provisions are made relative to the duties of the visitor. After the first appointment, the offices of guardian, governor, visitor and treasurer are directed to be filled up yearly (*x*); but the visitors and guardians were made a body corporate (s. 21).

Various powers were conferred for building the workhouses, purchasing land and borrowing money (*y*); and a schedule to the act contains rules, &c., to be observed at every poor-house established under the act (*z*).

Visitors and guardians might make agreements for the diet and clothing, &c. of persons sent to the poor-houses.

The treasurer and governor were to provide fit and necessary provisions (s. 24), and the guardians to provide suitable clothing, or (notwithstanding the repeal of the farming clause of the 9 Geo. I. c. 7, in respect of parishes adopting Gilbert's Act) the visitors and guardians were empowered to make agreements with any person "for the diet or clothing of such poor persons who shall be sent to the house or houses to be provided under the authority of this act, and for the work and labour of such poor persons, so that no such agreement shall be made for any longer time than twelve months, and so that the same shall be, and every such agreement is hereby declared to be, under the strictest inspection and control of the visitor, guardian and governor of such poor-house, and also of the justices of the peace for the limit where such poor-house shall be; two of which justices, upon proof of any abuse, shall have power to dissolve such contract" (s. 2).

Apportionment of expense.

The poor persons sent to the workhouse were directed to be maintained at the general expense of the respective parishes, &c., adopting the provisions of the act; and the sums to be paid by each of such parishes to be settled and adjusted at monthly meetings of the guardians, to be held for that purpose, the payments in respect of utensils, furniture, and rent, in proportion to the sums paid by each of such parishes, &c., on account of their poor, on a medium of three years, and for "victuals, beer, fire, and other necessaries" proportioned according to the number of paupers sent from each parish, &c. in the month.

To whom relief to be given.

Persons sent to the workhouse were to be admitted on an order from a guardian; and "to render the provisions of this act more practicable and beneficial" it was enacted, "that no person shall be sent to such poor-house or houses, except such as are become indigent by old age, sickness or infirmities, and are unable to acquire a maintenance by their labour; and except such orphan children as shall be sent thither by order of the guardian or guardians of the poor, with the approbation of the visitor; and except such children as shall necessarily go with their mothers thither for sustenance (s. 29) (*a*).

Infants.

Infant children of tender years, and becoming chargeable from accident or misfortune, might either be sent to the poor-house or placed by the guardian, with the approbation of the visitor, with some respectable person at a weekly allowance, the visitor being required to see that they were properly treated. On application by the parents or relations, however, desiring to receive and provide for such children, they were entitled to them, and children under seven could not be separated from their parents without the consent of the latter (s. 30).

(*x*) The omission to appoint guardians in each successive year was cured by the 1 & 2 Geo. IV. c. 56.

(*y*) See also 42 Geo. III. c. 74; 43 Geo. III. c. 110; 1 & 2 Geo. IV. c. 56.

(*z*) The 49 Geo. III. c. 124, and 50 Geo. III. c. 50, empowered justices to apply these rules to parishes not within Gilbert's Act, and to introduce other rules.

(*a*) Repealed 4 & 5 Will. IV. c. 76, s. 31.

Idle persons to be prosecuted.

Idle or disorderly persons, able but unwilling to work or maintain themselves and their families, are directed to be prosecuted by the guardians and punished under the 17 Geo. II., and the guardians were compelled to prosecute under a penalty of twenty shillings for any instance of neglect (s. 31).

Employment of persons willing to work.

On the other hand, in respect of poor persons "able and willing to work, but who cannot get employment," the guardians were required on application by or on behalf of such persons, to agree for their labour at any work or employment suited to their strength and capacity, to cause them to be properly maintained and provided for until such employment should be procured, and to receive their earnings, and to apply it in such maintenance, and make up the deficiency, if any, or to account for the surplus.

The refusal to work, or running away from it, was an offence punishable by imprisonment for nor less than one and not exceeding three months (s. 32).

Poor persons afflicted with sickness, &c., when at a distance from their parish.

Provision is made for the relief by guardians of poor persons "meeting with any accident or being afflicted with any dangerous sickness or bodily infirmity" on passing through any place until an order can be made for their removal to their place of settlement (s. 38).

One other provision requires notice as marking the existence of such practices on the part of parish officers. S. 41 recites that "it frequently happens that poor children, pregnant women, or poor persons afflicted with sickness or some bodily infirmity, are enticed, taken, or conveyed, by parish officers, or other persons, from one parish or place to another, without any legal order of removal, in order to ease the one parish or place, and to burthen the other with such poor persons," and imposes a penalty of not exceeding 20*l.* and not less than 5*l.* on guardians or other persons guilty of such an offence.

Such are the main features of this important statute forming a marked epoch in the history of the poor laws. The non-application of any part of its provisions, except to places adopting the act, detracted from its value, and also necessarily caused a want of uniformity in the administration of this branch of the law. This want of uniformity was further increased by numerous special acts of parliament in this reign, incorporating and regulating particular districts (*b*).

30 Geo. 3, c. 49.

A few years later an act 30 Geo. III. c. 49 was passed, reciting, that the laws then in being "for the regulating parish workhouses or poor-houses have been found in certain instances deficient and ineffectual, especially when the poor in such houses are afflicted with contagious or infectious diseases, in which cases particular attention to their lodging, diet, clothing, bedding and medicines is requisite," and authorizing justices, or medical men authorized by them, or the officiating clergyman of the parish, to visit and examine workhouses, and on finding cause for complaint, to certify to the quarter sessions as to their condition, and to summon the overseers or master or governor, and thereupon the court was authorized to make orders for removing any cause of complaint. If on such visitation, however, any of the poor were found afflicted

Justices, &c., may visit workhouses and certify the state of the poor to the next quarter sessions.

(*b*) These special acts limited the amount of poor rates to a certain sum. In 1795, those incorporated districts were empowered, in consequence of the insufficiency of the amount by reason of "the late very great increase in the price of corn, and other necessary articles of life, to raise increased sums not exceeding double the amount of the original limitation, but in 1812 the amount of such rates still falling short by reason as again alleged "of the very great increase of the price of corn and other necessary articles of life," the limitation was removed altogether by the 52 Geo. III. c. 73. By the 54 Geo. III. c. 170, all enactments contained in local acts in variance with the ordinary law of settlement, were repealed. Various other provisions of such acts, varying the general law, were repealed by the 56 Geo. III. c. 129.

with any contagious or infectious disease, or in want of immediate medical or other assistance, or of sufficient food, or requiring separation or removal, the justices of the divisions were empowered to make an order for immediate relief according to the nature of the application.

Justices at quarter sessions to remove cause of complaint.

The restrictions upon the relief of the poor imposed by the statutes 3 W. & M. c. 11, s. 11, and the 9 Geo. I. c. 7 (*c*) were relaxed by the statute 36 Geo. III. c. 23, which, reciting the provision of the 9 Geo. I. c. 7, prohibiting relief to persons refusing to go into poor-houses, and that the said provision has been found to have been and to be inconvenient and oppressive, inasmuch as it often prevents an industrious poor person from receiving such occasional relief as is best suited to the peculiar case of such poor person, and inasmuch as in certain cases it holds out conditions of relief injurious to the comfort and domestic situation and happiness of such poor persons," gave power to the overseers with the approbation of the parishioners, in vestry, or with the approbation, in writing, of a justice of the peace, "to distribute and pay collection and relief to any industrious poor person or persons at his, her or their homes, house or houses, under certain circumstances of temporary illness or distress, and in certain cases respecting such poor person, or his, her or their family, or respecting the situation, health or condition of any poor-house or poor-houses, in any parish, town, township or place, wherein a house or houses shall have been or shall be so hired, built or purchased, and a contract made with any person or persons for lodging, keeping, maintaining and employing, any or all poor persons who shall desire to receive collection or relief, although such poor person or persons shall refuse to be lodged, kept, and maintained within such house or houses.

36 Geo. 3, c. 23. Out-door relief.

Justices were also authorized at their "just and proper discretion" to order relief to poor persons at their own homes, for a time not exceeding one month, the special cause being, however, written on the order.

This act did not extend to places where houses of industry or other places for the reception of the poor were provided by Gilbert's Act, or under any special act.

In 1795 a very important inroad was made on the statute 13 & 14 Car. II. c. 12, with reference to the removal of poor persons to their place of settlement. By the statute of Charles, as has been mentioned, persons coming to settle in tenements under the yearly value of 10*l.* were liable to be removed within forty days to their place of settlement. The frequent vexatious removals under that provision were in some measure checked, as has been seen, by subsequent legislation, especially by the 8 & 9 Will. III. c. 30, by the granting of certificates. The statute 35 Geo. III. c. 101, reciting the inconveniences and obstruction to the employment of the poor where their labour was required, in nearly the same words as the recital of the statute 8 & 9 Will. III., and that the last-mentioned statute had been found very ineffectual, repealed so much of the statute of Charles as enabled the justices to remove any persons likely to be chargeable to the parish, and enacted "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."

35 Geo. 3, c. 101.

Actual chargeability required before removal.

The same statute empowered justices to suspend the removal of sick persons until out of danger (*d*).

(*c*) See ante, pp. 5, 7. The 36 Geo. III. c. 23 was repealed by the 4 & 5 Will. IV. c. 76, s. 53.

(*d*) See this and other provisions more fully in a subsequent part of this work.

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45 Geo. 3, c. 54. Contracts for farming the poor.

The evils arising from farming the poor under the statute 9 Geo. I. c. 7 (in places not adopting the provisions of Gilbert's Act) continued. The 45 Geo. III. c. 54, reciting the statute of George the First, and "that great inconvenience has arisen from contracts for the lodging, maintenance, and employment of the poor of parishes, having been entered into pursuant to the said act, with persons not being resident within such parishes respectively, nor of sufficient responsibility to ensure the faithful performance of such contracts," provided that no contract of that kind should be valid unless the person with whom it was made should be resident in the parish, nor unless security were given for the due performance of the contract. The approval of the contract by two justices was also made necessary.

The 50 Geo. III. c. 50, further made the contractors subject to the jurisdiction and orders of justices in like manner as overseers are subject to them; and further empowered the justices to appoint the keeper of a workhouse to be the governor of it.

The statute 54 Geo. III. c. 170 (among other provisions respecting the settlement of persons in particular positions, and the discharge of poor persons from the payment of rates, and other matters noticed elsewhere), prohibited the master, governor or other person entrusted with the superintendence of any poor-house, and also churchwardens, overseers or other persons having the control of the poor, from punishing "with any corporal punishment whatsoever any adult person or persons under his, her, or their care or charge, for any offence or misbehaviour whatsoever; or to confine any such person or persons whatsoever for any offence or misbehaviour, for any longer or greater space of time than twenty-four hours, or such further space of time as may be necessary, in order to have such person or persons before a justice of the peace."

55 Geo. 3, c. 137. Out-door relief.

Besides various provisions still in force for the punishment of paupers pawning and selling the workhouse clothes and property, and otherwise misbehaving in workhouses, comprised in the 55 Geo. III. c. 137, the same statute extended the time for which a justice might order relief to be given to paupers at their own homes, from one month (the limitation under the 36 Geo. III. c. 23) to three months, or in the case of two justices, for six months, and so on from time to time as the occasion should require, on proof on oath of the need and cause of relief; the amount ordered if for any longer time than one month being limited to three shillings a week, or three-fourths of the average weekly expense paid by the parish for the maintenance of each person; power being also given to the justices to discontinue such relief at any time (*e*). This statute also prohibited persons having the management of the poor being concerned in contracts relating to the poor.

A most significant provision is contained in a statute passed the next year. The 56 Geo. III. c. 129, s. 2, enacts, that "it shall not be lawful for any governor, director, guardian or master of any house of industry or workhouse, on any pretence, to chain, or confine by chains or manacles, any poor person of sane mind."

59 Geo. 3, c. 12.

An act 59 Geo. III. c. 12, passed just before the close of the reign of George the Third, and the result of the report of a committee appointed in 1817, contains a variety of provisions relating to the poor. It empowered the establishment in parishes of select vestries "for the concerns of the poor," and regulated their proceedings, and prohibited overseers (where such vestries should be established) from giving other relief than that ordered by the vestries, except temporary relief in cases of sudden emergency or urgent necessity, justices having also power to order temporary relief in such cases (*f*).

Select vestries.

(*e*) 55 Geo. III. c. 137, ss. 3 and 4. This part of the statute was repealed by the 4 & 5 Will. IV. c. 76, s. 53. See post.

(*f*) As *vestries* form a distinct head in this work, the subsequent legislation in reference to them is not noticed in this summary.

Justices were prohibited from ordering relief in parishes where select vestries should be established, or in which the relief of the poor was under the management of guardians, governors or directors appointed by virtue of special or local acts, without proof of application to and refusal by such bodies, and calling them before them, and then only for one month.

Assistant overseers.

Power was given to vestries to appoint assistant overseers, and for building or enlarging workhouses, and to raise money for that purpose, and to provide land not exceeding twenty acres (*g*) for the employment of the poor at wages.

Rating of owner instead of occupiers.

The same statute, among other provisions, respecting rating, enabled for the first time owners of houses to be rated to the relief of the poor instead of the occupiers. The power was, however, confined to houses let at a rent not exceeding 20*l.* nor less than 6*l.* by the year, for any less term than one year, or on any agreement by which the rent was made payable at any shorter period than three months.

Relief by way of loan.

Facilities were given for the recovery of houses occupied permissively by poor persons, and held over by them. Overseers were empowered in cases where it appeared that an applicant for relief might, "but for his extravagance, neglect, or wilful misconduct, have been able to maintain himself or support his family," to advance him money by way of loan only (*h*).

A variety of provisions were made for the appropriation of the pensions and allowances of persons becoming chargeable, and the obtaining payment of seamen's wages, and also for the removal of Scotch and Irish paupers and vagrants (*i*).

59 Geo. 3, c. 50. Renting of tenements.

The statute 59 Geo. III. c. 50, reciting that "many disputes and controversies have arisen respecting the settlement of poor people in parishes in England, by the renting of tenements," required the tenement to be a separate and distinct dwelling-house or building, or of land or of both, wholly situate in the parish where the person hiring it dwelt and inhabited, *bonâ fide* hired for 10*l.* a year at the least for the term of one whole year, and occupied and the rent actually paid by the person hiring it. This act was repealed, and fresh provisions made by the 6 Geo. IV. c. 57, explained and amended by the 1 Will. IV. c. 18 (*k*).

The 59 Geo. III. c. 95, confirmed ancient separations of corporate towns from parishes in regard to the maintenance of the poor.

Lunatic paupers.

Towards the close of the reign of George the Third various provisions were made for the disposal of insane paupers (*l*), the general law with respect to them will be found in a subsequent part of this volume; and the settlement of lunatic paupers is also treated of under the head of "Settlement."

1 & 2 Will. 4, c. 42. Providing land for employment of the poor.

The 1 & 2 Will. IV. c. 42, extended the provisions of the 59 Geo. III. c. 12, for providing land for the employment of the poor by increasing the amount from twenty to fifty acres (*m*), and by empower-

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(*g*) Extended to fifty acres by 1 & 2 Will. IV. c. 42.

(*h*) This provision has the significant recital that "it is expedient to discourage that reliance upon the poor's rates which frequently induces artisans, labourers and others, to squander away earnings which would, with suitable care, have afforded sufficient means for the support of their families."

(*i*) For the subsequent legislation as to Scotch and Irish paupers, see post, "OF RELIEVING CASUAL POOR."

(*k*) See post, Settlement by renting a Tenement.

(*l*) 48 Geo. III. c. 96; 51 Geo. III. c. 79; 59 Geo. III. c. 127. See also 5 Geo. IV. c. 71. These statutes were repealed by the 9 Geo. IV. c. 40, which was also repealed by 8 & 9 Vict. c. 126, in its turn repealed by 16 & 17 Vict. c. 97.

(*m*) See the 59 Geo. III. c. 12, supra.

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ing churchwardens and overseers to inclose waste or common land to the extent of fifty acres, with the consent of the lord of the manor and the majority in value of the persons having right of common thereupon, "and to cultivate and improve the same for the use and benefit of such parish and the poor persons within the same, or to let any part or parts of the same to any poor and industrious inhabitant or inhabitants of such parish, to be by him or them occupied and cultivated on his or their own account." No settlement, however, was to be granted by such renting and occupation.

1 & 2 Will. 4, c. 59.

2 Will. 4, c. 42.

In the same session a similar power was given (1 & 2 Will. IV. c. 59), to inclose crown lands not exceeding fifty acres for a similar purpose; and in the following year an act was passed (2 Will. IV. c. 42) empowering the trustees and parish officers to let allotments made for the benefit of the poor under Inclosure Acts, but which were useless and unproductive, "to such industrious cottagers of good character, being day labourers or journeymen," legally settled in the parish, as should apply for the same, the rents being applied in the purchase of fuel, to be distributed in the winter among poor persons legally settled and resident in or near the parish; and the powers of this act were applied to the before-mentioned acts 1 & 2 Will. IV. cc. 42, 59.

Poor Law Commission. Report of the commissioners.

The conviction (arising principally from the increase of the poor rates) that a change "was necessary either in the poor law as it then existed, or in the mode of its administration" (*n*), ultimately led to the issuing of a commission in 1832, "to make diligent and full inquiry into the practical operation of the laws for the relief of the poor in England and Wales, and into the manner in which those laws were administered, and to report their opinion *as to what beneficial alterations could be made.*" The result of this inquiry was laid before the Houses of Parliament in 1834, and the commissioners reported, "that the fund which the 43rd of Eliz. directed to be employed in setting to work children and persons capable of labour, but using no daily trade, and in the necessary relief of the *impotent, had been applied to purposes opposed to the letter, and still more to the spirit of the law, and destructive to the morals of the most numerous class, and to the welfare of all.* That the great source of abuse was the *out-door relief* afforded to the able-bodied, on their account, or on that of their families, given either in kind or in money." They also reported, that "great mal-administration existed in the workhouses." To remedy the evils, they proposed considerable alterations in the law; and the principal portion of their suggestions was embodied in the "Poor Law Amendment Act, 1834," 4 & 5 Will. IV. c. 76, which received the royal assent on the 14th August, 1834.

Poor Law Amendment Act, 1834.

The act was based on the principle that no one should be suffered to perish through the want of what is necessary for sustaining life; but at the same time that, if he be supported at the expense of the public, he must be content to receive such support on the terms most consistent with the public welfare; and the objects of the act were "first, to raise the labouring classes, that is to say, the bulk of the community, from the idleness, improvidence, and degradation into which the mal-administration of the laws for their relief has thrown them; and, *secondly*, to immediately arrest the progress, and ultimately to diminish the amount, of the pressure on the owners of lands and houses" (*o*).

The provisions of this important act may be thus concisely enumerated. The crown was empowered to appoint (for a period of five years) three commissioners to be styled "The Poor Law Commissioners for England and Wales," to sit as a board for carrying the act into execution, with power to them to appoint assistant commissioners and other officers.

(*n*) Sir George Nicholls, History of the Poor Laws, vol. 2, p. 221.

(*o*) Sir George Nicholls, vol. 2, p. 286, citing Mr. Senior.

The administration of relief to the poor throughout England and Wales, according to the existing laws, was made subject to the direction and control of the commissioners, who were authorized and required to make and issue all such rules, orders, and regulations for the management of the poor, for the government of workhouses, and the education of children therein, and for the apprenticing of poor children, and for the guidance and control of all guardians, vestries, and parish officers, so far as related to the management of the poor, and the keeping, examining, auditing, and allowing or disallowing of accounts, and making and entering into contracts, or any expenditure for the relief of the poor, and for carrying the act into execution in all other respects, as they should think proper; but they were not enabled to interfere in any individual case for the purpose of ordering relief.

All the powers of Gilbert's Act, 22 Geo. III. c. 83 (*p*), and of the 59 Geo. III. c. 12 (*q*), and also of all other acts, general as well as local, relating to the providing of workhouses, the borrowing of money, and governing and employing the poor, were subject to the control of the commissioners.

The commissioners were empowered to form poor law unions by uniting parishes for the administration of the poor laws, each parish, however, to be separately chargeable with the expense of its own poor on an ascertained average for three years preceding; but an agreement might be made for the united parishes becoming one parish for the purpose of settlement, the union to be under the immediate management of guardians of the poor elected for that purpose, and acting at a board, but subject to the general control of the commissioners, and all justices of the peace being ex-officio guardians.

Power was given to the commissioners, with the consent of the guardians or rate-payers of a parish, to build or enlarge workhouses, and make regulations for them. Relief was to be administered according to the rules of the commissioners, but out-door relief might be given, on the order of two justices, to poor persons wholly unable to work from old age or infirmity of body.

The union or incorporation of parishes under Gilbert's Act was prohibited without the consent of the poor law commissioners.

The commissioners were empowered to direct the appointment, duties, and salaries of paid officers for administering relief, examining and auditing accounts, and carrying the act into execution. Registers were directed to be kept of persons relieved, and relief given to or on account of the wife or any children under sixteen, is considered as given to the husband or father (*r*); and the children of a woman, whether legitimate or illegitimate born before marriage are, until sixteen, to be maintained by her husband, and deemed part of his family. Provision was made for the affiliation of bastard children (*s*), and for borrowing money to assist in the emigration of poor persons. Settlement by hiring and service, and by serving an office, was abolished; and settlement was not to be acquired by occupying a tenement unless the poor rate was paid for an entire year, nor by estate, unless the owner should inhabit within ten miles of it.

The removal of paupers to their place of settlement under orders, was regulated, as well as the appeals against such orders, and penalties were imposed for the violation of rules and other offences.

The act contained provisions for giving validity to and enforcing the orders and rules of the commissioners.

Commissioners were forthwith appointed, who (aided by assistant com-

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(*p*) See ante, p. 7—10.

(*q*) Ante, pp. 12, 13.

(*r*) Amended 7 & 8 Vict. c. 101, s. 25.

(*s*) Other provisions were substituted by the 7 & 8 Vict. c. 101. See post, tit. "BASTARDS."

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missioners) proceeded to form unions and introduce the workhouse system, and to issue orders as to relief and other matters; and the act was by degrees applied throughout the country (*t*).

5 & 6 Will. 4, c. 69.

In 1835 an act was passed (5 & 6 Will. IV. c. 69) to facilitate the conveyance of workhouses and property of parishes and unions (*u*), and in the following year an act was passed (6 & 7 Will. IV. c. 96) to regulate parochial assessments.

Various acts were also passed relative to the raising of money for building &c. workhouses, the provisions of which will be noticed under that head.

In 1839 the poor law commissioners (whose continuance in office was, as has been stated, originally limited to five years,) were continued for a year at a time until 1842 (*x*), and then for a further period of five years by the statute 5 & 6 Vict. c. 57, which also contained a variety of provisions on various matters of detail, which will be found under different heads.

7 & 8 Vict. c. 101.

The 7 & 8 Vict. c. 101 (besides making fresh provision for the affiliation of bastard children) contained provisions respecting apprentices, abolishing compulsory apprenticeship (see post, "APPRENTICE"), regulating the voting at the election of guardians and on other occasions, and the qualification of guardians; the auditing of accounts and election of district auditors, the formation of school districts (*y*) and boards, and asylums (*z*); offences in workhouses and their punishment, the appointment of collectors to perform the duties of assistant overseers; the proceedings in petty sessions, and the evidence of acts of the guardians, and a variety of other matters.

The 8 & 9 Vict. c. 100, provided for the care, &c. of insane paupers, and c. 117 amended the law relating to the removal of persons born in Scotland and Ireland, and in the Isle of Man and the Channel Islands (*a*).

In 1846 an important alteration was made in the laws relating to the removal of the poor; the 9 & 10 Vict. c. 66, enacting that no person should be removed from any parish in which he or she had resided for five years; no settlement, however, was to be gained by the non-removal (*b*).

Widows were not to be removed for a year after the husband's death, and no child under sixteen was to be removed unless the father or mother was removable (*c*).

10 & 11 Vict. c. 109.

In 1847, the authority of the poor law commissioners being about to expire, the statute 10 & 11 Vict. c. 109 was passed, under the provisions of which the powers and duties of the former commissioners were subsequently transferred to "Commissioners for administering the laws for relief

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(*t*) See as to the rules and orders of the commissioners, post, Chap. II.

(*u*) Amended, and further provisions, 5 & 6 Vict. c. 18; 20 & 21 Vict. c. 13.

(*x*) 2 & 3 Vict. c. 83; 3 & 4 Vict. c. 42; 5 Vict. c. 10.

(*y*) Amended as to the formation of school districts, 11 & 12 Vict. c. 82; and see 13 Vict. c. 11; 13 & 14 Vict. c. 101, s. 3; 14 & 15 Vict. c. 105, s. 16, 17.

(*z*) See 14 & 15 Vict. c. 105.

(*a*) Amended, as to removals to and from Scotland, by 10 & 11 Vict. c. 33, and 25 & 26 Vict. c. 113; and as to removals to Ireland, by the 24 & 25 Vict. c. 76; and 26 & 27 Vict. c. 89.

(*b*) The effect of this act being found "to increase unduly the amount of expenditure for the relief of the poor in particular parishes," an act was passed in the following year (10 & 11 Vict. c. 110), throwing the cost of maintenance of such irremovable persons as had received relief from their own parish within a year of the passing of the 9 & 10 Vict. c. 66, upon the union instead of on the parish in which they resided. See further, the 11 & 12 Vict. c. 110; 12 & 13 Vict. c. 103.

(*c*) This part of the statute was explained and amended by the 11 & 12 Vict. c. 111.

of the poor in England," appointed by the crown (*d*), "the lord president of the council, the lord privy seal, her Majesty's principal secretary of state for the home department and the chancellor of the Exchequer" being *ex officio* commissioners with those appointed; the commissioner first named in the letters patent or commission being styled the "president," and the president and a secretary being empowered to sit in the House of Commons. The commissioners were authorized to appoint inspectors (who had special powers conferred on them) to visit and inspect workhouses. Married persons above sixty years of age received into workhouses were permitted to live together instead of being compelled, as previously, to live apart. When boards of guardians neglected to appoint a visiting committee for visiting the workhouses, or where the visiting committee had neglected to visit the workhouses for three months, the commissioners were required to appoint a visitor, not being a guardian. The continuance of commissioners and inspectors and officers was limited to five years. The act received the royal assent on the 23rd July, 1847, and the commissioners forthwith issued an order bearing date the 24th July, 1867, consolidating previous orders. This order, known as "the General Consolidated Order," has, with amendments, continued to the present time, and forms the foundation of that part of the poor laws which rests upon orders. References to various provisions of this order will be found under different heads (*e*).

Consolidated orders.

In 1848, the procedure in respect of orders of removal and appeals was amended by the 11 & 12 Vict. c. 31, to prevent litigation on mere matters of form (*f*); and in the same year provision was made by the 11 & 12 Vict. c. 91, for the payment in certain cases of debts incurred by overseers after their year of office had expired, and also for auditing, and allowing certain charges in parochial and union accounts. This statute also gave power to guardians and other authorities under local acts, to grant out-door relief in the same manner as in unions formed under the 4 & 5 Will. IV. c. 76.

An act (11 & 12 Vict. c. 110 (*g*)) was also passed in 1848, altering the provisions relating to the charges for the relief of the poor, providing for their being borne by the union generally instead of by the particular parish in (among other instances) the case of wandering poor, and of paupers rendered irremoveable by the 9 & 10 Vict. c. 66 (*h*). The same statute (11 & 12 Vict. c. 110) contained a variety of other provisions. Questions as to the cost of relief in unions might be decided by the poor law commissioners; guardians were empowered to assist in the emigration of irremoveable poor, and charge the costs to the union (*i*); they were also empowered to cause a valuation to be made at any time of any property alleged to be rateable, and to obtain orders of maintenance upon relatives, as overseers might do. Power was given to search persons applying for relief, and those found in possession of money or property were made punishable as idle and disorderly persons.

In 1849, provision was made by the 12 Vict. c. 13, for the more effectual regulation and control over the maintenance of poor persons under contracts in houses not being the workhouses of any union or parish.

(*d*) The commissioners are now described as the Poor Law Board. See 12 & 13 Vict. c. 103, s. 21.

(*e*) See more fully as to the orders, post, Chap. II. § 3.

(*f*) See also 12 & 13 Vict. c. 45, partially applicable to such procedure.

(*g*) Continued by the 12 & 13 Vict. c. 103.

(*h*) This had been already partially done by the 10 & 11 Vict. c. 110; see ante, p. 16. See also 12 & 13 Vict. c. 103; 13 & 14 Vict. c. 101. These provisions of the 11 & 12 Vict. c. 110 were temporary, but were continued from time to time, and were made perpetual by the 24 & 25 Vict. c. 161.

(*i*) See 12 & 13 Vict. c. 103, s. 20; 13 & 14 Vict. c. 101, s. 4.

A statute was at the same time passed (12 Vict. c. 14) enabling (*inter alia*) overseers to recover the costs of distraining for poor-rates.

The 12 & 13 Vict. c. 103, among a variety of provisions relating to auditors and other matters, gave power to guardians to contract to receive in their workhouses certain poor belonging to another union or parish, in the case of overcrowding or the prevalence of any epidemic or contagious disease (*k*).

In 1850, an act was passed (13 & 14 Vict. c. 99) for better assessing and collecting the poor and highway rates in respect of small tenements.

In 1852, the poor law board, as constituted by the act of 1847, was continued to 1859 (*l*); and by subsequent acts it was continued from time to time, and by the 28 & 29 Vict. c. 105, it was continued to the 23rd July, 1866, and to the end of the then next session of parliament, when, as will be seen, the board was made perpetual.

The 14 Vict. c. 11, required a register to be kept of young persons hired or taken as servants from workhouses, and that they as well as apprentices should be visited periodically, and requiring guardians and overseers to prosecute in certain cases of offences committed in respect of such young persons.

The 14 & 15 Vict. c. 105, among other provisions made further provision for the election of guardians; empowered guardians to subscribe to hospitals and infirmaries, and by consent to refer questions of settlement to the poor law board.

The 16 & 17 Vict. cc. 96 & 97, contained various provisions respecting the care and treatment of lunatic paupers, and the regulation of asylums for them. Further amended by the 18 & 19 Vict. c. 105, and the 25 & 26 Vict. c. 111; 26 & 27 Vict. c. 110; 28 & 29 Vict. c. 80.

In 1855, an act was passed (18 & 19 Vict. c. 34) providing for the education of children in the receipt of out-door relief.

In 1859, provision was made (22 & 23 Vict. c. 49) defining and limiting the time for the payment of debts incurred by boards of guardians and boards of management of school and asylum districts.

In 1861, a further important alteration was made in reference to the irremovability of paupers. By the 24 & 25 Vict. c. 55 (explained by the 27 & 28 Vict. c. 105 (the period of five years, which by the 9 & 10 Vict. c. 66, gave a status of irremovability, was reduced to three years; and it was further enacted that the residence of a person in any part of a union should have the same effect in reference to this matter, as a residence in any parish. The same statute contains various provisions relative to the chargeability of paupers, under particular circumstances, to the common fund of a union; and the mode of calculating the contribution of parishes to the common fund.

In 1862, an act (25 & 26 Vict. c. 103) was passed for securing uniform and correct valuations of parishes for the purpose of rating. The provisions of this statute (as amended by the 27 & 28 Vict. c. 39) will be found under the head of Rates.

In the same year, in consequence of the closing of cotton mills and factories in Lancashire, Cheshire, and Derbyshire, consequent upon the civil war in America, the legislature, by the act 25 & 26 Vict. c. 110, enabled the boards of guardians of unions in those counties to obtain temporary aid by uniform union rates and by borrowing, in order to meet the extraordinary demand for relief; and in the following years those provisions were extended for further periods (26 & 27 Vict. cc. 4 & 91; 27 & 28 Vict. c. 10).

In 1865, an important act (28 & 29 Vict. c. 79) was passed, by which all the cost of relief of the poor, whether in or out of a workhouse, was

(*k*) See also as to children, 14 & 15 Vict. c. 105, s. 6.

(*l*) 15 & 16 Vict. c. 59.

charged upon the common fund of each union instead of to each parish, as under the Poor Law Amendment Act of 1834.

By the same statute, the period of one year was substituted from the 25th March, 1866, for that of three years, adopted by the 24 & 25 Vict. c. 55, for giving a status of irremovability.

"Poor Law Amendment Act, 1866."

The "Poor Law Amendment Act, 1866," (29 & 30 Vict. c. 113,) contains miscellaneous provisions extending previous provisions respecting superannuation allowances, and the audit of accounts, and other matters.

It permits the appointment of one overseer where two overseers cannot be conveniently appointed, and permits in any parish the same person to hold jointly the offices of churchwarden and overseer, and prohibits, on the other hand, the same person combining the offices of overseer and assistant overseer.

The parents or relatives of children not belonging to the established church, relieved in a workhouse or district school, may apply to have such children educated in the religion to which they belong.

Persons relieved out of the workhouse and refusing to perform proper task work prescribed for them, are liable to be punished.

The most important provision, however, of this act was the further reduction of time for giving a status of irremovability, from three years to one year (*m*).

"The Metropolitan Poor Act, 1867."

In the autumn and winter of 1866, public attention was directed to the administration of relief in the metropolis, and early in the following session "The Metropolitan Poor Act, 1867" was passed for the establishment in the metropolis of asylums for the sick, insane and other classes of the poor, and of dispensaries; and for the distribution over the metropolis of portions of the charge for poor relief, and for other purposes relating to poor relief there.

As these provisions are of a local character, it is unnecessary to describe them more fully in this place. They will be found in another part of the work (*n*).

"The Poor Law Amendment Act, 1867."

Later in the same session "The Poor Law Amendment Act, 1867," (30 & 31 Vict. c. 106) was passed "to make the poor law board permanent, and to provide sundry amendments in the laws for the relief of the poor."

The first object of the act, the making the poor law board (which was about to expire) permanent, was effected by simply repealing the 28th section of the "Poor Law Board Act, 1847," which limited the continuance of the commissioners to five years (*o*).

As intimated by the title, the other provisions of this act are of a very miscellaneous character. The poor law board may issue orders (but taking effect only when confirmed by act of parliament) for the repeal either wholly or in part of local acts, and they may, after application and upon inquiry, adjust intermingled parishes or divide extensive parishes.

Additional provisions for the election of guardians; power to guardians to hire or take on lease land for a limited time without any order, but with the approval of the poor law board; increase of the amount which may be raised for building workhouses; adjustment of contributions of divided and added parishes to the common fund; further provisions as to superannuation allowances; the maintenance of adult blind and deaf and dumb paupers, and borough lunatics: the detention of in-door paupers suffering from mental or infectious or contagious diseases; and various provisions as to orders of removal are among the other miscellaneous subjects of this act, which brings the history of legislation down to the period of publication of the present volume.

(*m*) See the 24 & 25 Vict. c. 55, ante, p. 18.

(*n*) See post, "ADMINISTRATION OF RELIEF IN THE METROPOLIS."

(*o*) See ante, p. 17.

CHAPTER II.

Of the Persons concerned in the Administration of the Poor Laws.

I. The Poor Law Board.

§ 1. Constitution of the Board.

Three commissioners under 4 & 5 Will. 4, c. 76, s. 1.

In pursuance of "The Poor Law Amendment Act, 1834," (4 & 5 Will. IV. c. 76, s. 1), *three commissioners* were appointed for five years, to carry that statute into execution; and the administration of the relief of the poor was subject to their direction and control. They had great power and authority, s. 15 enacting, that the administration of the relief to the poor throughout England and Wales, according to the existing laws, or such laws as should be in force for the time being, should be subject *to their direction and control.*

Administration of relief to the poor under control of the commissioners.

The powers of the poor law commission being about to expire in 1848, the 10 & 11 Vict. c. 109 was passed; the first section of which enabled the Queen by letters-patent or by commission under the great seal to appoint during pleasure such person or persons as she should think fit to be commissioners for administering the laws for relief of the poor in England." By 12 & 13 Vict. c. 103, s. 21, they may be described in all instruments, documents and proceedings in courts of law or otherwise, and may execute all powers and authorities from time to time vested in them, by the name of "The Poor Law Board."

Commissioners *ex officio.*

The lord president of the council, the lord privy seal, her Majesty's principal secretary of state for the home department and the chancellor of the exchequer for the time being are, by virtue of their respective offices, commissioners, with the person or persons nominated in any such letters-patent or commission, and have the same powers as if they were expressly nominated in such commission (*a*).

When commissioners shall enter on their office.

Notice of the issue of every such commission is directed to be published in the London Gazette; and the commissioners first appointed under the act entered on their office, and all the powers vested in them took effect, on the day after the first publication of such notice in the London Gazette (*b*).

Who shall preside at meetings of the commissioners.

"The commissioner first named in any such letters-patent or commission for the time being shall be and be styled the 'president;' and whenever in the absence of the president two or more of the commissioners shall meet for the execution of any powers vested in them by this act, the commissioner next in order of nomination in the said commission or this act, of those who shall be present, shall for that turn preside; and if the commissioners present at any meeting shall be equally divided in opinion upon any question before them, the president, or in his absence the commissioner presiding at that meeting, shall have a second or casting vote" (*c*).

Seal of the commissioners.

The seal of the commissioners has the same force and effect as the seal of the poor law commissioners, and documents purporting to be sealed or stamped therewith, are received in evidence in like manner

(*a*) 10 & 11 Vict. c. 109, s. 2.
(*b*) *Ib.* s. 3.
(*c*) *Ib.* s. 4.

and with the like effect as documents sealed or stamped with the seal of the poor law commissioners (*d*).

Appointment of secretaries, clerks, &c.

The commissioners are empowered from time to time, by order under their seal, to appoint two secretaries, and to remove any secretary so appointed, and from time to time to appoint so many clerks, messengers and servants as shall be allowed by the lord high treasurer or the commissioners of her Majesty's treasury; and all the persons so appointed hold their offices during the pleasure of the commissioners (*e*).

Who are competent to act in execution of act.

Any two of the commissioners, or the president alone, except as otherwise provided, is competent to act in the execution of any powers vested in the commissioners by the act; provided that no act of the commissioners which is required to be under their seal, or which, if done by the poor law commissioners, must have been done under their hands and seal, is of any validity unless it purports to be signed by at least two of the commissioners, or by the president, and, if signed by the president alone, countersigned by one of the secretaries to the commissioners; and during any vacancy among the commissioners, the surviving or continuing commissioners or commissioner may continue to act with the same powers and in the same manner respectively as before such vacancy (*f*).

Salaries.

The president and the secretaries, clerks, messengers and servants are paid such salaries as are from time to time regulated by the lord high treasurer or the commissioners of her Majesty's treasury, but no commissioner, other than the said president, is entitled to have any salary or remuneration for acting in the execution of this act (*g*).

President and one secretary may sit in the House of Commons.

The office of president is not such an office as renders the person holding it incapable of being elected, or of sitting or voting as a member of the house of commons, but one only of the secretaries is at the same time capable of so sitting (*h*).

Annual report to her Majesty to be laid before parliament.

"The commissioners shall once in every year submit to her Majesty a general report of their proceedings, and every such general report shall be laid before both houses of parliament within six weeks after the date thereof if parliament be then sitting, or if parliament be not then sitting, within six weeks after the next meeting of parliament" (*i*).

Appointment of inspectors.

"The commissioners shall from time to time, by order under their seal, appoint so many fit persons as shall be allowed by the lord high treasurer or commissioners of her Majesty's treasury, to be inspectors, to assist in the execution of this act, and of other acts now or which shall be hereafter in force for the relief of the poor in England, and may from time to time assign to the inspectors so appointed, or any of them, such duties in the execution of this act as they think fit; and the commissioners, by order under their seal, may remove all or any of the said inspectors, and appoint others in their stead; and there shall be paid to every such inspector such salary as shall be from time to time regulated by the lord high treasurer or the commissioners of her Majesty's treasury" (*k*).

Duties of inspectors.

"The said inspectors, and each of them, shall be entitled to visit and inspect every workhouse or place wherein any poor person in receipt of relief shall be lodged, and to attend every board of guardians and every parochial and other local meeting held for the relief of the poor, and to take part in the proceedings, but not to vote at such board or meeting" (*l*).

Inspectors may summon witnesses.

"The said inspectors may summon before them such persons as they may think necessary for the purpose of being examined before them upon any matter concerning the administration of the laws relating to

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(*d*) 10 & 11 Vict. c. 109, s. 5.
(*e*) *Ib.* s 6.
(*f*) *Ib.* s. 7.
(*g*) *Ib.* s. 8.
(*h*) *Ib.* s. 9.
(*i*) *Ib.* s. 13.
(*k*) *Ib.* s. 19.
(*l*) *Ib.* s. 20.

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the relief of the poor, or any other matter placed by law under the control or regulation of the commissioners, or for the purpose of producing and verifying upon oath any books, contracts, agreements, accounts, writings, or copies of the same, in anywise relating to such matter, and not relating to or involving any question of title to any lands, tenements, or hereditaments not being the property of any parish or union, and may examine any person whom they shall so summon, or who shall voluntarily come before them to be examined, upon any such matter upon oath, which each of the said inspectors shall be empowered to administer, or, instead of administering an oath, the inspector may require the party examined to make and subscribe a declaration of the truth of the matter respecting which he shall have been or shall be so examined; and all summonses made by any such inspector for any such purpose as aforesaid shall be obeyed by all persons as if such summons had been the summons and order of the commissioners, and the non-observance thereof shall be punishable in like manner; and that the costs and expenses of such person so summoned shall be paid in such cases and in such manner as the costs and expenses of persons summoned under the authority of the first-recited act are now payable: provided always, that no person shall be required in obedience to any such summons to go or travel more than ten miles from his place of abode" (*m*).

Special inquiries.

"So much of the said act of the sixth year of the reign of her Majesty as relates to the appointment of any assistant commissioner or of any person for the purpose of conducting any special inquiry as an assistant commissioner shall be repealed; and that, whenever it may seem fitting to the commissioners, they, with the consent of the lord high treasurer or the commissioners of her Majesty's treasury for the time being, may appoint some fit person to act as an inspector for the purpose of conducting any special inquiry for a period not exceeding thirty days, and the said commissioners may delegate to every person so appointed for the purpose of conducting such inquiry all such of the powers of the said commissioners as they may deem necessary or expedient for summoning witnesses and conducting such inquiry" (*n*).

Duration of commissioners.

Although the "Poor Law Board Act, 1847," (10 & 11 Vict. c. 109, s. 28), limited the appointment and powers of commissioners and officers appointed by them to five years (extended by subsequent acts to the year 1867), this limitation was repealed by "The Poor Law Amendment Act, 1867," (30 & 31 Vict. c. 106, s. 1), the effect of that repeal being intended to make the poor law board permanent.

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§ 2. POWERS OF THE BOARD.

General powers.

All the powers and duties of the poor law commissioners under the Act of 1834, with respect to the administration or control of the administration of relief to the poor throughout England, and all other powers and duties then vested in them, were transferred to and vested in the board (*o*).

By the Act of 1834, as already mentioned, "the administration of relief to the poor throughout England and Wales, according to the existing laws, or such laws as shall be in force at the time being, shall be subject to the direction and control of the said commissioners" (*p*); the only express restraint on the power of the commissioners being, that the powers conferred upon them should not be construed as enabling them to interfere in any individual case for the purpose of relief (*q*).

(*m*) 10 & 11 Vict. c. 109, s. 21.
(*n*) *Ib.* s. 22.
(*o*) *Ib.* s. 10.
(*p*) 4 & 5 Will. IV. c. 76, s. 15.
(*q*) *Ib.*

The general powers of the board to make rules, will be referred to under a separate head (*r*); but, besides these general powers, the following more specific powers are mentioned or referred to in "The Poor Law Amendment Act, 1834" (4 & 5 Will. IV. c. 76), and subsequent statutes.

Specific powers.

All the powers and authorities given by Gilbert's Act (22 Geo. III. c. 83 (*s*)), and by Sturges Bourne's Act (59 Geo. III. c. 12 (*t*)), "and also all the powers and authorities given by every other act of parliament, general as well as local, for or relating to the building, altering or enlarging of poor-houses and workhouses, and to the acquiring, purchasing, hiring, holding, selling, exchanging and disposing thereof, or of land whereon the same may have been or may hereafter be erected, and of preparing such houses for the reception of poor persons, and the dieting, clothing, employing and governing of such poor, and the raising or borrowing of money for any of the purposes aforesaid, and for repaying the same, and all powers of regulating and conducting all other workhouses whatsoever, and of governing, providing for and employing the poor therein, and all powers auxiliary to any of the powers aforesaid, or in any way relating to the relief of the poor, shall in future be exercised by the persons authorized by law to exercise the same, under the control, and subject to the rules, orders and regulations of the said commissioners; and the said commissioners and assistant commissioners (*u*) respectively, and every of them, shall be entitled to attend at every parochial and other local board and vestry, and take part in the discussions, but not to vote at such board or vestry: provided always, that nothing herein contained shall be construed to give the said commissioners or assistant commissioners (*u*) any power to order the building, purchasing, hiring, altering or enlarging of any workhouse, or the purchasing or hiring of any land at the charge or for the use of any parish or union, save and except so far as such powers are expressly given by this act" (*x*).

Powers of 22 Geo. 3, c. 83, 59 Geo. 3, c. 12, and of all other acts relating to workhouses, and to borrowing money, to be exercised under control of commissioners, and be subject to their orders.

Commissioners, &c. to be entitled to attend local boards and vestry; but not to order the building or hiring of workhouses, except under limitations.

No rules, orders and regulations under the authority of Gilbert's Act, or under any act relating to poor-houses, workhouses or the relief of the poor, can be made until submitted to and approved and confirmed by the board (*y*).

Rules and orders under Gilbert's Act or other acts.

With the consent in writing of the majority of the guardians of any union, or with the consent of a majority of the ratepayers and owners of property entitled to vote, in any parish, the board may order and direct workhouses to be built, hired, altered or enlarged (*z*); and without such consent they may order existing workhouses to be altered or enlarged within a certain limited amount of expenditure (*a*).

Workhouses.

The board may unite parishes into poor law unions (*b*), and combine unions and parishes into districts for the audit of accounts (*c*), and from time to time to dissolve or alter such unions (*d*) or districts (*e*).

Formation of unions.

Where the relief of the poor, or the making and levying of the poor-rate, is subject to the control or regulation of any local act, the board (on the application of the guardians) may issue an order to repeal the whole or any part of such local act; such order must, however, be confirmed by act of parliament before it is of any validity (*f*).

(*r*) See post, p. 27, "Rules and Orders of the Board."

(*s*) See ante, Chap. I. p. 7—10.

(*t*) See ante, Chap. I. pp. 12, 13.

(*u*) There are no assistant commissioners now. See ante, p. 22.

(*x*) 4 & 5 Will. IV. c. 76, s. 21.

(*y*) *Ib.* s. 22.

(*z*) *Ib.* s. 23.

(*a*) *Ib.* s. 25. As to control of commissioners on sales and purchase of parish property, and payment of debts, see 5 & 6 Will. IV. c. 69, ss. 3, 6; 7 Will. IV. & 1 Vict. c. 50; 5 & 6 Vict. c. 18.

(*b*) 4 & 5 Will. IV. c. 76, s. 26. See post, p. 82.

(*c*) 7 & 8 Vict. c. 101, s. 32.

(*d*) 4 & 5 Will. IV. c. 76, s. 32.

(*e*) 7 & 8 Vict. c. 101, s. 32.

(*f*) "The Poor Law Amendment Act, 1867." (30 & 31 Vict. c. 106, s. 2.)

Subject to the same confirmation, the board may, on the written application of one-tenth part in value of owners and ratepayers, make a provisional order for readjusting or dividing parishes, the several parts of which are separated from one another or intermixed with an adjoining parish, or where a parish is of great extent in area.

They may accept the resignation, and determine any dispute as to the right to act, and order a new election of any guardian (*e*).

To direct appointment, &c. of officers.

They may direct the overseers and guardians to appoint paid officers, with such qualifications as the board think necessary, "for superintending or assisting in the administration of the relief and employment of the poor, and for the examining and auditing, allowing or disallowing of accounts in such parish or union, or united parishes," and otherwise carrying the provisions of the Poor Law Amendment Act into execution (*f*), and define and direct their duties; and may direct their mode of appointment, and determine their continuance in office or dismissal, and the security to be given by them. The board may, when they see occasion, regulate the amount of salary payable to such officers and the time and mode of payment, and the proportion in which parishes or unions shall contribute to such payment (*g*).

Removal of paid officers.

The board may also, either upon or without complaint from the overseers or guardians, remove any master of a workhouse, assistant overseer or other paid officer of any parish or union whom they deem unfit for or incompetent to discharge the duties of any such office, or who refuses or wilfully neglects to obey and carry into effect any of the rules, orders, regulations or bye-laws of the board; and they may require the persons competent in that behalf to appoint a fit and proper person in his room (*h*).

The power to appoint, as well as to remove officers under the above provisions, extends to unions under Gilbert's Act and under local acts, as well as to unions formed by the commissioners (*i*).

They may declare to what extent and for what period the relief to be given to able-bodied persons or to their families in any particular parish or union may be administered out of the workhouse, by payments in money or with food or clothing in kind, or partly in kind and partly in money, and in what proportions, to what persons, or class of persons, at what time and places, on what conditions, and in what manner such out-door relief may be afforded (*j*).

The board are not only empowered but required to make rules for the management of houses where the poor are maintained under contract, and to prohibit the reception or retention of poor in such houses, and to regulate the contracts, and to appoint a paid visitor (*k*).

(*e*) 5 & 6 Vict. c. 57, ss. 9, 10, 11. Though the commissioners have no power to order guardians to be elected for a part of a township only, still an order containing such a provision is not void, but continues a valid order until removed by *certiorari* and quashed. (*Newbould* v. *Coltman*, 20 L. J., M. C. 149.)

(*f*) They have power to direct the overseers of townships comprised in an union to meet and appoint a relieving officer at the election of guardians of the union. (*R.* v. *Oldham Union*, 16 L. J., M. C. 110.)

(*g*) 4 & 5 Will. IV. c. 76, s. 46, and see as to collectors of rates, 2 & 3 Vict. c. 84, s. 2; 7 & 8 Vict. c. 100, ss. 61, 62; and salaries of auditors, 7 & 8 Vict. c. 101, s. 32. On a vacancy in the office of auditor, the board may appoint a temporary auditor to complete the accounts, 12 & 13 Vict. c. 103, s. 8.

(*h*) 4 & 5 Will. IV. c. 76, s. 48. The power to remove the paid officers of the union, e. g. the relieving officer, is entirely discretionary, and, therefore, may be exercised by the commissioners without assigning any cause or calling upon the officer to answer any charge. (*Re Teather*, 19 L. J., M. C. 70.)

(*i*) *Reg.* v. *Poor Law Commissioners* (*Alstonefield*), 11 A. & E. 558; 8 L. J., M. C. 77.

(*j*) 4 & 5 Will. IV. c. 76, s. 52.

(*k*) 12 & 13 Vict. c. 13.

If the guardians neglect to appoint a visiting committee for the purpose of visiting workhouses, the board may appoint a visitor at a salary (*l*).

Accounts of parish property.

The board may from time to time, as they think fit, require "from all persons to whom any freehold, copyhold or leasehold estate, or any other property or funds belonging to any parish, and held in trust for or applicable to the relief of the poor, or which may be applied in diminution of the poor rate of such parish, shall be vested, or who shall be in receipt of the rents, profits or income of any such estate, property or funds, a true and detailed account in writing of the place where such estate may be situate, or in what mode or on what security such other property or funds may be invested, with such details of the rents, profits and income thereof, and of the appropriation of the same," and of all such other particulars relating thereto as the board may require (*m*).

The board prescribes the mode of election of district auditors (*n*).

Duties of masters of apprentices.

The board may prescribe the duties of the masters to whom poor children may be apprenticed, and the terms and conditions to be inserted in the indentures (*o*).

Appeals and disputes.

They decide appeals against any allowance, disallowance, or surcharge made by auditors in the accounts of guardians, overseers, or their officers (*p*); and also questions as to the charging of costs of relief (*q*). They may also determine questions submitted to them by mutual consent affecting the settlement, removal, or chargeability of any poor person (*r*). They may combine unions and parishes into

School districts.

school districts for the management of infant poor, not above the age of sixteen, who are chargeable and are orphans, or deserted by their parents, or whose parents consent to place them in such district schools (*s*); and they may appoint auditors for such districts (*t*), and also certify schools, and control the sending of children to such schools by guardians (*u*).

They may extend the time within which payment of debts by guardians, &c. may be made (*x*).

On the representation of the board of guardians they may order a survey and valuation of property in any parish liable to poor-rates (*y*).

The above powers are independent of a variety of provisions requiring the sanction of the board to the proceedings of guardians and officers of the poor to give them validity. All these will be found, together with the above direct powers of the board, under the various heads to which they relate.

As to the power of the board in reference to district asylums in the metropolis, see post, "ADMINISTRATION OF RELIEF IN THE METROPOLIS."

Power to summon witnesses.

The commissioners, "by summons under their seal, may require the attendance of all persons upon any matter connected with the execution of any of the powers by law vested in them at such time and place as shall be set forth in the summons, and may make inquiry and require returns, and require and enforce the production upon oath of books, contracts, agreements, accounts, maps, plans, surveys, valuations and writings, or copies thereof respectively, in anywise relating to any such matter, and the commissioners or any one of them may upon such matters administer oaths, and examine upon oath all persons so brought

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(*l*) 10 & 11 Vict. c. 109, s. 24.

(*m*) 4 & 5 Will. IV. c. 76, s. 85. This power does not apply to any funds raised from time to time by the voluntary contributions of the inhabitants of any parish. *Ib.*

(*n*) 7 & 8 Vict. c. 101, s. 32.

(*o*) *Ib.* s. 12.

(*p*) 11 & 12 Vict. c. 91, s. 4.

(*q*) 11 & 12 Vict. c. 110, s. 4.

(*r*) 14 & 15 Vict. c. 105, s. 12.

(*s*) 7 & 8 Vict. c. 101, s. 40; 11 & 12 Vict. c. 82, s. 1.

(*t*) 7 & 8 Vict. c. 101, s. 49.

(*u*) 25 & 26 Vict. c. 43.

(*x*) 22 & 23 Vict. c. 49, s. 1.

(*y*) 6 & 7 Will. IV. c. 96, s. 3. See, however, the provisions of the 25 & 26 Vict. c. 103, in a subsequent part of this work.

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before them or him, and, when they or he shall think fit, instead of requiring such oath as aforesaid, may require any such person to make and subscribe a declaration of the truth of the matter respecting which he shall have been or shall be so examined: provided always, that no person shall be required, in obedience to any such order, to go more than ten miles from the place of his abode: provided also, that nothing herein contained shall empower the commissioners to require the production of the title, or of any paper or deed relating to the title, of any lands, tenements or hereditaments not being the property of any parish or union" (*y*).

Penalties for giving false evidence, or refusing to give evidence.

"Every person who upon any examination under the authority of this act shall wilfully give false evidence, or wilfully make or subscribe a false declaration, shall, on being convicted thereof, suffer the pains and penalties of perjury; and every person who shall refuse or wilfully neglect to attend in obedience to any summons of the commissioners, or any inspector, or to give evidence, or who shall wilfully alter, suppress, conceal, destroy, or refuse to produce any books, contracts, agreements, accounts, maps, plans, surveys, valuations, or writings, or copies of the same, which may be required to be produced for the purposes of this act, to any person authorized by this act to require the production thereof, shall be deemed guilty of a misdemeanor" (*z*).

Advertisements inserted by the commissioners, and mortgage bonds, instruments or assignments given by way of security in pursuance of their rules, &c., and contracts, agreements and appointment of officers made pursuant to such rules, &c., and all instruments made in pursuance of the poor law acts are exempt from stamp duty (*a*).

The board of commissioners is empowered to receive and send, free of postage, letters and packets (*b*).

Notice of action must be given to commissioners and all other persons for anything done in pursuance of or under the authority of the poor law acts.

Limitation of actions.

"The Poor Law Amendment Act, 1834," contained the following provision on the subject: "No action or suit shall be commenced against any commissioner, assistant commissioner, or any other person, for anything done in pursuance of or under the authority of this act, until twenty-one days' notice has been given thereof in writing to the party or person against whom such action is intended to be brought, nor after sufficient satisfaction or tender thereof shall have been made to the party aggrieved, nor after three calendar months next after the act committed for which such action or suit shall be so brought; and every such action shall be brought, laid, and tried where the cause of action shall have arisen, and not in any other county or place; and the defendant in such action or suit may plead the general issue, and give this act and any special matter in evidence, at any trial which shall be had thereupon; and if the matter or thing shall appear to have been done under or by virtue of this act, or if it shall appear that such action or suit was brought before twenty-one days' notice thereof given as aforesaid, or that sufficient satisfaction was made or tendered as aforesaid, or if any action or suit shall not be commenced within the time before limited, or shall be laid in any other county than as aforesaid, then the jury shall find a verdict for the defendant therein; and if a verdict shall be found for such defendant, or if the plaintiff in such action or suit shall become nonsuit, or suffer a discontinuance of such action, or if, upon any demurrer in such action, judgment shall be given for the defendant therein, then and in any of the cases aforesaid, such defendant shall have costs, charges, and expenses as between attorney and client, and shall have

Defendant may plead the general issue.

Costs.

(*y*) 10 & 11 Vict. c. 109, s. 11.
(*z*) *Ib.* s. 26.
(*a*) 4 & 5 Will. IV. c. 76, s. 86.
(*b*) *Ib.* s. 88.

such remedy for recovering the same as any defendant may have for his or her costs, in any other case by law" (*c*).

This provision was affected by the 5 & 6 Vict. c. 97 (amending the law relating to double costs, notices of action, &c.) by which notice of action must be given "one calendar month, at least," before it is commenced; and "such full and reasonable indemnity as to all costs, charges and expenses incurred in and about any action, suit, or other legal proceeding, as shall be taxed by the proper officer of the court," is substituted for other than the usual costs between party and party.

The commissioners are to make a yearly report of their proceedings, which is to be laid before parliament (*d*).

Authority of the Court of Chancery over the acts of the board.

With regard to the authority of the Court of Chancery over these commissioners, Lord Cottenham said, "I apprehend that the limits within which this court interferes with the acts of a body of public functionaries, constituted like the poor law commissioners, are perfectly clear and unambiguous. So long as those functionaries strictly confine themselves within the exercise of those duties which are confided to them by law, the court will not interfere. The court will not interfere to see whether any alteration or regulation which they may direct is good or bad: but if they are departing from that power which the law has vested in them; if they are assuming to themselves a power over property which the law does not give them, this court considers them as no longer acting under the authority of their commission, it treats them, whether they be a corporation or individuals, merely as persons dealing with property without legal authority." (*Frewer* v. *Lewis*, 4 M. & C. 249.)

§ 3. Rules and Orders of the Board for executing their Powers.

Commissioners may suspend or alter rules, &c.

For executing the powers given to them the original poor law commissioners were authorized to make rules, orders and regulations for the management of the poor, for the government of workhouses, and the education of the children therein, and for the management of parish poor children under the 7 Geo. III. c. 39, and the superintending, inspecting, and regulating of the houses wherein such poor children are kept and maintained, and for the apprenticing the children of poor persons, and for the guidance and control of all guardians, vestries, and parish officers, so far as relates to the management or relief of the poor, and the keeping, examining, auditing, and allowing of accounts, and making and entering into contracts in all matters relating to such management or relief, or to any expenditure for the relief of the poor, and for carrying the act into execution in all other respects as they should think proper; and the commissioners were empowered at their discretion to suspend, alter, or rescind such rules (*e*), but the commissioners were not enabled to interfere in any individual case for the purpose of ordering relief (*f*).

Although apparently within the scope of the above general powers, the same statute further specifically authorized the commissioners by writing under their hands and seal, to make rules, orders and regulations to be observed and enforced at every workhouse already established by

(*c*) 4 & 5 Will. IV. c. 76, s. 104. A clerk to a poor law union who had seized under the 2 & 3 Vict. c. 84, as a distress for a contributory sum due to the union, the amount of a rate made upon a parish of which the plaintiff had been appointed churchwarden, but who had refused to act or interfere in making the rate, was held entitled to notice of action under this section. (*Carter* v. *Filleter*, 1 C. & Marsh. 498.)

(*d*) 10 & 11 Vict. c. 109, s. 13.

(*e*) An order, inconsistent to some extent with a former one, will have the effect of altering that former order, and will be valid itself. (*Reg.* v. *Braintree*, 1 Q. B. 130.)

(*f*) 4 & 5 Will. IV. c. 76, s. 15.

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virtue of the 22 Geo. III. c. 83 (Gilbert's Act), or any general or local acts or thereafter to be established thereunder or by that act (4 & 5 Will. IV. c. 76), or any other act relating to the relief of the poor, for the government thereof, and the nature and amount of the relief to be given to and the labour to be exacted from the persons relieved, and the preservation therein of good order, and from time to time to suspend, alter, vary, amend, or rescind the same, and make any new or other rules, orders and regulations, to be observed and enforced as aforesaid, as they from time to time shall think fit, and to alter at their discretion any of the rules, orders and regulations contained in the Schedule to Gilbert's Act, and also to alter or rescind any rules, orders and regulations theretofore made in pursuance of that act or any local act relating to workhouses or the relief of the poor. All rules, orders and regulations to be made by the commissioners were declared to be valid and binding, and to be obeyed and observed as if the same were specifically made by and embodied in the act, subject nevertheless to the power of the commissioners from time to time to rescind, amend, suspend or alter the same. Provided that, if any such rule, order or regulation should be, at the time of issuing the same, directed to and affect more than one union, the same should be considered as a general rule, and subject and liable to all the provisions respecting general rules (*g*).

Besides the provisions above mentioned giving the commissioners *power* to make rules and orders, they are in certain cases *required* to make them.

Where the board declares a union to be dissolved or any parish to be separated from or added to a union, they "shall in every such case frame and make such rules, orders and regulations as they may think fit for adapting the constitution, management, and board of guardians of every such union, from or to which there shall be such separation or addition as aforesaid, to the altered state of the same" (*h*).

They are also not merely empowered but "required," from time to time as they shall see occasion, to make and issue all such rules, orders and regulations for the management and government of any house or establishment wherein any poor person shall be lodged, boarded or maintained, for hire or remuneration, under any contract or agreement (*i*).

"The Union Chargeability Act" (28 & 29 Vict. c. 79) enacts, that "the poor law board shall, as soon as convenient, make all such orders as may be requisite" to render that act applicable to the proceedings and accounts of the guardians of unions and of overseers of parishes comprised therein (*k*).

How and when orders, &c. take effect.

The act 4 & 5 Will. IV. c. 76, provided that no general rule (*l*) of the commissioners should take effect until the expiration of forty days after it had been submitted to one of the secretaries of state, power being given to the King in council to disallow it (*m*), but this clause is not now in force (*n*).

General rules are required to be laid before parliament (*o*), and general rules cannot be altered by a particular rule without the consent of the secretary of state (*p*). Before any rules can have any operation in any union or parish, a copy of them must be sent fourteen days previously to the overseers, the guardians of the union or clerk, and the clerk of the

(*g*) 4 & 5 Will. IV. c. 76, s. 42. For the definition of a general rule, see post, p. 29 and note (*l*) infra.

(*h*) 4 & 5 Will. IV. c. 76, s. 32.

(*i*) 12 & 13 Vict. c. 13, s. 1.

(*k*) 28 & 29 Vict. c. 79, s. 11. See post.

(*l*) By the interpretation clause (4 & 5 Will. IV. c. 76, s. 109) the words "general rule" is construed to mean any rule relating to the management of the poor, or to the execution of that act, which shall at the time of issuing the same be addressed by the commissioners to more than one union, or to more parishes or places than one not forming a union, or not to be formed into or added to a union under or by virtue of such rule. See also 10 & 11 Vict. c. 109, s. 15, post.

(*m*) 4 & 5 Will. IV. c. 76, s. 16.

(*n*) See post, p. 29.

(*o*) 4 & 5 Will. IV. c. 76, s. 17.

(*p*) 5 & 6 Vict. c. 57, s. 3.

justices of the petty sessions, who are required to give publicity to them, to allow inspection, and give copies of them, at a fixed charge (*q*).

Nevertheless, every order of the commissioners suspending or dismissing any paid officer from the exercise of his office (*r*), in which the commissioners shall declare that the urgency of the case requires that such order should take effect within the period of fourteen days, comes into force at such time as is directed in the order, notwithstanding that fourteen days shall not have expired as above required (*s*).

The 12 & 13 Vict. c. 103, s. 12, reciting the above provisions of the 4 & 5 Will. IV. c. 76, as to sending rules, and that parties to whom orders have been addressed have often acted in conformity therewith within the period of fourteen days, and that it is often convenient that they should do so, enacts, "that nothing in the said act contained shall be taken to invalidate any act or proceeding heretofore or hereafter to be done or taken in conformity with any order of the said commissioners or of the poor law board by the person or persons to whom the same shall have been or shall be addressed, although the period of fourteen days shall not have elapsed from the sending of the copies of the said order when any such act shall have been done or proceeding taken."

In the case of orders, &c. relative to relief out of the workhouse, a power is given to overseers or guardians to delay their operation for a limited time, and also to depart from them in cases of emergency on certain conditions (*t*).

How rules are to be made.

The power thus vested in the poor law commissioners to make rules, orders and regulations, and from time to time to vary or rescind the same, was vested in the commissioners constituted under the act 10 & 11 Vict. c. 109, the new commissioners being required to "make all such rules, orders and regulations under their seal, except such as are intended only for their own guidance or procedure, or for the guidance or procedure of any persons appointed or employed by them for the business of their office, and shall make all general rules under their seal, and under the hands of three or more of the commissioners, of whom the president shall be one" (*u*).

Definition of general rules.

"Every rule, order or regulation of the commissioners which at the time of issuing the same shall be directed to and affect more than one union, shall be deemed a general rule; and every rule, order and regulation made to vary or rescind a general rule, whether it be directed to or affect one or more than one union, shall also be deemed a general rule" (*x*).

This act repealed so much of the 4 & 5 Will. IV. c. 76 as relates to the making of general rules, or to the time or manner when or how any such general rule shall operate or take effect, or to the disallowance of any such general rule or any part thereof (*y*); and provided for the disallowance of rules by the Queen in council (*z*); existing orders are, however, continued (*a*).

The orders, when issued, supersede all rules conflicting with them previously made by local authorities under particular acts, and annul any rules conflicting with them, afterwards made by those authorities,

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(*q*) 5 & 6 Vict. c. 57, ss. 18, 20.

(*r*) As to dismissal of officers, see ante, p. 24.

(*s*) 5 & 6 Vict. c. 57, s. 4.

(*t*) 4 & 5 Will. IV. c. 76, s. 52. See this section fully, post, "RELIEF OUT OF THE WORKHOUSE."

(*u*) 10 & 11 Vict. c. 109, s. 14.

(*x*) 10 & 11 Vict. c. 109, s. 15. If an order is directed to one union only, it is not a general order, though an order in the same terms is simultaneously directed to another union. *Reg.* v. *Braintree*, 1 Q. B. 130. "The Metropolitan Poor Act, 1867" (30 Vict. c. 6), however, provides (sect. 4) "that any order of the poor law board, under that act, shall not be deemed a general order, although addressed to more than one union or parish."

(*y*) 10 & 11 Vict. c. 109, s. 16. The extent of the repeal appears to be confined to the 16th section of the 4 & 5 Will. IV. c. 76. See ante, p. 28.

(*z*) 10 & 11 Vict. c. 109, s. 17.

(*a*) *Ib.* s. 18.

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in pursuance of such acts. But they have not authority to change, set aside or put an end to the statutory relation in which the authorities and officers constituted by a particular act stand to one another, nor to make any substantial alteration of the machinery which the local act created for the administration of the law. Thus, an order transferring powers from the vestrymen, in whom they were vested by a local statute, to directors, was held invalid. (*R.* v. *St. Giles*, 15 Jur. 841.) But where by a local statute the vestrymen of the parish of St. J. W. were required to nominate twenty-one persons who should become the directors of the poor, and who were to make rules and regulations for the maintaining of the poor, and which were to be subsequently confirmed by the vestry; in pursuance of which, directors had been nominated who had duly made certain rules which were confirmed, and, among other things, appointed that the officers should be elected annually at Easter, the commissioners were held to be authorized to make an order, addressed to the vestrymen of the said parish, directing, among other things, that the directors, whenever a vacancy occurred, should appoint fit persons to fill certain offices, and that every officer appointed to or holding any office under the order should continue to hold the same until he die, resign or be removed by the poor law board, or be proved to be insane to the satisfaction of the board. (*R.* v. *Poor Law Commissioners*, 20 L. J., M. C. 236; and see post, Chapter V.)

Rules, &c. printed by the printer authorized by her Majesty to be received in evidence.

Although the Poor Law Amendment Act provided that all rules, orders, and regulations made by the commissioners under the authority of the act should be as valid and binding, and should be obeyed and observed, as if the same were specifically made by and embodied in the said act (*b*); no sufficient provision was made for bringing such orders to the knowledge of courts of justice (*c*); it was therefore enacted, "that any copy of any such rule, order, or regulation, printed by the printer duly authorized by her Majesty or any of her royal predecessors or successors, shall, after the lapse of fourteen days from the date thereof, be received in evidence, and judicially taken notice of, and shall, until the contrary be shown, be deemed sufficient proof that such order was duly made, and is in force" (*d*).

Evidence in legal proceedings of the transmission of the commissioners' rules, &c.

"And whereas it is provided by the said first-recited act that a written or printed copy of every rule, order, or regulation of the said commissioners shall, before the same shall come into operation in any parish or union, be sent by the said commissioners by the post, or in such manner as the commissioners shall think fit, sealed or stamped with their seal, addressed to the overseers of such parish, the guardians of such union, or their clerk, and to the clerk to the justices of the petty sessions held for the division in which such parish or union shall be situate: and whereas the proof of such sending is often attended with great expense and difficulty; be it enacted, that it shall not in any civil or criminal proceeding be necessary to prove such sending, except to the clerk to the guardians of the union or of the parish, or, where there shall be no guardians, to the overseers of the parish within which such rule, order, or regulation is intended to have effect; and that it shall in no case be necessary to prove such sending, unless reasonable notice in writing be given, by the party requiring such proof, to the party upon whom such proof would lie, that such proof will be required; and whenever it is proved to the satisfaction of the court that the said rule, order, or regulation was sent, and that the party was cognizant thereof, such court shall order the reasonable expenses of the witness or witnesses proving the same to be paid by the party who has given such notice, and such expenses shall be recoverable as penalties and forfeitures under the first-recited act" (*e*).

(*b*) 4 & 5 Will. IV. c. 76, s. 42.

(*c*) The courts of law would not take judicial notice of the rules made by the commissioners. *Reg.* v. *Dullgelly*, 8 A. & E. 561.

(*d*) 7 & 8 Vict. c. 101, s. 71.

(*e*) *Ib.* s. 72.

"In any case where the poor law commissioners or the poor law board shall have given or refused, or shall hereafter give or refuse, their consent, sanction, or approval in any matter where their order under seal shall not have been or shall not be expressly required, the production of any written document signed or purporting to be signed by a secretary or assistant secretary of the said commissioners or the said board shall be *primâ facie* evidence of the decision of the said commissioners or the said board upon such matter as aforesaid" (*f*).

Evidence of consent of poor law board.

The validity of any order may be determined by removing it into the Court of Queen's Bench by certiorari.

Certiorari.

"The Poor Law Amendment Act, 1834," contains the following provisions on this subject:—

No rule, order or regulation of the said commissioners or assistant commissioners, or any of them, shall be removed or removable by writ of certiorari into any court of record, except his Majesty's Court of King's Bench at Westminster; and every rule, order or regulation which shall be removed by writ of certiorari into the said Court of King's Bench shall, nevertheless, unless and until the same shall be declared illegal by that court, continue in full force and virtue, and be obeyed, performed and enforced in such and the same manner, and by such and the same ways and means, as if the same had not been so removed (*g*).

Rules, &c. to be removable by certiorari to Court of King's Bench.

Rules, &c. so removed to continue in force until declared illegal.

No application shall be made for any writ of certiorari for the removal of any such rule, order or regulation except to the judges when sitting in the said court, nor unless notice in writing shall have been left at the office of the said commissioners at least ten days previous to such application being made, and in which notice shall be set forth the name and description of the party by or on behalf of whom and the day on which it is intended to make such application, together with a statement of the grounds thereof; and thereupon it shall be lawful for the said commissioners to show cause in the first instance against such application, and the court may, if it shall so think fit, forthwith proceed to hear and determine the same upon the grounds set forth in such notice (*i*).

Notice to be given to commissioners of application for writ of certiorari, &c. (*h*).

Commissioners may show cause, in the first instance.

Previous to any writ of certiorari being issued, the party or parties applying for the same shall enter into a recognizance, with sufficient sureties, before one of his Majesty's justices of the Court of King's Bench, or before a justice of the peace of the county or place in which such person shall reside, in the sum of fifty pounds, with condition to prosecute the same, at his or their costs and charges, with effect, without any wilful or affected delay, and in default thereof, or in the event of such rule, order or regulation being deemed legal, to pay the said commissioners their full costs, charges and expenses, to be taxed according to the course of the said Court of King's Bench; and if the said rule, order or regulation, so removed by the said writ of certiorari into the said Court of King's Bench, shall be declared legal by the said court, the commissioners entitled to such costs, within ten days after demand made of the person or persons who ought to pay the said costs, upon oath made of the making such demand and refusal of payment thereof, may recover the same in the same manner as any penalties and forfeitures are recoverable under this act (*j*).

Recognizances to be entered into.

If rule be declared legal, commissioners to be entitled to costs.

If upon the hearing of the application the court shall order a writ of certiorari to issue for bringing up any such rule, order or regulation, and the same, being brought into court, shall be quashed as illegal, the said commissioners shall forthwith notify the judgment of the court to all unions, parishes or places to which such rule, order or regulation shall have been directed, and the same shall from the time of receiving such notice respectively be deemed and taken to be null and void to all intents and purposes whatsoever: provided, that such judgment shall

If rules are quashed, the same to be notified to parishes to which such rules have been directed.

Proviso for existing contracts.

(*f*) 29 & 30 Vict. c. 113, s. 4.
(*g*) 4 & 5 Will. IV. c. 76, s. 105.
(*h*) As to the title of the affidavits, 12 A. & E. 130.
(*i*) 4 & 5 Will. IV. c. 76, s. 106.
(*j*) *Ib.* s. 107.

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No person to be answerable until receipt of notice.

not have the effect of annulling any contracts made in pursuance or upon the authority of any such rule, order or regulation, which at the receipt of such notice respectively shall have been executed by either of the contracting parties: provided also, that no person shall be liable to be prosecuted, either by indictment or by civil action, for or in respect of any act done by him before the receipt of such notice, under the authority and in pursuance of such rule, order or regulation (*k*).

The certiorari, under 12 & 13 Vict. c. 103, s. 13, must be applied for within twelve months, it being enacted by that section, "that no writ of certiorari shall be granted, issued forth or allowed to remove into the Court of Queen's Bench any order, rule or regulation of the poor law commissioners, or of the poor law board, heretofore made, unless such certiorari be moved or applied for within twelve months next after the passing of this act, and in respect of any order, rule or regulation to be hereafter made, within twelve months next after the day when the copy thereof shall be sent in the manner required by the several statutes in that behalf." That an improper order would be valid until quashed, see *Newbould* v. *Coltman* (20 L. J. 14, M. C.), and *R.* v. *Governor of the Poor, &c. of Bristol* (18 L. J. 132, M. C.; 14 Jur. 568). An order may (like an order of justices) be quashed in part, if the parts be sufficiently divisible. (*Reg.* v. *Robinson*, 17 Q. B. Rep. 466.)

Penalty for wilful disobedience of rules, &c.

In case any person shall wilfully neglect or disobey any of the rules, orders or regulations of the commissioners, or be guilty of any contempt of the commissioners sitting as a board, such person shall, upon conviction before any two justices, forfeit and pay for the first offence any sum not exceeding 5*l.*, for the second offence any sum not exceeding 20*l.* nor less than 5*l.*, and in the event of such person being convicted a third time, such third and every subsequent offence shall be deemed a misdemeanor, and such offender shall be liable to be indicted for the same offence, and shall on conviction pay such fine, not being less than 20*l.*, and suffer such imprisonment, with or without hard labour, as may be awarded against him by the court by or before which he shall be tried and convicted (*l*).

Effect of violation of orders.

"Any contract which shall be entered into by or on behalf of any parish or union for or relating to the maintenance, clothing, lodging, employment or relief of the poor, or for any other purpose relating to or connected with the general management of the poor, which shall not be made and entered into in conformity with the rules, orders or regulations of the commissioners in that behalf in force at the time of making and entering into the same, or otherwise sanctioned by them, shall be voidable, and, if the said commissioners shall so direct, shall be null and void; and all payments made under or in pursuance of any contract not made and entered into in conformity with such rules, orders or regulations, at any period after the said commissioners shall have declared the same to be null and void as aforesaid, shall be disallowed in passing the accounts of the overseer, guardian or other officer by whom such payments shall have been made" (*m*).

All payments, charges and allowances made by any overseer or guardian, and charged upon the rates for the relief of the poor, contrary to the provisions of the Poor Law Amendment Act, or at variance with any rule, order or regulation of the commissioners, are declared to be illegal, any law, custom or usage to the contrary notwithstanding (*n*).

The introduction of the new system of poor laws under the "Poor Law Amendment Act, 1834," having been very gradual, the orders issued by the commissioners, although assuming by degrees the technical character of "general orders," as being addressed to more than one union (see ante, p. 28, note (*l*)), were not in fact of general application.

(*k*) 4 & 5 Will. IV. c. 76, s. 108.
(*l*) *Ib.* s. 98.
(*m*) *Ib.* s. 49.
(*n*) *Ib.* s. 89.

Upon the reconstruction of the poor law commissioners by the "Poor Law Board Act, 1847," a consolidation was effected as already stated (*o*) of general orders previously issued, and that general consolidated order bearing date 24th July, 1847, forms the foundation of the present orders. It was issued at the time to a large number of poor law unions then formed, and has been since issued to other unions subsequently formed, with such modifications and alterations as were required either by the intervening acts of parliament or as circumstances arose to call for them.

A variety of other independent orders have been also issued and are still from time to time issued to various unions (*p*).

CHAPTER III.

Of the Persons concerned in the Administration of the Poor Laws (*continued*).

II. Guardians of the Poor.

First introduction of Guardians.

The first introduction of guardians of the poor was by Gilbert's Act (22 Geo. III. c. 83) (*a*).

By that act all the power and authority given by any statute to overseers (with the exception of making and *collecting rates*), was transferred to *guardians* in every parish or united parishes, which adopted the provisions of that act. But as the guardians appointed under the "Poor Law Amendment Act, 1834" (4 & 5 Will. IV. c. 76) are the ordinary guardians throughout England and Wales, and the guardians under Gilbert's Act form the exception, the guardians of unions under "The Poor Law Amendment Act, 1834," are the subject of this chapter (*b*).

(*o*) See ante, p. 17.

(*p*) The mode in which the orders of the commissioners have been issued (and necessarily issued) from time to time, creates considerable difficulty in dealing with them in a work intended to form a complete code of the existing poor laws of general application throughout England and Wales. The difficulty arises from the fact indicated in the text that none of the orders are of general application in the sense in which an act of parliament is in force, and scarcely two orders are even co-extensive in their application, being limited to the particular unions or places named in them either originally or as they have been from time to time extended or applied. To insert the orders without stating the particular unions or places in which they are in force would lead to confusion and error, and to discriminate between the particular unions would be impracticable. The Consolidated Order of 24th July, 1847, is referred to in this work under the different heads to which it applies, and other orders are noticed and referred to when desirable. In no case should any action be taken upon an order without ascertaining that it has been applied to and is still in force without alteration in the particular union or place. The Orders have been collected and published by Mr. W. C. Glen, of the poor law board, in a volume of which several editions have appeared.

(*a*) See ante, pp. 7—10.

(*b*) See as to guardians in Gilbert's unions, post, Chap. VI.

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"The Poor Law Amendment Act, 1834," enacts, that "where any parishes shall be united by order or with the concurrence of the said commissioners for the administration of the laws for the relief of the poor, a board of guardians of the poor for such union shall be constituted and chosen, and the workhouse or workhouses of such union shall be governed, and the relief of the poor in such union shall be administered, by such board of guardians" (*c*).

The guardians are a corporation.

"The Union and Parish Property Act, 1835" (5 & 6 Will. IV. c. 69), contains the following provisions:—

Guardians incorporated.

"And, for the more easy execution of the purposes of this act, and of the laws relating to the poor, be it enacted, that the guardians of the poor of every union already formed or which hereafter shall be formed by virtue of the aforesaid act passed in the fourth and fifth years of the reign of his present Majesty, and of every parish placed under the control of a board of guardians by virtue of the said act, shall respectively from the day of their first meeting as a board become or be deemed to have become, and they and their successors in office shall for ever continue to be, for all the purposes of this act, a corporation, by the name of the guardians of the poor of the union (or of the parish of), in the county of ;

See 5 & 6 Vict. c. 57, s. 16, infra.

and as such corporation the said guardians are hereby empowered to accept, take, and hold, for the benefit of such union or parish, any buildings, lands, or hereditaments, goods, effects, or other property, and may use a common seal; and they are further empowered by that name to bring actions, to prefer indictments, and to sue and be sued, and to take or resist all other proceedings for or in relation to any such property, or any bonds, contracts, securities, or instruments given or to be given to them in virtue of their office; and in every such action and indictment relating to any such property it shall be sufficient to lay or state the property to be that of the guardians of the union, or of the parish of ; and in case of any addition to or separation of any parishes from any such union, under the authority of the said act passed in the fourth and fifth years of the reign of his present Majesty, the board of guardians for the time being shall (notwithstanding such alteration) have and enjoy the same corporate existence, property, and privileges as the board of guardians of the original union would have had and enjoyed had it remained unaltered" (*d*).

Previous sales made with the consent of the commissioners to be valid.

"All buildings, lands, or hereditaments, goods, effects, or other property, which, before the passing of this act, may have been conveyed, with the consent or under the directions of the said poor law commissioners, to any persons in trust for and for the use of any union or parishes, shall, without any further act, vest in the guardians thereof as such corporation, in the same manner as if the same respectively had been conveyed to or vested in them under the provisions of this act (*e*).

Corporate powers of board of guardians.

"The Poor Law Amendment Act, 1842," enacts, "that it shall be lawful for every board of guardians constituted under the said first-recited act (*f*) to accept, take, and hold, on behalf of the union or parish respectively for which they may act, any lands, buildings, goods, effects, or other property as a corporation, and in all cases to sue and be sued in their corporate name" (*g*).

The provisions of "The Poor Law Amendment Act, 1834," as to the mode of election of the guardians and otherwise, have been amended and amplified by subsequent statutes. The existing law, together with the rules issued by the commissioners, will be stated under the divisions mentioned at the head of this chapter.

(*c*) 4 & 5 Will. IV. c. 76, s. 38. As to guardians of single parishes, see post, § 4.

(*d*) 5 & 6 Will. IV. c. 69, s. 7.

(*e*) *Ib.* s. 8.

(*f*) 4 & 5 Will. IV. c. 76.

(*g*) 5 & 6 Vict. c. 57, s. 16.

§ 1. NUMBER AND QUALIFICATION OF GUARDIANS.

"The commissioners shall determine the number and prescribe the duties of the guardians to be elected in each union, and also fix a qualification, without which no person shall be eligible as such guardian, such qualification to consist in being rated to the poor-rate of some parish or parishes in such union, but not so as to require a qualification exceeding the annual rental of forty pounds and shall also determine the number of guardians which shall be elected for any one or more of such parishes, having due regard to the circumstances of each such parish: provided always, that one or more guardians shall be elected for each parish included in such union" (*h*).

"The Poor Law Amendment Act, 1867," enacts, that "the qualification of a guardian described by the Poor Law Amendment Act, 1834, shall be determined with reference to the annual rateable value of the property in respect of which his qualification is claimed" (*i*).

"The Poor Law Amendment Act, 1834" (4 & 5 Will. IV. c. 76, s. 41), required the consent of guardians and persons interested to the alteration of unions (*k*); but by the "Poor Law Amendment Act, 1844," "it shall be lawful for the said commissioners, having due regard to the relative population or circumstances of any parish included in a union, to alter the number of guardians to be elected for such parish, without such consent as is required by the said first-recited act" (*l*).

Number of guardians may be altered with reference to population, &c.

"No person, during the time for which he may serve or hold the office of assistant overseer of any parish, nor any paid officer engaged in the administration of the laws for relief of the poor, nor any person who, having been a paid officer, shall have been dismissed within five years previously, from such office, under the provisions of the said first-recited act, shall be capable of serving as a guardian; and no person receiving any fixed salary or emolument from the poor-rates in any parish or union shall be capable of serving as a guardian in such parish or union" (*m*).

Paid officers incapable of serving as guardians.

It is to be observed, also, that persons concerned in providing, or in any contract for the supply of any goods, materials, or provisions for the use of any workhouse or otherwise for the support or maintenance of the poor, for their own profit, would be ineligible, as they would be liable to penalties for acting as guardians (*n*).

Persons concerned in contracts ineligible.

"Every justice of the peace residing in any such parish, and acting for the county, riding, or division in which the same may be situated, shall be an *ex officio* guardian of such united or common workhouses, and shall, until such board of guardians shall be duly elected and constituted as aforesaid, and also, in case of any irregularity or delay in any subsequent election of guardians, receive and carry into effect the rules, orders, and regulations of the said commissioners; and after such board shall be elected and constituted as aforesaid, every such justice shall *ex officio* be and be entitled, if he think fit, to act as a member of such board, in addition to and in like manner as such elected guardians: provided always, that, except where otherwise ordered by the said com-

Ex officio guardians.

No guardian to

(*h*) 4 & 5 Will. IV. c. 76, s. 38. The proviso that "one or more guardians shall be elected for each parish" means that the commissioners shall direct one or more to be elected for each parish, and the mere omission to elect would not, it seems, prevent a competent board being formed, even without the assistance of the 5 & 6 Vict. c. 57, s. 12 (post, p. 42), which meets such a contingency. See *Reg.* v. *Todmorden*, 1 Q. B. Rep. 185; 4 P. & D. 553.

(*i*) 30 & 31 Vict. c. 106, s. 4.

(*k*) See post, Chap. IX.

(*l*) 7 & 8 Vict. c. 101, s. 18.

(*m*) 5 & 6 Vict. c. 57, s. 14. According to the opinion of Lord *Campbell*, taken when attorney-general, by the commissioners, a churchwarden or overseer may be elected guardian for his parish.

(*n*) 5 & 6 Vict. c. 57, s. 51.

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missioners, and also except for the purpose of consenting to the dissolution or alteration of any union or any addition thereto, or to the formation of any union for the purposes of settlement or rating, no *ex officio* or other guardian of any such board as aforesaid shall have power to act in virtue of such office, except as a member and at a meeting of such board" (*o*).

have power except at a local board, unless otherwise directed by the commissioners.

Justices who reside in extra-parochial places or parishes within unions to be ex officio guardians.

"When any union has been formed under the provisions of the said first-recited act (*p*), or where the said commissioners have under the provisions of the said act directed that the laws for the relief of the poor of any single parish shall be administered by a board of guardians, every justice of the peace acting for the county, riding, or division in which such union or parish, or any part thereof, is situated, and residing in any extra-parochial place the boundary line of which, or the greater part of the boundary line of which, is included within or coincident with the boundary line of such union or parish, shall be *ex officio* a guardian of such union or parish; and every justice of the peace residing in any parish within such a union, and acting for any county, riding, or division in which any part of such union is situated, shall be *ex officio* a guardian of such union" (*q*).

Borough justices are not ex officio guardians.

A borough justice is not a guardian *ex officio*. (See *Evans* v. *Stevens*, 4 T. R. 224, 459.) For notwithstanding the interpretation clause by which the words "justice or justices of the peace" shall be construed to include justices of the peace of any county, division of a county, riding, borough, liberty, division of a liberty, precinct, county of a city, county of a town, cinque port, or town corporate, unless where otherwise provided" (*r*), the words of the act, "justices acting for the *division*, riding or division," apply to counties and not to towns, &c. of exclusive jurisdiction.

Sheriff cannot be a guardian.

The sheriff of a county cannot act as a guardian *ex officio* in such county during his office, as, by 1 Mary, s. 2, c. 8, he is incompetent to act as a justice for the county.

"The Poor Law Amendment Act, 1867" (30 & 31 Vict. c. 106) contains the following clause (s. 27) :—

Jurisdiction of justices in unions (*s*).

"Where a union extends into several distinct jurisdictions, every matter, act, charge, or complaint by which the guardians thereof are affected, or in which they have any interest, shall for the purpose of jurisdiction be deemed to arise or exist equally throughout the union."

§ 2. ELECTION OF GUARDIANS.

Elections.

"The said guardians shall be elected by the rate-payers, and by such owners of property in the parishes forming such union as shall in manner hereinafter mentioned require to have their names entered as entitled to vote as owners in the books of such parishes respectively" (*t*).

(*o*) 4 & 5 Will. IV. c. 76, s. 38. "And whereas doubts have been entertained whether justices of the peace who are *ex officio* members of boards of guardians of parishes or unions under the provisions of the first-recited act can lawfully act as justices of the peace in cases in which the guardians of such parishes or unions are complainants, or are otherwise interested or concerned, and it is expedient that such doubts should be removed; be it therefore enacted, that 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 matter 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." 5 & 6 Vict. c. 57, s. 15.

(*p*) 4 & 5 Will. IV. c. 76.

(*q*) 7 & 8 Vict. c. 101, s. 24.

(*r*) 4 & 5 Will. IV. c. 76, s. 109.

(*s*) The marginal note appears to explain the scope of the section, which is itself somewhat obscure.

(*t*) 4 & 5 Will. IV. c. 76, s. 38.

"In all cases of the election of guardians under this act, or wherever the consent of the owners of property or rate-payers in any parish or union shall be required for any of the purposes of this act, except when otherwise expressly provided for in this act, the votes of such owners and rate-payers shall be given or taken in writing, collected and returned (*u*) in such manner as the said commissioners shall direct; and in every such case *the owner*, as well as the rate-payer, in respect of any property in such parish or union, shall be entitled to vote (*x*), and" ["every owner of property and rate-payer shall have respectively the same number and proportion of votes, according to the scale following: (that is to say,) if the property in respect of which he is entitled to vote be rated upon a rateable value of less than fifty pounds, he shall have one vote; if such rateable value amount to fifty pounds and be less than one hundred pounds, he shall have two votes; if it amount to one hundred pounds and be less than one hundred and fifty pounds, he shall have three votes; if it amount to one hundred and fifty pounds and be less than two hundred pounds, he shall have four votes; if it amount to two hundred pounds and be less than two hundred and fifty pounds, he shall have five votes; and if it amount to or exceed two hundred and fifty pounds, he shall have six votes" (*y*)]: "and the majority of the votes of such owners and rate-payers which shall be actually collected and returned shall in every such case be binding on such parish: and for the purpose of ascertaining the number of votes to which each such owner shall be entitled, the aggregate amount of the assessment for the time being of any property belonging to such owner in such parish, or on any person or persons in respect of the same, to the poor-rate shall be deemed to be and be taken as the annual value of such property to such owner; and where any such owner shall be the bonâ fide occupier of any such property, he shall be entitled to vote as well in respect of his occupation as of his being such owner: provided always, that it shall be lawful for any owner from time to time, by writing under his hand, to appoint any person to vote as his proxy; and every such appointment shall remain in force until revoked or recalled by such owner; but no owner shall be entitled to vote, either in person or proxy, unless he shall, *previous to the day on which he shall claim to vote*, have given a statement in writing of his name and address, and the description of the property in the parish as owner whereof, or proxy for the owner whereof, he claims to vote, and if such proxy, the original or an attested copy of the writing appointing him such proxy, to the overseers of such parish; and the said overseers are hereby required to enter in the rate books of such parish, or in some other book to be from time to time provided for that purpose, the names and addresses of the owners and proxies who shall send such statements, and the assessment of the rate for the relief of the poor of the property in respect whereof they respectively claim to vote: provided also, that every person who shall not vote, or who shall not comply with the directions to be made by the said commissioners for the giving, taking or returning of votes, shall be omitted in the calculation of votes, and considered as having had no vote on the question whereon he might have voted: provided also, that no person shall be deemed a rate-payer, or be entitled to vote, or do any other act, matter or thing as such, under the provisions of this act, unless he shall have been rated to the relief of the poor for the whole year immediately preceding his so voting or otherwise acting as such

Votes to be taken in writing, and *owners* as well as occupiers to vote.

Votes may be given by proxy.

No ratepayer to vote unless rated one year.

(*u*) Under this clause the overseers of townships in a union may be directed to meet and appoint a returning officer for the election of guardians. (*R.* v. *Oldham* (*Overseers of*), 16 L. J., M. C. 110.)

(*x*) 4 & 5 Will. IV. c. 76, s. 40.

(*y*) 7 & 8 Vict. c. 101, s. 14, repealing the previous provisions as to the scale of voting, of the 4 & 5 Will. IV. c. 70, s. 40.

rate-payer, and shall have paid the parochial rates and assessments made (*z*) and assessed upon him for the period of one whole year, as well as those due from him at the time of so voting or acting, except such as shall have been made or become due within the six months immediately preceding such voting or acting: provided always, that in cases of property belonging to any corporation aggregate, or to any joint-stock or other company, no member of such corporation, or proprietor of or interested in such joint-stock or other company, shall be entitled to vote as such owner in respect thereof; but any officer of such corporation, joint-stock or other company, whose name shall be entered by the direction of the governing body of such corporation or company in the books of the parish, in the manner hereinbefore directed with respect to the owner of property, shall be entitled to vote in respect of such property in the same manner as if he were the owner thereof" (*a*).

Voting of corporations and joint-stock companies as rate-payers.

"Where any corporation aggregate, joint-stock or other company, commissioners or public trustees shall be rated, any officer of such corporation, company, commissioners or public trustees from time to time appointed by the governing body thereof whose name shall be sent in writing to the overseers before the first day of March in any year, to be entered in the rate book under the name of such corporation, company, commissioners or public trustees, shall be entitled to vote in respect of the property assessed as if he were assessed in his own name for the same, and in the case of a parish divided into wards (*b*) shall vote in that ward where the principal office of the corporation, company, commissioners or public trustees shall be situated, if any, or otherwise in that ward where the greatest part of the property assessed shall be situated" (*c*).

Regulations as to votes of owners and of proxies.

"The Poor Law Amendment Act, 1844," enacts, that "no owner of property shall be entitled to vote as such, under the provisions of the said recited act (*d*), either in person or proxy (*e*), during the year following the twenty-fifth day of March in any year, unless before the first day of February next preceding such twenty-fifth day of March he had given to the overseers the statement required by the said act, signed by him, nor unless such statement contain a description of the nature of the interest or estate he may have in such property, and a statement of the amount of all rent service (if any) which he may receive or pay in respect thereof, and of the persons from whom he may receive or to whom he may pay such rent service; and no person shall be entitled to vote as proxy until fourteen days after he have made his claim so to vote in the manner required by the said act; and no person shall be entitled to vote as proxy for more than four owners of property in any one parish (except he be a steward, bailiff or land agent, or collector of rents for the owners of property for whom he may be appointed to vote); and no appointment of proxy shall remain in force for a longer period than two years from the making thereof, excepting only in the case in which an owner appoints his tenant, bailiff, steward, land agent or collector of rents to be his proxy, in which case such appointment shall

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(*z*) The parochial rates and assessments mentioned here extend only to rates made for the relief of the poor. 7 & 8 Vict. c. 101, s. 16. But "where money has been collected in any parish by an assessment under the name and as and for a poor rate, the same shall be deemed to be a rate made for the relief of the poor within the meaning the 40th section of 'The Poor Law Amendment Act, 1834,' and the 16th section of 'The Poor Law Amendment Act, 1844,' notwithstanding any defect in the form of such assessment." (30 & 31 Vict. c. 106, s. 11.) The marginal note of this section is in these words:—"Informal poor rate, if paid, to qualify voters at the election of guardians."

(*a*) 4 & 5 Will. IV. c. 76, s. 40.

(*b*) As to Wards, see post, p. 40.

(*c*) 30 & 31 Vict. c. 106, s. 10.

(*d*) 4 & 5 Will. IV. c. 76.

(*e*) See, however, as to voting by proxy, sect. 5 of the 30 & 31 Vict. c. 106, post, p. 40.

remain in force so long as the proxy may continue to be such tenant, bailiff, steward, land agent or collector, and such appointment remains unrevoked; and the overseers of every parish containing a population exceeding two thousand persons, according to the last enumeration of the population published by the authority of parliament, shall, on or before the fifth day of the month of February in every year, enter in the book to be from time to time provided for the purpose the names and addresses of all persons who before the first day of the said month of February have given such statement or made such claims as owners or proxies as aforesaid; and such overseers shall allow any person to peruse such book, without payment of any fee, at all reasonable hours between the said fifth day and the tenth day of February; and any person who has given such statement, or made such claim, or any rate-payer of such parish, may, on or before the fifteenth day of the said month of February, object to any other person as not being entitled to vote as such owner, by delivering to the clerk of the board of guardians of the said parish, or of the union in which it may be comprised, and at the address of the person objected to, notice in writing of the grounds of such objection; and on or before the twentieth day of such month of February such clerk shall send to the overseers of such parish notice of some day, between the twenty-fourth of the said month and the first of March then next, on which he or some person duly appointed for the purpose will hear evidence in relation to such objections, and of the place within the parish or union at which he or such other person will attend to hear such evidence; and such overseers shall forthwith cause a copy of such notice to be fixed on or near the doors of all churches or chapels within such parish, and at all the usual places of affixing notices of parochial business; and such clerk shall attend on the day and at the place so appointed, and shall, in the presence of all persons who may think fit to be present, hear any matter adduced in support of such grounds of objection, or in opposition thereto, but none other; and the overseers of the said parish shall then and there attend, and produce to such clerk the rate-books of the parish for the whole year preceding, and shall answer all such questions as such clerk may put to them or any of them touching the matter of any such objection; and such clerk shall retain in the said book the name of all persons to whom no objection has been duly made, and of all persons objected to, unless the party objecting have appeared in support of his objection, and established such objection, and when the name of any person has been duly objected to, such clerk shall require proof of the right of such person to vote as owner; and in case any matter be adduced in support of the objection, and the right of the person objected to be not proved to the satisfaction of such clerk, he shall expunge the name of such person from such book; and such clerk shall have power to adjourn from time to time, and administer an oath to the overseers of any parish, and to all persons attending before him claiming a right to vote as owners or objecting to such right, and to all witnesses who may be tendered or examined on either side; and such clerk shall write his initials against every name struck out, and sign his name to every page of the said book; and the persons whose names as owners are retained by such clerk in such book shall be the only persons entitled to vote in such parish as owners of property for the year following the twenty-fifth of March next ensuing: provided always, that the said commissioners may, if they see fit, by order under their hands and seal, direct the guardians of such parish or union to appoint some person, other than the clerk to such guardians, as a paid officer, to hear and decide the matter of such objections as aforesaid, who shall have all such powers as are hereinbefore given to the clerk, and perform all such duties as are hereinbefore imposed on the clerk in that behalf" (*f*).

Register.

Objection.

(*f*) 7 & 8 Vict. c. 101, s. 15.

Owners residing in parishes not to vote by proxy.

"The Poor Law Amendment Act, 1867," enacts, that "no owner shall vote by proxy at the election of a guardian for any parish or ward therein if at the time of such election he shall be residing within the said parish" (*g*).

Overseers may object to names of owners on the register.

The last-mentioned statute, "The Poor Law Amendment Act, 1867" contains the following provisions as to the register of owners:—

"The overseers may object to the names of any persons entered on the register of owners whom they shall believe to be dead, or to be disqualified from voting as such owners, and shall give public notice according to the provision in "The Poor Law Amendment Act, 1844," of the names to which they have made objections on some day between the fifth and fifteenth days of February, and shall send a copy of such notice to the clerk of the guardians, who shall hear and decide such objections at the time of his revision of the said register, in like manner as in the case of other objections" (*h*).

Overseers may make fresh registers.

"The overseers may from time to time make a fresh register of owners who have claimed to vote for guardians and of proxies as they shall find necessary, causing the names to be copied from the former register, and the two to be carefully collated and verified" (*i*).

Returning officer to be concluded by the register, whether revised or not.

"The returning officer at the election of guardians shall, in all parishes in which a revision can take place, be concluded by the entries in the register, whether such register has or has not been revised" (*k*).

For purposes of election parishes may be divided into wards.

"In every case in which a parish in which guardians are to be elected under the provisions of the said first-recited act (*l*), contains more than twenty thousand persons, according to the enumeration of the population then last published by authority of parliament, it shall be lawful for the said commissioners, by order under their hands and seal, for the purpose of conducting the election of guardians, to divide such parish into such and so many wards as they may deem expedient, so that no such wards shall contain a number of rated houses less than four hundred, and to determine the number of guardians to be elected for every such ward, having due regard to the value of the rateable property therein; and each such ward shall, for the purpose of every election of guardians, so far as the said commissioners may direct, be considered as a separate parish" (*m*).

Qualifications of guardians in wards.

"In every case in which a parish is divided into wards for the purpose of electing guardians, every person qualified to be elected as a guardian in the parish shall be qualified to be elected in any ward within the same parish; but no person shall at any election of guardians be elected for more than one ward within the same parish; and if at any such election a person be nominated in two or more wards, the returning officer at such election shall, if such person reside within the parish, give such person notice thereof in writing, to be left at his place of residence on the day following the last day fixed for the nomination of candidates, and such person, whether he reside in the parish or not, may at any time, until two days preceding the issuing of the voting papers, elect by notice in writing delivered to the returning officer any one ward for which he will stand an election; and if he do not so elect some one ward the returning officer shall place his name on the list of candidates for that ward only for which he was first duly nominated" (*n*).

Sect. 21 of 7 & 8 Vict. c. 101, repealed, and other provisions made as to voting in wards.

"The Poor Law Amendment Act, 1867," repealing the corresponding provision of "The Poor Law Amendment Act, 1844," enacts, that "no person in any future election of guardians entitled to vote shall give in the whole of the wards into which a parish may be divided a greater number of votes than he would have been entitled to have given if the

(*g*) 30 & 31 Vict. c. 106, s. 5.
(*h*) *Ib.* s. 7.
(*i*) *Ib.* s. 8.
(*k*) *Ib.* s. 9.
(*l*) 4 & 5 Will. IV. c. 76.
(*m*) 7 & 8 Vict. c. 101, s. 19.
(*n*) *Ib.* s. 20.

parish had not been divided into wards, nor in any one ward a greater number of votes than he is entitled to in respect of property in that ward; but any such rate-payer or owner may, by notice in writing signed by him, and delivered to the overseers of the parish before the day appointed for the annual nomination of candidates, elect in what ward or wards he will vote for the ensuing year, and determine what proportion of votes, having regard to the property situated therein, he will give in any one or more such wards; and if he do not give such notice his vote shall only be taken for the ward in which he resides, or, if he do not reside within the parish, for that ward in which the greater part of such property according to its annual rateable value shall be situated; provided that no person shall be qualified to nominate a guardian for any ward in which he is not qualified to vote" (*o*).

Resignation of candidates.

"If any person put in nomination for the office of guardian tender to the officer conducting the election of guardians his refusal in writing to serve such office, the election of guardians, so far as regards such person, shall be no further proceeded with" (*p*).

Determination of disputes as to the election, &c. of guardians.

"In case any question shall arise as to the right of any person to act as an elective guardian it shall be lawful for the commissioners, if they shall see fit, to inquire into the circumstances of the case, and to issue such order or orders therein, under their hands and seal, as they may deem requisite for determining the question; and no such order shall be liable to be removed by writ of certiorari into the court of Queen's Bench unless the application for such writ shall be made during the term next after the issuing of such order" (*q*).

When election set aside, previous guardian not entitled to act as guardian.

"When any question as to the election of a guardian is decided by the poor law board, and according to their decision the election in the parish for which he shall have been returned is declared to have been null, the guardian elected at any election in the previous year shall not be entitled to serve as such guardian for the remainder of the current year, but the poor law board shall issue an order for a fresh election" (*r*).

Penalties for malpractices at the election of guardians.

"If any person, pending or after the election of any guardian or guardians, shall wilfully, fraudulently, and with intent to affect the result of such election, commit any of the acts following; that is to say, fabricate in whole or in part, alter, deface, destroy, abstract or purloin any nomination or voting paper used therein; or personate any person entitled to vote at such election; or falsely assume to act in the name or on the behalf of any person so entitled to vote; or interrupt the distribution or collection of the voting papers; or distribute or collect the same under a false pretence of being lawfully authorized to do so; every such person so offending shall for every such offence be liable, upon conviction thereof before any two justices, to be imprisoned in the common gaol or house of correction for any period not exceeding three months, with or without hard labour" (*s*).

Duration in Office of Elected Guardians.

"The Poor Law Amendment Act," 4 & 5 Will. IV. c. 76, enacted, that "such guardians, when so elected, shall continue in office until the twenty-fifth day of March next following their appointment, or until others are appointed in their stead, and on such twenty-fifth day of March, or if that day should fall on a Sunday or a Good Friday, then on the day next following, or within *fourteen days* (*t*) next after the said

(*o*) 30 & 31 Vict. c. 106, s. 6.

(*p*) 5 & 6 Vict. c. 57, s. 9.

(*q*) *Ib.* s. 8. Previous to this statute it had been held that the validity of the election of a guardian cannot be tried on an information in the nature of a *quo warranto*. (*Re Aston Union*, 6 A. & E. 784; and see *Reg.* v. *Ramsden*, 3 A. & E. 784.)

(*r*) 30 & 31 Vict. c. 106, s. 12.

(*s*) 14 & 15 Vict. c. 105, s. 3.

(*t*) "40 days," 7 & 8 Vict. c. 101, s. 17.

twenty-fifth day or March in every year, such guardians shall go out of office, and the guardians for the ensuing year shall be chosen" (*u*).

Annual election of guardians to take place within forty days after the 25th of March.

The 7 & 8 Vict. c. 101, reciting the above provision of the 4 & 5 Will. IV. c. 76, that guardians of the poor elected under the provisions of that act shall go out of office, and guardians for the ensuing year shall be chosen within fourteen days next after the twenty-fifth day of March in every year, and reciting that such period hath been found to be too short, and it is expedient to extend the same; enacted, "that the period within which the annual election of guardians shall take place shall be extended to the period of forty days next after the said twenty-fifth day of March, and that the guardians of the preceding year shall continue in office for the said period of forty days, or until the election of guardians for the succeeding year have taken place" (*v*).

The new board of guardians to be constituted from and after the 15th April in each year.

By the "Poor Law Amendment Act, 1851," however, "the guardians elected for the several parishes in any union formed or to be formed under 4 & 5 Will. IV. c. 76, or for the several wards in any parish divided into wards, shall continue to act as such until the fifteenth day of April inclusive in each year, notwithstanding their successors may have been elected previously to that day; and from and after the said fifteenth day of April every guardian elected for any such parish or ward shall act as such guardian for the ensuing year" (*x*).

"In the event of any vacancy occurring in such board, by the death, removal or resignation, or refusal or disqualification to act of any elected guardian between the periods of such first and the next and any subsequent annual election, or in case the full number of guardians shall not be duly elected at such subsequent election of guardians for the time being, the other or remaining members of the said board shall continue to act until the next election, or until the completion of the said board, as if no such vacancy had occurred, and as if the number of such board were complete: provided also, that nothing herein contained shall prevent such owners and rate-payers from re-electing the same persons or any or either of them to be guardians for the year next ensuing, nor from electing as a guardian any person who may already have been chosen as a guardian of any other parish" (*y*).

Guardians may be re-elected.

Continuance of guardians in office, where no election.

"In every case in which no person shall be elected for the office of guardian in any parish at any annual election of guardians, the persons elected for the previous year may continue to act as guardians until the next annual election" (*z*).

Commissioners may accept resignation of any guardian, and may order new election.

"The said commissioners may accept the resignation of any person elected as a guardian tendered for any cause which the commissioners may deem reasonable; and in every case of omission to elect, or of vacancy in any board of guardians, by death, resignation, or disqualification, the said commissioners shall be and shall be deemed to have been empowered to order a new election for the completion of such board" (*a*).

In case of vacancy, remaining guardians to act.

"In case the full number of guardians shall not be or shall not have been elected at any election of guardians (*b*), or in case of any vacancy in any board of guardians by the death, removal, resignation, refusal or disqualification to act of any elected guardian, the other or remaining members of the said board, being not less than three, shall be and be

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(*u*) 4 & 5 Will. IV. c. 76, s. 38.
(*v*) 7 & 8 Vict. c. 101, s. 17.
(*x*) 14 & 15 Vict. c. 105, s. 2.
(*y*) 4 & 5 Will. IV. c. 76, s. 38.
(*z*) 5 & 6 Vict. c. 57, s. 10.
(*a*) *Ib.* s. 11.
(*b*) *Ib.* s. 12. In consequence of the use of the words "*subsequent* election" in the 38th section of the 4 & 5 Will. IV. c. 76, an attempt was made to invalidate the constitution of a board of guardians where one parish had, from the formation of the union, refused to elect a guardian. (*Reg.* v. *Todmorden*, 1 Q. B. Rep. 185; 4 P. & D. 553.) The introduction of the words "any election" avoids any possible distinction between the original or subsequent election.

deemed to have been competent to act until the next election, or until the completion of the said board, as if the number of such board were complete, and that no acts or proceedings shall be liable to be questioned on account of any failure to elect any guardian or guardians, or on account of any vacancy as aforesaid."

Mode of election.

The General Consolidated Order of the 24th July, 1847 (*c*) contains various articles respecting the election of guardians (*d*).

(*c*) As to this order, see ante, p. 33.

(*d*) Although, for the reasons stated, ante, p. 33, note (*p*), it has been found inexpedient to give the poor law orders at length, the following relating to the election of guardians are inserted by way of illustration and example of the minute details embraced by the orders:—

Art. 1. "The overseers of every parish in the union shall, before the twenty-sixth day of March in every year, distinguish in the rate book the name of every ratepayer in their parish who has been rated to the relief of the poor for the whole year immediately preceding the said day, and has paid the poor rates made and assessed upon him for the period of one whole year, except those which have been made or become due within the six months immediately preceding the said day.

Art. 2. "The clerk shall at every future annual election of guardians perform the duties hereby imposed upon him, and all other duties suitable to his office which it may be requisite for him to perform in conducting and completing such election; and in case the office of clerk shall be vacant at the time when any duty relative to such election is imposed on the clerk by this order, or in case the clerk, from illness or other sufficient cause, shall be unable to discharge such duties, the guardians shall appoint some person to perform such of the said duties as then remain to be performed, and the person so appointed shall perform such duties.

Art. 3. "The guardians shall, before and during every such election, appoint a competent number of persons to assist the clerk in conducting and completing the election in conformity with this order; but if the guardians do not make such appointment within the requisite time, the clerk shall take such measures for securing the necessary assistance as he may deem advisable.

Art. 4. "The persons appointed under Art. 3 shall obey all the directions relative to the conduct of the election, which may be given by the clerk for the execution of this order.*

Art. 5. "The overseers of every parish in the union, and every officer having the custody of the poor rate books of any such parish, shall attend the clerk at such times as he shall require their attendance, until the completion of the election of guardians, and shall, if required by him, produce to him such rate books, and the registers of owners and proxies, together with the statements of owners, and appointments and statements of proxies, and all books and papers relating to such rates in their possession or power: Provided that, where any register of owners shall have been prepared in any parish containing a population exceeding two thousand persons, it shall not be necessary to produce the statements of owners.

Art. 6. "The clerk shall prepare and sign a notice, which may be in the form marked (A.) hereunto annexed,† and which shall contain the following particulars:—

1st. The number of guardians to be elected for each parish in the union.

2nd. The qualification of guardians.

3rd. The persons by whom, and the places where the nomination papers in respect of each parish are to be received, and the last day on which they are to be sent.

4th. The mode of voting in case of a contest, and the days on which the voting papers will be delivered and collected.

5th. The time and place for the examination and casting up of the votes.

* The following additional clause has been inserted in subsequent orders: "The day on which voting papers may be received, if there should be a default of delivery, and the day on which voting papers may be delivered to the clerk if there should be a default in the collection."

† It has not been thought necessary to encumber the work by inserting these official forms.

§ 3. THE POWERS AND DUTIES OF GUARDIANS.

General powers.

It has been already seen that when a union is formed under the Poor Law Amendment Act, 4 & 5 Will. IV. c. 76, the workhouse of the union

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And the clerk shall cause such notice to be published on or before the fifteenth day of March, in the following manner :—

1st. A printed copy of such notice shall be affixed on the principal external gate or door of every workhouse in the union, and shall from time to time be renewed, if necessary, until the ninth day of April.

2nd. Printed copies of such notice shall likewise be affixed on such places in each of the parishes of the union as are ordinarily made use of for affixing thereon notices of parochial business.

Provided that whenever the day appointed in this order for the performance of any act relating to or connected with the election of guardians shall be a Sunday or Good Friday, such act shall be performed on the day next following, and each subsequent proceeding shall be postponed one day.

Art. 7. "Any person entitled to vote in any parish may nominate for the office of guardian thereof, himself, or any other person or number of persons (not exceeding the number of guardians to be elected for such parish), provided that the person or persons so nominated be legally qualified to be elected for that office.

Art. 8. "Every nomination shall be in writing in the form marked (B.) hereunto annexed,* and be signed by one person only, as the party nominating, and shall be sent after the fourteenth and on or before the twenty-sixth day of March to the clerk, or to such person or persons as may have been appointed to receive the same, and the clerk or such person or persons shall, on the receipt thereof, mark thereon the date of its receipt, and also a number according to the order of its receipt; provided that no nomination sent before the fifteenth or after the said twenty-sixth day of March shall be valid.†

Art. 9. "If the number of the persons nominated for the office of guardian for any parish shall be the same as, or less than, the number of guardians to be elected for such parish, such persons, if duly qualified, shall be deemed to be the elected guardians for such parish for the ensuing year, and shall be certified as such by the clerk under his hand as hereinafter provided in Art. 22.

Art. 10. "But if the number of the duly-qualified persons nominated for the office of guardian for any parish shall exceed the number of guardians to be elected therein, the clerk shall cause voting papers, in the form marked (C.) hereunto annexed,* to be prepared and filled up, and shall insert therein the names of all the persons nominated in the order in which the nomination papers were received, but it shall not be necessary to insert more than once the name of any person nominated.

Art. 11. "The clerk shall on the fifth day of April cause one of such voting papers to be delivered, by the persons appointed for that purpose, to the address in such parish of each rate-payer, owner, and proxy qualified to vote therein.

Art. 12. "If the clerk consider that any person nominated is not duly qualified to be a guardian, he shall state in the voting paper the fact that such person has been nominated, but that he considers such person not to be duly qualified.

Art. 13. "If any person put in nomination for the office of guardian in any parish shall tender to the officer conducting the election his refusal, in writing, to serve such office, and if in consequence of such refusal the number of persons nominated for the office of guardian for such parish shall be the same as, or less than, the number of guardians to be elected for such parish, all or so many of the remaining candidates as shall be duly qualified shall be deemed to be the elected guardians for such parish for the ensuing year, and shall be certified as such by the clerk under his hand, as hereinafter provided in Art. 22.

Art. 14. "Each voter shall write his initials in the voting paper delivered to him against the name or names of the person or persons (not exceeding the number of guardians to be elected in the parish) for whom he intends to vote, and shall sign such voting paper; and when any person votes as a proxy, he

* See note †, ante, p. 43.

† Where the 26th March fell on a Sunday, it was held that the delivery of a nomination paper on that day was valid notwithstanding the provision in Art. 6. (*Westbury-upon-Severn Union Case*, 4 E. & B. 314.)

shall in like manner write his own initials and sign his own name, and state also, in writing, the name of the person for whom he is proxy.

Art. 15. "Provided that, if any voter cannot write, he shall affix his mark at the foot of the voting paper in the presence of a witness, who shall attest the affixing thereof, and shall write the name of the voter against such mark, as well as the initials of such voter against the name of every candidate for whom the voter intends to vote.

Art. 16. "If the initials of the voter be written against the names of more persons than are to be elected guardians for the parish, or if the voter do not sign or affix his mark to the voting paper, or if his mark be not duly attested, or his name be not duly written by the witness, or if a proxy do not sign his own name, and state in writing the name of the person for whom he is proxy, such voter shall be omitted in the calculation of votes.

Art. 17. "The clerk shall cause the voting papers to be collected on the seventh day of April, by the persons appointed or employed for that purpose, in such manner as he shall direct.

Art. 18. "No voting paper shall be received or admitted unless the same have been delivered at the address in each parish of the voter, and collected by the persons appointed or employed for that purpose, except as is provided in Art. 19.

Art. 19. "Provided that every person qualified to vote, who shall not on the fifth day of April have received a voting paper, shall, on application before the eighth day of April to the clerk at his office, be entitled to receive a voting paper, and to fill up the same in the presence of the clerk, and then and there to deliver the same to him.

Art. 20. "Provided also, that in case any voting paper duly delivered shall not have been collected through the default of the clerk, or the persons employed for that purpose, the voter in person may deliver the same to the clerk before twelve o'clock at noon on the eighth day of April.

Art. 21. "The clerk shall, on the ninth day of April, and on as many days immediately succeeding as may be necessary, attend at the board room of the guardians of the union, and ascertain the validity of the votes, by an examination of the rate-books, and the registers of owners and proxies, and such other documents as he may think necessary, and by examining such persons as he may see fit; and he shall cast up such of the votes as he shall find to be valid, and to have been duly given, collected, or received, and ascertain the number of such votes for each candidate.

Art. 22. "The candidates, to the number of guardians to be elected for the parish, who being duly qualified, shall have obtained the greatest number of votes, shall be deemed to be the elected guardians for the parish, and shall be certified as such by the clerk under his hand.

Art. 23. "The clerk, when he shall have ascertained that any candidate is duly elected as guardian, shall notify the fact of his having been so elected, by delivering or sending, or causing to be delivered or sent, to him a notice in the form (D.) hereunto annexed.*

Art. 24. "The clerk shall make a list containing the names of the candidates, together with (in case of a contest) the number of votes given for each, and the names of the elected guardians, in the form marked (E.) hereunto annexed (*), and shall sign and certify the same, and shall deliver such list, together with all the nomination and voting papers which he shall have received, to the guardians of the union, at their next meeting, who shall preserve the same for a period of not less than two years.

Art. 25. "The clerk shall cause copies of such list to be printed, and shall deliver or send, or cause to be delivered or sent, one or more of such copies to the overseers of each parish.

Art. 26. "The overseers shall affix, or cause to be affixed, copies of such list at the usual places for affixing in each parish notices of parochial business.

Art. 27. "In case of the decease, necessary absence, refusal, or disqualification to act, during the proceedings of the election, of the clerk or any other person appointed or employed to act in respect of such election, the delivery of the nominations, voting papers, or other documents to the successor of the clerk or person so dying, absenting himself, refusing or disqualified to act, shall, notwithstanding the terms of any notice issued, be as valid and effectual as if they had been delivered to such clerk or person."

* See note †, ante, p. 43.

guardians (*i*). The ordering, giving, and directing all relief under this power belongs exclusively (subject to the power of the commissioners constituting the poor law board) to such guardians (*k*). The parish officers are liable to a penalty for disobeying the legal and reasonable orders of guardians in carrying the orders of the commissioners or the provisions of the law into execution (*l*). In addition to the general powers and duties thus vested in the guardians, special provision is made for their acting in respect of a variety of matters.

Powers with the approbation or consent of commissioners.

Where the parishes of a union are in the same county or magisterial division, the guardians may agree (with the approbation of the board) that all the parishes shall be considered as one parish for the purpose of raising in common the necessary funds for the relief of the poor (*m*), and they may enforce the contribution of parishes (*n*).

With the like consent the guardians may apply for the advance of public money for the purpose of purchasing, building, altering or enlarging workhouses, and for the purchase of land whereon to build them, or for defraying the expenses of emigration (*o*), and they may with the like approbation sell, exchange, let, or otherwise dispose of workhouses, buildings, lands, effects, and other parish property (*p*). They may, with the approval of the board (and without any order of the board under seal) hire or take on lease temporarily, or for a term of years not exceeding five, any land or buildings for the purpose of the relief or employment of the poor and the use of the guardians or their officers (*q*). All the powers given by acts previous to "The Poor Law Amendment Act, 1834," respecting the inclosure and hiring and allotment of land, are exercised by the guardians (*r*).

Guardians may, in the case of overcrowding or the prevalence or apprehension of disease, receive into their workhouse the poor of other unions, with the consent of the poor law board (*s*), and with such consent they may send children to the workhouse of another union having adequate accommodation (*t*). They may also contribute such sum of money as the poor law board approves towards the enlargement of any churchyard or consecrated ground (*u*), and contract with cemetery companies or burial boards as the poor law board approves (*v*); and may, with the consent of the poor law board, pay any sum of money as an annual subscription towards the support and maintenance of any public hospital or infirmary (*x*).

Duties upon the order of the commissioners.

Upon the order of the commissioners, the guardians are to appoint paid officers of the union (*y*), and to elect the members of district boards for schools and asylums (*z*). The chairman and vice-chairman of unions elect district auditors (*a*).

The guardians may, "with the order of the said commissioners, and in conformity with such regulations as they shall make, procure or assist in procuring the emigration of any poor person" chargeable but irremovable in law (*b*); and expend a limited sum in the emigration of

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(*i*) 4 & 5 Will. IV. c. 76, s. 38, ante, p. 34.
(*k*) *Ib.* s. 54.
(*l*) *Ib.* ss. 95, 96.
(*m*) 4 & 5 Will. IV. c. 76, s. 34. See the provisions of "The Union Chargeability Act, 1865" (28 & 29 Vict. c. 72), post.
(*n*) 2 & 3 Vict. c. 84, s. 1. They are also empowered to enforce contribution for the payment of debts; 5 & 6 Vict. c. 18, s. 7.
(*o*) 4 & 5 Will. IV. c. 76, s. 63.
(*p*) 5 & 6 Will. IV. c. 69, s. 3, and see 5 & 6 Vict. c. 18.
(*q*) 30 & 31 Vict. c. 106, s. 13.
(*r*) 5 & 6 Will. IV. c. 69, s. 4.
(*s*) 12 & 13 Vict. c. 103, s. 14.
(*t*) 14 & 15 Vict. c. 105, s. 6.
(*u*) 13 & 14 Vict. c. 101, s. 2.
(*v*) 18 & 19 Vict. c. 79, s. 2.
(*x*) 14 & 15 Vict, c. 105, s. 4.
(*y*) 4 & 5 Will. IV. c. 76, s. 46, and see provisions as to collectors, post, Chap. V.
(*z*) 7 & 8 Vict. c. 101, s. 42. Any guardian may visit any such asylum, *Ib.* s. 50.
(*a*) 7 & 8 Vict. c. 101, s. 32.
(*b*) 11 & 12 Vict. c. 110, s. 5.

settled poor (*c*), or of orphans and deserted children having no settlement, or whose settlement is unknown (*d*).

They are to make provision for the liquidation of debts as the commissioners direct (*e*).

Upon the order of the board (made on the application of the guardians) they may borrow money for the expenses of a valuation made under "The Union Assessment Committee Act, 1862" (*f*).

When the consent of guardians necessary to orders of commissioners.

The consent of the majority of guardians is necessary to enable the poor law board to order workhouses to be built (*g*); and the guardians are, under certain circumstances, empowered to delay for a period, not exceeding thirty days, the operation of orders respecting out-door relief (*h*); and, in cases of emergency, to depart from such orders in any particular instance, subject to certain conditions (*i*).

The previous application of the guardians is required before the commissioners can order them to appoint a paid collector of the poor-rates (*k*).

Discretionary powers.

The guardians are the proper persons to institute proceedings for various purposes; to enforce the repayment of relief given by way of loan (*l*), or relief given to pensioners (*m*); to obtain orders of removal (*n*), and to defend and appeal against them (*o*); to obtain orders of maintenance upon relatives (*p*), and orders in respect of lunatic paupers (*q*), and orders for the transfer to industrial schools of refractory children or children of convicted parents (*r*); to pay the costs of the apprehension and prosecution of offenders of various kinds (*s*); to pay or reimburse, where they think fit, any of their officers for damage done to their property by applicants for relief, or costs and expenses incurred in the prosecution of the offender (*t*).

They may appropriate so much of any money or the produce of any valuable security for money in the possession or belonging to paupers, "or recover the same as a debt before any local court," as will reimburse the guardians the amount expended by them (*u*).

They may provide for and pay the charges for the reception, maintenance, and instruction of adult blind, and deaf and dumb paupers in any hospital or institution (*v*).

The guardians may also (subject to the power of the commissioners) prescribe a certain limited task of work to be done by any person relieved in a workhouse (*x*); and they are empowered to bury the body of any poor person which may be within their union (*y*).

They may, upon the examination by and written report of the medical officer, direct the detention of any poor person in the workhouse suffering from mental disease, or from bodily disease of an infectious or contagious character (*z*).

They may, at their discretion, with the assent of the poor law board, grant superannuation allowances to officers in certain cases (*a*).

The guardians have the same power as overseers with regard to insane persons under the 9 Geo. IV. c. 40 (*b*).

They bind poor children apprentices (subject to the regulations of the poor law board), the powers previously vested in overseers being given to the guardians (*c*), and (subject to the like regulations) they

(*c*) 12 & 13 Vict. c. 103, s. 20.
(*d*) 13 & 14 Vict. c. 101, s. 4.
(*e*) 5 & 6 Vict. c. 18, s. 7.
(*f*) 27 & 28 Vict. c. 39, s. 8.
(*g*) 4 & 5 Will. IV. c. 76, s. 23.
(*h*) *Ib.* s. 52.
(*i*) *Ib.*
(*k*) 7 & 8 Vict. c. 101, s. 62.
(*l*) 4 & 5 Will. IV. c. 76, s. 59.
(*m*) 2 & 3 Vict. c. 51.
(*n*) 28 & 29 Vict. c. 79, s. 2.
(*o*) *Ib.* s. 3.
(*p*) 11 & 12 Vict. c. 110, s. 8.
(*q*) 16 & 17 Vict. c. 97; 24 & 25 Vict. c. 55, s. 7.
(*r*) 29 & 30 Vict. c. 118, s. 17.
(*s*) 7 & 8 Vict. c. 101, s. 59.
(*t*) 14 & 15 Vict. c. 105, s. 5.
(*u*) 12 & 13 Vict. c. 103, s. 16.
(*v*) 30 & 31 Vict. c. 106, s. 21.
(*x*) 5 & 6 Vict. c. 57, s. 5.
(*y*) 7 & 8 Vict. c. 101, s. 31; 18 & 19 Vict. c. 79.
(*z*) 30 & 31 Vict. c. 106, s. 22.
(*a*) 27 & 28 Vict. c. 42.
(*b*) 5 & 6 Vict. c. 57, s. 6.
(*c*) 7 & 8 Vict. c. 101, s. 12.

may, if they think fit, grant relief for the purpose of educating children who are in the receipt of out-door relief (*d*); and they may also send poor children to certified schools (*e*).

The guardians of different unions, &c. may, by agreement, submit questions to the poor law board affecting the settlement, removal, or chargeability of any poor person (*f*).

Guardians are under the control of the poor law board.

It is to be borne in mind that the guardians are under the guidance and control of the poor law board, and of their rules, orders, and regulations, except that the board cannot interfere in any individual case for the purpose of ordering relief (*g*).

Contracts not in conformity with such rules, &c. are voidable (*h*), and out-door relief given contrary to the orders is unlawful, and to be disallowed in the accounts of the person giving the same, except under special circumstances (*i*).

Capacity of guardians to contract.

Guardians, being a corporation, all contracts should be under the corporate seal, for if not, there is a difficulty in enforcing them by legal proceedings. Thus where a survey of a parish within the union had been executed under a contract under seal for the guardians of a union, pursuant to the orders of the poor law commissioners, and the guardians subsequently verbally ordered of the surveyor a reduced plan, which was executed and delivered to them: it was held, that they were not liable in an action for the value of the work thus verbally agreed for, as it could not be brought within any of the exceptions to the general rule that corporations are not liable except upon contracts under seal. (*Paine* v. *Strand Union*, 8 Q. B. 326; 15 L. J. 89, M. C.) In another case the board of guardians was held liable for the price of some gates made for the union workhouse, which had been verbally ordered, but subsequently received and retained by the guardians, the jury expressly finding that they were necessary for the purposes for which the guardians were incorporated. (*Sanders* v. *St. Neots Union*, 8 Q. B. 810; 15 L. J. 104, M. C.)

Meetings of Guardians.

No guardian, ex-officio or otherwise, has power to act in virtue of such office except as a member and at a meeting of the board, and no act of any such meeting shall be valid unless three members shall be present and concur therein (*j*).

De facto guardians.

"No defect in the qualification or election of any person acting as a guardian at a board of guardians, the majority of persons assembled at which shall be entitled to act as guardians, shall be deemed to vitiate or make void any proceedings of such board in which he may have taken part" (*k*).

"In the case of an equality of votes upon any question at a meeting of the guardians of any union or parish, the presiding chairman at such meeting shall have a second or casting vote" (*l*).

Meetings.

The meeting of the guardians is regulated by the rules of the com-

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(*d*) 18 & 19 Vict. c. 34.

(*e*) 25 & 26 Vict. c. 43. If not orphans or deserted children, the consent of the parents must be obtained. See post.

(*f*) 14 & 15 Vict. c. 105, s. 12.

(*g*) See 4 & 5 Will. IV. c. 76, s. 15, ante, p. 22.

(*h*) *Ib.* s. 49.

(*i*) *Ib.* s. 52. See post.

(*j*) *Ib.* s. 38.

(*k*) 5 & 6 Vict. c. 57, s. 13. In a case before this provision where a majority of the guardians de facto did not concur in an appointment, the Court of Queen's Bench refused to enforce it by mandamus. (*Reg.* v. *Dolgelly*, 8 A. & E. 561. See *Reg.* v. *Vestry of Holborn*, 10 A. & E. 730.)

(*l*) 12 & 13 Vict. c. 103, s. 19. Where a majority of guardians present at a meeting is necessary to make an appointment, the chairman cannot abstain from voting if his vote is required to give a majority of those present. (*Reg.* v. *Griffiths*, 17 Q. B. Rep. 164.)

missioners, but in general they meet weekly, and extraordinary meetings may be held on giving certain notices prescribed by the rules, or without notice in cases of emergency.

Relief.

At the board they must direct the nature and amount of relief to be given, subject, however, to the rules relating to relief, and hear the application of paupers, who have previously applied to the relieving officer. They must determine the kind of work to be done by paupers in or out of the workhouse, and give directions to the overseers for raising the money payable by their parish.

Application of paupers.

Work.

The duty of giving relief and employment, and making inquiries relating to the poor, is entrusted to the "relieving officer," who is appointed and paid by the board.

Committees of Guardians.

District committee for relief where parish more than four miles from place of meeting of guardians.

"Whenever the whole of any parish or parishes is situated at a greater distance than four miles from the place of meeting of the board of guardians of the union of which such parish or parishes may form part, it shall be lawful for the commissioners, on the application of the board of guardians, to form such parish or parishes into a district, and to direct the said guardians from time to time to appoint a committee of their members to receive applications of poor persons requiring relief in such district, to examine into the cases of such poor persons, and to report to the said guardians thereon" (*m*).

Assessment committee.

The guardians are also required to appoint an assessment committee of the union for the investigation and supervision of parochial assessments (*n*). The provisions respecting these committees will be found under the division of the work relating to the Poor Rates.

Proof of Orders and Acts of Boards of Guardians.

"Wherever a board of guardians is empowered to make any order, or to prefer any complaint, claim, or application, before justices or otherwise, if any such board resolve to make such order, or to prefer such complaint, claim, or application, a copy of the minute of such resolution, signed by the presiding chairman of such board, and sealed with their seal, and countersigned by their clerk, or person acting as their clerk, shall be deemed and taken to be sufficient proof of the making of such order, or of the preferring of such complaint, claim, application, or otherwise, as the case may be; and that whenever, either for the purpose of making an order for the removal of a pauper, or on the trial of an appeal against such order, or for any other purpose, it shall be necessary to prove to what parish a pauper has become chargeable (if in such parish the laws for the relief of the poor shall be administered by a board of guardians or a district board), a certificate of such pauper having so become chargeable, signed, sealed, and countersigned as aforesaid, shall be sufficient proof to what parish and at what time such pauper became and was chargeable, unless the contrary shall be proved by other legal evidence (*o*); and that in all cases in which the guardians of any parish or union are or may hereafter be empowered to make any application or complaint, or to take any proceedings before any justices at petty or special or general or quarter sessions, it shall be lawful for any officer of such guardians empowered by any board of such guardians, by an order in writing, under the hand of the presiding chairman of such board, and sealed with the common seal of such guardians, to make such application or complaint, or to take such proceedings on behalf of such

Certificate of chargeability.

Authority to officers to take legal proceedings.

(*m*) 5 & 6 Vict. c. 57, s. 7.
(*n*) 25 & 26 Vict. c. 103.
(*o*) See further, as to certificates of chargeability, 7 & 8 Vict. c. 101, s. 69, infra, and 11 & 12 Vict. c. 110, s. 11, and post.

guardians, as effectually to all intents and purposes as if the same were made or taken by such guardians, or any of them, in person" (*p*).

Guardians, &c. may make a certain certificate, which may be received in evidence, &c.

"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 chairman 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 person 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" (*q*).

The General Consolidated Order of the 24th July, 1847 (*r*) contains various articles respecting the meetings and proceedings of the guardians (*s*).

(*p*) 5 & 6 Vict. c. 57, s. 17.

(*q*) 7 & 8 Vict. c. 101, s. 69.

(*r*) As to this order, see ante, p. 33.

(*s*) Art. 28. "The guardians shall upon the day of the week, and at the time of day, and at the place already appointed for holding the ordinary meetings, hold an ordinary meeting once at least in every week or fortnight for the execution of their duties; and may, when they think fit, change the period, time, and place of such ordinary meeting, with the consent of the commissioners previously obtained.

Art. 29. "The guardians shall, at the first meeting after the fifteenth day of April, elect out of the whole number of guardians a chairman and a vice-chairman, who, provided they be guardians at the time, shall continue respectively to act as such chairman and vice-chairman for the year next ensuing.

Art. 30. "The guardians at any time may elect two vice-chairmen, and if such vice-chairmen be appointed at the same time, the guardians shall determine their precedence; according to which precedence one of the said vice-chairmen shall thenceforth preside and act as in the case when only one vice-chairman is elected.

Art. 31. "If a chairman or a vice-chairman cease to be a guardian, or refuse, or become incapable, to act as chairman, or vice-chairman, before the expiration of the term of office, the guardians shall, within one month after the occurrence of the vacancy, refusal, or incapacity, elect some other guardian to be chairman or vice-chairman, as the case may be.

Art. 32. "Whereas no act of any meeting of the guardians will be valid unless three guardians be present and concur therein; if three guardians be not present at any meeting, the clerk shall make an entry of that fact in the minute book, and the time for holding such meeting shall be deemed to have expired as soon as the said entry shall have been made. But one hour at least shall be allowed to elapse from the time fixed for the commencement of the meeting, before such entry shall be made.

Art. 33. "If three or four or more guardians be present at any ordinary meeting, such three, or the majority of such four or more guardians, may adjourn the same, to the day of the next ordinary meeting, or to some other day previous to the next ordinary meeting.

Art. 34. "An extraordinary meeting of the guardians may be summoned to be held at any time, upon the requisition of any two guardians, addressed to the clerk. Every such requisition shall be made in writing, in the form (F.)

"In any civil or criminal proceeding it shall not be necessary to prove the sending of the original order of the poor law commissioners, or of

Legality of acting boards of guardians.

hereunto annexed (*t*), and no business, other than the business specified in the said requisition, shall be transacted at such extraordinary meeting.

Art. 35. "Notice of every change in the period, time, or place of holding any meeting, and notice of the adjournment of any meeting, and notice of every extraordinary meeting, shall be given in writing to every guardian. Every such notice shall be respectively in the forms (G.), (H.), and (I.) hereunto annexed (*t*), and shall be given or sent by the clerk to every guardian, or left at his place of abode two days, if practicable, before the day appointed for the meeting to which it relates.

Art. 36. "If any case of emergency arise requiring that a meeting of the guardians should immediately take place, they, or any three of them, may meet at the ordinary place of meeting, and take such case into consideration, and may make an order thereon.

Art. 37. "At every meeting the chairman, or, in his absence, a vice-chairman shall preside; but if at the commencement of any meeting the chairman and vice-chairman or vice-chairman be absent, the guardians present shall elect one of themselves to preside at such meeting as chairman thereof, until the chairman or a vice-chairman take the chair.

Art. 38. "Every question at any meeting consisting of more than three guardians shall be determined by a majority of the votes of the guardians present thereat, and voting on the question, *and when there shall be an equal number of votes on any question, such question shall be deemed to have been lost* (*u*).

Art. 39. "No resolution agreed to or adopted by the guardians shall be rescinded or altered by them, unless some guardian shall have given to the board seven days' notice of a motion to rescind or alter such resolution, which notice shall be forthwith entered on the minutes by the clerk: Provided always, that this regulation shall not extend to any resolution which immediately concerns the allowance of relief to any person, or the punishment of any pauper, or to any resolution which the commissioners may request the guardians to re-consider or amend, or to any question of emergency.

Art. 40. "The guardians may from time to time (as occasion may require) appoint a committee to consider and report on any special subject, and such committee may meet at such times and places as to them may seem convenient; but no act or decision of any such committee shall of itself be deemed to be the act of the guardians.

Art. 41. "At every ordinary meeting of the guardians the business shall, as far as may be convenient, be conducted in the following order:

Firstly.—The minutes of the last ordinary meeting, and of any other meeting which may have been held since such ordinary meeting, shall be read to the guardians; and, in order that such minutes may be recognized as a record of the acts of the guardians at their last meeting, they shall be signed by the chairman presiding at the meeting at which such minutes are read, and an entry of the same having been so read shall be made in the minutes of the day when read.

Secondly.—The guardians shall dispose of such business as may arise out of the minutes so read, and shall give the necessary directions thereon.

Thirdly.—They shall proceed to give the necessary directions respecting all applications for relief made since the last ordinary meeting, and also respecting the amount and nature of relief to be given and continued to the paupers then in the receipt of relief, until the next ordinary meeting, or for such other time as such relief may be deemed to be necessary.

Fourthly.—They shall hear and consider any application for relief which may be then made, and determine thereon.

Fifthly.—They shall read the report of the state of the workhouse or workhouses, examine all books and accounts relative to the relief of the paupers of the union, and give all needful directions concerning the

(*t*) It has not been thought necessary to encumber the work by inserting these official forms.

(*u*) Where these orders have been issued since "The Poor Law Amendment Act, 1849" (12 & 13 Vict. c. 103), the words in italics have been omitted, sect. 19 of that act giving the chairman a casting vote (see ante, p. 48).

CHAP. III.

the commissioners constituting any board of guardians, in any case in which any persons professing to form a board in obedience to such order shall have taken upon themselves to act, and shall have continued for three years to act, in the execution of the laws for the relief of the poor; and in no proceeding shall it be lawful to question the qualification or validity of the election of any person as a guardian after the end of twelve months next following the election, or the time when the alleged disqualification or want of qualification of the person against whom such proceeding shall be directed shall have arisen" (*x*).

With respect to the conduct of proceedings by the clerk to the guardians, see post, "PROCEDURE FOR PENALTIES, &c.," and as to the payment of attornies' bills, see post, "PAYMENT OF DEBTS, &c."

§ 4. GUARDIANS OF SINGLE PARISHES UNDER "THE POOR LAW AMENDMENT ACT, 1834."

The like for single parishes.

"If the said commissioners shall, by any order under their hands and seal, direct that the administration of the laws for the relief of the poor of any single parish should be governed and administered by a board of guardians, then such board shall be elected and constituted, and authorized and entitled to act, for such single parish, in like manner and in all respects as is hereinbefore enacted and provided in respect to a board of guardians for united parishes; and every justice of the peace resident therein, and acting for the county, riding, or division in which the same is situated, shall be and may act as an ex-officio member of such board" (*y*).

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management and discipline of the said workhouse or workhouses and the providing of furniture and stores and other articles.

Sixthly.—They shall examine the treasurer's account, and shall, when necessary, make orders on the overseers or other proper authorities of the several parishes in the union, for providing such sums as may be lawfully required by the guardians on account of the respective parishes.

Seventhly.—They shall transact any such business as may not fall within any of the above classes.

Art. 42. "When the guardians have allowed relief in the workhouse to any applicant, a written or printed order for his admission therein, signed by the clerk, shall be forthwith delivered to the applicant, or to any person on his behalf.

Art. 43. "When the guardians have allowed outdoor relief, in money or kind, to any applicant, the particulars of such relief shall be entered, by the proper relieving officer, in a ticket according to form (K.) hereunto annexed, and such ticket shall be delivered by him to the applicant, or to some person on his behalf."

(*x*) 10 & 11 Vict. c. 109, s. 25.

(*y*) 4 & 5 Will. IV. c. 76, s. 39. This section, though general in its terms, was held not to apply to parishes having already a board of guardians or directors under a local act. (*R.* v. *The Poor Law Commissioners*, 6 A. & E. 1; 1 N. & P. 371.)

CHAPTER IV.

Of the Persons concerned in the Administration of the Poor Laws (*continued*).

III. Overseers of the Poor.

43 Eliz. c. 2.

Who shall be overseers.

THE statute 43 Eliz. c. 2, s. 1, enacts, "That the churchwardens of every parish and four, three, or two substantial householders there, as shall be thought meet, having respect to the proportion and greatness of the same parish and parishes, to be nominated yearly in Easter week, or (*a*) within one month after Easter, under the hand and seal of two or more justices of the peace in the same county, whereof one to be of the *quorum*, dwelling in or near the same parish or division where the same parish doth lie, *shall be called overseers of the poor of the same parish* (*b*)."

Where no churchwarden.

In some parishes, however, there is no churchwarden, and by 17 Geo. II. c. 18, s. 15, the overseers are empowered to execute all the authorities given to the churchwardens and overseers.

§ 1. THE PLACE FOR WHICH OVERSEERS ARE TO BE APPOINTED.

The statute of Elizabeth was confined to parishes, but the statute 14 Car. II. c. 12, extended it to townships and villages, and directed two or more overseers to be chosen and appointed according to the rules and directions of the statute of Elizabeth, within every of the said townships and villages (*c*).

Appointment of overseers in extra-parochial places.

The 7 & 8 Vict. c. 101, s. 22, enacted, that it should not be lawful to appoint separate overseers for any township or village or other place for which before the passing of the act separate overseers had not been lawfully appointed; and sect. 23 enacted, "that in all cases in which overseers have for the first time been separately appointed for any township or village since August 14, 1834, all orders of the poor law commissioners, determining the number of guardians, or ascertaining the

(*a*) See as to the time, post, § 4.

(*b*) See this section in its entirety, and also a notice of the earlier superseded provisions relating to overseers, in the origin and progress of the poor laws, ante, Chap. I.

(*c*) See this statute more fully in the definition of *parish*, township and village, post, Chap. VIII. See also the same chapter, post, p. 108, for a reference to the 59 Geo. III. c. 95, confirming the separation of corporate towns, &c.; and also post, p. 60, for sect. 9 of the statute of Elizabeth.

averages of any such township or village, or of any portion of the parish from which such township or village had been separated, shall be and be deemed to be good and valid in law, notwithstanding such separate appointment of overseers."

The 20 Vict. c. 19, however, provided for the relief of the poor in extra-parochial places, and directed overseers of the poor to be appointed therein notwithstanding the statute 7 & 8 Vict. c. 101 (*c*).

§ 2. WHO MAY BE APPOINTED, AND HEREIN OF DISQUALIFICATIONS AND EXEMPTIONS.

Overseers.

By the statute of Elizabeth, "the churchwardens of every parish and four, three, or two *substantial householders there*" are to be the overseers of the said parish, together with the churchwardens.

Power to appoint non-resident overseers.

Although the statute of Elizabeth and the words "substantial householders there," as defining the persons to be appointed overseers with the churchwardens (*d*), the 59 Geo. III. c. 12, s. 6, provides, "that it shall be lawful for his Majesty's justices of the peace, in their respective special sessions for the appointment of overseers of the poor, upon the nomination and at the request of the inhabitants of any parish in vestry assembled, to appoint any person who shall be assessed to the relief of the poor thereof, and shall be a householder resident within two miles from the church or chapel of such parish, or where there shall be no church or chapel, shall be resident within one mile from the boundary of such parish, to be an overseer of the poor thereof, although the person so to be appointed shall not be a householder within the parish of which he shall be so appointed an overseer of the poor; and it shall be sufficient, in every such appointment, to describe the person appointed by his name and residence, provided that no person shall be appointed to, or be compellable to serve, the office of overseer of the poor of any

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(*c*) See the provisions of the statute 20 Vict. c. 19, fully, post, Chap. VIII., and sects. 2 and 3, post, p. 55.

(*d*) Under the words of the statute of Elizabeth, it was held that the word "*substantial*" must be taken generally in its proper sense, but that it was so far relative, that where there were no other persons to serve, two day-labourers with some land annexed to their cottages, of whom one only was a proprietor, and the other a farmer's servant, were competent overseers, although the appointment of such men might be improper "in a place where there are a great many opulent farmers." (*Rex* v. *Stubbs*, 2 T. R. 406.) In every case the occupation to constitute a householder must be an independent occupation, and where a man occupies as servant he is not a householder, for his occupation is the occupation of his master. (*Reg.* v. *Spurrell*, 35 L. J. Rep. (N. S.) M. C. 74.) But it does not follow because the relation of master and servant exists, and the servant occupies premises of the master rent free as part of the wages which he would otherwise receive if he paid the rent, that the occupation may not be an occupation *qua* tenant independent of the master. The question is, whether the occupation is simply in part remuneration for his services; or whether it is subservient and necessary to the services. In the latter case the servant would not be a householder. *Ib.* And where persons were appointed overseers of *Weobly* by the style of *principal* inhabitants, the court quashed the appointment, because they were not described to be *substantial* householders. The court observed that the justices must pursue the power given them, to appoint substantial householders, which is a much more limited description than inhabitants; for a man may be an inhabitant, and a principal inhabitant, and not be a householder. (*Rex* v. *Weobly*, 2 Str. 1261; 1 Bott, 5.) Partners in trade frequenting their premises daily for the purpose of business, but not residing there, were held to be householders liable to serve as overseers of the parish in which the premises lay. (*Reg.* v. *Poynder*, 1 B. & C. 178; 2 D. & R. 258; 1 D. & R. Mag. Ca. 247.)

parish or place in which he shall not be a householder, unless he shall have consented to such appointment."

A churchwarden is *ipso facto* overseer.

Churchwardens, it has been seen, were in effect overseers of the poor long before the 43 Eliz. c. 2, s. 1 (*e*). And as the statute declares them to be such, and requires others to be *added to them* by the justices, they need no formal appointment, but are overseers *ipso facto* by *becoming churchwardens*. And the ordinary is bound to swear in churchwardens elect, immediately upon their applying to be sworn in, notwithstanding an usage not to swear in until the first visitation after Easter. (*Rex* v. *Middlesex*, 5 Nev. & Man. 494.)

To be sworn in immediately.

In office until successor sworn.

Semble, that a churchwarden continues in office until his successor is sworn in.

A chapelwarden of a township, although called a churchwarden, is not an overseer, for the statute of Elizabeth speaks only of the churchwardens and overseers of a *parish*, and the statute of Charles providing for the appointment of overseers of townships and villages does not mention either church or chapel wardens. (*Rex* v. *The Justices of Yorkshire, N. R.*, 2 N. & P. 103; 6 A. & E. 863.)

So, on the other hand, in a township having its own overseers, the churchwardens of the parish at large are not overseers of the township. (*R.* v. *Nantwich*, 16 East, 228.)

Women.

The phrase "*householder*" has no reference to sex; although men are more proper to be appointed than women, where there are a sufficient number of men qualified; yet a woman may be appointed where the necessity of the case requires it. (*Id. ibid.*)

Occasional residents.

The appointment of persons resident only for a part of the year has been discouraged by the courts; but such persons seem eligible in cases of necessity. (*Rex* v. *Moor*, Carth. 161; 1 Bott, 13.) And the justices are to determine where this necessity exists, being "invested with a discretionary power of approbation." (*Rex* v. *Stubbs*, 2 T. R. 395; *Rex* v. *Gayer*, 1 Burr. 245.)

Overseers in extra-parochial places.

One overseer only may be appointed by the justices.

"If in any extra-parochial place it shall appear to the justices that two overseers cannot conveniently be appointed from the inhabitant householders thereof, or are not required for such place, such justices may appoint one only; and if it shall appear to them that there is no such householder liable or fit to be appointed they shall appoint some inhabitant householder of an adjoining parish willing to serve to be such overseer, either with or without an annual salary, such salary, if any, to be approved of by the poor law board, and to be paid out of the poor rate of such place; and such last-mentioned appointment shall enure until the usual time of the appointment of overseers, and may be renewed from year to year as long as the justices shall find necessary" (*f*).

Provision for the Inns of Court.

"In each of the places termed the Inner Temple, the Middle Temple, and Gray's Inn, the officer for the time being acting as the under treasurer of such inn of court, and in the place termed Charterhouse, London, the registrar, shall be the overseer of such place; and in default of any such officer, the justices having jurisdiction in such inns or place respectively shall appoint some inhabitant householder therein to be the overseer thereof for the then current year, and thenceforth from year to year so long as the office of under treasurer or registrar shall be vacant; provided that such places shall not be liable to be added to any union or other district for the purposes aforesaid" (*g*).

Disqualifications.

Persons interested in contracts not to be appointed overseers.

By 12 & 13 Vict. c. 103, s. 6, "no person shall be qualified to be appointed to be an overseer of the poor in any parish who at the time of the proposed appointment shall be engaged or directly or indirectly concerned in any contract for the supply of goods, wares, materials or pro-

(*e*) See ante, p. 2.

(*f*) 20 Vict. c. 19, s. 2. See *Reg.* v. *Cousins*, 33 L. J. (N. S.) M. C. 87, noticed post, Chap. VIII., p. 110, n. (*o*).

(*g*) *Ib.* s. 3.

visions for the workhouse, or for the relief of the poor in such parish or in the union comprising such parish: provided always, that no rate or assessment made, nor any other act or thing done by such person as overseer, nor the service of any notice, demand, order or process upon him as such, shall, if in other respects legal and sufficient, be deemed invalid by reason only of such disqualification." And by 13 & 14 Vict. c. 101, s. 6, it is enacted, "that no master of a workhouse, nor any relieving officer, shall be henceforth qualified to be appointed to the office of overseer of the poor, constable, or any other parochial or township office, so long as he shall continue to be such master of a workhouse or relieving officer, except where the poor law board shall authorize any relieving officer to hold a paid office in a parish: provided always, that no rate or assessment made, nor any other act or other thing done, by any such person as such parochial or township officer, nor the service of any notice, demand, order or process upon him as such, shall, if in other respects legal and sufficient, be deemed invalid by reason only of such disqualification as aforesaid."

Masters of workhouses and relieving officers.

The same person not to be overseer and assistant overseer.

The "Poor Law Amendment Act, 1866" (29 & 30 Vict. c. 113), sect. 10, enacts, that "no person shall be qualified to be appointed to be an overseer of the poor in any parish who at the time of the proposed appointment shall be an assistant overseer of any parish; and no person being an overseer of any parish shall be qualified to be appointed an assistant overseer."

As to offices of churchwarden and overseer.

And sect. 12 enacts, that "in any parish the same person may hold jointly the offices of churchwarden and overseer" (*h*).

Who are exempt.

Exemptions.—The following classes are exempt from serving this office, and the justices therefore are not at liberty to make their nomination from among any of these persons. There is a distinction, however, between the claim of a privilege to be exempted, and absolute incapacity. In the former case the appointment is not void, but good until appealed against.

Distinction between exemption and incapacity.

Peers.

Peers, by reason of their dignity. (1 Gibs. Codex, 215.)

Members of Parliament.

Members of parliament, by reason of their privilege. (*Ibid.*)

Justices of peace.

Justices of the peace, as having the control of overseers' accounts (*i*).

Aldermen of London, being justices.

Aldermen of London, who are justices of the peace; for the same reason. (*Rex* v. *Abdy*, Cro. Car. 585; 1 Bott, 8.)

Practising barristers.

Practising barristers and attorneys, (*Gerard's case*, 2 Sir W. Bl. 1123,) and officers of the superior courts, are privileged, though there be a

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(*h*) In *Rex* v. *All Saints, Derby*, 13 East, 143, it was held that churchwardens were during their continuance in office exempt from serving as overseers.

(*i*) In *Rex* v. *Gayer*, 1 Burr. 245, the sessions, upon appeal, quashed the appointment of Gayer, because he was an acting justice, and a lieutenant on half-pay, and there were other substantial householders; and the King's Bench supported the judgment, upon the ground that the sessions had the same latitude of discretion as the two justices had. Lord *Mansfield* said, "it was not necessary to consider the general question of the incompatibility of the offices. The justices have a discretionary power, and although they have stated two reasons for their judgment, yet it did not follow that they considered either of these offices as an exemption or a disability." No opinion was given on the general question. (*Rex* v. *Gayer*, 1 Bott, 9; 1 Burr. 245.) But in *Rex* v. *Pateman*, 2 T. R. 779, Lord *Kenyon* said, "in *Rex* v. *Gayer*, it seems to have been agreed that the office of justice of the peace and overseer are incompatible, because the accounts of the latter were subject to the control of the former. The court, in *Rex* v. *Gayer*, gave no judicial opinion upon the point." "It seems to have been considered both by the bar and the bench, that if the two offices were incompatible, the consequence would be that the party would be discharged from that of overseer, as having been disqualified or exempted, and not from that of justice of peace as being vacated by the appointment of overseer." (*Parke*, J., in giving the judgment of the court in *Rex* v. *Patteson*, 4 B. & Ad. 23; 1 Nev. & M. 612, S. C.)

special custom for every parishioner to serve, according to the situation of his house. (*Rex* v. *Prouse*, Cro. Car. 389 ; and see 8 T. R. 379, note (*a*).

An officer of the Court of Exchequer. (*Cawthorne* v. *Campbell*, 1 Anst. 205, 216 ; 8 T. R. 376.)

Barristers and attorneys, and officers of courts.

The clerk of the treasury of the Court of Common Pleas, as bound to a personal attendance on his duties, was not compellable to serve the office. (*Ex parte Jeffries*, 6 Bing. 195 ; 3 M. & P. 450, S. C.) And such officers may be relieved by writ of privilege. (*Id. ibid.;* 8 T. R. 377 ; 1 Chanc. Rep. 196.)

Physicians.

The president, commons and fellows of the college of physicians, (whose exemption, however, extends no further than the city of London,) but apparently no other physicians. 32 Hen. VIII. c. 40. (See 1 Bott, 13.)

Clergymen.

Clergymen, though without cure of souls, by reason of their order. (*Anon.*, Gibs. Codex, 215 ; 6 Mod. 140 (*k*).)

Dissenting ministers.

Dissenting ministers, taking the oaths and subscribing the declaration and articles pointed out by 1 W. & M. c. 18, although they be also engaged in a trade. 1 W. & M. c. 18, s. 11 ; 52 Geo. III. c. 155, s. 9. (*Kenward* v. *Knowles*, Willes, 463 ; 1 Gibs. Codex, 215 (*l*).)

Freemen of the surgeons in London.

Freemen of the company and corporation of surgeons, established by 18 Geo. II. c. 15, who have been examined and approved pursuant to the rules of the company, so long as they exercise surgery and no longer. 18 Geo. II. c. 15, s. 10.

Apothecaries.

Apothecaries using their art in, or within seven miles of London, being free of the apothecaries' company, and having been examined and approved, and all persons using the said art in any other part of England, Wales or Berwick-upon-Tweed, having served an apprenticeship of seven years according to the stat. 5 Eliz., so long as they exercise the art and no longer. 6 & 7 Will. III. c. 4, ss. 2, 3 ; made perpetual, 9 Geo. I. c. 8.

Officers of the customs, tide-waiters, revenue officers.

Officers of the customs, tide-waiters, exchequer, and all other revenue officers, both by reason, it should seem, of the incompatibility of the functions, and by reason of the exemption granted them by the king, who has power to exempt by patent, charter or otherwise, not only from offices under the crown, but even from parochial offices. (*Rex* v. *Warner*, 8 T. R. 375 ; *Raymond* v. *St. Botolph's, Aldgate*, 2 Chanc. Rep. 196 ; *Cawthorne* v. *Campbell*, 1 Anstr. 216. See also *Rex* v. *Routledge*, Doug. 531.) But these exemptions granted by the prerogative were available only where there were a sufficient number of persons to serve the office without recourse to the individuals so exempted (8 T. R. 379, note (*a*) ; *Rex* v. *T. Clarke*, 1 T. R. 686) ; but by 7 & 8 Geo. IV. c. 53, officers of customs and excise are absolutely exempt.

Yeomen in ordinary.

Yeomen in ordinary of the king's body-guard. (*Ibid.; Rex* v. *Great Marlow*, 2 East, 245.)

Non-commissioned officers, &c. of militia.

Sergeants, corporals, drummers and privates of militia, from the time of their enrolment until they be regularly discharged ; but there is no exemption enacted for the officers of that force. 42 Geo. III. c. 90, s. 174.

Customary exemptions.

An *immemorial custom* to be exempted from all office, will exempt a person from this office, though it is an office created within legal memory. (See *Littledale*, J., in *Farr* v. *Hollis*, 9 B. & C. 338.)

Quære, if younger brothers of the Trinity-House are exempted ? (See *Charter King* v. *Clarke*, 1 Term Rep. 679 ; Steer's Par. L. 331.)

(*k*) This point was not decided, for three judges being against C. J. *Holt*, who thought the clergyman not exempt, it was "to be stirred again." The quotation from *Gibson* relates to the office of churchwarden.

(*l*) Dissenters scrupling to take the office, on account of the oaths or other matters required by law, repugnant to their peculiar religious opinions, are permitted to execute it by deputy, approved by such persons and in such manner as the principal should have been approved. 1 W. & M. sess. 1, c. 18, s. 7.

§ 3. THE NUMBER OF OVERSEERS TO BE APPOINTED.

Must be two and not exceed four, unless by special enactment.

By the express words of the statute of Elizabeth, there must be *four, three or two* overseers, *exclusive of the churchwardens.* There must not be more than four, nor fewer than two, except where the parish is subdivided into townships, in which case each township may have four, three or two overseers appointed. In some cases, particularly in larger towns, a greater latitude has been given by some special statute; but no *usage* for a greater or smaller number than the 43 Eliz. prescribes availed against the express terms of its enactment (see *Reg.* v. *Cousins*, 33 L. J. (N. S.) M. C. 87); and if more than four be appointed, the instrument is void as to every one of the persons appointed. (*Rex* v. *Loxdale*, 1 Burr. 446; *Rex* v. *Morris*, 4 T. R. 550; *Rex* v. *Clifton*, 2 East, 168; *Rex* v. *All Saints, Derby*, 13 East, 143; *Rex* v. *Forrest*, 3 T. R. 38; *Rex* v. *Wymondham*, 6 T. R. 552 (*m*).)

One overseer only may be appointed for small parishes.

The "Poor Law Amendment Act, 1866" (29 & 30 Vict. c. 103), however, enacts (sect. 11), that "if it shall appear to the justices who are required to appoint overseers that two overseers cannot be conveniently appointed from the inhabitant householders in any parish, such justices may appoint one overseer only, and if it shall appear to them that there is no such householder liable or fit to be appointed, they shall appoint some inhabitant householder of an adjoining parish willing to serve to be such overseer, either with or without an annual salary to be paid out of the poor rate of the parish, which last-mentioned appointment shall enure until the usual time of the appointment of overseers, and may be renewed from year to year so long as the justices shall find necessary."

Moreover, in extra-parochial places, one overseer may be appointed (*n*).

§ 4. TIME OF APPOINTMENT.

Overseers to be nominated on 25th March, or fourteen days after.

The 43 Eliz. provided that the overseers should be nominated yearly in Easter week, or within one month after Easter; but the 54 Geo. III. c. 91, provides, that the appointment of overseers of the poor shall in every year be made *on the 25th day of March, or within fourteen days next after* the said 25th day of March, in all and every the same manner as directed by the statute of Eliz. to be made in Easter week.

The statute is only directory.

The words of this statute are directory only, and not mandatory; therefore, an appointment made after the fourteen days is good. Two justices met after the regular notice, and entered on the business of the appointment of overseers to a township, when, not agreeing, they adjourned the final appointment to a day more than fourteen days after the 25th March. One of the justices, discovering the mistake the day after the meeting, made an appointment of overseers at an ordinary meeting of magistrates, and without holding any communication with the justice who had first acted with him: it was held, that this was a bad appointment; and, that an appointment subsequently made on the adjournment-day was good. (*Reg.* v. *Sneyd*, 5 Jurist, 962.)

If the appointment be made after the time limited it is not

The mandamus, in obedience to which the justices had appointed overseers, was issued after the month after Easter was expired, and it therefore appeared that the appointment was not within the month after

(*m*) A local act directed that the then overseers of the parish of W. should continue to be overseers for the remainder of the current year, and until two others should be appointed, and that two overseers should be appointed annually: held, that this act did not repeal the stat. 43 Eliz. c. 2, s. 1, and that an appointment of four overseers for the parish of W. was valid. (*Reg.* v. *Pinney*, 2 B. & C. 322; 3 D. & R. 578. See Plowden, 112, 113; and *Rex* v. *Burridge*, 3 Peere W. 461.)

(*n*) See 20 Vict. c. 19, s. 1, post, Chap. VIII., and sect. 2, ante, p. 55. As to one overseer in the New Forest, see 29 & 30 Vict. c. 66.

Easter. *Lee*, C. J. (who delivered the opinion of the Court), "As the justices are punishable by the act for not doing their duty, it would be a very hard construction to make the appointment itself void; for it would subject the parish to very great inconveniences for a thing which it is not in their power to prevent. To interpret an act of parliament, we must consider the mischief to be remedied, the remedy provided, and the true reason of that remedy. In this case the defect is, the want of a proper officer to take care of the poor. The remedy is, that the justices shall appoint overseers, and that within such a time. Now the justices have neglected their duty, in not appointing overseers within the proper time, and by the act have forfeited 5*l.*, but that doth not make such appointment void. Were it the express direction of the act, that they should appoint in that and no other time, it would be otherwise; but here the statute is only directory, and a penalty inflicted on the justices for not following such directions." (*Rex* v. *Sparrow*, 2 Sess. Ca. 140; 2 Str. 1123; 1 Bott, 34.)

therefore void, the act being merely directory.

Any other day is more proper than Sunday to appoint overseers, though the circumstance of the officers being required by the 43 Eliz. to meet once a month on a Sunday, raises a doubt whether an appointment made on a Sunday may not be valid. It was held to be good in *R.* v. *Clerkenwell* (Fol. 4); but on the case being cited, Lord *Mansfield* said, "I should think that an appointment on a Sunday is *primâ facie* clandestine and bad." (*Rex* v. *Butler*, 1 Bla. Rep. 649; *Rex* v. *Overseers of Bridgwater*, Cowp. 139.)

An appointment on a Sunday is improper.

Ministerial acts may be performed on a Sunday, but judicial acts done on that day are void: and the appointing overseers is clearly a judicial act. (*Waite* v. *Stokes*, God. 280; *Swan* v. *Broome*, affirmed on error, 3 Burr. 1595; *Rex* v. *Forrest*, 3 T. R. 78. See 1 Chitty's Col. Stat. tit. *Sunday*.)

It is a judicial act.

In *Rex* v. *Serle*, 1 Bott, 32, there were two sets of overseers certified on the same day. It was objected that both of the appointments were for this reason void; as where two informations on a penal statute are made on the same day, both are void. Hob. 209. *Sed non allocatur;* for although in some judicial proceedings the law considers the day as entire, and knows no fraction, yet in a bond and release, and many other things, that fiction does not hold, and these niceties should not be allowed to overthrow such orders; and in *R.* v. *Great Marlow*, it was held that the appointment which is prior in time is good, and the second void. The magistrates having made their appointment, their jurisdiction in that respect is at an end. (*Rex* v. *Great Marlow*, 2 East, 244.)

Where two or more appointments are made on the same day, the first is valid.

And the second appointment is invalid, though made only in consequence of a reasonable claim of exemption by the first appointees; unless where the first appointees are regularly discharged by the sessions on appeal, in which event it seems that the magistrates may constitute others in the place of those so discharged; for it then stands as if the full number had not been appointed at first, in which case the justices have jurisdiction to make a supplementary appointment, and the lapse of the fourteen days after the 25th of March does not take away that jurisdiction. (*Rex* v. *Great Marlow*, 2 East, 244. See *Rex* v. *Morris*, 4 T. R. 550 (*o*).)

And cannot be changed or superseded, except on appeal to the quarter sessions.

(*o*) Where by a local statute the inhabitants of each district in the parish, in vestry assembled, were to nominate a certain number of persons to be returned to justices at petty session, who were to select therefrom a certain number to be overseers, and at a vestry meeting for the above purpose, there was a contest as to the persons to be nominated, and after a show of hands a poll was demanded, it was held, that the nomination was not necessarily to be confined to the persons present at the meeting, but that a poll might be lawfully had on a future day, so that other persons entitled to vote might take part in the nomination. (*Reg.* v. *Hedger*, 4 P. & D. 61.)

§ 5. BY WHOM TO BE APPOINTED.

The statute of Elizabeth, as has been seen, enacts, that the nomination is to be "under the hand and seal of two or more justices of the peace in the same county, whereof one to be of the quorum, and dwelling in or near the same parish or division (*p*) where the same parish doth lie."

In general the parishioners assembled in vestry select two proper persons to be appointed as overseers, and the magistrates adopt that selection, or the parishioners make out a list, and the magistrates take the first names on the list. The justices alone can by law make the actual nomination or appointment (*q*).

Sessions cannot appoint overseers because appeal is given.

The appointment is to be made *under the hand and seal of two or more justices*, that is, out of quarter sessions; for the quarter sessions have no original power to make it, as they have the determination of appeals against the appointment. (*Rex* v. *Flag and Chilmerton*, 1 Sess. Ca. 260; Fol. 7; 1 Bott, 21. See *R.* v. *Gayer*, ante, p. 56, note (*i*).

Officers of corporate towns have the authority of justice of peace.

43 Eliz. c. 2, s. 8, also enacts, "That the mayors, bailiffs, or other head officers of every *town and place corporate and city* within this realm, being justice or justices of the peace, shall have the same authority by virtue of this act, within the limits and precincts of their jurisdiction, as well out of sessions as at their sessions, if they hold any, as is herein limited, prescribed and appointed to justices of the peace of the county, or any two or more of them, or to the justices of peace in their quarter sessions, to do and execute for all the uses and purposes in this act prescribed, and no other justice or justices of peace to enter or meddle there; and that every alderman of the city of London within his ward shall and may do and execute in every respect so much as is appointed and allowed by this act to be done and executed by one or two justices of peace of any county within this realm."

Aldermen of London.

A parish extending into two counties, or into two liberties.

And by sect. 9, "if any parish extend itself into more counties than one, or part to lie within the liberties of any city, town or place corporate, and part without, that then, as well the justices of peace of every county, as also the head officers of such city, town or place corporate, shall deal and intermeddle only in so much of the said parish as lieth within their liberties, and not any further: and every of them respectively, within their several limits, wards and jurisdictions, to execute the ordinances before mentioned concerning the nomination of overseers, to consent to binding apprentices, the giving warrant to levy taxations unpaid, the taking account of churchwardens and overseers, and the committing to prison such as refuse to account, or deny to pay the arrearages due upon their accounts; and yet, nevertheless, the said churchwardens and overseers, or most part of them, of the said parishes that do extend into such several limits and jurisdictions, shall, without dividing themselves, duly execute their office in all places within the said parish, in all things to them belonging, and shall duly exhibit and make one account before the said head officer of the town or place corporate, and one other before the said justices of peace, or any such two of them, as is aforesaid."

(*p*) In some of the ancient statutes, not now in force, as particularly the 22 Hen. VIII. c. 12, the justices were required to *divide* themselves, for the better execution of the regulations concerning the poor. And thence came the clause in the subsequent statute of Elizabeth, that the justices *of the division* were to do such and such things. But as at a subsequent period there was no law which required them to *divide* for the aforesaid purposes, there was properly no *division* in the sense which the statutes intended; and consequently it was unnecessary to set forth that the justices *were in or near the division.*

(*q*) The 43 Eliz. c. 2, terms the investing a person with authority as overseer, a "*nomination;*" the 54 Geo. III. c. 91, calls it an "*appointment.*" The magistrates alone can by law make the nomination or appointment, and no usage can entitle the parishioners to elect them.

If a parish is partly within a corporate jurisdiction and partly without, though all the overseers, when appointed, may act indiscriminately for the whole parish, yet the original appointment should be made by four justices, two for the part within the county at large, and two for the part within the corporate jurisdiction. (1 Nol. P. L. 45.)

Where the parish is part within and part without a corporation.

By the 5 & 6 Will. IV. c. 76, jurisdiction is given to county justices in all boroughs which have not a separate court of quarter sessions under that act.

In extra-parochial places, the justice of the peace having jurisdiction over such place or the greater part thereof, appoints the overseers (*r*).

The 43 Eliz. c. 2, s. 10, enacts, that if in any place there shall be no such nomination of overseers as is before appointed, every justice of the division shall forfeit 5*l.* to the poor of such place, to be levied by the churchwardens and overseers, or one of them, by distress by warrant from the sessions. (See *R.* v. *Sparrow*, supra, p. 59.)

Penalty on justices, &c. for not appointing overseers.

As the penalty is required to be levied by the *churchwardens and overseers*, or one of them, there should be a mandamus to make the appointment, and the penalty attaches for the omission to appoint at the time required.

The forfeiture being imposed upon *every justice of the division*, proceeds (it is said) upon the supposition of the justices being obliged to divide; (see ante, p. 60, n. (*p*); for in that case the appointment was to be by the justices in or near the division, and not otherwise; but when the justices at large are all equally concerned, and when therefore this penalty cannot be levied on the justice of any particular district, the more reasonable construction is, that all are liable. The language of the 43 Eliz. c. 2, is plainly to this effect; (see *Rex* v. *Price*, Cald. 305; *Rex* v. *Skinn*, and *Rex* v. *Baker*, 1 Bott, 527, 528; *Rex* v. *Grose*, Comb. 289; *Rex* v. *Woodsterton*, 1 Bott, 464; *St. John* v. *St. John*, Hob. 78.)

§ 6. Mode and Form of Appointment.

In considering the mode of appointing, and the form and execution of the instrument by which such appointment is authenticated, it may be observed that the *churchwardens* require no specific appointment by the justices in order to give them the authority of overseers; for they become so by 43 Eliz. *in virtue of their office of churchwarden.*

With a view to the selection of proper persons for the office, two justices ought to issue a *precept* to the high constable, directing him to require the petty constables to enjoin all the overseers within their respective constablewicks to deliver in a list of qualified inhabitants within a certain time. The form of precept of warrant and proceedings thereon will be found in the Appendix.

Precept to return a list.

The appointment must be in writing under the seals of the justices. (*Rex* v. *Arnold*, 1 Str. 101.) Its proper custody is that of the overseer himself, and parol evidence of it cannot be given until he has been called on. (*Stoke* v. *Golding*, 1 B. & A. 173. See the form in Appendix.)

Custody of appointment.

The name of the county or other smaller jurisdiction for which the justices act should be set forth in some part of the order, that the parish or township for which the appointment is made may appear to be within their jurisdiction; for those who act under a jurisdiction given by act of parliament must show that jurisdiction, since, in a matter of jurisdiction, the court will intend nothing. (*Rex* v. *Holbeck in Leeds*, Burr. Sett. C. 198; *Rex* v. *Stepney*, Burr. Sett. C. 23; *Rex* v. *Chilvers Coton*, 8 T. R. 178; *R.* v. *Houlditch*, 1 Bott, 4.)

Parts of appointment considered.

County.

The act requires that the appointment shall be by two justices at least: the number, therefore, must be shown, that the appointment may appear

Number of justices.

(*r*) 20 Vict. c. 19, s. 1.

to have been made by a competent authority: however, if there be more than one *signature*, the omission of the number in the body of the order would not vitiate an appointment thus *primâ facie* made by more than one justice.

Must show they are justices.

But it would be insufficient for them to say, *We do hereby nominate*, without describing themselves as justices; for then there would be no jurisdiction apparent. And this defect will not be cured even after confirmation of the original instrument on appeal, by calling them justices in the order of sessions: as they might have been justices at the time of making the order of sessions, and yet not at the time of making the original instrument. (*Walton* v. *Chesterfield*, 5 Mod. 322; *Rex* v. *Woodford*, 1 Bott, 434.)

Of the peace.

It seems also insufficient to say merely *justices of the county*, without stating them to be of the *peace*, though the words "of our lord the king" may be omitted without prejudice. (Hawk. P. C. b. 2, c. 8, s. 32.) And where the appointment is by magistrates acting for a limited jurisdiction, the justices should show precisely on the face of the order to what liberty they belong. (*Rex* v. *Dobbyn*, 2 Salk. 474.) But they need not describe themselves as *dwelling in or near* the parish or division. (*Rex* v. *Sparrow*, 2 Sess. Ca. 140.)

Of quorum.

Nor is it now strictly necessary that it should be stated that one of them is of the *quorum;* but it is still requisite that one of them *in fact be* of the *quorum*, except where there is but one justice of the *quorum* in the whole jurisdiction, in which case the acts of two justices are valid, though neither be of the *quorum*. (See 26 Geo. III. c. 27; 7 Geo. III. c. 21; and 4 Geo. IV. c. 27.)

Appointments may be by separate instruments.

Though not indispensable, the most eligible way is to appoint all the overseers by the same instrument; and this is the customary mode of proceeding. However, although there must be more than one overseer appointed for a district, there is no law that says there shall be an appointment of two or more overseers by one instrument. (*Rex* v. *Besland*, 1 Bott, 26; *Rex* v. *Morris*, 4 T. R. 550; *Rex* v. *Clifton*, 2 East, 168.) If more than four be appointed, the instrument is invalid as to all. (*Rex* v. *Wymondham*, 6 T. R. 553.)

Substantial householders of the district.

The old form describes the appointees as *being substantial householders of and in the parish* (or *township*), and it is proper to pursue this form where they are in fact resident within the parish or township, and their description as being *substantial* must be inserted in the body of the instrument, for so to describe them at the foot merely will not suffice. (*Rex* v. *Weobly*, 2 Str. 1261.) But if any one of the overseers appointed is not such a householder, but is a householder resident out of the parish or township (see 59 Geo. III. c. 12, ante, p. 54), it is sufficient to describe the person appointed by his name and residence. In the appointment, "*principal inhabitants*," instead of substantial householders, is an insufficient description. (*Rex* v. *Weobly*, Str. 1261.) It is proper, too, to say, *householders in the parish of* E., or if the name of the parish, and of that parish only, have occurred before in the same instrument,

Of parish, &c.

then at least to say *householders there*. (*Rex* v. *Weobly*.) A parish must be called a parish, and a township must be called a township, or a village, those being the terms used by the statute; or, which is in common acceptation synonymous, a hamlet or vill. (*Rex* v. *Morris*.) These descriptions cannot be supplied by intendment, and are so strictly required, that the order will be void if the parish or township be designated as such only under an *alias*, as the precinct of the *Tower*, *otherwise called the parish of St. Peter ad vincula*. (*Rex* v. *Severn and Arnold*, Say, 278.) Where the appointment is for a township, it is not sufficient that the overseer appointed be a householder in the parish of which that township is a district; he must also be a householder in that particular township; but if he be described in the appointment merely as a householder in the *parish*, he shall be intended a householder in the vill for which he is appointed. (*Rex* v. *Morris*, supra.)

As the 59 Geo. III. c. 12, ss. 6 & 35, provides that no out-dweller *shall be appointed*, unless he *shall have consented to such appointment*, it seems proper to add, after naming and describing him, "who has consented to this appointment," by way of showing the jurisdiction.

If an out-dweller.

The persons are to be described as "*overseers*," and where persons were appointed *to set the poor to work, &c.*, mentioning the several duties in the act, but were not in express terms appointed *overseers*, the appointment was quashed. (*Rex* v. *St. George*, Fort. 320; 1 Bott, 2.)

Must be styled "overseers."

It is usual to state that they are appointed *together with the churchwardens thereof.* These words, however, are not essential; for "when overseers are once legally appointed, they are by operation of law joined with the churchwardens of the parish for which they are appointed." (*Rex* v. *Searle*, 1 Bott, 1.)

Together with churchwardens.

If the whole number has not been appointed by the first instrument, the justices may, it seems, add the rest by one or more supplementary appointments. (*Rex* v. *Besland*, 1 Bott, 21; *Rex* v. *Morris*, 4 T. R. 550.)

Supplementary appointment.

The words "*For the present year*," are proper at whatever period the appointment is made, the form in this respect being construed to signify, from the present time till the next season allowed by law for the appointment of overseers; and this is so, though "at this present time" the proper period has gone by: for the year here means the overseers' year. (*Rex* v. *Sparrow*, 1 Bott, 34; *Rex* v. *Helling*, 3 Burr. 1905.) The following forms have, on the same construction, been sustained by the court: "for this present year, 1766." (*Rex* v. *Helling*, *ibid.*) "For a whole year." (*Rex* v. *Great Marlow*, Fol. 5; *Rex* v. *Jones*, 1 Bott, 35.) "For one year next ensuing." (*Rex* v. *Burder*, 4 T. R. 778.) "For one year next ensuing the date hereof." (*Rex* v. *Stubbs*, 2 T. R. 395.)

For what time.

The signing and sealing of the justices should be in each other's presence; for the function is not merely ministerial, like the allowance of a rate, but judicial; and the magistrates ought therefore to confer, and the result of their conference should be the ground of their determination, according to the general rule, that where a statute requires the concurrence of two magistrates, they should both act together. (*Rex* v. *Arnold*, 1 Str. 101; *Rex* v. *Great Marlow*, 2 East, 244.) But from the analogy of a more recent case, upon a warrant signed by commissioners of bankrupts, it may be inferred that the rule is satisfied if the magistrates have in fact duly conferred together and agreed what shall be done, leaving the acts of signing and sealing to be performed by them asunder at a subsequent time. (*Battye* v. *Gresley*, 8 East, 327.)

Justices must meet and concur.

It is to be observed that acting as overseer is *primâ facie* evidence of a legal appointment. (*Governor of Bristol* v. *Wait*, 6 Car. & P. 595.)

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§ 7. Appointment of fresh Overseers in case of Death, Removal, or Insolvency; and of the Duration of Office of Overseer.

The 17 Geo. II. c. 38, s. 3, enacts, "That if any such overseer shall die, or remove from the place for which he was appointed, or become insolvent, before the expiration of his office, on oath thereof made, it shall be lawful for two justices of the peace to appoint another overseer in his stead, who shall continue in office until new overseers are appointed: and if any overseer shall remove as aforesaid, he shall before such removal deliver over to some churchwarden, or other overseer of the same place, his accounts verified as aforesaid, with all rates, assessments, books, papers, sums of money, and other things concerning his office, under the like penalties as are inflicted by this act on an overseer refusing to do the same after the expiration of his office; and if any overseer shall die as aforesaid, his executors or administrators shall,

17 Geo. 2, c. 38. On an overseer's dying or becoming insolvent, two justices to choose another.

Overseer removing shall deliver his accounts to the churchwardens, &c.

Executors of overseers to account in forty days.

within forty days after his decease, deliver over all things concerning his office to some churchwarden or other overseer of the same place; and shall pay out of the assets left by such overseer all sums of money remaining due, which he received by virtue of his said office, before any of his other debts are paid and satisfied."

Continuance in office.

Overseers, who continue solvent and resident, remain in office until the arrival of the period limited for the appointment of their successors. (*Rex* v. *Sparrow*, 1 Bott, 34.) But no longer, even though no successors be appointed; nor, as it seems, does the authority even of the churchwardens, as overseers, continue beyond the expiration of the overseers' term, though "liable to be revived by the appointment of new overseers, if the churchwardens continue in office beyond the overseers' regular year." (*Vide* 1 Nol. P. L. p. 59.)

If overseers contract debts within three months of termination of their year of office, their immediate successors shall discharge the same.

The 11 & 12 Vict. c. 91, s. 10, reciting, that "it is expedient to make some provisions as to the payment in certain cases of debts incurred by the overseers of the poor in parishes after their year of office has expired," enacts, "that if the overseers of the poor in any parish shall lawfully, by virtue of their office, contract any debt on account of the parish within three months prior to the termination of their year of office, and the same shall not have been discharged by them before their year of office shall have determined, such debt shall be payable by and recoverable from their immediate successors in office, and chargeable upon the poor-rate of the said parish, in like manner as the same would have been payable and chargeable by such first-mentioned overseers during their year of office; and if any such debt shall have been contracted during their year of office, but more than three months prior to its termination, the same shall be payable by and recoverable from their immediate successors in office, if the ratepayers of the parish in vestry assembled, and the commissioners for administering the laws for the relief of the poor in England, shall consent, but not otherwise" (*q*).

§ 8. Of the enforcing or avoiding an Appointment, and of Appeals.

Mandamus to appoint.

If the magistrates will not make an appointment within the proper time, a mandamus may be obtained from the Court of Queen's Bench to compel them; and the rule will be absolute in the first instance. (*Reg.* v. *Churchwardens of Manchester*, 7 Dowl. 707.)

Indictment for not acting.

If, however, the justices have made a valid appointment, and the parties refuse to take the office upon them, it may be *enforced* against them by *indictment* (*r*).

The Court of Queen's Bench will not entertain an application to confirm an appointment. The district of Borough Fen is extra-parochial.

(*q*) This provision has not the effect of transferring the contract from one overseer to another. (*Chambers* v. *Jones*, 5 Exch. 229.)

(*r*) The person is overseer completely by the appointment under the hand and seal of the magistrates, until upon appeal the sessions have allowed his excuse, or the Court of King's Bench have pronounced his appointment void; but its invalidity seems a good answer to an indictment, and may be taken advantage of by demurrer where its insufficiency appears on the face of the indictment itself. (*Rex* v. *Pardy*, 1 Bott, 380; *Rex* v. *Burder*, 4 T. R. 778.) It would probably be necessary on such an indictment to prove that he had received notice of his appointment; for such notice is requisite even to warrant a conviction before two justices in penalties under 43 Eliz. for neglect of his office, where notice seems the less important, inasmuch as such a conviction must allege the defendant to have accepted the office, which implies that he must have had notice. (*Rex* v. *Harman*, 1 Bott, 376.)

It contains a considerable population ; and it had been for some time the practice for the inhabitants to support the poor requiring relief, who were resident among them, by rates, &c. Overseers had been in several instances appointed, who discharged the ordinary duties of that office. But the liability of the inhabitants within the district to pay rates for this purpose being at length disputed, the magistrates appointed overseers, and a motion was now made in full court for a certiorari to bring up such appointment, for the purpose of moving that it be confirmed, and thus obtaining the decision of the court, whether, under all the circumstances, overseers could be legally appointed for the district. Both parties were anxious for, and ready to abide by, the judgment of the court ; and a note in 4 Burn's Justice, 26th edit., was relied upon, which says, "The law has likewise permitted a *confirmation* of the appointment by the Court of King's Bench, on a motion to that effect, when it is brought up by certiorari ;" and *Rex* v. *Standard Hill* (4 M. & S. 382), was also referred to. The court, however, said that they were not aware of any instance in which such an application had been granted with a view to *confirm* the appointment, though there were many cases in which an appointment of overseers had been moved into this court for the purpose of *quashing* it, as was done in *Rex* v. *Standard Hill*, to which reference had been made ; the rule was therefore refused. (*Rex* v. *Justices of the Liberty of Peterborough*, 8 L. J., M. C. 130.)

Q. B. will not confirm an appointment.

The appointment may be removed into Q. B. by *certiorari*, at any time before the expiration of the year for which it was made ; but it seems not afterwards. (*Rex* v. *Butler*, 1 Bla. R. 649.) Upon which the court will go into the consideration, not only of defects apparent on the appointment itself, but of extrinsic objections appearing by affidavit, such as that the justices had no jurisdiction (*Rex* v. *Great Marlow*, 2 East, 244 ; *Rex* v. *Butler*), or that the place for which the appointment is made was not a township or vill, or reputed to be such. (*Rex* v. *Standard Hill*, 4 M. & S. 244.) But in a recent case the Court of Queen's Bench refused a certiorari for the purpose of quashing an appointment, on the ground that one of the persons was not a householder. (*The Overseers of Pudding Norton*, 33 L. J. (N. S.) M. C. 136.) Or that it was a parish and not extra-parochial, and therefore the appointment of one overseer is insufficient. (See *Reg.* v. *Cousins*, 33 L. J. (N. S.) M. C. 87, post, p. 110, n. (*o*).) It will also happen, in some cases, that a motion for a mandamus, to be directed to two justices of the neighbourhood, commanding them to appoint overseers for the proper district, will be the proper method of disputing the propriety of an appointment. But, according to Mr. Nolan (1 Nol. P. L. 37, note (4)), it is not applicable to improper appointments for extra-parochial places. The custody of the instrument of appointment belongs to the overseers. (*Rex* v. *Stoke Golding*, 1 B. & Ald. 173.)

Or on a certiorari.

For certain defects by affidavit, as the place be a township or vill.

Mandamus to appoint.

When the appointment is void, the objection to it may be taken on an indictment for refusal to take the office, or in an action for distraining under a rate made by such officers. In a distress for poor rate, the party rated cannot question the validity of the appointment of the overseers, on the ground that the majority of the justices present at the appointment did not concur in it, the jury negativing fraud. (*Pinney* v. *Slade*, 5 New Cases, 319. See also *Hinton* v. *Pawle*, Cro. Car. 92.) By 17 Geo. II. c. 38, s. 8, the distress for a poor rate is not unlawful on account of any defect or want of form in the warrant for the appointment of overseers. But it may be shown that the place for which the appointment is made was not a parish or vill. (*Lane* v. *Cobham*, 7 East, 1.)

Resisting appointment.

The dissent of a majority of justices present at appointment is no answer to a distress for a rate, if no fraud.

The appointment may be directly impeached by appeal, either by the overseers themselves, or by any of the parishioners.

An appeal was given against the appointment itself, by 43 Eliz. c. 2, s. 6, which provides, that if any person shall find himself grieved (*inter alia*) by any act done by the said justices of peace, "that then it shall be lawful for the justices of peace at their general quarter sessions,

Appeal against appointment.

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or the greater number of them, to take such order therein as to them shall be thought convenient; and the same to conclude and bind all parties." (*Rex* v. *Great Marlow*, 2 East, 244) (*s*).

The appeal may be by any parishioner. (*Rex* v. *Forrest*, 3 T. R. 38.)

It is advisable for the appellant to serve each of the justices who have made the appointment, and each of the other parish officers with whom he is nominated to act, with a copy of the notice and grounds of appeal (*t*).

Appointments by persons acting as justices, but not being such, a nullity.

If the appointment were made by persons who were not justices, no appeal is necessary, for that is a nullity; but if the party do appeal in such case, and call the persons in question in his notice by the title of justices, he concludes himself, and cannot be heard to urge that they are not so; though an appointment by persons not justices is void *ipso facto*, without appeal, yet, where the effect of jurisdiction is merely that neither of the justices is of the *quorum*, the proper way to obtain the avoidance of the appointment is by appealing. (*Rex* v. *Fisher*, and *Rex* v. *Towill*, Cald. 135; 1 Bott, 72; *Albrighton* v. *Skipton*, 1 Str. 300.)

On appeal against order of removal the appointment for an extra-parochial place may be questioned.

If the appointment is void, it may be questioned collaterally in an *appeal against an order of removal*, made to an extra-parochial place having no officers, or to a township or other minor district, when it ought to have been made to the parish at large; or, probably, to a parish at large when it ought to have been to one of the townships in that parish. (*Rex* v. *Denham*, Burr. S. C. 35; *Dolting* v. *Stokelane*, Fort. 219; *Rex* v. *Tamworth*, Cald. 28; 1 Bott, 156; *Rex* v. *Swalcliffe*, Cald. 248; 2 Bott, 896.) Another mode, the converse of the last, is an appeal against an order of removal made from a wrong district. (*Forest of Dean* v. *Parish of Linton*, 2 Salk. 487.)

§ 9. THE DUTIES AND POWERS OF OVERSEERS.

Duties under stat. 43 Eliz.

The overseers were directed by the 43 Eliz. c. 2, s. 1, to "take order from time to time, by and with the consent of two or more such justices of peace as is aforesaid, for setting to work the children of all such whose parents shall not, by the said churchwardens and overseers, or the greater part of them, be thought able to keep and maintain their children: and also for setting to work all such persons, married or unmarried, having no means to maintain them, and use no ordinary and daily trade of life to get their living by: and also to raise, weekly or otherwise (by taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate, propriations of tithes, coal mines, or saleable underwoods in the said parish, in such competent sum and sums of money as they shall think fit) a convenient stock of flax, hemp, wool, thread, iron, and other necessary ware and stuff, to set the poor on work: and also competent sums of money for and towards the necessary relief of the *lame*, *impotent*, *old*, *blind*, and *such other among them*, *being poor*, *and not able to work*, and also for the *putting out of such children to be apprentices*, to be gathered out of the same parish, according to the ability of the same parish, and to do and execute all other things, as well for the disposing of the said stock, as otherwise concerning the premises as to them shall seem convenient."

Employment of poor.

Under the statute of Eliz., therefore, it was the duty of the overseers to obtain *employment*, at reasonable wages, for able-bodied persons who were unable *to obtain employment* for themselves; and to give *pecuniary relief* only to the sick and impotent. The general care and management

(*s*) The 17 Geo. II. c. 38, s. 4, gives an appeal to the party grieved by any rate, or by overseers' accounts, or by an act done by the overseers, *or by any justices*, but it may be doubtful if this applies to the appointment of overseers.

(*t*) See Burn's Justice, Vol. I. title "APPEAL."

of the poor was vested in them, subject only to some control from the justices of the peace.

By "The Poor Law Amendment Act" (4 & 5 Will. IV. c. 76), however, the relief of the poor is now administered in unions by the board of guardians under the control of the poor law board, and the present principal duties of the overseers relate to the making and collection of rates, their duties and powers respecting which, as well as those relating to their accounts, will be found in a subsequent part of the volume.

For the duties of overseers in the now exceptional cases of Gilbert Unions and places under local acts, see post, Chapter VI.

Relief by overseers in cases of sudden and urgent necessity.

Nevertheless, overseers are not only empowered, but required to give relief in cases of emergency. The 4 & 5 Will. IV. c. 76, s. 54, which enacts, that it shall not be lawful for any overseer of the poor to give any further or other relief or allowance from the poor rate, than such as shall be ordered by guardians (or by a select vestry where the parish is so governed), excepts "cases of sudden and urgent necessity, in which cases he is hereby required to give such temporary relief as each case shall require, in articles of absolute necessity, but not in money, and whether the applicant for relief be settled in the parish where he shall apply for relief or not: provided always, that in case such overseer shall refuse or neglect to give such necessary relief in any case of necessity to poor persons not settled nor usually residing in the parish to which such overseer belongs, it shall and may be lawful for any justice of the peace to order the said overseer, by writing under his hand and seal, to give such temporary relief in articles of absolute necessity, as the case shall require, but not in money; and in case such overseer shall disobey such order, he shall, on conviction before two justices, forfeit any sum not exceeding five pounds, which such justices shall order: provided always, that any justice of the peace shall be empowered to give a similar order for medical relief (only) to any parishioner, as well as out-parishioner, where any case of sudden and dangerous illness may require it; and any overseer shall be liable to the same penalties as aforesaid for disobeying such order; but it shall not be lawful for any justice or justices to order relief to any person or persons from the poor rates of any such parish, except as hereinbefore provided."

Register of persons relieved.

Overseers are also required to keep a register and account of all persons receiving out-door relief (4 & 5 Will. IV. c. 76, s. 55) (*u*), and with the consent of the vestry they may in populous parishes provide offices for the transaction of business and depositories for parish documents. (See 24 & 25 Vict. c. 125, post, Chapter X.)

The duties of overseers in the election of guardians have been already noticed, (see ante, Chap. III. § 2). Their powers and duties relating to other matters of a minor character will be found under different heads in this volume.

The act for the *whole* parish.

The power of the overseers extends over the whole parish, but there may be a subdivision of the parish by the overseers themselves as a matter of arrangement. In such cases, the accounts form only an entire parochial account. (*Malkin* v. *Vickerstaff*, 3 B. & A. 189; and see *Rex* v. *Justices of Gloucester*, 1 B. & Adol. 1; *Rex* v. *Justices of Essex*, 3 B. & Adol. 941; 3 Maule & Selw. 471; *Eden* v. *Titchmarsh*, 1 Adol. & Ell. 691.)

Liability one for the other.

One overseer is not personally liable for the other's voluntary *contract*. (*Rex* v. *Justices of Gloucester*, 1 B. & Adol. 2, ante, per *Parke*, J.) But where a joint *duty* is imposed he may be so. (*Rex* v. *Essex*, 3 B. & Adol. 941; and see *Eden* v. *Titchmarsh*, 3 Nev. & M. 712.) And the overseers are responsible for the malversation of each other. (*Rex* v. *Justices of Essex*, 3 B. & Adol. 941.)

In common understanding, what is required to be done by church-

(*u*) See the section in full, post, Chapter X.

wardens and overseers is satisfied by being done by a *majority* so far as to bind parties affected by their contracts. (Lord *Kenyon*, in *Rex* v. *Beeston*, 3 T. R. 592.)

Recovery of contributions when copy of the order served upon one overseer.

By 12 & 13 Vict. c. 103, s. 7, "where the guardians of any union or parish shall make any order for the payment of money upon overseers or other officers of any parish upon whom they are empowered by law to make it, and a copy of such order shall be served upon any one of such overseers or other officer, it shall be lawful for the said guardians to enforce such order against the person so served as fully and as effectually as if a copy thereof had been also served upon every one of such overseers or other officers."

As to indictments for embezzlement, &c., and as to passing accounts by the auditors, see subsequent parts of this volume.

Liability of overseers on contracts.

Overseers are liable upon their contracts, express or implied, for necessaries furnished for the use of the poor.

"It cannot be matter of dispute in point of law, and I could wish it were so understood, that where time is not afforded for procuring an order of justices, the law raises an obligation against the parish where the pauper lies sick as casual poor, to look to the supply of his necessities; and, if the parish officer stands by and sees that obligation performed by those who are fit and competent to perform it, and does not object, the law will raise a promise on his part to pay for the performance." Lord *Ellenborough*, C. J., in *Lamb* v. *Bunce* (4 M. & Sel. 275). And in *Wennall* v. *Adney* (3 B. & P. 247), Lord *Alvanley*, C. J., said, "I have no doubt whatever that parish officers are bound to assist, where such accidents as these take place; and that the law will so far raise an implied contract against them, as to enable any person who affords that immediate assistance which the necessity of the case usually requires, to recover against them the amount of money expended."

In such a case there is no legal obligation on the overseers of the parish in which the pauper is settled to pay a medical man for attendance in the absence of any order or promise by them (*Gent* v. *Tomkins*, 5 B. & C. 746; 1 D. & R. 541 (*x*)); nor was there any implied promise on their part to repay the officers of the parish where the accident happened the amount paid by them for medical attendance and necessaries (*y*) (*Atkins* v. *Benwell*, 2 East, 505); nor is the master of a servant, who meets with an accident, liable to repay the parish officers the amount expended by them on the servant. (*Newby* v. *Wiltshire*, Cald. 527; 4 Dougl. 283, S. C.; and see *Wennall* v. *Adney*, 3 B. & P. 247; *Sellen* v. *Norman*, 4 C. & P. 80; *Reg.* v. *Smith*, 8 C. & P. 153.)

So clear is the *primâ facie* duty of the officers of the parish where an accident happened, to afford relief, that, where they improperly removed the person to her parish for the purpose of avoiding liability, they were held liable for the surgeon's bill. (*Tomlinson* v *Bental*, 5 B. & C. 738; 8 D. & R. 493.)

The liability in these cases is not confined to surgical aid, but extends to necessaries, such as lodging, maintenance, providing a nurse, &c. (*Simmons* v. *Wilmot*, 3 Esp. 91.)

But where a pauper had his leg fractured in one parish, and was conveyed for cure to a house in another parish as the most convenient

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(*x*) This case (cited as *Sneath* v. *Tomkins*) is noticed in a note, 1 Car. & P. 132, where the reporters say, that it was intimated from the bench, that two of the judges thought it highly doubtful whether, as the pauper was casual poor, there was any consideration even for a subsequent express promise by the overseer of the parish in which the pauper was settled, and they had very great doubts whether the action could be maintained, as this promise came within the rule of *nudum pactum*. But this view can scarcely be maintained.

(*y*) See now 11 & 12 Vict. c. 110, post, "UNIONS."

place, the overseer of the parish where the cure was performed was held liable for the surgical attendance. (*Lamb* v. *Bunce*, 4 M. & Sel. 275.)

Nevertheless, in all these cases it seems there must be some evidence of the acquiescence in the attendance or supply of necessaries, for "the legal liability does not give *any person who chooses to attend a pauper* a right to call for payment." Per *Bayley*, B. (*Paynter* v. *Williams*, 1 Cr. & M. 810).

On the other hand, the overseers of the parish where the pauper is settled may render themselves liable by an express promise to pay, either before or after the attendance (*Watson* v. *Innes*, Buller's N. P. 129; *Wing* v. *Mill*, 1 B. & A. 104), or even by an implied request or promise (*Paynter* v. *Williams*, 1 Cr. & M. 810). An assistant overseer is only liable on an express request. (*Watling* v. *Walters*, 1 Car. & P. 132.)

It is to be observed, that the 11 & 12 Vict. c. 91, s. 10 (ante, p. 64), which directs and enables overseers to pay debts contracted by their predecessors in office, does not transfer the contract. (*Chambers* v. *Jones*, 5 Exch. Rep. 229.)

These unseemly questions as to the liability of overseers in the case of accidents and sudden illness have been to a great extent, if not wholly, put an end to by the provisions of the 11 & 12 Vict. c. 110, regulating the repayment of such expenditure. (See post, Chapter IX., p. 120.)

Liabilities of Overseers for abuse of Office.

Overseers indictable for not relieving poor.

If an overseer did not provide for the poor, he was indictable; and if he relieved the poor when there was no necessity for it, it was a misdemeanor. (*Tawney's case*, 16 Vin. Abr., tit. *Poor*, 415; 1 Bott, 371.)

Remedies against abuse of office.

Overseers are indictable for not receiving a pauper sent to them by an order of justices, however satisfied they may be that such order cannot, upon being appealed against, be supported. For if this were permitted, the pauper might perish while his settlement was being disputed (*Rex* v. *Davies*, 1 Bott, 378; S. C. cited and approved, 2 Burr. 803 (*z*)); although by the 3 W. & M. c. 11, a specific penalty is given for this offence. (See post, "REMOVAL.")

Punishable for neglect of duty.

In many other instances penalties are inflicted, to be recovered by action, or levied on conviction by magistrates.

The provisions in this respect relating to overseers' accounts (43 Eliz. c. 2; 17 Geo. II. c. 38, s. 2); and apprentices (56 Geo. III. c. 139, s. 6), will be found in a subsequent part of this volume.

The following are provisions of more general application.

The 43 Eliz. c. 2, s. 2, provides, that overseers absenting themselves without lawful cause from the monthly meeting therein enjoined (*a*), or being negligent in their office, shall forfeit for every default 20*s.* to the poor, to be levied by one of the churchwardens or overseers by warrant of two justices (one being of the quorum) by distress; or in default thereof, any two such justices may commit the offender to the common gaol, there to remain without bail or mainprize, till the said forfeiture shall be paid.

(*z*) It appears that formerly, for very gross abuses in office, a criminal information might be obtained against an overseer; but the court came to the resolution, some time ago, to leave their official delinquencies, however flagrant, to the ordinary punishment by indictment. (*Rex* v. *Slaughter*, Cald. 247 (*a*).

(*a*) This penalty for not meeting in the church could not be inflicted on overseers of extra-parochial places, because they had no church to meet in. (8 Mod. 40.) Nor could an overseer be adjudged guilty of absenting himself from the meeting until he had personal notice of his appointment. (*Rex* v. *Harman*, 1 Bott, 376.) The provision relating to meetings of overseers is now, however, obsolete.

CHAP. IV.

Penalty of 20*s.* and not exceeding 5*l.*

By 17 Geo. II. c. 38, s. 14, it is enacted, "That if any churchwarden, overseer of the poor, or officer of any parish, township or place, shall neglect or refuse to obey and perform the several orders and directions of this act or any of them, where no penalty is before provided by this act, or shall act contrary thereto, every such churchwarden, overseer of the poor or other officer so offending in the premises shall for every such offence, on oath thereof made, within two calendar months after the offence committed, before any two or more of his Majesty's justices of the peace, forfeit for the use of the poor of such parish, township or place a sum not exceeding 5*l.* nor less than 20*s.*, to be levied by distress and sale of the offender's goods, by warrant from such justices; which sum shall be paid to some churchwarden or overseer of the poor of such parish, township or place for the purpose aforesaid."

The "orders and directions" of the act to which this provision appears chiefly to relate, are the delivery of accounts by overseers removing from the parish (see ante, pp. 63, 64), and the providing copies of rate-books for public perusal, and their delivery to succeeding overseers.

Punishment for neglect of duty, or disobedience of order of justices.

By 33 Geo. III. c. 55, s. 1, it is enacted, "That it shall and may be lawful for any two or more of his Majesty's justices of the peace assembled at any special or petty sessions of the peace, upon complaint being made upon oath before them of any neglect of duty, or of any disobedience of any lawful warrant or order of any justice or justices of the peace by any constable, overseer of the poor, or other peace or parish officer * * * (such constable, overseer or other officer * * having been duly summoned to appear and answer such charge or complaint), to impose, upon conviction, any reasonable fine or fines, not exceeding the sum of 40*s.*, upon such constable, overseer or other officer * * respectively, as a punishment for such disobedience, neglect of duty * * and by warrant under the hands and seals of any two or more of such justices assembled at any such special or petty sessions as aforesaid, to direct such fine or fines, if not paid, to be levied by distress and sale of the goods and chattels of the person or persons so offending, rendering the overplus (if any) after deducting the amount of such fine or fines, and the charges of such distress and sale, to such offenders; and such fine or fines which may be imposed upon any such constable, overseer or other officer as aforesaid shall be applied and disposed of for the relief of the poor of the parish, township or place where the offenders shall respectively reside, at the discretion of the justices imposing the same; * * * and if any person shall be aggrieved by the imposition of such fine or fines as aforesaid, or by any order or warrant of distress for raising and levying the same, or by the judgment or determination of the said justices, or by any act to be done in the execution of such warrant of distress, such person or persons so aggrieved shall and may appeal to the next general or quarter sessions of the peace to be held for the county, riding or division within which such person shall reside, of which appeal ten days' notice at the least shall be given; and for want of such distress, such person or persons shall be committed to the house of correction for any space of time not exceeding ten days."

Sect. 2 provides that no person acting under any such warrant of distress shall be deemed a trespasser *ab initio*, by reason of any irregularity in such warrant or proceedings thereupon.

Appeal.

Any person who thinks himself aggrieved may appeal to the next session, upon giving ten days' notice thereof.

A penalty is imposed on overseers who neglect to keep or publish, or who refuse inspection of, the rules of the poor law commissioners, 4 & 5 Will. IV. c. 76, s. 18 (*b*); and also for wilfully disobeying the legal and reasonable orders of justices and guardians in carrying the rules, orders and regulations of the commissioners or of the Poor Law Amendment Act

(*b*) As to these rules, see ante, pp. 27—33.

into execution. (4 & 5 Will. IV. c. 76, s. 95.) But overseers are exempted from liability to any prosecution or penalty for not carrying into execution any illegal order of such justices or guardians, any law or statute to the contrary notwithstanding. (*Ib.* sect. 96.)

Wilful misapplication of money.

By the 97th sect. of 4 & 5 Will. IV. c. 76, overseers and others are liable to a penalty for wilfully wasting or wilfully (*c*) misapplying any money or goods of the parish.

Contracts of overseers.

The overseers are liable in damages for acts done by them without authority or in abuse of their office. (See *Simmons* v. *Wilmot*, 3 Esp. Rep. 92; *Lamb* v. *Bunce*, 4 M. & S. 275.) An overseer proceeding through all the stages of an expensive suit, without the concurrence of the vestry, is personally liable. (*Rex* v. *Micklefield.* See also *Furnival* v. *Coombs*, p. 389 (*d*).)

Although the duties of overseers in respect to the making of rates will, as already stated, be treated of in a subsequent part of the work, it may be mentioned here that the 7 & 8 Vict. c. 101, s. 63, enacts, "that if the overseers of any parish wilfully neglect to make or collect sufficient rates for the relief of the poor, or to pay such moneys to the guardians of any parish or union as such guardians may require, and if by reason of such neglect any relief directed by the board of guardians to be given to any poor person be delayed or withheld during a period of seven days, every such overseer shall upon conviction thereof forfeit and pay for every such offence any sum not exceeding twenty pounds."

Penalty on overseers neglecting to obtain a supply of funds for the relief of the poor.

Persons having the management of the poor are not to be concerned in contracts, &c., whilst in office (*e*).

Privileges.

In the discharge of their various duties, churchwardens and overseers may occasionally be subjected to vexatious actions. To afford them protection, under such circumstances, the legislature has given them various advantages.

By 43 Eliz. c. 2, s. 19, persons sued for anything done by authority of that act may plead the general issue, and give the special matter in evidence; and if a verdict be found for the defendant, or the plaintiff be nonsuit, the defendant shall have treble damages with costs, to be assessed by the jury in case of the issue tried, or by a writ to inquire of the damages in case the plaintiff is nonsuit.

Treble damages with costs.

By 7 Jac. I. c. 5, as extended by 21 Jac. I. c. 12, if any action shall be brought against (*inter alia*) any *churchwarden* or *overseer of the poor*, or other person who in their aid, or by their commandment, should do anything concerning their offices, he may plead the general issue, and give the special matter in evidence: and if a verdict shall pass for him, or the plaintiff shall be nonsuit or suffer discontinuance, he shall have double costs (*f*). And such action shall be laid in the county where the act was committed, and not elsewhere.

May plead the general issue, &c.

Venue local.

(*c*) *Carpenter* v. *Mason*, 12 A. & E. 629.

(*d*) Where, under a former state of the law relating to such matters, an overseer took a gross sum as a compensation for the maintenance of a bastard child, he was held liable on the death of the child to repay the money not expended, and he could not protect himself by a payment over to his successors in office. (*Chappell* v. *Poles*, 2 M. & W. 867.)

Where an overseer distrained for a rate, not knowing there was an appeal against it, and immediately paid over the money so levied to a guardian under Gilbert's Act, 22 Geo. II. c. 83, and the rate was afterwards lowered on the appeal being heard, the overseer not being a wrong-doer was held not to be liable in money had and received. (*Priestley* v. *Watson*, 2 C. & M. 691.)

(*e*) See the statutes on this subject, post, Chapters V. and XI.

(*f*) This relates only to *torts* and acts *done*, and does not extend to a nonsuit in an action against overseers for the price of goods supplied for the use of the poor. (*Blanchard* v.

No action to be brought until copy of warrant demanded and refused.

And by 24 Geo. II. c. 44, s. 6, "no action shall be brought against any constable, headborough, or other officer, or against any person or persons acting by his order and in his aid, for anything done in obedience to any warrant under the hand or seal of any justice of the peace, until demand hath been made or left at the usual place of his abode, by the party or parties intending to bring such action, or by his, her, or their attorney or agent, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected for the space of six days after such demand; and in case after such demand and compliance therewith, by showing the said warrant to, and permitting a copy to be taken thereof by the party demanding the same, any action shall be brought against such constable, headborough, or other officer, or against such person or persons acting in his aid, for any such cause as aforesaid, without making the justice or justices who signed or sealed the said warrant defendant or defendants, that on producing or proving such warrant at the trial of such action, the jury shall give their verdict for the defendant or defendants, notwithstanding any defect of jurisdiction in such justice or justices, and if such action be brought jointly against such justice or justices, and also against such constable, headborough, or other officer, or person or persons acting in his or their aid as aforesaid, then, on proof of such warrant, the jury shall find for such constable, headborough, or other officer, and for such person and persons so acting as aforesaid, notwithstanding such defect of jurisdiction as aforesaid; and if the verdict shall be given against the justice or justices, that in such case the plaintiff or plaintiffs shall recover his, her, or their costs against him or them, to be taxed in such manner by the proper officer, as to include such costs as such plaintiff or plaintiffs are liable to pay to such defendant or defendants for whom such verdict shall be found as aforesaid."

Overseers of the poor, and all officers acting under a justice's warrant, are within the protection of this statute. (*Jackson's case*, Lofft, 249; Bull. N. P. 24.)

The provisions relating to the protection of overseers in enforcing payment of poor-rates will be found in a subsequent part of this volume.

Assistant Overseers.

The provisions as to assistant overseers are given in the next chapter, as falling within the description of "Paid Officers."

Bramble, 3 M. & Sel. 131; *Atkins* v. *Bunwell*, 3 East, 92.) The provisions as to double costs are repealed by 5 & 6 Vict. c. 97, and in lieu thereof a full and reasonable indemnity as to costs and expenses substituted.

CHAPTER V.

Of the Persons concerned in the Administration of the Poor Laws—(*continued*).

IV. Paid Officers.

§ 1. OF PAID OFFICERS GENERALLY.

THE appointment of paid officers is principally regulated by the 46th section of "The Poor Law Amendment Act, 1834," 4 & 5 Will. IV. c. 76. That section enacts, "that it shall be lawful for the said commissioners, as and when they shall see fit, by order under their hands and seal, to direct the overseers or guardians (*a*) of any parish or union, or of so many parishes or unions as the said commissioners may in such order specify and declare to be united for the purpose only of appointing and paying officers, to appoint such paid officers with such qualifications as the said commissioners shall think necessary for superintending or assisting in the administration of the relief and employment of the poor, and for the examining and auditing, allowing or disallowing of accounts in such parish or union, or united parishes, and otherwise carrying the provisions of this act into execution; and the said commissioners may and they are hereby empowered to define and specify and direct the execution of the respective duties of such officers, and the places or limits within which the same shall be performed, and direct the mode of the appointment and determine the continuance in office or dismissal of such officers, and the amount and nature of the security to be given by such of the said officers as the said commissioners shall think ought to give security, and, when the said commissioners may see occasion, to regulate the amount of salaries payable to such officers respectively, and the time and mode of payment thereof, and the proportions in which such respective parishes or unions shall contribute to such payment; and such salaries shall be chargeable upon and payable out of the poor-rates of such parish or union, or respective parishes, in the manner and proportions fixed by the said commissioners, and shall be recoverable against the overseers or guardians of such parish or union, or parishes, by all such ways and means as the salaries of assistant overseers or other paid officers of any parish or union are recoverable by law; and all such payments shall be valid, and shall be allowed in the accounts of the overseers or guardians paying the same."

Commissioners may direct overseers and guardians to appoint paid officers for parishes or unions;

and fix their duties, and the mode of appointment and dismissal, and the security;

and regulate their salaries.

This section empowers the appointment of officers, and applies as well to those parishes which are as to those which are not regulated by local acts (*b*).

(*a*) "Guardian" means and includes any visitor, governor, director, manager, acting guardian, vestryman or other officer in a parish or union, appointed or entitled to act as a manager of the poor, and in the distribution or ordering of the relief to the poor from the poor rate, under any general or local act of parliament, 4 & 5 Will. IV. c. 76, s. 109. The directors of the poor of St. Pancras, under the local act, 59 Geo. III. c. xxxix. were held to be guardians within sect. 46 of the 4 & 5 Will. IV. c. 76. (*Reg.* v. *Stockton and Directors of the Poor of St. Pancras*, 27 L. J., M. C. 281; E. B. & E. 583.)

(*b*) *Reg.* v. *The Poor Law Commissioners, In re The Vestrymen and Governors of the Poor of St. James*,

Masters of workhouses and parish officers to be under order of board, and removable by them.

Sect. 48. "And be it further enacted, that the said commissioners may and they are hereby authorized and empowered, as and when they shall think proper, by order under their hands and seal, either upon or without any suggestion or complaint in that behalf from the overseers or guardians of any parish or union, to remove any master of any workhouse, or assistant overseer, or other paid officer of any parish or union whom they shall deem unfit for or incompetent to discharge the duties of any such office, or who shall at any time refuse or wilfully neglect to obey and carry into effect any of the rules, orders, regulations, or bye-laws of the said commissioners, whether such union shall have been made or such officer appointed before or after the passing of this act, and to require from time to time the persons competent in that behalf to appoint a fit and proper person in his room; and that any person so removed shall not be competent to be appointed to or to fill any paid office connected with the relief of the poor in any such parish or union, except with the consent of the said commissioners under their hands and seal: provided always, that no person shall be eligible to hold any parish office, or have the management of the poor in any way whatever, who shall have been convicted of felony, fraud, or perjury."

The order suspending or dismissing a paid officer may in urgent cases take effect within the fourteen days required in general for orders coming into force (*c*).

When a payment for services is to be made out of the rates, the parish officers have the appointment, and it does not signify in the least whether they are permanent officers or not (*d*). But it was held that sect. 46 empowered the poor law board to direct that officers elected pursuant to their order under that section should continue to hold office till death, resignation or removal by the poor law board (*e*).

No person employed in administration of poor laws to furnish, for his own profit, goods or provisions given in parochial relief (*f*).

"The Poor Law Amendment Act, 1834," (4 & 5 Will. IV. c. 76), sect. 77, enacts, "that it shall not be lawful for any person hereafter to be appointed in any parish or union to any office concerned in the administration of the laws for the relief of the poor, or for any person who after the twenty-fifth day of March, one thousand eight hundred and thirty-five, shall fill any such office, to furnish or supply, for his own profit or on his own account, any goods, materials or provisions ordered to be given in parochial relief, or to furnish or supply any goods, materials or

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Westminster, 17 Q. B. Rep. 445; 20 Law J. Rep. (N. S.) M. C. 236; *Reg.* v. *Oxford*, 17 Q. B. Rep. 457 (note); *Reg.* v. *Robinson*, *Ib.* 466. In the first-mentioned case, by a local act (2 & 3 Geo. III. c. lviii. s. 21,) the vestrymen of the parish of St. James, Westminster, were required to nominate twenty-one persons who should become the directors of the poor, and who were to make rules and regulations for the maintaining of the poor, and which were to be subsequently confirmed by the vestry. In pursuance of this power the vestry (before "The Poor Law Amendment Act, 1834") nominated twenty-one persons, directors, by whom certain rules were made and duly confirmed, which, among other things, appointed that the officers should be elected annually at Easter. The poor law board, by an order addressed to the vestrymen of the above parish, ordered that the directors, whenever a vacancy occurred, should appoint fit persons to fill certain offices, and directed that every officer so appointed should continue to hold the office until he die, resign, or be removed by the poor law board, or be proved to be insane, to the satisfaction of the board. It was held that the board had not exceeded the powers conferred on them by sect. 46 of "The Poor Law Amendment Act, 1834," and that the order was therefore valid.

(*e*) 5 & 6 Vict. c. 57, s. 4. See ante, p. 29.

(*d*) *Patteson*, J., *Reg.* v. *Hunt*, 3 P. & D. 476; 12 A. & E. 130; 9 L. J., M. C. 86.

(*e*) *Reg.* v. *Robinson*, 17 Q. B. Rep. 466. But that case also decided that the poor law board could not order the simple *continuance* in office *without a fresh appointment* of an officer appointed under a local act before the order of the board.

(*f*) See also post, Chapter XI.

provisions for or in respect of the money ordered to be given in parochial relief, to any person in such parish or union; and every person holding such office shall, on conviction before any two justices of the peace, be subject to a penalty of five pounds for such offence, one-half of which penalty shall be paid to the informer, and the other half in aid of the poor rates of such parish or union."

Penalties on overseers and other officers disobeying guardians.

Sect. 95 enacts, "that in case any overseer, assistant overseer, master of a workhouse, or other officer of any parish or union, shall wilfully disobey the legal and reasonable order of such justices and guardians in carrying the rules, orders and regulations of the said commissioners or assistant commissioners, or the provisions of this act, into execution, every such offender shall, upon conviction before any two justices, forfeit and pay for every such offence any sum not exceeding five pounds."

Penalty on overseers, &c. purloining, &c. goods, &c. 20*l.* and treble the value of goods purloined.

Sect. 97 enacts, "that if any overseer, assistant overseer, master of a workhouse or other paid officer, or any other person employed by or under the authority of the said guardians, shall purloin, embezzle or wilfully waste or misapply any of the moneys, goods or chattels belonging to any parish or union, every such offender shall, besides and in addition to such pains and penalties as such person so offending shall, independently of this act, be liable to, upon conviction before any two justices, forfeit and pay for every such offence any sum not exceeding twenty pounds, and also treble the amount or value of such money, goods or chattels so purloined, embezzled, wasted or misapplied; and every person so convicted shall be for ever thereafter incapable of serving any office under the provisions of this or any other act in relation to the relief of the poor."

Assaults upon officers.

"The Poor Law Amendment Act, 1850," (13 & 14 Vict. c. 101), sect. 9, enacts, "that where any person shall be charged with and convicted of any assault upon any officer of a workhouse or relieving officer in the due execution of his duty, or upon any person acting in aid of such officer, the court may sentence the offender to the same punishment as is provided by law for an assault upon a peace officer or revenue officer in the due execution of his duty, and shall have the same power as in case of such last-mentioned assault to order payment of the costs and expenses of the prosecution."

By "The Poor Law Amendment Act, 1851," (14 & 15 Vict. c. 101), sect. 18, the last-mentioned section is extended to assaults upon any person included under the word "officer" in "The Poor Law Amendment Act, 1834" (*g*).

Power to guardians to reimburse for damage to the property of their officers in certain cases.

"The Poor Law Amendment Act, 1851," (14 & 15 Vict. c. 105), sect. 5, enacts, that "the guardians may, where they think fit, pay to or reimburse any of their officers the expense necessarily incurred in repairing or restoring property belonging to such officer which may have been unlawfully, wilfully and maliciously damaged, injured or destroyed by any person applying or having applied for relief, and such costs and expenses incurred in the prosecution of the offender as may not be allowed by the court before which the prosecution or trial shall take place."

By "The Poor Law Amendment Act, 1834," (4 & 5 Will. IV. c. 76), the appointment of any paid officer engaged in the administration of the laws for the relief of the poor, or in the management or collection of the poor rate, is exempted from stamp duty (*h*).

(*g*) "Officer" extends "to any clergyman, schoolmaster, person duly licensed to practise as a medical man, vestry clerk, treasurer, collector, assistant overseer, governor, master or mistress of a workhouse, or any other person who shall be employed in any parish or union in carrying this act or the laws for the relief of the poor into execution, and whether performing one or more of the above-mentioned functions." 4 & 5 Will. IV. c. 76, s. 109.

(*h*) Sect. 86.

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Appointment of officers.

In exercise of the powers before mentioned, the poor law commissioners authorized the guardians of unions to appoint various officers. The General Consolidated Order of the 24th July, 1847 (*i*), provides (Article 153), that "the guardians shall, whenever it may be requisite, or whenever a vacancy may occur, appoint fit persons to hold the undermentioned offices, and to perform the duties respectively assigned to them; namely, (1) clerk to the guardians (*k*); (2) treasurer of the union; (3) chaplain (*l*); (4) medical officer for the workhouse; (5) district medical officer (*m*); (6) master of the workhouse; (7) matron of the workhouse; (8) schoolmaster; (9) schoolmistress; (10) porter; (11) nurse; (12) relieving officer; (13) superintendent of out-door labour; and all such assistants as the guardians, with consent of the commissioners, may deem necessary for the efficient performance of the duties of any of the said offices (*n*).

(Art. 54.) "The officers so appointed to or holding any of the said offices, as well as all persons temporarily discharging the duties of such offices, shall respectively perform such duties as may be required of them by the rules and regulations of the commissioners, in force at the time, together with all such other duties, conformable with the nature of their respectice offices, as the guardians may lawfully require them to perform."

The duties of these various officers have been from time to time defined by orders of the commissioners (*o*).

Superannuation Allowances to Officers.

Superannuation allowances.

The statute 27 & 28 Vict. c. 42, "To provide for Superannuation Allowances to Officers of Unions and Parishes," reciting that "it is expedient that provision should be made to enable superannuation allowances to be granted to officers of unions and parishes who become disabled by infirmity or age to discharge the duties of their offices," enacts,

Power to guardians and trustees, with consent of poor law board, to grant superannuation allowances to officers in certain cases.

Sect. 1. "That the guardians of any union or parish, and the trustees or overseers of any parish appointed or incorporated under a local act, may, at their discretion, with the consent of the poor law board, grant to any officer whose whole time has been devoted to the service of the union or parish and who shall become incapable of discharging the duties of his office with efficiency, by reason of permanent infirmity of mind or body,

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(*i*) See as to this order, ante, p. 33.

(*k*) A *quo warranto* will lie in respect of this office, and mandamus is not a proper mode of trying the validity of the election. (*Reg.* v. *St. Martin in the Fields*, 17 Q. B. Rep. 149; 20 L. J. (N. S.) Q. B. 423.)

(*l*) It was expressly decided soon after the passing of the 4 & 5 Will. IV. c. 76, that the appointment of a chaplain was within the scope of the 46th section of that act. See the section, ante, p. 73. (*Reg.* v. *Braintree*, 1 Q. B. Rep. 130; 4 P. & D. 593; 10 L. J., M. C. 76.)

(*m*) Since 1st January, 1861, no person can hold any appointment as a physician, surgeon, or other medical officer in (inter alia) any lunatic asylum, house of industry, parochial or union workhouse or poor-house, parish union, or other public establishment, body or institution, unless registered under "The Medical Act." See 21 & 22 Vict. c. 90, ss. 33, 36; 22 Vict. c. 21, ss. 1 and 2; 23 Vict. c. 7, ss. 3 and 4.

(*n*) In the consolidated order issued to new unions, this article proceeds as follows:—"And the said guardians shall from time to time afterwards, whenever a vacancy may occur, appoint a fit person to supply such vacancy, except in the case of the superintendent of out-door labour, whose office shall be filled as and when the guardians find it requisite to employ such an officer." (Glen's General Consolidated Orders, 5th edit. p. 110.)

(*o*) In accordance with what has been stated in an earlier chapter (ante, p. 33), and for the reasons there mentioned, the duties of the various officers, as prescribed by the General Consolidated Order of July 24, 1847, or by substituted orders, are not attempted to be given.

or of old age, upon his resigning or otherwise ceasing to hold his office, an annual allowance not exceeding in any case two-thirds of his then salary, whether computed according to a fixed sum or to a poundage, and shall charge such allowance to the same fund as that to which such salary would have been charged if he had continued in his office."

Such allowances not to be assignable.

Sect. 2. "This allowance shall be payable to or in trust for such officer only, and shall not be assignable nor chargeable with his debts or other liabilities."

Limitation of grants of allowances.

Sect. 3. "No officer shall be entitled to such allowance on the ground of age who shall not have completed the full age of sixty years, and shall not have served as an officer of some union or parish for twenty years at the least."

Notice of grant to be given to guardians.

Sect. 4. "No grant shall be made without one month's previous notice, to be specially given in writing to every guardian of the union or parish and to every member of the board of trustees or overseers (as the case may be), of the proposal to make such grant, and the time when it shall be brought forward."

Interpretation of words herein used.

Sect. 5. "The words herein used shall be interpreted in the manner prescribed by the statute of the fourth and fifth years of William the Fourth, chapter seventy-six, and the subsequent acts amending or explaining the same."

By the 4 & 5 Will. IV. c. 76, s. 109, the word "officers" is construed to extend to "any clergyman, schoolmaster, person duly licensed to practise as a medical man, vestry clerk, treasurer, collector, assistant overseer, governor, master or mistress of a workhouse, or any other person who shall be employed in any parish or union in carrying this act or the laws for the relief of the poor into execution, and whether performing one or more of the above-mentioned functions."

The "Poor Law Amendment Act, 1866" (29 & 30 Vict. c. 113) enacts that,

Registrars of births and deaths deemed officers under 27 & 28 Vict. c. 42, and may be superannuated.

Sect. 1. "The superintendent registrar and the registrar of births and deaths appointed in any union or parish shall be deemed an officer within the operation of the statute twenty-seventh and twenty-eighth Victoria, chapter forty-two, and in computing the salary of any officer under that or the present statute the amount of the emoluments of his office on the average of the three years concluded at the last preceding quarter may be taken into the calculation by the guardians, managers, or overseers."

Provision for relieving officers who have also been registrars.

Sect. 2. "Where any relieving officer of any union or parish shall have also held the office of registrar of births and deaths in the same union or parish, he shall not be disqualified from receiving a superannuation allowance in respect of such office of relieving officer by reason of his having simultaneously held the office of registrar, and by reason of his having resigned his office of relieving officer subsequent to the passing of the last-mentioned act."

Managers of district schools empowered to grant superannuation allowances.

Sect. 3. "The board of management of any district school may exercise the same power in respect of any officer of such school in their service as the guardians of any union can do under such last-mentioned statute with like consent as therein provided, and shall charge any allowance to be made by them to the fund chargeable with the payment of the salaries of their officers."

"The Poor Law Amendment Act, 1867" (30 & 31 Vict. c. 106) contains the following additional provisions on this subject.

Sect. 2 of 29 & 30 Vict. c. 113, to apply to certain relieving officers.

Sect. 18. "The second section of the Poor Law Amendment Act of 1866 shall apply to a relieving officer who may hold the office of registrar of marriages simultaneously with that of relieving officer."

Allowance not to be lost by reason of being employed under another public authority.

Sect. 19. "Where an officer shall at the time of vacating his office be employed solely in the service of the guardians, he shall not be prevented from receiving a superannuation allowance by reason of his having been also employed under another public authority, provided that such last-mentioned employment shall have ceased not less than three years prior to his application for such allowance."

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Service in a dissolved union may be reckoned in the grant of allowance in new union.

Sect. 20. "When any union shall have been or shall be dissolved, or when any parish shall have been or shall be placed under the management of a board of guardians, the time passed in the service of such union or parish prior to such dissolution or the constitution of such board shall be deemed service, which the guardians of any other union comprising such parish, or the board of guardians for such parish, may, if they think fit, take into consideration in any case where an officer applies for a superannuation allowance; and if any person shall by means of such dissolution be deprived of any office or employment, the poor law board may, according to their judgment, award a compensation to be paid to such person, either in a sum certain or by way of annuity, and shall direct the same to be paid out of the poor-rate of the parish or parishes for which such person was acting at the time of the dissolution, in such manner and according to such proportions as to the said board shall appear equitable."

As to superannuations to officers of lunatic asylums, see 16 & 17 Vict. c. 97, s. 57, and 25 & 26 Vict. c. 111, ss. 12, 13.

§ 2. ASSISTANT OVERSEERS AND COLLECTORS OF POOR-RATES.

As assistant overseers and collectors of poor-rates stand upon a somewhat different footing from other officers appointed solely by force of "The Poor Law Amendment Act, 1834," they will be specially noticed.

Appointment of assistant overseers.

The overseers and guardians, having a duty imposed on them by law, are not entitled to any remuneration for their services, but it has been found expedient to provide for the payment of a salary to *assistant overseers*. By the 59 Geo. III. c. 12, s. 7, the inhabitants of any parish in vestry assembled were empowered "to nominate and elect any discreet person or persons to be assistant overseer or overseers of the poor of such parish, and to determine and specify the duties to be by* or them executed and performed, and to fix such yearly salary for the execution of the said office as shall by such inhabitants in vestry be thought fit; and it *shall be lawful* for any two of his Majesty's justices of the peace, and they are hereby empowered, by warrant under their hands and seals, to appoint any person or persons who shall be so nominated and elected to be assistant overseer or overseers of the poor, for such purposes, and with such salary, as shall have been fixed by the inhabitants in vestry; and such salary shall be paid out of the money raised for the relief of the poor, at such times and in such manner as shall have been agreed upon between the inhabitants in vestry and the respective persons so to be appointed; and every person *to be so* appointed assistant overseer shall be, and he is hereby authorized and empowered to execute all such of the duties of the office of overseer of the poor as shall in the warrant for his appointment be expressed, in like manner and as fully, to all intents and purposes, as the same may be executed by any ordinary overseer of the poor; and every person or persons *so appointed* shall continue to be an assistant overseer of the poor until he or they shall resign such office, or until his or their appointment shall be revoked by the inhabitants of the parish in vestry assembled, and no longer; and it shall be lawful for the inhabitants of any parish, upon the nomination and election by them of an assistant overseer or overseers, to require and take security for the faithful execution of his or their office, by bond, with or without a surety or sureties, and in such penalty as they shall think fit; and every such bond shall be made to the churchwardens and overseers of the poor, and may, on any breach of the condition thereof, be put in suit by and in the names of the churchwardens and overseers of the poor for the time being, by the direction of the vestry, or select vestry, for the benefit of the parish, in the manner hereinafter provided" (*p*).

* *Sic.*

Security may be taken.

(*p*) An assistant overseer having been nominated by a resolution of vestry at a salary of 15*l.* a year, he was duly appointed to the office by

By sect. 35, the same provision as to the election of an assistant overseer was extended to all townships, vills, and places having separate overseers, and maintaining their poor separately.

Various local acts authorized the appointment of collectors of poor-rates.

In exercise of the authority given by the Poor Law Amendment Act, 1834 (4 & 5 Will. IV. c. 76), s. 46, to the commissioners to direct the overseers or guardians of any parish or union to appoint paid officers (*q*), collectors of rates were appointed, but the Court of Queen's Bench having held that the powers of that act, for the appointment of paid officers, did not extend to collectors of rates (*r*), the 2 & 3 Vict. c. 84, s. 2, was passed, by which all orders theretofore made and issued by the poor law commissioners, and not rescinded by them or quashed *before* the 6th of May, 1839, by which the commissioners may have directed the overseers or guardians of any parish or union to appoint any person to collect the rates for the relief of the poor, or shall have defined or directed the execution of the duties of such person, or the place or limits in the which the same shall be performed, or shall have directed the mode of apportionment, or determined the continuance in office or dismissal of any such person from his office, or the amount or nature of the security to be given by such person, or shall have regulated the amount of salary payable to such person, or the time or mode or the proportions of payment thereof, shall be deemed, and the same are hereby declared to have the same force and validity as if the same had been warranted by 4 & 5 Will. IV. c. 76; and the commissioners shall have the same powers and authorities in respect to all such orders, and to the persons appointed in pursuance thereof, as they have with respect to all orders made and issued to the said officers appointed under the provisions of the said act; and that every person appointed by guardians under any such order shall have the like powers, authorities, privileges, immunities, protections, and remedies, as and for the performance of his duties under such order, as are by law given to overseers of the poor in the performance of the like duty.

Collectors of rates, 2 & 3 Vict. c. 84.

Previous orders confirmed by statute.

By 7 & 8 Vict. c. 101, s. 61, reciting the 2 & 3 Vict. c. 84, s. 2, and reciting that it was expedient that such collectors should in certain cases be invested with other of the duties of overseers of the poor, it was enacted, "that the inhabitants in vestry assembled of any parish situated within the district for which any collector or assistant overseer appointed under any order of the said commissioners now acts, may appoint such collector or assistant overseer, to discharge all the duties of an overseer of the poor, in addition to those of collector of poor rates for such parish, and in the same manner as if he were appointed thereto as an assistant overseer under the provisions of 59 Geo. III. c. 12; and whenever any such collector or assistant overseer has been or may be appointed under any order of the said commissioners, and whilst the said order remains in force, the powers of any vestry or parish officers, or of any other persons, other than the board of guardians of such parish or union (if a board of guardians have been constituted), to appoint any collector or assistant overseer, and (if so directed by the said commissioners) every appoint-

7 & 8 Vict. c. 101.

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two justices under the above act. Subsequently a resolution to increase the salary to 25*l.* a year was passed by the vestry, but there was no re-appointment by the justices. It was held that the first appointment was good and subsisting. (*Caunter* v. *Adams*, 33 L. J. Rep. (N. S.) C. P. 68.)

(*q*) See the section, ante, p. 73.

(*r*) *Reg.* v. *Poor Law Commissioners* (*Strand Union*), 9 A. & E. 901; *Reg.* v. *Same* (*Cambridge Union*), 9 A. & E. 911; 2 P. & D. 323; 8 L. J., M. C. 77. A special overseer appointed under 7 Will. IV. & 1 Vict. c. 81, s. 3, to make, levy or collect borough rates in a parish lying partly within and partly without a borough is not such an officer as could be appointed under the 5 & 6 Will. IV. c. 76. (*The Mayor of Birmingham* v. *Wright*, 16 Q. B. Rep. 63; 20 L. J. (N. S.) Q. B. 214.)

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ment under such powers, shall cease: provided always, that where the appointment of such assistant overseers shall have been made under the powers of any local act of parliament of a parish containing more than twenty thousand persons, such appointment shall continue, and the powers of such local act, as to any future appointment of an assistant overseer, shall be exercised, but subject always to the powers of the poor law commissioners, notwithstanding the provisions of this act: provided always, that no overseer shall be discharged by the appointment of any such collector or assistant overseer from his responsibility for the provision and supply of monies necessary for the relief of the poor, or for any of the purposes to which the rates made for the relief of the poor may be by law applicable; and every collector appointed or to be hereafter appointed as aforesaid, and every assistant overseer appointed or hereafter to be appointed, in pursuance of the said act of the fifty-ninth year of the reign of King George the Third, or of the orders of the said commissioners, shall, subject to the rules of the poor law commissioners, obey, in all matters relating to the duties of overseer, all directions of the majority of the overseers of the parish for which he acts; and the said commissioners shall have the same powers with respect to all collectors or assistant overseers as are given to them by the said first-recited act with respect to paid officers; and every collector or assistant overseer appointed as aforesaid shall be bound to give to the board of guardians of the parish or union, or if there be no such board of guardians, then to the overseers of the parish for which such collector or assistant overseer may act, sufficient security for the due performance of his duties; and no bond or any other security entered into in pursuance of this act, or of the said act of the fifty-ninth year of the reign of King George the Third, shall be charged or chargeable with, or be deemed to be or to have been subject or liable to, any stamp duty whatsoever; and wherever any parish for which such collector or assistant overseer may be appointed is situated in an union, or is governed by a board of guardians, every bond or security given by any officer, in pursuance of this act, or of the said act of the fifty-ninth year of the reign of King George the Third, or of the said first-recited act, and not contrary to the rules of the said commissioners, shall, if the guardians shall see fit, be put in suit by the board of guardians of the union in which the parish or district for which the officer acts or has acted may be situated, notwithstanding that such bond or security may have been originally given to the overseers of a parish, or to any other person; and every bond or security given by or on account of any officer appointed by any board of guardians, for the due performance of the office to which he is so appointed, shall remain in full force and effect, notwithstanding any change in district for which such officer may have been appointed or required to act at the time when such bond or security was given, or the addition of any parish to or the separation of any parish from such union since the giving of such security" (*s*).

Collectors.

Sect. 62. "If the board of guardians of any parish or union make application to the said commissioners to direct the appointment of a paid collector of the poor rates in such parish or union, or in any parish or parishes of such union, it shall be lawful for the said commissioners, by order under their hands and seal, to direct the said board of guardians to appoint such a collector; and the said commissioners shall have the same powers with respect to such collectors as are given to them by the said first-recited act with respect to paid officers; and all powers of the inhabitants of any parish in vestry assembled, or of justices of the peace, or of any persons, other than the board of guardians of such parish or union, to appoint any collector for any such parish as aforesaid, and (except when

(*s*) A bond for the due collection of poor and sewers and general rates is severable if each kind of rate is treated as a distinct employment, and therefore facts which might be an answer to an action against a surety in respect of part of the duties, may be no answer in respect of the other. (See *Skillett* v. *Fletcher*, 35 L. J. (N. S.) C. P. 154.)

otherwise directed by the said commissioners) all appointments under such powers, shall cease "(*t*).

Assistant overseers.

With respect to assistant overseers, although they are appointed as a matter of fact by guardians, under the orders of the commissioners, it seems that the statute 4 & 5 Will. IV. c. 76, s. 46, did not authorize such order. The effect of such an appointment upon the powers of the vestry, under 59 Geo. III. c. 12, was discussed in *R.* v. *Green* (17 Q. B. Rep. 793; 21 L. J. Rep. (N. S.) M. C. 137; 19 L. T. 9). The Court of Queen's Bench said: "It is remarkable that no act of parliament in express terms authorizes the poor law board to order the appointment of an assistant overseer. The 46th section of the 4 & 5 Will. IV. c. 76, as to paid officers, does not apply to an assistant overseer, not even to a collector of poor rates, as was held by this court in *The Queen* v. *The Poor Law Commissioners* (9 A. & E. 901) (*u*). The statute 2 & 3 Vict. c. 84, s. 2, which confirms the appointments of collectors already made, does not mention assistant overseers, nor does it even give a prospective power to the poor law board to order the appointment of collectors. The statute of the 7 & 8 Vict. c. 101, s. 62, does give such power as to collectors, but does not mention *assistant overseers*. Still the 61st section of the 7 & 8 Vict. c. 101 seems to recognize the appointment of collectors or assistant overseers, under the orders of the poor law board, and in such case prohibits the inhabitants in vestry from appointing a collector and assistant overseer, although it may be observed that there is no act of parliament authorizing the inhabitants in vestry to appoint a collector, but only an assistant overseer, under the 59 Geo. III. c. 12. It should seem that the 7 & 8 Vict. c. 101, by so recognizing such appointment, either gives the power to order it to the poor law board by implication, which would be a strange mode of legislation, or attaches, as a consequence to such appointment, whether the order for it be good or bad, if it remains unrescinded by this court, a prohibition to the vestry to appoint an assistant overseer. This also would be a strange enactment. However strange it may be, still we do not see how we can give effect to the act without holding that the appointment, in fact, of collector, or assistant overseer, or both, by the guardians of the union, under an existing unrescinded order of the poor law board, takes away the power of the vestry, under the 59 Geo. III. c. 12."

The order for the appointment of a collector of poor rates prescribes his duties, but as the form varies in many instances, it is necessary to consult the order actually issued in each case (*x*).

Assistant overseers as well as paid officers generally are incapable of serving as guardians (5 & 6 Vict. c. 57, s. 14), or as overseers (see 29 & 30 Vict. c. 113, s. 10, ante, p. 56), and they are removable by the commissioners either upon or without any suggestion or complaints from the overseers or guardians of a parish or union (4 & 5 Will. IV. c. 76, s. 48, ante, p. 74).

The exemption of the appointment of paid officers and collectors of poor rates from stamp duty has been already noticed (*y*).

(*t*) As to the employment of collectors of poor rates, in collecting county and borough rates, see 13 & 14 Vict. c. 101, s. 10.

(*u*) See ante, p. 79.

(*x*) No assistant overseer or collector is to receive money for the relief of any non-settled pauper on behalf of any officer or of the guardians or of any other parish or union, or to constitute himself in any way the agent of any officer or guardians of such other parish or union. (See Art. 222 of the General Order of the 24th July, 1847.) By Art. 10 of the Poor Law Accounts' Order of the 17th March, 1847, collectors are required to attend the ordinary meetings of the board of guardians if required. (See this and other orders relating to the collection of poor rates in Glen's Poor Law Orders.)

(*y*) Ante, p. 75. The appointment of assistant overseer would, but for

As to the duties and liabilities of an assistant overseer before the Poor Law Amendment Act, 1834, see *Bennet* v. *Edwards* (7 B. & C. 586; 1 Man. & R. 482, S. C.; 6 Bing. 230; 3 Younge & J. 464). An assistant overseer is liable to a penalty for selling goods for use of poor, for his profit, same as an overseer. (*Id.*) But he is not so liable for neglect of any supposed duty not prescribed in his appointment. (*Id. ibid.*) And there can be no implied promise by a deputy overseer to provide necessaries for the poor. (*Walley* v. *Walters*, 1 C. & P. 132.)

The "Poor Law Amendment Act, 1849" (12 & 13 Vict. c. 103, s. 15), reciting, that "whereas the guardians of certain unions and parishes, under the authority of the orders of the poor law commissioners and of the poor law board, are empowered to appoint collectors of poor rates and assistant overseers for some one or more of the parishes comprised within their union or for their parish, as the case may be, who collect and receive the money and other property of the parish or parishes for which they are appointed; and in case of embezzlement or larceny of such money or property by such collector or assistant overseer, difficulty has arisen as to the proper description of his office in the indictment or other proceeding," enacts, "that in respect of any indictment or other criminal proceeding, every collector or assistant overseer appointed under the authority of any order of the poor law commissioners or the poor law board, shall be deemed and taken to be the servant of the inhabitants of the parish whose money or other property he shall be charged to have embezzled or stolen, and shall be so described; and it shall be sufficient to state any such money or property to belong to the inhabitants of such parish, without the names of any such inhabitants being specified."

As to the appointment and duties of vestry clerks, see 13 & 14 Vict. c. 57, and Burn's Justice of the Peace, title "VESTRIES."

§ 3. AUDITORS OF ACCOUNTS.

Although the Poor Law Amendment Act, 4 & 5 Will. IV. c. 76, s. 46 (ante, p. 73), expressly includes officers "for the examining and auditing, allowing or disallowing of accounts," the appointment of auditors requires a distinct notice.

The poor law commissioners exercised the power given to them by the above-mentioned section of the Poor Law Amendment Act, by requiring the guardians of unions formed under that act to appoint auditors (*z*).

Districts.

By 7 & 8 Vict. c. 101, s. 32, the poor law commissioners were empowered to combine the parishes and unions of England and Wales into districts for the audit of accounts, and from time to time add any parish or union to any such district, or separate any parish or union therefrom (*a*).

Mode of election.

By the same section (s. 32), the chairman and vice-chairman of each board of guardians constituted under stat. 4 & 5 Will. IV. c. 76, or any other act, or if there be no chairman or vice-chairman of any guardians constituted under any other act, then some two of their number to be selected by such last-mentioned guardians, or if there be no such body, then some two of the overseers to be selected by the overseers

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this exemption, be subject to duty. (*R.* v. *Lew*, 8 B. & C. 655; 3 M. & R. 369.)

(*z*) The 4 & 5 Will. IV. c. 76, s. 109, enacts, "that the word 'auditor' shall be construed to mean and include every person other than justices of the peace acting in virtue of their office, appointed or empowered to audit, control, examine, allow or disallow the accounts of any guardian, overseer or vestryman, relating to the receipt or expenditure of the poor rate."

(*a*) See post, Chapter IX., p. 125.

respectively acting within the district, shall elect, at the time and in the manner to be prescribed by the said commissioners, a person to be the auditor of the district; but in any case in which there are two vice-chairmen appointed in any board of guardians, such board of guardians shall elect one of the vice-chairmen, who shall vote in the election of such auditor; and the said commissioners shall have all the powers with regard to the salaries of the said auditors to be charged on the poor rates, and to all other matters relating to auditors for such districts, as they have under stat. 4 & 5 Will. IV. c. 76, with regard to paid officers; and every auditor appointed for such a district shall have full powers to examine or disallow of accounts, and of items therein, relating to monies assessed for and applicable to the relief of the poor of all parishes and unions within his district, and to all other money applicable to such relief.

By section 37, upon such formation, so far as the powers of the audit extend, the powers of justices and all other persons to examine, audit, allow or disallow accounts, ceases (*b*). Provided that, where any union or unions and parishes had been already combined by the said commissioners under the provisions of stat. 4 & 5 Will. IV. c. 76, for the appointment of an auditor, and such an auditor has been appointed, or where any person has been appointed auditor for more than one union, it shall be lawful for the said commissioners to continue such auditor in office, and such district shall be deemed to have been formed, and such unions to have been formed into a district, and such auditor to have been appointed respectively under this act: provided also, that if the said commissioners subsequently add any parish or union to any district now formed or to be formed after the passing of this act, or which is to be deemed to be formed under this act, or separate any parish or union therefrom, such addition or separation shall not vacate the appointment of any auditor appointed previously to such addition or separation, but it shall be lawful for the commissioners to continue such auditor in office for such increased or diminished district without any re-election of such auditor.

See these and other provisions more fully, post, Chapter IX., § 2.

An auditor may be appointed for a single parish, under s. 46 of "The Poor Law Amendment Act, 1834," although it could not be comprised in an audit district, by reason of the exceptions contained in the 7 & 8 Vict. c. 101. (*Reg.* v. *St. James, Westminster*, 28 L. J. (N. S.) M. C. 172; affirmed on error, 29 Id. 4.) See post, Chapter IX., "AUDIT DISTRICTS."

The solicitor to a parish ought not to be elected auditor; but if elected, and he accepts the office, his audit of accounts is valid, although including his own bill of costs, for he is bound to perform all the duties of his office. (*R.* v. *Great Western Railway*, 18 L. J., M. C. 145.)

Auditor may, upon cause being shown, appoint a deputy.

By 11 & 12 Vict. c. 91, s. 10, "the commissioners may at any time, upon sufficient cause being shown to them, authorize any person, selected by the auditor, to act temporarily as his deputy, and shall communicate to the several unions and places forming his district the name of the person so appointed to act as his deputy, and such person shall thereon be empowered to act in all respects, and with the same authorities, and subject to the same duties and liabilities, as the auditor himself is entitled or subject to." And by 12 & 13 Vict. c. 103, s. 8, "when any auditor shall die, resign, or be removed, or become incompetent to act, at any time when the audit of the accounts of the parishes

(*b*) The statute (sect. 65) contained a proviso, that it should be lawful for any assistant poor law commissioner to be present at any audit as if the same were a meeting of a board of guardians or vestry, and to inspect, examine and take copies or extracts from any books, accounts or vouchers produced at sucha udit. (See now as to poor law inspectors, ante, p. 21.)

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or unions within his district shall not be completed, the poor law board may, by order under their seal, appoint temporarily some other person to audit the accounts of the several parishes or unions which may then be ready to be audited; and such temporary auditor shall have the same powers and authorities, and shall be subject to the same obligations and duties as the ordinary auditor would have possessed or would have been subject to, and shall receive such remuneration as the said commissioners shall direct for the performance of his services herein."

The particular duties of auditors will be found in a subsequent part of the work under the head of "AUDIT OF OVERSEERS' ACCOUNTS."

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CHAPTER VI.

Of the Persons concerned in the Administration of the Poor Laws—(*continued*).

V. The Persons concerned in the Administration of the Poor Laws under particular Statutes.

Gilbert's Act, 22 Geo. 3, c. 83.

THE act 22 Geo. III. c. 83, commonly called "Gilbert's Act," the provisions of which have been given elsewhere (*c*), and also various local acts made provision for the appointment of guardians of the poor and other officers. "Sturges Bourne's Act," 59 Geo. III. c. 12, provided for the management of the poor by means of select vestries. "The Poor Law Amendment Act," 4 & 5 Will. IV. c. 76, did not repeal these acts, but placed the administration of relief under the general control of the poor law commissioners (*d*), and in reference to the future provided that no union or incorporation of parishes should be formed under "Gilbert's Act," without the previous consent of the commissioners (*e*), and that unions already formed might be dissolved, separated or added to (*f*).

This part of the work would not be complete, therefore, unless the existing law in reference to guardians and officers under "Gilbert's Act," and the general provisions affecting guardians, and under local acts, as well as a reference to the powers of district vestries, were given.

§ 1. GUARDIANS AND OTHER OFFICERS UNDER 22 GEO. III. C. 83, COMMONLY CALLED "GILBERT'S ACT."

Guardians.

Upon the adoption of "Gilbert's Act" (*g*), and the recommendation to the consideration of the justices of the peace of the county or of three

(*c*) See ante, pp. 7—10.
(*d*) See ante, Chapter II.
(*e*) 4 & 5 Will. IV. c. 76, s. 37.
(*f*) *Ib.* s. 32.
(*g*) See ante, pp. 7—10.

able and discreet persons qualified for guardians of the poor for the parish, or for each parish, &c., agreeing to unite, and three other fit and proper persons qualified to be governors of the poor-house, and fixing their salaries, two justices of the peace of the limit where the poor-house was or was agreed to be situate, upon application made to them, were required to appoint one of the persons recommended to be guardian of the poor for each of such parishes, townships and places, in a form provided by the act, and also one of the persons as governor of the poor-house (*h*).

Governors.

Two justices were also to appoint a visitor of the poor-house out of three persons, "respectable in character and fortune," nominated by the guardians. In the event of each of the three persons nominated declining in succession the office, the guardians were required to serve that office monthly by rotation, and subject to the control of the justices of the limit where the poor-house should be. The visitor, if not a guardian, was authorized to nominate a deputy or assistant (in a form provided by the act) to act in the absence of the visitor and under his direction as inspector of the several matters committed to the care of the visitor, and to make his report thereof from time to time to him for his better information, and to render him all the assistance in his power (*i*).

Visitor.

Single parishes adopting the act could have a visitor appointed (*k*).

The visitor and guardians were incorporated (*l*).

The guardians of united parishes were also to recommend one of their own body to be treasurer of the poor-house, and two justices were to appoint him, or any other of the guardians whom they should think better qualified, to that office in a form provided (*m*).

Treasurer.

A treasurer might be appointed for a single parish adopting the act (*n*).

Upon any vacancy happening in any of the offices aforesaid by death, resignation or removal, meetings were to be called, and recommendations offered to the justices in the manner before mentioned; they were to proceed, as soon as conveniently, in the manner before directed, to appoint a fit and proper successor (*o*).

Vacancies, how to be filled up.

The offices of guardian, governor, visitor or treasurer determined in Easter week next after the respective persons were appointed thereto, on the day upon which the public meeting for such parish, township or place was held there, when the persons who, according to this act, are qualified and have a right to recommend another person to the justices, to be appointed to such office, either agreed with the persons who held the same to continue in such office, or proceeded to recommend others, in the manner hereinbefore directed, as if such person had died (*p*).

Officers, how long to continue.

The visitor, with the consent of the majority of the guardians (or two justices where a guardian was the visitor), was empowered to remove the governor of the poor-house upon complaint and sufficient proof of misbehaviour or incapacity in the execution of his office (*q*).

The Poor Law Amendment Act (4 & 5 Will. IV. c. 76) enacts, "that all elections of guardians, visitors and other officers for the execution of any of the powers or purposes of the said recited act made and passed in the twenty-second year of the reign of his said late Majesty King George the Third, intituled 'An Act for the better Relief and Employment of the Poor,' or of any local act of parliament relating to poor-houses, workhouses or the relief of the poor, or any act to alter or amend the

Elections of guardians, visitors, and other officers under the act 22 Geo. 3, c. 83, or any local act to be made according to the provisions of this act.

(*h*) 22 Geo. III. c. 83, ss. 3, 4, 7, 9. As the practical operation of this statute has been much diminished, the substance only is given.
(*i*) *Ib.* s. 10.
(*k*) *Ib.* s. 11.
(*l*) *Ib.* s. 21.
(*m*) *Ib.* s. 12.
(*n*) 41 Geo. III. c. 9, s. 3.
(*o*) 22 Geo. III. c. 83, s. 13.
(*p*) *Ib.* s. 14.
(*q*) *Ib.* s. 9.

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same respectively, shall hereafter, so far as the said commissioners shall direct, be made and conducted according to the provisions of this act: provided always, that it shall be lawful for the said commissioners, if they shall so think fit, from time to time, with the consent of the majority of the owners of property and rate-payers of any parish, or of any union now existing or to be formed under the provisions of this act, to alter the period for which the guardians to be appointed under the provisions of this act for such parish or union, or any of them, would under the provisions of this act hold office, for such other period or periods as to the said commissioners, with such consent as aforesaid, shall seem expedient, and also to make such alterations in the number, mode of appointment, removal and period of service of the guardians, or any of them, of any parish, or of any union now existing or to be formed under the provisions of this act, as to the said commissioners, with such consent as aforesaid, shall deem expedient" (*r*).

It is to be observed, that the power of the poor law board to direct the appointment of paid officers (*s*) extends to poor law unions formed under Gilbert's Act (*Reg.* v. *Poor Law Commissioners* (*Re Alstonefield*), 11 A. & E. 558; 3 P. & D. 59; 8 L. J., M. C. 77 (*t*)); and also to parishes regulated by local acts. (*Reg.* v. *Poor Law Commissioners*, 20 L. J., M. C. 236. See also *Reg.* v. *Oxford City*, 17 Q. B. 457; *Reg.* v. *St. James, Westminster*, 29 L. J., M. C. 4.)

The power to remove paid officers also clearly extends to Gilbert Unions (*u*).

Powers and duties of such guardians.

By sect. 7 of Gilbert's Act, "every such guardian shall attend the monthly meetings thereby directed to be holden (*x*), and execute the several powers and authorities given to guardians by that act, and shall have and is hereby invested with all the powers and authorities given to overseers of the poor by any other act or acts of parliament, and shall to all intents and purposes (except with regard to *making* and *collecting of rates*) be an overseer of the poor for the parish or township for which he shall be so appointed guardian, and shall be liable to such forfeitures and penalties for neglect of duty as overseers of the poor are made liable to by this or any other act of parliament, and all notices or applications directed by this or any other act of parliament to be given or made to the overseers of the poor with respect to the care and management or removal of the poor, where any such guardian shall be appointed under the authority of this act; but in case any orders of removal or notices shall happen by mistake to be given or sent to the churchwarden or overseer, the same shall be as valid and effectual as if given to the guardian; and such churchwarden or overseer shall, and is hereby required forthwith to deliver the same to the guardian, or shall forfeit forty shillings for his neglect."

Orders and notices, &c. to be delivered to guardians.

Overseers not to interfere.

"Where such guardian of the poor shall be appointed as aforesaid,

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(*r*) 4 & 5 Will. IV. c. 76, s. 41.

(*s*) See ante, p. 73.

(*t*) In that case it was held that the poor law commissioners had power to order the appointment of an auditor and clerk in a Gilbert Union, for the proper duties attaching to such offices; but not for collateral purposes, such as to prepare statistical information required for the public service.

(*u*) See 4 & 5 Will. IV. c. 76, s. 48, and interpretation clause (sect. 109), "Union."

(*x*) Sect. 24 directs the guardians to meet monthly. By sect. 26, "If the guardian for any parish, township, or place, which shall adopt the said provision as aforesaid, shall not attend each monthly meeting hereby directed to be holden, or send some substantial inhabitant of such parish, township, or place, to attend and answer the payments for him, in case he shall be prevented by sickness or other unavoidable accident from attending in person, the guardian for every such parish, township, and place, making such default, shall, for every such neglect, forfeit a sum not exceeding five pounds, nor less than forty shillings."

neither the churchwardens nor overseers of the poor shall interfere or intermeddle in the care and management of the poor (*y*), but shall continue to have and be invested with the same powers of making and collecting poor's rates as they have at present, and shall be subject to the like penalties for neglect or misbehaviour in making and collecting such rates as they were at the time of passing this act."

Various specific duties in respect to providing workhouses or poor-houses, the employment and clothing of the poor, and various other matters, are pointed out by the act. These provisions will be referred to in a subsequent part of the work, treating of the administration of relief.

Power and duty of visitor.

The visitor was appointed "to make agreements with any person or persons for the diet or clothing of such poor persons who shall be sent to the house or houses to be provided under the authority of this act, and for the work and labour of such poor persons, so that no such agreement shall be made for any longer time than twelve months, and so that the same shall be, and every such agreement is hereby declared to be, under the strictest inspection and control of the visitor, guardian and governor of such poor-house, and also of the justices of the peace for the limit where such poor-house shall be; two of which justices, upon proof of any abuse, shall have power to dissolve such contract."

The act directs that "every visitor so to be appointed shall superintend every such house or houses, and settle and adjust the accounts between the said guardians of the poor and the treasurer of such house, if any question or dispute shall arise respecting the same; and also shall settle and adjust all doubts and questions which may arise concerning the persons who ought to be sent to such house or houses, according to the intention of this act, and by every prudent means in his power enforce and promote the rules, orders, regulations, directions and provisions established, enacted and formed by and under this act, for the better accommodation and relief of the poor, and the preventing all unnecessary expenses and burthens on the said parishes, townships and places: and every such governor, guardian, and treasurer is hereby required to observe and obey the directions which he shall from time to time receive from the visitor so to be appointed, touching the several matters aforesaid: and, where any act shall be required to be done by a justice of peace, such visitor, if not a justice, or his deputy or assistant, shall apply to some neighbouring magistrate to do the same: and every person so to be nominated or appointed visitor or deputy visitor as aforesaid, as an inducement to his undertaking and executing that office, shall be freed and discharged from serving the office of constable and all parochial offices, and also from serving upon juries at the assizes or quarter sessions, so long as he shall continue in that office; and a certificate under the hand of a justice of the peace acting for the limit wherein he executes such office, in the form contained in the said schedule No. X., shall be admitted as evidence of his serving the office" (*z*).

Visitor to be free from certain offices.

The visitor was to determine whether relief should be given in or out of the poor-house. (*R.* v. *Laughton*, 2 M. & Sel. 324.)

Duties of churchwardens and overseers.

"From and after the appointment of such guardian as aforesaid, one or more of the churchwardens or overseers of the poor of every parish, township, or place, which shall adopt the provisions of this act, who shall be approved at some public meeting to be holden as aforesaid, shall receive the money to be collected by virtue of such poor's rates, and apply the same in manner following; (that is to say,) if such parish,

(*y*) Notwithstanding this provision, it was held that the overseers in parishes under this act, and not the guardians, were the proper persons to bind out parish apprentices. (*R.* v. *Lutterworth*, 3 B. & C. 487; 5 D. & R. 343.) See as to apprentices, post, Chapter XV.

(*z*) 22 Geo. 3, c. 83, s. 10.

township, or place, shall not be united with any other by virtue of this act, such churchwarden or overseer shall pay to the guardian of the poor such sums, from time to time, as he shall have occasion to employ for the purposes of discharging the bills, and all other necessary expenses attending such house or houses, and the poor belonging to such parish, township, or place, and shall take receipts from such guardian for all the money so paid, expressing in every such receipt the purposes for which such money is wanted; and if the said parish, township, or place, shall be united with any other parish, township or place, by virtue of this act, such churchwarden or overseer shall pay from time to time, to the treasurer of such united parishes, townships, or places, their due proportion and *quota* of the several expenses attending the poor and poor-house therein (*a*), under the authority and according to the direction of this act, and take his receipts for such money; or, if it shall be found more convenient, he shall permit such treasurer, from time to time, to draw drafts upon him for such money, in the form contained in the said schedule No. VIII., and pay the same when they become due, specifying in every such receipt and draft the general purposes, for which such money is to be applied; all which payments, so to be respectively made, shall be allowed to the said churchwarden or overseer, in his accounts with the parish, township, or place, wherein such money shall be raised; and the accounts, as well of the said churchwarden or overseer, as of the said guardian, shall be examined at every monthly meeting, and shall be examined and passed quarterly by the visitor of such poor-house, after they shall have been verified upon oath before a justice of the peace" (*b*).

Accounts to be examined, verified on oath, and passed quarterly.

Duties of treasurer.

The treasurer is required "to give sufficient security, to the satisfaction of the justices, to the other guardians, and their successors, for his duly accounting for the money which shall come to his hands; and shall keep the accounts, receive the money to be contributed by each parish and township, and pay or discharge the several bills and expenses which shall be allowed and ordered to be paid by the guardians, at their monthly meeting: and shall lay his accounts before the guardians, at every such meeting, for their perusal and approbation; and shall, once in every year, within fourteen days before the Michaelmas quarter sessions of the peace for the county, riding, division, city, or place, where such poor-house shall be situate, make out, or cause to be made out, a just and fair account of the expenses attending the same, distinguishing them under the several heads herein specified; and also an account of the number of poor persons, distinguishing their age and sex, which shall be contained in every such house at the time of making such account, and how they have been employed, and how much money hath been earned by the labour of the poor in the year preceding; which shall be laid before the visitor, and signified under his hand, if he

Account.

(*a*) See as to the mode of ascertaining the average expenditure, sect. 29 of the 4 & 5 Will. IV. c. 76, inserted in extenso, post, Chap. IX., pp. 114—116.

(*b*) 22 Geo. III. c. 83, s. 8. By 41 Geo. III. c. 9, s. 2, "the guardians of the poor present at a monthly meeting held according to the directions of the said act, with the approbation of the visitor, who shall sign the same, may make an order on the churchwardens or overseers, or collector of the poor's rates, some or one of them, for so much money as shall be necessary for the purposes of the said act; and if the churchwardens or overseers, or person or persons to whom the order shall be directed, shall neglect or refuse to pay the same to the treasurer or guardian to whom the same is made payable, within seven days after it shall be demanded, it shall be lawful for any justice of peace within the division or district, upon proof made on oath of such default, to issue his warrant for levying the same by distress and sale of the goods and chattels of the said churchwardens and overseers, or other person or persons, in like manner as by the 22 Geo. III. c. 83, is provided in case of nonpayment by the guardians of the poor."

approves the same, and shall afterwards be transmitted to the clerk of the peace, or town clerk, of such county, riding, division, city, or place, before or at the time of the said quarter sessions, and be by him laid before the court there for their inspection: and every such treasurer shall be allowed, for his trouble in executing that office, such annual sum not exceeding ten pounds, as the visitor, if not a guardian, shall think fit; and if no such visitor, as two justices of the peace for the limit shall appoint" (*c*).

Salary.

Besides the accounts above mentioned, the treasurer is required at the monthly meetings of the guardians to "produce, fairly written, one account of the debt incurred in the preceding month for utensils and materials for the purpose of manufacture, and for furniture, alterations or repairs of the buildings, and also for the salary or allowance to the governor or treasurer and servants (if any), in which account the rent of such house or houses, buildings and premises, if the same shall be rented, shall be charged in the month next after such rent shall become due, according to the terms of the agreement for taking the same" (*d*).

Penalty on visitors, guardians and governors, who shall sell provisions.

"If any visitor, guardian, or governor, shall sell or furnish any materials, goods, clothes, victuals, or provisions, or do any work in his trade, for the use of any workhouse, poor-house, or poor persons, within any parish, township, or place, for which he shall be so appointed to act, or be concerned in trade or interest with any person or persons who shall sell, provide, do or furnish the same, he shall for every such offence forfeit a sum not exceeding twenty pounds nor less than five pounds, on being duly convicted thereof by a justice of the peace" (*e*).

The provisions of the 55 Geo. III. c. 137, s. 6 (post, Chapter XI.), relating to contracts, are also applicable to guardians and others engaged in the maintenance of the poor under Gilbert's Act (22 Geo. III. c. 83). (*West* v. *Andrews*, 1 B. & C. 77; 2 D. & R. 184; 1 D. & R., Mag. Ca. 213; 5 B. & Ald. 328.)

The 4 & 5 Will. IV. c. 76, s. 54, enacts, "that from and after the passing of this act, the ordering, giving, and directing of all relief to the poor of any parish which, according to the provisions of any of the said recited acts (*f*), or of an act passed in the first and second years of the reign of his present Majesty, intituled "An Act for the better Regulating of Vestries, and for the Appointment of Auditors of Accounts in certain Parishes in England and Wales" (*g*), or of this act, or of any local acts, shall be under the government and control of any guardians of the poor, or of any select vestry, and whether forming part of any union or incorporation or not, (but subject in all cases to, and saving and excepting the powers of, the said commissioners appointed under this act,) shall appertain and belong exclusively to such guardians of the poor, or select vestry, according to the respective provisions of the acts under which such guardians or select vestry may have been or shall be appointed; and it shall not be lawful for any overseer of the poor to give any further or other relief or allowance from the poor-rate than such as shall be ordered by such guardians or select vestry, except in cases of sudden and urgent necessity."

Except in sudden and urgent necessity.

§ 2. Select Vestries under 59 Geo. III. c. 12, commonly called "Sturges Bourne's Act."

Sturges Bourne's Act, 59 Geo. 3, c. 12.

The care and management of the poor, in some parishes not within any union, under Gilbert's Act, or any local act, have been placed

(*c*) 22 Geo. III. c. 83, s. 12.
(*d*) *Ib.* s. 24.
(*e*) *Ib.* s. 42.
(*f*) Including Gilbert's Act, 22 Geo. III. c. 83, and Sturges Bourne's Act, 59 Geo. III. c. 12, as to which, see infra.
(*g*) 1 & 2 Will. IV. c. 60. See post, p. 93.

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Parishes enabled to establish select vestries for concerns of the poor.

Constitution of select vestries.

Members elected to be appointed by a justice.

Vacancies to be supplied.

Continuance of select vestries.

Power of removal.

Meetings and duties of select vestries.

under the direction of a select vestry under Sturges Bourne's Act. That act, the 59 Geo. III. c. 12, s. 1, enacted, "that it shall be lawful for the inhabitants of any parish, in vestry assembled, and they are hereby empowered, to establish *a select vestry* for the concerns of the poor of such parish; and to that end to nominate and elect, in the same or any subsequent vestry, or any adjournment thereof respectively, such and so many substantial householders or occupiers within such parish, not exceeding the number of twenty nor less than five, as shall in any such vestry be thought fit to be members of the select vestry; and the rector, vicar, or other minister of the parish, and in his absence the curate thereof, (such curate being resident in and charged to the poor's rates of such parish,) and the churchwardens and overseers of the poor for the time being, together with the inhabitants who shall be nominated and elected as aforesaid (such inhabitants being first thereto appointed by writing under the hand and seal of one of his Majesty's justices of the peace, which appointment he is hereby authorized and required to make) (*h*), shall be and constitute a select vestry for the care and management of the concerns of the poor of such parish; and any three of them (two of whom shall neither be churchwardens nor overseers of the poor) shall be a quorum; and when any inhabitant elected and appointed to serve in any such select vestry shall, before the expiration of his office, die or remove from the parish, or shall become incapable of serving, or shall refuse or neglect to serve therein, the vacancy which shall be thereby occasioned shall, as soon as conveniently may be, be filled up by the election and appointment, in manner aforesaid, of some other substantial householder or occupier of such parish, and so from time to time as often as any such vacancy shall occur; and every such select vestry shall continue and be empowered to act from the time of the appointment thereof until fourteen days after the next annual appointment of overseers of the poor of the parish shall take place, and may be from year to year, and in any future year, renewed in the manner hereinbefore directed; and every such select vestry shall meet once in every fourteen days, and oftener if it shall be found necessary, in the parish church, or in some other convenient place within the parish (*i*); and at every such meeting a chairman shall be appointed by the majority of the members present, who shall preside therein; and in all cases of equality of votes upon any question there arising, the chairman shall have the casting vote; and every such select vestry is hereby empowered and required to examine into the state and condition of the poor of the parish, and to inquire into and determine upon the proper objects of relief, and the nature and amount of the relief to be given; and in each case shall take into consideration the character and conduct of the poor person to be relieved, and shall be at liberty to distinguish, in the relief to be granted, between the deserving

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(*h*) The appointment by the justice is a ministerial act. In the parish of Tenterden, the inhabitants elected twenty select vestrymen, and the justice omitted two in his appointment, because they were ex officio members, one as a justice, and the other as an overseer. The court granted a mandamus to compel him to insert the names, although it was sworn that injury had resulted from the union of the offices of select vestryman and justice. Lord *Denman*, C. J., "The magistrates have nothing to do, except to appoint the persons already chosen by the inhabitants. The word 'elect' is a very strong one. The word 'appoint' is certainly an unlucky expression, if the meaning of the legislature be that they are only to register the acts of others: but it is clear to me that this was the only meaning. That being so, whatever consequences may follow, we have merely to give effect to the act." The rest of the court concurred. (*Rex* v. *Adams*, 2 Adol. & Ell. 409; 4 Nev. & M. 299.)

(*i*) As to place of meeting, see 13 & 14 Vict. c. 57, "to prevent the holding of vestry or other meetings in churches, and for regulating the appointment of vestry clerks."

and the idle, extravagant, or profligate poor; and such select vestry shall make orders in writing for such relief as they shall think requisite, and shall inquire into and superintend the collection and administration of all money to be raised by the poor's rates, and of all other funds and money raised or applied by the parish to the relief of the poor; and where any such select vestry shall be established, the overseers of the poor are required, in the execution of their office, to conform to the directions of the select vestry, and shall not (except in cases of sudden emergency or urgent necessity, and to the extent only of such temporary relief as each case shall require, and except by order of justices, in the cases hereinafter provided for) give any further or other relief or allowance to the poor, than such as shall be ordered by the select vestry (*k*).

Overseers (except in cases of emergency) to give no other relief than such as shall be ordered by the select vestry.

Sect. 3. "Every select vestry, to be established by the authority of this act, shall cause minutes to be fairly entered in books, to be for that purpose provided, of all their meetings, proceedings, resolutions, orders, and transactions, and of all sums received, applied, and expended by their direction, and such minutes shall from time to time be signed by the chairman; and shall, together with a summary or report of the accounts and transactions of the select vestry, be laid before the inhabitants of the parish in general vestry assembled, twice in every year, that is to say, in the month of March and the month of October, and at such other times as the select vestry shall think fit; and the minutes, proceedings, accounts, and reports of every select vestry shall belong to the parish, and be preserved with the other books, documents, accounts, and public papers thereof."

Minutes to be kept of the proceedings of select vestries.

Minutes of select vestries, and reports of their proceedings, to be laid before the inhabitants in general vestry.

Sect. 4 provides, "that the churchwardens and overseers of the poor shall cause ten days' notice, at the least, to be publicly given in the usual manner, of every vestry to be holden for the purpose of establishing any select vestry, or of nominating and electing the members, or any member thereof, and of every vestry to be holden for the purpose of receiving the report of the select vestry; and every notice of any such vestry shall state the special purpose thereof" (*l*).

Notice to be given of vestries for the establishment and election of members, and for receiving reports of select vestries.

Sect. 35. "All powers and authorities by this act given to and vested in justices of the peace shall be exercised and executed by such justices within the limits of their respective commissions and jurisdictions, and not elsewhere; and that all provisions, clauses, authorities and directions in this act contained in relation to parishes, shall extend and be construed to extend to all townships, vills, and places, having separate overseers of the poor, and maintaining their poor separately; and that all acts and duties required and authorized by this act to be done and executed by churchwardens and overseers of the poor, may in every parish be performed, exercised and executed by the major part of the churchwardens and overseers of the poor thereof; and that in townships,

Justices to act within their respective jurisdictions.

Provisions relating to parishes applied to townships, &c.

Majority to act.

(*k*) Wherever a select vestry is appointed, the right of the common law vestry has always, in practice, been considered as *de facto* superseded; and the language of this act of parliament appears to confer upon that body the authority relative to the care and management of the poor, which the parishioners at large were before in the habit of exercising. It is optional with the parishioners, whether they will or will not proceed upon the old law, or upon the provisions of the statute, by the appointment of a select vestry; but if they pursue the latter course, they delegate their authority to that body. (*Clarke* v. *King*, 2 Younge & J. 525.) It follows that the consent of a select vestry, constituted under this act, is sufficient to render valid a contract under 9 Geo. I. c. 7, s. 4, for the lodging, keeping, and maintaining the poor of a parish. *Ib.*

(*l*) Where a select vestry has been established, notice of an unusual meeting must be served on every select vestryman, otherwise the meeting is not duly convened, and cannot justify the expulsion of a person who was not one of the select vestry. (*Dobson* v. *Fussy*, 7 Bing. 305.)

vills, and places which have no churchwarden, the same may be performed, exercised and executed by the overseers of the poor thereof, or the major part of them; and that all the powers, provisions and clauses in this act contained, which relate to vestries, or to the inhabitants of any parish in vestry assembled, shall be construed to extend to all meetings of the inhabitants of any township, vill, or place, having separate overseers of the poor, and maintaining its poor separately, to be held after due and legal notice, for carrying into execution the laws for the relief of the poor, as fully as if in every such provision and clause they were severally and respectively named and repeated."

Powers given to vestries applied to meetings of townships, &c.

Sect. 36 provides, "that nothing in this act contained shall extend or be construed to extend to take away, abridge, alter, prejudice, or affect, further than is hereby expressly enacted, any of the powers, directions, provisions, or regulations contained in the said act passed in the twenty-second year of his present Majesty's reign, for the better relief and employment of the poor, in or with respect to such parishes, townships, and places as have adopted, or as shall adopt and become subject to the provisions of that act; nor to take away, abridge, alter, prejudice, or affect any of the powers or provisions of any special or local act or acts, for the maintenance, relief, or regulation of the poor in any city, town, hundred, district, parish, or place, so nevertheless, that in every city, town, hundred, district, parish, or place, such of the clauses, directions, and powers in this act contained, as are not repugnant to, nor incompatible with, the provisions of the said act of the twenty-second year of his Majesty's reign, or of such respective special or local acts, shall have the like force and effect, and may be adopted and applied in like manner as in other parishes and places: provided also, that nothing in this act contained shall extend or be construed to extend to alter, affect, or disturb any select vestry which in any parish has been established and acted upon by virtue of any ancient usage or custom"(*m*).

Saving powers of 22 Geo. 3, c. 83, where the provisions are adopted.

Saving powers given by special acts.

Select vestries.

(*m*) Where an ancient select vestry existed in a parish having certain powers in the management of the poor, but not all the powers required by 59 Geo. III. c. 12, to be exercised by select vestries, the court granted a mandamus calling on the parish officers to convene a meeting, pursuant to the act, for the purpose of establishing a new select vestry to perform those functions under the act which the former vestry could not discharge, but not otherwise to interfere with. (*Rex* v. *The Overseers of St. Martin in the Fields*, 3 Bar. & Adol. 907.) To a mandamus calling on the overseers to summon a meeting for the purpose of establishing a select vestry, pursuant to 59 Geo. III. c. 12, a return was made, stating that there was by custom an ancient vestry in the parish which had from time immemorial consulted and deliberated on parochial matters, and acted as a select vestry for the concerns of the poor, and that they had immemorially been accustomed to perform the duties imposed on select vestries by the statute: held, that the return was bad, since the statute imposes some duties, as the management of money raised by poor rates, and making orders for the government of overseers, which could not have existed before the statute 43 Eliz. c. 2. *Parke*, J., observed, "The ancient vestry may have had from time immemorial the power of managing and applying the funds raised for the relief of the poor, otherwise than by compulsory rates. There is no reason they should not continue to enjoy that authority, if existing. But it is also clear that the inhabitants are not precluded from exercising the power of appointing a select vestry to discharge those functions, and very important ones they are, which arise out of the poor law first established by the statute of Elizabeth." (*Rex* v. *St. Bartholomew the Great*, 2 Bar. & Adol. 506.) This decision ill agrees with the opinion expressed by Lord *Tenterden* in *Rex* v. *Woodman*, (4 B. & Ald. 507.) In that case a parish had for a period beyond living memory been managed by a select vestry of twenty-four persons, Lord *Tenterden* said the inhabitants at large might assemble and appoint a select vestry for the care and management of the poor under the act, not interfering with any of the rights of the ancient select vestry.

Sect. 37. "That this act shall extend only to that part of the United Kingdom called England."

Act extends to England only.

See sect. 54 of the 4 & 5 Will. IV. s. 76, ante, p. 89.

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§ 3. VESTRIES UNDER 1 & 2 WILL. IV. C. 60, COMMONLY CALLED "HOBHOUSE'S ACT."

Vestries under 1 & 2 Will. 4, c. 60.

The act 1 & 2 Will. IV. c. 60, empowered parishes to elect vestrymen (the number being regulated by the population), who were invested with the powers and privileges held by any previously-existing vestry in such parish. The act, however, did not repeal any local act for the government of any parish by vestries or for the management of the poor by any board of directors and guardians (*n*).

In parishes adopting this act the Poor Law Amendment Act, 4 & 5 Will. IV. c. 76, placed the administration of relief to the poor exclusively under the government of the select vestry (*o*).

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§ 4. GUARDIANS AND OTHER OFFICERS UNDER LOCAL ACTS.

Meetings of guardians under local acts.

The 7 & 8 Vict. c. 101, s. 64, enacts, that the guardians of every parish or union acting under any local act for the relief of the poor shall hold their meetings once in every fortnight, or oftener, and in all matters concerning the relief of the poor shall act as a board at a meeting, and not individually; and whenever under any such local act there is no person particularly designated or authorized to act as chairman, such guardians shall elect and appoint annually, and from time to time as vacancies may occur, a chairman and vice-chairman of such board, and shall at any meeting at which no chairman or vice-chairman is present elect a temporary chairman to preside at that meeting.

The same statute and section enacts, "that when the relief of the poor has been hitherto administered in any parish by guardians appointed under a local act, and not by overseers of the poor, if such parish, according to the last enumeration of the population published by authority of parliament, contain more than twenty thousand persons, it shall not be lawful for the said commissioners, after the passing of this act, without the consent in writing of two-thirds at least of such guardians, to declare such parish to be united with any other parish for the administration of the laws for the relief of the poor, any thing in the said first-recited act to the contrary notwithstanding: provided, however, that nothing herein contained shall prevent the said commissioners from including any such last-mentioned parish in a district for providing and managing an asylum for the temporary relief of and setting to work of destitute houseless poor, or from including such parish in a district for the audit of accounts, under the provisions of this act, except as hereinafter enacted."

The exception relates to the appointment of auditors, as to which, see ante, p. 82.

As to the power of guardians under particular or local statutes to grant out-door relief, see the 11 & 12 Vict. c. 91, s. 12, post, Chapter XII.

Sect. 21 of the "Poor Law Amendment Act, 1834" (4 & 5 Will. IV. c. 76), enacts, that all the powers and authorities of the 22 Geo. III. c. 83, and 59 Geo. III. c. 12, and also all the powers and authorities given by every other act of parliament, general *as well as local*, for or relating to

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(*n*) See more fully the title "VESTRIES," Burn's Justice, Vol. V.

(*o*) See infra.

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the building, &c. of poorhouses and workhouses, and the dieting, clothing, employing and governing of the poor, &c. shall in future be exercised by the persons authorized by law to exercise the same, under the control of the poor law commissioners (*p*).

The 12 & 13 Vict. c. 103, s. 18, provides, that the written consent of the majority of a board of guardians appointed under any local act, shall, as in the case of unions, be sufficient to enable the poor law board to issue orders, &c. for the building, purchasing, &c. of workhouses (*q*).

Local acts relating to the poor in places out of the metropolis may be altered by a provisional order of the poor law board, to be confirmed by parliament.

"The Poor Law Amendment Act, 1867" (30 & 31 Vict. c. 106), sect. 2, enacts, that "where in any union or parish not being within the metropolis as defined by the "Metropolitan Poor Act, 1867" (*r*), the relief of the poor, or the making and levying of the poor rate, is subject to the control or regulation of any local act, it shall be competent for the guardians of such union or parish having powers to exercise or duties to discharge under such act to apply to the poor law board to issue an order to repeal the whole or any part of such local act, or to alter the same, such application having been agreed to by the majority at two successive meetings of the said guardians, and being forwarded in writing under the hand of the presiding chairman of the second of such meetings to the said board; and the said board may, if after due inquiry they shall deem it expedient, make and issue a provisional order for such repeal or alteration, and shall take all necessary steps for the confirmation of such order by act of parliament, but previously to such confirmation the said order shall not be of any validity whatever; and every act of parliament confirming such order shall be deemed a public general act."

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CHAPTER VII.

Of the Persons concerned in the Administration of the Poor Laws—(*continued*).

VI. The Powers and Duties of Justices of the Peace in relation to the Poor.

Their authority *before* 4 & 5 Will. 4, c. 76.

BEFORE the "Poor Law Amendment Act, 1834," 4 & 5 Will. IV. c. 76, the justices of the peace had the *general superintendence* over all persons entrusted with the care and management of the poor, and they entirely directed the mode and amount of relief which should be given. This latter part of their duties was almost altogether transferred to the poor law commissioners and subsequently to the poor law board.

43 Eliz. c. 2. Two justices.

3 W. & M. c. 11. One justice.

Before the Poor Law Act of 1834, the overseers were required to take order for the relief and employment of the poor, "by and with the consent of *two or more justices of the peace*" (43 Eliz. c. 2); and by 3 W. & M. c. 11, s. 11, the overseers were required to keep a register of all persons who were admitted to receive relief, and no other person was to be allowed "to receive collections at the charge of the parish but by the authority of *one justice* of the peace." This authority was limited by

(*p*) See the section at length, ante, p. 23, and see sect. 54 of the same statute, ante, p. 89.

(*q*) See the section at length, post, Chapter XI.

(*r*) See post, Chapter XIII.

9 Geo. I. c. 7, s. 1, until oath had been made before such justice of the peace of some matter which he judged to be reasonable cause for having such relief; and that the person had applied for relief to the parishioners, or to two of the overseers, and was by them refused to be relieved; and until such justice had summoned two of the overseers to show cause why such relief should not be given; and the person so summoned had been heard or made default to appear before such justice. 9 Geo. 1, c. 7.

By the 36 Geo. III. c. 23 (the enactments of which were extended and modified by the 55 Geo. III. c. 137, s. 3, and the 59 Geo. III. c. 12, s. 2 and 5), magistrates were empowered to order relief to poor persons at their homes, notwithstanding a workhouse had been provided and contracts entered into for lodging, keeping, maintaining, and employing the poor (*r*). But this statute (36 Geo. III. c. 23), as well as the above-mentioned sections, by which it was extended and modified, were expressly repealed by the Poor Law Amendment Act, 1834 (*s*), and the ordering, giving and directing of all relief to the poor of any parish, which under the above repealed acts or under the Vestry Act, 1 & 2 Will. IV. c. 60, or the Poor Law Amendment Act, or any local act, is under the government and control of any guardians of the poor or of any select vestry, now appertains and belongs exclusively to such guardians or select vestry, but subject to the powers of the commissioners (*t*). Nevertheless, justices have power in such parishes to order relief in certain cases where an overseer refuses or neglects in cases of sudden and urgent necessity to give temporary relief in articles of absolute necessity to poor persons not settled nor usually residing in the parish to which such overseer belongs, *any justice* of the peace may, by writing under his hand and seal, order the overseer to give such temporary relief in articles of absolute necessity as the case shall require, but not in money; *any justice* may also give a similar order for medical relief only to any parishioner, as well as out-parishioner, where any case of sudden and dangerous illness may require it, and these orders are enforceable against overseers by penalties, except in the above cases it is expressly enacted that it shall not be lawful for any justice or justices to order relief to any person from the poor rates of any such parish (*u*). Consequently the general powers of the justices terminated. 36 Geo. 3, c. 23. 55 Geo. 3, c. 137, s. 3. 59 Geo. 3, c. 12, s. 5, repealed by 4 & 5 Will. 4, c. 53, s. 53.

Although the acts of 3 W. & M. c. 11, and 9 Geo. I. c. 7, authorizing justices to exercise a *control over the overseers in the administration of relief to the poor*, are not expressly repealed by 4 & 5 Will. IV. c. 76, this control can now be exercised only in parishes in which there is no board of guardians, no select vestry, or other similar body constituted under some local or general act. Their authority under 4 & 5 Will. 4, c. 76.

In any union, *two justices*, usually acting for the district wherein the union is situated, may order relief to be given to any adult person who, from old age or infirmity, shall be wholly unable to work, without requiring such persons to reside in the workhouse. (Sect. 27.) Justices are empowered, moreover, to enforce the repayment of relief given by way of loan made by the guardians or overseers, and for this purpose may order the master of the pauper to pay the wages to the guardians, &c. (Sect. 59.) Two justices may order relief out of the workhouse, and enforce repayment of relief.

The *proper* relief to be given in places under Gilbert's Act, 22 Geo. III. c. 83, may be determined by the justices after refusal by the guardian and visitor (*v*). In their petty sessions the justices may make an order upon the grandfather, father, &c., to maintain their grandchildren or children (*x*); (but no such power is given to enforce the extended liability of those who marry women having children) (*y*), and orders on

(*r*) See ante, p. 11.
(*s*) 4 & 5 Will. IV. c. 76, s. 53.
(*t*) *Ib.* s. 54.
(*u*) *Ib.*
(*v*) Sect. 36.
(*x*) 59 Geo. III. c. 12, s. 26.
(*y*) See 4 & 5 Will. IV. c. 76, s. 57.

the fathers of bastards (*z*); other statutes authorize justices to seize the goods and rents of persons deserting their families (*a*); and in places under Gilbert's Act, on complaint of guardians, to punish such idle or disorderly persons as neglect them (*b*). When army or navy pensioners desert their families the justices may attach their pensions (*c*) and may direct the owners of merchant ships to pay the wages of the seamen employed by them to the relief of their families (*d*). They may also order the wages of those who have been convicted of smuggling, and are serving in the king's ships, to be applied to the relief of their families (*e*). By various legislative enactments, it will be found that the justices have many other important duties to perform. They are authorized to appoint overseers (*f*); to supply a vacancy caused by the death, removal, or insolvency of an overseer (*g*); to enforce their accounts, and to cause books to be delivered to their successors (*h*); to compel the overseer to perform every order made under 17 Geo. II. c. 38 (*i*); and to pay the required rates to the guardians (*k*).

Poor rate.

The *poor rate* must be *allowed* by them (*l*), and its *payment enforced* by distress (*m*); orders of removal are made by them. They are empowered to deliver possession of parish houses to the overseers (*n*). They have power to punish persons buying or receiving into pawn, or absconding with clothing or goods provided for the maintenance and employment of the poor (*o*); and also paupers refusing to work or guilty of drunkenness or other misbehaviour in workhouses (*p*).

By the 30 Geo. III. c. 49, justices are empowered to visit workhouses (except in districts incorporated or regulated by special acts), and to remove causes of complaint; and by the Poor Law Amendment Act, 4 & 5 Will. IV. c. 76, s. 43, they are empowered to see that the rules and orders made in reference to workhouses are obeyed.

The orders now in force require the guardians to appoint a visiting committee to examine the union workhouses weekly, and practically there is no examination by justices except in their character of *ex officio* guardians and members of such committees.

The right of justices, however, to visit workhouses is expressly recognized by the legislature in the 12 & 13 Vict. c. 13, for providing a more effectual regulation and control over the maintenance of poor persons in houses not being the workhouses of any union or parish. That act empowers any justice of the peace acting in and for the jurisdiction in which such house or establishment is situated, to visit, inspect, and examine the same at such times as he thinks proper, for the like purposes and with the same power as any justice has under the 4 & 5 Will. IV. c. 76, in respect of the workhouse of any union or parish (*q*).

Select vestry

A select vestry under Sturges Bourne's Act (59 Geo. III. c. 12) receives its appointment from the justices (*r*), who also consent to and approve of the guardians (*s*), visitor (*t*), treasurer (*u*), and governor (*x*), in places under Gilbert's Act. Upon the neglect of any such guardian to pay over money in his hands, the justices may enforce it (*y*), and they may

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(*z*) 7 & 8 Vict. c. 101, and 8 & 9 Vict. c. 10.
(*a*) 5 Geo. I. c. 8.
(*b*) 22 Geo. III. c. 83, s. 31.
(*c*) 2 & 3 Vict. c. 51, s. 4.
(*d*) 59 Geo. III. c. 12, s. 32.
(*e*) 11 Geo. IV. c. 10, s. 2.
(*f*) 43 Eliz. c. 2. See ante, p. 60.]
(*g*) 17 Geo. II. c. 38, s. 3.
(*h*) *Ib.* s. 2.
(*i*) *Ib.* s. 14. See ante, p. 70.
(*k*) 41 Geo. III. c. 9, s. 2.
(*l*) 43 Eliz. c. 2.
(*m*) *Ib.*; and 17 Geo. II. c. 38, s. 7.
(*n*) 59 Geo. III. c. 12, s. 24.
(*o*) 2 & 3 Vict. c. 84; in Gilbert's unions; 58 Geo. III. c. 69, s. 6; 55 Geo. III. c. 137, s. 2.
(*p*) 55 Geo. III. c. 137, s. 5; 7 & 8 Vict. c. 101, s. 58.
(*q*) 12 & 13 Vict. c. 13, s. 8.
(*r*) 59 Geo. III. c. 12, s. 1.
(*s*) 22 Geo. III. c. 83, s. 3.
(*t*) *Ib.* s. 10.
(*u*) *Ib.* s. 12.
(*x*) *Ib.* s. 9, and see 50 Geo. III. c. 50, s. 3.
(*y*) 22 Geo. III. c. 83, s. 24.

punish such guardians and other persons for enticing persons to remove without an order (*z*).

These and other powers and duties for enforcing duties in relation to the poor laws will be fully treated of under their respective heads.

In unions under 4 & 5 Will. IV. c. 76, the justices are guardians *ex officio* (*a*), and in all parishes they are exempt from serving the office of overseer.

Jurisdiction of justices in unions.

"The Poor Law Amendment Act, 1867" (30 & 31 Vict. c. 106), contains the following provision:—Sect. 27. "Where a union extends into several distinct jurisdictions, every matter, act, charge, or complaint by which the guardians thereof are affected, or in which they have any interest, shall for the purpose of jurisdiction be deemed to arise or exist equally throughout the union."

(*z*) Sect. 41. Sect. 45 of the same act (22 Geo. III. c. 83) enacted, "That all penalties inflicted by this act shall be recovered before one or more justice or justices of the peace of the jurisdiction where the offender dwells; who shall, upon conviction, in default of payment, after due summons, and demand made, cause the same to be levied by distress and sale of the offender's goods and chattels, by virtue of a warrant under the hand and seal of any justice of the peace having jurisdiction where such offender shall dwell, rendering to the said offender the overplus, if any, after the charges of such distress and sale shall be deducted; and in case sufficient distress shall not be found, then, and in every such case, it shall and may be lawful to and for any such justice of the peace to commit such offender to the house of correction, there to remain, without bail or mainprize, for any space not exceeding six calendar months, nor less than one calendar month; and that every such penalty and forfeiture, if not hereby otherwise directed to be disposed of, shall be paid to the treasurer of every such house or houses, where any such shall be established under the authority of this act, to be applied by him towards defraying the monthly expenses of victuals, beer, firing, and other necessary provisions for the poor within such house or houses." By sect. 46, "any person aggrieved by the act of any justice or justices of the peace out of sessions, in or concerning the execution of this act, may appeal to the next general quarter sessions of the peace for the county, riding, liberty, division, precinct, or district, wherein such act was done, giving eight days' notice thereof to the party against whom the complaint shall be made, and giving security, by recognizance, to be acknowledged before a justice of the peace, with a sufficient surety, to pay the costs attending such appeal, if the matter shall be determined against the appellant; and the justices at such quarter sessions are hereby authorized to hear and determine such appeal, and to award costs, for or against the appellant, as they shall see just cause so to do; which determination shall be final, and shall not be removed by *certiorari*."

(*a*) 30 Geo. III. c. 49, s. 38; and see 7 & 8 Vict. c. 24. Justices may act at any petty, special, or quarter sessions, notwithstanding the board of which they are *ex officio* members is interested. 5 & 6 Vict. c. 57, s. 15.

CHAPTER VIII.

Of the Places concerned in the Administration of the Poor Laws.

I. Parishes and Extra-Parochial Places.

§ 1. PARISHES.
§ 2. EXTRA-PAROCHIAL PLACES.

§ 1. PARISHES.

UNDER the statute of Elizabeth, the duty of the relief of the poor was thrown upon each parish or upon the immediate relations of the poor person (*a*).

Deferring for the present the consideration of the liability of the relatives, we shall here consider the public liability in reference to the area of administration, of relief, and of taxation or responsibility.

The statute of Elizabeth, as has been already stated, makes the parish primâ facie responsible. We start, therefore, from this point—that the duty of relieving the poor is a parochial duty, and that the parish in which the pauper is relieved is, in the first instance, liable for the cost of that relief.

Maintenance by parish where the poor are settled.

The effect of the statute of Elizabeth was to allow paupers to resort to whatever parish they pleased, for the purpose of obtaining relief.

Referring to the history of the poor laws (*b*), and to the law of Settlement and Removal, in a subsequent part of the work (*c*), for the history and details of the existing law on these subjects, it is sufficient to state here that persons becoming chargeable to the place where they reside, and not being merely casual poor (*d*), may be removed to their place of settlement. The older statutes on these subjects did not, however, make any alteration in the principle of distinct parochial maintenance of the poor. The places from which the poor were removable, and the places to which they are removable, were of the same description, that is to say, the parish or township as the case might be.

Where a person in need has no settlement, or it cannot be discovered, he must be relieved in the parish where he happens to be whilst remaining in a state of pauperism; and so also if he is irremovable.

Casual poor.

Casual poor are entitled to relief in the parish in which they happen to be when the necessity for it arrives (*e*).

Rate in aid.

By the statute 43 Eliz. c. 2, the money required for the relief of the poor is directed to be raised by taxation of the inhabitants of the *parish*.

Nevertheless, the same statute provides for levying a rate in aid, out of the parish where the justices "perceive that the inhabitants of any parish are not able to levy among themselves sufficient sums of money" (*f*).

See further, as to a rate in aid, post, "POOR RATE," "RATE IN AID."

The statute of Elizabeth enacts, "that if it shall happen any parish to extend itself into more counties than one, or part to lie within the liberties of any city, town or place corporate, and part without, that then as well the justices of peace of every county, as also the head officers of such city, town or place corporate, shall deal and intermeddle only in so

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(*a*) See the statute, ante, p. 2.
(*b*) See ante, Chap. I.
(*c*) Post, "SETTLEMENT OF THE POOR."
(*d*) As to casual poor, see post, Chap. X.
(*e*) As to the recovery of relief to casual poor under Gilbert's Act, 22 Geo. III. c. 83, see post, p. 113.
(*f*) 43 Eliz. c. 2, s. 3.

much of the said parish as lieth within their liberties, and not any further; and every of them respectively within their several limits, wards and jurisdictions, to execute the ordinances before mentioned concerning the nomination of overseers, the consent to binding apprentices, the giving warrant to levy taxations unpaid, the taking account of churchwardens and overseers, and the committing to prison such as refuse to account, or deny to pay the arrearages due upon their accounts; and yet, nevertheless, the said churchwardens and overseers, or the most part of them, of the said parishes that do extend into such several limits and jurisdictions, shall, without dividing themselves, duly execute their office in all places within the said parish, in all things to them belonging, and shall duly exhibit and make one account before the said justices of peace, or any such two of them, as is aforesaid" (*g*).

Townships and villages.

The statute of Elizabeth merely related in terms to parishes only, but the system was extended to *townships* and *vills*, by the 13 & 14 Car. II. c. 12, s. 21, which *recites*, that "whereas the inhabitants of the counties of Lancashire, Cheshire, Derbyshire, Yorkshire, Northumberland, the bishopric of Durham, Cumberland, Westmoreland, and many other counties in England and Wales, by reason of the largeness of the parishes within the same, have not nor cannot reap the benefit of the act of parliament made in the three-and-fortieth year of the reign of the late Queen Elizabeth for relief of the poor;" and enacts, "That all and every the poor, needy, impotent, and lame person or persons within every township or village within the several counties aforesaid, shall, from and after the passing of this act, be maintained, kept, provided for and set on work, within the several and respective *townships* and *villages* wherein he, she, or they shall inhabit, or wherein he, she, or they was or were last lawfully settled, according to the intent and meaning of this act; and that there shall be yearly chosen and appointed, according to the rules and directions in the said act of the three-and-fortieth year of Queen Elizabeth mentioned, two or more overseers of the poor within every of the said *townships* or *villages*, who shall from time to time do, perform, and execute all and every the acts, powers, and authorities for the necessary relief of the poor within said township or village, and shall lose, forfeit, and suffer all such pains and penalties for non-performance thereof, as is limited, mentioned, and appointed in and by the said in part recited act."

Statute 14 Car. 2, c. 12.

This statute extends to all counties.

In *Dolting* v. *Stokelane* (Fol. 98; Fort. 219; 1 Bott, 46), it was held by the whole court, that by reason of the words "*and many other counties in* England *and* Wales," the act is general, and extends to other counties than those named in the act, otherwise it would not extend to one county in Wales. And in *Clifton* v. *Churcham* (1 Nol. P. L. 10), *Lee*, C. J., said, "that so it was determined, upon great debate and consideration, in *Dolting* v. *Stokelane*, which case hath been ever since adhered to." (Andr. 314).

What is a Parish, Township or Vill.

Numerous cases have been brought before the courts as to what constituted a parish, township or village within the statutes of Elizabeth and Charles.

There may be parish by reputation.

"A *parish* is that circuit of ground which is committed to the charge of one parson or vicar, or other minister having cure of souls therein." (1 Bla. Com. 3.) This, though not a very popular definition, may suffice for the present purpose. However, if a district were a parish by reputation at the passing of the 43 Eliz., and has so continued ever since, it is sufficient under this act, although it may not be a parish in the precise

(*g*) 43 Eliz. c. 2, s. 9.

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sense of the above definition, but the assumption of that character at any period subsequent to that time, unless it be by express act of parliament, will not constitute it a parish within the meaning of the poor laws. (See *Dean* v. *Linton*, 2 Salk. 487.) A special verdict found that the parish of H. was an ancient rectory and parish, that the village of S. is an ancient village and parcel of the rectory of H., that from the time of Henry the Sixth, there had been a church in the village of S. which during all the said time had been used and reputed as a parish; that the inhabitants of S. had all parochial rates and churchwardens. The court was of opinion that S. was a parish, for being found that it was a church in the time of Henry the Sixth, and that it then was, and ever since had been, reputed a parish, and not in the negative that it was not a parish before, it may be intended to be a parish before; and although not so intended, yet being found that it was a church then and churchwardens there, it is a parish within the statute, though only a reputative parish, and no churchwardens of H. are churchwardens of S. (*Hinton* v. *Pawle*, Cro. Car. 92; 2 Bl. Rep. 246. See also *Reg.* v. *Cousins*, 33 L. J. (N. S.) M. C. 87.) In *Nicholas* v. *Walker* (Cro. Car. 394; 4 Mod. 185), the court came to a similar conclusion as to the village of T. parcel of the parish of H. The verdict found that there was not any legal act to sever the vill from the parish, that the tithes were paid to the parson of H. who used to find a curate for T., and there is no parson at T., yet, as before and at the time of 43 Eliz., the vill was reputed to be a parish, and had its own constables, churchwardens, "et supravisores pauperum," and distinct rates, never contributing to the parish church, that was held to be a parish. But the immemorial exercise of some of the rights of a parish, as making rates and having a chapel of its own, will not make a distinct parish without all other parochial rights (*Rudd* v. *Foster*, 4 Mod. 157; 1 Bott, 45.)

A parish may be such by reputation.

Island of Fowlness.

The island of Fowlness in the county of Essex, which is no parish, but the lands are situate in divers parishes, is made a parish for this purpose by the 18th sect. of 43 Eliz. c. 2.

Whatever may be the distinction generally between a *town* and a *village*, the words vill, village and township are considered as denoting the same topographical division for the purposes of the poor laws; and a place so called may be such either in strictness or by reputation; but it must have been a vill in one or other of these modes at least as early as the 13 & 14 Car. II., which, as the 43 Eliz. c. 2 has been decided to embrace only parishes *in esse* when that statute was passed, must be taken to embrace only such vills as had an existence in the year 1662, the date of the 13 & 14 Car. II. (*Vide Jacob's Law Dictionary*, tit. "*Parish*;" 1 Bla. Com. 114.)

What is or is not a township or vill.

In *Rex* v. *Denham* (Burr. 36; Bott, 48, S. C.), Lord *Hardwicke*, C. J., observes, "It is certainly very hard to define exactly *what* is a township or a village; it must be left to the judgment of the court upon the circumstances of the case stated." Lord *Coke* says, "*Villa est ex pluribus mansionibus vicinata, et collata ex pluribus vicinis.*" (1 Inst. 115 *b.*) But in this case, as there were only two houses, that cannot amount to the notion of a town or village, and that if it had been formerly a town or village, if the houses were in fact decayed and gone, it would cease to be a town or village. *Lee*, C. J., observed, "that the notion of a village, according to the ancient law, is a tithing consisting of ten families; that, according to the modern notion, *it is a place that has a constable;* that it ought to have at least the reputation of a town or vill; and that a vill must at least mean more than two houses."

Where there is a *constable*, it is a vill.

Wherever there is a constable, there is a township; there may be a constable for a larger district than a township, but not for a smaller. (*Rex* v. *Horton*, per *Buller*, J., 1 Term Rep. 376.) "It is true one parish may contain three vills; the parish of A. may contain the vills of A., B. and C., that is, when there are district constables in every one of

them; but if the constable of A. run through the whole, then is the whole but one vill in law; or where there is a tithingman, there may be a vill; but if the constable run through the tithing, then it is all one vill." Per *Hale*, C. J., in a case where it was held that a fine of lands in A. would pass lands in B., a tithingman being appointed for B., but the constable exercising authority in B. (*Waldron* v. *Roscarrior*, 1 Mod. 78.)

Five dwelling-houses and farm held not a township or vill.

The manor of Grafton is an extra-parochial place, once consisting of a capital mansion-house and three keepers' lodges in the park, now disparked, and converted into five dwelling-houses and farms, occupied by five several tenants, but never having had any overseers of the poor or other officers, till the overseer now appointed for the purpose of the present removal, was adjudged by the justices to be a township or village within the statute into which a removal might be made. A rule to quash the order was granted, and afterwards made absolute without defence. (*Rex* v. *Grafton*, Burr. Set. C. 101; 2 Str. 1071; 1 Bott, 49.)

One capital messuage and labourer's cottages not a vill.

Showler and *Atter* were appointed overseers of the township or village of Haugh. The sessions adjudged Haugh to be a village or township, and confirmed the appointment. Haugh consisted of a capital messuage, in which *Showler* and his family dwelt, and of two small ancient cottages, and of one other small cottage lately built, and of another tenement, part of the said messuage. All the cottages were let, with the said messuage and the farm thereunto belonging, to *Showler;* and all of them inhabited by families; and one of the cottages was inhabited by *Atter*, who was a day-labourer, and his family; and another of the cottages was inhabited by another day-labourer; and another of the cottages was inhabited by a shepherd; and the tenement, part of the capital messuage, was inhabited by a poor widow and her children; all which occupiers of the cottages, and of the tenement, part of the capital messuage, were under-tenants to *Showler*. The court were unanimously of opinion that the appointment ought to be discharged. Lord *Mansfield*, C. J., observed, "that by this method a place might be made into a village, which in fact was not so; and the inhabitants of it might, by this contrivance, withdraw themselves from contributing towards the support of the poor of their parish." (*Rex* v. *Showler*, 3 Burr. 1391; 1 Bl. Rep. 419.)

But vill by reputation is sufficient.

A vill by reputation is sufficient; and if so returned by the sessions, it is decisive (*Rex* v. *Eyford*, 1 Bott, 60); but without such finding, an acknowledgment by the tenant of the lands of his liability to maintain the poor by granting a certificate, and his returns *as constable* are not sufficient. (*Ib.*)

Vill and hamlet are synonymous terms.

An order, appointing overseers of the "*hamlet*" of B., in the parish of C., is good; for it shall be intended that the place was a vill, unless it be stated to be otherwise; for "vill" and "hamlet" are, in common acceptation, used as synonymous terms. (*Rex* v. *Morris*, 4 T. R. 550.)

If the sessions find as a fact that the place is a vill, it is conclusive.

In *Rex* v. *Ronton Abbey* (2 T. R. 207), there were only three houses, and no constable or tithingman, nor, it seems, any church or chapel, and this passed as a vill; but there had been orders of removal to it executed, and some evidence was given of overseers and other officers having formerly been appointed; upon which it was expressly found by the sessions to be a vill by reputation, which precluded all question before the court above whether it were so or not; so that this case proves not that three houses alone will make a vill, but only that if a place be *found by the sessions*, upon the evidence there produced, to be a vill by reputation, it may be taken to be such, though there be but three houses remaining, and no other characterizing circumstances.

Extra-parochial place become a township.

An extra-parochial district may become a township by act of parliament, but in that case it cannot be treated for the purposes of settlement, &c., as having been of that denomination before the date of its creation under the act, up to which period it must be regarded as if it had been

wholly uninhabited. (*Rex* v. *Oakmere*, 5 B. & A. 775; 1 D. & R. 427. See now as to extra-parochial places, post, p. 109) (*h*).

The Division of Parishes under the Statute of Charles.

Assuming that no question arises as to the existence of a township or village within a parish, the cases in which the right to a separation under the statute of Charles have been discussed, remain to be noticed.

Dividing parishes to secure the benefit of 43 Eliz.

The *largeness* of the parishes is expressly put forward as the ground on which, in particular parishes, the benefit of the statute of Elizabeth cannot be enjoyed. A parish cannot be legally divided for the relief of the poor, unless it *cannot* otherwise have the *full benefit* of that act. (*Bastock* v. *Ridgway*, 6 B. & C. 496; 9 D. & R. 585, S. C.)

Extent of the benefit.

Speaking of the words in the statute of Charles, *Buller*, J., says, "The phrase, that a parish *cannot* reap the benefit of that statute, does not mean that it is *absolutely impossible* for them to maintain their own poor as a parish, for that would not be the case, even if the parish were 100 miles in circumference; but that it is *inconvenient* for them so to do." (*Rex* v. *Leigh*, 3 T. R. 748.) But the inconvenience must be real, and a mere trifling advantage which it is supposed may arise from a subdivision, will not warrant that proceeding. But where districts have maintained their poor respectively from distinct funds, even from a period subsequent to the 13 & 14 Car. II., either on account of the increase of population, or other changes having made it positively and really inconvenient to continue the union, the Court of King's Bench, upon a knowledge of the facts, directed a separation. Those cases must be treated as having decided that the parish was incapable of reaping the benefit of the 43 Eliz., and the townships or districts thereupon became entitled to separate overseers (*i*).

Inability of a parish to have the benefit of 43 Eliz., the foundation of the right to a division.

In *Peart* v. *Westgarth* (3 Burr. 1610), the facts were as follows:—The parish of Stanhope from 48 Eliz. to 9 Geo. I. (1723), had one joint appointment of overseers, and during all that time the poor of the parish were jointly relieved and maintained by entire and general rates upon the whole parish. During that time there were four churchwardens and four overseers, which four overseers were nominated one out of each of the four quarters in the parish, called F. quarter, N. quarter, P. quarter, and S. quarter; and in each quarter there was one churchwarden and one of the overseers who collected the poor-rates in the quarter wherein they respectively resided; but the money was levied under one entire assessment upon the whole parish, and carried to one general fund, and applied to the joint relief of all the poor of the parish. The parish is twenty miles in length, and eight miles in breadth. The P. quarter is one distinct *constablery*, the F. quarter one, and the S. quarter one, and the N. quarter consists of three constableries, but these three constableries compose one quarter only. In the 9 Geo. I., at the quarter sessions it was ordered "that the several townships and constableries of S., F., N., E., and W., should separately maintain their own poor." From that time there have been separate appointments of overseers for each of the four quarters, and each has maintained its own

Long practice even with an order of sessions insufficient.

(*h*) It may be observed here, that where the boundary between two parishes is a highway, the presumption is that the half highway on either side of the *medium filium*, belongs to the parish on that side. (*Reg.* v. *The Board of Works for the Strand Union*, 33 L. J. Rep. (N. S.) M. C. 33; affirmed on error, Ib. Q. B. 299.)

(*i*) The question has been generally raised on a rule for mandamus, but sometimes it was tried in a feigned issue before a jury. (*Lane* v. *Cobham*, 7 East, 1; *Rex* v. *Newell*, 4 T. R. 266.) Where the question was raised before the sessions, they were required to find the fact of the inability, and not state the circumstances for the court to form a judgment. (*R.* v. *Watson*, 7 East, 214.)

poor separately, excepting that, about twelve years ago, two townships, called B. and F., within N. quarter, separated themselves from the rest of that quarter, and have ever since had separate overseers and maintained their own poor separately. Orders of removal had from time to time been made since 1729 to 1761, for the removal of poor persons from one of the quarters to another, and appeals made by one quarter against another.—Lord *Mansfield* said he had no doubt upon the first argument. The policy of 13 & 14 Car. II. was mistaken; it went upon a wrong principle. The divisions ought rather to be enlarged than diminished (*k*). As to the question itself, consider, 1st, what was done; 2ndly, upon what foundation. It ought to appear "that there was an inability in the parish to have the benefit of the act of 43 Eliz." Now here no such inability appears, but quite the contrary for a great number of years (*l*), so that there is no foundation for the division. The acquiescence under it was upon a false notion, "that the sessions had such a power," which they had not. And there is no inconvenience in setting right this wrong usage, which has obtained for forty years. In the case of *Kentish Town*, all the judges held "that the foundation of such a division of a parish must be an inability of having the benefit of 43 Eliz." Here the foundation is wanting. *Wilmot*, J., also thought the larger the circle the better: therefore it would be more proper to enlarge than to lessen the divisions. The sessions do not seem to have had any sort of power to make such an order, therefore their order is a mere nullity. It was not made upon an appeal; but upon a motion made on behalf of some of the quarters and opposed by another. The subsequent usage for forty years cannot vary the right. For we cannot *presume* "that *omnia ritè acta sunt*;" because we *see* that it was founded upon this order of sessions, and it does not appear that the parish is so large that it cannot have the benefit of 43 Eliz. Therefore they ought to appoint running overseers over the whole parish.

The same principle was upheld in *Rex* v. *Uttoxeter* (Doug. 246), where there had been separate overseers from 1643 to 1703, but the townships had jointly relieved their poor.

Though it appears to be the policy of the law to discourage the division of parishes into separate districts, and even to promote their reunion, yet where the district is extra-parochial, or being part of a parish, it has maintained its own poor on a distinct account "time out of mind," or from a more modern date, if change of circumstances required the separation, it has a clear right to a distinct set of overseers.

Agreement by districts at the passing 13 & 14 Car. 2, to separate, held proof that the parish could not reap full benefit of 43 Eliz.

The two districts of which a parish consisted, had, from the 43 Eliz. down to the 13 & 14 Car. II., maintained their poor jointly, and, at the time of the passing of the latter act, agreed to separate in the maintenance of their poor, and that separate overseers should be appointed, upon condition that the rateable property in the parish, whether situated in the one or the other district, should be rated where the occupiers resided. In consequence of that agreement, they had ever since uniformly maintained their own poor separately, and had had separate overseers, constables, &c. The court held, that this clearly showed that the parish, at the time of the agreement, could not reap the full benefit of the statute of Eliz., and that therefore the separation of the two districts was valid, and that an appointment of overseers for the whole parish was now bad. It was held, also, that the agreement consisted of two

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(*k*) "I know that different opinions have at different times prevailed as to the better policy of providing for the poor in larger or smaller districts; but I had rather guide myself by the words of the act of parliament, and by the fact, than by any fluctuating policy that sometimes leans one way and sometimes another." Lord *Ellenborough*. (*R.* v. *Watson*, 7 East, 214.)

(*l*) See also on same point, *R.* v. *Watson*, supra.

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distinct parts, and that the invalidity of the latter part, as to rating property not situated within the district rated, did not affect the question on the former part. (*Rex* v. *Walsall*, 2 B. & A. 157.)

Secus, an agreement having no reference to the benefit of the statute of Eliz.

In *Bastock* v. *Ridgway* (6 B. & Cres. 494; 9 D. & R. 585, S. C.), Lord *Tenterden* remarked, "that in *R.* v. *Walsall* the separation took place very soon after 13 & 14 Car. II. Now there could be no legal separation between 43 Eliz. and 13 & 14 Car. II. But when we find that (as soon as an act of parliament makes a separation legal, in a case where the parish cannot have the benefit of the statute of Eliz.) such a separation actually takes place, that is abundant evidence that at and even before that time the parish could not have the benefit of the statute. But this inference by no means arises where (as in this case) the agreement was made in 1753." His lordship also observed, "that he did not mean to say, because the largeness of the parish is expressly mentioned in the statute, that it is the only ground by which the benefit of the statute of Eliz. is not to be had, for that benefit might be lost by the superabundant population in a district not exceedingly large." *Bayley*, J., "It does not appear by that agreement that it was in consequence of the largeness of the parish that they could not receive the benefit of that statute. In 1690 the poor-rate was an entire fund, and the agreement shows that the reason for separation was private disputes, and the principal one about some donations." The court held that the townships were not legally divided.

Largeness of parish not the only criterion.

More than four overseers not decisive of the inability.

In *Rex* v. *Newell* (4 T. R. 266), the hamlet was situated without the borough, had a separate constable and churchwarden, but no other church but the one common to the parish at large. The people of the hamlet attended the parish meetings, but not *vice versâ*. From 1648 the hamlet had separate overseers, with separate accounts. The parish had one churchwarden and three overseers. Since 1709 certificates have been granted by the hamlet, but not to the parish. Orders of removal have been made to the hamlet. Each made a separate rate, but the money when raised was blended together in one joint fund, though applied in certain proportions, and the sessions did not find it as a fact that the parish could not reap the benefit of the 43 Eliz.; it was held that the districts were not entitled to maintain their own poor separately and distinctly, though, since the year 1648, they have constantly had, in the whole, more than four overseers, and though the hamlet part has immemorially had a constable of its own. Lord *Kenyon*, in the course of his judgment, said, "The only circumstance that can bear the semblance of an argument against this decision is, that these districts have had more than four overseers; but that appeared to be the case in several other parishes, on an inquiry directed to be made by Lord *Mansfield*, in *Rex* v. *Loxdale* (1 Burr. 445). So that though it may be a very material ingredient in these cases, it is not a decisive one."

Districts separated, at the time of 13 & 14 Car. 2, may re-unite, though in two counties.

The parish of Wokingham is situated in two counties, part called the liberty of Wilts, and part the liberty of Berks. It appeared that, at the time of the 13 & 14 Car. II. and down to the year 1773, separate overseers had been appointed for each liberty, and separate rates. That in 1773 the liberties agreed to unite, and had been united ever since. Upon this evidence, the jury found that the parish could have the benefit of the statute of Eliz. And on a mandamus to review this decision, it was held that the districts might legally re-unite, and that in the exercise of their discretion they would not interfere with the management of the poor which had certainly prevailed for thirty-two years. (*Lane* v. *Cobham*, 7 East, 1; *R.* v. *Palmer*, 8 East, 416.)

Of re-union of districts.

The re-union by agreement of districts or townships to the collective system of 43 Eliz. is equally valid, whether the townships at the date of the statute of Car. II. maintained their poor jointly, continued so united until more than a century afterwards, and then divided; or whether, from the date of the statute of Car. II. until their agreement to unite,

they have been constantly separate. The court, therefore, will not disturb, by appointment of separate overseers, a re-union thus effected after a duration of thirty years. Nor probably, though much more recent. On the other hand, though there should be affidavits on behalf of one or more townships, that the parish might now, by re-union, reap the benefit of 43 Eliz., it does not seem likely that the court would grant a mandamus against the wish of any other of the townships, to appoint overseers for the whole parish collectively. (*Rex* v. *Leigh*, 3 T. R. 746 ; 1 Bott, 58.)

Separate appointments of overseers, with separate funds, evidence of such inability.

Where one or more, but not all, of eight several and distinct townships composing a parish have obtained a separate appointment by mandamus, or have been accustomed to maintain their poor from separate funds, under circumstances authorizing such separation, and the remaining townships have maintained their poor jointly, every one of them has a right to a separate appointment also, and the Court of King's Bench will grant a mandamus for the purpose ; for the circumstances prove the inability of the parish to maintain its poor as a parish ; that is, collectively out of one fund. (*Rex* v. *Sir Watts Horton*, 1 T. R. 374.)

Two neighbouring divisions of the parish of St. Andrew's, Pershore, used the same parish church, situate in one of the divisions ; but each had its own overseers, collectors of poor and county rates, surveyors of highways, and constable. Poor-rates were made for the whole district, consisting of the two divisions, but were raised by each division separately ; and one division (the hamlet of Pensham) always contributed in the proportion of two-thirds, and the other (St. Andrew's) of one-third. The two divisions had, as far back as could be traced, relieved their poor jointly and indiscriminately ; and they had for forty years had a joint workhouse. The residue of the parish consisted of five chapelries, each having its own chapel and parish officers, and maintaining its own poor. The court held, that the five chapelries were independent districts for the maintenance of the poor ; but that Pensham was not within sect. 21 of the stat. 13 & 14 Car. II. c. 12, the use of a joint workhouse and the raising a joint fund (though in different proportions) for the relief of the poor being decisive on this point. (*Price* v. *Quarrell*, 12 A. & E. 784.)

Construction of 13 & 14 Car. 2, c. 12.

Where it appeared that a district with a definite boundary, having its own chapel, with parochial rights and sacramental offices, and its own overseers of the poor, administering for the purposes of out-door relief, a rate assessed as and collected within the district, had a common workhouse with a parish in which the workhouse was situated, accounted with the parish at the end of the year, and submitted the accounts of its vestry to the vestry of the parish,—the court, on a case which, as to inferences of fact, gave it the powers of a jury at nisi prius : held, that the fund for the relief of the poor in the parish and district was a joint fund, and that the 13 & 14 Car. II. c. 12, s. 21, did not apply to the district. It was also held, that an ecclesiastical separation may be complete without the districts being necessarily separated as parishes or reputed parishes, as the duty of maintaining the poor has always been held to be an important element of the question whether a district was a chapelry or a parish ; and that as the tithes for the titheable lands of the district were paid to the vicar of the parish, the district was not a parish or reputed parish within the meaning of the 43 Eliz. c. 2 ; and that the rules and orders of the poor law commissioners since and under the 4 & 5 Will. IV. c. 76, and the statutes to be read as one with it, did not affect the determination of the question whether the district was within the statute of Charles, or a parish or reputed parish under the statute of Elizabeth. (*R.* v. *Clayton*, 18 L. J., M. C. 129.)

Nor is a parish entitled to a separation, merely because its different districts lie each in different jurisdictions, or even counties. (See *Lane* v. *Cobham*, supra.)

A parish is not within statute o

The parish of Hales Owen consisted of three townships in the county of Worcester, and certain townships and districts in the county of Salop.

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Charles, because parts of it are in different counties.

The townships in Worcester had always had their own overseers and relieved their own poor, but four overseers had been appointed for the division of the parish lying in Salop, and rates collected and applied for the relief of the poor of that division indiscriminately. On application by a township in the latter division for a mandamus to the justices of Salop to appoint overseers for that township, pursuant to 13 & 14 Car. II. c. 12, s. 21, on the ground that the parish had not enjoyed and could not enjoy the benefit of the statute 43 Eliz. c. 2, facts being also stated to show the expediency of a separate appointment: held, that the division of the parish in Worcestershire and Salop could not be considered as distinct parishes. Lord *Tenterden*, C. J.—Looking at the parish of Hales Owen as a whole, it is clear there never, within memory, has been one set of overseers for the parish. There has been one set for the townships in Worcestershire, and one for the part in Shropshire. Then the parties applying for the rule relied upon *Rex* v. *Sir Watts Horton*, which has been followed up in principle by several other cases. On the other hand, a case in Sir T. Raymond (p. 476), was referred to in the course of the argument, where a parish was situate partly in London and partly in Middlesex, each part having distinct officers, making distinct rates, and passing distinct accounts before the justices of the respective counties, and the question being as to the liability to maintain children who were left chargeable to one of the divisions, it was held that each division must be looked upon as a separate parish. We have looked into that case, and we think it is no authority to show that in every case in which a parish lies in two counties, each part may be considered as a separate parish. The case happened after the statute of Charles, and probably was no more than an application of the provisions of that statute to each part as a distinct township; at all events there is nothing in it calculated to raise any reasonable doubt on the application of *Rex* v. *Horton* to the case now before the court. Rule absolute. (*R.* v. *Salop*, 3 B. & Ad. 910 (*m*).)

In *Reg.* v. *Justices of Worcestershire* (3 P. & D. 465; 12 A. & E. 28, S. P.), on a rule for a mandamus to appoint overseers for the township of Bentley Pauncefoot, it appeared that the parish of Tardebigg contained four townships, one called Tutnall, in the county of Warwick, the other three, viz. Redditch, Webheath and Bentley Pauncefoot, in the county of Worcester. Two churchwardens act for the whole parish, and the parish church stands partly in Warwickshire, partly in Worcestershire. Tutnall had from time immemorial been considered a separate township from the other parts of the parish, and had its own overseers, collectors of taxes, surveyors of highways and constables. It maintained its own poor, had its own workhouse, and orders of removal have been made to the Worcestershire part of the parish. Up to 1832 the other three hamlets had each an overseer, who collected the rates in his own district, but the accounts were afterwards entered in one book, and passed jointly, and the poor of the three hamlets were maintained jointly at a workhouse in Webheath. Since 1834, four overseers had been appointed, viz. two for Redditch, and one for each of the other hamlets. A constable has always been appointed for Bentley Pauncefoot. For all other purposes, except contributing jointly to the relief of the poor and the repairs of the church, the hamlet of Bentley Pauncefoot is perfectly distinct from and independent of the other parts of the parish. The affidavits in answer stated that Tutnall and the parish of Tardebigg, in the county of Worcester, joined part of the union of Bromsgrove, and were respectively assessed at a certain quota ascer-

(*m*) Before this decision, some paupers had been removed to the parish of Hales Owen, and afterwards they were removed to the township of Oldham; but the court thought that the township was not included by the order. (*Rex* v. *Oldbury*, 4 A. & E. 167; 5 L. J. (N. S.) M. C. 38.)

tained to be the annual average expense of the poor in each place. They denied that any overseer had been appointed for Bentley Pauncefoot since 1830, and stated that the overseers for Redditch and Webheath had done the overseers' duty in Bentley since that year. Lord *Denman*, C. J.—The cases of *Rex* v. *Horton* (p. 106), and *Rex* v. *Salop* (p. 106), are so expressly in point with the present, that we are bound by their authority. The only ground on which we should feel ourselves at liberty to disregard their authority is, that the two decisions in Cro. Car. (*n*), in which a contrary conclusion is supposed to have been arrived at, were not then brought before the court. But these two cases are not in fact contradictory to the later ones, for they turn upon the fact of the jury having found the districts in question to have been reputed parishes at the time of the passing the 43 Eliz. But here it is unquestioned that Tutnall is only a township of the parish of Tardebigg. It is then contended that the policy of the legislature has changed since the 13 & 14 Car. II., and that now it is inexpedient to establish small districts for the relief and maintenance of the poor. But the court has long emancipated itself from the notion that it is to be guided in the construction of a statute by any view of supposed policy. We are bound to expound the law as we find it, and any change to be made in it must proceed from the legislature. No doubt, under the statute of Charles, it may be sometimes a matter of discretion for the court to enforce its provision by mandamus or not. But as two cases have been decided putting a clear construction upon that statute, under circumstances similar to the present, we must act upon them. *Littledale*, J.—This case comes so near *Rex* v. *Horton*, and *Rex* v. *Salop*, that I am unable to distinguish it. It is true that the cases in Cro. Car. establish that the districts maintaining their own poor at the time of passing the 43 Eliz. were to be considered as reputed parishes; but *Rudd* v. *Martin* (2 Salk. 501) shows, that to be a reputed parish within that statute it must have had a parochial chapel at the time that act passed. *Patteson*, J.—I am unable to distinguish this case from *Rex* v. *Salop*. With regard to the New Poor Law Act, there is no doubt that it is utterly at variance with the 13 & 14 Car. II. as to the relief of the poor in small districts; but it does not in any way alter the character of an overseer as to several of the functions he has to discharge. *Williams*, J.—No case has been oftener cited and acted on in parish law than *Rex* v. *Horton*, and it binds us now.

Policy as to large and small districts for maintenance of poor.

The fact that the place was extra-parochial did not prevent the application of the statute, provided it were a vill. In the vill of Rufford there were divers substantial freeholders able to contribute to the maintenance of the poor, and there were no churchwardens or overseers to make a rate, and the poor were unprovided for. The vill was part of no parish, but time out of mind had been extra-parochial, without church, chapel, or parochial rights, and there never had been any overseers of the poor. By the court: "The powers given by the 43 Eliz., to be executed in *parishes*, were, by the 13 & 14 Car. II. c. 12, extended to all *townships* and *villages*, whether parochial or extra-parochial, and consequently overseers might be appointed in this case." (*Rex* v. *Rufford*, 1 Stra. 512; 1 Bott, 47.)

But the township or vill may be extra-parochial.

But if the place was not a township or vill, the act did not apply.

In *Rex* v. *Justices of Peterborough* (Cald. 238; 1 Bott, 59), on a rule for a *mandamus* to appoint overseers for the minster in Peterborough, it appeared that it was an extra-parochial place, and always had a number of houses belonging to it; it contained upwards of sixty acres, upon which were twenty-five dwelling-houses at least, besides poor-houses; that these houses were inhabited, except in the instance of the bishop and three of the prebendal houses, altogether by laymen or strangers to

The site of a cathedral and its area do not constitute a vill, though there be many houses, &c., upon it.

(*n*) *Nicholls* v. *Walker*, Cro. Car. 394; *Hilton* v. *Pawle*, Cro. Car. 92.

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the cathedral, and mostly persons of fortune; many poor persons had acquired settlements therein; that they had a distinct place for burials, marriages, and divine worship; that the poor had been supported by the Chapter out of some fund belonging to them; "that it was not a township or vill, or ever reputed so to be;" that there never was any constable or other civil officer appointed for the said precinct, or any overseer of the poor, or churchwarden; nor had the inhabitants ever contributed to the relief of the poor within the precinct, or been called upon so to do. Lord *Mansfield:* "This space comprehends no more than the site of the cathedral and the area round it, and consequently was, in former times, within the sanctuary, and, as such, sacred and inviolable as the church itself. In modern times, to be sure, there is no such thing as sanctuary, but these places have throughout all ages, without interruption, enjoyed those immunities, as Westminster Abbey now does, and other places of the like nature. The ancient inns of court, though not exactly upon this principle, have also, at all times, been privileged; and a similar exemption was not questioned in *Rex* v. *Gardner* (Cowp. 79), with respect to that part of the court and garden ground of Catherine Hall in the university of Cambridge, which lay within the old and extra-parochial part of that foundation. Would you say that Christchurch, in Oxford, is a vill? (See 8 Mod. 40.) I am not satisfied that this place is a vill, and the party applying do not even call it so." *Buller*, J.: "As the party applying for a *mandamus* does not state, as a fact, that this place ever had a civil officer, or was ever reputed a vill (which, where the facts of the case do not, upon some clear principle of law, show the place to be of that denomination, the court has holden to be indispensably necessary for the purpose of founding an application for a *mandamus*), this case falls within the case cited." Rule discharged.

Houses recently built within the precincts of a castle not a vill.

Overseers were appointed for the township of Standard Hill, which was a piece of ground within the precincts of the castle of Nottingham. It was sold in 1807, and several dwelling-houses built upon it. The castle and precincts were extra-parochial, and "no part of it ever reputed to be a township or vill, or assessed to the poor, or had a constable," except some who were appointed in 1808, without the steward's knowledge, and who in 1814 gave orders that the practice should be discontinued, which was done. On a motion to quash the appointment, it was urged that as there were seventeen houses, and some in progress, and 140 inhabitants, the court should draw the conclusion that this was a vill. Lord *Ellenborough:* "The immediate consequence of holding this to be a vill, for which overseers ought to be appointed, would be that overseers must be appointed for all the inns of court, and every collegiate or ecclesiastical establishment, which would work a great alteration in the laws relating to this subject. This consideration makes me unwilling to pass the ancient limits, unless warranted by positive affidavit, and therefore, until I find it stated that this is a vill, I shall defer coming to such a conclusion which may lead to so extensive a consequence." Order quashed. (*Rex* v. *Standard Hill*, 4 Maule & Sel. 378.)

Separation of Towns Corporate from Parishes.

59 Geo. 3, c. 95, "for confirming ancient separation of towns corporate from parishes, in regard to the maintenance of the poor."

The 59 Geo. III. c. 95, for confirming ancient separations of towns corporate from parishes in regard to the maintenance of the poor, respecting *towns corporate or franchises*, after reciting that various towns corporate or franchises situate within one or more parish or parishes, and not co-extensive with the said parish or parishes, have heretofore and for a long time past been separately assessed from the parish or parishes in which they are situate, for the relief of the poor, and overseers of the poor for such town or franchise have been appointed distinct and apart from the overseers of the poor appointed for such parish or parishes; and whereas such separate and distinct assessments and appointments of overseers have, in many cases, been made without suffi-

cient authority, and yet, by reason of the long continuance of the said separation, the towns corporate or franchise cannot now be re-united to the parish or parishes in which they are situate, without manifest inconvenience and hardship: enacts, "That from and after the passing of this act, all such separation of towns corporate or franchise, from the parish or parishes in which they are situate, together with the separate and distinct appointment of overseers of the poor, shall be deemed and taken to be lawful to all intents and purposes whatsoever, in the same manner as if the said separation or division had taken place under the authority of an act made in the forty-third year of the reign of Queen Elizabeth, intituled 'An Act for the Relief of the Poor:' provided always, nevertheless, that nothing in this act contained shall render legal or confirm any separation of a town corporate or franchise from the parish or parishes in which such town corporate or franchise is situate, in respect to the maintenance of the poor, or the appointment of overseers of the poor, in any case where it shall appear that such separation has commenced within sixty years before the passing of this act."

Separation of towns from parishes, and distinct appointment of overseers lawful.

43 Eliz. c. 2.

But with respect to the poor, such separation must not have commenced within sixty years.

Adjustment of Intermingled Parishes.

"The Poor Law Amendment Act, 1867" (30 & 31 Vict. c. 106), s. 3, enacts, that, "where several parts of any parish are separated from one another or intermixed with an adjoining parish, or where a parish is of great extent in area, and an application in writing shall be made to the poor law board by one tenth part in value of owners of property and of ratepayers in the parish or parishes respectively interested in the subject, the said board may, if satisfied by public inquiry on the spot, after fourteen days' public notice of the time, place, and object of such intended inquiry, that the relief to the poor can be better administered in in the parish or parishes by means of such re-adjustment or division as hereinafter mentioned, make an order under seal for re-adjusting or dividing the said parishes according to the terms of the application, and for the purposes and objects set forth therein, or with such modifications as they shall deem expedient, and such order shall be made provisionally, and shall be submitted to parliament, to be confirmed in the manner hereinbefore set forth."

Poor law board may adjust intermingled parishes, or divide extensive parishes by a provisional order, to be confirmed by parliament.

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§ 2. EXTRA-PAROCHIAL PLACES.

The act 20 Vict. c. 19, "to provide for the relief of the poor in extra-parochial places," reciting, that "it is desirable that provisions should be made for the relief of the poor in extra-parochial places," enacts (s. 1), that, "after the thirty-first day of December, one thousand eight hundred and fifty-seven, every place entered separately in the report of the registrar-general on the last census which now is or is reputed to be extra-parochial, and wherein no rate is levied for the relief of the poor, shall for all the purposes of the assessment to the poor-rate, the relief of the poor, the county, police, or borough rate, the burial of the dead, the removal of nuisances, the registration of parliamentary and municipal voters, and the registration of births and deaths, be deemed a parish for such purposes, and shall be designated by the name which is assigned to it in such report; and the justices of the peace having jurisdiction over such place or over the greater part thereof shall appoint overseers of the poor therein; and with respect to any other place being or reputed to be extra parochial, and wherein no rate is levied for the relief of the poor, such justices may appoint overseers of the poor therein, notwithstanding anything contained in the hundred and first chapter of the statute passed

All extra-parochial places, where no poor-rate is levied, to be deemed parishes for relief of the poor, &c., and justices, having jurisdiction to appoint overseers.

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in the session of parliament of the seventh and eighth years of her present Majesty" (*o*).

Justices at the quarter sessions may, upon application, and with consent, annex any extra-parochial place to an adjoining parish.

Sect. 4. "If the owners and occupiers respectively of the land comprised in any extra-parochial place owning and occupying two-thirds in value at least of such land shall express their desire in writing, signed by such major part, that such place be comprised in or annexed to any parish for the purposes aforesaid, and such parish shall consent thereto, such consent to be expressed by a resolution of the vestry, after due notice, the justices of the peace in quarter sessions assembled, or the recorder of the borough if such place be situated within a borough subject to the jurisdiction of a recorder, may make an order for the annexation of such place to such parish, and thenceforth the same shall be deemed to be part of the said parish for all such purposes" (*p*).

Overseers may act as guardians until there shall be ratepayers qualified to elect.

Sect. 5. "If any such place should be added to any union the overseer or overseers thereof shall act as the guardian or guardians of such place at the board of guardians of such union until there shall be ratepayers thereof qualified to elect a guardian: provided that if the poor law board should direct one guardian only to be appointed for any such place, and there shall be two overseers appointed for the same, the overseer first appointed, or whose name shall stand first in the warrant of appointment, shall act as such guardian, and in the case of his decease or incapacity during the year of office the other overseer shall thenceforth act as such guardian; provided also, that no such paid overseer as aforesaid shall be authorized to act as a guardian."

All powers, &c. of overseers extended to overseers appointed under this act.

Sect. 6. "The overseers or overseer appointed under the authority of this act shall have all the powers, authorities, privileges, exemptions and protections which overseers now or hereafter shall possess, and shall be subject to all the obligations, responsibilities, penalties and consequences which overseers are now or may hereafter be liable to."

Certain places excepted.

Sect. 7. "Provided, that nothing above contained shall apply to any extra-parochial place in respect whereof there shall be any agreement with any parish as to the liability of such place to contribute to the poor rate of such parish contained in any act of parliament."

Provision for extra-parochial places adjoining districts acting under local acts.

Sect. 8. "Where there is any extra-parochial place contained in or adjoining to any district comprising any parish or parishes, in which district the relief of the poor is administered under the authority of a local act, the poor law board may, with the consent of the occupiers and owners of two-thirds in value of the land comprised in such place, and with the consent of the guardians acting in that district, by order direct such place to be added, for the purposes of administration of relief to the poor, to such district, upon such conditions and subject to such provisions and regulations as shall appear to them to be necessary for such purposes."

Bishop may authorize publication of banns in church or chapel of the church of England in extra-parochial place.

Sect. 9. "Where any extra-parochial place has belonging to or within it any church or chapel of the church of England, the bishop of the diocese within which such church or chapel shall be locally situate may, if he think fit, authorize by writing under his hand and seal the publication of banns and the solemnization of marriages by banns or licence

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(*o*) See ante, Chap. IV., "OVERSEERS." The 2nd and 3rd sections of the 20 Vict. c. 19, are given at length, ante, p. 55. In order to come within this provision the place must actually be or be reputed to be extra-parochial, and it is not sufficient that it has been separately entered in the report of the registrar-general on the last census as extra-parochial. (*Reg.* v. *Cousins*, 33 L. J. (N. S.) M. C. 87.)

(*p*) If the owners and occupiers do not avail themselves of this section, the poor law board may treat the extra-parochial place as a parish, and add it to a union under sect. 32 of "The Poor Law Amendment Act, 1834" (4 & 5 Will. IV. c. 76). (Per *Mellor*, J., *Reg.* v. *Boteler*, 32 L. J. Rep. (N. S.) M. C. 91; and see *Staple Inn* v. *Holborn Union*, Ib. 181.)

in such church or chapel of persons residing within such extra-parochial place, and such written authorization shall be registered in the registry of the diocese."

Provisions as to the keeping of marriage registers to extend to any church or chapel where banns may be published.

Sect. 10. "Provided always, that all provisions now in force or which may hereafter be established by law relative to providing and keeping marriage registers in any parish churches shall extend and be construed to extend to any church or chapel in which the publication of banns and solemnization of marriages shall be so authorized as aforesaid in the same manner as if the same were a parish church, and everything required by law to be done relative thereto by the churchwardens of any parish church shall be done by the churchwarden or chapelwarden or other officer exercising analogous duties in such church or chapel, or if there shall be no such officer then by such person as shall be appointed in that behalf by the bishop of the diocese."

Terms used in this act to be construed as in 4 & 5 Will. 4, c. 76, &c.

Sect. 11. "The words used in this act shall be construed in the like manner as in the seventy-sixth chapter of the statute passed in the fourth and fifth years of King William the Fourth; and the provisions contained therein, and the subsequent acts explaining and extending the same, and not repealed, shall, so far as they shall be consistent herewith, be extended to this act."

"The New Forest Poor Act" (29 & 30 Vict. c. 66) contains special provisions respecting extra-parochial lands in the New Forest.

CHAPTER IX.

Of the Places concerned in the Administration of the Poor Laws—(*continued*).

II. Unions and Audit Districts, School Districts, and Asylum Districts.

§ 1. UNIONS.
§ 2. AUDIT DISTRICTS, SCHOOL DISTRICTS, AND ASYLUM DISTRICTS.

§ 1. UNIONS.

Unions under Gilbert's Act (22 *Geo. III. c.* 83) *and under Local Acts.*

Gilbert Unions.

GILBERT'S Act (22 Geo. III. c. 83) empowered two or more parishes, &c. to unite for the purposes of that act (*i. e.* for the maintenance and superintendence of the poor, including the establishment of workhouses (*q*)); and the visitor and guardian of the several parishes, townships and places so united were declared to be one body politic and corporate (*r*).

The form of agreement provided by the act contained a clause respecting the apportionment of the costs of workhouses and the maintenance of the paupers.

The poor-house or workhouse to be built or provided for under the provisions of the act, were directed to be built or provided within one of the united parishes or townships (unless with special consent as provided for); and the expense of erecting, repairing or fitting up, and of the purchase of land, were to be paid in the proportions to be settled and adjusted by the persons in the manner directed by the agreement above referred to (*s*).

(*q*) See ante, p. 7—10.
(*r*) 22 Geo. III. c. 83, s. 21.
(*s*) *Ib.* ss. 18, 20. See more fully, "WORKHOUSES," post, Chap. XI.

Further, the poor sent to every such house of the act were directed to be maintained therein at the general expense of the respective parishes, townships and places adopting the act, according to the terms and in the proportions directed and prescribed by the act (*t*).

The overseers were to pay the treasurer of the united parishes their due proportion and quota of the several expenses attending the poor and poor-houses (*u*).

Duty of *guardians* to relieve under 22 Geo. 3.

Where *guardians* have been appointed under the 22 Geo. III. c. 83 (Gilbert's Act), the 38th section provides, that in case any poor person shall be retarded in his passage through a parish in which he has no settlement by accident, by dangerous illness or bodily infirmity, the guardian where such distressed object shall be, shall provide lodging and suitable nourishment and assistance, and may recover the expenses from the guardian of the parish in which he is settled. It makes provision also for the burial of such persons if they die, and also of those found dead (*x*).

(*t*) 22 Geo. III. c. 83, s. 24. See ante, p. 9.

(*u*) *Ib.* s. 8. See ante, p. 88 (Officers of Gilbert Unions), and post, as to ascertaining the average expenditure. The Parochial Assessment Act, 25 & 26 Vict. c. 103, s. 45, empowers Gilbert unions to adopt that act. See post, "RATING." Three unions, C., H. and L., of many townships each, were formed under Gilbert's Act, in different years, for maintenance of the poor; H. and L. having no workhouse, by arrangement with C. kept their poor at C. workhouse, and each township of the H. and L. unions paid its proportion of the common charges of the C. workhouse to the treasurer of the C. union. They also paid him part of the original charge of building and preparing the workhouse. It was held, that the townships of the H. and L. unions could not legally act as if incorporated into the union of C., and that the poor law auditor was right in disallowing payments made by one of the townships of the H. union to the treasurer of the C. union, on the above-mentioned accounts. (*Reg.* v. *Shaw*, 29 L. J. (N. S.) M. C. 211.)

(*x*) By 22 Geo. III. c. 83, s. 38, "if any poor person shall be retarded on his or her passage through any parish, township, or place, in which he or she has no legal settlement, by reason of his or her *meeting with any accident, or being afflicted with any dangerous illness or bodily infirmity, without the means of subsistence, or of proceeding to the place of his or her settlement, the guardian* living near the place where such distressed object shall be, shall, and is hereby required, upon notice thereof, forthwith to provide lodging, and suitable nourishment and assistance (and also clothing, if necessary) for such person, until he or she can be removed with safety; and when such person shall be in a state of health fit to be removed, shall take such person to some neighbouring justices of the peace of the county, riding, division, city, or place, where such person was found, who shall examine him or her upon oath, touching the place of his or her settlement, and make an order for his or her removal thither, if they think fit: and the parish officer who shall so receive and provide for such person or persons as aforesaid, shall make a charge of the expenses attending the same, which, on being allowed and certified by the justices before whom such poor person shall be so taken, or some other neighbouring justices within the limit where such person was found, the same shall be paid by the guardian of the parish, township, or place, where such poor person shall be settled, in case the same can be discovered, and shall happen to be within that county, on demand made thereof, and on the production of such allowance and certificate as aforesaid, or in default of payment, the same shall be levied upon the goods and chattels of any such guardian so making default, after due summons, by warrant from a justice of peace having jurisdiction there; and if any poor and sick person circumstanced as aforesaid shall die before he or she can be so examined, or if any poor person shall be found dead in any parish or place to which he or she did not belong, the guardian of such parish or place respectively shall, and is hereby required, in every such case, to cause such person to be buried in the parish, township, or place where he or she so died or was found dead, and shall make a charge of the expenses attending the same respectively, which shall be allowed

And by 33 Geo. III. c. 35, s. 3, all such *casual poor* as may happen to be within, and would be entitled to relief from, any one of such parishes, townships or places as have been, or may hereafter be, united together for the purposes of Gilbert's Act above mentioned, shall be relieved by all the said parishes, townships or places conjointly, and in the same respective proportion as they shall and are directed to contribute for the general purposes of that act, according to the provisions and regulations in the said act specified and contained. (And see *Rex* v. *Meredith*, Russ. & Ry. C. C. 46; Car. Crim. Law, 269; 3 W. & M. c. 11, s. 11.)

Various local acts, passed from time to time, also provide for uniting particular parishes.

Such unions, as well as unions under Gilbert's Act, were materially affected by the "Poor Law Amendment Act, 1834" (4 & 5 Will. IV. c. 76). Independently of the general control over such unions by the poor law commissioners, and requiring their consent to the future union or incorporation of any parishes under Gilbert's Act, various provisions were passed having special reference to them. These will be more conveniently noticed under the next head.

It may be observed, however, that "The Union Assessment Committee Act, 1862" (25 & 26 Vict. c. 103), may be applied to unions or incorporations under local acts, or under Gilbert's Act. (See post, "RATING.")

"The Poor Law Amendment Act, 1867" (30 & 31 Vict. c. 106), sect. 2, gives power to the poor law board to make a provisional order for the repeal of any local act regulating the relief of the poor in any union or parish (*y*).

Unions under and subsequent to the Poor Law Amendment Act, 4 & 5 Will. IV. c. 76.

Parishes may be united by commissioners.

The incorporation of parishes under Gilbert's Act was voluntary, but "The Poor Law Amendment Act, 1834" (4 & 5 Will. IV. c. 76), sect. 26, empowered the commissioners, "by order under their hands and seal, to declare so many parishes as they may think fit to be united for the administration of the laws for the relief of the poor, and such parishes shall thereupon be deemed a union for such purpose, and thereupon the workhouse or workhouses of such parishes shall be for their common use; and the said commissioners may issue such rules, orders and regulations as they shall deem expedient, for the classification of such of the poor of such united parishes in such workhouse or workhouses, as may be relieved in any such workhouse, and such poor may be received, maintained and employed in any such workhouse or workhouses, as if the same belonged exclusively to the parish to which such poor shall be chargeable; but, notwithstanding such union and classification, each of the said parishes shall be separately chargeable with and liable to defray the expense of its own poor, whether relieved in or out of any such workhouse" (*z*).

Each parish chargeable for its own poor.

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and certified by a justice of the peace, after examining into the place of his or her settlement, and shall be paid by the guardian of the parish, township or place where such person shall appear to have been settled, if the same shall be within that county; but in case the settlement of such poor persons respectively cannot be discovered, or shall not be within that county, the same shall be paid by the treasurer of such county, riding, division, city, or place where such person was so relieved, on the production of such allowance and certificate, out of the county or public money to be collected within his limit, and allowed to such treasurer in his accounts."

(*y*) See the section at length, ante, p. 94.

(*z*) Under this section it was held, that several parishes might be formed into a union, although one of them was governed by a local act. (*R.* v. *The Poor Law Commissioners* (*Whitechapel Union*), 6 A. & E. 34; 2 N. & P. 9.) The 7 & 8 Vict. c. 101, s. 64,

"The Poor Law Amendment Act, 1834" (4 & 5 Will. IV. c. 76), contains the following further provisions on this subject.

When a union of parishes shall be proposed, commissioners to inquire the expense of poor belonging to each parish for three years preceding.

Sect. 28. "And be it further enacted, that when any union of parishes, for the administration of the laws for the relief of the poor, shall be proposed to be made or shall be made under the provision of this act, it shall be lawful for the said commissioners, and they are hereby required, from time to time, by such means and in such manner as they may think fit, to inquire into and ascertain the expense incurred by each parish proposed to form part of such union for the relief of the poor belonging to such parish, whether such relief shall have been given in or out of any workhouse, for the three years ending on the twenty-fifth day of March next preceding such inquiry, and thereupon the said commissioners shall proceed to calculate and ascertain the annual average expense of each parish for that period; and the several parishes included, or proposed to be included in such union, shall, from the time of effecting the same, contribute and be assessed to a common fund for purchasing, building, hiring or providing, altering or enlarging any workhouse or other place for the reception and relief of the poor of such parishes, or for the purchase or renting of any lands or tenements, under and by virtue of the provisions of this act, of or for such union, and for the future upholding and maintaining of such workhouses or places aforesaid, and the payment or allowance of the officers of such union, and the providing of utensils and materials for setting the poor on work therein, and for any other expense to be incurred for the common use or benefit or on the common account of such parishes, in the like proportions as on the said annual average of the said three years such relief had cost each such parish separately, until such average shall be varied or altered as hereinafter provided: provided always, and the said commissioners are hereby authorized, if they shall so think fit, but not otherwise, from time to time, either upon the application of the guardians of such union or of the overseers of any parish forming part of the same, or without such application, to cause a like inquiry and calculation to be made and average ascertained for the three years ending on the twenty-fifth day of March next preceding such inquiry; and from and after the ascertaining of any such average, or of any succeeding average, the respective parishes of such union shall contribute and be assessed to the common fund thereof, for the purposes aforesaid, in the proportions which the expense of such parishes shall be found to have borne to each other during such period upon the average which shall have been so last ascertained, until a like inquiry shall be again made, and a new average and proportion ascertained for the future assessment of such parishes" (*a*).

Power for taking future averages.

The like provision in unions effected under local acts of incorporation. 22 Geo. 3, c. 83.

Sect. 29. "And whereas in divers unions formed under the said recited act made and passed in the twenty-second year of the reign of his late Majesty King George the Third, intituled 'An Act for the better Relief

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provides, however, "that when the relief of the poor has been hitherto administered in any parish by guardians appointed under a local act, and not by overseers of the poor, if such parish, according to the last enumeration of the population published by authority of parliament, contain more than twenty thousand persons, it shall not be lawful for the said commissioners, after the passing of this act, without the consent in writing of two-thirds at least of such guardians, to declare such parish to be united with any other parish for the administration of the laws for the relief of the poor, any thing in the said first-recited act to the contrary notwithstanding; provided, however, that nothing herein contained shall prevent the said commissioners from including any such last-mentioned parish in a district for providing and managing an asylum for the temporary relief of and setting to work of destitute houseless poor, or from including such parish in a district for the audit of accounts, under the provisions of this act, except as hereinafter enacted. (See post, p. 125, "AUDIT DISTRICTS.")

(*a*) For the power to compel payment, see 2 & 3 Vict. c. 84, post.

and Employment of the Poor,' or under local acts of incorporation, the whole of the expense, as well of upholding the united workhouses therein, as of maintaining and relieving the poor of the respective parishes of such unions, is assessed upon such parishes in the respective proportions fixed at the period when such unions were formed, and in others a part of such expenses is so levied, and a part subjected to variations at stated periods: and whereas some of the parishes of such unions have contributed and still continue to contribute, as their fixed proportion of the general fund, a sum much larger, and others a sum much less, than the actual expense incurred for the relief of the poor belonging to them respectively; for remedy thereof be it enacted, that it shall be lawful for the said commissioners, as soon as conveniently may be after the passing of this act, to cause an inquiry to be made and an account rendered, as it may be practicable to render the same, by the visitors, directors, acting guardians or other officers of such parishes or unions respectively, of the expense incurred for the relief of the poor belonging to each parish within any such union, whether such poor shall have been relieved in or out of such parish respectively, or in or out of any united workhouse, and whether such expense has been paid by the general fund of such union or the parochial funds of any of the parishes thereof, or by any private rate, or general subscription in lieu of a rate among the ratepayers of any such parish, and whether passed through the books or paid under the control of the managers or officers of such union, or not, for the period of three years ending on the twenty-fifth day of March, one thousand eight hundred and thirty-four, including therein a due proportion of the expense of maintaining the united workhouses and establishment of such union, calculated according to the actual expense otherwise incurred for the relief of the poor belonging to each such parish; and the average annual amount of such expense shall be deemed and taken to have been the annual expense incurred by such parish on account of its poor, notwithstanding such parish may have contributed a greater or smaller sum than such annual average to the general funds of the union during such period; and such annual average, so ascertained as aforesaid, shall, if the said commissioners shall see fit, and to such extent only as they may direct, be deemed and taken as the fixed proportion to be contributed and paid by each such parish respectively towards a common fund for the future hiring, maintaining and upholding, repairing, altering or enlarging of any workhouse, and the renting of any land used by such union at the passing of this act, and for the purchasing, building, hiring, maintaining, upholding, repairing, altering or enlarging of any new workhouse or workhouses, or other place for the reception and relief of the poor belonging to the parishes of such union, and for the renting or purchase of any lands or tenements under or by virtue of the provisions of this act, and the payment or allowance of any officers of such union, and the providing of utensils or materials for setting the poor on work therein, and for any other expense to be in future incurred for the common use or benefit of such parishes, and in addition to the cost or proportion of cost of the poor of such parishes who shall be maintained or relieved in or out of any workhouse of such union, for which each such parish shall in future be charged separately; any provision or enactment in the said recited act or in any such local acts to the contrary notwithstanding: provided always, and the said commissioners are hereby authorized, if they see fit, but not otherwise, upon the application of the guardians of any such last-mentioned union, or of the overseers of any parish forming part of the same, or without such application, from time to time to cause an inquiry and calculation to be made, and average ascertained for the three years ending on the twenty-fifth day of March next preceding such inquiry, of the expense incurred by each such parish, as well in respect of its contribution to such common fund as of the cost or proportion of cost of its poor which shall have been

Power for taking future averages.

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maintained or relieved in or out of any workhouse of such union during such period of three years; and from and after the ascertaining of such average or of any succeeding average, the respective parishes of such union shall contribute and be assessed to the common fund thereof, for the purposes of which such common fund is hereinbefore declared to be applicable, in the proportions which the expense of such parishes shall be found to have borne to each other during such period, upon the average which shall have been so last ascertained, until a like inquiry shall be again made, and a new average and proportion ascertained for the future assessment of such parishes to such common fund: provided always, that nothing herein contained shall extend to any parishes already formed or hereafter to be formed into a union for the purposes of settlement or rating, or where the annual assessment is directed to be indifferently proportioned between the several parishes composing such union."

Parliamentary returns to be evidence of actual expense of poor to each parish.

Sect. 30. "And for facilitating the inquiries directed by this act, be it enacted, that unless and until they shall be proved to the satisfaction of the said commissioners to be incorrect, the returns made to parliament of the sums expended for the relief of the poor of any parish for the last three years previous to the passing of this act, shall be deemed to be the actual expense incurred by each such parish respectively during that period for the purposes aforesaid, and on account of the poor belonging to such parish respectively, and shall be taken as the ground on which such averages shall be calculated and ascertained."

Repeal of 22 Geo. 3, c. 83, s. 5, and 56 Geo. 3, c. 129, part of s. 1, restraining parishes from contributing to workhouse at a greater distance than ten miles; and of 22 Geo. 3, c. 83, s. 29, limiting class of persons to be sent to workhouses.

Sect. 31. "And be it further enacted, that from and after the passing of this act, so much of the said recited act made and passed in the twenty-second year of the reign of his late Majesty King George the Third, intituled 'An Act for the better Relief and Employment of the Poor,' as provides that no parish, township, hamlet or place which shall be situate more than ten miles from any poor-house or workhouse to be provided under the authority of that act shall be permitted to be united for the purposes therein mentioned with the parishes, townships, hamlets and places which shall establish such poor-house or workhouse as therein mentioned, and as limits the class or description of persons who shall be sent to such poor-house or workhouse; and so much of a certain act made and passed in the fifty-sixth year of the reign of his said late Majesty King George the Third, intituled 'An Act to repeal certain provisions in Local Acts for the Maintenance and Management of the Poor,' as repeals all enactments and provisions contained in any act or acts of parliament since the commencement of the reign of his late Majesty King George the First, whereby any parish, township or hamlet, at a greater distance than ten miles from any house of industry or workhouse, shall hereafter be empowered or authorized to become contributors to or to take the benefit of such house of industry or workhouse, shall be and the same is hereby repealed."

Power to dissolve, add to, or take from any union;

and thereupon to make such rules as may be adapted to its altered state.

Sect. 32. "And be it further enacted, that it shall be lawful for the said commissioners, from time to time, as they may see fit, by order under their hands and seal, to declare any union, whether formed before or after the passing of this act (except when united for the purposes of settlement or rating), to be dissolved, or any parish or parishes, specifying the same, to be separated from or added to any such union, and, as the case may be, such union shall thereupon be dissolved, or such parish or parishes shall thereupon be separated from or added to such union accordingly; and the said commissioners shall in every such case frame and make such rules, orders and regulations as they may think fit for adapting the constitution, management and board of guardians of every such union, from or to which there shall be such separation or addition as aforesaid, to the altered state of the same, and every such union shall after any such alteration be constituted, managed and governed as if the same had been originally formed in such altered state; and in case any union shall be wholly or partially dissolved as aforesaid,

then the parishes constituting, or, in case of a partial dissolution, separated from any such union, shall thenceforth be subject to be re-united, or united with other parishes or unions, or otherwise dealt with according to the provisions of this act as the said commissioners shall think fit: provided always, that in every such case the said commissioners shall and they are hereby required to ascertain the proportionate value to every parish of such union of the workhouses or other property held or enjoyed by such union for the use of the poor or benefit of the ratepayers therein, and also the proportionate amount chargeable on every parish in respect of all the liabilities of such union existing at the time of such dissolution or alteration of the same, and the said commissioners shall thereupon fix the amount to be received, or paid or secured to be paid, by every parish affected by such alteration; and the sum to be received, if any, by such parish, shall be paid, or as the said commissioners shall direct, be secured to be paid to the overseers or guardians of the same, for the benefit of such parish, and in diminution of the rates thereof and of the expense attending such alteration; and the sum to be so paid or secured to be paid by every such parish shall be raised under the direction of the said commissioners, by the overseers or guardians of such parish, or charged on the poor rates of such parish, as the said commissioners may see fit, and shall be paid or secured for the use and benefit of the union from which the same parish shall have been so separated, or of the persons or parishes otherwise entitled thereto, as the case may be."

Rights and interests of parishes, and claims on them, to be ascertained and secured.

This section contained a proviso that "no such dissolution or alteration of the parishes constituting any such union, nor any addition thereto as aforesaid, shall in any manner prejudice, vary, or affect the rights or interests of third persons, unless such third persons, by themselves or their agents, shall consent in writing to such dissolution or proposed alteration or addition; *and that no such dissolution, alteration, or addition shall take place or be made, unless a majority of not less than two-thirds of the guardians of such unions shall also concur therein*; and in every such case, when the said majority of the guardians of such union shall so concur in such proposed alteration, the terms on which such concurrence shall have been given, if approved by the said commissioners, shall be binding and conclusive on the several parishes of such union (*b*).

The "Poor Law Amendment Act, 1844" (7 & 8 Vict. c. 101), s. 66, however, reciting that it was expedient to enable the commissioners to separate any parish or parishes from any union, or to add any parish or parishes to any union, without the concurrence of the guardians of such union respectively; enacts, "that it shall be lawful for the said commissioners to exercise the powers given to them by the said act for the separating of any parish or parishes from any union formed under the provisions of the said act, or for the addition of any parish or parishes to any such union, without the concurrence of the guardians of such union respectively in such separation or addition; and the said commissioners may, if they see fit, cause a board of guardians to be elected under the provisions of the said act for any single parish separated from any union in pursuance hereof, notwithstanding the provisions of any local act in force in such parish."

It has been held that an extra-parochial place may, since the statute 20 Vict. c. 19, be added to a union, as a parish under the above section.

(*b*) It was held that the parish of St. Andrew, Holborn, divided for ecclesiastical purposes, but governed by guardians and directors under a local act, did not constitute a *union* within the proviso of sect. 32, so as to require the consent of the guardians to the formation of a poor law union under the act. (*Reg.* v. *The Poor Law Commissioners* (*Holborn Union*), 7 A. & E. 281.)

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(*Reg.* v. *Boteler*, 32 L. J. (N. S.) M. C. 91 (see ante, Chapter VIII., p. 110); and see *Staple Inn* v. *Holborn Union*, Id. 181.)

The "Poor Law Amendment Act, 1834" (4 & 5 Will. IV. c. 76), contains the following further provisions relating to unions.

United parishes may be one parish for purposes of settlement.

Sect. 33. "In any union already formed, or which may hereafter be formed in pursuance of or under the provisions of this act, it shall and may be lawful for the guardians elected by the parishes forming such union, by any writing under the hands of all such guardians, to agree, subject to the approbation of the said commissioners, for or on behalf of the respective parishes forming such union, that for the purposes of settlement such parishes shall be considered as one parish; and in such case such agreement, having been first signed by the said guardians, shall be signed and sealed by the said commissioners, and one part thereof shall be deposited with the said commissioners and a counterpart or counterparts thereof, signed by the said guardians, and signed and sealed by the said commissioners, deposited with the clerk of the peace of the county, riding, division, district, or liberty, in which the parishes of such union shall be respectively situate; and the said clerk of the peace shall and is hereby required, upon the receipt of such agreement, or counterpart or counterparts thereof, to file the same with the records of such county, riding, division, district, or liberty; and from and after the depositing of the same as aforesaid the said agreement shall for ever thereafter be binding on each of such parishes, and shall not be revoked or annulled; and the settlement of a poor person in any one of the parishes of such union shall be considered, as between such parishes, a settlement in such union; and the expense of maintaining, supporting, and relieving every such poor person, and all other expenses of maintaining, supporting, and relieving the poor to which any one of such parishes shall be liable after the depositing of such agreement, part or counterpart aforesaid, or of ascertaining, litigating, or adjudging the settlement of any poor person in any of such parishes, shall form part of the general expenses and be paid out of the common funds of such union: provided always, that wherever such agreement is entered into as aforesaid, the rate or proportion of contribution to such common funds to be thereafter paid by each of the parishes of such union, shall be ascertained and fixed in like manner as in and by this act is provided for in cases where any union of parishes is made or proposed to be made under the provisions thereof, and shall not be subject to further variation."

Union may be one parish for purpose of rating with consent of guardians.

Sect. 34. "Where the parishes of any union shall be situate within the same county, riding, division, district, or liberty, under the jurisdiction of the same justices of the peace, it shall and may be lawful for the guardians elected by the parishes forming such union, by any writing under the hands of all such guardians, to agree, with the approbation of the said commissioners, for or on behalf of the respective parishes for which they shall so act as guardians, that, for the purposes of raising in common the necessary funds for the relief of the poor of such union, such parishes shall be considered one parish; and in such case such agreement, having been first signed by the said guardians, shall be signed and sealed by the said commissioners, and one part thereof deposited with the said commissioners, and a counterpart or counterparts thereof, signed by the said guardians, and signed and sealed by the said commissioners, deposited with the clerk of the peace of the county, riding, division, district, or liberty, counties, district, or districts, in which the said parishes of such union shall be situate; and the said clerk or clerks of the peace shall and is and are hereby required, upon the receipt of such agreement, part, or counterpart, to file the same with the records of such county, riding, division, district, or liberty, or counties, district, or districts, and from and after the depositing and filing of such last-mentioned agreement or counterpart, the same shall be for ever binding upon such parishes, and shall not be revoked or annulled."

Agreement or counterpart for such rating to be deposited with clerk of the peace.

Sect. 35 provides for the assessment of rateable property in the united parishes pursuant to the agreement (*c*).

Sect. 36. "From and after any such common rate shall have come into operation, the proportions or contribution fixed at the period of uniting such parishes, or existing at the time of such last-mentioned agreement for a common rate, shall wholly cease; and all expenditure in respect of the poor of such union, or chargeable in any way on the poor-rates of the respective parishes thereof, shall be deemed and be the common expenditure of such union, and be chargeable upon and paid out of the common or general fund to be raised upon such parishes under such common rate, according to the valuation or assessment of the rateable property in such parishes so ascertained, confirmed, and allowed by the said justices from time to time in manner hereinbefore provided: provided always, that the expense of every such valuation shall at all times be a charge on the common rate of such parishes: provided always, that in case any parish of any union, at the period of entering into such agreement for the purposes of settlement or a common rate, shall not be represented by a guardian elected solely by such parish, such parish shall not be bound by any such agreement, unless a majority of the owners of property and ratepayers in such parish, entitled to vote in the manner provided by this act, shall, by their votes in writing, testify their assent to such agreement, in such form as the said commissioners shall prescribe; and in case such assent shall not be so given, such parish shall be wholly omitted from such agreement, and be liable to pay such proportion only of the common assessment as it was bound to pay upon the forming of the union of such parishes."

In such cases all expenditure for the poor to be in common.

Expense of valuation.

Proviso for consent of parishes not represented by guardian.

Sect. 37. "From and after the passing of this act, no union or incorporation of parishes shall be formed under the provisions of the said act made and passed in the twenty-second year of the reign of his late Majesty King George the Third, without the previous consent of the said commissioners testified under their hands and seal."

No Gilbert union to be formed without consent of commissioners.

The "Poor Law Amendment Act, 1848" (11 & 12 Vict. c. 110), reciting, that by the act 4 & 5 Will. IV. c. 76, provision was made for the formation of unions for the relief of the poor, and for the charge for the relief of the poor belonging to the several parishes comprised therein, and that it was expedient to alter the mode in which the relief of certain persons was chargeable, enacted, that the costs of the relief to be given to any poor person chargeable or becoming chargeable in any union formed or to be formed under 4 & 5 Will. IV. c. 76, being a destitute wayfarer, or wanderer, or foundling (*d*), as well as the costs of the burial of the body of any such person dying within such union, shall be chargeable to the common fund of such union (*e*).

Charges to union fund.

The above provision of the 11 & 12 Vict. c. 110 was at first temporary (from 30th September, 1848, to the 30th September, 1849), but it was continued by the 12 & 13 Vict. c. 103; 13 & 14 Vict. c. 101; 14 & 15 Vict. c. 105; 15 & 16 Vict. c. 14; 22 Vict. c. 29; but the 24 & 25 Vict. c. 55, s. 4, enacts, that "where any destitute wayfarer, wanderer or foundling shall be or become chargeable upon the common fund of any union, the cost of the relief of such wayfarer, wanderer or foundling shall continue to be charged to such common fund until the relief shall be discontinued." (See sect. 5, post, p. 122.)

(*c*) See post, "RATES AND RATING."

(*d*) The 12 & 13 Vict. c. 103, s. 2, enacts, "that the term 'destitute foundling' contained in the said act shall extend to any destitute child under the age of twelve years, who shall be deserted by both parents, or by its surviving parent, and who shall not be in the care or custody of some relative, guardian or friend, and whose settlement shall not be known.

(*e*) 11 & 12 Vict. c. 110, s. 1.

Chargeability of union paupers on common fund made perpetual.

And sect. 8 of the last-mentioned statute further enacts, that "the temporary provisions of the several statutes whereby the costs of the relief, burial, and maintenance of certain paupers have been made chargeable upon the common fund of unions until the end of this session of parliament are hereby made perpetual."

Poor persons having a fixed place of abode meeting with accidents, &c., in some other parish where they have no legal settlement, to be relieved by the parishes of their abode or previous chargeability.

Sect. 2 of the "Poor Law Amendment Act, 1848" (11 & 12 Vict. c. 110), enacts, that "where any poor person having a fixed place of abode in a parish in any such union shall hereafter, by reason of accident, bodily casualty, or sudden illness occurring to him while in some other parish, in which he has no legal settlement, require relief, the cost of all the relief given by lawful authority in that behalf, as well medical as otherwise, shall, if the poor person be at the time in receipt of relief, be paid or reimbursed in like manner and by the same union or parish as any other relief shall be then payable; but if he be not then in receipt of relief, it shall be paid or reimbursed, as the case may require, by the parish in which such poor person shall then have his place of abode, unless by reason of any provision of the law he would, if otherwise chargeable, have been chargeable to the common fund of such union, in which case the payment or reimbursement shall be made by the guardians of the union comprising such parish, and shall be charged to the common fund of the union; and it shall be lawful for the guardians of any union, if they think proper, to pay for any medical or other assistance which shall be rendered to any poor person on the happening of any accident, bodily casualty, or sudden illness, although no order shall have been given for the same by them or any of their officers, or by the overseers, and to charge the same to some one parish in the union, or to the common fund of the union, according as such parish or union would have been liable for the ordinary relief of such poor person; provided that nothing herein contained shall exempt the guardians of the union or parish, or their officers, or the overseers of the parish in which such poor person shall require relief by reason of such accident, bodily casualty, or sudden illness, from their liability to supply the requisite relief to such poor person while in such union or parish."

Paupers rendered irremovable by the 9 & 10 Vict. c. 66, rendered chargeable to the common fund of the union.

Sect. 3. "All the costs incurred in the relief, as well medical as otherwise, of any poor person, who, not being settled in the parish where he resides, shall, by reason of some provision of 9 & 10 Vict. c. 66, be or become exempted from the liability to be removed from the parish where he resides, shall, where the said parish shall be comprised in any such union as aforesaid, be charged to the common fund of such union, so long as such person shall continue to be so exempted; and the expenses of the burial of any such person so exempted at the time of his death shall, if legally payable by the guardians of the union, likewise be charged to the said common fund."

Questions arising as to cost of relief, &c., may be referred to and decided by the poor law board;

Sect. 4. "Where in any such union a question shall arise between any parishes therein, or between the guardians and any parish or parishes therein, with reference to the charging of the cost of his relief, as to whether any pauper be so exempted as aforesaid, the parties may jointly submit such question to the commissioners for administering the laws for the relief of the poor in England, who may thereupon, if they think proper, entertain such question, and by an order under their seal determine the same;

whose orders shall not be removable after a certain time, nor be quashed for want of form.

but no such order shall be liable to be removed, by writ of *certiorari* or otherwise, into the Court of Queen's Bench, after the expiration of the term next ensuing the time when the copy thereof shall have been sent to the guardians, nor shall the same be quashed for any defect of form therein; and every such order not rescinded or quashed shall be in all courts and for all purposes final and conclusive between the guardians and every parish in the union interested in the matter."

Sect. 5. Empowers guardians to assist in the emigration of the poor, and to charge the expenses on the common fund, see post, Chapter XII., § 4, "EMIGRATION."

Sect. 6. "The cost of all the relief which, under the provisions of this

act, shall be chargeable to the common fund of any union shall be charged to the common fund of such union, in the same manner as union expenses are directed to be charged by the herein first-recited act."

Mode of charging the relief herein provided for.

Sect. 8. "The guardians of any union shall be entitled to obtain orders of maintenance upon the relations liable under any statute now in force to maintain any poor person whose relief would be chargeable to the common fund of the union, in like manner as the churchwardens and overseers of any parish can now obtain the same, and may expend in respect of such person, out of such fund, any money for any purpose which the overseers of the parish to which such person, if chargeable, would have belonged might have done; and all relief to be granted by the guardians to any pauper upon loan, and which shall be chargeable to the common fund of the union, or to any parish therein, may be recoverable in the county court or other court for the recovery of small debts for the district wherein the union or the major part thereof shall be comprised, on the plaint of the said guardians, who may apply and be heard in such court by any officer appointed by them for such purpose, in manner prescribed by the statutes enabling them to appoint officers to act for them: provided nevertheless, that the remedy already provided by law for the recovery of the relief granted on loan shall be in force and applicable to the relief so chargeable to the common fund as aforesaid."

Guardians may obtain orders of maintenance, and charge expenses in like manner as churchwardens, &c., can.

Relief advanced by way of loan may be recovered in county court, &c.

Sect. 9. "If any person hereinbefore made chargeable upon the common fund of the union shall be convicted before any justice of any offence committed in any workhouse while maintained therein, or of deserting or running away from any workhouse, and carrying away clothes or other property therefrom, and be liable to be committed to any gaol or house of correction, the justice before whom such person shall be convicted may commit such person to the gaol or house of correction of the county or place containing the parish in which such person, if chargeable to the common fund by reason of being exempt from removal under the statute hereinbefore mentioned, shall have been residing when admitted into the workhouse, or to that of the county or place comprising the major part of such union, in the case of any other person herein rendered chargeable on the said common fund, notwithstanding such workhouse may not be situated in such county or place, or that such justice may not be a justice of such county or place; and the charges of the conveyance of such person to such gaol or house of correction, and all other charges consequent upon such committal, shall be borne by such county or place in like manner as the charges of persons committed in the ordinary mode to the gaol thereof shall be borne."

Persons being chargeable upon the common fund of a union, and being convicted of any offence, may be committed by a justice to the common gaol, &c., the expenses of which shall be charged upon the county, &c.

By the "Poor Law Amendment Act, 1849" (12 & 13 Vict. c. 103), s. 3, "the chargeability of any person to the common fund of a union shall have the same effect and shall be attended with the same consequences as the chargeability of any poor person to a parish in respect of proceedings to be taken under 5 Geo. IV. c. 83, or under the statutes for the removal from England of poor persons born in Scotland or Ireland, or in the Isle of Man, or Scilly, Jersey or Guernsey, or under the statutes for the removal of lunatic paupers to asylums, or under any statute against unlawfully causing or procuring the removal of any poor person."

Persons chargeable to the common fund brought within the provisions of 5 Geo. 4, &c. [*sic* in statutes at large.]

By sect. 5, "all the costs and expenses incurred, or hereafter to be incurred, since the twenty-fifth day of March last in and about the obtaining any order of justices for the removal and maintenance of a lunatic pauper who shall have been or shall be removed under any such order to any asylum, licensed house or registered hospital, and who, if not a lunatic, would have been exempt from removal by reason of some provision in the 9 & 10 Vict. c. 66, shall, until the time when the provisions hereinbefore contained shall cease, be borne by the common fund of the union comprising the parish wherein such pauper lunatic was resident at the time when such lunatic pauper was so removed to such asylum, licensed house or registered hospital, notwithstanding the order for the payment thereof shall have been made upon the overseers of such parish,

The costs of lunatic poor, being irremovable, to be borne by the common fund.

or the parish of the settlement, or upon the treasurer or guardians of the union in which either parish shall be comprised" (*d*). This section was repealed by the 16 & 17 Vict. c. 97, s. 102, and new provisions substituted. (See post, Chapter XVI., "LUNATIC PAUPERS.")

Chargeability of sick persons.

The 24 & 25 Vict. c. 55, s. 5, enacts, that "when any person shall be or become chargeable upon the common fund of a union, by reason of some accident or sickness which will not produce permanent disability, the chargeability upon such fund shall cease when the person shall be cured, and thenceforth, if the relief continue, the cost thereof shall be charged to the parish where the poor person shall be then residing, unless he shall be in the workhouse of the union, and in such case it shall be charged to the parish wherein he was residing when he was removed to such workhouse, and the overseers of the parish so charged may apply for and obtain an order of removal."

Lunatics to be chargeable upon the common fund.

Sect. 6. "The cost of the examination of any lunatic pauper, present or future, of his removal to and from, and his maintenance in any asylum, licensed house, or registered hospital, who would under any provision of the sixteenth and seventeenth Victoria, chapter ninety-seven, be chargeable to a parish in a union, shall from and after the twenty-fifth day of March next (1862) be borne by the common fund of the union comprising such parish" (*e*).

Parishes comprised in any union formed under 4 & 5 Vict. c. 76, to contribute to common fund according to the annual value of rateable property.

Sect. 9. "And whereas it is also expedient to alter the mode in which the contributions of parishes to the common fund of the union in which they are comprised are now calculated: be it therefore enacted, that after the twenty-fifth day of March next the several parishes comprised in any union already formed or hereafter to be formed under the provisions of the fourth and fifth of William the Fourth, chapter seventy-six, shall contribute to the common fund thereof, in proportion to the annual rateable value of the lands, tenements and hereditaments in such parishes respectively assessable by the laws in force for the time being to the relief of the poor, and in no other manner, whether the lands, tenements and hereditaments shall be actually rated or not, and whether the rate levied shall be collected in full or upon any composition: provided always, that nothing herein contained shall alter or affect the liability of any parish comprised in any such union in regard to any charge lawfully created in the said union, and secured upon the poor-rates of all or any of the parishes comprised therein, which shall have been created at any time previous to the said twenty-fifth day of March; but the same shall continue to be charged and payable in like manner as it would by law have been charged and payable if this act had not been passed: provided also, that nothing herein contained shall apply to any contribution which shall be in arrear from any parish in such union on the said twenty-fifth day of March, but the same shall be recoverable and shall be applicable in the same manner as if this act had not been passed" (*f*).

Proviso as to liabilities.

Proviso for contributions in arrear.

Mode of ascertaining the annual rateable value.

Sect. 10. "The guardians of every such union, in computing the amount of contribution to the common fund from the several parishes, shall take the annual rateable value of such property in every parish therein from the valuation upon which such parish was assessed to the county rate, or, where there is no county rate, to the borough or ward

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(*d*) This section applied to a union formed under Gilbert's Act (*R.* v. *Priest Hutton* (*Inhabitants of*), 20 L. J., M. C. 226; 15 Jur. 561); but a single parish, having by statute a board of guardians, exercising the powers of a union, was not bound under this section to pay the expenses of a pauper sent from it to a lunatic asylum, who, if sane, would be irremovable. (*R.* v. *Leeds*, 17 L. T. 142.) The section included the expenses of maintenance. (*R.* v. *Wigton*, 20 L. J., M. C. 110.)

(*e*) See post, Chapter XVI.

(*f*) An extra-parochial place added to a union as a parish after the 20 Vict. c. 19 (see ante, p. 109) is liable to contribute under this section. (*Staple Inn* v. *Holborn Union*, 32 L. J. (N. S.) M. C. 181.)

rate, or other rate in the nature of a county rate, in the last assessment made not less than one month next preceding the day when the order for such contribution is made."

No order for contribution to be deemed void by reason of error in the calculation.

Sect. 11. "No order of guardians for contribution purporting to be made in accordance with this act shall be deemed to be void by reason of any error in the estimate of the rateable value of the property in any parish in the union upon which the contribution shall have been calculated; but every parish affected by such error shall be entitled to have the same set right in making out and closing of the accounts of the union or at the audit thereof" (*g*).

"The Union Assessment Committee Act, 1862" (25 & 26 Vict. c. 103), the provisions of which will be found at length in a subsequent part of the work ["RATING"], enacts, that "when the assessment committee for any union shall have approved valuation lists for all the parishes comprised within such union, the guardians of such union, in computing the amount of contribution to the common fund for the several parishes, shall thenceforward take the annual rateable value of the property in such parishes respectively from the valuation lists for the time being lastly approved of for such parishes respectively, any statute to the contrary notwithstanding." (See more fully, and also sect. 39, providing for the expenses of valuation, post, "RATING.")

Provision for the contributions of divided and added parishes in unions and adjustment of liabilities.

"The Poor Law Amendment Act, 1867" (30 & 31 Vict. c. 106), sect. 15, enacts, that "when any parish comprised in any union shall have been or shall be subdivided, or when any parish shall have been or shall be added to any union after all the valuation lists have been finally approved, the contributions of the several parishes to the common fund thereof shall continue to be made according to the provisions of 'The Union Assessment Committee Act, 1862,' and the poor law board shall determine by their order the proportions according to which the several parts of the parish so divided or the parish so added shall contribute to the common fund until valuation lists for such parts or such parish respectively shall have been finally approved of by the assessment committee of the union, and shall also in respect of such divided parish determine the proportions of the liabilities of such parish to the common fund at the time of the division, to be charged upon the several parts according to the annual rateable value of the property comprised therein respectively."

So much of sect. 26 of 4 & 5 Will. 4, c. 76, as requires parishes in unions to defray expenses of their own poor repealed; and expenses thenceforth incurred to be charged to the common fund.

"The Union Chargeability Act, 1865" (28 & 29 Vict. c. 79), reciting that "it is expedient to make provision for the better distribution of the charge for the relief of the poor in unions," enacts (sect. 1), that "from and after the twenty-fifth day of March, one thousand eight hundred and sixty-six, so much of the twenty-sixth section of the fourth and fifth William the Fourth, chapter seventy-six, as requires that each of the parishes in a union formed under the authority of that act shall be separately chargeable with and liable to defray the expense of its own poor, whether relieved in or out of the workhouse of such union, shall be repealed; and all the costs of the relief to the poor, and the expenses of the burial of the dead body of any poor person under the direction of the guardians, or any of their officers duly authorized, in such union (*h*) thenceforth incurred, and all charges thenceforth incurred by the guardians of such union in respect of vaccination and registration fees and expenses, shall be charged upon the common fund thereof."

(*g*) Sect. 12 enacts, that "the words used in this act shall be construed in the like manner as in the said act of King William the Fourth; and the provisions contained therein and in the subsequent acts explaining and extending the same, and not repealed, shall, so far as they shall be consistent herewith, be extended to this act."

(*h*) "Such union," i. e., a union formed under 4 & 5 Will. IV. c. 76, and therefore excluding unions under Gilbert's Act or any local act. (See *Reg.* v. *Northwich Union*, 36 Law J. Rep. (N. S.) M. C. 57.)

Computation of the charges on the common fund.

Sect. 12 enacts, that "the guardians shall distribute the charges upon the common fund during and at the close of every half-year in the proportions according to which the orders for the contributions to the common fund were made upon the several parishes comprised in such unions at the commencement of such half-year, notwithstanding the change which may be made in the valuation list of any parish during such period."

Saving of settlements in other respects.

Sect. 13. "Except as herein provided, no alteration shall be made in respect of the settlement of poor persons in parishes."

Unions, &c. under local acts enabled to avail themselves of this act.

Sect. 14. "If in any union or incorporation for the relief of the poor, where the costs thereof is not borne by a common fund, or where the common fund is not calculated upon an equal basis throughout the union or incorporation, the body having under the constitution of such union or incorporation the management of such relief shall be desirous of adopting the provisions of this act, such body may, on a resolution to that effect of a majority at two successive meetings, by writing under the hand of the presiding chairman of the second of such meetings, apply to the poor law board to be included in this act; and, upon the consent of that board being given under its seal to such application, and subject to such terms and conditions as that board may deem requisite, such union or incorporation shall be so included from such time as the said board shall declare; and such consent so signified shall be evidence that such application was in all respects duly made according to the provisions above mentioned."

Calls for money in advance to be made on the overseers of the several parishes.

Sect. 15. "When this act has been adopted by any such union or incorporation as aforesaid, and such adoption has been legally brought into operation in such union or incorporation, the body having the management of the relief of the poor therein shall from time to time make calls in advance for money for the relief of such poor upon the overseers of the several parishes therein respectively, on the basis of an equal pound rate on the annual value of the property in each parish rateable to the relief of the poor according to the law in force for the time being, and shall have the same powers of enforcing such calls as they now possess under the provisions of such local act for enforcing calls or rates for the relief of the poor; and such overseers shall have the same powers for making, levying and enforcing rates to meet and pay such calls as they now possess, either under the provisions of such local act or the general law relating to the making, levying and enforcing rates for the relief of the poor" (*i*).

Relief Districts in Unions.

"Whenever the whole of any parish or parishes is situated at a greater distance than four miles from the place of meeting of the board of guardians of the union of which such parish or parishes may form part, it shall be lawful for the commissioners, on the application of the board of guardians, to form such parish or parishes into a district, and to direct the said guardians from time to time to appoint a committee of their members to receive applications of poor persons requiring relief in such district, to examine into the cases of such poor persons, and to report to the said guardians thereon." ("Poor Law Amendment Act, 1842" (5 & 6 Vict. c. 57), sect. 7.)

Agreements for parishes mutually to bear costs of appeals against poor-rates.

Combination of Parishes and Unions for Miscellaneous Purposes.

"The Poor Law Audit Act, 1848" (11 & 12 Vict. c. 91), sect. 11, au-

(*i*) The act also directed (sect. 11), that "the poor law board should, as soon as convenient, make all such orders as might be requisite to render the provisions of the act applicable to the proceedings and accounts of the guardians of unions and of overseers of parishes comprised therein."

thorizes parishes to enter into agreements mutually to bear the costs of several appeals involving the same common principle.

So, also, the "Poor Law Amendment Act, 1851" (14 & 15 Vict. c. 105), sect. 12, empowers unions and parishes to agree in writing to refer questions of settlement, removal or chargeability to the poor law board.

Power to unions, &c. to agree and refer questions to poor law board.

§ 2. AUDIT DISTRICTS, SCHOOL DISTRICTS AND ASYLUM DISTRICTS.

Audit Districts.

"The Poor Law Amendment Act, 1834" (4 & 5 Will. IV. c. 76), s. 46, empowered the poor law commissioners to unite parishes or unions for the purpose of appointing and paying officers (*k*), and the appointment of auditors under that section has been already noticed (*l*).

The "Poor Law Amendment Act, 1844" (7 & 8 Vict. c. 101), s. 32, enacts, "that it shall be lawful for the said commissioners from time to time, by order under their hands and seal, to combine the parishes and unions in England and Wales into districts for the audit of accounts, and from time to time to add any parish or union to any such district, or separate any parish or union therefrom; and the chairman and vice-chairman of each board of guardians constituted under the said first-recited act or any other act, or if there be no chairman or vice-chairman of any guardians constituted under any other act, then some two of their number to be selected by such last-mentioned guardians, or if there be no such body then some two of the overseers to be selected by the overseers respectively acting within the district, shall elect, at the time and in the manner to be prescribed by the said commissioners, a person to be the auditor of the district; but in any case in which there are two vice-chairmen appointed in any board of guardians such board of guardians shall select one of the vice-chairmen, who shall vote in the election of such auditor; and the said commissioners shall have all the powers with regard to the salaries of the said auditors to be charged on the poor-rates, and to all other matters relating to auditors for such districts, as they have under the said first-recited act with regard to paid officers" (*m*).

Commissioners may combine parishes and unions into districts for audit of accounts.

Elections of district auditors.

The corporation of Bristol, which was instituted under a local act for the relief and maintenance of the poor in the different parishes of Bristol, out of a joint fund, and also to collect and administer other funds not applicable to the relief of the poor, was held not to be exempt from the provisions of this statute; the word "parish" including a city maintaining its own poor, and a "union" any number of parishes incorporated for the relief of the poor under any local act (*n*); and it was included in an audit district by order of the commissioners. (*R.* v. *Bristol Governors of the Poor*, 18 L. J., M. C. 132. And see *Reg.* v. *Tyrwhitt*, 2 E. & B. 77.)

What is a parish.

Sect. 37. "And be it enacted, that in every district for which an auditor may be appointed under the provisions of this act the powers of justices of the peace and of all other persons to examine, audit, allow, or disallow accounts shall, so far as relates to any accounts which such auditor is authorized to examine and audit, cease, and the same are hereby repealed: provided always, that where any union or unions and parishes have been already combined by the said commissioners under the provisions of the said first-recited act for the appointment of an auditor, and such an auditor has been appointed, or where any person has been appointed auditor for more than one union, it shall be lawful

Cessation of powers of justices to audit.

Existing district auditors may be retained.

(*k*) See the section at length, ante, Chapter V., p. 73.

(*l*) Ante, p. 82.

(*m*) The remainder of the section relates to the special duties of the auditor, and will be found in a subsequent part of this volume.

(*n*) 4 & 5 Will. IV. c. 76, s. 109 (incorporated with 7 & 8 Vict. c. 101).

for the said commissioners to continue such auditor in office, and such district shall be deemed to have been formed, and such unions to have been formed into a district, and such auditor to have been appointed respectively under this act: provided also, that if the said commissioners subsequently add any parish or union to any district now formed or to be formed after the passing of this act, or which is to be deemed to be formed under this act, or separate any parish or union therefrom, such addition or separation shall not vacate the appointment of any auditor appointed previously to such addition or separation, but it shall be lawful for the commissioners to continue such auditor in office for such increased or diminished district without any re-election of such auditor."

Proviso.

Sect. 64 of the same act which prevents parishes under local acts, with a population exceeding 20,000, being united without the consent of guardians, reserves to the commissioners the right to include such parish in a district for the audit of accounts, under the provisions of that act, except as hereinafter excepted (*o*).

Parishes, with a population exceeding 20,000, under local acts, having adopted the provisions of 1 & 2 Will. 4, c. 60, and parishes in the metropolitan district having auditors, not to be included in any district for audit of accounts.

Sect. 65. "Provided always, and be it enacted, that where any parish which is not governed by a board of guardians constituted under the said first-recited act (*p*), or comprised in any union, but is governed by guardians or directors under a local act, and contains a population exceeding twenty thousand persons, according to the last enumeration of the population published by the authority of parliament, have before the first day of January in this present year adopted and acted upon the provisions of an act passed in the second year of the reign of King William the Fourth, intituled *An Act for the better Regulation of Vestries, and for the Appointment of Auditors of Accounts, in certain Parishes of* England *and* Wales, and that where any two or more parishes situated within the district of the metropolitan police, containing together a population exceeding twenty thousand, according to the last enumeration of the population published by the authority of parliament, have been united for the purposes of rating or settlement under the provisions of any local act, and are governed by guardians or directors under such local act, and have not been comprised in any union formed under the provisions of the said first-recited act, and have an auditor or auditors appointed and acting under any provisions of such local act relating to the audit of accounts in such parishes, it shall not be lawful to include such parish or such two or more parishes respectively in any such district for the audit of accounts: provided always, that it shall be lawful for any assistant poor law commissioner to be present at any audit as if the same were a meeting of a board of guardians or vestry, and to inspect, examine, and take copies or extracts from any books, accounts, or vouchers produced at such audit."

Proviso.

Where a parish is within sect. 65 of the 7 & 8 Vict. c. 101, and therefore cannot be comprised within an audit district, an auditor may nevertheless be appointed for it under sect. 46 of "The Poor Law Amendment Act, 1834" (4 & 5 Will. IV. c. 76). (*Reg.* v. *St. James, Westminster*, 28 L. J. Rep. (N. S.) M. C. 172; affirmed on error, 29 Id. 4.)

School Districts.

By the 7 & 8 Vict. c. 101, s. 40, the commissioners are empowered to combine unions or parishes not in union, or such parishes and unions, into school districts for the management of any class or classes of infant poor not above the age of sixteen years, being chargeable to any such parish or union, who are orphans, or are deserted by their parents, or whose parents or surviving parents or guardians are consenting to the placing of such children in the school of such district.

(*o*) See this section at length, ante, p. 93.
(*p*) 4 & 5 Will. IV. c. 76.

See the provisions respecting school districts under the head of "EDUCATION OF POOR CHILDREN," post, Chapter XIV.

Asylum Districts for the Temporary Relief, &c. of Destitute Houseless Poor in certain Places.

District boards for asylums for the houseless poor.

In what places.

The "Poor Law Amendment Act, 1844" (7 & 8 Vict. c. 101), s. 41, empowered the poor law commissioners, as and when they may see fit, by order under their hands and seal, to declare so many parishes or unions, or parishes and unions, any part of which may be within the district of the metropolitan police, or the city of London, or within the limits respectively of Liverpool, Manchester, Bristol, Leeds and Birmingham, as such limits are described in the "Boundary Act" (2 & 3 Will. IV. c. 64), to be combined into districts for the purpose of providing and managing asylums for the temporary relief and setting to work therein of destitute houseless poor who are not charged with any offence, and who may apply for relief, or become chargeable to the poor-rates, within any such parish or union.

Many of the particular provisions respecting these asylums are combined with "School Districts," and special provision has been since made for the metropolis by the "Metropolitan Poor Act, 1867" (30 Vict. c. 6). The whole of these provisions will be given in a subsequent part of this volume. (See post, Chapters XIII. and XIV.)

CHAPTER X.

Of the Administration of Relief to the Poor.

§ 1. THE DESCRIPTION OF PERSONS ENTITLED TO RELIEF.

THE description of persons entitled to relief are thus referred to in the statute 43 Eliz. c. 2: "the children of all such whose parents shall not by the churchwardens and overseers (or the greater part of them) be thought able to keep and maintain their children;" also "all such persons married or unmarried, having no means to maintain them, as use no ordinary and daily trade of life to get their living by;" "the poor" and "the lame, impotent, old, blind and such other among them, being poor and not able to work" (*q*).

(*q*) The 4 & 5 Will. IV. c. 76, s. 60, enacted, "that from and after the passing of this act, so much of an act passed in the forty-third year of the reign of his said late Majesty King George the Third, intituled 'An Act for consolidating and amending the several Laws for providing Relief for the Families of Militiamen in England when called out into actual Service' (43 Geo. III. c. 47), as directs overseers of the poor, by order of some one justice of the peace, to pay to the family of any person serving or en-

§ 2. WHERE THE POOR ARE TO BE RELIEVED.

The statute of Elizabeth contemplated that the relief was to be afforded to the poor resident in the parish. Parochial officers are the persons upon whom the duty is cast, and the poor "among them" are those spoken of as entitled to relief in money; and notwithstanding the subsequent introduction of the law of settlement, by which persons becoming chargeable may be removed to their place of settlement, relief in the first instance is in general to be given where the poor are inhabitants (*r*).

Casual Poor.

A distinction has been drawn between resident poor and wandering poor.

By whom to be relieved, &c.

It is contrary to the humane spirit of the English laws, that any individual shall be permitted to perish from starvation or want of medical assistance. Whoever is by *sudden emergency or urgent distress* deprived of the ordinary means of subsistence, has a right to resort for *immediate* relief to the overseers of the poor of the parish in which he may happen to be at the time when he is thus bereft of support, whether he has acquired a settlement there or not, or to the relieving officer; and it is the bounden duty of the *overseers and relieving officers immediately*, and without waiting for an order of relief, to render the necessary assistance in such cases.

Duty of *overseers* to relieve.

As the relieving officer is bound to supply all cases of immediate want, the professional beggar fully avails himself of this provision. At a late period of the day, when there is no time for inquiry into the truth of his story, he applies for relief, and the relieving officer gives him an order for the workhouse, which the beggar knows ensures him some food and a bed without any cost.

Persons comprehended within the above description are called "*casual poor*" (*s*).

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rolled as a balloted man, substitute, hired man, or volunteer in the militia of England, a weekly allowance, or as authorizes any justice or justices to order such allowance to be paid under the rules and conditions in the said receited act provided, or as in any way discharges such balloted man, substitute, hired man, or volunteer from the liability to maintain or repay the costs of maintenance of his family or any part thereof, or as prevents such families or any part thereof from being removable to their place of legal settlement, or sent to any workhouse, by reason of their receiving any allowance or being chargeable, shall be and the same is hereby repealed."

(*r*) In *Clypton* v. *Ravistock*, 2 Nol. P. L. 369, an order recited that J. S. was last settled in *Clypton;* then ordering the overseers of *Clypton* to repair to the parish of *Ravistock*, and to relieve him, being so sick that he cannot be removed. By the court: "The justices have no authority to send for officers out of another parish, but *the parish where the poor reside are bound to maintain them as long as they continue with them.*" See as to suspended orders of removal, post, "REMOVAL."

(*s*) Persons without a settlement, or a settlement that cannot be discovered, and also persons born in Scotland, Ireland, or the Isle of Man, Guernsey or Jersey, and who have acquired no settlement in England or Wales, have been included in the term "casual poor." In *Paynter* v. *Williams* (post), it was argued that casual poor were persons in the parish without the intention of remaining there. *Bolland*, B.:—"I think that definition of casual poor cannot be so confined. In *R.* v. *Chatham* (8 East, 498), Lord *Ellenborough* lays down the rule much wider." See that case, which determines that persons whose settlements are unknown are casual poor. Where a bastard child is born, for whose support the parents neglect to provide necessaries, the parish officers are obliged to do so, without an order of justices for that purpose. (*Hags* v. *Bryant*, 1 Hen. Bla. 253.) The governors of the Foundling Hospital are incorporated by the 13 Geo. II. c. 29, *for the maintenance and education of exposed and deserted young children.* Any

Various regulations for the relief of casual poor will be mentioned hereafter.

Relief in case of accidents.

In the case of accidents, the poor person, in accordance with what has been said above, should be attended to upon the spot or at the nearest convenient place without reference to the place of residence or settlement. "I think it is highly prejudicial to the rights of the poor, that, when an accident has happened, the question should be agitated or even pass in the minds of those persons in whose power the sufferer is of necessity placed, whether a burthen which must fall somewhere must be borne by them, or can by any contrivance be shifted to others. It is of importance, therefore, that it should be certain upon whom the obligation to provide medical attendance rests. For otherwise the consequence will be, that poor persons, who ought not to be removed from the place where they have met with an accident, will, perhaps, at the risk of their life, but certainly with great aggravation of their sufferings, be removed to a distance." (*Bayley*, J., in *Tomlinson* v. *Bentall*, 5 B. & C. 738; 8 D. & R. 493 (*t*). See now as to the chargeability in such cases, ante, Chapter IX., p. 122.

Relief to widows.

With respect to widows, the statute 7 & 8 Vict. c. 101, s. 26, enacts, "that in the case of any person being a widow having a legitimate child dependent on her for support, and no illegitimate child born after the commencement of her widowhood, and who at the time of her husband's death was resident with him in some place other than the parish of her legal settlement, and not situated in any union in which such parish is comprised, it shall be lawful for the guardians of such parish or union, if they see fit, to grant relief to such widow, although not residing in such parish or union: provided always, that, notwithstanding anything herein contained, the guardians of any union or parish, and the overseers of any parish, in which such widow may be

Proviso.

person may bring children to it, to be received therein, if the governors think proper; no parochial officer can prevent them, or exercise authority in the hospital, and no residence therein will confer a settlement. A woman left a parcel containing a child at the hospital, which the governor refused to receive. It was held, that this child was casual poor, and must be maintained by the parish of St. Pancras, within whose ambit the hospital is situated. (*Reg.* v. *St. Paneras*, 7 A. & E. 750.)

(*t*) In that case the parish officers, where an accident happened, refused to allow the pauper to be left in their parish, and forced her to be taken to her own parish, and they were held liable for the surgical attendance given by the surgeon of the pauper's parish. On the other hand, it may sometimes happen that the parish where an accident occurs may not afford a proper place to give relief. The parish officers or others may, probably, without bestowing a thought upon the boundaries of parishes, do that which ought to be done immediately, namely, carry the pauper to the house *nearest* to the place where the accident happened, instead of conveying him to a considerable distance. In *Lamb* v. *Bunee* (4 M. & Sel. 275), the impression of the court was, that the parish in which the house was situate was the proper parish to have given relief. There is no express decision upon this point, and Mr. Justice *Bayley* reserved it, in giving his judgment in *Tomlinson* v. *Bentall*, supra. It can hardly be doubted, however, that whenever the question comes to be decided, that the courts will follow up the manifest impression of these cases, and declare that this expense must be borne by the place in which the house is situate where relief is afforded, if such house is nearest to the spot where the accident has happened, and has been chosen on that account alone, from a laudable anxiety to obtain for the pauper the most prompt and efficient assistance. It can make no difference in this respect, even where the pauper's settlement is in the adjoining parish. The various *dicta* upon this subject seem to establish that a pauper, become so under such circumstances, *obtains a settlement pro tempore* in the parish where the accident has *left him to be relieved;* and that his settlement in his own parish is suspended till the cause of its interruption is removed. As to the personal liability of parish officers in such cases, see ante, pp. 68, 69.

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resident or may require relief, shall be and remain liable to relieve such widow in the same manner as any other person requiring relief in such union or parish" (*u*).

§ 3. THE KIND OF RELIEF TO BE GIVEN.

The kind of relief mentioned in the statute of Elizabeth is of various kinds: setting to work of the children of those who are unable to keep and maintain them, and also setting to work all persons, married or unmarried, having no means to maintain them, and providing a stock "of flax, hemp, wool, thread, iron and other necessary ware and stoll to set the poor on work," and also "money for and towards the necessary relief of the lame, impotent, old, blind, and such other among them being poor and not able to work, and also by putting out of such children to be apprentices."

Erecting houses for the poor.

The same statute, "to the intent that necessary places of habitation may more conveniently be provided for such poor impotent people," enacted, that it shall and may be lawful for "the churchwardens and overseers, or the greater part of them, by the leave of the lord or lords of the manor, whereof any waste or common within their parish is or shall be parcel, and upon agreement before him or them made in writing, under the hand and seal of the said lord or lords, or otherwise, according to any order to be set down by the justices of peace of the said county at their general quarter sessions, or the greater part of them, by like leave and agreement of the said lord or lords in writing under his or their hands and seals to erect, build and set up in fit and convenient places of habitation, in such waste or common, at the general charges of the parish, or otherwise of the hundred or county as aforesaid, to be taxed, rated and gathered in manner before expressed, convenient houses of dwelling for the said impotent poor; and, also, to place inmates or more families than one in one cottage or house; which cottages and places for inmates shall not at any time after be used or employed to or for any other habitation, but only for impotent and poor of the same parish, that shall be there placed from time to time by the churchwardens and overseers of the poor of the same parish."

Setting up trades for benefit of the poor.

By 3 Car. I. c. 4, s. 22, the churchwardens and overseers might, by the consent of justices, set up and use any trade, mystery, or occupation, only for the setting on work and better relief of the poor.

Relief by medical assistance.

Medical assistance is within the meaning of *relief*, as understood and used in the poor laws, and an overseer is bound to supply such *relief* to a pauper labouring under a dangerous illness, though out of the workhouse, and not having previously had relief. (Per *Holroyd*, J., *Rex* v. *Warren*, Worcester Lent Ass. 1820. See ante, p. 68; and as to medical officers, see ante, p. 76 (*v*).)

Churchwardens, &c. may purchase, &c. houses to lodge or employ the poor.

The 9 Geo. I. c. 7, s. 4, empowered "the churchwardens and overseers of the poor in any parish, town, township or place, with the consent of the major part of the parishioners or inhabitants of the same parish, town, township or place, in vestry or other parish or public meeting for that purpose assembled, or of so many of them as shall be so assembled, upon usual notice thereof first given, to purchase or hire

(*u*) By 7 & 8 Vict. c. 100, s. 25, it is enacted, "that so long as it may appear that the husband of any woman is beyond the seas or in custody of the law, or in confinement in a licensed house or asylum as a lunatic or idiot, all relief given to such woman, or to her child or children, shall, notwithstanding her coverture, be given to such woman in the same manner and subject to the same conditions as if she was a widow; but nothing herein contained shall diminish or affect the obligations or liabilities of such husband in respect of such relief." See post, "SETTLEMENT."

(*v*) Guardians are required to provide public vaccinators, but (although the cost is payable out of parochial funds) this is not parochial relief (30 & 31 Vict. c. 84, s. 26).

any house or houses in the same parish, township or place, and to contract with any person or persons for the lodging, keeping, maintaining and employing any or all such poor in their respective parishes, townships or places, as shall desire to receive relief or collection from the same parish, and there to keep, maintain and employ all such poor persons, and take the benefit of the work, labour and service of any such poor person or persons, who shall be kept or maintained in any such house or houses, for the better maintenance and relief of such poor person or persons who shall be there kept or maintained; and in case any poor person or persons of any parish, town, township or place where such house or houses shall be so purchased or hired, shall refuse to be lodged, kept or maintained in such house or houses, such poor person or persons so refusing shall be put out of the book or books where the names of the persons who ought to receive collection in the said parish, town, township or place are to be registered, and shall not be entitled to ask or receive collection or relief from the churchwardens and overseers of the poor of the same parish, town or township" (*x*).

Poor refusing to be lodged, &c. are not entitled to relief.

(*x*) In *Rex* v. *Carlisle* (cited in *Rex* v. *Haigh*, 2 Nol. P. L. 357), the defendant was indicted for disobeying an order of sessions. Jane Carr, the pauper, having been delivered of two bastard children, was taken into the poor-house of the parish of St. Mary's in Carlisle, which had been there established according to the 9 Geo. I. c. 7. There she and her children were maintained for a year and a half. Then the parish officers agreed to allow her 1*s.* a week towards the maintenance of herself and children. After six months they refused to continue the payment, but offered to take her and her children again into the poor-house. She prayed them to take one child, and said she would take care of the other. That being refused, she offered to take 6*d.* a week. But the parish officers persisted in giving her no relief, unless she would come again into the poor-house. Whereupon she applied to the quarter sessions, who made an order on the overseers to pay her 1*s.* a week towards the maintenance of herself and her two bastard children, until further order. The defendant, one of the overseers, refused, but at the same time offered (as he had done several times before) to take her and her children into the poor-house. The question reserved at the assizes for the opinion of the judges was, "whether, under these circumstances, the defendant was by law empowered to refuse payment of such weekly allowance?" And the case being laid before the judges, they were all of opinion, upon considering the words of the statute, that, under the circumstances of this case, the defendant was by law empowered to refuse payment of such weekly allowance. In *Rex* v. *Haigh* (3 T. R. 637), the defendants were indicted for disobeying an order of a justice, for the payment of a weekly sum to Mary Gray for the maintenance of her bastard child. It appeared that the mother applied for relief for her child only; and the question was, "whether the defendants were bound to obey the order, as the mother of the child refused to go into the workhouse?"—Lord *Kenyon*, C. J. "The only question is, for whom was the relief asked? for such person only is, according to the terms of this act of parliament (9 Geo. I. c. 7), to be sent to the workhouse. It is stated that the *child* only wanted relief: the application indeed was made by the mother, but it was not on her own account, but for her child only, who was of too tender an age to apply herself. This is, therefore, very distinguishable from *Rex* v. *Carlisle*, where the relief was asked both for the parent and the child. It would be extremely hard, and contrary to the spirit and words of this act of parliament, if, when all the children of a family, except one, were capable of supporting themselves, and that one was unable to maintain itself, and was under the necessity of receiving relief, the whole family were to be sent to the workhouse." By order of a justice the overseers of North Shields were directed to pay to Ann, wife of Thomas Irwin, 2*s.* 6*d.* weekly, until such time as they should be otherwise ordered, for the support of her three children by her said husband; one aged six years, one three, and one fourteen months. Upon appeal by the overseers, it appeared that at the time of making the order there was, within the township, a poor-house, established according to the 9 Geo. I. c. 7, into which the parish officers were willing to receive the pauper,

Gilbert's Act (22 Geo. III. c. 83), made special provision for the building and maintenance of poor-houses, and empowered the visitor and guardians under that act to contract for the diet or clothing, and for the work, of poor persons sent to those houses (*y*); and also authorized the guardians to make agreements for the employment of able-bodied poor, "at any work or employment suited to his or her strength or capacity;" and to receive the money to be earned by such work or labour, and apply it in such maintenance, as far as the same would go, and to make up the deficiency, if any (*z*).

Sect. 29 of that act provided, "that no person should be sent to such poor-house or houses, except such as are become indigent by old age, sickness or infirmities, and are unable to acquire a maintenance by their labour; and except such orphan children as should be sent thither by order of the guardian or guardians of the poor, with the approbation of the visitor; and except such children as should necessarily go with their mothers thither for sustenance" (*a*).

How poor children are to be provided for.

Sect. 30 of the same statute enacts, "that all infant children of tender years, and who from accident or misfortune shall become chargeable to the parish or place to which they belong, may either be sent to such poor-house as aforesaid, or be placed by the guardian or guardians of the poor, with the approbation of the visitor (*b*), with some reputable person or persons in or near the parish, township or place to which they belong, at such weekly allowance as shall be agreed upon between the parish officers and such person or persons, with the approbation of the visitor, until such child or children shall be of sufficient age to be put into service or bound apprentice to husbandry or some trade or occupation; and a list of the names of every child so placed out, and by whom and where kept, shall be given to the visitor, who shall see that they are properly treated, or cause them to be removed, and placed under the care of some other person or persons, if he finds just cause so to do; and when every such child shall attain such age, he or she shall be so placed out, at the expense of the parish, township or place to which he or she

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with her three children, and offered so to do; but she refused to go into the house with them. She had another child of eight years of age, for whom she did not seek relief; neither did she seek relief for herself. Her husband was a mariner, and prisoner in France, and the order stated her inability to provide for the said three children. These children, being nurse-children, the opinion of the sessions was, that they ought not to be separated from their mother, and that the mother, not seeking relief herself, was not compellable to go into the workhouse. It was urged that in *Rex* v. *Carlisle*, the relief asked, and granted by the order, was partly *personal*, and therefore it was distinguishable from this case, and within the statute.—*Willes*, J., said, this was a humane order, and he wished to support it. He did not think the words of the act in the way, and inclined to adopt the distinction made by the counsel between this case and that of *Rex* v. *Carlisle*.—*Ashurst*, J., thought the act extended to the present case: that maintenance for the children was relief to the mother. There might be great inconvenience if the court were to adopt the other construction. One object of the statute was to encourage industry, by holding out the disgrace of going into a workhouse; and if parents could obtain a maintenance for their children without being compellable to go to the workhouse, idleness would be thereby promoted among artificers and manufacturers.—*Buller*, J., on the contrary, thought the distinction between this case and that of *Rex* v. *Carlisle* to be clear. The act was meant in case of parishes; but the effect would be quite the reverse, if, when one of a numerous family wants relief, the whole must go to the parish workhouse; and, on the other hand, that the parish is not entitled to the labour of a whole family, because one of them might want relief.—The case stood over, and the order of sessions was afterwards quashed on another point, and the original order confirmed. (*Rex* v. *North Shields*, Doug. 331; Cald. 68.)

(*y*) See the provisions of this act, ante, p. 7—10, and post, p. 137.

(*z*) 22 Geo. III. c. 83, s. 32.

(*a*) This section was repealed by the 6 & 7 Will. IV. c. 76, s. 31.

(*b*) As to visitors, see ante, p. 85.

shall belong, according to the laws in being (*c*): provided, nevertheless, that if the parents or relations of any poor child sent to such house, or so placed out as aforesaid, or any other responsible person, shall desire to receive and provide for any such poor child or children, and signify the same to the guardians at their monthly meeting, the guardians shall and are hereby required to dismiss, or cause to be dismissed, such child or children from the poor-house, or from the care of such person or persons as aforesaid, and deliver him, her or them to the parish, relation or other person so applying as aforesaid: provided, also, that nothing herein contained shall give any power to separate any child or children under the age of seven years from his, her or their parent or parents, without the consent of such parent or parents."

Acts passed since the beginning of the reign of Geo. 1, compelling poor not applying for relief to go to the workhouse;

The statute 56 Geo. III. c. 129 (*d*), enacts, "that *all* enactments and provisions contained in *any* act or acts of parliament since the commencement of the reign of his late Majesty King George the First, whereby any poor person or persons, *other than such as shall actually apply for and receive parochial relief*, are compelled or made compellable to go or remain in any house of industry or workhouse; or whereby any poor person or persons may be detained or kept in any house of industry or workhouse, at the discretion of the governors or directors thereof, or of the churchwardens or overseers of the poor of any district, parish, township or hamlet, after such persons are capable of maintaining themselves; or whereby any poor person or persons may be compelled to remain in any house of industry or workhouse, until the charges and expenses to which any district, parish, township or hamlet may have been put or become liable or chargeable for the maintenance or support of such poor person or persons, or any of his or her family, shall be repaid or reimbursed or satisfied by the earnings or labour of such poor person or persons; or whereby any poor child or children whomsoever is or are rendered liable to be apprenticed to any governor, director or master of any such house of industry or workhouse; or whereby any parish, township or hamlet, at a greater distance than ten miles from such house of industry or workhouse, shall hereafter be empowered or authorized to become contributors to, or to take the benefit of such house of industry or workhouse; or whereby any directors, governors, guardians or masters of any such house of industry or workhouse are authorized or empowered to hire out any poor person or persons of full age, or to contract or agree with any person or persons to have and take the profit of the labour of such poor person or persons; shall be wholly and severally, and the same are hereby wholly and severally repealed."

or to remain there;

or rendering them liable to be apprenticed to governor, &c.; or that distinct parishes shall not unite;

or contracting for their labour; repealed.

Relief to prisoners for debt.

The statute 52 Geo. III. c. 160, after reciting that "great distress is suffered by poor persons confined under mesne process for debt in such gaols as are not county gaols, in consequence of their not receiving any allowance whereon to subsist during the time of such confinement, empowered justices to order parochial relief to such debtors in such gaols as are not county gaols."

Although this statute has not been expressly repealed it is obsolete, owing to the almost total abolition of imprisonment for debt, and the regulations of prisons providing for the maintenance of all classes of prisoners.

Subscription to hospital or infirmary.

By "The Poor Law Amendment Act, 1851" (14 & 15 Vict. c. 105), sect. 4, it is enacted, "that the guardians of any union or parish may, with the consent of the poor law board, pay out of the common fund of such union, or, in the case of a parish, out of the funds in the hands of such guardians, any sum of money as an annual subscription towards

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(*c*) As to apprenticeship, see post, Chap. XV.

(*d*) The preamble and marginal note both refer to *local* acts. The enacting part of the statute is not so limited in words.

the support and maintenance of any public hospital or infirmary for the reception of sick, diseased, disabled or wounded persons, or of persons suffering from any permanent or natural infirmity."

Guardians may provide for adult paupers blind, or deaf and dumb.

And by "The Poor Law Amendment Act, 1867" (30 & 31 Vict. c. 106), sect. 21, "the guardians may provide for the reception, maintenance and instruction of any adult pauper, being blind or deaf and dumb, in any hospital or institution established for the reception of persons suffering under such infirmities, and may pay the charges incurred in the conveyance of such pauper to and from the same, as well as those incurred in his maintenance, support, and instruction therein."

Some of the various kinds of relief above mentioned, as the providing land and the apprenticing of young persons, and, also, the various provisions relating to education, emigration, burial, &c., as well as to the maintenance of LUNATICS, will be fully treated under their different heads in subsequent Chapters of this work.

The intention of the legislature in passing the 43 Eliz. was *to provide work for the able-bodied poor out of employment, and money for the sick and impotent* (*e*); and for a long period this humane and just policy was the guide in the administration of relief; but in modern times a different system prevailed, and constant relief was given to the able-bodied poor, though in full employment, whenever the number of children rendered the wages of the parents insufficient for their maintenance, a practice clearly sanctioned by the 22 Geo. III. c. 83, s. 32. The system became so general and was considered so pernicious, that one great object of the "Poor Law Amendment Act, 1834" (4 & 5 Will. IV. c. 76), was to put an end to such practice, either at once or by degrees (*f*).

That statute made the administration of relief to the poor throughout England and Wales subject to the direction and control of the poor law commissioners (*g*).

In-door and out-door relief.

Under the present administration of the poor law, the present system of relief, so far as regards its individual application, may be divided into "*in-door relief*" and "*out-door relief*," according as the relief is furnished within or without a workhouse,—the latter, or out-door relief, being exceptive.

By the 4 & 5 Will. IV. c. 76, the relief of able-bodied persons and their families out of the workhouse was placed under the direction of the poor law commissioners (sect. 52), justices being empowered, however, to order out-door relief to the aged and infirm (sect. 27), post, p. 137.

Duty of overseer under 4 & 5 Will. 4, c. 76.

And the overseers are bound, in cases "of sudden and urgent necessity," to give relief in articles of absolute necessity, but not in money, whether the party is settled in the parish or not; and if they refuse, a justice may make an order; and a justice may also, in cases of sudden and dangerous illness, give an order for medical relief. (See sect. 54, post, p. 136.)

These provisions will be found in greater detail under the next head of "THE ORDER FOR INDIVIDUAL RELIEF," and in Chapter XII., "RELIEF OF THE POOR OUT OF THE WORKHOUSE."

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§ 4. THE ORDER FOR INDIVIDUAL RELIEF.

The administration of the relief of the poor was originally entrusted to the *overseers*. Under the statute of Elizabeth, however, the consent of justices was necessary to the setting children to work and binding them apprentices.

The statute 3 W. & M. c. 11, s. 11, required a register to be kept of those receiving collection, and also required relief to be given only by authority

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(*e*) It was the primary duty of the overseers to find employment for the poor, if possible. (*Abbott*, C. J., *Rex* v. *Collett*, 3 D. & R. 582; 2 B. & C. 324.)

(*f*) See ante, p. 14.

(*g*) See ante, p. 22.

of a justice or by the Court of of Quarter Sessions "except in cases of pestilential diseases, plague or smallpox" (*h*).

The 9 Geo. I. c. 7, reciting the above provision of the 3 W. & M. c. 11, s. 11, and that under colour of it many persons obtained relief improperly (*i*), enacted, that "no justice of peace shall order relief to any poor person dwelling in any parish, until oath be made before such justice of some matter which he shall judge to be a reasonable cause or ground for having such relief, and that the same person had by himself, herself or some other, applied for relief to the parishioners of the parish, at some vestry or other public meeting of the said parishioners, or to two of the overseers of the poor of such parish, and was by them refused to be relieved, and until such justice hath summoned two of the overseers of the poor to shew cause why such relief should not be given, and the person so summoned hath been heard or made default to appear before such justice."

Various statutes of the reign of George the Third empowered justices to order occasional relief to poor persons at their own homes, but they were repealed by the "Poor Law Amendment Act, 1834" (4 & 5 Will. IV. c. 76) (*k*).

(*h*) See the section and the recital at length, ante, pp. 5, 6.

(*i*) See the recital, ante, p. 6, note (*n*).

(*k*) Under the former law it was held that the order of justices must express that the person was impotent as well as poor. (*Rex* v. *Highworth*, 1 Str. 10; 1 Bott, 460.) A question was raised under the former law, whether an appeal lay against the order of maintenance. In *Rex* v. *North Shields* (Dougl. 331), it was held that no appeal lay, and a reason given was that the pauper might starve while the cause was in suspense. Upon this case Dr. Burn, in the 21st edition of his Justice of the Peace (vol. 4, p. 117), made the following remarks:—"The great fundamental statute of 43 Eliz. c. 2, s. 6, enacts, that 'if any person shall find himself aggrieved by anything done by the churchwardens and overseers, or by the justices, in relation to the relief of the poor, he may appeal to the general quarter sessions, whose order therein shall be final:' which, by the rule that acts *in pari materiâ* are to be taken together and considered as one entire act, may seem to include this case concerning the order of maintenance. * * * * * This present case of *North Shields* was an *appeal* against an order of a justice out of sessions, and in this case of appeal likewise the court was of opinion that the sessions had no jurisdiction. From which it seems to follow that an order of maintenance by a private justice out of sessions is absolutely conclusive, which imports a power in this respect not usual in other like cases; especially as such justice is required by the statute to be an inhabitant of the parish, if any such be there residing, and consequently in all probability essentially interested in the poor-rate. As to the matter of practice, it is certain that nothing is more common at the sessions than applications for the maintenance of poor persons as well by original motion as by way of appeal from the order of private justices. In some places this makes up almost half the business of the sessions, even to a degree of ridicule among the unthinking part of mankind; as if magistrates could be better employed than in relieving the miseries of the distressed. The reason that has been sometimes alleged against removing the poor-rate into the courts at *Westminster*, lest the poor might starve before the cause should be determined, does not hold with regard to appeals against orders of maintenance. The justice's order takes effect immediately, and continues in force till altered by other legal authority. The usual way is for the justices to order the overseer to pay to the pauper so much weekly or otherwise, *until he shall be otherwise ordered according to law to forbear the said allowance*, or, more generally, *till further order*. And this, if not acquiesced in, brings on an appeal to the sessions, where the court enlarges, mitigates, or takes off the charge as they shall see cause." In *Rex* v. *Justices of Devon* (4 M. & S. 421), on a rule *nisi* for a *mandamus* to the justices at sessions, to hear an appeal against an order for the relief of a pauper, which appeal the justices had determined at the last sessions, conceiving that they had not any jurisdiction, the counsel cited the above

Repeal of 36 Geo. 3, c. 23; 55 Geo. 3, c. 137, ss. 3, 4; and 59 Geo. 3, c. 12, ss. 2, 5, enabling justices, guardians, vestries, &c., ordering relief.

Sect. 53 of that statute enacts, "that an act passed in the thirty-sixth year of the reign of his late Majesty King George the Third, intituled 'An Act to amend so much of an Act made in the ninth year of the reign of King George the First, intituled "An Act for amending the Laws relating to the Settlement, Employment, and Relief of the Poor," as prevents the distributing occasional Relief to poor Persons in their own Houses, under certain circumstances and in certain cases;' and so much of an act made and passed in the fifty-fifth year of the reign of his late Majesty King George the Third, intituled 'An Act to prevent poor Persons in Workhouses from embezzling certain Property provided for their use, to alter and amend so much of an Act of the thirty-sixth year of his present Majesty as restrains Justices of the Peace from ordering Relief to poor Persons in certain cases for a longer period than one Month at a time, and for other purposes therein mentioned relating to the Poor,' as extends the period for which occasional relief may be ordered by any justice or justices to poor persons at their own homes; and so much of the said act made and passed in the fifty-ninth year of the reign of his late Majesty King George the Third, intituled 'An Act to amend the Laws for the Relief of the Poor,' as empowers any justice or justices to order relief in certain cases for a limited time, or in cases of urgent necessity, or in cases where parishes are under the management of guardians, governors, or directors appointed by special or local acts, or in cases where parishes have not a select vestry, shall be and the same are hereby repealed."

No relief to be in future given, except by board of guardians, &c. P. 971, n.

No relief to be in future given, except by guardians, &c.;

or select vestry;

except articles of necessity, in cases of sudden necessity.

When upon neglect of overseer a justice may order some relief to persons not settled nor usually residing.

Sect. 54. "And be it further enacted, that from and after the passing of this act, the ordering, giving and directing of all relief to the poor of any parish, which according to the provisions of any of the said recited acts, or of an act passed in the first and second years of the reign of his present Majesty, intituled 'An Act for the better regulating of Vestries, and for the appointment of Auditors of Accounts in certain Parishes in England and Wales,' or of this act or of any act, or of any local acts, shall be under the government and control of any guardians of the poor, or of any select vestry, and whether forming part of any union or incorporation or not (but subject in all cases to and saving and excepting the powers of the said commissioners appointed under this act), shall belong exclusively to such guardians of the poor or select vestry, according to the respective provisions of the acts under which such guardians or select vestry may have been or shall be appointed; and it shall not be lawful for any overseer of the poor to give any further or other relief or allowance from the poor-rate than such as shall be ordered by such guardians or select vestry, except in cases of sudden and urgent necessity; in which cases he is hereby required to give such temporary relief as each case shall require in articles of absolute necessity, but not in money, and whether the applicant for relief be settled in the parish where he shall apply for relief or not: provided always, that in case such overseer shall refuse or neglect to give such necessary relief in any such case of necessity to poor persons not settled nor usually residing in the parish to which such overseer belongs, it shall and may be lawful for any justice of the peace to order the said overseer, by writing under his hand and seal, to give such temporary relief in articles of absolute necessity as the case shall require, but not in money; and in case such overseer shall disobey such order, he shall, on conviction before two justices, forfeit any sum not exceeding five pounds, which such

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note from Burn. But *per curiam*. "If, in every case of an order for relief, an appeal will lie, this will divert the funds of the poor into other channels. This order is not *in perpetuum*, it is to pay *until further order;* and why cannot the overseers go back to the quarter where it was made, and point out that the pauper's residence is in another parish, and obtain a fresh order?" and the rule was refused.

justices shall order: provided always, that any justice of the peace shall be empowered to give a similar order for medical relief (only) to any parishioner, as well as out-parishioner, where any case of sudden and dangerous illness may require it; and any overseer shall be liable to the same penalties as aforesaid for disobeying such order; but it shall not be lawful for any justice or justices to order relief to any person or persons from the poor-rates of any such parish except as hereinbefore provided.

Any justice may give order for medical relief in dangerous illness.

Section 27 of the same act, however, empowers two justices to order out-door relief to any adult person who from old age or infirmity of body be wholly unable to work (*l*).

Order for Individual Relief in Gilbert Unions.

In parishes adopting Gilbert's Act (22 Geo. III. c. 83), the guardian was invested with all the powers and authorities given to overseers of the poor by other acts, and the churchwardens and overseers were forbidden to interfere in the care or management of the poor (*m*).

Sect. 35 of that act, after reciting that from a want of proper descriptions of the poor who were to be the objects of relief, from a want of proper accommodations in many parishes, townships and places, and from a want of the means of enforcing the orders of justices for relief, the act 9 Geo. I., that act had not its proper effect, and the poor had been frequently reduced to hardships and distresses, enacts, "that it shall and may be lawful for any justice of the peace, on complaint made upon oath, by or on the behalf of any poor person belonging to any parish, township, or place, that the guardian, upon application made to him, hath refused such poor person proper relief, and after inquiring into the condition and circumstance of such poor person upon oath, either to order him or her, by writing under the hand of such justice, some weekly or other relief, or direct such guardian to send such poor person to the poor-house, in case he or she shall appear a fit object to be kept and provided for there, according to the true intent and construction of this act; which order shall be complied with, or sufficient cause shown to the contrary, before such justice, by such guardian, within two days after he shall receive the same."

Occasional relief ordered by the justices upon refusal of guardian to relieve (*n*).

The same section further provides: "Or if it shall appear to such justice that the person so complaining, or on whose behalf such complaint is made, is able and willing to work, but wants employment, in that case it shall and may be lawful for such justice to order the guardian to procure him or her maintenance and employment in the manner hereinbefore directed; and if any guardian shall, upon due notice of any such order, refuse or neglect to obey the same, he shall, for every such refusal or neglect, forfeit the sum of five pounds."

Remedy if the complainant is able and willing to work.

Sect. 36. "Provided, that when any complaint or application shall be made to a justice of the peace, for the relief of any poor person within any parish, township, or place, for which a visitor shall be appointed, such justice shall not summon the guardian to appear before him, unless application shall have been first made, by the person so complaining, to the guardian, and if he refuses redress, to the visitor (it being part of his duty to adjust matters of that sort), who shall order relief if he thinks it necessary, either within or out of the poor-house as he shall judge right; but if sufficient relief shall not be so given or ordered, the poor person complaining, or on whose behalf such complaint shall be made, shall be redressed by such justice in the manner hereinbefore directed." But 59 Geo. III. c. 12, s. 27, enacts, "that

Application to be made first to guardian, then to the visitor, before a justice makes any order.

(*l*) See the section at length, post, Chapter XII.

(*m*) See ante, pp. 86, 87.

(*n*) These sections do not appear to be affected by sects. 53, 54 of 4 & 5 Will. IV. c. 76. They are, however, only applicable to parishes governed by Gilbert's Act.

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if it shall be made to appear to any justice to whom any such complaint or application for relief shall be made, that the visitor of the parish or united parishes from which relief shall be sought is absent from home, or is resident more than six miles from the place of abode of the complainant, and that application for relief hath been made to the guardian, and hath been refused, it shall be lawful for such justice to summon the guardian to appear before him to answer such complaint, and to proceed thereon, and make such order therein, as the case shall require, in like manner as in cases where application hath been made to the visitor, in the manner by the said act directed."

Penalty on guardian for disobeying order for relief.

Sect. 37 further enacts, "that out of the penalty hereby inflicted upon the guardian, for disobeying the order of a justice of the peace for the relief and maintenance of any poor person, so much thereof as the justices of the peace who shall convict such offender shall direct to be paid to such poor person to whom such relief was ordered, shall be paid to him or her accordingly, and the remainder applied in such manner as the other penalties are hereby directed to be disposed of."

Jurisdiction of the Poor Law Board as to Orders for Relief.

Although "The Poor Law Amendment Act, 1834," places the administration of relief to the poor under the control of the poor law commissioners (*o*), the act contains the following proviso: "Provided always, that nothing in this act contained shall be construed as enabling the said commissioners or any of them to interfere in any individual case for the purpose of ordering relief" (*p*).

Committees of guardians in distant parishes.

District committees of the guardians may be formed for receiving applications for relief, when the parish is distant more than four miles from the place of the meeting of the board (5 & 6 Vict. c. 57, s. 7).

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§ 5. REGISTER OF PERSONS RELIEVED.

Masters of workhouses and overseers to keep registers.

A register is kept of all persons relieved both in and out of the workhouse, the 4 & 5 Will. IV. c. 76, s. 55, enacting, "that from and after the passing of this act the master of every workhouse, or such other paid officer of the parish or union as the said commissioners may direct, shall, on such day and in such form as the said commissioners shall appoint, take an account of, and register in a book to be provided at the expense of the parish or union to which such workhouse shall belong, and to be kept specially for that purpose, the name of every poor person who shall on such days be in the receipt of relief at or in such workhouse, together with such particulars respecting the families and settlement of every such poor person, and his and their relief and employment, as the said commissioners shall think fit; and in like manner, on such day as the said commissioners shall appoint, the overseer of the poor of every such parish shall register in a book, to be provided and kept as aforesaid, the name of every poor person then in the receipt of relief in such parish out of the workhouse, together with such particulars respecting the family and settlement of every such poor person, and his and her relief and employments, as the said commissioners shall think fit; and after such account shall have been so taken and registered as aforesaid a similar register and account shall be kept by the like persons respectively of all persons who shall receive relief at or in or out of a workhouse, when and as often as such relief shall be granted."

As to the registration of lunatic paupers, see post, Chapter XVII.

(*o*) See ante, p. 22.
(*p*) 4 & 5 Will. IV. c. 76, s. 15. See ante, p. 22.

The "Vestries and Vestry Clerks Act" (13 & 14 Vict. c. 57) empowered the churchwardens and overseers, or overseers alone, as the case might require, of any parish exceeding two thousand persons adopting that act, with the consent of the inhabitants in vestry and of the poor law commissioners, to hire a room or purchase or erect buildings "for the purpose of holding of any vestry and other meeting for the transaction of any business of or relating to the parish."

The act (24 & 25 Vict. c. 125) "to enable overseers in populous parishes to provide offices for the proper discharge of parochial business," enacts, (sect. 1,) that "the overseers of any parish in England the population whereof shall exceed four thousand persons according to the census for the time being, with the consent of the vestry, called after due notice, and with the consent of the poor law board, signified by an order under their seal, may hire any room, or purchase or take upon lease or exchange any land or building, or sell land belonging to such parish, and invest the proceeds of such sale in the purchase of other land and building, or erect a suitable building on any land acquired as aforesaid, for the purpose of an office for the transaction of the business of the parish.

Power to overseers and vestries, with consent of poor law board, to purchase offices for use of parish.

"And the 'Lands Clauses Consolidation Act, 1845' (except the parts and enactments of that act with respect to the purchase and taking of lands otherwise than by agreement, and with respect to the recovery of forfeitures, penalties, and costs), shall, in so far as the same is consistent with this act, be incorporated with this act.

"And for the purposes of this act the expressions 'the promoters of the undertaking,' or 'the secretary,' whenever used in that act, shall respectively mean the overseers as aforesaid; and the expression 'tolls or rates,' whenever used in the said first-mentioned act, shall mean monies to be raised for the relief of the poor; and all lands and premises which shall be so purchased or taken on lease or exchange by the overseers of any parish shall be conveyed, demised, and assured to such overseers and their successors, in trust for the purposes aforesaid; and the yearly rent reserved by any lease shall be chargeable upon and paid out of the monies to be raised for the relief of the poor of any such parish, and shall be paid by the overseers as aforesaid of such parish as such rent becomes payable; and if at any time any such rent be not paid within thirty days after it so becomes payable, and after demand thereof in writing, the person to whom any such rent shall be payable may either recover the same from the overseers as aforesaid, with costs of suit, by action of debt in any court of appropriate jurisdiction, or may levy the same by distress of the goods and chattels of any of the overseers as aforesaid; and such overseers may provide the requisite furniture and fittings of such room or such building, and appoint and pay out of the poor-rate such persons to take care thereof, or of any vestry-room provided under the authority of the fifty-seventh chapter of the statute of the thirteenth and fourteenth years of the reign of her Majesty, and to aid in the ordinary business of the parish, as the vestry shall authorize and the poor law board shall approve; and every such building and vestry-room shall be warmed and lighted and with its furniture shall be kept in good condition and repair at the cost of the poor-rate."

Sect. 2. "The overseers of any parish may, with the consent of the vestry, provide proper depositories of all the documents, books, and papers belonging to such parish for which no provision is otherwise made by law, and charge the cost thereof upon the poor-rate."

The overseers may provide depositories for parish documents.

Sect. 3. "The words used in this act shall be construed in the like manner as in the act of the fourth and fifth years of King William the Fourth, chapter seventy-six."

Interpretation of terms.

CHAPTER XI.

Of the Administration of Relief to the Poor—(*continued*).

Of Workhouses.

§ 1. THE BUILDING OF WORKHOUSES.

BY 9 Geo. I. c. 7, s. 4, a parish was enabled to purchase or hire a house for the maintenance and employment of the poor therein; and if any parish was too small to purchase or hire such house, then two or more parishes, with the consent of the inhabitants, and with the approbation of a justice, might unite in purchasing, hiring, or taking such house, for the purpose of keeping, maintaining, and employing the poor of the respective parishes (*q*).

Houses might be provided under Gilbert's Act.

By "Gilbert's Act" (22 Geo. III. c. 83), s. 17, the guardians of the poor of such places as should adopt the provisions of the act are directed to provide a house, with proper buildings and accommodations, and might purchase or rent land for that purpose; and fit up and dispose the same, with the approbation of the visitor, if any, at the expense of such places respectively, in the proportions therein mentioned; and provide mate-

(*q*) See the section at length in the preceding Chapter (pp. 130, 131). Under the statute of Elizabeth the houses provided were not *workhouses* but *dwelling-houses*. In *Rex* v. *St. Peter and St. Paul, Bath* (Cald. 213; 1 Bott, 483), Lord *Mansfield* observed, in allusion to workhouses, that "the want of workhouses was, however, soon felt as an inconvenience; they were, not long after, introduced by the legislature; and, if well regulated, a most desirable mode of relief they are; they supply comfort and accommodation for those who cannot work, and employment for those who can. In many instances which have chanced to fall within my knowledge, particularly on the Midland circuit, they have reduced the annual amount of the poor-rates one-half. But this benefit could not within itself be received by every separate district: for where parishes were small, the expense of the necessary buildings was too heavy for them. This obstacle was foreseen by the legislature, and provided against accordingly. Though single parishes could only contract for these buildings within their own limits, yet where two or more parishes, with the consent of the inhabitants, and with the approbation of a justice, might unite in purchasing, hiring, or taking such house, for the purpose of keeping, maintaining, and employing the poor of the respective parishes, no restrictions were imposed, the power is general. It is obvious that the workhouse of a single parish must be most conveniently situated in that parish. Upon a similar principle, where many parishes were jointly concerned, the legislature did not require that the building should be raised in either of the confederate parishes; because, in such case, a spot might be found in some other parish more central and better accommodated to their general convenience, than any part of their united district. The act, therefore, authorizes the purchase anywhere: and when once the joint purchase is made, wherever it be, it becomes a part of the local system of each contracting parish; and if the poor will not go there, they are not entitled to relief. The same narrow spirit that has impeded the progress of this beneficial plan, now starts up again to limit this power, and almost to overthrow the act itself; which was calculated ultimately to reduce expense, as well as promote industry and encourage manufactures, by employing all the poor under the eye of one master."

rials necessary for the employment of the poor; and by sect. 18, the houses to be built or provided must be situate within the parish for which it is used, if a single parish; and if several parishes are united, the house shall be built or provided within one of them, and not in any other parish, without the consent of three fourth parts, in number and value, of the owners or occupiers of lands, qualified as herein mentioned: and by sect. 19, that all the houses, buildings, and lands, to be hired or rented under the authority of this act, shall be hired or rented in such manner, for such term or terms, and on such conditions, as are specified in the form of agreement contained in the schedule, No. IV.; and all such houses, buildings, and lands, shall be free from all parochial and parliamentary taxes, except such taxes, and to such amount, as they were assessed at the time they were first taken and applied for the purposes of this act: and by sect. 27, the guardians, where any such poor-house shall be provided, &c., may inclose from any waste or common land near thereto, with the consent of the lord of the manor, and the major part in value of the freeholders or persons having right of common thereupon, land not exceeding ten acres, for the purpose of building upon, or cultivating, the same, for the use of such poor-house, and the poor persons (*r*).

And to be situated in the parish (if one), or in one of them if united, except by consent.

On what condition to be rented, and how taxed and rated.

Inclosing commons for use of workhouses, &c.

Parishes not availing themselves of the 22 Geo. III. c. 83, were not *compellable* to erect workhouses, but might maintain and employ their poor at their own homes. (*Rex* v. *Wetherill*, Cald. 432.)

Sect. 43 of the same act further enacted, "that it shall and may be lawful for the guardians of the poor of any parish, township, or place, which shall adopt the provisions of this act, with the approbation of the persons within such parish, township, or place, qualified as hereinbefore mentioned, obtained at a public meeting, held for that purpose, to sell or dispose of any house, cottage, or building, which shall have been erected or purchased for the use of any poor person or persons, at the expense of such parish, township, or place, and apply the money arising therefrom for the purposes of this act; and also to remove, by order from a justice or justices of the peace, the person or persons who shall inhabit the same, or any other house or dwelling rented or provided at the expense of such parish, township, or place, if he, she, or they refuse to quit, after receiving fourteen days' notice for that purpose."

Poor-houses may be sold, and occupiers removed.

By the 59 Geo. III. c. 12 (Sturges Bourne's Act), s. 8, any parish not having a workhouse, or a workhouse insufficient or inconvenient, the overseers, by the direction of the inhabitants, may erect and build in such parish a suitable workhouse, or alter any messuage belonging to such parish for that purpose, and to purchase or take on lease any ground within the parish for the purpose: and by sect. 10, in any parish in which no sufficient poor-house or workhouse can be procured for the accommodation of the poor, the overseers, by the direction of the inhabitants, may purchase or hire any house for that purpose, in any adjoining parish, with the consent of two or more justices, such consent to be written upon or annexed to the agreement for purchasing or hiring such house, such house not to be situated more than three miles from the parish.

Power to build or enlarge workhouses under the Select Vestry Act.

Where no poor-house, &c. can be procured in the parish, adjoining parish may be resorted to.

The stat. 1 & 2 Geo. IV. c. 56, reciting that doubts had arisen whether the guardians, or visitor and guardians under Gilbert's Act, could make effectual sales of houses and other buildings, and give effectual discharges for and make due application of the purchase-

(*r*) See subseqnent acts relating to inclosure of lands for poor, and the 5 & 6 Will. IV. c. 69, s. 4, post, Chap. XII. By the last-mentioned section the powers and authorities of the several acts there recited relating to the inclosing, purchasing, hiring or taking any waste, common or other land, are extended and applied to and may be exercised for the purpose of being used as the site of a workhouse, or of being occupied with a workhouse.

money, gives to the guardians and visitor, if any, express powers for those purposes (*s*).

"The Poor Law Amendment Act, 1834" (4 & 5 Will. IV. c. 76), sect. 21, enacts, that all the powers and authorities of Gilbert's Act, and of Sturges Bourne's Act, and of all other acts, general as well as local, for or relating (*inter alia*) "to the building, altering or enlarging of poor-houses and workhouses, and to the acquiring, purchasing, hiring, holding, selling, exchanging and disposing thereof, or of land whereon the same may have been or may hereafter be erected, and of preparing such houses for the reception of poor persons," and including the raising or borrowing of money and repaying the same, shall be exercised by the persons authorized by law to exercise the same, under the control and subject to the rules, orders and regulations of the commissioners" (*t*).

Commissioners empowered to order workhouses to be built, hired, altered or enlarged with consent, &c.

Sect. 23 of the same statute further enacts, "that it shall be lawful for the said commissioners, and they are hereby empowered, from time to time when they may see fit, by any writing under their hands and seal, by and with the consent in writing of a majority of the guardians of any union, or with the consent of a majority of the ratepayers and owners of property entitled to vote in manner hereinafter prescribed, in any parish, such last-mentioned majority to be ascertained in manner provided in and by this act, to order and direct the overseers or guardians of any parish or union not having a workhouse or workhouses, to build a workhouse or workhouses, and to purchase or hire land for the purpose of building the same thereon, or to purchase or hire a workhouse or workhouses, or any building or buildings for the purpose of being used as or converted into a workhouse or workhouses; and, with the like consent, to order and direct the overseers and guardians of any parish or union having a workhouse or workhouses, or any buildings capable of being converted into a workhouse or workhouses, to enlarge or alter the same in such manner as the said commissioners shall deem most proper for carrying the provisions of this act into execution, or to build, hire or purchase any additional workhouse or workhouses, or any building or buildings for the purpose of being used as or converted into a workhouse or workhouses, or to purchase or hire any land for building such additional workhouse or workhouses thereon, of such size and description, and according to such plan, and in such manner as the said commissioners shall deem most proper for carrying the provisions of this act into execution; and the overseers and guardians, to whom such order shall be directed, are hereby authorized and required to assess, raise and levy such sum or sums of money as may be necessary for the purposes specified in such order, by such powers, ways and means as are now by law given to or vested in churchwardens or overseers or guardians of the poor for purchasing or hiring land, or for building, hiring and maintaining workhouses for the use of the poor, in their respective parishes or unions, or to borrow money for such purposes under the provisions of this or any other act or acts" (*u*).

Power to order workhouses to be altered or enlarged, without consent, &c.

Sect. 25 enacts, "that it shall be lawful for the said commissioners, and they are hereby empowered, without requiring any such consent as aforesaid, by any writing under the hands and seal of the said commissioners, to order and direct the overseers or guardians of any parish or union having a workhouse or workhouses, or any building capable of being converted into a workhouse or workhouses, to enlarge or alter the

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(*s*) Although not expressly repealed, the provisions of this act appear to be merged in the 5 & 6 Will. IV. c. 69, s. 3, post, p. 145.

(*t*) See the section, ante, p. 23. Where a parish is under guardians, by the Poor Law Act the consent of the majority of such guardians is sufficient to give the commissioners authority to order the purchase of land and the building of a workhouse. (*R.* v. *St. Mary Abbotts, Kensington*, 16 L. J., M. C. 29.)

(*u*) See as to raising money, post, § 2.

same, according to such plan and in such manner as the said commissioners shall deem most proper for carrying the provisions of this act into execution; and the overseers or guardians to whom any such order shall be directed are hereby authorized and required to assess, raise and levy such sum or sums of money as may be necessary for the purposes specified in such order, by such powers, ways and means as are now by law given to or vested in churchwardens and overseers or guardians of the poor for altering, enlarging, and maintaining workhouses for the use of the poor, in their respective parishes or unions: provided always, that the principal sum or sums to be raised for such purposes, and charged upon any parish, shall not exceed in the whole the sum of fifty pounds, nor in any such case exceed one-tenth of the average annual amount of the rates raised for the relief of the poor in such parish for the three years ending at the Easter next preceding the raising of such money" (*v*).

Sums to be raised for such purposes not to exceed one-tenth of one year's rates, or 50*l*.

The same act (sect. 44), reciting, that "whereas the jurisdiction of certain cities, boroughs and corporate towns is not always co-extensive with the parish in which it exists," enacts, "that every house or building which shall be erected, purchased or hired as and for a workhouse, together with all premises and appurtenances thereto belonging, and the land or lands occupied therewith, shall be deemed and held to be within and subject to the local jurisdiction of such incorporated city, borough or town to which they may respectively belong, though the same may be situated in such part of the respective parishes as may not be within the chartered boundaries thereof."

Buildings taken for workhouses to be within the jurisdiction of the place to which they belong, though situated without (*x*).

The statute 5 & 6 Will. IV. c. 69 (to facilitate the conveyance of workhouses and other property of parishes and of incorporations or unions of parishes in England and Wales) (*y*), recites, that "there are certain legal difficulties attending the title, purchase, sale and disposal of property, which, with respect to workhouses and other property belonging to parishes, incorporations or unions, it is expedient to remove; and it is also expedient to simplify the assurances for the conveyance, exchange or transfer of such property," and enacts, "that it shall be lawful for the commissioners of the King's Majesty's woods, forests and land revenues, by and with the consent in writing of the lord high treasurer, or the commissioners of his Majesty's treasury, or any three or more of them, and for his Majesty, by any grant signed by the chancellor of the duchy of Lancaster, and for the Duke of Cornwall, by any grant signed by the chancellor of the duchy, to grant, and for the guardians and overseers of the poor of any parish or union of parishes, under the direction and with the approbation of the Poor Law Commissioners for England and Wales (to be testified by order under their hands and seal), and for any lay or ecclesiastical corporation aggregate or sole, and for any feoffees or trustees to charitable or other uses, and for any person beneficially seised or entitled in possession as tenant in fee-simple, or in fee-tail, general or special, or for his own life, or for years determinable on his own life (such estate for life or years not being subject to any rent), or for any term of years in gross whereof not less than four hundred shall be unexpired, and subject to no equity of redemption or rent, except a nominal rent, and for any married woman entitled or interested as aforesaid to her separate use, and for the guardian, trustee, husband, or committee of any person so seised or entitled who shall be an infant,

Powers for corporations and persons under disability to convey lands, &c. for the purposes of this act.

(*v*) See the substituted proviso of the 29 & 30 Vict. c. 113, s. 8, as to raising money, post, p. 153.

(*x*) For the purposes of relief, settlement, removal, and burial of the poor, the workhouse and district school shall be considered as situated in the parish to which the pauper is chargeable, 7 & 8 Vict. c. 101, s. 56, post, p. 149.

(*y*) See the interpretation clause of this act appended to the Table of Statutes at the commencement of this volume. This act is explained by 5 & 6 Vict. c. 18, post, p. 147. The 20 & 21 Vict. c. 13, contains special provisions to meet the case where any ecclesiastical corporation sole is insane.

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married woman (not separately entitled), idiot, lunatic, or under any other disability, to dispose of, by way of absolute sale, or in exchange for any messuages, lands or other hereditaments, any lands or buildings for the purpose of the same being used as or converted into a workhouse, or of being used as the site of a workhouse, or of being occupied with a workhouse, or for any other purpose relating to the relief of the poor which the said poor law commissioners may approve of, with the rights and appurtenances, and to convey the same and the fee-simple and inheritance thereof unto the guardians or overseers of any union or parish and their successors, or in such other manner as the said poor law commissioners may direct, and to accept from and give to such guardians or overseers any monies by way of equality of exchange."

Investment of purchase-money to the same uses as the estates sold were subject to.

Sect. 2, with regard to the application of money paid for the purchase or on the exchange of hereditaments of persons under disability, enacts, "that all sums of money which shall be agreed to be paid to any corporation, or to any trustee, guardian or committee for or on behalf of any infant, ward, lunatic, idiot, married woman or other person under disability, or to any person whose lands shall be limited in settlement, for the purchase or exchange of hereditaments as aforesaid, shall, in case the same shall exceed the sum of fifty pounds, and there shall be no person capable of giving a sufficient discharge for the same, be paid by the said guardians and overseers into the Bank of England in the name and with the privity of the accountant-general of the Court of Exchequer, to be placed in his account to the credit of the party who shall be so interested in the said hereditaments, describing them, subject to the order of the said Court of Exchequer; which said court, on the petition of or motion on behalf of any corporation or person making claim to any such money, is hereby empowered to order summarily the investment of such money in the purchase of real estates, to be settled to the same uses and upon the same trusts as the lands so sold were previously subject to, or in the public funds, and the distribution of the rents and dividends thereof respectively, according to the respective interests of the claimants thereof, and to make such other order in the premises as to the court shall seem reasonable; and the cashier of the Bank of England who shall receive such money shall give a receipt to the party paying the same, specifying for what the same is received, which receipt shall be to all intents and purposes a sufficient discharge; and upon such receipt being given it shall be lawful for the said poor law commissioners, by order under their hands and seals, to direct that the said hereditaments so purchased by such guardians or overseers shall be appropriated for the purposes of this act; and in case of doubts or questions of title to any money paid into the Bank of England by virtue of this act, or the securities on which the same may be invested, or the dividends or interest thereof, the corporation or person who shall have been in the possession of such hereditaments, interests or incumbrances at the time of such purchase, and persons claiming under them, shall be deemed and taken to be lawfully entitled to such hereditaments, interests or incumbrances until the contrary shall be shown to the satisfaction of the said Court of Exchequer; and the securities and principal and interest monies shall be applied and disposed of accordingly; and in case of such purchase, payment into the Bank of England, and application to the Court of Exchequer as aforesaid, it shall be lawful for the said court to order the expenses attending such purchase, payment or application, or any part thereof, to be paid by such guardians or overseers, who shall accordingly pay the same as and when the said court shall direct, and the money so paid shall be a charge on the poor-rates of such parish or such union, as the case may be" (*z*).

Parties in possession to be deemed entitled.

Court of Exchequer may order payment of expenses.

(*z*) Expenses of the investigation of title on a re-investment under this section, are payable by the poor law guardians. (*In re Lady Byron's Settlement*, 4 De Gex, M. & G. 694.)

By sect. 3 (*a*), in order to insure the due application of the property of parishes and unions, it is enacted, "that it shall be lawful for the guardians of any parish or union, and for the overseers of any parish not under the management of a board of guardians, and for the guardians or trustees, guardian or trustee of any dissolved union, or the person or persons who were the guardians or trustees, guardian or trustee, of any dissolved union at the time of its dissolution, or a majority of such guardians or trustees, or persons, if more than one, with the approbation, and subject to the rules, orders and regulations of the poor law commissioners, to sell, exchange, let or otherwise to dispose of any workhouses, tenements, buildings, land, effects or other property belonging to any such parish or union, or vested in trustees or feoffees in trust for such parish or union, or for the parishioners, ratepayers, or inhabitants thereof, or which belong or did belong to any dissolved union, and every and any part of such property, and to convey, assign or transfer the same accordingly to the purchasers or parties exchanging, as they shall direct; and, in case of a sale, to apply the produce arising therefrom (after deducting the reasonable expenses thereof) towards the purchase or building of any workhouse, or as or in part of the proportion of such parish or union towards the expense of any workhouse erected, purchased or provided on behalf of such parish or union, or as a loan to the board of guardians of such union, upon the security of the rates, for the purpose of erecting a workhouse, or in liquidation of any debt contracted by such parish or union or dissolved union, or in such other manner for the permanent advantage of such parish or union, or dissolved union, as the said poor law commissioners may approve; and, in case of an exchange, the hereditaments to be taken in exchange shall be conveyed to the guardians of such parish or union, or the overseers of such parish, upon the same trusts, and the rents and profits thereof shall be applied to the same purposes as the hereditaments given in exchange were held, and the rents and profits thereof would have been applicable under the provisions of the law or of this act if the same hereditaments had not been exchanged; and it shall be lawful for the said poor law commissioners to direct the mode and proportions on parishes in which any money required for the purchase of any such property shall be raised, paid and secured, and also to direct the mode in which the persons by whom, and the objects relating to the management of the poor to which the rents, profits, beneficial occupation or income of such property shall be applied, assigned or distributed; and wheresoever the workhouse or workhouses of any parish in any union may have become or shall hereafter become convertible to the common use of such union, it shall be lawful for the said poor law commissioners to direct such an annual sum, in the nature of rent or other compensation, to be paid to such parish out of the common fund of the union, and to vary the amount of such annual sum or compensation from time to time as they the said poor law commissioners shall see fit: provided always, that no such sale or exchange or letting of any workhouses, tenements, buildings or land of any parish shall take place except with the consent of a majority of the ratepayers of such parish, and of the owners of property therein, entitled to vote under and by virtue of the act passed in the fourth and fifth years of the reign of his present Majesty, intituled 'An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales,' assembled at a meeting to be duly convened and held for the purpose, after public notice of the time and place and purpose of holding such meeting shall have been given in like manner as notices of vestry meetings are pub-

Power to overseers and guardians of the poor to sell, purchase, and dispose of workhouses, &c.

Workhouse.

Application of profits of sale.

Proportions of purchase-money how applied.

4 & 5 Will. 4, c. 76.

(*a*) This statute does not *expressly* repeal former statutes on this subject; but this section is more ample than 1 & 2 Geo. IV. c. 56, ss. 1, 2; see ante, pp. 141, 142.

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lished and given, such majority to be ascertained in manner provided by the said act: provided also, that every sale and exchange or lease of any such workhouse, tenements, buildings, land or other property, which may have been made before the passing of this act, with the consent or approbation in writing of the said poor law commissioners, shall be as valid and effectual as if the same had been directed by their order under the authority of this act; and that any monies or rents which have become or shall become payable in respect of any such sale, exchange or lease, and have not been applied, shall be applied in the same manner as such monies or rents would have been applicable if such sale or exchange or lease had been made under this act" (*b*).

Previous sales made with consent of poor law commissioners ratified.

Mode of conveyance.

Sect. 6. "And, for simplifying the instruments of assurance of property under this act, be it enacted, that every conveyance, exchange, security, or assignment or security, under the authority of this act, may be made according to the forms set forth in the schedule annexed, or in such other forms as the said poor law commissioners shall direct, or as near thereto as the number of parties, the nature of the interests, and the circumstances of the case will admit, and shall, when executed by the conveying parties, be valid and effectual in the law, without livery of seisin being made, or any bargain and sale to vest possession being executed; and that every conveyance, exchange, security, transfer of security, or instrument made under the authority of this act, shall, when signed by the conveying parties thereto, be transmitted to the said poor law commissioners, who shall, if they shall approve thereof, signify such approval by sealing or stamping the same with their seal; and for preserving evidence of such instruments the said commissioners shall keep a register, properly indexed, in which they shall insert copies or memorials of such deeds or instruments of which they shall so approve, and of such orders of appropriation of property as are hereinbefore mentioned; and all such copies or memorials, or copies thereof, purporting to be sealed or stamped with the seal of the said commissioners, shall be received as evidence of the instruments respectively of which they purport to be copies or memorials."

Approval of the poor law commissioners.

Sect. 8 confirms previous conveyances made with the consent of the commissioners.

Parish property not divested by the Poor Law Amendment Act.

The legal estate in parish property is not divested out of the churchwardens and overseers of the parish by sect. 21 of the Poor Law Amendment Act, or by 5 & 6 Will. IV. c. 69, for facilitating the conveyance of parish property, but a power to sell is only thereby given to the guardians. (*Doe* d. *Norton* v. *Webster*, 12 A. & E. 442. See also *Worge* v. *Relf*, 11 L. J. Rep. (N. S.) M. C. 125.)

A contract for the purchase of parish property sold by the guardians of a union, in pursuance of an order of the poor law commissioners, is exempt from stamp duty, as it is a contract within the words of sect. 86 of 4 & 5 Will. IV. c. 76. It is a contract made in pursuance of 4 & 5 Will. IV. c. 76, because, though the 5 & 6 Will. IV. c. 69, is the first which expressly gives authority to the parish officers to sell parish property, yet the third section contains a clause, which declares, that all sales made before the passing of the act, with the consent or approbation of the commissioners, which must have been under the Poor Law Amendment Act, shall be as valid as if they had been directed by their order, under the authority of the subsequent act. (*The Guardians of the Banbury Union* v. *Robinson*, 4 Q. B. Rep. 919; 12 L. J. Rep. (N. S.) Q. B. 327.

Copyhold property.

The 7 Will. IV. & 1 Vict. c. 50, s. 1, reciting the 4 & 5 Will. IV. c. 76, and the 5 & 6 Will. IV. c. 69, and that doubts were entertained as to whether these acts applied to lands or buildings or other hereditaments of copyhold or customary tenure, enacts, that the provisions of the recited acts "apply to and comprise lands and buildings, and other here-

(*b*) See this section explained by the 5 & 6 Vict. c. 18, s. 2, post, p. 147.

ditaments of copyhold or customary tenure, as well as lands, buildings and other hereditaments of freehold tenure."

Enfranchisement.

The act contains provisions (ss. 2, 3) for the enfranchisement of copyholds.

Mode of conveyance.

Sect. 4 enacts, "that all conveyances or instruments by way of sale or exchange, or assignment or security or transfer to be made under the authority of the said recited acts or either of them, or of this act, may be made in such form as the poor law commissioners shall by any order or orders signed by them and sealed with their common seal direct or approve of, or as near thereto as the number of parties, the nature of the interests, and the circumstances of each case will admit, and shall be valid and effectual in the law without livery of seisin being made, or any bargain and sale to vest possession being executed, and without being enrolled."

5 & 6 Will. 4, c. 69, s. 1.

The 5 & 6 Vict. c. 18, reciting, that "by an act passed in the sixth year of the reign of his late Majesty, intituled 'An Act to facilitate the Conveyance of Workhouses, and other Property of Parishes, and of Incorporations or Unions of Parishes, in England and Wales,' it was among other things enacted, that it should be lawful for the guardians and overseers of the poor of any parish or union of parishes, under the direction and with the approbation of the poor law commissioners for England and Wales, to dispose of, by way of absolute sale, or in exchange for any messuages, lands, or other hereditaments, any lands or buildings, for the purpose of the same being used as the site of a workhouse, or of being occupied with a workhouse, or for any other purpose relating to the relief of the poor which the said poor law commissioners might approve of; and doubts have been raised as to the meaning in certain cases of this provision:" enacts (s. 1), "that all sales, lettings, exchanges, or dispositions of lands, buildings, or other property belonging to any parish or union not formed by the poor law commissioners, which shall have been or shall be made for any of the said recited purposes by virtue of the said act, and of the statute amending the same passed in the first year of the reign of her Majesty, under the order of the said commissioners, by a majority of the overseers of such parish or of the last acting guardians of such union respectively, to the guardians of any union formed by the said commissioners, shall be and be taken to have been valid."

All sales and dispositions of lands, buildings, &c. by overseers and acting guardians of dissolved incorporations to unions formed under 4 & 5 Will. 4, c. 76, and 7 Will. 4 & 1 Vict. c. 50, deemed valid.

Explanation of the meaning of 5 & 6 Will. 4, c. 69, s. 3.

Sect. 2. "And whereas by the said act it was further enacted, that it should be lawful for the guardians of any parish or union, and for the overseers of any parish not under the management of a board of guardians, and for the guardians or trustees, guardian or trustee of any dissolved union, or the person or persons who were the guardians or trustees, guardian or trustee of any dissolved union at the time of its dissolution, or a majority of such guardians, trustees, or persons, if more than one, with the approbation and subject to the rules, orders, and regulations of the poor law commissioners, to sell, exchange, let, or otherwise dispose of any workhouse, tenements, buildings, land, effects, or other property belonging to any such parish or union, or vested in trustees or feoffees in trust for such parish or union, or for the parishioners, ratepayers, or inhabitants thereof, or which belong or did belong to any dissolved union, and every or any part of such property, and to convey, assign, or transfer the same accordingly to the purchasers or parties exchanging, as they should direct; which said provisions have been extended by the said act passed in the first year of the reign of her present Majesty, and doubts have arisen as to the meaning and extent of such provisions; be it therefore declared and enacted, that the said provisions shall be deemed to have authorized and to authorize the sale, exchange, letting, and disposal, by the guardians of a union formed or to be formed by the said commissioners, of any workhouse, tenements, buildings, land, effects, or other property belonging to any parish which shall be comprised in the said union, and in cases of the sale, exchange, letting, and disposal of

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workhouses, tenements, buildings, land, effects, and other property belonging to a dissolved union to have applied and to apply to a majority of the persons who were the last acting guardians previous to the dissolution of such union: provided always, that nothing in this act shall be deemed to render valid or to authorize the sale, exchange, letting, or other disposition of any property whatsoever which shall have been given or bequeathed by way of charitable donation, or shall have been allotted in right of some charitable donation or otherwise, for the poor persons of any parish, and not for the general benefit of the ratepayers, parishioners, or inhabitants of such parish, nor to dispense with the consent of the ratepayers and owners of property required by the said last recited act to all sales, exchanges, lettings, or other dispositions of property belonging to any parish, except in the case next hereinafter provided."

Proviso for charitable donations;

and for consent of ratepayers, &c. to certain sales, &c.

For sale of property belonging to several parishes.

Sect. 3. "And be it enacted, that where several parishes shall have been or shall be jointly interested in any workhouse, tenements, buildings, lands, whether of freehold, copyhold, or customary tenure, effects or other property, it shall be deemed to have been and shall be lawful for the said commissioners, upon the application of the overseers of the major part of such parishes, and with the consent of the ratepayers and owners of property in the major part of such parishes, to be ascertained in the manner directed by the said act, to order the same to be sold, let, exchanged, or disposed of by the guardians of the union in which such parishes or the greater part thereof shall be situate, in such manner, and subject to such rules, orders, and regulations, as the said commissioners shall deem fit; and it shall be deemed to have been and to be lawful for the said commissioners to direct the application of the produce arising from such sale, letting, or disposition in the same manner and to and for the same purposes as the produce arising from the sales of property belonging to other parishes may be applied to: provided always, that where any conveyance, by way of sale, lease, exchange, disposition, or otherwise, of any property, belonging to a parish or union, whether dissolved or not, shall have been or shall hereafter be made by the guardians of any existing union, or a majority of the last acting guardians of any dissolved union, under the order of the said commissioners, the same shall be deemed to have been and to be valid for all the purposes of such conveyance, although the legal estate in such property shall be or shall be presumed to be outstanding in some trustee or trustees who shall not have joined in such conveyance; and in cases of copyhold or customary lands the surrender of the tenant on the roll, being a trustee for any parish or union, shall not be required, but the admission of the party to whom the guardians or overseers shall, under the authority of the said recited acts or this act, have conveyed the same, shall take place, upon the production to the steward of the manor of which such lands shall be held of the conveyance from such guardians or overseers duly executed, and upon payment of such fines, dues, or services to the lord of the manor of which the said lands shall be holden, and his steward, as they respectively would be entitled to upon the admission of such party after a surrender by a tenant on the roll."

Proviso that no trustee shall be required to join in any conveyance of parochial property.

Conveyances, &c. for workhouses to be good, although not enrolled.

The 7 & 8 Vict. c. 101, s. 73, enacts, "that in all cases where any messuages, lands, or hereditaments, or any estates or interest therein, have or hath been conveyed or assured, or purported to be conveyed or assured, either gratuitously or for valuable consideration, to or in trust for the churchwardens and overseers of the poor, or the overseers only, or the guardians of any parish or parishes respectively, or otherwise for the benefit of any parish or parishes respectively, or to or in trust for the guardians of any union, for the purpose of providing a workhouse or asylum, or workhouses or asylums, for the accommodation of the poor of such parish or parishes or union respectively, every such conveyance or assurance shall be deemed good and valid for all purposes whatsoever, notwithstanding that such conveyance or conveyances have not been

enrolled pursuant to the statute passed in the ninth year of the reign of his late Majesty King George the Second, intituled 'An Act to restrain the Disposition of Lands whereby the same became inalienable.'" 9 Geo. 2, c. 36.

By 12 & 13 Vict. c. 103, s. 18, reciting the provisions of 4 & 5 Will. IV. c. 76, as to orders for the building, purchasing, hiring, enlarging or altering of a workhouse; and that in many parishes not comprised in any union, the affairs relating to the relief of the poor are managed by a select vestry, or by guardians appointed or elected under the authority of some local act, and in such parishes it is difficult to obtain the opinion of the ratepayers and owners of property upon any such question: it is enacted, "that in any parish where there shall be a select vestry lawfully appointed, or a board of guardians appointed under any local act, the consent in writing of the major part of the select vestry, or of the guardians, as the case may be, shall be sufficient to enable the poor law board to issue any order, rule or regulation in all such cases as are hereinbefore referred to, where the consent of the ratepayers and owners of property would but for this provision have become requisite; provided that where in any parish there shall be a select vestry and also a board of guardians, the consent in writing of the major part of the vestry or guardians shall be sufficient, according as such vestry or guardians respectively shall by law be empowered to carry the directions of the said board into execution."

Where Workhouse is deemed to be situate.

Where deemed to be situate.

By 7 & 8 Vict. c. 101, s. 56, it is enacted, "that for the purposes of relief, settlement and removal of poor persons, and the burial of the poor, the workhouse of any union or parish, and every such district school, shall be considered as situated in the parish to which each poor person respectively to be relieved, removed or buried, or otherwise concerned in any such purpose, is or has been chargeable: provided always, that every birth and death within any such workhouse or building shall be registered in the parish or place in which such workhouse or building is locally situated; and all fees for registering births and deaths in any such workhouse or building shall be charged by the guardians to the parish or union to which the person dying or the mother of the child respectively is chargeable."

The 28 & 29 Vict. c. 79, s. 10, enacts, however, that for the purposes of burial the workhouse shall be considered as situate in the parish in the union where such poor person resided last, previously to his removal to the workhouse (*c*).

§ 2. POWERS TO RAISE MONEY FOR BUILDING WORKHOUSES.

Under Gilbert's Act, and other Amending Acts.

Borrowing money upon the poor rates, &c.

By Gilbert's Act (22 Geo. III. c. 83), s. 20, "when any such buildings shall be agreed to be erected, repaired, or fitted up, the expenses thereof, and of the purchase of the land necessary to be used for that purpose, shall be paid by the guardians of the poor, in the proportions to be settled and adjusted by the persons, and in the manner, directed by the agreement to be made as aforesaid; and the visitor and guardian, when such expenses, or the proportion thereof, shall amount to one hundred pounds or upwards, to borrow the same at interest, and secure such money by a charge upon the poor's rates, in sums not exceeding fifty pounds each, for the greater ease in discharging the same, in the form contained in the schedule, No. XI., or to the like effect (*d*); which

(*c*) See the section, post, Chapter XVI., p. 235.

(*d*) The 4 & 5 Will. IV. c. 76, s. 87, recites, that "whereas by an act passed in the twenty-second year of the reign of King George the Third, intituled

charge shall continue upon the rates until the money so borrowed, and all interest, shall be fully paid: and the said guardians and their successors shall, and they are hereby required duly to pay and keep down the interest of such money so to be borrowed, as the same shall become due; and when the principal shall be called for, they may borrow it from some other person, and secure it by an assignment of such security indorsed on the back thereof, in the form contained in the said schedule, No. XIV., or to the like effect: and the visitor and guardian, in order to expedite such payments, shall, as soon as the savings in the poor's accounts shall amount to a sum sufficient to pay off and discharge one of the sums which shall have been borrowed, pay off and discharge such sum, and in like manner as to all succeeding savings, until the whole debt so contracted and secured shall be discharged.

These assessments were to continue at the same rate as they were when the poor-house was established; but this was repealed by the 43 Geo. III. c. 110, which, after reciting that doubts had been entertained as to the efficiency of the 42 Geo. III. c. 74, which had enabled the overseer to pay off one-twentieth every year, enacts (s. 2), "that such assessments shall and may from time to time be diminished to such amount as shall be deemed proper and necessary: provided always, that the guardians of the poor, for the time being, of every such parish, shall yearly and every year, pay off or provide for a twentieth part at least of any monies which shall have been borrowed for the purpose aforesaid, under the powers of the said act of the twenty-second year of his present Majesty's reign, and also shall duly keep down the interest of all monies which shall be so borrowed; anything in the said recited acts of the twenty-second and forty-second years of his present Majesty's reign, or either of them, contained to the contrary notwithstanding" (*e*).

'An Act for the better Relief and Employment of the Poor,' the visitor and guardian of the poor of any parish, township, or place, which shall adopt the provisions of the said recited act, are authorized thereby to borrow money at interest for the purposes mentioned in the said act, and to secure such money by a charge upon the poor's rates of such parish, township, or place, in sums not exceeding fifty pounds each, in a certain form contained in the schedule to the said act, or to that or to the like effect, and which security is directed and allowed to be assigned by indorsement on the back thereof in a certain form also contained in the said schedule, or to that or the like effect: and whereas doubts have arisen touching the liability of such securities as aforesaid, and the assignments or transfers thereof to stamp duty, and it is expedient to remove the same;" and "that no bond or other security at any time heretofore or to be at any time hereafter made or entered into in pursuance of the said recited act, nor any assignment or transfer thereof, shall be charged or chargeable with, or be deemed to be or to have been subject or liable to any stamp duty whatsoever; anything in any act contained to the contrary thereof notwithstanding."

(*e*) The 5 & 6 Vict. c. 18, s. 7, recites, that "whereas various sums of money have been borrowed under the authority of an act passed in the twenty-second year of the reign of his Majesty King George the Third, intituled 'An Act for the better Relief and Employment of the Poor,' and securities authorized by that statute have been given in respect of such sums of money, and are now outstanding against the parishes on whose behalf the said sums were advanced, and the provisions of the several statutes in this behalf do not afford a satisfactory mode of liquidating such debts;" and enacts, "that where any parish is now or at any time hereafter shall be comprised in any union formed or to be formed under the said act of the fifth year of the reign of his late Majesty, or shall be under the management of a board of guardians, and the poor rates thereof shall be liable to the payment of any debt duly borrowed and secured under the authority of the said act of the twenty-second year of the reign of King George the Third, the guardians of such union or parish respectively shall be required to make such provision for the liquidation of the said debt in full, or by equal an-

Limiting the amount to be raised for buildings, and the purchase of lands, &c.

The 59 Geo. III. c. 12, s. 14, provides, "that no sum exceeding the amount of a rate or assessment at one shilling in the pound upon the annual value of the property in any parish assessable to the rates for the relief of the poor, shall be raised, expended or applied, in any one year, in purchasing, building and repairing any buildings, or land, by this act authorized to be purchased, taken, built or repaired, and in fitting up, preparing and furnishing such buildings, and in stocking such land (*f*), or for any one or more of such purposes or objects, unless the major part of the inhabitants and occupiers assessed to the relief of the poor, in vestry assembled, shall consent thereto, nor until two-third parts in value of all the inhabitants and occupiers so assessed as aforesaid (whether present in vestry or not) shall have also signed their consent thereto in the vestry or parish book."

Power to raise further sums by loans, or by the sale of annuities.

Sect. 15 enacts, "that in every case where the inhabitants of any parish shall in manner aforesaid consent that the greater sum than the amount of a rate or assessment of one shilling in the pound will raise, shall be expended in one year for all or any of such purposes and objects, it shall be lawful for the churchwardens and overseers of the poor of such parish, with the consent of such majority as aforesaid of the inhabitants and occupiers thereof, to be given and signed in the manner hereinbefore directed (after the rate or rates at or amounting to one shilling in the pound shall have been actually levied and applied for such purposes or some of them), to raise any additional sum or sums, by loan, or by sale of an annuity or of annuities on any life or lives, not being under the age of fifty years respectively, or for any certain term not exceeding fifteen years, so as the whole sum to be raised for all or any of such purposes by loan, and by the sale of annuities, or by either of such means, shall not be more than five shillings in the pound of or upon the true annual value of the property which shall in such parish be assessed to the poor's rates (every proposal for any such annuity being first stated to and approved by the inhabitants and occupiers of such parish in vestry assembled); and the churchwardens and overseers of the poor shall and they are hereby authorized, in the names and on the behalf of the inhabitants of the parish, to sign and execute securities for the money which shall be so borrowed, and for the annuities to be so granted; and by every such security to charge the produce of the future rates to be made for the relief of the poor of every such parish with the repayment of the principal sum which shall have been so borrowed, and the interest thereof, or with the payment of the annuity thereby granted (as the case may be), at and upon the days and times, and in such manner and proportions, as in and by the security for every such loan and annuity respectively shall be appointed and expressed for the payment thereof; and the money to be raised by such future rates shall be subject and liable to the payment of every such loan, and the interest thereof, and of every such annuity accordingly."

Future rates charged with loans and annuities.

No greater rate than 1*s.* in the pound shall be charged on future rates, unless with consent of two-thirds in value of the proprietors of premises.

Sect. 16 provides, "that no greater sum in the whole than the amount of a rate or assessment at one shilling in the pound shall in any parish be charged upon the future rates thereof, unless two-third parts in value of the proprietors of messuages, land, and tenements within such parish (whether for estates of freehold or copyhold, or by virtue of leases for

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nual instalments, not exceeding ten, as the said commissioners shall by order under their hands and seal direct; and for such purpose such guardians are hereby empowered to make any order or orders upon the overseers of such parish as the said guardians may find necessary, and shall have all the same powers for enforcing such order or orders as they now have by law in regard to the contributions required by such guardians." See post, p. 153, as to the power to apply to the commissioners of exchequer bills for an advance of money.

(*f*) See sect. 12 of this act relating to providing land for the poor, post, Chapter XII., § 3.

terms of not less than fifteen years absolute or determinable upon a life or lives), shall have consented to raise the money for which the charge or security shall purport to be made; such consents to be given by writing under the hands of all persons and corporations sole, and the consent of every corporation aggregate under the hand of the president, head or chief member thereof for the time being, and the consents of *femes covert*, minors, insane persons and persons out of the kingdom, by and under the hands of their respective husbands, guardians, committees, trustees, attorneys or agents, who are respectively authorized to give such consents, and the consent of the major part of the trustees for any charitable or other purpose shall be sufficient in respect of the trust estates."

The statute 1 & 2 Vict. c. 25, s. 2, made provision for the liquidation of loans made before "The Poor Law Amendment Act, 1834," for the building or enlarging of workhouses where no funds existed out of which the repayment could be legally enforced.

Under "The Poor Law Amendment Act, 1834," and subsequent Acts.

"The Poor Law Amendment Act, 1834" (4 & 5 Will. IV. c. 76), sect. 23, respecting the building, &c. of workhouses, authorized and required the overseers and guardians to whom any order of the commissioners has been directed for building a workhouse, &c. "to assess, raise and levy such sum or sums of money as may be necessary for the purposes specified in such order, by such powers, ways and means as are now by law given to or vested in churchwardens and overseers or guardians of the poor for purchasing or hiring land, or for building, hiring and maintaining workhouses for the use of the poor, in their respective parishes or unions, or to borrow money for such purposes under the provisions of this or any other act or acts" (*g*).

Sums to be raised for purposes of building workhouses to be charged on poor rates, not to exceed one year's amount of poor rates.

Sect. 24 enacts, "that for the better and more effectually securing the repayment of any sum or sums of money which may be borrowed for the purposes aforesaid, with interest, it shall be lawful for the said overseers or guardians to charge the future poor rates of such parish or union with the amount of such sum or sums of money: provided always, that the principal sum or sums to be raised for such purposes, whether raised within the year or borrowed, shall in no case exceed the average annual amount of the rates raised for the relief of the poor in such parish or union for three years ending at the Easter next preceding the raising of such money; and that any loan or money borrowed for any of the purposes aforesaid shall be repaid by annual instalments of not less than *one-tenth* (*h*) of the sum borrowed, with interest on the same, in any one year."

Increase of the limit of amount to be raised for building workhouses.

"The Poor Law Amendment Act, 1867" (30 & 31 Vict. c. 106), sect. 14, however, enacts, that "the amount limited by the twenty-fourth section of 'The Poor Law Amendment Act, 1834,' with reference to the sums to be raised for the purpose of building workhouses, shall be increased, and instead of the limit of one year's amount of poor rates, as therein prescribed, a sum not exceeding two-thirds of the aggregate amount of poor rates raised during the three years therein mentioned may be raised for this purpose, and where the site shall be within any municipal borough, or within five miles from the outward boundary thereof, the cost of such site may be added to the sum aforesaid."

Sect. 25 of "The Poor Law Amendment Act, 1834" (4 & 5 Will. IV. c. 76), further authorized and required overseers and guardians, who had

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(*g*) See the whole section, ante, p. 142.

(*h*) So that the whole amount would have been paid off in ten years. This has been extended to twenty years, by 6 & 7 Will. IV. c. 107. See also the 1 & 2 Vict. c. 25, extending the 6 & 7 Will. IV. c. 107, to loans made by incorporated companies.

been ordered by the commissioners to enlarge or alter existing workhouses, &c., "to assess, raise and levy such sum or sums of money as may be necessary for the purposes specified in such order, by such powers, ways and means as are now by law given to or vested in churchwardens and overseers or guardians of the poor for altering, enlarging or maintaining workhouses for the use of the poor in their respective parishes or unions: provided always, that the principal sum or sums to be raised for such purposes, and charged upon any parish, shall not exceed in the whole the sum of fifty pounds, nor in any such case exceed one-tenth of the average annual amount of the rates raised for the relief of the poor in such parish for the three years ending at the Easter next preceding the raising of such money" (*i*).

Part of sect. 25 of 4 & 5 Will. 4, c. 76, repealed, and another proviso substituted.

"The Poor Law Amendment Act, 1866" (29 & 30 Vict. c. 113), sect. 8, enacts, however, that "the proviso to section twenty-five of the said last-mentioned statute of King William the Fourth shall be repealed, and in lieu thereof it is provided that the principal sum to be raised for the purposes specified in such section shall not exceed one-tenth of the average annual amount of the rates raised for the relief of the poor in any such parish or union to which such section applies for the three years ending at the Easter next preceding the raising of such money, and when the board of guardians of any union or parish shall deem it expedient to make any enlargement, alteration or improvement of their workhouse, or the premises, drainage or other appurtenances belonging thereto, at a cost not exceeding five hundred pounds, and the poor law board shall give their consent thereto, they shall not require any order of that board to enable them to execute the same."

Overseers may apply to commissioners of exchequer bills under act 57 Geo. 3, c. 34, for advance of money.

Sect. 63 of "The Poor Law Amendment Act, 1834" (4 & 5 Will. IV. c. 76), further enacts, "that where it shall be lawful, under the provisions of any of the herein-recited acts (*k*), or of any local act, or of this act, to raise or borrow any sum or sums of money for the purpose of purchasing, building, altering or enlarging any workhouse or workhouses in any parish or union, or for purchasing land whereon to build the same, or for defraying the expenses of the emigration of poor persons having settlements in any parish, and being willing to emigrate, it shall be lawful for the overseers or guardians of such parish or union, with the consent of the said commissioners, to be testified under their hands and seal, to make application for an advance of any sum necessary for any such purposes to the commissioners appointed under an act made and passed in the fifty-seventh year of the reign of his late Majesty King George the Third, intituled 'An Act to authorize the Issue of Exchequer Bills, and the Advance of Money out of the Consolidated Fund, to a limited Amount, for the carrying on of Public Works and Fisheries in the United Kingdom, and Employment of the Poor in Great Britain, in manner therein mentioned,' and of any act or acts passed for amending or continuing the same; and the said Exchequer Bill Loan Commissioners are hereby empowered to make such advances, upon any such application as aforesaid, upon the security of the rates for the relief of the poor in such parish or union, and without requiring any further or other security than a charge on such rates."

Cost of obtaining site of workhouses in the metropolitan police district, &c.

The 7 & 8 Vict. c. 101, s. 30, enacts, "that in addition to the principal sum or sums of money which guardians are empowered by the said first-recited act (*l*) to raise or borrow for the purpose of purchasing, hiring, building, enlarging or altering workhouses, or buildings to be converted into workhouses, the guardians of any parish or union any part of which is situated within the metropolitan police district, or the city of London,

(*i*) See the entire section, ante, pp. 142, 143.

(*k*) The acts especially referred to in sect. 21 are the 22 Geo. III. c. 83, and 59 Geo. III. c. 12 (see ante, pp. 149, 151).

(*l*) 4 & 5 Will. IV. c. 76.

or the select vestry of the parish of Liverpool, may, with the consent of the poor law commissioners, also raise or borrow and charge the future poor rates of such parish or union with such further or other sum or sums of money as may be or may have been necessary for the purchase of any land, or interest in land, required as the site of such workhouse, or of any additions to any such workhouse." (See also post, "PAYMENT OF DEBTS.")

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§ 3. CONTRACTS FOR THE MAINTENANCE OF THE POOR IN WORKHOUSES.

The statute 9 Geo. I. c. 7, which empowered the purchase or hire of poor-houses (*m*), also authorized the churchwardens and overseers to contract for the lodging, keeping, maintaining, and employing the poor, and also empowered parishes to unite for those purposes (*n*).

Farming out the poor to cease, where guardians appointed.

By Gilbert's Act (22 Geo. III. c. 83), s. 1, so much of stat. 9 Geo. I. as respects the maintaining or hiring out the labour of the poor by contract, within any parish adopting the provisions of Gilbert's Act, was repealed; and s. 2 provides, "that it shall and may be lawful for the visitor and guardian, or visitors and guardians, appointed, as hereafter mentioned, of any parish, township or place, or parishes, townships and places, which shall have adopted the provisions and complied with the requisites of this act, and shall have a visitor appointed, from time to time to make agreements with any person or persons for the diet or clothing of such poor persons who shall be sent to the house or houses to be provided under the authority of this act, and for the work and labour of such poor persons, so that no such agreement shall be made for any longer time than twelve months, and so that the same shall be, and every such agreement is hereby declared to be, under the strictest inspection and control of the visitor, guardian, and governor of such poor-house, and also of the justices of the peace for the limit where such poor-house shall be; two of which justices, upon proof of any abuse, shall have power to dissolve such contract."

Agreement for diet or clothing of paupers in poor-house.

Contractors for providing for the poor shall be subject to the jurisdiction of the justices as overseers of the poor.

By the 50 Geo. III. c. 50, s. 2, "persons contracting for the maintenance of the poor of any parish or place shall, with respect to all such things as they shall contract to perform and provide for the poor, be subject to the jurisdiction and orders of justices of the peace in like manner in all respects as overseers of the poor are subject thereto; and that every order of any such justice to or upon any person so contracting, may be enforced and carried into execution by such means as the same might have been enforced and carried into execution against any overseer of the poor; and that every person so contracting for the maintenance of the poor, who shall refuse or neglect to obey any such order, shall be punishable by the like forfeitures and penalties, to be levied in the same manner as in cases of disobedience or neglect of the orders of justices by overseers of the poor" (*o*).

"The Poor Law Amendment Act, 1834" (4 & 5 Will. IV. c. 76), s. 49, enacts, "that any contract which shall be entered into by or on behalf of any parish or union, for or relating to the maintenance, clothing, lodging, employment, or relief of the poor, or for any other purpose relating to or connected with the general management of the poor,

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(*m*) See ante, pp. 130, 131.

(*n*) See ante, p. 7. The act 45 Geo. III. c. 54, amending the 9 Geo. I. c. 7, respecting contracts was repealed by the 4 & 5 Will. IV. c. 76, s. 50. The contract of the majority of the churchwardens and overseers was sufficient. (*Rex* v. *Beeston*, 3 T. R. 592.)

(*o*) The statute 55 Geo. III. c. 137, s. 7, required notice to be given of contracts for supplying workhouses, but this was repealed by the 7 & 8 Vict. c. 101, s. 67.

which shall not be made and entered into in conformity with the rules, orders, or regulations of the said commissioners in that behalf in force at the time of making and entering into the same, or otherwise sanctioned by them, shall be voidable, and, if the said commissioners shall so direct, shall be null and void; and all payments made under or in pursuance of any contract not made and entered into in conformity with such rules, orders or regulations at any period after the said commissioners shall have declared the same to be null and void as aforesaid, shall be disallowed in passing the accounts of the overseer, guardian, or other officer by whom such payments shall have been made."

Contracts not to be valid unless conformable to the rules of commissioners.

By 12 & 13 Vict. c. 13, s. 1, it is enacted, that "it shall be lawful for the commissioners for administering the laws for relief of the poor in England, and they are hereby required, from time to time as they shall see occasion, to make and issue all such rules, orders and regulations for the management and government of any house or establishment wherein any poor person shall be lodged, boarded or maintained for hire or remuneration, under any contract or agreement entered into by the proprietor, manager or superintendent of such house or establishment, or on his behalf, with any guardians, overseers or other persons having the ordering or management of the poor in any union or parish, or for the education of any poor children therein, in like manner and to the same extent as the said commissioners are by law empowered to do in the case of any workhouse belonging to any union or parish; and all such rules, orders and regulations shall have the like effect as other rules, orders and regulations of the said commissioners, and shall be obeyed accordingly, with the like penalties on any neglect or disobedience thereof, to be enforced upon summary conviction, as penalties under the 5 & 6 Will. IV. c. 76, may now be enforced" (*p*).

Maintenance by contract.

Sect. 2. "Provided nevertheless, that nothing herein contained shall extend to any county lunatic asylum or hospital registered or house licensed for the reception of lunatics, nor to any hospital, infirmary, school, or other institution supported by public subscriptions, and maintained for purposes of charity only."

Nothing herein to extend to lunatic asylums and hospitals.

Sect. 3. "That the said commissioners may direct their rules, orders and regulations to any person being or acting as the proprietor, manager, or superintendent, or as an officer or assistant, in any such house or establishment as aforesaid, and the same shall come into operation so soon as the said commissioners shall therein declare, and shall be binding upon the person named therein, and, if they shall so direct, upon every person who shall afterwards succeed to him in the same capacity."

Rules and regulations to be directed to the manager or officer of the establishment.

Sect. 4. "That the said commissioners shall be empowered, if at any time they shall see just cause, to prohibit, by order under their seal, the reception or retention of any poor person, or any class of poor persons, in any such house or establishment; and thereupon it shall not be lawful for any such proprietor, manager or superintendent, or other officer or assistant, to receive or retain any poor person therein, contrary to the terms of such order, so long as it shall be in force, nor for any guardians, overseers, or other such persons as aforesaid, to send any poor person to such house or establishment contrary to such order, provided that no such guardians, overseers, or other such persons as aforesaid, nor any officer of any union or parish, shall incur any legal responsibility in respect of the neglect of such order, until a copy thereof shall have been sent to the guardians of the union or parish, or to the overseers of the parish, or other such persons as aforesaid, in the manner in which orders of the said commissioners are now sent to guardians or overseers."

Poor law board may prohibit the reception or retention of poor in any such house.

Sect. 5. "That the said commissioners may, by order under their seal,

Poor law board

(*p*) See post.

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may remove any officer of such house.

remove from his office or service any officer, servant or assistant in any such house or establishment whom they shall deem unfit or incompetent to discharge the duties of his situation, or who shall at any time refuse or wilfully neglect to obey and carry into effect any of the rules, orders or regulations issued by the said commissioners under their seal for the regulation of such house or establishment, or of the officers or inmates thereof; and thereupon such officer, servant or assistant shall forthwith cease to act in his office, service or employment, and shall be entitled to claim and recover a rateable proportion of his salary, wages, or other remuneration up to the time of his being so removed, but no more, from the person liable to pay the same, subject to any defence at law which may then be open to the person from whom the same shall be claimed."

Poor law board may regulate and annul contracts.

Sect. 6. "That the said commissioners may from time to time issue any order which they may deem necessary for regulating the mode in which any contract shall be entered into for the lodging, boarding or maintenance of any poor person, with the proprietor, manager or superintendent of such house or establishment as aforesaid, or the terms or the duration of any such contract; and if after the issuing of any such order any contract or agreement be entered into with such proprietor, manager or superintendent, or any person on his behalf, not in accordance with such order, the same shall be voidable, and, if the said commissioners shall so direct, the same shall be void and of no effect; and all payments made under or in pursuance of any contract or agreement not made and entered into in conformity with such order as aforesaid, at any time after the said commissioners shall have declared the same to be void as aforesaid, and shall have given notice of such declaration to the guardians, overseers or other such persons as aforesaid, shall be disallowed in the passing and auditing of their accounts, or the accounts of any of their officers by whom such payments shall have been made or charged."

Persons may be appointed to inspect houses and the poor maintained therein.

Remuneration to such persons.

Sect. 7. "That the said commissioners may, if they think fit, appoint a person either temporarily or permanently to visit any such house or establishment, and to inspect the same, and the poor persons received and maintained therein, and to make a report to such commissioners upon any visit and inspection; and such person shall be paid by the guardians or overseers, as the case may be, of the several unions or parishes from which poor persons shall have been sent, and shall be at the time of such visitation maintained therein, such remuneration as the said commissioners shall by order under their seal direct."

Power to justices to visit houses.

Sect. 8. "That it shall be lawful for any justice of the peace acting in and for the jurisdiction in which such house or establishment shall be situated to visit, inspect and examine the same, at such times as he shall think proper, for the like purpose and with the same power as any justice has now by virtue of the act hereinbefore mentioned of the fifth year of his late Majesty in respect of the workhouse of any union or parish; and it shall be lawful for the general board of health, where they shall think proper, by order under the seal of the said board and the hands of any two or more members thereof, to authorize a superintending inspector to visit and inspect from time to time, or at such time or times as such boards shall direct, any such house or establishment, and to ascertain the state and condition of the same, and of the poor people therein, and to report thereon to the board; and it shall be lawful for such superintending inspector accordingly so to visit and inspect, and to ascertain such state and condition, and to examine any officer, servant, assistant or inmate of such house or establishment in relation thereto; and the powers and provisions of 'The Public Health Act, 1848,' in relation to the examination of persons for the purposes of an inquiry under such act by a superintending inspector, shall extend and be applicable to the examination of such officers, servants, assistants and inmates."

Power to general board of health to appoint a superintending inspector to visit houses, and examine officers, &c.

Receiving paupers from other parishes.

By 12 & 13 Vict. c. 103, s. 14, "where the workhouse of any union or parish shall be governed and regulated by rules, orders or regulations of the poor law commissioners or of the poor law board, the guardians of the union or parish to which such workhouse belongs, in case of the overcrowding of the workhouse of any other union or parish, or the prevalence or reasonable apprehension of any epidemic or contagious disease, or in and towards carrying out any legal resolution for the emigration of poor persons, may, with the consent of the poor law board, receive, lodge and maintain in the first-mentioned workhouse, upon such terms as shall be mutually agreed upon by the respective boards of guardians, any poor person belonging to such other parish or union; and such poor person so received into such first-mentioned workhouse shall while therein be treated in all respects in like manner, and be subject to the same regulations and liabilities, as the other poor persons therein, and shall be deemed to be chargeable in the first instance to the common fund of the union or to the parish in the workhouse whereof such poor person shall be received: provided always, that the abiding of any such poor person in such workhouse shall in all other respects be attended with the same legal consequences as if such workhouse had been situated within the union or parish from which such poor person shall have been sent."

And by 14 & 15 Vict. c. 105, s. 6, "where in any union or parish there shall be a workhouse or building having adequate provision for the reception, maintenance and education of poor children, and there shall be more accommodation therein at any time than the guardians of such union or parish shall require for the poor children of their own union or parish, such guardians may, with the consent of the poor law board, contract with the guardians of any other union or parish, [any part of which is not more than twenty miles from such workhouse or other building,(*p*),] for the reception, maintenance and instruction therein of any poor children under the age of sixteen years chargeable to such other union or parish, or to any parish in such other union, being orphans or deserted by their parents, or whose parents or surviving parent shall consent; and such last-mentioned children, while at such workhouse or other building, shall be maintained and instructed in the same manner in all respects as the children of the union or parish to which such workhouse or other building shall belong, and shall be subject to the control and management of the guardians of such union or parish, or their officers, in like manner as if such children were chargeable to such union or parish: provided always, that the abiding of any such child in any such workhouse or building shall in all other respects be attended with the same legal consequences as if such workhouse or building had been situated within the union or parish from which such child shall have been sent."

Parish officers not to be concerned in contracts.

The 55 Geo. III. c. 137, s. 6 (*q*), enacts, "that from and after the twenty-fifth day of March next after the passing of this act, no churchwarden or overseer of the poor, or other person or persons in whose hands the collection of the rates for the relief of the poor, or the providing for, ordering, management, control or direction of the poor of any parish or parishes, township or townships, hamlet or hamlets, place or places, shall or may be placed jointly with or independent of such churchwardens and overseers, or any of them, under or by virtue of any act or acts of parliament, shall, either in his own name, or in the name of any other person or persons, provide, furnish or supply, for his

(*p*) The limitation of distance was repealed by the 29 & 30 Vict. c. 113, s. 16; see post, p. 207.

(*q*) An assistant overseer is within this act. (*Bennett* v. *Edwards*, 1 Man. & R. 482; 7 B. & C. 586; 6 Bing. 230; 3 Younge & J. 464, S. C.) A parishioner, *ipso facto* a guardian of the poor, though he do not act as such, is within the act. (*Stanley* v. *Dodd*, 1 D. & Ryl. 397.)

or their own profit, any goods, materials or provisions, for the use of any workhouse or workhouses, or otherwise, for the support and maintenance of the poor, in any parish or parishes, township or townships, hamlet or hamlets, place or places, for which he or they shall be appointed as such, during the time which he or they shall retain such appointment; nor shall be concerned, directly or indirectly, in furnishing or supplying the same, or in any contract or contracts relating thereto, under pain of forfeiting one hundred pounds, with full costs of suit, to any person or persons who shall sue for the same by action of debt, or on the case, in any of his Majesty's courts of record at Westminster; in which action or actions no essoign, protection, wager of law, or more than one imparlance shall be allowed: provided, nevertheless, that if it shall happen in any parish or parishes, township or townships, hamlet or hamlets, place or places, that a person or persons competent and willing to undertake the supply of any of the articles or things required for such workhouse or workhouses, or for the use of the poor there, cannot be found within a convenient distance therefrom, other than and except some or one of the churchwardens and overseers of the poor, or other person or persons having the ordering, managing, control or direction of the poor, in such parish or parishes, township or townships, hamlet or hamlets, place or places, then and in every such case it shall and may be lawful to and for any two or more neighbouring justices of the peace (proof thereof having been first duly made before them upon oath, and which oath such justices or any one of them are and is hereby authorized and empowered to administer), by certificate under their hands and seals, to permit and suffer any one or more of such churchwardens and overseers, or other such person or persons as aforesaid, to contract and agree for the furnishing and supplying of any articles or things, which may be required for such workhouse or workhouses, or otherwise, for the use of the poor of such parish or parishes, township or townships, hamlet or hamlets, place or places, during the time which he or they may retain such appointment; anything herein contained to the contrary notwithstanding; and such certificate shall be entered with the clerk of the peace, or town clerk of the county, city, town or district in which such person or persons shall reside, and a copy thereof left with him, for which entry every such clerk shall receive one shilling and no more; and, from that time, every person and persons named in any such certificate shall be discharged from any penalty to which he or they would otherwise be liable under this act, for furnishing or supplying any such article or things as aforesaid; and in case any action or suit for the recovery of any such penalty as aforesaid shall be commenced against any person or persons to whom such certificate shall have been granted as aforesaid, it shall and may be lawful to and for such person or persons to plead generally, that he or they was or were duly discharged from any liability to such forfeiture, by a certificate granted according to the provisions of this act; and upon due proof being given of such certificate, and of such entry thereof as aforesaid, the jury shall find a verdict for the defendant in such action or suit; and if the plaintiff or plaintiffs shall become nonsuited, or discontinue his, her or their action, or if verdict shall pass against him, her or them, or if judgment shall be had against him, her or them, on demurrer, then the defendant or defendants in such action shall have double costs, and have such and the like remedy for the recovery of the same as any defendant or defendants have or hath for recovering costs of suit in any other cases by law."

Penalty 100*l.*

Exceptions in certain cases.

Poor Law Amendment Act, 1834. The penalty imposed by 55 Geo. 3, c. 137, on persons having the management of the poor being concerned in any

"The Poor Law Amendment Act, 1834" (4 & 5 Will. IV. c. 76), sect. 51, enacts, "that so much of a certain act made and passed in the fifty-fifth year of the reign of his said late Majesty King George the Third, intituled 'An Act to prevent poor Persons in Workhouses from embezzling certain Property provided for their Use; to alter and amend so much of an Act of the Thirty-sixth Year of his present Majesty as restrains Justices of the Peace from ordering Relief to poor Persons in certain cases for a

longer Period than One Month at a time; and for other Purposes therein mentioned, relating to the Poor,' as inflicts a penalty on persons having the management of the poor if concerned in providing or in any contract for the supply of any goods, materials or provisions for the use of any workhouse or workhouses, or otherwise for the support or maintenance of the poor for their own profit, and all remedies for the recovery of such penalties, shall apply, and the same are hereby extended and made applicable to every commissioner, assistant commissioner, guardian, treasurer, master of a workhouse, or other officer to be appointed under the provisions of this act" (*q*).

contract extended to persons appointed under this act.

And, by sect. 77, it is enacted, that no person filling any office concerned in the administration of the laws for the relief of the poor shall "furnish or supply, for his own profit or on his own account, any goods, materials or provisions ordered to be given in parochial relief, or to furnish or supply any goods, materials or provisions for or in respect of the money ordered to be given in parochial relief, to any person in such parish or union," under a penalty of five pounds, on conviction before two justices (*r*).

No person employed in administration of poor laws to furnish, for his own profit, goods or provisions given in parochial relief.

§ 4. GOVERNMENT AND VISITATION OF THE WORKHOUSE.

Gilbert's Act (22 Geo. III. c. 83) (*s*), contained provisions for the appointment of a governor of poor-houses established under that act, and to the governor was entrusted the care, management and employment of the poor, under the directions of the visitor appointed by the same act (*t*).

Appointment of governor.

The 50 Geo. III. c. 50, s. 3, empowered justices in special session, upon the application of the overseers of the poor of any parish or place, or of the major part of them, to appoint the keeper of the workhouse of any such parish or place to be the governor thereof; "and the keeper so appointed, so long as he shall continue keeper of such workhouse, until the justices in any such special session shall revoke such appointment (which they are hereby empowered to do), shall have, use and exercise the powers and perform the duties by the said act of the 22 Geo. III. vested in and imposed upon governors of the poor."

The 22 Geo. III. c. 83 (Gilbert's Act), sect. 34, enacted, that the rules, orders and regulations, specified and contained in the schedule thereunto annexed, should be duly observed and enforced at every poor-house or workhouse to be provided by virtue of that act, with such additions as should be made by the justices of the peace of the limit wherein such house or houses should be situate, at some special session; provided that such additions should not be contradictory to the rules, orders and

Special rules and forms to be observed.

(*q*) A guardian supplying goods to the master of a workhouse on a verbal order is liable to the penalty, although the master was not expressly authorized by the guardians to make the purchase as required by poor law orders. (*Greenhow* v. *Parker*, 31 L. J. (N. S.) Exch. 4.)

(*r*) This provision met some defects in the statute 55 Geo. III. c. 137, s. 6, for it was held, that that section was applicable only to a general supply of the poor by the parish officers, and not a supply to individual paupers. (*Procter* v. *Mainwaring*, 3 B. & Adol. 145; *Henderson* v. *Sherbone*, 2 M. & W. 236.) It was also held that it did not include materials supplied with work done. (*Barker* v. *Waite*, 3 N. & M. 611; 1 A. & E. 514.) And it was also held, that as the statute mentions a supply for profit, goods sold at prime cost or not with a view to profit were not within it. (*Pope* v. *Backhouse*, 8 Taunt. 239; 2 B. Moore, 186; *Skinner* v. *Buckee*, 3 B. & C. 6; 4 D. & R. 628.) As these cases are within the 4 & 5 Will. IV. c. 76, s. 77, they are no longer of importance. In *Henderson* v. *Sherbone* it was doubted whether the last-named provision had not repealed the earlier provisions of the 55 Geo. III. c. 137, but it seems clear that the whole section cannot be repealed, and it is moreover expressly recognized and extended by sect. 51 of the 4 & 5 Will. IV. c. 76. As to the disqualification of contractors for the office of overseer, see ante, p. 55.

(*s*) See ante, p. 7—10.

(*t*) See ante, p. 85.

regulations established by that act, and provided that the same be not repealed by the justices at their quarter sessions of the peace; and, for the purpose of having them more generally known, and more strictly attended to, the governors of every such house or houses were required to cause the same to be printed in plain legible characters, and fixed up in some conspicuous part of every such house or houses (*u*).

Two justices in petty sessions may direct the regulations prescribed by recited act to be observed.

By 49 Geo. III. c. 124, s. 5, reciting, "that whereas certain rules, orders, bye-laws and regulations are appointed to be observed and enforced in every poor-house established under the authority of 22 Geo. III.; and whereas it is expedient that such rules, orders, bye-laws and regulations should be extended to poor-houses and workhouses established in other parishes; it is enacted, that any two or more of his Majesty's justices of the peace may at any petty sessions direct such rules, orders, bye-laws and regulations, or any of them, to be observed and executed in any parishes within their respective divisions or districts, as fully as in those incorporated by the said act.

Two justices may direct the regulations specified in schedule of 22 Geo. 3, c. 83, to be observed in workhouses where no master or mistress is appointed to superintend; and may alter such regulations.

The 50 Geo. III. c. 50, s. 1, after reciting statutes 22 Geo. III. c. 83, and 49 Geo. III. c. 124, s. 5, and that it is expedient that the benefit of 22 Geo. III. c. 83, for the government of poor-houses and workhouses, should be extended to parishes which shall not have adopted the provisions of the said acts, enacts, "that any two or more of his Majesty's justices of the peace, within their respective limits, may at any special session direct the rules, orders and regulations, in the schedule to the said act of the 22 Geo. III. specified and contained, or any of them, with such additions as shall be made by such justices, to be observed and enforced in the workhouses or poor-houses, or any houses set apart for that purpose, although there should be no master or mistress to superintend the same, of any parish or place within their respective divisions or districts, as fully and effectually as the rules and orders by the said act of the 22 Geo. III. established, are to be observed and enforced within the parishes adopting the provisions of the same act; and that it shall be lawful for two or more such justices in any special session, from time to time as they shall see occasion, to add to and alter the rules, orders and regulations which shall at any special sessions have been made and ordered to be observed; provided that no addition or alteration to be made by such justices shall be contradictory to the rules, orders and regulations established by the said act of the 22 Geo. III., and provided that the same shall not be repealed by the justices at their quarter sessions of the peace; and for enforcing and carrying into execution such rules, orders and regulations, in every parish and place where the same shall be established by virtue of this act, every justice of the peace shall for that purpose have the powers by the said act of the 22 Geo. III. vested in visitors of the poor; and all churchwardens and overseers within their respective parishes and townships shall have and exercise the powers, and shall perform the duties by the same act vested in and imposed upon governors of the poor."

Breach of rules under this act to be punished.

By the same statute (50 Geo. III. c. 50), s. 5, "any breach of the rules and orders to be put in force by virtue of this act, shall be punished in such manner as is by the said act directed for the breach of the rules and orders to be enforced under the before-recited act of 22 Geo. III. c. 83."

No additions or alterations to be made to the rules

"The Poor Law Amendment Act, 1834" (4 & 5 Will. IV. c. 76), s. 22, reciting, that "whereas by the said act made and passed in the twenty-

(*u*) The schedule of the act contains "rules, orders, bye-laws and regulations to be observed and enforced at every poor-house, to be provided and established under the authority of the act of the twenty-second year of King George the Third." In consequence of the exercise of the powers given to the poor law commissioners to control these rules, and to issue others, the schedule is not given. On any question arising in Gilbert Unions as to the workhouse regulations, the precise rules in force should be carefully ascertained. (See ante, p. 33, note (*p*).)

second year of the reign of his late Majesty King George the Third, it is (among other things) enacted that the rules, orders, and regulations specified and contained in the schedule thereunto annexed, should be duly observed and enforced at every poor-house or workhouse to be provided by virtue of the said act, with such additions as should be made by the justices of the peace of the limit wherein such house or houses should be situate, at some special session, provided that such additions should not be contradictory to the rules, orders, and regulations established by that act, and provided that the same should not be repealed by the justices at their quarter sessions of the peace: and it is expedient that such additions, or other rules, orders, or regulations, under that or any local or other act, should not in future be made without the sanction of the said commissioners:" therefore enacts, "that no additions or alterations shall hereafter be made to or in the rules, orders, and regulations contained in the schedule to the said recited act, and no rules, orders, and regulations shall hereafter be made under the authority of the said recited act, or of any act made for altering, amending, or extending the same, or any local or other act relating to poor-houses, workhouses, or the relief of the poor, until the same shall have been submitted to and approved and confirmed by the said commissioners; and that the same, when so confirmed, shall be legally valid and binding upon all persons; and no justice or justices shall have power to repeal the same."

contained in the schedule to 22 Geo. 3, c. 83, or in any other act until confirmed by commissioners.

Sect. 42 of the same act further enacts, "that the said commissioners may and are hereby authorized, by writing under their hands and seal, to make rules, orders, and regulations, to be observed and enforced at every workhouse already established by virtue of the said recited act made and passed in the twenty-second year of the reign of his said late Majesty King George the Third, intituled "An Act for the better Relief and Employment of the Poor," or any general or local act of parliament, or hereafter to be established by virtue of such acts, or of any of them, or of this or any other act of parliament relating to the relief of the poor, for the government thereof, and the nature and amount of the relief to be given to and the labour to be exacted from the persons relieved, and the preservation therein of good order, and from time to time to suspend, alter, vary, amend, or rescind the same, and make any new or other rules, orders, and regulations, to be observed and enforced as aforesaid, as they from time to time shall think fit, and to alter at their discretion any of the rules, orders, and regulations contained in the schedule to the said recited act, and also to alter or rescind any rules, orders, and regulations heretofore made in pursuance of the said recited act, or any local act of parliament relating to workhouses or the relief of the poor: and that all rules, orders, and regulations to be from time to time made by the said commissioners under the authority of this act shall be valid and binding, and shall be obeyed and observed as if the same were specifically made by and embodied in this act; subject, nevertheless, to the said power of the said commissioners from time to time to rescind, amend, suspend, or alter the same: provided always, that if any such rule, order, or regulation shall be, at the time of issuing the same, directed to and affect more than one union, the same shall be considered as a general rule, and subject and liable to all the provisions in this act contained respecting general rules" (*x*).

Commissioners may make rules, &c. for present or future workhouses, and vary bye-laws already in force or to be made hereafter.

Rules, &c. affecting more than one union to be deemed general rules.

Various rules for the government of workhouses have been issued to different unions and parishes under the powers of the last-mentioned section (*y*).

The master of the workhouse is required to keep a register of per-

(*x*) See ante, pp. 28, 29.

(*y*) See the observations, ante, p. 33; and see as to the visiting committee, post, p. 163—165.

sons in receipt of relief in the workhouse (4 & 5 Will. IV. c. 76, s. 55) (*z*).

Births and deaths within the workhouse are registered in the parish or place in which the workhouse is locally situated (7 & 8 Vict. c. 101, s. 56) (*a*).

Visitation of Workhouse.

Justices, clergymen, &c. may visit parish workhonses,

By 30 Geo. III. c. 49, s. 1, "It shall and may be lawful to and for any of his Majesty's justices of the peace, or any physician, surgeon, or apothecary, for that purpose authorized by warrant under the hand and seal of any such justice or justices, or for the officiating clergyman (*b*) of the parish or place, duly authorized as aforesaid, at all times, in the day time, to visit any parish workhouse, or house kept or provided for the maintenance of the poor of any parish or place, within the county, riding, liberty, or division, wherein such justice or justices shall be resident and shall have jurisdiction, to examine into the state and condition of the poor people therein, and the food, clothing, and bedding of such poor people, and the state and condition of such house or houses; and if upon any such visitation the said justice or justices, or persons duly authorized as aforesaid, shall find any cause or occasion of complaint, that then and in such case such justice or justices, or persons duly authorized as aforesaid, shall, and they are hereby authorized and empowered, if he or they shall think fit, to certify the state and condition of such workhouse or poor-house, and the state of the poor therein, and of their food, clothing, and bedding, to the next quarter sessions of the peace to be held for such county, riding, liberty, or division, wherein such workhouse or poor-house shall be situate, under his or their hands and seals respectively; and such justice or justices, or other persons duly authorized as aforesaid, shall cause the overseers of the poor, or master or governor of the said workhouse or poor-house of such parish or place, to be summoned to appear at the same sessions to answer such complaint; and the justices assembled at such quarter sessions, on hearing the parties on any such complaint, shall and may, and they are hereby authorized to make such orders and regulations, for the removing of any cause of complaint contained in such certificate as aforesaid, as to them shall seem meet; and all the parties concerned shall, and they are hereby required to abide by and perform such orders and regulations as shall be so made by the justices at the said sessions."

and certify their condition to the quarter sessions,

who may hear the complaint.

Finding the poor afflicted with contagious or infectious disease, or in want of medical aid or proper food, &c.,

Sect. 2. "Provided, that in case any justice or justices of the peace, or persons duly authorized by warrant as aforesaid, shall, upon any such visitation, find any of the poor in any parish workhouse or poor-house afflicted with any contagious or infectious disease, or in want of immediate medical or other assistance, or of sufficient and proper food, or requiring separation or removal from the other poor in the said house, then and in such case or cases, if such visitation shall be made by a justice of the peace, it shall and may be lawful to and for such justice, and he is hereby directed and required to apply to one or more other justice or justices of the peace in the county, riding, liberty, or division, and certify to him or them the state and condition of the poor in such parish workhouse or poor-house; or if such visitation shall be made by the persons duly authorized as aforesaid, then and in such case or cases it shall and may be lawful to and for such persons, and they are hereby directed and required to apply to two or more justices of the peace in such county, riding, liberty, or division; and thereupon the said justices shall and may, and they are hereby authorized to make such order for the immediate procuring medical or other assistance, or of sufficient and proper food, or for the separation or removal of such

two justices may make an order to remedy it,

(*z*) See the section in full, ante, p. 138.

(*a*) See the section in full, ante, p. 149.

(*b*) See post, p. 167, as to attendance on religious worship.

poor as shall be afflicted with any contagious or infectious disease, in such manner as they the said justices, under their hands and seals, shall think proper to direct, until the next quarter sessions of the peace to be held in and for the said county, riding, liberty, or division, wherein such workhouse or poor-house shall be situate; at which quarter sessions of the peace the said two justices are to certify the same, under their hands and seals respectively, to the justices assembled at such quarter sessions, who are hereby authorized and required to make such order for the further relief of the poor in such parish workhouse or poor-house, as to the justices assembled at such quarter sessions shall seem meet and proper; and the charges and expenses of relieving such poor shall be, and are hereby directed to be paid out of the poor's rate of such parish, in such manner as the said justices assembled at such quarter sessions shall direct."

till the sessions.

Sect. 3. "Provided, that nothing herein contained shall extend to any poor-house or workhouse in any district or districts which have been, or may be hereafter, incorporated or regulated by any special act or acts of parliament."

Not applicable to houses built under local acts.

"The Poor Law Amendment Act, 1834" (4 & 5 Will. IV. c. 76), s. 43, enacts, "that where any rules, orders, or regulations, or any bye-laws, shall be made or directed by the said commissioners to be observed or enforced in any workhouse, it shall and may be lawful for any justice of the peace acting in and for the county, place, or jurisdiction in which such workhouse shall be situate, to visit, inspect, and examine such workhouse at such times as he shall think proper, for the purpose of ascertaining whether such rules, orders, regulations, or bye-laws, are or have been duly observed and obeyed in such workhouse, as well as for such other purposes, as justices are now authorized to visit workhouses under and by virtue of a certain act made and passed in the thirtieth year of the reign of his said late Majesty King George the Third, intituled 'An Act to empower Justices and other Persons to visit Parish Workhouses or Poor-houses, and examine and certify the State and Condition of the Poor therein to the Quarter Sessions;' and if in the opinion of such justice such rules, orders, regulations, or bye-laws, or any of them, have not been duly observed and obeyed in such workhouse, it shall be lawful for such justice to summon the party offending in such respect to appear before any two justices of the peace, to answer any complaint touching the non-observance of such rules, orders, regulations, and bye-laws, or any of them, and upon conviction before such two justices of the party so offending, such party shall forfeit and be liable to such penalties and punishments as are hereinafter prescribed and provided against parties wilfully neglecting or disobeying the rules, orders, or regulations of the said commissioners: provided always, that where no such rules, orders, regulations, or bye-laws, shall have been directed by the said commissioners to be enforced and observed in the workhouse of any parish, nothing in this act contained shall be construed to restrain or prevent any justice of the peace, physician, surgeon, or apothecary, or the officiating clergyman of any parish, from visiting such workhouse, and examining and certifying the state and condition of the same, and of the poor therein, in such manner as they or any of them are authorized to do in and by the said last-recited act."

Justices empowered to see bye-laws enforced, and to visit workhouses, pursuant to 30 Geo. 3, c. 49.

The power given to justices, &c. to visit workhouses reserved where commissioners' rules, &c. are no in force.

Visiting Committee.

Rules issued by the poor law commissioners to various unions and subsequently comprised in the Consolidated Order of the 24th July, 1847 (*c*),

(*c*) See ante, p. 33.

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required the guardians to appoint one or more visiting committees to examine the workhouse (*d*).

(*d*) Although for the reasons stated ante, p. 33, note (*p*), the rules issued by the poor law commissioners, and since by the poor law board, are not given in this work, the rules respecting visitors having been generally applied, and been referred to in the statute 10 & 11 Vict. c. 109 (post), they are given here, but with the caution that they must not be treated as in force in any particular union or place until the fact has been ascertained.

"Art. 148. The guardians shall appoint one or more visiting committees from their own body; and each of such committees shall carefully examine the workhouse or workhouses of the union once in every week at the least, inspect the last reports of the chaplain and medical officer, examine the stores, afford, so far as is practical, to the inmates an opportunity of making any complaints, and investigate any complaints that may be made to them."

"Art. 149. The visiting committee shall from time to time write such answers as the facts may warrant to the following queries, which are to be printed in a book, entitled the visitors' book, to be provided by the guardians, and kept in every workhouse for that purpose, and to be submitted regularly to the guardians at their ordinary meetings:—

Q. 1. Is the workhouse, with its wards, offices, yards and appurtenances clean and well ventilated in every part?—and is the bedding in proper order?—if not, state the defect or omission.

Q. 2. Do the inmates of the workhouse, of all classes, appear clean in their persons, and decent and orderly in their behaviour; and is their clothing regularly changed?

Q. 3. Are the inmates of each sex employed and kept at work as directed by the guardians, and is such work unobjectionable in its nature?—if any improvement can be suggested in their employment, state the same.

Q. 4. Are the infirm of each sex properly attended to, according to their several conditions?

Q. 5. Are the boys and girls in the school properly instructed as required by the regulations of the commissioners, and is their industrial training properly attended to?

Q. 6. Are the young children properly nursed and taken care of, and do they appear in a clean and healthy state?—Is there any child not vaccinated?

Q. 7. Is regular attendance given by the medical officer?—Are the inmates of the sick wards properly tended?—Are the nurses efficient?—Is there any infectious disease in the workhouse?

Q. 8. Is there any dangerous lunatic or idiot in the workhouse?

Q. 9. Is divine service regularly performed?—Are prayers regularly read?

Q. 10. Is the established dietary duly observed?—and are the prescribed hours of meals regularly adhered to?

Q. 11. Are the provisions and other supplies of the qualities contracted for?

Q. 12. Is the classification properly observed, according to Arts. 98 and 99?

Q. 13. Is any complaint made by any pauper against any officer, or in respect of the provisions or accommodations?—If so, state the name of the complainant, and the subject of the complaint.

Q. 14. Does the present number of inmates in the workhouse exceed that fixed by the poor law commissioners?"

"Art. 150. The guardians shall once at least in every year, and as often as may be necessary for cleanliness, cause all the rooms, wards, offices and privies belonging to the workhouse to be limewashed."

"Art. 151. The guardians shall cause the workhouse and all its furniture and appurtenances to be kept in good and substantial repair, and shall from time to time remedy without delay any such defect in the repair of the house, its drainage, warmth or ventilation, or in the furniture or fixtures thereof, as may tend to injure the health of the inmates."

"Art. 152. We do declare, that, subject to the rules and regulations herein contained, the guidance, government and control of every workhouse, and of the officers, servants, assistants and paupers within such workhouse, shall be exercised by the guardians of the union."

By stat. 10 & 11 Vict. c. 109, s. 24, "in all cases where boards of guardians neglect to appoint a visiting committee for the purpose of visiting the workhouse of the union, or where three months shall have elapsed during which such committee shall have neglected to visit such workhouse, the poor law commissioners shall be required to appoint a visitor, not being one of the guardians, at a salary to be fixed by them, to be paid out of the general fund of the union: provided always, that the appointment of any such paid visitor shall cease at the expiration of three calendar months next after the appointment of any visiting committee by the guardians, subject nevertheless to his re-appointment in case of any repetition of such neglect of the guardians or visiting committee as aforesaid."

Admission and Disposal of Paupers.

By Gilbert's Act, 22 Geo. III. c. 83, s. 28, "every person or persons, to be sent to any house or houses to be provided under the authority of this act, shall, at the time of his or her entering such house, deliver, or cause to be delivered, to the governor thereof, or to his assistant, if any, an order, signed by one of the guardians of the poor of the parish, township, or place from which such person shall come, for the admission of such person or persons, in the form or to the effect contained in the said schedule, No. XII.; which order shall be carefully kept by the governor, and entered by him in a book to be provided for that purpose."

Admitting paupers.

Sect. 29, regulating the persons to be admitted, is repealed by 4 & 5 Will. IV. c. 76, s. 31.

Search of paupers and disposition of property.

By 11 & 12 Vict. c. 110, s. 10, upon application for relief by admission to the workhouse of any such union as aforesaid or otherwise, by any poor person professing to be a destitute wanderer or wayfarer, the master, porter, or other officer of such workhouse, or the relieving officer of such union, or overseer of any parish to whom such application for relief shall be made, may search such person, or cause him to be searched, and may take from such person any money which shall be found upon him, and shall deliver the same to the guardians, to be by them applied in aid of the common fund of the union; and every person who shall apply for relief at any workhouse, or to any relieving officer or overseer, having at the time of such application in his possession and under his immediate control any money or other property, of which, on inquiry made by the guardians or their officers, or by overseers, he shall not make correct and complete disclosure, shall be taken to be an idle and disorderly person within the meaning of the act 5 Geo. IV. c. 83, for the punishment of idle and disorderly persons and rogues and vagabonds in England, and shall be punishable and dealt with in all respects and with the like proceedings as idle and disorderly persons under the said act (*e*).

Guardians may appropriate certain property of paupers.

The 12 & 13 Vict. c. 103, s. 16, enacts, "that where any pauper shall have in his possession or belonging to him any money or valuable security for money, the guardians of the union or parish within which such pauper is chargeable may take and appropriate so much of such money or the produce of such security, or recover the same as a debt before any local court, as will reimburse the said guardians for the amount expended by them, whether on behalf of the common fund or of any parish, in the relief of such pauper, during the period of twelve months prior to such taking and appropriation, or prior to such proceeding for the recovery thereof (as the case may be); and in the event of the death of any pauper having in his possession or belonging to him any money or property, the guardians of the union or parish wherein such pauper shall die may reimburse themselves the expenses incurred by them in

(*e*) That is to say, by imprisonment with hard labour. (5 Geo. IV. c. 83, for not exceeding one calendar month s. 3.)

and about the burial of such pauper, and in and about the maintenance of such pauper at any time during the twelve months previous to the decease."

Clothing suitable to be provided by guardians.

Sect. 33 of Gilbert's Act, 22 Geo. III. c. 83, enacts, "that the guardian of the poor for any parish, township, or place, adopting the provisions of this act as aforesaid, shall provide, at the expense of such parish, township, or place, suitable and necessary clothing for the persons sent by him to such poor-house as aforesaid; and in case of his neglect so to do, the governor or one of the guardians of every such house shall make complaint thereof to some neighbouring justice of the peace, who shall summon the guardian so making neglect to appear before him to answer the same complaint, and direct him to provide such clothing as shall to such justice appear necessary; and if such guardian shall make default in providing such clothing, within ten days after such direction, it shall and may be lawful for such justice of the peace to direct the governor of such poor-house, or the guardian so making such complaint, to provide the same, and to demand from such guardian so making neglect the charges and expenses of such clothing; and in default of payment thereof, upon demand made, it shall and may be lawful for such justice or justices of the peace to levy the same, and the costs and charges attending the recovery thereof, by distress and sale of the goods and chattels of every such guardian so making default."

No lunatic, insane person, or dangerous idiot, to be detained in a workhouse more than fourteen days.

The 4 & 5 Will. IV. c. 76, s. 45, enacts, "that nothing in this act contained shall authorize the detention in any workhouse of any dangerous lunatic, insane person, or idiot, for any longer period than fourteen days; and every person wilfully detaining in any workhouse any such lunatic, insane person, or idiot, for more than fourteen days, shall be deemed guilty of a misdemeanor: provided always, that nothing herein contained shall extend to any place duly licensed for the reception of lunatics and other insane persons, or to any workhouse being also a county lunatic asylum" (*f*).

Guardians empowered to detain in-door paupers.

"The Poor Law Amendment Act, 1867" (30 & 31 Vict. c. 106), s. 22, enacts, that "when there shall be in any workhouse a poor person suffering from mental disease, or from bodily disease of an infectious or contagious character, and the medical officer of such workhouse shall upon examination report in writing that such person is not in a proper state to leave the workhouse without danger to himself or others, the guardians may direct the master to detain such person therein, or, if the guardians be not sitting, the master of the workhouse may, until the next meeting of the guardians, detain him therein, and such person shall not be discharged from such workhouse until the medical officer shall in writing certify that such discharge may take place; provided, however, that this enactment shall not prevent the removal of a lunatic to a lunatic asylum, registered hospital, or licensed house, when such removal is otherwise required by law, nor the removal of any poor person after the parent or next of kin of such person shall have given to the guardians such an undertaking as they shall deem satisfactory to provide for the removal, charge, and maintenance of such person with due care and attention while the malady continues; and this provision shall apply to every district school and district asylum, and to the managers, board of management, medical officer, superintendent, or master thereof respectively."

Separation of husband and wife.

By 13 & 14 Vict. c. 109, s. 23, "when any two persons, being husband and wife, both of whom shall be above the age of sixty years, shall be received into any workhouse, in pursuance of the provisions of the said recited act or of this act, or of any rule, order or regulation of the commissioners appointed by authority of this act, such two persons shall not be compelled to live separate and apart from each other in such workhouse."

(*f*) See as to lunatic paupers, post, Chapter XVII.

"The Poor Law Amendment Act, 1834" (4 & 5 Will. IV. c. 76), s. 19, enacts, "that no rules, orders, or regulations of the said commissioners, nor any bye-laws at present in force or to be hereafter made, shall oblige any inmate of any workhouse to attend any religious service which may be celebrated in a mode contrary to the religious principles of such inmate, nor shall authorize the education of any child in such workhouse in any religious creed other than that professed by the parents or surviving parent of such child, and to which such parents or parent shall object, or, in the case of an orphan, to which the godfather or godmother of such orphan shall so object: provided also, that it shall and may be lawful for any licensed minister of the religious persuasion of any inmate of such workhouse, at all times in the day, on the request of such inmate, to visit such workhouse for the purpose of affording religious assistance to such inmate, and also for the purpose of instructing his child or children in the principles of their religion." (See as to education, post, Chapter XIV.)

Attendance on religious service.

No inmate of a workhouse obliged to attend any religious service contrary to his religious principles, &c.

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§ 5. Discipline and Control of Paupers in the Workhouse.

The statute 43 Eliz. c. 2, s. 4, empowered a justice of the peace to send to the house of correction or common gaol such as should not employ themselves to work, "being appointed thereunto," under the provisions of that act.

The 55 Geo. III. c. 137, s. 5, reciting, that "whereas persons maintained in public workhouses sometimes refuse to work, or are guilty of drunkenness and other misbehaviour, and by the laws in being no sufficient punishment is provided for such offences;" enacts, "that in case any person or persons maintained in any public workhouse or workhouses established for the relief, maintenance, and employment of the poor, shall refuse to work at any work, occupation, or employment suited to his, her, or their age, strength, and capacity, or shall be guilty of drunkenness or other misbehaviour, every such person or persons, being thereof lawfully convicted before any justice or justices of the peace, shall thereupon by such justice or justices of the peace be committed to the common gaol or house of correction, there to remain, without bail or mainprize, for any period of time not exceeding twenty-one days, and during such time to be kept to hard labour."

Persons refusing to work and guilty of misbehaviour in workhouse may be committed.

The 54 Geo. III. c. 170, s. 7, enacts, "that it shall not be lawful for the master, governor, or other person entrusted with the superintendence of any house for the reception of poor persons, or the churchwarden, overseer, or other persons elected, constituted, or appointed, by or under the authority of any act or acts of parliament for the control or management of the poor of any district, parish, township or hamlet, to punish with any corporal punishment whatsoever any adult person or persons, under his, her, or their care or charge, for any offence or misbehaviour whatsoever; or to confine any such person or persons whatsoever, for any offence or misbehaviour, for any longer or greater space of time than twenty-four hours, or such further space of time as may be necessary, in order to have such person or persons before a justice of the peace: anything in any act or acts of parliament contained to the contrary in anywise notwithstanding."

Masters, &c. of poor-house not to punish with corporal punishment any adult, or confine him more than twenty-four hours.

And 56 Geo. III. c. 129, s. 2, enacts, "that it shall not be lawful for any governor, director, guardian, or master of any house of industry or workhouse, on any pretence, to chain, or confine by chains or manacles, any poor person of sane mind."

The sane poor not to be chained by chains or manacles.

The 50 Geo. III. c. 50, s. 4, enacts, that "if any person who shall be sent to any poor-house or workhouse shall embezzle, or wilfully waste, spoil, or damage any of the clothing, goods, or materials committed to his or her care, or shall take or carry away, without permission of the overseer of the poor or keeper of the said workhouse, any clothing,

Penalty on embezzling or wilfully damaging goods.

goods, or materials provided for the use of such poor-house, or of any of the poor therein, complaint thereof may be made upon oath to one or more justices of the peace acting for the district or division in which such parish shall be situate; and such justices are hereby authorized to hear such complaint, and upon conviction to commit the offender to the house of correction, there to be kept to hard labour for any time not exceeding two calendar months, nor less than seven days."

Power of justices to commit offenders.

Remedy against pawning goods, and apparel.

The 55 Geo. III. c. 137, s. 1, after reciting "that many persons received into public workhouses, established for the relief, maintenance, and employment of the poor, pawn and dispose of their clothes and apparel, and the goods and chattels deposited in or belonging to such workhouses; and poor persons relieved by having clothes and apparel given them by the officers of parishes, frequently pawn and sell the same; and by the laws now in force no punishment can be inflicted on them, or on the person or persons buying or receiving the same into pawn;" and making provision for the vesting of goods and chattels, provided for the use of the poor, in overseers, and for the marking of such property with a stamp (*g*), enacts, that "if any pawnbroker or other person or persons shall knowingly take in pawn, buy, exchange, or receive any goods, chattels, furniture, clothes, linen, wearing apparel, tools, utensils, materials, and things provided for the use of any of the poor who are or shall be received into the workhouse of any parish or parishes, township or townships, hamlet or hamlets, place or places, or to whom the same shall have been given by the overseers of the poor, or other such person or persons as aforesaid, appointed as aforesaid, of or for any such parish or parishes, township or townships, hamlet or hamlets, place or places, or any of them, or any of the goods or materials carried into any such workhouse or workhouses, to be wrought up, manufactured, or used by the poor there, or any of the goods or furniture of such workhouse or workhouses: or shall receive or buy any of the provisions allotted to or provided for the poor of such workhouse or workhouses, or shall be aiding or assisting therein: or if any person or persons shall cause such mark or stamp, marks or stamps as aforesaid, to be obliterated or defaced, every person so offending shall forfeit for every such offence any sum not exceeding the sum of five pounds, nor less than one pound, upon conviction thereof, either by the confession of such person or persons, or by the oath of one or more credible witness or witnesses, before any one or more of his Majesty's justices of the peace of the county, city, town, riding, or division wherein the offence or offences shall be committed; one moiety of which said penalty shall go to the informer or informers, and the other moiety shall go and be paid to the overseers of the poor of the parish or parishes, township or townships, hamlet or hamlets, place or places to which such articles or things may belong, for the use of the poor of such parish or parishes, township or townships, hamlet or hamlets, place or places; and in case any person or persons who shall be convicted as aforesaid, shall not pay such penalty or penalties upon conviction, then and in such case such justice or justices of the peace shall and may and is and are hereby required to commit such offender or offenders to the common gaol or house of correction, there to remain, without bail or mainprize, for any space of time not exceeding two calendar months; and if any person or persons shall desert or run away from any workhouse or workhouses, and carry away with him, her, or them, any clothes, linen, or other goods or things as aforesaid, such person or persons being thereof lawfully convicted, either by the confession of such party or parties, or by the oath or oaths of one or more credible witness or witnesses, before any justice or justices of the peace, shall by such justice or justices of the peace be forthwith committed to the common gaol or house of correction, there to remain, without bail or mainprize, for the

Penalty on persons buying or receiving into pawn any property provided for the poor by parish officers;

or defacing marks.

Penalty.

Application of penalty.

On nonpayment of penalty, offenders to be committed.

Persons absconding with workhouse property to be committed.

(*g*) See these provisions, post, "Vesting of Parish Property."

space of three calendar months; and in all cases such mark, stamp, or brand, on any such articles or things as aforesaid (being duly authenticated) shall be considered and taken to be sufficient evidence, without further proof, of the right of property in such overseers or other person or persons appointed as aforesaid, as the case may be: provided always, that such mark or stamp as aforesaid shall not at any time be placed on any articles of wearing apparel so as to be publicly visible on the exterior of the same "(*h*).

Mark or stamp on articles to be evidence of the right of property.

Mark not to be put on the outside of wearing apparel.

Sect. 9. If any person shall think himself aggrieved by the judgment, such person may appeal to the next quarter sessions of the peace; such person at the time of his conviction entering into a recognizance, with two sureties, conditioned personally to appear at the said sessions to try such appeal, and to abide the further judgment of the justices at such sessions; and the said justices at such sessions shall determine the causes and matters of such appeal in a summary way, and make such order therein as the said justices shall think proper; and the determination shall be final.

Appeal to the quarter sessions.

Recognizances to be entered into.

Decisions to be final.

"The Poor Law Amendment Act, 1834" (4 & 5 Will. IV. c. 76), after repealing s. 91, the previous provisions of 6 Geo. IV. c. 80, on the subject, enacts (s. 92), "that if any person shall carry, bring, or introduce, or attempt or endeavour to carry, bring, or introduce, into any workhouse, now or hereafter to be established, any spirituous or fermented liquors, without the order in writing of the master of such workhouse, it shall be lawful for the master of such workhouse, or any officer of the same acting under his direction, to apprehend or cause to be apprehended such offender, and to carry him or her before a justice of the peace, who is hereby empowered to hear and determine such offence in a summary way; and upon conviction thereof the party so offending shall forfeit and pay any sum of money not exceeding ten pounds for every such offence, as such justice may direct; and in default of payment of the penalty hereby imposed such justice may and is hereby required to commit such offender to the common gaol or house of correction for the district in which such workhouse shall be situate, for any space of time not exceeding two calendar months, unless such penalty shall be sooner paid."

Penalty on persons introducing spirituous liquors into workhouses.

Sect. 93. "And be it further enacted, that if any master of a workhouse shall order any spirituous or fermented liquor to be carried, brought, or introduced into any workhouse, except for the domestic use of himself or of any officer of the said workhouse, or their respective families, or except by and under the written authority of the surgeon of such workhouse, or of any justice visiting the same, or of the guardians of such workhouse, or in conformity with any rules, orders, or regulations of the said commissioners; or if any such master or any other officer of any workhouse shall carry, bring, or introduce into such workhouse, or sell, use, lend, or give away therein, or knowingly permit or suffer to be carried, brought, or introduced, or sold, used, lent, or given away therein, any spirituous or fermented liquor, contrary to the rules, orders, and regulations of the said commissioners; or shall punish with any corporal punishment any adult person in such workhouse, or confine any such person for any offence or misbehaviour for any longer space of

Penalty on masters of workhouses allowing use of spirituous liquors, or ill-treating poor persons, or misconducting himself.

(*h*) The statute gives the following form of conviction:—"Be it remembered that on the day of , in the year of our Lord , A. B. is duly convicted before of his Majesty's justices of the peace for the county of [*or* 'city' *or* 'liberty of ' *as the case may be*], of having [*here state the offence*] contrary to the statute in that case made and provided. Given under my hand and seal [*or* 'our hands and seals,' *as the case may be*], the day and year first above written." The act provides that such conviction shall not be quashed for want of any other form of words, nor be removed by *certiorari*, or any other writ.

time than twenty-four hours, or such further space of time as may be necessary in order to have such person carried before a justice of the peace; or shall in any way abuse or illtreat, or be guilty of any other misbehaviour, or otherwise misconduct himself towards or with respect to any poor person in such workhouse; every such master or officer of a workhouse so offending shall for every such offence, upon the complaint of the overseers or guardians of the parish or union to which such workhouse shall belong, or of any such poor person, and upon conviction of such offence before any two justices, forfeit and pay such sum of money, not being more than twenty pounds, as such justices may direct; and in default of payment of the penalty hereby imposed, such justices may and are hereby required to commit such offender to the common gaol or house of correction for the district in which such parish shall be situate for any space of time not exceeding six calendar months, unless such penalty shall be sooner paid: provided always, that if at the time when any such master or officer of a workhouse shall be so convicted of any such offence, there shall be due to him any sum of money or salary in respect of his employment as such master or officer of such workhouse, or upon any balance of account from the overseers or guardians of the parish or union to which such workhouse shall belong, it shall be lawful for such justices, upon the application of such overseers or guardians, by order in writing under their hand, to direct that such* of money, salary, or balance, so far as the same shall extend, or a sufficient part thereof, shall be retained and applied for the use of such parish or union by such overseer or guardians, in payment or part payment of any such penalty, and such order shall be a good and valid discharge to such overseers or guardians for so much money as may by such order be directed to be so retained and applied against the claim or demand of the master or other officer of such workhouse in respect of any such sum of money, salary, or balance."

Power for justices to order salaries, &c. to be stopped, and applied towards payment of penalties.

* *Sic.*

Masters to hang up copies of two preceding clauses in workhouse.

Sect. 94. "And be it further enacted, that the master of every workhouse shall cause one or more copy or copies of the two preceding clauses to be printed or fairly written, and hung up in one of the most public places in such workhouse, and renew the same from time to time, so that it always be kept fair and legible, on pain of forfeiting the sum of ten pounds for every wilful default."

Guardians, &c. may set occasional poor to work.

To check imposition the legislature has, by the 5 & 6 Vict. c. 57, s. 5, enacted, "that it shall be lawful for the guardians of any parish or union, subject always to the powers of the poor law commissioners, to prescribe a task of work to be done by any person relieved in any workhouse, in return for the food and lodging afforded to such person; but it shall not be lawful to detain any person against his will for the performance of such task of work for any time exceeding four hours from the hour of breakfast in the morning succeeding the admission of such person into the workhouse; and if any such person, while in such workhouse, refuse or neglect to perform such task of work suited to his age, strength, and capacity, or wilfully destroy or injure his own clothes, or damage any of the property of the board of guardians, he shall be deemed an idle and disorderly person within the meaning of an act passed in the fifth year of the reign of King George the Fourth, intituled "An Act for the Punishment of idle and disorderly Persons, and Rogues and Vagabonds, in that part of Great Britain called England."

Penalty for not doing work.

Committal of offenders in workhouses to the gaol of the place to which the offenders belong.

"The Poor Law Amendment Act, 1844" (7 & 8 Vict. c. 101), s. 57, enacts, "that if any person be convicted before any justice or justices of any offence committed in any workhouse, while maintained therein, or of absconding from any workhouse, and carrying away clothes or other property therefrom, and be liable to be committed for such offence to any gaol or house of correction, it shall be lawful for the justice or justices before whom such person is convicted to commit such person to the common gaol or house of correction of the county or place in which the parish is situated, to which such person at the time of the commis-

sion of the offence was chargeable, notwithstanding that such workhouse may not be situated in such county or place, and notwithstanding that such justices may not be justices of such county or place; and if such person have not goods or money within such county or place sufficient to bear the charges of himself and those who convey him, then such charges shall be defrayed at the expense of the county, place, or parish, according to the provisions of an act passed in the twenty-seventh year of the reign of King George the Second, intituled *An Act for the better securing to Constables and others the Expenses of conveying Offenders to Gaol; and for allowing the Charges of poor Persons bound to give Evidence against Felons;* provided that in cases of such conviction and committal as aforesaid all further proceedings in respect thereof may be taken; and the costs and charges of such proceedings, and for the maintenance of such offender in such gaol or house of correction, shall be payable in like manner and under the like authority as such proceedings would have been taken, or as such costs and charges would have been payable, in case the offence had been committed within the parish or place to which such offender was chargeable at the time when he committed such offence."

27 Geo. 2, c. 3.

Punishment of persons in workhouses for misconduct.

Sect. 58. "And whereas by the said act passed in the fifty-fifth year of the reign of King George the Third, it is enacted, that if any person or persons shall desert or run away from any workhouse or workhouses, and carry away with him, her, or them any clothes, linen, or other goods as aforesaid, such person or persons, being thereof lawfully convicted, either by the confession of such party or parties, or by the oath or oaths of one or more credible witness or witnesses, before any justice or justices of the peace, shall by such justice or justices of the peace be forthwith committed to the common gaol or house of correction, there to remain, without bail or mainprize, for the space of three calendar months; and it is further enacted, that in case any person or persons maintained in any public workhouse or workhouses established for the relief, maintenance, and employment of the poor shall refuse to work at any work, occupation, or employment suited to his, her, or their age, strength, and capacity, or shall be guilty of drunkenness or other misbehaviour, every such person or persons, being thereof lawfully convicted before any justice or justices of the peace, shall thereupon by such justice or justices of the peace be committed to the common gaol or house of correction, there to remain, without bail or mainprize, for any period of time not exceeding twenty-one days, and during such time to be kept to hard labour: and whereas it is desirable that justices of the peace should have a power to commit such persons as are first mentioned for a period less than three months, and such persons as are last mentioned for a period greater than twenty-one days, in cases of repeated offences; be it therefore enacted, that it shall be lawful for any justice or justices to commit any such person as is first mentioned to the common gaol or house of correction, to be kept there in the manner provided by the said recited act for any period not less than seven days nor greater than three months, and to commit any such persons as are last mentioned, in case such persons have been before convicted of a like offence, to the common gaol or house of correction, in manner provided by the said act, for any period not exceeding forty-two days."

Persons committed to prison for offences against 55 Geo. 3, c. 137, s. 2, and 7 & 8 Vict. c. 101, ss. 57, 58, may be kept to hard labour.

By 13 & 14 Vict. c. 101, s. 8, reciting that by 55 Geo. III. c. 137, s. 2, and 7 & 8 Vict. c. 101, ss. 57, 58, power is given to punish by imprisonment any person or persons deserting, absconding, or running away from any workhouse or workhouses, and carrying away with him, her or them any clothes, linen or other goods in the said act of the 55 Geo. III. enumerated and described; it is enacted, "that in the case of every such offence it shall be lawful for the convicting justice or justices, if he or they shall so think fit, to order and adjudge that the person or persons convicted shall, during the period of imprisonment by law authorized (*i.e.* not less than seven days, nor greater than three

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months (sec 7 & 8 Vict. c. 101, s. 58)) be kept to hard labour." The committal may be to the common gaol or house of correction of the county or place wherein the parish to which the person convicted shall be chargeable at the time of conviction (s. 57). The costs of such proceedings are payable at the expense of the county, place or parish, according to the provisions of the 27 Geo. II. c. 3, provided that in cases of such conviction and committal as aforesaid all further proceedings in respect thereof may be taken; and the costs and charges of such proceedings, and for the maintenance of such offender in such gaol or house of correction, shall be payable in like manner and under the like authority as such proceedings would have been taken, or as such costs and charges would have been payable, in case the offence had been committed within the parish or place to which such offender was chargeable at the time when he committed such offence. (*Ib.*)

As to assaults upon officers of workhouses, &c., see ante, p. 75; and as to the burial of paupers, see post, Chapter XVI.

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CHAPTER XII.

Of the Administration of Relief to the Poor—(*continued*).

Relief of the Poor out of the Workhouse.

§ 1. General Provisions respecting Out-door Relief.

The provisions of "The Poor Law Amendment Act, 1834" (4 & 5 Will. IV. c. 76), on the subject of out-door relief, have been already referred to in connection with the former state of the law (*i*).

Justices may order out-door relief to aged and infirm persons wholly unable to work.

Sect. 27 of that act enacts, "that, in any union which may be formed under this act, it shall be lawful for any two of his Majesty's justices of the peace usually acting for the district wherein such union may be situated, at their just and proper discretion, to direct, by order under their hands and seals, that relief shall be given to any adult person who shall, from old age or infirmity of body, be wholly unable to work, without requiring that such person shall reside in any workhouse: provided always, that one of such justices shall certify in such order, of his own knowledge, that such person is wholly unable to work, as aforesaid; and provided further, that such person shall be lawfully entitled to relief in such union, and shall desire to receive the same out of a workhouse" (*k*).

(*i*) See ante, pp. 15, 134.

(*k*) Where a union consisted of twenty-four townships, of which three only were in the borough of D., two justices acting in and for the borough of D. were held not to be justices "usually acting for the district in which the union was situate," within 4 & 5 Will. IV. c. 76, s. 27, so as to be authorized to make an order for out-door relief. (*R.* v. *Durham Union* (*Guardians of*), 4 New Sess. Cas. 437.) See now 30 & 31 Vict. c. 106, s. 27, ante, p. 97.

Sect. 52 recites, that "whereas a practice has obtained of giving relief to persons or their families, who at the time of applying for or receiving such relief were wholly or partially in the employment of individuals, and the relief of the able-bodied and their families is in many places administered in modes productive of evil in other respects; and whereas difficulty may arise in case any immediate and universal remedy is attempted to be applied in the matters aforesaid;" and enacts, "that from and after the passing of this act it shall be lawful for the said commissioners, by such rules, orders or regulations as they may think fit, to declare to what extent and for what period the relief to be given to able-bodied persons or to their families in any particular parish or union may be administered out of the workhouse of such parish or union, by payments in money, or with food or clothing in kind, or partly in kind and partly in money, and in what proportions, to what persons or class of persons, at what times and places, on what conditions, and in what manner such out-door relief may be afforded; and all relief which shall be given by any overseer, guardian or other person having the control or distribution of the funds of such parish or union, contrary to such orders or regulations, shall be, and the same is hereby declared to be unlawful, and shall be disallowed in the accounts of the person giving the same, subject to the exceptions hereinafter mentioned: provided always, that in case the overseers or guardians of any parish or union to which such orders or regulations shall be addressed or directed shall, upon consideration of the special circumstances of such parish or union, or of any person or class of persons therein, be of opinion that the application and enforcing of such orders or regulations, or of any part thereof, at the time or in the manner prescribed by the said commissioners, would be inexpedient, it shall be lawful for such overseers or guardians to delay the operation of such orders or regulations, or of any part thereof, for any period not exceeding the space of thirty days, to be reckoned from the day of the receipt of such orders or regulations; and such overseers or guardians shall, twenty days at the least before the expiration of such thirty days, make a statement and report of such special circumstances to the said commissioners; and all relief which shall be given by such overseers or guardians, before an answer to such report shall have been returned by the said commissioners, if otherwise lawful, shall not be deemed unlawful, although the same shall have been given contrary to such orders or regulations, or any of them; but in case the said commissioners shall disapprove of such delay, or think that for the future such orders or regulations ought to come into operation, notwithstanding the special circumstances alleged by such overseer or guardian, it shall be lawful for the said commissioners, by a peremptory order, to direct that from and after a day to be fixed thereby such orders and regulations, or such parts or modifications thereof as they may think expedient and proper, shall be enforced and observed by such overseers and guardians; and if any allowance be made or relief given by such overseers or guardians after the said last-mentioned period, contrary to any such last-mentioned order, the amount of the relief or allowance so given shall be disallowed in the accounts of the party giving the same: provided also, that a quarterly report of all such cases as shall occur in any quarter shall, at the end of every such quarter, be laid by the said commissioners before one of his Majesty's principal secretaries of state: provided also, that in case the overseers or guardians of any parish or union in which such orders or regulations shall be in force shall depart from them or any of them in any particular instance or instances of emergency, and shall within fifteen days after every such departure report the same and the grounds thereof to the said commissioners, and the said commissioners shall approve of such departure, or if the relief so given shall have been given in food, temporary lodging, or medicine, and shall have been so reported as aforesaid, then and in either of such cases the relief granted by such overseers or guardians, if otherwise lawful, shall not be unlawful or subject to be disallowed."

Commissioners to regulate the relief to able-bodied paupers and their families out of the workhouse.

Relief contrary to their regulations to be disallowed.

But overseers may delay the operation of such regulations under special circumstances, and make report thereof to commissioners.

If commissioners disapprove of delay, they may fix a day from which all such relief shall be disallowed.

Cases of emergency.

The circumstances under which widows may be relieved out of the parish or union in which they are resident have been mentioned elsewhere (*l*).

Persons relieved out of the workhouse refusing to perform task of work rendered liable to be punished under the 5 Geo. 4, c. 83.

"The Poor Law Amendment Act of 1866" (29 & 30 Vict. c. 113), s. 15, enacts, that "when the guardians of any union or parish shall prescribe a task of work to be performed by any poor person, to whom, or to whose wife, if he be liable to maintain such wife, or child, whether legitimate or illegitimate, under the age of sixteen, relief shall have been lawfully granted by such guardians out of the workhouse, such task being suited to the age, sex, strength and capacity of such person, and being of a nature and description of which the poor law board shall have previously approved (*m*), and such person shall refuse or wilfully neglect to perform such task, or shall wilfully destroy or damage any of the tools, materials, or other property belonging to the said guardians, he shall be deemed to be an idle and disorderly person within the meaning of the eighty-third chapter of the statute of the fifth year of King George the Fourth, and shall be liable to be prosecuted and punished in the manner therein provided in respect of idle and disorderly persons; and the fifty-ninth section of the one hundred and first chapter of the statute of the seventh and eighth years of her present Majesty (*n*) shall apply to any such prosecution."

The overseers are required to keep a register and account of all persons receiving relief out of the workhouse. (4 & 5 Will. IV. c. 76, s. 55 (*o*).)

Education.

As to the education of children in the receipt of out-door relief, see post, p. 205.

Maintenance of Paupers out of the Workhouse under Gilbert's Act.

22 Geo. 3, c. 83. Persons not able to get employment, may be provided therewith by guardians.

Sect. 32 of Gilbert's Act (22 Geo. III. c. 83), enacts, "that where there shall be, in any parish, township or place, any poor person who shall be able and willing to work, but who cannot get employment, it shall and may be lawful for the guardian of the poor of such parish, township or place, and he is hereby required, on application made to him by or on behalf of such poor person, to agree for the labour of such poor person or persons, at any work or employment suited to his or her strength and capacity, in any parish, township or place near the place of his or her residence, and to maintain, or cause such person or persons to be properly maintained, lodged and provided for until such employment shall be procured, and during the time of such work, and to receive the money to be earned by such work or labour, and apply it in such maintenance, as far as the same will go, and make up the deficiency, if any; and if the same shall happen to exceed the money expended in such maintenance, to account for the surplus, which shall afterwards, within one calendar month, be given to such poor person or persons who shall have earned such money, if no further expenses shall be then incurred on his or her account to exhaust the same. And in case such poor person or persons shall refuse to work, or run away from such work or employment, complaint shall be made thereof by the guardian to some justice or justices of the peace in or near the said parish, township or place; who shall inquire into the same upon oath, and on conviction punish such offender or offenders, by committing him, her, or them to the house of correction, there to be kept to hard labour for any time not exceeding three calendar months, nor less than one calendar month."

Out-door Relief in Parishes and Unions governed by Local Acts.

Power for guardians of parishes,

The 11 & 12 Vict. c. 91, s. 12, recites, "that in certain parishes and

(*l*) See ante, p. 129.

(*m*) The poor law board, acting on the principle of the statute of Elizabeth, has from time to time issued what is described as a "supplemental out-door labour test order" to various unions. See Mr. Glen's Poor Law Orders, and observations on this subject.

(*n*) See this section, post.

(*o*) See the section, ante, p. 138.

unions wherein the relief of the poor is administered by guardians or other competent authorities under the provisions of particular statutes or local acts applicable thereto, doubts have been entertained whether any poor person can be relieved by such guardians or other authorities out of the workhouses belonging to such parishes and unions respectively, and it is expedient to remove such doubts, and to give authority for such relief out of the workhouse," and enacts, "that in all cases where the relief of the poor is administered in any parish or union under the provisions of any local act, it shall be lawful for the guardians, or other competent authority administering the relief to the poor in any such parish or union, if they think fit, to administer such relief in all respects in like manner and with the like powers and authorities as any board of guardians of a union formed under the provisions of the act passed in the fifth year of the reign of his late Majesty aforesaid, is now or shall hereafter be authorized to do; and all relief heretofore granted by such guardians or other authority shall, if otherwise lawfully granted, be held lawful for all purposes, although the same shall have been granted out of the workhouse of such parish or union, as the case may be, and the costs and charges thereof shall not be disallowed by any auditor, justice or other competent authority in that behalf, on the ground that the same was granted out of the workhouse: provided always, that the cost of all such relief so given or to be given shall be charged among the parishes in the same union, in like manner and in like proportion as the relief heretofore or hereafter to be given in the workhouse of such parish or union is now or shall hereafter be chargeable."

&c., under local acts, to grant out-door relief, in the same manner as in unions formed under 4 & 5 Will. 4, c. 76.

§ 2. RELIEF BY LOAN.

56 Geo. III. c. 12, s. 29, after reciting, that it is expedient to discourage that reliance upon the poor's rates which frequently induces artisans, labourers, and others, to squander away earnings which would, with suitable care, have afforded sufficient means for the support of their families, enacts, "that whenever it shall appear to the justices, or to the general or select vestry, or to such guardians, governors or directors as aforesaid, or to the overseers of the poor, to whom application shall be made for relief for any poor person, that he might, but for his extravagance, neglect or wilful misconduct, have been able to maintain himself, or to support his family (as the case may be), it shall be lawful for the overseers of the poor (by the direction of the justices, or of the general or select vestry, or of such guardians, governors or directors, where application shall have been made to them respectively) *to advance money weekly*, or otherwise, as may be requisite, to the person so applying, by way of loan only, and to take his receipt for, and engagement to repay every sum to be so advanced (for which no stamp duty shall be required); and it shall be lawful for any two justices, upon the application (within one year after any such loan or loans) of one or more of the overseers of the poor for the time being of the parish, to summon the

Overseers empowered, in certain cases, by direction of justices, &c., to give relief by way of loan only (*p*).

(*p*) It is stated in the Poor Law Report, p. 333: "From nearly every district complaints were received that large classes of persons who obtained, during particular seasons, such wages as would enable them to maintain themselves and families until the return of their season of work, and provide by insurance against sickness and other casualties, spend the whole of their earnings as fast as they receive them, and when out of work throw themselves and their families on the parish, and remain chargeable until the period of high wages returns. The alternation of dissipation and privation, to which such persons have become habituated, renders it probable that, even under an improved system of administration, many of them would endure the most rigid workhouse discipline during the winter, to gain freedom from self-restraint in spring, summer and autumn."

person to whom any money shall have been so advanced; and if, upon examination by such justices into his circumstances, it shall appear to them that such person is able, by weekly instalments or otherwise, to repay the whole or any part of the money so advanced to him, and for which he shall have given any such receipt and engagement, it shall be lawful for such justices to make an order under their hands and seals for the repayment of the whole or of any part of such money, at such time and times, and in such proportions and manner as they shall see fit; and upon every default of payment, by their warrant to commit such person to the common gaol or house of correction, for any time not exceeding three calendar months, unless the sum and sums which shall be due and payable by virtue of such order shall be sooner paid."

Such relief as commissioners may direct to be considered as loan.

"The Poor Law Amendment Act, 1834" (4 & 5 Will. IV. c. 76), s. 58, enacts, "that from and after the passing of this act, any relief, or the cost price thereof, which shall be given to or on account of any poor person above the age of twenty-one, or to his wife, or any part of his family under the age of sixteen, and which the said commissioners shall by any rule, order or regulation declare or direct to be given or considered as given by way of loan, and whether any receipt for such relief, or engagement to repay the same, or the cost price thereof, or any part thereof, shall have been given or not by the person to or on account of whom the same shall have been so given, shall be considered and the same is hereby declared to be a loan to such poor person."

Power to justices to attach wages in hands of master or employer.

Sect. 59. "And be it further enacted, that in all cases where any relief shall have been given by way of loan, or where any relief, or the cost price thereof, shall be treated as a loan, under the rules, orders and regulations of the said commissioners, or the provisions of this act, it shall be lawful for any justice, upon the application of the overseers or guardians of the parish or union providing such relief, and upon proof of the same having been given to or on account of any such person, his wife or family, as aforesaid, and of the same, or any part thereof, still remaining due, to issue a summons, requiring such person, as well as the master or employer of such person, or some person on his behalf, to appear before any two justices, at a time and place to be named in such summons, to show cause why any wages due, or which may from time to time become due, from such master or employer, should not be paid over, in whole or in part, to such overseers or guardians; and if no sufficient cause be shown to the contrary, or if such person, or some one on his behalf, shall not appear on the return of such summons, then the said justices shall, by order under their hands, direct the master or employer for the time being, from whom any wages shall be due or from time to time become due or payable to such poor person, to pay, either in one sum, or by such weekly or other instalments as the said justices shall in their discretion think fit, taking into consideration the circumstances of such poor person and his family, out of such wages, to such overseers or guardians, the amount of such relief, or so much thereof as shall from time to time be due or unpaid; and the payment to and receipt of any such overseer or guardian shall be a good discharge to such master or employer for so much of any such wages as shall be so paid by virtue of any such order; and if any such master or employer shall refuse or neglect to pay to the overseer or guardian producing any such order the money thereby directed to be paid, according to the terms of such order, and at the periods thereby fixed for such payment, the same may be levied and recovered, and the payment thereof from time to time enforced against such master or employer, in such and the like manner as penalties and forfeitures are recoverable under this act."

Mode of proceeding against masters for recovery thereof.

Relief advanced by way of loan may be recovered in county court, &c.

The statute 11 & 12 Vict. c. 110, s. 8, enacts, that "all relief to be granted by the guardians to any pauper upon loan, and which shall be chargeable to the common fund of the union, or to any parish therein, may be recoverable in the county court, or other court for the recovery of small debts for the district, wherein the union or the major part thereof

shall be comprised, on the plaint of the said guardians, who may apply and be heard in such court by any officer appointed by them for such purpose, in manner prescribed by the statutes enabling them to appoint officers to act for them: provided nevertheless, that the remedy already provided by law, for the recovery of the relief granted on loan, shall be in force and applicable to the relief so chargeable to the common fund as aforesaid."

§ 3. PROVIDING LAND FOR THE POOR.

To facilitate the employment of the poor, overseers have been authorized under various statutes to take *land*.

Power to inclose waste land.

Gilbert's Act, 22 Geo. III. c. 83, s. 27, in order to encourage the salutary and benevolent purposes of the act, and to afford better accommodations for the poor at poor-houses, enacts, that "it shall and may be lawful for the guardians of the poor where any such poor-house shall be provided, purchased or agreed to be erected, to inclose from any waste or common land or ground lying near or adjoining thereto, with the consent and approbation of the lord of the manor and the major part in value of the freeholders or persons having right of common thereupon, signified under their hands and seals, any part or portion of such waste or common land, not exceeding ten acres, for the purpose of building upon, or occupying, cultivating and improving the same, for the use and benefit of such poor-house and the poor persons within the parish, township or place where the same shall be, or within the parishes, townships or places which shall be united therewith for the purposes of this act."

Overseers to provide *land* for the employment of the poor.

The 59 Geo. III. c. 12, s. 12, after reciting, that "whereas by an act passed in the forty-third year of the reign of Queen Elizabeth, the churchwardens and overseers of the poor are directed to set to work certain persons therein described: and whereas, by the laws now in force, sufficient powers are not given to the churchwardens and overseers, to enable them to keep such persons fully and constantly employed;" enacts, "that it shall be lawful for the churchwardens and overseers of the poor of any parish, with the consent of the inhabitants thereof in vestry assembled, to take into their hands any land or ground which shall belong to such parish, or to the churchwardens and overseers of the poor of such parish, or to the poor thereof, or to purchase, or to hire and take on lease for and on account of the parish, any suitable portion or portions of land within or near to such parish, not exceeding *twenty acres* in the whole (*q*); and to employ and set to work in the cultivation of such land, on account of the parish, any such persons as by law they are directed to set to work, and to pay to such of the poor persons so employed as shall not be supported by the parish, reasonable wages for their work; and the poor persons so employed shall have such and the like remedies for the recovery of their wages, and shall be subject to such and the like punishment for misbehaviour in their employment, as other labourers in husbandry are by law entitled and subject to."

Overseers may let land.

Sect. 13 enacts, "that for the promotion of industry among the poor, it shall be lawful for the churchwardens and overseers of the poor of any parish, with the consent of the inhabitants in vestry assembled, to let any portion and portions of such parish land as aforesaid, or of the land to be so purchased or taken on account of the parish, to any poor and industrious inhabitant of the parish, to be by him or her occupied and cultivated on his or her own account, and for his or her own benefit, at such reasonable rent, and for such term, as shall by the inhabitants in vestry be fixed and determined."

(*q*) Extended to *fifty* acres by 1 & 2 Will. IV. c. 42, s. 1, post, p. 177.

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1 & 2 Will. 4, c. 42.

Churchwardens, &c. may provide land to a certain extent for employment.

Churchwardens, &c. may inclose part of waste lands for cultivation with consent.

Power to hire lands extended to guardians, &c. 22 Geo. 3, c. 83.

Provisions of recited act extended to lands, hired, &c. under this act.

No settlement to be gained by lands hired.

Power to inclose fifty acres of forest lands for the poor.

Allotments under inclosure acts.

The statute 1 & 2 Will. IV. c. 42, s. 1, reciting, that the limitation to twenty acres in the 59 Geo. III. c. 12, had been found inconvenient in many parishes, empowered the churchwardens and overseers of the poor of any parish "to hire and take on lease, for the employment of the poor of such parish, any suitable portion or portions of land within or near to such parish, to an extent not exceeding fifty acres."

Sect. 2 enacts, "that, in order to extend the salutary and benevolent purposes of this act, it shall and may be lawful for the churchwardens and overseers of the poor of any parish to inclose from any waste or common land or ground lying in or near to such parish, with the consent in writing of the lord of the manor and the major part in value of the persons having right of common thereupon, signified under their hands and seals, any part or portion of such waste or common land not exceeding fifty acres, and to cultivate and improve the same for the use and benefit of such parish, and the poor persons within the same, or to let any part or parts of the same to any poor and industrious inhabitant or inhabitants of such parish, to be by him or them occupied and cultivated on his or their own account."

Sect. 3 enacts, that the powers and authorities thereby given to churchwardens and overseers of the poor shall extend to and may be exercised by the guardians of the poor of any parishes or places which are or may be incorporated or united under the 22 Geo. III. c. 83, or under or by virtue of any local act or acts, and by the overseers of all townships, villages and places having separate overseers, and maintaining their poor separately.

Sect. 4. "The clauses, powers and authorities, regulations, provisions and directions, in and by the said recited act (*r*) given, contained and made with respect to the providing of land for the employment of the poor, or to the cultivation, management or disposition thereof, or to the poor persons employed thereon or renting any portion thereof, shall, so far as the same are applicable, be deemed and taken to extend to any land which shall be provided under this act, and to the poor persons employed thereon or renting any portion thereof respectively."

Sect. 5 provides that no settlement shall be gained by renting or occupying or paying parochial rates for land under either act (*s*).

By 1 & 2 Will. IV. c. 59, s. 1, the overseer may inclose from any forest or waste lands belonging to the crown, lying in or near the parish, with the consent of the lord treasurer or the commissioners of the treasury, not exceeding fifty acres, for the purpose of cultivating and improving the same for the use and benefit of such parish, and the poor persons within the same (*t*).

By the 2 Will. IV. c. 42, allotments made for the poor in parishes inclosed under an act of parliament, may, with the consent of the trustees of the allotment and the overseers, be let to industrious cottagers. Each

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(*r*) 59 Geo. III. c. 12.

(*s*) The plaintiffs, overseers, enclosed some waste of a manor for employing the poor. The defendant pulled down the fence, under an alleged right of common, which the jury negatived. The plaintiffs failed to prove the consent of the lord, and on a motion for a nonsuit on this ground, *Tindal*, C. J., said, "The plaintiffs enclose, cultivate, and allot portions of land; neither the lord of the manor nor the copyholder interfere; the defendant is a stranger, and as against him the plaintiffs are entitled to maintain this action on their mere possession." (*Matson* v. *Cook*, 4 Bing. N. C. 392.)

(*t*) In 1832 a temporary act was passed for the better employment of the agricultural labourers, by which agreements made in vestry by a majority of three-fourths of the ratepayers, and approved by the justices at the petty sessions, were to be binding on the parish; and it was enacted, that the overseers should not expend any money raised for the relief of the poor in the employment of any person in any work whatever. The statute continued in force till the 25th day of March, 1834.

portion to be not less than one quarter of an acre, and not exceeding one acre. The statute makes provision about the mode and time of letting, and the recovery of the rent or possession of the land, and prohibits the erection of habitations, and it directs that the rent shall be applied in the purchase of fuel, to be distributed in the winter season among the poor parishioners legally settled and resident in or near the parish. There is a further power for the vestry to exchange such allotments for land more favourably situated.

The act provided (sect. 10), "that no habitations shall be erected on the portions of land demised under this act, either at the expense of the parish or by the individuals renting the same."

Sect. 11 recites the 1 & 2 Will. IV. cc. 42 and 59 (supra), and enacts, "that in any parish where such inclosure shall exist or shall hereafter take place, or where land shall in any other manner be found appropriated for the general benefit of the poor of any parish, then and in such cases the powers and provisions of this act shall be held to apply in so far as the same may be found applicable."

Power to overseers to take waste or forest lands extended to guardians, &c.

The statute 5 & 6 Will. IV. c. 69, s. 4, enacts, "that all the powers and authorities in and by an act passed in the twenty-second year of the reign of King George the Third, intituled 'An Act for the better Relief and Employment of the Poor,' given to guardians of the poor for or relating to the inclosing of any part or portion of waste or common land as therein mentioned; and all powers and authorities in and by an act passed in the fifty-ninth year of the same reign, intituled 'An Act to amend the Laws for the Relief of the Poor,' given to churchwardens and overseers of the poor for taking land or ground into their hands, and for purchasing, hiring, and taking on lease any land; and all the powers and authorities contained in an act passed in the first and second years of the reign of his present Majesty, intituled 'An Act to amend an Act of the fifty-ninth year of his Majesty King George the Third, for the Relief and Employment of the Poor;' and in a certain other act passed in the first and second years of the reign of his present Majesty, intituled 'An Act to enable Churchwardens and Overseers to inclose Land belonging to the Crown for the benefit of poor Persons residing in the Parish in which such Crown Land shall be situate;' and in a certain other act passed in the second year of the reign of his present Majesty, intituled 'An Act to authorize (in parishes inclosed under any Act of Parliament) the letting of the Poor Allotments in small portions to industrious Cottagers;' shall in future be exercised (under the control, and subject to the rules, orders, and regulations of the poor law commissioners), by the overseers of the poor in any parish not under the management of a board of guardians, and by the guardians of the poor of any union or parish formed or established by virtue of any statute or local act; and all the aforesaid powers and authorities relating to the inclosing, purchasing, hiring, or taking any waste, common, or other land, for the purpose or purposes in the said acts mentioned, shall extend and apply to and may be so exercised as aforesaid by the said overseers and guardians for the purpose of being used in the site of a workhouse, or of being occupied with a workhouse, or for any other of the purposes of the said recited act passed in the fourth and fifth years of the reign of his present Majesty."

22 Geo. 3, c. 83.

59 Geo. 3, c. 12.

1 & 2 Will. 4, c. 42.

1 & 2 Will. 4, c. 59.

2 Will. 4, c. 42.

Powers given to justices to deliver possession of parish houses, &c. to churchwardens and overseers, extended to property of unions, &c.

Sect. 5. "The powers and authorities given by the said act of the fifty-ninth year of King George the Third, and by the said act of the second year of the present reign, to justices of the peace to cause possession of parish houses and lands and portions of land to be delivered to the churchwardens and overseers of the poor, and any other auxiliary powers or provisions in the said acts or other acts contained in relation thereto, shall extend to and shall be exercised by such justices in respect of any houses and lands and portions of land which are or may be vested in or under the management or control of the guardians of the poor of any union or parish, in the same manner as if the name of those officers had been in-

serted in the said acts instead of the names of the churchwardens and overseers of the poor."

Guardians may make temporary hirings without an order under seal.

"The Poor Law Amendment Act, 1867" (30 & 31 Vict. c. 106), s. 13, enacts, that the "guardians may, with the approval of the poor law board, hire or take on lease, temporarily or for a term of years not exceeding five, any land or buildings for the purpose of the relief or employment of the poor and the use of the guardians or their officers, without any order of the said board under seal."

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§ 4. EMIGRATION.

Power to owners and ratepayers to raise money on security of rates for purposes of emigration.

"The Poor Law Amendment Act, 1834," 4 & 5 Will. IV. c. 76, s. 62, enacts, "that it shall and may be lawful for the ratepayers in any parish, and such of the owners of property therein as shall in manner hereinbefore mentioned have required their names to be entered in the rate books of such parishes respectively as entitled to vote as owners, assembled at a meeting to be duly convened and held for the purpose, after public notice of the time and place of holding such meeting, and the purpose for which the same is intended to be held, shall have been given in like manner as notices of vestry meetings are published and given, to direct that such sum or sums of money, not exceeding half the average yearly rate for the three preceding years, as the said owners and ratepayers so assembled at such meeting may think proper, shall be raised or borrowed as a fund, or in aid of any fund or contribution for defraying the expenses of the emigration of poor persons having settlements in such parish, and willing to emigrate, to be paid out of or charged upon the rates raised or to be raised for the relief of the poor in such parish, and to be applied under and according to such rules, orders, and regulations as the said commissioners shall in that behalf direct: provided always, that no such direction for raising money for such purpose as aforesaid shall have any force or effect unless and until confirmed by the said commissioners, and that the time to be limited for the repayment of any sum so charged on such rates as aforesaid shall in no case exceed the period of five years from the time of borrowing the same: provided also, that all sums of money so raised as last hereinbefore mentioned, and advanced by way of loan, for the purposes of emigration, or such proportion thereof as the said commissioners shall by any rule, order, or regulation from time to time direct, shall be recoverable against any such person, being above the age of twenty-one years, who or whose family, or any part thereof, having consented to emigrate, shall refuse to emigrate after such expenses shall have been so incurred, or having emigrated shall return, in such and the like manner as is hereinbefore provided with respect to relief, or the cost price of relief, given or considered to be given by way of loan to any person, his wife or family."

The overseers of a parish or guardians of a union may apply for an advance of public money upon security of the rates, for the purposes of such emigration (4 & 5 Will. IV. c. 76, s. 63) (*u*).

Guardians to apply money raised for emigration.

The statute 7 & 8 Vict. c. 101, s. 29, enacts, "that the guardians of any parish or union constituted by the said commissioners shall apply all money raised or borrowed for the purpose of defraying the expenses of emigration in such parish or in any parish within such union, subject to the conditions and restrictions imposed by the said first-recited act" (4 & 5 Will. IV. c. 76).

Emigration.

By 11 & 12 Vict. c. 110, s. 5, "the guardians of any union or parish may, with the order of the said commissioners and in conformity with such regulations as they shall make, procure or assist in procuring the

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(*u*) See the section fully, ante, p. 153.

emigration of any poor person rendered irremovable by virtue of the provisions of the said last-mentioned act, and chargeable, or who would, if relieved, be chargeable upon the common fund of such union, or in the case of any parish not comprised in a union, who may, though not settled therein, be irremovable, as aforesaid, therefrom, and such guardians shall, in the case of a union, charge the costs and expenses incurred in such emigration upon the common fund, and in the case of a parish not in a union upon the monies in their hand, for the relief of the poor."

Guardians may expend limited sum for purposes of emigration without a previous vestry meeting.

By 12 & 13 Vict. c. 103, s. 20, "the guardians of any union, or of any separate parish for which a board of guardians is or shall be established, may expend, with the order and subject to the rules and regulations of the poor law board, but not otherwise, any sum of money not exceeding 10*l.* for each person, in and about the emigration of poor persons having settlements in such parish, or in any parish in such union respectively, without the necessity of the ratepayers and owners of property therein meeting and giving their consent (as required by the 5 & 6 Will. IV. c. 76) to such expenditure, and such guardians shall charge the same to the parish of the settlement in every case where such poor person resided therein or was removable thereto at the time of the emigration: provided always, that the guardian, or (if more than one) a majority of the guardians of such last-mentioned parish shall express his or their concurrence in writing in the resolution of the board of guardians for such expenditure, and that such written concurrence shall be transmitted by the clerk of the union in communicating the resolution to the poor law board: provided also, that the aggregate amount of the monies expended in the course of any one year in and about the emigration of such poor persons shall not exceed one-half the average yearly poor-rate raised in the said parish for the three preceding years."

Emigration of orphans and deserted children.

The 13 & 14 Vict. c. 101, s. 4, reciting 4 & 5 Will. IV. c. 76, s. 62, and 12 & 13 Vict. c. 103, s. 20, enacts, "that it shall be lawful for the guardians of any union or parish, in like manner and subject to the same regulations, limitations and restrictions as are contained in the said last-mentioned act, but with the consent in writing of the guardian or the majority of the guardians of the parish of the chargeability in place of the parish of the settlement, transmitted as therein specified, to expend money in and about the emigration of any poor orphan or deserted child under the age of sixteen years having no settlement, or the place of whose settlement shall not be known, who may be chargeable to some parish in their union or to their parish respectively, and such guardians shall charge the expense so incurred to the same parish to which such orphan or deserted child was chargeable at the time of the emigration; and where any such orphan or deserted child shall be chargeable to the common fund of any union, the guardians of such union shall have the same powers (subject to the same conditions) to procure or assist in procuring the emigration of any such last-mentioned orphan or deserted child as they have with regard to poor persons rendered irremovable by 9 & 10 Vict. c. 66: provided always, that no emigration of any such orphan or deserted child, under any of the above-mentioned powers, shall take place until such orphan or deserted child shall have consented thereto before the justices assembled in petty sessions holden in or near to the union or parish the guardians whereof propose to procure such emigration, and a certificate of such consent under the hands of two of the justices present thereat shall have been transmitted to the poor law board."

Emigration money how disposed of.

"The Poor Law Amendment Act of 1866" (29 & 30 Vict. c. 13), sect. 9, enacts, that "where any sum of money has been lawfully raised or borrowed for the purpose of the emigration of poor persons, and the same shall not have been wholly expended for such purpose, the poor law board may, upon application from the overseers of the parish for whose use the sum was raised or borrowed, by their order under seal, direct

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the unexpended amount of such sum, where it has not been raised by borrowing, to be applied in aid of the current rate, and where it has been borrowed to be applied in reduction of the balance of the loan, or in aid of the current rate, as the case may require."

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CHAPTER XIII.

Of the Administration of Relief to the Poor—(*continued*).

Special Relief in particular Places.

§ 1. ASYLUMS FOR HOUSELESS POOR IN CERTAIN LARGE TOWNS.
§ 2. ASYLUMS AND DISPENSARIES IN THE METROPOLIS.

§ 1. ASYLUMS FOR HOUSELESS POOR IN CERTAIN LARGE TOWNS.

Districts for providing asylums for houseless poor may be formed in the towns specified in schedule (B).

"THE Poor Law Amendment Act, 1844" (7 & 8 Vict. c. 101), sect. 41, reciting, that "it is expedient that more effectual means should be provided for the temporary relief of poor persons found destitute and without lodging within the district of the metropolitan police, or the city of London, and the city, towns and boroughs named in the schedule annexed to this act, and for avoiding the introduction of infectious disease, by the reception of such poor persons into the workhouses established for the ordinary relief of the poor within such districts and places," enacts, "that it shall be lawful for the said commissioners, as and when they may see fit, by order under their hands and seal, to declare so many parishes or unions, or parishes and unions, any part of which may be within the district of the metropolitan police, or the city of London, or within the limits respectively of the city, towns or boroughs named in the schedule marked (B) annexed to this act, as such limits are described in an act passed in the third year of the reign of King William the Fourth, 'to settle and describe the Division of Counties, and the Limits of Cities and Boroughs, in England and Wales, so far as respects the Election of Members to serve in Parliament' (*x*), to be combined into districts for the purpose of providing and managing asylums for the temporary relief and setting to work therein of destitute houseless poor who are not charged with any offence, and who may apply for relief, or become chargeable to the poor-rates within any such parish or union."

The cities, towns and boroughs comprised in schedule (B) are "Liverpool, Manchester, Bristol, Leeds and Birmingham."

After providing for the constitution of the board by election from amongst the ratepayers, and conferring powers upon them, and for the payment of contributions by the parishes and unions included in the district (*y*), the act contains the following clause relating to the expenses of the asylums:—Sect. 48. "The expenses incurred by every such district board in the purchase or hire of any building or buildings, or in

Distribution of charges for asylums.

(*x*) 2 & 3 Will. IV. c. 64.

(*y*) 7 & 8 Vict. c. 101, ss. 42—46. As these provisions also relate to school districts, the sections are given at length under the head of "EDUCATION OF POOR CHILDREN," post, Chap. XIV., p. 199—202.

erecting, repairing, adding to or fitting up any building as an asylum, and in the purchase of utensils and materials for the employment of the inmates of such asylum, and other objects and things necessary for the relief of such inmates, and the salaries of the officers and servants of the establishment, and all other expenses incurred by such district board in the relief of the poor, or in the management of such asylum, or incidental to the discharge of the duties of such district board, shall be charged by such district board upon the parishes or unions, or parishes and unions, comprised in such district, in proportion to the annual value of messuages, lands, tenements and hereditaments upon which such parishes and the parishes combined in such unions are respectively assessed to the county or borough rate, or other rate in the nature of a county or borough rate; and where any parish or place comprised in such district does not contribute in respect of the whole thereof to any county or borough rate, the said expenses shall be paid by such parish or place in proportion to the net annual value of all the property therein assessed to the rates for the relief of the poor; and any information necessary for the distribution of such charge shall be furnished, on demand of such district board or of the said commissioners, by every parish officer, and by every clerk of the peace, town clerk or other like officer of any county, city, town or borough, or other place raising rates in the nature of county or borough rates."

Sect. 49 relates to the appointment of auditors (*z*).

Guardians may visit and inspect asylums.

And by sect. 50, "every guardian of every union or parish included in any such district formed for the maintenance of an asylum shall at all reasonable times be entitled to enter the asylum of such district, and inspect any part thereof and enter his remarks thereon in a book to be kept for that purpose."

Class of destitute poor to be relieved in such asylum.

Sect. 53. "And be it enacted, that every district board for the management of any asylum under this act shall make provision for the temporary relief and setting to work therein of any poor person found destitute within any such district, not professing to be settled in any parish included therein, and not known to have any place of abode there, and not being charged with any offence under the provisions of an act passed in the fifth year of his late Majesty King George the Fourth, intituled 'An Act for the Punishment of idle and disorderly Persons, and Rogues and Vagabonds, in that Part of Great Britain called England,' or of any other act; and, subject to any regulations of the said commissioners, every such district board or any committee thereof may direct the mode of admission of such poor persons to the asylum of such district; and it shall be lawful for any constable of the metropolitan police, or of the police of the city of London, or any constable of the police acting under the chief constable of any county, district or division, or any constable of the city, towns or boroughs respectively named in the schedule marked (B) annexed to this act, personally to conduct any such poor person found wandering abroad within any district to any asylum established in such district in pursuance of this act, and such poor person shall, if there be room in such asylum, be temporarily relieved therein; and the sergeant of police or constable conducting such poor person shall sign his name in a column, headed to the following effect, in a book to be kept, in such form and manner as the said commissioners may from time to time direct, by some officer of every such asylum, in which shall be entered the alleged names of all poor persons admitted:

5 Geo. 4, c. 83.

Mode of admission into asylums.

'We, the undersigned constables of the metropolian police [*or* of the 'police of the city of London, *or* constable, &c., *as the case may be*], do 'severally declare, so far as each of us is concerned therein, that we have 'conducted the poor persons (whose alleged names are set opposite our 'respective signatures) to the asylum of district, the said poor

(*z*) See the section at length, post, Chap. XIV., p. 202.

'persons having been by us found wandering abroad, and apparently 'destitute, and not having committed or being charged with any offence 'punishable by law, within our knowledge.'

Regulations with respect to poor persons admitted into such asylums.

And every such book, purporting to be signed and to be certified at the foot of the page by the officer keeping the same, shall be received in all courts of justice as sufficient evidence of the fact that the poor persons described therein were chargeable to the said district at the time of their admission, and, if not contradicted by other evidence, of such other particulars as are therein duly recorded; and all poor persons admitted into any such asylum shall, if they desire it, be relieved with food and lodging for the night succeeding such admission; but no such poor person shall be detained against his will for any longer space of time than until the ordinary hour of breakfast of the day next succeeding his admission, and four hours afterwards, unless such poor person, since his admission, have become lawfully punishable for misbehaviour within such asylum, in which case it shall be lawful to detain such poor person for a space of time sufficient for such punishment; but no poor person shall be punished for any offence or misbehaviour in any asylum by confinement for any longer space of time than twenty-four hours, and such longer space of time as may be necessary in order to have such person before a justice of the peace; and if any poor person so admitted as aforesaid shall be disabled by sickness, or shall be unwilling to depart from such asylum, he may receive relief therein, if he consent to remain, and conform to the rules of the house, until the next meeting of the district board or of some committee (which such district board, subject to the rules of the said commissioners, is hereby authorized to appoint), who shall give such directions respecting such poor person as they may deem right, by discharging him from such asylum, with a direction to apply for relief in the district where he has dwelt, or otherwise as to them may seem fit: provided always, that, except under a medical certificate of sickness, it shall not be lawful for the officers of any such asylum to relieve any poor person for a longer period continuously in such asylum than is sufficient to enable his case to be decided by the district board or committee as aforesaid: provided also, that if any person received into such asylum shall wilfully give a false name, or make a false statement, or shall be proved to have given two or more different names on two or more different occasions, when so received into any such asylum, such person not having lawfully changed her name in consequence of marriage, such person shall be deemed a rogue and vagabond within the meaning of the said act passed in the fifth year of the reign of his late Majesty King George the Fourth, intituled 'An Act for the Punishment of idle and disorderly Persons, and Rogues and Vagabonds, in that Part of the United Kingdom called England.'"

5 Geo. 4, c. 83.

Liabilities of persons relieved in such asylums.

Sect. 54. "Every poor person relieved in any asylum under the management of any district board shall be liable to the same obligations in respect of the relief afforded to him as if the same were afforded in any workhouse, and shall be subject to the same punishment and penalties as are provided by an act passed in the fifty-fifth year of the reign of King George the Third, intituled 'An Act to prevent poor Persons in Workhouses from embezzling certain Property provided for their Use; to alter and amend so much of an Act of the Thirty-sixth Year of his present Majesty as restrains Justices of the Peace from ordering Relief to poor Persons, in certain Cases, for a longer Period than One Month at a Time; and for other Purposes therein mentioned relating to the Poor,' or under any other act or acts, for refusal or neglect to work, in pursuance of any regulations or directions prescribing a task of work, or for wilfully destroying or injuring his own clothes or any property, or for absconding with any clothes or other articles provided by such district board, or for damaging any of the property of such district board, or for any misbehaviour in such asylum, by disobedience of the rules and

55 Geo. 3, c. 137.

regulations in force therein, or otherwise, as if he were relieved or set to work in any workhouse under the control of a board of guardians acting under the orders and regulations of the said commissioners in pursuance of the said first-recited act: provided always, that nothing in this act contained shall relieve any guardian, overseer, relieving officer or master of a workhouse from any obligation now imposed upon him by law with regard to the relief of cases of sudden and urgent necessity, or shall prevent the reception into a workhouse of any person labouring under dangerous illness, or shall authorize the transfer to an asylum of any person received into such workhouse in a case of dangerous illness, unless with the certificate in writing of a medical man duly licensed to practise, to the effect that such person is then in a fit state to be removed, and stating the manner in which such person, in the opinion of such medical man, may be safely removed."

Penalty for returning after removal.

Sect. 55. "If any poor person return and become chargeable in the asylum of any district after removal from any parish in such district, he shall be deemed to have returned and become chargeable, without any certificate, to the parish whence he has been legally removed by order of two justices of the peace, within the meaning of the said act made and passed in the fifth year of King George the Fourth, intituled 'An Act for the Punishment of idle and disorderly Persons, and Rogues and Vagabonds, in that Part of Great Britain called England.'"

5 Geo. 4, c. 83.

Sect. 59 empowers a district board to pay the cost of certain civil and criminal proceedings out of the poor-rates (*a*).

Dissolution of asylum district.

By 14 & 15 Vict. c. 105, s. 14, "the poor law board may, if they see fit, upon the application or with the consent of the acting members of the board of management, at any time, by an order under their seal, dissolve any combination of unions or parishes, or unions and parishes, formed under 7 & 8 Vict. c. 101, into districts for the purpose of providing and managing asylums for the temporary relief and setting to work therein of destitute houseless poor, and, prior to issuing any such order of dissolution, may empower, by their order, the board of management of such district to pay and apply any funds in their possession in discharge of any liabilities then outstanding against such board, and to sell and dispose of any land, buildings or other property belonging to them, and to apply the produce of the same to the like purpose; and any surplus that may remain after satisfying all liabilities shall be returned to the several unions and parishes in proportion to their original contributions."

How conveyance may be executed.

Sect. 15. "The conveyance of such property by the acting members of the said board of management of any such district, when approved and sealed by the poor law board, shall be deemed valid, notwithstanding any defect which may exist in the number required to constitute such board of management."

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§ 2. Asylums and Dispensaries in the Metropolis (*b*).

"The Metropolitan Poor Act, 1867" (30 Vict. c. 6), "for the establishment in the metropolis of asylums for the sick, insane, and other classes of the poor, and of dispensaries; and for the distribution over the metropolis of portions of the charge for poor relief; and for other purposes relating to poor relief in the metropolis." Although relating to a variety of matters, distributed under different heads in this work,

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(*a*) See the section at length in a subsequent part of the work.

(*b*) The relief in general, of the poor in the metropolis, is provided for by various local acts, subject of course to the general control of the poor law board.

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the act will be given here in its entire form as more convenient for persons having occasion to refer to it.

"*Preliminary.*

Short title.

Sect. 1. "This act may be cited as 'The Metropolitan Poor Act, 1867.'"

Interpretation of terms.

Sect. 2. "In this act—

The term 'the Poor Law Acts' means the act of the session of the fourth and fifth years of King William the Fourth (chapter seventy-six) 'for the Amendment and better Administration of the Laws relating to the Poor in England and Wales,' and the acts extending or amending the same:

The term 'the Poor Law Amendment Act of 1844' means the act of the session of the seventh and eighth years of her Majesty's reign (chapter one hundred and one) 'for the further amendment of the laws relating to the poor in England.'

Words in this act have the same meaning as in the poor law acts."

Limitation of act to the metropolis.

Sect. 3. "This act extends only to unions and parishes not in union which are wholly or for the greater part thereof respectively included in the metropolis as defined by 'The Metropolis Management Act, 1855;' and in this act the term 'the metropolis' means the metropolis as so defined" (*c*).

Orders of poor law board.

Sect. 4. "Any order of the poor law board under this act shall not be deemed a general order within the operation of the poor law acts, although addressed to more than one union or parish" (*d*).

"*District Asylums.*

Asylums to be provided.

Sect. 5. "Asylums to be supported and managed according to the provisions of this act may be provided under this act for reception and relief of the sick, insane, or infirm, or other class or classes of the poor chargeable in unions and parishes in the metropolis (and in this act the term 'asylum' means an asylum provided under this act)."

Formation of districts.

Sect. 6. "In order to the provision of asylums, the poor law board may from time to time by order combine into districts, unions or parishes, or unions and parishes, in the metropolis, as they think fit, and may from time to time alter any such district by addition, subdivision, separation of part or otherwise (and in this act the term 'the district' means, in relation to each asylum, the district for which that asylum is for the time being provided)."

Number of asylums.

Sect. 7. "For each district there shall be an asylum or asylums, as the poor law board from time to time by order direct."

Managers of asylums.

Sect. 8. "For the asylum or asylums of each district there shall be a body of managers constituted as in this act provided, which managers and their successors are hereby incorporated by the name of the managers of the asylum district, and by that name shall be one body corporate, with perpetual succession and a common seal, and with power, subject and according to the orders of the poor law board, to take, hold, and dispose of lands and other property for purposes of the asylum district (and in this act the term 'the managers' means, in relation to each asylum district, the managers thereof for the time being)."

Constitution of managers.

Sect. 9. "The managers shall (subject to the provisions of this act) be partly elective and partly nominated."

(*c*) The act referred to (18 & 19 Vict. c. 120) enacts (sect. 250), that "the metropolis" shall be deemed to include the city of London, and the parishes and places mentioned in schedules A, B, and C, to that act. The city of London includes "all parts now within the jurisdiction of the commissioners of sewers for the city of London." The schedules comprise eighty-three "parishes and places."

(*d*) See ante, p. 29.

Election of managers.

Sect. 10. "Elective managers shall be from time to time elected by the guardians of each of the several unions and parishes forming the district from among themselves, or from among ratepayers qualified to be guardians therein, or partly from one and partly from the other."

Nomination of managers.

Sect. 11. "Nominated managers shall be from time to time nominated by the poor law board from among justices of the peace for any county or place resident in the district, or from among ratepayers resident in the district and assessed to the poor-rate therein on an annual rateable value of not less than forty pounds, or partly from one and partly from the other."

Number, qualifications, &c. of managers.

Sect. 12. "The poor law board shall from time to time by order prescribe the total number of the managers, and the proportion of the elective and nominated managers (but so that the prescribed number of the nominated managers do not ever exceed one-third of the prescribed number of the elective managers), the number of elective managers to be elected for each union or parish in the district, the qualifications of the managers, their tenure of office, the mode and times of election, and the quorum for their meetings."

Validity of acts of managers notwithstanding vacancies.

Sect. 13. "Any act or proceeding of the managers shall not be invalid by reason only of any vacancy in their body, or by reason only of any failure to elect or nominate, or any defect or irregularity in or about the election or nomination of any person to be manager, or by reason only of the want of qualification or disqualification of any person acting as manager; and the managers shall be deemed lawfully constituted, and shall act, notwithstanding any such vacancy, failure, defect, irregularity, want of qualification, or disqualification."

Prohibition against managers being concerned in contracts.

Sect. 14. "The provisions of the poor law acts imposing penalties on guardians and their officers if concerned for their own profit in providing or in any contract for the supplying of anything for the use of workhouses or otherwise for the support or maintenance of the poor, and all remedies for recovery of such penalties, shall extend and apply to the managers and their officers" (*e*).

Building for asylum.

Sect. 15. "The poor law board may from time to time by order direct the managers to purchase or hire, or to build, and (in either case) to fit up a building or buildings for the asylum, of such nature and size, and according to such plan, and in such manner, as the poor law board think fit, and the managers shall carry such directions into execution."

As to the purchase or hiring of lands, &c. by managers.

Sect. 16. "The managers shall have for the purposes of the asylum the like powers as are for the time being vested in guardians of unions or parishes in the metropolis relative to the purchase or hiring of lands or buildings; but the consent of any ratepayers or owners of property in a union or parish shall not be necessary with respect to any sale, lease, or other disposition of any workhouse, building, or land by guardians or overseers to the managers."

Power to borrow money for purposes herein named.

Sect. 17. "The managers may borrow money for purchasing lands or buildings, and for building, fitting up, and furnishing buildings erected or hired for the asylum, according to the provisions of the poor law acts under which guardians are for the time being empowered to borrow money, and may charge the poor-rates of the unions and parishes forming the district with the money so borrowed, and interest, subject and according to the following provisions:

(1.) The amount borrowed shall not exceed one third of the aggregate annual expenditure on the relief of the poor within the whole district (exclusive of reimbursements) for the period of three years ending on the twenty-fifth day of March next preceding the borrowing of the money:

(2.) The amount borrowed shall be charged on the poor-rates of the several unions and parishes forming the district in the propor-

(*e*) See ante, p. 74.

tions in which they contribute to the maintenance of the asylum:

(3.) The amount borrowed shall be paid off, with interest, by equal annual instalments not exceeding twenty."

Adaptation of existing workhouses for asylums.

Sect. 18. "The poor law board may by order direct that any building for the time being in use as a workhouse be, with such alterations as the poor law board think fit, used for the asylum, and thenceforth that buildings shall be for the common use of the district accordingly; and an annual sum in the nature of rent or other compensation of such amount as the poor law board from time to time direct shall be paid to the guardians of the union or parish to which such building belongs, as long as the same continues to be so used."

Reimbursement to managers of expenditure.

Sect. 19. "If in any such case the managers expend any money in the improvement or enlargement of the building, or the providing of substantial fittings therein, and afterwards relinquish the use thereof, the poor law board may, if they think fit, make an adjustment in respect of that expenditure between the owners of the building and the managers, and direct such amount as they think equitable to be reimbursed to the managers by the owners of the building, to be paid at once or by instalments as the poor law board direct."

Furniture, &c. for asylum.

Sect. 20. "The managers shall from time to time provide for the asylum necessary fixtures, furniture, and conveniences, and such as the poor law board from time to time by order direct."

Mode of admission into asylum.

Sect. 21. "The mode of admission of persons into the asylum shall be such as the poor law board from time to time by order direct."

Powers and duties of managers in respect of inmates.

Sect. 22. "The managers shall have the like powers as guardians for the relief, maintenance, and management of the inmates of the asylum, and shall from time to time provide such medicines, appliances, and requisites for the medical and surgical care and treatment of the inmates, and cause the same to be furnished and used according to such rules, as the poor law board from time to time by order direct."

Application of parts of 7 & 8 Vict. c. 101, as herein named.

Sect. 23. "The following provisions of the 'Poor Law Amendment Act of 1844' shall extend to the asylum as if it were an asylum under that act or a workhouse, and as if the managers were a district board under that act, that is to say,—

So much of section forty-three as relates to rules of the poor law board for government of the asylum or its inmates, and to religious assistance and instruction:

Sections fifty, fifty-four, fifty-seven, and fifty-nine" (*f*).

Chargeability, &c. of inmates.

Sect. 24. "With reference to chargeability, burial, and other incidents, the asylum shall in relation to each inmate thereof be deemed to be in the union or parish from which such inmate is sent; but births and deaths in the asylum shall be registered by the registrar in whose district the asylum is situate."

Appointment, &c. of paid officers.

Sect. 25. "The managers shall have the like powers as guardians for the appointment, control, and payment of paid officers of the asylum, and the grant of superannuation allowances to them.

"The duties, number, and salaries of the paid officers, and the securities to be given by them, shall be such as the poor law board may from time to time approve or by order direct."

Enforcement of orders of managers.

Sect. 26. "Legal and reasonable orders of the managers shall be obeyed, and obedience thereto shall be enforced, in like manner and by and under like remedies and penalties as legal and reasonable orders of guardians."

Committees of managers.

Sect. 27. "The managers may from time to time, subject and according to such regulations as the poor law board from time to time by order prescribe, appoint committees of members of their body, and delegate to them any of the powers of the managers."

(*f*) See ante, pp. 170, 183, 184, and post, Chap. XIV.

Sect. 28. "The managers shall, in the exercise and discharge of all their powers and duties, be subject to orders of the poor law board in like manner as guardians are under the poor law acts." Orders of poor law board as to managers.

Sect. 29. "Where the asylum is provided for reception and relief of the sick or insane it may be used for purposes of medical instruction, and for the training of nurses, in such cases and manner and subject to such regulations as the poor law board from time to time by order direct." Use of asylums as medical schools.

Sect. 30. "Where the asylum is provided for reception and relief of the insane the commissioners in lunacy may, if they think fit, depute one of their body or appoint from time to time a special commissioner, and the person so deputed or appointed shall be entitled to attend meetings of the managers and to take part in their proceedings, but not to vote; and every such asylum shall be considered as a workhouse within the meaning of the lunacy acts as defined by the twenty-fifth and twenty-sixth Victoria, chapter one hundred and eleven." Representative of commissioners in lunacy.

Sect. 31. "Expenses incurred by the managers in or about the purchasing, hiring, building, repairing, and fitting up of buildings for the asylum, and any sum in the nature of rent or other compensation, payable by the managers to guardians, in respect of the use for the asylum of a building previously used as a workhouse, and expenses incurred by the managers in or about the providing of fixtures, furniture, conveniences, medicines, medical and surgical appliances, and other necessaries required for keeping the asylum in proper order for daily use, and the salaries and maintenance of the officers thereof, shall be defrayed by contributions from the unions and parishes forming the district." Expenses of providing asylum and salaries.

Sect. 32. "Expenses incurred by the managers in or about the food, clothing, maintenance, care, treatment, and relief, or for the burials, of inmates of the asylum shall be separately charged to the respective unions or parishes from which the inmates of the asylum are sent. Charges for maintenance, &c.

Sect. 33. "The poor law board shall appoint some person to be the auditor of the district, who shall audit the accounts of the managers and of their officers; and those accounts shall accordingly be prepared for and submitted to the auditor at such times and in such manner as the accounts of guardians of unions are by the poor law acts required to be prepared and submitted." Audit of accounts.

Sect. 34. "The auditor shall have the like powers of allowing and disallowing accounts, and of making surcharges therein, as auditors appointed under the poor law acts have for the time being; and sums disallowed, reduced, or surcharged in the accounts submitted to the auditor shall be recoverable in like manner as under the poor law acts; and there shall be the like appeal to the Court of Queen's Bench or to the poor law board against an allowance, disallowance, or surcharge made by the auditor, as in case of the audit of union or parish accounts." Powers of auditor.

Sect. 35. "Within one month after each audit the managers shall deliver, by post or otherwise, to each board of guardians in the district a printed abstract (in a form from time to time prescribed by the poor law board) of the accounts as audited." Circulation of abstract of accounts.

Sect. 36. "The remuneration of the auditor shall from time to time be fixed by the poor law board by order, and, with his expenses, shall be paid as the salaries and expenses of auditors appointed under the poor law acts are for the time being payable." Remuneration of auditor.

Sect. 37. "The poor law board may remove an auditor as they think fit, and on a vacancy shall appoint a qualified person to fill the vacancy; and the powers of providing temporarily for a vacancy, and of appointing a substitute or a deputy, given by the poor law acts in relation to auditors thereunder, shall apply in relation to an auditor under this act." Removal and new appointment of auditor.

"*Medical Out-door Relief.*

Sect. 38. "The poor law board may from time to time, by order, direct the guardians of a union or parish in the metropolis to provide a Building for dispensary.

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dispensary or dispensaries for such union or parish, and to purchase or hire, or to build, and (in either case) to fit up and furnish a building or buildings for that purpose, of such nature and size, and according to such plan, and in such manner as the poor law board think fit, or to set apart, adapt, fit up and furnish for that purpose such part of the workhouse of the union or parish, according to such plans, and in such manner, as the poor law board think fit, and the guardians shall act accordingly; and, where the poor law board by order so direct, the guardians may borrow the amount requisite in that behalf, in like manner and subject to the like conditions as in the case of the building of a workhouse.

Dispensary committee.

Sect. 39. "There shall be a committee of management for the dispensary or dispensaries in each union or parish, to be called the dispensary committee for the union or parish (and in this act the term 'the dispensary committee' means, in relation to each union or parish, the dispensary committee for the same for the time being).

Election of committee.

Sect. 40. "The dispensary committee shall be elected by the guardians of the union or parish from among themselves, or from among ratepayers of the union or parish assessed to the poor-rate on an annual rateable value of not less than forty pounds, or partly from one and partly from the other.

Number, &c. of committee.

Sect. 41. "The poor law board shall from time to time prescribe with respect to each committee the number and tenure of office of the members, the mode and times of election, and the quorum for their meetings.

Places for seeing sick poor, &c.

Sect. 42. "The guardians of each union or parish providing a dispensary shall also provide, according to the directions of the poor law board, proper places where the medical officers of the union or parish may see such of the sick poor as attend there for advice, and where meetings of the dispensary committee may be held.

Appointment of dispensers, &c.

Sect. 43. "The dispensary committee shall from time to time appoint and shall at all times keep appointed proper persons to be dispensers of medicine at the dispensaries for the union or parish, and may from time to time appoint such other officers and such servants for the purposes of those dispensaries as they think fit.

"The duties, qualifications, number, and salaries of the dispensers, officers, and servants shall be such as the poor law board may from time to time approve or by order direct."

Provision and dispensing of medicines, &c.

Sect. 44. "The guardians of each union or parish providing a dispensary shall from time to time, on the requisition of the dispensary committee, provide proper medicines and appliances and requisites for the care and surgical treatment of the sick poor of the union or parish relieved out of the workhouse, and the same shall be dispensed and furnished to such of the poor entitled to relief as require the same, on the prescription or written direction of the district medical officer, subject to such regulations as the poor law board from time to time by order direct."

Appointment of district medical officers.

Sect. 45. "The district medical officers for a union or parish shall be from time to time appointed by the dispensary committee, subject to the rules and orders of the poor law board respecting appointment and removal of officers under the poor law acts; but the district medical officers in office at the time of the dispensary committee entering on their duties shall continue in office as if this act had not been passed, subject nevertheless to such modifications of arrangements respecting their duties and remuneration, made with them before the passing of this act, as the poor law board think fit."

Modification of districts, salaries, and contracts with district medical officers.

Sect. 46. "For giving effect to the provisions of this act relating to medical relief out of the workhouse, the poor law board may from time to time vary as they think fit medical districts, salaries, and contracts with district medical officers, existing at the passing of this act or at any time thereafter."

"District and Separate Schools (g).

Certain provisions as to charge of expenses of buildings, &c. as in 7 & 8 Vict. c. 101, s. 47; 13 & 14 Vict. c. 11, repealed.

Sect. 47. "So much of section forty-seven of the 'Poor Law Amendment Act of 1844' and of the act of the session of the thirteenth and fourteenth years of her Majesty's reign (chapter eleven), 'to make better provision for the contributions of unions and parishes in school districts to the common funds, of the respective districts,' as provides for payment by unions as therein mentioned of expenses incurred by any district board in the purchase or hire of any land or buildings for a school, or in erecting, repairing, adding to, or fitting up any building, and the salaries of the officers and servants of the establishment, and other common charges of the school, shall, from the twenty-ninth day of September next, as far as those provisions relate to a district in the metropolis, be repealed; but this repeal shall not affect the mode of payment of any such expenses or salaries incurred or accrued due up to that day inclusive or the payment of any mortgage or other debt incurred by any district board in respect thereof, or the validity or effect of any mortgage or security given by any district board for any such debt; and all such expenses and salaries, and every such debt, shall be paid and remain charged as if this act had not been passed."

Charges for buildings and salaries of officers of district schools.

Sect. 48. "Expenses incurred by a district board constituted under the 'Poor Law Amendment Act of 1844' for the maintenance of a district school for a district in the metropolis in the purchase or hire of land or buildings for the school, and the salaries of officers, and all other common charges of such school, shall, from the said twenty-ninth day of September next, be defrayed by contributions from the unions and parishes forming the district, as in this act provided."

Addition of nominated members to district board.

Sect. 49. "The poor law board may from time to time nominate to be members of such a district board such persons as they think fit from among justices of the peace for any county or place resident in the district of the school, or from among ratepayers resident in that district, and assessed to the poor-rate therein on an annual rateable value of not less than forty pounds, or partly from one and partly from the other, but so that the number of members so nominated do not ever exceed one-third of the full number of the elected members of the board."

"Workhouses for Classes of Poor.

Reception in workhouses of poor belonging other unions or parishes.

Sect. 50. "Where, in the opinion of the poor law board, the workhouse of a union or parish in the metropolis is adapted only for the reception of poor persons of a particular class or particular classes, but is capable of accommodating poor persons of that class or those classes from any other union or parish within the metropolis, the poor law board may by order direct the guardians of the union or parish to which the workhouse belongs to receive, lodge, and maintain therein poor persons of that class or those classes, or any of them, and the guardians shall receive, lodge, and maintain such poor persons accordingly on terms to be agreed on, with the approval of the poor law board, by the respective boards of guardians of the unions or parishes concerned, or, in default of such agreement, to be prescribed by the poor law board by order; and in every such case the following provisions shall have effect:

(1.) Every poor person so received into the workhouse shall, while therein, be treated in all respects in like manner, and be subject to the same or the like regulations and liabilities, as the other poor persons therein, and shall be chargeable in the first instance to the union or to the parish in the workhouse whereof he is received:

(g) See as to district and other schools in general, post, Chap. XIV.

(2.) The abiding of any such poor person in such workhouse shall in all other respects be attended with the same legal consequences as if the workhouse were situate within the union or parish from which he is sent:

(3.) Every guardian of the union or parish from which such poor person is sent may at all reasonable times enter the workhouse and inspect any part thereof."

"*Lands.*

Provisions of 5 & 6 Will. 4, c. 69, herein named to apply.

Sect. 51. "The provisions of the act of the session of the fifth and sixth years of the reign of King William the Fourth (chapter sixty-nine), 'to facilitate the conveyance of workhouses and other property of parishes, and of incorporations or unions of parishes, in England and Wales,' relative to the acquisition of sites or buildings for workhouses, and of all acts extending or amending the same (*h*), shall apply to lands and buildings required to be purchased, hired, or otherwise acquired for any of the purposes of this act, and shall have effect as if managers under this act were guardians, and as if an asylum or dispensary were a workhouse."

Certain parts of 8 & 9 Vict. c. 18, and 23 & 24 Vict. c. 106, incorporated.

Sect. 52. "'The Lands Clauses Consolidation Act, 1845,' and 'The Lands Clauses Consolidation Acts Amendment Act, 1860' (in this act referred to as the Lands Clauses Acts), are hereby incorporated with this act, and for the purposes of this act the term the promoters of the undertaking used in those acts shall mean managers or guardians desirous of purchasing lands for purposes of this act; and in those acts and this act the term lands shall include any estate, term, easement, right, or interest in, over, or affecting lands."

Provisions as to compulsory purchase of land.

Sect. 53. "So much of the lands clauses acts as relates to the purchase of lands otherwise than by agreement shall not be put in force except for the purchase of lands for the purpose of enlarging a workhouse, hospital, or school existing at the passing of this act, and then not without a previous order of the poor law board directing such purchase."

Notice of application as to lands.

Sect. 54. "Before the poor law board make any such order the managers or guardians applying to them for the same shall publish, once at least in each of four consecutive weeks in a daily morning newspaper published in the metropolis, an advertisement stating the object for which the lands are proposed to be taken, and the quantity of lands required, and the place where a plan of the lands is open for inspection at reasonable hours, and shall four weeks before the application to the poor law board serve notices on the owners or reputed owners, lessees or reputed lessees, and occupiers of the lands, stating the particulars thereof, and that the managers or guardians are willing to treat for purchase thereof."

"*Contributions of Unions and Parishes.*

Basis of contributions.

Sect. 55. "Sums to be contributed under this act by unions and parishes shall be assessed on and contributed by them respectively in proportion to the annual rateable value of the property therein comprised, to be determined according to the valuation lists, or, where there are none, according to the latest poor-rate for the time being for the union or parish, or on such other basis as the poor law board from time to time direct."

Calls for contributions by managers and district boards.

Sect. 56. "The managers of an asylum under this act, and the district board constituted under the 'Poor Law Amendment Act of 1844' for the maintenance of a district school, shall from time to time call on the guardians of the unions and parishes forming the district for such contributions as the managers or district board consider requisite for the purposes of the asylum or school."

(*h*) See ante, Chap. XI.

Notice of call for contribution.

Sect. 57. "Notice in writing of the amount of every such contribution, purporting to be signed by the clerk or other officer of the managers or district board (in a form from time to time prescribed by the poor law board by order), shall, fourteen days at least before such contribution becomes due, be delivered to the clerk or acting clerk of the guardians of each union and parish liable to the contribution, either by post in a letter addressed to him at the office of the union or parish or otherwise."

Remedies for recovery of contributions.

Sect. 58. "If the contribution is not duly paid the managers or district board shall (in addition to any other remedy which any person has for the time being against guardians) have the like remedy for recovery of the contribution, or of so much thereof as is not paid, from the overseers or other officers authorized to levy poor-rates in the several parishes (whether comprised in a union or not) in the district, as guardians have for the time being for recovery from overseers of contributions of parishes; and if the overseers of any parish in a union pay any money to the managers or district board on account of such contribution they shall be entitled to credit for such payment in the accounts of the union with their parish."

"*Medical In-door Relief.*

Determination or variation of contracts with workhouse medical officers.

Sect. 59. "In order to facilitate provision for the appointment, where requisite, of resident workhouse medical officers, and for better classification and management of the sick poor in a separate hospital or building, or in an infirmary kept distinct from the rest of the workhouse, the poor law board may, by order, determine, or from time to time vary as they think fit, any contract with any medical or other workhouse officer existing at the passing of this act, and direct the guardians to pay to a medical or other officer affected thereby such compensation by way of increased salary, or of an annuity, or of a gross sum, or otherwise, as the poor law board think fit."

"*Houseless Poor.*

Repeal of reimbursement by metropolitan board.

Sect. 60. "Sections one and two of 'The Metropolitan Houseless Poor Act, 1864,' shall from and after the twenty-ninth day of September, one thousand eight hundred and sixty-seven, be repealed, except with respect to any claims under that act then outstanding, which shall be provided for as if that act continued wholly in force" (*i*).

(*i*) "The Metropolitan Houseless Poor Act, 1864" (27 & 28 Vict. c. 116), "to make Provision for distributing the Charge of Relief of certain Classes of poor Persons over the whole of the Metropolis," reciting, that "it is expedient that provision should be made for distributing the charge of the relief of certain poor persons in the metropolis during the ensuing winter otherwise than is now lawful:" enacted (sect. 1), "*That after the twenty-ninth day of September next the guardians of every union or parish situated wholly or partly within the district to which the Metropolis Local Management Act applies may, subject to the orders and regulations of the poor law board, make out a separate account of the money expended by them daily in the relief of destitute wayfarers, wanderers, or foundlings during the hours from eight o'clock at night until eight o'clock in the morning, and submit the same to the auditor appointed to audit their accounts at the usual times of audit, who shall duly examine the same, and shall certify the amount which he shall find to have been legally expended in and about such relief under his hand, and if the poor law board shall have certified that proper wards or places of reception have been provided by such guardians, the said guardians may thereupon make application in writing to the metropolitan board of works for reimbursement of the amount so certified by the auditor.*"

Sect. 2. "*The said metropolitan board of works shall forthwith pay the amount so certified to the guardians making the application out of*

Establishment of metropolitan common poor fund.

Sect. 61. "There shall be a fund, called the metropolitan common poor fund, raised according to the provisions of this act by contribu-

the funds in their possession from time to time raised under the provisions of the said Metropolis Local Management Act, and the amount so paid shall be deemed to be part of the expenses for which the said board are empowered to make assessments under the said act, and the said guardians shall apply the sum received in aid of the poor-rate of their parish or the common fund of their union, as the case may be, and shall account for the same accordingly."

Sect. 3. "The relief to which this act shall apply shall include food and articles of necessity supplied by the said guardians, or by their relieving or other officer, or by any metropolitan police constable authorized by them in such behalf, and also the cost of lodging or shelter hired or temporarily provided for any such poor person, but not money given to him."

Sect. 4. "Where the guardians shall have provided proper wards or other places of reception for this class of poor, and the same shall have been approved of by the poor law board, they may include as part of the expense incurred by them in the relief of these poor persons such sum in respect of each pauper as the poor law board shall from time to time allow for the cost and expense of temporarily providing and maintaining such wards or other places."

Sect. 5. "Where no adequate accommodation exists, the guardians shall provide within their respective unions or parishes such wards or other places of reception for destitute wayfarers and foundlings as the poor law board, having regard to the number of persons likely to require relief therein respectively, shall direct. In default of making such provision, and until the same has been made, the guardians of the union or parish so making default shall not be entitled to the benefit of this act."

Sect. 6. "The provisions of this act shall not apply to any expenditure for relief incurred after the half year which will expire at Lady-day, one thousand eight hundred and sixty-five."

Sect. 7. "The several words used in this act shall be construed as in the act of the fourth and fifth William the Fourth, chapter seventy-six, and the subsequent acts explaining and extending the same, and the provisions thereof not inconsistent with anything herein contained shall be incorporated herewith."

Sect. 8. "This act may be cited for all purposes as 'The Metropolitan Houseless Poor Act, 1864.'"

"The Metropolitan Houseless Poor Act, 1865" (28 Viet. c. 34), reciting, that "it is expedient that the provisions of 'The Metropolitan Houseless Poor Act, 1864,' should be made perpetual," enacts (sect. 1), "that the provisions of the said act shall be extended to the expenditure for relief of destitute wayfarers, wanderers, and foundlings, or other destitute persons, in the several unions and parishes referred to in the said act, relieved and to be relieved from and after Lady-day, one thousand eight hundred and sixty-five; and the sixth section of the said act is hereby repealed."

Sect. 2. "The poor law board shall from time to time cause the wards and other places of reception provided according to the said act to be inspected not less than once in every four months, between the hours of six o'clock in the evening and eight in the morning in the months between October and March inclusive, and between the hours of eight o'clock in the evening and eight in the morning in the months between April and September inclusive; and the results of such inspections shall be reported to the poor law board, who may at any time revoke and renew the certificates granted or to be granted under the first section of that act."

Sect. 3. "The said board may allow for the costs and expenses referred to in the fourth section of that act, when they shall see fit to do so, a sum or several sums in gross instead of a sum in respect of each pauper as therein provided."

Sect. 4. "Any constable of the metropolitan police or of the police of the city of London may personally conduct any destitute wayfarer, wanderer, or foundling, or other destitute person, not having committed or being charged with any offence punishable by law, within the knowledge of such constable, to any wards or other places of reception approved of by the poor law board under the said act or this act; and every such wayfarer, wanderer, or foundling shall, if there be

tions from the several unions, parishes, and places in the metropolis (in this act referred to as the common poor fund)."

Appointment of receiver of common fund.

Sect. 62. "There shall be a receiver of the common poor fund (in this act referred to as the receiver), who shall be from time to time appointed by and shall be removable by the poor law board, and shall receive such salary and give such security (if any) as the poor law board direct."

Receiver to open account at bank of England.

Sect. 63. "The receiver shall open an account with the governor and company of the Bank of England, intituled 'The account of the receiver of the metropolitan common poor fund for the time being.'"

Assessment of contributions to common fund.

Sect. 64. "The poor law board shall from time to time assess on the several unions and parishes in the metropolis the amounts of their respective contributions to the common poor fund, in proportion to the annual rateable value of the property therein comprised, to be determined according to the valuation lists, or, where there are none, according to the latest poor-rate for the time being for the union or parish, or on such other basis as the poor law board from time to time direct."

Collection of common fund.

Sect. 65. "The poor law board shall from time to time issue to the guardians of each union or parish a precept under the seal of the board requiring them to pay the amount of their contribution therein specified, in the manner and within the time therein prescribed, and the guardians shall accordingly raise the amount of their contribution out of the poor-rates of the union or parish, and shall pay the same into the Bank of England to the credit of the account of the receiver; and no such precept shall be liable to be removed into any court of law by certiorari or otherwise, nor shall any order of the guardians, or any rate made after the passing of this act, be liable to question in any such court on the ground of its having been made wholly or partly in furtherance of any such precept: provided always, that the guardians shall be entitled to have credit in part payment of their contribution for the amount which may be repayable to them out of the common poor fund, under the precept of the poor law board, as hereinafter mentioned, in respect of expenditure during the preceding half year."

Collection of contributions by local authority where no poor-rate.

Sect. 66. "In order to obtain payment of the amount of the contribution to the common poor fund payable in respect of any place where there is no poor-rate, the poor law board shall from time to time issue to the masters of the bench, treasurer, governors, or other body or persons having the chief control or authority there, a precept requiring them or him to pay the amount of contribution therein specified, in the manner and within the time therein prescribed, and they or he shall pay the same accordingly."

Levying of rate by local authority.

Sect. 67. "In every such place the masters of the bench, treasurer, governors, or other body or persons, may levy on the several persons occupying rateable property therein the amount of contribution so paid by them or him by means of a rate in the nature of a poor-rate, and for that purpose may employ and remunerate collectors, and shall have the

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room in such wards or other places of reception, be temporarily relieved therein."

Sect. 5. "The wards or places of reception provided under the said act shall be open for the admission of destitute wayfarers, wanderers, and foundlings, or other destitute persons, who shall apply to be admitted during the hours between six o'clock in the evening and eight in the morning in the months between October and March inclusive, and during the hours between eight o'clock in the evening and eight o'clock in the morning in the months between April and September inclusive, and the guardians shall be entitled to be reimbursed for all relief administered in conformity with the provisions of that act during those hours respectively."

Sect. 6. "This act may be cited for all purposes as 'The Metropolitan Houseless Poor Act, 1865.'"

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like powers as are for the time being vested in overseers for the purposes of the making, assessing, levying, and collecting of poor-rate."

Remedies for recovery of contributions.

Sect. 68. "If any contribution to the common poor fund required by the poor law board to be paid by any guardians, masters of the bench, treasurer, governors, or other body or persons, is not duly paid, the receiver shall (in addition to any other remedy which any person has for the time being against guardians) have the like remedy for recovery from them or him, in the receiver's own name, of the contribution, or of so much thereof as is not paid, as guardians have for the time being for recovery from overseers of contributions of parishes; and for that purpose the precept of the poor law board requiring the contributions shall be conclusive evidence of the amount thereof and of the liability thereto of the party sued."

Application of common fund.

Sect. 69. "Expenses incurred for the following purposes after the twenty-ninth day of September, one thousand eight hundred and sixty-seven shall be repaid out of the common poor fund; that is to say,—

(1.) For the maintenance of lunatics in asylums, registered hospitals, and licensed houses, and of insane poor in asylums under this act, except such expenses as are chargeable on the county rate:

(2.) For the maintenance of patients in any asylum specially provided under this act for patients suffering from fever or smallpox:

(3.) For all medicine and medical and surgical appliances supplied to the poor in receipt of relief by guardians under this act or any of the poor law acts:

(4.) For the salaries of all officers employed by the guardians in and about the relief of the poor by the managers of district schools under 'The Poor Law Amendment Act, 1844,' and by the managers of asylums under this act, and also the salaries of the dispensers and other persons employed in dispensaries under this act, provided the appointments of the officers have been sanctioned by the poor law board:

7 & 8 Vict. c. 101.

(5.) For compensation to any medical officer of a workhouse affected by the determination or variation by the poor law board of a contract respecting medical relief in the workhouse, or for compensation to any officer of a union or parish who may be deprived of his office by reason of the operation of this act:

(6.) For fees for registration of births and deaths:

(7.) For fees for and other expenses of vaccination:

(8.) For maintenance of pauper children in district, separate, certificated, and licensed schools:

27 & 28 Vict. c. 116. 28 & 29 Vict. c. 34.

(9.) For relief of destitute persons certified by the auditor, and provision of temporary wards or other places of reception approved by the poor law board, under the Metropolitan Houseless Poor Acts of 1864 and 1865."

Mode of repayment out of common fund.

Sect. 70. "After each half-yearly audit the auditors shall, within such time and in such manner as the poor law board from time to time direct, certify to the poor law board the amount actually expended by each union or parish in respect of expenses which are to be repaid out of the common poor fund; and the poor law board shall, by precept under the seal of the board, direct the receiver to repay out of that fund to the guardians of the unions and parishes the several sums so expended, and the amount repaid shall be applied by them in aid of the fund chargeable with the relief of the poor."

Receiver's salary, &c.

Sect. 71. "The salaries of the receiver and his assistants, and all expenses incurred by him in the execution of this act, shall be paid out of the common poor fund."

Drawing on receiver's account.

Sect. 72. "The account of the receiver at the Bank of England shall be drawn on in such manner and according to such regulations as the poor law board from time to time by order direct."

"*Poor Relief under Local Acts.*

Constitution of guardians for parishes under local acts.

Sect. 73. "The relief of the poor of every union or parish in the metropolis governed by a local act shall, from and after a day to be stated in an order of the poor law board in relation to each union or parish, be, notwithstanding anything in such local act, administered by a board of guardians elected according to the poor law acts, and in conformity with an order of the poor law board."

Powers of new board of guardians.

Sect. 74. "The guardians so constituted under this act, notwithstanding anything in any local act, shall have the same powers and authorities, and shall be subject to the same orders, regulations, and restrictions as guardians elected under the poor law acts."

Transfer of property to new guardians.

Sect. 75. "The workhouses, goods, effects, and real and personal property belonging to a union or parish governed by a local act, and held or used for purposes of the relief of the poor or of the business of guardians, shall by virtue of this act be transferred to and vested in and belong to the guardians of the union or parish when constituted under this act, and shall be held and used for purposes of such relief and business, and upon such other trusts and for such other purposes as would have been applicable to the same if this act had not passed; and those guardians shall pay and discharge the debts and liabilities lawfully incurred in and about such relief, or otherwise due from the previous guardians of the union or parish, as the same ought to have been paid and discharged by the previous guardians if this act had not been passed; provided that the poor law board may, if they think fit, by order, extend the time of payment of any such debt for a period not exceeding six months from the date of the order."

Continuance of existing officers.

Sect. 76. "Officers and persons appointed or acting under any such local act for any purpose of the relief of the poor, or otherwise in the service of the guardians, and superintendent registrars of births, deaths, and marriages, and registrars of births and deaths, and registrars of marriages, shall be entitled to continue in office after the constitution of the new board of guardians under this act to the same extent as if this act had not been passed; and their service before the constitution of that board shall be reckoned in the computation of any superannuation allowance to which they may become entitled: provided that in case any officer of a union or parish shall be deprived of his office by reason of the operation of this act, the poor law board may award to him such compensation for the loss of his office and its emoluments, either by way of gross sum or by way of annuity, as to them shall seem reasonable."

Saving for rating-powers of existing bodies.

Sect. 77. "Nothing in this act shall deprive any body constituted under a local act of any power thereby vested in them of making and levying poor-rates; and in relation to guardians constituted under this act every such body shall be deemed overseers within the poor law acts as far as regards liability to payment of contributions required by guardians for purposes of the relief of the poor in the union or parish."

Part of sects. 64 and 65 of 7 & 8 Vict. c. 101, repealed.

Sect. 78. "So much of section sixty-four of the Poor Law Amendment Act of 1844 as prevents the union of parishes governed by local acts, without consent of the guardians, and section sixty-five of that act, are hereby repealed as far as they relate to the metropolis" (*k*).

"*Boards of Guardians.*

Power to poor law board to nominate additional guardians.

Sect. 79. "The poor law board may from time to time nominate to be members of a board of guardians of a union or parish in the metropolis (whether elected under the poor law acts or constituted under this act) such persons as they think fit from among justices of the peace for any county or place resident in the union or parish, or from among rate-payers resident therein and assessed to the poor-rate therein on an

(*k*) See these sections, ante, p. 93, and p. 126.

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annual rateable value of not less than forty pounds, or partly from one and partly from the other, but so that the number of guardians so nominated do not, together with the ex-officio guardians, ever exceed one-third of the full number of the elected guardians."

"*Officers.*

Appointment of officers on failure of managers, &c.

Sect. 80. "In case at any time any managers of an asylum or dispensary committee under this act, or any board of guardians of a union or parish in the metropolis, fail, for fourteen days after receipt of a requisition of the poor law board in this behalf, to appoint (either originally or on a vacancy) any officer whom they are by law required or authorized to appoint, then at any time after the expiration of that period of fourteen days the poor law board may, if they think fit, by order appoint a fit person to be such officer; and the person so appointed shall have and perform all the same powers, rights, privileges, and duties as if the appointment had been duly made by the managers, committee, or guardians, as the case may be."

"*Borrowing.*

Extension of borrowing powers.

Sect. 81. "Where the guardians of a union or parish in the metropolis require to borrow money for the purposes and under the authority of the poor law acts, the principal sum borrowed may be any sum not exceeding one-half of the aggregate amount of the rates raised for the relief of the poor in that union or parish within three years ending on the twenty-fifth day of March next preceding the borrowing of the money, anything in the said acts to the contrary notwithstanding."

Provision for orders of removal and of maintenance.

Sect. 82. "Nothing in this act contained shall prevent any board of guardians or churchwardens and overseers from obtaining any order of removal or any order of maintenance in respect of any pauper by reason of the costs and expenses of such pauper being repaid out of the common fund."

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CHAPTER XIV.

Of the Administration of Relief to the Poor—(*continued*).

Education of Poor Children.

UNDER the power given to the poor law commissioners by "The Poor Law Amendment Act, 1834" (4 & 5 Will. IV. c. 76), the guardians of unions are required to appoint fit persons to hold the office of schoolmaster and schoolmistress, and to perform the duties respectively assigned to them (*l*).

The statutes relating to this kind of relief will be given here.

The act 4 & 5 Vict. c. 38, amended by the 7 & 8 Vict. c. 37; 12 & 13 Vict. c. 49; and 14 & 15 Vict. c. 24 (after repealing the previous act 6 & 7 Vict. c. 70), gave facilities for the conveyance and endowment of sites for schools for the education of poor persons. As this statute is quite independent of the poor laws, in their strict sense, it is unnecessary to insert its provisions, of those of the amending acts. It may be

(*l*) See ante, p. 76.

observed, however, that no parochial property can be granted for such purposes without the consent of the ratepayers in the mode pointed out by the act 5 & 6 Will. IV. c. 69, to facilitate the conveyance of workhouses (*m*).

District boards for schools.

By 7 & 8 Vict. c. 101, s. 40, the poor law commissioners were empowered, "as and when they may see fit, by order under their hands and seal, to combine unions, or parishes not in union, or such parishes and unions, into school districts, for the management of any class or classes of infant poor not above the age of sixteen years, being chargeable to any such parish or union, who are orphans, or are deserted by their parents, or whose parents or surviving parent or guardians are consenting to the placing of such children in the school of such district; but the said commissioners shall not include, in any such district, any parish any part of which would be more than fifteen miles from any other part of such district (*n*); *provided always, that when the relief of the poor has been hitherto administered in any parish or united parishes by guardians appointed under a local act, and not by overseers of the poor, if such parish or united parishes, according to the last enumeration of the population published by authority of parliament, contain more than twenty thousand persons, it shall not be lawful for the said commissioners, without the consent in writing of the majority of such guardians, to include such parish or united parishes in a school district*" (*o*).

Constitution of the district boards for schools and asylums.

Sect. 42 enacts, "that a board shall be constituted for every district formed under this act for the maintenance of a school [or of an asylum (*p*)]; and every district board so constituted shall respectively consist of members to be elected from amongst the persons rated within the district to the relief of the poor; and the said commissioners shall fix the qualification of such members, such qualification to consist in being rated within the district to the relief of the poor, but not so as to require a qualification exceeding the net annual value of forty pounds; and such members shall be elected at such periods, not exceeding three years, and in such proportions and in such manner, as the said commissioners may from time to time direct, by the guardians of every parish or union governed by a board of guardians under the provisions of the said first-recited act or of any local act, and if there be no such guardians then by the overseers of a parish not governed by such guardians; and the chairman of every board of guardians constituted under the provisions of the said first-recited act shall, if he consent thereto, be ex officio a member of any district board constituted under the provisions of this act."

Powers and duties of district boards.

Sect. 43. "And be it enacted, that every such district board shall have such of the powers of guardians for the relief and management of the poor within any school [or asylum (*p*)], and for the appointment, payment, and control of paid officers (*q*), as the said commissioners may direct; and the legal and reasonable orders of such district board shall be obeyed and obedience thereto enforced in the same manner and by the same remedies and penalties as the legal and rea-

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(*m*) See ante, Chap. XI. p. 143.

(*n*) See the statute, 11 & 12 Vict. c. 82, post, p. 203.

(*o*) This proviso was repealed by the 30 & 31 Vict. c. 106, s. 16.

(*p*) Several of the sections of this act relate as well to district asylums in certain large towns, as to which, see Chap. XIII. § 1.

(*q*) Managers of district schools are empowered by the 29 & 30 Vict. c. 113, to grant superannuation allowances, sect. 3 of that statute enacting, that "the board of management of any district school may exercise the same power in respect of any officer of such school in their service as the guardians of any union can do under such last-mentioned statute (27 & 28 Vict. c. 42), with like consent as therein provided, and shall charge any allowance to be made by them to the fund chargeable with the payment of the salaries of their officers." See ante, Chap. V. p. 76.

sonable orders of guardians; and it shall be lawful for the said commissioners, with the consent in writing of a majority of any district board, to direct such district board to purchase or hire or build, and to fit up and furnish, a building or buildings, of such size and description, and according to such plan, and in such manner as the said commissioners may deem most proper, for the purpose of being used or rendered suitable for the relief and management of the poor to be received into such school [or asylum (*r*)]; and the said commissioners may, *with the like consent* (*s*), alter the district for which such district board was originally constituted, by adding thereto or taking therefrom any parish or parishes, union or unions, as aforesaid; and the said commissioners shall have the same powers for regulating the proceedings of any district board or of any committee thereof, and for directing and regulating the appointment, duties, remuneration, and removal of paid officers to be appointed by any district board, as they have with respect to the proceedings of boards of guardians, or with respect to paid officers to be appointed by any board of guardians; and every such board for a school district shall appoint, with the consent of the bishop of the diocese, at least one chaplain of the Established Church as one of the paid officers aforesaid, who shall be empowered to superintend the religious instruction of all the infant poor being under the control of such district board; and it shall be lawful for the said commissioners to issue rules and regulations for the government of any such school [or asylum (*r*)], and the inmates thereof, as if such school [or asylum (*r*)] were a workhouse; and any orders or regulations of the said commissioners made in pursuance of this act shall be enforced in the same manner and by the same penalties as if the same were an order or regulation made in pursuance of the said first-recited act: provided always, that no rules, orders, or regulations of the said commissioners, nor any regulations made by such district board, shall oblige any inmate of any such school [or asylum (*r*)] to attend any religious service which may be celebrated in a mode contrary to the religious principles of such inmate, nor shall authorize the education of any child in any religious creed other than that professed by the parents or surviving parent of such child, and to which such parents or surviving parent may object, or, in the case of an orphan or deserted child, to which his next of kin may object: provided also, that it shall be lawful at all reasonable times of the day, according to rules and regulations to be made for this purpose by the said board, for any minister of the religious persuasion professed by an adult inmate, or of the religious persuasion in which any child has been brought up, or in which the parents or surviving parent, or next of kin, as the case may be, may desire such child to be instructed, to visit the school [or asylum (*r*)], at the request of such adult inmate, for the purpose of affording to him religious assistance, or to visit such child for the purpose of instructing such child in the principles of his religion: provided also, that it shall be lawful at all times for any inspector of schools appointed by her Majesty in council to visit such schools, and to examine into the proficiency of the scholars therein."

Chaplain to be appointed.

Religious education of inmates.

School inspectors.

Powers of district board for purchasing and hire of land, &c.

Sect. 44. "And be it enacted, that for the purpose of providing a building for such school [or asylum (*r*)] it shall be lawful for such district board, subject to the order of the said commissioners, to exercise the powers given to boards of guardians by the said first-recited act or any other act or acts for the purchase and hire of lands and buildings, and to borrow, in like manner as is provided in the said first-

(*r*) See as to asylums, Chap. XIII. § 1.

(*s*) The 30 & 31 Vict. c. 106, s. 16, repeals so much of this section "as requires the consent in writing of a majority of the district board therein described to the alteration of such district."

recited act or in any other act or acts, such sum or sums of money as may be necessary for the purpose of purchasing any site, or purchasing, hiring, or building, and of fitting up and furnishing such building or buildings as aforesaid, and to charge the future poor-rates of the parishes or unions, or parishes and unions, so combined as aforesaid, with the payment of such sum or sums of money, and interest thereon: provided always, that the consent of any ratepayers or owners of property of any parish shall not be necessary to any sale, exchange, lease, or other disposal by guardians or overseers to or with any such district board of any workhouse, tenement, building, or land: provided also, that the principal sum or sums to be raised for the purpose of providing any such building or buildings as aforesaid, and charged on any union, or on any parish not included in a union, shall in no case exceed one-fifth of the average annual amount of the aggregate expenditure (*t*), relating to the relief of the poor within any such union, or of the like expenditure within any such parish, for three years ending the twenty-fifth day of March next preceding the raising of such money: provided also, that the principal sum or sums required for the purpose of providing any such building or buildings shall, if the same be borrowed, be repaid, with all interest thereon, within a period not exceeding twenty years" (*u*).

Sums to be raised for providing schools or asylums not to exceed one-fifth part of the average annual rates.

Sect. 45. "And be it enacted, that every such district board shall be enabled to accept, take, and hold, on behalf of the district for which they act, any lands, buildings, goods, effects, or other property, as a corporation, and in all cases to sue and be sued as a corporation, by the name of the board of management of the district school or asylum, as the case may be."

District board to hold property of the district as a corporation.

Sect. 46. "And be it enacted, that every district board for the management of any school [or asylum (*x*)] shall from time to time call on the parishes and unions included in such district for such contributions as they may deem requisite for the purposes of this act; and notice in writing of the amount of such contributions, purporting to be signed by the clerk or other officer of such district board, in any form prescribed by the said commissioners, shall, fourteen days at least before such contribution becomes due, be forwarded, by post or otherwise, to the clerk to the board of guardians of any union, and to two at least of the overseers or other officers authorized to make and levy rates for the relief of the poor in every parish from whom such contributions or any part thereof will become due; and if such contributions are not duly paid to

Payment of contributions to district boards.

(*t*) See the statute 11 & 12 Vict. c. 82, post, pp. 203, 204.

(*u*) In respect of metropolitan school districts, this section was amended by the 13 & 14 Vict. c. 101, s. 3, which enacts, "that in addition to the principal sum or sums of money which the board of management of a school district formed under the authority of the act of the eighth year of the reign of her Majesty, intituled 'An Act for the further Amendment of the Laws relating to the Poor in England,' are empowered to raise or borrow for the purpose of providing a building for the school of such district, such board may, whenever any part of such district is situated within the metropolitan police district, with the consent and order of the poor law board, also raise or borrow, and charge the future poor-rates of the unions and parishes respectively combined in such district with such further or other sum or sums of money as may be or may have been necessary for the purchase of any land or interest in land, required for the site of such school, or required for the training of the children maintained thereat, or for the site of any addition to such school." And by the 14 & 15 Vict. c. 105, s. 16, reciting the last-mentioned provision, and that it was expedient with respect to school districts situated within the metropolitan police district, that the limit of expenditure fixed by the act 7 & 8 Vict. c. 101, should be enlarged, it is enacted, "that, in respect of any school district situated within the said metropolitan police district, such limit shall be enlarged from one fifth to one third."

(*x*) As to asylums, see Chap. XIII, § 1.

the treasurer of such district board, such district board shall, in addition to any other remedy which now is or hereafter may be given to any persons against any board of guardians, have the like remedy for recovery of the same from the overseers or other officers authorized to make and levy the rates for relief of the poor of the several parishes, whether comprised in a union or otherwise, and which may form part of the district for which such district board may act, as are given to guardians for the recovery from overseers of the contributions of parishes; and in case of any addition or separation of parishes or unions, the said commissioners shall ascertain the proportionate value of property and amount of obligations of every parish or union affected by the change, and shall fix the amount to be received or paid, or secured to be paid, by every such parish or union."

Distribution of charges for schools.

Sect. 47. "And be it enacted, *that the expenses incurred by any district board in the purchase or hire of any building or buildings to be used as a school, or in erecting, repairing, adding to, or fitting up any building, and in the purchase of utensils and materials for the employment of the inmates of such school, or of books and other objects and things necessary for the instruction of such inmates, and the salaries of the officers and servants of the establishment, and all other expenses incurred on the common account of the parishes or unions, or parishes and unions, so united for the management of any class of infant poor, or incidental to the discharge of the duties of such district board, shall be paid by such unions in the proportion of the averages last declared for every such union, and by such parishes in the proportion of the average expenditure of every such parish for the like period and purposes as those to which the declared averages of such unions shall relate; and the said commissioners shall from time to time, by order under their hands and seal, ascertain and declare the proportion and rates of contribution in the above respects of every such parish and union;* and that all other expenses incurred in the relief of the children under the management of such district board shall be separately charged by such district board to the parish or union from which each such child may be sent" (*y*).

Appointment of auditors for district boards.

Sect. 49. "And be it enacted, that the poor law commissioners shall appoint some person, being at the time the auditor of some parish or union situated within the district for which any district board for any school [or asylum (*z*)] may be appointed, who shall be the auditor of such district, and shall be empowered and required to audit the accounts of each district board, and of the officers of such district board; and the salary of every such auditor of a district shall be paid by the district board thereof; and the said commissioners shall have the same powers for regulating the duties and remuneration of such auditors as they have with respect to paid officers appointed by any board of guardians; and it shall be lawful for the said commissioners, as they may see fit, to remove any auditor of such district, and in case of vacancy to appoint another person as aforesaid to the office: and every district board constituted under this act, and every officer of such district board, shall, twice in the year at least, at such a time and in such manner and form as may be prescribed by the poor law commissioners, account to the auditor appointed as aforesaid; and such auditor shall have all the powers of allowing and disallowing any charges in such accounts as are or may hereafter be given to auditors under the provisions of the said first-recited act or any other act for the audit of accounts relating to rates for the relief of the poor; and all sums disallowed or reduced or charged as balances against

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(*y*) See the 13 & 14 Vict. c. 11, s. 1, post, p. 204, repealing the part of this section in italics. As to the payment of debts incurred by boards of management in school districts, see the provisions of the act 22 & 23 Vict. c. 49, post, "OVERSEERS' ACCOUNTS." See also sect. 47 of "The Metropolitan Poor Act, 1867" (30 Vict. c. 6), ante, Chap. XIII. p. 191.

(*z*) As to asylums, see Chap. XIII. § 1.

any person by such auditor, shall be recovered on the application of such auditor (which application he is hereby empowered to make), in the same way as penalties and forfeitures under the said first-recited act, from the person making or authorizing such illegal payment; and within thirty days of such audit each district board shall cause to be printed, and shall forward by post or otherwise to each board of guardians, and to the officers of every parish within their district, an abstract of the accounts of their district so audited, in such form as the poor law commissioners may direct."

Children may be sent to district schools from parishes and unions not combined, but not distant more than twenty miles.

Sect. 51. "And be it enacted, that in any case where a parish or union is not combined in a school district, [*and where any part of such parish or union is not more than twenty miles from a district school* (*a*)], the board of guardians of such parish or union may, with the consent of the board of such district, send to such district school any infant poor not above the age of sixteen years, being chargeable to any such parish or union, who are orphans, or are deserted by their parents, or whose parents or surviving parent or guardians are consenting thereto; and the costs of the maintenance, employment, and instruction of such infant poor in such district schools shall be paid by such board of guardians to such district board, according to such rates and at such times and in such manner as may be agreed upon by the said boards, with the approbation of the said commissioners; and such infant poor while at such district school shall be subject to the control and management of such district board and their officers, in like manner as if the said parish or union were combined in such school district by virtue of this act."

Repeal of the acts 7 Geo. 3, c. 39, and 2 Geo. 3, c. 22.

Sect. 52. "And be it enacted, that the provisions of the act passed in the seventh year of the reign of his late Majesty King George the Third, intituled '*An Act for the better Regulation of the Parish poor Children of the several Parishes therein mentioned within the Bills of Mortality*,' and of an act passed in the second year of the reign of his said late Majesty, intituled '*An Act for the keeping regular, uniform, and annual Registers of all Parish poor Infants under a certain Age within the Bills of Mortality*,' shall be and are hereby repealed."

Workhouse to be deemed to be situate in every parish of a union, &c.

Sect. 56. "And be it enacted, that, for the purposes of relief, settlement, and removal of poor persons, and the burial of the poor, the workhouse of any union or parish, and every such district school, shall be considered as situated in the parish to which each poor person respectively to be relieved, removed, or buried, or otherwise concerned in any such purpose, is or has been chargeable: provided always, that every birth and death within any such workhouse or building shall be registered in the parish or place in which such workhouse or building is locally situated; and all fees for registering births and deaths in any such workhouse or building shall be charged by the guardians to the parish or union to which the person dying or the mother of the child respectively is chargeable."

By 11 & 12 Vict. c. 82, s. 1, reciting the 7 & 8 Vict. c. 101, as to districts for infant poor, it is enacted, "that so much of the said act as prevents the commissioners therein mentioned from including in any such district any parish, any part of which would be more than fifteen miles from any other part of such district, and so much thereof as provides that the principal sum or sums to be raised for the purpose of providing any building or buildings for any school for any such district as aforesaid, and charged on any union, or on any parish not included in a union, shall in no case exceed one-fifth of the average annual amount of the aggregate expenditure relating to the relief of the poor within any such parish, for three years ending the twenty-fifth of March next preceding the raising of such money, shall not apply to prevent the combination of

(*a*) See the 29 & 30 Vict. c. 113, s. 16, post, p. 207, repealing this limitation as to distance.

any union, or any parish not in union for the purposes aforesaid, nor the raising of any money for the purpose aforesaid, when the major part of the guardians of the several unions, and parishes not in union, proposed to be combined, shall previously thereto consent in writing to such combination." And by sect. 2, "all the provisions contained in 5 & 6 Vict. c. 57, in respect of the election, qualification, resignation and the acts of guardians of a union, and in respect of the supply of vacancies in the board of guardians, shall apply to the members of the district boards formed or to be formed under the authority of the first recited act and of this act."

The mode in which the averages of unions and parishes comprised in school districts shall be ascertained and declared.

By 13 & 14 Vict. c. 11, s. 1, so much of 7 & 8 Vict. c. 101, s. 47, as provides for the contribution of the unions and parishes comprised in any such school district, is repealed (*b*): and by s. 2 it is enacted, "that in respect of any district heretofore formed, or hereafter to be formed under the provisions of the statutes aforesaid, the poor law board shall cause an inquiry to be made as to the average annual expense incurred by or on account of the relief of the poor in every union and parish forming an integral part of such district during the three years ending on the twenty-fifth day of March next before the date of the formation of such district, such expense to include the cost of the relief of the poor belonging to the parish; or, in the case of a union, the cost of the relief of the poor belonging to the several parishes thereof, and of those chargeable upon the common fund thereof; and in each case the payment of the salaries of all officers engaged in the administration of the relief of the poor, and other like expenses of current and ordinary nature; and the said board shall, by an order, declare the respective averages so ascertained, and after the issue of such order the several unions and parishes comprised in any such district shall contribute to the several charges set forth in the clause hereinbefore cited from the said first-mentioned statute, according to the proportion of the averages declared in such order, until the same shall be altered by any subsequent order of the said board."

Provision for the declaration of fresh averages.

Sect. 3. "That the said poor law board, from time to time, whenever it shall seem proper to them to do so, may cause a fresh inquiry to be made in manner aforesaid, in respect of any such district, as to the expense of the unions and parishes therein for the three years ending on the twenty-fifth day of March next preceding such inquiry, and declare by their order the averages ascertained by such inquiry, and thereupon the contributions of the several unions and parishes in such district to the charges aforesaid shall be calculated according to the averages so last declared."

Provision for the case of the addition of a parish or union to an existing district.

Sect. 4. "That when any union or parish shall be added to any previously-formed district the said board shall cause the average expense of such union or parish corresponding with the period for which the averages of such district shall have been last ascertained and declared as aforesaid."

Accounts in any such district not closed and audited, to be settled according to provisions of this act.

Sect. 5. "That in respect of any district heretofore formed, all charges and expenses which shall not have been closed and audited at the passing of this act, and to which the said clause of the said first recited statute would have applied, shall be estimated and settled according to the proportions of the averages to be declared according to the provisions of this act."

By 14 & 15 Vict. c. 105, s. 17, the board of management of any school district may in like manner, and subject to the like order, rules and regulations of the poor law board, as in the case of the guardians of a union, exchange, demise, sell or otherwise dispose of any land belonging to the said district, and apply the rents or produce of any such exchange, sale or disposition for the benefit of the said district in such manner as the said poor law board shall direct.

(*b*) See ante, p. 202.

The statute 18 & 19 Vict. c. 34, "to provide for the education of children in the receipt of out-door relief," reciting, that "it is expedient that means should be taken to provide education for the young children of poor persons who are relieved out of the workhouse:" enacts (s. 1), "that the guardians of any union or any parish in England wherein the relief to the poor is administered by a board of guardians may, if they deem proper, grant relief for the purpose of enabling any poor person lawfully relieved out of the workhouse to provide education for any child of such person between the ages of four and sixteen in any school to be approved of by the said guardians, for such time and under such conditions as the said guardians shall see fit."

Guardians may grant relief to enable certain poor persons to provide education for their children.

Sect. 2. "Provided, that the poor law board may at any time issue their order to regulate the proceedings of the guardians with reference to the mode, time, or place in or at which such relief shall be given or such education received."

Poor law board may issue orders to regulate proceedings of guardians.

Sect. 3. "Provided also, that it shall not be lawful for the guardians to impose as a condition of relief that such education shall be given to any child of the person requiring relief."

Such education not to be a condition of relief.

Sect. 4. "The cost of the relief so given for the education of any such child shall be charged to the same account as the other relief granted by the said guardians to the same poor person, and may be given by the said guardians, and recovered by them as a loan, under the same circumstances and in like manner as such other relief."

Cost of relief to be charged to the same account as the other relief.

Sect. 5. "In the case of any child of such age as aforesaid relieved out of the workhouse, which child has been deserted by its parents or surviving parent, or both whose parents are dead, it shall be lawful for such guardians in their discretion, and with the like power of regulation on the part of the poor law board as aforesaid, to grant relief for the purpose of providing education for such child in any such school as aforesaid."

Orphans and deserted children may be relieved.

Sect. 6. "The words used in this act shall be construed in like manner as the words contained in the act of the 5th of William the Fourth, c. 76, and the several acts incorporated therewith."

The 25 & 26 Vict. c. 43, "to provide for the Education and Maintenance of Pauper Children in certain Schools and Institutions," reciting, that "it is expedient that facilities should be given to guardians of the poor to provide education and maintenance for poor children in certain cases where they are not empowered to do so by the laws now in force," enacts,

Sect. 1. "That the guardians of any parish or union may send any poor child to any school certified as hereinafter mentioned, and supported wholly or partially by voluntary subscriptions, the managers of which shall be willing to receive such child, and may pay out of the funds in their possession the expenses incurred in the maintenance, clothing, and education of such child therein during the time such child shall remain at such school (not exceeding the total sum which would have been charged for the maintenance of such child if relieved in the workhouse during the same period), and in the conveyance of such child to and from the same, and, in the case of death, the expenses of his or her burial."

Power to guardians to send poor children to schools.

Sect. 2. "The poor law board may, if they think fit, upon the application in writing of the managers of any such school as aforesaid, appoint such person as they shall deem proper to examine into the condition of the school, and to report to the said board thereon, and, if satisfied with such report, that board may, by writing under the hand of one of their secretaries, certify that such school is fitted for the reception of such children or persons as may be sent there by the guardians, in pursuance of this act; and it shall be lawful for the said board, if at any time they shall be dissatisfied with the condition or management of such school, by notice addressed to the managers, and signed as aforesaid, to declare that the certificate is withdrawn from and after a day to be specified therein, not less than two months after the date thereof."

Poor law board to certify the school.

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Poor law board may order children to be removed from school.

Sect. 3. "If the poor law board shall be of opinion that any person is aggrieved by any child being so sent or kept at such school as aforesaid, the board may order any such child to be removed, and the guardians shall forthwith cause such child to be removed from the school, and every engagement previously entered into for the payment of the charges of such child shall thereupon cease, and become void for the future."

School to be open to inspection.

Sect. 4. "Every school wherein any such child shall be received shall be open to the visitation and inspection of any inspector appointed by the poor law board, and he shall be empowered to make any examination into the state and management of the same which he shall deem requisite, and the condition and treatment of the said children therein, and shall make his report thereon to the said board; and the guardians by whom any child may have been sent to any such school as aforesaid may from time to time appoint any one of their body to visit and inspect such school, and such school shall at all reasonable times be open to such visitation or inspection."

Guardians to bring back child to parish or union.

Sect. 5. "The guardians may at any time, at their discretion, and shall, upon the requisition of the managers of the school, or upon the withdrawal of the certificate, as herein provided, cause any such child to be removed from any such school, and brought back to their parish or union."

Description of child to be sent to school.

Sect. 6. "No child shall be sent to such school unless he or she be an orphan, or deserted by his or her parents or surviving parent, or be one whose parents or surviving parents shall consent to the sending of such child to the said school."

Continuance in school not to be compulsory.

Sect. 7. "Nothing herein contained shall enable the guardians to keep any child in any school against the will of such child, if above the age of fourteen, or of the parents or surviving parent of such child, whatever be the age of the child."

Charge of expenses how to be borne.

Sect. 8. "The expenses incurred by the guardians in respect of any child under this act shall be charged to the same fund and in the same manner as the relief otherwise supplied to such child would be charged."

Child not to be sent to certain schools herein named.

Sect. 9. "No child shall be sent under this act to any school which is conducted on the principles of a religious denomination to which such child does not belong."

Interpretation of "school."

Sect. 10. "The several words used in this act shall be construed as in the act of the fourth and fifth years of William the Fourth, chapter seventy-six; and the word 'school' shall extend to any institution established for the instruction of blind, deaf, dumb, lame, deformed, or idiotic persons, but shall not apply to any certified reformatory school."

Extent of act.

Sect. 11. "This act shall not extend to Scotland or Ireland."

Provision for educating children in the religion to which they belong.

"The Poor Law Amendment Act of 1866" (29 & 30 Vict. c. 113), enacts (s. 14), "that if the parent, step-parent, nearest adult relative, or next of kin of any child not belonging to the Established Church, relieved in a workhouse or in a district school, or in case there should be no parent, step-parent, nearest adult relative, or next of kin, then the god-parent of such child, make application to the said board in such behalf, the board may, if they think fit, order that such child shall be sent to some school established for the reception, maintenance, and education of children of the religion to which such child shall be proved to belong, and duly certified by the poor law board under the statute of the twenty-fifth and twenty-sixth Victoria, chapter forty-three (*c*), and the guardians of the union or parish to which such child shall be chargeable shall, according to the terms of such order, cause the child to be conveyed to such school, and pay the costs and charges of the maintenance, lodging, clothing, and education of the said child therein, and

(*c*) See sect. 2 of the 25 & 26 Vict. c. 43, ante, p. 205.

all the provisions of the said statute shall thenceforth apply to the said child."

Sect. 16 enacts, that "so much of the fifty-first section of the said last-mentioned statute (*d*) as limits the distance within which children may be sent to the school of any district formed under the said or any subsequent statute from any parish or union not combined therein, and so much of the sixth section of the statute of the fourteenth and fifteenth years of her Majesty, chapter one hundred and five, as limits the distance within which children may be sent from one workhouse to another (*e*), are hereby repealed."

The limits imposed by sect. 51 of 7 & 8 Vict. c. 101, and sect. 6 of 14 & 15 Vict. c. 105, withdrawn.

Industrial Schools.

"The Industrial Schools Act, 1866" (29 & 30 Vict. c. 118), enacts (s. 19), that "two justices or a magistrate, while inquiry is being made respecting a child, or respecting a school to which he may be sent, may, by order signed by them or him, order the child to be taken to the workhouse or poor-house of the union, parish, or combination in which he is found or resident,—or where (in *Scotland*) there is no such poor-house, or the poor-house is at an inconvenient distance, to such other place, not being a prison, as the magistrate thinks fit, the occupier whereof is willing to receive him,—and to be detained therein at the cost of the union, parish, or combination for any time not exceeding seven days, or until an order is sooner made for his discharge or for his being sent to a certified industrial school; and the guardians of the poor for the union or parish, or the keeper of the poor-house, or other person to whom the order is addressed, are and is hereby empowered and required to detain him accordingly."

Temporary detention in workhouse, &c.

Sect. 31 enacts, that "the time during which a child is detained in a school under this act shall for all purposes be excluded in the computation of time mentioned in section one of the act of the session of the ninth and tenth years of her Majesty's reign (chapter sixty-six), 'to amend the Laws relating to the Removal of the Poor,' as amended by any other act."

Liability to removal not affected by stay at school.

Besides the above provision applicable to all children sent to an industrial school, the act contains the following important section respecting pauper children:—"Where the guardians of the poor of a union or of a parish wherein relief is administered by a board of guardians, or the board of management of a district pauper school, or the parochial board of a parish or combination, represent to two justices or a magistrate (*f*) that any child apparently under the age of fourteen years maintained in a workhouse or pauper school of a union or parish, or in a district pauper school, or in the poor-house of a parish or combination, is refractory, or is the child of parents either of whom has been convicted of a crime or offence punishable with penal servitude or imprisonment, and that it is desirable that he be sent to an industrial school under this act (*g*), the justices or magistrate may, if satisfied that

As to refractory children under fourteen years of age in workhouses, pauper schools, &c.

(*d*) 7 & 8 Vict. c. 101, ante, p. 203.

(*e*) See ante, Chap. XI. p. 157.

(*f*) "The term 'two justices' applies to England only, and means two or more justices in petty sessions, or the lord mayor or an alderman of the city of London, or a police or stipendiary magistrate or other justice having by law authority to act alone for any purpose with the powers of two justices: the term 'magistrate' applies to Scotland only, and includes sheriff, sheriff substitute, justice of the peace of a county, judge in a police court, and provost or baillie of a city or burgh." (29 & 30 Vict. c. 118, s. 4.)

(*g*) "A school in which industrial training is provided, and in which children are lodged, clothed, and fed, as well as taught, shall exclusively be deemed an industrial school within the meaning of this act." (*Ib.* s. 5.)

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it is expedient to deal with the child under this act, order him to be sent to a certified (*h*) industrial school" (*i*).

Power to guardians of poor, &c. to contribute.

"The guardians of the poor of a union or parish, or the board of management of a district pauper school, or the parochial board of a parish or combination, may from time to time, with the consent in England of the poor law board, and in Scotland of the board of supervision, contribute such sums as they think fit towards the maintenance of children detained in a certified industrial school on their application" (*k*).

(*h*) "The secretary of state may, on the application of the managers of an industrial school, direct the inspector of industrial schools to examine into the condition of the school, and its fitness for the reception of children to be sent there under this act, and to report to him thereon, and the inspector shall examine and report accordingly. If satisfied with the report of the inspector the secretary of state may, by writing under his hand, certify that the school is fit for the reception of children to be sent there under this act, and thereupon the school shall be deemed a certified industrial school." (*Ib.* s. 7.)

(*i*) 29 & 30 Vict. c. 118, s. 18, enacts, that "the order of justices or a magistrate sending a child to a school (in this act referred to as the order of detention in a school) shall be in writing signed by the justices or magistrate, and shall specify the name of the school. The school shall be some certified industrial school (whether situate within the jurisdiction of the justices or magistrates making the order or not) the managers of which are willing to receive the child; and the reception of the child by the managers of the school shall be deemed to be an undertaking by them to teach, train, clothe, lodge, and feed him during the whole period for which he is liable to be detained in the school, or until the withdrawal or resignation of the certificate of the school takes effect, or until the contribution out of money provided by parliament towards the custody and maintenance of the children detained in the school is discontinued, whichever shall first happen. The school named in the order shall be presumed to be a certified industrial school until the contrary is shown. In determining on the school the justices or magistrate shall endeavour to ascertain the religious persuasion to which the child belongs, and shall, if possible, select a school conducted in accordance with such religious persuasion, and the order shall specify such religious persuasion. The order shall specify the time for which the child is to be detained in the school, being such time as to the justices or magistrate seems proper for the teaching and training of the child, but not in any case extending beyond the time when the child will attain the age of sixteen years."

(*k*) 29 & 30 Vict. c. 118, s. 37.

CHAPTER XV.

Of the Administration of Relief to the Poor—(*continued*).

Parish Apprentices.

§ 1. GENERAL PROVISIONS RELATING TO PARISH APPRENTICES.

43 Eliz. c. 2.

STAT. 43 Eliz. c. 2, s. 1, directs the churchwardens and overseers of every parish to raise a fund for setting to work the children of those who should not be thought able to keep or maintain them; and, by sect. 5, enacts, "that it shall be lawful for the said churchwardens and overseers, or the greater part of them (*l*), by the assent of any two justices of the peace aforesaid (*m*), to bind any such children as aforesaid, to be apprentices where they shall see convenient, till such man child shall come to the age of four-and-twenty years (*n*), and such woman child to the age of one-and-twenty years, or the time of her marriage; the same to be as effectual to all purposes as if such child were of full age, and by indenture of covenant bound him or herself."

Who to be bound.

The assent or allowance of the justices under the statute of Elizabeth is a judicial act. *R.* v. *Hamstall Ridware*, 3 Term Rep. 54; *Staunton* v. *Ashburton*, 4 E. & B. 526; 24 L. J., M. C. 53.

Children bound apprentices, master to provide for them according to indenture signed by justices, &c.

The stat. 8 & 9 Will. III. c. 30, s. 5, reciting stat. 43 Eliz. c. 2, s. 5, "but there being doubts whether the persons to whom such children are to be bound are compellable to receive such children as apprentices, that law hath failed of its due execution;" enacted, "that where any poor children shall be appointed to be bound apprentices pursuant to the said act, the person or persons, to whom they are so appointed to be bound, shall receive and provide for them, according to the indenture signed and confirmed by the two justices of the peace, and also execute the other part of the said indentures; and if he or she shall refuse so to do, oath being thereof made by one of the churchwardens or overseers of the poor, before any two of the justices of the peace for that county, liberty, or riding, he or she, for every such offence, shall forfeit the sum of 10*l.*, to be levied by distress and sale of the goods of any such offender, by warrant under the hands and seals of the said justices, the same to be applied to the use of the poor of the parish or place where such offence was committed; saving always to the person, to whom any poor child shall be appointed to be bound an apprentice as aforesaid, if he or she shall think themselves aggrieved thereby,

Penalty for refusal.

Appeal.

(*l*) See 51 Geo. III. c. 80, and 54 Geo. III. c. 107, noticed, post, p. 210.

(*m*) This and the subsequent statutes relating to duties of justices of the peace, and to the compulsory binding in reference to apprenticeship, must be read subject to the alterations effected by the 7 & 8 Vict. c. 101, post, p. 217.

(*n*) Altered to twenty-one by the 18 Geo. III. c. 47.

his or her appeal to the next general or quarter sessions of the peace for that county or riding, whose order therein shall be final and conclude all parties" (*m*).

The statute 32 Geo. III. c. 57, "for the further regulation of parish apprentices, contains various provisions to meet the case of the death of the master, and to enforce covenants for their maintenance, and also providing for the assignment of apprentices." These provisions will be found under subsequent divisions of this chapter.

The 42 Geo. III. c. 46, provided for the registry of parish apprentices (*n*).

The 51 Geo. III. c. 80, rendered valid former and subsequent indentures for the binding of parish apprentices, which had been or might be declared void by reason of their not being signed by distinct persons as churchwardens and other distinct persons as overseers (*o*); and the 54 Geo. III. c. 107, rendered valid indentures although the churchwardens executing them had not been sworn in, and also rendered valid indentures executed by overseers and churchwardens of townships (*p*).

How parish apprentices to be bound.

The stat. 56 Geo. III. c. 139, to regulate the binding of parish apprentices (*q*), reciting (s. 1), that "many grievances have arisen from the binding of poor children as apprentices by parish officers to improper persons, and to persons residing at a distance from the parishes to which such poor children belong, whereby the said parish officers and the parents of such children are deprived of the opportunity of knowing the manner in which such children are treated, and the parents and children have in many instances become estranged from each other; and also from the permission given to apprentices, by the persons to whom such apprentices have been bound, to serve others without a formal assignment, whereby the discretion to be exercised by magistrates in placing out apprentices to suitable persons is frequently rendered of no avail;" for remedy thereof enacts, "that from and after the 1st day of October, 1816, before any child shall be bound apprentice by the overseers of the poor of any parish, township, or place, such child shall be carried before two justices of the peace of the county, riding, division or place wherein such parish, township, or place shall be situate (*r*), who shall inquire into the propriety of binding such child apprentice to the person or persons to whom it shall be proposed by such overseers to bind such child; and such justices shall particularly inquire and consider whether such person or persons reside, or have his, her, or their place or places of business within a reasonable

Child to be carried before two justices;

who are to inquire whether intended master resides at a reasonable distance, &c.

(*m*) In consequence of doubts whether persons were compellable to receive and provide for apprentices under particular acts relating to incorporated hundreds or districts, the 20 Geo. III. c. 36, removed those doubts by so compelling them, if inhabitants and occupiers in the parish to which the child belonged; and this act was by the 42 Geo. III. c. 46, s. 8, extended to children bound apprentices under subsequent acts. It is unnecessary to notice these statutes more fully, compulsory apprenticeships no longer existing. (See post, pp. 217, 218.)

(*n*) See post, § 5.

(*o*) The case of *R.* v. *All Saints, Derby*, 13 East, 143, led to this enactment.

(*p*) The 1 & 2 Geo. IV. c. 32, rendered valid indentures of apprenticeship previously executed by one churchwarden only. As the power of apprenticing is now exercised by guardians (see post, p. 217), it is unnecessary to notice these statutes at greater length.

(*q*) This whole statute relates to *parish* apprentices, and is intended as an amendment of the system of which 43 Eliz. c. 2, s. 5 (ante, p. 209), is the origin. The statute is in parts obscurely worded. (See *R.* v. *Threlkeld*, 4 B. & Adol. 229; 1 Nev. & M. 14, S. C.)

(*r*) If the parish is in a city, borough, or town corporate, the indenture must have been allowed by a justice of peace of such city, &c., and a justice of the peace of the county in which the same is situate. (3 & 4 Will. IV. c. 63, s. 3, post, p. 216.)

distance from the place to which such child shall belong, having regard to the means of communication between such places, or whether any circumstances shall make it fit, in the judgment of such justices, that such child should be placed apprentice at a greater distance; and if the father or mother of such child shall be living, and shall reside in or near the place to which such child shall belong, such justices shall (if they see fit) examine such father or mother, or either of them, and shall particularly inquire as to the distance of the residence or place of business of the person or persons to whom it shall be proposed to place such child, and the means of communication therewith: and such justices shall also inquire into the circumstances and character of such person or persons; and if such justices shall, upon such examination and inquiry, think it proper that such child should be bound apprentice to such person or persons, such justices shall make an order, declaring that such person or persons is or are fit person or persons to whom such child may be properly bound as apprentice, and shall thereupon order that the overseer or overseers of the place to which such child shall belong shall be at liberty to bind such child apprentice accordingly; which order shall be delivered to such overseer or overseers as a warrant for binding such child apprentice as aforesaid; and such order shall be referred to by the date thereof, and the names of the said justices, in the indenture of apprenticeship of such child (*s*), and after such order shall have been made, such justices shall sign their allowance of such indenture of apprenticeship, before the same shall be executed by any of the other parties thereto; provided always, that no such child shall be bound apprentice to any person or persons residing or having any establishment in trade, at which it is intended that such child shall be employed out of the same county, at a greater distance than forty miles from the parish or place to which such child shall belong (*t*), unless such child shall belong to some parish or place which shall be more than forty miles from the city of London, in which case it shall be lawful for the justices who shall authorize the apprenticing of such child to make a special order (*u*) for that purpose, in which order such justices shall distinctly specify the grounds on which they shall think fit to allow of the apprenticing of such child to a person or persons residing, or having an establishment in trade, at a greater distance than forty miles from the parish or place to which such child shall belong."

May examine parents as to distance, &c.

and character, &c. of master.

Justices to make order that overseers may bind, &c.

Order to be referred to in indenture and signed by justices before execution of indenture.

No child to be bound beyond forty miles out of county,

unless child's parish be more than forty miles from London.

Special grounds for allowing, to be stated by justices.

Sect. 2. "In all cases where the residence or establishment of business of the person or persons to whom any child shall be bound, shall be within a different county or jurisdiction of the peace from that within which the place by the officers whereof such child shall be bound shall be situated, and in all other cases where the justices of the peace for the district or place within which the place by the officers whereof such child shall be bound shall be situated, and who shall sign the allowance of the indenture by which such child shall be bound, shall not have jurisdiction, every indenture by which such child shall be bound at any time after the said first day of October shall be allowed as well by two justices of the peace for the county or district within which the

Indenture to be allowed by two justices of county, &c. into which apprentice is to be bound, as well by two justices of county, &c. from which he is bound.

(*s*) This provision, requiring that the order of magistrates for the binding out parish apprentices shall be referred to in the indenture of the date thereof, is compulsory; and, therefore, an indenture in which the date of the order is omitted, was held to be void, and no settlement gained by serving under it. (*R.* v. *Bawbergh*, 2 B. & Cres. 222; 3 D. & R. 338, S. C.) See now, however, the 7 & 8 Vict. c. 101, s. 12, post, p. 217, dispensing with the allowance by justices in all but exceptional cases.

(*t*) Before this enactment, the overseers might have bound a parish apprentice to a person residing or carrying on trade at any distance out of the county. (Per cur. *R.* v. *St. George, Exeter*, 3 Ad. & Ell. 373.)

(*u*) The House of Commons, in passing "The Poor Law Amendment Act, 1834," repealed this clause, but the House of Lords rejected such repeal.

place by the officers of which such child shall be bound shall be situated, as by two justices of the peace for the county or district within which the place shall be situated wherein such child shall be intended to serve (*t*): provided always, that no indenture shall be allowed by any justice of the peace for the county into which such child shall be bound, who shall be engaged in the same business, employment, or manufacture in which the person to whom such child shall be bound is engaged; and notice shall be given to the overseers of the poor of the parish or place in which such child shall be intended to serve an apprenticeship before any justice of the peace for the county or district, within which such parish or place shall be, shall allow such indenture; and such notice shall be proved before such justice shall sign such indenture, unless one of such overseers shall attend such justice, and admit such notice."

Justices not to be engaged in same business as apprentice.

Notice to overseers.

Allowance by county magistrates valid in towns, &c. of exclusive jurisdiction.

Sect. 3. "The allowance of two justices of the peace for the county within which the place in which such child shall be intended to serve an apprenticeship shall be situated, shall be valid and effectual, although such place may be situated in a town or liberty within which any other justices of the peace may in other respects have an exclusive jurisdiction."

Distance to which apprentices may be bound not limited to cities counties of themselves.

Sect. 4. "And whereas there are several cities and boroughs which are counties of themselves, and several districts situated without the limits of the county to which such districts respectively belong, be it enacted, that the distance to which parish apprentices may be bound shall not be construed to be limited to such cities and boroughs being counties, but shall extend to the county in which any such city and borough, and any such district, though belonging to another county, shall be locally situated."

No settlement gained unless directions complied with.

Sect. 5. "No settlement shall be gained by any child who shall be bound by the officers of any parish, township, or place, by reason of such apprenticeship, unless such order shall be made and such allowances of such indenture of apprenticeship shall be signed as hereinbefore directed" (*u*).

Penalty on overseers binding apprentices contrary hereto.

Sect. 6. "In case any overseer or overseers shall bind an apprentice to any person or persons without having obtained such order and such allowances as hereinbefore required, and in case any person or persons shall receive any such apprentice as so bound without such order and allowances having been first obtained, the said overseer or overseers, and the said person or persons, shall each respectively forfeit the sum of ten pounds for each apprentice so bound, to be recovered as the penalties hereinafter given are directed to be recovered."

Children not to be bound until nine years old.

Sect. 7. "After the said first day of October it shall not be lawful for any parish officers to bind out any child as parish apprentice until such child shall have attained the age of nine years, anything in any act or acts of parliament to the contrary notwithstanding" (*x*).

Sections 8, 9, and 10, relate to the master's removal to a distance, &c., and to the discharge of the apprentice, &c., and will be found, post, § 4.

Allowance by justices where binding at expense of public parochial fund.

The first ten sections of the 56 Geo. III. c. 139, apply to cases where the parish officers are the binding parties; but inasmuch as parish officers intending to bind a child apprentice to an improper person, or to a person not residing or carrying on business within a reasonable distance, might, without being actual parties to the indenture, in order to evade the provisions contained in those sections, advance the public

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(*t*) See now the 3 & 4 Will. IV. c. 63, s. 1, post, p. 215.

(*u*) See post, "SETTLEMENT BY APPRENTICESHIP."

(*x*) The stat. 28 Geo. III. c. 48, had previously fixed eight years as the minimum age for apprenticing poor children to chimney sweepers. The 4 & 5 Will. IV. c. 35, raised it to ten, and the 3 & 4 Vict. c. 85, raised it to sixteen.

parochial funds to the parents of such child in order to bind him out; to remedy that mischief, and to prevent the parish officers from doing indirectly that which the other sections prevented them from doing directly, the 11th section was introduced.

Indentures not valid unless approved by two justices.

Sect. 11, reciting, that "the salutary provisions enacted by the 43 Eliz. are frequently evaded in the binding out of poor children, and the premium of apprenticeship, or a part thereof, is clandestinely provided by parish officers, who are thus enabled to bind out such poor children without the sanction of justices of the peace," enacts, "that after the said first day of October no indenture of apprenticeship, by reason of which any expense whatever shall be incurred by the public parochial funds, shall be valid and effectual, unless approved of by two justices of the peace under their hands and seals (*y*), according to the provisions of the said act and of this act."

In accordance with what is above stated as to the object of this section, it was considered that the first ten sections of this act of 56 Geo. III. apply to parish appenticeships of poor children where the parish officers are parties to the indenture, and that the 11th section applies to parish apprenticeships of poor children where the binding is voluntary, and the parish officers are not actual parties to the indenture, but procured the binding. (*R.* v. *St. Paul's, Exeter*, 10 B. & Cres. 12; *R.* v. *St. Peter's, Hereford*, 1 B. & Adol. 196; *R.* v. *Inhabitants of St. John, Bedwardine*, 5 B. & Adol. 173; 2 Nev. & M. 86, S. C. And see *R.* v. *Arundel*, 5 M. & Selw. 257; *R.* v. *St. Mary, Reading*, 1 Bott, 609 (*z*).)

(*y*) The allowance of the indenture to which the parish officers are actual parties is required, by the 56 Geo. III. c. 139, s. 1 (ante, p. 210), to be *signed* by two justices, but it need not be *under seal*. The allowance, however, of an indenture to which the parish officers are *not* parties, but where they have directly or indirectly *procured the binding*, and in respect whereof some expense has been expressly incurred by the *public parochial funds*, is required, by the 11th section of that statute, to be *sealed* as well as *signed* by two justices, or it will be void *ab initio*, and service under it will confer no settlement. This will appear from the cases of *R.* v. *St. Peter's, Hereford* (1 B. & Adol. 916); *R.* v. *St. Paul's, Exeter* (10 B. & Cres. 12; 5 M. & R. 94, S. C.); *R.* v. *Stoke Damerel* (1 M. & R. 458; 7 B. & Cres. 563; 1 M. & R., M. C. 155, S. C.).

(*z*) "I think we must construe the enacting part of the 11th section to cases *where the execution of the indenture is directly or indirectly obtained by parish officers, so as in effect to be a binding by them.*"—Per *Tenterden*, C. J., in *R.* v. *St. Peter's, Hereford* (1 B. & Adol. 916). Therefore where A., intending from charitable motives to apprentice a poor person, collected a sum of money for that purpose from several individuals, and among others from the overseers of three different parishes, though there was no evidence that the person belonged to either, and the sums given by the overseers were charged and allowed to them in their respective accounts, and with the sums so collected, and with his own money A. paid the premium of apprenticeship; this was held not a binding by the parish officers within the act, and did not require the assent of two justices. (*Ib.*)

So where the trustees of a charity established for placing out poor boys of a parish, the parish officers furnished him, from the parochial funds, with a suit of clothes, *all* of which would not have been given to him *at that time*, except with the prospect of his being bound; but no stipulation was made on the subject by or with the master: it was held, that the supply of clothes was not an expense incurred by the parochial funds within the 56 Geo. III. c. 139, s. 11, and therefore that the indenture did not require the approval of two justices. (*R.* v. *Quainton*, 3 Nev. & M. 289; 1 Ad. & Ell. 133, S. C.)

Lands were devised for the relief of the poor of H., one-half of the revenue to be employed for the relief of widows, the other half towards binding out apprentices; the rents were received by the churchwardens, and not mixed with the poor-rate, but kept in a distinct account. A parishioner of H., not receiving parish relief, applied to the churchwardens to provide him with the means of apprenticing his

CHAP. XV.

Penalties may be recovered by information, &c.

Sect. 12. "All penalties and forfeitures hereby imposed for any offence against this act shall and may be recovered by information before any two justices of the peace of the county or district where such offence shall be committed."

Justices empowered to dispose of penalties.

Sect. 13. "It shall and may be lawful to and for the justices before whom any such penalty shall be recovered, to direct such penalty, after deducting the necessary costs and charges attending any information and the proceedings thereon, to be paid, applied, and distributed either to the person or persons giving information of the offence for which such penalty shall be incurred, or to the overseers of the poor of the parish or township in which such offence shall have been committed, or by the officers whereof such apprentice shall have been bound, for the use of the poor of such parish or township, or in the binding of the apprentice respecting whom such offence shall be committed, to any other person, or to be distributed and applied for any one or more of such purposes as to such justices shall seem meet."

Recovery of penalties.

Sect. 14. "In case of non-payment of any penalty hereby imposed, the same shall be levied by distress and sale of the offender's goods and chattels, by warrant under the hands and seals of the justices before whom such offender shall have been convicted, or of any other two justices of the peace of the same county or district; and for want of such distress, such offender shall be committed to the common gaol or house of correction for any period not less than one, nor more than six months, to be appointed by the justices before whom such offender shall be convicted."

Form of conviction.

Sect. 15 gives a form of conviction for all offences against the act (*a*).

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son. The son was apprenticed, and the churchwardens paid the premium, costs of indenture, and expense of clothing the apprentice, out of the charity fund: held, that this was not an indenture by which an expense was incurred by public parochial funds within 56 Geo. III. c. 139, s. 11, and therefore not void for want of the approval of two justices according to that statute. (*R.* v. *Halesworth*, 3 B. & Adol. 717.)

And in a similar case, where lands were devised to the churchwardens and overseers of L. and their successors, upon trust to apply the rents towards educating twenty poor children, and a part thereof yearly towards apprenticing eight of such children, to be chosen out and allowed by the said churchwardens and overseers and the principal inhabitants: held, that this also was not a public parochial fund within the meaning of the act. (*Ib.*)

But where, before the execution of an indenture, the master said that the intended apprentice should have better clothes, the apprentice then applied to the parish officers, who agreed to give him 2*l.* on the execution of the indenture, for the purpose of buying clothes, which they did accordingly: it was held, that the money paid by the parish officers was an expense incurred by reason of an indenture of apprenticeship, within the meaning of the 56 Geo. III. c. 139, s. 11, and therefore that the indenture required the assent of two justices. (*R.* v. *Mattishall*, 8 B. & Cres. 733; 3 M. & R. 386.)

Where an apprentice is bound out of a parish by his father, but part of the expense is paid out of the parochial funds, the indenture must be approved of by two justices. (*R.* v. *Stoke Damerel*, 1 M. & R. 458; 7 B. & Cres. 563, S. C.)

It may be observed, that the 11th section of the 56 Geo. III. c. 139, extends only to indentures of apprenticeship of *poor children*; and, therefore, an indenture whereby a person of the age of twenty-four is bound apprentice, part of the premium being paid out of the public parochial funds, does not require the assent of two justices. (*R.* v. *The Inhabitants of St. John, Bedwardine*, 2 Nev. & M. 86; 5 B. & Adol. 169, S. C.)

And though an infant be a pauper in the parish workhouse at the time of the binding and the parish officers pay the premium, still it was not necessary for them to sign the indenture, or that the justices should assent thereto, if the infant be not a *parish* apprentice within the meaning of the 43 Eliz. c. 2. (*R.* v. *Arundel*, 5 M. & Sel. 257.)

(*a*) See the form, post, Appendix.

Sect. 16. "In case any person convicted for any offence against this act shall not pay the penalty imposed by such conviction within one calendar month next after such conviction shall take place, it shall be lawful to and for the justices making such conviction, or for any two other justices of the county or district, to issue their warrant for the apprehending and imprisoning of such offender, notwithstanding such offender may have goods or chattels whereby such penalty might have been levied."

Persons not paying penalty may be imprisoned.

Sect. 17. "Any person or persons who shall be dissatisfied with any act done by any justice or justices of the peace in the execution of this act, may appeal against the same to any court of general or quarter sessions to be holden for the county within which such act shall have been done, within three calendar months after the fact so complained of, upon giving notice in writing to such justice or justices, and also to the person or persons who shall be interested in such appeal, within twenty-one days next after the act so appealed against shall have taken place; and in case such appeal shall be against any conviction, entering into a recognizance with two sufficient sureties before any justice of the peace of the county or district within which such conviction shall have taken place, to appear at such general or quarter sessions to abide the judgment of the court upon such appeal, and to pay the costs which may be awarded thereon; and that it shall and may be lawful to and for the justices at such sessions to hear and determine the matter of such appeal, and to award costs therein as they in their discretion shall think fit; and all such appeals shall be to the sessions of the county within which the act appealed against shall have taken place, and not to any district or liberty within the same."

Appeal.

Sect. 18. "The provisions and penalties herein contained respecting overseers of the poor shall be deemed to extend to all churchwardens having the power and authority of overseers of the poor; and that all the provisions herein mentioned and contained respecting any parish or place shall extend to any incorporated or other district for the maintenance of the poor; and that the officers of any such district having power to bind apprentices, shall be subject to all the rules, regulations and penalties herein mentioned and contained respecting overseers of the poor."

Churchwardens included in meaning of act.

Incorporated and other districts.

By 3 & 4 Will. IV. c. 63, intituled "An Act to render valid Indentures of Apprenticeship allowed only by two Justices acting for the County in which the Parish from which such Apprentices shall be bound, and for the County in which the Parish into which such Apprentices shall be bound, shall be situated; and also for remedying defective Executions of Indentures by Corporations," reciting the 56 Geo. III. c. 139; "and that since the passing of that act numerous indentures of apprenticeship have been allowed by two justices attending and acting at such petty sessions for the county within which the place by the officers whereof such child shall be bound is situated, and by the same two justices acting also as justices for the county within which the place is situated wherein such child shall be intended to serve, such justices conceiving that, as they were acting justices for both counties, they were entitled to allow such indenture accordingly;" and that "doubts (*b*) have lately arisen whether the allowance of such two justices, although they act as justices for both counties, are valid and effectual, or whether it is not necessary that such indenture should be allowed by four justices, two acting for one county, and two for the other only; and the settlement of the numerous persons who have already served and are now serving under indentures allowed by two justices acting for both counties in manner aforesaid will be set aside, to their manifest injury;" enacts (s. 1), that "indentures allowed by justices acting for two counties shall be as valid as if granted by justices acting for different counties."

3 & 4 Will. 4, c. 63.

Recites 56 Geo. 3, c. 139.

(*b*) See *R.* v. *Newark-upon-Trent*, 3 B. & Cres. 59; 4 D. & R. 745, S. C.

Indentures with seal of corporations annexed to be valid.

Sect. 2. "Reciting, that by divers acts of parliament heretofore made and passed, the directors, guardians, acting guardians, or other officers of incorporated hundreds, parishes and other districts, are by the said acts of parliament respectively authorized to bind poor children apprentices in the manner by the said acts of parliament respectively prescribed and directed: and that the said directors, guardians, acting guardians, and other officers, have bound out poor children apprentices by indentures, to which the said directors, guardians, acting guardians, and other officers have been, by their description as directors, guardians, acting guardians, or other officers of such incorporated hundreds, parishes, and other districts respectively, made parties of the one part, or to which they have by their said descriptions respectively been binding parties, and which indentures have been executed by the said directors, guardians, acting guardians, and other officers, by affixing thereto the seal of the corporation of which they are directors, guardians, acting guardians, and officers respectively, and in no other manner by them: and that doubts have been entertained as to the effect and validity of indentures so executed (*c*); and it is desirable to remove such doubts;" enacts, "that from and after the passing of this act in all cases where any indentures for the binding out poor children apprentices have been heretofore or shall be hereafter executed by any directors, guardians, acting guardians, or other officers of any hundreds, parishes or other districts now incorporated or hereafter to be incorporated under and by virtue of any act of parliament, by affixing thereto the seal of the corporation of which they are or shall be directors, guardians, acting guardians, or other officers respectively, such execution of the said indentures respectively shall be deemed and taken to be a good, valid and effectual execution of the said indentures respectively by the said directors, guardians, acting guardians or other officers of such incorporated hundred, parishes or other districts respectively."

Indentures to be allowed by two justices, one of them acting for the county and one for the city, &c.

Sect. 3. "Reciting, that it is expedient that justices of the peace in every city, borough, or town corporate should have concurrent jurisdiction with county magistrates in apprenticing any child or children within the limits of such city, borough, or town corporate;" enacts, "that from and after the passing of this act every indenture for the binding of parish apprentices within any city, borough, or town corporate, shall be allowed by two justices of the peace, one of such justices acting for and on behalf of the county, and the other of such justices acting for and on behalf of the city, borough, or town corporate within the limits of which such child shall be bound."

This act not to set aside decisions already come to.

Sect. 4. "Nothing in this act contained shall be construed to affect or set aside any decision or judgment made or given in any court of judicature respecting any such indenture."

Apprenticing of poor children to be under the control of the poor law commissioners.

By the "Poor Law Amendment Act, 1834" (4 & 5 Will. IV. c. 76), s. 15, it is enacted, "that from and after the passing of this act the administration of relief to the poor throughout England and Wales, according to the existing laws, or such laws as shall be in force for the time being, shall be subject to the direction and control of the said commissioners; and for executing the powers given to them by this act the said commissioners shall and are hereby authorized and required, from time to time, as they shall see occasion, to make and issue all such rules, orders, and regulations for (*inter alia*) 'the Apprenticing the Children of Poor Persons.'"

Justices to certify that rules have been complied with in binding poor apprentices.

By sect. 61, it is enacted, "that from and after the period at which any rule, order, or regulation of the said commissioners shall come into operation for the binding of poor children apprentices, in addition to such assent or consent, order or allowance of justices, as are now required by

(*c*) See *R.* v. *Haughley*, 4 B. & Ad. 650; 1 N. & M. 525.

law, such justices or any one justice are and is hereby authorized and required to examine and ascertain whether the rules, orders, or regulations of the said commissioners then in force for the binding of poor children apprentices have been complied with, and to certify the same at the foot of every such contract or indenture, and of the counterpart thereof, in such form and manner as the said commissioners by such rules, orders, or regulations, may direct, and until so certified no such contract or indenture of apprenticeship shall be valid: provided, nevertheless, that nothing in this act, or in any rule, order, or regulation of the said commissioners, shall affect the jurisdiction of any justices of the peace over any master or apprentice during the period of apprenticeship" (*d*).

Justices' power as between master and apprentice.

The 15th section made no alteration in the law, but, to secure a conformity with the rules which that section empowers the commissioners to make on this subject, sect. 61 imposed on justices the duty of certifying that such rules have been complied with.

The "Poor Law Amendment Act, 1844" (7 & 8 Vict. c. 101), made a considerable alteration in the law relating to the apprenticeship of poor children by transferring the power from the overseers and justices to the guardians of the poor, and by abolishing compulsory apprenticeship so far as the masters are concerned.

Poor law commissioners to prescribe the duties of poor apprentices, and masters neglecting to fulfil them liable to penalty.

By s. 12 of that statute it is enacted, "that the poor law commissioners may, by order under their hands and seal, prescribe the duties of the masters to whom poor children may be apprenticed, and the terms and conditions to be inserted in the indentures by which such children may be so bound as apprentices; and every master of such apprentice who wilfully refuses or neglects to perform any of such terms or conditions so inserted in any such indenture shall be liable, upon conviction thereof before any two justices, to forfeit any sum not exceeding 20*l.*; and that after the first day of October next no poor child shall be bound apprentice by the overseers of any parish included in any such union or subject to a board of guardians under the provisions of the first-recited act (*e*), but it shall be lawful for the guardians of such union or parish respectively to bind any such poor child to be an apprentice, and in such case the indentures of apprenticeship shall be executed by the said guardians, and shall not need to be allowed, assented to, or executed by any justice or justices of the peace, and the guardians shall have all the powers for binding or assigning any such apprentice which are now possessed by overseers, and shall cause all apprentices so bound or assigned by them to be registered by their clerk according to the form prescribed by the statute of 42 Geo. III. c. 46, relating to the registration of parish apprentices, so far as the same may be applicable to such binding or assignment: provided always, that nothing herein contained shall directly or indirectly interfere with the provisions of any act of parliament relating to apprentices to be bound to the sea service."

Guardians to bind poor children apprentices instead of overseers.

42 Geo. 3, c. 46.

Compulsory apprenticeship abolished.

Repeal of 43 Eliz. c. 2.

8 & 9 Will. 3, c. 111.

Sect. 13. "And be it enacted, that after the passing of this act so much of an act passed in the forty-third year of the reign of Queen Elizabeth, intituled 'An Act for the Relief of the Poor,' and so much of an act passed in the session held in the eighth and ninth years of the reign of King William the Third, intituled 'An Act for supplying some Defects in the Laws for the Relief of the Poor of this Kingdom,' or of any other act of parliament, whether general or local, as compels any

(*d*) Since the 7 & 8 Vict. c. 101, s. 12 (infra), this provision is not applicable to apprenticeship by boards of guardians, but only to the now very exceptional cases in which the allowance of indentures by justices is still necessary. (See Mr. Glen's Notes to his "Poor Law Orders.")

(*e*) 4 & 5 Will. IV. c. 76.

person to receive any poor child as an apprentice, shall be and is hereby repealed" (*f*).

Under the authority thus conferred the poor law commissioners (now the poor law board) issued rules to various unions and places with reference to the apprenticeship of pauper children (*g*).

These regulations are merely directory, and any omission to comply with them does not affect the validity of the indentures or a settlement by apprenticeship. (*Reg.* v. *St. Mary, Bermondsey*, 2 E. & B. 809; 23 L. J. (N. S.) M. C. 1.)

§ 2. WHO MAY BE BOUND PARISH APPRENTICES.

Who may be bound.

We have already seen the statutes which point out who is to be bound a parish apprentice. (Ante, p. 209.)

The child to be bound should be of the age of nine years or upwards (*h*), 56 Geo. III. c. 139, s. 7, (ante, p. 212); and of parents who are not able to maintain it, 43 Eliz. c. 2, s. 5.

But it is not necessary that the child should be chargeable to the parish, or even residing within it, to authorize the overseers to put it apprentice; it is sufficient if it be the child of a person settled in the parish, who the overseers think is not able to maintain it. (*R.* v. *St. George, Exeter*, 3 Ad. & El. 373.)

A person of the age of twenty-one years cannot be considered a poor child within the meaning of the 56 Geo. III. c. 139. (*R.* v. *Inhabitants of St. John, Bedwardine*, 5 B. & Ad. 169; 2 N. & M. 86, S. C.)

Sect. 11 of that statute extends only to indentures of apprenticeship of poor children; and therefore an indenture, whereby a person of the age of twenty-four is bound apprentice, part of the premium being paid out of the public parochial funds, does not require the assent of two justices. (*Id.*)

It is discretionary in the parish officers to select those children whose parents the officers think unable to maintain them. (*R.* v. *Crosse, Comb.* 209.)

The consent of the apprentice is not requisite. (*R.* v. *St. George, Exeter*, 3 Ad. & El. 373.)

§ 3. THE MODE AND TERM OF BINDING.

Inquiry before Binding, Order of Justices, and Notice to Overseers.

The statutes requiring these preliminaries have been already noticed, and as they are now acted upon only in the exceptional cases of parishes neither included in a union nor subject to a board of guardians under the provisions of "The Poor Law Amendment Act, 1834," it is unnecessary to refer to them here (*i*).

(*f*) This renders it unnecessary to notice the various cases decided by the courts, in reference to what persons are compellable to take apprentices, and how compellable. They will be found collected under that head in Burn's Justice of the Peace, 29th edit. Vol. I. p. 222 et seq.

(*g*) These orders are included in the Consolidated Order of the 24th July, 1847. For the reasons stated, ante, p. 33, these rules are not given here. They include regulations respecting the parties, the premium, the term, consent, place of service, preliminaries to the binding (including medical examination and certificate), indenture, and duties of the master.

(*h*) As to the age of apprentices to chimneysweeps, see ante, p. 212, note (*x*).

(*i*) See a reference to the old statutes and cases, post, "SETTLEMENT BY APPRENTICESHIP."

Term of binding.

The Term of Binding.]—The time for which a male child is to be bound is till he becomes twenty-one years of age; the time for which a female child is to be bound is until she becomes twenty-one years of age or is married. (43 Eliz. c. 2; 18 Geo. III. c. 47, ante, p. 209.)

The apprentice may be bound for a shorter time than the statute requires, though not for a longer time. (*R.* v. *Chalbury*, 1 Bott, 606.)

But where a local statute enacted that certain guardians of the poor should have power to bind children apprentices, "provided such children be not bound for a longer term than until they shall have attained the respective ages following, viz. a boy the age of twenty-two, and a girl that of twenty:" it was held, that an indenture binding a boy for a longer term than that allowed by the act was not absolutely void, but only voidable. (*R.* v. *Inhabitants of the Vill of St. Gregory*, 2 Adol. & Ell. 99; 4 N. & M. 137, S. C.)

So an indenture, not made for any certain time, is not thereby void, but voidable only (*R.* v. *Woolstanton*, 1 Bott, 610); nor is an indenture, binding a poor girl an apprentice, void for want of the alternative "or till marriage." (*R.* v. *St. Petrox*, 1 Wils. 96; 1 Bott, 607.)

The indenture.

The Indenture.]—The indenture, before "The Poor Law Amendment Act, 1844," was between the churchwardens and overseers, or the major part of them of the one part, and the master of the other part. See now that act (ante, p. 217). (*R.* v. *Oadby*, 1 B. & Ald. 477.) There is no need of a stamp to or a statement of the premium in it (*k*).

Proviso as to death of master.

The 32 Geo. III. c. 57, s. 1 (post, p. 221), requires a proviso to be inserted as to the continuance of the apprenticeship after the death of the master.

Execution of, by master.

It is not necessary that the master should execute the indenture. (*R.* v. *Fleet*, 1 Bott, 601.) This was a question of settlement, and it appeared that the pauper, a parish apprentice, was bound by indentures; that the original indenture was properly executed by the parish officers, and allowed by two justices. The counterpart was also allowed by the justices, but neither the indenture nor counterpart was executed by the master. The master accepted the indenture and the pauper, and considered him as his apprentice. And upon this case there arose a question, whether it was necessary, under 8 & 9 Will. III. c. 30, s. 5 (ante, p. 209), that the master should have executed a counterpart, to enable the pauper to gain a settlement. And the court held that the binding was authorized by 43 Eliz. c. 2, s. 5, long before the act requiring a counterpart; that the statute of William only compelled persons to receive poor apprentices, but did not in other respects confirm the power of binding, which was already fully established (Cald. 31); and the court said, that it had been so determined in *R.* v. *St. Peter's-on-the-Hill* (2 Bott, 367); in which last case it was decided, that if the apprentice himself be bound, the execution by the master is not actually necessary, but the indenture shall be valid without it.

By apprentice.

Nor is it necessary that it should be executed by the apprentice. (*R.* v. *St. Nicholas in Nottingham*, 2 T. R. 726; 2 Bott, 373; *R.* v. *Woolstanton*, 1 Bott, 606.)

Before "The Poor Law Amendment Act, 1844" (*l*), it must in general have been executed by the major part of the churchwardens and overseers.

Execution by guardians, &c.

Where a parish was incorporated with others for the maintenance of its poor, and a guardian appointed under the 22 Geo. III. c. 83 (ante, p. 8), it was held that the churchwardens and overseers might still bind out poor children apprentices, and the indentures need not be

(*k*) The 31 Geo. II. c. 11, rendered the want of indenting immaterial, so far as regards settlement by apprenticeship.

(*l*) See ante, p. 217.

signed by the guardians. (*R.* v. *Lutterworth*, 5 D. & R. 343; 3 B. & Cres. 487, S. C.)

It seems that this case is still applicable to Gilbert Unions, although by the 3 & 4 Will. IV. c. 63, s. 2 (ante, p. 216), the corporate seal would be sufficient; and the 7 & 8 Vict. c. 101, s. 12 (ante, p. 217), would not apply, as that is confined to unions and boards of guardians under the 4 & 5 Will. IV. c. 76.

As to the execution of the indenture by justices (no longer necessary in unions or parishes subject to a board of guardians under "The Poor Law Amendment Act, 1834"), see the statutes (ante, pp. 211, 212, 216).

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§ 4. DISCHARGE AND ASSIGNMENT.

In general.

In general a *parish* apprentice under age cannot be *discharged* by his consent (*R.* v. *Austrey*, 1 Burr. 441), even though his father consent (*R.* v. *Langham*, Cald. 126); as he is bound out by the parish officers under a special authority, they ought to be consulted and give their assent to his discharge, otherwise the whole policy of the 43 Eliz. might be defeated.

But such assent is not necessary after he has attained the age of twenty-one, at which time the master and apprentice may cancel the indentures by mutual agreement. For at twenty-one the apprentice is *sui juris*, and his discharge from the indenture concerns at that time himself and his master only, and there is no necessity to procure the assent of the parish officers. (*R.* v. *Eccleshall Bierlow*, 1 Bott, 608.)

The assignment and vacating of *parish* indentures is provided for and regulated in most cases by the following legislative enactments of 32 Geo. III. c. 57; 56 Geo. III. c. 139; and by enactments relating to the discharge of apprentices in general in cases of ill-treatment, misconduct, &c.

Effect of Death of Master.

By sect. 1 of the 32 Geo. III. c. 57, after reciting the provisions of the statutes 43 Eliz. c. 2; the 8 & 9 Will. III. c. 30; and the 18 Geo. III. c. 47 (by which last-mentioned statute it was enacted, "that when any man child should be bound to be an apprentice, by virtue of the act of Queen Elizabeth, such child shall be bound to be an apprentice for no longer term than till he shall come to the age of twenty-one years); and also reciting, that in indentures of apprenticeship, it hath been usual to insert several agreements and covenants to be done and performed by the several parties thereto; (that is to say,) an agreement on the part of the apprentice, that he will faithfully serve his master during the term of such apprenticeship; and also several covenants on the part of the master, for himself, his executors and administrators, that he the said master will teach, or cause to be taught, such apprentice in the business of husbandry, or in the craft, mystery or occupation which such master then useth, as the case may be; and that such master shall also, during the term of such apprenticeship, find and allow unto such apprentice sufficient meat, drink, apparel, lodging and all other things needful for an apprentice, during such term:" and further recites, that "in the event of the death of the master during the term of such apprenticeship, the agreement for service on the part of the apprentice is at an end, but the covenant for maintenance on the part of the master still continue in force, as far as the master's assets will extend, or doubts have arisen with respect thereto (*m*), and, in consequence thereof, such apprentices

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(*m*) At *common law* by the death of the master the agreement for the service by the apprentice is put an end to, but the covenant on the part of the master still continues in force, as far as his assets will extend.

do frequently, on the death of their master, leave their master's house, and, after living in idleness, return again and become a burden on their master's effects, and so from time to time as they think proper, which is attended with great inconvenience and hardship to the family and personal representatives of such master, and is at the same time an inducement to such apprentice to continue in a disorderly and idle course of life; and whereas the several powers given to justices of the peace for the better ordering of parish apprentices, by the several acts of parliament made for that purpose, do cease and determine on the death of the master, for which a remedy ought to be provided; and whereas several other regulations are necessary to be made respecting parish apprentices:" it is enacted, "that in case of the death of any master or mistress of any parish apprentice, during the term of such apprenticeship, upon the binding out of which apprentice no larger sum than five pounds has been or shall be paid, [or by 5 Vict. c. 7, where no premium has been paid,] such covenant as is before mentioned for the maintenance of such apprentice, inserted in the indenture of apprenticeship by which such apprentice shall have been or shall be bound, shall not continue and be in force for and during any longer time than for three calendar months next after the death of such master or mistress, and that during such three calendar months such apprentice shall continue to live with and serve as an apprentice the executors and administrators of such master or mistress, some or one of them, or such person or persons as such executors or administrators, some or one of them, shall appoint; and the master or mistress whom such apprentice shall accordingly serve during the said three calendar months, and also such apprentice, shall during that time be subject and liable to all the laws which are or shall be in force for the better government and regulation of masters and parish apprentices; and that in all such parish indentures of apprenticeship as aforesaid, which shall be made from and after the first day of July, 1792, there shall be annexed to the covenant in such indentures to be entered into on the part of the master or mistress of such apprentice, for such maintenance as aforesaid, a proviso declaring that such covenant shall not be made to continue and be in force for any longer time than for three calendar months next after the death of such master or mistress, in case such master or mistress shall die during the term of such apprenticeship; which proviso may be in the form or to the effect mentioned in the schedule hereunto annexed, marked with the letter A (*n*); and in case such proviso shall happen to be omitted in any such indenture, the covenant therein contained on the part of the master, for the maintenance of the apprentice, shall be deemed and taken to continue and be in force for no longer time than for three calendar months next after the death of such master or mistress, in case such master or mistress shall die during the term of such apprenticeship; anything in any such covenant to the contrary notwithstanding."

Covenants where no more than 5*l.* given, to continue no longer than three months after death of master, &c.

Such a proviso to be inserted in indenture.

If omitted, covenant to continue no longer in force.

Sect. 2 reciting, "and whereas it is just and reasonable that such apprentice as aforesaid, in case of his master's death during his apprenticeship, should be obliged, during the term of his apprenticeship, to make some satisfaction by his labour to the family or representatives of his deceased master, for the advantages he has received from his apprenticeship in his childhood, when his services could not be equal to the expenses of his maintenance;" enacts, "that within such three calendar months after the death of such master or mistress, it shall and may be lawful for any two justices of the peace of the county, city, town, riding, division or place where such master or mistress shall have died, on application made to them by the widow of such master, or by the husband of such mistress, or by any son or daughter, brother or sister,

In three months after death of master, two justices may order apprentices to serve residue of terms with certain other persons.

(*n*) See form, post, Appendix.

or by any executor or executrix, administrator or administratrix, of such master or mistress, by indorsement on any such indenture of apprenticeship, or the counterpart thereof, or by any other instrument in writing (which indorsement or instrument may be in the forms or to the effect mentioned in the schedule hereunto annexed marked with the letters B and C (*n*)), to order and direct that such apprentice shall serve as an apprentice any one of such persons so making such application as aforesaid (such person having lived with and having been part of the family of such master or mistress at the time of his or her death), as the said justices shall in their discretion think fit, for and during the residue of the term mentioned in such indenture of apprenticeship; and the person obtaining such order shall declare his acceptance of such apprentice, by subscribing his or her name to such order; and that from and after such order shall be made, the executors and administrators, and the personal assets, estate and effects of the master or mistress so dying as aforesaid shall be released and discharged of and from any promise or covenant whatsoever, contained in any such indenture of apprenticeship, on the part of such master or mistress, his or her executors or administrators, to be done and performed; and the person obtaining the same shall be, and be deemed and taken to be, the master or mistress of such apprentice, in like manner as if such apprentice had been originally bound to such master or mistress; and that such last-mentioned master or mistress, his or her executors and administrators, each and every of them, shall be held and bound by the several promises and covenants contained in any such indenture of apprenticeship on the part of the master or mistress therein named, his or her executors or administrators, to be done and performed, in like manner as if such master or mistress obtaining such order as aforesaid had duly executed the counterpart of such indenture; and that such master or mistress and apprentice shall be subject and liable to the several penalties, provisions and regulations which shall then be in force for the better government and good order of masters and parish apprentices; and that all justices of the peace shall have the like powers and authority with respect thereto as they shall then have by any act or acts of parliament relating to parish apprentices."

How order to be made, &c.

How master to declare his acceptance of.

His liabilities.

Sect. 3. "All and singular the regulations and provisions hereinbefore made, and directed to take place on the death of the original master or mistress, shall be deemed and taken to relate to the like event of the death of any such subsequent master or mistress, and to their several relations and representatives before enumerated, from time to time, as often as the case shall happen, during the continuance of the term mentioned in any such indenture of apprenticeship."

Provisions to take place on death of original master to extend to subsequent one.

Sect. 4. "In case no such application shall be made as aforesaid within three calendar months next after the death of such master or mistress, or in case such two justices to whom any such application as aforesaid shall have been made, shall not think fit that such apprenticeship should be continued, then the said apprenticeship shall be determined, and the indenture of apprenticeship and covenants therein contained shall be at an end, in like manner as they would have been at the expiration of the term therein mentioned."

If no application made, or justices do not think fit that apprenticeship should continue, it shall be ended.

Sect. 5. "Nothing herein contained shall extend, or be construed to extend, to any parish apprentice, but to such only as shall be living with and shall make part of the family, or shall be in the actual employment of such original master or mistress, or of any subsequent master or mistress appointed under and by virtue of the several provisions of this act at the time of the death of any such masters or mistresses respectively." (See *R.* v. *Inhabitants of Sheepshead*, 15 East, 59.)

Act to extend to parish apprentices only living with master.

(*n*) See form, post, Appendix.

Apprentices may be assigned with consent of two justices.

The stat. 32 Geo. III. c. 57, s. 7, reciting, that it "frequently happens that persons are compellable, under and by virtue of the act of the ninth and tenth years of King William, to take a greater number of parish apprentices than it is convenient for them to maintain or employ in their own families, and they are therefore forced to place out or assign over such apprentices to other persons; and it is proper that such assignment should be legally made, under the inspection and control of the magistrates, as well for the benefit of the apprentice, as that the original master may be discharged from his covenants in respect of such apprentice; and it is fit that the person to whom such assignment shall be made, and also the apprentice, should be made subject to the ordinary jurisdiction of justices of the peace with respect to masters and parish apprentices;" enacts, "that it shall and may be lawful for any master or mistress of any such parish apprentice as aforesaid, [where not more than 5*l.* premium, sect. 9, or no premium, 5 Vict. c. 7, has been given,] by indorsement on the indenture of apprenticeship, or by other instrument in writing, by and with the consent of two justices of the peace of the county, city, town, riding, division or place where such master or mistress shall dwell, testified by such justices under their hands, to assign such apprentice to any person who is willing to take such apprentice for the residue of the term mentioned in such indenture of apprenticeship: provided always, that such person to whom such apprentice is intended to be assigned shall at the same time, by indorsement on the counterpart of such indenture, or by writing under his or her hand, stating the said indenture of apprenticeship and the indorsement and consent aforesaid, declare his or her acceptance of such apprentice, and acknowledge himself or herself, his or her executors and administrators, to be bound by the agreements and covenants mentioned in the said indenture on the part of the master or mistress of such apprentice to be done and performed; which indorsement or instrument may be in the form or to the effect mentioned in the schedule hereunto annexed (*o*); and in such case such apprentice shall be deemed and taken to be the apprentice of such subsequent master or mistress to whom such assignment shall be made, to all intents and purposes whatsoever, and so from time to time, as often as it shall be necessary or convenient for any such subsequent master or mistress to part with any such apprentice; and all justices of the peace shall have the like power and authority, in the several cases last mentioned, with respect as well to the subsequent master or mistress, masters or mistresses, as to the apprentice, as such justices shall then have by any law for the better regulation of parish apprentices." See the 56 Geo. III. c. 139, ss. 9 and 10, (post, pp. 225, 226,) prohibiting the assignment or discharge of parish apprentices without the consent of justices.

Assignment by indorsement of master on indenture.

See also 42 Geo. III. c. 46, s. 5 (post, p. 227), as to the entry of the assignment in the overseers' book.

Stamp on assignment.

The assignment under this act, where the original premium was within the limit, is exempted from stamp, whatever the consideration for the assignment may be. Though in a *voluntary* binding without consideration, and where *more than* 5*l.* is given in a *parish binding*, the assignment is not exempt from stamp. See the exception in the exemption in schedule, 55 Geo. III. c. 184, when money is given *to* the new master.

The assignment need not state the premium, if any given. (*R.* v. *Ide*, 2 B. & Adol. 866.)

Discharge of Apprentice on Insolvency of Master.

On insolvency, &c. of master, justices may discharge apprentices.

Sect. 8 of the 32 Geo. III. c. 57, reciting, "that no express provision has been made for the discharging of any such *parish apprentice* from a

(*o*) See the forms relating to apprenticeship in the Appendix, post.

master or mistress who is become insolvent, or is so far reduced in his or her circumstances as to be unable to employ or maintain such apprentice," enacts, "that it shall and may be lawful for two justices of the peace of the county, city, town, riding, division or place where any such master or mistress shall live, on the application of such master or mistress, requesting that any such apprentice may be discharged, for the reasons aforesaid, to inquire into the matter of such allegations, and to discharge any such apprentice from his apprenticeship, in case the said two justices shall find such allegations to be true."

These provisions not to extend to apprentices where more than 5*l.* given.

Sect. 9. Nothing hereinbefore contained shall extend to any parish apprentice with whom more than 5*l.* shall be given, but the same shall remain subject to the like rules and regulations as if this act had not been made. (The provisions of this act are extended by 5 Vict. c. 7, to cases where no premium has been paid.)

Stamp.]—Sect. 10. No indorsement made in pursuance of this act shall be chargeable with any stamp duty.

Sect. 14 gives an appeal to the quarter sessions.

On removal, &c. of master out of county or forty miles from parish where apprentice bound, he to give notice to parish where apprentice resides, &c.

Discharge, &c. on Removal of Master.]—By 56 Geo. III. c. 139, s. 8, "if any person or persons to whom any child shall be bound apprentice by the overseers of the poor of any parish or place, shall after the said first day of October remove his, her or their residence or establishment of business out of the same county, or forty miles from the parish or place wherein the same was when such child was bound apprentice, such person or persons shall, at least fourteen days previous to such removal, give a written notice thereof to the churchwardens or overseers of the poor of the place where such apprentice shall then reside, unless such person or persons shall reside in such place under certificate: and in that case such persons shall give the like notice to the churchwardens or overseers of the poor of the place where such apprentice shall then be legally settled; and which churchwardens and overseers, and also the master or masters, mistress or mistresses of such apprentice, shall cause such apprentice to appear before two of his Majesty's justices of the peace for the county or district within which such apprentice shall be then serving, who shall inquire whether it may be fit and proper that such apprentice should continue in the service of such person or persons or be discharged therefrom, or bound or assigned over to any other person or persons, and shall thereupon make order, either for the continuance of such apprentice with such person or persons, or for the discharge of such apprentice, or for the binding or assigning of such apprentice to any other person, as to them in their discretion shall seem meet; and if they shall see fit, shall also require the person or persons so giving notice of removal to pay the amount of the premium received with such apprentice, or such portion of it as to them shall seem meet, for the expense of assigning or binding such apprentice to any other person to be approved by the said justices; and the person or persons to whom such apprentice shall be so bound or assigned shall be subject to the same rules and regulations as the person or persons to whom such apprentice shall be originally bound; and in case any such master or masters, mistress or mistresses, shall remove as aforesaid, and shall take any such apprentice to any other place, without such order as aforesaid, or shall wilfully abandon and leave any such apprentice without giving such notice as aforesaid, every person so offending shall forfeit the sum of ten pounds for every such apprentice, to the churchwardens and overseers of the poor of the parish, township or place wherein, at the time of such removal or taking, the apprentice shall have been legally settled, for the use of the poor of the same parish, township or place: provided an information shall be exhibited for such offence within three calendar months next after the commission of the same."

Apprentice to appear before two justices, who to order apprentice's continuance, &c.

Liability of new master.

Penalty for his abandoning, &c. apprentice.

Limitation of prosecution for.

Consent of Justices to assignment or dismissal in all cases requisite.]— The stat. 56 Geo. III. c. 139, s. 9, after reciting that "whereas it may be expedient that those to whom parish apprentices are bound or assigned should be empowered to place out or assign over such apprentices to others, and it is proper that such placing out or assignment should in all instances be under the inspection and control of the magistrates; and it is fit that the person to whom such putting out or assignment shall be made, and also the apprentice, shall be made subject to the ordinary jurisdiction of justices of the peace with respect to masters and parish apprentices; and it is inexpedient that any master or mistress should in any way discharge or dismiss from his or her service any parish apprentice without the consent of such justices;" enacts, "that from and after the 1st of October, in the year 1816, it shall not be lawful for any master or mistress to put away or transfer any parish apprentice to any other, or in any way to discharge or dismiss from his or her service any parish apprentice without such consent of justices as is directed in an act passed in the thirty-second year of the reign of Geo. III., intituled 'An Act for the further Regulation of Parish Apprentices' (ante, p. 220), and that no settlement shall be gained by any service of such apprentice, after such putting away or transfer, unless such service shall have been performed under the sanction of such consent as aforesaid" (*p*).

Apprentices not to be assigned or dismissed without parties consent.

This assignment must be executed by the master, or by some person legally authorized by him. Where the master was abroad, and the assignment was executed by his steward without any other authority than what might be implied from his often having done so before, and the expenses being allowed by the master in his accounts, the court held the assignment to be bad, and that the apprentice gained no settlement under it; the master should exercise his discretion in making it, and it should therefore be executed either by himself, or by express authority from him. (*R.* v. *Spreyton*, 3 B. & Ad. 818.)

Settlement not gained without it.

When a parish apprentice is bound into another parish by assignment of the indenture of apprenticeship, notice from the churchwardens and overseers of the first parish to those of the second is not requisite, under sect. 2 of the 56 Geo. III. c. 56 (ante, p. 211). (*R.* v. *Inhabitants of Exminster*, 1 Nev. & Per. 603; 6 Ad. & Ell. 598.)

Assignment and acceptance of a parish apprentice, in the following words: "The said T. M. doth hereby assign the said Elizabeth Matthews (the apprentice named in the indenture), and the said M. P. doth hereby agree to accept the said Elizabeth Melhuish:" it was held that the misnomer did not render the acceptance a nullity. (*Ib.*)

The master of a parish apprentice not having work sufficient for him, proposed to him to go to a farm in a different parish, occupied by the master's sister. The pauper assented to the proposal, and agreed with her to work there for a twelvemonth for his meat and drink. He worked for her for four years and four months. During the first two years he received from her meat and drink. During the third and fourth years he received wages. It was held, first, that no settlement was gained by the service with the sister, the service not being under

(*p*) Where a parish apprentice was assigned before the passing of 56 Geo. III. c. 139, but for want of consent of two magistrates in writing under 32 Geo. III. c. 67, s. 7, the instrument was not valid to confer a settlement; the Court of Queen's Bench held, that though the assignment might be for many purposes inoperative, yet that it manifested a consent of the first master to a service with the second, and rendered that a service under the original binding. (*R.* v. *Barleston*, 1 D. & R. 421; 5 B. & Ald. 780, S. C. And see *R.* v. *St. Petrox*, 4 T. R. 196; and *R.* v. *East Bridgeford*, Burr. S. C. 133; *R.* v. *Gwinear*, 1 Ad. & Ell. 152.)

the indentures; and, secondly, there had been a putting away of the apprentice without the consent of the justices, within the meaning of the 9th section of 56 Geo. III., and that the pauper did not by his service with the sister gain any settlement by hiring and service. (*R.* v. *Shipton*, 8 B. & Cres. 88.)

So where a tailor to whom a parish apprentice was bound, not having work for him, agreed with a draper that he should work for him at the business of a tailor, in consideration of 5*s.* a week being paid to him (the first master) out of the boy's earnings: the court held this to be a putting away of the apprentice within the meaning of the act. (*R.* v. *Wainfleet, All Saints*, 9 Law J. Rep., M. C. 31.)

Penalty on discharging without such consent.

Sect. 10. "Any person or persons, who, after the 1st of October, 1816, shall put away or transfer any parish apprentice to another, or who shall in any way discharge or dismiss from his or her service any parish apprentice, without such consent as aforesaid, shall forfeit a sum not exceeding 10*l.* for every apprentice so transferred."

Penalties how recoverable, &c. Appeal, &c.

Sects. 12 to 18 relate to the mode of recovering penalties under the act, and the right of appeal, &c., and will be found ante, pp. 214, 215.

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§ 5. REGISTRATION AND VISITATION.

42 Geo. 3, c. 46.

By stat. 42 Geo. III. c. 46, after reciting the power given by the 43 Eliz. c. 2, to overseers of the poor to bind out poor children apprentices: and that "whereas it would tend to the benefit of the children so bound as apprentices, if the overseers of the poor were required to keep a register of all children who shall be so bound:" it is enacted, "that the overseers of the poor of every parish, township, or place, appointed by virtue of the said recited act, passed in the forty-third year of the reign of Queen Elizabeth, shall, from and after the 1st day of June, 1802, and they are hereby required, to provide and keep a book or books, at the expense of the said parish, township, or place, and to enter, or cause to be entered therein, the name of every child who shall be bound out by them respectively as an apprentice, together with the several other particulars, in manner and form required by this act, according to the schedule hereunto annexed; and every such entry, when made in the said register, shall be produced and laid before the two justices of the peace, who shall signify their assent to the indenture of apprenticeship of every such child, at the time when such indenture shall be laid before such justices for their assent, as required by the said recited act; and each entry in the said register shall, if approved of by such justices, be signed by them according to the form marked in the schedule" (*q*).

Overseers to keep a book for entering name of apprentices bound out by them.

Entry to be signed by two justices.

Not providing such book, or neglecting to make such entries therein, &c.

Sect. 2. "If any overseer or overseers of the poor shall refuse or neglect to provide and keep such book or books, or to make such entry therein as before directed, or shall destroy, or permit, suffer, or cause to be destroyed, any such book or books, or shall wilfully and knowingly obliterate, deface, or alter any such entry, so that the same shall not be a true entry of the several particulars hereby required, or shall wilfully and knowingly make a false entry therein, or shall so permit, suffer, or cause the same to be done, or shall not produce or lay such book or books before such justices as aforesaid for their signatures, or shall not deliver or tender, or cause to be delivered or tendered, such book or books to his, her, or their successor or successors in office, within fourteen days after the appointment of such successor or successors, or if any such successor or successors shall refuse or neglect

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(*q*) See form, post, Appendix.

to receive the same when offered or tendered to him or them by his or their predecessor or predecessors in office, then and in every such case every such person so offending shall for every such offence, on being convicted thereof before any two justices of the peace for the county, city, or place where the offence shall be committed, on the oath of any credible witness (which oath such justices are hereby empowered and required to administer), or on the voluntary confession of the party or parties, forfeit and pay a sum not exceeding 5*l.*, to be recovered by distress and sale of the goods and chattels of the offender or offenders, by warrant under the hands and seals of the justices before whom the offender or offenders shall be convicted, and the overplus (if any) of the money arising by such distress and sale shall be returned upon demand to the owner or owners of such goods and chattels, after deducting the costs and charges of making, keeping, and selling such distress; and such penalties and forfeitures shall be applied for the use of the poor of the parish, township, or place, for which such offender or offenders shall be overseer or overseers; and in case such sufficient distress cannot be found, or such penalties and forfeiture shall not be paid forthwith, it shall and may be lawful to and for such justices, by warrant under their hands and seals, and they are hereby required, to commit every such offender to the common gaol or house of correction of the county, city, or place where the offence shall be committed, there to remain without bail or mainprize for any time not exceeding one calendar month, unless such penalties and forfeitures shall be sooner paid and satisfied."

Penalty.

Recoverable by distress.

How applied.

Commitment.

Sect. 3. "It shall be lawful for any person or persons, at all seasonable hours, to inspect such book or books in the hands of the said overseer or overseers, and to take a copy of such entry in such book or books, upon payment of the sum of sixpence, except in case of any of his Majesty's justices of the peace acting in and for the said county, who shall be entitled at all such times to inspect such book gratis; 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."

Books may be inspected.

Books deemed evidence of indentures, &c. if lost.

Sect. 4. "The justices before whom any person shall be convicted by virtue of this act, shall cause the conviction to be drawn up in form L." (*r*).

Form of conviction.

Sect. 5. "Whenever any such apprentice shall be assigned or bound over to any other master or mistress by virtue of an act passed in the thirty-second year of the reign of Geo. III., intituled 'An Act for the further Regulation of Parish Apprentices' (*s*), then and in every such case the overseer or overseers, party or parties to the assignment of such apprentice, shall insert the name and residence of the master or mistress, to whom such apprentice shall be assigned or bound over as aforesaid, together with the other particulars, in the book or books herein directed to be provided and kept by such overseer or overseers; and for non-performance thereof, every such overseer or overseers shall be liable to the pains, penalties, and forfeitures incurred by this act, in like manner as if such apprentice had been originally bound to such master or mistress."

Entry of assignment, &c. to be made.

Sect. 6, reciting, that "by different acts of parliament the like powers are given to certain persons therein named, for binding out parish apprentices, as are given to the overseers of the poor;" enacts, "that such several persons shall be subject to the like pains, penalties and forfeitures for non-compliance with the several provisions and directions in this act contained for registering any parish apprentice bound out or assigned by them respectively, to which overseers of the poor

Persons having like powers as overseers to bind out apprentices to comply with directions of act.

(*r*) See form, post, Appendix. (*s*) Ante, p. 220.

are subject and liable by virtue of this act for non-compliance with such provisions and directions."

Appeal.

Sect. 7. "If any person or persons shall think himself, herself, or themselves aggrieved by any thing done in pursuance of this act, it shall and may be lawful to and for such person or persons to appeal to the justices at the first general quarter sessions of the peace to be holden for the county or place where the cause of appeal shall arise, within four calendar months next after the cause of appeal shall have arisen, on giving to the person or persons appealed against ten days' notice of such appeal and of the matter thereof; and the justices at such sessions are hereby authorized and required to hear and determine the matter of such appeal in a summary way, and to grant such costs and expenses to either party as to them shall seem reasonable."

Costs on.

The statute 14 & 15 Vict. c. 11 ("for the better protection of persons under the care and control of others as apprentices or servants, and to enable the guardians and overseers of the poor to institute and conduct prosecutions in certain cases"), enacts (s. 3), "that the guardians of every union and of every separate parish under the management of a board of guardians, and the overseers of every parish not in union or under the management of a board of guardians, shall provide and keep a book or books, and shall cause to be registered therein the name of every young person under the age of sixteen who shall hereafter be hired or taken as a servant from the workhouse of such union or parish, together with the several other particulars specified in the schedule hereunto annexed (*t*); and every such entry shall be signed by the presiding chairman of such board of guardians at an ordinary meeting thereof, or by some one of such overseers; provided that nothing herein contained shall be taken to supersede or affect the obligation to keep such register of poor children apprenticed by overseers or guardians as is required by the 42 Geo. III. c. 46, and 7 & 8 Vict. c. 101."

A register to be kept of young persons hired or taken as servants from any workhouse.

Not to supersede obligation to keep register as required by 42 Geo. 3, c. 46, and 7 & 8 Vict. c. 101.

Sect. 4. "Where any young person under the age of sixteen shall have been or shall be hired or taken as a servant from the workhouse of any union or parish, or shall have been or shall be bound out as an apprentice by the guardians of any union, or the guardians or overseers of any parish, it shall be lawful for such guardians or overseers respectively, and they are hereby required, so long as such young person shall be under the age of sixteen, and shall be known to them to reside as servant or apprentice in the same service into which such young person shall have so gone as a servant from such workhouse or as such apprentice within such union or parish respectively, or within five miles of any part of such union or parish, to cause the relieving officer, or,

Young persons hired from workhouses, or bound out as pauper apprentices, to be visited periodically by officer of guardians or overseers.

(*t*) The schedule gives the following

"*Form of Register.*"

Name of Child.	Age.	Date of hiring or taking as Servant.	Name of Master or Mistress.	Trade or other Description of Master or Mistress.	Residence of Master or Mistress.

where there is no relieving officer, then some other officer duly authorized for the purpose, to visit such young person at least twice in every year, and to report to them in writing whether he has found reason to believe that such young person is not supplied with necessary food or is subjected to cruel or illegal treatment in any respect."

As to young persons hired or bound to masters residing at a distance from union or parish.

Sect. 5. "Where any young person under the age of sixteen shall hereafter be hired or taken as a servant from the workhouse of any union or parish, or shall be bound out as an apprentice by the guardians of any union, or by the guardians or overseers of any parish, and the residence of the master or mistress shall be more than five miles from any part of such union or parish, then a written notice of such hiring, taking or binding, specifying the name and age of the apprentice or servant, and the name, description and residence of such master or mistress, shall be forthwith sent from such guardians or overseers to the guardians or overseers of the union or parish in which such master or mistress shall reside; and thereupon it shall become the duty of such last-mentioned guardians or overseers to cause the particulars contained in such notice to be registered in some book or books, to be provided by them for the purpose, together with the name of the union or parish from which such notice shall have been received; and such last-mentioned guardians or overseers shall cause such young person to be visited as frequently and in the same manner in all respects as if such young person had been hired or taken from their own workhouse, or had been bound out as an apprentice by themselves."

Interpretation of terms.

Sect. 8. "The words 'guardians,' 'union,' 'overseers,' 'justice of the peace,' 'officer,' 'poor,' 'parish,' and 'workhouse,' used in this act, shall be construed in like manner as in the act 4 & 5 Will. IV. c. 76."

Extent of act.

Sect. 9. "This act shall extend only to England and Wales" (*u*).

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§ 6. Enforcement of Contract and Duties by Master and Apprentice.

Justices may order sums for maintenance, &c. to be levied by distress.

The stat. 32 Geo. III. c. 57, s. 6, reciting, that "much difficulty and delay must necessarily happen in bringing an action upon the covenant for maintenance before mentioned contained in any such indenture of parish apprenticeship," enacts, "that in case any such original master or mistress as aforesaid, [where no premium, 5 Vict. c. 7, or not more than 5*l.* premium has been given, 32 Geo. III. c. 57, s. 9,] or any master or mistress appointed under or by virtue of this act, shall, during the term of any such parish apprenticeship as aforesaid, or if the executors or administrators of such masters or mistresses, any or either of them, having assets, shall, during such three calendar months as aforesaid, refuse or neglect to maintain and provide for any such apprentice, according to the terms of such covenant, it shall and may be lawful for any two justices of the peace of the county, city, town, riding, division or place in which the parish or place shall lie, to which such apprentice shall belong, on complaint of such apprentice, or of the churchwardens and overseers of the poor of such parish or place, by warrant under their hands and seals, to levy, by distress and sale of the personal estate and effects or assets of such master or mistress respectively, such sum or sums of money as shall be necessary for the maintenance and clothing of such apprentice, and as shall also be necessary to reimburse to the churchwardens and overseers of the poor of such parish or place any sum or sums of money that shall have been reasonably expended by them for that purpose."

(*u*) Sects. 1, 2, 6, and 7 of this act were repealed by the 24 & 25 Vict. c. 95, and new provisions substituted by the 24 & 25 Vict. c. 100, ss. 26, 73. (See post, pp. 231, 232.)

The statute 20 Geo. II. c. 19, s. 3, empowered two or more justices, upon "any complaint or application by any apprentice put out by the parish, or any other apprentice upon whose binding out no larger a sum than five pounds of lawful British money was paid (*x*), touching or concerning any misusage, refusal of necessary provision, cruelty or other ill-treatment of or toward such apprentice by his or her master or mistress," to summon such master or mistress, and, upon proof, to discharge such apprentice by warrant or certificate under the hands and seals of the justices.

Order to be made after discharge.

The 32 Geo. III. c. 57, s. 11, reciting the above provision of the 20 Geo. II. c. 19, s. 13, and also reciting, that "instances of such ill-treatment frequently occur, and it is fit that the expectation of such discharge should not operate as an inducement to such ill-treatment," enacts, "that in every case where any *parish* apprentice whatsoever shall be discharged from his apprenticeship by two justices under and by virtue of the said last-mentioned act, it shall and may be lawful for such two justices to order such master or mistress to deliver up to such apprentice his or her clothes and wearing apparel," and also to pay to the churchwardens or overseers of the parish or place to which such apprentice shall belong, some or one of them, any sum not exceeding 10*l.* to be applied by them, some or one of them, under the order of such justices, for the again binding out such apprentice so discharged, or otherwise for his or her benefit as to such justices shall seem meet; and also to pay any sum not exceeding 5*l.* in case such master or mistress shall refuse to deliver up such clothes and wearing apparel; and on his or her refusal to pay the sum so ordered, or either of them, or any part thereof, such justices may levy the same by distress, together with the reasonable expenses of such distress.

Recognizance by churchwardens, &c. to prosecute.

And such justices may, if they think fit, compel such churchwardens and overseers, some or one of them, to enter into a recognizance for the effectual prosecution by indictment of such master or mistress, for such ill-treatment of any such apprentice so discharged as aforesaid;

Costs of prosecution.

and may also order that the costs and expenses of the prosecution shall be paid or reimbursed to such person entering into such recognizance as aforesaid; one moiety thereof out of the poor-rates of the parish or place to which such apprentice shall belong, and the other moiety out of the

Moiety to be paid by county.

county rate in which such parish or place shall lie. And in case the churchwardens and overseers shall refuse to pay such their moiety, such justices may levy the same by distress on the goods and chattels of such churchwardens and overseers, or any of them, together with the reasonable expenses of such distress.

Master convicted of misusing apprentice, not to have another put on him,

By sect. 12, "where any parish apprentice shall have been so discharged from any master or mistress as aforesaid under and by virtue of the said last-mentioned act, and such master and mistress shall have been convicted of such offence, in consequence of such prosecution by indictment as aforesaid, or shall have been found guilty thereof in any action brought at the suit of the party injured, it shall not be lawful for the churchwardens and overseers of the poor of any parish or place, or the major part of them, to bind any other apprentice upon such person; but that whenever such person ought or would be compellable to take a parish apprentice, it shall and may be lawful for any two justices of the peace of the county, city, town, riding, division or place where such person shall reside, upon application made to them by the churchwardens and overseers of the poor of such parish or place, to order

but to pay not exceeding 10*l.* nor less than 5*l.*

and direct that such person shall pay into the hands of such churchwardens and overseers of the poor, some or one of them, a sum not exceeding the sum of 10*l.* nor less than 5*l.*, for the purpose of binding out a child (intended to be bound) an apprentice with the approbation of

(*x*) Extended to 25*l.* by 4 Geo. IV. c. 29, and to cases where no premium was paid, by 5 & 6 Vict. c. 7.

such two justices; and in case such person shall refuse to pay such sum as aforesaid, then that it shall and may be lawful for such two justices, by warrant under their hands and seals, to levy the same by distress and sale of the goods and chattels of such person, together with the reasonable expenses of such distress: provided always, that it shall and may be lawful for such master or mistress, from whom any parish apprentice shall be discharged under and by virtue of the act 20 Geo. II., to appeal against the order made for such discharge, and also against any such order made for his or her payment of any such sum or sums of money in consequence thereof, or for his or her payment of any sum or sums of money in lieu of a subsequent binding, under and by virtue of the provisions of this act, to the next general quarter sessions of the peace for the county, city, riding, division or place where such orders, or any or either of them, shall be made, and upon such appeal, the said court of general quarter sessions shall finally determine the same, and in their discretion allow to all parties their reasonable costs; and no such distress for enforcing the payment of any such sum or sums of money as are last mentioned, shall be taken until after the general quarter sessions of the peace, to be holden next after any such order as aforesaid shall be made, in case the person who is ordered to pay the same shall, within seven days after notice given to him or her of such order being made, give notice to such churchwardens and overseers of the poor, some or one of them, of such intended appeal; and in case such person shall fail to appear in support of his appeal at such general quarter sessions, then the sum of 40*s.* shall be added to the expenses of the distress before directed to be taken and levied accordingly."

Distress for same.

Appeal.

Distress not to issue on notice of appeal.

If party does not appear, 40*s.* to be added to expenses of distress.

The 20 Geo. II. c. 19, s. 4, empowered justices, upon application or complaint "by any master or mistress against any such apprentice, touching or concerning any misdemeanor, miscarriage or ill-behaviour in such his or her service," to punish the offender by commitment to the house of correction, with hard labour, for a reasonable time, not exceeding one calendar month.

The 32 Geo. III. c. 57, s. 13, reciting the above provision of the 20 Geo. II. c. 19, s. 4, and reciting, that it was "expedient to prevent the expectation of such discharge being an inducement to such ill-behaviour on the part of the apprentice," enacts, "that in all cases where any *parish* apprentice shall be discharged by two justices, under and by virtue of the said last-mentioned act, from his or her apprenticeship, on account of any misdemeanor, miscarriage, or ill-behaviour on the part of such apprentice, that it shall and may be lawful for such two justices, if they think proper, by warrant under their hands and seals, to punish such offender by commitment to the house of correction, there to remain and be corrected and kept to hard labour for a reasonable time, not exceeding three calendar months, as to such justices shall seem meet."

It is to be observed, that the provisions of "The Master and Servant Act, 1867" (30 & 31 Vict. c. 141), were substituted for (inter alia) those of the 20 Geo. II. c. 19. Whether the above-mentioned provisions of the 32 Geo. III. c. 57, would be held applicable to a discharge of an apprentice under "The Master and Servant Act, 1867," may be doubted (*y*).

Besides the remedies which parish apprentices, in common with other apprentices, possess for ill-treatment or for wages under "The Master and Servant Act, 1867" (substituted for various previous acts), their persons are protected by their masters and mistresses being amenable to special criminal proceedings for refusing or neglecting to provide necessary food, clothing or lodging, and the guardians of the union (or where

(*y*) See further, as to "The Master and Servant Act, 1867," Burn's Justice, title "MASTER AND SERVANT."

there are no guardians, the overseers of the poor) may be bound over to prosecute (*z*).

§ 7. APPRENTICESHIPS TO THE SEA SERVICE.

"The Merchant Shipping Act, 1854" (17 & 18 Vict. c. 104), contains the following provisions (in substitution for previous enactments) relating to the apprenticeship of pauper boys to the sea service.

Shipping masters to assist in binding apprentices, and may receive fees.

Sect. 141. "All shipping masters appointed under this act shall, if applied to for the purpose, give to any board of guardians, overseers or other persons desirous of apprenticing boys to the sea service, and to masters and owners of ships requiring apprentices, such assistance as is in their power for facilitating the making of such apprenticeships, and may receive from persons availing themselves of such assistance such fees as may be determined in that behalf by the board of trade, with the concurrence, so far as relates to pauper apprentices in England, of the poor law board in England, and so far as relates to pauper apprentices in Ireland, of the poor law commissioners in Ireland."

Indentures of boys bound apprentices to sea service by guardians or overseers to be witnessed by two justices.

Sect. 142. "In the case of every boy bound apprentice to the sea service by any guardians or overseers of the poor, or other persons having the authority of guardians of the poor, the indentures shall be executed by the boy and the person to whom he is bound in the presence of and shall be attested by two justices of the peace, who shall ascertain that the boy has consented to be bound, and has attained the age of twelve years, and is of sufficient health and strength, and that the master to whom the boy is to be bound is a proper person for the purpose."

Indentures of apprenticeship to be exempt from stamp duty, and to be recorded.

Sect. 143. "All indentures of apprenticeship to the sea service shall be exempt from stamp duty, and all such indentures shall be in duplicate; and every person to whom any boy whatever is bound as an apprentice to the sea service in the United Kingdom shall within seven days after the execution of the indentures take or transmit the same to the registrar-general of seamen or to some shipping master; and the said registrar or shipping master shall retain and record one copy, and shall indorse on the other that the same has been recorded, and shall re-deliver the same to the master of the apprentice; and whenever any such indenture is assigned or cancelled, and whenever any such apprentice dies or deserts, the master of the apprentice shall, within seven days after such assignment, cancellation, death, or desertion, if the same happens within the United Kingdom, or if the same happens elsewhere, so soon afterwards as circumstances permit, notify the same either to the said registrar of seamen, or to some shipping master to be recorded; and every person who fails to comply with the provisions of this section shall incur a penalty not exceeding ten pounds."

Rules to govern apprentices of paupers in Great Britain and Ireland respectively.

Sect. 144. "Subject to the provisions hereinbefore contained, all apprenticeships to the sea service made by any guardians or overseers of the poor, or persons having the authority of guardians of the poor, shall, if made in Great Britain, be made in the same manner and be subject to the same laws and regulations as other apprenticeships made by the same persons" (*a*).

Apprentices and their indentures to be brought before shipping master before each voyage in a foreign-going ship.

Sect. 145. "The master of every foreign-going ship shall, before carrying *any* apprentice to sea from any place in the United Kingdom, cause such apprentice to appear before the shipping master before whom the crew is engaged, and shall produce to him the indenture by which such apprentice is bound, and the assignment or assignments thereof (if

(*z*) 24 & 25 Vict. c. 100, ss. 26 and 73. As these provisions extend to all apprentices and servants, they are not fully noticed here.

(*a*) The rest of this section relates to apprenticeships made in Ireland.

any), and the name of such apprentice, with the date of the indenture and of the assignment or assignments thereof (if any), and the name of the port or ports at which the same have been registered, shall be entered on the agreement; and for any default in obeying the provisions of this section the master shall for each offence incur a penalty not exceeding five pounds."

CHAPTER XVI.

Of the Administration of Relief to the Poor—(*continued*).

Burial of Paupers.

§ 1. THE DUTY OF BURIAL IN GENERAL.

WHERE a pauper dies in a workhouse, the duty of burying the body is cast upon the parish, not by virtue of the statute of Elizabeth, but by the principles of the common law, which it seems oblige every one under whose roof a poor person dies, to carry the body decently covered to a place of burial (*b*).

The overseers are not bound to bury a pauper, though settled and dying in the parish, but not in a parochial house.

But neither the common law nor the statute of Elizabeth imposes any duty on overseers to bury poor persons not dying in the workhouse, although settled in the parish and in the receipt of out-door relief. (*Reg.* v. *Stewart*, 12 A. & E. 773.) In that case M. K., a married woman, and residing with her husband in the parish of St. George's, was admitted an in-patient in St. George's Hospital, and died there. She remained unburied, as the husband was, from poverty, unable to bury her. He was receiving a weekly allowance from the parish, and he deposed, to his belief, that he was settled there. The overseers contended that the hospital was bound to inter the body. The governor of St. George's Hospital applied for a mandamus to compel the overseers to cause the body to be interred. After argument, on consideration, the court refused the writ. The following judgment was delivered by Lord *Denman*:—"Upon the argument we felt extreme difficulty in placing on any legal foundation either the right of the hospital to the writ, or the obligation on the parish to do the act required; yet we were unwilling at once to discharge the rule, considering how long the practice had prevailed and been sanctioned of burying such persons at the expense of the parish, and the general consequences of holding that such practice has no warrant in law. In the argument for the rule, the necessity of the case, a very large construction of the words of the stat. of 43 Eliz. c. 2, and an inference from stat. 48 Geo. III. c. 75, for the burial of shipwrecked bodies cast on shore, were alone relied on. These all appear to us insufficient; and in the last-named statute there are undoubtedly words from which it may be inferred that the framers of it

(*b*) See the judgment of the Court of Queen's Bench in *Reg.* v. *Stewart*, infra.

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recognized burials at the expense of the parish, and, in a doubtful case, such recognition might weigh something in affirmance of the legal obligation on the parish to provide such burials. But in the present case, we are thrown necessarily on the statute of Eliz.; the overseer is a statutable officer, dealing with a statutable fund, and accountable for its application to statutable purposes. The language of that statute leaves no doubt. The relief and employment of the poor are its objects; the fund is created for them, and cannot be diverted from them, unless to objects specifically engrafted on them by subsequent statutes, of which this is not one. No usage, however proper in itself, and however uncontroverted, can prevail against that which the plain construction of the statute forbids; and we cannot accede to the argument that the burial of a pauper receiving relief, but *not dying in any parish house*, can be brought within the objects of the statute, express or implied. We limit the rule thus purposely: for, on passing to the ground of necessity, we wish to be understood as distinctly recognizing its existence, while we deny its application in the way now contended for. Every person dying in this country, and not within certain exclusions laid down by the ecclesiastical law, has a right to Christian burial, and that implies the right to be carried from the place where his body lies to the parish cemetery. Further, to use the words of Lord *Stowell*, in *Gilbert* v. *Bernard* (2 Hagg. 333), 'that bodies should be carried in a state of naked exposure to the grave, would be a real offence to the living, as well as an apparent indignity to the dead.' We have no doubt, therefore, that the common law casts on some one the duty of carrying to the grave, decently covered, the dead body of any person dying in such a state of indigence as to leave no funds for that purpose. The feelings and the interests of the living require this, and create the duty; but the question is on whom it falls. It is enough for the disposal of this rule to say that it is not cast upon the overseers, where the death does not take place under the roof of any parish house, or that which, under the circumstances, can be considered as such. But the principles above laid down seem to point to an important distinction, and we think it right in the present case, with a view to the extensive consequences of our decision, to state it. It should seem that the individual under whose roof a poor person dies is bound to carry the body, decently covered, to the place of burial: he cannot keep him unburied, nor do anything which prevents Christian burial; he cannot, therefore, cast him out, so as to expose the body to violation, or to offend the feelings, or to endanger the health of the living; and, for the same reason, he cannot carry him uncovered to the grave. It will probably be found, therefore, that where a pauper dies in any parish house, poor house, or union house, that circumstance casts on the parish or union, as the case may be, to bury the body, not by virtue of the statute of Eliz., but upon the principles of the common law. In the present case, however, the same principles would rather cast the burthen on the hospital than the parish, and form an additional, though not a necessary reason, for refusing the writ."

Their duty to bury paupers.

By 7 & 8 Vict. c. 101, s. 31, it is enacted, "that it shall be lawful for guardians, or where there are no guardians for the overseers, to bury the body of any poor person which may be within their parish or union respectively, and to charge the expense thereof to any parish under their control to which such person may have been chargeable, or in which he may have died, or otherwise in which such body may be; and unless the guardians, in compliance with the desire expressed by such person in his lifetime, or by any of his relations, or for any other cause, direct the body of such poor person to be buried in the churchyard or burial ground of the parish to which such person has been chargeable (which they are hereby authorized to do), every dead body which the guardians or any of their officers duly authorized shall direct to be buried at the expense of the poor-rates shall (unless the deceased person, or the husband

or wife or next of kin of such deceased person, have otherwise desired) be buried in the churchyard or other consecrated burial ground in or belonging to the parish, division of parish, chapelry, or place in which the death may have occurred; and in all cases of burial under the direction of the guardians or overseers as aforesaid, the fee or fees payable by the custom of the place in which the burial may take place, or under the provisions of any act of parliament, shall be paid out of the poor-rates, for the burial of each such body, to the person or persons who by such custom or under such act may be entitled to receive any fee: provided always, that it shall not be lawful for any officer connected with the relief of the poor to receive any money for the burial of the body of any poor person which may be within the parish, division of parish, chapelry, or place in which the death may have occurred, or to act as undertaker for personal gain or reward in the burial of any such body, or to receive any money from any dissecting school or school of anatomy, or hospital, or from any person or persons to whom any such body may be delivered, or to derive any personal emolument whatever for or in respect of the burial or disposal of any such body; and any such officer offending as aforesaid shall, on conviction thereof before any two justices, forfeit and pay a sum not exceeding five pounds." The costs of burial are to be charged to the union fund.

By the 12 & 13 Vict. c. 103, s. 16, "in the event of the death of any pauper having in his possession or belonging to him any money or property, the guardians of the union or parish wherein such pauper shall die may reimburse themselves the expenses incurred by them in and about the burial of such pauper, and in and about the maintenance of such pauper at any time during the twelve months previous to the decease" (*c*).

Expenses of burials recoverable as loans.

By sect. 17, "it shall be lawful for the guardians of any union or parish to pay the costs of the burial of any poor person dying out of the limits of such union or parish who was at the time of the death in the receipt of relief from such guardians, and that the cost of burying any poor person by or under the direction of any guardians or overseers shall be recoverable in like manner and from the same parties as the cost of any relief (if given to such person when living) would have been recoverable."

Provision for deaths in the workhouse.

The 28 & 29 Vict. c. 79, s. 10, enacts, that "for the purposes of the burial of any poor person dying in the workhouse of any union, such workhouse shall be considered as situated in the parish in the union where such poor person resided last, previously to his removal to the workhouse."

§ 2. BURIAL GROUNDS.

Burials of poor persons dying in workhouses.

Contribution to enlarge or obtain burial grounds.

By 13 & 14 Vict. c. 101, s. 2, "it shall be lawful for the guardians of any union to contribute out of the common fund, or for the guardians of any parish to contribute out of the poor-rates of such parish, such sum of money as the poor law board shall approve, towards the enlargement of any churchyard or consecrated public burial ground in the parish wherein the workhouse shall be situated, or in any other parish of the union, or towards the obtaining of any such consecrated public burial ground, and where any such burial ground shall be enlarged or obtained with the aid of such contribution, it shall be lawful for them to bury therein the dead body of any poor person dying in such workhouse: provided always, that nothing in this act contained shall discharge or vary the obligation now imposed by law upon the guardians to bury

(*c*) See the entire section, ante, p. 165.

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the dead body of such poor person elsewhere, in case the deceased person, or the husband, or wife, or next of kin of such deceased person, shall have so requested: provided also, that in all cases of burial under the direction of the guardians as aforesaid the fee or fees payable by the custom of the place where the burial may be, or under the provisions of any act of parliament, shall be paid by the said guardians for the burial of each such body to the person or persons who by such custom or under such act shall be entitled to receive such fee or fees, and charged by them in like manner as the relief to the deceased when living was last chargeable."

7 & 8 Vict. c. 101, s. 31.

The act 18 & 19 Vict. c. 79, reciting, that "by the act 7 & 8 Vict. c. 101, provisions were made for the burial of poor persons by guardians and overseers of the poor: and that, in consequence of the closing of the burial grounds in many parishes, and the want of adequate space in others, great difficulty is frequently found in carrying into execution the above provisions, and it is expedient that other provisions should be made," enacts,

Where burial ground of parish closed or overcrowded, guardians or overseers may bury in neighbouring parish.

Sect. 1. "That where the guardians of any union or parish, or any of their officers duly authorized in that behalf, or the overseers of any parish not under a board of guardians, shall undertake the burial of any poor person, or shall contribute money or other aid towards the same, and the burial cannot take place in the parish where, according to the provisions of the said act, the same would have been required to take place, by reason of the public burial ground of such parish having been closed, and no other having been provided, or where, in consequence of the crowded state of such burial ground, the guardians or overseers respectively are of opinion that the burial of such dead body therein would be improper, it shall be lawful to bury such body in a public burial ground (some part of which has been consecrated) of or in some other parish as near as conveniently may be to the parish wherein the burial would have been required to take place according to the provisions of the said act: provided, that in all cases of burial under the direction of the guardians or their officers, or of the overseers, as aforesaid, the fee or fees payable by the custom of the place where the burial may be, or under the provisions of any act of parliament, shall be paid by the said guardians or overseers for the burial of each such body to the person or persons who by such custom or under such act of parliament shall be entitled to receive such fee or fees."

Power to enter into agreements with cemetery companies or burial boards.

Sect. 2. "The guardians of any union or parish, or the overseers of any parish not under a board of guardians, may from time to time enter into agreements with the proprietors of any cemetery established under the authority of parliament, or with any burial board duly constituted under the statutes in that behalf, for the burial of the dead bodies of any poor persons which such guardians or overseers may undertake to bury, or towards the burial whereof they may render assistance; and thereupon the burial of any such body, under the directions of the said guardians or their officer, or of such overseers, or with their aid respectively, in such cemetery, or in the burial ground of such burial board (unless the deceased person, or the husband or wife or next of kin of such deceased person, have otherwise expressly desired), shall be lawful: provided, however, that no such agreement shall be valid unless made in such form and with such stipulations as the poor law board shall approve."

Construction of words to be as in 4 & 5 Will. 4, c. 76, &c.

Sect. 3. "The words contained in this act shall be construed in like manner as in the act of the fifth year of King William the Fourth, chapter seventy-six, and in the several acts incorporated therewith."

"The Lunatic Asylums Act, 1853" (16 & 17 Vict. c. 97), s. 120, enacts, that on the death of any lunatic pauper in an asylum, the necessary expenses attending the burial of such pauper shall be borne by the union or parish (if any) to which he is chargeable as provided by the act, or if such pauper be chargeable to a county, as therein provided, then by such county, and shall be paid by the guardians of such union or parish, or by the overseers of such parish if not in a union or under a board of guardians, or by the treasurer of such county (*d*).

Provision for burial of pauper lunatics.

The 18 & 19 Vict. c. 105, s. 11, enacts, that "where the visitors of lunatic asylums for counties and boroughs in England, or any of their officers duly authorized in that behalf, shall undertake the burial of any pauper lunatic, and the burial cannot take place in the parish where the death shall have taken place by reason of the public burial ground of such parish having been closed, and no other having been provided, or where, in consequence of the crowded state of such burial ground, the visitors as aforesaid are of opinion that the burial of such dead body therein would be improper, it shall be lawful to bury such body in a public burial ground of or in some other parish as near as conveniently may be to the parish wherein the death shall have taken place, with the consent of the minister and churchwardens of such parish: provided, that in all cases of burial under the direction of the visitors or their officers as aforesaid the fee or fees payable by the custom of the place where the burial may be, or under the provisions of any act of parliament, shall be paid by the said visitors for the burial of each such body to the person or persons who by such custom or under such act of parliament shall be entitled to receive such fee or fees."

Power to enter into agreements with cemetery company or burial board.

Sect. 12. "The visitors of lunatic asylums in England may from time to time enter into agreements with the proprietors of any cemetery established under the authority of parliament, or with any burial board duly constituted under the statutes in that behalf, for the burial of the dead bodies of any pauper lunatics which such visitors may undertake to bury; and thereupon the burial of any such body, under the directions of the said visitors or their officer, in such cemetery, or in the burial ground of such burial board, shall be lawful: provided, however, that no such agreement shall be valid unless made in such form and with such stipulations as the commissioners in lunacy shall approve."

Committee of visitors may convey land for burial ground for lunatics, &c. dying in the asylum.

Sect. 13. "And whereas it is expedient that burial grounds should be provided for persons dying in any county or borough lunatic asylum built or to be built under the authority of any act of parliament for the reception of pauper lunatics: be it therefore enacted, that it shall be lawful for every committee of visitors of any county or borough lunatic asylum, or for any trustee or trustees in whom any land shall be vested for the purposes of an asylum, with the previous consent of one of her Majesty's principal secretaries of state under his hand, to give, grant, and convey to her Majesty's commissioners for building new churches, and it shall be lawful for them to accept, any portion not exceeding two statute acres of any land which belongs to or has been or may be purchased for any such asylum, for the purpose of consecration as a burial ground for pauper or other lunatics or officers or servants dying in such asylum, and that in all such cases the freehold of every burial ground, of which her Majesty's said commissioners shall accept a conveyance under the provisions of this act for the purpose of consecration, shall, after the same burial ground shall have been consecrated, vest in the visitors or trustees or trustee, as the case may be, for the time being of the county or borough lunatic asylum to which such burial ground shall belong, and be for ever thereafter exclusively appropriated for the burial of pauper

(*d*) See the section at length, post, Chapter XVII.

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and other lunatics dying in such asylum, and of the officers and servants belonging to such asylum and dying therein; and that from and after the consecration of such land the incumbent of the parish in which such burial ground is situate shall not be entitled to any fee for the interment therein of any pauper or other lunatic dying in such asylum, or of any of the officers and servants belonging to such asylum and dying therein."

Lunatics in asylum.

"The Lunacy Acts Amendment Act, 1862" (25 & 26 Vict. c. 111), s. 9, enacts, that "the committee of visitors of any asylum may provide accommodation for the burial of pauper lunatics dying in the asylum by acquiring a new burial ground, or by enlarging any existing burial ground; they may purchase for the purposes aforesaid any land, and may grant any land when purchased, or any land already belonging to them, to any person or body of persons, to be held on trust for a new burial ground or as part of an existing burial ground, or they may themselves hold such land on trust as a new burial ground or as part of an existing burial ground; they may also contribute any sums of money to any person or body of persons on condition of such person or body of persons agreeing to provide accommodation for the burial of such paupers as aforesaid in any burial ground; they may also take steps for the consecration of any new burial ground or enlarged burial ground, or any part thereof, and in the case of a new burial ground they may provide for the appointment of a chaplain therein; they may enter into any agreements necessary for carrying into effect the powers conferred by this section, but the exercise of such powers shall be subject to the restrictions following:

Firstly, that not more than two statute acres shall in the case of any one asylum be purchased or granted as a new burial ground, or for an enlargement of an existing burial ground.

Secondly, that the sanction of the court of general or quarter sessions and of one of her Majesty's principal secretaries of state shall be given to any plan that may be proposed by any visitors for carrying into effect this section.

All expenses incurred by any visitors in providing accommodation for the burial of pauper lunatics, in pursuance of this act, shall be deemed to be monies, costs, and expenses payable for the purposes of the Lunacy Act, chapter ninety-seven, and may be defrayed accordingly."

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CHAPTER XVII.

Lunatic Paupers.

The provisions made by the legislature for dealing with lunatic paupers are so important and voluminous as to require a separate notice.

"The Lunatic Asylums Act, 1853" (16 & 17 Vict. c. 97), to consolidate and amend the laws for the provision and regulation of lunatic asylums for counties and boroughs, and for the maintenance and care of pauper lunatics, in England, contains the principal enactments on this subject (*e*). The various sections will be given at length, arranged for the most part under the heads adopted in the act. That part of the statute, however, relating to orders of maintenance and appeals from orders is reserved for another part of this volume in connection with the allied provisions relating to orders of removal in the case of ordinary paupers. The provisions relating to the burial of lunatic paupers will also be found included in Chapter XVI. relating to the burial of paupers.

§ 1. Providing Asylums and Appointment of Committees of Visitors.

Under this head "The Lunatic Asylums Act, 1853" (16 & 17 Vict. c. 97), contains the following sections:—

Sect. 2. "The justices of every county (*f*) and (save as hereinafter otherwise provided) of every borough not having an asylum for the pauper lunatics thereof, shall provide an asylum in manner herein directed; (that is to say,) the justices of every such county and the recorder of every such borough shall, at or before the general or quarter sessions for such county or borough next after the twentieth day of December, one thousand eight hundred and fifty-three, direct public notice to be given by the clerk of the peace of such county or borough, in some newspaper or newspapers commonly circulated in such county or borough, of the intention of the justices of such county or borough to appoint at the then next general or quarter sessions for such county, or

Justices of county and borough not having a lunatic asylum to provide one, and justices of the county or recorder of the borough at or before a certain time to direct notice to be given of the intention to appoint a committee for that purpose.

(*e*) This statute (s. 1) repeals the 8 & 9 Vict. c. 126; 9 & 10 Vict. c. 84, and 10 & 11 Vict. c. 43, but such repeal shall not interfere with or affect any appointment, salary, or annuity made or granted, or act done, or agreement or contract entered into or made, or prevent or defeat any prosecution or proceeding for any offence committed or any penalty or forfeiture incurred before the commencement of this act, but every such agreement or contract shall and may (subject to the provisions hereinafter contained in relation thereto) be carried into effect and enforced, and every such offence prosecuted, and every such penalty and forfeiture sued for, recovered, and applied, and every pending prosecution or proceeding continued, in like manner as if this act had not been passed.

(*f*) The interpretation clause (s. 122), enacts, that "in this act the words and expressions following shall have the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,)

'County' shall mean every county, riding, and division of a county, county of a city,* county of a town, and shall include every city, town, parish, place, or district by this act annexed to a county for the purposes hereof:

'Borough' shall mean every borough town and city corporate having a quarter sessions, recorder, and clerk of the peace:

'Parish' shall mean any parish, township, vill, tithing, extra-parochial place, or place maintaining its own poor:

'Union' shall mean a union of parishes formed under the act of the fifth year of King William the Fourth, intituled 'An Act for the Amendment and better Administration of the Laws relating to the Relief of the Poor in England and Wales,' or under the act of the twenty-second year of King George the Third, intituled 'An Act for the better Relief and Employment of the Poor,' or incorporated or united for the relief or maintenance of the poor under any local act:

'Lunatic' shall mean and include every person of unsound mind, and every person being an idiot:

'Pauper' shall mean every person

* The courts will take judicial notice that a city is a county of a city. (*Reg.* v. *St. Maurice*, 16 Q. B. Rep. 908; 20 L. J. (N. S.) M. C. 221.)

(in the case of a borough) at a special meeting of the justices of such borough to be fixed in such notice, and to be holden within three months

maintained wholly or in part by or chargeable to any parish, union, or county:

'Justice' shall mean justice of the peace:

'Officiating clergymen of the parish' shall include the chaplain of the workhouse of the same parish, or of the workhouse of a union to which such parish belongs:

'Guardians' shall mean guardians, governors, directors, managers, or acting guardians, entitled to act in the ordering of relief to the poor from poor rates: *

'Overseer' shall mean overseer of the poor of any parish, or any person acting as such:

'Relieving Officer' and 'Clerk of the Guardians' shall respectively mean such relieving officer and clerk of the guardians, and any persons acting as such respectively:

'Clerk of the Peace' shall mean every clerk of the peace, and every person acting as such, or any deputy duly appointed:

'Physician,' 'Surgeon,' and 'Apothecary' shall respectively mean a physician, surgeon, and apothecary duly authorized or licensed to practise as such by or as a member of some college, university, company, or institution legally established, and qualified to grant such authority or licence, in some part of the united kingdom, or having been in practice as an apothecary in England or Wales on or before the fifteenth day of August, one thousand eight hundred and fifteen, and being in actual practice as a physician, surgeon, or apothecary:

'Treasurer of the Borough' shall mean every officer who has the custody of any monies raised by a borough rate:

'Treasurer of the County' shall mean every officer who has the custody of any county rate, or of any rate of any city, town, parish, place, or district by this act annexed to a county for the purposes hereof:

'County Rate' shall mean a county rate and any funds assessed upon or raised in or belonging to any county in the nature of county rates, and applicable to the purposes to which county rates are applicable:

'Borough Rate' shall mean a borough fund or rate, and any fund assessed upon or raised in or belonging to any borough in the nature of borough rates, and applicable to the purposes to which borough rates are applicable:

'Asylum' shall mean any asylum, house, building, or place already erected or provided under the provisions of an act passed in the forty-eighth year of King George the Third, chapter ninety-six, or an act of the ninth year of King George the Fourth, chapter forty, or the said acts hereby repealed or any of them, or subject to the provisions of the said acts or any of them, or to be erected or provided under the provisions of this act."

Sect. 133 enacts, that "nothing in this act shall affect the provisions of any of the following acts; (that is to say,) an act of the session holden in the thirty-ninth and fortieth years of King George the Third, chapter ninety-four; an act of the session holden in the first and second years of her Majesty, chapter fourteen; and an act of the session holden in the third and fourth years of her Majesty, chapter fifty-four; or any other provisions relating to criminal lunatics." (See post, § 7.)

"The Lunacy Acts Amendment Act, 1862" (25 & 26 Vict. c. 111), s. 48, enacts, that "so much of section one hundred and thirty-two of the Lunacy Act, chapter ninety-seven, as enacts that in that act, unless there be something in the subject or context repugnant to such construction, the word 'county' shall mean a county of a city or county of a town, shall, except with respect to the city of London, be repealed, and all the provisions of the said act and of the acts amending the same shall be read and construed accordingly."

"The Lunacy Acts Amendment Act, 1863" (26 & 27 Vict. c. 110), reciting, that "by 'The Lunatic Asylums Act, 1853,' the justices of every county and borough are required to provide an asylum for the reception of their pauper lunatics, but power is given to two or more counties and boroughs to unite together for the purpose of providing an asylum for their common use: and whereas by the said act county is defined to include a county of a city

* Including guardians under local acts; see 7 & 8 Vict. c. 101, s. 28.

from the date thereof, a committee of justices to provide an asylum for the pauper lunatics of such county or borough, under the provisions of this act; and the clerk of the peace of such county or borough shall, within ten days after being so directed as aforesaid, cause such notice to be given accordingly."

Justices to appoint a committee to superintend the providing of an asylum, or to treat for uniting with some county, &c., or to effect one or other of such purposes.

Sect. 3. "The justices of every such county and borough respectively (such notice having been given as aforesaid) shall at the then next general or quarter sessions for such county, or at such special meeting as aforesaid of the justices of such borough, either themselves determine in which of the modes hereinafter mentioned an asylum shall be provided for such county or borough, or shall refer the selection to the committee to be appointed as hereinafter mentioned, and shall elect some justices of such county or borough to be a committee to provide such asylum (*g*), and may authorize such committee to provide such asylum, in such of the modes hereinafter mentioned as the said justices shall have determined (that is to say), to superintend the erecting or providing of an asylum for the pauper lunatics of such county or borough for such county or borough alone, or to treat and enter into an agreement for uniting with any county or counties (*h*), borough or boroughs, alone or together with the subscribers to any hospital for the reception of lunatics, established or in course of erection, or afterwards to be established, or for uniting with any county or counties and borough or boroughs jointly, or jointly and also together with the subscribers to any such hospital as aforesaid, in erecting or otherwise providing an asylum under or for the purposes of this act, as the justices appointing

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or county of a town, and borough is defined to mean every borough, town, and city corporate having a quarter sessions, recorder, and clerk of the peace: and whereas by 'The Lunacy Acts Amendment Act, 1862,' it is provided that the word 'county' shall not, except in the case of the city of London, mean a county of a city or county of a town: and whereas certain counties of towns have quarter sessions, but such quarter sessions are not held by a recorder: and whereas at the date of the passing of the last-mentioned act certain agreements were pending for the union, with a view to a common asylum, of certain counties, including counties of towns: and whereas it is expedient to confirm such agreements in certain cases, notwithstanding that by virtue of the last-mentioned act a county of a town is no longer included under the term 'county,' and is by such exclusion rendered incapable of carrying into effect such agreement:" enacts (s. 1), that "where, in pursuance of 'The Lunatic Asylums Act, 1853,' an agreement for providing a common asylum has been duly entered into between divers counties, properly so called, and such agreement has been afterwards varied by the admission as a party thereto of a county of a city or county of a town, the original agreement shall be binding on the counties originally parties thereto, in the same manner as if no variation of such agreement had been made."

The 28 & 29 Vict. c. 80, reciting, that "by 'The Lunatic Asylums Act, 1853,' county is defined to include a county of a city or county of a town, and borough is defined to mean every borough, town, and city corporate having a quarter sessions, recorder, and a clerk of the peace: and whereas by 'The Lunacy Acts Amendment Act, 1862,' it is provided that the word 'county' shall not, except in the case of the city of London, mean a county of a city or county of a town: and whereas certain counties of cities and counties of towns have quarter sessions and clerks of the peace, but no recorders, wherefore the same do not come within the provisions of 'The Lunatic Asylums Act, 1853,' and the acts construed as one therewith: and whereas it is expedient to remedy such defect:" enacts (s. 1), "that the word 'county' in 'The Lunatic Asylums Act, 1853,' and the several acts construed as one therewith, shall be construed to include every county of a city or county of a town having quarter sessions and a clerk of the peace, and no recorder." (See s. 2 of this act, post, p. 244.)

(*g*) See the 19 & 20 Vict. c. 87, noticed post, p. 245, note (*n*).

(*h*) See "The Lunacy Acts Amendment Act, 1863" (26 & 27 Vict. c. 110), s. 1, supra, note (*f*).

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such committee may have determined, or in case the said justices appointing such committee think fit to refer the selection of the mode in which such asylum shall be provided to the committee, they may authorize such committee to provide such asylum in such of the modes aforesaid as to the committee may seem best (*i*); and any committee so authorized to treat and enter into an agreement may treat and enter into such agreement with any committee or committees having due authority in that behalf under this act, or any former act, for any county or counties, borough or boroughs, or on behalf of any such subscribers as aforesaid, and with any committee of visitors of any existing asylum, and whether or not any previous agreement for uniting may have been already entered into between some of the parties under this act or any former act; and by any such agreement to be entered into as aforesaid the several committees, parties thereto, may, to the extent of their authority, in lieu of agreeing to erect or provide an asylum, or in addition thereto, and in consideration of any payment in gross or of the payment of any sum in the nature of rent or otherwise, agree for the joint use of any existing asylum or hospital, and, where they think fit, for enlarging the same."

Council of every borough to exercise the same duties, &c. of erecting asylums as are conferred upon justices, &c.

Sect. 129 enacts, that "the council of every borough which shall within six months after the passing of this act, by writing under their common seal, give notice to one of her Majesty's principal secretaries of state of the intention of such council to take upon itself the duties, powers, and authorities hereinbefore imposed or conferred upon or given to the justices of the borough, shall from and after the giving of such notice be subject to and have and exercise all the duties, powers, and authorities of and for erecting and providing asylums and carrying into execution the purposes of this act which by this act are imposed or conferred upon or given to the justices of such borough, or upon any committee of visitors to be appointed as directed by this act, and all liabilities and contracts incurred or entered into by such justices or committee on behalf of such borough under this act, or any act hereby repealed, shall thereupon become transferred to and obligatory upon such council to the same extent as they would have been binding or obligatory on such justices or committee, and all matters and things which in this act are required to be done at any general or quarter sessions, or at any meeting of the justices of such borough, may and shall thenceforth be done at any meeting of the council of such borough, and all notices which by this act are required to be given to or by the clerk of the peace shall and may thenceforth be given to or by the town clerk of such borough."

Committee appointed by council to have same powers as committee of visitors.

And by sect. 130, "it shall and may be lawful for the council of any such borough to confer upon any committee to be appointed by such council such of the powers and authorities which by this act are conferred upon any committee of visitors to be appointed thereunder, as to such council shall seem fit" (*k*).

Provisions to apply to councils

The 18 & 19 Vict. c. 105, s. 6, enacts, that "where the council of a borough has taken upon itself, under 'The Lunatic Asylums Act, 1853,'

(*i*) The 18 & 19 Vict. c. 105, s. 1, enacts, that "section three of 'The Lunatic Asylums Act, 1853,' shall extend to empower the justices of any one county or borough to authorize any committee of justices elected for such county or borough thereunder to treat and enter into an agreement for uniting with the subscribers to any such hospital as therein mentioned, and it shall not be necessary that any other county or borough be a party to such agreement; and section five of the said act shall extend to empower any such committee of visitors as therein mentioned to enter into an agreement for uniting with the subscribers to any such hospital alone."

(*k*) These sections, inserted among the "Miscellaneous" clauses of the act, are transferred to this place.

or the act of the session holden in the eighth and ninth years of her Majesty, chapter one hundred and twenty-six, the duties, powers, and authorities imposed or conferred upon or given to the justices of the borough, such council shall be subject to and have and exercise the duties, powers, and authorities by this act imposed or conferred upon the justices of a borough, or any committee elected by them; and such council may confer upon any committee appointed by them such of the said duties, powers, and authorities as under this act are or may be conferred upon a committee elected by the justices of a borough; and where the council of a borough had before the commencement of 'The Lunatic Asylums Act, 1853,' taken upon itself under the said act of the eighth and ninth years of her Majesty, chapter one hundred and twenty-six, the duties, powers, and authorities imposed or conferred upon or given to the justices of the borough, such council shall, from the commencement of 'The Lunatic Asylums Act, 1853,' be deemed to have been subject to and to have had the duties, powers, and authorities by that act imposed or conferred upon the justices of a borough, or any committee elected by them, and to have been authorized to confer upon any committee appointed by such council such of the said duties, powers, and authorities as under such act may be conferred upon a committee elected by the justices of a borough."

of boroughs where they have taken upon themselves the execution of the Lunatic Asylums Act, 1853.

"The Lunatic Asylums Act, 1853" (16 & 17 Vict. c. 97), s. 4, enacts, that "it shall be lawful for the major part of such of the subscribers to any such hospital as aforesaid as shall be present at any meeting of such subscribers called together expressly for this purpose by advertisement in a newspaper commonly circulated in the place where such hospital is or is intended to be situate, to elect any number of such subscribers not exceeding five to be a committee to treat and enter into an agreement for uniting with any county or counties or borough or boroughs alone, or any county or counties and borough or boroughs jointly, under and for the purposes of this act; and where any such agreement has been or shall be entered into under any former act or this act, nothing in this act shall prevent the reception into the asylum provided under such agreement, or the discharge therefrom, of so many of any lunatics other than pauper lunatics as might have been received into such hospital or asylum if this act had not been passed."

Subscribers to any hospital empowered to appoint a committee to treat for uniting with any county or borough, &c.

Sect. 5. "It shall be lawful for the committee of visitors of any asylum already provided for any county or borough, alone or otherwise, to enter into an agreement for uniting for the purposes of this act with any county or counties, borough or boroughs, alone or together with the subscribers to any such hospital as aforesaid, or for uniting with any county or counties and borough or boroughs jointly, or jointly and also together with the subscribers to any such hospital" (*l*).

Committees of visitors of existing asylums may enter into agreements to unite.

Sect. 6. "Provided always, that where a committee has been appointed before the commencement of this act for any county or borough for any of the purposes aforesaid, or proceedings have been taken for or towards the appointment of a committee for any of the said purposes, nothing herein contained shall render it necessary to proceed afresh to the appointment of a committee for any of such purposes; and any proceedings already taken as aforesaid shall remain in force and be continued; and all the provisions of this act shall be applicable to any such committee already appointed, or to be appointed under such proceedings, in like manner as if such committee had been appointed under the provisions of this act."

Saving where a committee is already appointed, or proceedings for the appointment of a committee have been commenced.

Sect. 7. "Provided also, that it shall be lawful for the justices of any such borough as aforesaid, at such special meeting, if they think fit, in lieu of electing a committee to superintend the erecting or providing of

Justices of boroughs may contract with committees of

(*l*) See s. 1 of the 18 & 19 Vict. c. 105, ante, p. 242, note (*i*).

visitors, &c. for reception of the pauper lunatics of the borough.

an asylum, or to treat for uniting, as hereinbefore mentioned, or to effect either of such purposes, to elect a committee of justices of such borough to contract with any committee of visitors of any existing asylum, or any committee providing or about to provide an asylum, whether for any county or borough, alone or otherwise, for the reception of the pauper lunatics of such first-mentioned borough into such asylum, in consideration of such payment in gross, or such annual or periodical payment, and upon and subject to such terms, stipulations, and conditions as to the duration and determination of the contract, and otherwise, as may be agreed upon; and it shall be lawful for any committee of visitors of any existing asylum, or any other such committee as last aforesaid, to contract with the committee for any such borough accordingly; and during the continuance of such contract the justices of such borough shall, at a special meeting of such justices to be holden within twenty days after the twentieth day of December in every year, appoint a committee of such justices to visit the pauper lunatics sent from such borough to such asylum, and two at least of the members of such committee shall together once at the least in every six months visit such asylum, and see and examine as far as circumstances will permit every lunatic received into such asylum under such contract, and shall after each such visit report the result thereof, with such remarks as they think fit, to the justices of such borough at a special meeting of such justices; and the justices making any such visit may, if they see fit, be accompanied by some physician, surgeon, or apothecary (*m*), other than a medical officer of the asylum; and such justices may by writing under their hands order the payment to such physician, surgeon, or apothecary of such reasonable sum for his services on any such visit as they may think fit, and such sum shall, upon the production of such order, be paid to such physician, surgeon, or apothecary by the treasurer of such borough; and every report of such justices so visiting shall be entered among the records of the court of quarter sessions of such borough, and shall be open to the inspection of any of the commissioners in lunacy; and such commissioners may, if they think fit, require a copy of every or any such report to be transmitted to them by the clerk of the peace of such borough; and while any such contract making adequate provision for the pauper lunatics of such borough is in force such borough shall not be required to provide an asylum for itself alone, or in union, as hereinbefore mentioned."

Powers of justices of such counties.

"The Lunacy Acts Amendment Act, 1865" (28 & 29 Vict. c. 80), s. 2, enacts, that "the justices of every county of a city or county of a town having quarter sessions and a clerk of the peace, and no recorder, shall have all the powers and authorities conferred on or given to the justices of every borough not having any asylum by section seven of 'The Lunatic Asylums Act, 1853,' notwithstanding such county of a city or town may have an asylum of its own: provided always, that it shall not be obligatory on any such county of a city or town to keep up and maintain any such asylum from and after or during such time as it shall avail itself of the provisions of the said section."

Boroughs now contributing to a county asylum deemed to have an asylum, but upon notice may separate from the county.

"The Lunatic Asylums Act, 1853" (16 & 17 Vict. c. 97), s. 8, "provided also, that every borough situate within a county having an asylum for pauper lunatics, and which at the time of the passing of the said act of the eighth and ninth years of her Majesty contributed and still contributes to such asylum, shall be considered as having an asylum for the pauper lunatics of such borough; but it shall be lawful for any such borough, at any time hereafter, upon giving six months' notice in writing under the hand of the town clerk, in pursuance of a resolution of the council of such

(*m*) Registered under "The Medical Act," 21 & 22 Vict. c. 90. See 25 & 26 Vict. c. 111, s. 47.

borough, to the clerk of the peace of the county, to separate itself, so far as relates to the establishment of a lunatic asylum for such county, and the maintenance of lunatics therein, from such county, and from and after the expiration of such notice such borough shall for the purposes of this act be deemed a borough not having an asylum for the pauper lunatics thereof; and from and after the expiration of such notice, and the withdrawal from such county asylum of all lunatics from or belonging to such borough, such borough shall not be liable to pay or contribute towards the expense of the establishment of such asylum, or the maintenance of lunatics therein, but until the withdrawal from such county asylum of all lunatics from or belonging to such borough such borough shall be liable to contribute towards the expenses of such asylum, in the same manner and to the same extent as if such notice had not been given."

Every borough not having six justices, besides the recorder, to be annexed to the county or one of the counties in which it is situate, for the purposes of this act.

Sect. 9. "Provided also, that every borough, in which at the passing of the said act of the eighth and ninth years of her Majesty hereby repealed there were not six justices besides a recorder, shall, for the purposes of this act, be annexed to and be part of the county in which it is wholly situate, or in case it be not wholly situate in any one county shall for the purposes of this act be annexed to and be part of such one of the counties in which it is situate as such borough may have been annexed to under the said act of the eighth and ninth years of her Majesty, or if not already so annexed then the same shall be annexed to and be part of such one of the said counties as one of her Majesty's principal secretaries of state shall by writing under his hand direct; and the recorder of every such borough shall, at the general or quarter sessions next after the twentieth day of December in every year, appoint two justices of such borough to be members of the committee of visitors of the asylum of the county to which such borough is or shall be annexed (*n*); and the justices of every county to which any borough is or shall be annexed as aforesaid shall, at their general or quarter sessions, from time to time fix the sum to be contributed by such borough towards the expenses of and incident to erecting, providing and maintaining the asylum of such county, according to the comparative population of such borough and county as stated in the then last returns made of the same under the authority of parliament, and cause notice thereof in writing to be given to the treasurer of such borough, and such sum shall be raised by a borough rate to be made by the council of the borough in manner directed by the act of the session holden in the fifth and sixth years of King William the Fourth, 'to provide for the Regulation of Municipal Corporations in England and Wales,' or out of the borough fund, if the council think fit, and shall be paid by the treasurer of the borough to the treasurer of the asylum."

Recorder to appoint two justices to be members of committee of visitors.

5 & 6 Will. 4, c. 76.

Every city, town, liberty, &c., not being a borough within the meaning of this act, to be annexed to and rated as part of the county within which the same is situate.

Sect. 131. "Every city, town, liberty, parish, place, or district, not being a borough or part of a borough within the meaning of this act, shall for all the purposes of this act be annexed to and be treated and rated as part of the county within which the same is situate, or if such city, town, liberty, parish, place, or district be situate partly in one county and partly in another, then to and as part of such one of the same counties as such city, town, liberty, parish, place, or district may have been annexed to under the said act of the eighth and ninth years of her Majesty, hereby repealed, or if not already so annexed, then to and as

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(*n*) The 19 & 20 Vict. c. 87, enacts, that "where a committee is or shall hereafter be appointed to provide an asylum for any county under the 'Lunatic Asylums Act, 1853,' the recorder of every borough now or hereafter annexed to such county for the purposes of the said act shall, at the general or quarter sessions next after such appointment as aforesaid, or where such committee has been already appointed, shall, at the general or quarter sessions next after the passing of this act, appoint two justices of such borough to be members of such committee."

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part of such one of the same counties as one of her Majesty's principal secretaries of state shall by writing under his hand and seal direct, and shall contribute rateably to the expenses of the asylum of the county to which it is or shall be so annexed, whether such asylum have been provided before or after the passing of this act, and shall for the purposes of this act be within the jurisdiction of the justices of such county; and in every case in which any such city, town, liberty, parish, place, or district as aforesaid is or shall be annexed to a county in which an asylum has been or shall have been already erected or provided, and such city, town, liberty, parish, place, or district shall not have contributed as provided by law towards the expenses incurred in erecting or providing such asylum, the present or any future committee of visitors of such asylum shall, as soon as conveniently may be after the passing of this act, or after such annexation, fix a sum to be paid by the city, town, liberty, parish, place, or district so annexed towards the expenses then already incurred in erecting or providing such asylum, in due proportion to the population of such city, town, liberty, parish, place, or district, and of the county to which it shall be annexed, according to the last returns under the authority of parliament, and the same shall be paid by every such city, town, liberty, parish, place, or district to the treasurer of such asylum, and shall be levied and raised by such city, town, liberty, parish, place, or district by a rate to be made therein in the same manner as any rate to be made therein for the purpose of levying or raising any other monies hereby directed to be levied and raised for the purposes of this act; and the justices for the county to which such city, town, liberty, parish, place, or district is or shall be annexed as aforesaid, in general or quarter sessions, are hereby authorized and required to make such rate as aforesaid; and the sum so paid by such city, town, liberty, parish, place, or district shall be applied by the treasurer of the asylum to whom the same shall have been paid in such manner as the committee of visitors shall direct, according to the provisions and for carrying into execution the purposes of this act" (*o*).

Places becoming boroughs after the commencement of the Lunatic Asylums Act, 1853, to be deemed boroughs annexed to the counties in which they are situate.

The 18 & 19 Vict. c. 105, s. 7, enacts, that "any place which has become a borough within the definition contained in section one hundred and thirty-two of 'The Lunatic Asylums Act, 1853,' since the commencement of that act, shall, from and after the passing of this act, be deemed to be a borough annexed to the county in which the same is situate, and any place which after the passing of this act becomes a borough within such definition shall, from and after the time of becoming such borough, be deemed a borough so annexed, and the provisions contained in section nine in 'The Lunatic Asylums Act, 1853,' for the appointment of two justices of a borough annexed thereunder to a county to be members of the committee of visitors of the asylum of such county, and in relation to the contribution by such borough to the expenses of the asylum of such county, shall extend to any borough annexed under this enactment."

Where there is a dissolution of a union a new asylum to be provided.

By the 18 & 19 Vict. c. 105, s. 5, "to the intent that due provision may be made for the reception and care of the pauper lunatics of counties and boroughs parties to unions upon the dissolution of such unions, the justices of every county and borough united (either alone or with any subscribers) shall, before any dissolution of their union takes effect, at a general or quarter sessions for such county, or at a special meeting of the justices of such borough (as the case may require), elect a committee to provide an asylum for their county or borough, and authorize such committee to proceed for that purpose in manner by 'The Lunatic Asylums Act, 1853,' provided in the case of a county or borough not having an asylum; and all the provisions of the said act and this act applicable to

(*o*) This section is transferred from the "Miscellaneous" clauses to this place.

a committee elected to provide an asylum in the case of a county or borough not having an asylum shall be applicable to the committee elected under this provision."

Boroughs neglecting to provide an asylum or to contract for the care of their pauper lunatics may be annexed by secretary of state to the county.

"The Lunatic Asylums Act, 1853" (16 & 17 Vict. c. 97), s. 10, enacts, that "if at any time after the expiration of one year after the passing of this act it appear to one of her Majesty's principal secretaries of state, upon the report of the commissioners in lunacy, that the justices of any borough by this act required to provide an asylum, or contract for the care of the pauper lunatics thereof, have not provided an asylum, or entered into an agreement for that purpose, or into a subsisting contract making adequate provision for the care of the pauper lunatics thereof in some asylum, and that any asylum belonging wholly or in part to the county or any of the counties (if more than one) in which such borough is locally situate, either wholly or in part, is capable of affording accommodation for the pauper lunatics of such borough, or may be conveniently enlarged so as to afford such accommodation, it shall be lawful for such secretary of state, with the consent of the committee of visitors of such asylum, by writing under his hand, to annex such borough for the purposes of this act to such county; and the justices of every borough so annexed under this provision shall, at a special meeting of such justices to be holden within twenty days after the twentieth day of December in every year, appoint two justices of such borough to be members of the committee of visitors of the asylum of the county to which such borough shall be annexed; and the provision in the enactment lastly hereinbefore contained in relation to the contribution by a borough annexed to a county under such enactment to the expenses of the asylum of such county, shall extend to any borough so annexed under this provision."

Justices of borough so annexed shall appoint two justices to be members of committee of visitors.

Powers of committees may be enlarged.

Sect. 11. "Where any committee has been appointed for any county or borough (whether before or after the passing of this act) for any of the purposes hereinbefore mentioned, it shall be lawful for the justices of such county or borough, if they think fit, at any general or quarter sessions for such county, or (in the case of a borough) at any special meeting of the justices of such borough, after like public notice as is required in the case of the first appointment of the committee, to enlarge or alter the powers of the committee so as to vest in the committee any such powers as might be vested in any committee on the original appointment thereof under this act, and, if the justices see fit so to do, to appoint additional members of the said committee, and every such committee shall have the like powers, and the provisions of this act shall be applicable to such committee in like manner, as if such committee had been originally appointed with the powers so vested in them under such enlargement or alteration of their powers."

New committees to be appointed in lieu of committees which have ceased or shall hereafter cease to exist, &c.

Sect. 12. "Where any committee appointed for any county or borough (either before or after the passing of this act) for any of the purposes hereinbefore mentioned has ceased or shall hereafter cease to exist, without carrying into effect the purposes for which it was appointed, or, if appointed for the purpose only of treating for uniting or of contracting as aforesaid, has reported or shall hereafter report that it is not practicable or expedient to enter into an agreement for uniting or into the proposed contract, or to that effect, the justices of such county or the recorder of such borough shall, at or before the general or quarter sessions next after the passing of this act, or next after the occasion has arisen, cause public notice to be given, in manner herein directed in the case of the original appointment of a committee under this act for any of the said purposes, of the intention of the justices of such county or borough to appoint at the then next general or quarter sessions for such county, or (in the case of a borough) at some special meeting of the justices of such borough to be fixed in the notice and to be holden within three months from the date thereof, a committee in lieu of the committee previously appointed as aforesaid; and such

notice having been so given, the justices of such county or borough shall, at the then next general or quarter sessions for such county, or at such special meeting as aforesaid of the justices of such borough, appoint a committee accordingly, and shall have the like discretion and authority for determining the purposes for which such committee shall be appointed as in the case of an original appointment of a committee under the provisions hereinbefore contained; or such justices may, if they think fit, in lieu of appointing a new committee in the place of any such committee appointed only for the purpose of treating for uniting or of contracting as aforesaid, and which may have reported that it is not practicable or expedient to enter into an agreement for uniting or into the proposed contract, or to that effect, enlarge or alter the powers of such committee as hereinbefore provided, and, if such justices think fit, appoint additional members of such committee."

Notice for appointment of a committee given at a time subsequent to that required by this act, and the appointment of such committee, to be valid.

Sect. 13. "Provided always, that where the justices of any county or the recorder of any borough have or has not, in pursuance of any of the provisions hereinbefore contained, at or before such general or quarter sessions as in that behalf required, cause notice to be given of the intention of the justices of such county or borough to appoint a committee under this act, it shall be lawful for the justices of such county or the recorder of such borough, at or before any subsequent general or quarter sessions, to cause such notice to be given in manner required by this act; and the appointment of a committee in pursuance of such notice, or the enlargement or alteration of the powers of any existing committee, and the appointment of any additional members of such committee, at the sessions or meeting for which such notice has been given, shall be valid."

Committees uniting to enter into agreement in the form in schedule (A.)

Sect. 14. "When two or more committees agree to unite for the purposes of this act, an agreement shall be entered into and signed by the several committees uniting, or the major part of such committees respectively, in the form or to the effect set forth in schedule (A.) (*p*) to this act; and such agreement, when signed by the major part of each such committee, and not before, shall be binding upon every county and borough, and the subscribers (if any) for or on behalf of which or whom such agreement has been entered into; and every such agreement shall specify the proportion in which the expenses necessary for carrying into execution the purposes of this act shall be charged upon each county and borough, and the subscribers (if any) so uniting; and the proportions of the counties and boroughs uniting shall be calculated and fixed with reference to their respective populations as stated in the then last return made of the same under the authority of parliament; and where under any such agreement a right to the joint use of any existing asylum or hospital is required by any county or borough, or the subscribers to any hospital, such agreement shall fix the sum to be paid by such county, borough, or subscribers towards the expenses already incurred in erecting or providing such asylum or hospital."

Additional stipulations or conditions may be inserted in agreement, but not so as to subject acts of visitors to control of general or quarter sessions.

Sect. 15. "Provided always, that it shall be lawful for such committees to insert in the agreement to be entered into by them any stipulations or conditions, in addition to the matters by this act required to be specified in such agreement, so that such additional stipulations or conditions do not in any way subject the acts of the committee of visitors to the approval or control of any court of general or quarter sessions, or of any justices, in any case not provided for by this act, and the additional stipulations and conditions so inserted in the said agreement shall be of the same force and effect as the matters so required to be specified, notwithstanding that such additional stipulations or conditions may control in any other manner than as hereinbefore specified and excepted the discretion and acts of the committee of visitors as

(*p*) See the form in the Appendix to this volume.

regulated by this act, or may require the consent or approval of, or may subject the acts or orders of the visitors to be disallowed, modified, or controlled by one of her Majesty's principal secretaries of state, in cases not provided for by this act; but any stipulations or conditions subjecting the acts of the committee of visitors to the approval or control of any court of general or quarter sessions, or of any justices, in any case not provided for by this act, shall be void and of none effect."

The proportion of expenses between any county and borough may be fixed with reference to accommodation likely to be required.

The statute 18 & 19 Vict. c. 105, enacts, s. 2, that "when two or more committees agree to unite under 'The Lunatic Asylums Act, 1853,' or under that act as amended by this act, the proportion in which the expenses of carrying into execution the purposes of the said act shall be charged upon and raised by each county and borough so uniting may be calculated and fixed according to the extent of the accommodation which in the judgment of the committees entering into such agreement will be required for the pauper lunatics of such county and borough respectively; and the power in section sixteen of 'The Lunatic Asylums Act, 1853,' of repealing or altering the stipulations of any agreement for uniting, shall extend to authorize the alteration thereof by readjusting the proportions in which the expenses aforesaid shall be charged on each county and borough and the subscribers (if any) uniting, or any of the said parties, and, where the committee of visitors think fit, by fixing as aforesaid, according to the probable extent of accommodation required, the proportion in which each county and borough is to contribute to such expenses; and where the proportions of any contributions are fixed according to the probable extent of accommodation required as aforesaid the agreement shall specify that such proportions are fixed according to that basis."

Agreements for uniting to be hereafter entered into to stipulate for contributiou by counties and boroughs according to their relative populations for the time being, where not fixed according to foregoing provision.

Sect. 3. "Where an agreement for uniting is hereafter entered into under 'The Lunatic Asylums Act, 1853,' or under that act as amended by this act, and the proportion in which the expenses of carrying the purposes of the said act into execution are to be charged upon each county and borough is not fixed, under the foregoing provision, with reference to the probable extent of accommodation required, the agreement shall stipulate that such expenses, or, where any committee of subscribers of a lunatic hospital are a party to the agreement, then that the aggregate amount to be contributed by the counties and boroughs towards such expenses, shall be from time to time charged upon and raised by the counties and boroughs in proportion to their respective populations as stated in the last return for the time being made of the same under the authority of parliament, and such agreement shall be varied from the form in schedule (A.) to 'The Lunatic Asylums Act, 1853,' accordingly."

Where expenses are to be contributed in proportion to population, the same to be ascertained by last census for the time being.

Sect. 4. "Where an agreement for uniting has been already entered into under 'The Lunatic Asylums Act, 1853,' or any former act, the expenses of carrying into execution any such act, or, where any committee of subscribers is a party to the agreement, the aggregate amount to be contributed by such counties and boroughs, shall be from time to time charged upon and raised by the counties and boroughs united in proportion to their respective populations as stated in the last return for the time being made of the same under the authority of parliament, save where such expenses are adjusted and fixed under the foregoing provision according to the probable extent of accommodation required."

With consent of visitors, stipulations or conditions may be repealed.

"The Lunatic Asylums Act, 1853" (16 & 17 Vict. c. 97), s. 16, "provided also, that with the consent in writing under the hands of the greater number of visitors of each county and borough, and of the greater number of visitors of any body of subscribers united under any agreement entered into under this act or any former act, and with the previous consent in writing under the hand of one of her Majesty's principal secretaries of state, the committee of visitors may from time to time repeal or alter any of the stipulations or conditions of such agreement, but

not so as to subject the acts of the committee of visitors to the approval or control of any court of general or quarter sessions, or of any justices, in any case not provided for by this act."

Proportions of expenses and of visitors may be varied on any further union being effected.

Sect. 17. "Where any agreement for uniting has been entered into under this act or any former act, and the union effected thereunder is added to by an agreement for further union, the proportions in which any expenses are under any former agreement for union to be charged on the counties or boroughs, or counties and boroughs, and the subscribers, if any, uniting, and the proportions in which visitors are to be elected for and on behalf of such counties or boroughs, or counties and boroughs, and subscribers (if any), may be altered as may be agreed upon."

As to payment and application of money paid towards prior expenses, or becoming repayable under agreement for further union.

Sect. 18. "Where under an agreement for union any money is to be paid towards the expenses already incurred by any county or borough in erecting or providing any asylum, the same shall be paid to the treasurer of such county or borough, and shall be applied in liquidation and payment, *pro tanto*, of the monies, if any, which shall have been raised by such county or borough for the purposes of this act or the acts hereby repealed, or any of them, in such manner as the justices of such county at any general or quarter sessions for the same, or the council of such borough, shall respectively order and direct, or if all such monies shall have been paid, then the same shall be applied in diminution of any rate to be made in pursuance of this act."

Committees of justices to report agreement to quarter sessions, and the original to be delivered to clerk of the peace of the county or borough in which the asylum is situate, and a copy to clerk of the peace of each other county and borough.

Sect. 19. "When any agreement has been entered into and signed as aforesaid, the committee for each county and borough on behalf of which the same has been entered into shall report the same to the justices of such county or the recorder of such borough at the then next general or quarter sessions; and the original agreement shall, at such sessions for the county or borough in which the asylum to which the same relates is situate or is intended to be situate, be delivered to the clerk of the peace of such county or borough, to be by him entered among the records thereof; and a copy of such agreement shall at such sessions for each other county or borough on behalf of which such agreement has been entered into be delivered to the clerk of the peace of such county or borough, to be by him entered among the records thereof; and a copy of every such agreement shall be sent by the clerk of the peace to whom the original agreement is delivered, within twenty days after the delivery thereof to him, to the commissioners in lunacy; and any of the justices of any county or borough on behalf of which such agreement has been entered into, and any commissioner in lunacy, shall be entitled, without payment, to inspect the original agreement so delivered to the clerk of the peace as aforesaid; and any clerk of the peace hereby required to send to the said commissioners a copy of any agreement, who shall neglect so to do within the time aforesaid, and any clerk of the peace who shall refuse to permit such inspection as aforesaid, shall for every such offence be liable to a penalty not exceeding five pounds, and this enactment shall extend and be applicable to and in respect of every agreement by which any of the stipulations or conditions in any agreement entered into under this act or any former act shall be repealed or altered."

After agreement for uniting is reported, visitors to be elected for carrying same into effect.

Sect. 20. "When any agreement for uniting has been entered into, signed, and reported as aforesaid, the justices of every county to which the same relates shall, at the general or quarter sessions to which such agreement is reported, elect from among the justices of such county the number of visitors allotted to such county in the agreement; and the justices of every borough to which such agreement relates shall, at a special meeting of such justices to be holden within twenty days after such agreement has been reported to the general or quarter sessions for such borough, elect from among the justices of such borough the number of visitors allotted to such borough in the agreement; and the majority

of such of the subscribers to any hospital to which such agreement relates as shall be present at a meeting of such subscribers to be holden within twenty-eight days after the signing of such agreement, and of which meeting public notice shall have been given by advertisement in some newspaper circulated in the place in which such hospital is situate or is intended to be situate, shall elect from among such subscribers the number of visitors allotted to the subscribers to such hospital in such agreement; and the visitors so elected as aforesaid shall together form and be the committee of visitors for carrying such agreement into effect."

Committee authorized to superintend the erection of asylums to be deemed committee of visitors.

Sect. 21. "Every committee elected for any county or borough as hereinbefore provided, and authorized to superintend the erecting or providing of an asylum for such county or borough, shall, until the election of visitors or a committee of visitors for such county or borough, or the asylum thereof, under any of the provisions herein contained, be deemed the committee of visitors for such county or borough."

Visitors to be elected annually for asylums.

Sect. 22. "At the general or quarter sessions to be held next after the twentieth day of December in every year the justices of every county, and at a special meeting to be held within twenty days after the twentieth day of December in every year the justices of every borough, having for the time being an asylum (whether provided before or after the passing of this act), either for the sole use of such county or borough or under any agreement for uniting as aforesaid, shall elect some justices of such county or borough to be visitors on behalf of such county or borough for the said asylum during the year next ensuing the election; and where such asylum has been provided under any agreement for uniting entered into with any such subscribers as aforesaid, the majority of such of the subscribers as shall be present at a meeting to be holden in the month of January in every year, of which notice shall have been given by public advertisement in some newspaper circulated within the place in which such asylum is situate, shall elect some of such subscribers to be visitors for such asylum during the year then next ensuing; and where such asylum is for the sole use of any one county or borough, the visitors elected for such county or borough as aforesaid shall be 'the committee of visitors' of such asylum; and where such asylum has been provided under any agreement for uniting, the visitors elected as aforesaid on behalf of every county and borough, and the subscribers (if any) to which the asylum belongs, shall together form and be 'the committee of visitors' of such asylum: provided always, that the number of the committee of visitors of any county or borough having an asylum for its sole use shall not be less than seven; and that in all other cases the number of visitors to be elected on behalf of every county and borough, and of any body of subscribers, to form and be the committee of visitors, shall be the number provided for in the agreement."

A separate committee of visitors to be appointed for every asylum.

Sect. 23. "Where any county or borough has more than one asylum a separate committee of visitors shall be appointed as aforesaid for every such asylum, each of which committees shall have all the powers and be subject to all the provisions of this act with regard to the asylum for which it is appointed, as if it were the only asylum for that county or borough: provided always, that it shall be lawful for the justices of the county or borough, if they think fit, with the approval of one of her Majesty's principal secretaries of state, to appoint the same committee for two or more such asylums."

Proviso.

Meetings of visitors.

Sect. 24. "The several persons elected members of any committee of visitors shall within one month after their election assemble at some convenient place to be named in a notice in writing given by two or more of such visitors, or by the clerk to the outgoing committee by the direction of two or more of the said visitors, to the several members so elected, such notice to be given to each member personally, or left at his place of abode, or transmitted to him through the post office, seven days at least before the time appointed for such meeting; and the said visitors

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Every committee to elect a chairman.

may adjourn the said meeting from time to time or from place to place, and meet where and as often as they think necessary: and the said visitors shall at their first meeting after their election elect one of their members to be their chairman, who shall preside at all meetings at which he is present; and in case of the absence of the chairman from any meeting the members of the committee then present shall elect one of such members to be chairman for the meeting, who shall preside at the meeting; and to constitute a meeting of a committee there shall be present not less than three members thereof, except for adjournment, which may be made by less than three; and every question shall be decided by a majority of votes (the chairman, whether permanent or temporary, having a vote), and in the event of an equality of votes on any question the chairman for the time being shall have an additional or casting-vote."

Number of members to constitute a meeting.

Questions how to be decided.

Clerk, on requisition of chairman or two visitors or of superintendent, to call meetings of visitors.

Sect. 25. "The clerk of any committee of visitors shall, whenever required in writing by the chairman or two of the visitors, or by the superintendent of the asylum, and the chairman of any such committee may, whenever he shall see fit, convene a meeting of such committee by a notice in writing to each visitor of the time and place of such meeting, such notice to be delivered, left, or transmitted as aforesaid by such clerk or chairman seven days at least before the time appointed for the meeting."

Chairman may convene meetings.

Visitors to appoint a clerk.

Sect. 26. "Every committee of visitors shall appoint a clerk to such visitors for the purposes of this act, at such salary or remuneration as such visitors think fit, and may, if and when they think fit, remove any clerk appointed by them, and in any such case, or in case of the death or resignation of any such clerk, shall appoint a new clerk; and the clerk to any committee of visitors of any asylum may also be the clerk of such asylum; and any clerk to any committee of visitors shall, unless he sooner die, resign, or be removed, continue in office so long as such committee continue in office" (*q*).

Committee of visitors to continue until first meeting of new committee, and in default of election of new committee to continue as if re-elected.

Sect. 27. "The powers of any committee of visitors and of the members of such committee, whether appointed or elected before or after the commencement of this act, shall continue until the first meeting of the committee by which such first-mentioned committee is to be succeeded, anything herein contained to the contrary notwithstanding; and if the justices of any county, or the justices or recorders of any borough, or any body of subscribers, neglect in any year to make such election or appointment as required by this act, then the committee of visitors lastly before elected, or the members of such committee elected or appointed for such county or borough, or on behalf of such body of subscribers, or such of them as shall continue to act, shall be deemed and taken to be the committee of visitors, or to form part of the committee of visitors, as if such committee or members had been re-elected or re-appointed in such year, and so from time to time so often as the said justices, recorder, or subscribers so neglect."

Provision for supplying vacancies in committees.

Sect. 28. "In case any member of any committee, or any visitor elected or appointed under this act or any act hereby repealed, die, resign, or become incapable to act, the justices for the county or borough for which such member or visitor was elected or appointed, at any general or quarter sessions for such county, or at a special meeting of the justices of such borough, or where such visitor was appointed by the recorder of a borough, then the recorder of such borough, shall elect or appoint some other justice in his place; and where any such member or visitor has been elected on behalf of any body of subscribers, the majority of such of the said subscribers as shall be present at some meeting called in manner provided with respect to the annual election of visitors shall elect some other subscriber in his place; but, notwith-

Continuing members may act.

(*q*) See ss. 125, 126, post, p. 266.

standing any vacancy in any committee, the continuing members or visitors may act as if no such vacancy had occurred."

Secretary of state may require any county or borough not having an asylum to provide one.

Sect. 29. "In case at any time after the expiration of one year from the commencement of this act it appear to one of her Majesty's principal secretaries of state, upon the report of the commissioners in lunacy, that any county or borough has not an asylum for the pauper lunatics thereof, it shall be lawful for such secretary of state, by writing under his hand, to require the justices of such county or borough forthwith to provide a fit and sufficient asylum for so many pauper lunatics as upon the report of the said commissioners such secretary of state may think fit and direct, and such justices shall forthwith proceed as hereinbefore mentioned to cause such asylum to be provided: provided always, that no borough annexed to any county by virtue of this act or any former act, or on behalf of which a subsisting contract making adequate provision for the care of the pauper lunatics thereof shall have been entered into under this act, or which now contributes to any asylum for the county in which it is situate, and shall not have been separated from such county, shall be required to provide an asylum under any such order."

Where accommodation of existing asylum is inadequate, additional asylum to be provided, or existing asylum enlarged.

Sect. 30. "It shall be lawful for the justices of every county and borough having an asylum or asylums for the pauper lunatics thereof, where it appears to such justices at any general or quarter sessions, or (in the case of a borough) at any special meeting of such justices, that the asylum or asylums of such county or borough is or are inadequate or unfit for the proper accommodation of the pauper lunatics of such county or borough, to cause an additional asylum, or a new asylum in lieu of any existing asylum of such county or borough, to be provided for such county or borough, in like manner as hereinbefore directed in the case of a county or borough not having an asylum, or to direct the committee of visitors of any existing asylum to cause the same to be enlarged or improved, or, in any other case where the said justices deem it necessary or expedient, to direct the committee of visitors of any existing asylum to improve the same; but it shall not be incumbent on any such committee under any such direction as aforesaid to enlarge or improve such asylum where the same does not belong to one county or borough alone, without a like direction from the justices of every county or borough to which the same belongs; and in case at any time it appear to one of her Majesty's principal secretaries of state, upon the report of the commissioners in lunacy, that any existing asylum or asylums for any county or borough is or are inadequate or unfit for the proper accommodation of the pauper lunatics thereof, it shall be lawful for such secretary of state, by writing under his hand, to require the justices of such county or borough forthwith to cause an additional asylum, or a new asylum in lieu of any existing asylum, to be provided as aforesaid for such county or borough, or the committee or committees of visitors of any existing asylum or asylums forthwith to enlarge or improve the same, in such manner as the said secretary of state may see fit and direct, and the said secretary of state may require accommodation to be provided in and by such additional or new asylum, or by means of the enlargement of such existing asylum or asylums, for so many pauper lunatics as upon the report of the said commissioners such secretary of state may think fit and direct; and the said justices or committee or committees shall forthwith carry such requisition of the said secretary of state into effect; and the powers and provisions in this enactment contained with respect to the enlargement and improvement of asylums shall extend and be applicable to and for the enlargement and improvement of the offices, outbuildings, yards, courts, outlets, ground, land, and appurtenances belonging thereto."

When an asylum or additional asylum or accommo-

Sect. 31. "It shall be lawful for any committee of visitors having authority to provide an asylum for pauper lunatics (but subject as hereinafter mentioned) to procure, examine, and determine on plans

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dation is required, the visitors to procure and determine on plans and estimates, and to contract for the purchase of land and buildings, and for erecting, &c. the necessary buildings.

for the same, and estimates, and contract for the purchase of lands and buildings (and in the case of buildings, either with or without any fittings-up and furniture belonging thereto), and for building, erecting, altering, improving, restoring, furnishing, and completing, or otherwise providing such asylum, and rendering the same in all respects fit and ready for the reception of lunatics, and for making, laying out, and completing the offices, outbuildings, yards, courts, outlets, grounds, land, and appurtenances of or for such asylum, and for providing clothing for patients, and everything necessary for the opening of any such asylum; and any committee of visitors having authority to enlarge, alter, or improve any asylum shall have like powers for the purpose of enlarging, altering, or improving such asylum, or the offices, outbuildings, yards, courts, outlets, grounds, land, and appurtenances thereto belonging; and every person contracting for building or doing any other such work as aforesaid shall give to the clerk of such visitors sufficient security for the due performance of the contract; and every such contract, either for purchase of lands or buildings, or for doing any such work as aforesaid, and all orders relating thereto, shall be entered in a book to be kept by the clerk to such visitors; and when such asylum and appurtenances, or (as the case may be) the additions to or alterations or improvements thereof, are completed, such book shall be deposited and kept among the records of the county or borough, or where more than one county or borough is interested in such contract by reason of an agreement for union, then among the records of the county or borough which has contributed the largest proportion of the expenses of such contract; and every such book may be inspected at all reasonable times by any person contributing to the rates of the county or borough, or, in the case of a union, to the rates of any of the counties or boroughs, and also, if any part of such expenses has been paid by voluntary subscriptions, by any of such voluntary subscribers; and a copy of every such book shall be kept at the asylum to which the contract relates: provided always, that the said visitors shall from time to time make their report to the general or quarter sessions of the county or borough, counties or boroughs, for which they, or such of them as have not been elected by subscribers as aforesaid, have been elected, of the several plans, estimates, and contracts which have been agreed upon, and of the sum or sums of money necessary to be raised and levied for defraying the purchase-monies and expenses thereof on the county or borough, or, in the case of such union as aforesaid, on each or every of the counties or boroughs; which plans, estimates, and contracts shall be subject to the approbation of the court or courts of general or quarter sessions of such county or counties, and of the justices of such borough or boroughs, before the same are completed or carried into execution, save where the amount to be expended does not exceed an amount previously fixed by the court or courts of general or quarter sessions of such county or counties or by the justices of such borough or boroughs."

Contractors to give security.

Contracts and orders to be entered in a book, to be deposited, and to be open to inspection.

Visitors to report.

Plans, &c. of visitors, when not approved by the quarter sessions, to be submitted to secretary of state.

"The Lunacy Acts Amendment Act, 1862" (25 & 26 Vict. c. 111), s. 4, reciting, that by section thirty-one of the Lunacy Act, chapter ninety-seven, it is provided, "that the said visitors shall from time to time make their report to the general or quarter sessions of the county or borough, counties or boroughs, for which they (or such of them as have not been elected by subscribers, as therein mentioned) have been elected, of the several plans, estimates, and contracts which have been agreed upon, and of the sum or sums of money necessary to be raised and levied for defraying the purchase-monies and expenses thereof on the county or borough, or, in the case of such union as therein mentioned, on each or every of the counties or boroughs; which plans, estimates, and contracts shall be subject to the approbation of the court or courts of general or quarter sessions of such county or counties, and of the justices of such borough or boroughs, before the same are com-

pleted or carried into execution" (save in the case therein mentioned): enacts, that

"Where a plan, estimate, or contract agreed upon by any committee of visitors on behalf of a union of counties, or of a union of counties and boroughs, is disapproved of by one or more but not all of the courts of general or quarter sessions, or other bodies of justices whose approbation is required, in pursuance of the said enactment, each court of general or quarter sessions or body of justices disapproving of the same shall, within four months after such plan, estimate, or contract is reported to them, or where the same has been reported to them before the passing of this act, then within one month after the holding of the first court of general or quarter sessions of the county or the first meeting of the justices of the borough after the passing of this act, as the case may be, set forth their objections, with any observations they may think fit in relation thereto, in a report in writing, and forthwith transmit the same to one of her Majesty's principal secretaries of state, and the secretary of state shall cause such inquiries to be made in relation to the matter as he may deem proper, and shall by writing under his hand direct the plan, estimate, or contract in question, with or without any alteration therein, or such other plan, estimate, or contract for the like purpose as he may think fit, to be proceeded with and carried into execution. The decision of the secretary of state, given in pursuance of this section, shall be final, and shall be acted upon without further report or approval."

Power to visitors to purchase in consideration of a rent reserved.

"The Lunatic Asylums Act, 1853" (16 & 17 Vict. c. 97), s. 32, enacts, that "it shall be lawful for any committee of visitors to purchase and take a conveyance for the purposes of this act from any person having absolute power to sell and convey, independently of this act, any lands or buildings, in consideration of a yearly rentcharge or annual sum to be limited to such person, his heirs and assigns, or as he or they shall direct, out of the lands or buildings to be purchased, and the same shall accordingly be conveyed as aforesaid, subject thereto, and to powers of distress and entry for securing the same."

Power for visitors to take a lease for rent.

Sect. 33. "It shall be lawful for any committee of visitors, instead of purchasing any land or buildings which they are hereby authorized to purchase, to take a lease thereof for any absolute term of not less than sixty years, at such annual rent and under such covenants as the said committee of visitors think fit; and it shall also be lawful for such committee to rent any land by the year for the purpose of employing such of the inmates of the asylum as may be fit for such employment, or otherwise for the occupation and use of the patients."

Taking on lease additional lands for use of asylum.

"The Lunacy Acts Amendment Act, 1862" (25 & 26 Vict. c. 111), s. 11, enacts, that "it shall be lawful for any committee of visitors, with the sanction of the court of general or quarter sessions, to hire or take on lease, from year to year or for any term of years, at such rent, and upon such terms, and under such covenants as they think fit, any land or buildings, either for the employment or occupation of the patients in the asylum, or for the temporary accommodation of any pauper lunatics for whom the accommodation in the asylum may be inadequate.

"The restrictions in section thirty-three of the Lunacy Act, chapter ninety-seven, as to the term for which the committee of visitors are thereby authorized to take a lease, or to rent land, shall not apply to land or buildings to be hired or taken under this provision.

"The land and buildings so to be hired or taken shall, while used for the purposes of this section, be deemed part of the asylum, and all existing provisions as to the asylum or part of the asylum shall be applicable thereto accordingly."

Asylum may be erected beyond the limits of any county or borough, and justices of

"The Lunatic Asylums Act, 1853" (16 & 17 Vict. c. 97), s. 34, enacts, that "the asylum to be provided for any county or borough, either solely or jointly, may be without the limits of such county or borough, and when any asylum provided or to be provided solely or in

such county or borough may notwithstanding act therein.

part for any county or borough, or any part of such asylum, is situate within the limits of any other county or borough, then and in every such case the justices of the county or borough to which such asylum wholly or partly belongs shall have full power and authority to act in such other county or borough, so far as concerns the regulation of such asylum, and the powers conferred by this act, in the like manner as if such asylum and every part thereof were situate within such first-mentioned county or borough."

Assessment to local rates not to be increased after purchases for the purposes of this or any former act.

Sect. 35. "No lands or buildings already or to be hereafter purchased or acquired, under the provisions of any former act or this act, for the purposes of any asylum (with or without any additional building erected or to be erected thereon), shall while used for such purposes be assessed to any county, parochial, or other local rates at a higher value or more improved rent than the value or rent at which the same were assessed at the time of such purchase or acquisition" (*r*).

Certain provisions of 8 & 9 Vict. c. 18, incorporated, and extended to authorize exchanges.

Sect. 36. "The provisions of 'The Lands Clauses Consolidation Act, 1845,' 'with respect to the purchase of lands by agreement,' 'with respect to the purchase-money or compensation coming to parties having limited interests, or prevented from treating, or not making title,' and all other provisions of the said act applicable to and in the case of the purchase of lands by agreement, shall be incorporated with this act; and all parties by the said provisions empowered to sell any lands may give lands in exchange for the purposes of this act for other lands, and enter into all necessary agreements for that purpose, and on any such exchange money may be paid by either party by way of equality of exchange, and the said provisions 'with respect to purchase-money or compensation coming to parties having limited interests, or prevented from treating, or not making title,' shall apply to any money coming to any such parties on any such exchange; and any lands to be purchased or taken in exchange for the purposes of this act shall be conveyed to such persons, being not less than five in number, and in such manner as the committee of visitors purchasing the same or taking the same in exchange may direct, in trust for the purposes of this act; and any conveyance to be so made shall have the like force and effect as a conveyance made under section eighty-one of the said Lands Clauses Consolidation Act."

8 & 9 Vict. c. 18, incorporated.

"The Lunacy Acts Amendment Act, 1862" (25 & 26 Vict. c. 111), enacts (s. 10), that "all the provisions of 'The Lands Clauses Act, 1845,' except the provisions of that act 'with respect to the purchase and taking of any lands otherwise than by agreement,' 'with respect to the recovery of forfeitures, penalties, and costs,' 'with respect to lands acquired by the promoters of the undertaking, under the provisions of the "Lands Clauses Consolidation Act, 1845," or the special act, or any act incorporated therewith, but which shall not be required for the purposes thereof,' 'and with respect to the provision to be made for affording access to the special act by all parties interested,' shall be incorporated with this act; and for the purposes of this act the expression 'the promoters of the undertaking,' wherever used in the said Lands Clauses Consolidation Act, shall mean any such committee of visitors as aforesaid."

Provision for the appointment of new trustees of land purchased or acquired for asylum.

"The Lunatic Asylums Act, 1853" (16 & 17 Vict. c. 97), s. 37, enacts, that "when and so often as any land purchased or acquired under this act or any former act, for the purposes of an asylum, shall be vested in less than three trustees, or there shall not be any trustee thereof living, it shall be lawful for the committee of visitors of such asylum, or any three or more of them, by an instrument in writing under the hands of such visitors or any three or more of them, to appoint such number of new trustees of such land as such visitors may think fit; and

(*r*) See *Congreve* v. *Upton*, 33 L. J. (N. S.) M. C. 83, post, "RATING."

such appointment shall be deposited and kept among the records of the county or borough, or, where more than one county or borough is interested in such land, then among the records of the county or borough having the largest interest therein; and all the estate and interest in such land which at the time of such appointment may be vested in any trustee or trustees, in trust for the purposes aforesaid, or in any other person, as heir, or devisee, or otherwise, subject to such trust, shall by virtue of such appointment vest in the trustees so appointed, either alone, or if there be any continuing trustees or trustee jointly with such continuing trustees or trustee, as the case may require, without any conveyance or assignment for that purpose."

Visitors to order all ordinary repairs of asylums, provided they do not exceed 400*l.* per annum.

Sect. 38. "The committee of visitors of every asylum may of their own authority from time to time order all such ordinary repairs as may be necessary for such asylum, and any additions, alterations, or improvements to or in such asylum, or the offices, outbuildings, yards, courts, outlets, grounds, land, and appurtenances thereto belonging, which to them may seem necessary or proper for the further or better accommodation of the pauper lunatics who may be received or taken care of therein, provided that the expense of all such additions, alterations, and improvements shall not exceed four hundred pounds in any one year; and if such asylum belong to one county or borough only, they shall cause the expense of such repairs, additions, alterations, or improvements to be paid by making an order upon the treasurer of such county or borough for the payment thereof, but if otherwise they shall apportion such expense in the proportion in which each county or borough has contributed to the erection thereof, or where any other proportion is fixed by any agreement for the time being in force, then in such other proportion, and where any such agreement only provides in what proportion the expense of repairs shall be defrayed, the said committee shall apportion the expense of such additions, alterations, and improvements in the same proportion unless it be otherwise provided by such agreement, and the said committee shall make an order on the treasurer of each county or borough for the payment of the proportion to be paid by such county or borough, and such treasurer shall pay the same accordingly out of any money of such county or borough then in his hands, or which may thereafter come to his hands, not specifically appropriated to any other purpose, and the same may be recovered from him, for the benefit of such asylum, by the treasurer or clerk thereof, together with all costs and expenses, in any of her Majesty's courts at Westminster, or in any other court of competent jurisdiction: provided always, nevertheless, that no order for any such repairs, additions, alterations, or improvements as aforesaid, or for the payment of any money for the expenses thereof, where such expenses exceed the sum of one hundred pounds, shall be made, unless notice of the meeting at which the same shall be ordered, and of the intention to determine thereat the question of such expenditure, have been given in such manner and so long before the time appointed for the meeting as is hereinbefore provided with respect to notices of meetings of committees of visitors, nor unless three visitors concur in and sign such order: provided also, that where any such expenditure as aforesaid is incurred otherwise than for ordinary repairs, the visitors shall report the same to the next general or quarter sessions of the county or borough, or each county and borough, on behalf of which such expenditure has been incurred."

As to payment of expenses of repairs, &c.

No order for payment of money exceeding 100*l.* to be made unless notice has been given of the meeting at which the same shall be ordered.

Power of visitors, with consent of secretary of state, to dissolve unions.

Sect. 39. "It shall be lawful for every committee of visitors, with the consent of one of her Majesty's principal secretaries of state under his hand, to determine and dissolve any union, whether such union have been formed under this act or under any former act, and upon such dissolution to divide and allot the lands, buildings, hereditaments, chattels, monies, and effects of or belonging to such union between or among every such county and borough, and the subscribers (if any) between which and whom such union existed, in the proportions in which they

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respectively have contributed thereto or are interested therein, or in such other proportions and manner as the said visitors, with the approbation of the said secretary of state, think fit; and if on any such division or allotment there cannot be conveniently allotted to any county or borough or subscribers the proper proportion of such county, borough, or subscribers in the lands, buildings, hereditaments, chattels, monies, and effects of such union, there shall be paid to such county, borough, or subscribers such sum of money as the said visitors, with the approbation of the said secretary of state, may direct, in full or in part satisfaction, as the case may require, of the aforesaid proportion of such county, borough, or subscribers; and every such sum of money shall be raised by the county or counties, borough or boroughs, to or between or among which the lands, buildings, hereditaments, monies, chattels, and effects of the said union shall be allotted (if more than one) in such shares as the said visitors, with the approbation of the said secretary of state, think fit, in the same manner and by the same means as other monies are appointed to be raised by counties or boroughs for the purposes of this act: provided always, that no union shall be so dissolved by any committee of visitors except under a resolution of such committee at a meeting specially convened for the purpose of determining the question of such dissolution by a notice given in such manner and so long before the time appointed for such meeting as is hereinbefore provided with respect to notices of meetings of committees of visitors, nor unless the majority of the whole number of the committee of visitors shall at such meeting have concurred in such resolution: provided always, that in the case of a dissolution of union, where any county or borough having an asylum shall be united with any county or counties, borough or boroughs, not having an asylum, and have erected additional buildings and incurred any other expense for their benefit, and be in the receipt of an annual fixed sum or rent as a remuneration for the expenses so incurred in lieu of the payment of a sum in gross, it shall be lawful for the said county or counties, borough or boroughs, so paying such rent, if they shall think fit, to raise, in the same manner as is provided in the act for the purpose of erecting county asylums, such a sum of money for the purpose of compensating the county or borough receiving such rent for the cessation of such rent as may be agreed upon and approved of by the committee of visitors of such county or counties, borough or boroughs, as may have been so united as aforesaid."

Power for visitors, with consent of secretary of state, to sell or exchange lands and buildings.

Sect. 40. "It shall be lawful for every committee of visitors, with the previous consent of one of her Majesty's principal secretaries of state under his hand, to sell, either by public auction or private contract, and subject to any conditions, any lands or buildings or parts of lands or buildings which may have belonged to and been used as or together with an asylum, or which may have been purchased or otherwise acquired under any former act or this act, for the purposes of an asylum, and found unsuitable or otherwise not required for such purposes, or to give the same in exchange for other lands or buildings, and to pay or receive through the treasurer of such asylum any money by way of equality of exchange; and every conveyance of lands or buildings so sold or given in exchange which shall be executed by the persons in whom the same may then be vested as trustees, or by any three of the members of the committee of visitors who sell the same, shall be effectual to convey the same for all the estate or interest then vested in such trustees, in trust for the purposes of such asylum, and the receipt of any three of the committee of visitors shall be a sufficient discharge for the purchase-monies or for any monies to be received for equality of exchange; and such monies, in case the sale or exchange be made by a committee of visitors of any one county or borough alone, shall be applied in carrying into execution the powers and purposes of this act, or shall be paid to the treasurer of such county or borough, and be applied for the general purposes thereof, or otherwise, as the justices of such county or borough

Application of purchase-monies.

shall, at some general or quarter sessions for such county, or at some special meeting of the justices of such borough, direct; and in every other case the monies received shall be paid to the treasurer of the county, borough, or subscribers to which or to whom the property sold or exchanged belonged, in case it belonged to any one of them, or if the same was joint property then to the respective treasurers of every county and borough, and of the subscribers, if any, in the proportion in which such county, borough, and subscribers were respectively interested therein; and such monies shall be held and applied by every such treasurer, in the case of a county or borough, as part of the general rates or funds of such county or borough, and in the case of any subscribers, as the majority of such of the subscribers as shall be present at any meeting convened for that purpose shall direct."

Visitors may, with consent of secretary of state, get released from contracts.

Sect. 41. "Where any committee of visitors have (either before or after the passing of this act), contracted for the purchase of any lands for the purposes of an asylum, or for any exchange of any lands for other lands for such purposes, and the lands so contracted to be purchased or taken in exchange are found to be unsuitable or are not required for such purposes, such committee, or any other committee appointed in their place, may, with the consent in writing of one of her Majesty's principal secretaries of state (notwithstanding such contract may have been approved as required by the said acts hereby repealed, or this act), procure a release from the said contract, and in consideration of such sum of money (if any) as the said committee, with such consent as aforesaid, may agree to pay; and the said committee or any three of such committee may, in consideration of such release, execute a release to the other party to such contract or other the persons bound thereby; and the consideration money (if any) by the said committee agreed to be paid as aforesaid, and all expenses in relation to the said contract and releases, shall be paid, defrayed, and raised in like manner as if the same were payable in respect of the purchase of lands for the purposes aforesaid."

Visitors empowered to contract for the reception of pauper lunatics into asylums of other counties or hospitals or licensed houses.

Sect. 42. "It shall be lawful for every committee of visitors to contract with the committee of visitors of any asylum, or with the subscribers to any hospital registered or the proprietor of any house licensed for the reception of lunatics, for the reception into such asylum, hospital, or house of the whole or of a portion of the pauper lunatics of the county or counties, borough or boroughs, or counties and boroughs, or any of them respectively, for which such first-mentioned committee is acting, or for the use and occupation of all or any part of such registered hospital or licensed house, at such sum, either in gross or by way of annual or other periodical payment or rent, and under and subject to such terms, stipulations, and conditions, as such visitors shall think fit; and it shall be lawful for the committee of visitors of any asylum, or the subscribers to any registered hospital, or the proprietor of any licensed house, to contract with any committee of visitors accordingly: provided always, that no such contract shall be made for any longer period than for the term of five years, and that any such contract may be determined by notice in writing under the hand of one of her Majesty's principal secretaries of state, and that every such contract with the proprietor of a licensed house shall determine on such house ceasing to be duly licensed for the reception of lunatics: provided also, that no such contract shall exempt the justices of any county or borough or any committee from the immediate duty and obligation of erecting or providing, or uniting in erecting or providing, an asylum or additional asylum, or of enlarging or improving any asylum, as required by this act, where one of her Majesty's principal secretaries of state has caused notice to be given as aforesaid for the determination of such contract, although the term for which such contract was entered into has not expired by effluxion of time: provided also, that any money which may be payable under such contract for the reception of the lunatics of any county or borough into

Period of such contract limited.

As to money payable under con-

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tract for reception of lunatics into any asylum.

any asylum beyond the weekly sums which may be charged under this act for the lodging, maintenance, medicine, clothing, and care of lunatics in the asylum belonging to the county or borough to which such lunatics shall belong, shall be paid, defrayed and raised by such county or borough out of any monies in the hands of the treasurer for the county which shall be applicable for the repairs or other ordinary expenses of such asylum: provided also, that any hospital or licensed house with the subscribers or proprietors of which any such committee so contract as aforesaid shall be subject to the visitation of any of the members of such committee for the time being."

Contracts under forty-second section of Lunatic Asylums Act, 1853, may be renewed.

The 18 & 19 Vict. c. 105, s. 10, reciting, that "doubts have been entertained whether under the forty-second section of 'The Lunatic Asylums Act, 1853,' a contract for the reception of pauper lunatics thereby authorized can be renewed:" enacts, "that upon or after the expiration or other determination of any contract for any of the purposes of the said section it shall be lawful for every committee of visitors, under and subject to the several provisions of the said act applicable thereto, from time to time to enter into a new contract for any of the purposes mentioned in the said section with the committee of visitors of any asylum, or with the subscribers to any hospital registered or the proprietor of any house licensed for the reception of lunatics, and for the committee of visitors of any asylum, or the subscribers to any registered hospital or the proprietor of any licensed house, to contract with any committee of visitors accordingly."

Provision as to contract for reception of lunatics.

"The Lunacy Acts Amendment Act, 1862" (25 & 26 Vict. c. 111), s. 7, enacts, that "where any contract has been made by a committee of visitors of any county or borough under the Lunacy Act, chapter ninety-seven, section forty-two, for the reception into any asylum, hospital, or licensed house of the whole or a portion of the pauper lunatics of such county or borough, it shall be lawful for the justices of such county or borough, so long as such contract is subsisting, to defray out of the county or borough rate so much of the weekly charge agreed upon for each pauper lunatic received therein as may, in the opinion of such committee of visitors represent the sum due for the use of such asylum, hospital, or licensed house, not exceeding, however, one fourth of the whole of such weekly charge, in exoneration to that extent of the union to which the maintenance of any such pauper lunatic may be chargeable."

When any asylum can accommodate more than the lunatics of the county or borough, visitors may order the admission of other lunatics.

"The Lunatic Asylums Act, 1853" (16 & 17 Vict. c. 97), s. 43, enacts, that "whenever it appears to the committee of visitors of any asylum that such asylum is more than sufficient for the accommodation of all the pauper lunatics of the county or borough or each county and borough to which the same wholly or in part belongs, and of any county or counties, borough or boroughs with which any existing contract for the reception of all or any of the pauper lunatics thereof in such asylum has been entered into, or which shall otherwise contribute to such asylum, it shall be lawful for the committee of visitors, if they think fit, to give notice thereof by advertisement in some newspaper commonly circulated in such county or borough, or every such county or borough as aforesaid, and (subject nevertheless and without prejudice to any agreement with any voluntary subscribers), by a resolution of the said committee, to permit the admission of so many pauper lunatics of any other county or borough, and (if such committee think fit) lunatics not paupers, but who, in the opinion of such committee, may be proper objects to be admitted into a public asylum, as to such committee may seem expedient, and at any time to rescind or vary any such resolution; and such committee may, if they think fit, by such resolution require that no pauper lunatic shall be admitted into such asylum thereunder without an undertaking by the minute of the guardians of the union or parish, or signed by two of the overseers of the parish, to which such lunatic is chargeable, or in the case of a lunatic not a pauper by the person signing the order for the admission of such lunatic, for the due payment of the weekly charge for the lodging, maintenance, medicine,

clothing, and care of such lunatic during his continuance in such asylum, and of the expenses of his burial in case he die therein, as well as for the removal of such lunatic from such asylum within six days after due notice given in writing by the superintendent of such asylum; and such lunatic not being a pauper shall have the same accommodation in all respects as the pauper lunatics."

No visitor to have any interest in any contract or agreement.

Sect. 44. "No visitor of any asylum shall have or take, or be capable of having or taking, any interest or concern whatsoever, either in his own name or in the name of any other person, in any contract or agreement to be made under the authority of this act or in anywise relating to or connected with such asylum, or shall, for any design or plan he may deliver or produce, receive any benefit or emolument whatever, or otherwise have or take any benefit or emolument whatsoever from or out of the funds of the asylum: provided always, that this enactment shall not extend to any such interest, benefit, or emolument which any visitor may have or derive by reason of his being a shareholder of any joint stock company established by act of parliament or by charter, with which any contract may be entered into on behalf of such asylum, or which may otherwise receive any benefit or emolument out of the funds of the asylum; provided that no contract or dealing between such company and the visitors of such asylum be at or upon rates or terms more advantageous to such company than in the case of contracts or dealings by such company with other parties."

Plans, &c. to be submitted to commissioners in lunacy, and approved by secretary of state.

Sect. 45. "Every committee of justices or visitors shall submit all agreements for uniting for the purposes of this act, and all contracts under this act, for the reception of the pauper lunatics of any county or borough, or any of them, into any asylum, registered hospital, or licensed house, or for the use and occupation of all or any part of any such hospital or licensed house, and all plans for building or providing or enlarging or improving any asylum for pauper lunatics, and all contracts for purchases of lands or buildings for any such purpose, to the commissioners in lunacy, who shall make such inquiries in reference thereto, and to the amount of the accommodation requiring to be provided, as they may deem proper, and shall report thereon in writing to one of her Majesty's principal secretaries of state, and such committee shall submit to one of such secretaries of state estimates of the cost and expense of carrying into execution such plans, and no such agreement, contract, or plan shall be carried into effect until the same has been approved by such secretary of state in writing under his hand."

Estimates to accompany plans.

"The Lunacy Acts Amendment Act, 1862" (25 & 26 Vict. c. 111), enacts, s. 5, that "together with every plan for building, or providing or enlarging or improving, any asylum for pauper lunatics, which is to be submitted to the commissioners in lunacy, under section forty-five of the said Lunacy Act, chapter ninety-seven, an estimate of the cost and expense of carrying such plan into execution shall be also submitted to the said commissioners."

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§ 2. How Monies to be raised for providing Asylums.

Provisions for raising monies required for the purposes of this act by county and borough rates.

"The Lunatic Asylums Act, 1853" (16 & 17 Vict. c. 97), s. 46, enacts, that "in order to pay and defray the monies, costs, and expenses payable for any of the purposes of this act, or the said acts hereby repealed, by any county, the justices of such county at any general or quarter sessions for the same may and shall assess and tax a general county rate or rates upon such county, and may and shall fix a sum or rate to be contributed by all places whatsoever within such county, (other than any borough being within such county or by this act for the purposes thereof annexed thereto,) and whether such places be or be not liable to contribute to an ordinary county rate; and in order to pay and defray

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the monies, costs, and expenses payable as aforesaid by any borough, the council of such borough may and shall assess a general borough rate in the nature of a county rate upon such borough, and the said rates shall be collected, levied, and recovered in the same manner, and by the same powers, authorities, ways, and means, and under the same penalties, as any ordinary rate for such county or borough respectively may by law be collected, levied, and recovered; and the monies, costs, and expenses to be paid and contributed by any county or borough for the purposes of this act shall be paid by the treasurer of such county or borough, out of the rates aforesaid, to the treasurer of the asylum to which such county or borough shall either alone or jointly pay or contribute: provided always, that it shall be lawful for the council of any borough, if they think fit, to direct that any monies payable for the purposes of this act, or any part thereof, shall be paid out of the borough fund of such borough, and such monies shall be paid by the treasurer of such borough out of such fund accordingly."

Power for justices of counties and councils of boroughs to raise money by mortgage of the rates.

Sect. 47. "It shall be lawful for the justices of every county in general or quarter sessions assembled, or the major part of them, such major part not being less than five, and for the council of every borough, from time to time to borrow and take up on mortgage of the rates to be made under this act for such county or borough, or on mortgage of such rates together with all other rates or funds, or any of them, of the same county or borough, all or any of the monies required for paying and defraying any such monies, costs, and expenses, as aforesaid, payable by such county or borough; and such money may be so raised at any rate of interest not exceeding five pounds per centum per annum, and every such mortgage may be made by an instrument in the form contained in the schedule (B.) hereunto annexed, or to that or the like effect, and shall be executed in the case of a county by the chairman, and two or more other justices present at the time of making such mortgage, and in the case of a borough by affixing the common seal of the borough thereto; and every such mortgage shall be effectual for securing to the person advancing the sum of money in such mortgage expressed to be advanced, his executors, administrators, and assigns, the repayment thereof, with interest for the same, after such rate and at such time and in such manner as in such mortgage provided; and the said mortgages shall be numbered in the order of succession in which they are granted; and copies or extracts of all such mortgages shall be kept by the clerk of the peace, or other proper officer having the custody of the records of the quarter sessions of such county or of the records of such borough, as the case may be; and every person to whom any such mortgage has been made under the act hereby repealed or any former act, or is made under this act, his executors or administrators, is hereby empowered, by endorsing his or their name or names on such mortgage, to transfer the same, and his and their right to the principal money and interest thereby secured, unto any person, and every assignee under this act or any former act of any such mortgage, his executors and administrators, may in like manner transfer the same again, and so toties quoties; and the persons to whom such mortgages or such transfer thereof are made, their executors and administrators, shall be creditors upon the rates and funds thereby expressed to be mortgaged in an equal degree one with another, and shall not have any preference or priority other than is provided under the powers of this act."

Power to public works loan commissioners to lend money for purposes of this act.

Sect. 48. "It shall be lawful for the justices and council of any county and borough respectively to make application for any advance of any sum necessary for the purposes of this act, or the said acts hereby repealed, to the commissioners acting in the execution of an act of the session holden in the fourteenth and fifteenth years of her Majesty, chapter twenty-three, 'to authorize for a further Period the Advance of Money out of the Consolidated Fund to a limited Amount for carrying on Public Works and Fisheries, and Employment of the Poor,' and

any act or acts amending or continuing the same, and the said commissioners are hereby empowered, if they think fit, to make such advance upon the security of such mortgage as aforesaid."

Provision for the payment of the interest on the mortgages, and of a portion of the principal in each year.

Sect. 49. "The said justices or council, as the case may be, shall in every year charge the rates or funds of such county or borough with the sum for the time being required to pay the interest of the money borrowed on any mortgages under this act or any former act, or such of them as for the time being remain unpaid, and also with the payment of a further sum, not less than one thirtieth part of the whole of such mortgages at the time of the same being first made, and such sums shall be applied under the direction of the said justices or council in discharge of the interest on the said mortgages or such of them as for the time being remain unpaid, and of so many of the principal sums owing on the said mortgages for the time being remaining unpaid, as such sums after payment of the interest as aforesaid will extend to discharge, until the whole of the principal monies for which such mortgages shall have been made, and the interest thereof, shall be fully paid and discharged; and the said justices and council, as the case may be, are and is hereby required to fix one or more days in each year on which such payment shall be made, and shall make orders for assessments in due time, so as to provide for such payments being regularly made; and the said justices or council, as the case may be, shall, by agreement with the parties, or others advancing any money for the purposes of this act, determine the order or priority in which the several sums advanced shall be respectively discharged; and the justices of every county and the council of every borough so borrowing money on mortgage as aforesaid are and is hereby required to appoint a proper person to keep an exact and regular account of all receipts and payments in respect of principal monies borrowed or taken up as aforesaid under this act or any former act, and the interest thereof, in a book or books separate and apart from all other accounts, and the said book and books, duly adjusted and settled up to the time being, to deliver annually, in the case of a county, into court at some general or quarter sessions for such county, and in the case of a borough to the council of the borough, at such time as such council shall appoint; and the justices for every such county at such sessions, and the council for every such borough, are and is hereby required carefully to inspect all such accounts, and to make such orders for carrying the several purposes aforesaid into execution as to them shall seem meet."

Provision to be made for paying money borrowed within a limited time not exceeding thirty years.

Sect. 50. "Provided always, that the justices of every county and the council of every borough borrowing money as aforesaid shall make provision by means of the rates which they are hereby respectively authorized to make, and by the orders and directions which they are hereby authorized to give, that the whole principal money to be borrowed under the authority of this act by such county or borough, and all interest for the same, shall be fully paid and discharged within a time to be limited by such justices or council, not exceeding thirty years from the time of borrowing the same."

Persons lending money on mortgage of rates, &c. not bound to give proof that notices have been given, &c.

Sect. 51. "No person lending money to any justices of any county or the council of any borough, and taking a mortgage for securing repayment of the same, executed in manner directed by this act, and purporting to be made under the authority of this act, shall be bound to require proof that the several provisions of this act or of any former act or acts have been duly complied with; and if there be an order of the justices of any county in general or quarter sessions, or of the council of any borough making application for the loan, and any mortgage have been thereupon duly executed, either before or after the passing of this act, as by any act then in force or this act is provided, the justices or council (as the case may be) shall have and be deemed to have had full power to levy the rates so mortgaged for repayment of the money so borrowed, with interest, notwithstanding that the provisions of this act or

any former act or acts may not have been complied with; and it shall not be competent to any ratepayer or other person to question the validity of any such rate or mortgage on the ground that such provisions had not been complied with."

Power to raise money to pay off sums already borrowed.

Sect. 52. "Provided also, that in every case in which any monies have been borrowed under the powers of any former act or this act, it shall be lawful for the justices of the county or council of the borough for which such monies shall have been borrowed (with the consent of the parties to whom the same shall be owing), to pay off the monies so borrowed, and to raise and borrow the monies necessary for that purpose, and also to repay the said last-mentioned monies and the interest thereof, under the powers of this act, as if such monies were borrowed under the powers hereinbefore contained; but so, nevertheless, that all monies borrowed shall be discharged within thirty years from the time of first borrowing the same."

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§ 3. REGULATION AND MANAGEMENT OF ASYLUMS, AND APPOINTMENT OF OFFICERS.

Visitors to submit general rules to the secretary of state, and, subject to such general rules, to make regulations and determine diet of lunatics.

"The Lunatic Asylums Act, 1853" (16 & 17 Vict. c. 97), enacts (s. 53), that "every committee of visitors shall, within twelve months after the passing of this act, in the case of every asylum already established and general rules for the government whereof have not been already submitted to one of her Majesty's principal secretaries of state, and within twelve months after the completion of every asylum hereafter established, submit the existing general rules, or general rules to be prepared by such committee, for the government of the asylum under their superintendence to one of her Majesty's principal secretaries of state for his approval; and such rules, when approved by him, shall be printed, abided by, and observed; and every such committee shall have power, with the like approbation, to alter and vary such rules from time to time as they think necessary; and every such committee shall make from time to time such regulations and orders as they think fit, not inconsistent with the general rules for the time being in force for the management and conduct of the asylum, and in such regulations there shall be set forth the number and description of officers and servants to be kept, the duties to be required of them, and the salaries to be paid to them respectively; and every such committee shall from time to time determine the diet of the patients; and in and by such regulations such committee may direct that any number of beds in such asylum, and in such respective parts thereof as such committee may think fit, shall be always reserved for such cases as in and by such regulations shall be in this behalf mentioned; and in such case such asylum shall for the purposes of this act, as respects the admission of all cases not within the description or class for which such beds are reserved, be deemed full when there are no vacant beds in such asylum except those so reserved, but nevertheless it shall be in the power of the committee of visitors of such asylum for the time being to fill the beds so reserved as they may deem expedient; and any such committee may, if they see fit, by any such regulations or order, exclude from admission into the asylum persons afflicted with any disease or malady which such committee may deem contagious or infectious, and persons coming from any district or place in which any such disease or malady may be prevalent."

Visitors to fix weekly rate to be paid for maintenance of each lunatic, not to exceed 14*s.* per week.

Sect. 54. "Every committee of visitors shall fix a weekly sum to be charged for the lodging, maintenance, medicine, clothing, and care of each pauper lunatic confined in such asylum, of such amount that the same may be sufficient to defray the whole expense of the lodging, maintenance, care, medicine, and clothing, and other expenses requisite for each pauper lunatic, and that the total amount of the weekly sums,

after defraying such expenses, may also be sufficient to pay the salaries of the officers and attendants, and such committee may from time to time alter the amount of such weekly sum as occasion may require: provided always, that any such committee may, if they think fit, fix a greater weekly sum to be charged as aforesaid in respect of pauper lunatics other than those sent to such asylum from or settled in some parish or place situate in any county or borough to which such asylum belongs: provided also, that such sum shall in no case exceed the rate of fourteen shillings per week; but if the aforesaid rate of fourteen shillings be found insufficient for the purposes aforesaid, it shall be lawful for the major part of the justices of the county or borough, or of each county or borough to which such asylum may belong, present at any general or quarter sessions for such county, or at a special meeting of the justices of such borough, or each such county or borough respectively, to make such addition to such rate as to them respectively shall seem fit and necessary, and to make an order or orders accordingly, which order or orders shall be signed by the clerk of the peace for the county, or clerk to the justices for the borough, and forthwith published in some newspaper commonly circulated within such county or borough."

If the rate be found insufficient, justices in quarter sessions may increase it.

"The Lunacy Acts Amendment Act, 1862" (25 & 26 Vict. c. 111), s. 6, enacts, that "where the committee of visitors enter into any agreement for the reception into the county asylum of pauper lunatics belonging to a county or borough which has not contributed to the erecting or providing such asylum, and think fit, under the Lunacy Act, chapter ninety-seven, section fifty-four, to fix a greater weekly sum than is charged by them in respect of lunatics sent from or settled in some place, parish, or borough which has contributed to the building or providing such asylum, they may, if they think fit, pay over the excess created by the payment of such greater weekly sum to a building and repair fund, to be applied by them to the altering, repairing, or improving such asylum, and shall annually submit to the general or quarter sessions a detailed statement of the manner in which such fund has been expended."

Excess of payment may be paid to a building and repair fund.

The 30 & 31 Vict. c. 106, s. 23, enacts, that "when any pauper lunatic shall be sent to an asylum from any part of a borough wholly or partly comprised within a union, which borough shall not have contributed to the erection or maintenance of that asylum, the visitors of the asylum shall, where the union and the borough are not conterminous, make out two accounts in respect of such lunatic in the asylum, one of which shall be limited to the charge which would be made in the case of a pauper lunatic sent from the county, and shall be transmitted to the guardians of the said union for payment, and the other, which shall contain the extra sum by law chargeable in respect of a pauper lunatic received into the same asylum from any other county, shall be transmitted to the town council of such borough, and shall be paid by them as other charges to which the borough fund may be liable."

As to pauper lunatics sent from boroughs.

"The Lunatic Asylums Act, 1853" (16 & 17 Vict. c. 97), s. 55, enacts, that "the committee of visitors of every asylum shall appoint a chaplain for the same, who shall be in priest's orders, and shall be licensed by the bishop of the diocese, and the licence of any such chaplain as aforesaid shall be revocable by the bishop whenever he shall think fit; and such chaplain, or his substitute approved by the visitors, shall perform and celebrate, in the chapel of or in some convenient place within or belonging to such asylum, divine service according to the rites of the church of England as established by law, on every Sunday, Christmas-day, and Good Friday, and shall also perform and celebrate such service within the said asylum at such other times, and also such other services according to the rites of the church of England as established by law at such times, as the visitors shall direct; and if any patient be of a religious persuasion differing from that of the established church, a minister

Visitors to appoint a chaplain.

Patients allowed the visits of any

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minister of their own persuasion.

Visitors to appoint medical officer, clerk, and treasurer, and such other officers and servants as they think fit.

of such persuasion, at the special request of such patient, or his friends, shall, with the consent of the medical officer of such asylum, and under such regulations as he shall direct, be allowed to visit such patient at proper and reasonable times; and the committee of visitors of every asylum shall appoint a medical officer, who shall be resident in such asylum, and who shall not be clerk or treasurer of such asylum, and a clerk (*s*) and treasurer, and such other officers and servants for the asylum, as the committee may think fit; and the committee shall have power to remove the chaplain, medical officer, clerk, and treasurer, or any other officer or servant, and shall from time to time, upon every vacancy, by death, removal, or otherwise, in the office of the chaplain, medical officer, clerk, or treasurer of the asylum, appoint some other person to such office, subject to the conditions and restrictions affecting the original appointment to such office, and may from time to time fill up or not, as in their discretion they may think fit, vacancies among other officers and servants of the asylum; and the committee shall, if they think fit, have power to appoint a visiting physician or surgeon to every such asylum, and shall from time to time appoint the medical officer or one of the medical officers (if more than one) of the asylum, or where there is a separate medical officer of each division, then the medical officer or one of the medical officers (if more than one) of each division, to be the superintendent of the asylum, or of such respective division thereof, and may remove any such officer from being such superintendent, and such superintendent shall be resident in the asylum; and the committee shall from time to time fix the salaries and wages to be paid to the officers and servants of the asylum: provided always, that it shall be lawful for the said committee, with the sanction and approbation of one of her Majesty's principal secretaries of state, to appoint any person other than such medical officer to be such superintendent: provided also, that where, on the tenth day of February, one thousand eight hundred and fifty-three, any person, other than a resident medical officer, was the superintendent of any asylum, such person may continue to be such superintendent as if this act had not been passed, unless and until the committee otherwise direct."

Visitors may sue and be sued in the name of their clerk, whose removal shall not abate action.

Sect. 125. "Every committee of visitors may sue and be sued in the name of their clerk; and no action brought or commenced by or against any such committee of visitors in the name of their clerk shall abate or be discontinued by the death or removal of such clerk, but the clerk for the time being to the visitors shall always be deemed plaintiff or defendant in such action, as the case may be."

Secretary of commissioners in lunacy and clerks to visitors may prosecute for offences.

Sect. 126. "It shall be lawful for the secretary of the commissioners in lunacy, by their order, to prosecute or proceed against any person for any offence against this act, and for the clerk to any committee of visitors of any asylum, by their order, to prosecute or proceed against any person for any offence against this act committed by any officer or servant belonging thereto or employed therein; and such secretary or clerk acting as the prosecutor or complainant in any such prosecution or proceeding shall be competent to be a witness therein, in the same manner as if he were not such prosecutor or complainant; and no such prosecution or proceeding shall abate or be discontinued by reason of the death or removal of such secretary or clerk, but his successor shall come and be in his place."

Penalty on officers or servants ill-treating lunatics.

Sect. 123 enacts, that "if any superintendent, officer, nurse, attendant, servant, or other person employed in any asylum strike, wound, ill-treat, or wilfully neglect any lunatic confined therein, he shall be guilty of a misdemeanor, and shall be subject to indictment for every such offence, or to forfeit for every such offence, on a summary conviction thereof

(*s*) See s. 26, ante, p. 252.

before two justices, any sum not exceeding twenty pounds nor less than two pounds."

Penalty on officers, &c. allowing lunatics to escape or be at large without permission.

Sect. 124. "If any superintendent, officer, or servant in any asylum shall, through wilful neglect or connivance, permit any patient in any case to quit or escape from such asylum, or be at large without such order as in this act mentioned, (save in the case of temporary absence authorized under the regulations of the committee of visitors,) or shall secrete, or abet or connive at the escape of any such person, he shall for every such offence forfeit and pay any sum not more than twenty pounds nor less than two pounds" (*t*).

Clerk of asylum to transmit to commissioners in lunacy information of dismissal of attendants.

Sect. 56. "The clerk of every asylum shall, within one week after the dismissal for misconduct of any nurse or attendant employed in such asylum, transmit to the commissioners in lunacy, by the post, information in writing under his hand of such dismissal, and of the cause thereof; and every such clerk neglecting to transmit such information to the said commissioners within one week after the dismissal of any such nurse or attendant shall for every such offence forfeit any sum not exceeding ten pounds" (*u*).

Visitors may grant superannuations to the superintendent, &c., not exceeding two-thirds of their salaries.

Sect. 57. "In case any superintendent, chaplain, matron, or any officer or servant of any asylum, become, from confirmed sickness, age, or infirmity, incapable of executing the office in person, or have been an officer or servant in the asylum for not less than twenty years, and be not less than fifty years of age, it shall be lawful for the committee of visitors of such asylum, if in their discretion they think fit so to do, but not otherwise, to grant to such superintendent, chaplain, matron, or other officer or servant such annuity by way of superannuation as they in their discretion think proportionate to the merits and time of service of such superintendent, chaplain, matron, or other officer or servant (whether incapable from sickness, age, or infirmity, or retiring from long service and age), and every such annuity shall be payable out of the rates lawfully applicable to the building or repairing of such asylum: provided always, that the annual amount paid by way of superannuation to any retired superintendent, chaplain, matron, or other officer or servant of any asylum shall not exceed the amount of two-thirds of the salary payable at the time of his or her retirement, and that no such superannuation shall be granted unless notice of the meeting at which the same shall be granted, and of the intention to determine thereat the question of such superannuation, have been given, in such manner and so long before the time appointed for such meeting as is hereinbefore provided with respect to notices of meetings of committees of visitors, nor unless three visitors concur in and sign the order granting the same."

Superannuation of officers in asylum.

"The Lunacy Acts Amendment Act, 1862" (25 & 26 Vict. c. 111), s. 12, enacts, that "the powers vested in the visitors of an asylum of granting an annuity by way of superannuation to any person that has been an officer or servant in such asylum for not less than twenty years, under section fifty-seven of the Lunacy Act, chapter ninety-seven, may be exercised by them when any such person has been an officer or servant for not less than fifteen years, in the same manner as if the time of such service had been twenty years; and in calculating the amount of superannuation regard may be had, if the visitors think fit, to the value of the lodgings, rations, or other allowances enjoyed by the person superannuated: provided, that no annuity by way of superannuation granted by the visitors of any asylum under the provisions of this act, or of the Lunacy Act, chapter ninety-seven, shall be chargeable on or payable out of the rates of any county until such annuity shall have been confirmed by a resolution of the justices of such county in general or quarter sessions assembled."

(*t*) The four preceding clauses are introduced here from the "Miscellaneous" provisions of the act.

(*u*) See s. 126, ante, p. 266.

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Provision for superannuation of matrons.

Sect. 13. "Where the offices of superintendent and matron of any asylum are held by man and wife, and an order has been made under the Lunacy Act, chapter ninety-seven, granting an annuity by way of superannuation to the superintendent, it shall be lawful for the committee of visitors of such asylum, if they think fit to do so, and if the matron has been an officer in the asylum for not less than twenty years, to grant to her such annuity by way of superannuation as they in their discretion think proportionate to her merits and time of service, although she may not have become incapable of executing her office from sickness, age, or infirmity; and every annuity granted in pursuance of this section shall be payable out of the rates lawfully applicable to the building or repairing of such asylum: provided, firstly, that the annual amount by way of superannuation paid to any matron under this section shall not exceed two thirds of the salary payable at the time of her retirement; secondly, that no such superannuation shall be granted unless notice of the meeting at which the same is to be granted, and of the intention to determine thereat the question of such superannuation, have been given in such manner and so long before the time appointed for such meeting as is provided in the said act with respect to notices of meetings of committees of visitors, nor unless three visitors concur in and sign the order granting the same; thirdly, if any such matron as aforesaid at any time thereafter is appointed to any public office, or to any office under the Lunacy Act, in respect of which she receives a salary, the payment of the compensation awarded to her under this act shall be suspended so long as she receives such salary, if the amount thereof is greater than the amount of compensation, or, if not, shall be diminished by the amount of such salary."

Clerk of the asylum to keep account of monies paid and received, and send abstract thereof annually to secretary of state and commissioners in lunacy.

"The Lunatic Asylums Act, 1853" (16 & 17 Vict. c. 97), s. 58, enacts, that "the clerk of every asylum shall keep all books, documents, and instruments which the visitors of the asylum are required to keep or direct to be kept, and shall also keep an account of all monies received or paid on account of the asylum, either to or by the treasurer of the asylum or otherwise, and shall in the month of March in every year send an abstract of such account for the year previous ending on the thirty-first day of December to one of her Majesty's principal secretaries of state, and to the clerk or clerks of the peace of the county or borough, or of each county or borough, to which the asylum shall belong, and also to the commissioners in lunacy, such abstract to contain such particulars and be in such form as the commissioners in lunacy may direct; and such commissioners shall, within one month from the receipt of such abstract, cause a copy thereof to be laid before both houses of parliament."

Treasurer to keep accounts.

Sect. 59. "The treasurer of every asylum shall keep accounts of all monies received and paid by him."

Visitors to audit accounts.

Sect. 60. "The committee of visitors of every asylum shall, previously to the month of March in every year, audit the accounts of the treasurer and clerk of such asylum, and shall report the same to the next general or quarter sessions of the county or each of the counties, and to the council of the borough or each of the boroughs, to which the asylum wholly or in part belongs."

Two visitors at least to visit once in every two months every asylum.

Sect. 61. "Not less than two members of every committee of visitors shall together, once at the least in every two months, inspect every part of the asylum of which they are visitors, and see and examine, as far as circumstances will permit, every lunatic therein, and the order and certificate for the admission of every lunatic admitted since the last visitation of the visitors, and the general books kept in such asylum, and shall enter in a book to be kept for that purpose any remarks which they may deem proper in regard to the condition and management of such asylum and the lunatics therein, and shall sign such book upon every such visit."

Annual reports to be made by committees of visitors to justices at quarter sessions, &c., and copies sent to commissioners in lunacy.

Sect. 62. "The committee of visitors of every asylum shall in every year lay before the justices of every county and borough to which such asylum wholly or in part belongs, at the court of general or quarter sessions to be holden next after the twentieth day of December in every year for such county, or at a special meeting of the justices of such borough to be holden within twenty days after the twentieth day of December in every year, a report in writing of the state and condition of such asylum, and as to its sufficiency for the proper accommodation of the number of lunatics for whom it may be requisite to provide accommodation, and as to the management of such asylum, and the conduct of the officers and servants thereof, and the care of the patients therein, and such committee may in such report make such remarks or observations in relation to any matters connected with such asylum as they may think fit; and the clerk to such committee shall transmit a copy of such report to the commissioners in lunacy, and if any such clerk neglect so to do for twenty-one days after the laying of such report before the justices of any county or borough, he shall for such offence forfeit any sum not exceeding ten pounds."

Lists of pauper patients in asylums to be made half-yearly and laid before visitors, and copies transmitted to clerks of the peace and commissioners in lunacy.

Sect. 63. "The clerk of every asylum shall, on the first day of January and the first day of July in every year, prepare a list of all pauper lunatics then in such asylum, according to the form in schedule (C.) No. 1, to this act annexed, and within fifteen days after such list shall have been prepared one copy thereof shall be laid by such clerk before the visitors of the asylum, and another shall be transmitted by him to the clerk of the peace of every or any county, and to the clerk to the justices of every or any borough to which such asylum solely or jointly belongs, to be by him laid before the justices of such county or borough, and another copy of such list shall within the same time be transmitted by such clerk to the commissioners in lunacy; and the clerk of every asylum receiving private patients shall also on the first day of January and first day of July in every year prepare a list containing the christian names and surnames of all the private patients in such asylum in the form in schedule (C.) No. 2, to this act annexed, and shall within fifteen days after such list shall have been prepared transmit the same to the commissioners in lunacy; and shall also within the same time transmit to such clerk of the peace and clerk to the justices as aforesaid, for the purposes aforesaid, a certificate under his hand of the number of such private patients of each sex."

Lists of private patients to be sent half-yearly to the commissioners.

Statement of condition of pauper lunatics to be transmitted to guardians.

"The Lunacy Acts Amendment Act, 1862" (25 & 26 Vict. c. 111), s. 34, enacts, that "the superintendent of every asylum shall, once at the least in each half year, transmit to the guardians of every union, and of every parish under a board of guardians, and the overseers of every parish not in a union nor under a board of guardians, a statement of the condition of every pauper lunatic chargeable to such union or parish."

Clerks of boards of guardians, and overseers where no guardians, to make annual returns of pauper lunatics.

"The Lunatic Asylums Act, 1853" (16 & 17 Vict. c. 97), s. 64, enacts, that "the clerk of the board of guardians of every union, and of every parish under a board of guardians, and the overseers of every parish not in a union nor under a board of guardians, shall, on the first day of January in every year, or as soon after as may be, make out and sign a true and faithful list of all lunatics chargeable to the union or parish in the form in schedule (D.) hereunto annexed, and shall, on or before the first day of February next succeeding, lay one copy of such list before the visitors of the asylum, or before the visitors of each asylum (if more than one) of the county or borough in which such union or parish is situate, and shall transmit one copy of such list to the clerk of the peace of the county, or the clerk to the justices of the borough within which the union or parish to which each such lunatic is chargeable is situate, to be by him laid before the justices acting for such county at their next general or quarter sessions, or before the justices of such borough, and another copy of such list to the commissioners in lunacy, and another copy thereof to the poor law board; and any such clerk or overseer

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neglecting to make out and sign such list, or to transmit copies thereof, as herein directed, shall for every such offence forfeit any sum not exceeding twenty pounds."

Power for medical persons, guardians, and overseers of unions and parishes to visit pauper patients of such unions and parishes confined in any asylum.

Sect. 65. "Any physician, surgeon, or apothecary (*x*) to be appointed by the guardians of any union or parish, or the overseers of any parish, and also the guardians of any union or parish, and the overseers of any parish, shall be permitted, whenever they see fit, between the hours of eight in the morning and six in the evening, to visit and examine any or every pauper lunatic chargeable to such union or parish confined in any asylum, registered hospital, or licensed house: provided always, that if the medical officer of any asylum be of opinion that it will be injurious to any lunatic to permit such visit and examination, and such medical officer state in writing the reasons why such lunatic should not be visited and examined, and sign such statement, and deliver the same to the person or persons so requiring to visit and examine such lunatic, then and in such case it shall be lawful for such medical officer to refuse such visit and examination; and in every such case such medical officer shall forthwith enter in the medical journal the reasons set forth in such statement for such refusal, and shall sign such entry."

§ 4. VISITATION, CONFINEMENT, REMOVAL AND DISCHARGE OF LUNATICS (*y*).

Every pauper lunatic not in an asylum, registered hospital, or licensed house, to be visited once a quarter by the medical officer of the parish or union, and list of such lunatics to be sent to commissioners in lunacy.

"The Lunatic Asylums Act, 1853" (16 & 17 Vict. c. 97), s. 66, enacts, that "every pauper lunatic not in an asylum, or a hospital registered or a house licensed for the reception of lunatics, shall be visited once in every quarter of a year (reckoning the several quarters of the year as ending on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September, and the thirty-first day of December), by the medical officer of or for the parish or union or district of a parish or union in which such lunatic is resident; and such medical officer shall be paid the sum of two shillings and sixpence for each such quarterly visit to any pauper not being in a workhouse, which sum shall be paid by the same persons and be charged to the same account as the relief of such pauper; and within seven days after the end of every such quarter such medical officer shall prepare and sign a list according to the form in the schedule (E.) to this act (*z*), of all such lunatics, and shall state therein whether in the opinion of such medical officer all or any of such lunatics are or are not properly taken care of, and may or may not properly remain out of an asylum, and such medical officer shall within the time aforesaid deliver or send such list to the clerk to the guardians of such parish or union, or if such parish be not under a board of guardians to one of the overseers thereof; and the forms for such lists shall be from time to time furnished to the medical officer of every parish under a board of guardians, and to the medical officers of every union, by the guardians of such parish or union; but nothing in this

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(*x*) He must be registered under "The Medical Act," 21 & 22 Vict. c. 90. (See 25 & 26 Vict. c. 111, s. 47.)

(*y*) The 18 & 19 Vict. c. 105, s. 9, enacts, that "the powers of the commissioners and visitors under 'The Lunatic Asylums Act, 1853,' and the acts of the eighth and ninth years of her Majesty, chapter one hundred, and the sixteenth and seventeenth years of her Majesty, chapter ninety-six, with reference to any licensed house and the inmates thereof, and all powers and provisions of the said acts having reference to the discharge, removal, and transfer of such inmates, shall, after the expiration or revocation of any licence granted in respect of such house, continue in force for all purposes, so long as any lunatics are detained therein, in the same manner as if the licence subsisted."

(*z*) See the 25 & 26 Vict. c. 111, s. 21, post, p. 271.

enactment shall be taken or construed to relieve any medical officer from any obligation by this act imposed upon him to give notice to a relieving officer or overseer where it appears to such medical officer that any pauper lunatic ought to be sent to an asylum; and such clerk or overseer receiving any such list as aforesaid shall, within three days after the receipt thereof, transmit the same to the commissioners in lunacy, and a copy thereof to the clerk to the visitors of the asylum for the county or borough in which the parish or union for which he is clerk or overseer is situate; and every such medical officer, clerk, or overseer failing to comply with this enactment shall for every such offence forfeit any sum not exceeding twenty pounds nor under two pounds."

Amendment of form of list as respects pauper lunatics in workhouses.

"The Lunacy Acts Amendment Act, 1862" (25 & 26 Vict. c. 111), s. 21, enacts, that "the list of lunatic paupers required by section sixty-six of the Lunacy Act, chapter ninety-seven, to be made out by the medical officer, shall be in the form in the schedule marked (B.) hereto, and not in the form required by the said section, and shall, as respects such of the lunatics therein mentioned as may be in any workhouse, state whether, in the opinion of the medical officer, the workhouse is or not sufficient for the accommodation of the lunatics detained therein, and whether or not the lunatics detained therein are proper persons to be kept in a workhouse."

Provision for sending pauper lunatics to asylums.

"The Lunatic Asylums Act, 1853" (16 & 17 Vict. c. 97), s. 67, enacts, that "every medical officer of a parish or union who shall have knowledge that any pauper resident in such parish, or in any parish within the district of such medical officer, is or is deemed to be a lunatic, and a proper person to be sent to an asylum, shall within three days after obtaining such knowledge give notice thereof in writing to a relieving officer of such parish, or if there is no relieving officer then to one of the overseers of such parish, and every relieving officer of any parish within a union or under a board of guardians, and every overseer of a parish of which there is no relieving officer, who shall have knowledge, either by such notice or otherwise, that any pauper resident in such parish is or is deemed to be a lunatic [*and a proper person to be sent to an asylum* (*a*)], shall within three days after obtaining such knowledge give notice thereof to some justice of the county or borough within which such parish is situate; and thereupon the said justice shall, by an order under his hand and seal (*b*), require such relieving officer or overseer to bring such pauper before him, or some other justice of the said county or borough, at such time and place within three days from the time of such notice being given to such justice as shall be appointed by the said order; and the said justice before whom such pauper shall be brought shall call to his assistance a physician, surgeon, or apothecary (*c*), and examine such person; and if such physician, surgeon, or apothecary shall sign a certificate with respect to such pauper, according to the form in schedule (F.) No. 3, to this act annexed, and such justice be satisfied, upon view, or personal examination of such pauper or other proof, that such pauper is a lunatic, and a proper person to be taken charge of and detained under care and treatment, he shall, by an order under his hand according to the form in the said schedule (F.) No. 1, to this act annexed, direct such pauper to be received into such asylum as hereinafter mentioned, or, where hereinafter authorized in this behalf, into some hospital registered or some house duly licensed for the reception of lunatics; and such relieving officer or overseer shall

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(*a*) By the 25 & 26 Vict. c. 111, s. 19, this section is to be construed as if the words "and a proper person to be sent to an asylum" had been omitted.

(*b*) May be signed only; see 18 & 19 Vict. c. 105, s. 15.

(*c*) He must be registered under "The Medical Act," 21 & 22 Vict. c. 90. (See 25 & 26 Vict. c. 111, s. 47.)

immediately convey or cause the said lunatic to be conveyed to such asylum, hospital, or house, and such lunatic shall be received and detained therein: provided always, that it shall be lawful for any justice, upon notice being given to him as aforesaid, or upon his own knowledge, without any such notice as aforesaid, to examine any pauper deemed to be lunatic at his own abode or elsewhere, and to proceed in all respects as if such pauper were brought before him in pursuance of an order for that purpose: provided also, that in case any pauper deemed to be lunatic cannot, on account of his health or other cause, be conveniently taken before any justice, such pauper may be examined at his own abode or elsewhere by an officiating clergyman of the parish in which he is resident, together with a relieving officer, or if there be no relieving officer an overseer of such parish, and such officiating clergyman, together with such relieving officer or overseer, shall call to their assistance a physician, surgeon, or apothecary (*d*); and if such physician, surgeon, or apothecary shall sign a certificate with respect to such pauper according to the said form in the said schedule (F.) No. 3, and if upon view or examination of such pauper such officiating clergyman and such relieving officer or overseer be satisfied that such pauper is a lunatic, and a proper person to be taken charge of and detained under care and treatment, such officiating clergyman, together with such overseer or relieving officer, shall, by an order under their hands according to the said form in the said schedule (F.) No. 1, direct such pauper to be received into such asylum as hereinafter mentioned, or, where hereinafter authorized in this behalf, into some such registered hospital or licensed house as aforesaid, and such relieving officer or overseer shall immediately convey or cause such pauper to be conveyed to such asylum, hospital, or house, and such pauper shall be received and detained therein: provided also, that if the physician, surgeon, or apothecary by whom any such pauper shall be examined shall certify in writing that he is not in a fit state to be removed, his removal shall be suspended until the same or some other physician, surgeon, or apothecary (*d*) shall certify in writing that he is fit to be removed; and every such physician, surgeon, and apothecary is required to give such last-mentioned certificate as soon as in his judgment it ought to be given: provided also, that where a certificate in the form in the said schedule (F.) No. 3, is signed by the medical officer of the parish or union in which the pauper named therein is resident, as well as by some other person being a physician, surgeon, or apothecary (*d*) called to the assistance of the justice or clergyman and overseer or relieving officer, as hereinbefore mentioned, such joint certificate, or such two certificates (as the case may be), shall be received by the justice or clergyman and overseer or relieving officer by whom such person is examined as hereinbefore mentioned as conclusive evidence that the person named therein is a lunatic, and a proper person to be taken charge of and detained under care and treatment, and he or they shall make an order in the form in the said schedule (F.) No. 1, accordingly (*e*).

Medical men signing false certificates, and persons not being medical men giving certificates as such, guilty of misdemeanor.

Sect. 122 enacts, that "any physician, surgeon, or apothecary who shall sign any certificate contrary to any of the provisions herein contained shall for every such offence forfeit any sum not exceeding twenty pounds; and any physician, surgeon, or apothecary who shall falsely state or certify anything in any certificate under this act, and any person who shall sign any certificate under this act, in which he shall be described as a physician, surgeon, or apothecary, not being a physician, surgeon, or apothecary respectively within the meaning of this act, shall be guilty of a misdemeanor."

(*d*) See note (*c*), ante, p. 271.

(*e*) As to how far the invalidity of an order under this section affects or is in question on an adjudication of settlement and order of maintenance under s. 97, see post, "ORDERS OF REMOVAL AND MAINTENANCE."

"The Lunacy Acts Amendment Act, 1862" (25 & 26 Vict. c. 111), s. 20, enacts, that "no person shall be detained in any workhouse, being a lunatic or alleged lunatic, beyond the period of fourteen days, unless in the opinion, given in writing, of the medical officer of the union or parish to which the workhouse belongs such person is a proper person to be kept in a workhouse, nor unless the accommodation in the workhouse is sufficient for his reception, and any person detained in a workhouse in contravention of this section shall be deemed to be a proper person to be sent to an asylum within the meaning of section sixty-seven of the Lunacy Act, chapter ninety-seven; and in the event of any person being detained in a workhouse in contravention of this section, the medical officer shall for all the purposes of the Lunacy Act, chapter ninety-seven, be deemed to have knowledge that a pauper resident within his district is a lunatic, and a proper person to be sent to an asylum, and it shall be his duty to act accordingly, and further to sign such certificate as is contained in schedule (F.) to the said act, No. 3, with a view to more certainly securing the reception into an asylum of such pauper lunatic as aforesaid."

Lunatics proper to be sent to asylums.

Sect. 31. "Where upon the visitation of any workhouse by any two or more of the commissioners in lunacy it appears to them that any lunatic or alleged lunatic therein is not a proper person to be kept in a workhouse, they may by an order under their hands direct such lunatic to be received into an asylum, and any order so made shall have the same effect, and be obeyed by the same persons, and subject them to the same penalties in case of disobedience, as an order made by a justice for the reception of a lunatic into an asylum under the sixty-seventh section of the Lunacy Act, chapter ninety-seven: provided always, that it shall be lawful for the guardians of the union or parish to which any workhouse belongs to appeal against such order at any time within one calendar month from the making thereof to her Majesty's principal secretary of state for the home department, who shall thereupon exercise the power given to him by section one hundred and thirteen of the Lunacy Act, chapter one hundred, save that he shall not appoint thereunder the commissioners who made the order appealed against, or either of them; and the order in the matter of the secretary of state, made upon the report of the special visitation, shall be binding on all parties concerned."

Power to remove lunatic from workhouse to asylum.

Sect. 32. "Any two or more of the commissioners in lunacy may visit any pauper lunatic or alleged lunatic not in an asylum, hospital, licensed house, or workhouse, and may, if they think fit so to do, call to their assistance a physician, surgeon, or apothecary, and examine such pauper; and if such physician, surgeon, or apothecary sign a certificate with respect to such pauper, according to the form in schedule (F.) No. 3, annexed to the Lunacy Act, chapter ninety-seven, and the commissioners are satisfied that such pauper is a lunatic, and a proper person to be taken charge of and detained under care and treatment, they may, by an order under their hands, direct such lunatic or alleged lunatic to be received into an asylum, and any order so made shall have the same effect, and be obeyed by the same persons, and subject them to the same penalties in case of disobedience, as an order made by a justice for the reception of a lunatic into an asylum under the sixty-seventh section of the Lunacy Act, chapter ninety-seven."

Removal of single pauper patients to asylums.

Sect. 33. "The order made by any two or more of the commissioners in lunacy in pursuance of this act may authorize the admission of a lunatic not only into any asylum of the county or borough in which the parish or place from which the lunatic is sent is situate, but also into any other asylum for the reception of pauper lunatics of such county or borough, and also into any asylum for any other county or borough, or any hospital registered or house licensed for the reception of lunatics, under the same circumstances and subject to the same conditions under which an order of the justice or justices may authorize such admission

Effect of order for removal.

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in pursuance of section seventy-two of the Lunacy Act, chapter ninety-seven."

The same act contains the following additional provisions respecting admission and detention.

Persons signing orders for admission to have seen patient within one month.

Sect. 23. "No order for the reception of a private patient into any asylum or registered hospital, licensed or other house, made in pursuance of the Lunacy Acts, chapters ninety-six and ninety-seven, or either of them, shall authorize the reception of such patient after the expiration of one calendar month from its date, nor unless the person subscribing such order has himself seen the patient within one month prior to its date, nor unless a statement of the time and place when such person last saw the patient is added to such order."

Relative of pauper to be named in order of admission.

Sect. 25. "Where an order is made, in pursuance of the Lunacy Acts or any of them, for the reception of any private or pauper lunatic into any asylum, registered hospital, or licensed house, there shall be inserted in every such order, wherever it be possible, the name and address of one or more of the relations of the lunatic; and in the event of his death it shall be the duty of the clerk of such asylum, the superintendent of such hospital, and the proprietor or superintendent of such licensed house to send by post notice of his death in a prepaid letter addressed to such relation or one of such relations."

Same order and certificates to justify detention as pauper as of private patient.

Sect. 26. "The order and certificate required by law for the detention of a patient as a pauper shall extend to authorize his detention, although it may afterwards appear that he is entitled to be classified as a private patient; and the order and certificates required by law for the detention of a patient as a private patient shall authorize his detention, although it may afterwards appear that he ought to be classified as a pauper patient."

Provision as to defective certificates.

Sect. 27. "Where any medical certificate upon which a patient has been received into any asylum, registered hospital, licensed or other house, or either of such certificates, is deemed by the commissioners incorrect or defective, and the same are or is not duly amended to their satisfaction within fourteen days after the reception by the superintendent or proprietor of such asylum, registered hospital, or licensed or other house of a direction or writing from the commissioners requiring amendment of the same, the commissioners or any two of them may, if they see fit, make an order for the patient's discharge."

Provision as to lunatics wandering at large, not being properly taken care of, or being cruelly treated, &c.

"The Lunatic Asylums Act, 1853" (16 & 17 Vict. c. 97), s. 68, enacts, that "every constable of any parish or place, and every relieving officer and overseer of any parish, who shall have knowledge that any person wandering at large within such parish or place (whether or not such person be a pauper) is deemed to be a lunatic, shall immediately apprehend and take or cause such person to be apprehended and taken before a justice; and it shall also be lawful for any justice, upon its being made to appear to him by the information upon oath of any person whomsoever that any person wandering at large within the limits of his jurisdiction is deemed to be a lunatic, by an order under the hand and seal (*e*) of such justice, to require any constable of the parish or place, or relieving officer or overseer of the parish where such person may be found, to apprehend him and bring him before such justice, or some other justice having jurisdiction where such person may be found; and every constable of any parish or place, and every relieving officer and overseer of any parish, who shall have knowledge that any person in such parish or place not a pauper and not wandering at large as aforesaid is deemed to be a lunatic, and is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the care or charge of him, shall, within three days after obtaining such knowledge, give information thereof upon oath to a justice, and in case

(*e*) May be under hand only, see 18 & 19 Vict. c. 105, s. 15.

it be made to appear to any justice, upon such information or upon the information upon oath of any person whomsoever, that any person within the limits of his jurisdiction not a pauper, and not wandering at large, is deemed to be a lunatic, and is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the care or charge of him, such justice shall, either himself visit and examine such person and make inquiry into the matters so appearing upon such information, or by an order under his hand and seal (*f*) direct and authorize some physician, surgeon, or apothecary (*g*) to visit and examine such person, and make such inquiry, and to report in writing to such justice his opinion thereupon; and in case upon such personal visit, examination, and inquiry by such justice, or upon the report of such physician, surgeon, or apothecary, it appear to such justice that such person is a lunatic, and is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the care or charge of him, it shall be lawful for such justice, by an order under his hand and seal (*f*), to require any constable of the parish or place, or any relieving officer or overseer of the parish, where such person is alleged to be, to bring him before any two justices of the same county or borough; and the justice or justices (as the case may be) before whom any such person as aforesaid in the respective cases aforesaid is brought, under this enactment, shall call to his or their assistance a physician, surgeon, or apothecary, and shall examine such person, and make such inquiry relative to such person as he or they shall deem necessary; and if upon examination of such person or other proof such justice be satisfied that such person so brought before him is a lunatic, and was wandering at large, and is a proper person to be taken charge of and detained under care and treatment, or such two justices be satisfied that such person so brought before them is a lunatic, and is not under proper care and control, or is cruelly treated or neglected by any person having the care or charge of him, and that he is a proper person to be taken charge of and detained under care and treatment, and if such physician, surgeon, or apothecary sign a certificate with respect to every such person so brought either before one justice or two justices according to the form in the schedule (F.) No. 3 to this act, it shall be lawful for the said justice or justices, by an order under his or their hand and seal or hands and seals (*f*), according to the form in the schedule (F.) No. 1 to this act, to direct such person to be received into such asylum as hereinafter mentioned, or, where hereinafter authorized in this behalf, into some hospital registered or house licensed for the reception of lunatics, and the said constable, relieving officer, or overseer who may have brought such person before the said justice or justices, or any constable whom such justice or justices may require so to do, shall forthwith convey such person to such asylum, hospital, or house accordingly: provided always, that it shall be lawful for any justice upon such information on oath as aforesaid, or upon his own knowledge, and alone, in the case of any such person as aforesaid wandering at large and deemed to be a lunatic, or with some other justice, in any other of the cases aforesaid, to examine the person deemed to be a lunatic, at his own abode or elsewhere, and to proceed in all respects as if such person were brought before him or them as hereinbefore mentioned: provided also, that it shall be lawful for the said justice or justices to suspend the execution of any such order for removing any such person as aforesaid to any asylum, hospital, or house for such period not exceeding fourteen days as he or they may deem meet, and in the meantime to give such directions or make such arrangements for the proper

(*f*) May be under hand only, see 18 & 19 Vict. c. 105, s. 15.

(*g*) Registered under "The Medical Act," 21 & 22 Vict. c. 90; see 25 & 26 Vict. c. 111, s. 47.

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care and control of such person as he or they shall consider necessary: provided also, that if the physician, surgeon, or apothecary by whom such person is examined certify in writing that he is not in a fit state to be removed, the removal of such person shall be suspended until the same or some other physician, surgeon, or apothecary certify in writing that such person is fit to be removed; and every such physician, surgeon, and apothecary is hereby required to give such last-mentioned certificate as soon as in his judgment it ought to be given: provided also, that nothing herein contained shall be construed to extend to restrain or prevent any relation or friend from retaining or taking such lunatic under his own care, if such relation or friend shall satisfy the justice or justices before whom such lunatic shall be brought, or the visitors of the asylum in which such lunatic is or is intended to be placed, that such lunatic will be properly taken care of."

Power to justices to order payment of a fee to any physician, &c. called in to examine any person.

Sect. 69. "It shall be lawful for any justice or justices causing any person to be examined by any physician, surgeon, or apothecary, under the provisions hereinbefore contained, if he or they think fit so to do, to make an order under his or their hand and seal or hands and seals (*i*) upon the guardians of the union or parish or the overseers of the parish to which such person is chargeable, under the provisions herein contained, for the payment of such reasonable remuneration to any such physician, surgeon, or apothecary, for the examination of such person, and of all other reasonable expenses in or about the examination of such person, and the bringing him before such justice or justices, and in case he be ordered to be conveyed to any asylum, registered hospital, or licensed house, of conveying him thereto, as to such justice or justices may seem proper."

Penalties on medical officers, overseers, &c. omitting to give notice as aforesaid.

Sect. 70. "If any medical officer of any parish or union omit for more than three days after obtaining knowledge of any pauper resident in such parish, or in any parish within his district, being or being deemed to be lunatic, and a proper person to be sent to an asylum, to give such notice thereof as is hereinbefore required, or if any relieving officer of any parish, or any overseer of any parish of which there is no relieving officer, omit for more than three days after obtaining knowledge of any pauper resident in such parish, being deemed to be a lunatic, and a proper person to be sent to an asylum, to give notice thereof to a justice as hereinbefore required, or if any constable, relieving officer, or overseer omit to apprehend and take before a justice, as hereinbefore required, any person wandering at large and deemed to be a lunatic, or omit for three days after obtaining knowledge that any person deemed to be a lunatic (not a pauper and not wandering at large) is not under proper care and control, or is cruelly treated or neglected by any person having the care or charge of him, to give information thereof to a justice as hereinbefore required, such medical officer, relieving officer, overseer, or constable, as the case may be, shall for every such offence forfeit any sum not exceeding ten pounds."

Penalty on relieving officers, overseers, and constables, delaying to execute orders.

Sect. 71. "If any relieving officer, overseer, or constable by this act required to convey any person to any asylum, registered hospital or licensed house, in pursuance of any order under this act, refuse or wilfully neglect to execute such order with all reasonable expedition, he shall for every such offence forfeit any sum not exceeding ten pounds."

Orders of justices, &c. may extend to authorize reception into hospitals or licensed houses, but lunatics to be always sent to asylum, if circumstances permit.

Sect. 72. "Every such order by a justice or justices, or by a clergyman and overseer or relieving officer as aforesaid, for the reception of a lunatic into an asylum, may authorize his admission, not only into any lunatic asylum of the county or borough in which the parish or place from which the lunatic is sent is situate, but also into any other asylum for the reception of pauper lunatics of such county or borough, and also into any asylum for any other county or borough, or any hospital regis-

(*i*) May be signed only, 18 & 19 Vict. c. 105, s. 15.

tered or house licensed for the reception of lunatics; but every lunatic shall under every such order be sent to an asylum of the county or borough in which the parish or place from which he is sent is situate, unless there be no such asylum, or there be a deficiency of room, or unless there be some special circumstances by reason whereof such lunatic cannot conveniently be taken to such asylum, which deficiency of room or special circumstances shall be stated in the order for the reception of such lunatic into any asylum other than such asylum as aforesaid, or into any registered hospital or licensed house; and no lunatic shall be sent to any registered hospital or house licensed for the reception of lunatics, by virtue of such order, except there be no such asylum, or no such asylum in which he can be received, or there be some special circumstances by reason whereof he cannot be taken thereto, which shall be stated in like manner as aforesaid."

No pauper to be received into any asylum without a certain order and certificate.

Sect. 73. "No pauper shall be received into any asylum, registered hospital, or licensed house (save under the provisions herein contained with respect to removal of lunatics) without an order according to the form required in the said schedule (F.) No. 1, under the hands of one justice, or under the hands of an officiating clergyman, and of one of the overseers or the relieving officer of the parish or union from which such pauper is sent as aforesaid, together with such statement of particulars as is contained in the same schedule, nor without a medical certificate according to the form in the said schedule (F.) No. 3, signed by one physician, surgeon, or apothecary, who shall have personally examined him not more than seven clear days previously to his reception; and every person who receives any pauper into any asylum without such order and medical certificate (save under any of the said provisions) shall be guilty of a misdemeanor" (*k*).

[Sect. 74 relates to the reception of persons not paupers.]

Medical certificate to specify facts upon which opinion of insanity has been formed.

Sect. 75. "Every physician, surgeon, and apothecary signing any certificate under or for the purposes of this act, shall specify therein the facts upon which he has formed his opinion that the person to whom such certificate relates is a lunatic, an idiot, or a person of unsound mind, distinguishing in such certificate facts observed by himself from facts communicated to him by others; and no person shall be received into any asylum under any certificate which purports to be founded only upon facts communicated by others."

Who not to sign certificate for reception of a patient.

Sect. 76. "No physician, surgeon, or apothecary who, or whose father, brother, son, partner, or assistant, shall sign the order for the reception of a patient, shall sign any certificate for the reception of the same patient, and no patient shall be received into any asylum upon or under any certificate signed by any medical officer of such asylum."

Power to two visitors of any asylum, being justices, to order removal of pauper lunatics to or from such asylum.

Sect. 77. "It shall be lawful for any two of the visitors of any asylum, being justices, by an order in writing under their hands and seals (*l*), to order any pauper lunatic chargeable to any parish or union within the county or borough or any county or borough to which such asylum wholly or in part belongs, or to such county, and who may be confined in any other asylum, or in any registered hospital or licensed house, to be removed to such first-mentioned asylum; and it shall be lawful for any two of the visitors of any asylum, being justices, in manner aforesaid to order any pauper lunatic to be removed from such asylum to some other asylum, or to some registered hospital or licensed house; but no such lunatic shall be removed as last aforesaid without the consent in writing of two of the commissioners in lunacy, except to an asylum within or belonging wholly or in part to the county within which the asylum from which the lunatic is removed is situate, or the county in

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(*k*) See s. 122, ante, p. 272, and the Forms in the Appendix to this Volume. This section appears to override the similar provision of the 16 & 17 Vict. c. 96, s. 7.

(*l*) May be signed only, 18 & 19 Vict. c. 105, s. 15.

some parish of which the lunatic may have been adjudged to be settled, or a registered hospital or licensed house within any such county as aforesaid, or an asylum, registered hospital, or licensed house into which the lunatic can be received under a subsisting contract for the reception of lunatics therein; and it shall be lawful for the justices making any such order in and by the same to direct or require any overseer or relieving or other officer of the parish, union, or county to which such lunatic is chargeable, or to authorize any other person, to execute the same; and every such order and consent shall be made and given respectively in duplicate, and one duplicate shall be delivered to and left with the superintendent or proprietor of the asylum, hospital, or licensed house from which the patient is removed, and the other shall be delivered to and left with the superintendent or proprietor of the asylum, hospital, or licensed house to which the patient is removed, and such order, with such consent in writing (where such consent is required), shall be a sufficient authority for the removal of such patient, and also for his reception into the asylum, hospital, or licensed house to which he is ordered to be removed: provided always, that no person shall be removed under any such order without a medical certificate, signed by the medical officer of the asylum, or the medical practitioner, or one of the medical practitioners, keeping, residing in, or visiting the hospital or licensed house from which such person is ordered to be removed, certifying that he is in a fit condition of bodily health to be removed in pursuance of such order; and the superintendent or proprietor of such asylum, hospital, or licensed house shall, at the time of delivering the person ordered to be removed to the overseer, officer, or person having the execution of the order for removal, deliver to such overseer or officer, free of any charge for the same, the certificate of such medical officer, and also a copy (certified under the hand of such superintendent or proprietor to be a true copy) of the order and certificate under which such person was received into and detained in such asylum, hospital, or licensed house, and the said certificate and certified copies, with one duplicate of the order for removal, shall be delivered by such overseer, officer, or person to the superintendent or proprietor of the asylum, hospital, or licensed house to which such person is ordered to be removed, or any other officer of such asylum, hospital, or licensed house into whose care such person is delivered."

Powers given by sect. 77 of Lunatic Asylums Act, 1853, to visitors of an asylum to order removal of pauper lunatics extended.

The 18 & 19 Vict. c. 105, s. 8, enacts, that "the power given by section seventy-seven of 'The Lunatic Asylums Act, 1853,' to any two of the visitors of any asylum, being justices, to order any pauper lunatic chargeable to any parish or union within the county or borough, or any county or borough to which such asylum wholly or in part belongs, or to any such county, and who may be confined in any other asylum, or in any registered hospital or licensed house, to be removed to such first-mentioned asylum, shall be extended so as to authorize such visitors to order any pauper lunatic chargeable to any parish or union within any county or borough, or to any county for the reception of the pauper lunatics whereof into such first-mentioned asylum there is a subsisting contract, and who may be confined as aforesaid, to be removed to such first-mentioned asylum, and also to order any such pauper lunatic as hereinbefore mentioned to be removed from such first-mentioned asylum to any asylum, registered hospital, or licensed house, subject nevertheless to the restriction contained in section seventy-eight of 'The Lunatic Asylums Act, 1853.'"

Pauper lunatics not to be received into any other than the county or borough asylum without endorsement of order by a visitor, and orders not compulsory on hospitals or licensed houses.

"The Lunatic Asylums Act, 1853" (16 & 17 Vict. c. 97), s. 78, "provided always, that no lunatic being a pauper shall be received under any order made by virtue of this act into any asylum, other than an asylum belonging wholly or in part to the county or borough in which the parish or place from which such lunatic is sent, or the parish in which he is adjudged to be settled, is situate, except there be a subsisting contract for the reception of lunatics of such county or borough therein, or such borough otherwise contributes to such asylum, unless such order be

indorsed by a visitor of such asylum; and it shall not be compulsory on the superintendent of any registered hospital or the proprietor of any licensed house to receive any lunatic under any such order, except in pursuance of any subsisting contract."

Provision for care of chronic lunatics.

"The Lunacy Acts Amendment Act, 1862" (25 & 26 Vict. c. 111), s. 8, enacts, that "it shall be lawful for the visitors of any asylum and the guardians of any parish or union within the district for which the asylum has been provided, if they shall see fit, to make arrangements, subject to the approval of the commissioners and the president of the poor law board, for the reception and care of a limited number of chronic lunatics (*m*) in the workhouse of the parish or union, to be selected by the superintendent of the asylum, and certified by him to be fit and proper so to be removed."

Visiting committee to enter observations in a book respecting dietary, accommodation, &c. of lunatics in workhouses.

And sect. 37 of the same statute enacts, that "the visiting committee of every union, and of every parish under a board of guardians, and the overseers of every parish not in a union nor under a board of guardians, shall once at the least in each quarter of a year enter in a book to be provided and kept by the master of the workhouse such observations as they may think fit to make respecting the dietary, accommodation, and treatment of the lunatics or alleged lunatics for the time being in the workhouse of their union or parish, and the book containing the observations made in pursuance of this section by the visiting guardians or overseers shall be laid by the master before the commissioner or commissioners on his or their next visit."

Discharge of lunatics from asylums.

"The Lunatic Asylums Act, 1853" (16 & 17 Vict. c. 97), enacts (s. 79), that "it shall be lawful for any three of the visitors of any asylum, by writing under their hands and seals (*n*), to order the discharge of any person detained in such asylum, whether such person be recovered or not, and also for any two of such visitors, with the advice in writing of the medical officer of such asylum, to discharge any person detained therein, or to permit any such person to be absent from the asylum upon trial for such period as such visitors think fit; and it shall be lawful for such visitors to make such allowance to such last-mentioned person, not exceeding what would be the charge for such person if in the asylum, which allowance, and no greater sum, shall be charged for him and be payable as if he were actually in the asylum; and in case any person so allowed to be absent on trial for any period do not return at the expiration of such period, and a medical certificate as to his state of mind, certifying that his detention in an asylum is no longer necessary, be not sent to the visitors, he may, at any time within fourteen days after the expiration of such period, be retaken, as herein provided in the case of an escape."

Overseers and relieving officers to remove lunatics upon notice of discharge, and to be liable to a penalty for refusal or wilful neglect.

Sect. 80. "When the visitors of any asylum shall order a pauper lunatic confined therein to be discharged therefrom, it shall be lawful for them, when they shall see occasion, to send notice in writing, signed by their clerk, through the post or otherwise, of their intention to discharge such lunatic, to the overseers of the parish wherein it shall have been adjudged that such lunatic is settled, or, if no such adjudication shall have been made, to the overseers of the parish from which such lunatic shall have been sent to such asylum, unless such lunatic shall

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(*m*) The 26 & 27 Vict. c. 110, s. 2, reciting, that doubts are entertained whether the expression "chronic lunatics" mentioned in the above section includes lunatics chargeable to parishes or unions other than the parish or union into the workhouse of which they are proposed to be received, declares, "that the words 'chronic lunatics' in the said section include chronic lunatics chargeable to other parishes or unions, as well as chronic lunatics chargeable to the parish or union into the workhouse of which they are proposed to be received."

(*n*) May be under hand only, 18 & 19 Vict. c. 105, s. 15.

be chargeable to the common fund of any union, and in any such last-mentioned case to some one relieving officer of such union; and upon receipt of such notice the overseers or relieving officers respectively shall cause such lunatic, upon his discharge, to be forthwith removed to their parish, or to the workhouse of the union at the cost and charge of their parish or of the common fund of the union, as the case shall require; and any overseer or relieving officer who shall refuse or wilfully neglect to remove such lunatic from the said asylum within the space of seven days after such notice shall have been sent to him shall be guilty of an offence against this act, and shall forfeit for such offence any sum not exceeding ten pounds, to be recovered as other penalties imposed by this act are recoverable."

Visitors may discharge a lunatic on the undertaking of a relative or friend that he shall no longer be chargeable, and shall be taken care of.

Sect. 81. "Where application is made to the committee of visitors of any asylum by any relative or friend of a pauper lunatic confined therein, requiring that he may be delivered over to the custody and care of such relative or friend, it shall be lawful for any two of the visitors aforesaid, if they think fit, and upon the undertaking in writing of such relative or friend to the satisfaction of such visitors that such lunatic shall be no longer chargeable to any union, parish, or county, and shall be properly taken care of, and shall be prevented from doing injury to himself or others, to discharge such lunatic."

"The Lunacy Acts Amendment Act, 1862" (25 & 26 Vict. c. 111), sect. 38, enacts (inter alia), that "two of the commissioners, as regards any hospital or any licensed house, and two of the committee of governors of any hospital, and two of the visitors of any licensed house, as regards any licensed house within the jurisdiction of visitors, may of their own authority permit any pauper patient therein to be absent from such hospital or house upon trial for such period as they may think fit, and may make or order to be made an allowance to such pauper not exceeding what would be the charge for him in such hospital or house, which allowance shall be charged for him and be payable as if he were actually in such hospital or house, but shall be paid over to him, or for his benefit, as the said commissioners or visitors may direct:

"In case any person so allowed to be absent on trial for any period do not return at the expiration thereof, and a medical certificate as to his state of mind certifying that his detention as a lunatic is no longer necessary be not sent to the proprietor or superintendent of such licensed house or hospital, he may at any time within fourteen days after the expiration of the same period be retaken as in the case of an escape."

Commissioners in lunacy may order removal of lunatics.

"The Lunatic Asylums Act, 1853" (16 & 17 Vict. c. 97), enacts, (sect. 82), that "it shall be lawful for the commissioners in lunacy, or any two of them, by writing under their hands and seals, to order and direct the removal of any lunatic from any asylum, registered hospital, or licensed house to any other asylum, registered hospital, or licensed house; and every such order shall be made in duplicate, and one duplicate shall be delivered to and left with the superintendent or proprietor of the asylum, hospital, or licensed house from which the patient is removed, and the other shall be delivered to and left with the superintendent or proprietor of the asylum, hospital, or licensed house to which the patient is removed, and such order shall be a sufficient authority for the removal of such patient, and also for his reception into the asylum, hospital, or licensed house to which he is ordered to be removed."

[Sects. 83, 84, 85 and 86 relate to patients not paupers.]

Orders and medical certificates may be amended.

Sect. 87. "If after the reception of any lunatic into any asylum it appear that the order or the medical certificate, or (if more than one) both or either of the medical certificates, upon which he was received, is or are in any respect incorrect or defective, such order and medical certificate or certificates may be amended by the person or persons signing the same at any time within fourteen days next after the reception of such lunatic; provided nevertheless, that no such amendment

shall have any force or effect unless the same shall receive the sanction of one or more of the commissioners in lunacy."

Persons received into asylums, &c. may be detained till removal or discharge, and in case of escape may be retaken within fourteen days.

Sect. 88. "Every person received into any asylum, registered hospital, or licensed house under such order as is required by this act, accompanied by the requisite medical certificate, may be detained therein until he be removed or discharged as authorized by this act, and in case of escape may, by virtue of such order and certificate or certificates, be retaken at any time within fourteen days after his escape by the superintendent or proprietor of such asylum, hospital, or house, or any officer or servant belonging thereto, or any other person authorized in writing in this behalf by such superintendent or proprietor, and conveyed to and received and detained in such asylum, hospital, or house."

Every clerk receiving a lunatic into an asylum to make an entry thereof, and to transmit a copy of the order and certificate of medical officer of the asylum to commissioners in lunacy.

Sect. 89. "The clerk of every asylum shall, immediately on the admission of any person as a lunatic into such asylum, make an entry with respect to such lunatic in a book to be kept for that purpose, to be called 'The Register of Patients,' according to the form and containing the particulars specified in the schedule (G.) No. 1, to this act, except as to the form of disorders, the entry as to which is to be supplied by the medical officer of the asylum within one month after the admission of the patient, and after the second and before the end of the seventh clear day from the day of the admission of any person as a lunatic into any asylum shall transmit to the commissioners in lunacy a copy of the order and statement and certificate or certificates on which such lunatic has been so received, together with a statement, to be made and signed by the medical officer of the asylum, not sooner than two clear days after such admission, according to the form in the said schedule (F.) No. 4, to this act annexed; and any clerk omitting so to make such entry, or to transmit such copy and statement within the time aforesaid, and every medical officer omitting to make or sign such statement, shall for every such offence forfeit any sum not exceeding twenty pounds" (*o*).

Weekly journal and case book to be kept in every asylum.

Sect. 90. "In every asylum the medical officer thereof shall once in every week enter in a book to be kept for that purpose, to be called 'The Medical Journal,' a statement according to the form in the said schedule (G.) No. 3, showing the number of patients of each sex then in such asylums, the christian name and surname of every patient who is or has been under restraint or in seclusion since the last entry, and when and for what period and reasons, and in case of restraint by what means, and the christian name and surname of every patient under medical treatment, and for what, if any, bodily disorder, and every death, injury, and violence which shall have happened to or affected

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(*o*) The 25 & 26 Vict. c. 111, s. 28, enacts, that "the documents required by the Lunacy Act, chapter one hundred, sections fifty-two and ninety, and the Lunacy Act, chapter ninety-seven, section eighty-nine, to be sent to the commissioners in lunacy, after two clear days, and before the expiration of seven clear days from the day on which any private patient has been received into any licensed house, registered hospital, or asylum, shall with the exception of the statement now required to be subjoined to the notice of admission into any asylum, hospital or licensed house, be transmitted to the said commissioners within one clear day from the day on which any patient has been received into any such house, hospital, or asylum as aforesaid, and the said sessions shall, so far as relates to the said documents, other than the said statement, be construed as if the words 'one clear day' were substituted therein for the words 'after two clear days, and before the expiration of seven clear days;' nevertheless the said excepted statement shall be transmitted as heretofore, save that it shall be separate from the said notice, and shall refer to the order of admission by the date thereof, instead of referring to it as the above notice, and the words referring to the said statement as being subjoined shall be omitted in the said notice,"

any patient since the then last preceding entry, and shall also enter into a book to be called 'The Case Book,' as soon as may be after the admission of any patient, the mental state and bodily condition of every patient at the time of his admission, and also the history from time to time of his case whilst he shall continue in the asylum; and such books shall from time to time be regularly laid before the visitors for their inspection and signature, and every medical officer omitting to make such entries, or any of them, shall for every such offence forfeit any sum not exceeding twenty pounds."

Copies of entries made by commissioners visiting asylums to be sent to the office of commissioners.

Sect. 91. "The clerk of every asylum shall, within three days after every visit to such asylum of two or more of the commissioners in lunacy, transmit to the office of such commissioners a true and perfect copy of any entries of any remarks or observations made by such visiting commissioners in any of the books of such asylum, and every such clerk omitting to transmit as aforesaid any such copy shall for every such offence forfeit any sum not exceeding ten pounds."

In case of the death of a lunatic the cause of death to be stated, and sent to the registrar of deaths, the commissioners in lunacy, and relieving officer or overseers.

Sect. 92. "In case of the death of any patient in any asylum a notice and statement according to the form in schedule (F.) No. 5, of the death and cause of the death of such patient, and the name of any person or persons who was or were present at the death, shall be drawn up and signed by the clerk and medical officer of such asylum, and a copy thereof shall be by the clerk transmitted to the registrar of deaths for the district and to the commissioners in lunacy within forty-eight hours of the death of such patient, and also to the relieving officer or the overseers of the union or parish to which such lunatic (if a pauper) was chargeable, and if not a pauper to the person who shall have signed the order for the admission of the lunatic, or who made the last payment on account of such lunatic; and every clerk or medical officer who neglects or omits to draw up, sign, or transmit such notice or statement as aforesaid, within the time aforesaid, shall respectively forfeit and pay any sum not exceeding twenty pounds."

Entries to be made of deaths, discharges, and removals, and notice given to the commissioners in case of the discharge, removal, escape, and recapture of every lunatic.

Sect. 93. "The clerk of every asylum shall, within three clear days after the death, discharge, or removal of any patient, make an entry thereof in the said register of patients, and also in a book to be kept for that purpose according to the form and containing the particulars in the schedule (G.) No. 2, to this act, and shall also, within three clear days after the discharge, removal, escape, or recapture of any patient, transmit a written notice of such discharge or removal, according to the form in the said schedule (F.) No. 5, or of such escape or recapture, to the commissioners in lunacy; and every such clerk who neglects or omits to make such entry as aforesaid, or transmit such notice as aforesaid within the time aforesaid, shall forfeit and pay any sum not exceeding ten pounds; and every such clerk who shall knowingly and wilfully in such entry untruly set forth any of the particulars required shall be guilty of a misdemeanor."

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§ 5. EXPENSE OF MAINTENANCE AND OF REMOVAL, &c. OF LUNATICS.

Every pauper lunatic to be chargeable to the parish from which he is sent till otherwise adjudged.

"The Lunatic Asylums Act, 1853" (16 & 17 Vict. c. 97), s. 95 (*p*), enacted, that "when any pauper lunatic is confined under the provisions of this act he shall, for the purposes of this act, be chargeable to the parish from which, or at the instance of some officer or officiating clergyman of which, he has been sent, unless and until such parish shall have established, under the provisions herein contained, that such lunatic is

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(*p*) Other sections comprised in the act under this head will be found under the heads of "THE LIABILITY OF PAUPERS AND THEIR RELATIONS IN RESPECT OF RELIEF," Chap. XVIII. § 6, and under ORDERS OF MAINTENANCE OF PAUPER LUNATICS in connexion with ORDERS OF REMOVAL.

settled is some other parish, or that it cannot be ascertained in what parish such lunatic is settled; and every pauper lunatic who is chargeable to any parish shall, whilst he resides in an asylum, registered hospital, or licensed house, be deemed for the purposes of his settlement to be residing in the parish to which he is chargeable" (*q*).

The 24 & 25 Vict. c. 55 (*r*), contains the following provisions making lunatics chargeable upon the common fund of unions.

Lunatics to be chargeable upon the common fund.

Sect. 6. "The cost of the examination of any lunatic pauper, present or future, of his removal to and from, and his maintenance in any asylum, licensed house, or registered hospital, who would under any provision of the sixteenth and seventeenth Victoria, chapter ninety-seven, be chargeable to a parish in a union, shall from and after the twenty-fifth day of March next be borne by the common fund of the union comprising such parish."

Orders in lunacy may be obtained by or appealed against by boards of guardians.

Sect. 7. "The guardians of any union may obtain orders upon the guardians of any other union, or upon the guardians or overseers of any parish not comprised in a union, or upon the treasurer of the county, and may appeal against or defend any orders in respect of any lunatic paupers hereby made chargeable upon the common fund of the union, in like manner and subject to the same incidents and provisions as are contained in the said last cited act, in respect of lunatic paupers chargeable to any parish in such union: provided that every appeal now pending may be continued and determined as though this act had not been passed."

Proviso for pending appeals.

Justices to make an order upon the officers of unions and parishes for maintenance of lunatics.

Sect. 96 of "The Lunatic Asylums Act, 1853" (16 & 17 Vict. c. 97), enacts, that "it shall be lawful for the justice by whom any pauper lunatic is sent to an asylum, registered hospital, or licensed house under the powers of this act, or for any two justices of the county or borough in which the asylum, registered hospital, or licensed house in which any pauper lunatic is confined is situate, or from any part of which any pauper lunatic has been sent, or for any two justices being visitors of such asylum or licensed house, to make an order upon the guardians of the union or parish or the overseers of the parish (if not in a union or under a board of guardians) from which, or at the instance of any officer or officiating clergyman of which, such lunatic is or has been sent for confinement, for payment to the treasurer, officer, or proprietor of the asylum, registered hospital, or licensed house of the reasonable charges of the lodging, maintenance, medicine, clothing, and care of such lunatic in such asylum, hospital, or house, and any such order may be retrospective or prospective, or partly retrospective and partly prospective; and the guardians or overseers on whom such order shall be made shall from time to time pay to the said treasurer, officer, or proprietor the charges aforesaid" (*s*).

[Sect. 97 empowers justices to inquire into and adjudge the settlement of pauper lunatics. This section, and the cases upon it, will be found at length in a subsequent part of this volume.]

If settlement cannot be ascertained, a pauper lunatic may be made chargeable to the county.

Sect. 98. "If any pauper lunatic be not settled in the parish by which, or at the instance of some officer or officiating clergyman of which, he is sent to any asylum, registered hospital, or licensed house, and it cannot be ascertained in what parish such pauper lunatic is settled, and if a relieving officer of such first-mentioned parish, or of the union

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(*q*) A lunatic Scotchman or his wife having no settlement in England is within the latter part of this section as a lunatic in respect of whom it cannot be ascertained in what parish he is settled, and is therefore chargeable to the county under s. 98, infra. (*Somerset* v. *Shipham*, 32 L. J. (N. S.) M. C. 83.)

(*r*) See other provisions of this statute, ante, Chapter IX., p. 122.

(*s*) The Court of Queen's Bench has held (*Blackburn*, J., dissenting), that there is no appeal from an order under this section on the grounds that s. 128 (post, p. 288), does not apply. (*Kettering Union* v. *Northampton Lunatic Asylum*, 34 L. J. (N. S.) M. C. 198.)

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in which the same is situate, or the overseers of such first-mentioned parish, shall give ten days' notice to the clerk of the peace of the county in which such lunatic was found to appear for such county before two justices thereof, at a time and place to be appointed in such notice, it shall be lawful for such two justices, or any two or more justices of such county, upon the appearance of such clerk of the peace, or any one on his behalf, or, in case of his non-appearance, upon proof of his having been served with such notice, to inquire into the circumstances of the case, and to adjudge such pauper lunatic to be chargeable to such county, and to order the treasurer of such county to pay to the guardians of any union or parish or the overseers of any parish all expenses incurred by or on behalf of such union or parish in or about the examination of such lunatic, and the bringing him before a justice or justices, and his conveyance to the asylum, hospital, or house, and all monies paid by such guardians or overseers to the treasurer, officer, or proprietor of the asylum, hospital, or house, for the lodging, maintenance, medicine, clothing, and care of such lunatic, and incurred within twelve calendar months previous to the date of such order, and (if such lunatic is still in confinement) also to pay to the treasurer, officer, or proprietor of the asylum, hospital, or house the reasonable charges of the future lodging, maintenance, medicine, clothing, and care of such lunatic; and every such treasurer of a county on whom any such order is made shall, out of any monies which may come into his hands by virtue of his office, immediately pay to such guardians or overseers the amount of the expenses and monies by such order directed to be paid to them, and from time to time pay to the said treasurer, officer, or proprietor of the asylum, hospital, or house the future charges aforesaid: provided always, that such justices may direct such inquiry to be made to ascertain the parish in which any pauper lunatic is settled as they think fit, and delay adjudging such pauper lunatic to be chargeable to any county until such further inquiry has been made: provided also, that every county to which any pauper lunatic is adjudged to be chargeable as aforesaid may at any time thereafter inquire as to the parish in which such lunatic is settled, and may procure such lunatic to be adjudged to be settled in any parish" (*t*).

Chargeability of pauper lunatics whose settlements cannot be ascertained where found in certain boroughs.

"The Lunacy Acts Amendment Act, 1862" (25 & 26 Vict. c. 111), s. 45, (repealing a previous provision on the same subject (*u*),) enacts, that "where any pauper lunatic is not settled in the parish by which or at the instance of some officer or officiating clergyman of which he is sent to an asylum, registered hospital, or licensed house, and it cannot be ascertained in what parish such pauper lunatic is settled, and such lunatic is found in a borough which has a separate court of sessions of the peace, and is not liable, under the act of the session holden in the fifth and sixth years of king William the Fourth, chapter seventy-six,

(*t*) See note (*q*) to s. 95, ante, p. 283. Under the proviso to this section the county may obtain an order on the very same parish which has previously obtained an order on the county. (*All Saints, Poplar* v. *Middlesex*, 29 L. J. (N. S.) M. C. 186.)

(*u*) 18 & 19 Vict. c. 105, s. 14, which recited, that "doubts are entertained as to the chargeability of pauper lunatics found in boroughs whose settlements cannot be ascertained, and it is expedient to remove such doubts," and made provision accordingly. Under this repealed section it was held, that a borough which has a separate court of quarter sessions, and a gaol and a lunatic asylum of its own, and did not contribute anything towards the county rate in respect of the county gaol and county lunatic asylum, or the maintenance of lunatics therein, but does, under the stat. 5 & 6 Will. IV. c. 76, s. 117, contribute to the county rate for other purposes, was not chargeable with the maintenance of a lunatic pauper found in the borough and sent to the borough asylum, and whose place of settlement could not be ascertained. (*Birmingham* v. *Bacchus*, 8 E. & B. 870; 27 L. J. (N. S.) M. C. 181; affirmed on error, 29 L. J. (N. S.) M. C. 56.)

section one hundred and seventeen, to the payment of a proportion of the sums expended out of the county rate (*x*), or is found in any borough which under the act of the session holden in the twelfth and thirteenth years of her Majesty, chapter eighty-two, is exempted from liability to contribute to the payment of the expenses incurred for maintaining pauper lunatics chargeable to the county in which such borough is situate (*y*), such lunatic shall be adjudged to be chargeable to the borough in which he is found; and it shall not be lawful for any justices to adjudge such lunatic to be chargeable to any county, nor to make any order upon the treasurer of any county for the payment of any expenses whatsoever incurred or to be incurred in respect of such lunatic.

"All the provisions in the Lunacy Act, chapter ninety-seven, as to the mode of determining that a pauper lunatic is chargeable to a county, and as to the orders to be made for payment of expenses and other monies in respect of such lunatic, and for the repayment thereof to the treasurer of a county, shall extend to the case of a borough to which a lunatic is made chargeable under this section as if the said provisions were re-enacted in this act, and such borough were therein mentioned or referred to instead of a county."

"The Lunatic Asylums Act, 1853" (16 & 17 Vict. c. 97), s. 99, enacts, that "if, after any pauper lunatic has been sent to an asylum, registered hospital, or licensed house as aforesaid, and has been adjudged to be chargeable to a county, such county procure such lunatic to be adjudged to be settled in any parish, it shall be lawful for any two justices of the county or borough in which the asylum, registered hospital, or licensed house in which such lunatic is confined is situate, or from any part of which such lunatic was sent for confinement, or for any two justices being visitors of such asylum or licensed house, to make an order upon the guardians of the union to which such parish belongs, or of any such parish, if such parish be in a union or be under a board of guardians, or if not, then upon the overseers of such parish, for payment to the treasurer of the said county of all expenses and monies paid by such treasurer as hereinbefore is provided, and of all monies paid by such treasurer to the treasurer, officer, or proprietor of the asylum, hospital, or house, for the lodging, maintenance, medicine, clothing, and care of such lunatic, and incurred within twelve calendar months previous to such order, and (if such lunatic is still in confinement) also for payment to the treasurer or officer or proprietor of the asylum, hospital, or house of the reasonable charges of the future lodging, maintenance, medicine, clothing, and care of such lunatic; and such guardians or overseers shall immediately pay to the treasurer of such county the amount of the expenses and monies by such order directed to be paid to him, and from time to time pay to the said treasurer, officer, or proprietor of the asylum, hospital, or house the future charges aforesaid."

Provision for the reimbursement to a county of monies paid on account of a lunatic afterwards adjudged to belong to any parish.

Sect. 100. "It shall be lawful for any justices hereinbefore authorized to make any such order as aforesaid upon the guardians of any union or

Justices to make orders out of

(*x*) The boroughs which are made liable under that section to the payment of a proportion of the sums expended out of the county rate are boroughs in which a separate court of quarter sessions of the peace is holden, and which before the passing of the Boundary Act, 2 & 3 Will. IV. c. 64, was chargeable with or liable to contribute in whole or in part to the county rate.

(*y*) The 12 & 13 Vict. c. 82, enacts (inter alia), that no borough in which a separate court of quarter sessions of the peace is holden, and which before the passing of the Boundary Act, 2 & 3 Will. IV. c. 64, was chargeable with or liable to contribute in whole or in part to the county rate, which shall possess or provide a sufficient asylum to the satisfaction of the secretary of state for the reception or care of the pauper lunatics in such borough, shall be liable to pay or contribute to the payment of any costs, charges, or expenses which may be incurred after such asylum shall be actually opened for the reception or care of the pauper lunatics in such borough, for maintaining any pauper lunatics chargeable to such county.

parish, or upon the overseers of any parish, to make such order upon such guardians or overseers, although such union or parish be not within their respective jurisdictions.

the jurisdiction of such justices."

Order for payment of charges of maintenance in asylums, &c. to extend to any asylum, &c. to which the lunatic may be removed.

Sect. 101. "Where any order has been made for the payment of the future charges of the lodging, maintenance, medicine, clothing, and care of any lunatic in any asylum, registered hospital, or licensed house, such order shall extend to and be applicable in respect of the charges of the lodging, maintenance, medicine, clothing, and care of such lunatic in any asylum, registered hospital, or licensed house to which he may be removed under the powers of this or any other act, in like manner as if such charges had by such order been directed to be paid to the treasurer or an officer or the proprietor of the asylum, registered hospital, or licensed house in which such lunatic may for the time being be confined."

The costs of pauper lunatics who are irremovable to be borne by the parish wherein they were exempt from removal, or by the common fund in unions.

Sect. 102. "Provided always, that all the expenses incurred since the twenty-ninth day of September, one thousand eight hundred and fifty-three, or hereafter to be incurred, in and about the examination, bringing before a justice or justices, removal, lodging, maintenance, medicine, clothing, and care of a pauper lunatic heretofore (*y*) or hereafter removed to an asylum, registered hospital, or licensed house under the authority of this or any other act, who would, at the time of his being conveyed to such asylum, hospital, or house, have been exempt from removal to the parish of his settlement or the country of his birth by reason of some provision in the act of the session holden in the ninth and tenth years of her Majesty, chapter sixty-six (*z*), shall be paid by the guardians of the parish wherein such lunatic shall have acquired such exemption if such parish be subject to a separate board of guardians, or by the overseers of such parish where the same is not subject to such separate board, and where such parish shall be comprised in any union the same shall be paid by the guardians, and be charged to the common fund of such union so long as the cost of the relief of paupers rendered irremovable by the last-mentioned act shall continue to be chargeable upon the common funds of unions; and no order shall be made under any provision contained in this or any other act upon the parish of the settlement in respect of any such lunatic pauper during the time that the above-mentioned charges are to be paid and charged as herein provided; and section five of the act of the session holden in the twelfth and thirteenth years of her Majesty, chapter one hundred and three, shall be repealed" (*a*).

Section 5 of 12 & 13 Vict. c. 103, repealed.

Guardians and overseers may pay charges without orders of justices.

Sect. 103. "Provided also, that any guardians or overseers who would be liable under any provision contained in this act to have an order made upon them for the payment of any money may pay the same without any such order being made, and may charge the same to such account as they could have done if such order had been made."

[Sects. 104 and 105 relate to the appropriation of a lunatic's property for his maintenance, and will be found post, Chapter XVIII. § 6.]

(*y*) In *Knowles* v. *Trafford*, 26 L. J. (N. S.) M. C. 51 & 188, it was held, that on the passing of this act a parish (not in a union), in which the lunatic had obtained exemption from irremovability, became liable to his maintenance, although an order had been obtained on the place of settlement before the passing of the act (under the repealed act 8 & 9 Vict. c. 126), and the Court of Exchequer Chamber held (reversing on that point the judgment of the Queen's Bench), that the liability under the former order ceased upon the passing of the new act without any steps being taken to transfer the liability.

(*z*) See this statute and cases, post, "ORDERS OF REMOVAL."

(*a*) See ante, pp. 121, 122; and ante, pp. 282, 283. Sect. 102 applies to those cases in which, *at the time of removal* to the asylum, the lunatic is irremovable. (*Reg.* v. *St. Giles in the Fields*, 30 L. J. (N. S.) M. C. 12.) It does not apply to a woman who residing separate from her husband, and in a different parish, is sent to a lunatic asylum. The order in such a case should be made under s. 97. (See *Reg.* v. *East Retford*, 32 L. J. (N. S.) M. C. 17, and post, "ORDERS OF REMOVAL."

Sect. 106. "If any person feel aggrieved by any refusal of an order of any justice or justices as aforesaid, such person may appeal to the next general or quarter sessions of the peace for the county or borough where the matter of appeal has arisen, the person so appealing having given to the justice or justices against whom such appeal is made fourteen clear days' notice of such appeal, and such sessions are hereby authorized and required to hear and determine the matter of such appeal in a summary way, and their determination shall be final and conclusive" (*b*).

Persons aggrieved by refusal of an order may appeal to the sessions.

[Sects. 107 to 117 relate to orders of adjudication of settlement and appeals. See post.]

Sect. 118. "The provisions of this act for and concerning the payment of expenses incurred or to be incurred in relation to pauper lunatics shall be applicable with respect to persons confined as pauper lunatics sent to any asylum, registered hospital, or licensed house under any other act authorizing their reception therein as pauper lunatics, and (save as herein otherwise provided concerning any lunatic who shall appear to have an estate, real or personal, applicable to his maintenance) with respect to all other lunatics sent to any asylum, registered hospital, or licensed house under any order of a justice or justices made under this act, or the acts hereby repealed, or any of them, as if such last-mentioned lunatics were at the time of being so sent actually chargeable to the parish from which they have been or shall be sent."

Provisions of this act as to expenses to extend to pauper lunatics sent to asylums under any other act, &c.

Sect. 119. "In every case of an inquiry, investigation, dispute or appeal as to the parish in which a pauper lunatic is settled, the guardians, clerks of the guardians, relieving officers, and overseers of every union including any parish, or of any parish, which parish respectively is interested in such inquiry, investigation, dispute, or appeal, and every person duly authorized by them respectively, and the clerk of the peace of any county interested in such inquiry, investigation, dispute, or appeal, and every person duly authorized by such clerk of the peace, shall at all reasonable times be allowed free access, in the presence of the medical attendant, to the lunatic, to examine him as to the premises."

In cases of inquiries and appeals guardians and officers interested to have access to the lunatic.

Sect. 120. "On the death, discharge, or removal of any pauper from any asylum, registered hospital, or licensed house, the necessary expenses attending the burial, discharge, or removal of such pauper shall be borne by the union or parish (if any) to which such pauper is chargeable, as hereinbefore provided, or if such pauper be chargeable to a county as hereinbefore provided, then by such county, and shall be paid by the guardians of such union or parish, or by the overseers of such parish if not in a union or under a board of guardians, or by the treasurer of such county."

Expenses of the burial, removal, or discharge of a pauper.

Sect. 121. "If any overseer, or any treasurer of any county, upon whom any order of justices for the payment of money under the provisions of this act or of any act hereby repealed is made, shall refuse or neglect for the space of twenty days next after due notice of such order to pay the money so ordered to be paid, the said money, together with the expenses of recovering the same, shall be recovered by distress and sale of the goods of the overseer or treasurer so refusing or neglecting, by warrant under the hands and seals of any two justices hereby authorized to make the order for payment of the money aforesaid, or by an action at law, or by any other proceeding in any court of competent jurisdiction, against such overseer or treasurer; and if the guardians upon whom any such order is made refuse or neglect for such time as aforesaid to pay the money so ordered to be paid, the same, together with the expenses of recovering the same, may be recovered by an action at law or by any other proceeding in any such court; and in case of any such action or proceeding no objection shall be taken to any

Money ordered to be paid by any clerk, overseer, relieving officer, or treasurer to be levied (in case of neglect to pay) by distress or action.

(*b*) Extended to offences against 18 & 19 Vict. c. 105; see s. 19 of that act.

default or want of form in any order of admission or maintenance, or in any certificate or adjudication under this act, if such order or adjudication shall not have been appealed against, or if appealed against shall have been affirmed."

§ 6. RECOVERY OF PENALTIES.

Penalties to be recovered in manner provided by 11 & 12 Vict. c. 43.

"The Lunatic Asylums Act, 1853" (16 & 17 Vict. c. 97), s. 127, enacts, that "all penalties and forfeitures imposed by this act shall and may be recovered summarily before two justices in manner provided by the act of the twelfth year of her Majesty, 'to facilitate the Performance of the Duties of Justices of the Peace out of Sessions, within England and Wales, with respect to summary Convictions and Orders;' and such penalties and forfeitures, when recovered upon proceedings taken by the secretary of the commissioners, shall be paid to such secretary, and be applied and accounted for by him in like manner as money received for licences for the reception of lunatics granted by the said commissioners, and when recovered upon proceedings taken by the clerk to any committee of visitors of any asylum shall be paid to the treasurer of such asylum, to be by him applied for the purposes of such asylum in such manner as such committee may think fit and direct, and in all other cases shall be paid to the treasurer of the county or borough for which the justices by whom the person convicted of such offence have acted in such conviction" (*c*).

Application of penalties.

Power of appeal to the quarter sessions.

Sect. 128. "Any person who thinks himself aggrieved by any order or determination of any justices under this act, other than orders adjudicating as to the settlement of any lunatic pauper, and providing for his maintenance, may, within four calendar months after such order or determination made or given, appeal to the general or quarter sessions, the person appealing having first given at least fourteen clear days' notice in writing of such appeal and the nature and matter thereof to the person appealed against, and forthwith after such notice entering into a recognizance before some justice of the peace, with two sufficient sureties, conditioned to try such appeal, and to abide the order and award of the said court thereupon; and the said general or quarter sessions, upon proof of such notice and recognizance having been given and entered into, shall in a summary way hear and determine such appeal, or, if they think proper, adjourn the hearing thereof until the next general or quarter sessions, and if they see cause may reduce any penalty or forfeiture to not less than one-fourth of the amount imposed by this act, and may order any money to be returned which shall have been levied in pursuance of such order or determination, and may also award such further satisfaction to be made to the party injured, or such costs to either of the parties, as they shall judge reasonable and proper; and all such determinations of the said general or quarter sessions shall be final, binding, and conclusive upon all parties to all intents and purposes whatsoever" (*d*).

§ 7. PAUPER CRIMINAL LUNATICS.

Prisoners becoming insane, power to two justices to inquire, with

The statute 27 & 28 Vict. c. 29, s. 2, enacts (*e*), that "if any person while imprisoned in any prison or other place of confinement under any sentence of transportation, penal servitude, or imprisonment, or under a

(*c*) See also s. 126, ante, p. 266.

(*d*) The Court of Queen's Bench has held (*Blackburn*, J., dissenting), that this section does not give an appeal against an order under s. 96 (ante, p. 283). (*Kettering Union* v. *Northampton Lunatic Asylum*, 34 L. J. (N. S.) M. C. 198.)

(*e*) Sect. 1, repealed the first section of 3 & 4 Vict. c. 54, containing corresponding provisions on this subject.

charge of any offence, or for not finding bail for good behaviour or to keep the peace, or to answer a criminal charge, or in consequence of any summary conviction or order by any justice or justices of the peace, or under any other than civil process, shall appear to be insane, it shall be lawful, if such person is confined in a prison to which visiting justices are appointed (*f*), for two or more of the visiting justices of such prison, or if such person is in any other place of confinement, for two or more justices of the peace of the county, city, borough or place in which such place of confinement is situate, and such visiting or other justices are hereby required to call to their assistance two physicians or surgeons, or one physician and one surgeon, duly registered as such respectively under the provisions of an act passed in the session of the twenty-first and twenty-second years of her Majesty's reign, chapter ninety, and to be selected by them for that purpose, and to inquire with their aid as to the insanity of such person; and if it shall be duly certified by such justices or any two of them, and such physicians or surgeons, or such physician and surgeon, that such person is insane, one of her Majesty's principal secretaries of state may, upon receipt of such certificate, if he shall think fit, direct by warrant under his hand that such person shall be removed to such lunatic asylum or other proper receptacle for insane persons as the said secretary of state may judge proper and appoint (*g*); and if at any time it shall be made to appear to one of her Majesty's principal secretaries of state that there is good reason to believe that any prisoner in confinement under sentence of death is then insane, either by means of a certificate in writing to that effect in the form given in schedule (A.) transmitted to him by two or more of the visiting justices of the prison in which such prisoner under sentence of death is confined, or by any other means whatsoever, such secretary of state shall appoint two or more physicians or surgeons, duly registered as aforesaid, to inquire as to the insanity of such prisoner; and if on such inquiry the prisoner shall be found to be then insane, the fact shall be certified in writing by such persons to the said secretary of state, and on the receipt of such certificate the said secretary of state shall direct by warrant under his hand that such prisoner shall be removed to such lunatic asylum or other proper receptacle for insane prisoners as aforesaid; and every person so removed under this act, or already removed and in custody under any former act relating to insane prisoners not under civil process, shall remain in confinement in such asylum or other proper receptacle as aforesaid, or in any other lunatic asylum or other proper receptacle to which such person may be removed by any like warrant which the secretary of state is hereby empowered to issue, if he shall think fit, until it shall be duly certified to the said secretary of state by

medical aid, respecting such insanity.

If certified by justices and such medical aid that prisoner is insane, secretary of state may grant warrant for removal of prisoner to a lunatic asylum.

If secretary of state has reason to believe prisoner sentenced to death to be insane, he may desire medical aid to inquire into the same.

(*f*) Sect. 3 enacts, that "all prisons which now are or may hereafter be placed under the government of the directors of convict prisons, by virtue of the act of the thirteenth and fourteenth years of her Majesty's reign, chapter thirty-nine, or of any other act now in force or which may hereafter be passed, shall for the purposes of this act be deemed to be prisons to which visiting justices are appointed, and the said directors shall be deemed the visiting justices thereof, and the duties and powers hereinbefore imposed upon and given to any two or more of such visiting justices shall and may be performed and exercised by any one or more of such directors."

(*g*) As to such asylums, see 23 & 24 Vict. c. 75. The 27 & 28 Vict. c. 29, s. 4 enacts, that all the provisions of the 3 & 4 Vict. c. 54, not thereby repealed, and all the provisions of the 23 & 24 Vict. c. 75, "shall apply to lunatics removed under this act in all respects as if they had been removed under the first section of the first-mentioned act, and as if the asylum to which they were removed under this act were any asylum for criminal lunatics to which the provisions of the said act of the twenty-third and twenty-fourth years of her Majesty's reign were applicable."

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If prisoner afterwards pronounced sane, how to be dealt with.

two physicians or surgeons, or one physician and one surgeon, duly registered as aforesaid, that such person is sane, and upon the receipt of such last-mentioned certificate the said secretary of state is hereby authorized to issue a warrant under his hand directing, if the period of imprisonment or custody of such person shall have expired, that he or she shall be discharged, or if such person shall still remain subject to be continued in custody, that he or she shall be removed to any prison or other place of confinement in which he or she may be lawfully confined, to undergo his sentence of death or other sentence, or, if not under sentence, to be dealt with according to law as if no such warrant for his removal to a lunatic asylum had been issued; provided, that nothing in this act contained shall be construed to repeal the thirty-eighth section of the act of the sixteenth and seventeeth years of her Majesty's reign, chapter ninety-six, or any part thereof."

Justices of the peace to inquire into the settlement of such prisoner, and make orders on parish for maintenance, &c.

The 3 & 4 Vict. c. 54, s. 2, enacts, "that in all such cases as aforesaid (*h*), unless one of her Majesty's principal secretaries of state shall otherwise direct, it shall be lawful for such two justices, or any other two justices of the peace of the county, city, borough, or place where such person is imprisoned, to inquire into and ascertain, by the best evidence or information that can be obtained under the circumstances, of the personal legal disability of such insane person, the place of the last legal settlement, and the pecuniary circumstances of such person; and if it shall not appear that he or she is possessed of sufficient property which can be applied to his or her maintenance, it shall be lawful for such two justices, by order under their hands, to direct the overseers of the parish where they adjudge him or her to be lawfully settled, or in case such parish be comprised in a union declared by the poor law commissioners, or shall be under the management of a board of guardians established by the poor law commissioners, then the guardians of such union, or of such parish (as the case may be), to pay on behalf of such parish, in the case of any person removed under this act, all reasonable charges for inquiring into such person's insanity, and for conveying him or her to such county lunatic asylum or receptacle for insane persons, and to pay such weekly sum as they or any two justices shall, by writing under their hands, from time to time direct, for his or her maintenance in such asylum or receptacle in which he or she shall be confined; and in the case of any person removed under any former act relating to insane prisoners, to pay such weekly sum as they or any two such justices as aforesaid shall, by writing under their hands, from time to time direct, for his or her maintenance in the asylum or receptacle in which he or she is confined; and when the place of settlement cannot be ascertained, such order shall be made upon the treasurer of the county, city, borough, or place where such person shall have been imprisoned; but if it shall appear, upon inquiry, to the said or any other two justices of the county, city, borough, or place where such person is imprisoned, that any such person is possessed of property, such property shall be applied for or towards the expenses incurred or to be hereafter incurred on his or her behalf, and they shall from time to time, by order under their hands, direct the overseers of any parish where any money or securities for money, goods, chattels, lands, or tenements of such person shall be, to seize so much of the said money, or to seize and sell so much of the said goods and chattels, or receive so much of the annual rent of the lands

When settlement not found, order to be made on treasurer of county.

In case the person is possessed of property, it shall be applied towards the expense.

(*h*) As already mentioned, note (*e*), p. 288, the 1st section of the 3 & 4 Vict. c. 54, was repealed by the 27 & 28 Vict. c. 29, supra; but by s. 4 of the last-mentioned act all the provisions of the 3 & 4 Vict. c. 54, not repealed, are applied to lunatics removed under 27 & 28 Vict. c. 29. See note (*g*), ante, p. 289. "All such cases as aforesaid," therefore, now refer to the cases mentioned in the 1st section of the 27 & 28 Vict. c. 29.

or tenements of such person (*i*), as may be necessary to pay the charges, if any, of inquiring into such person's insanity, and of removal, and also the charges of maintenance, clothing, medicine, and care of any such insane person, accounting for the same at the next special petty sessions of the division, city or borough in which such order shall have been made, such charges having been first proved to the satisfaction of such justices, and the amount thereof being set forth in such order" (*k*).

The charge and maintenance of insane prisoners to be borne by the common fund of the union.

The 27 & 28 Vict. c. 29, s. 5, enacts, however, that "where any order shall have been or shall hereafter be made upon the guardians of any union formed under the provisions of the Act fourth and fifth William the Fourth, chapter seventy-six, for the payment of money under section two of the said first-mentioned act (*l*), the amount which shall be paid under such order shall be charged by the guardians upon the common fund of the union, and not to the account of any parish therein; and the power given to the justices to order the seizure and sale of the goods and chattels, or the receipt of the rents of the lands or tenements, of any insane person therein referred to, shall cease as regards the overseers, but shall apply to the guardians of the union who shall have incurred any expenses under any such order of justices as aforesaid."

Persons charged with misdemeanors, acquitted on the ground of insanity, may be kept in custody.

39 & 40 Geo. 3, c. 94.

The 3 & 4 Vict. c. 54, s. 3, recites, that "it is expedient that the same provision should be made with regard to persons charged with misdemeanors as is made with regard to persons charged with treason, murder, or felony by virtue of an act passed in the session holden in the thirty-ninth and fortieth years of the reign of King George the Third, intituled 'An Act for the safe Custody of Insane Persons charged with Offences'" (*m*); and enacted, "that in all cases where it shall be given in evidence upon the trial of any person charged with any misdemeanor that such person was insane at the time of the commission of such offence, and such person shall be acquitted, the jury shall be required to find specially whether such person was insane at the time of the commission of such offence, and to declare whether such person was acquitted by them on account of such insanity; and if they shall find that such person was insane at the time of the committing such offence the court before whom such trial shall be had shall order such person to be kept in strict custody, in such place and in such manner as to the court shall seem fit, until her Majesty's pleasure shall be known; and it shall thereupon be lawful for her Majesty to give such order for the safe custody

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(*i*) S. was tried for murder, and acquitted on the ground of insanity, and ordered to be confined during her Majesty's pleasure, and was removed to an asylum by order of the secretary of state; immediately before his trial he conveyed real estate, subject to a mortgage, to trustees for sale. The mortgagee entered into possession, sold the estate, and a balance of 100*l.* remained in his hands, which he refused to pay to the trustees, on the ground that S. was insane when he conveyed to them. An order of settlement and maintenance having been made on the township of H. under this statute, the Court of Queen's Bench refused a writ of mandamus to pay the 100*l.* to the overseers, on the ground apparently that this was a debt and not money within the 2nd section. (*Re Simpson's Trust Estate, Ex parte Overseers of Old Hutton*, 20 L. J. (N. S.) M. C. 231.)

(*k*) See post, as to the Order of Maintenance on the Parish of Settlement.

(*l*) 3 & 4 Vict. c. 54.

(*m*) The act 39 & 40 Geo. III. c. 94, s. 1, provides for the detention of persons charged with treason, murder or felony, and acquitted on the ground of insanity at the time of the commission of the offence; and s. 2 provides for the detention of "any person indicted for any offence," and found either upon arraignment or trial to be insane at the time of trial. It seems doubtful how far the provisions of s. 3 of the 3 & 4 Vict. c. 54, as to orders of maintenance relate to cases within the 39 & 40 Geo. III. c. 94. This point, however, does not seem to have been raised in *Re Simpson's Trust Estate, Ex parte Overseers of Old Hutton*, 20 L. J. (N. S.) M. C. 231, ante, note (*i*).

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of such person, during her pleasure, in such place and in such manner as to her Majesty shall seem fit; and in all cases where any person before the passing of this act has been acquitted of any such offence on the ground of insanity at the time of the commission thereof, and has been detained in custody as a dangerous person by order of the court before whom such person has been tried, and still remains in custody, it shall be lawful for her Majesty to give the like order for the safe custody of such person during her pleasure as her Majesty is hereby enabled to give in the case of any person who shall hereafter be acquitted on the ground of insanity; and in all such cases (*n*) any two justices of the peace of the county, city, or place where such person shall have been acquitted on account of insanity, or shall be kept in custody, shall have the like power as is given in the cases before mentioned (*o*) to inquire into and ascertain the last legal settlement of such insane person, and also to make the like order or orders for the payment of such person's maintenance and of other charges as above mentioned."

Like powers, as in cases before mentioned for inquiring into settlement and ordering maintenance.

Persons aggrieved may appeal from the order of the justices.

Sect. 4. "Provided always, and be it enacted, that if any person shall feel aggrieved by any order of any justices as aforesaid, such person may appeal to the justices of the peace at the next quarter sessions of the peace to be holden in and for the county, city, borough, or place where the matter of appeal shall have arisen, the person so appealing having given to the justices against whose order such appeal shall be made ten days' notice of his or her intention to make such appeal; and the said justices at such sessions are hereby authorized and required to hear and determine the matter of such appeal in a summary way, and to make such determination as they shall think proper, and shall and may also award such further satisfaction to the party injured, or such costs to either of the parties as they shall judge reasonable and proper; and every such determination shall be final and conclusive to all intents and purposes whatsoever, and no certiorari shall be allowed "(*p*).

Rules for interpretation of this act.

Sect. 8 of the same statute, "in order to remove doubts as to the meaning of certain words in this act," enacts, "that the words 'treasurer of the county, city, borough, or place' shall be deemed to include any officer in any county, riding, division, liberty, county of a city, county of a town, cinque port, or town corporate, who has the custody of any funds assessed upon or raised in or belonging to such county, riding, division, liberty, county of a city, county of a town, cinque port, or town corporate, in the nature of county rates, and applicable to the purposes to which county rates are applicable; that the words 'insane person' shall be deemed to include any lunatic or dangerous idiot; and that the words 'county, city, borough, or place' shall be deemed to include any county, riding, division, liberty, county of a city, county of a town, cinque port, or town corporate; and the word 'parish' shall be deemed to include any township, hamlet, tithing, vill, extra-parochial place, or any place maintaining its own poor."

The 23 & 24 Vict. c. 75, s. 10, enacts, that all provisions in the act 3 & 4 Vict. c. 54, "for the payment of the conveyance of such insane persons as therein mentioned to any asylum or other receptacle, and of his maintenance therein, shall extend and be applicable to the conveyance of any such person to any asylum for criminal lunatics, and his maintenance therein, and all sums payable under any order made under such provisions shall be paid and applied towards defraying or reimbursing the expenses in respect of which the same are paid, or other expenses of the asylum, as the commissioners of her Majesty's treasury may direct."

The 30 Vict. c. 12, s. 4, enacts (inter alia), that the enactments of the

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(*n*) See note (*m*), ante, p. 291.

(*o*) *i. e.*, in the cases now included in s. 2 of the 27 & 28 Vict. c. 54, ante, p. 290, note (*h*).

(*p*) As to appeals by unions against orders of maintenance, see post.

above section, relating to the expenses of conveyance and maintenance of criminal lunatics, 'shall apply to a criminal lunatic in whatever asylum or place of confinement he may be, and to such asylum and place of confinement, so far as regards such lunatic, in the same manner as if such asylum or place of confinement were an asylum appropriated to criminal lunatics in pursuance of the last-mentioned act."

Criminal lunatic may be removed to a county asylum on expiration of his sentence.

The last-mentioned statute (30 Vict. c. 12), repealing s. 8 of the 23 & 24 Vict. c. 75, enacts (s. 6), that "where the term of punishment awarded to any criminal lunatic confined in any asylum or other place of confinement for criminal lunatics expires before such evidence of his sanity has been given as justifies his being discharged, the following consequences shall ensue; that is to say,

1. If such lunatic be confined in any asylum or place of confinement to which lunatics may be sent in pursuance of the Lunatic Asylums Act, 1853, he shall thenceforth be deemed to be a pauper lunatic, and shall be in the same position in all respects as if he were a lunatic who immediately previous to the expiration of his term of punishment had been found wandering at large within the parish or place where the offence was committed in respect of which he became a criminal lunatic, and had been directed by a justice, in pursuance of the sixty-eighth section of the Lunatic Asylums Act, 1853 (*q*), to be received into the said asylum or place of confinement as a lunatic wandering at large, and a proper person to be taken charge of and detained under care and treatment:
2. If such lunatic be confined in any asylum or place of confinement to which lunatics cannot be sent in pursuance of the said Lunatic Asylums Act, 1853, the said secretary of state may, by order under his hand, direct the lunatic to be received into any asylum or place of confinement for lunatics into which a justice might have directed him to be received in pursuance of the said sixty-eighth section of the Lunatic Asylums Act, 1853 (*q*), if immediately previous to the date of the expiration of his term of punishment the lunatic had been found wandering at large within the parish or place where the offence was committed in respect of which he became a criminal lunatic, and the justices had been satisfied that the lunatic was a proper person to be taken charge of and detained under care and treatment; and any order made by the said secretary of state in pursuance of this section shall have the same effect, and be obeyed by the same persons, and subject them to the same penalties in case of disobedience, as an order made by a justice for the reception of a lunatic into an asylum or other place of confinement for lunatics in pursuance of the said sixty-eighth section of the said Lunatic Asylums Act, 1853 (*q*); and such lunatic when received into the said asylum or place of confinement shall thenceforth be deemed to be a pauper lunatic, and shall be in the same position in all respects as if he had been such wandering lunatic as aforesaid directed to be received into the said asylum or place of confinement in pursuance of the said order of a justice."

(*q*) See ante, p. 274.

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CHAPTER XVIII.

Of the Liability of Paupers and their Relations in respect of Relief.

§ 1. THE LIABILITY OF RELATIONS IN GENERAL (*r*).

The statute 43 Eliz. c. 2, compelling the relief of poor persons by their parents or children.

THE statute 43 Eliz. c. 2, s. 7, enacts, "that the *father and grandfather*, and the *mother and grandmother*, and the *children* of every poor, old, blind, lame and impotent person, or other poor person not able to work, being of a sufficient ability, shall, at their own charges, relieve and maintain every such poor person in that manner, and according to that rate, as by the justices of peace of that county where such sufficient persons dwell, or the greater number of them, at their general quarter sessions, shall be assessed; upon pain that every one of them shall forfeit twenty shillings for every month which they shall fail therein" (*s*).

(*r*) The natural obligation upon such near relatives as parent and child cannot be disputed. See the doctrine, 1 Bla. Com. 447. But independently of the *express enactment* in the 43 Eliz. c. 2, and other subsequent statutes, there is no legal obligation on a parent to maintain his child, or on a child to relieve his parent; and therefore a third person, who may afford such relief, even from absolute want, cannot *sue* the parent for a reasonable remuneration, unless he expressly or impliedly *contracted* to pay. (See per *Le Blanc*, J., 4 East, 84; Sir T. Raym. 260, margin; Palmer, 559; 2 Stark. 521.) And where the father had reasonable grounds for believing that the child was provided for by another, a third person cannot relieve the child and sue the father. (*Urmston* v. *Mersconnem*, 4 A. & E. 899.) Whereas, in the case of *husband and wife*, the former may, in some cases, be sued for necessaries provided for the latter, even in defiance of the husband's injunctions not to supply them. The *common* law considered moral duties of this nature, like others of imperfect obligation, as better left in their performance to the impulse of nature. However, a parent may, under circumstances, be indicted at common law for not supplying an infant child with necessaries; (Russell & R. C. C. 20; 2 Camp. 650); and very slight circumstances will suffice to justify a jury in finding a *contract* on the part of the father.

(*s*) The 4 & 5 Will. IV. c. 76, s. 56, enacts, "that all relief given to or on account of the wife, or to or on account of any child or children under the age of sixteen, not being blind or deaf and dumb, shall be considered as given to the husband of such wife, or to the father of such child or children, as the case may be, and any relief given to or on account of any child or children under the age of sixteen of any widow, shall be considered as given to such widow: provided always, that nothing herein contained shall discharge the father and grandfather, mother and grandmother, of any poor child, from their liability to relieve and maintain such poor child in pursuance of the provisions of a certain act of parliament passed in the forty-third year of the reign of her late Majesty Queen Elizabeth, intituled 'An Act for the Relief of the Poor.'"

The marginal note of this section is, "Poor persons liable for relief to wife or children;" but this section does not extend the personal liability imposed by the statute of Elizabeth, to recoup monies expended in relief to children, &c. It affects the liability of the husband or father to removal to the parish of his settlement, and the payment by that parish of the costs of relief; see post, "REMOVAL."

By s. 11, the penalties under the statute "shall go and be employed to the use of the poor of the same parish, and towards a stock and habitation for them, and other necessary uses and relief, as before in this act are mentioned and expressed; and shall be levied by the said churchwardens and overseers, or one of them, by warrant from any two such justices of the peace, or mayor, alderman, or head officer of city, town, or place corporate, respectively, within their several limits, by distress and sale thereof as aforesaid; or, in defect thereof, it shall be lawful for any two such justices of peace, and the said aldermen and head officers, within their several limits, to commit the offender to the said prison, there to remain without bail or mainprize till the said forfeitures shall be satisfied and paid."

Justices in *petty sessions* empowered to order relief by parents, &c.

The 59 Geo. III. c. 12, s. 26, after reciting the 43 Eliz., and that it is expedient to extend the power by the said act given to justices in their quarter sessions to justices in petty sessions, enacts, "that it shall be lawful for any two or more of his Majesty's justices of the peace, for the county or other jurisdiction in which any such sufficient person shall dwell, and they are hereby empowered, in any petty session, to make such assessment and order for the relief of every poor, old, blind, lame, impotent, or other poor person not able to work, upon and by the father, grandfather, mother, grandmother, or child (being of sufficient ability), of every such poor person, as may by virtue of the said act be made by the justices in their general quarter sessions; and that every such assessment and order of two or more justices in any petty sessions shall have the like force and effect as if the same were made by the justices in their general quarter sessions; and the disobedience thereof shall be punishable in like manner."

Sums payable under 43 Eliz. c. 2, s. 7, by relations of poor persons, how recoverable.

And the 4 & 5 Will. IV. c. 76, s. 78, enacts, "that all sums of money which shall be assessed by any justices of the peace on the father, grandfather, mother, grandmother, child, or children of any poor person, for the relief or maintenance of such poor person, under or by virtue of the provisions of a certain act passed in the forty-third year of the reign of her late Majesty Queen Elizabeth, intituled 'An Act for the Relief of the Poor,' or of any act to amend the same, or of this act, and all penalties and forfeitures to which any person so assessed by such justices for such relief or maintenance, shall be liable for any default in paying the same by virtue of the provisions of any of the said recited acts or of this act, shall be recoverable against every person so assessed or charged, in like manner as penalties and forfeitures are recoverable under the provisions of this act."

The statute of Elizabeth extends only to *natural* relations. (*Rex* v. *Munday*, 1 Str. 190) (*t*). In that case an order reciting that *Munday* had a good fortune with his wife, and that her mother was poor, ordered him to provide for her. By *Pratt*, C. J. "On consideration we are all of opinion that *the son-in-law is not bound*, either within the words or intent of the statute, which provides only for *natural parents*. By the law of nature, a man was bound to take care of his own father and mother. But there being no temporal obligation to enforce that law of nature, it was found necessary to establish it by act of parliament, and that can be extended no farther than the law of nature went before; and the law of nature doth not reach this case."

So, therefore, a father is not liable for the maintenance of his son's wife. (*R.* v. *Kempson*, 2 Str. 955; *R.* v. *Benoire*, 1 Bott, 449; 2 Nol. P. L. 263.)

So, by the statute of Elizabeth, a man was not bound to maintain his step-children. (*Cooper* v. *Martin*, 4 East, 76.)

(*t*) Before this case a different doctrine prevailed. (*Reg.* v. *Clentham*, Fol. 39; *Reg.* v. *St. Botolph's, Aldgate*, Fol. 42, 44; 1 Bla. Com. 448, 449. *R.* v. *Munday* was, however, recognized in *Rex* v. *Kempson*, 2 Str. 955, and *Tubb* v. *Harrison*, 4 T. R. 118, and other cases.)

Affection will, in most instances, induce the discharge of the moral obligation with more efficacy than an act of parliament; and even where that motive is wanting, a sense of shame will generally supersede the necessity of resorting to the statute of Elizabeth, where the party is of sufficient ability to render this assistance to relatives, even more distant in degree than is expressed in the enactment.

Though the father be living, yet, if he be unable, the grandfather, being of ability, may be compelled to keep the grandchild, and also to pay so much money as the justices shall think reasonable for the time past. (*Reg.* v. *Joyce*, 16 Viner, 423.)

An order on a grandfather need not state that the father is unable.

In *Rex* v. *Cornish* (2 B. & Adol. 498), Lord *Tenterden* said, "There is nothing in the statute of Elizabeth to show that the obligation of the *grandfather* is absolute only in the event of the father being unable, and that being so, the justices who make the order are not bound to assign on the face of it any reason why they made it on the grandfather." And per *Littledale*, J. "The statute gives the justices a discretionary power; if the grandfather be a rich man, and the father a poor man, they may in the exercise of their discretion make an order on the grandfather to maintain his grandchildren."

Husband liable to maintain children of wife born before marriage.

So, the statute of Elizabeth did not extend to bastards. (*The City of Westminster* v. *Gerrard*, 2 Bulst. 346.) But now by the 4 & 5 Will. IV. c. 76, s. 57, "every man who from and after the passing of this act shall marry a woman having a child or children at the time of such marriage, whether such child or children be legitimate or illegitimate, shall be liable to maintain such child or children as a part of his family, and shall be chargeable with all relief, or the cost price thereof, granted to or on account of such child or children, until such child or children shall respectively attain the age of sixteen, or until the death of the mother of such child or children; and such child or children shall, for the purposes of this act (*u*), be deemed a part of such husband's family accordingly." See also the provisions of the 7 & 8 Vict. c. 101, as to the desertion of bastard children by their mothers, post, § 7.

Of the Order of Maintenance on Relations.

The order must set forth that the person is poor (*St. Andrew's Undershaft* v. *Mendez de Breta*, 1 Ld. Raym. 699), and chargeable (*Rex* v. *Tripping*, 16 Ven. 424; 1 Bott, 430), and not able to work (*Rex* v. *Gulley*, Fol. 47; 1 Bott, 431); and that the person on whom the order is made is of sufficient ability. (*Reg.* v. *Halifax*, Sett. & Rem. 52; 1 Bott, 429.)

It must be an *order*, not a recommendation.

An order of maintenance must be positive, not by recommendation; it must observe the words of the statute, and state how long the maintenance is to continue. (*Rex* v. *Pennoyer*, 1 Bott, 433.)

An order to pay a definite sum weekly until the court should otherwise order was however held good. (*Jenkin's case*, 2 Salk. 534.)

The order may be made either by the justices at quarter sessions (43 Eliz.), or at petty sessions (59 Geo. III. c. 12); but in practice it is now always made at the latter. The order must be made by the justices of the county where such sufficient person dwells. If a child lives in the county of Middlesex, and be maintained by the parish there, and the grandfather lives in the county of Suffolk, the justices of Middlesex can make no order therein, but the justices of the county of Suffolk must make the order. (*Rex* v. *Reeve*, 2 Bulstr. 344.)

A recital that G. was of the parish, and a subsequent adjudication that the said G. should pay, was held to show that G. was within the juris-

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(*u*) "For the purposes of this act." This refers to their maintenance, and not to their settlement. (*Reg.* v. *Wendron*, 3 N. & P. 62; 7 A. & E. 819, post.)

diction of the justices making the order (the parish being alleged to be in the county). (*Reg.* v. *Toke*, 8 A. & E. 227; 3 N. & P. 323.)

The pauper is not to be sent to such sufficient person. (*Reg.* v. *Jones*, Fol. 41; 1 Bott, 425.) That was an order for the grandmother to take care of her grandchildren, and by the order the grandchildren were sent to the grandmother. By the whole court: "They cannot send the grandchildren to the grandmother; but the justices ought to have made a rate upon the grandmother of so much a week."

And an order may be that the grandfather shall pay so *much for the time past*, while the grandchild was chargeable, as well as for the time to come, the father being living, but *unable* to do it. (*Reg.* v. *Joice*, 16 Vin. Abr. 423.) And the inability of the father in such a case need not appear in the order. (*Rex* v. *Cornish*, ante, p. 296.)

The order of maintenance may be enforced by indictment.

Mr. Christian has supposed (1 Bla. Com. 448, note 1), that the relations mentioned in the 43 Eliz. c. 2, can only be compelled to allow each other 20*s.* *a month*, *or* 13*l.* *a-year*; but he has not distinguished between the power to award a *sufficient maintenance* and the *punishment* for the breach of the order. The *amount* of maintenance is in the discretion of the magistrates, and they may order much more than 20*s.* a month. And if the party disobey the order by not paying that sum, though exceeding 20*s.* a month, he may be indicted. (*Rex* v. *Robinson*, 2 Burr. 799.) In that case the defendant was *indicted* for refusing to obey an order of sessions for maintaining his two infant grandchildren. In arrest of judgment it was urged that this is a new offence; and where a statute creates a new offence, and gives a particular penalty, and a specific method of recovering the same, that course ought to be pursued, and the party shall not be punished by indictment. By Lord *Mansfield*, C. J. "The rule is certain, that where a statute creates a new offence by prohibiting and making unlawful anything that was lawful before, and appoints a specific remedy against such new offence, not antecedently unlawful, by a particular sanction and particular method of proceeding, that method must be pursued, and no other; but where the offence was antecedently punishable by a common law proceeding, and a statute prescribes a particular remedy by a summary proceeding, there either method may be pursued, and the prosecutor is at liberty to proceed either at common law, or in the method prescribed by the statute; because there the sanction is cumulative, and doth not exclude the common law punishment. In the present case a remedy existed before the statute of the 43 Eliz.; for disobedience to an order of sessions is an offence indictable at common law. So that there are two remedies: one, to proceed by way of indictment for disobeying the order, where the weekly payment is neglected or refused to be made: the other, to distrain for the 20*s.* penalty after neglect of payment for a month. The former method has been taken in the present case; and there is no doubt but that an indictment will lie for disobeying an order of sessions. But, notwithstanding there are two remedies given, it would be extremely oppressive to take the remedy by indictment, if there are no circumstances which obstruct the proceeding in the shorter way of summary remedy. This would be wrong and unreasonable when the primary remedy can be put in practice. But in some cases it may be impracticable to proceed in the summary method by way of distress, as if the party upon whom the order is made be gone out of the county (which is said to be the case here), in which case the penalty cannot be levied by distress and sale, nor the offender committed by the justices. And there may be a disobedience to the order, even before the month is out, and the forfeiture is only 20*s.* for every month which they shall fail. However, that would be too severe a verdict for disobedience to the order, with such very great haste as not to wait till the month should be expired." And the court were unanimously of opinion that the judgment ought not to be arrested.

Indictment will lie for refusing to obey the order of sessions.

Since disobeying an order of justices is an offence at common law, (vide *Rex* v. *Balme*, Cowp. 648), BURN'S JUSTICE OF THE PEACE, tit,

CHAP. XVIII.

"INDICTMENT," the law of the above case also applies to orders made by two or more justices in petty sessions, under stat. 59 Geo. III. c. 12, s. 26, ante.

Order to be served.

An order must be served and obedience formally demanded, to complete an indictable offence. (*R.* v. *Moorhouse*, 4 Dougl. Rep. 388.)

The 11 & 12 Vict. c. 110, s. 8, enacts, "that the guardians of any union shall be entitled to obtain orders of maintenance upon the relations liable under any statute now in force to maintain any poor person whose relief would be chargeable to the common fund of the union, in like manner as the churchwardens and overseers of any parish can now obtain the same, and may expend in respect of such person, out of such fund, any money for any purpose which the overseers of the parish to which such person, if chargeable, would have belonged might have done" (*v*).

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§ 2. THE LIABILITY OF PERSONS FOR DESERTING THEIR FAMILIES.

Desertion of children.

The statute 7 Jac. I. c. 4, s. 8, reciting, "for that many wilful people finding that they, having children, have some hope to have relief from the parish wherein they dwell, and being able to labour, and thereby to relieve themselves and their families, do nevertheless run away out of their parishes, and leave their families upon the parish," for remedy thereof enacts, "that all such persons, so running away, shall be taken and deemed to be incorrigible rogues, and endure the pain of incorrigible rogues; and if either such man or woman, being able to work, and shall threaten to run away, and leave their families as aforesaid, the same being proved by two sufficient witnesses upon oath before two justices of the peace in that division, that then the said persons so threatening shall by the said justices of the peace be sent to the house of correction (unless he or she can put in sufficient sureties for the discharge of the parish), there to be dealt with and detained as a sturdy and wandering rogue, and to be delivered at the assembly or meeting, or at the quarter sessions, and not otherwise."

Idle persons neglecting to provide for their families may be prosecuted.

Under Gilbert's Act (22 Geo. III. c. 83, s. 31), "all idle or disorderly persons, who are able, but unwilling, to work or maintain themselves and their families, shall be prosecuted by the guardians of the poor of the several parishes, townships, and places wherein they reside, and punished in such manner as idle and disorderly persons are directed to be by the statute made in the seventeenth year of the reign of his late Majesty King George the Second; and if any guardian shall neglect to make complaint thereof, against every such person or persons, to some neighbouring justices of the peace, within ten days after it shall come to his knowledge, he shall, for every such neglect, forfeit a sum not exceeding five pounds, nor less than twenty shillings, one moiety whereof, when recovered, shall be paid to the informer, and the other moiety to be disposed of as the other forfeitures are hereinafter directed to be applied."

But if it appear that the complainant is an idle person, the justice may commit him.

By sect. 35 of the same statute, "if it shall appear to a justice that a person making complaint (that the guardian has refused relief), or on whose behalf such complaint is made, is an idle or disorderly person, and has not used proper means to get employment, it shall and may be lawful for the justice, after examining such person, and hearing the whole circumstances of the case, to commit such person to the house of correction for any time not exceeding three calendar months, nor less than one calendar month; or if it shall appear to such justice, upon inquiry as aforesaid, that the husband or father of such person making complaint, or on whose behalf complaint shall be so made, for want of relief, is an idle or disorderly person, able to work, but by his neglect of work, or for want of seeking employment, or by spending the money he earns in alehouses, or places of bad repute, does not maintain his wife or children, and suffers them to be reduced to want, it shall and may be

(*v*) See the remainder of this section, ante, pp. 176, 177.

lawful for such justice of the peace, in like manner, to commit the husband of such poor woman, or the father of such poor child or children, to the house of correction, for any time not exceeding three calendar months, nor less than one calendar month."

It must be borne in mind that the provisions of the 22 Geo. III. c. 83, only relate to Gilbert Unions. (See ante, Chapter VI. § 1.)

Refusing to maintain family.

The 5 Geo. IV. c. 83, s. 3, enacts, that (inter alia) "every person being able wholly or in part to maintain himself or herself or his or her family by work or other means, and wilfully refusing or neglecting so to do, by which refusal or neglect he or she, or any of his or her family whom he or she may be legally bound to maintain, shall have become chargeable in any parish, township or place," "shall be deemed an idle and disorderly person within the true intent and meaning of this act; and it shall be lawful for any justice of the peace to commit such offender (being thereof convicted before him by his own view or by the confession of such offender, or by the evidence on oath of one or more credible witness or witnesses) to the house of correction, there to be kept to hard labour for any time not exceeding one calendar month."

Husband not liable where wife guilty of adultery.

A man is not liable to the penalty of 5 Geo. IV. c. 83, s. 3, for neglecting and refusing to maintain his wife, who has left him and committed adultery; although he himself has been guilty of adultery since her departure. (*Rex* v. *Flintan*, 1 Bar. & Adol. 227.) In that case *Flintan* was convicted as an idle and disorderly person for refusing to maintain his wife. *Elizabeth*, the wife, became chargeable to the parish of St. Andrew on the 20th of February, 1829, and received from that time to the time of the conviction four shillings a week from the parish. *Flintan* was then able wholly to maintain his wife, and he and his wife cohabited together for some years until the 26th of November, 1826, when they quarrelled on account of her having pawned some of their plate; and on the following day she quitted his house in his absence, and without his knowledge, and has not resided with him since. She subsequently sued her husband for alimony, by reason of adultery committed by the husband, who produced, in his defence, evidence of adultery committed by his wife; and the court decreed, that *Flintan* had been guilty of adultery, and that *Elizabeth Flintan* had been guilty of adultery, and therefore dismissed *Flintan* from the citation. The adultery which was proved upon the wife had been committed while she lived with her husband, and without his knowledge or subsequent condonation; the adultery proved upon him did not take place till after that time, and after she had left him. Upon appeal against the conviction, the question for the opinion of the court was, whether *Flintan* was, at the time of the conviction, legally bound, under the circumstances, to maintain his wife, within the meaning of the 5 Geo. IV. c. 83, s. 3? *Bayley*, J. "This case is very clear. By this statute, a man is criminally answerable for refusing to maintain any of his family whom he is legally bound to maintain. That obligation must be made out; and it is not established in the case of a wife who has left her husband and lives in adultery." *Littledale*, J. "I do not see the distinction attempted between the parish and an individual supplying necessaries. If the husband is not obliged to answer for the wife's contracts, or to receive her into his house, it cannot be said that he is 'legally bound to maintain her.'" *Parke*, J. "It would be strange if the court could hold that a man was not civilly liable for the supply of necessaries to his wife, and yet that not supplying them rendered him a vagrant." It was urged in favour of the argument, that the husband was bound to maintain a wife living in adultery, that otherwise the latter would be cast upon her relations; upon which *Bayley*, J., said, "If the husband were dead, she must be supported by those relations; may it not be said that her misconduct shall have the same effect?" *Littledale*, J. "Having rendered herself unworthy of her husband's protection, she returns to the same state as if she were not married." The court quashed the conviction.

Effect of ill-treatment of wife on husband's liability.

If a wife refuses to live with her husband on the ground of past ill-usage and reasonable apprehensions of being ill-treated again, yet if he wishes her to live with him, he cannot be convicted of wilfully refusing or neglecting to maintain her. (*Flannigan* v. *Bishopwearmouth*, 27 L. J. (N. S.) M. C. 46.) In that case the husband having assaulted the wife and ill-used her, so that she was afraid to live with him, she left him and went to live with her mother. The husband not paying her any money, and her mother being unwilling to be burthened with her support, she applied for and obtained parish relief. The husband was summoned under this act, when, the above facts being proved, the case was withdrawn on his repaying the parish officer the amount advanced and the costs incurred, and undertaking to pay twelve shillings a week for his wife's future support. Although of sufficient ability he never made a single payment of such allowance, and after the lapse of a few weeks, the wife having again applied for and obtained parish relief, he was again summoned. On this occasion he, by his attorney, denied that he had wilfully refused or neglected to maintain his wife, and preferred to maintain his wife if she would leave her mother's home (where, however, he himself in the first instance took her, and for some time lived with her) and would come and live with him, but he admitted he had no home of his own to reside in, he staying, when not at sea, with his father. This his wife refused to do, alleging that he had assaulted her and used her very ill, without the slightest cause, and that she was afraid to live with him alone. The defendant, through his attorney, at the close of the case, offered to refund the sum advanced by the parish, and to pay the costs of the present hearing; but gave notice that the defendant would not consider himself liable for future advances, inasmuch as he was willing to provide a home for his wife to live with him and maintain her, and undertaking to treat her kindly and properly. The magistrates, however, being fully satisfied on the evidence produced before them, that the defendant had, for a length of time, neglected to support his wife, who had on this and the former occasion, from inability to support herself, been compelled to apply to the parish for relief; that the defendant was abundantly able to support himself and wife, and to make the weekly payment, the neglect of which had caused the present application to the parish; and, moreover, that he had been guilty of the ill-usage complained of, and that the offer to take her to live with him was only made to screen himself from the consequences of his continued neglect, concurred with the overseers in considering that the defendant's proposals were not such as should induce the parish to forego the prosecution, and they convicted the defendant.

Upon a case stated under the 20 & 21 Vict. c. 43, the Court of Queen's Bench quashed the conviction. Lord *Campbell*, C. J., in giving his judgment, said, "The question now before us is, whether, upon the facts as stated, the husband who has promised to make his wife an allowance, and has broken that promise, and at the same time asks her to come and live with him, which she refuses (and I will assume that he has ill-used her in such a manner that if she had proceeded for a separation *à mensâ et thoro* she would have succeeded, and that the husband would have been liable to a person giving her credit for necessaries), is guilty of the offence of wilfully refusing to maintain his wife? I am of opinion that he has not committed any offence, and that the conviction is illegal. An act has recently passed (*x*) which contains provisions that will, when the act is in operation, be found salutary and beneficial. By that act a judicial separation may be pronounced, and the husband compelled to provide a pecuniary allowance and alimony for his wife; but when this conviction took place no such thing was known as a judicial separation, and until there was a legal separation *à mensâ et thoro* all the rights of

(*x*) 20 & 21 Vict. c. 85.

the marriage tie existed in full force. Here, the justices seemed to have supposed that, because the wife might have good ground for refusing to return and live with her husband, that rendered him liable to the offence of wilfully refusing to maintain her under the Vagrant Act. But I think that is not so. No past misconduct, however gross, would justify the wife in refusing to go and live with her husband if he wished her to do so. As the law stood, although her apprehensions were well founded, it could not be said that there had been any wilful refusal of the husband to maintain his wife, and the conviction, therefore, must be quashed." *Coleridge*, J., said, "Supposing the wife had been very much ill-used indeed, and had reasonable apprehensions of being ill-treated again, that the husband had promised to make her a pecuniary payment punctually, and that he had afterwards not paid her any money, nor made any provision for her; is that evidence of a wilful refusal and neglect to maintain his wife within the Vagrant Act? It seems to me not; it was an arrangement substituted for her living with him, and it appears he had made her the offer to return and live with him, which she had refused, and this the justices supposed they might treat, under the circumstances, as a wilful neglect on his part. That, I think, was not a proper conclusion from the facts, and that the conviction, therefore, is invalid." And by *Wightman*, J. "This is an attempt, it would seem, to enforce a separate maintenance in a case where a husband has refused to make his wife a separate allowance. The whole case shows that he was always ready to support her if she came to live with him, but she insists on her right to be maintained by him, and that she is not bound to return and live with him on account of his ill-usage towards her, though he was ready to receive her back. This is an attempt to get a separate maintenance on the ground of ill-usage, and is not a wilful refusal within the meaning of the Vagrant Act; and the conviction, therefore, must be quashed."

Wife incompetent as a witness.

It is to be observed that the wife is not a competent witness against her husband on a charge under this section, as it is not a case within the exception to the general rule excluding the evidence of the wife in criminal cases, the exception being confined to formal injuries effected by violence or coercion. (*Reeve* v. *Wood*, 34 L. J. (N. S.) M. C. 15.)

Sect. 4 enacts (inter alia), that "every person running away and leaving his wife, or his or her child (*y*) or children chargeable, or whereby she or they, or any of them, shall become chargeable to any parish, township or place;" shall be deemed a rogue and vagabond, within the true intent and meaning of this act; and it shall be lawful for any justice of the peace to commit such offender (being thereof convicted before him by the confession of such offender, or by the evidence on oath of one or more credible witness or witnesses) to the house of correction, there to be kept to hard labour for any time not exceeding three calendar months."

Actual chargeability necessary.

To constitute a person a rogue and vagabond within the meaning of this section, it is necessary that the wife or child or children should have become actually chargeable, and it is not sufficient that the chargeability is merely imminent and that actual chargeability subsequently ensues; for the meaning of the section is, that if a person goes away leaving his wife and family chargeable, he becomes a rogue and vagabond at once, if not so chargeable at the time, but they become chargeable afterwards, he becomes a rogue and vagabond then. (*Heath* v. *Heape*, 26 L. J. (N. S.) M. C. 49.) In that case the husband being out of work sold his effects and his wife and children went to her father's. While there her father, who was unable to maintain his daughter, received information that the husband was going to America, and that he was

(*y*) It has been held, that a bastard is not "a child" within this section. (*Reg.* v. *Maude*, 6 Jurist, 646.)

going on board a vessel at Liverpool the next day. It was held that, as no actual chargeability had occurred, the husband could not be lawfully arrested as a rogue and vagabond under this section (*y*). So also the running away must be wilful either with the intent of leaving the wife or children chargeable, or with the knowledge that the consequence of his running away will be to cause them to become chargeable. The section therefore was held not to apply to the case of a husband leaving his wife by mutual consent, she being at the time possessed of some property, although he subsequently committed bigamy, and the wife three years after the separation became chargeable; but without any knowledge on the husband's part that she was likely to become chargeable. (*Sweeney* v. *Spooner*, 32 L. J. (N. S.) M. C. 82.)

What constitutes 'running away.'

A mother who, having obtained an order for the admission of herself and two children into the union workhouse, took them to the gate of the workhouse and having rung the bell left them with the order in her hands, and returned to her usual residence in the borough where the workhouse was situate, was held by the Court of Common Pleas not to be within the section. (*The Cambridge Union* v. *Parr*, 30 L. J. (N. S.) M. C. 241.) *Erle*, C. J. said, "The statute is directed against persons leaving their relatives chargeable to the parish, but the words are 'running away,' and I think, therefore, in order to be within the meaning of the statute, such persons must either abscond or so conceal themselves that the parish authorities cannot find them, or they must absent themselves by going a long distance, as was required by the earlier statute" (*z*). *Byles*, J.: "I cannot but think that the former act explains what is meant by running away, in the Vagrant Act of 5 Geo. IV. In the act of 5 Geo. I. it is recited, 'that divers persons run or go away from their places of abode into other counties or places, and sometimes out of the kingdom, leaving their wives or child or children, and some mothers run or go away leaving a child or children upon the charge of the parish.' Now neither the place from or to which the woman in this case went was within the words of that act."

Sect. 5 enacts, "that every person, who under the provisions of this act shall have been convicted as an idle and disorderly person, or as a rogue and vagabond, shall be deemed to be actually chargeable to the parish, township, or place in which such person shall reside; and such person shall be liable to be removed to the parish of his or her last legal settlement, by the order of two justices of the peace of the division or place in which such person shall reside" (*a*).

(*y*) It is sufficient, therefore, under 11 & 12 Vict. c. 43, s. 11, if the information be laid within six months of the chargeability, per Pollock, C. B., and Martin, B.; Bramwell, B., dissenting. *Reeves* v. *Yates*, 31 L. J. (N. S.) M. C. 241.

(*z*) 5 Geo. I. c. 8; infra.

(*a*) See post, "ORDERS OF REMOVAL;" and see the other provisions of the Vagrant Act, Burn's Justice of the Peace, title, "VAGRANTS." Sect. 6 authorizes any person whatsoever to apprehend any person who shall be found offending against this act, and makes a constable or peace officer refusing or wilfully neglecting to take such offender into custody a breach of duty. It has been held, that a constable is not bound to take into his custody, without a warrant, a man who does not support his wife, as he could not be said to be 'found offending,' the offence depending on a variety of circumstances not visible to the eye. (*Horley* v. *Rogers*, 29 L. J. (N. S.) M. C. 140.)

Sect. 14 of the Vagrant Act gives an appeal. As to costs on an appeal under the act, see *Reg.* v. *Smith*, 29 L. J. (N. S.) M. C. 216; *R.* v. *Purdey*, 34 Id. 4.

§ 3. APPROPRIATION OF PROPERTY FOR MAINTENANCE.

Appropriation of Property for Maintenance of Wife and Children.

The 5 Geo. I. c. 8, recites, that divers persons run or go away from their places of abode into other counties or places, and sometimes out of the kingdom, some men leaving their wives, a child, or children, and some mothers run or go away, leaving a child or children, upon the charge of the parish or place where such child or children was or were born, or last legally settled, although such persons have some estates which should ease the parish of their charge in whole or in part, and then enacts, "that it shall and may be lawful for the churchwardens or overseers of the poor of such parish or place where any such wife, or child or children shall be so left, upon application to, and by warrant or order from any two justices of the peace, to take and seize so much of the goods and chattels, and receive so much of the annual rents and profits of the lands and tenements of such husband, father or mother, as such two justices of the peace as aforesaid shall order or direct, for or towards the discharge of the parish or place where such wife, child or children are left, for the bringing up and providing for such wife, child or children; which warrant or order being confirmed at the next quarter sessions, it shall be lawful for the justices of such quarter sessions to make an order for the churchwardens or overseers for the poor of such parish or place to dispose of such goods and chattels by sale or otherwise, or so much of them for the purpose aforesaid as the court shall think fit, and to receive the rents and profits, or so much of them as shall be ordered by the sessions as aforesaid, of his or her lands and tenements for the purpose aforesaid" (*b*).

Churchwardens, &c. by warrant of two justices, may seize the goods, rents, &c. of husbands and parents absenting themselves.

And by order of quarter sessions dispose thereof.

By s. 2, the churchwardens and overseers aforesaid shall be accountable to the justices at quarter sessions for all such money as they, or any of them, shall receive by virtue of this act.

Churchwardens accountable for the monies so received.

The order must state how much of the goods or rents should be seized, and the quantum of relief to be appropriated out of them; and in case of rents must limit the period of such appropriations. (*Stable* v. *Dixon*, 6 East, 163.) In that case an order was made by justices, whereby the justices authorized and commanded the overseers to *receive the annual rents and profits of the lands and tenements* of the plaintiff at *Bromhill, towards the discharge of the parish for the providing for the plaintiff's wife, &c. The order was confirmed* by the Court of Quarter Sessions, and the court ordered the overseers, &c. to receive 7*l.* 16*s.* rent of the rents of the lands of the plaintiff, towards the discharge of the said parish for the providing the plaintiff's wife. It was urged, that the original order *was void*, as being *prospective*, to seize the rents and profits *for future expenses; or* if it might be prospective, still *it did not ascertain the quantum of relief required by the parish*, conformably with the words "*so much*" in the statute; also that the sessions had it only in their power to confirm the order, and direct a sale, and (perhaps) vary the sum before directed to be levied. Lord *Ellenborough*, C. J. said, "The 5 Geo. I. gave to magistrates a power of appropriating to the purposes of the act *so much* of the goods and chattels, and *so much* of the annual rents and profits of the party, as they should order and direct, or as the sessions afterwards, to whose confirmation such order is to be submitted, should think fit. But it never was meant to invest the parish officers or magis-

See form, Appendix.

(*b*) Before the 5 Geo. I. the parish officers might have taken an assignment of the property of the husband, and there is nothing in this statute to prevent that. But as the land was conveyed in trust for the benefit of a charitable use, to the intent that the rents and profits may be applied to the use and benefit of the poor in aid of the poor-rate, the deed was within the enacting clause of 9 Geo. II. c. 36, s. 1, and not being enrolled was void, for it was not a deed within the 2nd sect., made for a valuable consideration paid by the person to whom it is made.

trates with a right to take indefinitely all the property of such a person without apportioning how much of it was to be taken for that purpose. The language of the act is, that the goods and chattels, &c. are to be taken for or towards *the discharge* of the parish; which imports that it was to relieve the parish from a burthen already incurred, and which was therefore capable of being then ascertained. But even if they had a *prospective* power, still the justices are to ascertain *how much* is to be taken. The act expressly says, the officers shall take *so much* as the justices shall order. That makes it imperative on the magistrates to ascertain the sum: but if an order like this could be sustained, it would open a door to great vexation. If any person happened to go away, leaving his family a charge on the parish, it would authorize the justices to make the parish officers trustees for the whole of his property to whatever amount."

If the husband remain in the parish, his effects cannot be seized for his wife's support. The act applies to runaways only.

It has been held, that if a man refuse to maintain his wife, but nevertheless *remains* in the parish, no order can be made under the 5 Geo. I. c. 8, to seize his effects. The wife might have recourse to the remedy of suing for alimony; or any one who supplied her with necessaries might have his action against the husband. The 5 Geo. IV. c. 83, s. 3 (ante, p. 299) gives, however, another remedy.

Appropriation of Pauper's Property for his own Maintenance.

Guardians may appropriate certain property of paupers.

By 12 & 13 Vict. c. 103, s. 16, "where any pauper shall have in his possession or belonging to him any money or valuable security for money, the guardians of the union or parish within which such pauper is chargeable may take and appropriate so much of such money or the produce of such security, or recover the same as a debt before any local court, as will reimburse the said guardians for the amount expended by them, whether on behalf of the common fund or of any parish in the relief of such pauper, during the period of twelve months prior to such taking and appropriation, or prior to such proceeding for the recovery thereof, as the case may be; and in the event of the death of any pauper having in his possession or belonging to him any money or property, the guardians of the union or parish wherein such pauper shall die may reimburse themselves the expenses incurred by them in and about the burial of such pauper, and in and about the maintenance of such pauper at any time during the twelve months previous to the decease."

As to relief by way of loan, see ante, p. 175, and as to the appropriation of the property of lunatics, see post, § 6.

§ 4. LIABILITY OF PENSIONERS.

Where the applicant for relief is entitled to a pension, the overseers are authorized to require an assignment of it.

Part of 59 Geo. 3, c. 12, and 6 Geo. 4, c. 27, repealed.

The 2 & 3 Vict. c. 51 (repealing so much of the 59 Geo. III. c. 12, as directed or authorized the assignment of any pension, superannuation, or other allowance granted in respect of service in the navy, royal marines, army, or ordnance for the indemnity or reimbursement of parishes, and as directed or authorized justices to order payment to parish officers of any such pensions, upon any pensioner or other person entitled thereto leaving his wife or family chargeable to any parish, and also the whole of the 6 Geo. IV. c. 27), provided for an assignment of such pensions when relief is given to the pensioner or his family, by admission *into the workhouse*. There is also a similar provision when the pensioner applies for *temporary relief*, without limiting the mode in which such relief may be given. If a pensioner leave his wife or family chargeable, a power is given to justices to direct a portion of the pension to be paid to the guardians, &c.—one-half, if a wife and one child is left chargeable, and two-thirds if a wife and one child, or two or more children.

Relief of pensioners in army, navy, marines and ordnance.

The following are the provisions of the statute 2 & 3 Vict. c. 51 in full.

Sect. 2. "When relief shall be given to any person entitled to or in receipt of any army or naval pension, or any superannuation or other allowance in respect of his service in the army, navy, marines, or ordnance, or any other branch of the military service, or in any civil branch of the army, navy, marines, or ordnance, or to his wife, or to any person whom he may be liable to maintain, by admission of such pensioner, his wife, or person into the workhouse of any union or parish, it shall be lawful for the guardians of such union, by minute, in the form in the schedule to this act annexed marked (A.) with respect to any pension payable at Chelsea Hospital, or payable out of any funds intrusted to the commissioners of Chelsea Hospital for the payment of pensions, and in the form in the schedule to this act marked (B.) with respect to any Greenwich out-pensions, and in the form in the schedule to this act marked (C.) with respect to any other of the before-mentioned pensions, superannuation, or allowance, to require that the next payment which shall become due of such pension or allowance shall be made to such guardians, who shall transmit a copy of such minute, attested by their clerk, at least one month before such payment shall become due, and addressed, as to pensions or allowances payable at Chelsea Hospital, or by the commissioners of the said hospital, to the secretary of Chelsea Hospital, with the words 'Chelsea pension' written thereon, and as to Greenwich out-pensions to the paymaster-general, Out-pension Office, Tower Hill, with the words 'Greenwich out-pension' written thereon, and as to all other the before-mentioned pensions to the paymaster-general, Whitehall, London; and the commissioners of Chelsea Hospital and her Majesty's paymaster-general respectively shall thereupon, and upon the like proof being given as is hereinafter directed with respect to assignments, cause payment to be made to such guardians; and the said guardians shall thereupon enter upon their minutes the nature and amount of relief actually given to such pensioner, or his wife or other person, and upon application made by the said pensioner to the clerk of the said guardians shall inform the said pensioner of the amount thereof; and the said guardians so receiving any pension or allowance shall retain and apply so much thereof as will repay the cost of relief actually given as aforesaid for the use and indemnity of the union or parish, and shall pay the surplus (if any) to the pensioner or person entitled thereto; and upon the receipt of any such minute as aforesaid the payment of the pension or other allowance mentioned therein shall be suspended until sufficient proof shall have been given to entitle the guardians named in such minute to receive the money thereby required to be paid to them; provided that where such relief shall not be given to the pensioner himself, the said guardians, before transmitting any such minute as aforesaid, shall obtain satisfactory proof that the person to whom such relief shall be given is the lawful wife of the said pensioner, or a person whom such pensioner is by law liable to maintain, which proof shall also be entered upon the minutes of the said board of guardians."

Guardians may require the payment of pensions to be made to them for relief given by admission of pensioners into the workhouse.

Sect. 3. "When any pensioner or person entitled to or in receipt of any pension or other allowance as aforesaid shall apply for temporary relief to the guardians of any union or parish in England or Ireland, or to the churchwardens or overseers of any parish in which the administration of the relief of the poor has not been directed to be governed by a board of guardians, or not situate within any union, so long only as such parish is not governed by such guardians, nor situate within any union, or to the heritors and kirk session in Scotland, or shall receive relief from the said guardians, churchwardens, and overseers, or heritors and kirk session, it shall be lawful for the said guardians, or churchwardens and overseers of the poor, and heritors and kirk session, but not compulsory upon them, to grant such relief in such case, or in the event of any pensioner receiving relief without previous

Authorizing assignment of pension on application for relief.

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application on his part, and to require the pensioner applying for or receiving the same to assign to them respectively his next quarterly payment of pension or other allowance, to the intent that such guardians, or churchwardens and overseers, or heritors and kirk session respectively, may receive the same, and retain for the use of the said union or parish so much thereof as shall have been by them respectively advanced for the temporary relief of such pensioner, or of his wife or family residing with him in such union or parish; and every assignment to be made of any such pension or other allowance for the purposes and according to the tenor of this act shall be exempt from stamp duty, and shall, as to any pensions payable at Chelsea Hospital or by the commissioners thereof, be in the form set out in the schedule to this act marked (D.), and as to Greenwich out-pensions in the form set out in the schedule to this act marked (E.), and as to all other the before-mentioned pensions and allowances payable by her Majesty's paymaster-general in the form set out in the schedule to this act marked (EE.); and every assignment shall be certified by the chairman and clerk of the said union at some meeting of the board of guardians, or by a churchwarden or overseer of such parish, or one of the heritors, and shall be attested by one of her Majesty's justices of the peace; and every such assignment shall be transmitted, within seven days after the same shall have been executed, and at least one month before the payment thereon shall become due, under cover, addressed, as to pensions payable at Chelsea Hospital or by the commissioners of the said hospital, to the secretary of Chelsea Hospital, with the words 'Chelsea pensioner' written thereon, and with respect to naval pensions to the paymaster-general, Out-pension Office, Tower Hill, with the words 'Greenwich out-pension' written thereon, and as to all other the before-mentioned pensions, to the paymaster-general, Whitehall, London, who shall thereupon respectively cause the payment thereof to be made to the said guardians of the union or parish, or to the churchwardens and overseers of the poor of the parish, or to the overseers of the poor alone where there are no churchwardens, or heritors and kirk session, for whose security the assignment shall have been made, in the same manner as the said payment would have been made to the person assigning the same if no such assignment had been made; and such guardians, or churchwardens and overseers, or heritors and kirk session, are hereby authorized to receive the same, and to retain thereout, for the use of the said union or parish, so much as shall have been advanced and paid on security thereof; and the said guardians, churchwardens and overseers, or heritors and kirk session respectively, shall keep an account in writing of the sum or sums so advanced, and also, immediately upon the receipt of the said pension, shall pay the residue thereof (if any) to the pensioner by whom such assignment shall have been made; and if any question shall arise between the pensioner making any such assignment, and the guardians, or churchwardens and overseers of the poor, or heritors and kirk session, receiving the same, touching the amount which shall be due and payable to them respectively by virtue of any such assignment, the same shall be determined in a summary way by one of her Majesty's justices of the peace, and his order and determination therein shall be final and conclusive: provided always, that no such assignment shall entitle the said guardians, or churchwardens and overseers, or heritors and kirk session, to whom the same shall be made, to receive the pension or allowance purporting to be thereby assigned, if the same shall not have been transmitted within seven days after the same shall have been executed, if the party assigning the same shall die before the time when such pension would have become payable to him, as if no such assignment thereof had been made: provided also, that all assignments not made in conformity with the provisions of this act shall be null and void."

Pension may be applied to wife and family of pensioner deserted, and chargeable.

Sect. 4. "When any pensioner or other person entitled to or in receipt of any army, naval, or other pension or allowance as aforesaid, shall leave his wife or family in any union or parish, or shall suffer them to become chargeable to any union or parish, it shall be lawful for two or more of her Majesty's justices of the peace for the county or place in which such union or parish is situate, upon complaint thereof made on oath to them by any one or more of the guardians of any such union or parish, or any one of the churchwardens and overseers of the poor of such parish where no union or board of guardians is established, or by the relieving officer of such union or parish, or the heritors and kirk session in Scotland, and upon due and satisfactory proof being given to the said magistrates that the person so left is the lawful wife of the said pensioner, or the lawful child (as the case may be), by order under their hands and seals, as to army pensions payable at Chelsea Hospital or by the commissioners thereof, in the form set out in the schedule to this act marked (F.) (*b*), and as to Greenwich out-pensioners in the form set out in the schedule to this act marked (G.) (*b*), and as to all other the before-mentioned pensions and allowances payable by her Majesty's paymaster-general in the form set out in the schedule to this act marked (H.) (*b*), to direct that one-half of the next payment which shall become due of such pension or other allowance, in case it shall be the wife or one child only who shall have been so left or suffered to become chargeable, or two-thirds thereof in case a wife and child, whether his own or a step-child, or two or more children, shall have been left or suffered to become chargeable, shall be made to the guardians of such union or parish, or to the churchwardens and overseers of the poor of the parish, or heritors and kirk session, to which such wife or family shall have become chargeable; and such guardians or churchwardens and overseers of the poor, or heritors and kirk session, shall transmit or cause to be transmitted such order as to such army pensions as aforesaid to the commissioners for the affairs of the Royal Hospital at Chelsea, and with respect to such naval and other pensions as aforesaid to the paymaster-general, Whitehall, London, in like manner and within the like period as any assignment is hereinbefore directed to be transmitted, which said commissioners of Chelsea Hospital and her Majesty's paymaster-general respectively shall thereupon, and upon sufficient proof being given to their satisfaction respectively that the person whose pension shall be directed to be paid shall have been living when the same has become payable, and would have been entitled to receive the same if no such order had been made, cause the said payment of one moiety or two-thirds, as the case may be, to be made to the said guardians of the union, or churchwardens and overseers of the poor of the parish, or heritors and kirk session, for whose security such order shall have been made; and the guardians or churchwardens and overseers of the poor, or heritors and kirk session, receiving any such pension by virtue of any such order, shall retain and apply the same, or so much thereof as shall have been actually expended for the purposes aforesaid, for the use and indemnity of the said union or parish, and shall pay the overplus (if any there shall be) to the pensioner or person entitled thereto; and upon the receipt of any such order as aforesaid by which the pension to be mentioned therein shall be directed to be paid as aforesaid, the payment thereof shall be suspended until sufficient proof, by the personal appearance of the pensioner before the collector of excise, or in such other manner as shall be directed by the lords and others commissioners of Chelsea Hospital, or paymaster-general, shall have been given, to entitle the said guardians or churchwardens and overseers of the poor of the parish in such order named, or heritors and kirk session, to receive the money thereby directed to be paid to them; and

(*b*) See the forms in the Appendix to this volume.

upon the like proof, the other moiety or one-third, as the case may be, of the quarterly payment of the said pension shall be paid by the commissioners of Chelsea Hospital and her Majesty's paymaster-general respectively to the pensioner entitled thereto upon his own receipt; provided that in all cases where it shall be made to appear to the said justices that the woman relieved or to be relieved as the wife of the said pensioner shall be notoriously profligate, or cohabiting with any other person than her said husband, it shall be lawful for the said justices and they are hereby required to refuse making any order with respect to the payment of the said pension."

As to the pension of insane pensioners.

Sect. 5. "In case any such army pensioner as aforesaid shall become insane, it shall be lawful for any one of her Majesty's justices of the peace for the county or place in which such pensioner shall reside, upon due proof being made of such insanity, to certify the same to the lords commissioners of Chelsea Hospital, who shall thereupon order and direct, according to their discretion, that the pension of the said insane pensioner shall be paid to the guardians of the union or parish, or churchwardens and overseers of the parish not governed by a board of guardians or comprised in any union, or heritors and kirk session of the place in which such pensioner shall reside, or to the wife, child, or other person to whom the care of such insane person shall be intrusted, or to the treasurer of the county, if such pensioner shall be confined in a county lunatic asylum, or public asylum, or house licensed for the reception of persons insane; and the receipt of the person to whom the same shall be directed to be paid shall be a sufficient voucher and discharge for so much money as shall appear to have been paid thereon."

When officers or seamen become lunatic, their pensions payable to, &c. their wives.

Sect. 6. "And whereas by an act passed in the eleventh year of the reign of his late Majesty King George the Fourth, to amend and consolidate the laws relating to the pay of the royal navy, power is vested in the commissioners for executing the office of Lord High Admiral to direct pensions payable to the officers and seamen of the royal navy, and to the officers of marines and to marines, who shall become lunatic, or so much of such pensions as the said commissioners shall think fit, to be disposed of in the maintenance of such lunatic persons, and it is expedient that such power should be extended to the pensions, superannuations, and other allowances made to persons for services in the civil departments of the navy; be it therefore enacted and declared, that in all cases when any such persons as last mentioned are or shall become lunatic, such pensions, superannuations, or other allowances, or so much thereof as the said commissioners for executing the office of Lord High Admiral shall deem expedient, shall and may be paid by the paymaster-general to the wife, relative, or other person having the care and maintenance of the lunatic, to be applied towards his support; and the receipt of the wife, relative, or other person as aforesaid to whom the same shall be so paid shall be a sufficient discharge to the said paymaster-general for the same."

Orders and assignments relating to the same quarter's pension to be paid according to priority of dates.

Sect. 7. "That if it shall happen that the minute of any board of guardians, and any assignment by the person entitled, and any order of justices relating to the same pension, or any two of such instruments, shall, as to such army pensions, be received at Chelsea Hospital, and as to such Greenwich out-pensions be received at the Pension Office, Tower Hill, London, or as to any other of such pensions or other allowance as aforesaid be received at the office of the paymaster-general at Whitehall, in any one quarter, the commissioners of Chelsea Hospital or her Majesty's paymaster-general respectively shall pay the quarter's pension upon such one of the said respective instruments as shall have been first executed according to the date thereof, and duly transmitted, so as to enable the commissioners and her Majesty's paymaster-general respectively, according to their usual course of forwarding the receipts for quarterly pensions, to confer such priority; and in the event of any such instruments being dated and received the same day, then a propor-

tionate part of the pension to which such instruments relate shall be paid upon every or each of the said instruments."

Sect. 8 provides against assignment of pensions to any persons but guardians and overseers, and the forgery of the documents is made felony by s. 9. The term "parish" to include all places separately maintaining their own poor, s. 10.

Definition of parish.

The statute 9 Vict. c. 10, reciting that it was expedient that provision should be made for the more easy recovery of relief given or money advanced to pensioners by guardians and other officers concerned in the administration of relief to the poor, repealed "so much of the act 2 & 3 Vict. c. 51, as relates to the repayment of relief administered to Chelsea or Greenwich out-pensioners."

Repayment to parishes of relief given to out-pensioners.

The provisions of the 9 Vict. c. 10, were, however, repealed by the 19 Vict. c. 15. Sect. 8 of that statute enacts, that "if any Chelsea or Greenwich pensioner shall be relieved, or become chargeable in Great Britain or Ireland in respect of relief afforded to himself or to any person whom he is liable to maintain, or if in any case the secretary-at-war for the time being and the guardians of the poor of any union or parish, or the overseers of any parish or township not under a board of guardians, or the heritors and kirk session of any parish in Scotland, think it desirable that the whole or any part of the pension of such pensioner should be advanced out of the poor's rate or funds applicable to the relief of the poor, it shall be lawful for the secretary-at-war, by any writing under his hand or under the hand of any officer or person employed by him, to agree with such guardians or overseers, or heritors and kirk session, for the repayment to them out of the pension of any such pensioner of the amount of relief so advanced to or expended on his account, not exceeding in any case where relief has been administered to his wife or one child only, whom he is bound to maintain, the amount of one-half, or where such relief has been administered to two or more such children, or to his wife and one or more such child or children, the amount of two-thirds, of his pension so advanced."

Lunatic pensioners.

Sect. 9 enacts, that "in case any Chelsea or Greenwich pensioner shall be or become insane, it shall be lawful for the secretary-at-war for the time being, upon being satisfied of such insanity, to order that the pension of such insane pensioner, or so much thereof as shall appear to the said secretary-at-war to be necessary for his care and maintenance, shall be paid to such guardians of the poor or overseers, or heritors and kirk session, or to the wife, child, or any other person to whom the care of such insane pensioner may be intrusted, or who may be chargeable for or liable to the expense of his care and maintenance; and the receipt of the person or persons to whom the same shall be so paid shall be a sufficient voucher and discharge for so much money as shall appear to have been paid thereon: provided always, that where no claim or demand shall be made for the support of any such insane pensioner, or where the charge for his care and maintenance does not amount to the full rate of his pension, then and in every such case it shall be lawful for the secretary-at-war, at his discretion, to order his pension, or so much thereof as may not be necessary for his care and maintenance as aforesaid, to be paid to his wife or child or children, if he have any."

§ 5. Relief to Seamen's Families out of Wages.

"The Merchant Shipping Act, 1854" (17 & 18 Vict. c. 104), contains the following provisions relating to "Relief to Seamen's Families out of Poor Rates" (*c*).

(*c*) By "The Merchant Shipping Repeal Act, 1854" (17 & 18 Vict. c. 120), the previous provisions on this subject, contained in s. 32 of the 59 Geo. III. c. 12, were repealed.

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Relief to seamen's families, to be chargeable on a certain proportion of their wages.

Sect. 192. "Whenever during the absence of any seaman on a voyage his wife, children, and step-children, or any of them, become or becomes chargeable to any union or parish in the united kingdom, such union or parish shall be entitled to be reimbursed out of the wages of such seaman, earned during such voyage any sums properly expended during his absence, in the maintenance of his relations, or any of them, so that such sums do not exceed the following proportions of his said wages, that is to say:—

1. If only one of such relations is chargeable, one-half of such wages.
2. If two or more of such relations are chargeable two-thirds of such wages.

But if during the absence of the seaman any sums have been paid by the owner to or on behalf of any such relation as aforesaid, under an allotment note given by the seaman in his, her, or their favour, any such claim for reimbursement as aforesaid shall be limited to the excess (if any) of the proportion of the wages hereinbefore mentioned over the sums so paid."

Notice to be given to owner, and charge to be enforced on the return of the seaman.

Sect. 193. "For the purpose of obtaining such reimbursement as aforesaid, the guardians of the union or parish where the relief of the poor is administered by guardians, and the overseers of the poor of any other parish in England, and the guardians or other persons having the authority of guardians in any union in Ireland, and the inspector of the poor in Scotland, may give to the owner of the ship in which the seaman is serving a notice in writing stating the proportion of the seaman's wages upon which it is intended to make the claim and requiring the owner to retain such proportion in his hands for a period to be therein mentioned, not exceeding twenty-one days from the time of the seaman's return to his port of discharge, and also requiring such owner immediately on such return to give to such guardians, overseers, persons, or inspector notice in writing of such return; and such owner, after receiving such notice as aforesaid, shall be bound to retain the said proportion of wages, and to give notice of the seaman's return accordingly, and shall likewise give to the seaman notice of the intended claim; and the said guardians, overseers, persons, or inspector may upon the seaman's return apply in a summary way in England or Ireland to any two justices having jurisdiction in such union or parish as aforesaid, and in Scotland to the sheriff of the county, for an order for such reimbursement as aforesaid; and such justices or sheriff may hear the case, and may make an order for such reimbursement to the whole extent aforesaid, or to such lesser amount as they or he may under the circumstances think fit: and the owner shall pay to such guardians, overseers, persons, or inspector, out of the seaman's wages, the amount so ordered to be paid by way of reimbursement, and shall pay the remainder of the said wages to the seaman; and if no such order as aforesaid is obtained within the period mentioned in the notice so to be given to the owner as aforesaid, the proportion of wages so to be retained by him as aforesaid shall immediately on the expiration of such period, and without deduction, be payable to the seaman" (*d*).

(*d*) These provisions "apply to all sea-going ships registered in the united kingdom (except such as are exclusively employed in fishing on the coast of the united kingdom, and such as belong to the Trinity House, the commissioners of northern lighthouses, or the port of Dublin corporation, and also except pleasure yachts), and also to all ships registered in any British possession and employed in trading or going between any place in the united kingdom, and any place or places not situate in the possession in which such ships are registered, and to the owners, masters, and crews of such ships respectively, wherever the same may be." (See 17 & 18 Vict. c. 104, s. 109.)

§ 6. LIABILITY IN THE CASE OF PAUPER LUNATICS.

Liability of Husband for Maintenance of Lunatic Wife.

Maintenance by husband of lunatic wife.

By 13 & 14 Vict. c. 101, s. 5, "where any married woman being lunatic shall be duly removed to any asylum, licensed house or registered hospital under any of the statutes in such behalf, any two justices having jurisdiction in the place wherein the husband of such lunatic shall dwell, upon application by or on behalf of the guardians of the union or of the parish having a separate board of guardians, or the overseers of the parish, to which union or parish respectively such lunatic shall be or become chargeable, may summon such husband to appear before them to show cause why an order should not be made upon him to maintain or contribute towards the maintenance of his wife in such asylum, licensed house or registered hospital; and upon his appearance, or in the event of his not appearing upon proof of due service of such summons upon him, such justices may (if they think fit) make an order upon him to pay such sum, weekly or otherwise, for or towards the cost of the maintenance of such lunatic, as, after consideration of all the circumstances of the case, shall appear to them to be proper, and determine in such order how and to whom the payments shall from time to time be made, which order shall, if the payments required by it to be made be in arrear, be enforced in the manner prescribed by the 11 & 12 Vict. c. 43, for the enforcing of orders of justices requiring the payment of a sum of money."

As to "LUNATIC PENSIONERS," see ante, § 4.

Liability of Lunatic's Estate.

Expenses incurred for insane paupers may be levied off their estates.

"The Poor Law Amendment Act, 1844" (7 & 8 Vict. c. 101), s. 27, enacts, "that if it be made to appear to any two justices that any insane person, lunatic, or idiot chargeable to any parish hath an estate more than sufficient to maintain his family, they shall by order under their hands and seals direct the overseers of the parish to which such person is chargeable to seize so much of any money, to seize and sell so much of any goods and chattels, or to receive so much of the rent of the lands or tenements of such person who is proved to such justices to be insane, necessary to pay any charges incurred in providing for the removal, maintenance, clothing, medicine, and care of such person; and if any trustee or other person having the possession, custody, or charge of any property of an insane person, lunatic, or idiot, or if the governor and company of the Bank of England, or any other person or persons, having in his or their hands any stock, interest, dividend, or annuity due to any such insane person, lunatic, or idiot, pay any money to any overseer or to any guardians of the poor to defray the charges incurred by any parish in the removal, maintenance, clothing, medicine, or care of such insane person, lunatic, or idiot, the receipt of such overseer or of the clerk of such guardians shall be a good discharge to such trustee or other person aforesaid."

How justices are to proceed where it appears to them that the lunatic has property applicable to his maintenance.

"The Lunatic Asylums Act, 1853" (16 & 17 Vict. c. 97), enacts (s. 94), that "where any lunatic shall be sent to an asylum, registered hospital, or licensed house, under any order made by virtue of the authority hereinbefore given to two justices, if it appear to such justices that such lunatic hath an estate applicable to his maintenance, and more than sufficient to maintain his family (if any), it shall be lawful for such justices to make an application in writing under their hands and seals to the nearest known relative or friend of such lunatic, for the payment of the charges of the examination, removal, lodging, maintenance, clothing, medicine, and care of such lunatic; and, in case such charges be not paid within one month after such application, it shall be lawful for the same or any other justices, by an order under their hands and seals, to direct a relieving officer or overseer of the parish from which such

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lunatic shall be sent, or where any property of such lunatic shall be, to seize so much of the money, and to seize and sell so much of the goods and chattels, and take and receive so much of the rents and profits of the lands and tenements of such lunatic, and of any other income of such lunatic, as may be necessary to pay the charges of the examination, removal, lodging, maintenance, clothing, medicine, and care of such lunatic, accounting for the same to the same or any other justices, such charges having been first proved to the satisfaction of the said justices, and the amount set forth in such order; and if any trustee or other person having the possession, custody or charge of any property of such lunatic, or if the governor and company of the Bank of England, or any other body or person having in their or his hands any stock, interest, dividend, or annuity belonging or due to such lunatic, pay the whole or any part thereof to any overseer or relieving officer, to defray the charges set forth in such order, the receipt of such overseer or relieving officer shall be a good discharge to such trustee, governor, and company, or other body or person as aforesaid: provided always, that, notwithstanding it may appear to the said justices that such lunatic hath such estate as aforesaid, it shall be lawful for such justices, in the meantime and until such charges as aforesaid shall be paid, in pursuance of such application or order as aforesaid, to make an order on the guardians of the union or parish, or the overseers of the parish, from which such lunatic shall be sent for confinement, for payment of the charges of the removal, lodging, maintenance, clothing, medicine, and care of such lunatic; and such guardians or overseers shall be reimbursed such charges under any order to be made as aforesaid for payment of such charges, out of the property of the lunatic, unless the same be sooner repaid by some relative or friend of such lunatic in pursuance of such application as aforesaid."

The same statute contains the following further sections.

Lunatic's property to be available for his maintenance.

Sect. 104. "If it appear to any justice or justices by this act authorized to make any order for the payment of money for the maintenance of any lunatic that such lunatic has an estate, real or personal, applicable to his maintenance, and more than sufficient to maintain his family, if any, he or they shall, by an order under his or their hand and seal or hands and seals, direct the overseers of the parish, or a relieving officer of the parish or union, or the treasurer or some other officer of the county to which such lunatic is chargeable, or in which any property of the lunatic may be, or an officer of the asylum in which the lunatic may be, to seize so much of any money, and to seize and sell so much of the goods and chattels, and to take and receive so much of the rents and profits of the lands and tenements of such lunatic and other income of such lunatic as may be necessary to pay the charges of the examination, bringing before a justice or justices, removal, lodging, maintenance, clothing, medicine, and care of such lunatic, accounting for the same to such justice or justices, such charges having been first proved to the satisfaction of such justice or justices, and the amount set forth in such order; and if any trustee or other person having the possession, custody, or charge of any property of such lunatic, or if the governor and company of the Bank of England, or any other body or person having in their or his hands any stock, interest, dividend, or annuity belonging or due to such lunatic, pay any money according to any such order, or pay any money without any such order, to the guardians of any union or parish, or to any overseer of any parish not in a union or under a board of guardians, or to the treasurer of any county, or any other officer of any county authorized to receive the same, to defray the charges paid or incurred by or on behalf of such parish, union, or county for the examination, bringing before a justice or justices, removal, lodging, maintenance, clothing, medicine, and care of such lunatic, the receipt of the person authorized to receive such money under such order, or of such guardians, overseer, or treasurer, or other

officer, shall be a good discharge to such trustee, governor, and company, or other body or person as aforesaid."

Liability of relations of pauper not to be affected.

Sect. 105. "The liability of any relation or person to maintain any lunatic shall not be taken away or affected where such lunatic is sent to or confined in any asylum, registered hospital, or licensed house by any provision herein contained concerning the maintenance of such lunatic."

So also, in the case of criminal lunatics, power is given to seize their property under an order of justices. (See ante, Chapter XVII., p. 290.)

§ 7. Maintenance of Bastards.

Bastards born before the Poor Law Amendment Act, 1834.

As regards the maintenance of bastards born before the passing of "The Poor Law Amendment Act, 1834" (4 & 5 Will. IV. c. 76), two justices were, by the 18 Eliz. c. 3, s. 2, empowered, by an order of filiation, to compel the putative father or mother, or both, to pay a weekly sum for the child's maintenance; and by the 49 Geo. III. c. 68, s. 3, the order might be enforced by a justice committing the party disobeying it to the common gaol or house of correction, there to be imprisoned and kept to hard labour for three months, unless the sum was sooner paid.

The 13 & 14 Car. II. c. 12, s. 19, empowered the overseers to seize the property of the putative father or mother.

The 4 & 5 Will. IV. c. 76, s. 69 (*e*), repealed or superseded all the prior legislative enactments respecting bastards born after the passing of that act.

Bastards born after that time.

By sect. 71 of that act, "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 (*f*), 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; 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."

Mother bound to maintain.

When she marries husband to maintain them.

Sect. 57. "Every man who from and after the passing of this act shall marry a woman having a child or children at the time of such marriage, whether such child or children be legitimate or illegitimate, shall be liable to maintain such child or children as a part of his family, and shall be chargeable with all relief, or the cost price thereof, granted to or on account of such child or children until such child or children shall respectively attain the age of sixteen, or until the death of the mother of such child or children; and such child or children shall, for the purposes of this act, be deemed a part of such husband's family accordingly."

Where she is unable to maintain them.

By sects. 72, 73, 74, 75 and 76, as altered by the 2 & 3 Vict. c. 85, if the mother became unable to maintain the child, and it therefore became chargeable to the parish, then the putative father might be compelled to reimburse the parish for its maintenance and support, on application to the sessions for that purpose.

But by "The Poor Law Amendment Act, 1844" (7 & 8 Vict. c. 101), reciting that it was expedient to amend the 4 & 5 Will. IV. c. 76, and certain other acts relating to the relief of the poor in England, it was

(*e*) The repeal is of so much of any act of parliament as enables the mother of any bastard to charge or affiliate it, or as enables any overseer or guardian to charge any person as the reputed father, or as in any way renders the reputed father liable to punishment or contribution, or as enables parish officers to seize his goods or the rents of his lands, and so much of any act as renders an unmarried woman with child liable to be summoned, examined, or removed, or as renders the mother of any bastard liable as such to be imprisoned or otherwise punished.

(*f*) See post, "SETTLEMENT."

CHAP. XVIII.

Powers of making order on putative father to cease.

enacted, "that from and after the passing of this act all powers for obtaining or making an order upon any putative father for the maintenance of a bastard child shall cease and determine, except as hereinafter provided."

Present powers.

Under this act power is given to the mother of a bastard child to summon the putative father before justices, "and if the evidence of the mother be corroborated in some material particular by other testimony, to the satisfaction of the said justices, they may adjudge the man to be the putative father of such bastard child; and they may also, if they see fit, having regard to all the circumstances of the case, proceed to make an order on the putative father for the payment to the mother of the bastard child, or to any person who may be appointed to have the custody of such child under the provisions of this act, of a sum of money weekly, and of such costs as may have been incurred in the obtaining of such order, including, if they think proper, ten shillings for the midwife, and ten shillings towards the funeral expenses of the child, provided it have died before the making of such order; and if the application be made before the birth of the child, or within two calendar months after the birth of the child, such weekly sum may, if the said justices think fit, be calculated from the birth of the child, at a rate not exceeding five shillings per week for the first six weeks after the birth of such child; and in other cases such sum shall not exceed two shillings and sixpence per week from the time of the making of the application."

Power is given to enforce the order by distress and imprisonment.

As these provisions are quite independent of the poor laws, it is unnecessary to give them in greater detail (*g*).

The following provisions of the same statute, however, are connected with the administration of the poor laws, and are therefore given at length.

Money under the order to be paid to the mother or to a person appointed by the justices.

Sect. 5. "And be it enacted, that all money payable under any order as aforesaid shall be due and payable to the mother of the bastard child in respect of such time and so long as she lives and is of sound mind, and is not in any gaol or prison, or under sentence of transportation; and after the death of the mother of such bastard child, or whilst such mother is of unsound mind, or confined in any gaol or prison, or under sentence of transportation, any two justices may, if they see fit, by order under their hands and seals, from time to time appoint some person who, with his own consent, shall have the custody of such bastard child, so long as such bastard child is not chargeable to any parish or union, and any two such justices may revoke the appointment of such person, and may appoint another person in his stead; and every person so appointed to have the custody of a bastard child shall, so long as such child is not chargeable to any parish or union, be empowered to make application for the recovering of all payments becoming due under the order of the court of petty session as aforesaid, in the same manner as the mother of such bastard child might have done; and the clerk to the justices making any order on the putative father of a bastard child, or appointing any person to have the custody of such child, as hereinbefore provided, shall as soon as may be send by post or otherwise a duplicate of such order or appointment, signed by such clerk, to the clerk to the guardians of the union or parish in which the mother of such bastard child resided at the time of making such order or appointment: provided always, that no order for the maintenance or support of any such bastard child made in pursuance of this act shall, except for the purpose of recovering money previously due under such order, be of any force or validity after the child in respect of whom it was made has attained the age of thirteen

Time of cessation of order.

(*g*) See 7 & 8 Vict. c. 101, and 8 & 9 Vict. c. 10, and Burn's Justice of the Peace, Vol. I., tit. "BASTARDS."

years, or after the marriage of the mother of such child, or after the death of such child."

Mother punishable for neglect or desertion of her bastard child. 5 Geo. 4, c. 83.

Sect. 6. "Every woman neglecting to maintain her bastard child, being able wholly or in part so to do, whereby such child becomes chargeable to any parish or union, shall be punishable as an idle and disorderly person, under the provisions of an act made and passed in the fifth year of the reign of his late Majesty King George the Fourth, intituled 'An Act for the Punishment of idle and disorderly Persons, and Rogues and Vagabonds, in that part of the United Kingdom called England;' and every woman so neglecting to maintain her bastard child, after having been once before convicted of such offence, and every woman deserting her bastard child, whereby such bastard child becomes chargeable to any parish or union, shall be punishable as a rogue and vagabond, under the provisions of the said last-recited act" (*h*).

Officers of parishes or unions not to receive money under the order, or to interfere in any respect.

Sect. 7. "It shall not be lawful for any justice of the peace to appoint any officer of any parish or union to have the custody of any bastard child as hereinbefore provided, or for any officer of any parish or union, clerk of justices, or constable, to receive any money in respect of any bastard child under an order of petty session as aforesaid, or as such officer to conduct any application to make or enforce such order, or in any way to interfere as such officer in causing such application to be made, or in procuring evidence in support of such application, under a penalty of forty shillings, to be levied on conviction before any two justices, as penalties and forfeitures under the said first-recited act: provided always, that after the death of such mother, or if such mother be incapacitated as aforesaid, so often as any bastard child for whose maintenance such order of petty sessions has been made, becomes chargeable to any parish or union by the neglect of the putative father to make the payments due under the orders of justices, then and in such case it shall be lawful for any board of guardians of a union or parish, or if there be no such board of guardians for the overseers of any parish or place, to make such application for the enforcement of the order as might have been made by the mother of such bastard child if alive; but all payments for the maintenance of such child made in pursuance of such application shall be made to some person to be from time to time appointed by the justices as hereinbefore provided, and on condition that such bastard child shall cease to be chargeable to such parish or union."

Proceedings against putative father in case of death or incapacity of mother.

Penalties for promoting marriage of a mother of a bastard improperly, misapplying monies, or maltreating a bastard child.

Sect. 8. "If any officer of a union, parish, or place, endeavour to induce any person to contract a marriage by threat or promise respecting any application to be made or any order to be enforced with respect to the maintenance of any bastard child, such officer shall be guilty of a misdemeanor; and every person having the custody of any bastard child under any order of justices, as hereinbefore provided, who may misapply monies paid by the putative father for the support of such child, or may withhold proper nourishment from such child, or otherwise abuse and maltreat such child, shall, on conviction before any two justices, forfeit and pay a sum not exceeding ten pounds."

It may be observed here that where a bastard child is born, for whose support the parents neglect to provide necessaries, the parish officers are obliged to do it. (*Hags* v. *Bryant*, 1 H. Bl. 253.)

Desertion of child.

The abandonment of a bastard child by its mother, with the intent of burthening the parish with its maintenance, is not an indictable offence; the authorities only establish that if there is a person bound by the obligations of nature, or by contract, to supply with food a child of tender years, and such person has the means of providing food for it, and neglects to do so, an indictment will lie against the person if the health of the child is thereby injured. (*R.* v. *Hogan*, 20 L. J. 219, M. C.)

(*h*) See the punishments under the statute 5 Geo. 4, c. 83, ante, pp. 299, 301.

CHAP. XIX.

CHAPTER XIX.

Of the Settlement of the Poor.

§ 1. SETTLEMENTS IN GENERAL.

Definition of a settlement.

"BY the term *settlement* is to be understood *a permanent indestructible right* to take the benefit of the poor laws in a particular parish or place which maintains its own poor." (Gambier on Par. Sett. 1.)

"A settlement is the *right acquired* in any one of the modes pointed out by the poor laws to become a recipient of the benefit of those laws, in that parish or place, which provides for its own poor, where the right has been *last* acquired. It is not *forfeitable*, and may be *communicated* from person to person, notwithstanding an attainder, which works a forfeiture of most civil rights." (*Rex* v. *St. Mary, Cardigan*, 6 T. R. 116 (*a*)). It may cease, or be *destroyed for ever* in the parish or place where it once existed, upon the acquisition of the same right, or any other new right, in any other such parish or place. It will be observed that, from the *language* of the act 13 & 14 Car. II. c. 12, and the other statute relating to the removal of paupers, a pauper is always to be removed to the parish where his *last* settlement was acquired; so that where a person may have *successively* acquired *several* different settlements he has *no option*, but must seek relief in the parish where he acquired his *last* settlement. See post, "REMOVAL."

Earliest provisions as to place of relief.

By the earliest statute on this subject (12 Rich. II. c. 7), in which punishment was awarded against beggars able to serve, and provision made for impotent beggars, the poor were to repair, in order to be maintained, to the places where they were *born*. By 11 Hen. VII. c. 2, beggars not able to work were to resort to the *hundred* where they last *dwelled*, or *were best known* or *were born;* and by 19 Hen. VII. c. 12, to where *born*, or *to where they had made their last abode by the space of three years*. By 1 Edw. VI. c. 3, this was explained to be, where they had been *most conversant* by the space of three years. By 1 Jac. I. c. 7, they were to be sent to the place of their *dwelling*, if they had any; if not, to the place where *they last dwelt* by the space of *one* year; if that could not be known, then to the place of their *birth*. So that beggars not able to work were to be maintained where they were born, or where they had inhabited,—*first*, for any indeterminate time, *next* for three years, and lastly, for *one year*.

Poor people going from one parish to another.

This last regulation as to the place where paupers were to be supported continued to the time of 13 & 14 Car. II. c. 12, by which, after reciting that the number of poor within England and Wales is very great and burthensome (*b*); "and whereas, by reason of some defects in the law, poor people are not restrained from going from one parish to another, and therefore do endeavour to settle themselves in those parishes where there is the best stock, the largest commons or wastes to build cottages, and the most wood 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 stock,

(*a*) A settlement is not a *property;* nor is it at all analogous to an *inheritance*. Per Lord Ellenborough, *Rex* v. *Haddenham*, 15 East, 463.

(*b*) See the recital at length, ante, p. 4.

where it is liable to be devoured by strangers :" it is enacted (s. 1), "that it shall and may be lawful, upon complaint made by the churchwardens or 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."

How to be removed to the parish where last settled.

Sect. 3 enacted, "that (this act notwithstanding) it shall and may be lawful for any person or persons to go into any county, parish, or place, to work in time of harvest, or at any time to work at any other work, so that he or they carry with him or them a certificate from the minister of the parish and one of the churchwardens and one of the overseers for the poor for the said year, that he or they have a dwelling-house or place in which he or they inhabit, and hath left wife and children, or some of them there (or otherwise as the condition of the persons shall require), and is declared an inhabitant or inhabitants there; and in such case, if the person or persons shall not return to the place aforesaid, when his or their work is finished, or shall fall sick or impotent whilst he or they are in the said work, it shall not be accounted a settlement in the cases above said, but that it shall and may be lawful for two justices of the peace to convey the said person or persons to the place of his or their habitation as aforesaid, under the pains and penalties in this act prescribed."

The effect of the above act was that any person might gain a settlement by *residence of forty days, irremovable.* But by 1 Jac. II. c. 17, the forty days were to be reckoned from the delivery to the parish officers by the new comers of a *notice* of the place of abode and the number of the family; and by 3 & 4 Will. & M. c. 11, from the *publication* of such *notice* in the *church.* The object of this regulation was *notoriety*, in order that persons likely to be chargeable might be removed. But the latter act contemplated four cases in which a settlement should be gained without such notice. First, when the person had served an annual office. Secondly, when he had *paid* parish rates. Thirdly, when he had been *hired* for a year, being unmarried and having no children. And fourthly, persons *bound apprentice* by indenture and inhabiting in any town or parish.

The forty days' residence.

In consequence of certificates under the 13 & 14 Car. II. c. 12 being often treated as a notice under 1 Jac. II. c. 17, the 8 & 9 Will. III. c. 30 made fresh provisions as to certificates, and prohibited persons with such certificates being removed until they became chargeable, and the effect of delivery and publication of notice upon settlements was taken away by 35 Geo. III. c. 101. Sect. 3 of that act enacted, that "no person coming into any parish, township or place shall, from and after the passing of this act, be enabled to gain any settlement therein, by delivery and publication of any notice in writing." Although it was not correct, technically speaking, to speak of a settlement as gained by delivery and publication of notice, the effect of the statute 35 Geo. III. c. 101, s. 3, was to abolish settlement by mere residence of forty days after notice.

The statutes already enumerated comprise the origin of all other settlements; namely, settlements by birth, by hiring and service, by apprenticeship, by renting a tenement, by estate, by office, by payment of rates, by certificate—all of which will be treated of under their separate titles.

Repeal of settlement by hiring and service.

"The Poor Law Amendment Act, 1834" (4 & 5 Will. IV. c. 76), s. 64, abolished the future acquisition of settlements by hiring and service and by serving an office; s. 64 enacting, "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."

As the abolition was, however, only prospectively, and persons may still be removed by reason of a settlement acquired by hiring and service or by office before the act, it is necessary to notice those settlements.

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§ 2. THE PLACE IN WHICH A SETTLEMENT MAY BE ACQUIRED.

In what place a settlement may be gained.

Wherever a district of known limits contributes to one common fund raised within it, and which is disbursed within it, for the relief of its own poor, this right may be acquired, whether such district be a parish, a township, or hamlet, even though the township or hamlet be extra-parochial, for overseers may be appointed to an extra-parochial township or village. (*Rex* v. *Rafford*, 1 Stra. 512.)

The above rule has at different times been modified in favour of parishes in which prisons, hospitals, and other public charitable institutions are situated. The provisions to this effect in local acts have given way to the following general enactment.

All enactments and provisions in respect of gaining settlements contained in local acts repealed.

By 54 Geo. III. c. 170, it is enacted, "that all enactments and provisions contained in any act or acts of parliament since the commencement of the reign of his late Majesty George I., whereby an alteration is made in respect of gaining or not gaining a settlement within any particular district, parish, township, or hamlet, shall be and the same are hereby repealed; and that all and every person shall be deemed and taken to have acquired and to acquire a settlement in every such district, parish, township, or hamlet, by any ways and means he, she, or they would or might have done, or would or might do, in case such act or acts, or any of them, had not been made and passed; and notwithstanding the same or any of them are or was in force and operation."

Persons born in prisons, or houses licensed for the reception of pregnant women, not to gain a settlement thereby.

Sect. 2 provides, "that no person shall be deemed or taken to acquire any settlement in any district, parish, township, or hamlet, by reason of such person being born of the body of any mother actually confined as a prisoner within the walls of any prison; or any house licensed for the reception of pregnant women, in pursuance of an act made and passed in the thirteenth year of his present Majesty's reign, for the better regulation of lying-in hospitals, and other places appropriated for the charitable reception of pregnant women, in which any such prison or house shall be situated" (*c*).

Provisions respecting settlements by reason of birth in any poorhouse or house of industry belonging to united parishes.

Sect. 3 provides, "that whensoever any person shall be born of the body of any poor person in any house of industry, or house for the reception and care of the poor of any district, parish, township, or hamlet which shall be locally situated in any district, parish, township, or hamlet, contributing to the expenses of maintaining the poor in such house, or in any other district, parish, township, or hamlet, not contributing to such expense, such person shall, so far as regards the settlement of such person, be deemed and taken to be born in the district, parish, township, or hamlet, by whom the mother of such person was sent to, and on whose account the mother of such person was received and maintained in, such house."

(*c*) According to the case of *R.* v. *St. Peter and St. Paul, Bath*, Cald. 213; 1 Bott, 483, persons born in gaols and workhouses, even before this statute, acquired no settlement in such places; and see *Suckley* v. *Whitborn*, 2 Bulst. 358. As to the Foundling Hospital, see the statute 13 Geo. II. c. 29, noticed post, p. 324.

Sect. 4 provides and enacts, "that no person shall be deemed or taken to gain any settlement by reason of any residence within any district, parish, township, or hamlet, while he, she, or they shall be detained or confined as a prisoner within any such district, parish, township, or hamlet, on any civil process, or for any contempt whatsoever."

Prisoners for debt or contempt not to gain settlement while in custody.

Sect. 5 provides and enacts, "that no gate-keeper, or toll-keeper of any turnpike-road or navigation, or person renting the tolls and residing in any toll-house of any turnpike-road or navigation, shall thereby gain any settlement in any district, parish, township, or hamlet" (*d*).

No gate-keeper or person residing in any toll-house to gain a settlement thereby.

Sect. 6 provides and enacts, "that no person or persons shall gain any settlement in any district, parish, township, or hamlet, by reason of any residence in any house or other dwelling-place provided for the residence of such person or persons by any charitable institution, while such person or persons shall be supported and maintained at the expense of such charitable institution as an object or objects of such charity."

No person maintained in any charitable institution to gain any settlement by residence therein.

And by 59 Geo. III. c. 12, s. 11, it is enacted, that every house and building which shall be purchased or hired under the authority of that act, shall, in all questions relative to the settlement of persons born or lodged therein, be deemed and taken to be part of the parish, on behalf of which the same shall be purchased or hired, and by which the same shall be used as a poorhouse or workhouse.

Building hired under 59 Geo. 3, c. 12, taken to be in the parish, &c., hiring, in questions of settlement.

By 1 & 2 Will. IV. c. 42, which enables the parish officers to provide land for the employment of the poor, and inclose waste lands for cultivation, it is provided by the fifth section, that no poor inhabitant of the parish, to whom land shall be let which shall have been hired or inclosed under that act, shall gain a settlement by renting, or occupying or paying parochial taxes for such land, either alone or with any other land or tenement (*e*).

Similar power is given by the 1 & 2 Will. IV. c. 59, for inclosing land belonging to the Crown (*f*), and that act contains the same restriction as to gaining settlements.

By the 4 & 5 Will. IV. c. 76, s. 33, the guardians of the parishes forming any union are empowered to agree that, for the purpose of *settlement*, such parishes shall be considered as *one* parish. (See ante, p. 118.)

Union of parishes for purpose of settlement.

It may be observed here, that a person exempted from liability to be removed under the act 9 & 10 Vict. c. 66, and subsequent acts, does not, by reason of such exemption, acquire any settlement in a parish. (See post, "REMOVAL.")

By the 7 & 8 Vict. c. 101, s. 56, for the purposes of relief, *settlement*, and removal and burial, the workhouse of any union or parish and district school is considered as situated in the parish to which each poor person respectively to be relieved, removed, or buried, or otherwise concerned in any such purposes, is or has been chargeable (*g*). (See further, "ORDERS OF REMOVAL.")

(*d*) The General Turnpike Act, 3 Geo. IV. c. 126, s. 51, enacts, "that no collector or person renting tolls or residing in a toll-house, and no apprentice or servant of any such collector or person shall thereby gain a settlement in any parish or place whatsoever;" and the Amending Act, 4 Geo. IV. c. 95, s. 31, enacts, "that no collector or receiver of any tolls or penalties for overweight, residing in any house or building erected or used by the trustees of any turnpike road for the residence or accommodation of persons appointed for weighing any wagons or other carriages, and no apprentice or servant of any such collector or receiver shall thereby gain a settlement in any parish or place."

(*e*) See ante, p. 178.

(*f*) See ante, p. 178.

(*g*) An Irish single woman applied to the relieving officer of a union for an order of admission to the workhouse, stating (as were the facts) that she was very near her confinement, and that she had resided for nine months in C., one of the parishes of the union. He refused to give her an order, but told her, if she was taken bad to go to the workhouse, and she would be admitted. In the evening

Two or three peculiar cases have occurred where the law of settlement has been affected by the union or separation of parishes.

Separation of townships.

The parish of Hales Owen, which consisted of thirteen townships, and formerly supported its poor in common, was in the year 1832 separated, and overseers appointed for each of the townships respectively, and a pauper who before the separation had been born in the parish workhouse, which was situated in the township of Hales Owen (one of the townships of which the parish of the same name consisted), was removed to that township as the place of her birth settlement, the court held that the removal was wrong, as the settlement by birth was destroyed (*R.* v. *Tipton*, 3 Q. B. 215); and where the father of a pauper's husband, in 1792, hired and served for a year in Hunnington, one of the townships of Hales Owen, the court held that he could derive no settlement from his father; not in Hales Owen, for it no longer supported its own poor, nor in Hunnington, for no settlement would be acquired in it, as a distinct township, until the separation in 1832. (*R.* v. *Hunnington*, 5 Q. B. 273; 13 L. J. 24, M. C.) But where two parishes were united by an act of parliament for all purposes whatsoever, except ecclesiastical matters, it was held, that a pauper who had previously been settled in one of the parishes, could be removed to the united parishes. (*R.* v. *St. Martin's, New Sarum*, 9 Q. B. 241; 15 L. J. 123, M. C.)

Union of parishes.

The parish of Gresford consisted of ten townships, eight in Denbighshire and two in Flintshire. The parish church is in Gresford, one of the former townships, and there are four churchwardens for the whole parish, who act only in ecclesiastical matters. The two townships in Flintshire have always had their own overseers, and maintained their own poor; the others have had in some years overseers for each township, and in others for two or three townships jointly, the number varying from four to eight. In 1831 four overseers were appointed to serve for the whole of the parish in Denbighshire. An equal poor-rate has been always agreed to by the churchwardens and the several overseers in general vestry, and the rate of allowance to paupers there ordered. Separate poor-rates were made, allowed, and collected by the overseers in the separate townships, and the poor relieved by them, and at the end of each year they settled the accounts, paying and receiving to and from each other the surplus or deficiency, as the case might be, the general balance being handed over to the account of the next year. That part of the parish, from 1730 to 1833, occasionally received and removed paupers as to and from the parish of Acton, but the townships never removed to each other; the townships in Flintshire, however, occasionally removed paupers to the part of the parish in Denbighshire. In and since 1833, in obedience to a mandamus, two overseers have been regularly appointed for each township in Denbighshire, which has since managed its affairs distinct from the others. At the trial of an appeal

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of the same day, finding labour coming on, she went to the workhouse, and told the master what had passed between her and the relieving officer, and she was then admitted, and was delivered of a child two hours afterwards. The master entered the mother on the books as "casual," and charged her and the child to the common fund; and the guardians, seeing the entries, charged their maintenance to the common fund of the union. The mother went from the workhouse with her child to parish G., and was afterwards admitted into a female reformatory in another parish, into which the child was not admissible, and, the child becoming chargeable to G., an order for its removal to C. was made with its mother's assent: It was held that the mother when admitted into the workhouse was "chargeable" to C. within the meaning of the above section, and the child was therefore to be considered as born and settled in that parish by virtue of that section. Semble, that the child was to be taken as born in C., by virtue also of the 54 Geo. III. c. 170, s. 3, ante, p. 318. (*R.* v. *St. Clement Danes*, 32 L. J. Rep. (N. S.) M. C. 25.)

against an order of removal to the township of Gresford, the sessions found that the husband of the pauper gained a settlement in Gresford in 1771 by hiring and service, and died in 1815; that since his death his widow was regularly relieved by that township while residing out of it. They however quashed the order of removal, stating all the above facts for the opinion of the Court of Queen's Bench, who held, first, that the signature of the churchwardens of Acton was not necessary to the grounds of appeal by the township of Gresford; secondly, that no settlement could be gained in the township of Gresford in 1771; and that the relief was therefore given by mistake, and not conclusive of the pauper's settlement there. (*R.* v. *Inhabitants of Acton*, 8 Q. B. 108; 15 L. J., M. C. 21.)

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§ 3. Of the Persons who may acquire a Settlement.

A settlement attaches to those persons only, concerning whom those circumstances may be affirmed, which acts of parliament say shall give a settlement. It is not universally true that *every* person in this country *must have a settlement* to which he may be removed, for bastard children born in an *extra-parochial* place which is not a vill have no settlement, nor foreigners who come into this country. (*Rex* v. *St. Nicholas, Leicester*, 2 B. & C. 889.) Such persons are denominated *casual* poor, and must be provided for in the parish where they happen to be. (See "*Casual Poor*," ante, p. 128.)

It is not *every* person who has a settlement.

Although a *foreigner* has not necessarily a settlement in this country, he *may acquire one* in some of the modes by which natural-born subjects obtain this privilege; thus, the wife of a foreigner was removed to Eastbourne (the place of her maiden settlement) from Seaford, where she had for two years before, and at the time of the removal, resided, and rented a house of above the value of 10*l.*, exercising the trade of a baker. The husband acquiesced in the removal, and accompanied them to Eastbourne. The sessions confirmed the order of removal, and the question was, whether a foreigner can gain a settlement in this country? *St. Giles's* v. *St. Margaret's* (infra) was cited, and it was urged that the 13 & 14 Car. II. referred only to the poor of *this* kingdom, *i. e.* England and Wales. *Per* Lord *Ellenborough*, C. J. "This man was not an alien enemy, but a German by birth, an alien *amy*. And as such, though he may not take *a lease* (*h*) of a dwelling-house or shop, by reason of the statute 32 Hen. VIII. c. 16, yet he may occupy a tenement of 10*l.* a year, and carry on his trade there like any other person. Then if he may do so, he has that interest which enables him to gain a settlement by the provision of the legislature: the law of humanity obliges us to afford relief to poor foreigners, to save them from starving." *Lawrence*, J., in answer to the observation, that the statute of Car. II. did not extend to any but the poor of England and Wales, said, that, "without dispute Scotchmen and Irishmen may gain a settlement here." Both orders quashed. (*Rex* v. *Eastbourne*, 4 East, 103.)

Foreigners.

A foreigner may gain a settlement by occupying a tenement of 10*l.* for a year.

St. Giles v. *St. Margaret's*, 1 Sess. Ca. 97. An Englishwoman was married to a foreigner who had no settlement in England: the husband continued for the space of forty days in a parish irremovable, for that there was no place to which he could be removed; and it was urged that the wife continuing with him as part of his family for forty days, in a place whence he hath not a right to be removed, gains a settlement. But Lord *Holt*, C. J., thought "That where a person stays forty days in a place whence he hath a right *not to be removed*, that gains a settle-

A foreigner does not gain a settlement by mere residence of 40 days in a parish.

(*h*) This provision applies only to *leases* of dwelling-houses or shops granted to stranger *artificers* or handicraftsmen. A vintner is not within the statute, 3 Mod. 94; 1 Saunders, 3.

ment; otherwise, where he only stays in a place because they do not know whither to remove him."

Same point.

Ellinor Conred's Case, Comb. 287; 2 Bott, 17. She and her two children landed at Harwich from Holland, and removing to another place, were sent back to Harwich by order of two justices. *Darnel*, Serj. "Landing makes no settlement." Sir *Barth. Shower*. "'Tis within the equity of the act." *Eyre*, J. (*absente Holt*), "You must keep them where you have them for aught I know; it seems to me to be *casus omissus*." The order was quashed.

Married women (*i*) can acquire no settlement.

Married women, during their *coverture*, cannot *by any act of their own* acquire a settlement. What is their proper settlement will be considered in another place.

"There never was an instance where a wife was held to acquire a settlement during the life of her husband." Lord *Hardwicke*, in *Berkhampstead* v. *St. Mary, North Church*, 2 Bott, 51. "Nor can she, by residence of her husband on an estate devised to her, acquire a settlement either for her husband or her children. If she only be irremovable (*R.* v. *Oakley*, post), and if her husband resides with her, he will acquire a settlement; and thereby, indirectly, she will acquire one."

Infants.

Infants could not be removed from the parish in which they have a freehold (*Rex* v. *Hasfield*, Burr. S. C. 147; 2 Bott, 613); but no case has decided, though it has been intimated in some, that a settlement could not be gained under such circumstances. (*Ib.*) A child under seven years of age, removed with a parent for nurture, will gain no settlement. (*Rex* v. *Cumnew*, 2 Bott, 36.) (See post, "REMOVAL OF CHILDREN.")

Attainted persons.

Persons attainted may communicate their settlement to children born after the attainder (*Rex* v. *St. Mary, Cardigan*, 6 T. R. 116); and in *Rex* v. *Haddenham* (15 East, 463), an attainted felon, who had been discharged upon the sign manual, but never received a *formal* pardon, acquired a settlement by the purchase of an estate.

Deserters.

In some former editions of this work it has been said that a deserter can gain no settlement, and *Rex* v. *Norton* (9 East, 206) is cited as an authority. But that case determined only that he could not gain a settlement by *hiring and service*, on account of the superior claim to his service by the country. But suppose a deserter, before the Poor Law Amendment Act, 1834, executed an annual office, or rented a tenement openly, and bonâ fide, he could have acquired a settlement.

In *Rex* v. *Ashton-under-Lyne* (4 M. & Sel. 357), the wife took the premises, and the husband never entered into the contract. (*Rex* v. *Brightelmstone*, 1 B. & A. 270; *Rex* v. *Beaulieu*, post.) A soldier may, during his service in the army, gain a settlement by renting a tenement, although he could not by hiring and service; and, on that ground chiefly, it was decided that he gained no settlement. It is no objection that his estate was defeasible. (*Rex* v. *Haddenham*, 15 East, 460.)

(*i*) A *feme coverte*, who is the guardian in socage of the children by a former husband, may be irremovable from their estate. (See *Rex* v. *Oakley*, 10 East, 491.)

CHAPTER XX.

Of the Settlement of the Poor—(*continued*).

Of Settlement by Birth.

§. 1. OF BIRTH SETTLEMENT IN GENERAL.

The place of birth in general.

THE place of birth is *primâ facie* the place of settlement. (*R.* v. *Heaton*, 6 T. R. 653.) And this holds of legitimate as well as of illegitimate children.

A child was removed to the place of its birth, neither father nor mother having a settlement; and on appeal the sessions were of opinion that birth gained a settlement only in case of bastardy. But *per Curiam*. "Birth makes a good settlement, and the labour lies on them where it was born to find another." (*Spitalfields and St. Andrew's, Holborn*, Fort. 307.)

"It is an established principle that every English subject has a birth settlement *primâ facie*, that is, till an acquired settlement is shown; until then it is no more than *primâ facie;* and when it is ascertained that the father or mother has an English settlement, that is the settlement of the child. But if neither has, or (which comes to the same thing) if neither has one which can be ascertained after search made, the *primâ facie* settlement, which always potentially exists, takes effect. I will not say revives." (*Coleridge*, J., in *Reg.* v. *All Saints, Derby*, 14 Q. B. Rep. 207; S. C., 19 L. J. Rep. (N. S.) M. C. 14. Cited by *Blackburn*, J., in *Reg.* v. *Newchurch*, 32 L. J. Rep. (N. S.) M. C. 19.)

This rule equally applies to an unemancipated child. (*Reg.* v. *Newchurch*, supra.)

It has been suggested that a settlement by *birth* is founded on the 13 & 14 Car. II. c. 12 (ante, pp. 316, 317), by which justices are directed to remove any poor person come to inhabit and likely to become chargeable to the parish where he or she was last legally settled, either as a *native*, householder, &c., for the space of forty days at the least, and therefore that a residence of forty days is essential to the acquisition of a *birth* settlement. (See 1 Nol. P. L. 288, n. (1).) But it has been since expressly held that a birth settlement does not require forty days' residence to complete it. (*R.* v. *Watford*, 9 Q. B. Rep. 626; 16 L. J. Rep. (N. S.) M. C. 1.)

In *Whitechapel* v. *Stepney* (Carth. 433), it is said that a bastard gains a settlement in its place of birth *ex necessitate*, for being *nullius filius*, it cannot otherwise be provided for, except a reputed father can be found. But this proposition is laid down rather too largely, because if the birth happen in an extra-parochial place, which does not maintain its poor, no settlement is gained, and such child can only be relieved as casual poor till it acquires a settlement in some other way. This appears by

A bastard child, born in an extra-parochial place, which is not a vill, has no settlement.

Rex v. *St. Nicholas, Leicester*, 2 B. & C. 889; 4 D. & R. 462. In that case the pauper was the illegitimate child of Elizabeth Littlewood, deceased, and was born in 1822, in an extra-parochial place, called the Black Friars, in Leicester, which was not a vill, and for which no overseers had ever been appointed. She was shortly afterwards taken by her mother to All Saints, Derby, where she remained until the death of her mother, and up to the time of this order of removal. The mother

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was settled in St. Nicholas, Leicester, at the time of the pauper's birth and of her own death. The sessions confirmed an order for the removal of the pauper from All Saints to St. Nicholas. *Bayley*, J. "The argument in support of the order of sessions is founded upon the assumption that every person is by law entitled to a settlement in some place; but that is by no means the case, *for foreigners have not any settlement in this country*. A settlement attaches to those persons only concerning whom those circumstances may be affirmed, which acts of parliament say shall give a settlement. Generally speaking, an illegitimate child is settled in the parish where it is born. There are some exceptions to this general rule, noticed in the treatises on the poor laws. In most of the excepted cases, the mother, at the time of the birth, is in law supposed to be in the place of her settlement, where she ought to be (*k*); as where a woman with child is removed out of one parish into another, through the fraud or collusion of its officers, or where the child is born pending an order of removal. In one of these cases the child, when born, is settled in the parish from which the mother has been fraudulently removed; in the other, in the parish to which she is ordered to be removed. In this case, the child was born in an extra-parochial place. It therefore has not any settlement by birth, and, being a bastard, it can derive none from its parent. In such cases, however, it is entitled to remain with its mother as long as the purposes of nurture require it, and it will afterwards be entitled to relief as *casual poor*, although it has not any settlement. We are all of opinion that the order of sessions must be quashed."

See now as to extra-parochial places, ante, Chapter VIII. § 2 (p. 109).

In *Clavely* v. *Burton* (2 Bulst. 351), it was holden by the judges, that if the mother of a child born in one parish die in another parish, while passing to a third, such child shall be settled where it was born, and not in the parish where it was left destitute by the death of the mother.

In *Whitechapel* v. *Stepney* (Carth. 433; 2 Bott, 24), it was holden that a legitimate child, where its parent is a vagabond, gains a settlement by birth.

The place of birth of a legitimate child, as a vagrant, is its settlement, until another be found.

A travelling woman, having a nurse child, was apprehended for felony, and sent to gaol, and was hanged; this child is to be sent to the place of its birth, if it can be known, otherwise it must be sent to the town where the mother was apprehended, because that town ought not to have sent the child to gaol, not being the malefactor. (Dalt. c. 73, p. 168.)

First known place of abode.

And where a child is first known to be, that parish must provide for it till they find another. (Comb. 364, 372.)

Foundlings maintained in hospitals.

By 13 Geo. II. c. 29, for confirming and enlarging the powers conferred by charter upon the governors and guardians of the hospital for the maintenance and education of exposed and deserted young children, it is provided by s. 7, that no child, nurse, or servant, received or employed in such hospital shall, by virtue thereof, gain any settlement in the parish where such hospital shall be situate. The settlement of *foundlings*, therefore, is left to be determined by the same rule as prevails in all other cases wherein those particulars as to their birth and parentage can be ascertained, which determine the settlement of the child in such other cases. According, however, to the popular notion of a *foundling*, these facts are not made known, nor are they easy to be discovered. But it is to be inferred that the institution to which the above statute relates, is not limited to the reception of children whose destitution is of that aggravated description. It involves no absurdity, therefore, to say that *foundlings*, if they are legitimate children, follow their father's settlement, if it is known; if not, they take their mother's; and if neither of these be known, or they are bastards, their settlement will be in the place of their birth. But if that also cannot be discovered,

(*k*) See post, p. 327.

they must be provided for in the place in which they may happen to be, as casual poor. The effect of an admission upon this charitable establishment, is only to take those children from the parish where they must otherwise have been supported, and to give them the benefit of the provisions of the hospital.

The ordinary cases of illegitimacy arise from the circumstance of the mother being single down to the time that the child is born; but the child of a married woman may be a bastard, in which case it also takes a birth settlement.

The place of birth is the weakest settlement, for this reason, that it is liable to be defeated in the case of legitimate children by proof of the settlement of the parents (even of their birth settlement, see post, DERIVATIVE SETTLEMENTS) (*l*), or by proof of a subsequently-acquired settlement by the pauper.

Birth Settlement of Bastards.

Although, as has been already stated, the primâ facie settlement by birth applies to both legitimate and illegitimate children, there are, nevertheless, material distinctions in the position of the two descriptions of children.

First. The settlement arising from the place of birth of a bastard was, until "The Poor Law Amendment Act, 1834," in general only superseded by a settlement subsequently acquired by the bastard in his own behalf; while, as has been seen, the birth settlement of a legitimate child is superseded by proof of the settlement of either of its parents.

Illegitimate child follows the mother's settlement till the age of sixteen.

Secondly. By "The Poor Law Amendment Act, 1834" (4 & 5 Will. IV. c. 76), s. 71, it was enacted, "that every child born a bastard after the passing of that 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; 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."

Liability of second husband.

If the mother of the bastard afterwards marry, then, under the 57th section of the same act, her husband is bound to maintain such child till the age of sixteen or till the death of the mother.

Under s. 71, it has been held that the child takes the second husband's settlement for the limited time (*Reg.* v. *St. Mary, Newington*, 4 Q. B. Rep. 581; 12 L. J. (N. S.) M. C. 68), and if the mother die before the child attains sixteen, the child is removable to the mother's last place of settlement (*Reg.* v. *Sutton-le-Braile*, 5 E. & B. 814; S. C. *nom. R.* v. *Sutton-under-Brailes*, 25 L. J. (N. S.) M. C. 57), but on attaining sixteen, whether the mother be living or dead, or whether the mother has acquired a fresh settlement or not, the child is removable to the parish of its birth, for the section does not take away the birth settlement. (*St. Andrew, Worcester* v. *Bodenham*, 22 L. J. (N. S.) M. C. 39.)

Bastard born in a place by collusion.

Thirdly. Under the old law, as it existed independently of the above

(*l*) "Evidence of birth is only evidence that the mother was locally resident in the parish at the time. It is the slightest evidence possible of a settlement." (Per Lord *Ellenborough*, C. J., *Rex* v. *Wakefield*, 1 Smith's Rep. 514; 5 East, 335, S. C.) "The place of birth is the weakest evidence of settlement." (Per *Le Blanc*, J., S. C.) Nevertheless, in the absence of proof of any other settlement it must be acted upon.

"The father's settlement is the settlement of the children, when it can be found out; otherwise, the birth of the child *primâ facie* is the settlement of the child, until there is another settlement found out." (By the court: *Cripplegate* v. *St. Saviour's*, 2 Bott, 27.)

provisions, if a woman came into a place by privity and *collusion of the officers where she belonged*, and was there delivered of a bastard, such bastard gained no settlement there, notwithstanding its birth.

What is not collusion.

Thus, in *Masters* v. *Child* (3 Salk. 66; 2 Bott, 5), and *Tewkesbury* v. *Twyning* (2 Bott, 3), it was laid down that if a woman with child of a bastard, and settled in one parish, *is persuaded* to go into another, and there be delivered, this fraud will make the parish chargeable where the mother was settled, though the child were not born there; but if a woman with child of a bastard come *accidentally into one parish*, and is persuaded by some of the parishioners to go into another parish, which she doth, and there be delivered, this shall not charge that parish which persuaded her. (*Rex* v. *Astley*, 4 Doug. 389.)

The collusion must be by the parish officers. Where the occupier of land and putative father caused a pregnant woman (who was his servant) to remove out of the parish during her confinement to an extra-parochial place, the child will not be settled in the parish from whence she removed. (*Rex* v. *Mattersey*, 4 B. & Adol. 211; 1 Nev. & M. 49.) *Denman*, C. J. "The general rule is, that an illegitimate child is settled in the parish in which it is born * * * *. But I think it may be collected from *Tewkesbury* v. *Twyning* and *Masters* v. *Child* (supra), that in order to fix the settlement of an illegitimate child in the parish from which the mother has been fraudulently removed, *the fraudulent removal must have been by the parish officers*. Here it was not so. No case has gone so far as to show that if the fraud be by an individual, not a parish officer, the child shall be settled in the parish where the fraud was committed." *Parke*, J., concurred. *Taunton*, J. "In *Masters* v. *Child*, it is stated that, if a woman being with child of a bastard, and settled in one parish, is persuaded by the parish officers to go into another, and there to be delivered, this fraud will make the parish chargeable where the mother was settled, though the child was not born there. But if the woman accidentally come into a parish, and is persuaded by some of the parishioners to go into another, which she doth, and there is delivered, this shall not charge that parish which persuaded her. That is precisely in point. Here, the mother of the pauper was persuaded by one of the parishioners to go to an extra-parochial place. Independently of that decision, I should have been bold enough to come to the same conclusion. The general rule is, that an illegitimate child shall be settled in the place where it is born, and the fewer exceptions there are to that rule the better." *Patteson*, J., concurred (*m*).

The fraud must be of the parish officers.

(*m*) In *Rex* v. *Llanfihangel, Abercowin*, 4 Nev. & M. 355, the Court of Queen's Bench thought the following facts constituted evidence of fraud for the justices although the Court of Queen's Bench could not infer it. Esther Walters, single woman, being pregnant of the pauper, was removed by an order to Llanfihangel, and was, together with the order, delivered to one of the overseers of Llanfihangel; she was left there by the overseer of Mydrim, but on the same day returned to her mother's house in Mydrim, under a promise from the overseer of Llanfihangel, made after the departure of the overseer of Mydrim, that a certificate should in a few days after be given to Mydrim, acknowledging her to be legally settled in Llanfihangel; she was at the same time told by the overseer of Llanfihangel, to go to the parish of Mydrim and look for a place for herself there, until a few days, when she could bring such certificate, and in the mean time to conceal herself from the parishioners of Mydrim. She accordingly returned that day to Mydrim, and concealed herself until the child was born. The overseer of Llanfihangel did not bring the certificate, nor was such certificate ever after given to Mydrim. In about three weeks after her return, E. Walters was, at her mother's in Mydrim, delivered of the pauper, a bastard, she having directed her mother and sister to conceal the fact of her being there, and three weeks after, the parish of Llanfihangel paid the nurse for nursing the pauper.

Fourthly. Also, independently of "The Poor Law Amendment Act, 1834," if a bastard be born after an order of removal has been made, and before the mother can be sent to her place of settlement, being hindered by water or otherwise; such bastard shall not be settled where so born, but at the mother's settlement. (*Reg.* v. *Ickleford*, 1 Sess. Cas. 33; Sett. and Rem. 66; 2 Bott, 9.)

Bastard born after the order of removal is made (*n*).

So if the officers be carrying a woman, by virtue of an order of removal, to another parish, and she be delivered on the road in transitu, the bastard shall go with the mother where she is going by virtue of the order, notwithstanding the birth. (*Jane Gray's case*, Sett. and Rem. 66; 2 Bott, 8.)

Bastard born in removing.

So if a woman, pregnant, be removed by an order, and she be delivered, and there be an appeal, and the order be reversed, the child must be sent back. (*Much Waltham* v. *Peram*, 2 Salk. 474; *Westbury* v. *Coston*, 2 Salk. 532; 1 Salk. 121.) *Holt*, C. J., said, in the last-mentioned case, "Though there be no fraud in this case, yet here is a wrongful removal, and the reversal makes all void ab initio; fraud or not fraud is not material in this case; but the settlement of the child depends upon the removal; for if that was wrong, they shall not ease themselves by it."

In *Rex* v. *Great Salkeld* (6 M. & Sel. 408), the mother of the pauper, Catherine Nicholson, whilst a single woman and pregnant with the pauper, was removed from Great Salkeld to Lowther, and the order was confirmed on appeal; but, on a case stated, was quashed by K. B. Whilst the appeal was depending, and before the decision of the court, Catherine was delivered of the pauper in Lowther, born a bastard. Lord *Ellenborough*: "The birth settlement of the pauper, though in fact born at Lowther, was in Great Salkeld, for there he was in judgment of law born, because the order of removal being vacated, the mother's right to be in Lowther was void *ab initio*." *Abbott*, J. "An illegitimate child is, as it cannot derive a settlement from its parents, in the first instance settled where born; but where the mother is improperly removed, the law says that the parish whence the removal was made, and where, but for this, the child would have been born, is to be considered the place of its birth."

In such a case it is the parish from whence the mother was removed, as distinguishing from her own proper settlement, which is to be considered as the place of birth. (*R.* v. *St. Andrew, Holborn*, 6 M. & Sel. 411; *Rex* v. *Martlesham*, 5 Man. & R. 82; 10 B. & C. 77.)

If after an order executed, the woman returns to the removing parish without the knowledge of the overseers, the child is settled where born. (*Rex* v. *Halifax*, 2 B. & Adol. 211.) In that case an order of removal of Ann Smith and Thomas her child was confirmed as to Ann, and quashed as to the child:—Ann Smith, who was settled in Manchester, lived at Halifax in January, 1829, and was then pregnant of a child likely to be born a bastard. On the 30th of January, by an order of two justices, made before, but executed after, the Epiphany quarter sessions, she was removed to Manchester, and delivered to the overseers of the poor there. They requested her to go into the workhouse, but she refused, and on the next day (January 31st) returned to Halifax, where she remained till the 20th of February following, and was on that day delivered of a bastard, the child mentioned in the order. The Easter sessions, for the riding in which Halifax is situate, were holden on the 27th of April, and by the practice of those sessions, when an order of removal is appealed against, there must be ten days' notice previous to the sessions; but no notice of appeal was given against this order, nor was any appeal entered against it at the Easter sessions. The return of Ann Smith from Manchester to Halifax was without the

Mother returning after order.

(*n*) "Here the act of God prevents the execution of the order." *Littledale*, J., in *Rex* v. *Halifax*, infra.

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knowledge of the appellants or respondents, and no fraud was imputable to either. The point made for the respondents was, that as the pauper Ann Smith had been removed after the Epiphany sessions, and had returned of her own accord, and without any notice, into the respondent township, and had been there delivered of a bastard child, whose settlement was in question, without the knowledge of the respondents, before the time of giving notice of appeal for the next sessions had expired, the order must be considered as pending, and the settlement of the child must follow that of the mother. Lord *Tenterden*, C. J., "I am of opinion that the order of sessions was right." *Littledale*, J., "It seems to me that in this case the child was settled in the place of its birth according to the general rule on the subject of bastards. There is an exception to that rule where the child is born while the order is under execution, and before it can be completely fulfilled, the interruption happening by the act of God, and the officers having done all in their power to carry the order into effect, as where the birth takes place on the road, or during detention by floods. But here the order had been executed, and the woman afterwards returned from the appellant to the respondent township, without any fraud on the part of either. It is admitted, that if the child had been born after the time for appealing had expired, the settlement would have been good; and I think it is the same in this case, as there was no appeal depending at the time of the birth. *Landinaboe* v. *Much Birch* seems an authority to the contrary, but the reporter himself questions that case, and admits that it was not well considered." *Parke*, J., "The order in this case had been executed, and the parish officers of Manchester had received the pauper, and after that, she returned to Halifax, and was there delivered. The parties stand on just the same footing as if this had happened after the order had been appealed against and confirmed at sessions. An order can no more be said to be pending during the time in which an appeal may be instituted, than a judgment while a writ of error may be brought. Here was a complete execution of the order; no fraud appears in the appellants, and the overseers of Manchester had no power to detain the pauper there. The order of sessions must therefore be confirmed." *Patteson*, J., "The order had been completely executed, and was not depending. Although the pauper became a vagrant by returning to Halifax, that can make no difference in the question between these parishes." Order of sessions confirmed.

Fifthly. The settlement of a bastard in the place where he is actually born, may be affected by the mother having been certificated at the time.

The nature and general effect of certificates, given by parishes to enable their poor to reside in other parishes where they can best earn a subsistence, is explained under a subsequent head, "ACKNOWLEDGMENT OF SETTLEMENT BY CERTIFICATE."

The general rule is, that bastards born in a place in which the mother resides under a certificate, are settled where born. But a bastard of which the mother is pregnant at the time the certificate is given, may be included in the certificate, but is not comprehended under the term "family."

Bastard born under certificate is settled where born.

John P., being settled in Waltham, where he had lived two years with a woman his reputed wife, went with a certificate, owning them as man and wife, from thence to Windsor, where they had six children. The man died, and the woman swearing they had never been married, the justices adjudged the children to be bastards, and settled in Windsor where they were born. And by the court: "There is no doubt but the bastard of a certificate person is settled in the place of his birth, for he is not such an issue as will follow the settlement of his father or mother, neither is such bastard his or her child within the intention of the statute, so as to be sent back with the parent." (*Windsor* v. *White Waltham*, 1 Stra. 186.)

And a bastard is not included in the word "family" in the certificate acts, and, therefore, is settled where born. (*Hilton* v. *Lidlinch*, 2 Stra. 1168; Burr. S. C. 187; 2 Bott, 13.) In that case a single woman went into Lidlinch with a certificate from Hilton, where she lived a year, and then had a bastard child. The only question was, whether the child should be settled in the parish where it was born, or in the parish which gave the certificate? By the court: "The certificate must be taken to be good, and all fraud to be laid out of this case, it being a year that she dwelt in the parish before she was delivered of the child; and wherever this court, in determining a settlement, adjudges upon the point of fraud, that fraud must be expressly stated; for as fraud is odious, it is never to be presumed. The cases hitherto adjudged as to this point have either depended upon some point of fraud or an illegal removal. So where the child is born in a gaol, he shall be settled in the parish where his mother is; for she shall be construed to be in custody of the law, and in all other respects a parishioner. But the present case stands entirely on 8 & 9 Will. III. c. 30, which, for the encouragement of labour and industry, gave power of removing persons by certificate, which certificate obliges the parish to whom given to receive and continue them in that parish till they become actually chargeable; and then such person is to be removed, together with his or her family, and in another place with his or her children, to the place from whence the certificate was brought. The question then is, whether the bastard is included under the words family or children? And we take it he is not; for the law takes no notice of bastard children; they are *filii nullius, filii populi*, and are *primâ facie* settled where born."

In *Rex* v. *Wyke* (Burr. S. C. 264; 2 Bott. 14), it was held that a certificate undertaking to provide for a woman and her child, she being then pregnant of a bastard, did not embrace the illegitimate child: the court holding that they must take the child referred to by the certificate to be a legitimate child then in being, for it did not at all appear that the parish who gave the certificate knew that the woman was then with child.

But a certificate acknowledging a woman as unmarried, and "the child she now goeth with," embraces the child when born, although illegitimate. (*Rex* v. *Ipsley*, Burr. S. C. 650; 2 Bott. 15.) There was no doubt in this case (distinguishing it from *R.* v. *Wyke*, supra), as to the child referred to, and Lord *Mansfield*, C. J., observed, that "an infant *in ventre sa mère* may be, to a variety of purposes, considered as born."

In *Rex* v. *Mathon* (7 T. R. 362), a certificate engaging to relieve a woman and her child, with which she was pregnant, and all other children which she may have, was held not to include bastards born eight years afterwards.

Bastard born where the removal of the mother was suspended.

Sixthly. By 35 Geo. III. c. 101, the removal of persons during sickness may be suspended (*o*), and by sect. 6, if during such suspension any unmarried woman shall be delivered of a bastard child, every such bastard shall be deemed and taken to be settled in the parish, township, or place in which was the legal settlement of such mother at the time of her delivery.

In the house of industry of an incorporated district.

Seventhly. By 20 Geo. III. c. 36, s. 3, all bastard children born in the house of industry, of any hundred, or other district, incorporated by act of parliament for the relief and employment of the poor, shall be deemed to belong to the parish or place where the mother of such bastard child was legally settled (*p*).

(*o*) See post, "SUSPENDED ORDERS OF REMOVAL."

(*p*) As to *all* children born in gaols see 54 Geo. III. c. 170, s. 2, ante, p. 318. Apart from this statute bastards born in prison were held to be removable to the mother's last place of settlement. (*Elsing and the County Gaol of Hereford*, 1 Sess. Ca. 94; 1 Nol. P. L. 290; *Rex* v. *Astley*, 4 Doug. 391; *Suckley* v. *Whitborn*, 2 Bulst. 358.)

Bastard born in a lying-in hospital.

Eighthly. By 13 Geo. III. c. 82, s. 5, a bastard born in a lying-in hospital shall follow the mother's settlement; but this is merged in the wider provision of the 54 Geo. III. c. 170, s. 2, ante, p. 318 (*q*).

Ninthly. By Gilbert's Act (22 Geo. III. c. 83, s. 39), an illegitimate child born in any workhouse established under that act is considered as settled in the parish or place to which the mother belongs (*r*).

Bastard born under the act for establishing friendly societies.

Tenthly. The 33 Geo. III. c. 54, s. 25, for the encouragement and relief of friendly societies, enacted, that every child which shall be born a bastard in any parish or place, the mother whereof shall at the time of the birth of such child be a member of any such benefit society, and be residing in such parish or place under the authority of that act, such child shall have the same settlement which the mother had at the birth of such child.

Although this provision which took effect from 21st June, 1793, was repealed by the 10 Geo. IV. c. 56 (10th June, 1829), it is possible, but improbable, that a question can now arise under it (*s*).

With respect to the separation of a child from its mother, see post, "REMOVAL."

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§ 2. EVIDENCE OF SETTLEMENT BY BIRTH.

The mere fact of a pauper being first *found* in a particular parish is not presumptive evidence of his having been *born* there. Per *Bayley*, J. (*Rex* v. *Trowbridge*, 1 M. & R. 12; 7 B. & C. 252.)

Time of birth may be proved by parents.

The parents may prove the *time* of birth; and after their death, their declarations, made in their lifetime, are evidence of that fact. The register is only evidence of the christening; and *non constat* thence, when the child was born. Per Lord *Mansfield*, C. J. (*Goodright* v. *Moss*, Cowp. 591.) But in *Creech St. Michael* v. *Pitminster* (Burr. S. C. 765; 2 Bott, 28) a copy of the parish register of Pitminster was produced. "Christenings, 1735, John, son of John Every and Mary his wife, baptised Dec. 5." And one of the witnesses swore that the pauper lived many years ago with him; that John Every, who lived in Pitminster, and died long since, was considered as the pauper's father; and that he knew Mary Every, who lives in Pitminster, and whom he understood to be the pauper's mother, and has heard the pauper call her mother. Lord *Mansfield*, C. J., seemed to think, and so it was afterwards determined, that this evidence was sufficient.

Birth settlement may be proved by the copy of the parish register of christenings, and by identifying the person.

Place of birth, how proved.

The locality of the birth may be proved by some person who saw the mother in the parish just before and immediately after that event, and who also saw the offspring, and can give evidence of identity. The party himself can have no recollection of the place of his birth, and the fact of his remembering himself when he was four years of age, in the parish of A., is no proof that he was born there. (*Rex* v. *Trowbridge*, 1 Man. & R. 7; 7 B. & C. 252.)

Hearsay declaration of the father, as to the *place* of his son's birth, is not evidence. (*Rex* v. *Erith*, 8 East, 539.) It appeared on the evidence

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(*q*) In *Rex* v. *Manchester* (4 B. & Ald. 504), it was held, that a room in a parish workhouse, licensed pursuant to 13 Geo. III. c. 82, and appropriated to the reception of, and used for the purpose of, delivery of pregnant women resident within the parish, whether settled there or elsewhere, and the expense of which room was defrayed in common with the general expenses of the workhouse out of the parish rates, was not an hospital or place within the 13 Geo. III. c. 82, s. 5.

(*r*) See the general provisions of the 54 Geo. III. c. 170, as to births in workhouses, ante, p. 318.

(*s*) In *Rex* v. *Idle* (2 B. & Ald. 149), it was held, that s. 25 of the 33 Geo. III. c. 54, was not, as was contended, virtually repealed by the 35 Geo. III. c. 101, which provides that no person shall be removable from any parish until actually chargeable.

of the pauper, that he remembered being at Erith with his father; that they had no fixed residence; and that his father, who was now dead, had told him that he was born a bastard at Erith, and had pointed to that place as they were passing, telling him that that was the place of his (the pauper's) birth. A search was made in the books of the parish of E., and no register of the pauper's baptism was to be found there. The sessions thought this sufficient evidence of the pauper's birth at E. Lord *Ellenborough*. "The controversy was not, as in a case of pedigree, from *what parents* the child derived its birth, but in *what place* an undisputed birth, derived from known and acknowledged parents, has happened. The point thus stated turns on a single fact, involving no question but that of locality, and therefore not governed by the rules applicable to places of pedigree; and is to be proved, therefore, as other facts generally are proved, according to the ordinary course of the common law; that is, by evidence to which the objection of *hearsay* does not apply. We are, therefore, upon this ground, of opinion that the evidence of the father's declaration as to the birthplace of the pauper, the bastard, ought not to have been received." Order of sessions quashed. (Post, "HEARSAY EVIDENCE." See Phill. Ev. 229, 6th edit.; 3 Stark. on Evid. 1115.)

The declaration of a deceased mother as to the *time* of birth is admissible in evidence, upon a question as to the *place* of birth of the child, though the father be living. (*Rex* v. *Birmingham* and *Rex* v. *Aston*, 9 B. & C. 225; 4 M. & R. 691; Steer's Par. L. 599.)

The register of baptism is not *alone* sufficient evidence of the place of a person's birth. (*Rex* v. *North Petherton*, 5 B. & C. 508; 8 D. & R. 325.) Joseph Rich was removed from North Petherton to West Monckton. Order quashed. Case:—To make out the settlement of the pauper's father, it was proved by a copy of the parish register of Spaxton that he was baptised in that parish. There was no other evidence of his having been born in that parish, and the sessions thought, on the authority of *Creech St. Michael* v. *Pitminster* (supra), that they were bound to consider the register by itself, *primâ facie* proof of the place of his birth. When that case was quoted in King's Bench, *Bayley*, J., said, "We do not know at what age the pauper's father was baptised. It was urged that he was baptised within a very short time after his birth. According to the doctrine of the church touching baptism, 'the pastors and curates are directed to admonish the people, that they defer not the baptism of infants any longer than the Sunday next after the child be born, unless upon great and reasonable cause declared by the curate and by him approved.'" (Gibson's Codex. Jur. Ecc. Bap. tit. 18, c. 9.) *Bayley*, J. "The register of baptism *per se* is not evidence of the place of birth. If the age of the child at the time when it was baptised could be ascertained, the register might in some cases be evidence of the place of birth. If the child were then very young, the register would be presumptive evidence that it was born in that parish where it was baptised; but if the child were not then young, the circumstance of its having been baptised in a particular parish would afford no presumption that it was born there. Here there was no evidence to show the age of the child when it was baptised. We think, therefore, that the case must go back to the sessions to be reheard, in order that they may ascertain by other evidence whether the father of the pauper was born in the parish of Spaxton or not. We do not say that a register of baptism is not evidence of the place of birth, when accompanied with proof of other circumstances, but that, taken by itself, is not evidence of the place of birth." *Holroyd*, J. "I am of the same opinion. I think the register alone is not sufficient to establish the place of birth. It would be sufficient, coupled with proof that the pauper's parents were living within the same parish at the time of the baptism, or that the birth had been shortly previous to the baptism, which latter circumstance would afford

a strong presumption that the child was born in the same parish where it was baptised." *Littledale*, J., concurred (*t*).

Proof of the marriage of the parents of B. in the parish in 1799, of the baptism of B. in the following year, and of two other children in 1782 and 1790, and the evidence of the last child that her first recollection was living with her parents in the parish, and B. was then living with them, and was about ten years older than the witness, was held sufficient evidence of the birth settlement of B. (*Reg.* v. *Crediton*, 27 L. J. (N. S.) 265.)

As to evidence of illegitimacy, see post.

A parish may be estopped by a certificate acknowledging the bastard to be settled with them. (*Goodright* v. *Saul*, 4 T. R. 356.)

CHAPTER XXI.

Of the Settlement of the Poor—(*continued*).

Of Derivative Settlements.

BEFORE proceeding to notice in detail the law respecting those settlements which are gained by the act of the parties, it will be convenient to notice, in connection with birth settlements, the law respecting the communication of an acquired settlement to others; or, in other words, DERIVATIVE SETTLEMENTS.

Settlement by parentage and settlement by marriage, form the two species of what are called *derivative settlements.*

§ 1. DERIVATIVE SETTLEMENTS BY PARENTAGE.

Settlement derived from the Father.

If the father's last place of settlement be known, that is the legal place of settlement of his children; and they will take successively any settlement which the father may from time to time acquire before their emancipation; *his last* settlement being always *their settlement* until they have acquired one by their own act, and consequently this derivative settlement supersedes a mere birth settlement of the pauper himself.

Legitimate children derive their settlement from their parents.

Legitimate children only can acquire a settlement by parentage; for a bastard, according to *Holt*, C. J., has no father, or rather none that the

(*t*) This is not altered by the Registry Act. That enacts, "that certified copies of entries purporting to be sealed with the seal of the register office, shall be received as evidence of the birth, death, or marriage, without any further proof of such entry," 6 & 7 Will. IV. c. 86, s. 38. This regulates the *mode* of proof, but does not touch the *effect* of the proof.

law looks upon as such, and consequently can derive no settlement from the relation of child and parent (*u*). (*Hard's case*, 2 Salk. 427.)

The settlement of a legitimate child is that of the father, or of the mother; but until one of these is ascertained, the place of birth is, *primâ facie*, the place of settlement.

Legitimate children take the settlement of their father; if the father has no settlement, they are entitled to the settlement of their mother; and it is only when both these sources fail, that their right accrues to a settlement in the place in which they were born. But until the settlement of the father or of the mother has been ascertained, the settlement of a legitimate child, like that of a bastard, is *primâ facie* in the parish where the birth took place; and if that cannot be ascertained, then the child is not removable from the place where it was *found*, and must be relieved there. (See ante, p. 323.)

It seems to have been erroneously thought at one time, that if a legitimate child were born whilst the parents were in a state of vagrancy, or in a parish different from that in which the parents were settled, or was born an idiot, that it was settled where born. (*Hard's case*, 2 Salk. 427; *Coxwell* v. *Shillingford*, Fost. 313; Fol. 269.) But the rule is, that a legitimate child is only entitled to a settlement where it is born, in case the parents have no settlement, or none that is known in this country; as in the case of foreigners who come into England and have children here—they themselves having acquired no settlement. But in the case of children of Irish and Scotch parents, and forming part of the family of such parents, they are not to be relieved in the place of their birth if their parents become chargeable, but must be removed with their parents to Ireland or Scotland. (See post, "REMOVAL.")

Children, wherever born, take their parents' settlement, and each successive settlement acquired by him.

If a father whose settlement is in A. removes to B., and, before he has gained a settlement there, has a son born in B., the son is settled in A. But if the father gain a new settlement either in B. or any other parish, he gains it for his son as well as for himself, *so long as the son remains part of his family, or is (as it is called) unemancipated.* Such was the judgment of *Holt*, C. J., in *Cumner* v. *Milton*, 2 Salk. 528, where a man settled at Cumner, and, having several children born in that parish, afterwards removed to Milton with his children, and gained a settlement there, where he, becoming chargeable, the justices erroneously supposed the children were removable to Cumner, and made an order accordingly, which was quashed.

Where the father gains a settlement after the child's birth, the child takes it also.

In *St. Giles's, Reading* v. *Eversly, Blackwater* (1 Stra. 580; 2 Ld. Raym. 1332), it was ruled by all the court, that where a father gains a second settlement after the birth of his child, that settlement is immediately communicated to the child. And a child may be sent to the place of his father's settlement without ever having been there before.

Therefore a child may be removed with the father to his settlement, though it have never been there before.

In *Sowton* v. *Sydbury* (Andr. 345), *Lee*, C. J., said, "The true distinction, I think, is, that where children have gained no settlement, but continue part of their father's family, they shall follow their father's settlement."

A child born after the father's death follows his settlement.

The death of the father before the child is born will not defeat its right to a *settlement where the father* was last settled before his death. (*Rex* v. *Clifton*, Vin. Abr. 382; 2 Bott, 38.)

Proof of the father's settlement establishes the settlement of the child.

Proof of the father's settlement will establish the settlement of the child, if nothing appear to the contrary. (*Rex* v. *Stone*, 6 T. R. 56.) Mary, the wife of T., and her infant daughter, were removed from Stone to Leighford in Staffordshire. The sessions quashed the order, stating that T. had left his wife and family for three quarters of a year, during which time she had not heard of him, nor had he since been in either township. The settlement of T.'s father was in Leighford, but T. himself was not *born* there, and it did not appear by any evidence that he had gained any settlement in his own right. It was further stated, that

(*u*) But under the 4 & 5 Will. IV. c. 76, bastards follow the mother's settlement till the age of sixteen; see ante, p. 325.

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the removal had been made without any examination of T., and that due diligence had not been used by the respondents to find him out. Lord *Kenyon*, C. J., said, "That there was nothing in the case: that the evidence produced was legal evidence, and, if not contradicted, sufficient to establish the settlement in Leighford; but that the sessions seemed to have thought it indispensably necessary to procure further evidence, in which they were mistaken." The order of sessions was therefore quashed.

Settlement of grandmother on father's side, preferred to settlement of mother.

The children take the father's settlement, derived from their grandmother, in preference to that of their own mother. (*Rex* v. *St. Matthew's, Bethnal Green*, Burr. S. C. 482; 2 Bott, 54.) There a man whose settlement was not known married a woman who was settled in the precincts of St. Katherine's; they had a son born in Bethnal Green, which son married a woman settled in St. Leonard, Shoreditch, and had several children by her. It was argued that these children ought to follow the acquired settlement of their mother, and not their father's, which was only a derivative one from their grandmother, who had married a Frenchman, who had no settlement. But the court said, that there is no difference between an acquired and a derivative settlement. And the rule laid down was this: that the child's settlement follows that of its father, if its father's can be found, and that no recourse shall be had to the mother's settlement, till that of the father can be traced no further. And these children were adjudged to be settled at St. Katherine's.

Effect of attainder.

The settlement of a parent, acquired before his attainder, is communicated to his children born afterwards. (*Rex* v. *St. Mary, Cardigan*, 6 T. R. 116.) E. J., her daughter M., and J. and J. J., sons of her husband by a former wife, were removed from St. Mary, Cardigan, to L. Order quashed. Case:—The pauper's husband was settled in L.: he was convicted of sheep-stealing in 1770, and sentenced to death, but before execution he escaped from gaol. Two years afterwards he returned to Cardigan, and continued there till 1792; during that time he married, and his wife had by him John, one of the persons removed; on her decease, he married the pauper C., and had the pauper Mary; he afterwards absconded in 1792. The wife's settlement before marriage was in St. Mary, Cardigan. It was argued that the father's settlement was destroyed by his attainder. Lord *Kenyon*, C. J., "A settlement is not the property of any man; it cannot escheat, neither can it be called a franchise: in the case of a franchise it was rightly decided that by attainder the franchise was lost, and that the party had no right to vote at an election. But this person was, before his attainder, settled in the parish to which the paupers were removed, and I think that the father's settlement was communicated to them. It would be another question whether the man himself could acquire a settlement after the attainder" (*x*).

A settlement not a property.

Settlement derived from the Mother.

The child's settlement follows that of its father, whether acquired by his own act or derived from *his* parents, till it can be traced no further; recourse shall then be had to the settlement of the mother.

Birth settlement answered by proof of mother's maiden settlement.

A primâ facie case of settlement, by evidence of the place of birth of the pauper, may be answered by proof of the maiden settlement of his mother, without showing that his father had no settlement. (*Rex* v. *St. Mary's, Leicester*, 3 A. & E. 644; 5 N. & M. 215.) In that case J. Cuthbert was removed from Swetstone to St. Mary's, Leicester. Order confirmed. Case:—The respondents proved that the pauper was born in

(*x*) In *Rex* v. *Haddenham* (15 East, 463), it was held, that a convicted felon, discharged under the sign manual, may acquire a settlement by purchase.

the appellants' parish. The appellants proved that the pauper's mother, before her marriage to the pauper's father, acquired a settlement in St. Martin's, Leicester. The sessions confirmed the order, upon the ground that no evidence was offered to show that the pauper's father had no settlement. Lord *Denman*. "My first impression was, that, upon the authority of the rule laid down in *Rex* v. *St. Matthew's, Bethnal Green*, it was incumbent on 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; neither of which had been done. But the respondents rely upon the birth settlement. If the father had a settlement in the same place, they should have shown it; but they rely upon the primâ facie case of the birth: that is good till a settlement by parentage is shown: here that is shown by proof of the mother's settlement. It is argued that the mother's settlement cannot be taken to be that of the child, till the fact of the father's settlement be disproved; but that is not so here, because the mother's is good as against a birth settlement." *Littledale*, J. "The respondents, without giving any account of the parents, show a primâ facie settlement by birth. The appellants, to get rid of that, show a settlement in one parent—the mother: but neither party gives any proof as to the father. The father's settlement would displace that of the mother; but it would also displace the birth settlement. How then does the case stand? It may be presumed, indeed, that every man had a settlement; but if the father had one, it would displace the settlement relied on by the respondents, as that of the mother will do in the absence of the father's settlement." *Patteson*, J. "The birth settlement is the lowest and weakest. If you show a better, you get rid of that: the birthplace is the place of settlement, because no better settlement is found. Here a better is found." *Williams*, J. "I accede to the view of the case taken by the appellants. How do the respondents make good a settlement by birth? Only by supposing that the father has no settlement. Then the appellants show the mother's settlement. On what supposition is that a good settlement? On the very supposition necessarily made on the other side." Order of sessions quashed.

In *Berkhampstead* v. *St. Mary, North Church* (2 Sess. Ca. 182; 2 Bott, 51), the father ran away, and the mother went and resided on an estate devised to her. One question was whether the children could gain a settlement by residing with the mother (*y*) on such estate, where the father had *never lived?* Lord *Hardwicke*, C. J., held, "That as it did not appear that the father was dead, the court must suppose him to be living; and in such case the children could gain no settlement but what was derived from their father."

Father having no known settlement and run away, the child shall be settled with the mother.

An Englishman, whose settlement was not known, married, had a child, and ran away: the child was then nine years of age. By the court: "The mother and children ought to be settled where the mother was settled before marriage." (*Rex* v. *Westerham*, Fol. 252; 2 Bott, 108.)

So where the father was an Irishman, having no settlement.

S. E., with her daughter, aged five years, was removed from St. Margaret's to St. Giles's, as being the place of their mother's settlement before her marriage, she having married an Irishman who had no settlement. And it was adjudged that her daughter should be settled with her mother in St. Giles's, where her mother's settlement was before marriage. (*St. Giles's* v. *St. Margaret's*, Fol. 251; 2 Bott, 107: S. P., *St. Botolph* v. *St. John's*, Burr. S. C. 367; 2 Bott, 109.)

(*y*) The mother herself could gain no settlement by this estate, as her husband was living; and as he had not resided on the estate at all, no settlement in that parish could be derived from him in that parish.

So where the father was a foreigner.

In *Rex* v. *St. Paul's, Shadwell* (2 Sess. Ca. 113), it was resolved by *Eyre* and *Fortescue*, JJ., that where the father, being a foreigner, had no settlement, the children should have the benefit of their mother's settlement; for that her right should descend to them, and they should not be sent to the place of their birth.

Children follow settlement of mother acquired during widowhood.

Children follow the settlement of the mother, acquired after the death of the father, and during her widowhood. (*St. George's* v. *St. Katherine's*, Ld. Raym. 1474; 2 Bott, 47.) A man settled in St. Katherine's married, and had six children born there, and died. After his death, the widow went into St. George's with her children, and rented a house of 12*l.* a year, and lived in it with her children four months. The question was, whether the children should have the settlement of the mother in St. George's? And the whole court were of opinion that they followed the mother's newly-acquired settlement. *Parker*, C. J. "There is no distinction between the settlement of children with the father or mother; for they are as much hers as the father's, and nature obliges her, as much as the father, to provide for them; so does the law: and every argument that holds for their settlement with the father, holds as to their settlement with the mother. The reason why children shall not gain a settlement where the widow gains a settlement only by intermarriage is, because it is then not her family, but her husband's; and she cannot give the children any sustenance without the husband's leave (*z*). But in this case, since she is equally punishable with her husband for deserting her children, and therefore could not leave them behind her, they must gain a settlement with her."

Same point.

So in *Woodend* v. *Paulspury* (2 Ld. Raym. 1473; 2 Stra. 746), J. Buncher was settled at Woodend, and died, leaving a widow and one daughter, aged fourteen years. The widow removed to Paulspury, into a messuage of her own for life, and took her daughter with her, and the daughter lived with her there two years. And the question was, whether the daughter gained a settlement at Paulspury? And it was judged that she did; because the mother being a widow, having gained a new settlement after her husband's death, the daughter gained a settlement also as part of her family. And there is no difference between a father's gaining a settlement and a mother's, in such cases as this: for the mother is obliged to provide for her children after her husband's death, as the father was when living; and she could not leave this daughter behind her, neither could she be removed from her.

Same point.

So also *Barton Turfe* v. *Happisburg* (Burr. S. C. 49; 2 Bott, 52), T. Man being settled in Barton Turfe, died. After his death his widow removed to Happisburg, and occupied lands there, devised to her by her father. Her daughter, of the age of thirteen years, lived with her mother as part of her family for a year and a half. By the court: "The daughter gained a new settlement in Happisburg, by living with her mother there, as part of her family, upon the mother's own estate. For a child may gain a settlement under its mother after the father's death, equally as under its father whilst alive. The mother's settlement has the same effect upon the child as the father's had." (And see same point, *Rex* v. *Oulton*, 2 Burr. S. C. 64; 2 Bott, 53.)

But will not follow mother's settlement by second marriage.

But, if the mother gain a subsequent settlement by intermarriage, the children by the first marriage will not follow such settlement. (*Wangford* v. *Brandon*, Carth. 449; 2 Salk. 482.) Three men of Wangford married three widows of Brandon, each of which widows had children by their former husbands, some under seven, some above seven years of age. It was holden that the children did not gain a settlement in Wangford, nor were removable thither, to charge that parish. As to the nurse children, they indeed might be sent thither for *nurture only;* yet still

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(*z*) *Patteson*, J., in *Reg.* v. *St. Mary, Newington*, 12 L. J. (N. S.) M. C. 70: "I do not very well understand this reasoning."

Brandon must relieve them there, and not Wangford. But the children above the age of seven years ought not to be removed at all, being settled inhabitants of Brandon; and the removal of the mother shall have no influence on the settlement of her children.

In *Cumner* v. *Milton* (2 Salk. 528), it was said that if, after the death of the father, the mother marry again to a husband who is settled in another parish, this is an accidental settlement of the mother, and as she is now become one person with him, shall not gain a settlement for her children.

Same point.

So in *St. Giles's in the Fields* v. *St. Clement's* (Burr. S. C. 2; 2 Bott, 49), J. M., the pauper, was an infant of nine years of age. His father's settlement was not known: his mother's settlement before their marriage was known: his father died: his mother married a second husband, who had a settlement; and she gained a new settlement by this second marriage. By the court: "J. M.'s settlement is where his mother was last settled before her marriage with J.'s father; the new-gained settlement of his mother not being gained in her own right, but only in right of her second husband." And in this case the court agreed, that where children are sent with their mother for nurture, they are to be supported at the expense of the parish where their legal settlement is.

Although every man who marries a woman having children, legitimate or illegitimate, is now liable to maintain them till they are sixteen, or the mother dies, and for the purpose of the 4 & 5 Will. IV. c. 76, they are to be deemed part of his family (see ante, p. 296), the legitimate children within the age of nurture, of a wife married to a second husband cannot be ordered to be removed to the settlement of her husband. (*Rex* v. *Walthamstow*, 1 N. & P. 460; 6 A. & E. 301.) An order was confirmed as to William Hammond, Eliza his wife, and Mary Ann, their lawful child, but quashed as to the three other children of the said Eliza, by her former husband, all under seven years of age. The order adjudged the place of legal settlement of the said W. Hammond, Eliza his wife, and the children aforesaid, to be in the parish of St. Leonard, Shoreditch. W. Hammond was married to the said Eliza his wife in September, 1834, and his settlement at that time, and from thence up to the time of the above removal, was in the parish of St. Leonard, Shoreditch. At the time of the marriage of the pauper and his said wife, she had by a former husband, who was not settled in either of the contending parishes, the three children named in the order, all of whom were unemancipated. The question was, whether the three children of E. Hammond, by her former husband, were removable to the parish of St. Leonard by virtue of the said order. During the argument, Lord *Denman* said, "Suppose that order had been confirmed on appeal, how would the parish of Walthamstow ever have been able to get rid of their obligation to support these children?" And afterwards he added, "Justices have no power to remove paupers unless they are settled in another parish; but it is argued, that as children within the age of nurture are not to be separated from their mother, and are to be supported by the husband, under the 57th section of the Poor Law Amendment Act (*a*), it follows, that if the husband is removable, the children are to be removed likewise. I do not think that consequence springs from the provisions of the act. It may be assumed that the children will not be separated from their parents, but I do not think the justices have any power to remove them to a parish in which they are not settled." *Williams*, J. "In sect. 71, an express provision is contained as to the settlement of a bastard child, and the argument to be derived from that section, which is *in pari materiâ*, is strong to show, that settlement, not being mentioned in sect. 57, was not intended to be affected. The order of the justices in this case adjudicates upon the settlement of these children,

Even children within the age of nurture cannot be removed to settlement of stepfather.

(*a*) 4 & 5 Will. IV. c. 76.

and I do not think that the difficulty suggested by my lord as to the future effect of that order has been satisfactorily answered. If such an order is only to be valid for the settlement of the children for a certain time, that must be by the construction of sect. 57; but that clause contains no such provisions, and I cannot make the inference that such is the construction, there being no terms to warrant it." *Coleridge*, J. "The court is called upon here to say whether the children of a woman (legitimate or illegitimate), being within the age of nurture, gain a settlement upon the marriage of their mother. Now the words of the 57th section do not necessarily import this; though I will not say that such a result might not be raised by implication. But as it is only an inference that may under certain circumstances be raised, I ask myself whether I must not look at all the consequences arising from such an inference, and see whether there is any thing that forces the court to go beyond the literal interpretation of the act. I see nothing to throw such an obligation upon us, but, on the contrary, great inconvenience and novelties introduced into the law of settlement. Whereas adhering to the words of the act seems quite consistent with the purposes for which this enactment was passed, viz. not so much to keep the mother and children together, as to throw upon a husband all the expenses of supporting the children of the woman whom he may marry. These purposes may be effected by making him liable to support the children till they attain the age of sixteen, who for such purposes are to be deemed a part of his family; and nothing else need be implied. The 71st section corroborates this view, because there, on a similar subject, the legislature has expressly enacted what the settlement of an illegitimate child shall be. As there is nothing to the same effect in sect. 57, I do not think we ought to give the clause a similar interpretation." Order of sessions quashed.

Legitimate children above seven years of age, but under sixteen, of a woman who has married again, if chargeable to the parish where they reside with their mother and father-in-law, may be removed to their late father's settlement-parish, notwithstanding 4 & 5 Will. IV. c. 76, s. 57. (*Reg.* v. *Stafford*, 1 P. & D. 414; 10 A. & E. 417.) In that case J. Blackbourne, and two other children of John Blackbourne deceased, by Ann his wife, were removed from Maltby to Stafford. The order was confirmed as to the two elder children (the youngest child being within the age of nurture). The case was that Ann Ford, the mother of the three children named in the order, is now the wife of James Ford, to whom she was married in October, 1836. Her late husband, who died in 1834, was settled in Stafford. The question is, whether the two elder children of John Blackbourne, both of whom, at the time of making the order, were above the age of seven years, and have gained no settlement in their own right, are removable from Maltby to Stafford, their late father's settlement, James Ford, their stepfather (whose settlement is in Maltby), having run away and left his wife and her aforesaid children chargeable to the township of Maltby.

Reg. v. *Costock* was argued at the same time as *Reg.* v. *Stafford*. Lucy and Joseph Dexter were removed from Radford to Costock, and the order was confirmed. The case found that the paupers, Lucy Dexter, aged eight years, and Joseph Dexter, aged six years, were the legitimate children of Joseph Dexter and Susannah his wife. In September, 1834, Joseph Dexter died, being at the time of his death lawfully settled in Costock. In August, 1836, Susannah, his widow, was married to William Marville, who is settled in Radford. At the time of the order the children were resident with the mother in the workhouse of Radford, and chargeable to that parish. Lord *Denman*. "I am of opinion that the sessions have come to a right conclusion in these cases. The settlement of the paupers is not at all affected by the liability of the stepfather to maintain them, and there is nothing in the act to lead to a contrary doctrine." *Littledale*, J., concurred. *Patteson*, J. "*Rex* v. *Walthamstow* has decided that the 57th section does not operate to

change the settlement of children, under the circumstances therein provided for; and *Rex* v. *Wendron*, that it is not suspended for all purposes. Were these children, then, properly removed? It is said that the legislature intended that they should not be separated, before the age of sixteen, from their parents. Suppose the stepfather to die, when one of these children is only eight years old; the mother would remain in his parish, and the children would be removed from her to the place of their deceased father's settlement. So much for the alleged object of the legislature to keep them with the mother. I was struck with the ingenious argument as to the difficulty of carrying into execution the 59th section, if the children are held removable from the family of the stepfather. The inconvenience mentioned may certainly happen, and the children might be removed to Cornwall, and justices of that county have to attach wages in the hands of his employer in Lancashire. But the words of the 57th section are satisfied by holding that the stepfather is liable to reimburse the settlement parish of the children the costs of any relief given to them. If he should return and be of ability to maintain them, the question, whether he may be compelled to have them removed back again, may be settled when it arises." *Williams*, J. "It has been suggested that the construction contended for by the appellants may be justified by intendment drawn from the 71st section. We have, however, had sufficient warning against liberal intendments, from the number of cases in our books with respect to binding of apprentices for a less period than expressed in the statute, and with respect to constructive service and dispensations, and other matters which have complicated our poor-law with difficulties and niceties equal to any that may be met with in the most abstruse question on contingent remainders." Order of sessions was therefore confirmed.

Before 4 & 5 Will. 4, c. 76, bastard within age of nurture removable to birth settlement.

A bastard child, born *before* the passing of the 4 & 5 Will. IV. c. 76, living apart from her mother, who had married, and whose husband was alive, was held removable to the parish of her birth, although within the age of nurture. (*Reg.* v. *Wendron*, 3 N. & P. 62; 7 A. & E. 817.) Here, Sophia Hellings, aged about four years, was removed from Wendron to Constantine. Quashed. The pauper was the illegitimate child of Sophia Bowswarrick, who, before her marriage, was settled in Constantine, and in which parish the pauper, in 1832, was born. After her birth the pauper was placed at nurse in Wendron, by and in which latter parish she was relieved and maintained as a pauper before and at the time of the order. In November, 1835, the pauper's mother intermarried with John Bowswarrick, of Kenwyn, and a settled inhabitant of that parish, and both she and her husband had resided in Kenwyn ever since. Neither John Bowswarrick or his wife ever resided in Wendron. The sessions were of opinion, that by the 4 & 5 Will. IV. c. 76, the settlement of the pauper, in Constantine, was *suspended* during the lives of her mother and her husband, until she attained the age of sixteen. Lord *Denman*, C. J. "The 57th sect. of 3 & 4 Will. IV. c. 76, may certainly be argued with much plausibility to make the bastard child of a female pauper part of the father-in-law's family for all purposes whatever; but considering that that act was passed principally for the relief of the poor, and not to effect changes in settlement, and more particularly when I find, that in sect. 71 it is expressly enacted, that a bastard child shall follow its mother's settlement, I think it is a fair deduction, that if sect. 57 intended to make any alteration in the law of settlement for such a child, when the mother married, that it would have done so in terms. The words of that section are, that the child shall become a part of the husband's family for *the purposes of the act*, which are, first, the receiving of maintenance, and, secondly, receiving it in such proportion as every other member of his family would be entitled to. In *Rex* v. *Walthamstow* (ante, p. 337), we held that the settlement of the child is not changed, but still the parish where the child is settled may come upon the husband and compel him to maintain it. Now, the parish of

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Wendron has nothing to do with this matter, the father and mother not living there; and their only obligation arising from the child being found in their parish, and being chargeable to them, it is clear that they cannot be liable. Then to what place can the child be removed, except to its settlement by birth? I therefore think the order of removal was right, and the order of sessions wrong." *Littledale*, J. "The 57th section says, the child shall be part of the husband's family, but it does not say a word about settlement. There is no objection, therefore, to its being removed to Constantine, for it may still be considered as part of the husband's family, and an order may be made on him for its support. When the husband shall have provided for the maintenance of the child, he will have done all that is required by the act. The terms of sect. 71 are different, for they are express as to the settlement of a bastard child, but the 57th section contains no provision on the subject." *Williams*, J. "The question as to the removability of a child during the period of nurture does not occur, because the child was living apart from its mother. The comparison of sect. 57 with sect. 71 goes far to show that the decision in *Rex* v. *Walthamstow* was right, because all that is said in sect. 57 is, that the child shall be deemed part of the husband's family; but sect. 71 goes further, and enacts, that the child shall follow the mother's settlement. A strong inference arises from that provision, that sect. 57 was not intended to alter the child's settlement in the cases provided for in that section. The child, therefore, is settled in its birth-parish, and I think that no suspension of its settlement should be considered to take place. If steps are to be taken against the father-in-law for contribution to the support of the child, it is highly reasonable that the parish where the settlement is should be the parish to do so, and not the parish where the child may by accident happen to be." *Coleridge*, J. "I entirely concur. The tender age of the child is out of the question, because she is already living apart from her mother. *Lang* v. *Spicer* (1 M. & W. 129), only decided that the mother of a bastard child, having married, the liability of the putative father ceased. Only three possible cases can be conceived with regard to this child. It must either remain at Wendron, or be removed to Kenwyn, or to Constantine. As to the first case, there is no provision of the act which enacts that the child shall have no settlement at all, or which makes it irremovable from the parish where it happens to be till the age of sixteen. According to the terms of sect. 57, the husband is bound to maintain the child; but if he refuse so to do,—why is a stranger parish, like Wendron, to bear the burden of putting that law in force? If it is to be removed to the husband's parish, a new form of order must be devised. It is admitted, that the child is not settled in that parish. But it is essential that the justices should adjudicate upon the settlement, when an order of removal is to be made. I see no proviso in the act under which a removal could be made to any other than the settlement-parish. Then what is to prevent the removal being made to the settlement-parish? There are no words strong enough in the act to destroy that settlement. The literal meaning of the words in sect. 57 does not warrant that construction; and on comparing it with sect. 71, where there is an express provision on a correlative subject, no implication can be made that a similar provision was intended in the former clause. It is a much safer course to construe these sections according to the language used, and not to give them an extended sense, unwarranted by the words." Order of sessions quashed.

Secus, born after that act.

Illegitimate children born after the passing of 4 & 5 Will. IV. c. 76 (14th August, 1834), have, by force of s. 71, the settlement acquired by their mother by her subsequent marriage, until sixteen, or until they acquire a settlement in their own right. (*Reg.* v. *St. Mary, Newington*, 4 Q. B. Rep. 581; 12 L. J. (N. S.) M. C. 68 (*b*). See ante, p. 325).

(*b*) See 7 & 8 Vict. c. 101, s. 26 (ante, p. 129), as to relief of widows with legitimate children. See also post, "REMOVAL OF CHILDREN."

§ 2. OF EMANCIPATION.

A child will follow each newly-acquired settlement of his parents so long as he continues a member of the family, that is, until he is emancipated, and no longer. In case the father have no settlement, the mother is the head of the family, for the purpose of communicating a settlement to the children, or subordinate members thereof; and she assumes the same rank, with the like capacity to confer the same privilege, after the death of her husband, who had a settlement, until she herself becomes again a subordinate member of another family, by contracting a fresh marriage.

Emancipation is effected when the child ceases to be a subordinate member of his father's or mother's family. In *Rex* v. *Wilmington* (5 B. & Ald. 525), Lord *Tenterden* said, "It is of importance to lay down a general rule for the guidance of magistrates on the subject of emancipation, and the best which 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, however, no question, that in that case he is only removable to his own acquired settlement." General rules as to emancipation.

To the same effect is the rule laid down by Lord *Kenyon*, in *Rex* v. *Roach* (6 T. R. 247). "The rule to be extracted from the cases is this: if the child be separated from the parents, and without marrying or obtaining any settlement for himself, return to them 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 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 purpose of a derivative settlement, to be deemed part of that family; this rule will reconcile all the cases, and will be found to be an intelligible one."

Subject to the above exceptions of marriage, and the acquiring a settlement of his own, it may be further stated that, "during the minority of the child he will remain, under almost any circumstances, unemancipated; but where a new settlement is acquired by the parent after the child has attained the age of twenty-one, it will not be communicated to the child unless in fact the child continues part of the family. Where therefore at that period he is absent, employed in gaining a livelihood for himself, or serving in the militia, he no longer remains a member of the family."—Lord *Tenterden*. (*Rex* v. *Hardwick*, 5 B. & Ald. 176.)

An infant then will be emancipated by marriage; by acquiring a settlement; but absence in any service, and independence of his parents, if he return to the parental control before twenty-one, does not emancipate him.

Adults may be emancipated by actual separation, or by remaining separate after coming of age.

Although it is said that the acquisition of a settlement by a child does not properly fall under the head of emancipation, yet as it has been generally classed under that title, the decisions upon that point are enumerated here.

In *Rex* v. *Yeavely* (8 A. & E., post), it appeared that the pauper was unemancipated in 1817; and it was held that the onus was cast on the parish contending that he was emancipated in 1824, to prove it, although in 1824 he was 26 years old, and in an order then made for the removal of the mother, he was not included as part of her family. As to the presumption of emancipation.

An idiot is always a minor, and not emancipated. (*Rex* v. *Much Cowarne*, 2 B. & Ad. 861.) In that case J. Yarnold was removed from An idiot remains unemancipated.

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Great Witley to Much Cowarne. Order confirmed. The pauper was born in 1793, and was always an idiot. He and his parents resided in Great Witley, the place of his father's settlement, till 1822, when the mother died. In 1824 the father left the pauper (then 31 years old) in Witley, and hired himself as servant, and in 1826 married a second wife, and then went to Much Cowarne, and resided there upon some property belonging to his second wife until her death in 1830, and there gained a settlement. After the father left Witley he never returned to it, but the overseers took care of the pauper, and never applied to the father for any assistance or remuneration for what they paid. The sessions found that the pauper was incapable of taking care of himself through imbecility of mind at the time of the separation from his father, seven years since, and that previously he was not emancipated from the same cause. Lord *Tenterden*. "The general rule is, that until a child reaches twenty-one he is not emancipated, unless he becomes the head of a family or gains a settlement; but if after twenty-one, he separates himself from his father's family, he is emancipated. Why is twenty-one the period thus fixed by the law? Because at that age the party is presumed by law to be competent to take the management of his own affairs. Here the pauper never was and never will be competent to do so. The reason therefore for which that period was fixed upon in other cases wholly fails in this." *Parke*, J. "If the pauper were a minor, he would continue unemancipated. Now it is found that he is incapable of maintaining and taking care of himself, he must therefore be considered in the same situation as if he had remained a minor." *Taunton*, J. "The rule has been correctly stated to be, that where a party after twenty-one separates from his father's family, and can provide for himself, and requires no further protection, he is emancipated. That rule does not apply here." *Patteson*, J. "The words in *Rex* v. *Hardwick* (ante, p. 341), must apply only to a member of the family capable of supporting himself." Order confirmed.

Physical incapacity.

So also, where a child was rendered incapable of work by her hands being burnt off, it was held she followed her father's settlement, although she continued in the workhouse after twenty-one. (*Rex* v. *Broadhembury*, 4 Doug. 241.)

Emancipation by marriage.

A son is emancipated by the father's removing to another parish and the son remaining behind and marrying. (*Eastwoodhay* v. *Westwoodhay*, 1 Stra. 438; 2 Bott, 57.)

So a son at nineteen leaving his father and going into another parish, and marrying, is emancipated. (*St. Michael's Coslany in Norwich* v. *St. Matthew's in Ipswich*, 2 Sess. C. 129; 2 Stra. 831; 2 Bott, 58.)

Same point in *Bugden* v. *Ampthill* (Burr. S. C. 270; 2 Bott, 60); *Rex* v. *Heath* (5 T. R. 583), and *Rex* v. *Mortlake* (6 East, 397).

Marriage by a son is an emancipation, although he continue to reside with and as part of his father's family. (*Rex* v. *Everton*, 1 East, 526.) Lord *Kenyon*, C. J., said, "The sessions could not intend more by the statement that he continued a part of his father's family, than to inform us that locally and personally the pauper lived in the same house with his father, and took his fare at the same board with him; but they wish to be informed, whether that so far constituted him in point of law one of his father's family under the circumstances, as that after his marriage he would follow a newly-acquired settlement of the father, and I am of opinion that it did not."

It does not appear whether the pauper was under age or not at the time of the discharge, and therefore the case is of very little authority; for it is clear that if the return to the father's family be while the son is still a minor, the emancipation is not complete. (See *Rex* v. *Rotherfield Greys*, post, p. 344; and *Rex* v. *Whitehaven*, 5 B. & Ald. 720.)

By enlisting.

Where the son enlists as a soldier, and thereby puts himself under the control of others, it is an emancipation, although he gains no settlement of his own. (*Rex* v. *Walpole St. Peter's*, Burr. S. C.

638; 1 Bla. Rep. 669; *Rex* v. *Stanwix*, 5 T. R. 670.) In the last-mentioned case the son enlisted when he was nineteen, and was abroad and of full age when his father acquired a fresh settlement.

Serving in the militia.

In the subsequent case of *Rex* v. *Woburn* (8 T. R. 479), serving in the militia was held not to be of itself an emancipation, although he continues after twenty-one. In that case, J. Williams, the father of T. Williams, the pauper, previous to 1756 was settled with his family at Leighton Buzzard. The pauper was born in that parish and baptized there in 1756. In 1763 J. W., with his family (including T. W.), removed to Woburn, and gained a settlement there in 1774. In 1772, previous to such settlement, the pauper entered into the militia with the consent of his father, then a sergeant in the same militia; the pauper continued therein a drummer till he was twenty-three years of age: during which time his pay was received by his father. From the time of the pauper's entering into the militia until the year 1788, when he married, he lived in his father's family, except at the times when he and his father were absent upon duty in the militia. He was removed from L. B. to Woburn, and the sessions affirmed the order. Per Lord *Kenyon*, C. J. "The argument that has been used in support of the present rule, if it proves any thing, proves too much; for it tends to show that if a child be for any period of time, however short, under any other control than that of the father, he is thereby emancipated from his father's family. That is the case of every private in the militia, even in time of peace; he is subject to military control during a part of the year, and therefore not under the father's control during that time; and yet it was contended that such a person is by that means emancipated. A drummer is generally taken at a very early period of life, and if he only continue in that situation for twenty-four hours, he is, it is said, emancipated from his father, he is to be taken from the protection of his father, and if his father is removed elsewhere, the child is to remain unprotected. The proposition is monstrous. In *Rex* v. *Walpole St. Peter's* (ante, p. 342), the court proceeded on this ground, that he was engaged to serve for life, and was liable to be sent into foreign countries. But a son is not emancipated by the circumstance of his being under some other control than that of his father. For in *Rex* v. *Halifax* (post, p. 346), where the son served an apprenticeship for four years, it was decided that he was not emancipated. There may be two kinds of control: a son may be under the control of his father and also under the control of the law; as if he be ordered to assist a constable in the execution of his duty, that is a temporary control. I am, therefore, of opinion that this pauper was not emancipated from his father at the time when the latter gained a settlement at W." *Grose*, J., of the same opinion, as it appeared that he was only sixteen years of age when he entered; that he did so with his father's consent, a sergeant in the same militia; that his father received his pay: and that till he married he lived in his father's family. *Le Blanc*, J., said, "That in *Rex* v. *Walpole St. Peter's*, the son was totally independent of his father for four years." He added, "Suppose he had engaged to live as a servant unto a farmer in the neighbourhood for six months, he would during that time have been under the control of his master, but on returning to his father's family he would again become subject to his father's control and would not have been emancipated."

Nevertheless, in *Rex* v. *Hardwick* (5 B. & Ald. 176), a person serving in the militia was held to be emancipated, he being in actual service when he came of age. The pauper was born in Hardwick, and resided there as a part of the family of his father, who was settled there. In 1817, when the pauper was eighteen years of age, he was drawn for the militia, and served therein for five years as a balloted man, the regiment during that period being embodied and in actual service. He joined the regiment in 1808, and in 1809, having obtained a furlough for three weeks, he returned to the house of his father, who was still

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residing at Hardwick, and lived with him for about a fortnight. In 1811 the pauper obtained a second furlough for a fortnight, and went again to his father's, who was then residing in Stanton Harcourt, where he remained for about twelve days. The pauper was discharged from the militia in 1813, when he returned to his father in Stanton Harcourt, who gave him lodgings in his house till his marriage. After the pauper's return from the militia, and before his marriage, his father gained a settlement in Stanton Harcourt. *Abbott*, C. J. "The rule of law is, that every new settlement acquired by the parent is communicated to the children so long as they remain members of his family; and the question in this case is, whether at the time the father gained his settlement in Stanton Harcourt this pauper remained a member of his family. Now, during the minority of the child, he will remain almost under any circumstances unemancipated; but where the new settlement is acquired by the parent after the child has attained twenty-one, it will not be communicated unless the child in fact continues part of the family. Where therefore at that period he is absent, employed in gaining a livelihood for himself, or serving, as in this case, in the militia, I think he no longer remains a member of the family. In the present case, I think that the sessions have come to a right conclusion, in deciding that the legal settlement of the pauper was at Hardwick." *Bayley*, J. "If a child be separated from his father's family, and does not return till after twenty-one, he ceases to be a member of that family, and consequently his settlement will not, after twenty-one, shift with that of his father. I think, therefore, that the sessions are right, and that this case is hardly distinguishable from *Rex* v. *Walpole St. Peter's*." *Holroyd*, J. "The distinction between a compulsory and a voluntary separation seems to me to be immaterial. The case must follow the same rule as *Rex* v. *Walpole St. Peter's*."

It will be observed, that in *Rex* v. *Woburn* the pauper remained with the father's family during the whole period when he was on duty as a militia-man, and then when he was on duty he was still in some sense under the parental control, the father being in the same service, and receiving his pay. In *Rex* v. *Hardwick* these facts did not exist, and this seems to be the ground of distinction between the two cases.

Serving in the marines.

On the other hand, a minor who enlisted into the marines was discharged, and returned to his father's family before he attained the age of twenty-one, was held not to be emancipated. (*Rex* v. *Rotherfield Greys*, 1 B. & C. 345; 2 D. & R. 268.) In that case, in 1807, the pauper's father removed with his wife and family, including the pauper, to Tooting, and took a cottage there, which he had held ever since at 3*s.* per week. The pauper resided at Tooting with his parents till 1813, when he enlisted in the marines, and went abroad in that service. He remained in the marines till the 8th September, 1815, when in consequence of the reduction of that corps he received his discharge, and returned the same day to his parents at Tooting, *being then under the age of twenty-one years*, and resided with them from that time until some time after his father hired a stable in Streatham. About a year after the pauper's return home, the pauper being then more than twenty-one years of age, his father hired a stable in Streatham, at 4*s.* a week, which he held for about nine months, still continuing to reside at the cottage at Tooting. The cottage and the stable together were above the annual value of 10*l.* The pauper had never done any act to acquire a settlement for himself. *Bayley*, J. "I am of opinion that the pauper was not emancipated. In order to constitute emancipation, the party ought to be wholly and permanently free from the parental control. In this case, the pauper by enlisting into the marines became subject to the control of the crown, and continued subject to that control as long as the period of his service continued; and if he had remained in the army till the age of twenty-one years, his emancipation would undoubtedly relate back to the time of his enlistment: but before he attained the age of twenty-one

Emancipation relates back to the time of enlistment.

years, the relation between him and the crown ceased, and he returned to and constituted part of his father's family, and of course again became subject to the parental control. He, therefore, was not emancipated." *Holroyd*, J. "By entering into the marines, the pauper ceased to be under the control of his father, and became subject to the control of the crown, as long as that state of circumstances continued. But before he attained the age of twenty-one, he ceased also to be under the control of the crown, returned to his father's family, and again became subject to his control, and consequently was not emancipated. It has been said, that this, being an engagement for life, constitutes in itself a complete and perfect emancipation. It was an engagement for life, so as to bind the pauper to serve for life, if required; but the duration of the service depends on the discretion of the crown." *Best*, J. "By the general policy of the law of England, the parental authority continues until the child attains the age of twenty-one years: but the same policy also requires that a minor shall be at liberty to contract an engagement to serve the state. When such an engagement is contracted, it becomes inconsistent with the duty which he owes to the public that the parental authority should continue. The parental authority, however, is suspended, but not destroyed. When the reason for its suspension ceases, the parental authority returns.

And in a later case it was held, as the rule is, that during the minority of a child there can be no emancipation, unless he marries or contracts some other relation so as wholly and permanently to exclude the parental control; service in the local militia is not equivalent to emancipation any more than mere absence from home and working at a trade, without any contract with his master which would deprive his father from claiming his services. (*R.* v. *Scammonden*, 8 Q. B. 349; 15 L. J., M. C. 30.) And service as a policeman, with the parent's consent, does not operate as an emancipation, for a policeman, unlike a soldier, can resign at any time. (*Reg.* v. *Selborne*, 29 L. J. (N. S.) M. C. 11.)

Service as a policeman.

If a child gains a settlement in his own right, as by hiring and service, though in the parish in which he was previously settled by parentage, he is thereby emancipated although he return to his father before he is of age. (*Rex* v. *Bleasby*, 3 B. & Ald. 377.) In that case the pauper was born at Gonalstone, the place of his father's settlement, in June, 1785; and at thirteen years of age was hired and served for a year with J. Hind, of Gonalstone. When the pauper was about sixteen years of age, his father gained a settlement in Thurgarton by renting a tenement of the yearly value of 10*l.*, on which the father continued to reside during the remainder of the pauper's minority, and the pauper continued during such period (that is, from about two years after the expiration of his service in Gonalstone, until he was twenty-one years of age), to reside in his father's house at Thurgarton, working during the time as a journeyman frame-work knitter, and occasionally paying part of his earnings to his father, who was a labourer, as a compensation for his board. *Abbott*, C. J. "I take it to be settled law, that if a child acquire a settlement of his own, although he may afterwards during his minority return and live with his father's family, he does not follow the settlement of his father subsequently obtained. In this case the pauper did acquire a settlement by the hiring and service in Gonalstone, and after that time he derived his settlement no longer from his father, but from the contract of hiring." *Bayley*, J. "It has long been settled that the settlement of a child, who has acquired one of his own, does not shift with that of the father. It is said that the pauper has not gained a settlement of his own in Gonalstone, because he had one there before; but the words of 3 Will. & M. expressly provide, that if an unmarried person shall so be hired and serve, he shall be judged and deemed to have a good settlement." *Holroyd*, J. "I can see no reason why a party should not gain a new settlement in the parish in which he had one before, where originally he had it in another right, as derived from his

Emancipation by settlement in own right.

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father, and subsequently in his own right, under the contract of hiring and service" (*a*).

By absence.

If provision be made for a child under age, and independently of the parents, and the child lives away from the father's family, so that he exercises no superintendence or immediate actual control over the child, still this will not amount to an emancipation, as is established by the following cases.

Residence of a child by his father's direction at an uncle's house for support, the child visiting his father's house occasionally as his home, when corrected by his uncle and also on holidays, is not an emancipation, and the child follows the settlement of his father acquired during his absence. (*Rex* v. *Tottington Lower End*, Cald. 284; 2 Bott, 64.) Lord *Mansfield*, C. J. "The pauper considered himself as part of his father's family, and the father considered him the same. When a man acquires a settlement, he acquires it for himself and his family. There is no reason to say this boy was not a part of his father's family. The uncle was under no obligation to do anything for him, or to keep him an hour; and the boy, in point of fact, on every disagreement went to his father's house as his home, and he received him, as he was bound to do. I see no ground for considering this as an emancipation." *Rex* v. *Offchurch* (3 T. R. 114), is to the same effect. In that case, Lord *Kenyon*, C. J., said, "It is not necessary in these cases of derivative settlements, that the child should remove with the father from place to place, for the settlement of the father will be communicated to the child: otherwise children who are sent out into the world for education, and are of course separated for a time from the father, might lose the benefit of their father's settlement; and when they were about to return home, would find themselves excluded from parental care, if their parents had in the mean time gained a new settlement."

A daughter *of the age of eighteen*, who, from the age of four, had lived with her grandfather, and had been maintained by him until his death, and afterwards by her grandmother, the grandfather having by his will directed the grandmother to educate and maintain her out of a fund given to the grandmother for life, and after her decease to the daughter, was held not to be emancipated, but capable of deriving from her father any settlement he might acquire. (*Rex* v. *Uckfield*, 5 M. & Sel. 214.)

An unmarried son carrying on business for himself, but living with his father's widow as part of her family, is not thereby emancipated. (*Rex* v. *Sowerby*, 2 East, 276.)

A son, nineteen years of age, treating his father's house as his home, and so considering it, is not emancipated, although absent as an apprentice for four years (but not so as to gain a settlement, his father residing under a certificate), though he goes about the country working for himself. (*Rex* v. *Halifax*, Burr. S. C. 806; 2 Bott, 63.)

So a son apprenticed to a certificated person for four years, who after serving the time, returned to his father at the age of nineteen, was held not emancipated. (*Rex* v. *Hardwick*, 11 East, 578.)

So where a pauper was bound apprentice to a certificated man, and during his apprenticeship, he being of the age of eighteen, his father gained a new settlement, and the pauper did not return to his father's till after twenty-one: he was held to be not emancipated, but to follow his father's acquired settlement. (*Rex* v. *Huggate*, 2 B. & Ald. 582.)

Absence from the father's family as a servant does not emancipate the child if he return as part of his father's family. (*Rex* v. *Collingbourn Ducis*, 4 T. R. 199.)

So a child bound apprentice by and serving under a void indenture

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(*a*) The dictum in *Rex* v. *Keel*, Cald. 144, "that the party can acquire no new settlement in the place where he was settled before," is therefore not law.

(as for want of a stamp) is not thereby emancipated, but follows his father's settlement acquired during the apprenticeship. (*Rex* v. *Edgeworth*, 3 T. R. 353.)

Emancipation by exclusion of parental control.

Emancipation takes place by becoming head of a family, or contracting some other relation, so as wholly and permanently to exclude the parental control. (*Rex* v. *Wilmington*, 5 B. & Ald. 525; 1 D. & R. 140.)

In *Rex* v. *Roach* (6 T. R. 247), an adult daughter who left her father's home and went into weekly service, but at the end of eight weeks returned to her father's, was held to be emancipated and did not follow the settlement of her father, acquired by renting a tenement in a parish to which he removed a few days after the daughter went into service. In that case, Lord *Kenyon*, C. J., said, "It has been very properly observed on former occasions, that this court ought to be anxious, in determining questions arising on the settlement laws, to lay down clear and distinct rules for the information of a very useful class of persons, the magistrates, who are to decide in cases of this kind. And I hope that the rule of decision which we are about to establish in this case, will fall in with every case that has been cited. For with regard to a supposed expression of mine in *Rex* v. *Witton-cum-Twambrookes* (*b*), there is an inaccuracy in it. I think I could not have said, because it never was my opinion, that the mere circumstance of a son's attaining the age of twenty-one was an emancipation, so as to prevent his having a derivative settlement, gained by his father afterwards, if the son continued to live with the father; for if the son, with unbroken continuance, remain with and a member of the father's family, he is not emancipated. But this proposition will not break in upon any of the cases, but may be reconciled with all of them, namely, that 'if a child under the age of twenty-one leave his father's home, and is thereby *quâ* severed from his father's family, and return to his father during a state of pupilage, during which time policy requires that the child should be under the protection of his father, he must be considered as incorporated with his father's family, unless he have gained a distinct settlement of his own, or have become the head of a family himself: but if a child, after a state of pupilage, sever himself from his father's family, he cannot afterwards be incorporated with it.' The case of the soldier (*c*) proceeded upon that principle; he had neither gained a settlement nor was in a situation to gain one, but he had ceased to be under the control of his parents, and had become liable to the control of others; and as he did not return to his father until after he was of age, the case was thought too clear to be argued. But it must not be inferred from the circumstances of that case not having been argued, that it passed without consideration, and is not entitled to much notice; because in *Rex* v. *Halifax* (*d*), *Aston*, J., who was a very good sessions lawyer, alluded to

General rules as to absence.

(*b*) In *Rex* v. *Witton-cum-Twambrookes* (3 T. R. 355), it was held, that a boy, who, after being from his father's family for a considerable time, returned to it before he was an adult, or married, and before he had acquired a settlement for himself, was not emancipated, but was entitled to the benefit of his father's settlement. The case is only worth noticing on account of the reported expression of Lord *Kenyon*, C. J. "It was never conceived in any case that a son who was only sixteen years of age, and who had not gained any settlement in his own right, was not part of his father's family. The cases of emancipation have always been decided on the circumstances either of the son's being twenty-one (*Rex* v. *Roach*, supra), or married, or having gained a settlement in his own right, or (as in the case of the soldier), having contracted a relation which was inconsistent with the idea of his being in a subordinate situation in his father's family."

(*c*) *R.* v. *Walpole St. Peter's*, Burr. S. C. 638; 1 Bla. Rep. 669; ante, p. 342.

(*d*) Ante, p. 346.

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it as a case properly decided. And if so, it must govern the present, for I cannot distinguish between them. Some stress, however, has been laid in the argument to-day on the circumstance of that person having engaged in the situation of a soldier; but that cannot be material in any other way than as showing that the son was no longer under the control of his father. So in this case this woman was above twenty-one; she had contracted the relation of servant with another family; she was out of her father's family; she was under no control to him other than that arising from moral obligation and gratitude; and I cannot see how she could afterwards be deemed to be incorporated with the father's family."

A widower having a daughter, placed her, at eleven years of age, with an uncle, by whom she was wholly maintained as part of his family and with whom she continued to reside after she came of age, doing service for him, but without any contract of hiring, to give her a settlement of her own; the father in the meantime having gone out to service: held, that on coming of age she was emancipated. (*Rex* v. *Cowhoneyborne*, 10 East, 80.) Lord *Ellenborough*, C. J. "The daughter having been originally placed, when an infant, by her father in her uncle's family, continued to live with her uncle after she came of age, as part of his family, receiving no assistance from her father, and being at liberty to depart from her uncle when she chose. She was of age, living apart from her father, having her support from sources independent of him, and was at liberty to quit her uncle when she pleased, as she herself considered. If this be not emancipation, it would be difficult to say what is so, and when it can take effect." *Grose*, J. "The daughter lived apart from her father, after she was twenty-one, not under his control, nor having any contemplation of it, nor receiving any assistance from him: she was therefore emancipated." *Le Blanc*, J. "Under these circumstances, living away from her father before and after the age of twenty-one, he having no house of his own, nor giving her any support; I think she ceased, after she came of age, to be part of her father's family, and consequently no future settlement gained by him could be communicated to her." *Bayley*, J. "To constitute emancipation, it is clearly not necessary for the child to have acquired a new settlement of his own: *Rex* v. *Roach* is in point to that. Where is the difference between going out from the father's house after twenty-one to seek a livelihood, and continuing out for the same purpose after that age, where the absence from the father is so long as it was here; the father, too, during all that time having no house of his own, and having indeed contracted a relation which precluded him from receiving his daughter at home."

Hiring for the harvest.

In accordance with *Rex* v. *Roach* (ante, p. 347), it was held, in *Rex* v. *Oulton* (5 Bar. & Adol. 958; 3 Nev. & M. 62, S. C.), that hiring by an adult for the harvest is an emancipation. In that case John Barnes, the father of the pauper, had a settlement in Oulton until 1830, when he acquired a settlement in Arkton, the pauper at that time living with him as part of his family. The pauper was born in 1806, and had never gained any settlement in her own right, but up to the time of the removal lived with her father as part of his family. She did the work of her father's house, and before and at the time of the appeal was the main support of his family. In the autumn of 1829, the pauper then being of the age of twenty-three years, with the consent and at the desire of her father, hired herself to William Wilson, residing at some miles distance, in an adjoining parish, at weekly wages, to work for him during his harvest. She remained living with Wilson and working for him under the hiring for three weeks and upwards, when she received her wages and returned home, having been absent from her father's house three weeks and two days. In the following autumn she hired herself again, with the consent and at the desire of her father, to Wilson, to assist him in his harvest. On this occasion she served Wilson, living with him under

this hiring a fortnight, received her wages, and returned home as before, having been absent from her father's house at this time two weeks and two days. On this latter occasion she gave her wages to her father, who expended them for the use of the family. The pauper had not on either of these occasions any intention of abandoning her home, but on both occasions she fully intended to return, and her father expected that she would return to him as soon as the harvest work at Wilson's was done. The sessions found that the pauper was emancipated, and did not follow the settlement acquired by her father in Arkton in 1830. *Denman*, C. J. "It seems to me that the sessions were right in finding that the daughter was emancipated. It appears that she and her father were on very good terms, and that on one occasion she paid her wages to him; but she being twenty-one years of age, and having hired herself during the harvest, it was in her option to pay her wages to her father or not. *Rex* v. *Lytchet Matravers* (post, p. 352) tends strongly to show that a pauper who hires himself under twenty-one years of age, and continues to serve after that period, will be emancipated. We are extremely anxious to make the rules on this subject as clear as possible. A party under age is not considered to be emancipated unless some distinct act be shown producing that effect; as if he marries, and so becomes the head of a family; or contracts some other relation, so as wholly and permanently to exclude the parental control; but where a child has attained the age of twenty-one, and is then separated from the father's family, the burden of proof that the child is not thereby emancipated lies on the party asserting that fact." (His lordship then read the words of *Abbott*, C. J., in *Rex* v. *Hardwick*, ante, p. 341.) "Now here the pauper, after she attained twenty-one, made a contract whereby she bound herself to work during a certain period. In performance of that contract she was absent from her father's house three weeks, employed in gaining a livelihood for herself. During that period, consequently, she no longer remained a member of his family; and I am, therefore, of opinion that the sessions were warranted in the conclusion they came to, that she was emancipated." *Littledale*, J. "I am of opinion that the pauper was not emancipated. It appears to me that her temporary absence from her father's house during the harvest was not, under the circumstances stated in this case, a severance from his family, and therefore does not amount to emancipation. It is the common practice for country people to hire themselves during the harvest, and their temporary absence from home under such a hiring, and when they are of full age, has never been considered such a severance from the father's family as amounts to emancipation. In this case the daughter did not intend to separate from her father's family, and her intention is very material in a case like the present, where her absence from the parent was for so short a period. For anything that appears, her room or her bed may have been kept for her during her absence. She maintained her father, and her hiring herself during the harvest may have been intended as a means of making her earn something towards his support. It is said that the pauper is emancipated, because, having contracted to work during the harvest, she had for a time put herself out of her father's control. That argument would equally apply if she had agreed to work by the day, because during the hours of work she would be free from her father's control. There must be a severance of the child from the family of the parent to constitute emancipation. I think that the pauper here, during the harvest time while she was working for another, continued, under the circumstances stated in this case, part of her father's family. In *Rex* v. *Roach* (ante, p. 347), Lord *Kenyon* said, 'This woman' (the pauper) 'was above the age of twenty-one, she had contracted the relation of servant with another family, she was out of her father's family, she was under no other control to him than that arising from moral obligation and gratitude, and I cannot see how she could afterwards be deemed to be incorporated with the father's family.' In this case the pauper never contracted the relation of household ser-

The intention of the child material.

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vant with another family; she was to work in the fields, not in the house. She was therefore never out of her father's family, to use Lord *Kenyon's* expression; her wages contributed to his support, she intended to return home, and her father expected she would, as soon as the harvest work was done. In *Rex* v. *Roach*, *Ashhurst*, J., considered the question, whether absence from the father's family amounted to emancipation, to depend upon the intent. He there says, 'In some cases, perhaps, it may be difficult to say what shall amount to a severance from the father's family. When a child becomes of age, it is optional in him either to continue with his parents or not, as he pleases. He is then *sui juris*, and if he leave his father's house and put himself under some other control, this is a kind of public notification that he means to leave his father's family.' Now I think here that the fact of the pauper having left her father's house, and put herself under the control of another during the harvest, was not, under the circumstances of the case, any indication of an intent to leave her father's family. In *Rex* v. *Sowerby* (2 East, 276), it was found that the son of the certificated person never left his father or mother's house, except for a few weeks in harvest time in one year, and it was then considered that he was not thereby emancipated." *Taunton*, J. "Certainty in the administration of every department of the law is of the greatest importance, and in none more so than in sessions law. The yearly expense of the country is increased greatly by splitting hairs in questions of this description. I cannot distinguish this case from *Rex* v. *Roach*. That decision, whether wisely come to or not, is binding on us. It certainly is not in contravention of any leading principles of law; if it were, I might think it right to reconsider it. It is true, that in this case the pauper hired herself at the desire and with the consent of her father, but every parent consents and desires (if his mind be properly constituted) that his children should go to service to obtain an honest livelihood. Here the pauper agreed not merely to do the harvest work, but to work for Wilson during his harvest. It is by no means uncommon for farmers to employ their own domestic servants to do the harvest work, and to hire others to do the household work. Whether that was the case here does not appear; but the pauper lived with her master during the whole harvest time, and slept in his house, and she was absent on the first occasion three weeks and two days. And as it is expressly found that on the second occasion she gave her wages to her father, it may be fairly inferred that on the first she kept them for himself. Then the only difference between *Rex* v. *Roach* and this case is, that there the pauper served eight weeks, here only three weeks and two days. In each case the pauper served under a contract, and as it was held in the former case that the pauper was emancipated by having been absent from his father's family eight weeks, I think we are bound to adhere to that decision, and to hold that the pauper was emancipated here by her absence for three weeks." *Patteson*, J. "I cannot distinguish this case from *Rex* v. *Roach*. The only difference is, that in that case the pauper served eight weeks, here she served three weeks and two days; but she was bound by her contract, and compellable to serve her master during that period. It is found, indeed, that she hired herself with the consent and at the desire of her father, but he could not enforce or prevent her so doing, for she was of full age, and that being the case, the onus of showing that she was not emancipated is thrown on that party who contends that she was not so. As to *Rex* v. *Sowerby*, the decision there did not turn on the question of the emancipation of the son; he was born after the father had come into the certificated parish, and always resided with him during his lifetime, and after his death with his mother; and the question was, whether or not after that time he still resided under the certificate by living with his mother as part of a family of which she was the head, in which case his hired servant was prevented by the statute 12 Anne, c. 18, s. 2, from gaining a settlement."

In *Rex* v. *Morley* (2 M. & Sel. 417), the son of a certificated person, not named in the certificate, upon the death of his father, was bound apprentice in the certifying parish, where he served for some years, and then, with his master's consent, served the remainder of his time, till twenty-one, with a person in the certified parish, where his mother and family resided under the certificate; and afterwards he hired himself to the same person for a year, and served that and three successive years in the certified parish: it was held, that he gained a settlement by such hiring and service, on the ground that he had separated himself from his father's family at an age when he was by law capable of supporting himself; and that, therefore, he was not prevented by the certificate from gaining a settlement for himself, which is a disability that can only attach on him as being one of the family.

Entering sea service.

In *Rex* v. *Lawford* (8 B. & C. 271; 2 M. & R. 556), it was held, that where a pauper left his father's family at fifteen, and entered the sea service, where he remained till twenty-one: held, that he was *then* emancipated, and was settled in the parish where his father was *then* settled. In that case, J. Nunn, the late husband of the pauper, in 1802, when about fifteen years of age, quitted his parents, and went to sea, where he continued till the period of his marriage, sometimes serving on board a king's cutter, and at other times on board trading vessels, gaining his own living. Up to the age of eighteen his parents resided at Manningtree, and, while there, the vessel on board of which their son was serving being stationed on the river near that town, his mother washed for him, and occasional visits were paid by the son to the parents, sometimes of a few days' continuance. During the period from 1805 to 1810, the parents having quitted Manningtree, removed to St. Anne's, Limehouse, and resided on a tenement of the value of twelve guineas a year; and twice during those five years the son visited them there, and stayed eight or ten days at a time, returning to his ship after each visit. The distance prevented the mother from continuing to wash for the son while she and her husband were resident at St. Anne's; but she occasionally sent him small sums for pocket-money. The son attained the age of twenty-one while his parents were residing in St. Anne's, Limehouse. In 1810 the parents quitted that parish, and took a tenement of 24*l.* a year at Gravesend, on which they resided when the son married, having been in the occupation of it upwards of a year before such marriage. *Bayley*, J. "It is extremely desirable in cases of this nature to preserve an uniformity of decision, and to act, wherever it is possible, upon broad and general principles, and not to give effect to such nice and subtle distinctions as have been advanced in the argument in support of this order of sessions. It was laid down as the rule, by *Lawrence*, J., in *Rex* v. *Roach*, that if a child leaves his father's family under twenty-one, and returns while he is under age, he continues to be part of that family, and his settlement will shift with that of his father; but that if the child, when he attains twenty-one, is absent from his father's family, the father thereby loses all control over him, he becomes emancipated, and his settlement will not shift with that of his father, but will continue to be in that parish where the father was settled when the child attained twenty-one. That learned judge there says, 'In the case of the soldier, the son was enlisted when he was under age, and if he had returned home before he was twenty-one, he would have been considered part of his father's family; or if he had quitted the army before twenty-one, without returning home, the father might have reclaimed him by suing out a habeas corpus; but it appears from the case that he had attained the age of twenty-one before he left the army; therefore, during the time that he continued a soldier, his father lost all control over him, he being of age; and the subsequent settlement gained by the father was not communicated to him'. After applying the reasoning in that case to the one before the court, the learned judge adds, 'If, after such a service as this, the daughter had returned to her father before she was

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of age, she would have continued as part of her father's family; but not returning till after, she can no longer be considered as part of his family.' *Rex* v. *Cowhoneyborne* was decided upon the same principle. There, a widower having a daughter, placed her at eleven years of age with an uncle, by whom she was wholly maintained after that time, and with whom she continued to reside after she came of age, doing service for him, but without any contract of hiring to give her a settlement of her own; the father in the meantime having gone out to service. It was held, that on her coming of age she was emancipated. There, at the time she became twenty-one, she continued absent from her father's family. The same doctrine was laid down in *Rex* v. *Hardwick*, the only distinction between that and the former cases being that the original separation of the child from his father's family was not voluntary; he having been drawn for the militia while he was under age, and served in it until he was twenty-three years of age. That distinction, however, does not vary the question of emancipation; and the principle deducible from that latter case is, that a child is not part of his father's while he remains subject to a control paramount to that of his father; and that if, while under age, he contract a relation inconsistent with the parental control, which relation continues until after he attains twenty-one, the authority of the father thereby wholly ceases, and he can no longer insist upon the child's returning into his family, and the child is emancipated. In this case, when the pauper's husband attained twenty-one, his father's settlement was at Limehouse, and he was absent from his father's family, in a service, in which he voluntarily continued after he was twenty-one. The consequence was, that he then became emancipated, and that his settlement continued at Limehouse, though his father's had been transferred to Gravesend."

Period from which the emancipation dates.

If a son at sixteen hire himself for a year, and serve that year, the emancipation commences from the termination of the service. (*Rex* v. *New Forest*, 5 T. R. 478.) There, on old Martinmas-day, 1777, E. Coates hired himself for a year to G. Bowe, of New Forest, and served that year: on the 22nd December, 1777, E. Coates married his present wife: William Coates, a legitimate son of his by a former wife, being within one month of the age of sixteen years, and having gained no settlement in his own right, on the same Martinmas-day, 1777, hired himself for a year to R. Nelson, of Ellerton, which he served. The question was, whether, by reason of the service and settlement thereby gained by the son under his hiring, the father could be considered as being an unmarried man, by the emancipation (which, it was contended, was by relation at that moment complete) of his son? Lord *Kenyon*, C. J. (after reciting the 3 Will. & Mary, c. 11, s. 6), said, "That in this case the son was not separated from the father; when the father was hired, the son had gained no settlement for himself; he indeed did on the same day enter into a contract which might or might not have been completed, and which, when completed, would confer a settlement on the son, but at the time when the father entered into the relation of servant at New Forest, the son formed a part of his family."

A pauper, under age, hired himself to serve on board a ship trading to Newfoundland. While he was so serving, and before he attained twenty-one, his father acquired a new settlement. After he had attained the age of twenty-one, the pauper returned to his father's house: it was held, that the pauper was not emancipated when his father acquired the new settlement, and that his settlement shifted with that of his father. (*Rex* v. *Lytchet Matravers*, 7 B. & C. 226; 1 M. & R. 25.) In that case, the father of the pauper was settled in Lytchet Matravers, and while he was so settled, the pauper hired himself to serve for two summers and a winter on board a ship trading to Newfoundland. In February or March, 1816, being then twenty years of age, he entered upon that service, during which he continued during the stipulated time. There was no evidence that his father ever exercised any control over him during

his service. He attained the age of twenty-one years before his return from the voyage. Shortly after he had left this country, and before he had attained the age of twenty-one years, his father acquired a settlement in St. James, Poole. On the pauper's return from Newfoundland, he went to reside in his father's house, who, before that time, had left Poole, and returned to Lytchet. After a few weeks he left his father's residence, and lived with his sister, working on his own account as well there as during his residence with his father. The sessions were of opinion that the pauper was emancipated at the time when his father acquired the settlement in Poole. *Bayley*, J. "The question in this case is, whether at the time when the father had gained a settlement in St. James, Poole, the pauper was emancipated? There can be no doubt that the settlement of a son, if he have none of his own, shifts with that of the parent, so long as the son continues part of the parent's family. When he ceases to constitute part of the parent's family, he is emancipated. The different instances of emancipation put by Lord *Kenyon* in *Rex* v. *Offchurch*, and *Rex* v. *Witton-cum-Twambrookes*, and recognized by Lord *Ellenborough*, in *Rex* v. *Uckfield*, are, the child's attaining its full age, or being married, or gaining a settlement, or, as in the case of the soldier, contracting a relation inconsistent with the idea of his being in a subordinate situation in his father's family. In *Rex* v. *Roach*, Lord *Kenyon* qualified what he was reported to have said as to a son's being emancipated on attaining the age of twenty-one years, by limiting that observation to cases where the son at that age was severed from his father's family; and then adverting to the case of the soldier, he observes that the soldier had ceased to be under the control of his parents, and had become subject to the control of others; and that as he did not return to the father until after he was of age, the case was thought too clear for argument. It is insisted that this case falls within the fourth class of cases mentioned by Lord *Kenyon*, and that the pauper, as soon as he entered into the contract, like the soldier who had enlisted, was emancipated, because he had subjected himself to the control of others, and continued so subject until he had attained twenty-one. But there is this distinction between the case of the soldier and the present: the soldier, by enlisting, became subject to an authority paramount to that of his parent: here the pauper, by contracting to serve the owner or the captain of the ship, subjected himself to an authority not paramount but subordinate to that of his parent; for, by the law of England, the parental authority continues until the son attains the age of twenty-one. This distinction is pointed out by *Holroyd* and *Best*, JJ., in *Rex* v. *Rotherfield Greys;* the latter there says, 'By the general policy of the law of England, the parental authority continues until the child attains the age of twenty-one years; but the same policy also requires that a minor shall be at liberty to contract an engagement to serve the state. When such an engagement is contracted, it becomes inconsistent with the duty which he owes to the public that the parental authority should continue.' *Lawrence*, J., in *Rex* v. *Roach*, seems to take the same view of the subject, and to consider the authority of the state paramount to that of the parents, so long as the minor continues in the public service; but as soon as he leaves it, then the parental authority is restored. He there says, 'In the case of the soldier the son was enlisted when he was under age, and if he had returned home before he was twenty-one he would have been considered as part of his father's family; or if he had quitted the army before twenty-one without returning home, the father might have reclaimed him by suing out a habeas corpus.' *Blackstone*, in his Commentaries, vol. 1, p. 453, says, 'The legal power of a father over the persons of his children ceases at the age of twenty-one, for they are then enfranchised by arriving at the years of discretion, or that point which the law has established, when the empire of the father or other guardian gives place to the empire of reason. Yet, till after that age arrive, the empire of the father continues even after his death; for he

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may, by his will, appoint a guardian to his children. He may also delegate part of his parental authority during his life to the tutor or schoolmaster of his child, who is then *in loco parentis*, and has such a portion of the power of the parent committed to his charge, viz. that of restraint and correction, as may be necessary to answer the purposes for which he is employed.' It appears then that in ordinary cases the authority of a father over his child continues until the age of twenty-one; but the case of a soldier is an exemption from the general rule. For an infant may by law enlist, and become bound to serve the state; and if he does contract to serve, and the state adopt him as their servant, that adoption severs him from his father's family, and he then becomes subject to the paramount control of the state. In *Rex* v. *Woburn*, the son enlisted at the age of sixteen into the same regiment of militia in which his father served, and lived with him to the age of twenty-three. Lord *Kenyon* thought as he lived in his father's family, the parent's control was not altogether destroyed, the guidance and direction of the child to a certain extent not being inconsistent with the occasional military situation in which he was. He seems to have thought that such a person might be subject to a double control. So in this case, if the father did not interfere, the son might be subject to the control of his master whom he had contracted to serve: but being part of his father's family, and subject to his paramount authority, the latter might have claimed his services at any time before he attained the age of twenty-one years. But in the case of a minor who enters into the army, the state will be entitled to his services, and against the public the father cannot claim them. Considering the principle upon which a minor who enlists as a soldier becomes emancipated to be that he thereby contracts a relation inconsistent with a subordinate situation in his father's family; and considering that a minor who contracts to serve a subject, thereby makes himself liable to the double control of his father and his master, the authority of the parent being paramount to that of the master, I think that the pauper, in this case, when he agreed to serve the owner or captain of a ship, did not contract any relation inconsistent with a subordinate situation in his father's family; but that until he attained twenty-one, he continued part of his father's family, and subject to his paramount authority. Consequently, the sessions were wrong in holding that the pauper was emancipated, and his settlement shifted with that of his father."

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§ 3. EVIDENCE OF SETTLEMENT BY PARENTAGE.

In addition to proof of the settlement (whatever that may be) of the parent, evidence must be given of the parentage.

The ordinary evidence is an examined copy of the register of baptism, coupled with evidence of identity. (See further as to evidence of marriages, post, § 5.)

As this derivative settlement by parentage only applies, as has been stated, to legitimate children, the question of legitimacy has been frequently raised in orders for the removal of children.

Presumptions as to legitimacy.

After proof of the marriage, a child is presumed to be legitimate, though the contrary may be proved. The presumption will still be in favour of legitimacy, though the parents were separated by voluntary deed; but the presumption is the other way, if they are separated by a divorce *à mensâ et thoro;* and the child is, of course, a bastard, if begotten and born after a divorce *à vinculo matrimonii.*

In *St. Peter's* v. *Old Swinford* (Burr. S. C. 25), evidence of bastardy after the mother's death, by the father, who contradicted his own assertions made during the mother's life, that he had been married, was held admissible in that case. J. H. proved that for seven years together he travelled with H. A., as wandering persons, till the death of H. A., about fifteen

weeks since; during that time they cohabited as man and wife, and it did not appear that the marriage was ever questioned in the lifetime of H. A. During the time she was delivered of three children, one of whom, the pauper, was born in O. S. They were reputed to be his children, and the pauper was baptised as the legitimate child of him and H. A. He and H. A. were never married. The sessions were of opinion that the evidence of J. H. was not admissible to bastardise the pauper. Lord *Hardwicke*, C. J. "There is no ground to support the order of sessions. It is an apparent fact, that this man and this woman were never married. The evidence of the man is admissible to prove this fact. The child is therefore a bastard, and must be settled where born" (*e*).

Parents may prove that they were never married.

So, in *Rex* v. *Bramley* (6 T. R. 330), where the sessions refused to receive the mother as a witness, to prove that she never had been married, or had been illegally married: and also the declarations of the father and mother to that effect, they having cohabited together, and been reputed as man and wife till the death of the father. Lord *Kenyon*, C. J., held that this evidence was certainly admissible; that parents may be called to prove the children illegitimate. But he observed that such evidence was open to very great observation.

But not the non-access of the husband.

In *Rex* v. *Kea* (11 East, 132), the sessions received the evidence of a person who had been the wife of the father (since deceased) of the pauper, and was now the wife of another, to prove that her first husband had not had access to her during a certain period, viz. at the time of the conception of the pauper, and for many months before. Lord *Ellenborough*, C. J., said, "that to hold this evidence receivable, would be to overthrow *Rex* v. *Reading*, which was not meant to be overruled in *Rex* v. *Luffe* (*f*); the court intending in that case that the wife had only

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(*e*) *Rex* v. *Stockland* (Burr. S. C. 508; 2 Bott, 91), although calculated to lead to a different conclusion, cannot be relied upon for that purpose.

(*f*) In *R.* v. *Reading* (2 Sess. Cas. 175), the defendant Reading was adjudged, by an order of bastardy, to be the putative father of a bastard child begotten of the wife of one Almont, of Sherborne. The said woman, on the appeal, gave evidence that the said Reading had carnal knowledge of her body in or about August, 1732, and several times since; and that her husband had no access to her from May, 1731, to the time of her examination in that court, being the 3rd of October, 1733, and that the said Reading was the father of the said child. And the question, on the removal of the same into the Queen's Bench, was, whether the wife in this case should be admitted as a witness for or against her husband, and to bastardise her own child? And the whole court were of opinion, that the wife could be a witness to *no other fact but that of incontinence*, and that this she must be admitted to be witness to from the necessity of the thing; but not to the *absence of her husband*, which might properly be proved by other witnesses; and they likened it to the case of hue and cry, where the person robbed shall be admitted a witness of the fact of robbery, but not to prove any other matter relating thereto, as in what hundred the place was, and the like, because they may be proved by others.

In *Rex* v. *Luffe* (8 East, 193), an order of bastardy way made, adjudging M. Taylor to be the mother of a bastard child: and the order stated her to be the wife of J. T., and that it appeared *as well on the oath of the said M. T. as otherwise*, that her husband had been beyond the seas, and that she did not see her said husband, or *had access to him*, from, &c. &c., and that her husband returned only fourteen days before the birth, and adjudging *as well on the oath of the said M. T. as otherwise*, the said H. L. to be the reputed father of the said bastard child. One point was, that the wife was admitted to prove non-access, which, it was contended, ought not to have been. Lord *Ellenborough*, C. J. "The wife might prove the fact of her connection with that person whom she charged as being the real father of the child. And the whole of the judgment of the Chief Justice and the other judges went upon the supposition that

been examined to the facts she might legally prove, and not to the non-access of the husband. And the court also said that the death of the husband made no difference. Where the husband is within the realm, it is not incumbent on the party alleging bastardy to prove that the husband could not, by any possibility, have had access to the wife; it is sufficient to adduce such circumstantial evidence as satisfies the minds of the jury. The removal of the husband to a place distant from the wife, her cohabiting with another man, and the fact that the son, whose legitimacy is questioned, took the name of the latter from his birth, and which he and his descendants afterwards retained, is strong evidence of illegitimacy."

Upon a question as to the legitimacy of a child procreated during the marriage of A. and B., neither A. or B. is a competent witness to prove the non-access of A. Nor can their evidence of facts, from which non-access may be inferred, be received for that purpose. (*Rex* v. *Sourton*, 6 N. & M. 575; 5 Ad. & E. 180.) Ann Tickle Soper was removed from Lamerton to Sourton, in Devonshire. Order confirmed. Case:—The respondents proved the birth of the pauper, twenty-five years ago, in Sourton. The appellants called John Tickle, who proved that he had been married to the pauper's mother, in Sourton, seven years before the pauper was born; which was further proved from the marriage register. He then proved that he had since gained a settlement by renting a tenement, which he had occupied about twenty-five years, at Clifton. The respondents relied on proving the non-access of John Tickle to his wife, and thereby the illegitimacy of the pauper. They called one Soper, and partly from his evidence, and partly from the cross-examination of John Tickle, the sessions found, that the mother's general residence, for a year previous to the birth of the pauper, was in Sourton; that the pauper went by the name of Ann Tickle, though called Ann Tickle Soper in the order of removal; that John Tickle had removed from Sourton to Clifton (one hundred miles distant) about five years before the pauper's birth, and that his general residence from that period to the present time had been at the latter place. It further appeared from the cross-examination of John Tickle, that during his residence at Clifton he had been living in incestuous intercourse with his wife's sister, who had borne him children. The sessions were satisfied with the proof of non-access, if they were right in admitting the evidence of John Tickle, without which they had not sufficient grounds to find the fact of non-access. If that evidence was inadmissible, the order was to be quashed; if it was admissible, the order was to be confirmed. Lord *Denman*. "We do not think it necessary that we should hear the other side. Indeed it is desirable that we should not do any thing which may imply any doubt whatever as to the rule. The rule is, that neither the mother nor her husband is competent to prove non-access. It is to be taken as an indisputable rule of law, that for the purpose of proving non-access neither the husband nor the wife can be admitted. Although the precise questions and answers put to and given by John Tickle are not stated in the case, yet it is

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she was not a witness to the fact of non-access, but only to the fact of criminal connection: and that the words '*as otherwise*' implied that other persons were examined on oath." Another point was, that the non-access of the husband ought to have been proved during the *whole time* of pregnancy. In answer to this, it was said by the court, that natural impossibility, the being within the age of puberty, and great infirmity, would bastardise the issue though the husband had access. And that it was always a matter of evidence, whether the husband could, by possibility, be the father of the child. But they left in full force the rule of law, that marriage before the birth made the after-born child, the conception of which commenced before marriage, the legitimate child of the parties marrying.

impossible not to draw the conclusion from what is stated, that this person, who was called on the part of the appellants, was cross-examined for the purpose of making out circumstances from which it was intended to raise the inference of the fact of non-access. When the husband was questioned as to his course of life, with the avowed purpose of proving non-access to his wife, the rule of law immediately applied. The sessions were satisfied of the fact of non-access, provided they were right in admitting the evidence of John Tickle, but without it they had not sufficient ground for finding that fact. It is quite evident that the sessions have admitted the husband to prove facts which, by the clear and obvious rule of law, he was incompetent to prove." *Littledale*, J. "The sessions have stated that they were satisfied with the proof of non-access, if they were right in admitting the evidence of Tickle, without which they had not sufficient grounds to find the fact of non-access; and the question is, whether they were right in admitting that evidence. I entirely concur in the rule laid down by Mr. *Starkie* (*g*). Upon that it might be a question whether the rule went further than this,—that the husband or wife cannot be asked as to the direct fact of non-access; but it appears to me to go a great deal farther, and that the rule ought to be extended to all questions whatever which have a tendency to prove the fact of access or non-access. Suppose an issue as to legitimacy to be sent to be tried upon a question whether the husband had access to the wife from such a time to such a time. In that case neither husband nor wife could be admitted to prove the negative. Their evidence ought to be rejected altogether. Now, in the present case the whole object of the cross-examination of John Tickle was to prove the fact of non-access by him to his wife. It is admitted that the questions were asked with that object, and though he might have proved the facts stated by him for any other purpose, yet, in as far as his evidence went to prove non-access, it ought not to have been allowed. His evidence ought to be regarded as if it had never been given at all. It was as much inadmissible as if he had been asked as to the direct fact of non-access." *Patteson*, J. "It is very much to be regretted that the sessions have stated this case in the manner in which they have done it. I have very great difficulty in finding what the sessions received and what they rejected; but according to my apprehension it seems that they mean to submit the question, whether the evidence of John Tickle, as far as it related to the fact of non-access, was admissible. There is no doubt that as John Tickle was called by the appellants, he was admissible for some purposes. No doubt he was competent to prove many of the facts, as the birth, the settlement acquired by himself in Clifton, the residence there; but the respondents went on to cross-examine him, in order to show that there was not access. It seems to be admitted that John Tickle could not legally be asked as to the direct fact of non-access. It is quite trifling to say that you are not to put the question directly, but may put any question leading up to it. Upon the issue of access or non-access, whether arising at the sessions or upon the trial of an issue out of chancery, I am of opinion that neither the husband nor the

(*g*) The rule is thus laid down by Mr. Starkie in the first edition of his Treatise on Evidence, vol. ii. p. 223: "It has been said that the *mother*, being a married woman, is not competent to prove the non-access of the husband, as it seems, upon a principle of public policy, which prohibits the wife from being examined against her husband in any matter which affects his interest or character, unless in cases of necessity." He, however, adds this note:—"In the case of *Goodright* v. *Moss* (Cowp. 591), Lord *Mansfield* says, 'It is a rule, founded in decency, morality and policy, that *the parties* shall not be permitted, after marriage, to say that they had *no connexion*.'"

The same passage occurs without alteration in the second edition of the work, vol. ii. p. 139.

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wife can be examined at all." *Williams*, J. "I was rather disposed to send the case back, that the evidence of John Tickle might be set out; but I shall assume, with the rest of the court, that he was examined with a view to establish the fact of non-access, and that without his testimony the sessions would not have found the fact. Beyond all question, Tickle was incompetent to give testimony on the issue of access or non-access; and as the finding of the sessions proceeded upon evidence given by him as to that fact, the order of sessions cannot be supported."

Illegitimacy is not to be inferred from the mere fact of cohabitation.

Reg. v. *Mansfield* (1 G. & D. 7; 1 Q. B. 444). The illegitimacy of a child is not to be inferred from the single fact that the mother cohabited notoriously with another man, unless some evidence is also given of the non-access of the husband. A woman, married in 1812, went through the form of marriage in 1818, her husband living, and cohabited with her paramour down to 1832. These facts alone do not furnish sufficient evidence of non-access. In that case Ann Fletcher and children were removed from Mansfield to Tewkesbury. The order was confirmed as to the children. The case stated that Ann Fletcher, the pauper, was married to Thomas Fletcher in 1812. The paupers Henry and Elizabeth are her children. T. Fletcher, the husband of Ann Fletcher, is still living. The children removed by the order are the bastard children of Ann by Henry Parsons, and were christened by the names of Henry and Elizabeth Parsons, and have never gone by the name of Fletcher, or any other name but that of Parsons. Henry is of the age of nineteen and upwards, and Elizabeth is of the age of seventeen and upwards. The pauper Ann was married to Parsons by banns at Mansfield in 1818, and cohabited with him at Mansfield from 1818 to 1832, and during such time the paupers Henry and Elizabeth were born. The settlement of T. Fletcher, the husband of the pauper, is at Tewkesbury. The above facts were proved by Ann, the pauper, who was the only witness for the respondents. No evidence was given by the appellants. If the court shall be of opinion that the sessions were justified on the evidence before them in finding the facts above stated, then the order of sessions is to be confirmed, otherwise to be discharged. Lord *Denman*. "The question is, whether there was any evidence of illegitimacy, to make out which there must be evidence of non-access. Non-access may, no doubt, be inferred from circumstances. But here the only fact proved was that the mother lived with a man in a state of adultery. We are not told where the husband was during the period of her adulterous intercourse. The case of *Cope* v. *Cope*, as reported in 5 C. & P. 604, and abstracted in Harrison's Digest, has been relied on. Even in this report it does not appear to me that the learned judge was laying down a rule of law, but merely that he was making strong observations for the direction of the jury upon the circumstances of the particular case. I may remark, in passing, that a proposition is often taken from the summing up of a judge as a proposition of law, which has been addressed merely by way of observation to the jury. But in the report of *Cope* v. *Cope*, in 1 M. & Rob. 275, I find no such proposition as that which has been relied upon, but rather the contrary, for the learned judge says, 'Where the wife is living in open and notorious adultery, and the husband on one single occasion only had opportunity of access to her, and then at a time and under circumstances rendering it extremely improbable that he availed himself of the opportunity, those facts might perhaps be urged as a reasonable ground for concluding that sexual intercourse did not take place.' So that it seems the opinion of the jury must be taken upon the very question of non-access, notwithstanding the wife be living in adultery; the fact of non-access, therefore, is not to be assumed. There is nothing in the cases cited to show that proof of non-access can be dispensed with." *Patteson*, J. "On referring to *Cope* v. *Cope*, I find it is no authority in support of the conclusion come to by the ses-

sions, for all the learned judge said was that access was to be presumed, but whether it took place or not, under a particular state of circumstances, was for the consideration of the jury. The facts of this case are, that the woman was married in 1812, that her husband is living at this moment, that in 1818 she went through the ceremony of marriage with another man notwithstanding, lived with him and had children. We are asked from these facts to say there was non-access, although her husband might be living next door to her." *Williams*, J., concurred. Order of sessions quashed.

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§ 4. Of Derivative Settlement by Marriage.

The effect of marriage upon settlements.

If a woman marry a man who hath a known settlement she acquires the husband's settlement; and she takes every subsequent settlement which he may obtain until his death; but if the husband has no settlement, then the prior settlement of the wife continues.

Residence with a husband in the place where he is settled, is not necessary to give the wife his settlement (*h*).

In *St. Giles's* v. *Eversley* (2 Sess. Ca. 116; 2 Bott, 103), the objection to the removal of the wife and children to the husband's settlement was, that she could not take the benefit of her husband's right of settlement after his death, as she had not taken any advantage of it in his lifetime, but had waived it, and fixed in another place; but *Eyre* and *Fortescue*, JJ., held that the wife and children must be sent to the last legal settlement of the husband and father; and they confirmed the order.

A wife cannot gain a separate and distinct settlement during coverture.

In *Rex* v. *Aythorp Rooding* (2 Bott, 104), the wife, after the husband had deserted her, went with her children from White Rooding, and lived upon a copyhold tenement of her husband's forty days without him, in Aythorp Rooding. Before the forty days expired the parish officers gave her notice to remove out of the parish; and as she refused to depart, the justices removed her from thence to White Rooding as a person likely to become chargeable (*i*). The court were unanimously of opinion, that although the wife could not gain a settlement by thus residing forty days upon her husband's estate, yet at the same time that she was irremovable from the property of her husband upon being only likely to become chargeable. And even if she go and reside upon an estate devised to her after her husband has deserted her, she cannot thereby gain a settlement for herself. Lord *Hardwicke*, C. J., said, "There never was an instance where the wife was held to acquire a settlement during *the life* of her husband. A *feme coverte* cannot by residence gain a settlement for her husband." (*Berkhampstead* v. *St. Mary, Northchurch*, 2 Bott, 32; 1 Nol. P. L. 291.)

Nor complete the imperfect settlement of the husband.

If the husband is in the progress of acquiring a settlement, by renting a tenement for a year, and he dies a few days before it is completed, the widow cannot, by continuing to reside and paying the year's rent, perfect the settlement for herself and children, as she was not the person who hired the tenement. (*Rex* v. *Crayford*, 6 B. & C. 68; 9 D. & R. 80.)

Though the marriage be fraudulently obtained, the wife will take the husband's settlement (*k*).

In *Rex* v. *Birmingham* (8 B. & C. 29; 1 M. & R. Mag. Ca. 408), the pauper, L. S., was married to E. S. when he was a minor, by licence, and without the consent of his father. The appellants offered to prove

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(*h*) A contrary doctrine had been held in *Uphottery* v. *Dunkswell*, S. & R. 89; 2 Bott, 102.

(*i*) This was of course before actual chargeability was required to ground a removal.

(*k*) An information will be granted against the overseers for procuring the marriage of an idiot woman, or of a woman pregnant with a bastard, with a view to change her settlement. (*Rex* v. *Watson*, 1 Wils. 41; *Rex* v. *Tanant*, 4 Burr. 2106; *Rex* v. *Edwards*, 8 Mod. 321.)

that the marriage of the pauper was effected by a fraudulent contrivance and conspiracy of the overseers of Little Packington, for the purpose of changing the settlement of the pauper from Little Packington to Birmingham, where the husband was settled; but the sessions refused to receive this evidence, and confirmed the order. Lord *Tenterden*, C. J. "It is difficult to say, that if the marriage is valid in other respects it could be invalidated by the fraud of other parties, and thus cause a separation of the husband from the wife." *Contra*, it was urged, that Mr. Nolan cites Dalton to show that no settlement brought about by fraud should be considered valid. Lord *Tenterden*, C. J. "Does the rule go further than this, that the court will prevent a fraud from having its effect when that can be done without violating some higher and more important rule?" *Bayley*, J. "Mr. Nolan treats the case of marriage as an exception from the general rule." (And see *Rex* v. *Parkens*, 1 Sess. C. 276.)

So also where a widow was married in her maiden name, but without fraud.

A woman, on the death of her husband, resumed her maiden name, and after several years was again married by banns in that name, describing herself as a widow; it was held, that in the absence of fraud such marriage was legal, and that her settlement followed that of her second husband. (*Rex* v. *St. Faith's*, *Newton*, 3 D. & R. 348.)

Husband dead and his place of settlement not known, the wife's maiden settlement remains.

St. Giles's v. *St. Margaret's* (1 Sess. Ca. 97; 2 Bott, 107). A woman marries an Irishman, and her husband dies. The court: "She must be sent to the place of her settlement before marriage."

Rex v. *Chiddingstone* (1 Stra. 683). A single woman was married to a man who was since dead, but his settlement did not appear. The court: "Her settlement before marriage stands." (S. P., *Uphottery* v. *Dunkswell*, 2 Bott, 108; 1 Sess. Ca. 80; Sett. & Rem. 89.)

If a woman who has a settlement marries a man who has none, and is deserted by him, she may be removed to her maiden settlement. (*St. John's*, *Wapping*, and *St. Botolph's*, *Bishopsgate*, Burr. S. C. 367; 2 Bott, 109.) There E. Kinley married T. Kinley, an Irishman, who had no settlement in England. About two years ago, the husband entered on board a man-of-war bound for the West Indies, but E. about two months ago heard he was living: and the question was, whether her settlement which she had before marriage ceased, or was in suspense, during the coverture. *Cur. adv. vult.*—*Ryder*, C. J. "1. It is certain St. Botolph's was once her settlement. 2. That settlement continues till she gains a new one. 3. That she has never yet gained a new one." To the second point he said, "A settlement is a permanent thing; it lasts during life, or till a new one is acquired; and there is no case where a settlement ceases by any other method; a man cannot give away, or release, or suspend his settlement, for the public is concerned as well as himself. The question is not, whether she gained any new settlement by marriage, but whether her old settlement was discontinued by her marriage with a person who had none? It is absurd to say she shall lose her own without getting another. The objection that the husband and wife would be separated is of no weight here, for they are separated already; for he has left her: I must own the case of *Stretford* v. *Norton* (*l*) is not

(*l*) In *Stretford* v. *Norton* (Andr. 307; 19 Vin. Abr. 376; Burr. S. C. 122), an Englishwoman married an Irishman who had no settlement in England. He ran away; his wife was removed to her maiden settlement. *Lee*, C. J. "It is now a settled point, that by the marriage the woman's settlement is suspended, whether the husband have or have not a settlement; for otherwise the justices might separate husband and wife; and therefore, to make the other good, it should have appeared that the man was dead." In *Hanway* v. *Marston* (T. 1 Geo. I.) the Ch. J. said, "that the settlement of a woman who marries a vagrant is suspended during the coverture; and that as the husband cannot be sent to the place of the wife's settlement, so neither can the wife herself, because a husband and wife being as it were but

to be distinguished from the present, and is against our present opinion; to be sure we must have great regard to former resolutions in this court, but we must judge upon the case before us. How that case came to be determined so I do not know; but there are at least four authorities the other way (which perhaps might not then be cited), and we think the reason is with the old cases. The husband may come to her in one parish as well as the other, for he will be a vagrant in both, and liable to be treated as such. The wife's settlement remains having never been determined, but only, as it were, suspended during the time that she continued under the power and protection of her husband, and was maintained and supported by him."

The wife may be removed to her maiden settlement, if the husband's be not known.

It appeared by the testimony of E. P., that she was at the time of the order a married woman, and that her husband was born in Wiltshire, but in what place he had a settlement she did not know; but he is run away, and still living, for what she knows. By the court: "Whether the husband be living or dead signifies nothing. For unless it appear that he has a settlement, the woman must be sent to the place of her settlement before her marriage: for, supposing the husband was born upon the high seas, or in Ireland, or a foreign country, if the woman might not be sent to the place of her settlement before marriage she might be starved." (*Rex* v. *Westerham*, Fol. 252; 2 Bott, 108.)

See as to the wives of Scotch and Irish paupers, post, "REMOVAL."

§ 5. EVIDENCE OF SETTLEMENT BY MARRIAGE.

The most usual evidence of the marriage is, by a person who was present (and either husband or wife is a competent witness for this purpose), or the production of examined copies of the parish register, with proof of the identity of the parties.

By the 6 & 7 Will. IV. c. 86, marriages must be registered, and (by sect. 38) certified copies of entries, purporting to be sealed with the registrar-general's seal, shall be received as evidence of the marriage, without further proof. A certificate under this statute coupled with evidence of identity would be sufficient, but the statute does not exclude the other proof above mentioned. (See Taylor on Evidence, § 386.)

Reputation evidence of marriage.

A marriage may be proved by reputation, as that the parties cohabited together, and were received by relations and friends as man and wife.

In *Morris* v. *Miller* (4 Burr. 2057), it was said, in all cases but of prosecution for bigamy and actions of crim. con., reputation is good proof of marriage.

A marriage is presumed to have been celebrated with the formalities

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one person cannot be parted." (*Shadwell* v. *St. John's, Wapping*, T. 9 Geo. I.) One Ridley, a vagrant, having no settlement, married a woman who had a settlement in St. John's, Wapping, and had four children by her, born in Stepney. And it was held, that the children were not settled in the place where they were born, but where the wife had a settlement; but that this was suspended during the coverture, and it revived again upon the death of the husband.

This last case is that which is said by Sir *James Barrow* (Burr. S. C. 124) to have been turned into a catch, in which form alone he had been able to meet with it. The metrical report is as follows:

"A woman having a settlement,
Married a man with none:
The question was, He being dead,
If that she had was gone?

Quoth Sir *John Pratt**—Her settlement
Snspended did remain,
Living the husband; but, him dead,
It doth revive again.

Chorus of Puisne Judges.
Living the husband; but, him dead,
It doth revive again."

* Then Lord Chief Justice.

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necessary to its validity till the contrary be shown; and it is not necessary to prove that the minister was in orders, or to prove any of the proceedings preliminary to the actual solemnization of the marriage. (*St. Devereux* v. *Much Dewchurch*, 1 Bla. R. 367. See Stark. Ev. 932.)

But after proof of an actual marriage, it may be shown that the marriage was void either by the omission of solemnities required by statute, and without which the marriage would be void, or by reason of consanguinity or any other cause.

It would be out of place to enter into a question of the circumstances which render a marriage void. (See Burn's Justice of the Peace, title, "MARRIAGE") (*m*).

In this place, however, the cases in which questions have been raised as to the validity of marriages in connexion with the settlement of paupers will be noticed, with so much of the statute law as is necessary to render those cases intelligible.

The first statute requiring the observance of particular forms was the 26 Geo. II. c. 33, the 11th section of which enacted, that marriages by banns, without consent of parents, should be void, and that section was repealed by 3 Geo. IV. c. 75, which contained a retrospective clause (sect. 2), legalising marriages in such cases. The 4 Geo. IV. c. 17, repealed the 3 Geo. IV. c. 75, except as to certain provisions. The retrospective clause in 3 Geo. IV. c. 75, did operate, with respect to the particular marriages to which it applied, as a repeal of the clauses in 26 Geo. II. c. 33, which rendered them invalid; it therefore was not repealed by the subsequent statutes. (*Rose* v. *Blakemore*, R. & M. 382.)

Of dissent of parents, &c. of minors under this act.

The 4 Geo. IV. c. 17, and 26 Geo. II. c. 33, were repealed prospectively by stat. 4 Geo. IV. c. 76, s. 8 of which enacts, that "no minister, &c. solemnising marriages between persons, both or one of whom shall be under the age of twenty-one years, after banns published, shall be punished by ecclesiastical censures for so doing, without consent of parents or guardians required by law, unless such minister, &c., shall have notice of their dissent: and if such parents or guardians shall publicly declare, or cause to be declared, in the church or chapel where and at the time the banns are so published, their dissent to such marriage, such publication of banns shall be absolutely void."

Marriages void where persons wilfully marry in any other place than a church, &c. by 4 Geo. 4, c. 76.

Sect. 22 provided, "that if any person shall knowingly and wilfully intermarry in any other place than a church, or such public chapel wherein banns shall be lawfully published, unless by special licence as aforesaid, or shall knowingly and wilfully intermarry without due publication of banns or licence from a person or persons having authority to grant the same first had and obtained: or shall knowing and wilfully consent to, or acquiesce in, the solemnization of such marriage by any person not being in holy orders, the marriages of such persons shall be null and void to all intents and purposes whatsoever."

Marriage Act, 6 & 7 Will. 4, c. 85.

By the 6 & 7 Will. IV. c. 85 (an Act for Marriages in England), marriage may be solemnised after licence, or banns (as before), or upon the registrar's certificate. Quakers and Jews may be married according to their peculiar custom, if both parties are Quakers or Jews; but they must obtain the registrar's certificate. A notice of the intended marriage is required to be given to the registrar of the district in which the parties have dwelt for seven days, or one of the parties for a month. Seven days after notice, if the marriage is by licence, and twenty-one days, otherwise, the registrar will give a certificate. Consent is required to marriages by licence as before. Places of worship may be registered for marriage. In support of a marriage, proof of the required residence, or the consent

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(*m*). The principal acts now in force relating to marriages are, 4 Geo. IV. cc. 5, 76; 5 Geo. IV. c. 32; 11 Geo. IV. & 1 Will. IV. c. 66; 6 & 7 Will. IV. c. 85; 7 Will. IV. & 1 Vict. c. 22; 3 & 4 Vict. c. 72; 19 & 20 Vict. c. 119; 21 & 22 Vict. c. 25; 23 & 24 Vict. c. 18; 23 & 24 Vict. c. 24.

shall not be necessary, nor shall any evidence be given to prove the contrary in any suit touching the validity of such marriage. If any persons knowingly and wilfully intermarry in any place not allowed by the act, or in any other place than the one specified in the notice and certificate, or without licence where licence is required, or in the absence of the registrar when required, the marriage is null and void (*n*).

Marriage of a minor without consent.

The marriage of a minor by licence, without the consent required by 4 Geo. IV. c. 76, s. 16, is valid. (*Rex* v. *Birmingham*, 8 B. & C. 29; 2 M. & R. 230.) In that case, L. Smith and Elizabeth his wife were removed from St. Michael and the Holy Trinity, in Coventry, to Birmingham. Order confirmed. Case:—Luke was married to Elizabeth in 1826, by licence, he then being a minor and his father living, who did not consent to his marriage. It was objected that his marriage was void under the 4 Geo. IV. c. 76, for want of the father's consent. Lord *Tenterden*. "We are all of opinion that the marriage in question is valid. A marriage under such circumstances would, by the 26 Geo. II. c. 33, s. 11, have been void, but the 3 Geo. IV. c. 75, s. 1, recites that section, and that it had been productive of great evils and injustice, and then proceeds to enact, 'That so much of the said statute as is hereinbefore recited, as far as the same relates to any marriage to be hereafter solemnised, shall be and the same is hereby repealed.' The second section enacted, 'that marriages theretofore solemnised by licence, without such consent as required by the former act, shall be valid,' with certain limitations imposed by the third and fourth following sections. Then the eighth and subsequent sections contained the new provisions as to granting licences in future. These were repealed by the 4 Geo. IV. c. 17, which restored certain parts of the 26 Geo. II. c. 33, and some question might be raised as to whether that part of the 3 Geo. IV. c. 75, remained in force, which repealed the 11th section of the 26 Geo. II. But that question is now rendered immaterial by the 4 Geo. IV. c. 76, which repealed the 4 Geo. IV. c. 17, and so much of the 26 Geo. II. c. 33, as was then in force. The only statute therefore now to be considered is the 4 Geo. IV. c. 76, the fourteenth section of which points out the mode in which licences are to be obtained, and the matters to be sworn to by the parties, or one of them; and one of those matters, where either of the parties, not being a widower or widow, shall be under the age of twenty-one years, is, that the consent of the person or persons whose consent to such marriage is required under the provisions of this act, has been obtained thereto. Then the sixteenth section specifies the persons who shall have power to consent, and proceeds, 'and such consent is hereby required for the marriage of such party so under age, unless there shall be no person authorised to give such consent.' The language of this section is merely to *require* consent; it does not proceed to make the marriage void, if solemnised without consent. Then the twenty-second section declares that certain marriages shall be null and void, and a marriage by licence without consent is not specified. Thus far, therefore, the question depends upon the direction in the sixteenth section; and if there were any doubt upon the construction of that section, it would be removed by the twenty-third, which enacts, that 'if any valid marriage, solemnised by licence, shall be procured by a party to such marriage to be solemnised between persons, one or both of whom shall be under age, by means of falsely swearing to any matter to which such party is required personally to depose,' *not* that the marriage

(*n*) Evidence of a marriage in a Roman Catholic chapel between parties who afterwards live as man and wife was held, *primâ facie*, sufficient evidence (in support of a plea of coverture) to show a valid marriage under the 6 & 7 Will. IV. c. 85, as the law will presume that the chapel was registered and the registrar present as required by that act. (*Sichel* v. *Lambert*, 33 L. J. Rep. (N. S.) C. P. 137.)

shall be void, but that all the property accruing from the marriage shall be forfeited, and shall be secured for the benefit of the innocent party, or the issue of the marriage. This is a penalty for disobeying the direction of the legislature given in the sixteenth section, and is calculated to prevent fraudulent and clandestine marriages, by depriving the guilty party of the pecuniary benefit, which is most commonly the inducement moving to the fraud. For these reasons it appears to us that the marriage in this case is valid, and the order of sessions right."

A marriage rendered valid by 3 Geo. 4, c. 75, not rendered invalid by subsequent marriage of either.

A marriage void by s. 11 of 26 Geo. II. c. 33 (Marriage Act), but *made valid* by s. 2 of 3 Geo. IV. c. 75, shall not subsequently be rendered invalid by the marriage of either of the parties during the life of the other with a third party. (*Rex* v. *St. John Delpike*, 2 B. & Ald. 226.) Mary Laycock was removed from St. Mary Castlegate, York, to St. John Delpike. Order confirmed. Case:—In the year 1808 the pauper, not then being a widow, and being under the age of twenty-one years, intermarried with one James Laycock. This marriage was solemnised by licence in the parish church of St. Lawrence, in the city of York, without the consent of the pauper's father, who was then living. She continued to live with James Laycock, as his wife, till 1825, when she intermarried with one Thomas Laycock, the said James Laycock then and still being alive. The question for the opinion of the court was, whether the former marriage with James Laycock was or was not valid: if it were declared valid, then the order of sessions was to be quashed; if invalid, then to be affirmed. Lord *Tenderden*, C. J. "We must construe the proviso in the third section as intended to apply to cases which occurred before the passing of the 3 Geo. IV. c. 75. Section 2 applies to marriages which, under certain circumstances, were rendered invalid by the 26 Geo. II. c. 33, and which are, by that section, rendered valid in cases where the parties shall have continued to live together as husband and wife till the death of one of them, or till the passing of that act. The provision in section 3, that 'the act shall not extend to render valid any marriage where either of the parties shall at any time afterwards during the life of the other party, have lawfully intermarried with any other person,' may have been wholly unnecessary. At the same time it may possibly have occurred to those who framed the act, that it might occasionally happen, that one of the two parties to the first marriage might, during the life of the other, have lawfully intermarried with a third; and might afterwards have cohabited again with the original husband or wife, till the death of one, or the passing of the act. I think, however, that clause was introduced only for greater caution, and that we ought not to construe the act so that a marriage may first be treated as valid, and afterwards as invalid. The first marriage, therefore, was valid; and consequently the order of sessions must be quashed." *Littledale*, J. "The second section renders valid marriages which, by the 26 Geo. II. c. 33, would be void. I think the words of that and the following section are, in their natural construction, retrospective. And, without express words to a contrary effect, we could not say that the validity given by this act to marriages was intended to be shifting and uncertain. The proviso in the third section, that 'the act shall not extend to render valid any marriage declared invalid by any court of competent jurisdiction before the passing of that act, nor any marriage where either of the parties shall at any time afterwards, during the life of the other party, have lawfully intermarried with any other person,' seems to contemplate cases not very likely to happen in conjunction with the circumstances pointed out in the second section. But such cases are possible. Parties might continue to cohabit, yet friends might choose to render the marriage invalid. So the parties to the original marriage might cohabit together, though one had been lawfully married in the mean time to another. But if there could be a floating shifting validity, the consequence might be, that children might be legitimate one day and not another; and it appears to me that this is

not contemplated by the act." *Parke*, J. "I think this is a very clear case. The second section renders valid marriages otherwise invalid by the 26 Geo. II. c. 33, in cases where the parties shall have continued to live together as husband and wife till the death of one of them, or till the passing of that act. Under that section, therefore, the first marriage would be valid; because here the parties did continue to live together till the passing of the act. Then, the third section enacts, that the act shall not render valid any marriage where one of the parties shall, during the other's life, have lawfully intermarried with any other person. It is said that this clause is prospective. If it be retrospective only, there can be no question in the case. If it be prospective, this absurdity will follow,—that parties, whose marriage is rendered valid by the second section, may at any time they please bastardise their issue by contracting a subsequent marriage. Such a construction ought not to be given to the words of the act, unless it be absolutely necessary. But then it is said that if the construction be retrospective only, this clause is useless. That would not be a sufficient reason for so absurd a construction as that contended for by the respondent parish: but in truth, the clause is not altogether useless; for two parties may be living together, and yet one have married another person; and this case is provided for by the last part of the third section. The argument assumes that a party cannot commit bigamy, without ceasing to live with his first wife. A man may have continued to cohabit with his first wife till the passing of the act, or the death of one of the parties, and yet have contracted another and a valid marriage in the mean time." *Patteson*, J. "I think the original marriage was rendered valid by the second section, and that the third section has a retrospective operation only; and, therefore, that the marriage of the pauper to Thomas Laycock after the passing of the act does not take the case out of the second section." Order of sessions quashed.

Marriage under age of children, without consent of parents.

In *Chilham* v. *Preston* (1 Bla. Rep. 192), E. Young, Rebecca his wife, and child, were removed from Chilham to Preston. Order confirmed. Case:—E. Young was, in 1758, without the consent of his father, married by licence in the parish church of Tenham, to Rebecca, E. Young being then an infant. Afterwards Rebecca was brought to bed in Chilham of the child removed by the order. By Lord *Mansfield*, C. J. "The marriage act is avowedly made *against* both the contracting parties; and, therefore, they shall not waive the disabilities of it at their own option. The marriage is void and null to all intents and purposes, even though the parties should afterwards agree to it, wherever the fact appears directly contrary to the statute." And by the whole court: "Let the order be quashed as to Rebecca and the child."

Consent to marriage of illegitimate minors before repeal of 26 Geo. 2, c. 33, s. 11, by 3 Geo. 4, c. 75, s. 1 (o).

Before the repeal of 26 Geo. II. c. 33, it was held in *Rex* v. *Hodnet* (1 T. R. 96), that a marriage of illegitimate minors, without consent, was void under sect. 11 (*o*). In *Horner* v. *Liddiard* (1 Hagg. Rep. 337, 360), Lord *Stowell* held the same point, and that the necessary consent could be only given by a guardian appointed by Chancery; and in *Priestly* v. *Hughes* (11 East, 1), it was decided that the consent of the natural mother to a marriage by licence was not sufficient.

Marriage in foreign countries.

"It is part of the law of England, that the law of the country where a a marriage is solemnised shall be adopted." *Holroyd*, J. (*Doe* in d.

(*o*) 26 Geo. II. c. 33, s. 11 (repealed by 3 Geo. IV. c. 75, s. 1, from and after 22nd July, 1822), provided that marriages by licence, where either party, not being a widow or widower, is under twenty-one years of age, had without the previous consent of the father or lawful guardian, or one of them, or if no guardian, then of the mother, if living and unmarried, or if none such, then of a guardian appointed by Chancery, shall be null and void.

Birtwhistle v. *Vardill*, 5 B. & C. 438; 8 D. & R. 189; *Dalrymple* v. *Dalrymple*, 2 Hagg. C. R. 54; *Ruding* v. *Smith*, id. 371.) (*p*)

"By the ancient general law of Europe, a contract *per verba de præsenti*, or a promise *per verba de futuro cum copulâ*, constitutes a valid marriage. The intervention of a priest was first required by the council of Trent." Lord *Stowell* in *Dalrymple* v. *Dalrymple*. This general rule prevails in Scotland, but there the intervention of a priest is unnecessary.

Marriage in Scotland.

It is an undoubted proposition, that a marriage celebrated in Scotland is such a marriage as would entitle the woman to a dower in England. (*Ilderton* v. *Ilderton*, 2 Hen. Bla. 145.)

By Romish priests.

Marriages by Romish priests, whose orders are acknowledged by the church of England, have been deemed to have the effect of legal marriages in some instances (at least before the 26 Geo. II., per Lord *Ellenborough*, 10 East, 288).

Marriage abroad by a French Catholic priest in the French tongue, according to the English rite.

Rex v. *Brampton* (10 East, 288). Whilst the British army was at St. Domingo, the pauper and a man belonging to that army went to a chapel, in order to be married; and there a service was read in the French language by a person dressed like a priest, and interpreted into the English language by a person who officiated as clerk. The pauper did not understand French, but by the interpreter she understood it was the marriage service of the established church of England read in French. She did not know that the person officiating was a priest. She received a certificate of marriage, which she lost. There was no chaplain with the British forces at that time in St. Domingo. No evidence was given of the laws or usage of the island respecting the marriage ritual there. She and the man lived together as man and wife till his death, and she was removed to his settlement. Order quashed. Lord *Ellenborough*, C. J. "First, considering it as a marriage celebrated in a place where the law of England prevailed; for I may suppose, in the absence of any evidence to the contrary, that the law of England, ecclesiastical and civil, was recognized by subjects of England in a place occupied by the King's troops, who would impliedly carry that law with them; then, Was it a good marriage before the marriage act? Certainly, before that act, a contract of marriage *per verba de præsenti*

(*p*) In that case Lord *Stowell* observes, that "it is not *e converso* established that marriages of British subjects, not good according to the law of the place where celebrated, are universally, and under all possible circumstances, to be regarded as invalid in England: the safest course is to be married according to the law of the country; but if this cannot be done, on account of legal or religious difficulties, the law of this country does not say that its subjects shall not marry abroad. And where no difficulties of that insuperable magnitude exist, yet if a contrary practice has been sanctioned by long acquiescence and acceptance of the one country, the courts of this country, I presume, would not incline to shake their validity, upon these large and general theories, encountered, as they are, by numerous exceptions, and the practice of nations." And by 4 Geo. IV. c. 91, after reciting "that it is expedient to relieve the minds of all his Majesty's subjects from any doubt concerning the validity of marriages solemnised by a minister of the church of England, in the chapel or house of any British ambassador or minister residing within the country, to the court of which he is accredited, or in the chapel belonging to any British factory abroad, or in the house of any British subject residing at such factory, as well as from any possibility of doubt concerning the validity of marriages solemnised within the British lines, by any chaplain or officer, officiating under the orders of the commanding officer of a British army serving abroad," it is declared and enacted, "That all such marriages as aforesaid shall be deemed and held to be as valid in law as if the same had been solemnised within his Majesty's dominions, with a due observance of all form required by law."

would have bound the parties; this was such a marriage, and performed by one who publicly assumed the office of a priest, and appeared habited as such; of what persuasion does not appear: but even if it were performed by a Roman Catholic priest, the case would be the same; for such a person would be recognized by our church as a priest, capable of officiating as such, upon his mere renunciation of the errors of the church of Rome. But *Rex* v. *Fielding* (*a*) shows that a marriage by a Roman Catholic priest (before the marriage act) was effectual for that purpose, which was considered as a contract *per verba de præsenti*. In this case the ceremony was performed in a public chapel, instead of in private lodgings, as in *Fielding's case*. Considering, therefore, the case to be that the king's forces carried with them the law of England to St. Domingo, by which they and other subjects who accompanied them (in the absence of proof that any other law was in force there) may be considered as continuing to be governed, this would be a good marriage by that law. But supposing this law of England not to have been carried to St. Domingo by the king's forces, nor obligatory upon them in this particular, let us consider whether the facts stated would not be evidence of a good marriage, according to the law of that country, whatever it might be. And, indeed, after the ceremony of marriage, as it was understood and intended by the parties at the time to be, performed openly in a chapel, by a person appearing there as a priest authorized to perform the ceremony of marriage, and this followed by a cohabitation between the two parties for eleven years afterwards, every presumption is to be raised in favour of its validity. I should have considered myself as safe, in resting my opinion in favour of this marriage upon the law of England, independent of the provisions of the marriage act: but without the aid of that, I think every presumption must be made in favour of its validity, according to the law of the country where it was so celebrated: having been performed there in a proper place, and by a person officiating as one competent to perform that function." The other judges agreed.

(*a*) 5 St. Trials, 610.

To prove settlement of pauper, her husband was called to prove his marriage with her: Held, that it was competent in answer to call a female to show that the husband had been previously married to herself, and consequently that the second marriage was a nullity. (*Rex* v. *Bathwick*, 2 B. & Ad. 639.) In that case the respondents proved, by the testimony of W. J. Cook, his settlement in St. Pancras, and his marriage with the pauper at Bath in 1829, and he stated her to be now his wife. The appellants insisted that the marriage was void, Cook having been previously married in Dublin in 1826 to Mary Byrne. To prove their case, they called the said Mary, to whose competency the respondents objected. The court admitted her evidence, and she proved that she, being a Roman Catholic, and Cook, being a Protestant, went on the 21st of May, 1826, before Mr. Wood, a clergyman, residing in Dublin, who in his private house read to them the marriage ceremony, and in the course of it asked her whether she would be the wife of Cook, and asked him whether he would be her husband, to which question both of them answered, "I will;" and after the ceremony they returned to the house of Cook's father, whose servant she was, and there secretly cohabited for two months and upwards. It was proved by parol that Wood was reputed to be a clergyman of the established church, and the appellants put in a document purporting to be the letters of orders, signed and sealed by William, late Lord Archbishop of Tuam, dated the 18th of October, 1799, whereby the archbishop certified that he had ordained Wood a priest, and which letters were proved to have been among Wood's papers at the time of his death, in July, 1829. Lord *Tenterden*. "We are of opinion that the witness Mary, assuming to be the first and lawful wife of W. J. Cook, was a competent witness. The question arose on the settlement of another woman, considered to be the wife of Cook; Cook was examined,

A document purporting to be letters of orders from an archbishop, more than thirty years old, and produced from the proper custody, is evidence, without proving the archiepiscopal seal, which, used for this purpose,

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is to be considered a private, and not a corporate seal.

and proved his marriage with this woman: but he was not asked, and did not say, that he had not been previously married to the witness Mary. The witness Mary was afterwards called to prove her previous marriage with this person. In deposing to this marriage, she did not contradict anything that he had said. I notice this fact; but we do not mean to say that if she had been called to contradict what he had sworn, she would not, in a case like this, have been a competent witness to do so. It is not necessary to decide that question at present; but it may well be doubted whether the competency of a witness can depend upon the marshalling of the evidence, or the particular stage of the cause at which the witness may be called. In the present case, however, the witness not having been called to contradict her husband, and her testimony not being inconsistent with the fact to which he had deposed, her incompetence, if it can be established, can be so only upon the authority of the case of *Rex* v. *Cliviger* (*a*). The authority of that case was much shaken by *Rex* v. *All Saints, Worcester* (*b*), in which Lord *Ellenborough* said, 'The objection rests only on the language of *Rex* v. *Cliviger*, that it may tend to criminate him; for it has not an immediate tendency, inasmuch as what she stated could not be used in evidence against him. The passage from Lord *Hale* (P. C. 301) has been pressed upon us, where it is said the wife is not bound to give evidence against another in a case of theft, if her husband be concerned, though her evidence be material against another, and not directly against her husband. Admitting the authority of that passage, it assumes that the husband was under the criminal charge; that he was included in the *simul cum aliis*. But if we were to determine, without regard to the form of proceeding, whether the husband was implicated in it or not, that the wife is an incompetent witness as to every fact which may possibly have a tendency to criminate her husband, or which, connected with other facts, may perhaps go to form a link in a complicated chain of evidence against him, such a decision, as I think, would go beyond all bounds; and there is not any authority to sustain it; unless, indeed, what has been laid down, as it seems to me, somewhat too largely, in *Rex* v. *Cliviger*, may be supposed to do so.' The decision in *Rex* v. *Cliviger* appears to have been founded on a supposed legal maxim of policy, viz., that a wife cannot be a witness to give testimony in any degree to criminate her husband. This will undoubtedly be true in the case of a direct charge and proceeding against him for any offence; but in such a case she cannot be a witness to prove his innocence of the charge. The present case is not a direct charge or proceeding against the husband. It is true, that if the testimony given by both be considered as true, the husband Cook has been guilty of the crime of bigamy; but nothing that was said by the wife in this case, or any decision of the court of sessions, founded upon her testimony, can hereafter be received in evidence to support an indictment against him for that crime. This is altogether *res inter alios acta;* neither the husband nor the wife has any interest in the decision of the question, and the interest of the parish of St. Pancras required that the illegality of the second marriage should be established, if it was in fact illegal. Secondly, we are also of opinion that the certificate of the ordination of Mr. Wood, by whom the first marriage was celebrated in Ireland, was properly received in evidence. This certificate came from the proper custody. It was produced by the widow of Wood, and was found among his papers at his death. It was dated in 1799, more than thirty years before the time of its production in evidence; and if it had been signed only, there could have been no question as to its inadmissibility; but, in fact, it was also sealed; and it was contended that this must be considered as the seal of a court or of a corporation, and therefore not within the rule as to thirty years, but requiring to be proved. It is not necessary to decide whether such a seal be within the rule; it may be argued that it is not within the principle of the

(*a*) 2 T. R. 26.
(*b*) 6 M. & S. 194.

rule, because, although the witnesses to a private deed, or persons acquainted with a private seal, may be supposed to be dead, or not capable of being accounted for after such a lapse of time, yet the seals of courts and corporations, being of a permanent character, may be proved by persons at any distance of time from the date of the instrument to which they are affixed. We think it not necessary to decide this question, because a certificate of ordination is not the act of any court; and although an archbishop is a corporation sole for many purposes, such as those relating to the temporalities of his see, yet such a certificate has no relation to his corporate character, and the seal must be considered as the seal of the natural person, and not of the corporation. The result of this is, that the order of sessions must be confirmed."

A first subsisting marriage.

A prior marriage subsisting at the time of a second marriage, renders the second void *ab initio*. (*Westbrooke* v. *Stratville*, 1 Stra. 79.)

To render a second marriage void, the existence of the first husband must be strictly proved (*a*). (*Rex* v. *Twyning*, 2 B. & Ald. 386.) Mary Burns, the wife of Francis Burns, an Irishman, then absent, was removed from Manchester to Twyning. Order confirmed. Case:—About seven years ago the pauper married R. Winter, with whom she lived a few months, when he enlisted as a soldier, went abroad on foreign service, and has never been heard of since. In a little more than twelve months after his departure, the pauper being settled in Twyning, married Francis Burns, with whom she has ever since cohabited; the children mentioned in the order were born during such cohabitation, and are the children of Francis Burns; but were not born in Twyning. *Bayley*, J. "Are we to presume that Winter was alive at the time of the second marriage, and the woman guilty of bigamy? If the pauper had been indicted for bigamy, it would clearly not be sufficient. In that case, Winter must have been proved to have been alive at the time of the second marriage. It is contended that his death ought to have been proved; but the answer is, that the presumption of law is, that he was not alive, when the consequence of his being so is, that another person has committed a criminal act. I think, therefore, that the sessions decided right in holding the second marriage to have been valid, unless proof had been given that the first husband was alive at the time."

Evidence of parties being alive.

Letters from abroad may be received as evidence of the existence of the first wife (the writer), and the sessions may presume that a woman alive on 17th March, was alive on 11th April. (*Rex* v. *Harborne*, 4 N. & M. 341; 2 A. & E. 540.) An order for the removal of Ann Smith, the wife of Henry Smith (who had deserted her), from Harborne to East Haddon, was quashed. Case:—The respondents proved that Henry Smith, being settled in East Haddon, married the pauper on the 11th of April, 1831, and afterwards deserted her. The appellants then proved that, on the 4th of October, 1821, Henry Smith had married one Elizabeth Meadows; and in order to show that she was alive at the time when he married, the pauper called the father of Elizabeth, who proved that his daughter and Henry Smith continued to live together till 1825, when he left her, and she went into Northampton hospital, that he had since received several letters from her, dated from Van Diemen's Land; and he produced a letter, dated Hobart Town, 17th of March, 1831, which he proved to be in her handwriting. The sessions received the letter in evidence, and quashed the order. The question was, whether the sessions were justified in presuming that Elizabeth, the first wife of Henry Smith, was alive at the time of his marriage with the pauper. Lord *Denman*, C. J. "The question is, whether the sessions were justified in coming to the conclusion, that a party who was proved to have

(*a*) A parish may be precluded even from this evidence, where, by a certificate, they have recognised the man and woman as husband and wife, see post, "SETTLEMENT BY CERTIFICATE."

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been alive on the 17th of March, was alive on the 11th of April. If that conclusion was right, the marriage was invalid. It appears to me that the evidence was properly admitted, and that the sessions have come to a correct conclusion. There was strong evidence to show that the party was alive; and there were no circumstances from which a contrary inference of fact could be drawn. The only matter that raised any doubt in my mind was the doctrine laid down by *Bayley*, J., in *Rex* v. *Twyning*. In that case, however, the sessions came to a different conclusion; they did not choose to presume that the first husband was alive at the time of the second marriage of the wife; and the court said, that there was no legal presumption to countervail that finding of fact; but it was totally unnecessary to enter into the question of conflicting presumptions. Lord *Tenterden*, C. J., and *Holroyd*, J., did not happen to be present. *Bayley*, J., seems to have taken up the matter on a principle which certainly was not necessary for the decision of the case. "Here the sessions have said, 'The circumstances are of such a nature, that we will not presume that the wife was not alive.' It appears to me, that nothing could be more absurd, than that there should be a presumption of life or death without reference to the age, circumstances, situation of life, and common habits of the party. Can there be the same presumption as to a party who is 100 and one who is 35? As to a party who was in good health when last heard of, and one who was proved to have then a disorder upon him, which was likely speedily to terminate in his death? It cannot be. It is altogether a question of fact. The only question that can be is, whether the sessions or a jury have competent evidence before them. In *Doe* v. *Nepean*(*a*) the question arose much in the same manner. In that case the question was, whether there had been an adverse possession for twenty years, and this depended upon the question, whether a party who went abroad, and was never again heard of, must necessarily be taken to be alive up to the end of seven years after his departure. The learned judge said that the law was so; and he did not leave it to the jury to say whether the party was alive up to that time. When, however, the case came before the court, they held that there was no *legal presumption* of the continuance of life until the last period. That is perfectly consistent with our decision in the present case. In *Rex* v. *Twyning* the point arose exactly in the same manner as in this case. The sessions having found one way, the question was, whether there was any legal presumption against that finding. In every case the only question that can arise is, whether the evidence was in its nature admissible; for otherwise, supposing even that it had been proved that the party was alive on the 10th, and that the marriage had taken place on the 11th, you could not presume that the party was alive at the time of the marriage. The sessions were justified in forming their own opinions upon the facts laid before them; and they have given an opinion from which no persons can dissent."

(*a*) 5 B. & Ad. 86.

Marriage in chapels.

Marriage solemnised in chapels erected since 26 Geo. II. were held to be void (*King's Norton* v. *Northfield*, Doug. 659), but soon after this determination marriages solemnised in any parish church, or public chapel, erected since the 26 Geo. II. and consecrated, were rendered valid in law by 21 Geo. III. c. 73.

Publication of banns.

The banns must be published in the true names of the parties, but in *Rex* v. *Billingshurst* (3 M. & Sel. 250), where a person whose baptismal and surname was A. L., was married by banns by the name of G. S., having been known in the parish where he resided, and was known by that name only, from his first coming into the parish till his marriage, which was about three years: it was held, that the marriage was valid. In that case the pauper, whose name is Abraham Langley, was married to his present wife in Lamberhurst, by banns, about four years ago, by the name of George Smith. Previously to his marriage he had resided about three years at Lamberhurst, and from his first coming, and during

all the time he remained there, he was known by the name of George Smith only. Lord *Ellenborough*, C. J. "All that the law requires on this subject is, that marriages shall be solemnised either by licence, or publication of banns, otherwise the 26 Geo. II. c. 36, s. 8, declares that they shall be void. The statute does not specify what shall be necessary to be observed in the publication of banns; or that the banns shall be published in the true names; but certainly it must be understood as the clear intention of the legislature, that the banns shall be published in the true names, because it requires that notice in writing shall be delivered to the minister of the true christian and surnames of the parties, seven days before the publication: and unless such notice be given, he is not obliged to publish the banns. The question then is, has there been, in this case, that which is required, a due notification by the minister, on a Sunday, in time of divine service, of one of the persons intending to contract marriage? Now it appears that such notification has been made by the name of George Smith, by which name alone the party was known in the place where he resided, and which he had borne for three years prior to the celebration of the marriage, in that place, and that he was not known there by any other name. It would lead to perilous consequences, if, in every case, an inquiry were to be instituted, at the hazard of endangering the marriage of a woman, who had every reason to think she was acquiring a legitimate husband, whether the name by which the husband was notified in the banns were strictly his baptismal name, or whether at the period of his baptism he may not have received some other name. What the consequences might be of encouraging such inquiries, as to the avoiding of marriages, and bastardising the issue of them, it is not very difficult to imagine. The object of the statute, in the publication of banns, was to secure notoriety, to apprise all persons of the intention of the parties to contract marriage; and how can that object be better attained than by a publication in the name by which the party is known? If the publication here had been in the name of Abraham Langley, it would not of itself have drawn any attention to the party, because he was unknown by that name, and its being coupled with the name of the woman who probably was known, would perhaps have led those who knew her, and knew that she was about to be married to a person of another name, to suppose, either that these were not the same parties, or that there was some mistake. Therefore, the publication in the real name, instead of being notice to all persons, would have operated as a deception; and it is strictly correct to say, that the original name, in this case, would not have been the true name within the meaning of the statute. On these grounds I think that the act only meant to require that the parties should be published by their known and acknowledged names, and to hold a different construction would make a marriage by banns a snare, and in many instances a ruin upon innocent parties. The court, therefore, cannot lend itself to a construction which would be pregnant with such consequences." *Le Blanc*, J. "The object of the marriage act was to insure notoriety to the transaction, and, I think, the court recollecting that, cannot say that a marriage by banns, published in the names by which alone the party was known, is a marriage without publication of banns. The argument is, that a marriage by publication of banns means, by publication of banns in the real names of the parties only; but the statute has said no such thing. If the banns be published in the names of the party by which alone he is known, and there is no fraud, whether that be the true christian or surname of the party or not, I think the marriage is good within the meaning of the statute. Therefore, I am of opinion, that upon the present occasion everything was done that was sufficient to give that notification of the marriage which it was the object of the marriage act to insure." Order of sessions confirmed.

Marriage in false names.

So a marriage by licence, not in the man's real name, but in the name which he had assumed because he had deserted, he being known by that name only in the place where he lodged and was married, and where he had resided sixteen weeks, was held a valid marriage. (*Rex* v. *Burton-upon-Trent*, 3 M. & Sel. 537.) In that case the pauper's father, whose real name was Joseph Price, was married at Leicester, by licence, by the name of Joseph Grew, having changed his name to Grew because he had deserted from the army, and he was known by that name only at Leicester, where he lodged at the time of his marriage, and where he had resided sixteen weeks. He never passed by any name but Price in his father's family, and in the place where they resided. His wife did not know his real name till a fortnight after the marriage, when he told it her. The pauper was the issue of this marriage, and was born at Burton-upon-Trent, and after his birth his parents were married by the true name. The sessions considered the first marriage as invalid, and therefore that the pauper was not entitled to his father's settlement. Lord *Ellenborough*, C. J. "If this name had been assumed for the purpose of fraud, in order to enable the party to contract marriage, and to conceal himself from the party to whom he was about to be married, that would have been a fraud on the marriage act, and the rights of marriage, and the court would not have given effect to any such corrupt purpose. But where a name has been previously assumed, so as to have become the name which the party has acquired by reputation, that is, within the meaning of the marriage act, the party's true name. The same law has been recognised in the case of negotiable instruments, where, if a party sign an instrument in a name assumed by him for other purposes a considerable time before, such signature will not amount to a forgery; but otherwise, if he assume a name by which he had never been known before, for the purpose of the fraud. Now, here the party assumed the name for the purpose of concealment, and not of fraud upon the marriage, and he was known by that name alone for sixteen weeks in the place where he was married. It seems to me, therefore, that he had acquired the name, and that to have had a licence in any other name would have been a fraud on the marriage act." *Le Blanc*, J. "The name was assumed by the father for the purpose of concealing himself as a deserter from his Majesty's service, and not with a view to impose upon the woman whom he married." *Bayley*, J. "The sessions may always draw the line, whether the name was assumed for a fraudulent purpose, as it regards the marriage, or not." Order quashed. (See 2 East's P. C. 967, 968.)

Marriage in maiden name.

So marriage by maiden name used by a widow is valid, unless assumed for a fraudulent purpose. (*Rex* v. *St. Faith's, Newton*, 3 D. & R. 348; 2 D. & R. Mag. Ca. 34.) The pauper, whose maiden name was Ann Lovick, was married on the 14th of September, 1812, to James Browne, a man of colour, whose settlement is unknown, and who was then a private in the 69th regiment. About half-a-year afterwards, Browne went to Ipswich, and the pauper, at his request, followed him thither, and remained with him there a few weeks, when she returned to Norwich, and never saw or heard anything of her husband afterwards, except that a report reached her of his death by drowning, but it is not otherwise known when he died, or whether he is dead. On the 31st March, 1822, and after the pauper had received such information of the death of Browne, she was married, by banns, to William Rigg, widower, by the name and description of Ann Lovick, widow. Both at Ipswich, and after her return to Norwich, the pauper went by the name of Ann Lovick only, till her marriage with Rigg." *Bayley*, J. "The object of the statute was to make it notorious to the world who were the parties that were about to enter into the married state, and therefore, wherever the name is fraudulently assumed or concealed, that object is defeated, and the marriage is void. But when the party has assumed a new name, not for any fraudulent purpose, but fairly and openly, and has, for a

considerable period, used and been known by that name, then, it has been in several cases decided, a marriage under that name is valid. The name in this case does not appear to have been assumed for the purposes of the marriage, or for any improper purpose; and, under the circumstances of this case, at least as much notoriety was given of the person of the pauper by the name of Lovick, as could have been given by that of Browne. The former was her maiden name, she had gone by it for many years, and was, therefore, more likely to be recognised by that name than by the other. The mere fact that some one individual *may* be deceived is not sufficient to annul the marriage; the name must be assumed fraudulently. That has long been the rule of construction upon this subject, and that rule is acted upon in the cases that have been cited. I am therefore of opinion that this is a valid marriage, and that a different decision would be very likely to produce much mischief; for where a party has several names, one of them may be easily omitted by accident or mistake, and it would be a most grievous thing if every marriage solemnised under such circumstances were to be deemed illegal."

Mistake in name.

In the publication of banns, in 1817, a woman, named Mary Hodgkinson, was called White, a surname entered by mistake in the register of her baptism, but which she had never gone by or been entitled to. The false name was given to the officiating clergyman without any intention to mislead, nor did any individual, having an interest in the marriage, appear to have been deceived: held, that the marriage was void under the stat. 26 Geo. II. c. 39, then in force. (*Rex* v. *Tibshelf*, 1 B. & Adol. 190.) The pauper and her husband were married, in 1817, by banns, by the names of Joseph Betts and Mary White. The husband had been baptised as the son of John and Mary Betts. Mary Betts was the daughter of Samuel Wilson, and her husband having absconded shortly after their marriage, her son, the pauper's husband, was brought up by his maternal grandfather, and was always called by the name of Wilson, was bound apprentice by that name, with the consent of his grandfather, and was never called or known by the name of Betts, or by any other name than Wilson, either before or after his marriage with the pauper. The pauper, Mary, was the legitimate daughter of Job and Martha Hodgkinson, and was never called or known by any name, except Hodgkinson, till after her marriage; but in the register of her baptism she is described as "Mary, the daughter of Samuel White and his wife." Her mother was the daughter of Samuel and Dorothy White, and her father and mother resided with them at the time of her birth, and her mother's brother stated that he believed the entry in the register to have been a mistake of the clergyman who baptised her; and that he was the person who discovered the mistake in the register previous to the pauper's marriage, it having been supposed that her baptism was omitted to be registered. Lord *Tenderden*, C. J. "The question whether this removal is right or not depends upon the validity of the marriage between Joseph Betts and the said Mary. If the marriage was invalid, the order of sessions was wrong, and we are of opinion it was invalid. This marriage was in 1817, and at that time the only act by which marriages were regulated was the 26 Geo. II. c. 39, which was finally repealed, except as to all acts, matters and things done under its provisions, by 4 Geo. IV. c. 76. Neither that act, nor the repealed act 3 Geo. IV. c. 75, contains any clause rendering former marriages by improper banns valid; and if s. 19 of the latter act could have been construed as having that effect, it could not have any operation after the repeal of that act. The act 26 Geo. II. provides, by s. 8, that all marriages that shall be solemnised without publication of banns, or licence, shall be null and void to all intents and purposes whatsoever. In the directions in that statute for the publication of banns, nothing is said as to the names of the parties, but s. 2 excuses the minister from

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publishing them, unless the parties deliver in, in writing, their true christian and surnames. And in a series of decisions upon this statute, both in the Ecclesiastical Courts and the Court of King's Bench, it has been held that the clear intention of the legislature was that the banns are to be published in the true names of the parties, otherwise it is no publication at all. By these decisions these rules are fully established: first, that if there be a total variation of a name or names, that is, if the banns are published in a name or names totally different from those which the parties, or one of them, ever used, or by which they were ever known, the marriage in pursuance of that publication is invalid; and it is immaterial in such cases, whether the misdescription has arisen from accident or design, or whether such design be fraudulent or not. But, secondly, if there be a partial variation of name only, as the alteration of a letter or letters, or the addition or suppression of one christian name, or the names have been such as the parties have used and been known by at one time and not at another, in such cases the publication may or may not be void; the supposed misdescription may be explained, and it becomes a most important part of the inquiry, whether it was consistent with honesty of purpose, or arose from a fraudulent intention. It is in this class of cases only that it is material to inquire into the motives of the parties. The substance of these rules will be found in the judgments of Lord *Stowell*, in the cases of *Sullivan* v. *Sullivan* (2 Hagg. Consist. Rep. 254); *Frankland* v. *Nicholson* (3 M. & Sel. 261; 1 Phill. Rep. 147); *Pougett* v. *Tomkins* (3 M. & Sel. 263); and *Mather* v. *Ney* (3 M. & Sel. 265), and in the judgments in *Rex* v. *Billinghurst* in this court. The present case falls distinctly within the first rule. Whether the alleged husband was sufficiently designated by the name of Betts we need not inquire, as we are clearly of opinion that the woman was never known by and never used the surname of 'White,' so as to make that, in any latitude of construction, 'a true name' within the meaning of the statute. Her family name, and that by which she was always known, was Hodgkinson. The only occasion upon which the name of White was applied to her was in the register of her baptism; she was not *baptised* by that name, for the surname is never used in the baptismal ceremony; but the name was entered in the register necessarily without her privity, and it seems without that of her parents, and probably by a mere error of the officiating minister, who appears to have mistaken her parentage, and considered her as the child of her maternal grandfather and grandmother. It is impossible, whatever may be the disposition to favour parties who have meant to act correctly, and from the best motives, to say that a surname so entered can be the true name of the party to whom it is applied. It is, doubtless, a great hardship upon these innocent persons to pronounce that this marriage is void, but it would be a much greater inconvenience to the public to alter the settled rules upon this subject, for the sake of preventing a particular mischief."

The 5 & 6 Will. IV. c. 54, s. 4, makes null and void all marriages within the prohibited degrees, and it has been held that the prohibited degrees include natural relations, and that a woman marrying the husband of her aunt did not acquire any settlement by marriage, and that it was immaterial that the pauper's mother was illegitimate. (*Reg.* v. *Brighton*, 30 L. J. (N. S.) M. C. 197.)

Primâ facie evidence of the maiden settlement in the appellant parish is sufficient to call for an answer.

On removal of a wife, it is sufficient in the first instance to prove her maiden settlement. (*Rex* v. *Ryton*, Cald. 39; 2 Bott. 114. See, also, *Rex* v. *Edisore*, Cald. 371; *Rex* v. *St. Mary, Leicester*, ante, p. 334.)

In *Rex* v. *Woodford* (Cald. 236; 2 Bott, 118), as by rule of the Dorsetshire sessions, on appeals against orders of removal, the appellants begin, and show some settlement of the pauper out of the parish appealing, for this purpose the appellants produced a copy of the register of the birth of the pauper, a widow. It was objected that this was not sufficient, but that the settlement of the husband ought to have

been shown, and that to identify the pauper it was necessary to prove her marriage. The sessions adjudged that the proof of the birth of the pauper was sufficient, and that the *onus probandi* of the marriage lay upon the respondents in order to prove their case, and quashed the order. It was argued, that the pauper having been removed as a widow, it imported that it was a removal to her late husband's settlement, and that her maiden settlement was nothing to the purpose. But the court said: "It may be the husband had no settlement; and if he had, till discovered, her own would in the mean time remain. It is enough in the first instance: the sessions have done right."

So, in *Rex* v. *Harberton* (13 East, 311), on the removal of Elizabeth, the wife of Charles Hill, and her daughters by her said husband, from Harberton to Drewsteignton, the respondents proved that in 1806 the pauper married Charles Hill, in Chagford: and from a copy of the registry of the marriage, which was produced, it appeared that he was therein described to be of the parish of Alverdiscott, and Elizabeth was therein described to be of Drewsteignton. They also examined the wife, who proved that the children mentioned in the order were born after the marriage, and also that her husband was with her in Harberton a little after Christmas last, since which time he had left her, and she had not seen him since; that he was not there when she was examined before the justices previous to, nor at the time of her removal, and that she did not know her husband's settlement. The respondents gave no evidence to account for the absence of the husband, or of any further search having been made for him, or inquiry as to his settlement. The appellants produced no witnesses, nor did they offer any evidence of the husband's settlement. The sessions quashed the order. Soon after this case had been opened at the bar, the court said that there could be no doubt but that the evidence offered by the respondents, of the wife's maiden settlement, was *primâ facie* sufficient, and that it lay upon the appellants to rebut it, by giving evidence of the husband's settlement in a different parish: but the sessions having decided against the respondents, upon the supposition that they had not used due diligence in endeavouring to procure the attendance of the husband, or in accounting for his absence, or inquiring as to his settlement, without going further into the consideration of the case, this court sent it back to be reheard by the sessions, to give the appellants an opportunity of entering into their own case, and of giving evidence of the husband's settlement; and the description in the copy of the marriage register of the husband, that he was of the parish of Alverdiscott, was considered to be no evidence of his having a settlement there.

Proof of a settlement of husband, although parish unknown, supersedes the wife's settlement.

But proof of a settlement of the husband, though the parish cannot be ascertained, supersedes the wife's settlement. (*Rex* v. *St. Mary, Beverley*, 1 B. & Adol. 201.) In that case, Harriet, wife of W. Owen, and their children, were removed from St. Martin to St. Mary, in Beverley, and the order was confirmed. The maiden settlement of Harriet was in St. Mary's, and both the children were born there. No proof was offered that Owen had gained a settlement in his own right; but on the part of the respondents, Ann Rogers, the mother of Owen, proved that she was the wife of a sergeant in the 30th regiment of foot; that she never heard or knew where his place of settlement was; that about twenty-seven years since, whilst the regiment was on the march, she was suddenly taken in labour upon a baggage waggon; that her son, William Owen (the husband of Harriet Owen), was born in the stable of an inn at Ipswich; that she never was in Ipswich before, nor had she ever been there since; that there were several parishes in Ipswich, but that she did not know in which parish the stable was situate, or to what it belonged; and that, even if she was now in Ipswich, she could not point out the stable or inn where she was confined.

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No proof was given of any other endeavour having been made on the part of the respondents to ascertain the parish in which William Owen was born. At the time of making the order of removal, William Owen was living with his wife and family in the parish of St. Martin, in Beverley. The husband, William Owen, gave his consent to the removal of his wife and family to the parish of St. Mary, in Beverley, but no proof was given of any consent on the part of Harriet Owen to her removal. The question was whether H. Owen and her children could be removed to her maiden settlement. *Bayley*, J. "We are of opinion that both the orders in this case ought to be quashed. To justify the confirmation of an order of removal, it ought to appear upon the evidence adduced by the respondents that the party removed is settled in the parish to which the removal is made; if that do not appear, and *à fortiori* if the contrary appear, the removal cannot be supported. Now the evidence in this case does not prove that the person removed is settled in the parish of St. Mary, to which she is removed, but in one of the parishes in Ipswich. It is argued, however, that as the respondents' witness did not know in which of the parishes in Ipswich the settlement was, and had proved a maiden settlement in the appellant parish, in the wife who was removed, the *onus* of proving in which of the parishes in Ipswich the husband was born was upon the appellant parish; and that in the absence of such proof, a removal to the wife's maiden settlement was warrantable. We do not concur in this reasoning. Where the respondents' evidence makes out a maiden settlement, and contains nothing to show that any subsequent settlement which would supersede the maiden settlement has been gained, that constitutes a *primâ facie* case, and the *onus* of proof that the pauper was not settled there lies upon the appellants, but not that of proving the precise place where the pauper was settled. It is enough to disprove by clear evidence the obligation of the appellant parish to maintain the pauper; and the question may be considered for this purpose, as being in substance the same as if there were an issue to be tried between the two parishes whether the pauper was settled in the parish of St. Mary or not. None of the cases cited in argument go anything like the length for which the respondents must contend. In *Rex* v. *Woodford* (ante, p. 374), there was no proof of any settlement but the maiden settlement of the wife. The same was the case in *Rex* v. *Harberton* (ante, p. 375). In *Rex* v. *Hensingham* there was indeed proof that the husband had told his wife that he was born in Yorkshire; but what a man says as to the place of his birth is not receivable in evidence to prove it; and a similar observation applies to the case of *Rex* v. *Westerham*, of which there is a note in Burn's Justice, tit. "POOR" (ante, 335). The only remaining case cited by the respondents was that of *Rex* v. *Eltham* (*a*), where the husband was a Scotchman, and had no settlement of his own. I am not aware of any other case in favour of the respondents. Now what do these cases prove? They prove at the utmost, that where there is no sufficient evidence of any settlement in the husband, and where the only settlement as to which there is any is the wife's maiden settlement, the wife may be removed to that settlement; but they do not bear upon the point where it appears upon the evidence that there is a settlement in the husband. Upon the ground, therefore, that in this it appears upon the respondents' evidence that the husband has a settlement in a parish at Ipswich, we are of opinion that a removal to the wife's maiden settlement cannot be supported, and that the order of sessions ought to be quashed."

(*a*) 5 East, 113.

Unnecessary to prove any inquiry as to husband's settlement.

It is not necessary that the removing parish has made any inquiry into the husband's settlement. The question was settled in *R.* v. *Birmingham* (8 Q. B. 410; 15 L. J., M. C. 65), in accordance with the judgment of *Bayley*, J., in *R.* v. *St. Mary, Beverley* (9 B. & Ad. 201). "Where the respondents' evidence makes out a maiden settlement, and

contains nothing to show that any subsequent settlement which would supersede the maiden settlement has been gained, that constitutes a *primâ facie* case, and the onus of proof that the pauper was not settled there lies upon the appellants." The court added, "If, indeed, it should be proved that he had gained a settlement in England, but that no one could prove in what parish it was, the wife could not be properly removed to the maiden settlement, nor to any place, until knowledge was obtained of the place of her husband's settlement. Thus, if it had been clearly proved that the husband had been hired and served for a year in one of the parishes of London, but no one could tell in what parish, the removal to the widow's maiden settlement could not have been correctly made; but if no settlement of the husband is made to appear, the place of the maiden settlement of the wife is *primâ facie* that to which she must be taken. The question as to the sufficiency of a search for the husband's settlement will not arise either at the sessions or in this court; the wife's being taken to continue till it is proved to have been displaced, will cast the burden of proof on those who are interested in discovering that it has been displaced. This duty belongs to the respondents in the first instance, and is transferred to the appellants after the removal." Inquiry as to the husband's settlement is merely a precautionary measure to prevent an improper removal, as of course his settlement is that of the wife.

CHAPTER XXII.

Of the Settlement of the Poor—(*continued*).

Of Settlement by Hiring and Service.

"THE Poor Law Amendment Act, 1834" (4 & 5 Will. IV. c. 76), enacts (s. 64), that *no settlement shall be acquired by hiring and service* after the passing of that act (*a*). 4 & 5 Will. 4, c. 76.

As questions, however, arise relative to settlements acquired by hiring and service, *antecedent* to this act, it is necessary to retain the law on the subject. (See ante, pp. 317, 318.)

By the 13 & 14 Car. II. c. 12, s. 1, as has been seen (ante, p. 317), upon complaint by the churchwardens or overseers of the poor of any parish, within forty days after any person coming to settle in any tenement under the yearly value of ten pounds, two justices of the division where any persons, that are likely to be chargeable to the parish, shall come to inhabit, might by their warrant remove and convey such 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." The statutes relating to settlements. Persons removable, unless security given for the discharge of the parish.

(*a*) See the precise language of the act, ante, pp. 317, 318, and post, § 2.

Settlement by forty days' residence from delivery of notice.

By 1 Jac. II. c. 17, the forty days were to be accounted from the time of delivery of notice in writing, of the abode, and the number of family, to one of the churchwardens or overseers of the poor; and by the 3 W. & M. c. 11, s. 3, the forty days' continuance of such person in a parish or town, intended by the said acts to make a settlement, shall be accounted from the publication of notice in writing read in church. (See ante, p. 317.)

Notice to be published.

Soldiers, &c. not to gain a settlement by notice till after dismission.

3 M. & W. c. 11, s. 4. "No soldier, seaman, shipwright, or other artificer or workman employed in their Majesties' service, shall have any settlement in any parish, port town, or other town, by delivery and publication of a notice in writing as aforesaid, unless the same be after the dismission of such person out of their Majesties' service."

Hiring and service for a year, of unmarried person, &c., a settlement.

Sect. 7 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, though no such notice in writing be delivered and published as is hereinbefore required" (*b*).

The hiring and service must be for one whole year.

The 8 & 9 Will. III. c. 30, s. 4. "And whereas some doubts have arisen touching the settlement of unmarried persons, not having child or children, lawfully hired into any parish or town for one year, be it therefore enacted and declared by the authority aforesaid, 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 during the space of one whole year."

There are some statutory provisions precluding persons coming into parishes under particular circumstances, from acquiring settlements in those parishes, whilst they continue within the operation of those provisions, as will be seen hereafter.

Requisites in general of a valid hiring to give a settlement.

The requisites of this description of settlement may be stated as follows:—

1st. With respect to the *hiring*.—That the master or mistress, and servant whether male or female, must be *capable* of entering into such a contract with each other; and all persons (except husband and wife), however nearly related to each other, may make such a contract, even though one or both parties be under age.

2nd. The parties must not merely be competent to make a binding contract as *between themselves*, but they must be in that *unfettered condition* which the poor laws require in order to create a right of settlement by such contract duly performed. For instance, the master must not be a *certificate* man, nor must the servant be already under a subsisting contract as an apprentice, or soldier, or married, or a widower with children, &c.

3rd. The contract must be for *a year prospectively* from its date; but it is not essential that it should be actually so expressed, for if it can be collected from the other terms of the contract, as the wages, notice to leave, &c., that the parties *intended* that the hiring should be for a year, that will suffice.

4th. The master must have the control over the servant's *whole time* and services; for if it is stipulated by the contract that the servant shall have the *right* to certain days or even hours to himself, independently of his master, although he in fact employed those hours in his master's service, being paid for them, the contract will not confer a settlement.

Requisites of the service to give a settlement.

5th. With respect to the *service*.—This likewise must be for a year; though intervals of absence by the master's authority will not prejudice: for the master may dispense with a portion of the service.

6th. It is not necessary that the *whole* year's service should be under the *yearly* hiring, though it must be *in the same service;* for if a person serve a few months without any yearly hiring, and then without quitting

(*b*) The effect of delivery and publication of notice on settlements was taken away by the 35 Geo. 3, c. 101, s. 3; see ante, p. 317.

or suspending the service, contract to serve the same master for a year, and continue to serve under this contract a length of time sufficient (even though it be forty days only), when added to the time served before the hiring for a year, to make a whole year's service, the settlement will be complete.

7th. It is not essential that the service should be under the *same master;* for if the *same service* is *continued* under the lessee, assignee, executor, &c. of the master with whom the contract was made, and the service in part performed, it will be sufficient for the purposes of the settlement.

8th. It is not necessary that any part of the service should be in the parish or place where the contract of hiring is made; or that the whole year's service should be in one and the same parish or place; or that it should be in the parish or place where the master resides: for wherever the servant resides the last forty days for the *purposes of the service*, there he will acquire his settlement.

9th. The forty days' residence for the purposes of the service are not required to be *consecutive;* though they must be within the compass of a year. Thus if a servant during a hiring and service for a year serve in *several* parishes, his settlement will be in that parish in which he has *last served*, if in the whole he has resided and served *there* forty days.

Such are the rules of law by which settlements by hiring and service were governed. In cases stated by the courts of quarter sessions, the sessions ought to decide whether there was a contract of hiring, or only of apprenticeship, and not merely to find or state facts.

The law will be arranged under the following heads and subdivisions.

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§ 1. OF THE CONTRACT OF HIRING.

(a) *Of the Parties to the Contract.*

The 3 W. & M. c. 11, s. 7, 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.*" (See ante, p. 378.) Therefore the servant must be unmarried, without children, and *sui juris.*

"Any *Unmarried Person.*"]—*Anthony* v. *Cardigan* (2 Bott, 257). *A widower* is within the meaning of the act, and might gain a settlement by hiring and service.

A widower might gain this settlement.

Where a married man agreed to a hiring subject to approbation, and his wife died before he enters on the agreement, and then the hiring was completed, it was sufficient. (*Rex* v. *Banknewton*, 2 Burr. S. C. 259.)

If the man were single when the contract was made, marrying between the hiring and entering upon the service did not defeat the settlement in the absence of fraud. (*Rex* v. *Allendale*, 3 T. R. 382.) Same point, (*Rex* v. *Stannington*, 3 T. R. 385.)

So a marriage *during* the service did not defeat the settlement. (*Farringdon* v. *Witty*, 2 Salk. 527.)

A child emancipated is not within the meaning of the statute.

"*Not having Child or Children.*"]—In *Anthony* v. *Cardigan* (supra), the pauper had a daughter who was married and lived settled elsewhere; and it was decided that he was a single person within the meaning of the act, though not expressly within the letter of it. The meaning of the statute is, that he might not bring any consequential damage to the parish, which he could not possibly do here. Same point in *Rex* v. *Cowhoneyborne* (10 East, 88).

Rex v. *New Forest* (5 T. R. 478). But a child whose emancipation is incomplete, is within the act. On Martinmas-day, 1777, E. Coates hired himself and served a year in the township of New Forest; on 22nd December, 1777, he married. The pauper, son of E. C., on the same Martinmas-day (being under sixteen, and without having gained a settlement), hired himself for a year to R. N., of Ellerton, and served the year. Lord *Kenyon*, C. J. "The construction which the court has put upon the 3 W. & M. c. 11, s. 7, is, that though the person so hired have children, yet if they have gained settlements for themselves, distinct from the father's, the statute will not prevent his acquiring a settlement by serving a year under that hiring. But here the son was not separated from the father when the latter was hired; he had gained no settlement for himself; he had entered into a contract, 'which might or might not have been completed,' but which, when completed, would give him a settlement; but at the time when the father entered into the relation of a servant at New Forest the son formed a part of his family." (See this case, ante, p. 352.)

Not during apprenticeship.

The servant must be *sui juris*. A hiring during a subsisting apprenticeship is insufficient. (*Rex* v. *Dawlish*, 1 B. & Ald. 281; *Rex* v. *Bow*, 4 M. & Sel. 383.)

A deserter could gain no settlement by hiring and service,

Rex v. *Norton* (9 East, 206). The pauper was duly enlisted as a private in his Majesty's marine forces, from which he deserted, and then hired himself for a year, and served a year under the hiring. Afterwards he was taken up for desertion, tried, and convicted. It was urged that the pauper was as much *sui juris* as a militia-man (*c*). Lord *Ellenborough*. "That was the case of a lawful contract with a just exception. The public had a claim upon the militia-man's service for a certain time, and subject to that claim he might lawfully contract to serve his master. If this case had been *res integra* there might have been great doubt whether the word 'lawfully,' were not to be narrowed to a contract and the terms of it lawful; and if lawful in its form, whether the party serving under it could be disabled from gaining a settlement by reason of his having before contracted an engagement with another person, inconsistent with it. But a variety of cases have decided the question in the case of an apprentice: and this not on the ground of its being an excepted case, or as standing upon any occult efficacy in the indenture; but upon the broad principle that one, who has contracted a relation which disables him from serving any other without the consent of his first master, is not *sui juris*, and cannot lawfully bind himself to serve such master, so as to gain a settlement under such contract. In reason

(*c*) See post, p. 381.

and principle it can make no difference whether he be originally bound by a contract of apprenticeship, or by any other contract equally obligatory on him, which disables him from binding himself to serve a second master. The objection is, that he cannot give the master a control over his service for the whole period which the master stipulates for, and has a right to require by the contract. The king's officers might at any time have reclaimed him and taken him out of the service in which he was engaged: he cannot, therefore, be said to have been lawfully hired into it. A soldier is at least as much bound to the service of the king as an apprentice is to that of his master; and nothing is to be inferred from the measured language of the court in the case of an apprentice, in not laying down the principle broader than the matter in judgment required. Nothing was said intimating an opinion that the rule was confined to the case of an apprentice, and therefore we must look to the reason and principle of those decisions when we are called upon to apply the rule to similar cases." The other judges agreed that the principle was, that if the party cannot make such a contract for his service, of which the master may avail himself for the whole year, no settlement can be gained.

nor a private soldier.

A private soldier, with the permission of his officer, entered into a contract of hiring and service, conditionally for a year, if so long allowed to be absent, and served the year: held not to gain a settlement, as not being *sui juris*. (*Rex* v. *Beaulieu*, 3 M. & Sel. 229.)

A man being in the militia cannot lawfully hire himself for a year, without disclosing that fact to his master.

Rex v. *Holsworthy* (6 B. & C. 283; 9 D. & R. 322). Order of removal of F. H. Trim, &c. from Thornbury to Holsworthy, confirmed. Case:— In May, 1819, the pauper was enrolled as a substitute in the S. D. militia as a private, to serve for five years. In June, 1822, whilst he was still a member of the corps, being at Plymouth, he was sworn in a recruit of the 5th regiment. When the sergeant paid him the enlistment money, the pauper told him he was in the militia, and the sergeant bid him say nothing about it. He did not, and was afterwards convicted and imprisoned for it. In 1823 he hired himself, and served for a year in Holsworthy. *Bayley*, J. "I think this case does not admit of any doubt. It is not necessary to say whether a militia-man may or may not gain a settlement by serving under a yearly hiring for a whole year, if at the time of making the contract he communicates to the party with whom he is contracting that he is in the militia, and therefore liable to be called out during the year. If the master chooses to engage the servant, subject to the risk of his being called out to perform the duties of a militia-man during the year, I do not see that there is anything illegal in such a bargain. It may be considered a conditional hiring during the year, and if the militia are not called out, a settlement may perhaps be gained by serving under it. But what is the contract of hiring in this case? The contract is one by which the master stipulates to have, and the pauper stipulates to give, his services for one whole year; there is no qualification or condition whatever in the contract, and if there were any it ought to have been stated, and cannot be inferred. I do not presume fraud, for the non-communication of the fact of the pauper's being in the militia may have arisen from his considering it wholly immaterial, from omission, or from any other circumstances. Without, therefore, breaking in upon any case in which it has been decided that a militia-man, who, in his contract of hiring, stipulates for the time that he may be called upon to perform his duty in the militia, may gain a settlement by serving for a whole year under such a hiring, I think that the pauper, not having communicated to the party whom he contracted to serve for a whole year that he was in the militia, cannot be said to have 'lawfully hired himself,' and therefore he gained no settlement in Holsworthy." *Holroyd*, J. "It is not to be presumed that, at the time of the hiring, the pauper communicated to his master that he was in the militia; and there is nothing in this case to show that a communication was made. The case seems to fall within the principle laid down by

Lord *Ellenborough* in *Rex* v. *Norton*. It is said that this case differs from that, because the militia, not having been called out during the year, there was a year's service under a conditional hiring; but the objection is, that the pauper was not capable of making a contract, so as to give the master a control over his services during the whole year. Now no communication having been made to the master that the pauper was in the militia, I am of opinion that this is an absolute, and not a conditional hiring. It is quite clear that the pauper was not capable of making an unconditional contract to serve for a year." *Littledale*, J., concurred.

Rex v. *Taunton St. James* (4 M. & R. 695; 9 B. & C. 831) recognized the above case, and further decided that the then existing militia act (48 Geo. III. c. 111, s. 15), which provided, that no ballot, enrolment, and service under that act shall extend to make void or in any manner to affect any indenture of apprenticeship, or contract of service between any master or servant, notwithstanding any covenant or agreement in any such indenture or contract; and no service under that act of any apprentice or servant shall be deemed or construed, or taken to be an absence from service, or breach of any covenant or agreement as to any service, or absence from service, in any indenture of apprenticeship, or contract of service, was confined to contracts existing at the time of enrolment.

But if the servant informed his master of his liability to be called out in the militia, he gained a settlement, although he served in the militia for fourteen days. (*Rex* v. *Elmley Castle*, 3 B. & Adol. 826.) *Taunton*, J. "*Rex* v. *Holsworthy* was decided on the ground that the pauper did not at the time of hiring inform his master that he was a militia-man. Here the pauper did so. There was a good hiring for a year. The statute (*d*) enacts that no service in the militia shall be deemed to be an absence from service with the master; but independently of that statute, my opinion, founded on the decisions of *Rex* v. *Westerleigh* and *Rex* v. *Winchcombe*, would have been the same."

Same point, (*Rex* v. *St. Mary*, *Colchester*, 3 N. & M. 113; 5 B. & Adol. 1023).

A member of a volunteer corps was not *sui juris*.

Rex v. *Witnesham* (4 Nev. & Man. 447; 2 A. & E. 648). A few days after Michaelmas, 1807, the pauper let himself to Mr. Keen, a farmer of Clopton, for a year, to commence at the Michaelmas-day following. The pauper went into the service accordingly, and stayed his time. He slept all the time at Clopton, and received his wages. A year and a half before the pauper entered into the service of Mr. Keen, he had been enrolled as a member of the Helmingham corps of volunteers, which corps was duly constituted according to the acts relating to corps of yeomanry and volunteers in Great Britain. During all that time, and throughout his year's service, the pauper duly attended muster, and was duly returned by the commanding officer as an effective member of the corps. He did not communicate the fact of his being a member of the corps to Mr. Keen until he had entered his service, nor did he ever give fourteen days' notice of an intention to quit the corps. He did not take the oath of allegiance according to 44 Geo. III. c. 54, s. 20. The sessions thought that he was not *sui juris* at the time of hiring, although he had not taken the oath of allegiance. *Cur. adv. vult.* Lord *Denman*, C. J. "The question in this case is whether a person who was at the time a member of a volunteer corps, could gain a settlement by hiring and service. We have been referred to the volunteer act (44 Geo. III. c. 54), to the act for the defence of the realm (43 Geo. III. c. 96), and to the militia acts of 42 Geo. III. c. 90, 55 Geo. III. c. 65, and 55 Geo. III. c. 168. It seems to us that the volunteer act puts a volunteer upon the same footing as a militia-man, and that, by becoming a volunteer,

(*d*) 52 Geo. 3, c. 38, s. 65.

the pauper in this case had put it out of his power to contract to serve his master during the whole year. This case therefore comes within the authority of the militia-man's case, in which it was held that no settlement was gained." [Sir *John Campbell*, *amicus curiæ*. "Lord *Erskine* wrote a celebrated book upon the subject, in which he came to the same conclusion."] Lord *Denman*, C. J. "We are glad to hear our opinion confirmed by that of so learned a person. We thought it strange that the question should never before have been considered."

Age of the servant.

The contract of an *infant* made for his own benefit is not void, but voidable only, and therefore an infant may enter into a contract of hiring and service, with the permission of his parent, and thereby have gained a settlement. (*Rex* v. *Chillesford*, infra.)

Age of master.

If a boy be bound *apprentice* to a person under age, the binding was sufficient for the purposes of a settlement, as the indenture is not in such case void, but voidable only. (*Rex* v. *St. Petrox*, *Dartmouth*, 4 T. R. 196.) By the same rule, therefore, it may be considered that a contract of hiring and service with a master who is a minor, is a valid contract, and if duly performed, entitled the servant to a settlement.

Master must not be a certificated man.

The master must not have been resident under a certificate, unless he has a lease of a tenement of the annual value of 10*l*. (*Rex* v. *Nacton*, 3 B. & Ad. 543, post.) A parish certificate extended to a wife married after it is granted, and no apprentice to such wife, after the husband's death, could gain a settlement in the certified parish (*Rex* v. *Hampton*, 5 T. R. 266), the principle of which decision is equally applicable to cases of hiring and service.

Where the master is also parent of the servant.

An infant, whether emancipated or not, may hire himself to his father. (*Rex* v. *Chertsey*, 2 T. R. 37.) The pauper, at the conclusion of a service by which she gained a settlement in Chertsey, went to her father's (a day labourer), who in consequence of his wife's death had previously applied to her to come and live with him, to do the offices of a servant for a year in the parish of Thorpe, for which she was to have her board and lodging, and such profits as she could make by keeping fowls, and what she could earn by her own labour; and if that did not produce as much as she got in her former place, her father was to make up the difference. She lived with him more than a year in pursuance of this agreement, and made more than her former wages by her extra labour and profits, and at the end of the year her father gave her ten shillings as an additional recompence for having gone out reaping with him in the harvest month. The court held this a good hiring and service, and that a settlement was gained in the parish of Thorpe.

Missenden v. *Chesham* (2 Bott, 173; Fol. 142), same point.

Rex v. *Chillesford*, *Rex* v. *Winslow* (4 B. & C. 94; 6 D. & R. 161.)

An unemancipated son might acquire a settlement by a *bonâ fide* contract of hiring with his father, in a parish where the latter has no settlement.

In *Rex* v. *Chillesford*, the pauper's father let himself as a shepherd to Mr. Taylor, of Blythburgh. The father hired every year one or two pages, over whom Taylor had no control, and about nine years ago, when, Jarvis, one of the pages, was to leave, the father, about a week before old Midsummer, agreed with his son, the pauper, at that time nineteen years of age, and unemancipated, to serve him for a year, from old Michaelmas to old Michaelmas, in Jarvis's place, at the same wages, 8*l*. a-year, which time the pauper served, sleeping in his father's house. In *Rex* v. *Winslow*, Thomas Lane, the husband of the pauper, when about fourteen years old, being then unemancipated, was hired by his father, who was a sawyer, residing at Beaulieu, but not having a settlement there, to assist him in his work as a sawyer. A contract was, in point of fact, made between them, whereby the son agreed to serve the father for a year at the wages of 2*l*. 10*s*., his board and lodging being also provided by the father. He served this year with his father in Beaulieu, and received his wages, and, at the expiration of this contract, served his father for two successive years, under new contracts, at increased wages. *Abbott*, C. J. "I am of opinion that in each of these cases the pauper gained a settlement by hiring and service. It

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is conceded that, if the pauper had been previously emancipated, he might have gained a settlement by hiring and service for a year with his own father afterwards. But emancipation does not confer any capacity to contract, and the objection here is, that the son has not any capacity to contract with his father. It must be admitted that he might have contracted with a stranger without, or, at all events, with his father's permission, to serve as a yearly servant. The contract of an infant, if it is made for his benefit, is not, according to the general principles of law, absolutely void. It may be voidable at the election of the infant himself, but of no other person. In this respect, this case is very distinguishable from a contract of hiring and service by a person who was a soldier at the time of hiring. There the consent of the officer was completely nugatory, because the officer could not consent to the contract. The soldier was not then *sui juris*, but was under the dominion of the crown, and the crown had a right to avoid the contract at any time; and therefore, in that case the court very properly held that the contract was not valid in law. But in this case the contract is not void, but voidable only. If, therefore, an infant may, with the permission of his father, enter into a contract with a stranger, why may he not do so with his own father? I know of no such incapacity, if the son is capable of serving as a servant, and his father thinks his services worth remuneration. There being nothing, therefore, which declares such a contract with the father to be void, can we say that there is any thing which shall prevent the son from gaining a settlement by such a hiring and service? It is said that, if a settlement can be so gained, it may enable a father to confer a settlement on his son in a parish in which the son could not gain a derivative settlement from his father. But this is not the only case in which a person may derive a settlement from another who has himself no settlement in the parish. Then it is put strongly, and with so much force, as to induce me to pause in the conclusion to which my mind was originally prepared to come, that if we decide this to be a settlement, it may lead to much confusion, and to the raising of many questions of a similar nature for the determination of the quarter sessions. I cannot say that such may not be the case; but, however, when such questions shall be raised, it will be the duty of the quarter sessions to look narrowly into the facts of the case, and see whether there really was any contract of hiring and service.

Mode of ascertaining the existence of such a contract.

One mode of ascertaining that will be, to inquire whether the father had any occupation for a hired servant, and whether he had anything for him to do in that capacity; and if the father had no employment for a hired servant, the sessions may reasonably conclude that there was no contract for hiring and service. In the first of the cases at bar, it appears that the son came into the place which had been filled by another person, who had been hired at yearly wages. That is abundant evidence that the father had really occasion for a servant of that description. In the other case the father was a sawyer, and he had almost always occasion for two persons to assist him in his business. Indeed the nature of the trade itself, which requires the concurrence of two persons at least to carry it on with skill, shows that the father had occasion for a servant; and it is stated as a fact, that for several successive years the pauper had served him at increased wages. For these reasons it appears to me that a settlement was gained by the paupers in both cases." *Bayley*, J. "It appears to me that an unemancipated son is competent to enter into a contract of this description with the father, and that all the legal consequences resulting from such a contract follow from the existence of that contract. It is clear that an infant may bind himself to a stranger. It may be in general supposed that such a contract is entered into with the consent and concurrence of the father, but there may be instances in which the father is not in any respect consenting, and even where a son, against the father's consent, enters into such an engagement, yet still he will

gain a settlement, and he may insist upon having his wages paid him, and he may be liable to all the statutable stipulations and regulations respecting the relation of master and servant. If then an infant may bind himself to a third person by a contract of hiring and service, the question is, whether the relation of parent and child destroys the capacity to contract. It is clear that it does not do so in the case of emancipated natural or step-children (*Rex* v. *St. Peter's, Dorset*, Burr. S. C. 513); and yet if a step-child is capable of contracting with his step-father, the same mischiefs result as if his own father consented. The same observation applies to emancipated children. If the father has no occasion for a servant, and the employment of the son in that capacity is merely a pretence, the sessions will decide accordingly; but if there is a *bonâ fide* contract, why may not that contract produce a new relationship and create new rights and obligations between the parties? I see no reason why the father and the son should not be at liberty to enter into a contract of that description. It gives to the father a new right of control, and the child a right to wages which is beneficial to him." *Littledale*, J. "My brother *Holroyd*, who has left the court, desires me to say that he concurs in the opinion delivered by my Lord Chief Justice. By law a parent has a right to exact service from his son or daughter, and this is the foundation of the action for seduction, and no proof of actual service is necessary. If then there be a species of service due from the child to the parent, why may not the obligation to serve be made stronger, by allowing the parent to hire the child for a certain time at stipulated wages? It is admitted that an emancipated child may hire himself to his father; but it is said this may not be done where the child is unemancipated, because the child being already under the control of the parent, and owing him service by the law of nature, he cannot enter into such a contract. But there seems to me to be no reason why a child may not contract with his parent for the performance of other services than those which are due in consequence of the relation of parent and child. Such a contract is highly beneficial to the child, because it superadds the salutary restraint of the master to that of parent, and renders him amenable to the statutory regulations applicable to master and servant. If then, in point of law, such a contract be valid and binding, there seems to be no reason why a settlement should not be gained by a service under it. Some inconveniences may arise from the decision in this case, but that is no reason why a contrary decision should be pronounced, so as to deprive these paupers of a settlement, where there is nothing either at the common law or by the statute of William, which makes such a contract void."

It was not necessary that the master should have a settlement.

Where the father had no settlement, the sessions conceived that he could confer none on his daughter by hiring and service; but the whole court agreed that a settlement may be gained by serving a man who has no settlement himself, because the servant does not derive the settlement from the master but from the service. (*Missenden* v. *Chesham*, 2 Bott, 173.)

The hiring might be by a public body, and by persons not rated to the poor.

In *Rex* v. *Sandhurst* (7 B. & C. 557; 1 M. & R. Mag. Ca. 65), it was urged that the hiring having been by an officer of a public establishment which was exempted from poor-rates, and that as the pauper was to serve the officers of the establishment and the young gentlemen there, and was not hired by or to serve a private individual, this distinguished it from the common hiring; but *Bayley*, J., in giving the judgment, said, "It has been urged that the party is to be considered as holding an office and not as a servant. But a man who does all the menial offices of a servant and is at the command of the persons in the establishment is a servant, and not an officer. We think the legislature did not mean to make any distinction between one description of hiring and another by a particular description of persons."

A pauper, hired out by parish officers, could not by such hiring gain

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a settlement, as the relation of master and servant did not exist between him and the employer. (*Rex* v. *Rickinghall Inferior*, 7 East, 373.)

Compulsory hiring gained no settlement.

Compulsory hiring, and service under it, gained no settlement. (*Rex* v. *Stowmarket*, 9 East, 211.) The pauper, of the age of fourteen, was in the house of industry of Stowmarket, the guardians whereof were empowered by their incorporating act to apprentice poor children for seven years. It did not appear that they had ever exercised this power, the practice being to send the children to their respective parishes; the pauper was sent to Mr. Reynolds, of Stowmarket, to whom he had been allotted by the officers of that parish: this person told the pauper he had procured him a service with one Fox, of Coddenham. The pauper did not object, conceiving he had no discretion on the subject, and he went to F., who received him, and told him he would give him clothes, and that he was to stay with him a year. The pauper did stay the year, receiving clothes, maintenance, and a little pocket-money (*e*). Lord *Ellenborough*, C. J. "All the parties seem to have acted under the idea that the boy was a parish slave, who might be handed over from one to another, and disposed of as they pleased. But there was no agreement by him to the services: he submitted to them because he thought himself obliged to do whatever they bid him. If we were to hold this sufficient to give a settlement we should establish a new head of settlement by allotment. The law gave the directors a power to apprentice out children, and instead of executing that power in a proper manner, they assume to themselves a power to hand these children over to the officers of the respective parishes, who again hand them over to others; and so they are shifted from one to another. And now, because the boy has done the work they made him to do, and eat the meat and worn the clothing which were provided for him, it is argued that he has adopted so many contracts of hiring to which he was no party, which were made without any consideration of his will or consent. But the adoption of a contract must be the act of a free agent; and at what period of time is he found to have consented or contracted at all? On the contrary, it is stated by Reynolds that he had procured a service for him with Fox; the pauper made no objection, conceiving that he had no discretion on the subject. Again, it is stated that the pauper made no agreement with any one respecting wages, or the nature or duration of his service; nor was he consulted on the subject by either of the persons to whom he had been allotted; but considered himself obliged to accept those services, as being under the control of others. Then can a person who is considered as a slave, and conceives himself to be such, be considered as having adopted the acts of his master? It is against common sense so to construe his involuntary acquiescence. In those cases where the pauper's misapprehension of the contract has been held not to vary the legal effect, the pauper meant to exercise a contracting power, though he mistook the legal effect of it."

But where a poor boy *hired himself*, the overseers of his parish afterwards assisting him with clothes: it was held, that he acted *suo jure*, and gained a settlement. (*Rex* v. *Dunton*, 15 East, 352.) *Grose*, J. "The question is, whether the contract was made by the master with the boy, or with the overseer? Now, the boy offered and declared himself willing to serve the master, and the master agreed to take the boy, before any intervention of the parish officer: and though facts are afterwards stated, to show that reference was made to the officer, yet that was only to enable the boy to make the contract, by getting clothes from the overseer, without which the master refused to keep him." *Le Blanc*, J. "Here there was an original agreement for hiring and service between the boy and his master before the overseer knew any-

(*e*) He was *allotted* a second time, and served in *the same way*.

thing of the matter: how then can it be said to be a contract made between the master and the overseer for the letting out of the boy, without the real assent of the latter? The law, indeed, says that an overseer cannot contract with another for the services of a pauper without his consent; but there is no law which says that an overseer may not furnish a pauper with clothes, to enable him to make a contract of hiring with another." *Bayley*, J. "The boy acted throughout *suo jure;* he chose his own master, and fixed his own terms, and, therefore, I see no objection to his gaining a settlement under the contract of hiring made by him."

Rex v. *Sparsholt* (6 N. & M. 8; 4 A. & E. 491). The turnkey of a bridewell, at an annual salary, is not a *servant* either to the justices or the keeper.

(a) *Statutory Personal Exceptions from the Right to acquire a Settlement by Hiring and Service.*

No person bound apprentice, or being a hired servant, to one who came into a parish by certificate, gained a settlement there by reason of such hiring and service, &c.

The 12 Anne, c. 18, s. 2, reciting the provision in the 8 & 9 Will. III. c. 30, as to poor persons residing in other than their own parishes under certificates (*f*), and that many persons bringing such certificates frequently take apprentices and hire and keep servants, who thereby attain settlements and become a great burthen to such certificated parishes; enacts, that "if any person whatsoever, who, upon or after the 24th of June, 1713, shall be an apprentice, bound by indenture to, or shall, upon or after the said 24th of June, 1713, be a hired servant to or with any person whatsoever, who did come into or shall reside in any parish, township, or place, in that part of Great Britain called England, by means or licence of such certificate, and not afterwards having gained a legal settlement in such parish, township, or place, such apprentice, by virtue of such apprenticeship, indenture, or binding, and such servant by being hired by or serving as a servant as aforesaid to such person, shall not gain or be adjudged to have any settlement in such parish, township, or place, by reason of such apprenticeship or binding, or by reason of such hiring or serving therein; but every such apprentice and servant shall have his and their settlements in such parish, township, or place, as if he or they had not been bound apprentice or apprentices, or had not been a hired servant or servants to such person as aforesaid; any act or acts of parliament to the contrary notwithstanding."

Provisions of a repealed friendly society act to prevent settlements being gained under particular circumstances.

By a former friendly societies act (33 Geo. III. c. 54, s. 24), no person apprenticed, bound by indenture to, or a hired servant to or with any person who resided in any parish, township, or place, under certificates issued by the authority of that act, and not afterwards having gained a legal settlement in such parish, township, or place, "shall gain or be adjudged to have any settlement in such parish, township, or place, by reason of such apprenticeship or binding, or by reason of such hiring or serving therein; but all such apprentices and servants shall have their settlements in such parish, township, or place, as if they had not been bound, or had not been hired to such person as aforesaid; any act or acts of parliament to the contrary notwithstanding." But this act was repealed by the 10 Geo. IV. c. 56. (See ante, p. 330.)

By 52 Geo. III. c. 72, s. 8, from and after the passing of that act, no person or persons shall by residence in any house, lodge, or other building, erected or to be erected within the forest of Alice Holt, in the county of Southampton, or by hiring and service either for the preservation of the said woods or plantations, or the game in the said forest, gain thereby any settlement in the parish of Binsted, in the said county, in which the said forest is situate.

(*f*) See ante, p. 317, and post, "SETTLEMENT BY CERTIFICATE."

By the general turnpike acts, 3 Geo. IV. c. 126, s. 51, and 4 Geo. IV. c. 95, s. 31, "no apprentice or *servant* of a collector or renter of tolls, or weighing machine, or residing in toll-house, shall thereby gain a settlement."

(b) *What amounted to a Contract of Hiring and Service.*

The contract must have been lawful, and obligatory on the master to employ, and on the servant to serve; if either was not bound the contract was imperfect.

If the contract be by deed, it is not absolutely necessary that it should be executed by the master as well as the servant.

Rex v. *Houghton-le-Spring* (2 B. & Ald. 375). William Cowell being a single man at the time, duly executed, together with sixty-one other persons, a deed, which purported to be an indenture, whereby it was witnessed, that they whose names or marks were thereunder written and seals affixed, in consideration of a shilling a-piece then received, and of certain wages to be paid to them, had hired and bound themselves to T. Croudace and S. Watkin, and their heirs, to be their servants, &c., from 18th October, 1805, to 18th October, 1806. This deed was executed by W. Cowell, but was not signed by either of the masters, or any one on their behalf. Cowell duly served under the deed. *Bayley*, J. "The only question is, whether the execution of the indenture by the servant only is sufficient to constitute a valid contract of hiring. Now, in order to do that, there must be an obligation both on the part of the servant and of the master: here it is admitted, that the execution by the servant bound him to serve for a year; and the objection is, that the master was not equally bound to keep him. But if the master, knowing the terms by which the servant is bound, accept the service, then I apprehend that the agreement must be considered binding on him, although he has not executed the deed. For it is laid down in Co. Litt. (230 b, note (1)), that a party who takes the benefit of a deed is bound by it, although he has not executed it. But the sessions have not found the fact that the master had this knowledge; and although it is probable that they would have found it, still, having stopped the case *in limine*, it must now go back to have the case determined. Their proper course would have been to have received the deed in evidence, and then to have permitted the party to have proved such facts, from which the knowledge of its contents by the master, and his acceptance of the service on those terms, might be inferred." *Holroyd*, J., concurred. (*Rex* v. *Arnesby*, 3 Bar. & Ald. 584, post.)

A contract of hiring, made on a Sunday by a farmer, is lawful.

Rex v. *Whitnash* (7 B. & C. 596; 1 M. & R. Mag. Ca. 177). The pauper was offered by his father to C., a farmer, on a Sunday, as waggoner's boy, and was hired on that day for a year, and served him for a year. *Bayley*, J., having observed on the policy of 29 Car. II. c. 7, s. 1, said, "This act does not prohibit business of every description, and I am of opinion that the hiring of a servant by a farmer on a Sunday is not work or business within the statute. I also think that it is not 'labour, business, or work of the ordinary calling' of the farmer. He, like every other person who requires servants, must hire them. The true construction of the words 'ordinary calling' seems to me to be, not that without which the trade or business cannot be carried on, but that which the ordinary duties of the calling bring into continued action. Those things which are repeated daily or weekly in the course of trade are parts of the *ordinary calling* of a man exercising such trade or business; but the hiring of a servant once in a year does not come within the meaning of those words." *Holroyd*, J., said, "If a farmer sowed his corn, or the servant ploughed his land on the Sunday, these would be parts of their ordinary calling. But I think the making of a contract with a person who is to assist another in his ordinary calling, does not come within the statute, so as to subject the parties to a penalty, or to avoid the contract." *Littledale*, J., gave judgment to the same effect.

There must have been a contract.

Gregory Stoke v. *Pitminster* (2 Bott, 269). The pauper, who was a young girl, was sent to by a relation, who told her that if she would

live with her she should have her meat, drink, washing, and lodging. The pauper accepted the terms, and lived with her four years as a servant. It was insisted that this amounted to a general *retainer* (within the statute of labours, 24 Edw. III. c. 1) for a year, and that the actual entry into the service, after being sent to, and terms offered, was such an assent as amounted to a *contract*. But the court held that *there must be an actual contract* where the servant is under no obligation to stay, *and* the contract must be *mutual* to bind the parties, and that this was no agreement, but an encouragement to the pauper that if she would live with the relation she would maintain her. (See, in *Rex* v. *Lyth*, Lord *Kenyon's* remarks on this case.)

There must have been a hiring.

Rex v. *Thames Ditton* (4 Doug. 300; 2 Bott, 272). The pauper was bought as a negro slave in America, and brought to England, and lived in Thames Ditton with her master till he died, and after that with his widow and executrix. Lord *Mansfield*. "The poor law is a system of many acts of parliament. It began in the time of Queen Elizabeth; perhaps before villenage was out of use. Villenage in gross may now be abolished; but none of those statutes apply to villenage. The legislature never thought of it. To give this pauper a settlement, she must come within the description of a positive law. Her being a black or a slave is no objection; but the statute requires a *hiring*. There is none here; and therefore the case is not within the statute."

It must have been a contract for *service*. A contract for cohabitation was insufficient.

Rex v. *Northwingfield* (1 B. & Adol. 912). The pauper was *bonâ fide* hired as a housekeeper by H. H., in Northwingfield, in October, 1810, by an agreement in writing, for a year, at 40*l.* per annum wages. She entered into the service in pursuance of her agreement, and stayed in the same (in the appellant's parish) until February following, when Mrs. H. returned home, and she then left. Some time after she had been in Mr. H.'s service she began to sleep with him. No agreement was made on this subject before she came into the service. She performed all the duties of a housekeeper, and lived with the other servants, and sometimes paid for articles wanted in the house, and was repaid by Mr. H. Upon leaving Mr. H.'s she went to London; and shortly afterwards Mr. and Mrs. H. came to London, and he hired her a second time, by a written agreement, for a year, as a servant, at the same wages as under the first agreement. According to this contract, she entered again into Mr. H.'s service in the appellant parish, and served him there for many years, and until he died; living in and managing his house, and superintending his servants, precisely as under the first hiring. She received her wages, but at times, from necessity, expended a part of them in paying the expenses of Mr. H.'s house, and she provided herself with clothes. The former cohabitation between her and her master was continued. The second written agreement having been lost, and the loss of it proved, the pauper gave parol evidence of the terms of it to the effect before stated. The appellants then proceeded to cross-examine her, for the purpose of proving that the contract of hiring was founded in part upon the pauper's agreement to cohabit with her master, in which case the hiring would be *turpis contractus*, and could not confer a settlement. The respondents objected that no evidence ought to be received of a consideration that did not appear upon the written agreement; and the court concurred in the objection, and refused to receive the evidence. The question reserved was, whether the evidence ought to have been admitted or not. Lord *Tenterden*, C. J. "This contract may have been either a contract for service, or for cohabitation, or for both. In the first case a settlement would clearly be gained by a service under it, in the second it would be clearly void, and no settlement could be gained. If it were for both, then it is said that the contract is divisible, and good for so much as is legal; but void for the residue. As to that, it is unnecessary to say anything at present. The evidence should have been received, to ascertain the nature of the contract; and the case must therefore be sent back to the sessions for that purpose."

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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.

Rex v. *St. Mary, Guildford* (2 Bott, 273), and *Rex* v. *Wrifield* (Cald. 521). T. Full, at the age of eleven or twelve, went to live with his uncle, who was a tailor, at South Mims, and worked for him and learned his business. At the expiration of two years his uncle proposed that he should become his apprentice, but they had some difference about it, and the pauper refused to be bound. However, he continued to live with him, working in and learning his business, till about the age of seventeen, and was provided with board, lodging, and necessaries. This case came on immediately after *Rex* v. *Thames Ditton* (ante, p. 389); and the counsel said, as the court had declared in that case that a hiring was necessary, it was impossible for him to support this settlement. The court said a hiring was certainly necessary, and that this was clearly no settlement.

If it appear that there was no contract, no hiring can be presumed; but where a contract appears, it will be presumed to have been regular, till the contrary is proved.

Rex v. *Weyhill* (Burr. S. C. 491; 2 Bott, 271). R. Pyke, Esq., took the pauper (being then about eight years of age) into his family *from charity*, and gave him meat, drink, lodging, and clothes, while he continued with him, which was about six years, of which the last four years were in Weyhill. *Neither at nor before* the time of *Pyke's taking the pauper* into his family, nor at any time after, *was there any contract* between the parties, in relation to the pauper's service to Pyke, or his continuance with him, or to any wages or other gratuity to be paid to him; during his continuance with P. he was employed in running of errands, and doing whatsoever P., or his servants, thought fit to bid him: no wages were ever paid or given to him: in the pauper's apprehension he was, during all the time, at liberty to quit P., or P. to turn him off, as either party should think fit. The court said, it is clear here was no binding at all; no contract; but he was taken *out of charity*, a child eight years of age, to run on errands, and do whatever he was bid, and left Mr. Pyke when he came of fourteen years of age, and was capable of doing more service. And it is expressly stated that there was no contract. Indeed, *where there is a hiring stated, the court will presume it to have been a regular one, unless the contrary appears;* and that was the case of *Rex* v. *Wincaunton* (Burr. S. C. 299), a general hiring was there stated; but here was no hiring at all.

Charitable employment insufficient in the absence of a contract.

Rex v. *Rickinghall Inferior.* (See this case, ante, p. 386, on another point.) The facts as to the contract appeared to be that the pauper, after the parish officers of Redgrave had refused to continue the allowance promised by them to the person with whom he was placed, was by that person sent home to Redgrave. He then returned, and lived with the same person without any new agreement; he frequently absented himself, sometimes with, sometimes without leave; he sometimes received 6*d.* for jobs done on Sundays, but on applying for relief to Redgrave they gave it to him. And the court said here was no settlement gained; for after the parish withdrew their allowance the pauper was permitted to live at Rickinghall out of charity, without any contract as between master and servant.

An assistant to a waiter at an inn, without agreement with the innkeeper, did not gain a settlement by such service.

Rex v. *St. Matthew's, Ipswich* (3 T. R. 449). The waiter belonging to S. Ribbands, who kept an inn in St. Matthew's, being ill, sent for the pauper to assist him at the inn, where he stayed *as helper to the waiter* about six months, and then went away. The waiter being again taken ill, sent to the pauper *to help him*, which he did; and he continued in the inn as boot-catcher for nineteen months, during which time he lodged and boarded there, and was to be satisfied by the gentlemen who came to the house. Ribbands knew of his being there the night after he came; but nothing passed between him and the pauper at the time. The waiter who sent for the pauper continued in the service of Ribbands till about July in the next year, when he went away, and the pauper continued there till Christmas following, when Ribbands and the pauper having some dispute, Ribbands told him to go away, upon which he asked for something for the time he had been there; Ribbands replied, he should not give him anything, as he had made no agreement with

him; but on being pressed again, Ribbands gave him two guineas, and the pauper left the house. The pauper considered himself not as a servant to Ribbands, but as assistant to the waiter, and thought himself at liberty to go away when he pleased; he saw Ribbands sometimes, who, if a guest wanted his boots, told the pauper to get them, and at other times sent him on errands. Lord *Kenyon*, C. J. "There never was a case like the present, in which a hiring was presumed by retrospect. To some of the positions which have been laid down at the bar I perfectly accede; as that there is no necessity for an hiring by the *master himself;* that if there be an hiring, it shall be presumed an hiring for a year, unless something appear to show that the contrary was intended; and that wages are not necessary to confer a settlement on the servant. But the foundation of the argument here is, that the pauper was the servant of Ribbands: now that is expressly negatived by the facts of the case. And here the question arises, upon the determination of which this case must turn—in what situation the pauper was at that time? The case states that he came there *as helper to the waiter;* and there is nothing in the case from whence we can infer that he was the servant of Ribbands. Therefore, down to the time when the waiter went away, it is impossible to say that there was any agreement between Ribbands and the pauper. It is true that we cannot refer the last six months of the pauper's service to anything but a contract with Ribbands; but that is not sufficient to give a settlement. If, indeed, the pauper had been before in Ribbands's service, and had then lived under a yearly hiring, making in the whole a year's service, that would have gained him a settlement. But here was no contract with Ribbands, either express or implied, until the last six months. *Rex* v. *Weyhill* (ante, p. 390) is not unlike this: there, indeed, the pauper was taken out of charity; but in that, as in the present case, the pauper was taken in such a situation as excludes *an hiring* by the master. In cases where the nature of the service implies an hiring, the court will raise such implication; but the nature of the service here implies the reverse."

If a person go to live with a relation, as such, and not under any hiring, and afterwards go to live with him *as before;* this is not a hiring. (*Rex* v. *Stokesley*, 6 T. R. 757.)

(c) *Where a Contract may be implied.*

The ostler's case. Where a person had lived with another as ostler for two years, and had been seen in menial service there, a yearly hiring may be presumed.

Rex v. *Holy Trinity, in Wareham* (Cald. 141; 2 Bott, 481). The pauper's husband was abroad, and had been beyond sea for two years past, if alive. To her knowledge he lived in the capacity of an ostler with Mrs. Lee, in W., some years since deceased, for about two years, where she had seen him brew: but whether there was any agreement relating to such service was not proved, but she had heard her husband (*g*) say he was settled at Wareham. By Lord *Mansfield*, C. J. "The sessions have drawn their conclusion that he was hired; and I think they have done right." *Buller*, J. "Though the evidence is slight, there is nothing to contradict it." *Willes* and *Ashhurst*, JJ., concurred.

Husbandman's case.

Rex v. *Lyth* (5 T. R. 327). If it be proved that a person was seen and known to be in the service of another, as servant in husbandry for a year, a yearly hiring may be presumed.

Rex v. *Long Whatton* (5 T. R. 447); *Rex* v. *Hales* (5 T. R. 168). If a person go into a service upon trial, and at the end of the year is paid for the year, and continue in the service afterwards, a yearly hiring may be presumed.

A hiring for a year may be presumed from a service for four years.

Rex v. *Pendleton* (15 East, 449). The pauper was in 1782 engaged as a servant to Messrs. Douglas & Co. of Pendleton, by "Articles of agreement made the 24th of June, 1782, between T. and W. Douglas, of Pen-

(*g*) Such declarations are not admissible. (*Rex* v. *Ferry Frystune*, 2 East, 54, post; and *Rex* v. *Nuneham*, 1 East, 373, contra.)

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dleton, on the one part, and J. Jebson, cotton-worker, on the other part, and J. Longden (the pauper), of the other part, witnesseth that J. Jebson hereby covenants and agrees duly and faithfully, and J. Longden hereby agrees duly and faithfully, to serve T. and W. Douglas in the capacity of cotton-workers, during the term of three years, night or day; and T. and W. Douglas agree to pay unto J. Jebson 5*s.* 6*d.* per week for the first year, and to J. Longden 6*s.* per week for the first year, 7*s.* per week for the second year, 9*s.* per week for the third year, in consideration of his faithful services; and whatever time J. Longden or J. Jebson shall be absent from their work, it shall be proportionably deducted from their wages. The present agreement to remain in full force for three years. And for the performance of this agreement, J. J. and J. L. bind themselves and their executors in the penalty of 100*l.*" (The instrument was signed and sealed by the respective parties, but was not *stamped.*) The pauper served Messrs. D. & Co. during the time stated, and continued on in their service for four years more without anything further being said as to wages, and without any express engagement as to the time or conditions of such service. The sessions were of opinion that a hiring might be *presumed.* Lord *Ellenborough*, C. J. "The fact of the service is always capable of distinct proof, for it is collateral and subsequent to the contract itself. The pauper served, that is a fact to be proved by parol evidence: he served T. and W. Douglas at Pendleton, that is also proved by the fact; he served them there during three years, which is a shorter way of expressing that which the sessions meant to find as to the time of the service, by referring to the time mentioned in the instrument; and he afterwards continued to serve them for four years longer; he served without anything being said as to wages. The stress of the argument seems rather to show, that there were no certain wages reserved, and that there was no hiring for a year, for if there were only a general hiring, the law presumes that it is for a year, and if the rate of wages were not specified, he would be entitled to reasonable wages. Then were not the sessions warranted from the fact of a service of four years at wages, though not specified, to presume that it was under a hiring for a year? The law says, that they may make such a presumption when there is nothing to repel it, and that makes an end of the case." *Le Blanc*, J. "For anything which appears to us, the sessions received the evidence of the written instrument without objection made to it at the time; for if they meant to state the question reserved by them, to be whether that evidence was properly received, they would have stated that objection was taken to it, and asked the advice of the court on its admissibility. But as far as we can see, the evidence was received without objection, and the facts stated in the instrument are joined on with the other evidence, which, without reference to the instrument, would probably have been stated more fully, and the pauper would then probably have proved that he had served, in fact, for four years after the expiration of the articles, having before served for three years under them, and received wages at the rate of so much a week during that time; and then the sessions would have sent to us to know whether they could, from that evidence, putting the written instrument quite out of the question, have presumed a hiring for a year. And how can we say that they could not so presume?" *Bayley*, J. "It has been argued here, that inasmuch as the pauper served for some part of the time, at least, under a written instrument unstamped, we cannot look at the instrument even to see for what time it enured, and that no parol evidence could be given of any contract with reference to the subject-matter of it. But though we cannot look at the unstamped instrument for the purpose of proving by it any agreement between the parties—for such is the general import of the stamp acts—yet the court may look at it to see whether it applies to other evidence of a contract between them; as if a contract in writing be made, not stamped, for the sale and delivery of certain goods, on certain terms, the court, in an action for

the non-delivery of goods upon a contract proved by parol evidence only, may look at the instrument to see whether it applies to the goods then sought to be recovered for; and if those goods were not included in the contract, parol evidence may be received of the contract sought to be recovered upon. So here, the court might look at the instrument to see the duration of the first contract under it, in order to guide them in receiving parol evidence of the subsequent services to which it did not apply." Order confirmed.

When a hiring may be implied from service (*h*).

Rex v. *St. Martin's, Leicester* (8 B. & C. 674). The pauper, being then about fourteen years old, went with his father to the house of one Neale, an innkeeper, in the parish of St. Martin, and informed N. that he heard he wanted a lad. N. answered "he had got one coming in a fortnight, but that the pauper might stay for that fortnight, till the other lad came." The pauper was to fill the situation of boots and tap-boy, and had his board and the vails. At the end of the fortnight the other boy came, but was not hired, and the pauper continued in the service (without anything following between him and N.) for three years and a quarter, when he went and engaged with another master without consulting N., and removed the following day; N. telling him "that if it was his mind to go he believed he must. The sessions found this to be an implied hiring. *Bayley*, J. "I think that the justices were warranted in coming to this conclusion. If N. had said no more than that the boy should have board, lodging, and the vails, the law would have implied a general hiring; but he assigns a reason why he could not engage him for more than a fortnight. At the end of that time the pauper continued in N.'s service. The question then for the justices was, whether the relation of master and servant was created between them, and for what time; that depended on the understanding existing in the mind of the parties at the time. Both parties understood that the relation of master and servant was created for a fortnight in the first instance. If the justices thought that the master refused to take the pauper for a year, only because he expected another boy, they might, as that boy was not finally hired, taking into consideration the conversation between the pauper and master, and the subsequent service, presume a contract for a year; they might, most properly, have so presumed, if nothing had been said in the first instance of another boy coming in a fortnight. If the conversation, omitting all mention of another person being expected, coupled with the subsequent service, would have been sufficient to raise a presumption of yearly hiring, the justices might think that as the expected person was not hired, both parties intended the relation of master and servant to continue for that period. *Rex* v. *Pendleton* is in point." *Littledale*, J., said, "he should have drawn a different conclusion from the facts; but he thought the decision of the justices ought not to be disturbed." *Parke*, J., concurred. Order of sessions confirmed.

(*h*) In *Bayley* v. *Remmill* (1 M. & W. 506), an action was brought by an assistant surgeon against his employer for salary. The plaintiff claimed at the rate of 100*l.* a year. There was no specific contract. After the plaintiff had been in the defendant's service he was taken ill, and went to an hospital for three months. He did not return, nor was he requested. The plaintiff had been paid different sums, but not at any fixed or definite periods. The court were of opinion that the plaintiff had no claim to be paid at the rate of an annual salary. B. *Parke* remarked, "admitting there was some evidence of a hiring and agreeing, or the proposition that a general hiring, if unexplained, is to be taken to be a hiring for a year, I think there is abundant evidence in this case to show there was no hiring for a year. It appears that payments were made; but they were not made according to the yearly amount, nor at any definite periods of the year. The parties separated in the middle of the year, and neither did the plaintiff return, nor did the defendant require him to return and complete the service."

The relation of the parties may rebut the presumption of hiring.

Rex v. *Sow* (1 B. & Ald. 178). Order of removal from Coundon to Sow, confirmed, &c. Case:—The pauper was hired in November, 1812, by the wife of Mr. Deeming, of Sow, for a year, at 50*s.* wages, and what clothes Mrs. D. pleased. Previously to this hiring, the pauper, who is a natural daughter of Mr. D., lived with her mother at Kersley, and the hiring was for the purpose of gaining a settlement in Sow. As soon as she was hired she went into the service of Mr. D., served him for a year, and continued to live with him until the month of July, 1816, when she went away; during the whole of which time she did the household work, as she did during the first year, but no conversation took place between the parties about hiring after she was hired in November, 1812, and there was no second hiring, unless from continuance in the service of Mr. D. a hiring ought to be implied, which in the opinion of the sessions it ought not. Some months after the expiration of the first twelve months, Mr. D. gave the pauper 5*l.*, 50*s.* thereof for the first year's wages, and desired her to keep the remaining 50*s.* and say nothing about it. The pauper never afterwards received any sum on account of wages, but received at different times clothes and pocket-money. Mr. D. at Lady-day, 1816, removed with his family to Coundon: the pauper removed with them, and continued to live with them there till the month of July. There was no fraud in this case. Lord *Ellenborough*. "I cannot set the sessions more right than they have set themselves. The pauper was hired for a year, and 50*s.* were paid her; that was paid with another sum, and there is no question that the one sum was paid as wages and the other as bounty; it is true the service continued the same, but there was not any hiring for the second or any subsequent year" (*i*). *Bayley*, J. "I think the sessions have done perfectly right; where the parties are not related, it may fairly be presumed, from a continuance in the service, that the terms in which they continue are the same as during the preceding year. But where the relation of father and child subsists, the ground for that presumption fails, and here there are a variety of circumstances to show that there was not any new hiring. The parties lived during the second year upon different terms from what they lived during the first." *Abbott*, J., thought "the sessions right, inasmuch as after the first year the pauper was living as a child with her parent, and not as a servant with her master." Order confirmed. (See *Rex* v. *Chillesford*, ante, p. 383.)

(*i*) *Rex* v. *Creditton*, post.

(d) *Where the Contract is indefinite.*

Presumption of a yearly hiring.

Where the relation of master and servant has existed in such a manner that a hiring for a year *may* have been entered into between them, the law will adopt such an inference unless it can be rebutted by opposing evidence. The stipulations, therefore, as to *time* or *wages* may justify the conclusion of a yearly hiring, although they do not *expressly* include that period.

Presumption may be rebutted by the custom of the country.

A general hiring may be a hiring for a year, or it may be for less than a year. If there be a general known custom in a parish to hire servants for less than year, the general hiring would be for the customary period, and not for a whole year. *Bayley*, J. (*Rex* v. *Bottesford*, post, p. 396.)

A general hiring, and no time mentioned, implies a hiring for a year. Hiring to serve in husbandry (*k*).

Rex v. *Wincaunton* (Burr. S. C. 299; 2 Bott, 289). The pauper, of the age of seventeen, offered to serve S. Williams, of Charleton Horethorne; who hired him to serve him in husbandry, and agreed to give him meat, drink, washing, lodging, and clothes, when wanted; but *no particular time was agreed on*, and the pauper apprehended his master might have been off, or he might have gone away from him, at their pleasure;

(*k*) In *Rex* v. *Tyrley* (4 B. & Ald. 624), where the pauper hired himself for 8*l.*, and no time specified. He entered the service the day before New Year's-day, and left it two days after Christmas-day. The sessions found this to be a general hiring. *Abbott*, C. J., said, "the court were bound by this finding, but that he should have come to a different conclusion."

nevertheless, there was no agreement for that purpose. The boy continued and served him in Charleton Horethorne two years and a half. By the court: "He gained a settlement there by this service. A general hiring is a hiring for a year. And here are no circumstances in this case to show an intention to the contrary, or to vary it from the general rule. The mere apprehension of the pauper doth not do it."

Telling a person to go into the place of one who had been a yearly servant, is ground to imply a hiring for a year.

Rex v. *Berwick St. John* (Burr. S. C. 502; 2 Bott, 290). The pauper met Mr. Jones, head keeper of Rushmore Lodge, in Berwick St. John, who had then lately parted with one E. Hill, who had been for many years one of his servants, or under keepers, at the wages of 3*l.* a year, and a keeper's livery, besides meat, drink, and lodging. Jones said to the pauper, "Do you like the life of a keeper?" Which being answered in the affirmative, he said, "Then go into Ned Hill's place, and you shall want no encouragement." Accordingly he went, and continued in the service for three years, and received three years' wages. By Lord *Mansfield*, C. J. "This man served three years, and received wages accordingly. But it is objected that he was never hired at all. It is admitted that if he were hired at all, it would by law be a hiring for a year. And upon the state of this conversation it is a clear hiring, for Hill was a hired servant."

Where no mention is made of time or of wages, and the *service* is for a year, a hiring is presumed. (*Rex* v. *Stockbridge*, Burr. S. C. 759; 2 Bott, 294.)

An indefinite hiring is to be considered as a hiring for a year, and the apprehension of the master and servant makes no difference.

Rex v. *Seaton and Beer* (2 Bott, 297; Cald. 440). S. Ponsford, who kept a public-house at Broadclift, agreed with the pauper that he, Ponsford, should give him, the pauper, one shilling a week, as he had given the other man or men, and the vails of the stables. Nothing was said about time. At the end of the year his mistress said to him, "*You have been here a year, I will pay you.*" To which the pauper answered, "*It is no matter, I may stay with you another year.*" She said, "*Very well, Sampson.*" He did stay another year, and then received what was due to him, being 5*l.* 4*s.*; he worked in the stables as an ostler, and neither at the time of making the first agreement, nor at the end of the first year, was any mention made, either by the mistress or the pauper, of a hiring for a year, or of the term for which he was to serve; but the pauper apprehended that his master might have parted with him at any time, on giving reasonable notice. No evidence was given of the time for which any such man or men as above referred to had been at any time hired by Ponsford. The sessions thought no settlement was gained. *Willes*, J. "The first agreement was general, but the pauper was to receive wages like a former servant. I think the conversation at the end of the year was an agreement to serve another year, which makes it even stronger than the case of a general hiring. *Rex* v. *Stockbridge* (supra) is decisive of the present question." *Ashhurst*, J. "I am not for narrowing the determinations in favour of settlements; and this does not go so far as some other cases. *The general rule is*, that an indefinite hiring, without any circumstances to show that a less time was meant, shall be considered as a hiring for a year. In this case, the first conversation would amount to an indefinite hiring; the second seems to show that it was in the mind of both that it should be a hiring for a year. There are cases where it has been so held against the apprehension of both." *Buller*, J. "It is settled in a variety of cases, that the apprehension of the pauper makes no difference (*l*). The first agreement would be sufficient; but on the second there can be no doubt."

A hiring, without any stipulation as to time, but only

Rex v. *Bath Easton* (Burr. S. C. 823; 2 Bott, 296). The pauper was hired to John Giles, in Devizes, to serve him as a journeyman barber,

(*l*) In many of the early cases the apprehension of the master and servant as to the *legal* effect of the contract, is stated; but it is now settled that can make no difference.

as to meat, &c. and service for three years, a hiring for a year will be implied.

who was to give him meat, drink, and lodging. In lieu of wages he was to have the Christmas-boxes. No time was mentioned. Upon these terms the pauper lived with Giles four years, but thought himself at liberty to leave his master when he thought proper. Afterwards, he was hired to J. Bedford, an innkeeper at Mangotsfield, "*to serve him in his stable*," who was to find him meat, drink, washing, and lodging, but no wages, other than what he should receive as perquisites of the stable; no time was mentioned, and he apprehended that his master might have turned him off, or he might have gone away from him, at their pleasure (*m*). From the time that the pauper began to serve Bedford, to the time at which he left him, was sixteen years; during which time he left Bedford several times at his pleasure, but from the time of his first going into the service he was with Bedford two years and upwards without leaving him at all; and at the end of the sixteen years, he was with him for three years together without interruption. And this was admitted without argument to be a settlement at Mangotsfield.

Where the pauper agreed to live with one as nurse, and was to receive clothes, &c., but no time was mentioned, and she remained two years and a half, going away in the middle of a year, a yearly hiring was presumed. (*Rex* v. *Worfield*, 5 T. R. 506.)

Rex v. *Macclesfield* (3 T. R. 76). Hiring for eleven months, and then an agreement to continue for an indefinite time and a service under it, gave a settlement, as the latter is an indefinite hiring. By Lord *Kenyon*, C. J. "It is clear that there must be either an express or an implied contract for a year, in order to give the servant a settlement. A hiring for eleven months will not confer a settlement, unless the sessions find that it was fraudulent, and that a year's service was intended, though eleven months only were expressed, as in *Rex* v. *Milwich*, where there was a hiring for eleven months, with an agreement to give in another month's service. Now, in this case, the first hiring for eleven months was not sufficient to confer a settlement: but when that time was elapsed, the master told the pauper that he might *as well stay on an end*, which in that part of the country means an indefinite time. The second hiring, therefore, must be considered as a general hiring, which the law construes to be a hiring for a year."

Where there were three successive hirings from a few days after Old Michaelmas to the following Old Michaelmas: held, that there was not such a general hiring as conferred a settlement. (*Rex* v. *Ardington*, 3 Nev. & M. 304; 1 Ad. & El. 260.)

Rex v. *South Newton* (10 Bar. & Cres. 838). A shepherd was hired for eleven months, and then for a month, and then "to go on again on the same terms;" the latter is a hiring for a year, as an indefinite hiring.

(e) *What is a Hiring for a Year.*

Whether there has been a hiring for a year or not is, upon most occasions, a question of *fact*, which the sessions are to determine (*Rex* v. *Bottesford*, 4 B. & C. 84); and the Court of King's Bench will not interfere with their conclusion upon the subject, unless it is founded upon some mistake of the rules of evidence, or of the law applicable to the circumstances of the case.

Rex v. *Tyrley* (4 B. & Ald. 624). A pauper hired himself, without specifying any time, and entered into the 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, although they might have come to a different conclusion.

(*m*) See note (*l*), ante, p. 395.

Hiring from Whitsuntide to Whitsuntide gains a settlement, though there be less than 365 days in that period. (*Rex* v. *Newstead*, Burr. S. C. 669; 2 Bott, 343.) The court said: "There is no case that proves the absolute necessity that the hiring should be for exactly 365 days. It is stated to be the usual way (*n*) of hiring servants in that country, and such service is always deemed to be a year's service. Parish officers are to be appointed in Easter week, or within one month after Easter (which is a moveable feast), yet they are considered as executing the office a whole year, though it may fall short of 365 days."

Hiring need not be for exactly 365 days.

So although the service be ended before the following Whit-Sunday, if it has continued more than 365 days. (*Rex* v. *Ulverstone*, 7 T. R. 564.)

Hiring two days after Michaelmas till the following Michaelmas gains no settlement. (*Coombe* v. *Westwoodhay*, 1 Str. 147.) It was observed in that case, that there must first be a hiring and then a service; and not *vice versâ*, a service and then a hiring.

But hiring the day after Michaelmas till the Michaelmas-day following gained a settlement. (*Rex* v. *Navestock*, Burr. S. C. 719; 2 Bott, 345.) The pauper, at the statute fair at Ongar, on the next day after Old Michaelmas-day, the 11th of October, 1733, hired himself to S. Pasford, of Navestock, to serve till the Old Michaelmas-day following. He entered upon the service, and continued in it till the Old Michaelmas-day following; on which day he received his wages, and quitted the service. This hiring was according to the custom of the country. *Mansfield*, C. J. "There must be a hiring for a year. If the hiring be for less than for a year it will not do, be the deficiency ever so little. Two days or one day short of a year, are equally an objection to its being a hiring for a whole year. Hiring from a moveable feast to a moveable feast, according to the custom of the country, has been determined to be a hiring for a year; being according to the custom of the country, although there should not be 365 days. And here they have stated the custom and usage of the country to hire servants in the manner this pauper was hired, and the custom is very material to explain it. If this should be taken not to be a hiring for a year, there has been no settlement gained in this country by a servant; for all servants in this country are hired as the present pauper was hired. Therefore it seems no stretch to consider this as a hiring from Michaelmas to Michaelmas." *Aston*, J. "It appears that the pauper entered on the day after Michaelmas-day; 'till' is the word relied on, to prove it a hiring for less than a year. How has that word been understood? The pauper was in the service on the Michaelmas-day, and took his wages; the service explains the hiring; here is in effect a hiring for a year, and a service agreeable to it." *Willes*, J. "The custom of the country in such a doubtful case as this must be called in aid."

Michaelmas to Michaelmas.

Rex v. *Syderstone-cum-Bermer* (Cald. 19; 2 Bott, 346). The pauper applied on Old Michaelmas-day to J. E., of Milham, to be hired by him, but they could not then agree about wages; the pauper asking eight guineas a year, and the other offering only six pounds. The next day, viz. October 11th, between two and three o'clock in the afternoon, they were together at a public-house at Milham, when J. E. asked the pauper if he would take the wages offered him the day before, which he refused; but after some conversation, the pauper hired himself to J. E., as a servant in husbandry, until Michaelmas following, at seven pounds wages; and entered his service on the evening of that same day, and stayed till 10th October following, being Michaelmas-day, 1772. On that day his master, not having finished his harvest, asked the pauper to stay and

So, a hiring on October 11th till Michaelmas following, being October 10th, was a hiring for a year.

(*n*) But the custom of the country cannot aid an imperfect contract. See *Rex* v. *Lowther* and *Rex* v. *Hanwood* (p. 399). The authority of the above case has in one instance been sustained, on the principle, that as the hiring was from one moveable feast to another moveable feast, its duration was uncertain.

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help him with his harvest; and though the pauper thought himself at liberty to go away, yet he stayed with his master until the 11th October at noon, when after dinner he asked his master for his wages, who paid him seven pounds; and the pauper quitted his service, but did not ask or receive any recompense for his additional service. The court were clearly of opinion that this gained a settlement. Lord *Mansfield*, C. J. "To be sure there must be a hiring for a year; and this is one. Though he was hired on the afternoon of the 11th, yet we shall say that he was hired at twelve o'clock at night on the 10th; for it is settled that the law will not allow the fraction of a day. He served till the 10th; that is a year. If a man be born on the 10th, he is of age on the 9th." *Aston* and *Willes*, JJ., concurred.

A hiring from Martinmas-day till the Martinmas-day following, is a hiring for a year, *till*, being for this purpose inclusive. (*Rex* v. *Skiplam*, 1 T. R. 490.) *Buller*, J. "The only question is, whether Martinmas-day is to be taken *inclusive* or *exclusive*. The pauper's husband was hired the day after Martinmas-day to serve *till the Martinmas-day following*. From the moment of the hiring he became the servant of the master, and continued in the service *till* Martinmas-day: then does the word '*till*' include the day? The former cases have decided that it does; and if it only includes a *part* of the day, as there is no fraction of a day, the service would be complete."

The hiring need not have been by one entire contract; if by any number of contracts the master obtained dominion over the servant for a whole year to come, it was sufficient.

Reg. v. *Ravenstonedale* (3 P. & D. 469; 12 A. & E. 73). The pauper, when about fifteen years old, was hired by W. Parkin, a farmer, in Ravenstonedale, to serve for half a year from Whitsuntide. At the Michaelmas following he hired again to serve another half-year, and so for eight successive half-years. A month or six weeks before the Whitsuntide at which the last of these eight hirings expired, he hired again for the summer half-year. Some days after, he hired for the next winter half-year. These last two hirings did not take place within a week of each other, and it might have been a month between them, but they were both before Whitsuntide. At the expiration of the summer half-year, the pauper and his master differed about the amount of wages and agreed to part. The pauper then left, having been in the service four years and a half continuously. Lord *Denman*. "I cannot entertain the least doubt that this is a good yearly hiring under the statute, which requires merely an obligation on the master's part to employ and on the servant's to serve for one whole year, whether under one contract or two: and the sessions might have satisfied themselves with the propriety of their decision without sending the case up." *Littledale*, J. "There is nothing in the statute to make it necessary to have one contract of hiring only." *Patteson*, J. "The test mentioned as to whether an action would not lie for wages before the end of the year is not a correct one, because, although the hiring might be a yearly one, the wages might be payable quarterly or weekly, and the wages might be sued for at the expiration of those periods. The argument has been founded entirely on the expression 'one entire contract,' which has been sometimes made use of, but which does not seem to have much sense in it with relation to this statute. The object contemplated by that act was, that the master should have the entire dominion over the servant for one whole year, and it will be found that in most of the cases cited the second contract for half a year was made after the expiration of the first half-year; though, even if made before the expiration of the first half-year, as in *Rex* v. *Lowther* (post, p. 399), it is insufficient, because the master never has at one moment the entire dominion over his servant for a whole year. If he has that, whether it is by one or fifty contracts, is immaterial." *Williams*, J. "The proposition in *Nolan*, and other Poor Law Digests, as to the necessity of one entire contract for a year, is rather too broadly laid down; for, in the cases cited for it, the service under the first contract had either commenced or was over before the second contract was made. The present case is one of mere arithmetical compu-

tation, whether two successive hirings for half-years are equal to a hiring for a whole year." Order of sessions confirmed.

What is not a hiring for a year.

A pauper had been hired for three years at 20*l.* per annum as a looker, 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, and he could perform the duty of looker for any other persons employing him, when his time allowed. No hiring for a year. (*Rex* v. *Lydd*, 4 D. & R. 295; 2 B. & C. 754).

So where the fair meaning of the contract was to limit the service of the party hired to that portion of the year during which the employer might have occasion for it. (*Rex* v. *South Killingholme*, 10 B. & C. 802.)

A hiring for two half-years in succession, will not make a yearly hiring.

Dunsford v. *Ridgwick* (2 Salk. 535; 2 Bott, 250). A person was hired for half a year, and after that was hired again for another half-year with the same master, and served a year in one continued and entire service, but by several hirings. By the court: "It ought to be one entire contract, and one entire service; the one is required by the statute as well as the other. If a service under several contracts shall gain a settlement, one that serves by the month, by the week, or by the day, if he continue a year, shall gain a settlement. One may hire by the day for charity; but there is danger of being chargeable in hiring such a person by the year. For such a term as a year it is not supposed a master would hire one, unless able of body, and so a person not likely to become chargeable."

Same point.

So *Horsham* v. *Shipley* (Fol. 134; 2 Bott, 340). A person was hired from May-day to Lady-day, then from Lady-day to May-day: and the court were of opinion it did not gain a settlement, for they said the hiring must be for a year; and though such successive hirings be according to local custom no settlement was gained. (*Rex* v. *Lowther*, Burr. S. C. 674; 2 Bott, 238.)

So hiring at a statute fair, if for less than a year (as from the Friday after Old Martinmas till Old Martinmas) gained no settlement, though such a hiring be *customary*. (*Rex* v. *Hanwood*, Dougl. 439; Cald. 100.) *Buller*, J., said, "There is no case where a hiring upon the face of it appears to be for less than a year, in which the court has held that a settlement was gained; and it would be dangerous to make a new precedent of that sort."

Same point.

Rex v. *Standon Massey* (10 East, 576). Ongar statute fair is held on the day after Old Michaelmas, except when Old Michaelmas-day falls upon a Saturday, and then on the following Monday. At Ongar fair, 1806, held on a Monday, which was two days after Old Michaelmas in that year, the pauper was hired to serve W. C. *from the fair-day till the Old Michaelmas-day* following, at yearly wages. Lord *Ellenborough* said, "No settlement could be gained under such a hiring, and that it was in no manner similar to a hiring from a moveable feast in one year to the same moveable feast in another." He added, "If we allow these constructive hirings to go on, it will soon be contended that a servant acquires a settlement who is hired by a schoolmaster from the breaking up at Christmas to the breaking up at Christmas, though less than a year should in fact be comprised in the period." And he added, that "The cases had gone far enough upon this subject."

Hiring for less than a year, to avoid a settlement, although a year's wages be paid, is not a yearly hiring. (*Rex* v. *Little Coggeshall*, 6 M. & Sel. 264.) Lord *Ellenborough*. "The point on which the settlement fails is, that there was not any hiring for a year. I should be glad to know if the master could have maintained any action against the servant for not serving him the year. At the end of the month of probation, the master said he would continue him, but he must go away a fortnight before the end of the year, that he might not be an incumbrance to the

parish. This, therefore, was a stipulation by way of condition that they should part within the year." *Bayley*, J. "With respect to what has been said of the original contract, I would ask whether at the end of the month the pauper had a right to insist upon his master's continuing him the year."

Hiring for fifty-two weeks, is not a hiring for a year.

Rex v. *Astley* (M. 1815, 4 Burn, 279, 23rd edit.) At Michaelmas, 1812, the pauper was hired by Mr. Lillyman, of Astley, for fifty-one weeks, at two guineas and a half wages, and went into his service and lived with him accordingly. About a fortnight before the expiration of the fifty-one weeks, the pauper was hired again by Mrs. L. for fifty-one weeks, to commence from the Michaelmas following; and on the day on which the first fifty-one weeks expired, and before the expiration of the first fifty-one weeks, she agreed with her master to serve him for the ensuing week ending at Michaelmas, for which a few days after Michaelmas she received 1*s.* wages. Three weeks before the end of the first fifty-one weeks it had been proposed by the mistress to the girl and her mother that the girl should stay in her service the odd week, after the end of the first fifty-one weeks, and before the commencement of the second fifty-one weeks. The girl was unwilling, and would not say whether she would or not, but the mother was willing she should stop; but a full agreement for the week was not made until it was made by the husband *on the day on which the first fifty-one weeks expired.* At the time the pauper agreed with her master to stay the odd week, the other servant was gone, and her mistress was ill and near her confinement. The pauper stayed in the service the odd week, and the second fifty-one weeks. It was contended that the continuance of the pauper a week in the service after the expiration of the fifty-one weeks, completed her year's service, and she thereby gained a settlement. Lord *Ellenborough*, C. J. "The question is not whether one week and fifty-one weeks make a year, but whether fifty-two weeks make a year. Fifty-two weeks do not make a year, and consequently such a service does not give a settlement." *Bayley*, J. "There are but 364 days in fifty-two weeks, and 365 days, 6 hours, and 49 minutes in a year. Unless, therefore, the whole of the latter time is included in the contract, no settlement can be obtained." Lord *Ellenborough*, C. J. "The question is purely arithmetical, and the sessions at Warwick will in future know the difference between a contract for fifty-two weeks, and a contract for a year." Order of sessions quashed.

Hiring three days after Michaelmas till the Michaelmas following, did not gain settlement, although there be a service for 365 days (being leap-year).

Rex v. *Ackley* (3 T. R. 250). On Saturday, 13th October, 1787, being three days after Old Michaelmas-day, which was on a Wednesday, the pauper hired himself to J. Clarke, to serve him until the next Michaelmas. He accordingly went into such service, and continued therein till Saturday, the 11th October, 1788, being the day after Old Michaelmas-day, which was on a Friday (it being leap-year), and was paid his wages and went away. As this was a service for 365 days, the sessions thought it gained a settlement in Ackley, and confirmed the order, by which he and his wife were removed from Bicester Market End to Ackley. But the court were clearly of opinion that here was no hiring for a year; this was a hiring for two days short of a year; and though the court has been extremely indulgent with respect to *services*, they have been always strict with regard to hirings. Order of sessions reversed.

In leap-year the hiring must have been for the whole 366 days.

Rex v. *Wormighall* (6 M. & Sel. 350). Case:—The pauper was hired in 1807 at Thame fair, held on the Tuesday next after Old Michaelmas-day, which in this year happened on the 13th October, for eight guineas, five shillings, and three pence. He served till the 11th October, 1808, on which day he received his full wages, and quitted the service. 1808 was a leap-year. Lord *Ellenborough*. "In those years which consist of 366 days, a hiring and service for a year must be for that same number of days." *Bayley*, J. "One day was wanting to complete the year; for in leap-year the statute (24 Geo. II. c. 23) enacts,

that the year shall consist of 366 days." *Holroyd*, J. "The statute (21 Hen. III.) for regulating the bissextile year, ordains that in leap-year the intercalary day with the day preceding it shall be accounted as one day."

Rex v. *Roxby*. The pauper served only 365 days in leap-year; and the court said he had contracted to serve a year of 366 days (it being leap-year), which he has not done.

Same point.

Reg. v. *Worth* (7 Jurist, 172). The appellants admitted a settlement in their parish, and relied upon a subsequent settlement in the respondent parish by hiring and service with one Thomas Stone, in or about the year 1824. The pauper and his father deposed to the contract of service having been for a year, though neither of them could recollect at what wages. To rebut this, and show that no contract of hiring for a year in fact took place, the respondents called Mrs. Creasy, daughter of Mr. Stone, who proved that her father died in 1827, that he carried on the business of a farmer at the farm in question for upwards of twenty years; that in the course of his business he was in the habit of hiring farm-servants, and that she believed his practice was, when he did so, to make an entry of the time and terms of such hiring in a memorandum-book kept by him for that purpose. The book, which had been in the custody of Mrs. Creasy, from the time of her father's decease, was tendered in evidence. It contained amongst numerous minutes of the time and terms of hiring of farm-servants (many such being for a year, and of payments made to them in respect of their service), the following entries with respect to the hiring and service of the pauper, proved to be in the handwriting of Mr. Stone, but the witness was not present when the entries were made:—"April 4, 1824, William Worsell came, and to have for the half-year 40*s.* September 29, paid this 2*l.* October 27, ditto came again, and to have 1*s.* per week, to March 25, 1825, in twenty weeks two days, 1*l.* 1*s.* 6*d.* 25, paid this." The sessions rejected the evidence. Lord *Denman*, C. J. "We have every disposition to admit evidence, but there must be some limit. The rule is as put by counsel: an entry by a deceased person, to be admitted in evidence, must either be against the interest of the person making it, or in the course of the discharge of some responsible duty. Now this is no entry against the interest of the person making it, it is only an entry of a liability to arise, it might be in favour of the person making it. Again, it is impossible to say that an entry by a person in a book for his private use of a contract to himself, is an act done in the discharge of some responsible duty; this entry cannot, therefore, be admitted in evidence." Order of sessions confirmed.

Evidence of contract. An entry in the private memorandum book of a deceased master is not evidence to rebut a settlement by hiring and service.

(f) *Weekly or Monthly Wages and Notice.*

Where the duration of the hiring is not expressed in the contract, the question whether it is a yearly hiring or not, will frequently be determined *by the stipulation as to wages*. Thus where the parties agree for *yearly* wages, the presumption of a *yearly* hiring arises. "If the payment of weekly wages be the only circumstances from which the duration of the contract is to be collected, it must be taken to be only a weekly hiring; but if there be anything to show that the hiring was intended for a year, the reservation of weekly wages will not control that hiring." (Per *Buller*, J., *Rex* v. *Newton Toney*, infra.)

A contract for wages at six shillings a week, summer and winter, is a *weekly* and not a yearly hiring. (*Rex* v. *Dedham*, Burr. S. C. 653; 2 Bott, 292; *Rex* v. *Newton Toney*, 2 T. R. 453; *R.* v. *Odiham*, 2 T. R. 622.) So a contract at so much a week in the summer and another sum in the winter is only a weekly hiring. (*R.* v. *Rolvendon*, 1 M. & R. 689.)

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A hiring for so much a week, as long as the master and servant could agree, is only a weekly hiring, and gives no settlement. (*Rex* v. *Mitcham*, 12 East, 351.) Lord *Ellenborough* said, "This case is nothing more than a hiring at so much a week, which, where nothing else appears to the contrary, is a weekly hiring within the rule laid down in *Rex* v. *Newton Toney;* and it cannot alter the case by adding that which must necessarily have been understood, that the hiring was to continue as long as the master and servant agreed, that is, from week to week."

It is not a general hiring when the master and servant may separate at the pleasure of either. (*Rex* v. *Great Bowden*, 7 B. & C. 249; 1 M. & R. Mag. C. 42.)

Thus 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. (*Rex* v. *Christ's Parish, York*, 3 B. & C. 459; 5 D. & R. 314.)

A servant in husbandry, hired at the weekly wages of four shillings, board, washing, and lodging, except in the harvest month, when his wages were to be increased to ten shillings and sixpence per week, is only a weekly hiring. (*Rex* v. *Dodderhill*, 3 M. & Sel. 243.) *Bayley*, J. "There is nothing in this case to show that the master bound himself to keep the man, or the man to serve the master for a year. The parties were only providing, that in case the weekly contract should continue up to the harvest month, the weekly wages should be increased. There was no obligation either upon the master or the servant to continue it beyond the week."

Weekly wages, and two guineas *for* the harvest.

Rex v. *Lambeth* (4 M. & Sel. 315). The pauper's husband had been hired by one W. at eight shillings *per* week, *and two guineas for the harvest*, to do anything the gardener should set him about; and under this hiring he served four years in Chadlesworth. The sessions thought he thereby gained a settlement in Chadlesworth, and now it was contended, in support of their order, that here was an agreement for a gross sum to be paid for the harvest, and not merely, as in *Rex* v. *Dodderhill*, for an increase in the weekly wages in the harvest month. And *for the harvest*, imports for a consolidated period, at least as long as a month, for which period these wages are reserved, which is inconsistent with the notion of a weekly hiring; and therefore this case falls within the principle of *Rex* v. *Hampreston*, post. But *per* Lord *Ellenborough*, C. J. "It does not distinctly appear whether the two guineas were to be paid *de incremento*, or were to cover the whole harvest. All that appears is, that the hiring being by the week, the parties contemplated that possibly it might last through the harvest." Order of sessions quashed.

Where nothing is said as to term of service, but that the servant shall have weekly pay, it is only a weekly hiring.

Rex v. *Puckdechurch* (5 East, 382). The pauper hired himself for eight weeks at 5*s*. *per* week. At Midsummer he agreed for 4*s*. a week till Michaelmas: at Michaelmas he agreed to live with his master for board and lodging, and 2*s*. 6*d*. *per* week. No time was mentioned then. In the *summer* the pauper asked for more wages, and they were increased, and again reduced in *winter*. When the wages were increased nothing was said as to leaving the service, or dissolving the contract. The alterations of wages took place in the beginning of a week. He entered and left the service the same day of the week. He served in the whole five years and a quarter. There was no complete settlement of wages till they parted. Lord *Ellenborough*, C. J. "If nothing be said as to the term of the service, but that the servant shall have weekly pay, it must *primâ facie* be understood that the parties intended a weekly hiring and service. But circumstances may show a different intent. Here, in the first instance, the hiring was for a specific term of eight weeks; the second hiring was also for a definite time short of a year. No time was mentioned at the third hiring, but it was a hiring at weekly wages. Then it falls within the cases of Dedham, Bradninch, and Newton Toney, where a hiring at weekly wages has been holden to be a weekly hiring, and if it wanted any additional circumstance, the

conduct of the parties themselves shows that they so considered it, for the servant left his master at the end of a week in the middle of the year (*n*). If an indefinite hiring be stated on a record, and nothing shown to control it, it will be deemed a hiring for a year: but that is in the absence of any circumstance from whence a different inference is to be collected." Afterwards Lord *Ellenborough* said, "I hope it will be understood, that where nothing is said in the contract about time, but a reservation of weekly wages, it is only a weekly hiring." *Grose*, J. "It appears that the wages varied at the different seasons of the year: that cannot furnish the inference of an implied hiring for a year, for then the wages must have continued as they were first settled." *Le Blanc*, J. "There is another circumstance confirmatory of the construction that it is a hiring for a year; for the servant in the middle of the year required an advance of wages, to which the master acceded, a circumstance scarcely probable if they had contracted for a year.

Where the servant asked *yearly* wages, and the master offered *weekly* wages, which were accepted, this was not a yearly hiring. (*Rex* v. *Warminster*, 6 B. & C. 77; 9 D. & R. 70.)

A hiring of a journeyman by the month, at a month's wages, or a month's warning, will not be a yearly hiring. (*Rex* v. *Clare*, Burr. S. C. 819; 2 Bott, 295.)

A hiring to work at three shillings and sixpence per week, and a week's notice, does not warrant the inference of a general hiring, although the service under it be continued for six years without any alteration of terms. (*Rex* v. *Hanbury*, 2 East, 423.)

Instances of implied yearly hiring.

The following are instances in which the terms of agreement were, in most respects, like those in the former cases, but something was added by which it appears that a yearly hiring was intended.

But a hiring at three shillings a week "the year round," each to be at liberty on a fortnight's notice, gains a settlement (*o*).

Rex v. *Birdbroke* (4 T. R. 245). M. Meers was removed from Stoke to Birdbroke. Order confirmed. Case:—The pauper was hired by J. Olley, farmer, at Stoke, at 3*s.* per week the year round; each was to be at liberty on a fortnight's notice, but the pauper was not to go away at seed time, hay, or harvest. He stayed in that service a year, and received his wages at different times whenever he pleased. Lord *Kenyon*, C. J., said, "No doubt can be entertained on this case. It does not even rest on a general hiring, for this was an express contract to serve the year round. But it is said that this cannot be considered to be a hiring for a year, because there was a reservation of weekly wages, and because each party was to be at liberty to put an end to the agreement on giving a fortnight's notice: but whether the wages to be paid by the week or the year, cannot make any alteration in the duration of the service, if the contract were for a year. This, therefore, was a contract for a year, at so much a week, with liberty to quit at any time, except seed, hay, or harvest time, on giving a fortnight's notice: but the power of giving notice makes no difference; for it has been held that an agreement to leave the service on giving a month's warning, did not defeat the settlement." *Buller*, J., said, "A hiring for a week, requiring a fortnight's notice, was never heard of." (See *Rex* v. *New Windsor*, Burr. S. C. 19; 2 Bott, 359, post, p. 412.)

Hiring at so much per week, and liberty to part on a month's notice, is a general hiring. (*Rex* v. *Hampreston*, 5 T. R. 205; *Rex* v. *Great Yarmouth*, 5 M. & Sel. 114; *Rex* v. *St. Andrew, Pershore*, 8 B. & C. 679.) Lord *Kenyon*, C. J., in *Rex* v. *Hampreston*, said, "It is admitted that since *Rex* v. *New Windsor*, the circumstance of the

(*n*) In *Rex* v. *Road*, 1 B. & Ald. 362, *Bayley*, J., observed, "From quitting in the middle of the year, without notice, it may fairly be inferred there was no yearly hiring." See *Rex* v. *Worfield*, ante, p. 396.

(*o*) A hiring to work at 2*s.* per day, there being a custom to give a fortnight's notice, is a general hiring. (*Rex* v. *Keele*, Easter T. 1832.)

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parties having it in their power to determine the service on giving notice, will not defeat the settlement where there is a contract for a year, and a year's service under it (*p*). Neither could it be disputed that a general hiring is not a hiring for a year. In the cases cited (*q*) there was something to show that the parties did not intend that it should be a general hiring: one was as long as the master wanted a servant, another as long as the parties liked, where, without any notice, the contract might have been immediately determined. But 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, there the hiring must be understood to be a hiring for a year. If this were not a general hiring, those who disputed that proposition should have pointed out for what time it was to continue; and indeed it has been contended to be for a month, or a month added to a week, but there is no foundation for either: for if that were so, the pauper might have left the service at the end of the first month, or of the five weeks, without giving any notice at all; but there is no pretence for that; for by the terms of the contract, he was to give a month's notice before he could determine it. And this is distinguishable from *Rex* v. *Bradninch* (*r*), for there was a hiring for a stipulated time less than a year. In this case, independent of the first contract, the parties met again after an absence, and the pauper was a second time hired at 4*s.* per week, the pauper insisting upon an increase of wages. This also was a general hiring, which in law is a hiring for a year." *Ashhurst*, J. "On the second hiring an observation arises from the difference of expression, for there the pauper was hired at the rate of 4*s.* per week, words which clearly refer to the quantum of wages, and not to the duration of the contract." *Buller*, J. "What Lord *Kenyon* said in *Rex* v. *Birdbroke* has been misapplied. His lordship had disposed of the former part of the case; namely, that there was a hiring for a year; and then he added, the power of giving notice makes no difference."

(g) *Hiring by the Job.*

If a pauper is hired to do a particular job, which may occupy him a year, it is not a hiring for a year; but there may be a hiring for a year, though the wages are regulated according to the quantity of work done.

Hiring for a year to spin yarn at so much per stone, gained a settlement.

Rex v. *King's Norton* (2 Stra. 1139). M. Calcut was hired for a year to spin yarn at 1*s.* 6*d.* a stone, and was to provide herself with victuals and lodging. She spun the whole year, and boarded and lodged

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(*p*) The power to determine the contract by notice, makes it a *conditional* contract. See the cases under that title, post, p. 407.

(*q*) *Rex* v. *Newton Toney; Rex* v. *Odiham; Rex* v. *Dedham*, ante, p. 401; *Rex* v. *Birdbroke*, ante, p. 403.

(*r*) *Rex* v. *Bradninch*, Burr. S. C. 662, cannot be reconciled with these cases, and must be considered as overruled. There the pauper came to S. Ruddall, in Crediton, and agreed to *live with him by the week*, at *two shillings and sixpence per week*, and to *part at a fortnight's or month's notice*. The pauper being asked "*how long he intended to live with Ruddall*," replied, he did not know, but *as long as they liked*." The pauper lived with Ruddall for eight years under that agreement, the pauper and master being both at liberty to part from each other on a fortnight or month's notice. The pauper received his wages of two shillings and sixpence per week, sometimes at the end of the week, sometimes at the end of a fortnight, and sometimes longer, as he wanted money. It was argued that this could not be taken as a hiring by the *week* only; because they were not to part but at a fortnight's or a month's notice, which is inconsistent with the idea of hiring only by the week. But Lord *Mansfield*, C. J., observed, "that this pauper was under *no obligation to serve for a year*: whereas, in order to gain a settlement, there must be an *obligation* upon the pauper to serve for a year."

at her master's, allowing 2*s.* a week for the same. By the court: "This case hath all the requisites of the statute, and is a good settlement. For in fact here is a hiring and a service for a year. And whether she was paid by the year, or by the quantity of her work, was immaterial."

A hiring "for a year," to make screws at so much per gross, "good earn, good hire," gained a settlement.

Rex v. *Birmingham* (Doug. 333; Cald. 77; 2 Bott, 217). Case:—T. Baker was hired in Birmingham by J. Jennings a wood-screw maker for a year, "good earn, good hire," to work for him and no other master, to make screws at so much per gross: and this was all that passed. Persons are often hired at Birmingham under the terms "good earn, good hire," the meaning of which is, that their pay is to depend upon their work. Baker had no wages; he was to have what he got. His master had no business but that of a screw-maker. He was to work in his master's shop, and do no other work. He served a year under the hiring, and sometimes lodged with his master, sometimes in another house; when he lodged with his master he paid him for it. He sometimes absented himself to drink or play for a week or a fortnight, and never asked his master's leave for such absence. His master on his return was angry, and checked him, but always received him again. During such absence he never worked for his master, nor did he or could he for any other person. Baker had said to his master he could not compel him to work, and the master thought he had no right to compel him. It is generally understood at Birmingham, that persons hiring to work in shops, under the above terms, may occasionally absent themselves, but cannot work for another master. The court, after discussing all the cases, considered that this was a good hiring and service.

Hiring to make a limited quantity of bricks gave no settlement.

Rex v. *Woodhurst* (1 B. & Ald. 325). In 1809 the pauper was hired by W. Margetts of St. Ives, brickmaker, to work in St. Ives under a written agreement, which Margetts states to be lost, and to be as follows: "I G. H. have this day agreed to serve W. M. as a brickmaker, from Michaelmas to Michaelmas again. G. H. engages to make 70,000 bricks at so much for digging and turning, so much for moulding and making, and so much for running to the kiln." Nothing was said as to the time he was to begin to dig; he probably began in November, and then worked on the kilns under that contract, not having finished his 70,000 bricks till after Michaelmas following. As soon as the pauper had made the 70,000 bricks according to his contract, his master had no control over him, and he might go where he pleased, even if it was a month before Michaelmas, and if he stopped and made more than 70,000 bricks he was to be paid for them, and the master could set him to no other work than brick-making. This was the custom of the kilns. After argument, Lord *Ellenborough*, C. J., "entertained no doubt there was not a contract which, properly speaking, had relation to time. The pauper engages to serve only until a particular job be done: if the bricks were made before the year expired, his service would terminate. So that unless he finished the last brick exactly at the year's end, which would be very improbable, he would not serve for a year. It is therefore only a contract for that individual job, and the introduction of time into the agreement is wholly irrelevant." Order of sessions confirmed.

An agreement to live with a step-father, to work with him and to be paid at a certain rate for his work, is not a hiring for a year.

Rex v. *St. Peter's, Dorchester* (1 Bla. Rep. 443). The pauper, from six years old, was maintained and employed by his step-father, as a button maker, without wages or contract. At the age of sixteen he went away to seek more advantageous employment, but returned soon after, and agreed with his step-father to live with him in his house, and to be paid 1*s.* for every gross for what he should earn at button-making, deducting 5*s.* a week for his board. Under this agreement he lived with him four or five years. By Lord *Mansfield*, C. J. "This is the case of a workman hired to work by the piece. It is not like any of the cases where there was a hiring for a year. Indeed, hiring in general and indefinitely gives a presumption of a hiring for a year,

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where the nature of the service and subsequent facts concur to render it probable that it was so meant. But the nature of the present service is quite otherwise. It is very clear in this case that there was no hiring for a year express or implied."

In *Rex* v. *Alton* (Cald. 424), the pauper agreed with his uncle for a year. During the year, the pauper being idle, he agreed to work by the piece, and find himself board, &c. The court held the services would connect (see post), and it was also added, "that the second agreement being general, would be equivalent to a hiring for a year. *Sed quære.*

(h) *Retrospective Hiring.*

The *contract* for a year must not embrace any time *past.*

Rex v. *Ilam* (Burr. S. C. 304; 2 Bott, 356). R. Port, of Ilam, hearing that the pauper was a likely boy to serve him as a postilion, sent to the pauper's father to have him upon liking. After the pauper had served Port eight weeks, Port hired him for a year, to commence from the beginning of the said eight weeks. He served Port a year (including the eight weeks) and ten days, and no longer. By *Lee*, C. J. "This case differs from all the former cases. In *Rex* v. *Lidney* (post, p. 413), the first hiring was conditional for a quarter of a year upon liking; and if they did like each other, then to continue for a year: yet it was holden a good settlement, as they did like each other; and the year's service was performed. In *Rex* v. *New Windsor*, it was uncertain till the end of the year, whether the hiring would be for a year; yet happening so in the event, it was held good. In the present case, the commencing of the hiring was eight weeks after the boy had been upon liking, with a retrospect to his first coming into the service. Now a man cannot serve from a day past." Mr. J. *Foster* "thought the cases of *Rex* v. *Lidney* and of *Rex* v. *New Windsor* had carried the matter as far as possible; and if they were new questions, he should doubt of those resolutions: but both those were hirings for a year, previous to the service, and the conditions were performed. He observed also that the safest way is to adhere strictly to the words of the act of parliament; for refinements upon these questions have produced infinity of questions and difficulties." And the court were of opinion that the pauper gained no settlement.

Retrospective hiring not sufficient.

Rex v. *Marton* (4 T. R. 257). The pauper being at the time under age, went into the service of W. Fisher, in Marton, and stayed about a fortnight or three weeks without any hiring. The pauper's father then made an agreement with Fisher for the pauper to serve him for a year, at 2*s.* 6*d.* per week. The time he had then served was to make a part of, and be reckoned in, the year. He stayed in Fisher's service upwards of fifteen months from his first coming, and he received his wages according to the above agreement. It was admitted that the settlement in Marton could not be supported, because according to *Rex* v. *Ilam*, and *Rex* v. *Hoddesdon* (Cald. 23), a retrospective hiring was not sufficient. (See also *Coomb* v. *Westwoodhay*, ante, p. 397.)

(i) *Hirings made purposely to avoid a Settlement.*

A master may hire a servant for a less period than a year, for the express purpose of preventing the servant from gaining a settlement by such hiring and service. But this must be done *bonâ fide*, for if the contract was really for a year, though ostensibly or colourably for a shorter time, the settlement is not to be thus defeated. (See *Rex* v. *Little Coggeshall*, ante, p. 399.)

A covenant not to hire, so as to gain settlement, is valid.

Congleton v. *Patteson* (10 East, 130); *Collison* v. *Lettson* (6 Taunt. 224). A covenant not to hire servants, so that they shall gain a settlement, is valid; but does not run with the land, so as to bind assignee.

Hiring three days after Michaelmas till the Michaelmas following

Rex v. *Mursley* (1 T. R. 694). W. Coleman, the pauper, three days after Michaelmas, 1782, was hired by J. Pollard, of Mursley, to serve him in husbandry until the Michaelmas following: he served that

time, and received his wages. At the time of hiring, Pollard told him he should not belong to Mursley. The sessions stated it as their opinion that all such transactions on the part of masters are fraudulent, to prevent servants gaining settlements: and adjudged that the pauper gained a settlement. But by the court: "It is very clear that this is not a hiring for a year so as to gain a settlement." And as to the question of fraud, *Buller*, J., said, "That only arises where in truth there is a hiring for a year, and a service for a year, and the parties endeavour to colour it, in order to prevent the settlement: in such a case the court may say it is fraudulent; but a master may, if he please, hire a servant for less than a year, for the express purpose of preventing his gaining a settlement."

gained no settlement, although such contract was made with a view to prevent a settlement.

So, hiring for eleven months, though so limited to prevent the gaining a settlement. (*Rex* v. *Houghton*, Fol. 137; 1 Stra. 83; 10 Mod. 392.)

But a hiring for eleven months, and to give one month over, gained a settlement. (*Rex* v. *Milwich*, 2 Burr. S. C. 433; 2 Bott, 306.)

(k) *Of Conditional Hirings.*

Although the 8 & 9 Will. III. c. 30, s. 4, seems in express terms to require an absolute hiring for an entire year, viz. for one entire consecutive period of 365 days, yet in the construction of it, as well as in the statute relating to a settlement by a yearly tenancy, it sufficed if there be a *conditional* hiring for a year, *determinable in a certain event* by either party, accompanied with an *actual service* for a year. The distinction between a *conditional* and an *exceptive* hiring is clearly explained by *Bayley*, J., in *Rex* v. *Byker* (infra). "A conditional hiring is where the contract is for the 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 avails 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 country, in a particular trade, or by the general law of the land. But any limitation as to the number of working hours is an exceptive hiring (post).

Distinction between conditional and exceptive hiring.

Under a conditional hiring the servant may acquire a settlement, but under an exceptive one he cannot.

A pauper was by indenture hired for a year as a driver in a colliery, at the wages of one shilling and tenpence for a good day's work, not exceeding fourteen hours, and twopence a day more when that time was exceeded; and he was to forfeit ten shillings and sixpence for every act of disobedience, and two shillings and sixpence per day for lying idle (to be deducted out of his wages). The master about Christmas to repair any engine, might stop the workings for seven days, without paying any wages. This is a conditional, and not an exceptive contract. (*Rex* v. *Byker*, 2 B. & C. 114; 3 D. & R. 330.) *Bayley*, J., delivered the judgment. "The question in this case was, whether the hiring was conditional or exceptive. Many cases of this description are to be found in the books, between which the distinction is rather subtle, and at first sight not easily discovered. Adverting to them all, the proper distinction appears to be this; if *the bargain be originally made for an entire year, and terms are introduced applicable to a continuance of the relation of master and servant during the whole year, but there is also a provision that in a given event it shall be competent to the parties to put an end to or suspend the service for a part of the year, still a settlement is gained if the service is actually performed for a whole year, and neither party avails himself of the condition.* A conditional hiring is, for this purpose, the same as an absolute hiring, unless the condition is

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Distinction between conditional and exceptive hirings.

acted upon. *An exceptive hiring is one by which the relation of master and servant will not subsist for the whole year unless some further arrangement is entered into;* and if by the bargain days or hours are excluded from the service, that is an exceptive hiring. It has been contended that here both days and hours are excluded; but we are of a different opinion. The pauper was hired by indenture, and it was agreed that the master should pay for every good day's work not exceeding fourteen hours (and 2*d.* per day when that time was exceeded), 1*s.* 10*d.* It was said that the pauper was entitled to absent himself at the expiration of fourteen hours, and that the master could not compel him to work any longer. We are of opinion that the time was only mentioned as the measure of the wages; that the contract does not impose any limit upon what might reasonably be required by the master; and that the relation of master and servant continued during the whole twenty-four hours. Upon the forfeitures also, we think that the pauper might not, upon payment of them, be absent if he thought fit, but that they were inserted to enforce regular attendance; and this view of it is confirmed by the clause stipulating that nothing in the contract shall be construed to abridge the power of the magistrates. Another clause has been insisted upon for the appellants; that relating to the repair of the engine. If that was an exception, this was a contract for a year, *minus* seven days. But we think it a contract for a year, with power to the master to stop the work if he thought fit. Had he done so, the question would have been different; but that is not found. This, therefore, was a bargain for a year, with liberty to suspend the service, which constitutes a conditional and not an exceptive hiring. This distinction between *conditions* and *exceptions* is consistent with all the decisions. In the cases where a servant having liberty to be absent has been held not entitled to a settlement, it will be found, either that the servant availed himself of the liberty, or that the time was necessarily excepted out of the original contract. This being a conditional hiring and the condition not having been acted upon, the pauper gained a settlement in *Byker*. Order confirmed (*s*).

(*s*) The following correct summary is from a note in *Rex* v. *Byker*, 2 B. & C. 117. In *Rex* v. *Bishop's Hatfield*, 2 Bott, 211, the pauper was hired for a year, with liberty to let himself for the harvest month to any other person. In *Rex* v. *Empingham*, 2 Bott, 217, the hiring was for a year, with liberty to be absent eleven days during the sheep-shearing season. In *Rex* v. *Arlington*, 1 M. & S. 622, the hiring was for a year, with liberty to be absent during the sheep-shearing season. In *Rex* v. *Turvey*, 2 B. & A. 520, the hiring was for a year from Michaelmas, to go away a month at harvest, and make up the time after Michaelmas. In each of these cases the pauper did absent himself according to the liberty reserved in the original contract; and it was held that no settlement was gained by such hiring and service. There are two cases, *Rex* v. *Westerleigh*, Burr. S. C. 753, and *Rex* v. *Winchcomb*, 1 Doug. 391, which appear to be at variance with those decisions. In each of these two cases the pauper was hired for a year, with liberty to be absent on duty as a militia-man for a month, and he accordingly was absent; yet it was held that the hiring and service conferred a settlement. In *Rex* v. *Over*, 1 East, 599, Lord *Kenyon* says, that the ground of those decisions was, that the leave of absence stipulated for, was no other than what the law would have compelled without stipulation. In several other cases it has been held that implied exceptions will not prevent the gaining of a settlement, but that if they are expressed in the contract they will have that effect. *Rex* v. *Macclesfield*, Burr. S. C. 458; *Rex* v. *All Saints, Worcester*, 1 B. & A. 322. And there appears to be this distinction between them, that notwithstanding the implied exceptions, the relation of master and servant continues during the whole year; whereas that relation has been considered at an end during the excepted periods stipulated for in the contract. *Rex* v. *Wrington*, Burr. S. C. 280. But in the

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, is not an exceptive hiring, but for five years *absolutely*. *Taunton, J.*, dissen.

Rex v. *Ossett cum Gawthorpe* (4 Bar. & Ad. 216; 1 N. & M. 21). George Clarke and family were removed from Leeds to Ossett cum Gawthorpe. Order confirmed. Case:—The pauper was born in Ossett cum Gawthorpe, and a hiring under the following agreement and service for the time therein mentioned in the respondent township were admitted. "Memorandum of an agreement made this 25th day of the fourth month, 1826, between J. and T. Walker, of Leeds, cloth merchants, on the one part, and G. Clarke, with the consent of his father, on the other part; the said G. Clarke doth agree to become the hired servant of J. and T. Walker, for the term of five years, to do such work as belongeth to the finishing of cloth, and to take any part of work the said J. and T. Walker shall think proper, and do the same to the best of his knowledge justly and faithfully; this being done, the said J. and T. Walker promise to pay unto G. Clarke 10*s.* per week for the first two years, and 11*s.* for the third, and 12*s.* for the fourth year, and 13*s.* for the fifth and last year; the hours of working to be from six o'clock in the morning until seven o'clock in the evening, and to be paid for all over-time, and a deduction to be made for all short, either in sickness or in health." The question for the opinion of this court was whether G. Clarke gained a settlement in Leeds by such hiring and service. *Denman*, C. J. "It is impossible to decide this case without interfering with some former decisions; but upon the whole I think that this was an exceptive hiring. The pauper agreed to become the hired servant of J. and T. Walker for five years, to do such work as belonged to the finishing of cloth. If the agreement had stopped here, there would clearly have been a contract to serve for five years, and the masters would have the right to command all the services of the pauper during that period. The question is, if there be any clause in the subsequent part of the agreement which clearly takes away that right. The masters promise to pay the pauper weekly wages, varying in amount yearly during the whole five years. Then comes a clause in these words, 'the hours of working to be from six o'clock in the morning until seven o'clock in the evening, and to be paid for all over-time, and a deduction to be made for all short, either in sickness or in health.' There is nothing here to show that it was in the option of the pauper to work or not for the master in over-hours, and if not, then the right given to the master in the early part of the agreement to all the services of the pauper is not taken away. I think this was a complete bargain for all his time, and that there was not any part of that time during which the pauper could lawfully refuse to work for his master." *Parke*, J. "I am of the same opinion. I think there was no period of the day when the master could not lawfully command the services of the pauper. The true way to ascertain whether this be an exceptive contract or not, is to consider what would have been the situation of the parties if there had been an extraordinary demand for work, and the master had called on the pauper to work during over-hours. Could he have refused? The words of the contract are, 'that G. Clarke agrees to be a hired servant for the term of five years to do work,' &c. That is the stipulation as to working, or to the service to be performed. Then the contract goes on to fix the weekly wages to be paid from year to year by the masters. Then come the words on which the difficulty arises: 'the hours of working to be from six o'clock in the morning until seven o'clock in the evening, and to be paid for all over-time.' Those words seem to me to be a qualification of the sentence which

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cases of the militia-men, it seems that the relation of master and servant must at all events have been suspended for the time during which they were out on duty. It seems difficult, therefore, to understand on what principle those cases are sustainable; and see the observations made by the court in *Rex* v. *Beaulieu*, 3 M. & S. 229.

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immediately precedes them, and which fixes the amount of weekly wages; if that be so, then the case is like *Rex* v. *Byker* (p. 407). It is distinguishable from *Rex* v. *Birmingham* (p. 418), because there the pauper might at his election have worked or not for his master at over-hours. In *Rex* v. *Frome Selwood* (p. 419), the limitation as to the working hours immediately followed the stipulation for service. Here, between that clause and the one specifying the number of hours the pauper was to work, the clause intervenes fixing the amount of weekly wages. It appears to me that the pauper could not lawfully refuse to work for his master during the over-hours (if required so to do); but that the latter was entitled to the whole services of the pauper during the five years, and consequently this was not an exceptive contract." *Taunton*, J. "The cases undoubtedly run very near to each other. Certainty in sessions law is very important, and I am sorry, therefore, I cannot come to the same conclusion as my lord chief justice and my brother *Parke*. This case appears to me not distinguishable from *Rex* v. *Birmingham* and *Rex* v. *Frome Selwood*, and they being the latest cases on this subject ought to govern this. It is said that, in *Rex* v. *Birmingham*, the pauper was to do over-work only if he chose. Looking at the terms of the present contract, I think it was optional in the pauper here also to work over-hours or not. The hours of working are defined to be from six o'clock in the morning till seven in the evening. I cannot see why this limitation of the hours of working was introduced, unless it were as an exception in the contract. It is said that it refers only to the amount of wages, I think it refers to the time of working as well, and that the pauper might have refused to extend his time of service beyond those hours, and then it is not distinguishable from *Rex* v. *Birmingham:* nor can I distinguish it from *Rex* v. *Frome Selwood.* It does not signify much in what part of an instrument a particular stipulation occurs unless it be so placed as necessarily to qualify only the words immediately preceding. Now I cannot consider this clause a mere regulation of wages, but I think it also limits the time of work.

Exceptive contracts frequent in manufactories.

Without wishing to multiply distinctions in a branch of the law in which they are already too abundant, I must add, that the present is the case of a servant hired to perform manufacturing work, and it is well known that exceptive contracts are extremely frequent on such occasions. This may in some degree furnish a key to the meaning of the parties, and assist in explaining their intention, and in affirming the order of sessions I think we should not only fall in with the last two cases, but also with the general current of authorities." *Patteson*, J. "I am of opinion that a settlement was gained. *Rex* v. *Byker* and *Rex* v. *Frome Selwood* turn on very nice distinctions. The question in this case is, whether the pauper was bound to serve more than the number of hours mentioned in the agreement. I thought for a considerable time that the case fell within *Rex* v. *Frome Selwood*, but looking at the terms of the contract, and the place in which the stipulation as to the number of hours occurs, I think that it was introduced merely to regulate the wages, and that the pauper could not refuse to work for his master beyond those hours. I feel great difficulty in distinguishing one case from the other, but upon the whole it seems to me that the present falls within *Rex* v. *Byker*." Order of sessions quashed.

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 satis-

Rex v. *St. Helen's, Auckland* (4 B. & Ad. 718; 1 N. & M. 462). An order for removing George Riley from Coundon to St. Helen's, Auckland, was confirmed. Case:—The pauper was bound as a pitman to Dixon & Co., the owners of the Eden Main Colliery, situate in West Auckland, by bond or memorandum of the 4th of February, 1815, between G. D., J. D., and E. D., as copartners in the said colliery, of the one part, and the several pitmen whose names were thereunder written, on the other part; whereby it was witnessed that the pitmen, in consideration of the wages to be paid as after mentioned, did thereby severally

agree with the said copartners or masters to hew, pit, and work coals within the said colliery, from the day of the date thereof for and unto the 4th day of February, 1816, in the manner and at the prices following; that is to say, to hew coals at 2*s.* 6*d.* a score, of twenty-five corves to each score; the said pitmen also agreed to give to the said masters the usual fire coal corf for each day they were at work, over and above the said number of twenty-five corves to each score; and further, to drive their boards of such a breadth, and to prop and maintain their own work, and to work in a workmanlike manner, properly, fairly, and orderly, as directed by their said masters, or their agent for the time being, and to drive headways at 8*d.* a yard, and headways walls at 6*d.* a yard, when, where, and in such a manner as directed by the said masters or their said agent; and further, the pitmen agreed to send as many setters to bank as the seam would admit and afford, and also to put coals in their course at the prices then given, and to have the liberty to hew half-a-score of coals in the putting morning, which were to come to bank the same day. "*And the said pitmen do hereby further severally undertake, promise, and agree to work constantly at the said colliery until the said 4th day of February*, 1816, *or to forfeit and pay each man to the said masters, or their said agent, one shilling for each and every day that he shall absent himself from the said work, or not work a reasonable day's work, to the satisfaction of the said masters, or their said agent.* And, on the other hand, the said masters for themselves agree to pay to each said pitman one shilling a day for each and every day they shall wilfully or without just cause lay any of them off work." The pauper served under this bond for a whole year, and received his wages, and during that time there was no forfeit incurred either by him or his employers by reason of any interruption of the work in the colliery or otherwise. He remained in the service of the same employers as a pitman for eleven months after the expiration of the bond, and from the date of the bond to the time of his finally quitting the colliery, a period of nearly two years, he slept in the appellant parish. The question for the opinion of this court was whether this was a service under such a yearly hiring as would confer a settlement. *Denman*, C. J. "The decisions in *Rex* v. *Byker* (p. 407), and *Rex* v. *Gateshead* (p. 416), run very near each other; but there is a distinction between them, and I think the former case an authority in favour of a settlement here. It is said, that in this contract there is an exception, because an option is given to the pauper either to work or to forfeit and pay 1*s.* upon each day that he absents himself, or does not work a reasonable day's work to the satisfaction of the master. In *Rex* v. *Byker* (p. 407), the pauper by indenture was hired for a year as a driver in a colliery, and the master covenanted to pay wages at the rate 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 the pauper was to forfeit 2*s.* 6*d.* per day for lying idle, to be deducted out of his wages. It was contended that that was an exceptive contract, because the master could not compel the pauper to work more than fourteen hours a day, and also because the pauper on the payment of 2*s.* 6*d.* per day was at liberty to absent himself. But the court held that the fourteen hours was only mentioned in the master's covenant to regulate the amount of the wages, and that the relation of master and servant continued during the whole twenty-four hours of every day, and consequently during the whole year, and that the clause as to forfeiture was intended not to give the servants a liberty to absent themselves, but merely to enforce regular attendance. The same observation applies to the clause of forfeiture in this case. In *Rex* v. *Gateshead* it was stipulated that each man should on each working day do such a quantity of work as should be equal to a full day's work, and should not leave the pit until that quantity was completed, or in default thereof should forfeit 2*s.* 6*d.* There, as soon as each man completed his full day's work, he was at liberty to quit, and was no longer under the control of this master. According to the report

faction of his master, is not exceptive.

Rex v. *Gateshead* explained.

of that case in 3 D. & R., it was part of the contract of hiring that the labourers were to work for the whole year, except ten days during the Christmas holidays, when they were not to work, nor to be liable to any penalties for not working. If that were a correct statement of the contract, there would be a clear exception of ten days. It appears, however, from the reasoning of the judges there given, that the hiring was held to be exceptive, not because the pauper was not bound to work for his master during the ten days, but because he was not bound to work during the whole of every day, but during such part of the day only as might be required to complete a full day's work. The contract, as stated in 2 B. & C. 117, was that the master should find work for the men during the whole year, and forfeit 2*s.* 6*d.* for every day that he should oblige them to be idle, except at the Christmas holidays, which were not to exceed ten days. According to that statement the stipulation as to ten days would appear not to be an exception in the contract of hiring intended to give a privilege to the servant, but to be a provision introduced for the benefit of the master, and considering the reasons on which the judgment of the court was founded, that must be taken as the correct report of the case. I think, therefore, this case falls within *Rex* v. *Byker*, and that a settlement was gained in St. Helen's, Auckland." *Littledale*, J. "If the cases referred to had never been decided, I should not have had the slightest doubt on this case. By the agreement of the 4th of February, 1815, the pauper agreed to hew, pit, and work coal till the 4th of February, 1816, and to work constantly at the colliery, or to forfeit 1*s.* for each and every day he should absent himself or not work a reasonable day's work. Now the latter stipulation bound the pauper to pay 1*s.* per day if he did not perform his part of the contract. There was a contract to work for a whole year, and every day in the year, and the master had a right to call on the pitmen so to work. The mere agreement to pay 1*s.* per day as a forfeiture does not make the contract exceptive, because neither party can be supposed to have contemplated at the time when the contract was entered into that there should be an absence or neglect to work." *Parke*, J. "I felt some little difficulty at first in distinguishing this case from *Rex* v. *Gateshead*, but I think it falls within *Rex* v. *Byker*. In the first of those cases there was a stipulation that each man should on each working day do a full day's work, and that he should not leave the pit until that quantity of work was completed; and that on default thereof he should forfeit 2*s.* 6*d.* It was therefore stipulated by implication that the men were not to be under the control of the master on days which were not working days, nor on any day as soon as a full day's work was completed." Order of sessions confirmed.

Agreement for forfeiture does not make a contract exceptive.

A hiring at wages, payable quarterly, with liberty to part on a month's notice at the end of any quarter, is a yearly hiring.

Rex v. *Atherton* (Burr. S. C. 203; 2 Bott, 360). R. Harrison was hired for a year by T. Barlow of Barton, at 4*l.* wages, payable quarterly. And it was agreed that either should be at liberty to determine the contract at the end of any quarter, on a month's notice. No notice was ever given, and the servant continued in the service the whole year. The servant declared at the time of the hiring that the reason of the hiring being made determinable at the end of every quarter upon notice, was, that he would not be hired so as to lose his former settlement. But by the court unanimously and clearly: "This is a good settlement."

A hiring at five pounds per year wages, with liberty to part at a month's wages or warning, is a yearly hiring.

Rex v. *New Windsor* (Burr. S. C. 19; 2 Bott, 359). D. Brookes was hired to Colonel Merrick at Thorpe, and was to go into her service a month upon liking, and was to have 5*l.* a year wages; but was to go away from her service on a month's wages or a month's warning on either side. She continued near two years in this service, without any other hiring, and received her wages quarterly. This, by the unanimous opinion of the court, is a hiring for a year (*t*).

(*t*) *Beeston* v. *Colyer*, 4 Bing. 309; 12 Moore, 552. *Gaselee*, J. "In domestic service there is a common understanding that such a contract

Wandsworth v. *Putney* (2 Bott, 288). 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; this was held to be a clear yearly hiring.

Hiring conditional as to liking, a good hiring for a year, where the service continues so long.

Rex v. *Lidney* (Burr. S. C. 1; 2 Bott, 358). M. Brewer was hired to W. Wake for a quarter of a year; and if her master and she liked one another, she was to continue for a year, and to have 3*l.* for her year's wages. She entered into the service, and continued one whole year, and received the 3*l.* It was argued, that as it was in the election of either party, during the first quarter, whether she should continue or not, she could not be originally hired for a year. But the court held this conditional hiring to be a good hiring for a year, since the master and she did like one another, and a year's service was actually performed under it.

Same point. See *Rex* v. *Mitcham*, *ante*.

Rex v. *St. Ebbs* (Burr. S. C. 289; 2 Bott, 361). C. Guy was removed from Holywell to St. Ebbs. Order confirmed. Case:—The pauper was hired to T. White of Holywell, to come for a quarter of a year, and to have after the rate of 20*s.* a year; and if he and his master liked each other, he was to continue. He did continue a year and a half above the said quarter, without any other hiring, and received his wages as he had occasion for them. It was moved to quash these orders, for that the settlement was in Holywell by this hiring and service; for a conditional hiring is a hiring for a year, provided the condition be performed. And a rule was made to show cause, but no cause was shown. And the rule was made absolute. See supra the cases where the pauper might quit, or be turned away at pleasure.

Power to dismiss.

Rex v. *Sandhurst* (1 Man. & R. 95; 7 B. & C. 557). A hiring for a year, by an officer of a military college, reserving the right of dismissing the pauper without notice, is a good hiring for a year. (See this case, post.)

The pauper having served one year, the master expressed his fear that the pauper would not be strong enough for the work in a town to which they were going, but the pauper was to try: he tried and was strong enough. He gained a settlement.

Rex v. *Northwold* (2 D. & R. 790; 1 D. & R. Mag. Ca. 413). The pauper was hired and served for a year with his master at Northwold. The other facts are stated in the judgment of *Abbott*, C. J. "I am of opinion that there was a second hiring for a year to serve in Brandon, and therefore the orders must be quashed. Just before the end of the first year, the master says to the pauper, 'Will you go with me into Brandon?' The pauper says he has no objection. If nothing more passed, it is clear that that would be a hiring for another year. The master then says, 'I am afraid you will not be strong enough for the work there, but try.' The meaning of that is, 'We shall contract for a year, but if upon a little trial I find you are not strong enough, then our contract is at an end.' That is a conditional hiring. The pauper tries, is found strong enough, and resides for forty days. This is a settlement." *Bayley*, J. "It is a defeasible contract for a year, and a settlement is gained." *Holroyd*, J. "This is a conditional hiring for a year, the condition being the pauper having strength enough to do the work. The contract is not in express terms for a year, but still that does not prevent a conditional hiring for a year operating." Order of sessions quashed. So, also, in *Rex* v. *Farleigh-Wallop* (post), a hiring for a year with a condition that the pauper should go if the master had a sale, is sufficient.

A determinable hiring may confer a settlement.

(1) *What are Exceptive Hirings.*

As to the difference between *conditional* and *exceptive* hirings, see p. 407.

Hiring for a year, with liberty to be absent eleven or

Rex v. *Empingham* (Burr. S. C. 791; 2 Bott, 313). J. Langton, before Harborough fair, hired himself to H. Hubbard from that fair to the next,

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may be dissolved on reasonable notice, as a month's wages or a month's warning. There does not appear to be any such practice with respect to servants in husbandry." 2 Starkie, 256, 257; and see 1 Car. & P. 370, 510, 608.

twelve days sheep-shearing, is exceptive.

being one year, at the wages of 3*l.* "*subject to a liberty of being absent eleven or twelve days in the sheep-shearing season,*" and to have the benefit of what he got during that time. He entered upon the service, and served Hubbard for above three-quarters of the year. He went to shear sheep in the season, for about eleven days, and served Hubbard the remainder of the year. He received to his own use what was paid him for the sheep-shearing, besides his wages of 3*l.* One day in the season he asked his master's leave to go a sheep-shearing: his master said he was going out, and could not spare him that day; and in consequence thereof he did not go. The pauper during the shearing season returned frequently to his master's house, and did what work was to be done; and his master found him his board as often as he returned home. The court were of opinion that this was an exception out of the contract at the time of making it. They held it to be a part of the contract, and not to be considered upon the footing of leave of absence given by the master, who being bound by the contract, could not refuse agreeing to it. Consequently no settlement was obtained under this hiring.

A hiring for a year, with liberty to let himself during the harvest month, is exceptive.

Rex v. *Bishop's Hatfield* (Burr. S. C. 439; 2 Bott, 307). A man was hired from Michaelmas to Michaelmas, for 5*l.* wages, *with liberty to let himself for the harvest month to any other person.*" He served till the harvest month, and then hired for that month, and received wages for it. During that month he brewed for his master, and lodged in his master's house during the whole year; and served out the remainder of his time, and received his 5*l.* wages. By the court: "This is in effect only hiring for eleven months: and the harvest month is the principal month of the year. It is safest to keep to the statute. If we allow this, we shall not know where to stop."

So hiring for four years with liberty to leave a week every year to see his friends.

Rex v. *Rushulme* (10 East, 325). The pauper was hired for four years, "*with liberty to leave a week every year, to see his friends.*" Per Lord *Ellenborough*, C. J. "Here is a hiring for a period of four years, with an exception of a week in every year, that is to be taken distributively, a week out of each year. Therefore the master had no dominion over the servant for any one entire year, but only for one year *minus* one week in that year, and so on." (*u*).

If the stipulation be that the servant shall have, "during the year two or three days to see her friends," it is exceptive. (*Rex* v. *Leamington Priors*, 8 D. & R. 329.) *Bayley*, J. "There are many cases which say, that if at the time of hiring there is a stipulation giving the pauper the option of being absent during any part of the year, that time is to be considered as excepted out of the contract, and treated as a hiring for a year, *minus* the time the servant is entitled to be absent."

And a stipulation for a holiday, though *no time* specified is exceptive. (*Rex* v. *Threkingham*, 7 A. & E. 886.)

So stipulation by pensioner to have two days in each half-year to go and receive his pay, defeats his settlement. (*Rex* v. *Over*, 1 East, 599.)

Hiring 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. (*Rex* v. *Arlington*, 1 M. & Sel. 622.)

Hiring for a year, to go away a month at harvest, and to make up the time after Michaelmas, is

Rex v. *Turvey* (2 B. & Ald. 520). T. Smith was hired for a year from Old Michaelmas, to go away a month at harvest, and make the time after Michaelmas. He went away for a month at harvest, and continued in his master's service a month after Michaelmas. *Abbott*, C. J. "It has been decided in this court that where there has been a hiring for a year,

(*u*) Where it was part of the *contract* that the pauper should go away a fortnight before the end of this year, this is an exceptive hiring. *Rex* v. *Willoughby*, post. But where the *contract* is completed before anything is said as to the holiday it is not exceptive. *Rex* v. *Sulgrave*, post; *Rex* v. *Market Bosworth*, post.

and a service for a year, although that service has not been under one hiring, the servant gains a settlement. But I hope no rash genius will ever carry the matter any further. The only question here is, what is the meaning of the word 'year' in this statute. I apprehend the legislature clearly to have *meant one entire consecutive period of three hundred and sixty-five days.* Unless that were so, we might have to deduce a settlement of a pauper by taking different unconnected days and weeks from a long series of years, so as to make up in the whole a year's service. And so it would happen that a hiring for the month of August, for this and eleven successive years, would amount to a hiring for one year. I have often lamented, that in so many instances the court has departed from the plain and literal construction of the statutes relating to the settlement of the poor. As far as the authorities go, I have always held and shall always continue to hold myself bound; but where they are silent, I shall feel myself bound to construe these acts of parliament according to the plain and popular meaning of the words." *Bayley*, J., and *Holroyd*, J., concurred.

not a hiring for a year (*x*).

Meaning of the word "*year*."

Rex v. *Edgmond* (3 B. & Ald. 107). The pauper agreed to serve Mr. Jones, a bricklayer, for three years, if he so long lived, at weekly wages, and in case he should neglect his master's business, or lose any time on his own account in any one week, during the first year, then that Jones should deduct from his weekly wages in proportion; and Jones agreed that he would pay wages in proportion to any *over-work* which the pauper might do in any one week in the first year. There were similar stipulations for the second and third years of the term; and it was also agreed that in case they could not work through severity of weather in any one year in the winter time, then that Jones should pay no wages during that time, but should permit the pauper to employ himself in any other business whatever. During such severity of weather with respect to frost the pauper served one year and a half. *Abbott*, C. J. "The agreement contains in substance an engagement to work only during certain hours of the day, and I do not see what remedy the master could have had, supposing the pauper had refused to work after the usual hours. The agreement, taken altogether, seems to me to contain a promise only to serve for a part of the year." *Bayley*, J., (*inter alia*), observed, "That if by the usage of trade certain exceptions are implied or introduced, they will not prevent a settlement. There is clearly an exception here, the period of frost. The contract is not confined to the particular trade. The pauper might engage to serve other persons, and so might contract inconsistent relations at one and the same time. *Rex* v. *Martham* (1 East, 239), is distinguishable from the present, because there was no such express authority as this to contract a relation of service with another master; besides, that was not a general contract of service, but to serve in the particular trade of a bricklayer." *Holroyd*, J., thought "the contract was for service only during the *usual* hours. As to the other point, I had at first doubts whether it was sufficient to invalidate the settlement, but I am now satisfied that it is; the provision is that the pauper shall be at liberty to employ himself with any other master during the time of frost; that, therefore, would impliedly give to him a reasonable time, even after the frost was over, to finish the business he had so undertaken." *Best*, J. "As soon as the frost commenced all contract of the master with the servant would cease."

So an exception of certain hours or days is an exceptive hiring.

Exceptions implied by usage of trade will not prevent a settlement.

Reg. v. *Stoke-upon-Trent* (8 Jurist, 34). A pauper in June, 1815, entered into the following written contract:—"Plate and dish workers. It is agreed with Messrs. Bourne from 11th November next, till 11th November, 1817, at prices good out of oven, as per opposite side. We agree to lose no time on our own account, to do our work well, and

If the written contract is silent as to holidays, a custom to have holidays may be proved by parol.

(*x*) But a hiring for *eleven* months, and the servant to give one month more, is a *yearly* hiring. *Rex* v. *Milwich*, ante, p. 407.

behave ourselves as good servants." The writing was not signed by the masters. The pauper stated that he had his Sundays to himself, and that he was absent two or three days at Easter, and at the wakes in August. The Court of Queen's Bench held that parol evidence was admissible of a custom for all persons in this trade to have certain holidays and Sundays to themselves, and the case was sent back to the sessions to admit such evidence and re-hear the case.

A contract from Michaelmas to Michaelmas, the servant was to have a month in harvest to himself, 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: exceptive.

Rex v. *Althorne* (3 D. & R. 375; 2 B. & C. 112). The pauper at Michaelmas, 1821, agreed with Mr. Croil, a farmer of Mayland, to live with him as his servant in husbandry, from that Michaelmas till the following, at 10*s.* per week for the winter half-year, and 11*s.* per week for the summer half-year; the pauper to have a month in harvest to himself, and if he and his master could not agree for the harvest month, the pauper was to harvest where he pleased. If any one offered the pauper more money than his master for the harvest month, the pauper had a right to go. At the commencement of the harvest, the master offered the pauper 5*l.* for the harvest, which the pauper at first refused, and required 5*l.* 5*s.*, but afterwards agreed to take the 5*l.*, and accordingly continued in his master's service during the whole year, and received his wages weekly. *Bayley*, J. "I am of opinion that the sessions have rightly decided that this was not a conditional but an exceptive hiring. There may be nice distinctions between decided cases, but I think the distinction between a conditional and an exceptive hiring is broad and intelligible. I take a conditional hiring to be that where the parties stipulate for the continuance of the service for a whole year, but by fixing the terms upon which the service is to be continued, it is left to the option of either to put an end to the contract. If the bargain is made so that it shall be co-extensive with the whole year, but with liberty to either to dissolve it, then it is a conditional hiring; but if the servant stipulates that during a period of the year he shall be absent from labour, or that with respect to a particular period of the year there shall be a new bargain when the period arrives, then it is an exceptive hiring, and no settlement can be gained. In this case there is an express stipulation that the pauper shall have a month to himself in the harvest time, and if he and the master could not then agree for the harvest month, he was to harvest where he pleased. The parties therefore do not bargain beforehand as to the wages to be paid during the harvest month, but that is to be subsequent matter of contract. This is no more, therefore, than a hiring for eleven months, the twelfth month being scoped out of the original contract, and subject to a new bargain." *Best*, J. "I think *Rex* v. *Bishop's Hatfield* (ante, p. 414), is an authority in point, and though the pauper in that case hired himself to another master during the harvest, that makes no difference."

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 two shillings and sixpence per day wages, and to forfeit a penalty for neglect; they were to do such quantity of work as was equal to a full day's work; there was a reservation of the jurisdiction of the justices in case of any disputes: this is an exceptive contract. (*Rex* v. *Gateshead*, 2 B. & C. 117, *n.*; 3 D. & R. 333, *n.*; 2 D. & R. Mag. Ca. 17, *n.* (*y*).)

The pauper was hired by agreement in writing, from the 5th of April,

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(*y*) In the report of this case in 3 D. & R. there are these words, "Except during ten days' notice, Christmas holidays when they were not to work, nor be liable to any penalties for not working." The case stated here is taken from Barnewall & Cresswell; and in *Rex* v. *St. Helen's, Auckland* (post), the court observed, "that the reasoning proceeded on the facts stated in Barnewall & Cresswell; that, therefore, must be taken as the more correct report. It seems to be an agreement for working only."

1826, to the 5th of April, 1827, to hew and work coals, and it was provided that the hewers were to be allowed, during the whole period of their hiring, save for one fortnight at Christmas, and in case of accident as thereinafter provided, not less work than would yield them 28*s.* in each fortnight, but the owners were empowered, if they thought it expedient, for the parties hired to work no more than nine days in each fortnight, to "lay the pits off work" for the other days; also, that the owners might lay the pits off work, at or about Christmas, for any time not exceeding ten working days, but that "the parties hired should nevertheless continue during such time, and during all other times that the pits should be laid off work, the servants of the owners;" also, that "the parties hired should do and perform a full day's work on each and every working day, or a quantity of work equal to a day's work, and should not leave their work until such day's work or quantity of work should be fully performed." This was held to be an exceptive hiring. (*R.* v. *Walbottle*, 9 Q. B. 248; 15 L. J., M. C. 153.)

Cases of exceptive hiring.

Rex v. *Cowpen* (6 N. & M. 559; 5 A. & E. 333). 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, on the ground that there was a period of the week in which the servant was his own master.

Rex v. *Polesworth* (2 B. & C. 715; 4 D. & R. 258). 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 servant was not to be paid, is not a hiring for a year.

Rex v. *Chertsey* (2 T. R. 37). But if a daughter go to her father for a year, "*to do the offices of a servant*," it is a good hiring, although it is agreed that she may earn what she can by her own labour besides.

Rex v. *Westerleigh* (Burr. S. C. 753; 2 Bott, 312). Hiring for a year, with liberty to be absent a month in the militia, if requisite, upon an abatement of wages, gained a settlement, though he is absent for the month, for it is only a dispensation.

So a hiring for a year, at so much per week, and to serve a month at the end of the year, as he should be absent in the militia for a month of the year, gives a settlement (*z*). (*Rex* v. *Winchcomb*, Dougl. 391.) Lord *Mansfield*. "There is in this case a hiring for a year; and there is also a service for a year, if it were not for the month's absence in the militia. *A service must be for a continuation without interruption or adding together broken pieces to make up the year.* But here the agreement as to the absence for a month in the militia was only what would have been implied, and what the master must have consented to. The year was completed five weeks before Michaelmas, and the additional month agreed for was only in the nature of a compensation for the want of the pauper's service while absent in the militia, and equivalent to a deduction of so much wages. This case, if not the same, is very like *Rex* v. *Westerleigh* (*supra*). The court ought to lean in favour of settlements; and the bad consequences would be very extensive if we were to determine that a man shall lose his settlement by serving his country in the militia. We are all of opinion that this is a good settlement at Chipping Norton."

These cases are mentioned here as Lord *Mansfield* gives as a reason for his judgment that the agreement for absence would have been implied if not expressed. (See *Rex* v. *Holsworthy*, 6 B. & C. 283, ante, p. 381.)

(*z*) In *Rex* v. *Elmley Castle* (p. 382), *Taunton*, J., observed, "that these two cases were decided by men eminent for their knowledge of the law of settlement; that he had been eighteen years at sessions, and never heard them questioned."

(l) *Hiring with Limitation of Working Hours.*

There is also a class of hirings in which it is not the intention of the parties to except any portion of the year out of the agreement, but in which a stipulation is introduced as to the number of *working hours*. The effect of such stipulations upon the question of settlements will be seen in the following cases.

Hiring to work for three years, eleven hours a day, the rest of his time and Sundays to be his own, is not a yearly hiring. (*Rex* v. *Macclesfield*, Burr. S. C. 458; 2 Bott, 300.)

Rex v. *Kingswinford* (4 T. R. 219). Same point. In that case Lord *Kenyon* said, "The fair construction of this agreement was, that the pauper was to be his own master on Sundays, and on other days after he had served the thirteen hours, because he had only covenanted to serve those hours, and that the expression of one was the exclusion of the other. *It was essential in these cases that the servant should be under the power and coercion of the master, during the whole time*" (*a*).

Same point.

Rex v. *North Nibley* (5 T. R. 21), is a case similar in its material circumstances, and the court held that *Rex* v. *Kingswinford* had decided the question, and that such hiring and service did not gain a settlement.

A hiring to serve five years as a shearman, and to work shearman's hours only, is not for the year.

Rex v. *Buckland Denham* (Burr. S. C. 694; 2 Bott, 311). The pauper, about seventeen years of age, was hired by his father to a clothier of Buckland Denham, to serve him as a shearman for five years, and was *to work shearman's hours only* (which are uncertain): it was understood that he should be at his own liberty at all other times. He served his master as a shearman, according to the agreement, working the same hours as his master's other shearmen did. By the court: "*This is not a good hiring for a year; because there is an exception in it, that the pauper was to work shearman's hours only, and to be at his own liberty at all other times.* But if the contract be an absolute contract for a year, the not working on Sundays and holidays, if it be the custom of the country not to work on those days, ought not to hinder the gaining of a settlement."

A hiring at four shillings per week, to work from six A.M. to seven P.M., with liberty to do as much over-work as he pleased, is not for a year.

Rex v. *Birmingham* (9 B. & C. 925; 4 Man. & R. 691). Order of removal of W. Steam, &c. from Birmingham to Athersone, confirmed. Case:—The pauper went to live with J. Owen, a button-caster of Birmingham. After he had been with him for some time Owen hired him for a year at 4*s.* 6*d. per* week. Nothing was said about Sundays. It was part of the terms of the hiring that the pauper was to work from six in the morning to seven in the evening, and might make as much over-work as he chose. He received earnest when he was hired. He served his master under this contract for a year, during which he lived in his master's house and boarded himself; he lived there on Sundays as well as week-days, and on Sunday morning he used to ask if anything was to be done, and if there was, he did it. He made a good deal of money by over-work, but never did any for any one but the master, and was never paid for it but by him; he was allowed 2*d.* an hour for over-work. At the expiration of the first year, he was hired by Owen for a second year on the same terms, except that he was to have 5*s.* 6*d. per* week wages and 4*d.* an hour over-work. He served the whole of the second year. He was hired for and served a third year on similar terms. *Bayley*, J. "This case is very different from *Rex* v. *Byker* (p. 407). There the court thought the term was only mentioned as the measure of the wages, and that the contract did not impose any limit upon what was reasonably required by the master; and that the relation of master and servant continued during the twenty-four hours. But in this case there was a stipulation that the pauper was to work from six in the morning till seven in the evening, and might make as much over-work as he chose.

(*a*) In *Rex* v. *Wrenton*, Burr. S. C. 458, *Foster*, J., said, "A hired servant is always under the control of the master, even on Sundays."

It was optional in him to do over-work or not. He had a right to say to his master, I have worked thirteen hours and will work no more. This is clearly an exception in the contract, limiting the control of the master to the specific period of time therein mentioned." *Littledale* and *Parke*, JJ., concurred. Order confirmed.

Same point, but nothing said as to over-work, and the pauper could not work for any other master.

Rex v. *Frome Selwood* (1 Bar. & Adol. 207). J. Bagnall and family were removed from Birmingham to Frome Selwood. Order confirmed. Case:—The pauper was hired by an agreement made the 16th day of August, 1820, by himself and John Wright of Birmingham, bedstead-maker. First, J. Bagnall agreed with J. Wright, that he J. Bagnall, in consideration of the wages agreed to be paid to him by J. Wright, for and during the term of three years thence next ensuing, to work for and serve J. Wright in the business of a bedstead-maker, and in such particular branches thereof as Wright thought proper to employ him: and J. Bagnall agreed, to the best of his power, to make, manufacture and complete such goods as should be delivered to him, or which he should be requested to make: and it was agreed that *J. Bagnall shall work from six o'clock in the morning to seven in the evening in summer, and from seven in the winter to eight o'clock, in every working day* during the term, and not work for or serve any other person. And Wright, in consideration of such work agreed to find him full employment and to pay him on Saturday night in every week for the first year 7*s*., the second year 8*s*., and the third 9*s*. The pauper stayed in Wright's service in Birmingham for a year under the above agreement. The question is, whether he thereby gained a settlement in Birmingham. *Bayley*, J. "The rule is, that if a party contract generally to serve in a particular trade, though he may be bound to work only during the usual hours of work in that trade, yet by so working he will gain a settlement. But if it be made part of the bargain that the person hired shall serve for specific hours only, then the relation of master and servant does not subsist out of those hours, according to the maxim *expressio unius est exclusio alterius*, and that is an exceptive hiring. In *Rex* v. *Buckland Denham* (p. 418), there was an express exception in the contract, the pauper was hired as a shearman to serve for five years to work shearman's hours only. The same observation applies to *Rex* v. *Kingswinford* (p. 418). The hiring there was for seven years to work for thirteen hours in the day (Sundays excepted). *Rex* v. *Birmingham* (p. 418) goes further than either of those cases. The pauper there was hired for a year to work from seven in the morning to seven in the evening, with liberty to make as much over-work as he pleased; and it was optional in him to do over-work or not, and as he might refuse to work more than thirteen hours, the court held that there was an exception in the contract limiting the control of the master to the specific period of time therein mentioned. In *Rex* v. *North Nibley* (p. 418), the terms of the hiring were the same as in the present case. They do not admit of the distinction contended for with regard to the difference between serving and working. There the pauper was hired as a colt shearman to work twelve hours each day, and that was held to be an exceptive hiring, upon the ground that the servant to gain a settlement must be under the control and coercion of the master the whole time of service. Now in this case, although the servant could not have worked for any other master out of the stipulated hours, he might have worked for himself, or at all events might have refused to execute during those hours any commands of his master in his business. This therefore was an exceptive hiring, and no settlement was gained by the service under it." *Littledale*, J. "I thought in *Rex* v. *St. John, Devizes* (p. 421), and I think now, that if the case were *res integra*, an engagement to work thirteen hours in the day ought to gain a settlement, being all the work that could be reasonably exacted. But it appears to me that the authorities are conclusive in favour of the finding of the sessions." *Parke*, J. "I think this case is governed by the principle to be collected from *Rex* v. *Birmingham*. And it is to be ob-

A bargain for specific hours excludes all other hours.

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served, that the agreement is not simply for service but for service in a particular trade, so that the exception in the hours of working was an exception of the very thing which was the subject-matter of the contract of hiring." Order confirmed.

Same point.

Rex v. *Norton Bavant* (4 Nev. & Man. 687; 3 Ad. & E. 161). John White and family were removed from Norton Bavant to Frome Selwood. Order quashed. Case:—The pauper's birth settlement was in Frome Selwood. About eight years ago the pauper went to one Gutch in the parish of Corsley, to hire himself as a colt shearman; Gutch asked the pauper if he liked to work for him for a twelvemonth, and offered 6*s.* a week to work ten hours a day, from five o'clock in the morning till six in the evening, and to leave off in the middle of the day on Saturday, so as to make up the ten hours a day. The pauper served the year and slept in the same parish, sometimes at his master's and sometimes at home. About a month after entering into the service, it was agreed between the master and the pauper that the latter should receive one penny *per* hour for over-hours; and he continued to receive the same to the end of the year. Sometimes he looked after his master's horse, and sometimes worked in the garden. At the end of the year the pauper agreed with the master to stay on upon the same terms, with the addition of 6*d.* a week more wages. The pauper served a second year, doing nearly the same work as before. The pauper during both years worked over-hours at his master's request, and never refused when he was wanted. He was sometimes employed on Sundays, and was paid for so doing. The pauper kept an account of his over-time by the direction of his master, and was asked by his master if he would sooner do the over-work in his own time or in his master's. The pauper chose to work his over-hours in the evening. The question for the court is, whether the pauper gained a settlement by hiring and service in Corsley. Lord *Denman*. "I think it impossible for us to say that we are bound by the decision of the sessions. The sessions have found that there was a birth settlement in the appellant parish, and a subsequent settlement by hiring and service in the respondent parish: *provided* this court is of opinion that the hiring which they have stated amounts to a hiring for a year. The court is therefore bound to inquire whether it is such a hiring or not. We should find it very difficult to reconcile all the cases which have been decided as to *exceptive hirings*. This case is however precisely governed by *Rex* v. *Birmingham* (p. 418), for the facts are quite the same." *Bayley*, J., in that case distinguishes it from *Rex* v. *Byker* (p. 407). Here the master asked the pauper if he liked to work for a twelvemonth, and offered 4*s.* a week to work ten hours a day, from five o'clock in the morning till six in the evening, and to leave off in the middle of Saturday so as to make up the ten hours a day. There was a part of the week which the pauper was not bound to work for his master. That which took place after the original agreement forms no part of the contract. We are pressed with the authority of *Rex* v. *Ossett-cum-Gawthorpe*. In that case we did not intend to overrule *Rex* v. *Birmingham;* on the contrary, it is expressly mentioned and distinguished in the judgments. The distinction between the two cases is I admit a refined one, and one of our learned brothers (*Taunton*, J.) thought that we were wrong. There however the contract certainly was different from that upon which the question *here* turns. In that case there was a *general hiring* for five years stated, and then followed *certain arrangements* as to the amount of the wages. Here the actual contract of hiring itself is to work for ten hours a day only. Therefore, without interfering with any of the decisions referred to, we may hold that this is an exceptive hiring." *Littledale*, J. "I am of the same opinion." *Patteson*, J. "I also am of the same opinion. I do not think that the sessions can be said to have found that this was a hiring for a whole year: for they have asked us to

decide whether it is so or not. We distinguish between *Rex* v. *Birmingham* and *Rex* v. *Ossett-cum-Gawthorpe* (p. 409). In the latter case I was not much pressed by *Rex* v. *Birmingham*, but was more so by *Rex* v. *Frome Selwood* (p. 419). The question whether a contract of hiring is exceptive or not, depends upon whether over-work is *optional* or not on the part of the servant. In *Rex* v. *Ossett-cum-Gawthorpe* it was *not optional*." We all agreed there as to the principle though we differed as to the facts. Here the over-work is optional." *Coleridge*, J. "It is quite trifling to say that there has been any finding by the sessions which can prevent our going into the inquiry whether this is an exceptive hiring or not. They leave the question entirely open to us. There is no doubt a difficulty in reconciling all the cases upon this subject; but at the same time there is no class of cases in settlement law on which the *principle* is better settled. The difficulty is this, that assuming the principle the court appears to have come to contradictory opinions as to the application. It would have been better if the sessions had found upon the settled principle, that the hiring was incomplete or complete for a year. The principle being settled it is impossible for any one who reads this case, without referring to other decisions upon the subject, to doubt that this is an exceptive hiring. During all the time beyond the stipulated hours the pauper was his own master. He might have gone away and worked wherever he would. This was clearly an exceptive hiring. That which came after the original contract in this case, shows what was the understanding of the parties. A distinction was then acknowledged by them between master's time and servant's time." Order of sessions quashed.

Exceptive hiring.

Agreement to work for four years as hired servant in turning iron-work, or any other employment as an artisan, 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. &c., is exceptive. (*Reg.* v. *Holbeck*, 7 Jurist, 647.)

An agreement for more than a year at weekly wages to work under certain rules: viz., each person employed to give one month's notice previous to leaving, but the masters to discharge without notice; also the hours of attendance to be from six o'clock a.m. until half-past seven p.m., excepting Saturday is exceptive. (*Reg.* v. *Preston*, 7 Jurist, 648.)

A hiring for four years, to work according to the rules of the factory, which were at the master's discretion. The pauper was told she was to work twelve hours a day: held, not an exceptive hiring. (*Rex* v. *St. John, Devizes*, 9 B. & C. 896; 4 Man. & R. 681.) *Bayley*, J. "Where there is in a contract of hiring an express exception of any particular time, so that during that time the master cannot exercise any control over his servant, that is not a hiring for a year. By this agreement the servant stipulates to obey all the rules of the factory with regard to the hours of attendance. In every hiring the law will imply that the party hired shall work at all reasonable hours when required. The ordinary working hours in a manufactory are twelve hours a day; but it does not therefore follow that the master may not, on extraordinary occasions, require his servant to work at other hours. Whether he does so or not, the relation of master and servant continues during the whole day. It does not appear what were the specific rules in this case; but assuming that one of them were to work twelve hours a day, yet, inasmuch as the regulations might be, and were, from time to time, altered by the master, the stipulation that the servant should obey the rules of the factory with regard to hours of work, did not give the servant any right to say that the master should not require her service at all reasonable hours. Such a stipulation does not necessarily imply that she is not to work beyond certain hours. The true meaning of this agreement is, that the relation of master and servant was to continue the whole day. There is no exception in the contract, and no remis-

sion of service, but such as the law will imply in every contract of hiring." *Littledale*, J. "To constitute a yearly hiring, the relation of master and servant must subsist during the whole year, and during the whole of every day. 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 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." *Parke*, J. "It is said there is an exception to the agreement by reason of that stipulation, whereby the pauper agrees to obey the rules of the factory. But that imports no more than a contract to obey the orders of her master, which is a term implied in every contract of hiring."

So, also, if hiring is to serve three years, though only to work twelve hours a day, and if more to have a certain sum per hour, this gained a settlement.

Rex v. *Ozelworth* (Burr. S. C. 302; 2 Bott, 432). W. Hewett agreed with T. Palsor, clothworker, to serve him in his business for three years, at so much a week. He was to work twelve hours a day, and a penny for each hour over. Sixpence a week was to be retained as a deposit; which was to be repaid to Hewett if he performed the agreement, or if Palsor should discharge him before the end of the term. It was understood between them that Palsor might turn Hewett out of his service at any time during the term, paying him the sixpences detained. Hewett worked under the agreement for about six months; and then, being ill, absented himself about three months, and then returned, and was received by Palsor, and continued to work for him under the agreement till removed by the order, being about three-quarters of a year after his return. By the court: "Here is an actual hiring for three years, and a service under it for one year and a quarter."

So, also, where the exceptions are only *implied*.

Rex v. *St. Agnes* (Burr. S. C. 671; 2 Bott, 310). The father of the pauper contracted with Mr. Nankivell (the pauper being then fifteen years of age) for the pauper to work at Nankivell's stamps, situate in St. Agnes (which stamps are mills, wherein several are employed in cleansing and manufacturing tin), for one year, at the yearly wages of 5*l*. The pauper served Nankivell at the stamps for the year, by working therein daily, except holidays and Sundays, according to the custom of tinners, and his father received his wages as he had occasion for it. During the year the pauper ate, drank, and lodged with his father in St. Agnes, serving Nankivell at his stamps, and in no other capacity, nor ever became a part of his master's family. By the court: "This was an entire contract for a year, without any exception contained in it; and the service was according to the custom of the country. *The difference is where the exception is part of the contract, and where the contract is absolute: the question turns upon this distinction* In *Rex* v. *Macclesfield* (ante), it was part of the original contract: here it is not so." And they were unanimous that the pauper gained a settlement.

Hiring to work as a bleacher and crofter.

Rex v. *Horwich* (10 East, 489). The pauper was hired as a bleacher and crofter for a year at 12*s*. a week; nothing else passed at the time of hiring, and he served the year. The custom is for each bleacher to be directed by his master to get up a certain number of pieces a week, calculating at so many pieces a day for six days; there is no stint as to hours, and if the bleacher finish his work in less than the time appointed, the rest of the time is his own to do as he pleases. The pauper on Sundays went where he pleased, without asking his master's leave. The pauper occasionally made up for lost time by working on Sundays, but this was his own act. The master had nothing to do with the bleachers on Sundays. Lord *Ellenborough*. "The law of the land breaks in upon such contracts as these on the Sundays, and the

Implied exceptions by the custom of the country will not defeat the settlement.

master in this case had as much right to the service of the pauper for the whole year as the law will allow. Here is a clear distinction between this case and *Rex* v. *Macclesfield*, *Rex* v. *Kingswinford*, and *Rex* v. *N. Nibley*. Here is an express hiring for a year, and no express exception of any part of the year. But this is an attempt to introduce an implied exception from the practice of a particular house of manufacture; though *implied exceptions in the times of service, by the custom of the country, have been held not to break in upon general contracts of hiring for the year.*"

A clerk in a merchant's house, hired by the year, but serving only during the usual hours of mercantile business, thereby gained a settlement, although these hours never occupied the whole day.

Rex v. *All Saints, Worcester* (1 B. & Ald. 322). A clerk in a mercantile house was hired by the year, but he served only during the usual hours of business, which did not, by the custom of the trade, ever occupy the whole day, and he went where he pleased, without asking his master's leave, when those hours were over. He did what he pleased on Sundays. Lord *Ellenborough*. "There is in every contract of hiring some implied exception of hours for relaxation, food, and rest; I cannot, at least, suggest to myself any contract in which such exceptions do not exist. The master here has a right to the service of the pauper at all times, but he does not require his services at any other hours than those mentioned: there is not any exception in the contract. The hiring then being general, and there being no exceptions but such as are necessarily implied in every contract, I think that the pauper, by serving under it for a year, gained a settlement." *Bayley*, J., said, "The distinction between the two classes relative to this subject is, that in the one the exception to the service is expressed in the contract, and in the other it is left by the custom of the particular trade to be raised by implication. This case seems to me to range itself under the latter class; and therefore I think the pauper gained a settlement by this hiring and service." *Abbott* and *Holroyd*, JJ., concurred. Order of sessions quashed.

(m) *Imperfect Apprenticeship not a good Hiring.*

It must be a contract for *service*, and not an imperfect contract of *apprenticeship*. Those cases only are inserted here where the contract has been held to be a hiring. Those relating to imperfect apprenticeships are collected under that title. See post, "SETTLEMENT BY APPRENTICESHIP."

It must be collected from the words of the instrument whether or not the party is to serve as an apprentice (*a*).

Rex v. *Little Bolton* (2 Bott, 316; Cald. 367). The pauper went to W. Stott, at Great Bolton, and asked him if he would teach him to weave counterpanes; Stott answered, he would teach him, if he would work with him two years and a half or three years, and the pauper's earnings were to be divided between them; the pauper was to find himself with meat, washing, and clothes; he was engaged on these terms, and an agreement in writing was entered into accordingly. The pauper worked with Stott under this agreement, in Great Bolton, about a year and a half, and then the pauper gave the master 20*s.* to be free, having then married. The master (whilst he was working under the agreement) found him looms, room, and materials; he never employed the pauper in any work but weaving; the condition upon which he taught the pauper to weave was one-half of his earnings. Stott received the money, and paid the pauper one-half, and looked on it that he had a right to receive it; but sometimes he let the pauper receive it. Lord *Mansfield*, C. J., delivered the judgment of the court. "We have looked into the authorities, and we find that all those cases of apprenticeships which have been holden to be defective, and not convertible into hirings and services, *speak of the pauper as an apprentice*, and that he was to serve

(*a*) See *Rex* v. *Laindon*, 8 T. R. 379, post, "SETTLEMENT BY APPRENTICESHIP," in which the decision in *R.* v. *Little Bolton* is put on its proper footing.

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A binding by verbal agreement to serve another, on condition of being taught a trade, is a hiring for service.

as such. There is no such statement here; and we are therefore of opinion that it is a good hiring and service." Orders quashed.

Rex v. *Eccleston* (2 East, 298). Removal from Little Bolton to Eccleston confirmed. Case:—The pauper, when about fifteen years of age, went to Tonge with Haulgh, and made a verbal agreement with S. Clough, a weaver of counterpanes, to serve him a year and a half. Clough was to teach him to weave counterpanes, and the pauper was to have one-half of what he earned, and to find himself in everything. Nothing else passed between them on making the agreement. The pauper worked with Clough for a year and a half, except for a fortnight, during which he remained absent; but Clough, however, brought him back into his service, and obliged him to stay a fortnight over the year and a half, in order to make up the time he had been absent from his service. During the time of his service he constantly slept at the house of his mother. Lord *Ellenborough*, C. J. "I gave a reluctant assent to *Rex* v. *Little Bolton* (supra); but as the case now before us is in terms the same as is there decided, I think it is better to abide by that determination, than to introduce uncertainty into this branch of the law; it being often of more importance to have the rule settled than to determine what it shall be. I am not, however, convinced by the reasoning of that case, and if the point were new, I should think otherwise. I should consider, as Lord *Kenyon* said in *Rex* v. *Laindon* (*b*), that if the relation of master and apprentice be created by the contract of the parties, though they do not use the very words master and apprentice, yet, if they use words tantamount, it is sufficient. The word apprentice, he observed, was taken from *apprendre*, to learn; and what was that but an apprenticeship, where the purpose of the contract was for one man to *teach* and the other to *learn* a trade? Then what was this intended to be? I should have said, upon general reasoning, that where the contract was that the master should teach the other a trade, and the latter was to do nothing *ulterior* the employment in that trade, it was a contract *apprendre* in the true sense of the word; and being defective in this case, for want of proper legal formalities, it could not enure as a contract of hiring in a servant. However, as Lord *Kenyon* did not think proper to overrule *Rex* v. *Little Bolton* in terms, though he disapproved of what was there said; and as it was not overturned in *Rex* v. *Highnam*, or *Rex* v. *Rainham*, for the reason I at first gave, I think it better to concur in that decision, however unwilling I should have been to have done so in the first instance." *Lawrence*, J. "The case referred to is directly in point, and not having been overruled, it ought to govern the present. *Rex* v. *Laindon* and *Rex* v. *Rainham* are both very distinguishable from the present."

If one be *clubbed* for three years, to be taught a trade, and contract to do any work he may be set about, it is a hiring (*c*).

Rex v. *Coltishall* (5 T. R. 193). At Lady-day, 1785, the pauper being about eighteen years of age, and a bricklayer's labourer, was clubbed with J. Rolfe, of Coltishall, for three years, at 6*s.* per week the first year, 7*s.* the second year, and 8*s.* the third year; to board, lodge, and wash for himself; he was to be taught the trade of of a bricklayer. An agreement in writing was to be prepared for three years, but this was never done. The pauper served two years and upwards, and then, upon some difference, his master and he consented to part. No premium was paid. The pauper *was to do any work Rolfe set him about*, and was not to be absent from his business during any part of the time. Lord *Kenyon* said, "that it was impossible to raise a doubt upon the case; for that the concluding part of it, which stated that 'the pauper was *to do any work* his master set him about (*d*) *was decisive* to show that he must be

(*b*) 8 T. R. 379, post, "SETTLEMENT BY APPRENTICESHIP."

(*c*) This case also stated, that "clubbing signifies a person contracting to serve for the purpose of learning a trade, and to have less wages on account of learning the trade."

(*d*) This is not *decisive*. (*Rex* v. *Coombe*, 8 B. & C. 82; *Rex* v. *Tipton*, 9 B. & C. 888); post, Chap. XXIII., "SETTLEMENT BY APPRENTICESHIP."

considered as a hired servant:' and that, although *one* of his objects *was* to learn a trade, that was deemed equivalent to part of his wages."

Same point.

Rex v. *Martham* (1 East, 239). By an agreement made by the pauper's uncle, he was clubbed with B. a bricklayer, for three years, at certain weekly wages, to learn the trade of a bricklayer, *and to do any other work* his master might set him about, with a proviso, that if he were prevented from working by bad weather, illness, or want of employment, there should be a proportionable deduction of wages. It was holden that the pauper gained a settlement, though occasional deductions on those accounts were made. The case was decided upon *Rex* v. *Coltishall.*

The panper entered into a written contract (unstamped and without seals), to serve for three years, to learn to make bricks: held to be a hiring in the relation of master and servant.

Rex v. *Shinfield* (14 East, 541). M. Lanesbury was removed from Reading to Shinfield. Order confirmed. Case:—The pauper's husband, R. Lanesbury, in June, 1806, hired himself for a year to J. Palmer, brickmaker, and continued from that time upwards of a year in Palmer's service. On 29th September, 1806, the pauper's husband (being still a minor) and Palmer, signed an agreement on unstamped paper, and not under seals, under which the pauper's husband served the whole three years. The agreement was: "I, R. L., do hereby covenant and agree to serve J. P. for three years to learn to make bricks, and the art of burning, on condition of the said J. P.'s finding me sufficient victuals, lodging, and clothes, and to be clothed in the habit of a working man at the expiration of the three years, on condition of my helping to attend the kiln on nights: 29th September, 1806.—(Signed) R. L." and attested. In the margin of the paper, near the attestation, was written, "I, J. P., consenting to the above agreement." The appellants produced R. Lanesbury's mother, who swore that Palmer came to her and asked her if she had any objection to her son being apprenticed to him, and she said, "No." Lord *Ellenborough.* "This was the case of a person who, though a minor, had power to contract for a hiring and service to another, or as an apprentice (*Drury* v. *Drury*, cited in 3 Term Rep. 161). *Quâcunque viâ datâ*, the pauper gained a settlement in Shinfield; for if the instrument were invalid as being a fraud upon the law, it is clear that there was no good apprenticeship created, because it was not created in the manner prescribed by the law; and if invalid and not receivable in evidence, what is there to do away the former contract of hiring for a year? But supposing it to be valid and not operating as an apprenticeship, but as a hiring in the relation of master and servant, what is this but the case of a continuing service operating under a new contract of hiring, merely superadding other terms whereby the servant was to have food and clothing provided for him in the manner stated, and an opportunity of learning the trade of his master, instead of seeking for a compensation for his service upon a *quantum meruit.* It is therefore unnecessary to determine whether or not this was a good contract of hiring and service, as created by the written instrument. And all the cases cited by the appellant's counsel differ from the present, because in none of them was there a good contract of hiring and service, independent of the imperfect contract of apprenticeship in dispute. But here there was an original perfect contract of hiring and service, which was not defeated by an invalid instrument. With respect, however, to *Rex* v. *Little Bolton* (ante, p. 423), the court, in *Rex* v. *Eccleston* (ante, p. 424), considered it as a subsisting authority, whatever question there might have been upon the subject at first, and I think the convenience of the thing is in support of it, but it is not necessary now to discuss that point." *Grose*, J. "Here there was originally a good contract of hiring and service, and that was not done away with by the subsequent instrument, whereby the parties merely prolonged the duration of the contract, and fixed the compensation to be made by the master for the service." *Le Blanc*, J. "This case is distinguishable from all the former cases in which the question has been, whether the contract was to serve as an apprentice, or as a hired servant; where if the court considered that the contract was to serve as an apprentice it could not enure to

An invalid contract of apprenticeship will not vitiate a subsisting contract of hiring.

give a settlement, as in the case of a hired servant, for in none of those cases was there any valid contract of hiring and service existing before, independent of the instrument in question. But here the husband of the pauper had first entered into a good contract by parol, as a hired servant for a year, and pending that contract he and his master entered into a written agreement, by which it is contended that the parties meant to contract for an apprenticeship, and that this, though invalid for the purpose of creating an apprenticeship, yet changed the nature of the service under the former hiring into a service as an apprentice, and therefore prevented the gaining of a settlement as a hired servant. But I do not accede to that argument; because, if there were at one time a subsisting valid contract of hiring and service for a year, and pending that the parties enter into an invalid agreement, I do not see how that can do away with the former valid contract. But even upon the construction of the written instrument itself, I do not think that it is to be taken as a contract of apprenticeship. In all the former cases where the instrument in question has been so construed, it has been stated that the parties intended to contract in the relation of master and apprentice, only they had contracted informally in order to avoid the stamp duties. But here the contract is for Lanesbury to serve Palmer for three years, to learn the art of a brickmaker, on condition of Palmer's finding him in board, lodging, and clothes; there is no contract by the master to teach him, but only for the boy to have the opportunity of learning the business. It is said that no wages are reserved, but that is no more than what often happens with boys at service; they get less at first, because they must first learn their business before they can be of use to their masters in it. Then though it is stated here that the boy was to serve his master to learn his business, that would not prevent it from operating as a contract of hiring and service. I do not think, therefore, that this was, in the terms of it, an agreement for an apprenticeship, so as to supersede the former contract of hiring and service. But even if it were intended as an apprenticeship, yet the instrument being invalid, would not supersede the former valid contract." *Bayley*, J. "I consider the instrument as a contract of service, and not as an apprenticeship. There was an original good contract for a year between the parties as master and servant generally, and after three months' service generally under it, they entered into a new agreement, by which the boy was to serve his master for three years, not generally, but to learn to make bricks and the art of burning, upon condition of being found in board, lodging and clothes. The meaning of the parties, therefore, was, that the general service before contracted for should be restrained to such service as would enable the boy to learn his master's business. If an apprenticeship had been intended, there would have been words introduced into the agreement binding the master to teach the boy, and there being no such words of obligation on the master, and the written contract not having the ordinary words of binding to serve as an apprentice, and the intent of the parties, as collected from the terms of it, being at least equivocal, we are warranted by the cases in saying that the object of it was merely to confine the general service, before contracted for, to such parts of the master's employ as would enable the boy to learn his business. If this, therefore, was to give an extraordinary benefit to the servant, the master might well stipulate for receiving such service without the payment of wages." Orders confirmed.

Absence of "*wages*" does not negative a hiring.

Contract of hiring inferred, where there is no agreement to *teach*.

Rex v. *Burbach* (1 M. & Sel. 370). A verbal agreement by the father that his son should work with another for two years, to have what he earned, and to allow the master two shillings per week for instruction, and the use of a frame and standing, is a contract of hiring and service, and not of apprenticeship (*e*).

(*e*) In *Rex* v. *Newton*, post, *Patteson*, J., said, "I consider this case to be overruled by *Rex* v. *Crediton*," post. This observation relates only to the

Rex v. *Billinghay* (5 A. & E. 676; 1 N. & P. 149). R. Lynn was removed from Asterby to Billinghay. Order confirmed. Case:—The pauper having first gone upon liking, let himself under a written agreement to R. Medley, of Ranceby, a wheelwright. The agreement was signed by the pauper and the father. It was, "Mem.: The undersigned, R. Lynn, agrees on behalf of his son, R. Lynn, that he shall serve R. Medley in his business as a wheelwright, from this time to 29th March, 1830, R. Medley paying, at the expiration of the said term, 5*l.* to R. L. the son; R. Lynn to find his son clothes, washing, and all other necessaries; and R. Medley meat, drink, and lodging, 3 Dec. 1827." The pauper stated he served as an apprentice. The pauper previously had been bound an apprentice by indenture to Lund, of Billinghay, a wheelwright, and served him one year and eight months. The indentures were then cancelled, his father having bought up the remainder of his time. Lord *Denman*. "I think this instrument creates a contract of hiring; it contains no provision for learning or teaching." *Patteson*, J. "I am clearly of opinion, that the contract was one of hiring and service, and that the sessions were wrong in their construction of it." *Williams*, J. "I agree that this is a contract for hiring and service." *Coleridge*, J. "The instrument, when rightly interpreted, appears to be a contract of hiring." Order of sessions quashed (*f*).

A boy became an apprentice to a wheelwright for five years. After less than two years the indenture was cancelled, and he agreed to serve another wheelwright for more than two years. This latter is a contract of hiring.

Service or apprenticeship. Hiring and service.

The cases are often obscure as to the difference between contracts for service and contracts amounting to apprenticeship, and it is not possible to deduce any rule from them. By agreement between A., B. and C., A. agreed to hire B., and B. agreed to be hired by A., for the term of three years, to dress silk, for 10*s.* a week for the first three months, and afterwards in proportion to the work done, provided B. did a certain quantity per week. It was further agreed that C. should receive from A. so much per week for superintending and teaching B. to make him a competent workman. This was held to be a contract of hiring, for the stipulation as to the teaching did not make it an imperfect apprenticeship. (*R.* v. *Northowram*, 9 Q. B. 24; 15 L. J., M. C. 49.)

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§ 2. THE SERVICE UNDER THE CONTRACT; AND HEREIN,

(a) *Of Connecting Services under distinct Hirings.*
(b) *Of Lapse between Services.*
(c) *Of Dispensation.*
(d) *Of Change of Master in the same Service.*
(e) *Of Dissolution.*
(f) *Of the Completion of the Contract before the Poor Law Amendment Act*, 1834.

(a) *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.*"

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question of apprenticeship, and not to the validity of the contract by the son.

(*f*) In this case, the sessions allowed the pauper to state that he served as an apprentice under the latter contract, but they rejected evidence of a conversation between the parties before and at the time of signing the instrument; and they also rejected an indorsement on the paper, as there was no proof that it was written at the time the agreement was signed. The court thought they could not say the sessions had done wrong, as the evidence might or might not be admissible according to circumstances which were not specified.

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In order to perfect a settlement by hiring and service, it is therefore necessary that the person *continue and abide in the same service during the space of one whole year.*

A person may abide in the *same service* under different successive hirings, and the law does not require that the hiring and the service shall be for one and the same year, to entitle the party to a settlement.

It is said that in *Dunsford* v. *Redgwich* (Fol. 133; 2 Bott, 364), the court declared that there ought to be one entire contract, and one entire service for a year, pursuant to that contract. But it is proper to remark, that the point in question in that case was, whether a hiring for two half-years should be deemed a sufficient hiring, and not what should be a sufficient *service* under such hiring.

A service for a year, though under different hirings, is good, if one of the hirings be for a year.

Rex v. *Overton* (Burr. S. C. 549; 2 Bott, 363). The pauper Bailey was settled in Overton, and on the 25th day of March contracted with Orpwood, of the parish of Steventon, for the wages of 20*s.*, to serve him from the said 25th day of March, 1697, until Michaelmas then next following, and which time she served accordingly. At Michaelmas, Orpwood contracted with her from the said Michaelmas for one year ensuing, for the wages of 30*s.*, and she remained with him until some time in the month of April, 1698, in which month, by mutual consent, she left her service, and he paid her the proportion of her wages that were then due. The sessions conceived that the pauper, by continuing more than one whole year under this hiring, gained a settlement in the parish of Steventon; and the Court of King's Bench were of the same opinion, for the service under the hiring for half a year, and the half-year's service under the hiring for the year, answers the end of the statute 8 & 9 Will. III. c. 30, and is a good service for the year.

The same point precisely was determined in *Rex* v. *South Molton*, (Raymond, 426); a case the records of which cannot be found, but which, Sir *James Burrows* says, may possibly be the same case as *Rex* v. *Overton*. (See Burr. S. C. 550.)

Service under a hiring for part of a year, with service for eleven months, and under a hiring for a year, was a good year's service.

Brightwell v. *Westhallam* (1 Sess. Ca. 87; Fol. 143; 2 Bott, 366). There was a hiring and service from three weeks after Michaelmas to Michaelmas, and then a hiring for a year, and service for eleven months. The Chief Justice said, "If there were a service for a year, under a hiring from week to week, and then a hiring for a year, *and serving for forty days* (*g*), he should adjudge that a settlement. The reason is, because by the 3 W. & M. c. 11, a hiring for a year, and forty days' service under it, made a settlement, in regard that the hiring for a year showed that the person was not likely to become chargeable, for that he was able to work; but by 8 & 9 Will. III. c. 30, the service must be during the space of one whole year. So forty days is a good settlement to an apprentice, in respect to his skill and art, by which he is supposed unlikely to become chargeable. So a person that has paid parish dues, or served offices in a parish, gains a settlement by forty days, because he is supposed a person of substance, unlikely to become chargeable. But the late act requiring service for a year, as well as a hiring, we think it sufficient if the words be answered, considering this with the design of the former statutes."

A hiring and service from Christmas to Michaelmas, and then a hiring for a year, and a service till Midsummer under the second hiring, will suffice.

Rex v. *Aynhoe* (2 Sess. Ca. 119; Fol. 144; 2 Bott, 368). The pauper was hired from Christmas to Michaelmas, and served till Michaelmas; then was hired for a year, and served till Midsummer. And this was adjudged a settlement. Lord *Raymond* said, "The case of *Westhallam* was express to the point, and he would not break into it; but if it had been *res integra*, or a case not adjudged before, he should have thought it ill. Here the service was antecedent to the hiring for a year." The greater part of the judges thought this case to be against the statute,

(*g*) But in *Rex* v. *Adson* (p. 429), it was held that forty days' service under such yearly hiring was not necessary to gain a settlement.

but that they were more strongly bound by the precedent, and were unwilling to set aside a resolution solemnly adjudged, though not according to their own opinion."

So will a hiring and service from Christmas to Whitsuntide, and then a hiring for a year, and service till the beginning of the March after the Christmas.

Rex v. *Underbarrow* (Burr. S. C. 545; 2 Bott, 373). A. Kellet hired herself at Christmas to J. Thompson, till Whitsuntide, which time she served. At Whitsuntide she hired herself to Thompson for one year, and continued in the service till the beginning of March, when she and her master parted by consent. It was urged that *Rex* v. *South Bolton* and *Rex* v. *Overton* were determined upon facts prior to the explanatory statute of the 8 & 9 Will. III., before which statute a hiring for a year, and a service for forty days, gained a settlement. And it was observed that in *Rex* v. *Aynhoe*, Lord *Raymond* and Mr. J. *Page* declared that if it had been then *res integra*, they should have judged it to be no settlement: and now it appears to be so; as the two supposed precedents were no precedents at all, being prior to 8 & 9 Will. III. By the court: "The authority of these cases will be just the same, whether the facts were prior to the statute or not; because the court determined them as upon facts subsequent to the statute. And there having been many determinations the other way, the court were unanimously of opinion that, for the sake of certainty, it was best to adhere to settled determinations. Though there might be room for great doubt upon this point, if the matter were again open, yet the rule *stare decisis* is always proper, and especially in these cases of settlements" (*h*).

So a hiring and service for less than a year, and then a hiring for a year, but only ten days' service under the yearly hiring, will gain a settlement.

Rex v. *Adson* (5 T. R. 98). The pauper was hired eight days after Old Michaelmas, 1786, to Old Michaelmas following, and continued in his master's service till the day after Old Michaelmas-day, 1787, when he was hired by his master till the Michaelmas following, and under that hiring he served only ten days. The sessions thought that the second hiring was a hiring for a year, but that the pauper had gained no settlement under it, as he had not served forty days subsequent to that hiring. Lord *Kenyon* was of opinion that a settlement was gained; but *Grose*, J., at first was of a different opinion. Afterwards Lord *Kenyon* said, "That they were both of opinion that the pauper gained a settlement."

Service under a hiring for a year, at certain wages, and then under a hiring for another year at higher wages, is a continuance of the same service.

Rex v. *Underbarrow* (Doug. 309). Hallhead was hired for a year, from Whitsuntide, 1770, to Whitsuntide, 1771, to Burrow, for the yearly wages of 18*s*. She lived with him till the 12th of May, being Old May-day, 1771; her master then removing to a new farm in Strickland Roger, carried her with him, where she served seven days, which completed her year, and received her wages. Then she hired herself to the same master for another year, from Whitsuntide, 1771, to Whitsuntide, 1772, for the wages of 25*s*.; and she continued with him in Strickland Roger from Whitsuntide, 1771, till Candlemas, when by mutual consent she quitted her service, and received her wages up to that time. Lord *Mansfield*, C. J. "We are all very clear that this was a continuance of the same service with an increase of wages."

Dissimilar services may be connected.

Rex v. *Sutton* (1 East, 656). The pauper hired himself by the week to Mr. Hatch, of Sutton. Nothing was said about Sunday in the contract; but the pauper worked on that day occasionally when asked by his master, without receiving any additional wages, though he sometimes received some victuals. He received his wages every Saturday night or Sunday morning: he did not reside in his master's house, but boarded himself. At the end of nine months, on his master's family servant going away, the pauper was hired in his place for a year at 12*l*.

(*h*) Upon searching the records, it has appeared that *Rex* v. *Overton* was *after* the 8 & 9 Will. III. and the mistake arose from the error of the reporters as to the times of the hiring and service.

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per annum, and served eleven months under that hiring. Lord *Kenyon*. "It has now been too long settled to be recalled, that if there be a hiring for a year, and a service for a year, though but a small part of the service were performed under the yearly hiring, a settlement will be gained. But an attempt has been made to introduce a new head of settlement law, of which I have no knowledge, under a notion that only services *ejusdem generis*, as it has been said, can be joined. The term got into fashion some time ago. At that period Mr. J. *Foster* thought that settlements were too easily acquired by the construction which the court was inclined to put on the statute: but since then the leaning has been in favour of them; and it has been supposed that a person ought to gain a settlement in that parish where he has laboured for a certain time, as a reward for his labour: a strange idea, if examined; because somewhere or other he must at any rate be maintained, if he be in want of it. I know not how to state this as a question upon which any doubt can be made. The pauper was hired by the week; nothing was said about Sunday; it is very seldom that there is: why then is that day to be excluded? If a servant be hired for a year, nobody doubts but that Sundays are included; then why not included in a weekly hiring, if no exception be made? The sessions have found that there was a hiring by the week, which must mean the whole week. There is nothing stated to show it was otherwise intended. The pauper was paid sometimes on the Saturday, sometimes on the Sunday; and whenever the master ordered him to do any work on the Sunday, he did it: what is to be concluded from thence, but that it was his duty to do so? How do these facts show that he was not under the master's control on the Sundays as well as other days of the week? In *Rex* v. *Wrington* (p. 431) it appeared from the circumstances that Sundays were excluded. But it is said, that the services cannot be joined, because they were not *ejusdem generis*. I really know not what that means, nor where the line is to be drawn. Suppose a postilion were made coachman, would those be deemed services *ejusdem generis?* It is said, that he at first was an out-door servant, and then a family-servant; but I do not know what difference that made in the services. Upon the whole, I cannot do better than what the justices below have done; they have determined that there was a continuing service for a year, and a hiring for a year, and that he gained a settlement; and I think they are warranted by the authorities in that conclusion." *Le Blanc*, J. "I cannot see that the services were not the same."

Hiring by the *week* includes Sundays.

Service for a year, partly under a weekly and partly under a yearly hiring, gave a settlement.

Rex v. *Bagworth* (Cald. 179; 2 Bott, 378). S. Ward was removed from Bagworth to Ratby. Order quashed. Case:—Nine weeks before Old Michaelmas, 1780, the pauper was hired by W. Hunt, of Ratby, by the week, and served him till Old Michaelmas, when she was hired for a year from that time, and served till about a fortnight before the following Old Michaelmas, when being with child, she and her master parted by consent, and she received her wages up to that time. She was employed in the same manner during the time she served by the week, as under the hiring after Michaelmas. *Willes*, J. "The question raised upon the merits is perfectly clear; the pauper did not live in this family occasionally, or work merely as a day-labourer or charwoman, but constantly as a menial servant, and employed throughout in the same service; and a hiring for a year, with a year's service in the whole, and that of a similar nature throughout, though it is made up of several hirings (provided there is no discontinuance), gives a settlement." *Buller*, J. "Here is a continuance in the service for a year: and it has been long settled, that where the service extends throughout the year, you may couple any number of preceding hirings and services with a hiring for a year; the extent and duration of the several preceding services, 'where such services have been similar,' have never been adjudged to vary the law, but there must be one entire hiring for a year."

Rex v. *Wrington* (Burr. S. C. 280; 2 Bott, 270). Ann Stokes, the pauper, when thirteen years of age, went to Chew Magna, to her aunt, and soon afterwards went to Winford, and worked with N. Walker, cloth-worker, in the business of burling clothes, by a weekly hiring. She continued to work with Walker for a year and a half. On the last Saturday of the service the pauper covenanted to serve Walker for a year, at 1*l.* 10*s.* wages; entered immediately into the service, and continued therein eleven months. By the court: "The pauper did not acquire a settlement by this service. For though a subsequent service for less than a year, performed under a hiring for a year, may be coupled to a prior service, which was not performed under a hiring for a year, provided it be a continuance of the same service, yet the subsequent service cannot, in the present case, be coupled with the former, because the former hiring was not of the same kind with the latter: the former was as a day labourer, or weekly labourer at the most; not as a hired servant, who is part of the master's family.

Exception to the rule in the above cases (*i*).

Rex v. *Dawlish* (1 B. & Ald. 280). Service under a hiring void at first, the pauper being then an apprentice, may be connected with service under a second hiring, there being a whole year's service after the indenture had expired.

Service on a day intervening between the end of the first service and the commencement of the last, may be included. (*Rex* v. *Harbury*, 1 Bar. & Adol. 36.)

But the whole year's service must be under contracts creating the relation of master and servant. (*Rex* v. *St. Mary, Kedwelly*, 2 B. & C. 750; 4 D. & R. 309 (*k*).)

And a settlement can be gained by hiring and service only in that parish where the party has the character of a servant hired for a year. (*Rex* v. *Apethorpe*, 2 B. & C. 892; 4 D. & R. 487 (*l*).)

If a part of the year's service is abroad, still if the pauper serves forty days in a parish in this country he will gain a settlement. (*Rex* v. *Buckingham*, 3 Nev. & M. 72; 5 Bar. & Adol. 953.)

Service under a hiring from Michaelmas to Michaelmas if the master had no sale, and if he should have a sale the pauper to go: in a few months the master had a sale and the pauper left: was held a good contract for a year, and the service sufficient. (*Rex* v. *Farleigh Wallop*, 1 Bar. & Adol. 336.)

A service under a hiring for fifty-one weeks may be coupled with a service under a previous hiring for a year, so as to confer a settlement. (*Rex* v. *Fillongley*, 1 B. & Ald. 319.)

Service under a hiring for a year will connect with services under an agreement in the middle of the year to work by the piece. It is not necessary that all the service should be under a hiring for a year; a service under a hiring for less than a year may be coupled with service under a hiring for a year, and give a settlement. (*Rex* v. *Alton*, 2 Bott, 317.)

Services in successive years will not connect when the servant at the commencement of the second year was married. (*Rex* v. *St. Giles's, Reading*, Cald. 54; 2 Bott. 376.)

(b) *Of Lapse between Services.*

Rex v. *Caverswall* (Burr. S. C. 461; 2 Bott, 372). S. Brassington, the pauper, was hired for a year to E. Brassington, at Trentham, and served

Absence for fortnight disconnects service.

(*i*) The distinction between this and the two preceding cases seems to be, that in this the service was as an artisan, and the Sundays were excluded; see Lord *Kenyon's* judgment in *Rex* v. *Sutton* (p. 429); whereas in two former cases the paupers were menial or domestic servants, and there was no exemption from service on Sundays.

(*k*) See this case, post, "SETTLEMENT BY APPRENTICESHIP."

(*l*) In this case, *Rex* v. *Croscombe* (2 Stra. 1246; Burr. S. C. 256), is criticised, and the opinion of *Lee*, C. J., overruled.

him till within three weeks of the end of the year; when, on some disputes arising betwixt him and his master, he was with his own consent discharged from his service, and received all his wages, except what was deducted for the three weeks. As soon as he left his service he went to London, and was absent about a fortnight. Upon his return at Mrs. B.'s request (his master being then from home), he went again into the service; and within a week after the expiration of the first year his master hired him again for another year, and he served him in Trentham for about six months of that second year, and then left him. By the court: "Here was a discontinuance. The first contract was absolutely dissolved, and so continued for a fortnight or three weeks. Therefore this last service cannot be connected with the former part of the year, and consequently no settlement was gained at Trentham."

The day after the contract expired, the contract was renewed. The service on the intervening day connects the services. (*Rex* v. *Sulgrave*, 1 T. R. 778.)

An hour's interval between the termination of the first service and the beginning of the second, does not amount to a discontinuance, although the servant leave the place for that hour.

Rex v. *Fifehead Magdalen* (Burr. S. C. 116; 2 Bott, 371). W. Trim hired himself to a master at West Stower, from Midsummer to Lady-day, for 40*s.* At Lady-day he received his wages of 40*s.* and left his master's service, and then went to his father's house in West Stower; and in about an hour returned to his master, and agreed with him for a year, at 3*l.* 10*s.* a-year, and lived with his master half-a-year. When he went from his master's house, he had no clothes but what he wore, except a shirt, which he left at his master's house. *Lee*, C. J., said, "He remembered the resolution was first come into in *Parker's*, C. J., time, that a hiring for a year, and a service for a year, were sufficient to gain a settlement, though all the service should not be under the same contract; and that Sir *Thomas Powys* (who was just come into the court) very much boggled at it: but now," he added, "the rule is established, that if there be a hiring for a year, and a service for a year, it will gain a settlement, though the whole service is not under the first hiring. And in this case, the absence for an hour, which was only to consult his father about a new contract, ought not to be looked upon as a discontinuance. Upon every new contract there is a sort of discontinuance. The last day of the former contract was the first day of the second service. And this was only an hour's absence within the space of that same day. Therefore he remained a servant during the whole time of the completion of his year."

So whatever the interval, provided it be *part* only of a day. (*Rex* v. *Ellisfield*, Cald. 4; 2 Bott, 375.)

Same point.

Rex v. *Grendon Underwood* (2 Bott, 380; Cald. 359). On Friday before Michaelmas, the pauper hired himself for a year from that Michaelmas, to J. H. to be his carter; he had 11*s.* earnest, was to have 6*l.* wages, and to go into his master's service the Wednesday after Michaelmas-day. On that day he came to his master's, who told him he had hired another servant in the place he had hired him to do; but that he wanted a man to milk and go to plough, and if he liked that work he might stay; the pauper refused; his master told him he might keep his earnest and go about his business; the pauper said, "Am I at liberty to hire myself to any other person?" his master answered in the affirmative. The pauper then went away. In the same afternoon the master met him again, and hired him to serve the place of milkman and go to plough; gave him 2*s.* 6*d.* earnest, and agreed to give him 6*l.* 6*s.* wages, to serve him from that time till Michaelmas. The pauper immediately entered into the service, and continued till February; his master then hired him to serve the place of carter from that time to Michaelmas, gave him earnest, and agreed to give him 10*s.* 6*d.* additional wages; and the pauper continued till Michaelmas. Lord *Mansfield*. "In this case it is expressly stated, that on the Friday before Michaelmas-day the pauper was hired for a year from Michaelmas. It is then expressly stated, that they stood in the relation of master and servant from Michaelmas to Michaelmas. If so, it would be repugnant to say that this was not a hiring for a year. The case itself contradicts

There may be a hiring for a year without any *actual* service under it.

the idea that it was a hiring from the Wednesday after Michaelmas. Then the absence was matter of indulgence on the part of the master; and whether revocable or not, is so common in these transactions, and so reasonable upon the commencement of a service, that it never has been considered as impeaching or affecting the validity of a contract: but under all these circumstances I consider it as an indulgence which the master might revoke; and that it was a hiring and service for a year without any interruption on account of the short disagreement." *Buller*, J., said, "that in this as in all other contracts, all the words must have effect given them if possible. The case expressly stated a hiring for a year, and if the conduct of the servant in not coming into his service till the Wednesday were considered as an act of right, founded upon an exception in the original contract, the contract would be overturned: whereas by construing it as a licence or dispensation, effect is given to the whole. If then after the hiring for a year, which is expressly stated in the case, the leave of absence was given, absence by leave is the same thing as service."

(c) *Of Dispensation.*

The servant must abide in the same service, if not actually, at least constructively. A constructive service takes place where *the relation of master and servant continues*, but the master *foregoes* the benefit of actual service. This is called a *dispensation*. If, however, the relation ceases, the contract is dissolved, and the service incomplete. It is difficult, if not impossible, to reconcile all the cases on these two subjects. It may be well, therefore, to remember that in *Rex* v. *King's Pyon* (post), Lord *Ellenborough* said, "I should not wish to carry the idea of dispensation further than it has been already carried; which in many of the cases seems to me to be stretched as far as ingenuity could go, upon the false idea that a servant has a right to acquire, in gaining a settlement;" and in *Rex* v. *Sudbrooke* (post), *Le Blanc*, J., lamented that the words of the statute had been departed from.

The doctrine of *dispensation* not to be extended.

Rex v. *Islip* (1 Str. 423). H. W. was hired for a year by S. J., of Islip; during the year he was sick for six days, and incapable of doing any service; afterwards he went without leave of his master to see his mother, and stayed away four days; three days before his year was up, he asked leave of his master to go to a statute fair to be hired, which the master refused, but the servant persisting he must go, the master replied, I am resolved you shall gain no settlement in this parish, and therefore if you go it shall be for good. No, says the other, I will serve out the year, and thereupon he went and never returned during the last three days; and when he came to be paid, his master deducted for the time he was sick, and when he went to see his mother, which deductions the servant agreed to; and the master at the same time abated 6*d.* for the last three days, which the servant refused to allow, but the master refusing to pay it, the servant took the rest of the wages, and the question was, whether these interruptions defeated the settlement. The sessions adjudged it a settlement. *Pratt*, C. J. "There is no doubt that there was a complete hiring for a year. The only question is, whether there has been a service in pursuance of it. Three objections have been made to it—1. That the servant being sick for six days, and incapable of serving, can never gain a settlement, which is to be acquired only by a service for a year; but here, say they, he did not serve for six days. This was lightly touched on at the bar, and surely there is little in it. A servant that lies thus under the visitation of God, which befalls him not through *his own default*, is and must be taken to be all the while in the service of his master; and if this exception were to be allowed, it might prevent all the settlements in the kingdom. It is not to be presumed that the servant is less able to provide for himself at the year's end, because he has a slight indisposition during the year; and that presumption of an ability is the foundation of a settlement. 2. It was ob-

Incapacity to serve, arising from sickness, does not interrupt the service.

Nor absence without leave, the master receiving the servant again, though the wages are deducted for the absence.

Nor absence without leave to procure a situation.

jected, that going to see his mother without leave, was a desertion of the service, and the time he stayed away takes so much away from the complete service of the year. As to that we are all of opinion, that it will not prevent the settlement; it never was the intent of the statute, that if a servant happened to stay out a night or two it should avoid the settlement; but here the master taking him again, has dispensed with his non-attendance: so there is nothing in that objection. 3. The third, and, indeed, the most considerable objection, was, that the going away three days before the year was up, and never returning again during the year, is a forfeiture of the settlement. Now, though that would *primâ facie* be a good objection, yet, as this case is circumstanced, we are of opinion that it cannot prevail. Consider how the case stands, as regards the servant. He knew his master designed to part with him at the year's end, and therefore it was high time for him to look out for another place. To this end he applies in a very proper manner for leave to go to the statute fair, which is a place where in all likelihood he might provide himself, and not be obliged to lie idle all the year, it being usual for the people in the county to go thither to hire their servants; the master, like an unreasonable man, refuses so reasonable a request, coupling it with a declaration that a servant should gain no settlement, which is a badge of *fraud* on the side of the master, which ought not to prevail. As, therefore, the request was reasonable, and upon a just ground on the side of the servant, and the refusal was unreasonable on the side of the master, we think the servant's going after without leave is no forfeiture of the service, especially if we take in the declaration of the servant, that he would serve out the year, and his refusal to allow 6*d.* for the three days, show that the contract was not dissolved before the end of the year, as was strongly insisted on at the bar. The order of sessions must be confirmed."

A pauper asked leave to go to the statute fair. This was refused. The pauper went and returned, and offered to continue in the service, but the master refused; full wages were paid on a summons; he made no contract for the time remaining: held, a dispensation.

Rex v. *Polesworth* (2 Bar. & Adol. 483). Two justices removed J. Barwell from Kingsbury to Polesworth. Order confirmed. Case:—The pauper was hired by Mr. Hay, of Polesworth, at Polesworth statutes, a fortnight before Michaelmas, 1799, as waggoner's lad, at 3*l.* 10*s.* wages for a year, commencing from the day after Fazely fair, the Tuesday after Michaelmas-day. The pauper remained in the service till a fortnight before Michaelmas in the following year, when he went to Middleton statutes, having previously asked his master's leave and been refused. The following day the pauper asked his master what work he was to do; the master told him he might go where he had been the day before, and that he would not employ him any more. The pauper asked the master to pay his wages, and said if he did he would go. The master refused, and said he would obtain a summons, which he did; but neither of them attended the magistrate on that summons. The pauper left his master's house on the day the summons was served; two days afterwards, the pauper called at his master's house; and the same day they both went to Polesworth statutes, when the pauper hired himself to a new master from the day after the next Fazely fair. On the day after Polesworth statutes, the pauper summoned his master before the magistrate. When before the magistrate, the pauper, in answer to a question put to him by the magistrate, said he was willing to serve his time out; but the master said he would not take him again. The magistrate then directed the master to pay the pauper his whole wages: which the pauper took and was satisfied. The day after Fazely fair he entered upon his new master's service. *Abbott*, C. J. "It seems to me, that the sessions were quite right in refusing to consider this as a case in which the contract between the parties was dissolved. There can be no dissolution without a mutual consent of the parties, or some justifiable cause of complaint on the part of the master; but here he quarrelled with the pauper without sufficient reason, for the pauper had done no more than, according to *Rex* v. *Islip* (p. 433), he had a right to do. There was, therefore, no justifiable ground for dismissal. Then is there any

mutual consent? It appears that the parties went before a magistrate, and the pauper then stated that he was willing to continue in the service: the master, however, peremptorily refused, upon which the pauper, after receiving his full wages, said that he was satisfied; but he neither contracted nor offered to contract any other service. I think there is nothing in this case to show that if on the following day the master had ordered the pauper to return into his service, he would not have been bound so to do." *Bayley*, J., said, "The circumstance of the servant not having offered to contract with another master, naturally distinguished this case from *Rex* v. *Pyon* and *Rex* v. *Leigh*. As to the servant saying he was satisfied, that is easily explained; for his whole wages being paid, he was satisfied that the remainder of his service should be dispensed with." *Holroyd*, J., relied on the absence of any contract inconsistent with his return to the master. Order of sessions confirmed.

If a servant does not come into the service till three days after his contract, and is absent at different times without consent, but his master receives him again, it is a dispensation.

Rex v. *Hanbury* (Burr. S. C. 322; 2 Bott, 419). The pauper was hired for a year at Michaelmas, but did not come to his service till three days after Michaelmas, and served till the day after Michaelmas in the next year. He was absent about two or three days at a time, in the whole a fortnight, without consent, but was always received again. At going away, he agreed to make a deduction of 6*s*. 6*d*. of his wages for the time he was absent. The court said he gained a settlement by this service. The court has not been so strict in determining upon the service, as upon the hiring. It has often been held, that though a servant has been absent for a time, yet his master taking him again, purges his absence. And there is no difference between an absence in *the beginning* and in the middle of the service; for he is a servant from the time of hiring, (*Rex* v. *Grendon Underwood*, p. 432.)

If a servant run away from his master and continue absent working with another person thirteen weeks, and then his master apprehend him, and give him leave to come back, deducting a sum for the time of absence, it is a dispensation, not a new contract. (*Rex* v. *East Shefford*, 4 T. R. 804.)

If a servant, at her master's instance, go from his family on account of illness, to the hospital, and her mistress give her the remainder of her wages, it is a dispensation, although she never return. (*Rex* v. *Christchurch*, Burr. S. C. 494; 2 Bott, 436.)

In *Rex* v. *Sharrington* (2 Bott, 449; 4 Doug. 11), where a pauper in liquor met with an accident, which disabled him for twenty-nine weeks, on his recovery he tendered his services to his master, who refused to receive him back or employ him, it was held a dispensation (*m*).

Rex v. *Maddington* (Burr. S. C. 675; 2 Bott, 438). Absence at the end of the service on account of illness, is no dissolution, although the master deduct a sum from the wages on that account.

The master removed to another town, before the servant's year ended, and paid her the whole year's wages, and something over, and the servant, five days before the end of the year, entered another service: held, a dispensation.

Rex v. *St. Bartholomew, Cornhill* (Cald. 48; 2 Bott, 445). The pauper U. Owen was hired for a year on the 11th of June, 1771: in April, 1772, her master told all his servants that he was going to live at Manchester, but did not know the time; and that they might look out for services, or stay with him until he went, as they chose; the pauper continued with her master in St. B. till the 4th of June, when he paid her the whole year's wages, and half a guinea over, and that same day he left London. His going that day was quite a casual matter, and if he had remained in London he would have continued the pauper in his service. The pauper went into a new service two days after her master left London. Lord *Mansfield*. "The only question is, whether the servant continued

(*m*) In *Rex* v. *Coningsby* (p. 439), *Parke*, J., recognised the doctrine of dispensation where the absence was occasioned by the misconduct of the servant; and *Taunton*, J., said, "he yielded to authority rather than reason."

bonâ fide in her service during the whole year? To be sure there is a distinction between exceptions from the contract originally, or subsequent dissolution and dispensation of the service; but if the case be of the latter description and *bonâ fide*, it can make no difference when the servant is engaged or where; or whether the service be in the same or another occupation; she quitted her service at the desire of her master, and received half a guinea beyond her wages as an equivalent no doubt for her board. It was accidental and a favour to her master. *Rex* v. *Richmond* (p. 438) is full as strong as this, for there a new servant came into the very place. Fraud vitiates everything; but the justice as well as reason of the thing are here with the settlement. Suppose she had come from a distant county, and had no other settlement, shall she lose her only one which she deserves so well?"

Five days before the end of the year the master became bankrupt, and the mistress discharged the servant, paying the whole year's wages: held, a dispensation.

Rex v. *St. Andrew's, Holborn* (2 T. R. 627). M. Robinson was hired for a year, and was continued in her service until within four or five days of the end of the year; when her master becoming bankrupt, and the messengers taking possession of the house, her mistress *discharged* her, paying her the whole year's wages. This case was not argued, the court being clearly of opinion that the bankruptcy of the master did not dissolve the contract of hiring without the servant's consent; and that the pauper gained a settlement.

If a mistress on account of some difference discharge a servant, and pay her her full wages, which the servant accepts, it is a dispensation.

Rex v. *St. Philip, Birmingham* (2 T. R. 624). The pauper was hired for a year to E. Poole, in Powick, where she served until within eight days of the end of the term, when on account of some difference between them she gave her mistress warning that she would leave her service at the end of the year. The mistress, on having hired another servant, by reason of some impatient behaviour of the pauper, discharged her and paid her the full wages, which she accepted and quitted the service, and left the parish eight days before the year ended; but she said she would have served the year if her mistress would have let her. *Ashhurst*, J. "This was not an absolute dissolution of the contract, though it be true that an agreement to put an end to the service will defeat the settlement, yet if it be not voluntary between the parties, as if a master fraudulently turn her away with a view to prevent a settlement, or wrongfully discharge her, this will not defeat the settlement. Now this was I think a mere wrongful act of the mistress, which was *submitted* to but not *agreed* to by the servant. Something should have been stated to show that it was voluntary on her part; but it may be inferred she did not go by her own consent, but rather in consequence of the wrongful dismission of the mistress, for she was desirous of serving the whole year." *Buller*, J., thought this "one of the clearest cases of dispensation. The warning given by the servant, and the payment of the whole year's wages by the mistress, showed a consciousness in each that they could not dissolve the contract before the end of the year." *Grose*, J. "It is clear if the servant be turned away by the wrongful act of the master, it will not prevent the settlement. Now here it is either the wrongful act of the mistress, or it is a dispensation from service. *Rex* v. *Gresham* (post, p. 443) is distinguishable; this is more like *Rex* v. *Richmond* (post, p. 438)."

Where the master died three weeks after the hiring, and the pauper continued with the widow and sons to the end of the year, this is an abiding in the same service. One of the sons, on a frivolous pretence, turned her out of doors three weeks before the end of the year, she offering to stay to the end of the year, but carrying away her clothes the next day, and taking what the son insisted was her full wages for the year, according to the agreement, though she demanded a larger sum. The tender of service was held equivalent to performance. (*Rex* v. *Hardhorn-with-Newton*, 12 East, 51.)

An information was laid against the keeper of a gaming-house. He quitted it, and told his servants he had no longer occasion for their services, and paid the full year's wages; this is a dispensation. (*Rex* v. *St. Mary, Lambeth*, 8 T. R. 236.)

Eastland v. *Westhorsley* (1 Stra. 526; S. C. Fortes. 216; 2 Bott, 426). A servant was hired for a year: the day before the year expired, the master told him, that to prevent his gaining a settlement in that parish, he should go away immediately, which the servant refused to do, insisting to serve out the year, whereupon the master turned him out of doors. The court held this to be such a fraud in the master as should not prevent the settlement of the servant.

Where a master turns away his servant to prevent his gaining a settlement, it is a fraud, and will not defeat the settlement.

Rex v. *Frome Selwood* (Burr. S. C. 565; 2 Bott, 437). R. Stent, the husband of the pauper, was hired for a year at King's Weston, and served till within ten days of the end of it, when Stent declaring to his master that he wished not to be settled in King's Weston, asked his leave to go and visit his relations, to which the master consented. After the year was expired Stent returned to his master, and then hired himself as a day-labourer, and as such continued with him three months. On making up their account Stent allowed out of his daily wages for the days he had been absent in the preceding year. The court held the settlement to be in King's Weston, regarding the consent of the master as fraudulent, and a mere evasion of the settlement.

A quitting the service because the pauper wished to be settled elsewhere, is fraudulent, and a dispensation only.

Rex v. *Sulgrave* (1 T. R. 778). The pauper was hired for a year, and afterwards told by the master "he shall go away a fortnight at Michaelmas because of his settlement," and at the year's end he was paid a year's wages. This is a dispensation, and not an exception.

Rex v. *Market Bosworth* (2 B. & C. 757; 4 D. & R. 306). A mistress hired a servant from Shrove Tuesday until Old Michaelmas-day following, and three weeks before the latter day asked her to "stay again," to which the servant replied, she had no objection, if they could agree about wages. They agreed, and one shilling earnest was paid, but nothing said as to the time the service was to continue. A fortnight before Old Michaelmas the mistress said, "I have hired you," but mentioned no time: "remember you are hired for fifty-one weeks;" to which the servant replied, "Very well." The servant continued for a year under this agreement. She had three days' holidays at Christmas, and four other days at different periods, and at the end of the year received her wages: held, to be a yearly hiring and service to confer a settlement.

Rex v. *Potter Heigham* (Burr. S. C. 690; 2 Bott, 442). A servant, hired for a year, continued till the day before the end of his year, when he desired his master to *discharge* him; telling his master that as he had hired himself for the next year to a person in a distant place, he wished to pass that day with his friends; and requested to have that time to himself to spend with them, to which the master consented, and he was accordingly discharged. He then received the whole of his wages, except sixpence, which he allowed to his master for that day. The court held this not to be a dissolution of the contract, but an absence by leave of the master; and adjudged that the servant gained a settlement.

If a servant on the last day of his year desire his master to *discharge* him that he may go and see his friends, and his master thereupon do so, deducting sixpence for that day, it is a dispensation.

Rex v. *Bray* (Burr. S. C. 682; 2 Bott, 440). On Thursday before Michaelmas-day, 1767 (a Saturday), J. Hunt was hired for a year to J. Lee, of Bray, farmer, as a carter, to go into his service on the Monday following, until Michaelmas, 1768, for six guineas. At the time of the agreement Lee desired him to go into his service before Monday, but Hunt said it would not suit him as he was then in service; and Lee replied, that if he would come into his service on Monday morning, he would shift all that time. He went into his service on the Monday. At the time of the agreement the pauper was in the service of J. Lewis, of South Stock, under a contract which expired on Michaelmas-day, 1767, which service he left on the night of the Michaelmas-day, 1767. He continued in the service of John Lee till the day before Michaelmas-day, 1768, when he desired leave of his master to go to see his relations before he went to another service; his master deducted one shilling from his wages for that day, and paid him the residue; he then went away and

Dispensation of the first day on change of places.

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returned no more. On the pauper's going away Lee told him that if he quitted the service before Michaelmas-day there might be a dispute about his settlement, and desired him to come back. Lord *Mansfield.* "This is a hiring for a year, with a dispensation of the first day. The pauper thought he had his master's leave the last day, and had allowed a shilling for it, which is more than one day's wages. Both master and servant were clear that at the end of the year there was only an absence of one day, and at the beginning of the year the pauper had his master's leave for being absent the first day. Both master and servant meant it as a settlement."

Other instances of dispensation.

Leave to go thirteen days before the year expires, and payment of full wages, is a dispensation, the servant wishing to quit, and another servant hired. (*Rex* v. *Richmond*, Burr. S. C. 704; 2 Bott, 443.)

If the servant absent himself, with leave, for the last five weeks of his service, and pay his mistress the sum earned by him during that time, it is a dispensation. (*Rex* v. *Nether Hayford* (Burr. S. C. 479; 2 Bott, 435.)

Service with others, by first master's consent, is equivalent to service with the master. (*Rex* v. *Beccles*, 2 Stra. 1207; Burr. S. C. 230.)

So where a servant procures another to take his place for a time, paying him himself, and receiving from his master his whole year's wages. (*Rex* v. *Goodnestone*, Burr. S. C. 251; 2 Stra. 1232.)

A yearly servant, on complaint of master, was committed, and after nine days' confinement was released. He returned, and served out the year: held, the service continued. (*Rex* v. *Barton-upon-Irwell*, 2 M. & Sel. 329.)

So also where the master made a complaint against the servant before a justice, who (under the 29 Geo. II. c. 19) committed him for one month for misconduct, and his year expired while he was in prison. (*R.* v. *Hallow*, 2 B. & C. 739; 4 D. & R. 299.) *Abbott*, C. J. "I am of opinion that there was a complete service for a year, notwithstanding the commitment under 20 Geo. II. c. 19; but I wish to be understood as speaking of a commitment under that statute only. The second section is for the punishment of servants in the character of servants. It gives the magistrate power to put an end to the service, if he thinks fit: when that power is exercised it puts an end to all questions of settlement. But the statute gives another power also, viz. that of imprisoning the offending party for any period not exceeding one month. If an imprisonment for a month, under that provision, defeats the settlement, imprisonment for a week, or even for a day, must have the same effect. There is nothing to show that the legislature contemplated or intended to produce such an effect. I therefore think that a servant committed under the statute in question, must be considered as abiding in the master's service, within the 8 & 9 Will. III. c. 30." *Bayley*, J. "I am of opinion that this case falls within the distinction taken by *Le Blanc*, J., in *Rex* v. *Barton-upon-Irwell*. He there says, 'It was under the authority of the contract that his master acted when he punished him for misconduct, therefore it was not a dissolution.' So here the pauper was imprisoned at the instance of the master. The latter might have pressed for a dissolution of the contract, but, instead of that, there was an understanding between him and the justice, that the pauper should either beg his master's pardon, or remain the rest of the year in prison. It has been conceded that that does not operate as a dissolution, and I think it may be put either as a constructive service or a dispensation. In the case cited, it was held that the servant gained a settlement; and I cannot see why the imprisonment should have a different effect at the end from that which it had in the middle of the year. It has been urged in argument, that the master, by taking the servant back, is to be considered as dispensing with his service during his absence. But the contract not being dissolved, if the servant were released from prison before the end of the year, the master would be under the necessity of

receiving him." *Holroyd*, J. "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 occurrence 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." *Littledale*, J. "In this case neither the master nor the justice having discharged the servant, the relation of master and servant continued. Then the servant, when in prison, did not absent himself voluntarily from the master's service. The imprisonment was at the instance of the master; the servant might still be ready and willing to work for him. I am therefore of opinion, that it must be considered as a constructive service."

Where a female servant, who was fined for a malicious trespass, was advised by her mistress not to pay the fine but go to prison, this is a dispensation. (*Rex* v. *Coningsby*, 3 N. & M. 199; 4 B. & Ad. 156.)

(d) *Of Change of Master in the same Service.*

It is not essential that the whole year's service should be under the *same* master or mistress, though there must be an identity in the service. The removal, therefore, of the master with whom the contract was made, and the service commenced, either by death or by the transfer of the farm or establishment to another person, will not prevent the servant from gaining a settlement, by continuing the service under the new master to the end of the year. This rule of settlement law has been considered so little disputable, that very few cases upon it have been brought before the superior court. (*Rex* v. *Hardhorn-with-Newton*, p. 436.)

If the master let his farm, and the servant continue with the lessee for the remainder of his year, it is a continuance of the same service. (*Rex* v. *Ivinghoe*, 1 Stra. 90; 2 Bott, 414.)

So where the servant continues with an executor for the remainder of the year. (*Rex* v. *Ladock*, Burr. S. C. 179; 2 Bott, 397.)

(e) *Of Dissolution.*

If the service for the year has not been completed before the contract be *dissolved*, no settlement will be gained, and a *dissolution* of the contract may be effected by the consent of the parties or by operation of law.

Where a servant, with his master's consent, left the service a few days before the expiration of the year, and was paid the whole year's wages, he gained no settlement.

Rex v. *Castlechurch* (Burr. S. C. 68; 2 Stra. 1022 (*n*); 2 Bott, 430). The pauper was hired for a year, and served from the 7th January to the 26th of December following, when he went away with his master's consent, and took his clothes with him, and was paid the whole year's wages. Lord *Hardwicke*. "I should think this is not a good settlement. The legislature has expressly determined the time of service: they require that it shall continue for *one whole year*. In this case the contract was determined, and the pauper ceased to be a servant to the master. If so, he could not be said to continue in the service during the twelve days, and consequently it was not a service for *a whole year*." The other judges concurred.

(*n*) By the report in *Strange*, it appears that the servant went away without leave, stayed till the year was up, when he returned for his clothes, and was paid his whole wages.

The *contract* may continue, yet the *service* be discontinued.

Pawlet v. *Burnham* (Fol. 187; 1 Sess. Ca. 71; 2 Bott, 424). The pauper covenanted with R. A. to serve him for a year, but three weeks before the expiration of the year departed from the service with his master's consent, and abated 6*s.* out of his wages for the remainder of the year. It was contended that as the case stated the pauper to be a covenant-servant, which must be presumed to be by deed, he could not be discharged by parol consent, and therefore he continued a hired servant during the year. The court: "Here is no fraud expressed or implied. It is not within the words of the act, nor the meaning. Can a man compel his servant to gain a settlement *nolens volens?* As to the covenant being by deed, and so the service continuing, perhaps he might bring an action on the covenant: and as to that point the service continued, but not as to gaining a settlement, where the statute saith he must serve for a year, which this man hath not served."

Where a servant on being paid his wages for the time he had served, left the service, but afterwards returned and served the remainder of the year without further agreement, it was held to be a dissolution.

Rex v. *Ross* (Burr. S. C. 688; 2 Bott, 441). T. Chest hired himself for a year to E. Miles, and served him in Langarren only three days. A difference arising between them about the business the pauper was employed in, Miles bid the pauper go about his business. On which the pauper immediately ran away and quitted his service, and hired himself to J. Whitby for a year, and served Whitby for six months in Whitchurch. Miles then insisted on Whitby's not keeping the pauper in his service. Whitby paid the pauper his wages to that time, and the pauper quitted that service, and went one or two voyages up the river Wye, as labourer to a barge-master, for a fortnight. Then at Whitby's request, and with Miles's consent, he returned into Whitby's service without coming to any new agreement, or any mention of wages, and continued in Whitby's service in Whitchurch seven months, being a month over the end of the year for which he was hired, in order to make out his lost time, and then received his wages. It was argued that the fortnight's absence was purged by the master's receiving him again. But the court said, "Here is an absolute dissolution of the contract, both by master and servant, at the end of six months. Whereas the statute requires a continuance in the same service for a whole year. The new service cannot be connected with the old hiring."

Where before the end of the year the mistress asked the servant whether she chose to go away on a certain day (within the year), assigning as a reason that she had hired a new servant, who wished to come to her then, and the servant said it was immaterial to her, and agreed to go, which she did; the court thought it strong evidence that the contract was dissolved. (*Rex* v. *St. Peter, Mancroft*, 8 T. R. 474.)

If a servant is prevented by illness from entering upon his service at the time agreed, and upon going to his place, his master refuse to receive him, and then he continue there, agreeing to take whatever he should be allowed, the service only commences at the second agreement. (*Rex* v. *Wintersett*, Cald. 298; 2 Bott, 379.)

The servant being taken ill, sent for his clothes and money, which his master sent, deducting for the absence during illness: held, a dissolution. (*Rex* v. *Whittlebury*, 6 T. R. 464.)

A servant is taken ill, and receives his whole year's wages, and voluntarily leaves the service to go to the hospital, and never returns, this is a dissolution.

Rex v. *Sudbrooke* (4 East, 356). The pauper hired himself for a year, and after eight months, being too ill of a fever to do his work, his master paid him his whole year's wages, when *he left his master's service* and went to the hospital, and never returned into the service (*o*). Lord *Ellenborough*, C. J. "The doctrine of dispensation has only been allowed where both parties contemplated the continuance of the relation of master and servant. But here the servant being ill and unable to do his work, voluntarily *left his master's service* before the end of the

(*o*) It was assumed as a fact, that the pauper continued ill during the remainder of the year. See 4 East, 356, *note*.

year, when his master paid him his whole year's wages; we must therefore take it, not only to be a ceasing to *abide*, in the words of the act, but a relinquishment of the service altogether. After that, neither party could maintain any action against the other for the affirmance of the contract or continuance of the service. Then if neither had any remedy against the other upon the contract, or any compulsory means of enforcing its execution, it must be dissolved in point of law. In *Rex* v. *Christchurch* (p. 435), at the time of the servant's departure, both parties contemplated the continuance of the service if the servant recovered; for she was sent to Mr. L. at her master's *desire*, and with a *request* from him to take her in, and if he refused she was to return to her master. I do not overlook the circumstances pressed upon us, that there was an advance of the *whole year's* wages before the end of the year; but the same circumstance occurred in *Rex* v. *Godalmin* (2 Const. 497, and *Rex* v. *Castlechurch*, p. 439), and yet no settlements were there holden to have been gained by the servants who quitted their master's service before the end of the year by mutual agreement." *Lawrence*, J., agreed that the question to be considered was, whether the master did or did not retain his control over his servant during the whole year? It is stated the servant left his service, by which we are not merely to understand that he left the house, for that would not be a leaving of the *service*, unless *the contract were dissolved*. *Le Blanc*, J., said, "That however we may lament that the words of the statute have been departed from, yet as an extended construction of it has been made in some cases, if this case came within the words and precise determination of those authorities, we must have abided by them; but unless it could be shown to fall within some precise determination, the court will not extend the departure further. I do not found my opinion upon the mere circumstance of the servant's leaving his master's house to go to the hospital, but that I think that the parties came to a determination to put an end to the contract. The servant's illness cannot enable the master to determine the contract; but if the servant should choose, on account of illness, to go away, illness cannot prevent him from coming to an agreement with his master to put an end to the contract. Did they agree here? The servant received his whole year's wages, went away before the end of the year, went to the hospital, and never returned to his master again. Are we not to conclude that this was done by mutual consent? *Rex* v. *Castlechurch* shows the payment of the *whole* year's wages makes no difference if the parties agreed to put an end to the contract before the end of the year. And that though illness would not enable *one* of the parties to put an end to the contract, it might still induce both to come to such an agreement."

Rex v. *Rushall* (7 East, 471). Terms had been mentioned, but no agreement made till a week after Old Michaelmas, when the servant entered upon the place. She continued till Old Michaelmas-day of the following year, and then left by mutual agreement, having previously given a month's warning. It was mentioned between them that she had not completed her year by one week, but she received the whole year's wages: held, a dissolution. Lord *Ellenborough*, C. J., in that case said, "The rule, which the court has laid down as the test, whether the circumstances attending the departure of a servant before the end of a year amount to a dissolution of the contract, or only to a dispensation of the service, is '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.' If, after this, any person had harboured the servant when the mistress desired her services, could she have maintained an action for it? Certainly not; and that is a fair test that the relation of master and servant had ceased to exist."

Rule for deciding the fact of dissolution.

Rex v. *Bottesford* (4 B. & C. 84; 6 D. & R. 99). The pauper was hired at four pounds wages, but the duration of the service was not

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mentioned; when he went into the service afterwards, the master told him he had forgot to mention, that it was not the custom to hire for more than fifty-one weeks, and that he must therefore hire him again for that time, to which the pauper assented, and received fresh earnest. He remained in the service the fifty-one weeks, and received the four pounds: the sessions thought this a dissolution of the original contract, and the court adopted their finding.

Instances of dissolution.

If the master, at the servant's request, give him leave to go to another service, before the end of the year, though he pay him the full wages, it is nevertheless a dissolution. (*Rex* v. *Thistleton*, 6 T. R. 185.) Lord *Kenyon*. "The distinction between the different cases upon this subject seems to be this; if the pauper be absent from the service with the concurrence, remaining however subject to the control, of the master, he may acquire a settlement, because this only amounts to a dispensation with his service; but if the master has once parted with his control over the servant, there no settlement is gained; and the receiving of the whole year's wages does not make any difference. In this case the master had given up all control over the servant; he himself was instrumental in enabling the servant to make another contract with another master; and from what passed between those 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 cases in which it has been determined that a settlement was gained, notwithstanding the servant was not in actual service during the whole year, proceeded on artificial reasoning, on a supposition that the relation of master and servant continued throughout the year. But that idea is inconsistent with what was done in this case; for if that relation had subsisted here, the master might have insisted on the pauper's returning into his service after the wages were paid: but he agreed not to insist on that when he parted with the servant. It is miscalling this a dispensation with the service; for upon the agreement to part, the pauper's liability to serve the first master ceased." *Grose*, J. "If we were to say that the service for the latter part of the year was service performed under the first master, we should determine that he was serving two masters at the same time, which would be contrary to the statute."

During the service under a hiring for a year, a second agreement for another year, to commence immediately, at different wages, and for a different sort of service, is a dissolution, and not a mere variation of the first contract. (*Kenyon*, C. J., *dissentiente; Rex* v. *Great Chilton*, 5 T. R. 672.)

Dissolution of contract is not necessarily to be inferred from change of wages. (*Rex* v. *Overnorton*, 15 East, 347.)

Where the master *gave up his business*, discharged the servant, paying him his full wages, and the servant left the house, and worked with another person, during the rest of the year, the contract is dissolved. (*Rex* v. *Bray*, 3 M. & S. 20). Lord *Ellenborough*. "What is to be the limit to this doctrine of dispensation if it is to be carried thus far? It should seem as if the master might, at the end of a day, or a fraction of a day, if he has no longer occasion for his servant, send him away, and thereby dispense with the whole year's service. But is not that absurd? Where, indeed, the relation of master and servant continues, but the master foregoes the benefit of actual service for part of the time, that has been held a dispensation; but here is everything which can be predicated of a dissolution of the contract, for the master paid off and discharged the pauper with the rest of his servants, and the pauper left the house, and engaged himself with another master during the remainder of the year. I cannot but say that I am sorry for some of the cases on this subject, which have created such an artificial system: I think that not only the decision of the sessions in this case is unreasonable, but

that several of the cases on which it professes to stand are unreasonable also." *Le Blanc*, J. "The pauper, after quitting the first service, worked under a distinct engagement; and though not such an engagement as would gain him a settlement, still it was inconsistent with the continuance of his former contract." *Bayley*, J. "The moment the pauper quitted the service he was to be at full liberty to contract a new relation, and he did so." *Dampier*, J. "The master pays him his wages, and tells him to go whither he liked, and the pauper accepts his wages, and contracts a new relation during the time."

Where a servant, eleven weeks before the end of his year, in order to procure a discharge from his master, engages a man to supply his place, and hires himself to another for the remainder of the year, the contract is dissolved. (*Rex* v. *Mildenhall*, 12 East, 482.)

If a master insists upon turning his servant away, and lay down his wages then due, which the servant takes up and then goes away: it is a dissolution, and the contract cannot be set up again by the servant afterwards returning at the *request* of his master. (*Rex* v. *Gresham*, 1 T. R. 101.) Lord *Mansfield*. "The absence of a servant from his master's service is an equivocal act, and therefore may be explained by other circumstances; but if it appears that the contract has been once dissolved, it cannot be set up by a new agreement."

Where the servant, nine days before the year was out, went on a Sunday morning to get another place when his year should be up, and does not return for two days, when the master paid him his wages to that time, and would not let him stay out the year, it was held to be a dissolution. (*Rex* v. *Clayhydon*, 4 T. R. 100; *Rex* v. *Seagrave*, Cald. 247; 2 Bott, 448. Same point.)

In *Rex* v. *Roxby* (5 M. & R. 40; 10 B. & C. 51), it was held, that settling wages the day before the year ended, was evidence of a dissolution, although the pauper by his master's permission slept that night at his house.

A servant, who quits the service for ill-treatment, and refuses to return, though his master required it, dissolves the contract, although the whole wages are paid. (*Rex* v. *Grantham*, 3 T. R. 754.) Lord *Kenyon*. "The question here is, whether we can say that there was a constructive service for the whole year? and whether the relation of master and servant subsisted during that time? If the absence be for a reasonable cause, it is immaterial whether that absence be at the beginning, the middle, or at the end of the year. And it has been argued that this was an absence for a reasonable cause, on account of the ill-treatment of the master; but here there was no *animus revertendi*, which distinguishes the present from the class of cases alluded to. When the servant was ill-used, though he could not have left the service without his master's consent, or without applying to a magistrate to be discharged on that account, yet the master did consent to the servant's leaving him, and both parties agreed to put an end to the contract. If the master had afterwards complained of the pauper's not serving him for those three days, the latter might have answered him by saying that the contract was dissolved. And if its being absolutely put an end to only three days before the expiration of the year will not defeat the settlement, what line can be drawn with respect to the time of the service which is necessary to give a settlement? If one day or three days may be dispensed with, any other time may be equally so. In some cases, indeed, where it has been equivocal what the transaction really was, and the servant has paused and considered whether he would absolutely quit the service or not, other circumstances have been admitted to explain the absence; but here was no suspense, no *locus pœnitentiæ;* for both master and servant agreed to put an end to the service."

Absence (*absque animo revertendi*), evidence of a dissolution.

Same point. (*Rex* v. *Upwell*, 7 T. R. 438; *Rex* v. *Corsham*, 2 East, 303.)

CHAP. XXII.

A servant dismissed, applied to a magistrate. He directed her master to take her back or pay the whole wages. He paid the whole wages, and the servant offered herself to others: this is a dissolution. (*Rex* v. *King's Pyon*, 4 East, 351; S. P. *Rex* v. *Leigh*, 7 East, 539.) Lord *Ellenborough*, C. J., in the former case, said, "The servant showed her assent to the dissolution of the contract by taking the wages, and offering her services to other persons. Both parties gave the magistrate a power of dissolving the contract, by showing their assent to what he directed in that respect. Then, after all this, could the master or servant have maintained an action against the other, the one for not performing the remainder of the service, the other for not employing her during that time? This is the true question to be considered. I should not wish to carry the idea of dispensation further than it has already been carried, which seems to me to be stretched as far as ingenuity could go upon the false idea that a servant has *a right* to acquire, in gaining a settlement. I do not mean to disturb any of the cases which have been already decided; but I am not inclined to carry the decisions further still from the plain words of the act of 8 & 9 Will. III. c. 30."

Master consents to servant's leaving his service one day before the end of his year, pays him his full wages, and the servant takes another place: held, a dissolution. (*Rex* v. *Maidstone*, 12 East, 550.) In this case *Le Blanc*, J., thought the sessions would have been warranted in finding a dispensation instead of a dissolution; but *Bayley*, J., said, "The sessions had done right. In order to constitute a case of dispensation, I think the master should have power to recall the servant to his service all through the year; but where the master agrees generally to let the servant go away from his service, without reserving to himself the right of recalling him throughout the whole year, I think that puts an end to the contract of service altogether."

Pregnant servant discharged by a justice, gained no settlement.

Rex v. *North Basham* (2 Bott, 45; Cald. 566). The pauper, in order to avoid a settlement in East Basham, having three days and a half before the end of the year married a female servant big with child by him, went with his master before a justice, to be by him discharged from his service. The master was willing that the pauper should be settled in his parish, and said so before the justice; and the justice, after hearing both parties, discharged the pauper from his service. The master paid him his wages, all but for the three days and a half. Lord *Mansfield*. "This was a discharge before a justice, and it certainly was not fraudulent on the part of the master, for he had no objection to the settlement. It was a solemn discharge by the consent of both parties, and, as such, a dissolution."

A female servant may be discharged by her master for being pregnant, and thereby loses her settlement, although she receives her full wages. (*Rex* v. *Brampton*, Cald. 11; 2 Bott, 444.) Lord *Mansfield*. "These questions have always been brought to this point, *whether the contract was put an end to within the year?* This cannot be done by dismission of the servant without good and sufficient cause. In *Rex* v. *Castlechurch* (p. 439), there was a discontinuance by agreement, and the contract, therefore, determined; in such case the payment of the full wages, which might be mere benevolence, could make no difference. The question then is, *is this contract dissolved within the year?* The answer depends upon this, Has the master done *right* or *wrong* in discharging his servant for this cause? I think *he did not do wrong.* * * * * Where a servant's absence is said to be *purged* (which is an improper expression) by receiving him again, the receiving only explains and shows the nature of the absence; the consequence of it indeed is, that such reception must generally be considered as amounting to a dispensation, and thereby subjects the master to the payment of the whole wages. But the effect of a positive act of the master, *i. e.* the dismission of his servant under a *criminal* charge, shall never be done away by an implication arising from the payment of the whole wages." *Willes*, J. "This case differs

from *Rex* v. *Richmond* (p. 438), nor is it like *Rex* v. *Islip* (p. 433), where the cause of the discharge was not reasonable." *Rex* v. *Marlborough* (2 Bott, 423) is to the same effect.

Suspicion of guilt will not justify discharge.

In *Rex* v. *Welford* (2 Bott, 446), where the like decision was made, it is added that the pauper, a man-servant, could not be discharged from his service, on account of a *supposed* criminal intimacy with a female servant in the same family. *Secus*, if the criminality had really existed. See Burn's "Justice of the Peace," tit. SERVANTS."

A servant apprehended under the old law on a charge of bastardy, and detained four days from his service, gained no settlement; for by his own wrongful act he became incapable of completing the contract, and that was equivalent to a wilful absence. (*Rex* v. *Westmeon*, Cald. 129; 2 Bott, 447; S. P. *Rex* v. *North Cray*, 2 Bott, 450; Cald. 562; 4 Dougl. 243.)

A servant, to avoid an order of bastardy, absconds with his master's privity. In nine days he returns and *agrees* to work with his master again, and at the end of the year receives the balance of the whole wages, *minus* 2*s.* 6*d.* for the absence. No settlement was gained thereby. (*Rex* v. *East Kennett*, 2 Bott, 452; Cald. 562.)

Such absence may be cured.

In *Rex* v. *Kenilworth* (2 T. R. 598), *Buller*, J., said, "The circumstance of the pauper's having been apprehended on a charge of bastardy, I lay out of the question; for it was competent to the master to receive him again after he was discharged out of custody, if he pleased."

If fraud be not found by the sessions, the court will not act upon such an imputation.

Rex v. *Preston* (Burr. S. C. 69). A person served under a hiring his whole year within five days, and then left his master by consent, the parish officers having first given him two guineas to leave the parish, he being about to be married. The justice held this to be no settlement, and stated the case specially. It was objected that this departure was fraudulent. By the court: "The justices might upon evidence have examined into that point; and if they had thought that this departure was fraudulent, they would, without question, have stated it to have been so; that not being done, we cannot intend any fraud, nor that the party hath gained any settlement, it being agreed on all sides that he hath not served his year." But they decided the case upon a defect in the order.

(f) *Of the Completion of the Contract before the "Poor Law Amendment Act*, 1834" (4 & 5 *Will. IV. c.* 76).

That statute (passed 14th August, 1834), enacts, by s. 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 s. 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."

A pauper was hired in June, 1833, at a monthly hiring, and served under 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 the 4 & 5 Will. IV. c. 76, she gained no settlement. (*Rex* v. *Rettenden*, 1 N. & P. 448; 6 A. & E. 296.) In that case the facts were that on the 28th of June, 1833, the pauper, Sophia Attridge, went into the service of Elizabeth Baker, widow, as her servant, for a month, at wages of 1*s.* a week. The pauper continued in the service of E. Baker until the expiration of the month, and was then hired by E. Baker to be her servant till the following Michaelmas, at the like wages of 1*s.* a week, and the pauper served E. Baker up to the said Michaelmas. At that Michaelmas the pauper was hired by E. Baker to be her servant for the following year, at the wages of 50*s.* a year, and the pauper continued to serve E. Baker during the whole of such year. From the time of the first hiring in June, 1833, till Michael-

mas, 1834, there was an unbroken continuance of service, and the pauper always resided in the house of E. Baker, which was in Rettenden. The question was, whether, referring to the 4 & 5 Will. IV. c. 76, s. 65, the pauper gained a settlement in Rettenden. Lord *Denman*. "It does not seem quite certain that the legislature contemplated this exact case, or what they would have done if they had, but the words of the act leave no doubt on the matter. The service is not complete, and within this act the settlement is not obtained. It is quite immaterial to the public and to the pauper, where she is settled, but it is very important that due effect should be given to all the words of this act, and also that it should come into operation as soon as possible." *Williams*, J. "I am entirely of the same opinion. It seems to me clear that this contract was not complete at the time of the passing of the act. The argument is, that by the old law, by coupling service, as it was called, when there was a service in fact for a year, and a hiring for a year, although the service was not for a twelvemonth under the yearly hiring, a settlement was gained before the passing of the act; but by the new law the contract for service, as well as the contract of hiring, must be completed before the passing of the act, and that contract has been cut in twain by the act of parliament." *Coleridge*, J. "Before this act of parliament passed, under the circumstance of this case, a settlement might have been acquired without even completing that contract of hiring and service, under which, however, the settlement would take place: the contract for hiring and service being one, and being entered into, if there had been sufficient service under that, coupled with service under a weekly or monthly contract, the settlement would have been acquired; but this act says no person shall be judged to have acquired a settlement by such hiring and service, unless the contract of hiring and service shall be complete at the time of this act being passed. How has that been done? The contract under which the settlement was to be acquired, had not been completed at the time this act passed, and therefore I do not see how it is possible to get over the words of this act."

The same point was determined in *Rex* v. *St. John, Trallorey* (6 A. & E. 300).

In *Reg.* v. *St. Pancras* (7 Jurist, 696), the 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. IV. c. 76, passed, she resided with her mistress in St. Mary-le-bone: it was held, that no settlement was gained in St. Mary-le-bone under sect. 65.

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§ 3. THE PLACE IN WHICH THE SETTLEMENT IS ACQUIRED.

Although the law requires a hiring for a *year*, and a service for a *year;* yet a *residence* for *forty days* in any particular parish or place, during such hiring and service, will complete the settlement. But, as a servant may during a hiring and service for a year reside forty days in several different parishes, it is held that the settlement will be in that parish where he *last* completes a forty days' residence.

Forty days' residence necessary to a settlement.

A residence for less than forty days in a parish will not gain a settlement. In *Goring* v. *Moltsworth* (Sess. Ca. 327; Sett. & Rem. 219; 1 Barnard. 436); a person hired for a year, served the year with a master living at Goring, and who kept a boat, which navigated from Goring to London, but the servant was not forty days in the whole year at Goring, but served out the year on board the boat. By the court: "This was no settlement at Goring."

They need not be continuous.

Greenwich v. *Longdon* (Burr. S. C. 243; 2 Bott, 398). G. Wall was hired and served for a year as a livery servant to Saunderson, commander

of a yacht, who had a house and family at Greenwich, and resided there when not on the king's service. His master made frequent voyages to Holland, and he always attended him, and he was never forty days together at Greenwich, but during his service he was there forty days at different times. By the court: "It need not be forty days altogether; it is sufficient if within the year he reside forty days in the whole."

But must be within the compass of a single year.

Rex v. *Denham* (1 M. & Sel. 221). Order confirmed by the sessions for the removal of C. Tranter. Lord *Ellenborough* delivered the judgment. "The question was, whether it was necessary there should be forty days' residence within the compass of a year, or whether, if the service were for several years uninterruptedly, a residence of forty days within those several years would be sufficient? The facts were these: the pauper was hired for a year to Smith, and served that year; at the expiration of which he was hired to him for another year, and served half of it; and during that year and a half he was resident in B. for forty days, but he did not reside in B. for forty days either within the first year or within the half year, nor (as was admitted) within any one period of a year whilst he continued with Smith. The sessions were of opinion, that this residence was not sufficient, and we think their opinion right.

History of the forty days' residence.

By 13 & 14 Car. II. c. 12, s. 1, poor persons coming to settle in any parish, if likely to be chargeable to the parish, may be removed within forty days after they so come to settle as aforesaid; and it is under this act that forty days' residence is required. By 1 Jas. II. c. 17, s. 3, the forty days' continuance shall be accounted from the delivery of notice in writing to one of the officers of the parish to which such poor person removes: which notice, by 3 & 4 Will. & Mary, c. 11, s. 3, is to be read in church the next Lord's-day, and registered in the book kept for the poor's accounts. By the same statute 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 a good settlement therein, though no such notice in writing be delivered and published as aforesaid.' And by 8 & 9 Will. III. c. 30, s. 4, 'No person so hired as aforesaid shall be adjudged 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*.' Upon these clauses settlements by hiring and service now stand. It has been decided that so as 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 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 were to hold that residence for forty days beyond the compass of a single year would do."

The whole service need not be under the yearly hiring.

The forty days' residence need not be under the same year's hiring (*Rex* v. *Findon*, 4 B. & C. 91; 6 D. & R. 116.)

If the forty days' residence are within the compass of a year they need not be within one year from the yearly hiring. (*Rex* v. *Child Okeford*, 3 Bar. & Ad. 809.)

If the last forty days' service be in different parishes, the settlement is where the servant *lodges* the last night. (*Lowess* v. *Lanstephan*, Burr. S. C. 825; 2 Bott, 404.)

Same point. (*Rex* v. *Hulland*, Doug. 657; Cald. 118; 2 Bott, 406.)

Although the last forty days was after marriage. (*Rex* v. *Iveston*, Cald. 288; 2 Bott, 407.)

In *Rex* v. *Great Bookham* (Cald. 290; 2 Bott, 407, *n.*), the same point was considered as fully settled.

If a yearly servant served forty days in A., then went with his master's leave to B., his father's parish, and there remained above forty days, then to another parish to work for his master, and then for the last three days slept in B., his father's parish, he gained a settlement in B. (*Rex* v. *Undermilbeck*, 5 T. R. 387.) Lord *Kenyon*. "It has been properly admitted that the contract was not dissolved by the servant's absence for seven weeks, because the master consented to it, and received part of the servant's earnings; and as the service continued in contemplation of law during the whole year, I think the servant was settled in Sawrey, where he slept the last night, he having before that time served there forty days in the course of the last year. For it has been decided, after much argument, that the last day's service may be connected with any preceding service in the same parish, notwithstanding any intervening service elsewhere for forty days."

A settlement might be gained by service in a parish where the master never lived.

St. Peter's in Oxford v. *Chipping Wycomb* (1 Stra. 528). The master of the Oxford stage-coach hired a servant for a year, to stay in an inn at Wycomb where the coach baited, and to take care of the horses; he lived there for the whole year, and the master all the while lived in Oxford. The question was, where that servant gains a settlement, or whether any by that service? And by the whole court: "He gained a settlement in Chipping Wycomb, though his master never lived there."

The settlement is at the place of the last forty days' service, though the master is not settled there.

Bishop's Hatfield v. *St. Peter's, St. Alban's* (Fol. 197; 2 Stra. 794). Langley was huntsman to Mr. Arnold, who lived sometimes in Westminster and sometimes in Northamptonshire, but Arnold had no settlement in St. Peter's; Langley served the last forty days of his year in St. Peter's with Arnold. The Court of King's Bench held Langley's settlement to be in St. Peter's, by serving Arnold the last forty days of his year there, though Arnold had no settlement there.

Master's residence not material.

Rex v. *Eldersley* (2 Bott, 274). A. hired himself to be a warrener in the parish of Eldersley, in a warren there, to joint occupiers of it, who lived in two parishes distant from the parish of Eldersley. He dieted and lodged for eight weeks with one of the occupiers, and for the rest and last part of the time on the warren. Per *curiam:* "His settlement is in Eldersley."

So a person hired as a groom to running horses, and going from place to place to take care of them, gained a settlement by residence at the last place, though his master had neither house nor estate there. (*Rex* v. *East Ilsley*, Burr. S. C. 722; 2 Bott, 402.)

Residence of a yearly servant with his master at a sea-bathing place for forty days conferred a settlement. (*Rex* v. *Bath Easton*, Burr. S. C. 774; 2 Bott, 403. Commenting on *Alton* v. *Elvetham*, 2 Bott, 400.)

Rex v. *St. Andrew's, Holborn* (2 Bott, 408). A hiring may be in an extra-parochial place, and a settlement may be gained by a service under it in a parish or township; and if the master and servant be at a watering-place during the last forty days, a settlement will be gained there.

Service with the same master, but not in the same place where the hiring was, will gain a settlement in the last place. (*Rex* v. *Ashton*, Fol. 88; Sett. & Rem. 23; 2 Bott, 388.)

It is not necessary that the servant should lodge at his master's house. (*Rex* v. *Whitechapel*, 2 Sess. Ca. 114; Fol. 146; 2 Bott, 393.)

Where a person, during his service, marries, and then lodges with his wife for the last forty days in another parish than that where his service is performed, he nevertheless gains a settlement in the parish where he lodges. And this, though it was unknown to the master where he lodged. (*Rex* v. *Hedsor*, Cald. 51; 2 Bott, 405.)

In *Rex* v. *Nympsfield* (Cald. 107; 2 Bott, 405), the same point was given up as being settled.

It is not necessary that the residence should have relation to the duties of the servant. It is sufficient if with the master's consent. (*Rex* v. *Dremerchion*, 3 Bar. & Adol. 420.)

A servant obtained a settlement in the parish where he had lived and served his master ten months, and not in the parish to which he had been sent as a lunatic, and in which he had resided the last two months of the year's contract. (*Rex* v. *Sutton*, 5 T. R. 657.)

A servant leaving his master's house from illness, and residing at his father's house in a different parish to the end of the year, his master supplying him with food and medical attendance, and paying him wages for the whole year, gains a settlement in the parish where he resided during his illness. (*Reg.* v. *East Winch*, 4 P. & D. 342; 12 A. & E. 697.)

The pauper is settled where his place of rest is.

Rex v. *Mildenhall* (3 B. & Ald. 374). Removal from Mildenhall to Newmarket, All Saints. Order quashed. Case:—On the 1st May, 1817, the pauper let himself as a yearly servant to R. Bailey, of Mildenhall, and entered into his service on the same day. The pauper was employed by his master every day from the commencement of his service up to the 5th of April, 1818, to drive the mail-cart to and from Newmarket and Mildenhall. For this purpose he started every night from Mildenhall, and arrived at Newmarket about eleven o'clock in the evening; and after delivering the bags, &c., which generally occupied about an hour, went to bed at an inn in Newmarket, in a bed hired for him exclusively for a year, and paid for by his master. He slept until about four o'clock in the morning, when the mail-coach arrived at Newmarket from London, and the pauper used to get up and receive the Mildenhall mail-bags, and drive his cart back to Mildenhall, where he generally arrived about six o'clock. He then, after putting up his horse, &c., went to bed in a room provided for him in his master's house at Mildenhall, and slept two or three hours. He was employed during the rest of the day in Mildenhall, as his master chose, and sometimes, which was about eight or ten times in a month, he did not go to bed at all at Mildenhall. He kept all his clothes and took all his meals in his master's house, and the room and bed in which he there slept were exclusively appropriated to him, and he considered that Mildenhall was his home, but that he took his night's rest at Newmarket. He kept no clothes nor anything else at Newmarket, and other persons occasionally slept in the same room there with him. From the 5th April, 1818, until the 1st of May, he never drove the mail-cart at all, but lived wholly in his master's service at Mildenhall. On the 1st May, 1818, he quitted Bailey's service. By the court: "Here the pauper was, by the nature of his service, compelled to wait a few hours in the middle of the night for the return of the mail. During that time he slept there; but that sleep was not his ordinary and sufficient rest; for after he returned to his master's house at Mildenhall he went to bed in his own room, which was there provided for his exclusive use. He did not therefore go to Newmarket as to his place of rest, and unless that were so, he could gain no settlement there. Besides, it was for the respondents below to establish affirmatively a settlement in Newmarket, and if that is left doubtful, the court will not quash the order of sessions. But here, in fact, Mildenhall appears to have been the place of rest of the pauper during his service." Order confirmed.

CHAPTER XXIII.

Of the Settlement of the Poor—(*continued*).

Of Settlement by Apprenticeship.

THE only statute which *expressly* provides that a *settlement* may be acquired by *apprenticeship*, is the 3 Will. & Mary, c. 11, s. 8. But the 13 & 14 Car. II. c. 12, s. 1, by authorizing two justices to remove any person into the parish *where he was last settled for forty days as* (*inter alia*) *an apprentice*, unless he found security, &c., *impliedly* made a residence by an apprentice for *forty days* in any one parish, a sufficient settlement. (See ante, pp. 316, 317.)

3 Will. & Mary, c. 11. Binding and inhabitation as an apprentice confers settlement.

The 3 Will. & Mary, c. 11 (after provisions relating to the delivery and publication of notice of persons removing (*a*)), s. 8, 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 as aforesaid."

Nothing more was required by 13 & 14 Car. II. c. 12, to settle an apprentice duly bound, than a residence of forty days; and the 3 Will. & Mary, c. 11, exempted him from the necessity created by different statutes of giving notice of his inhabitancy.

9 & 10 Will. 3, c. 11.

By 9 & 10 Will. III. c. 11, no certificated person can acquire a settlement in any parish by (*inter alia*) apprenticeship: he must take a tenement of 10*l.* per annum or execute some parish office. See post, "SETTLEMENT BY CERTIFICATE."

3 Geo. 4, c. 126. 4 Geo. 4, c. 95, no apprentice or collector of tolls of turnpikes to gain a settlement.

The 3 Geo. IV. c. 126, s. 51, enacts, "That no collector or person renting such tolls (turnpike), or residing in such toll-house as aforesaid, and no apprentice or servant of any such collector or person, and by 4 Geo. IV. c. 95, s. 31, no apprentice of any collector of tolls for overweight residing in any house used or erected by the trustees, shall thereby gain a settlement in any parish or place whatsoever."

After 12th Aug. 1834, no settlement to be acquired by apprentices to seamen and fishermen.

By the "Poor Law Amendment Act, 1834" (4 & 5 Will. IV. c. 76), s. 67, it is enacted, that from and after the passing of that act (12th August, 1834) no settlement shall be acquired 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.

The acquisition of a settlement by apprenticeship will be considered in reference to the contract of apprenticeship, the service, the dissolution, and the evidence in support of it.

(*a*) See "SETTLEMENT BY CERTIFICATE," post, and ante, p. 317.

(a) *The Instrument of Binding.*
(b) *The Parties to the Binding.*
(c) *The Date and Execution of the Instrument.*
(d) *The Term of Years.*
(e) *The Premium and Stamp Duty thereon.*
(f) *The Time for Stamping.*
(g) *Exemption from Stamp Duty.*
(h) *Statement of Premium in the Indenture.*
(i) *The Effect of an Imperfect Apprenticeship.*

(a) *The Instrument of Binding.*

Persons bound apprentice by deed, though not indented, is not liable to be removed.

The 3 W. & M. c. 11, s. 8, in conformity with the 5 Eliz. cc. 4, 5, requires that the binding shall be by *indenture*, that is, by deed *indented;* and a deed in the manner and form of an indenture, but not *actually indented*, was insufficient. (*Rex* v. *Mellingham*, 2 Bott, 492; *Rex* v. *Stratton*, Burr. S. C. 272.) But the formality of indenting was removed by 31 Geo. II. c. 11, s. 1, which enacts, "that no person who shall have been bound an apprentice by any deed, writing, or contract, *not indented*, being first legally stamped, shall be liable to be removed."

The binding must be by deed.

But the binding must still be by *deed*, though *indenting* is no essential part of it. (*Rex* v. *Ditchingham*, 4 T. R. 769. See also *Rex* v. *Mawman*, Burr. S. C. 290.)

Antedating it does not render it void.

A printed indenture of apprenticeship which is antedated is not therefore void, and residence under it will give a settlement. (*Rex* v. *Harrington*, post.)

(b) *The Parties to the Binding.*

The relation of master and *apprentice* may be contracted as freely as that of master and servant (*a*); though it is usual for the parent to be a party to the deed and to covenant for his good conduct. In the case of parish apprentices, the law imposes certain duties upon the parish officers and neighbouring magistrates, the observance of which was essential to the validity of the contract. See ante, Chapter XV., and post, § 2.

Apprentices to sea service cannot now acquire a settlement (*b*).

We have seen that the legislature has prevented the apprentices in the sea service, or to fishermen, from acquiring settlements after August, 1834.

But such apprentice whose term of apprenticeship was running at the time of the passing of 4 & 5 Will. IV. c. 76, but who had previously served and resided so as to gain a settlement, retains his settlement. (*Reg.* v. *St. Giles's*, 2 G. & D. 542; 2 Bott, 458.)

An infant may bind himself apprentice by indenture, because it is for his benefit. (*Newbury* v. *St. Mary's in Reading*, Fol. 154; And. 373; 2 Bott, 490.) There a poor boy of fourteen years of age bound himself apprentice for seven years to a weaver. It was argued that this was not a binding according to the statute, and therefore did not gain a settlement; and

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(*a*) The 5 Eliz. c. 4, ss. 25—48, contained various regulations respecting apprentices, and prohibiting persons who had not *served seven years* from setting up in any craft, mystery or occupation. It also contained many regulations respecting the *qualifications* of *persons* entitled to *take* apprentices, and the *term of years* for which apprentices should be bound, and as to the *mode* of *binding*. Most of these enactments were repealed by 54 Geo. III. c. 96. See Burn's Justice of the Peace, Vol. I., title "Apprentice."

(*b*) With respect to settlement by apprentices to the sea service before 1834, it is sufficient to say that by the statutes 5 Eliz. c. 5, s. 12, 2 & 3 Anne, c. 6, and 6 Geo. IV. c. 107, enrolment of the indentures was necessary.

that the indenture was void, because an infant could not bind himself. But by the court: "It did gain him a settlement; for an infant may make an indenture for his own benefit." (And see *Rex* v. *Arundel*, 5 M. & Sel. 257.)

Legislative restrictions as to binding infants.

The legislature has, in many instances, interposed for the protection of children of tender years, and prohibited apprenticeship under certain years, and to particular occupations. Since August, 1840, no child can be bound an apprentice to a chimney-sweeper under the age of 16, formerly under 10, and earlier still, under 8 (*c*). No child under the age of 10 can be bound to work in mines or collieries, and the overseers cannot bind a child under 9 years of age. See Burn's Justice of the Peace, Vol. I., title "APPRENTICE," and ante, Chapter XV.

A boy bound apprentice to a chimney-sweeper contrary to the statutes did not acquire a settlement, the indentures being void. (*Rex* v. *Hipswell*, 8 B. & C. 466; 1 M. & R. Mag. Ca. 474.)

And from J. *Holroyd's* judgment in *Rex* v. *Stoke* (as reported in 7 B. & C. 571), it seems that if an indenture is voidable only, and the parties at any time avoid it, no previous service will confer a settlement.

An adult may bind himself.

Although parish apprentices can only be bound until twenty-one, it is clear from many of the cases, and from the language of several of the statutes, that a person of the *full age of twenty-one* may bind himself to serve as an apprentice.

The master may also be an infant. (*Rex* v. *St. Petrox in Dartmouth*, 4 T. R. 196.) The father of the pauper's husband agreed with Mary Hayne, widow, to bind his son, then aged about *eight years*, an apprentice to R. H., son of M. H., who was then between the *ages of fourteen and fifteen*, and was then resident in his mother's house as a part of her family, and had no habitation or business of his own. Lord *Kenyon* said, "It has been properly admitted that this indenture was not absolutely void, but only voidable, on account of the infancy of the parties; and unless there were some other objection the pauper is entitled to the benefit of the apprenticeship."

The master's condition is immaterial.

A *female* may be bound apprentice by the parish to a day labourer, to learn housewifery; and it will be good, unless it is found to be fraudulent. (*Rex* v. *St. Margaret's, Lincoln*, Burr. S. C. 728; 1 Bott, 713.)

An articled clerk to an attorney may, by being bound and inhabiting in a parish, gain a settlement therein as an apprentice. (*Clapham* v. *St. Pancras*, 29 L. J., M. C. 141.)

So if the master may have no right to take an apprentice.

Anon., *T.* 9 *Anne.* If an apprentice be bound to a master who has no right to take an apprentice, yet a settlement will be gained by service under such an indenture.

A settlement may be gained by service by apprenticeship under indentures made abroad. (*Rex* v. *Closworth*, 6 A. & E. 286; 1 N. & P. 437.) In that case, in the beginning of 1817, the pauper who was of age, bound himself by an indenture of apprenticeship for three years, to serve as an apprentice on board any vessel the master might have. The instrument was not executed in England, but in Newfoundland, and was signed and sealed by the pauper and his master, then residing in Newfoundland. No evidence was given of the law of Newfoundland relating to such instruments, but it was admitted—"that legal indentures executed in Newfoundland do not, according to the laws of that island, require a stamp, in order to render them valid there." The question was, whether the binding was a valid one, so as to confer a settle-

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(*c*) The first statute relating to the age of chimney-sweeps (28 Geo. III. c. 48), required the age of the boy to be inserted in the indenture; but it has been held that it is not necessary to insert the age only when the child is bound by the parish officers, and that a voluntary binding is valid in the ordinary form, provided the child was in fact of the proper age. (*Reg.* v. *Epsom*, 24 L. J., M. C. 119.)

ment by service under it in England. Lord *Denman*, in his judgment, said, "With regard to the law of Newfoundland, there is certainly nothing to show that this indenture is according to the forms required there; but I do not think that is necessary, as a contract of teaching and learning is *primâ facie* a legal contract, requisite for the conduct of trade in all parts of the world, and it is found expressly that the apprentice was of age at the time that he bound himself. Had that not been so, a question might have arisen as to the necessity of showing that an infant could bind himself by the laws of that colony. But that difficulty does not arise. I therefore think that the indenture is valid, and that the residence under it in this country has conferred a settlement." *Coleridge*, J. "Taking the two statutes of 13 & 14 Car. II. c. 12, and the 3 W. & M. together, one mode of gaining a settlement is created by being bound an apprentice by indentures, and by forty days' residence in a parish under that apprenticeship. It has been said to-day (reversing the order of the arguments used), that a settlement has not been gained under this indenture, for two reasons; first, that there is no proof of there being any contract of apprenticeship, as this instrument was made in a foreign country, and there is no evidence to show that it is according to the laws of that country; and secondly, that the case is not brought within the settlement laws. It is very true that no evidence has been given of the law of Newfoundland on that subject; but this is a written contract entered into between the two parties, which the court can look at. Apprenticeship is, in other words, merely a contract to teach and to learn, and we have a right to look into the instrument to see whether, on a fair construction, the language of this instrument imports such a contract; for, if so, it must be taken to be, until something else be shown to the contrary, a contract of apprenticeship. But then it is said, as it appears this contract was entered into in a foreign country, it is not within the purview of the acts relating to settlement. The argument is, that the statutes of Charles, and of William & Mary, are to be construed with reference to the statute of Elizabeth (*d*), which was the foundation of apprenticeships; and that that statute clearly imports that the party bound must be resident in this country, and the regulations as to husbandmen and householder—tradesman in a corporate town—householder—inrolment at the next market town, and so on, are referred to, all for the purpose of showing that the statute refers only to contracts made in this country. It seems to me that that argument could only be sustained on the supposition that no contract of apprenticeship is good for the purpose of a settlement, unless it is made in strict compliance with the statute of Elizabeth. But that cannot be maintained by any lawyer; for although the words of that statute are strong, as my brother *Williams* has just pointed out, yet from an early period it was held (and decision after decision has gone to that effect), that for the purpose of a settlement when there has been *de facto* a binding and a service, the settlement shall be acquired. It was held, indeed, that it would be acquired, although not merely the provision as to time, but every one of the provisions of that statute were broken through; although it was questionable whether the master himself had a right to take an apprentice, which right only grows out of that very condition of being a householder, that has been so much relied upon to-day to show that the act can only have reference to a contract made in this country. For it has been determined (*a*) that a mere lodger, not holding a house, was able to take an apprentice."

Proof of foreign law not required, the apprentice not being an infant.

(*a*) *Rex* v. *Petrox*, p. 452.

A parish indenture was duly executed and allowed, but the master was fraudulently imposed upon the justices, but not by the parish offi-

(*d*) 5 Eliz. c. 4. See this statute, Burn's "Justice of the Peace," Vol. I., title "APPRENTICE."

cers. This does not prevent a settlement. (*Rex* v. *Great Sheepy*, 8 B. & C. 74; 2 M. & R. 286.)

May be bound to two masters successively.

Rex v. *Louth* (8 B. & C. 247). An indenture by which an apprentice was bound for seven years, to serve A. B. for the first four years, and his own father for the last three, to learn two different trades, is valid, and one stamp is sufficient.

Rex v. *Chesterfield* (2 Salk. 479; 5 Mod. 329). A servant was put out by his late master to a barber, who was to teach him to shave and make periwigs, for which he was to have 5*l*. The servant was no party to the covenants between his master and the barber. And the court adjudged it not to make a settlement, because it was no service, and the servant was no more than a boarder there for his education, which was no service to make a settlement.

If the binding be by the act of other parties, without his own intervention, no settlement is gained thereby.

Rex v. *Cromford* (8 East, 25). The pauper's husband, W. H., went on the 1st of May, 1796, being then fourteen years of age, as apprentice to N. Kniveton, of Wirksworth, weaver, and continued to serve him as an apprentice for five years. The following indenture was executed by the master and the father of W. H., but *not by* W. H. himself: "This agreement, made the 1st day of May, 1796, between N. K., weaver, and J. H., minor; the said N. K. shall teach W. H., the son of J. H., the art and mystery of weaving, &c. in the best way he can, for five years from the date above; and that N. K. shall find W. H. all utensils belonging to the business; and that W. H. shall receive of N. K. half of what he earns, and the remainder to N. K." W. H. did not execute or become a party to any other indenture. Lord *Ellenborough*, C. J. "Here is neither a binding of the son himself apprentice, nor, if I may so say, of his parent for him, for there is no contract for his serving his master; nothing to bind the son to serve. He might serve in fact, but was under no obligation to do so: he only continued to be taught as long as he pleased, but was not obliged to stay. This was no apprenticeship." The other judges concurred.

An indenture is void if the pauper, an adult, (though assenting,) is not a party to the deed.

Rex v. *Ripon* (9 East, 295). Removal from Ripon to Darlington quashed by the sessions. The pauper, being twenty-three years of age, was put apprentice by her father-in-law, with her own consent, to one Husbands, in Hunton. She was present at the making of the agreement; but the indenture was only executed by the master and her father-in-law, but not by herself: neither was it ever tendered to her for that purpose, though she lived under it with her master for nearly twelve months in Hunton. And, without argument, by the court: "Is it possible to maintain this to be a competent binding of an adult who was no party to the indenture? The relation of master and apprentice did not exist."

Father has no authority to bind his infant son apprentice without his assent. Services under an indenture executed by the master and the father, but not by the apprentice, will give no settlement.

Rex v. *Arnesby* (3 B. & Ald. 584). The pauper served some years under an indenture of apprenticeship. The indenture stated that Simcoe, the pauper, son of Samuel Simcoe, glover, with the consent of his father, did put himself apprentice to W. S., framework-knitter, to learn his art, and with him, after the manner of an apprentice, to serve for the term of seven years. It was regular, except that it was executed only by the father of the pauper and the master, and not by the pauper himself. *Abbott*, C. J. "The words of the 3 & 4 W. & M. c. 11, are, '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.' Before therefore any settlement can be gained, the court must see that the party is bound by indenture. Now the ordinary mode is for the party to bind himself, by executing the indenture. Even if he does not do that, still in the special case of a parish apprentice he may be bound without such execution; but then the binding takes effect by the authority of an act of parliament. This, however, is not the case of a parish apprentice; and unless we were to hold that it is competent for a father to bind his son apprentice without his assent (for which no authority can be produced), we must

hold this indenture to be invalid. *Bayley*, J. "An infant can only *bind himself* apprentice by deed; and the question in this case is, whether, according to the words of the act, this party is bound by indenture. The indenture indeed purports to bind the son, but the son has not executed it. It is said, however, that he has done that which is tantamount to an execution. If we were to hold that to be so, we should hold, contrary to all principle, that an infant might be bound by his act *in pais*, without executing the deed. *In the case of a parish apprentice there is a special power given by the statute of Elizabeth to parish officers, and there an apprentice may be bound without his assent till he come of age.* But a father has at the common law no such right. The passage cited from *Comyn's Digest* is unsupported by any authority. I think, therefore, that the indenture in the present case was invalid, and that no settlement was gained by the service under it." *Holroyd*, J. "The apprentice did not gain a settlement by the service in this case; for an infant cannot be bound merely by an act *in pais*. It has been argued, that as he has taken the benefit of the deed by serving under it, he must be bound by it. But that argument is not, as it seems to me, available. In *Rex* v. *Cromford* (p. 454), the apprentice had served out his time; and in *Rex* v. *Ripon* (p. 454), the indenture was executed by the father of the apprentice and the master, with her consent, and she also served under it. Yet, in both those cases, the indentures were held to be invalid. According to my recollection the distinction is this: where a party takes the benefit of a deed, but does not execute it, he will not be liable under it as for a covenant broken, but he may be liable under the implied contract raised by the acts of benefit which he takes under it. Here the infant was not bound by indenture, and no settlement was gained." *Best*, J. "It is said that the service here was tantamount to an execution: but where is that argument to stop? It might go the length of proving that a service for a single day, and that perhaps without proof of his knowledge of the contents of the indenture, would bind the apprentice. The dictum to which we have been referred applies only to land *qui sentit commodum sentire debet et onus, et transit terra cum onere;* and even there it would be a difficult point to establish that where a person took possession of the land for a single day, he was bound by all the covenants of a long lease which he had never executed. It seems impossible to consider this as the case of a person bound by indenture; and unless that he be so, he is not within the statute, and has gained no settlement."

But a parish apprentice may be bound without his assent.

St. Nicholas, Rochester, v. *St. Botolph, without Bishopsgate* (31 L. J. (N. S.) M. C. 258). By a local act, the guardians of the city of C. were required to put a certain number of boys out apprentice, and, in addition to the profits of certain property vested in the guardians, they were empowered to levy rates for the purposes of the act. The execution of the indentures by the apprentices was held to be essential to confer a settlement, as there was no power of compulsory apprenticeship. (See post, p. 477, note (*a*).)

But a parish apprentice bound to a master, not legally liable to receive him, will acquire a settlement although the apprentice did not execute the deed, for execution by a parish apprentice is unnecessary, and the master by executing the indentures binds himself. (*Rex* v. *St. Nicholas, Nottingham*, 2 T. R. 726.)

The child of a person receiving relief from the parish in which he resided, might be bound as a parish apprentice before the 56 Geo. III. c. 139 (ante, p. 210), although the child was resident in another parish. (*Rex* v. *St. George, Exeter*, 5 Nev. & Man. 61; 3 Adol. & Ellis, 373.)

The indenture of a parish apprentice must be executed by the board of guardians under a local act in *their true corporate names*. (*Rex* v. *Haughley*, 4 B. & Ad. 650; 1 Nev. & M. 525.)

Rex v. *Gravesend* (3 Bar. & Adol. 240). The 10 Geo. II. c. 31, s. 5, after reciting the inconvenience which happened by watermen, &c. taking

Watermen, not occupiers of a

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honse, are prohibited from taking apprentices.

apprentices before they are housekeepers or have any settled habitation for themselves or their apprentices, enacted, "that it shall not be lawful for any waterman, though a freeman of the (Waterman's) company, or his widow, to take or keep any person as his or her apprentice, unless he or she shall be the occupier of some house or tenement wherein to lodge him or herself and such apprentice, and that he or she shall keep such apprentice in the same house or tenement wherein he or she shall lodge or lie, on pain of forfeiting 10*l.* for every offence." By section 4 it is provided, that no such freeman or freeman's widow shall take or retain more than two apprentices at the same time, under a penalty. By section 5, any contract to take an apprentice, entered into by such freeman or widow, not being an occupier of some house, &c., or having already two apprentices, was prohibited, and therefore where a pauper bound himself by indenture of apprenticeship to serve the widow of a waterman, she not having such house, &c., but it being understood that he was to live at the house of a freeman of the company (which he did), and to serve him conformably to the indenture, he having two other apprentices at the time: it was held, that such indenture was absolutely void, and no settlement was gained by serving under it.

(c) *The Date and Execution of the Instrument.*

In *Reg.* v. *Barmston* (7 A. & E. 858; 3 N. & P. 167), an indenture antedated two years, for the purpose of contravening 5 Eliz. c. 4, s. 31, then in force, was held altogether void, and no settlement gained.

A printed indenture of apprenticeship, which is antedated, is not therefore void. The notice required by 5 Geo. 3, c. 46, s. 19, and which is in fact printed under the indenture, states that such indenture will be void, but the statute does not.

Rex v. *Harrington* (6 N. & M. 165). In June, 1815, the pauper was bound apprentice by indenture to one M. M'Graa, a ship-smith in Workington, for six years. The indenture was a printed form filled up, and had at the foot of it the notice required to be added to all such printed forms, by 5 Geo. III. c. 46, s. 19. The indenture bore date 13th June, 1813, but was not executed, in point of fact, until June, 1815. It was properly stamped, and in all other respects, except as to its being antedated, was perfectly regular. The pauper served between two and three years, and gained a settlement, under the indenture, in a third parish, provided a settlement could be gained at all by service under it. The sessions held the indenture absolutely void, by reason of its being so antedated, and no settlement gained by service under it. Lord *Denman*. "It is contended that no settlement was gained, because the indenture was avoided by 8 Anne, c. 9, and 5 Geo. III. c. 46. By 8 Anne I think the indenture is certainly not avoided under the circumstances. The 35th section of that act imposes a *penalty* upon the master to whom any sum of money is paid, &c. for and in respect of any clerk, &c. which shall not be truly inserted in some indenture or writing bearing date on the day of execution; but in another section (39) the cases are specified in which the indenture or other writing is to be void; and as the case of antedating is not there mentioned, we cannot say that the indenture is void under that statute. By 5 Geo. III. c. 46, it is declared and enacted, that all printed indentures of apprenticeship shall have the notice there given printed under the same. That notice states that the indenture will be void in certain cases, of which one certainly is the insertion of a wrong date. That is an act for altering the stamp duties upon admissions into corporations and companies, and for further securing and improving the stamp duties in Great Britain; and in order to secure the stamp duties upon printed indentures, &c., for binding clerks and apprentices, requires that this notice shall be printed at the foot of it. But there are no words there which can operate to make the indenture, &c. void in the cases mentioned in the notice." *Littledale*, J. "The 35th section of 8 Anne, c. 9, appears to impose a *penalty* for inserting a wrong date; but the 39th section enumerates the cases in which the indenture is to be *void*, and this is not one of them. The 19th section of 5 Geo. III. puts people *in terrorem*, as it were, but certainly does not of itself operate

to make the indenture void in the cases specified." *Willams*, J., and *Coleridge*, J., concurred. Order of sessions quashed.

Not essential that the *master* should execute.

It will be observed by the cases under the last head, that although, generally speaking, the parties to the deed become so by executing it, yet there are some instances in which this ceremony is not essential to the validity of the instrument. In 1 Nol. P. L. 499, it is said "although the master and apprentice must be parties to the deed, yet the settlement is not prevented by the *master's* neglect to execute, provided the apprentice is bound, and the law is the same whether it be a parish or a voluntary apprentice;" and several of the preceding cases are cited; to which may be added *Rex* v. *Ribchester* (post); and *Rex* v. *St. Peter's on the Hill* (2 Bott, 495). The pauper was bound an apprentice in *St. Peter's in Chester* for seven years to a carpenter, but the indenture was not executed by the master. *Lee*, C. J. "It is objected that this indenture is not good, because it is not executed by the master, but that makes no difference if the apprentice himself were bound."

Same point.

Rex v. *Fleet* (Cald. 31). The indenture was properly executed by the parish officers, and allowed by two justices, but neither that nor the counterpart was executed by the master. It was contended that as the 8 & 9 Will. III. c. 30, s. 5, requires the master to execute a counterpart, a settlement could not be gained unless the master executed. But Lord *Mansfield*, C. J., said, "There is no doubt. The binding was authorized by the 43 Eliz. long before the act requiring a counterpart. But though the binding was valid, it was doubtful, till that act was made, whether the persons to whom they were bound were compellable to receive them. That statute was therefore made, and it subjects the master, upon his refusal to receive the apprentice, to a penalty; but in no other respects confirms the power of binding, which was already fully established."

But the master must *assent*. (*Rex* v. *St. Cuthbert, Wells*, 5 Bar. & Ad. 939; 3 Nev. & M. 100.) In that case, by an indenture of 23rd August, 1744, the parish officers of Ditcheat put and placed J. Ivey, of the age of eight years, an apprentice to Mr. Powell, for and in respect of Mr. Wilmot's estate, with him to dwell and serve, and there was a covenant by Powell to teach him the business of husbandry. The indenture was executed by two of the parish officers, and by *Wilmot* (*f*). Powell was a farmer, and the tenant of a farm at Ditcheat, the property of Wilmot, who was a stocking maker, resident at Wraxhall, in Ditcheat, but who afterwards resided in St. Cuthbert (the appellant parish), where J. Ivey lived with him, and was employed as a stocking weaver. J. Ivey, at the time he was bound, was living with his sister, Mrs. Ward, at Ditcheat. By directions of the parish officers, she took her brother to Wilmot, at Wraxhall. Wilmot said he was not quite ready for him; and she, at his request, kept her brother for a quarter of a year: Wilmot paying for his board. After that time, Wilmot sent for him, and the boy went and lived with him, first at Wraxhall, and then in the appellant parish, for more than forty days. *Denman*, C. J. "It does not appear that any master was bound by this indenture. It is stated merely that the original was signed by the parish officers, and the pauper (*f*), Powell does not appear to have signed it." His lordship afterwards added, "There ought to have been a positive finding by the sessions of every essential fact. It is not found that Powell ever assigned the apprentice to Wilmot, or consented to his serving him. The order must be quashed." *Patteson*, J. "There is no statement that Powell knew anything of the transaction."

(*f*) In the report in N. & M. it is said that the *pauper* signed it, and Lord *Denman* makes the same observations. But the child was only *eight* years old.

(d) *The Term of Years.*

Although the 5 Eliz. c. 4, declared apprenticeships for less than seven years void, yet before the 54 Geo. III. c. 96, it was held that such contract is voidable only, and not void; and that, therefore, a service under an indenture for a less term than seven years entitles the apprentice to a settlement.

Binding for *less than seven* years does not render an indenture void, but voidable only. See remarks on this statute in *Rex* v. *Louth*, post.

St. Nicholas v. *St. Peter's, Ipswich* (2 Stra. 1066; Burr. S. C. 91; 2 Bott, 493). There was an *indenture* of apprenticeship *for four years*, which the apprentice served accordingly. It was urged that this could not gain a settlement; for the 5 Eliz. enacts, that all indentures otherwise than by that statute shall be clearly void in the law to all intents and purposes; and by the same statute, persons dwelling in cities and towns corporate shall take apprentices *for seven years at the least;* whereas this master, dwelling in a town corporate, had taken this apprentice only for four years. By Lord *Hardwicke*, C. J., and the court: "The indenture is not void, but only voidable at the election of the parties themselves, if they think fit to take advantage of it; and not by a third person. It can only be avoided by the master or servant, who were the parties to it; but not by the parish, who have had the benefit of the service of this apprentice."

A binding of a parish female till twenty-one does not render the binding void.

Rex v. *St. Petrox* (Burr. S. C. 248; 2 Bott, 496). The pauper was bound a parish apprentice in *St. Petrox, until her age of twenty-one, without* the alternative, *or till time of marriage*, as the 43 Eliz. c. 2, s. 5, requires. (See ante, Chapter XV.) It was urged that she gained no settlement, the binding being contrary to the statute, and therefore void. But, by the court: "*St. Nicholas* v. *St. Peter's* is in point. The indenture is not void, but only voidable by the parties themselves, if they shall think fit to take advantage thereof; but it is neither void nor voidable by the parish as to gaining a settlement."

So a binding for six years is merely voidable.

Rex v. *Evered* (Cald. 26; 1 Bott, 638), cited per Lord *Ellenborough*, *Gray* v. *Cookson* (16 East, 27). The apprentice was bound, when an infant, for six years, by indenture, and afterwards when of age he had run away. Such a binding is not void, but merely voidable.

The same point was determined in the case of a parish apprentice, in *Rex* v. *Chalbury* (1 Bott, 706).

Binding for an unlimited time only voidable.

Rex v. *Woolstanton* (1 Bott, 707). An *unlimited* binding of a parish apprentice is not *void*, but only voidable. The statute for putting out parish boys apprentice, as to that part which speaks of binding them till the age of twenty-four, is only directory; but if it were compulsory, the indenture would be, for want of this, only voidable.

We have seen that apprentices to certain crafts must be of a certain age (ante).

A binding of a parish apprentice for a term that *may* extend beyond the age of twenty-one, is only voidable. (*Rex* v. *St. Gregory, Canterbury*, 2 Adol. & Ellis, 99; 4 Nev. & Man. 137.)

(e) *Of the Premium and Stamp Duty thereon, and Statement thereof in the Indenture.*

The statute of 8 Anne, c. 9 (made perpetual by the 9 Anne, c. 21), first imposed a *duty* on any *premium*, whether pecuniary or otherwise, given with any apprentice. The 35th and 39th sects. of 8 Anne, c. 9, declared *void* all indentures of apprenticeship, unless the full premium were truly inserted in the deed, and unless the deed were brought to the stamp office within certain times, and duly stamped, but contained exemptions in favour of certain parish apprentices.

Under this statute it was requisite that there should be one stamp in respect of the instrument itself, and another in respect of the fee or premium, where a fee was given; but two stamps have not been necessary in any such case since the consolidation of the stamp duties by the

44 Geo. III. c. 98 (*g*), which afterwards gave place to the 48 Geo. III. c. 149, and the new duties granted by that act were again repealed by the 55 Geo. III. c. 184, by which the amount of duty upon these instruments is now regulated.

That act, passed 11th July, 1815, contains (Schedule, Part I.) the following Duties on *Indentures of Apprenticeships.* 55 Geo. 3, c. 184.

	Duty. £	s.	d.
"APPRENTICESHIP AND CLERKSHIP.—Indenture or other instrument or writing containing the covenants, articles or agreements, for or relating to the service of any *apprentice*, clerk or servant, who shall be put or placed to or with any master or mistress, to learn any profession, trade or employment whatsoever; *except articles of clerkship to attornies and others, hereinafter specifically charged.*			
If the sum of money, or the value of any other matter or thing which shall be paid, given, assigned or conveyed, or be secured to be paid, given, assigned or conveyed, to or for the use or benefit of the master or mistress, with or in respect of such apprentice, clerk or servant, or both the money and value of such other matter or thing shall not amount to 30*l.* . .	1	0	0
If the same shall amount to 30*l.* and not amount to 50*l.*	2	0	0
If the same shall amount to 50*l.* and not amount to 100*l.*	3	0	0
If the same shall amount to 100*l.* and not amount to 200*l.*	6	0	0
If the same shall amount to 200*l.* and not amount to 300*l.*	12	0	0
If the same shall amount to 300*l.* and not amount to 400*l.*	20	0	0
If the same shall amount to 400*l.* and not amount to 500*l.*	25	0	0
If the same shall amount to 500*l.* and not amount to 600*l.*	30	0	0
If the same shall amount to 600*l.* and not amount to 800*l.*	40	0	0
If the same shall amount to 800*l.* and not amount to 1,000*l.*	50	0	0
And if the same shall amount to 1,000*l.* or upwards .	60	0	0
And where there shall be no such consideration as aforesaid, moving to the master or mistress; if the indenture or other instrument shall not contain more than 1,080 words	1	0	0
And if the same shall contain more than that quantity .	1	15	0
"APPRENTICESHIP AND CLERKSHIP.—Indenture, or other instrument or writing, containing the covenants, articles or agreements for or relating to the service of any such apprentice, clerk or servant as aforesaid, who shall be put or placed to or with a *new master or mistress*, either by assignment, transfer or turn-over, or upon the death, absence or incapacity of the former master or mistress, or otherwise; or any writing whatever, whereby any such assignment, transfer or turn-over may be effectuated or ascertained.			
Where there shall be any such valuable consideration as aforesaid, moving to the new master or mistress, exclusive of any part of the consideration to the former master or mistress, which may be returned or given or transferred to the new master or mistress . . .	Such and the like duty, in proportion to the amount or value of such new consideration only, as is before charged on any original indenture of apprenticeship.		

(*g*) A previous Stamp Act, (37 Geo. III. c. 111,) exempted contracts of apprenticeship of a certain limited amount. This exemption was held not to apply where no consideration passed. (*Rex* v. *Make*, 3 A. & E. 531; 5 N. & M. 241.)

APPRENTICESHIP AND CLERKSHIP—*continued.*	Duty. £ s. d.
And where there shall be no such new consideration; if the indentnre or other instrument or writing shall not contain more than 1,080 words (*h*)	1 0 0
And if the same shall contain more than that quantity .	1 15 0
And where there shall be *duplicates*, or *two parts*, of any snch indenture or other instrument or writing, relating to any such apprentice, clerk or servant as aforesaid, each part shall be charged with the duty before mentioned, in all cases where the same shall not exceed thirty-five shillings; and where the same shall exceed that sum, only one part shall be charged with the said *ad valorem* duty, or duty in proportion to the consideration, and the other part shall be charged with a duty of	1 15 0
Note.—And *the part* bearing the *ad valorem* or higher duty shall belong to and be kept by the apprentice, clerk or servant, or some person on his or her behalf, upon his or her being first placed out; and in case of any subsequent placing out, by assignment or otherwise, *the part* bearing the *ad valorem* duty on that occasion (if any) shall belong to and be kept by the former master or mistress, or his or her representatives, or by the apprentice, clerk or servant, or some person on his or her behalf; and in each of the said cases, *the other part*, bearing the lower duty hereby charged thereon, shall belong to and be kept by the original master or mistress, or the new master or mistress, as the case may be; and the same shall be respectively received in evidence accordingly" (*i*).	

Denomination of stamp.

The stamp formerly must have been of the proper *kind* as well as value; even though the stamp used was higher than that required, and applicable to the same kind of instrument. But by 55 Geo. III. c. 184, s. 10, all instruments upon which any stamp shall have been used of an improper denomination or rate of value, but of equal or greater value than the regular stamp, shall be valid, unless the stamp is specifically appropriated to any other instrument by having its name on the face thereof.

Where the duty is not paid, the indenture is void, and no settlement acquired. (*Cuerden* v. *Leyland*, 2 Stra. 903; 2 Sess. Ca. 134; 1 Bott, 545). In that case the pauper was bound apprentice by indenture, and the master had 20*s.* paid him; he served three years, but the master never paid the duty of 6*d.* in the pound according to 8 Anne, c. 9, s. 39 (*k*), which says, that if the duty be not paid, the indenture shall be void to all intents and purposes whatsoever. The case was referred to *Fortescue*, J., who went the circuit, and he held it a settlement, because the master had six months to pay the duty in (*l*); so that during those six months a settlement was gained, and it should not be in the power of the master to defeat it by matter *ex post facto*. And pursuant to this opinion, the sessions held it a settlement. But upon debate in the King's Bench, the order was quashed; for they said it was making the indenture good to one purpose, when the act of parliament had made it

(*h*) An assignment of an indenture of apprenticeship does not require more than a 1*l.* stamp, although it extends the period of apprenticeship. (*Morris* v. *Cox*, 2 M. & G. 659.)

(*i*) As to exemptions, see post, p. 461.

(*k*) See this section, post, p. 463.

(*l*) The statute of Anne permitted indentures, executed beyond fifty miles from the limits of the bills of mortality, to be stamped within six months; see infra.

void to all intents and purposes whatsoever. And though it was a hard case, they could not break through the positive words of the act.

Under the statute of Anne it was held, that a covenant by the father to provide lodging, board, &c. for the apprentice, and the master to pay four shillings per week to the father for the same, did not render an additional stamp necessary. (*Rex* v. *Portsea*, Burr. S. C. 884.)

So where an apprentice covenanted to provide himself meat, drink, lodging, &c., and the master covenanted to pay him wages. (*Rex* v. *Walton in Le Dale*, 3 T. R. 515.)

So where the friends of an apprentice covenanted to maintain him on every Sunday, and to provide him with clothes. (*Rex* v. *Leighton*, 4 T. R. 732.)

A pauper was bound apprentice by the trustees of a public charity. The master covenanted to find meat, drink, apparel, washing, &c. Before the execution of the indenture the father of the pauper, who was not a party to the indenture, agreed with the master to find the pauper clothing and washing during the term, and he did so. It was held that the indenture did not require a stamp. (*Rex* v. *Aylesbury*, 3 Bar. & Adol. 569.)

So a master stipulating for part of the apprentice's earnings, is not a consideration within the statute of Anne. (*Rex* v. *Wantage*, 1 East, 601.)

So an indenture, with covenant to allow the master two shillings a week, and the apprentice to have wages and provide for himself, does not require the additional stamp. (*Rex* v. *Bradford*, 1 M. & Sel. 151.)

An apprenticeship to two masters, to serve them consecutively in two distinct trades, is valid, and requires only a single stamp; for by the stamp act, a duty shall be paid on every indenture, not a distinct duty in respect of each master or each trade. This instrument does not operate as two indentures, or as an indenture and assignment, so as to require two stamps. (*Rex* v. *Louth*, 2 Man. & R. 273; 8 B. & C. 247.)

(f) *The Time for Stamping.*

By 8 Anne, c. 9, s. 36, indentures signed within the limits of the weekly bills of mortality were required to be stamped with the premium stamp within one month after the date; and by sect. 37, every indenture entered into elsewhere in Great Britain shall be either stamped within two months, or brought within that time to some collector or officer appointed for the management of these duties, who shall indorse a receipt for the duty paid, bearing date on the day of payment. By sect. 38, indentures so indorsed, executed within fifty miles, to be computed from within the limits of the weekly bills of mortality, shall be stamped within three months; and if at a greater distance, within six months after the date of making thereof. By sect. 39, all indentures not stamped within the respective times for that purpose limited by the act, are declared void, and not available in any court or place, or to any purpose whatsoever.

These provisions are still in force in reference to cases where a premium is paid; and therefore indentures of apprenticeship, whether executed before or since the 55 Geo. III. c. 184, must be stamped within the time limited by the 8 Anne. (*R.* v. *Chipping Norton*, 5 B. & Ald. 412; *Rex* v. *Church Hulme*, 5 B. & Ad. 1029, n.) But where no premium is paid, and therefore not within sect. 39 of the statute of Anne, the court will not inquire when the stamp of 1*l.* (or 1*l.* 15*s.*) required by the 55 Geo. III. c. 184, was affixed, or what penalty has been paid. (*Rex* v. *Preston*, 5 B. & Ad. 1028.)

(g) *Exemption from Stamp Duty.*

The statute 8 Anne, c. 9, s. 40, exempted from such duty apprentices "placed out at the common or public charge of any parish or township, or by or out of any public charity."

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The 55 Geo. III. c. 184 (Schedule, Part I.), contains the following exemptions from the duties there imposed, and from all other stamp duties :—

"Indentures or other instruments for placing out poor children apprentices, by or at the sole charge of any parish or township, or by or at the sole charge of any public charity, or pursuant to the act of the thirty-second year of his Majesty's reign (*m*), for the further regulation of parish apprentices.

"And all assignments of such poor apprentices; provided there shall be no such valuable consideration as aforesaid given to the new master or mistress, other than what may have been or shall be given by any parish or township, or by any public charity."

A voluntary annual charitable subscription, for the purpose of putting out children apprentices, was held to be a "public charity," within the statute of Anne. (*Rex* v. *St. Matthew, Bethnal Green*, Burr. S. C. 574; 1 Bott, 641.)

So also a bequest of money to put out children apprentices, was held to be within it. (*Rex* v. *Clifton-upon-Dunsmore*, Burr. S. C. 687; 1 Bott, 641.)

And if the money be raised at the common and public charge of the parish, it seems that the apprenticeship is within the exemption, if the parties are bound, although all the requisites of the statutes to make it a compulsory binding by the parish have not been complied with. (*Rex* v. *St. Petrox in Dartmouth*, 4 T. R. 196.)

An indenture reciting certain trustees to be parties, and the consideration to be 20*l.*, is good, though not executed by the trustees, and though only 16*l.* 15*s.* 6*d.* of the consideration was paid to the master.

Rex v. *Quainton* (2 M. & Sel. 338.) Removal from Quainton to Bicester-Market-End quashed. Case:—The pauper, on the 23rd of November, 1811, a poor boy aged thirteen, of Quainton, was, with the consent of the trustees (created by the will of Lady Say and Sele for the purpose of yearly putting out a certain number of poor boys apprentices), bound apprentice to J. Adams, of Bicester, for seven years, for the consideration of 20*l.* stated in the indenture to be paid to Adams by the trustees, who were recited to be parties to the indenture; but it was only executed by the pauper and Adams. This indenture was unstamped, and it appeared that Adams received only 16*l.* 15*s.* 6*d.*, the residue of the 20*l.* being retained by the agent of the trustees for the expenses of the binding. The pauper served under the indenture at Bicester more than forty days. It was first urged that the "two sums" was the gross sum received; and next, as the trustees had not joined in the execution of the indenture, this was not a placing out at the expense of a charity, but was similar to parish indentures, to which the officers must be parties. Lord *Ellenborough*, C. J., said, "Upon the latter point it appeared that the money was paid out of the funds of the public charity, and that it was paid by the trustees in the execution of their trust; and that they acted very wisely not to involve themselves by becoming parties to the covenant; and as to the other point, that the consideration was fully stated. Even if a stamp had been necessary, the consideration would have been sufficiently stated, for it is stated against the party's interest." (See *Rex* v. *Keynsham.*) Order of sessions quashed.

A poor child, apprenticed to B. by the trustees of a charitable fund with a premium, was verbally, and without the knowledge of the trustees, transferred to A. who received 6*l.* part of the 15*l.* paid as the premium. It was held that this transfer is void for want of a stamped assignment, not being within the exemption of 55 Geo. III. c. 184. (*Rex* v. *Fakenham*, 2 Adol. & El. 528; 4 Nev. & Man. 553.)

(h) *Statement of Premium in the Indenture.*

8 Anne, c. 9.

The 8 Anne, c. 9, s. 35, enacts, "That the full sum or sums of money received, or in anywise directly or indirectly given, paid, agreed, or con-

(*m*) See ante, Chap. XV.

tracted for, during the term aforesaid, with or in relation to every such clerk, apprentice, and servant, as aforesaid, shall be truly *inserted and written in words at length in some indenture or other writing, which shall contain the covenants, articles, contracts or agreements, relating to the service of such clerk, apprentice*, or servant as aforesaid, and shall *bear date upon the day* of the signing, sealing, or other execution of the same; upon pain that every master or mistress, to or with whom, or to whose use, any sum of money whatsoever shall be given, paid, secured, or contracted, for or in respect of any such clerk, apprentice, or servant, as aforesaid, which shall not be truly and fully so inserted and specified in some such indenture, or other writing, shall, for every such offence, *forfeit double the sum so given, paid, secured, or contracted for.*"

The premium to be inserted in the indenture, &c. on forfeiture of double the sum.

Sect. 39. "All such indentures or writings as aforesaid, wherein shall not be *truly inserted and written the full sum and sums of money received*, or in anywise directly or indirectly given, paid, secured, or contracted for, with or in relation to such clerk, apprentice, or servant as aforesaid, or whereupon the duties payable by this act shall not be duly paid or lawfully tendered, or which shall not be stamped, or lawfully tendered to be stamped, according to the tenor and true meaning of this act, within the respective times herein for that purpose severally and respectively limited, *shall be void*, and not available in any court or place, or to *any purpose whatsoever;* and the clerk, apprentice, or servant, whom the same shall concern or relate to, shall in such case be utterly incapable of being free of any city, town, corporation, or company, and of following or exercising the intended profession, trade, or employment; any charter, law, or custom to the contrary notwithstanding."

Indentures, in which the full sum received is not charged, &c., void.

And apprentices not to be free of any city, &c.

The premium given by the parish officers, upon the binding out of a poor apprentice, need not be set out in the indenture in words in full length; such an indenture being exempted from any duty by 8 Anne, c. 9, s. 40, the insertion of the premium being required only to ascertain the amount of the duty. (*Rex* v. *Oadby*, 1 B. & Ald. 477.)

And it seems the provisions of the act did not relate to the assignment of any apprentice, although a fresh consideration passed on the transfer. (*Rex* v. *Ide*, 2 B. & Ad. 866.)

Money given by the apprentice's grandfather to the master to clothe the boy, before he enters upon his apprenticeship, is not such a consideration as the statute requires to be set out in the indenture. (*Rex* v. *North Owram*, Burr. S. C. 145; 1 Bott, 462.)

Where the stamp duty is on the sum contracted for, and that sum is inserted in the indenture, though a less sum be actually paid the indenture is good, and service under it gains a settlement; for the act requires (s. 35), "that *the full sum* of money *received*, or in anywise directly or indirectly given, paid, agreed, or contracted for, with the apprentice, shall be *truly* inserted," under a certain penalty. By s. 39 the indenture is avoided, "if the sum received, given, paid, secured, or contracted for," be not so truly inserted. By requiring the *full sum* to be inserted, it meant that *not less* than the sum upon which the duty was really payable should be inserted. Here, not only the *full sum*, but *more* than the sum for which the duty was payable, has been inserted, and the duty paid upon such larger sum. Then more than the act required has been complied with. (*Rex* v. *Keynsham*, 5 East, 309.) And see *Rex* v. *Quainton* (2 M. & Sel. 338, ante, p. 462).

A step-father agreed to give ten pounds as premium; the mother secretly promised more; ten pounds was inserted in the indenture: it was held sufficient. (*Rex* v. *Bourton-upon-Dunsmore*, 9 B. & C. 872.)

But where the mother, not a *feme coverte*, agreed to give 1*l.* in addition to 4*l.* given by a charity, it was held that the 1*l.* must be inserted in the indenture, and stamp paid. (*Rex* v. *Baildon*, 3 B. & Ad. 427.)

So an agreement by a grandfather to pay an additional sum to that

given by a charity, is a binding agreement, and the indenture is void by 8 Anne, c. 9, for not stating it. (*Rex* v. *Amersham*, 6 N. & M. 12; 4 A. & E. 508.)

(i) *The Effect of an Imperfect Apprenticeship.*

Where parties *intend* to create the relation of master and apprentice, the contract entered into between them for that purpose can have no force with reference to the law of settlements, except as a contract of apprenticeship; and therefore if the contract as such is defective in form or substance, it cannot be available as a contract of *hiring* and *service*. If it has not *all the legal requisites of an apprenticeship*, it is an absolute nullity; and the ingredients to constitute a *hiring* for a year, or a term of years, cannot be picked out of such a contract, so as by a service under it to entitle the party to a settlement.

The defects of *form* which are fatal to the right of settlement by apprenticeship, have been exhibited in the preceding cases: it remains to be seen in what manner the *contract* itself will be insufficient to establish a settlement of this description.

If the intention be to create an apprenticeship, and the indenture is not stamped, it confers no settlement.

Salford v. *Storeford* (2 Barnard, 39; 2 Bott, 490). Order of removal confirmed. Case:—Lineacre had been bound an apprentice by indenture, and served his master the last two years of his apprenticeship at Salford; the indenture was not stamped. The justices judged this to be a good settlement by way of service, though not as an apprenticeship. But the court held this to be no settlement, on the authority of *Cuerden* v. *Leyland* (p. 460), and quashed the order.

Where one is taken as an apprentice, but the indentures are not executed, it cannot be converted into a hiring and service.

Rex v. *Whitchurch Canonicorum* (Burr. S. C. 450; 2 Bott, 497). The pauper, being of the age of twenty-two years, agreed with a stonemason that he should take him apprentice for six years, to teach him the trade, and that the indentures should be executed accordingly. He went and served five years, when they parted by consent: no indentures were executed. It was contended that this was good as a hiring and service. By the court: "Here is no hiring, expressed or implied. A binding as an apprentice, and a hiring as a servant, cannot be converted one into the other." *Rex* v. *St. Mary Kalendar* (post), was mentioned as in point.

Where an unstamped agreement recited that the pauper *is to be bound apprentice*, it was held that no settlement was gained.

Rex v. *All Saints in Hereford* (Burr. S. C. 656; 2 Bott, 499). The pauper, Abraham Lewis, when a boy, together with his father, entered into an agreement in writing, not stamped, with Mrs. Tringham of All Saints, reciting, that "whereas the boy, with the consent of his father, is to be bound apprentice to her for seven years," she agrees to pay the boy 25*s*. the first year, the four following years 50*s*. each, the sixth year 3*l*., and the seventh year 4*l*. He served her two years, and received the money agreed on for the time, then left his mistress: no indenture was executed. By the court: "An *apprenticeship* was certainly the thing in view; but no indenture was executed; nor could the agreement be esteemed to supply the want of it, as it was not stamped. Nor can it be considered in the nature of a *service;* for in that case there must be a hiring for a year, and a service for a year under such hiring. And the binding as an apprentice cannot be converted into the hiring as a servant."

If A. serve seven years as an apprentice, and there be no indenture, he cannot gain a settlement, either as an apprentice or yearly servant.

Rex v. *Margram* (3 T. R. 378). The pauper's mother had made an agreement with Mr. Tyler, agent for the English Copper Company, who lived in Margram, for him *to serve seven years as an apprentice;* and he served in the copper works for eight years, and learned the trade of a refiner, and received weekly wages; as also 20*s*. a year, as a refiner, and he conceived himself serving as an apprentice, but he signed no indenture or agreement whatsoever, nor was any signed by any other person on his behalf, or to his knowledge. The court, without hearing any argument, were clearly of opinion that this servitude as an apprentice, could not be converted into a service under a hiring.

Rex v. *Highnam* (Cald. 491; 2 Bott, 501; Doug. 238). The pauper, at seventeen years of age, went to W. Evans, of St. Mary de Crespt, in Gloucester, carpenter, for the purpose of being his apprentice for four years, to learn the trade of a carpenter; but to save the expenses of indentures and duty (four guineas' consideration being paid by the pauper to his master), he and his master agreed to sign an agreement on *unstamped paper*, which was accordingly done. Lord *Mansfield*, C. J., and the court held, that it was clear that a fraud was intended; that the pauper meant to be an apprentice and defraud the revenue; and that therefore no settlement could be gained by service under such circumstances.

If, for fraudulent reasons, the indenture is not completed, no settlement can be gained under it.

Rex v. *Laindon* (8 T. R. 379). Order of removal of J. Claydon from East Horndon to Laindon, confirmed. Case:—The pauper went to Ingrave in November, 1792, and after being one month upon trial with J. Mander, a carpenter, in East Horndon, he entered into this unstamped written agreement: "November 20th, 1792, I, John Mander, do hereby agree with J. Claydon *to serve* me three years to learn the business of a carpenter; the first year to have 1*s.* 2*d.* per day; the second year to have 1*s.* 6*d.* per day; the third year to have 1*s.* 10*d.* per day; witness my hand, J. Claydon, J. Mander. Witness, Robert Beles." The pauper proved that at the time of signing the agreement, he agreed to give Mander three guineas as a premium (*n*) to teach him the said trade, and paid Mander 1*l.* 15*s.*, which, with 1*l.* 8*s.* due for wages during the month of trial, made the three guineas; and that he was not to be, and was not employed in any other work than that of a carpenter. The pauper worked with and served Mander under this agreement the whole three years, and slept the last forty nights in East Horndon, and considered himself as an apprentice under the agreement; but he thought himself at liberty to leave his master if he used him ill. The parol evidence, explanatory of the agreement, was objected to, but received. Lord *Kenyon*. "The justices who made this order, and the justices who confirmed it, were of opinion that the pauper was not hired to serve Mander as a yearly servant, but that the relation which was created between them, was that of master and apprentice. The opinions of the magistrates ought not indeed decidedly to influence our judgment, as they have referred the case to us; but when a certain opinion has gone abroad, founded on the decisions of this court, upon which magistrates have been acting, it ought not lightly to be departed from. The first question that arises in this case is, on the admissibility of the parol evidence. This parol evidence was not offered to contradict the written agreement, but to ascertain an independent fact, and I think it was properly received in evidence. That being so, the case appears to be shortly this: in consideration of three guineas paid by the pauper, the master undertook to teach him the business of a carpenter, and the pauper was to serve three years. I am sorry that nice distinctions were ever taken in the determination of cases on this subject; but notwithstanding those little differences, we must consider the whole class of decisions on this point, and extract the principle from them. It is admitted in all of them, that *if two persons intend to enter into the relation of master and apprentice, and owing to some circumstance the relation of apprenticeship is not duly constituted, as if the indentures be not stamped, this shall not change the condition of the parties; if they cannot avail themselves of the consequences of the condition in which they intended to stand, they shall not be put into another condition in which they did not mean to place themselves.* But when it is urged that this relation can only be formed by using the term 'apprentice,' it may be observed that the argument would lead to an absurd consequence; for then if the word '*clerk*' were used in regular indentures of apprenticeship, the clerk

A contract of apprenticeship may be formed without using the word "apprentice;" but a defective contract of apprenticeship cannot be converted into a contract of hiring and service, so as to give the apprentice a settlement.

Parol evidence inadmissible to contradict a writing, but admissible to prove an independent fact. See also *Rex* v. *Llangunnor*, post.

(*n*) The premium indicates an intention to create an apprenticeship.

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would not gain a settlement by serving under the indenture, merely because he was not retained *eo nomine* as an apprentice; but it would be a disgrace to our laws, if we were obliged to decide according to words, without considering their meaning. It was properly said by Lord *Hardwicke*, that 'there is no magic in words;' and he said this not as a discovery just then made by him, but as a maxim that was handed down to him from his predecessors. *If the relation of master and servant be created by the contract of the parties, though they do not use the very words tantamount, it is sufficient.* In this case, a premium was paid by one man to another, who engaged to teach him a trade: now, what is that but an apprenticeship? The term 'apprentice' is taken from the French word *apprendre*, to learn. Unfortunately, Lord *Mansfield* did not adhere to his first opinion in *Rex* v. *Little Bolton* (p. 423); but even when he gave his second opinion in that case, he took it for granted that the rule remained unshaken, that if the parties *intended* to create the relation of master and apprentice, and it were not legally created, so that the apprentice could not gain a settlement as such, he could not acquire a settlement as a yearly servant: and in *Rex* v. *Highnam* (p. 465), Lord *Mansfield* adopted the opinion he had first given in *Rex* v. *Little Bolton*, conformably to all the other cases. Therefore, we may rely on this last case, and if it be not distinguishable from that of *Rex* v. *Little Bolton*, it is sufficient to say that it is subsequent to it, and that *Rex* v. *Little Bolton* is an anomalous case. When we find the current of authorities one way, I should be sorry that a little inadvertence in the court, in the decision of one case only, should be supposed to break in upon the general rule. For *Rex* v. *Coltishall* (p. 424), which has been cited, is distinguishable from this class of cases; there, by the agreement of the parties, the pauper was *to do any work* that the master set him about. I am, therefore, most clearly of opinion, that in this case the parties intended to form the relation of master and apprentice; and that, as that relation was not legally constituted so as to give the latter a settlement as an apprentice, the relation cannot be converted into that of master and servant, so as to give him a settlement as a yearly servant. And I think we should do infinite mischief, if we were to overturn that which has been so long a settled rule." *Lawrence*, J. "The first point is, that the sessions ought not to have received the parol evidence, because it contradicted the written agreement; but it was not offered for that purpose, but to ascertain a fact collateral to the written instrument, in order to explain the intention of the parties, the instrument being in some measure equivocal. The fact being established, the case was this: on the one hand, the pauper paid a premium to the master, and was to receive certain wages: and on the other hand, the master engaged to teach him the business of a carpenter; then the question is, whether or not by this agreement the parties were to stand in the relation of master and apprentice, of which I think no doubt can be entertained. In *Rex* v. *Little Bolton*, Lord *Mansfield* only went thus far: that it must be collected from the words of the instrument, whether or not the party is to serve as an apprentice; his lordship could not mean to say that a contract of apprenticeship could not be formed, so as to give a settlement to the party serving under it, without the introduction of the word 'apprentice.' With regard to the instance put at the bar, of servants at inns, it is to be remembered that they do not pay their money in order to learn a trade, but as a premium to the master to let them have the perquisites of that situation: but in the case of a trade, the relation of apprenticeship is created for the very purpose of the party being instructed in that trade: the two cases do not bear the smallest resemblance to each other. Therefore, there does not appear to me to be any reason for shaking the authority of *Rex* v. *Highnam*, especially as the great body of cases support it. It is much to be lamented that settlement cases should ever have been determined on nice distinctions; it would be better to decide them on some general rule, that every person

Meaning of "apprentice."

Payments by servants at an inn are not to learn a trade.

who reads may understand it." *Le Blanc*, J. "If the master, in consideration of a premium, engage to teach the other his trade, it is the same as if he agree in express words to receive him as an apprentice and teach him his trade." Orders confirmed.

A perfect apprenticeship may be constituted without using the word "apprentice."

Rex v. *Rainham* (1 East, 531). The pauper, on the 8th of November, 1784, entered into the following agreement with Hills, a sawyer, living in Eltham. "An agreement made the 8th of November, 1784, between J. Hills, sawyer, and M. Smith; viz. Smith doth agree with J. Hills to serve him for three years from the date of the agreement; viz. for the first year 10*s.* per week; for the second year 11*s.*; and for the third year 12*s.* per week; and J. Hills doth agree and promise to learn M. Smith the art of a sawyer, which he now follows; and it is agreed that if Smith shall wilfully lose any time to the prejudice of Hills, he agrees to pay Hills 3*s.* per day for all such neglect. If Smith repents of this agreement before the time expires, he promises to pay Hills 10*l.* on demand; or if Smith is sick, or by any disorder or misfortune rendered incapable of work, not to receive any pay from Hills." The agreement was signed and sealed by both parties, and stamped: no premium was paid by the pauper to Hills. The pauper immediately went to Hills, and resided with him in Eltham for two years and a half. Lord *Kenyon*. "The sessions have stated the deed and the service under it in fact, leaving this court to draw the conclusion: and that can only be done in one way, namely, that this was a contract of apprenticeship. The instrument was under seal, and need not be indented (*o*). It has been determined, that the party serving need not be retained *eo nomine* as an apprentice; but that *it is enough, if the purpose of the contract be, that the one shall teach and the other learn the trade.* That is the case here; for the master engaged to learn, *i. e.* teach the pauper the art and mystery of a sawyer, and the object of the pauper was to be taught the business. No technical words are necessary to constitute the relation of master and apprentice; nor is it necessary that there should be any premium given to the master."

An instrument under *seal*, but not indented, is sufficient.

Rex v. *Bilborough* (1 B. & Ald. 115). The father of the pauper, by a parol contract, agreed with Smith that he should teach the pauper to make stockings during the year next ensuing, for which he was to receive two guineas, and the pauper was to have his earnings, paying his master for the use of the frame; one guinea was paid at the time, and the other guinea was to be paid by 1*s.* a week during the agreement; and the pauper went to learn the business, and work for Smith in the manner specified, and continued to do so for a year and a half, during which time he paid the second guinea, and the price for the use of the frame. Lord *Ellenborough*. "In this case the pauper never contracted to *serve* the master; the only agreement was that the master should *teach* the pauper for a year. In *Rex* v. *Burbach* (p. 426), there was an agreement on the part of the pauper to work for two years; that forms an essential distinction between the two cases." (See *Patteson*, J., in *Rex* v. *Newton*, p. 469; and *Rex* v. *Crediton*, post, p. 468.)

A contract on the part of the master to teach, without any engagement on the part of the pauper to serve, is not sufficient.

Rex v. *Mountsorrell* (2 M. & Sel. 460). Order of removal from Mountsorrell to Quorndon quashed. Case:—When G. Swain, the husband, was about thirteen years old, his father made an agreement with one Rawlins of Quorndon, that R. should take his son for six years, to teach him the trade of a framework knitter, and he was to allow R. 9*s.* per week for the first three years, for teaching him, and his board and lodging. G. Swain served R. six years in the whole in Quorndon. The court distinguished this case from *Rex* v. *Little Bolton* (p. 423), inasmuch as by this contract the son was entitled to none of his earnings, and

The father agreed that R. should take his son for six years, to teach him his trade, and he was to allow R. 9*s.* a week for the first three years for his board, &c.: this is a defective contract of apprenticeship.

(*o*) They need not be indented for the purpose of a settlement, because the 31 Geo. II. has so provided; but deeds of apprenticeship generally require an indenture. (Shep. Touch. 50.)

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instead of his receiving wages from his master, his master was to receive wages from him, as the price of teaching him: it was a hiring of the master to teach the apprentice. The whole contract with the father was bottomed on and had for its object the instruction of the son, and nothing else. Order of sessions confirmed.

An agreement for a year to learn sawing, and to have a portion of the earnings of himself and his master, is not a hiring, but a defective contract of apprenticeship.

Rex v. *Crediton* (3 B. & Ad. 493). An order of removal of J. Middlewich, &c. from St. Mary Major, Exeter, to Crediton, was confirmed. The pauper agreed with one West, a sawyer, of the parish of St. Edmund's, Exeter, for a twelvemonth, to learn sawing, and was to have 7*s.* 6*d.* out of every 20*s.* earned by his master and himself. He served out that year, providing his own board and lodging. At the end of the year he made a new agreement with West for another year, under which he was to receive 8*s.* out of every 20*s.* earned by his master and himself. Nothing was said about Sunday or the hours he was to work; but he was occasionally absent without permission from West. He lived out the second year with West in the parish of St. Edmund's. The sessions decided that the pauper gained no settlement by this service. *Littledale*, J. "It seems to me the sessions came to the right conclusion. In all the cases cited there was some work to be done, though there was a contract to learn. This case falls within *Rex* v. *Bilborough* (p. 467). There one Smith, by parol, agreed with the pauper to teach him to make stockings during the year, for which Smith was to receive two guineas, and the pauper was to have his earnings, paying the master for the use of the frame, &c.; and it was held, that no settlement was acquired by living out the year under the agreement, for the pauper never contracted to serve the master; the only agreement was that the master should teach the pauper for a year. In *Rex* v. *St. Mary, Kidwelly* (p. 471), the father of the pauper agreed by parol to give a shoemaker a guinea for teaching his trade to the pauper, for twelve months; and it was held, that the agreement created the relation of teacher and scholar, and not that of master and servant. In *Rex* v. *The Hamlet of Walton* (Carth. 400), the pauper was put out to a barber for one year to learn to shave, and the barber was to have the benefit of the boy's work, and receive some money for teaching, and the boy lived with him for a year; it was held, that the boy was in the situation of a scholar, and not of a servant. On the other hand, in *Rex* v. *Hitcham* (Burr. S. C. 489), where the pauper agreed to let himself to his brother, who was a carpenter, for a year, and 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, and the pauper was to do all his brother's business in the farming way: that was clearly held to be a contract for service, and a hiring for a year. Here, as by the express terms of the contract, the pauper was to learn, an obligation on the part of the master to teach must be implied. The agreement for the second year is substantially the same as that for the first. The only difference is, that the wages are increased." *Parke*, J. "I think the sessions have put the right construction on this contract. To gain a settlement by hiring and service the pauper must have hired himself to serve for a year. Here, the relation of master and apprentice, not that of master and servant, was created. The case is not distinguishable from *Rex* v. *Bilborough*. There the contract was that the master was to teach the pauper; here it is, that the pauper shall learn; but if the one is to learn, it must be implied that the other is to teach. The only difference between the agreement for the first and that for the second year is that the wages were different; in other respects the contracts are the same." *Taunton*, J. "I am of opinion that the relation contemplated in this case was that of master and apprentice. The only difference between the first and second agreement is in the sum to be received by the pauper. What then is the purpose for which the pauper agreed to contract any relation with West? It is stated expressly in the agreement to be to learn sawing. I take the true distinction in these cases to be this,

From an obligation to learn, a contract to teach may be implied. See *Rex* v. *Bilborough*, p. 467.

where teaching on the part of the master, or learning on the part of the pauper, is not the primary, but only the secondary object of the parties, that will not prevent (where work is to be done for the master) the contract being considered one of hiring and service. In all the cases cited, where the contract was so considered, it appeared that the pauper agreed to work for his master, and the master undertook to teach him the particular trade in which he was conversant; but the teaching and learning were incidental, and therefore it was held to be a contract of hiring. But where teaching and learning are the principal object of the parties, though there was a service, the contract is considered to be one of apprenticeship." Order of sessions confirmed.

Rex v. *Ightham* (6 Nev. & Man. 320; 4 A. & E. 937). A., a carpenter and occupier of land, was applied to by B., who wished to succeed C. as an apprentice to A. A. said he would take no more apprentices, unless they would work on the land as well as at the trade, and that he would take him to do work as a servant. It was agreed that B. should live with A. three years, to learn the business of a carpenter, and to do any other work that shall be required by A., who was to pay him certain weekly wages, and also for overwork. Although the question, whether this agreement constituted a contract of apprenticeship or of hiring and service, ought to have been decided by the sessions, yet where the sessions, having decided that it was a contract of hiring and service, granted a case, the court, upon the facts found as above, reversed their decision, holding that the agreement was an imperfect contract of apprenticeship.

An agreement by pauper for three years with a master manufacturer to learn the art of weaving flannels, and, after six weeks' employment, another similar agreement with another master for twelve months, are imperfect apprenticeships.

Rex v. *Newton* (1 Ad. & Ell. 238). The pauper, when he was 21 years old, agreed by parol with J. W., a master flannel manufacturer, for three years, to learn the art of weaving flannels, and was to be paid by his master one-half of what he could get, and to find himself meat, drink, clothes, washing, and lodging; and the master was to have the other half for teaching him the art of weaving. The pauper remained in W.'s employ six weeks, and then left by consent, and applied to E., another master flannel manufacturer, to take him on the same terms as W. E. said he would take him on the same terms, but for twelve months only, adding, that twelve months would be long enough if he was a good boy. The pauper agreed to go to E. for twelve months *to learn the art of weaving*, and to give half of his earnings. The pauper went to E. on the following day, and continued to weave flannels in his master's room, from his master's materials, and with his loom, to the end of the year, on the terms originally agreed upon. *The pauper could not leave nor be turned away during the twelve months*, and was paid by his master one-half of what he earned, and his master kept the other half for teaching him the trade. He found himself meat, drink, clothes, washing and lodging, and lodged during the above time with his mother. After his time was up with E. he began to weave by the piece, then he had all he got, like other workmen. *Littledale*, J. "There has certainly been some undulation of opinion in the court at different times on this subject; but I think we are bound by the last decision. The present case is like *Rex* v. *Crediton* (p. 468), but stronger; and there, as in this case, the pauper found his own board and lodging. On the facts of this case as found by the sessions I think the contract was for learning, and was not a hiring for service. In *Rex* v. *Eccleston* (p. 424), the contract was generally 'to serve.' Here by the agreement the pauper was to learn the art of weaving flannels, and the master was to have half his earnings for teaching. The master's observation that twelve months would be long enough if the pauper was a good boy, strongly shows the intention of the parties to have been teaching and learning, and their language throughout has the same tendency. If the master had gone into a different business I should doubt if he could have insisted on employing the pauper in it. I question whether he had a right to employ him in anything but weaving flannels. Upon the whole, there

is nothing here to show a hiring for the purpose of service; and I think that an apprenticeship was not merely the primary, but the only object of the contract." *Patteson*, J. "I cannot distinguish this case from *Rex* v. *Crediton*, and being bound by that authority we must decide accordingly. I confess I am also unable to distinguish the case from *Rex* v. *Burbach* (p. 426); but I think that is overruled by *Rex* v. *Crediton*. The distinction between cases where the agreement is to work or to serve, and where it is to learn, seems to have been first distinctly taken by Lord *Ellenborough* in *Rex* v. *Bilborough* (p. 467), yet in *Rex* v. *St. Margaret's, King's Lynn* (p. 471), the same words are stated. In *Rex* v. *Edingale* (infra), where the agreement was held to be a defective contract of apprenticeship, the boy's agreement was to serve for four years, and that was held an imperfect contract of apprenticeship. I cannot reconcile the cases, but ever since *Rex* v. *Bilborough* the current of opinion has been to consider agreements like the present as imperfect contracts of apprenticeship." *Williams*, J. "I agree in the opinion expressed by Mr. Justice *Lawrence* in *Rex* v. *Eccleston*, of the importance in these cases of adhering to what has been once expressly determined. When the court begins to decide them on nice and evanescent distinctions infinite trouble is occasioned. The tendency of opinion latterly has been to treat agreements like this as imperfect contracts of apprenticeship; and without, considering the several instances in which an inclination has been shown to depart from the doctrine laid down in *Rex* v. *Little Bolton*, it is enough to say, that I think the present case is not distinguishable from *Rex* v. *Crediton*, and ought to be governed by it."

Agreement to serve for four years with a tailor, to learn his trade, to have meat, drink, &c. and 2*s.* 6*d.* a week the last two years, is an imperfect contract of apprenticeship.

Rex v. *Edingale* (10 B. & Cres. 739). The pauper, who had worked with his father at his trade as a tailor, and after the death of his father was put by his mother to work with other tailors, who paid him. At the age of fourteen went to live with T., a tailor, under an agreement, the circumstances of which were as follow:—The pauper saw T. when he went to his shop on an errand. T. said the pauper was just such a one as he wanted,—he thought he would suit him. The pauper said his mother would like to make him an apprentice. T. said he would not take him apprentice, because if he did he should offend the farmers: he would take him on agreement for four years. The pauper's father-in-law, and the pauper, went to T., and T. agreed with him that the pauper should serve him four years. He was to go to him, to learn his trade, to have meat, drink, washing, and lodging the whole time, to receive no money for the first two years, but 2*s.* 6*d.* a week for the last two years. It was said at the time the agreement was made, that the pauper was to go to him to learn his trade. When the pauper had lived with T. about a year, his father-in-law having neglected to supply him with clothes, T. agreed with the pauper to give him 1*s.* 6*d.* a week from that time for the remainder of the term, instead of 2*s.* 6*d.* a week for the last two years. In the third year the pauper having quarrelled with his master, ran away and went to his mother; upon which he was taken by T. before a magistrate, who made him return to his master, with whom he continued to live until the expiration of the four years. It was held, that the sessions were right in coming to the conclusion that it was an imperfect contract of apprenticeship.

Rex v. *Combe* (8 B. & C. 82; 2 M. & R. 30). Pauper was "hired" by his uncle, a carpenter, "to learn his trade," and "was to do any other work as well as that of a carpenter." His uncle was to find him part of his food and clothing, but he was to lodge with his father. Pauper served his uncle on these terms five years. At the end of two years it was proposed to draw up indentures, to exempt pauper from the militia; but none ever were drawn up. This was held to be an imperfect contract of apprenticeship.

In *Rex* v. *Nether Knutsford* (1 Bar. & Adol. 726), an unstamped memorandum of agreement, whereby pauper was hired, and was to be taught the art and mystery of cotton weaving, using many of the usual

terms of indentures of apprenticeship, was held to be a defective contract of apprenticeship.

An agreement to serve as an *articled servant to learn a trade*, and be considered an out *apprentice*, to do any work; wages to be deducted during illness or absence; is an imperfect apprenticeship. (*Rex* v. *Tipton*, 9 B. & C. 888; 4 M. & R. 703.)

Rex v. *St. Mary, Kidwelly* (2 B. & C. 750; 4 D. & R. 309). By a parol contract, the master agreed to teach the pauper the trade of a shoemaker for twelve months, for which the master was to receive a guinea, the pauper's father finding him board and lodging during the time. This is an imperfect apprenticeship. At the expiration of the year, the pauper entered into a fresh agreement to work with his master for twelve months, making shoes at three pence per pair for the first half-year, and at four pence per pair the remaining half-year. The latter is a hiring and service.

A shoemaker proposed to the mother of a pauper, a boy, to take him to learn his business. The boy was to serve four years, was to board and lodge with his mother, and was to have half what he earned. The mother consented, and the boy served four years upon those terms. No indentures were executed, *on account of the poverty of the mother*, and no premium was paid. This is a defective contract of apprenticeship.

Rex v. *St. Margaret's, King's Lynn* (6 B. & C. 97). Headley, a shoemaker, a friend of the pauper's mother's family, applied to her, and offered, if she would agree to his proposal, that he would take her son, then a boy, to learn his business; but there were no indentures, on account of her poverty. The pauper was to serve for four years, to board and lodge with his mother in St. Margaret's, and to have half what he earned. The pauper entered upon this service, worked in the shop with the apprentices, did not stay with his master on a Sunday, and was not required to do any work but in the shop. The pauper continued in the service four years, boarding and lodging in St. Margaret's. Some time after entering upon the service, Headley sent the following writing by the pauper to his mother, which was neither stamped nor signed:—"An agreement drawn up between Mrs. Cotton and Thomas Headley, that the said Thomas Headley is to find her son, John Cotton, work for four years, and he is to have half what he earns all the four years; and Mrs. Cotton is to find her son, John Cotton, everything else during the four years." *Bayley*, J. "I am of opinion that this was a defective contract of apprenticeship, and not a contract of hiring Every case of this nature must be determined with reference to its own peculiar circumstances. Where it appears from all the circumstances that the parties at the time of making the contract contemplated the relation of master and apprentice, the contract must be construed as one of apprenticeship; and then if it is a defective apprenticeship, no settlement can be gained by service under it. Where, on the other hand, it appears that the parties contemplated the relation of master and servant, the contract must be construed as one of hiring, and a settlement will be gained by service under it. The payment of a premium is strong evidence to show that an apprenticeship was intended; but it is not decisive: and still less is the absence of a premium evidence to show that a contract of hiring was intended. The written agreement, not having been signed or stamped, must be laid out of consideration, and we must look to the original bargain between the master and the pauper's mother, to ascertain the intention of the parties. The proposal, and consequently the purpose of the master, was to teach the pauper his trade; and the pauper was to serve four years for that purpose, to have half what he earned, and to board and lodge with his mother. In ordinary cases, indentures of apprenticeship are executed, but here they were not executed on account of the poverty of the mother. The fact that the execution of indentures was thought of, though not realised, shows clearly that the parties did not contemplate the mere relation of master and servant, but did contemplate the relation of master and apprentice. *Rex* v. *Little Bolton* (p. 423) comes very near the present. There, the pauper proposed to the master, who was a weaver, to teach him to work counterpanes; but although the object of the pauper was to be taught a trade, the master agreed to teach him only upon the condition that he should work for a given time. In many cases the object of the party

Payment of premium evidence of apprenticeship.

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who hires himself is to learn a particular trade, and the instruction which he receives is a partial remuneration for his services. In *Rex* v. *Burbach* (p. 426) it was agreed that the pauper should work for two years, and have what he got, allowing his master so much per week for teaching him. The court held that to be a contract of hiring and service, but there was nothing to show that the parties ever contemplated the relation of master and apprentice. Here a contract of apprenticeship was contemplated, and not completed, only in consequence of the poverty of the pauper's mother. That being so, I think this a defective contract of apprenticeship." *Holroyd*, J. "I am of opinion that the relation of master and apprentice was contemplated; or, at least, that there is not evidence to justify us is saying that the relation of master and servant was contemplated. The case states that the master, a shoemaker, applied to the pauper's mother, and offered her, if she would agree to his proposal, to take her son, then a boy, to learn his business. The proposal was to teach, and the mother was to consider whether she would accept that proposal. The terms upon which the master proposed to teach the pauper was, that the pauper should serve four years. Now, for what purpose was he to serve four years? To learn the business. I think the sessions were not warranted in finding that the relation of master and servant existed in this case. The fact of the pauper having served, does not warrant the conclusion that he served in the character of servant, and not of apprentice; for mere service does not constitute the relation of master and servant." *Littledale*, J., concurred. Order of sessions quashed.

Where the sessions find the contract to be for an imperfect apprenticeship, the Court of Queen's Bench will not disturb their judgment.

Rex v. *Great Wishford* (4 A. & E. 216). The pauper's mother applied to West, a carpet-weaver at Kidderminster, to take her son, the pauper, into his employment. West agreed with the mother to take the pauper for two years on trial; after which, if the pauper and master agreed, the pauper was to be apprenticed to West. The pauper was to be found in board and lodging and washing by West, but was to have no wages except what West pleased to give him as pocket-money. The pauper was to draw. The pauper went to West as agreed, and worked for him for about a year and a half, living in West's house during that period. The pauper then ran away, from Easter to wheat-harvest, when he returned and worked for West for a short time at weekly wages, when he again ran away, and they parted. It was stated by a magistrate on the bench, and assented to, "That every carpet-weaver is first taught the art of drawing as a draw-boy." The chairman took the opinion of the court, whether the service was an imperfect contract of apprenticeship or a living and service, and the court found that it was an imperfect contract of apprenticeship. *Patteson*, J. "The chairman put it to the court of quarter sessions, whether there was in this case an imperfect contract of apprenticeship or a hiring and service. The sessions found the one, and I think in doing so they negatived the other. It is now contended, first, that we are not at liberty to enter into the question, the sessions having decided on it; and secondly, if we do enter into it, the judgment of the sessions is right. The line of demarcation is not plain between cases in which this court is and is not bound by the finding of the sessions; but there is clearly no instance in which this court has reversed their decision, unless they have manifestly come to a conclusion which is wrong, either as being unsupported by facts, or as being contradictory to them. We have been pressed, in this case, with the decision in *Rex* v. *Woolpit*, but there my brother *Williams* and I thought the finding of the sessions contradictory to the facts appearing on the case: my brother *Coleridge* was of a different opinion. Here we all think that the sessions came to a conclusion warranted by the facts. The contract might have received either of the two interpretations submitted to the sessions, more especially as it was by word of mouth. In *Rex* v. *St. Margaret's, King's Lynn* (p. 471), *Bayley*, J., said, 'Every case of this description must depend upon its own particular circumstances,

If, from all that passed between the parties at the time the contract was made, they appear to have contemplated the relation of master and apprentice, then the contract must be considered to be one of apprenticeship; and if it be an imperfect apprenticeship, no settlement can be gained by serving under it. If, on the other hand, it appears that the parties contemplated the relation of master and servant, then it must be deemed a contract of hiring, and a settlement will be gained by serving under it.' The sessions are to determine upon a view of all the circumstances, as *Bayley*, J., truly says, if the contract itself be ambiguous. In subsequent cases the criterion has been stated in rather different terms than those used by *Bayley*, J., in *Rex* v. *St. Margaret's, King's Lynn*. The test, as latterly stated, and as put in *Rex* v. *Crediton* (p. 468), and *Rex* v. *Newton* (p. 469), is, whether or not the contract was for learning and teaching. Here it might have been inferred from the circumstances of the contract, either that the master was to take the pauper for two years, to see whether he was a teachable boy, and likely to learn the business; or that he was to take him for two years to do all kinds of work, and that if liked at the end of that time he was to be received as an apprentice. The sessions have adopted the first construction, and have found an imperfect contract of apprenticeship. My own inclination is towards the same conclusion, though the circumstances will admit of a contrary one. It is suggested that the sessions must have doubted the justness of their own decision, or they would not have referred the matter to the court as they have; but this is an argument which may always arise if the sessions send cases at all. Upon the whole, I think, enough appears in this case to justify the order of sessions." *Williams*, J. "I am also of opinion that there is enough in this case to support the order of sessions. The supposed difference of opinion in *Rex* v. *Woolpit* arose merely from the different views taken with regard to the facts of that case. Here, without saying whether I should or should not have decided as the sessions have, I think that they had ground for finding that there was a contract to teach and learn (as I presume they mean to say), and not a contract for hiring; and, if the case shows any ground for their decision, we ought to support it. The word 'employment' might apply to either description of contract. It is true the agreement here was not in terms that the boy should go to be taught, but it might be inferred that he was to go for that purpose. He was to 'draw,' and that, most probably, was to prepare him for the particular business. One expression in the case, with respect to the contract, is ambiguous, and the others are in favour of the finding. I should have been sorry if they had proved so conclusive against the order of sessions that we could not have maintained it; for the sessions appear to have acted upon the case of *Rex* v. *Crediton*, where this court overruled a multitude of former cases (such as *Rex* v. *Little Bolton*, and *Rex* v. *Eccleston*), which had created great confusion, by establishing that a contract, in which the servant was not expressly retained as an apprentice, might not be a contract of apprenticeship, although there was no doubt that the intention of the parties was teaching and learning. Now a more plain and intelligible ground has been laid down upon which to decide such cases—namely, the object contemplated by the parties; and I am glad that the sessions in this instance appear to have proceeded upon that ground." *Coleridge*, J. "In *Rex* v. *Woolpit*, there was no difference on the bench as to principle. Every one will agree that the jurisdiction, upon matters of fact, is with the sessions; this court has it only when a matter of fact is referred to it by the sessions, or where they have decided on the fact without any evidence, or against evidence. The first question here is, whether the sessions have found a matter of fact. I think that in effect they have. Then is their conclusion necessarily wrong? I think it is right; therefore I cannot say that their decision ought to be interfered with. An imperfect contract of apprenticeship exists where the parties have had a perfect contract of apprenticeship in view, but it has

not been thoroughly carried into execution. The object of such a contract is, that the master shall teach and the boy shall learn. That was contemplated here. The parties would not go to the expense of the indenture, but that they said that they would try for two years whether the boy could learn, and the master teach him; and if it proved so, the boy was to be apprenticed. Then there was, in effect, an imperfect contract of apprenticeship. It is said that no express words signifying instruction were used; but I think that it is not necessary, if it can be inferred that learning and teaching were contemplated. It would be a new position to lay down, that an intent cannot be collected in the absence of express terms." Order of sessions confirmed.

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§ 2. OF THE CONTRACT OF APPRENTICESHIP IN THE CASE OF PARISH APPRENTICES.

There are some peculiarities respecting parish apprenticeships, which render it expedient to consider them separately.

Contracts of Parish Apprentices before 1st October, 1844.

Previous to the "Poor Law Amendment Act, 1844" (7 & 8 Vict. c. 101), the indentures of parish apprentices were in general between the churchwardens and overseers, or the major part of them, of the one part, and the master of the other part (see ante, p. 219), and the assent of justices was necessary.

Churchwardens and overseers.

The authority of the churchwardens and overseers to bind out poor children is derived from the 43 Eliz. c. 2, s. 5 (ante, p. 209), but various regulations have been established by subsequent statutes, among which is a provision that it shall not be lawful for any parish officers to bind out any child as a parish apprentice until such child have attained the age of nine years. (56 Geo. III. c. 139, s. 7, ante.)

By the 43 Eliz. c. 2, s. 5, a parish apprentice could be bound only by the *greater* part of the churchwardens and overseers; and therefore where one of the two overseers was also sole churchwarden, and the indenture was executed by the overseers, the binding was held insufficient, as there ought to be two overseers exclusive of churchwardens (*Rex* v. *All Saints, Derby*, 13 East, 143); but this was remedied by 51 Geo. III. c. 80 (ante, p. 210), which has a retrospective operation, and extends not only to cases where *both* the parish officers *act in a double capacity*, but to those also where only one of them is in that situation. (*Rex* v. *St. Margaret, Leicester*, 2 B. & Ald. 200.)

Indenture signed by one churchwarden and one overseer is sufficient.

Rex v. *Hinckley* (12 East, 361). Where an indenture appeared to be executed by W. S. churchwarden, and J. G. overseer of the hamlet of Atterton, and no other evidence was given respecting it, it was holden by the sessions to be sufficient; but the Court of King's Bench held that there might be one churchwarden only by custom, and that if any intendment could by law be made to support the indenture, they must make that intendment (*a*).

Same point.

The 43 Eliz. c. 2, did not require absolutely two churchwardens in every parish for the management of the poor; and therefore an indenture binding out a poor apprentice by *one* churchwarden (where by custom there was but one) and *one* overseer, was held to be good (*Rex* v. *Earl Shilton*, 1 B. & Ald. 275); and the 1 & 2 Geo. IV. c. 32, rendered valid

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(*a*) Upon this case Mr. *Evans*, in his collection of statutes, observes, "I have never been able to assent to the correctness of this decision, because the presumption is always to be made according to the general course and operation of the law; and if the appointment of one churchwarden would be *primâ facie* void, the existence of a special custom to support it would seem to require positive proof. But see *Rex* v. *Whitchurch*, 7 B. & C. 573; *Rex* v. *Upton Grey*, 10 B. & C. 807; noticed post, SETTLEMENT BY ACKNOWLEDGMENT.

indentures of apprenticeship previously executed by one churchwarden only.

Even before the 54 Geo. III. c. 107, which rendered valid indentures executed by overseers and churchwardens of townships (ante, p. 210), it was held, that an indenture executed by the overseers of a *township* which has no churchwardens, and maintains its own poor, was valid, although neither of the churchwardens of the *parish* joined in the execution (*Rex* v. *Nantwich*, 16 East, 228); and under the 54 Geo. III. c. 107, an indenture executed by an officer stated to be the churchwarden of a township, and one of two overseers, was held sufficient. (*Rex* v. *Stainforth*, 11 Q. B. Rep. 66; 17 L. J., M. C. 25.)

The overseers, and not the guardians, in Gilbert Unions, under 22 Geo. III. c. 83, are the proper parties to a parish indenture, notwithstanding sect. 7 of that act excluding the interference of the churchwardens and overseers in the care and management of the poor where guardians are appointed. (*Rex* v. *Lutterworth*, 3 B. & C. 487.)

Assent of justices.

The statute 43 Eliz. c. 2, required the assent of two justices, and this assent must have been given by their signing. (*Rex* v. *Saltern*, Cald. 443.)

Their assent being a judicial act, they must not assent separately. (*Rex* v. *Hamstall Ridware*, 3 T. R. 380.) In that case the pauper was bound a parish apprentice. The indenture was *separately* assented to by two justices, by signing the same; but the two justices *did not assent to or sign the same at the same time*, or in the presence of each other. It was contended that this was a *ministerial act*, and like the allowance of a rate. But Lord *Kenyon* held clearly that *this was* an act of a *judicial* nature, and as such that the justices must, when they do it, meet and confer together.

One justice might sign alone if he be present when the other signs (*Rex* v. *Winwick*, 8 T. R. 455), and it must appear on the face of the allowance that the justices were, at the time of granting it, acting within their jurisdiction. (*Staverton* v. *Ashburton*, 4 E. & B. 526; 24 L. J., M. C. 53.)

Questions arising at the present day, in reference to settlements by parish apprentices, will in general be subsequent to the 1st October, 1816, when the statute 56 Geo. III. c. 139, to regulate the binding of parish apprentices, came into operation. The provisions of that statute have been given at length in Chapter XV. (see ante, p. 210 et seq.), and therefore it is unnecessary to repeat them here.

No settlement gained unless directions complied with.

Sect. 5. "No settlement shall be gained by any child who shall be bound by the officers of any parish, township, or place, by reason of such apprenticeship, unless such order shall be made, and such allowances of such indenture of apprenticeship shall be signed as hereinbefore directed."

The provisions of the 3 & 4 Will. IV. c. 63, amending the 56 Geo. III. c. 139, in reference to the allowance by justices acting for different counties and in boroughs, and the execution by corporations, have also been noticed in Chapter XV. (See ante, pp. 215, 216; and see *R.* v. *Totness*, 11 Q. B. Rep. 80; 18 L. J., M. C. 46.)

The distinction between the provisions of the statute 56 Geo. III. c. 139, where the parish officers are parties to the indenture, and where they merely procure the binding, has been also pointed out, and the cases noticed at sufficient length to render any repetition unnecessary here. (See ante, pp. 212, 213.)

The following cases may however be noticed here:—

Two justices refused to bind a parish apprentice, and he was bound with his own and his mother's consent out of parish money, by indenture duly stamped. The sessions found the binding fraudulent; but the Court of King's Bench held the binding to be independent of the statute 56 Geo. III. c. 139, and a settlement gained. (*Rex* v. *Kilby*, 2 M. & Sel. 501.)

Under the statute 56 Geo. III. c. 139, the order of justices for the

binding must be referred to in the indenture by the *date* thereof, and if such date be omitted the indenture is void. (*Rex* v. *Bawbergh*, 2 B. & C. 222; 3 D. & R. 338.)

The notice required by s. 2 of the 56 Geo. III. (ante, pp. 211, 212), must be given not only where the binding parish is in the county, and that of the master in a borough of exclusive jurisdiction (*Rex* v. *Newark*, 3 B. & C. 59; 4 D. & R. 745), but notice also must be given where an apprentice is bound from one parish into another, though both be within the same county and jurisdiction. (*Rex* v. *Threlkeld*, 1 Nev. & M. 14; 4 B. & Ad. 229.)

But it will be presumed, until the contrary be shown, that notice has been duly given and was proved to the magistrates before allowance. (*Rex* v. *Whiston*, 6 N. & M. 65; 4 A. & E. 607.)

Identity of justices.

In *Rex* v. *Witney* (6 N. & M. 553; 5 A. & E. 191), it was held, that justices of a county having jurisdiction in a city, may sign an indenture of apprenticeship for a pauper of such city. (See the subsequent statute 3 & 4 Will. IV. c. 63, s. 3, ante, p. 219.)

When a parish apprentice is *assigned* to a person resident in another parish, notice to the overseers of the second parish is not requisite. (*Rex* v. *Exminster*, 1 N. & P. 603; 6 A. & E. 598.)

An indenture stated that the overseers and churchwardens of M. in the county of W., with the consent of justices of the *said* county, bound a pauper apprentice to T. W., of H., in the county of L., and the justices, in their written consent in the margin, described themselves as justices of the county *aforesaid:* held, that it sufficiently appeared that they were justices of the county of W. (*R.* v. *Hinckley*, 1 B. & Ald. 293.)

Two justices "for the said county dwelling within the said parish" allowed the indentures; two counties had been named in the indenture: it may be implied from the context that they were justices for the proper county. (*Rex* v. *Countesthorpe*, 2 B. & Ad. 487.)

An indenture recited an order for binding allowed by G. B. and R. P., two justices of the peace acting in and for the county of Devon, and the allowance at the foot of the indenture was signed by the same persons, calling themselves justices of the peace. The order for binding and the indenture bore the same date. On an objection taken that it did not appear on the face of the documents that the parties who signed the allowance at the foot of the indenture had legally jurisdiction to do so, because it did not appear in the said allowance that they were justices of the peace for the county of Devon: it was held, that by the word "such" the act means "the same," and that by a fair and reasonable intendment it sufficiently appeared on the face of the documents that the justices who signed the allowance were the same justices of the county who made the order. (*Reg.* v. *Ashburton*, 15 L. J., M. C. 97.)

The allowance of the indenture should appear on the face of it to be locally made within the jurisdiction of the allowing justices, except in cases where such jurisdiction appears in the order for binding, and the allowance is made by the same justices; thus, *Reg.* v. *Stainforth* (17 L. J. Rep. (N. S.) M. C. 25) shows that the authority of the borough justices need not appear on the face of their allowance, as they were the persons who made the order for binding, and who were to make all the preliminary inquiries. But where the justices of the borough of T., in the county of D., made an order for binding a child apprentice in the parish of H., in the county of D., and the indenture of the apprenticeship purported to be allowed by the two justices of the borough, and also by G. P. A. and R. H. F., two of her Majesty's justices of the peace for the county of D., it was held to be void, because not showing where the allowance by the county justices was made. (*R.* v. *Totness*, 11 Q. B. 80; 18 L. J., M. C. 46.) The court abstained from giving any opinion upon an objection that the allowance was not pursuant to 3 & 4 Will. IV. c. 63. The allowance purporting to be made by A. and B., justices in and for the West Riding of York, sufficiently shows that it was allowed

within their jurisdiction. (*R.* v. *Aldborough*, 13 Q. B. 190; 18 L. J., M. C. 80.) Where an allowance by justices of the binding of a parish apprentice was written at the foot of the indenture, and was subscribed by the justices before execution of the indenture by the parties to the binding; it was held that such allowance formed part of the indenture; and therefore a reference in such allowance to the order for binding was a reference thereto in the indenture, satisfying the requirements of stat. 56 Geo. III. c. 139, s. 1. (*Ib.*) The court there said, "If the allowance is in the indenture, the reference to the date which is in the allowance is also in the indenture; for a reference to the date of an order being equally effectual on whatever part it may be written, and not being the act of any one in particular, the place where it may be found within the four corners of the instrument ought not to affect its validity. If the parties procured it to be written before they executed the deed, whether the writing was above or below the seal, whether on the side or back, and whether the language of the reference purported to be that of all who seal, or of one only, or of another person, and to be adopted by them, the statute would be complied with."

Reference to order in allowance.

The allowance of an indenture of apprenticeship appeared on the face of it to be made by two justices of the county of Middlesex, and concluded, "Given under our hands and seals at the police office, Hatton Garden, the day and year first above written." The statute 10 Geo. IV. c. 44, s. 4, constituting the Metropolitan police district, described the Holborn division as in the county of Middlesex, and including the liberty of Saffron Hill, Hatton Garden, and Ely Rents. It was held, that it sufficiently appeared that the allowance was made within the jurisdiction of the justices (*Reg.* v. *Holborn Union*, 25 L. J., M. C. 110); but where the order of Middlesex justices for binding the apprentice purported to be signed "at the board-room of the Holborn Union Workhouse," the court would not take judicial notice that the board-room was in the county of Middlesex, and consequently as the order did not show on its face that the justices were acting within their jurisdiction it was bad and no settlement was gained under it. (*Reg.* v. *St. George's, Bloomsbury*, 4 E. & B. 520; 24 L. J., M. C. 49.)

In addition to the duties of justices already mentioned, "The Poor Law Amendment Act, 1834" (4 & 5 Will. 4, c. 76), s. 61, required the justices or any one justice to certify at the foot of the indentures the compliance with the rules, orders, or regulations of the poor law commissioners, and this certificate was essential to the validity of the contract. (See the section at length, ante, pp. 216, 217 (*a*).)

Contracts of Parish Apprentices after the 1st October, 1844.

"The Poor Law Amendment Act, 1844" (7 & 8 Vict. c. 101), s. 12, enacted, that after the 1st day of October, 1844, no poor child should be bound apprentice by the overseers of any parish included in any union or subject to a board of guardians under the provisions of "The Poor

(*a*) The execution of the indenture by the apprentice is unnecessary. (See ante, pp. 219, 455.) But where by a local act certain property was vested in the guardians of the poor of the city of C. for the benefit of the poor of the said city, and the said guardians were required to give a bond to provide for and maintain sixteen poor boys of the said city, and to cause them to be instructed, &c., and to "put them and every of them out apprentices, after they and every of them respectively should have attained their respective ages of thirteen years, and before their said ages of fifteen years." It was held, that this statute did not authorize the guardians to apprentice a boy without his assent, and that consequently no settlement was acquired by an apprenticeship where he did not execute it; and further, that even if the statute did authorize such apprenticeship without consent it would not apply to a boy above fifteen. (*St. Nicholas, Rochester* v. *St. Botolph*, 31 L. J., M. C. 258. See ante, p. 455.)

Law Amendment Act, 1834," but that it shall be lawful for the guardians of such union or parish to bind any such poor child to be an apprentice, and in such case the indentures of apprenticeship shall be executed by the guardians, and shall not need to be allowed, assented to, or executed by any justice or justices of the peace. The same section authorized the commissioners (now the board) to prescribe the duties of the masters, and the terms and conditions to be inserted in the indentures. (See the section at length, ante, p. 217.)

Assignment and Registration of Parish Apprentices.

As to the requisites of assignments, see ante, pp. 223—226, and post, § 4; and of registration, ante, pp. 226, 227.

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§ 3. Of the Service and Residence under Contracts of Apprenticeship.

An apprentice is settled where he resides the last forty days.

An apprentice may serve his master in different parishes and abide a sufficient length of time in each to establish a settlement in each consecutively; but the right is ultimately fixed in that place where he has last completed a forty days' residence under the indenture.

It may be proper here to remark, that as a forty days' residence is sufficient to give a settlement under a valid binding, it is possible that *the apprentice may gain as many settlements as there are spaces of forty days in the term of his apprenticeship; and where he serves the last forty days, there is his last settlement.* It thus appears that he may often gain a settlement long before his master gains one; as where the master's settlement is to arise from executing an annual office, or by residence upon a 10*l.* tenement for a year. He may also gain a settlement whilst his master is unable to gain one; as where his master resides upon a tenement of less annual value than 10*l.*, or does not occupy for the whole year where the renting is sufficient in amount. It follows that the master may be removed, when the apprentice is irremovable, by an order of justices under the poor laws; and in such case the master must of necessity apply to the justices to compel the apprentice to go along with him.

If an apprentice be bound to one, with intent to serve another, his settlement is in the parish where he served, though the master had no settlement there.

Holy Trinity v. *Shoreditch* (1 Str. 10). *Parker*, C. J., delivered the resolution of the court. "Ferrer was removed from the parish of Holy Trinity to Shoreditch. He was bound apprentice to one Truby, of Holy Trinity, in Shoreditch, with intent that he should serve Green: which he did for three years. We are of opinion that the justices have done right in sending him to Shoreditch, where the service actually was. It is the same thing as if Truby had turned him over to Green; in which case there would have been no question but he had gained a settlement in Green's parish."

Though master had no settlement there.

St. Bride's v. *St. Saviour's* (2 Salk. 533). A woman who was settled at St. Saviour's, with her apprentice, by indenture, came and took a lodging in St. Bride's, and there continued above forty days with her apprentice, who served her there. This was held by the court to be a settlement of the apprentice at St. Bride's, though the mistress had no settlement there.

Residence is where the party lodges.

St. John Baptist v. *St. James's, Bishop Cannings* (2 Raym. 1371; 1 Stra. 594). Binding and serving will not make a settlement, but the settlement must be by inhabiting, which cannot be but where the party lodges.

An apprentice, working by day in one parish, and sleeping by night in another, obtains a settlement where he slept by night.

Rex v. *Casileton* (Burr. S. C. 569; 2 Bott, 526). The pauper, John Holroyd, was bound to a master at Castleton for seven years. He worked, dieted, and lodged with his master in Castleton for four years and a half, and then married. After which marriage he worked and dieted with his master in Castleton in the daytime, but lodged at nights

with his wife's father in Hundersfield, until the expiration of his apprenticeship, which was about two years and a half from the time of his marriage. Lord *Mansfield*, C. J. "Clearly he gained a settlement in Hundersfield."

The contrary had been held in *Rex* v. *St. Olave's Jury* (1 Stra. 51), where the facts were that A. was bound to a cobbler, who kept a stall in D., slept in F., and the boy in E., and it was held that no settlement was gained in either: the stall not being sufficient, the master lying in another parish. The authority of this case is very doubtful.

The apprentice gains a settlement where he inhabits, *i. e.* lodges.

Rex v. *St. Peter's on the Hill* (2 Bott, 524). The pauper was bound an apprentice to a carpenter, and served two years in St. P., during which he lived, ate, and lodged at night with his mother in St. O. *Lee*, C. J. "There is a distinction in this case between apprentices and servants. The statute is, that *apprentices* gain a settlement by *binding and inhabitation*, not by *binding and service;* but servants gain a settlement by *hiring and service*, without regard to inhabiting. *Rex* v. *St. John's, Devizes* (T. 10 Geo. I.), seems to me a very odd determination; all the cases I am acquainted with being to the contrary, as *St. Mary, Colechurch* v. *Radcliffe; Rex* v. *Graveny.*" The order of removal to St. O. was confirmed.

Forty days' residence successively not necessary.

Rex v. *Cirencester* (1 Stra. 579). An apprentice bound in the parish, lived there off and on for three quarters of a year. Exception was taken, that he did not inhabit forty days together. But by the court: "That is not necessary."

Residence for forty days, though not within the compass of any one year, is sufficient.

Rex v. *Aldstone* (2 B. & Adol. 207). E. Davidson, &c., were removed from Hexham to Aldstone. Order confirmed. Case:—The pauper, when about nineteen years of age, bound himself as an apprentice to John Ostle, of North Shields, shipowner, by indenture of the 26th of August, 1809, for three years; in the first year the vessel in which he served was moored for a month in the township of Middleborough, which township maintains its own poor; in the second year the same ship, in which the pauper still continued to serve, was moored in the same township for five weeks, and during the said month and five weeks he slept on board the ship. The question was, whether he gained a settlement in Middleborough, the forty days of his residence in that township not having been in one and the same year of his apprenticeship. Lord *Tenterden.* "This case falls within the decision of *Rex* v. *Gainsborough* (Burr. S. C. 586). There the pauper, while apprentice, resided forty days in the whole in West Stockwith, at many different times during a term of three years and a quarter, and was resident nowhere else forty days during that period, and he was held to be settled in West Stockwith." *Littledale*, J. "There is a distinction between contracts for service and for apprenticeship. In the former case there must be a year's service under a yearly hiring to confer a settlement: the forty days' residence must therefore be within the year. But the service under a contract of apprenticeship has no reference to the term of a year." *Parke*, J., and *Patteson*, J., concurred. Order of sessions quashed.

Distinction between servants and apprentices.

An apprentice lived with his master forty days in A., then forty days in B., and then one day in A.; his settlement is in A. (*Rex* v. *Brighthelmstone*, 5 T. R. 188.)

A residence merely on account of illness, where no service is performed, was held not to confer a settlement. (*Rex* v. *Barmby in the Marsh*, 7 East, 381.) In that case the court was of opinion that the residence of the pauper in B. being on account of illness, was not a residence as an apprentice, and that the inhabitation required by 3 Will. III. c. 11, must be referable in some way to the apprenticeship.

But in *Rex* v. *Charles* (Burr. S. C. 706), an apprentice was turned over to a person in another parish, and returned, a cripple, to his original

master, who sent him to board with his grandmother, and it was held that residence with the grandmother gained a settlement (*a*).

So, in *Rex* v. *Foulness* (6 M. & S. 351), if the pauper, being ill, is put by the master, and at his expense, in the workhouse, it is a residence under the indentures. *Bayley*, J. "In *Rex* v. *Barmby* the apprentice was residing at a distance from the master, and with his own friends: here he was maintained at the master's expense.

A parish apprentice, upon the failure of his master, was placed by him with another master, in another parish, and after serving him for nine months, he became ill, and returned to his first master in another parish; the latter having no accommodation for him, told him to go to his mother, who lived in that parish, and he promised to remunerate her. Residence with the mother, without any actual service for his master, is an inhabitation as an apprentice. (*Rex* v. *Linkinhorne*, 3 B. & Adol. 413.) Lord *Tenterden*. "The decisions on this branch of the law run very near to each other, and are hardly reconcilable. I agree that the mere continuance of the contract during the absence of the apprentice from his master is not sufficient; but I do not agree that the performance of some service by the apprentice is absolutely necessary to enable him to gain a settlement in a parish different from that where the master lives. I think less than that will do, and that it will be sufficient if the residence be in pursuance of the contract of apprenticeship, and in a place where but for that contract it would not have been. The word service is not mentioned in the statute 3 Will. & Mary, c. 11, s. 8, but 'binding and inhabitation.'" *Parke*, J. "The question arises on the 3 Will. & Mary, c. 11, s. 8, which enacts, that 'if any person shall be bound an apprentice by indenture, and inhabit in any parish, such binding and inhabitation shall be adjudged a good settlement.' The statute says nothing of actual service. The true construction, as stated by Lord *Tenterden* in *Rex* v. *Ilkeston* is, that the inhabitation must be in the character of an apprentice, and in some way or other in furtherance of the object of the apprenticeship. * * * The dictum, that service is one of the essential requisites to confer a settlement, cannot be supported. Service may be material as showing that the residence is in the character of apprentice, but that may be shown by other facts. Here the residence appears undoubtedly to have been in the character of apprentice, and was so considered by the master, for he agreed to maintain the pauper during the time of such residence." *Patteson*, J. "Service is a criterion, but not the only one whereby to determine the character of the residence. * * * *Rex* v. *Charles* is in point, and has not been overruled."

Where the pauper was bound apprentice to his father-in-law, and resided with him during the indentures, a settlement is gained, although the pauper never served his master at his trade, or was instructed by him. (*Reg.* v. *Burslem*, 3 P. & D. 38; 11 A. & E. 52.)

Apprentice bound to a cork-cutter in B., for seven years; after seven weeks, owing to weakness of eyes, the master sent him back to his father in K., and agreed to allow him corks to value of 4*s.* per week for his maintenance: held, that the apprentice gained a settlement in K., residing and being maintained there as an apprentice (*b*). (*Rex* v. *Ban-*

(*a*) In *Rex* v. *Banbury*, 3 B. & Adol. 706 (pp. 480, 481), Lord *Tenterden* observed, "It is not easy, if possible, to reconcile these cases." In *Rex* v. *Stratford-upon-Avon*, 11 East, 176 (post, p. 481), *Le Blanc*, J., obseved, that "it was not considered in this case that the pauper went to *Knowstone* (the residence of his grandmother), for the purpose of cure, but that the original master, who lived in the same parish, and was bound to receive him, did receive and place him there."

(*b*) In this case the judges speak of residence only in *another* parish, as if residence in the *same* parish, without reference to the indenture, would be sufficient. But this is not so. (See *Rex* v. *Charles*, p. 479; and *Rex* v. *Smarden*, post, p. 484.)

bury, 2 Nev. & M. 205; 3 B. & Adol. 706.) Lord *Tenterden*. "I am of opinion that the pauper gained a settlement in the parish of K. under the circumstances stated in this case. It is not easy, and perhaps not possible, to reconcile all the cases on this subject. But this principle may be collected from them all, that where the residence in a parish different from that of the master is unconnected with the apprenticeship no settlement is gained. The cases where paupers have removed to other parishes on account of illness, or for the purpose of visiting friends, neither receiving maintenance nor performing service, are illustrations of this part of the rule. On the other hand, if during the residence in a parish different from that of the master, the apprentice performs service for his master there, his residence is then considered referable to and connected with the apprenticeship, and he gains a settlement. There is also a third case, where the master assents to the residence of his apprentice in a different parish, and maintains him there, though no service be performed. The master covenants by the indenture to teach the pauper, and also to maintain him. Here he certainly did not teach the apprentice while he resided in K., but he did maintain him. That was one of the objects of the apprenticeship, and it was satisfied; and I think it is sufficient to connect the residence of the apprentice in Kingsutton with the indenture, and that the safer course will be to hold that such residence was referable to the apprenticeship, by reason of the maintenance of the pauper in that parish." *Taunton*, J. "In the cases which have been referred to, and in which the residence was held not to have taken place under the apprenticeship, the pauper was not under the control of the master, and there was no other circumstance from which it could be said that the residence was in pursuance of the contract."

Residence unconnected with the apprenticeship gives no settlement.

Where an apprentice sleeps in another parish on account of illness, and while there is occasionally employed by his master, and serving him to the extent of his ability, he gains a settlement by forty days' residence in that parish. (*Rex* v. *Stratford-upon-Avon*, 11 East, 176.)

Residence with a father during illness, and at the request of the master, is an inhabitation as an apprentice. The service may be connected with the apprenticeship, by selling lottery tickets, though such an employment may be illegal. (*Reg.* v. *Somerby*, 1 P. & D. 180; 9 A. & E. 310.) Lord *Denman*. "In this case I think there is no doubt that the relation of master and apprentice did continue during the time of the pauper's residence in Somerby. I do not mean to say that if a master and his servant conspired to do an illegal act, a service in furtherance of their object could be relied upon as conferring legal rights; but it would be very hard upon an apprentice, who innocently complies with the commands of his master, to be afterwards told that he ought to have disobeyed the orders, as they were contrary to law. This case is not to be distinguished in principle from *Rex* v. *Banbury* and *Rex* v. *Stratford-upon-Avon*."

Rex v. *Ilkestone* (4 B. & C. 64; 6 D. & R. 64). The pauper's husband was bound apprentice by indenture 22nd December, 1818, for seven years, to B. Roberts, a boat-builder, of Ilkestone. He lodged and worked with his master in Ilkestone, but regularly and with the consent of his master went to his father's at Radford on the Saturday night, slept there on the Saturday and Sunday nights, and returned to his master on the Monday morning. On the Saturday before the Nottingham fair, in October, 1822, the pauper's husband went to his father's as usual, slept there on the Saturday and Sunday nights, and returned to his master on the Monday, and worked for him that day, and in the evening asked and obtained his master's permission to go home again, for the purpose of being at the fair at Nottingham on the two following days. He left his master's that evening accordingly, and never returned, having enlisted for a soldier a few days afterwards. The pauper's husband did no work for his master on Saturday nights or Sundays, or at any other time while he was at his father's. The indenture was retained by the master

Inhabitation by indulgence is not sufficient.

CHAP. XXIII.

till applied for some days after the pauper's husband had enlisted, when he gave it up. *Abbott*, C. J. "I am of opinion that the husband of the pauper did not gain a settlement in Radford, the place of his father's residence, but at Ilkestone, the place of his master's residence. The true construction of 3 Will. & Mary, c. 11, s. 8, appears to be that the inhabitation must be in the character of an apprentice, and in some way or other in furtherance of the object of the apprenticeship. An inhabitation by indulgence is not then within the statute. Here the residence in Radford was by indulgence only. There may be cases, and some such have arisen, where an inhabitation in a parish, different from that in which the master resides, may be in furtherance of the service; as where a master cannot take an apprentice into his own house, and appoints and allows him to choose a residence in another parish, so that he may return to his work every morning. But here the sleeping in Radford was merely for recreation, and had no connection with the service." *Bayley*, J. "Where the master appoints no place for the pauper to sleep, or appoints a place out of the parish where the service is performed, I agree that a settlement is gained where the apprentice sleeps, and this was the ground on which *Rex* v. *Castleton* (ante, p. 478), and *Rex* v. *Stratford-upon-Avon* (p. 481), proceeded. *Le Blanc*, J., expressly puts it on the ground that the pauper slept in Old Stratford as an apprentice. But if he in general resides with his master, and is allowed once a week as an indulgence to visit his parents, he does not lodge there as an apprentice; and the case is not varied if the indulgence is for days or months."

A. was apprenticed to N. for five years, but his father was bound to find him board and lodging. The workshop of N. closed at two o'clock on Saturday, and A. used to go to his father's house, which was in the parish of M., and to sleep there on Saturday night, and sometimes on Sunday night as well. The other nights he slept in B., where his masters' works were. For the last year he slept on Saturdays, and sometimes on Sundays, at his father-in-law's, which was also in M. For the last eighteen months or two years he lodged in the house of C., in the parish of B., but C. was unable to accommodate him on Saturday nights, and he was always at M. on such nights. On the night of Friday, the 27th September, 1850, the last night but one of the apprenticeship, he slept in the house of C., and the next afternoon he left off work and slept in M. on Saturday and Sunday nights, and on Monday he returned to his masters' works and worked for them at weekly wages: it was held, that he gained a settlement in M., as that was the parish in which he slept for the last night of his apprenticeship (for the master had a right to his services the whole of Saturday), and as under the circumstances of the case it appeared (in distinction to the facts in *Rex* v. *Ilkestone*, supra) that his so sleeping in M. was in furtherance of and under the apprenticeship. (*Reg.* v. *Barton-upon-Irwell*, 32 L. J., M. C. 102.)

An apprentice not being wanted went back to school, and resided there: held, that this was not a residence under the indenture.

Rex v. *Saint Mary Breding, Canterbury* (2 B. & Ald. 382). A master mariner, having no immediate occasion for his apprentice's service, the vessel being then in dock, offered either to turn him over to another master for a time, or let him go back to school, and the apprentice said he would go back to school and learn navigation; he did so, and resided above forty days there; the master paid no part of the expense of the school, nor gave him any wages. He never returned to the ship or his master. *Bayley*, J. "This is a case new in its circumstances, and we are called upon now to lay down a rule which is to govern in future. It has been truly stated that the words of the statute are only 'such *binding and inhabitation*.' But I apprehend that the service of the apprentice is one of the essential requisites to confer a settlement of this sort. This service must either actually or constructively be going on during the absence of the apprentice from his master; and the cases say, that where the absence is occasioned by illness, which negatives the existence of such service, no settlement is gained by such a residence, nor had the master any control over the apprentice during this period. This case is

like that of a master who allows his apprentice to return to his friends, having no occasion for his service. This is a suspension of the apprenticeship for the time, and no settlement can be gained by such residence. Here the service did not continue while the apprentice was at school."

Working in one parish and sleeping in another.

An apprentice, working with his master during the week in one parish, and sleeping on Saturday and Sunday nights at his master's house in another (W.), may gain a settlement in the latter parish by inhabitancy under his indenture. A verbal agreement by a master "upon being paid 3*l.* to set his apprentice at liberty, and to give him up his indenture," does not discharge the indenture so as to fix the settlement of the apprentice in the parish where he slept last before the making of such agreement. (*Rex* v. *Warden*, 1 M. & R. Mag. Ca. 277.) On the first point Lord *Tenterden*, C. J., said, "*Rex* v. *Ilkestone* (pp. 481, 482) is very distinguishable from the present. There the apprentice was allowed by his master, as a matter of indulgence, to go to his father's every Saturday, and to sleep there every Saturday and Sunday nights; and it was expressly found there that the apprentice during those periods of absence did no work for his master. Here the apprentice returns with his master from their work and goes to his master's house, where he passes the Saturday and Sunday nights, and on the Monday again accompanies his master to work, having been in the interval under the eye and control of his master, and, for aught that appears, performing all his biddings. He therefore slept at W. in his character of apprentice, and was an inhabitant of that parish under his indentures."

Where an apprentice, who worked and slept at his masters' in C., at weekly wages, went, with their knowledge, on Saturdays and Sundays to R., and slept there, and returned to his work on Mondays, and was received by them; and on the Saturday before Shrove Tuesday (having the night before slept at C.) received his pay, and never returned again to the service, and slept that and the following evening at R., but on quitting the works on Saturday had not formed any intention not to return: held, that his settlement was at C., his service having ended on his quitting. (*Rex* v. *Ribchester*, 2 M. & Sel. 135.) *Dampier*, J., observed, that "*Rex* v. *Undermilbeck* (5 T. R. 387) is the only case like the present; but in that case the master recognised the departure of the servant, for he paid him his wages for the time of his absence. That, therefore, affords a distinction. Here the apprentice was at weekly wages, and was paid on the Saturday; and the Friday night was the last night of his being in the actual service of his masters under the indenture."

Apprentice and master in the militia.

A parish apprentice and his master were both on the permanent staff of the local militia, in consequence of which they resided together in the parish of B. for forty days, where the apprentice also served his master. This residence is sufficient to give a settlement, notwithstanding they were both under the control of their superior officers during the whole time. (*Rex* v. *Chelmsford*, 3 B. & A. 411.) *Abbott*, C. J. "I am of opinion that the pauper gained a settlement by his residence in Braintree. It is not necessary for the court to consider what would have been the effect, if the residence had been separate from that of his master, in consequence of his being in the local militia. Here he continued to reside in the same place with his master, and continued to serve him during the whole period. That is expressly stated as a fact by the sessions; and it is not impossible that, during a great part of the time, he might be actually serving his master. It is not necessary that the party should reside in a place because he is an apprentice, so as to give him a settlement there; for *Rex* v. *Stratford-upon-Avon* is a distinct authority to the contrary." *Bayley*, J. "The best rule is to abide by the words of the statute. Those are, 'If any person shall be bound an apprentice and inhabit, such binding and inhabitation shall give a settlement.' Now here was a valid binding, and the pauper resided where his master was at the time, and continued to do acts of service

whilst so resident. His residence was, therefore, not wholly foreign to the purposes of the indenture, and sufficient to confer a settlement." *Holroyd*, J. "I see nothing to show that the obligation to serve under the indenture was put an end to. His service might lawfully continue, and, in fact, did continue during all this time. It is said that the ground of his residence was because he was a soldier; and so in Stratford-upon-Avon the residence was in order that he might be cured of sickness. Yet as he continued to do service for his master, notwithstanding his sickness, the residence conferred a settlement. That case governs the present."

Where an apprentice, at his master's desire, left the parish in which his master lived, but returned and slept in that parish without his master's knowledge, it is not a residence under the indenture. (*Rex* v. *Smarden*, 13 East, 453.)

A pauper slept the last three nights of his apprenticeship in the parish of his original master, with the knowledge of the second master, but unknown to his original master. He gained a settlement.

Rex v. *Iddesleigh* (4 D. & R. 332; 2 D. & R. Mag. Ca. 245). The pauper's indenture as a parish apprentice expired 24th June, 1813. He resided in I. with his master till Lady-day, 1813, when he left him, and agreed with W. of D., to serve him for a month, at 2*s.* 6*d.* per week. After this agreement, and before the pauper went into W.'s service, the master saw W., and consented to the pauper's service with him; and the pauper then went for the first time to reside with W. At the expiration of the first month, the pauper agreed for a second month, at 3*s.* 6*d.* a week, and continued to work with W. at the same wages, and to reside at D. till the 7th June, when he left W. in consequence of being called out to serve in the local militia in a third parish. Having served a fortnight in the militia, he returned, on the 21st June, to W., and agreed to serve him in the same capacity as before at 6*d.* a day; and while in W.'s service, *from the 21st June including that day* the pauper slept continually for two or three months at his mother's in I. It was urged that this was like *Rex* v. *Smarden* (supra). *Abbott*, C. J. "That case is distinguishable from the present in two particulars; first, the second service was entered upon with the consent of the first master; and second, the fact of the apprentice sleeping one night in the parish of the first master was unknown to him, and was a casual act, not done with the intention of resuming the service under the indenture." It was then said, "there is a general consent of the first master here to the pauper's entering into the second service, and that is sufficient." *Abbott*, C. J. "Still the pauper sleeping the last three nights of his term in I. removes the settlement to that parish, because he was then serving under the indenture." After further argument, *Abbott*, C. J., said, "The pauper had agreed to serve W. in D. for a month, at 2*s.* 6*d.* per week. The latter communicated this circumstance to the former master, who consents to the service, and for that purpose the pauper goes into and resides in the appellant parish under that contract. At the expiration of that month, the pauper was at liberty to quit, and W. was at liberty to part with him. Then they agreed for another month, at 3*s.* 6*d.* per week, and the pauper remains in D. parish until he goes into the militia. At the end of a fortnight he returns to W., and enters into a third agreement at 6*d.* a day; but it does not appear that the agreement was for any specific length of time. The sessions seem to have been of opinion that there was either a consent of the former master, specially or generally, for the pauper to serve W. If it was a special consent, then it must be a consent to the terms of service for which the parties had agreed previously to the return of the pauper to W.'s service; and if it be so considered, then there would be only one service, with the assent of the original master. But, on the other hand, if it was a general assent that the pauper should serve W. during the remainder of the term, then, though the service during the last three days was in D., still that would not confer a settlement, for during the nights of those three days he slept in I., and therefore whatever view is taken of the case, whether we consider it as a special or general

assent, it seems to me that no settlement was gained in D." *Bayley*, J. "I think the sessions did right in forming the conclusion to which they came. It was for them to decide whether the first consent was general or definite. On whatever ground they decided, their decision is correct, the pauper having slept during the last three nights in I. It is said that the sleeping must be connected with the service. To that I accede; but it must be a sleeping in the parish in which the service is. It has been decided over and over again in the case of a hired servant, that sleeping the last night in the parish in which the pauper is hired will determine the settlement, though there is no work done in that parish. Though the pauper in this case slept the last three nights in I. without the first master's knowledge, that will make no difference." *Holroyd* and *Littledale*, JJ., concurred.

Service and Residence of Seafaring Apprentices (t).

Residence of seafaring apprentices.

St. Mary, Colechurch v. *Radcliffe* (1 Stra. 60). Removal to St. Mary, and order quashed. A boy was bound apprentice to a seafaring man, and served him for a quarter of a year in the day time on land in St. Mary, Colechurch, but lay every night on shipboard in Radcliffe. This was likened to the case of the cobbler. *Parker*, C. J. "A man properly inhabits where he lies; as where the house is in two leets, he is to be summoned to that in which his bed is."

Rex v. *Burton Bradstock* (Burr. S. C. 531). Removal from Bothenhampton to Burton Bradstock. The pauper was bound in March 28, 1754, to J. Miller, of Bridport, owner of a ship, an apprentice, and to *learn navigation, and the art of a sailor*, and immediately he entered on board the ship, and did there serve John Miller for seven years as an apprentice. The ship was during that time employed in a coasting trade from Bridport harbour to other ports, and that harbour was considered by the captain and sailors as *the ship's proper home.* During that time the ship was often in the harbour, but never for more than a month at a time. On December 7, 1760, she arrived, and *continued there* till January 22, 1761, *being more than forty days;* the apprentice, during those forty days, lodging, boarding, and serving his master on board the ship: and the ship was never in any other port forty days after that. On March 11, 1761, the ship returned to Bridport, and there remained till after the 28th of that month, on which day the apprenticeship expired; and during that time the pauper lodged, boarded, and served on board the ship as before. Bridport harbour is a basin within the parish of Burton Bradstock, and communicates with the sea by a cut made from it to the sea, and through this cut ships enter. Lord *Mansfield*, C. J. "*Lying in a parish* is the same whether it be on board a ship or on land. *Casual* residences, or *accidental* inhabitances, are out of the present case. The harbour is stated to be within Burton Bradstock, and the service was *bonâ fide* performed there." *Yates*, J. "This was not like the case of a vagabond strolling from parish to parish." *Aston*, J., said, he "thought *mere watching* on board a ship was not a residence within 3 & 4 Will. & Mary, c. 11. Nor would a vessel *in transitu*, accidentally stopping at a port to repair a leak, or any such *casual* occasion, gain a settlement to the sailors on board; but this was the proper home of the ship." [See, however, the following case.]

If an apprentice to a ship-owner resides in a port more than forty days in the course of his trade, he gains a settlement there, though his master in the meantime absconds from home.

Rex v. *Topsham* (7 East, 466). The pauper, when twelve years of age, was bound apprentice as a mariner to D. S., of Topsham, ship-owner and coal-merchant. He served his master for three years, during which he made several voyages, and returned to Topsham, residing there in the intervals between the voyages, sometimes for two months. His last voyage was in the *Reward* of Topsham, which sailed to Shields, and from thence to Poole, with a cargo of coals. The pauper remained at

(*t*) See ante, p. 232.

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P. upwards of forty days, and slept every night during that time on board the vessel, alongside the quay. He knew whilst there that his master was become a bankrupt, and gone from Topsham; in consequence of which he applied to Mr. Penny, the agent and consignee of the vessel, for money, to enable him to return to Topsham, who supplied him with half a guinea for that purpose. On his arrival at Topsham he resided with his uncle, not being able to find his master, whom he had never seen or served since. It was contended that the residence at Poole was accidental; that in *Rex* v. *Burton Bradstock* (ante, p. 485), the fact relied on was that Bridport harbour was the home of the ship; that the pauper's return to Topsham, by the assistance of his master's agent, and his subsequent continuance there, fixed his settlement in that parish. But the court agreed, that the residence at P. was not casual, but that he was there in the actual employ of his master in his trade, which in its nature required a shifting residence. That the principal doubt in *Rex* v. *Burton Bradstock* was, whether the residence of an apprentice on ship-board were equivalent to a residence on shore in the same parish, and what was thrown out there in respect of Bridport harbour being the home of the ship was principally in answer to that objection. And that the doctrine of casual residence, as applied to places of public resort, which had been thrown out in the Scarborough case, had been pretty much shaken in *Rex* v. *Bath Easton* (ante, p. 448). That at any rate, however, the doctrine did not apply to a case like the present, where the apprentice was in the actual service of his master at the time. And that it was clear an apprentice might gain a settlement by serving his master in another parish, where his master's business called him. That it appeared also by the case that the apprentice never returned to his master's service in Topsham, for his master had absconded before his return, and he went to his uncle; and it is expressly found that he never saw or served his master afterwards. Order of sessions quashed. See *Rex* v. *Aldstone* (ante, p. 479).

The indenture stipulated that the master should provide meat, &c. during the term, except in the winter, when the ship to which the apprentice belonged should be laid by unrigged; at which time the apprentice was maintained by himself or friends, the master paying a compensation. The apprentice accordingly during the winter resided with his parents for more than forty days, doing no work for his master. This is not a residence as an apprentice.

Rex v. *Brotton* (4 B. & Ald. 84). Removal from Whitby to Brotton. Order confirmed. Case:—The pauper, S. Marshall, was bound apprentice for four years, by indenture of 11th of March, 1813, made between S. Marshall, the elder, and S. Marshall, the younger, of the one part, and Addison Brown, ship-owner, of the other part. The master was to provide for his apprentice meat, washing, and lodging during the term, *except in the winter seasons, when the ship to which he should belong should be laid by unrigged, during which time it was agreed that the apprentice should maintain himself, or be maintained by his friends*, and in lieu thereof, the master should pay the apprentice 6*s.* a week, during such time as the apprentice should not be maintained by his master, and the master should pay the apprentice for wages 7*l.*, in certain yearly proportions. The pauper, while the ship was laid up at Whitby, in which he served his master as an apprentice, resided occasionally during the winter with his parents in Brotton, and in the whole for more than forty days, and he slept the last night of the apprenticeship at Brotton. Brotton is twenty miles from Whitby; and the pauper did not do any work for his master while he resided there, but was liable to have been recalled by his master at any time, if he had been wanted at the ship. *Abbott*, C. J. "This appears to me to be a stronger case than the one which has been cited (*Rex* v. *St. Mary, Breding*, ante, p. 482), and that on the very ground on which it has been attempted to be distinguished from it. Here there was a distinct stipulation in the indenture, by which the master dispensed with the service of his apprentice during the winter season, the period when this residence at Brotton took place. The residence, therefore, is not at all connected with a service; but is by the very words of the indenture disconnected from it. Then the case cited is an express authority to show that an apprentice, by such a residence, does not acquire a settlement."

Of Serving different Masters.

It is not necessary that the apprentice should serve out the term with the same master to whom he was bound. He may gain a settlement under the indenture, although the master relinquishes his right over his service for a time, to be resumed at a future day, or permanently for the whole remaining period of the apprenticeship.

It has been observed, that much subtlety and refinement has been introduced into this particular branch of settlement law: and Lord *Tenterden* said, in *Rex* v. *Whitchurch* (1 B. & C. 574), that it was time that some plain and broad rule should be adopted; and he added, "there *must be an express* consent on *the part of the first* master, to which the second must be privy, and an employment by the *latter of the servant* in the same *capacity*."

It will be found that several of the following cases cannot be reconciled with this principle, and particularly that of *Rex* v. *Banbury* (post, p. 496), where it was observed that the rule, that the second master must be privy to the facts of the apprenticeship, is much shaken, if not altogether denied.

It is also to be observed that the original master cannot give his consent, unless the indentures *continue in force*, therefore it is important to see what amounts to a dissolution of the apprenticeship. The cases may be arranged according to the following divisions:—

1. There must be an express consent to the transfer of the service; mere knowledge is not sufficient.
2. By whom the consent to the change of master may be given.
3. The consent may be given either by parol, or by assignment of the indenture.
4. Privity of second master to the consent by the first.
5. The apprentice must be employed in furtherance of his indenture.

There must be an express consent to the transfer of the service; mere knowledge is not sufficient.

St. Olave's v. *All-Hallows* (Sett. & Rem. 153; 1 Stra. 554). A person is bound apprentice to a master who lives in St. Olave's. Afterwards, the apprentice, by his master's verbal consent, lived with and served another person in All-Hallows. By the court: "He gains a settlement in the last place; for a person may serve his master in another parish or place: and although he serves another man, yet it is by consent of his master, and the benefit accrues to his master."

An apprentice, who, by a verbal consent of his original master, serves another, gains a settlement by such service.

Rex v. *St. George's, Hanover Square* (2 Sess. Ca. 138; 2 Stra. 1001). A. Wheeler was bound a parish apprentice to G. Leicester in St. George's, where she lived about forty days. Afterwards she was by parol agreement hired out by her master to Hall in St. Mary-le-bone, and there lived for one year and upwards, the apprenticeship continuing; Leicester received her wages, and found her clothes. By the court: "The apprentice is well settled in St. Mary-le-bone."

Rex v. *Fremington* (Burr. S. C. 416; 2 Bott, 560). M. Bevans, the pauper, was bound a parish apprentice to one Richards, in Fremington, who, after some time, declared that he had no business for her, and gave her permission to go and work elsewhere, where she could, for her own benefit: and on his recommendation she was hired to one Mr. Nott, at Sherwell, from the 1st day of June till Lady-day, and served him there for the wages of 32*s.*; and then went back to her master, with whom she stayed eight days, and then her apprenticeship expired. This was held to be a good settlement at Sherwell, for she was not discharged from her apprenticeship, nor intended to be so. Her master only gave her leave to go elsewhere and serve another person for her own benefit. She did so, and afterwards she returned to her master, and was received by him, and stayed with him to the end of her term. And, consequently, the service with Nott was a continuation of the apprenticeship, and performed under it.

An apprentice hired by a second, at the recommendation of her first master, serves under the apprenticesbip.

After a parol assignment of a parish apprentice, and part service under that assignment, the apprentice ran away from her second master, and lived with a third nine months in the original parish, with the know-

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ledge but without the consent of her former master, and remained afterwards two years in that parish in good health, and the indentures then expired: held, that no settlement was gained by service in original parish after her return. (*Rex* v. *Ideford*, Burr. S. C. 821; 2 Bott, 413.) Lord *Mansfield*, C. J. "Here is no consent of the master, either express or implied; his mere knowledge of it doth not imply his consent." And the whole court were unanimous that the pauper obtained no settlement after her return.

Apprentice to a freeman in Colchester worked for whom he chose, and sometimes for his master: held, not a service under the indentures.

Rex v. *Inman* (4 B. & Ald. 55). *Quo warranto* for exercising the franchise of a burgess in Colchester. The custom was, that every person who served an apprenticeship by indenture for seven years to a burgess was entitled to the franchise. The boy was regularly bound, and served his master five or six years, living in his house. His master's business falling off, he then went to reside with his mother, during which time his master permitted him to work for whom he chose, he having agreed to pay his master 2*s.* a week. His master occasionally gave him work to do, for which he was not paid. During all this time the indentures remained with the master. *Abbott*, C. J. "It is quite clear that to entitle this party to his freedom, there must not only be a continuance of the binding under the indentures to a free burgess, but also a continuance of the service under the indentures to a free burgess during the whole period of seven years. I am of opinion that the service under the indentures to the first master did not continue so long, and the consequence is, that the party is not entitled to his freedom."

An apprentice offered his master a guinea "to let him off;" to which the master agreed, and also to give him a suit of clothes when the guinea was paid; but the indentures were not given up or cancelled. The guinea not being paid, the indentures still subsisted in law, and a settlement was gained by serving another master with the consent of the first. (*Rex* v. *Shebbear*, 1 East, 13.)

Express consent given to the second master with a general leave to the apprentice, is sufficient, though the consent were not given till the apprentice had been in his second service for some time, but more than forty days before he quitted it. (*Rex* v. *Bradstone*, 2 Bott, 573.)

Giving a character to an apprentice is a constructive assent to his service with the party applying for it. (*Rex* v. *St. Mary, Lambeth*, Cald. 533; 2 Bott, 419.)

But general leave is not sufficient, though the master knows in whose service the pauper is.

Rex v. *Crediton* (1 East, 59). W. Milton was removed from North Tawton to Crediton. Order confirmed. Case:—The pauper was bound apprentice to Matthews, whom he served above forty days in Crediton. Matthews failing in business, *told the pauper* that *he had no further employment for him*, and *he might go where he pleased.* As the pauper was going out of the house, his master asked him where he was going? The pauper told him he was going down to Underhill. Matthews said, "*he might go there or where he pleased.*" Thereupon the pauper left Matthews's house, and went and hired himself and lived with Underhill above forty days in Sampford Courtenay, but no communication appeared to have taken place between Matthews and Underhill. Lord *Kenyon.* "The service with Underhill was not a prosecution of the service of the original master. Some of the cases upon this subject have been carried to a greater degree of refinement than might be desirable, if they were to be decided again *de novo;* but we are to be governed by the general principle resulting from them, and not by particular expressions, which vary in every case: it would have been better perhaps to have confined the power of gaining a settlement to a service with the original master. *Rex* v. *St. George's, Hanover Square* (ante), first broke in upon that line, and determined that an apprentice serving another by the consent of the original master might thereby gain a settlement: from thence has issued such a train of decisions as it is difficult to follow; however, the general principle of them all is to be found in *Rex* v. *Austrey* (post), where Lord *Mansfield* said, 'that in order to gain

a settlement by the apprentice serving another master, there must be an express and implicit leave and consent given by the master to the particular service, so as to be considered as a service of his master under the indenture,' and not, as he observed in that case, 'a leave intended to be quite general;' or, as here, a general quitting of the service, and leave to go where the pauper pleased. Here the master first tells the pauper he had no longer any employment for him, and he might go where he pleased; and then, somebody having sent for the pauper, he tells his master, on being asked where he is going, that he is going to Underhill; on which the master repeats in effect what he had before said, that he might go there or where he pleased, meaning that he no longer looked for his service, or took any concern how he disposed of himself." *Grose*, J. "There must be a particular consent of the original master to the service with another, in order to give a settlement. In *Rex* v. *The Holy Trinity in the Minories* (post, p. 503), there was a particular recommendation to a particular service, which the court held sufficient for that purpose. Whether there be such a particular assent of the original master to the subsequent service is more a question of fact than of law; and here the sessions have in effect negatived that fact, by finding that the pauper gained no settlement by the service with the second master."

So where the master tells the apprentice he may do the best he can for himself, and afterwards, upon hearing from the second master that the apprentice had procured a place, expressed his satisfaction at it, it is not such a consent as will give a settlement. (*Rex* v. *St. Helen, Stonegate*, 1 East, 285.)

A. is apprenticed to B. and C., partners. The partnership being dissolved, B. removes, and A. serves C. and C.'s new partner D. After the death of C., A. continues to serve D. It not being found by the sessions that the service under D. was with the consent of B., the court of K. B. would not refer the service to the apprenticeship. No settlement was therefore gained by A. in the parish in which he served and resided with D. (*Rex* v. *St. Martin's, Exeter*, 4 Nev. & M. 388; 1 Har. & W. 69.)

By whom the consent to the change of master may be given.

Rex v. *East Bridgeford* (Burr. S. C. 133; 2 Bott, 557). Thomas Alt was bound apprentice to William Henston, of Orston, webster, for nine years, and served him the first four years at O. H. then dying intestate and insolvent, his widow, without administration, assigned him over to E. George, of Staunton, webster, a certificate man, for the remainder of the term, in consideration of 3*l*. He served Stanton about a year and a half at S.; and then he, in consideration of 40*s*., did, with the consent of Alt, assign him over, by verbal agreement, to Baggaley, webster, for the remainder of the term; and he served the remainder of the term with B. at East Bridgeford. The removal was from O. to East B. The objection was, that the widow had not taken out letters of administration, and had no authority to make such assignment. The court were unanimous that this was a settlement in E. B.; since to this assignment, though only a verbal one, there was the consent of all the parties concerned and he lived and inhabited at E. B. under the terms of the apprenticeship, as an apprentice bound according to the act of parliament. And they observed that an assignment of an apprentice is not considered a strictly legal transaction (because the person of a man is not strictly and legally assignable); but it has been an equitable construction, that where an apprentice has lived forty days under an assignment, he shall thereby gain a settlement, because of the *consent*.

The consent of the widow of the master is sufficient, though she had not administered to her husband (*u*).

An apprentice cannot legally be assigned.

The assignment is evidence of consent.

Rex v. *Chirk* (Burr. S. C. 782; 2 Bott, 782). An apprentice, bound for three years, without any consideration, to a slater at Wrexham, served under the indenture for nine months: then his master died, and

The pauper was bound for three years, and served forty days in W.,

(*u*) This case is recognised as an authority in *Rex* v. *Barleston* (post, 491),

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when his master died, and being dismissed by the widow, who had not taken out administration, went and served his father in C. two or three years: his settlement was held to be in W.

he continued a fortnight with the widow, to complete the work unfinished by his master. Then his mistress, having no employment for him, told him that he must not stay with her, and that he was at liberty to go where he thought proper. On his going away, he told his mistress that he was going to his father, who was a slater. There was no particular agreement between his father and his mistress, nor were the indentures delivered up. His father then lived in Chirk, and he continued with him there two or three years. The court held the settlement to be in Wrexham, for "it sufficiently appears that the pauper served forty days as an apprentice in W., and that his settlement remained there. The widow doth not appear to have had any interest; and no administration appears to have been taken out."

An apprentice may continue to serve under an indenture by leave of the executor, and will gain a settlement thereby (*x*).

Rex v. *Stockland* (Doug. 70). The pauper was bound apprentice by the parish of Stockland to John Davis till twenty-four years of age. He lived with him four years under the indenture, when his master died. He continued with his master's son, who was his executor, and had proved the will, for about seven years, when, being desirous of living with his uncle in Otterton, to learn the trade of a miller, his uncle and he applied to the executor for his consent, who gave it. The pauper went to his uncle in Otterton, and continued there with him two years and a half, at the end of the first four months of which time the pauper attained his age of twenty-four. *Rex* v. *East Bridgeford* (ante, p. 489), was relied on because there the assignment was by a person who had only the right to the administration, but had not administered. Lord *Mansfield*. "Though an apprentice is not strictly assignable, nor transmissible, yet if he continue with the consent of all parties and his own, it is a continuation of the apprenticeship. *Rex* v. *East Bridgeford* is much stronger than this."

A settlement is gained by a service with a third master, under the express consent of the second, to whom the first had assigned the apprentice.

Rex v. *Tavistock* (Burr. S. C. 578; 2 Bott, 412). The pauper was bound an apprentice by the parish of Lamerton to R. Rundle, with whom he lived several years; Rundle transferred him by assignment to J. Prout of Milton Abbot, with whom he lived till he was twenty years and a half old, at which time he offered his service to T. M. of Kelly. M. apprehending that he was an apprentice to P., sent his sons to P. to know whether it was with his consent that the pauper should live with him. To which P. answered, "With all my heart; he may live with M. or anybody else provided he performs his agreement with me." Accordingly he lived with M. in K. for a year and upwards. Lord *Mansfield*, C. J. "The only question is, whether Prout consented? It is clear that he did consent, and his consent included that of the first master." *Aston*, J., said, that "a second assignment was good."

The consent of the second master was held to be sufficient in *Rex* v. *Clapham* (infra). The same may be inferred from *Rex* v. *St. Martin's, Exeter* (ante, p. 489), and *Rex* v. *Ideford* (ante, pp. 487, 488).

The consent may be by parol, or by assignment of the indenture.

Apprentice assigned.

St. Olave's v. *All-Hallows* (2 Sess. Ca. 215). If a master assign over his apprentice, and the apprentice serve in pursuance of that assignment, he thereby gains a settlement; and it differs not whether he serve with one master or another, for he still serves by virtue of the first indenture.

In *Rex* v. *Langham* (post, p. 504), the consent was given by delivering up the indentures, and promising not to reclaim the apprentice.

If an apprentice be delivered to a second master, and by him placed with a third master, he gains a settlement.

Rex v. *Clapham* (Burr. S. C. 266; 2 Bott, 559). Michael Wilson, the pauper, was bound a parish apprentice to T. J., of Austwick, tenant to Mr. Jackson, of Clapham, who had covenanted to indemnify his tenant against all parish charges. T. J. carried him to his landlord, together

(*x*) But an apprenticeship is a personal trust, and is determined by the death of either master or apprentice, and therefore no assignee of an apprentice, after the death of the first master, can give consent, unless he is an appointee within the meaning of 32 Geo. III. c. 57. (See *Rex* v. *Eakring* and *Rex* v. *Sheepshead*, post.)

with the indenture, who accepted, received, and provided for him. He desired the mother to provide for the boy, who did so for three years in Austwick, and Jackson paid her 20*s.* a year. Then he lived with him in Clapham eight weeks, and then ran away to his mother, and remained a quarter of a year with her in Austwick, and Jackson consented to his being there. Then the pauper was placed with his brother, a mason in Austwick, as an apprentice, by Jackson, who gave him a new suit of clothes. And he served his brother as an apprentice a twelvemonth or two in Austwick, who took him as an apprentice and acquitted Jackson of him. But the representatives of the first master (who was then dead) knew nothing of this, or even assented to it, nor anything of his living with his mother. By *Lee*, C. J., and the court: "The statute only requires a binding by indenture, and gives a settlement where the last forty days are served. Here is a binding by indenture; and the first master delivers over the apprentice and indenture to his landlord, who receives him. This therefore must be looked upon as receiving him under the terms of the indenture. If there had been no inhabitancy elsewhere, after the boy's living eight weeks with Jackson at Clapham, the settlement had been there. But a settlement is fixed at Austwick by the boy's living there a quarter of a year, with the consent of his master, and, after that, by his service to the mason. There is no ground for the distinction, that a second master cannot assign to a third, that is, so far as to gain a settlement by the service under it. This was not a new binding to the mason, for a new contract could not be made whilst the former subsisted; but the service with the mason was a service under the first binding."

An invalid assignment of a parish apprentice under 32 Geo. III. c. 57, s. 7 (ante, p. 223), is sufficient to show the consent of the first master, and to render such service good as a service under the original indenture. (*Rex* v. *Barleston*, 5 B. & Ald. 780; 1 D. & R. Mag. Ca. 103.)

Forty days' service under an unstamped assignment by a widow, not stated to be the executrix or administratrix of her husband, confers a settlement.

Rex v. *Barnsley* (1 M. & S. 377). Order of removal of Robert Gill from Barnsley to Killinghall, discharged. Case:—John Gill, the father of the pauper, was bound apprentice on 1st December, 1764, to Thomas Harrison, in Clint, for seven years, and served five years, until his master died, when in consideration of three guineas paid by William Bradfield, he was assigned by Elizabeth (widow of Thomas Harrison), by an unstamped indorsement on the indenture for the remainder of his term, in words to this effect: "April 14th, 1769. I, E. H., do assign over my apprentice, J. G., for the remainder of his apprenticeship, unto W. B. (Signed) E. H., W. B." No evidence was offered to show that E. H. was either the executrix or the administratrix of Thomas Harrison. J. G. served Bradfield as his apprentice in Killinghall, till the expiration of his indenture. Lord *Ellenborough*, after adverting to the effect of the relief given (for which see S. C., post), said, "The assignment (which, it is admitted, was not at the time required to be stamped) is in its form an assignment by the widow, 'as my apprentice,' and at this distance of time we will presume, if necessary, that she was lawful executrix: or even if she were executrix of her own wrong, still according to *Rex* v. *East Bridgeford* (p. 489), if the pauper lived forty days under that assignment, we should hold him settled in the parish: and one case is enough on such a subject." *Bayley*, J., said, "*St. Petrox* v. *Stoke Fleming* (p. 501) shows that similar assignments need not be by deed."

Privity of the second master.

Consent to a particular service is not sufficient where the pauper is hired as a servant, and the second master did not know that the pauper was an apprentice. (*Rex* v. *Ashby-de-la-Zouch*, 1 B. & Ald. 116 (*y*).)

The apprentice asked leave to go into another service, without mentioning where. The mistress said that she was not against it. The

(*y*) See this case commented upon, post, pp. 495, 496.

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apprentice then hired himself to A. B. for a year, and returned to his mistress and told her what he had done, and she said that she was not against it. This is not a particular assent to that service, and the service is not as an apprentice, but as a servant. (*Rex* v. *Whitchurch*, 1 B. & C. 574; 2 D. & R. 845.) In that case Joseph Pierce was removed from Drayton in Hales to Whitchurch. Order confirmed. Case:—The pauper, by indenture (7th April, 1798), was bound a parish apprentice, till twenty-one years of age, to Margaret Dutton, under which he served her, in Whitchurch, for six years, when the indenture having still three years to run, and the pauper not agreeing with Mrs. Dutton's foreman, asked his mistress leave to go into another service, to which she consented, saying, "she was not against it if he could better himself." He did not mention where he was going. The pauper went to Jenkinson's and hired himself to him for a year at 3*l.* 16*s.* wages. He returned and told his mistress, who said, "Very well: she was not against it." In a few days he went to his new place, and in about a fortnight returned to his old mistress for his clothes, who said, "she hoped he liked his new place;" and he said "he did." Under these circumstances he lived with Jenkinson, in Rees, three months. *Rex* v. *Crediton* (p. 488) was cited, and *Rex* v. *Shebbear* (p. 488). *Abbott*, C. J. "There the new master took the pauper *as the apprentice* of the former master." *Per curiam:* "The question in this case is, whether the service with Jenkinson was a service under the indenture. It is clear that the justices have thought that it was not; because they have confirmed the order. They have not said so in express terms, for then there could be no argument upon the subject before us; but they have left it to us to say whether the conclusion they have come to was right or wrong. We are clearly of opinion that their decision was right. Much subtlety has been introduced into this branch of the law, of which some of the cases cited furnish examples. Of late the courts have inclined to decide these questions upon plain principles. In this case it is impossible to say that the pauper served Jenkinson as an apprentice under the indenture. It does not appear that Jenkinson *even knew that the pauper was an apprentice.* It appears that Mrs. Dutton had consented to the pauper's going into another service generally; but then he had not mentioned to her where he was going. Afterwards, when he had hired himself to Jenkinson, he returned and told his mistress: *but Jenkinson's name was not even then mentioned.* She did not dissent from it; but there was no express consent to that particular service. It has been urged, that the subsequent assent of the first master is sufficient to make the second service a service under the indenture; but the contrary is established by *Rex* v. *St. Helen's, Stonegate* (p. 489). Besides, under these circumstances, the service to Jenkinson was under a contract of yearly hiring. The pauper served under that contract as a servant, and not under the indenture as an apprentice; and very different duties result on both sides from these different descriptions of service. *Rex* v. *Ashby-de-la-Zouch* (ante, p. 491) is strongly in point with the present. The want of knowledge in the second master, and the hiring of the pauper as a servant, are common to both cases; and those facts distinguish this from most of the cases cited in argument. For these reasons, we are of opinion that the service with the second master was not a service under the indenture, and consequently that the order of sessions is right."

A., a parish apprentice, having a general permission from B. his master to seek employment in trade elsewhere, serves C., in the parish of Dale, and resides there forty days before the

Rex v. *Maidstone* (6 M. & N. 545; 5 A. & E. 320). B. Drywood, &c. were removed from St. Mary, Canterbury, to Maidstone. Order confirmed. Case:—The pauper, Drywood, was, in June, 1814, bound as a parish apprentice to one Pollard, of Milton, basket-maker, with whom he lived under the indenture at Milton until August, 1816, when Pollard failing, and having no means of employing him, Drywood expressed a wish to go and endeavour to procure work in the basket-making business, and mentioned Maidstone as a place where it was likely to be pro-

cured. There were at that time several basket-makers in Maidstone, but no mention was made of the name of any of them. Pollard consented to the pauper's going, but said that if he got work, he (Pollard) should expect to be allowed a trifle out of his wages. To this the pauper assented, and he thereupon left Milton. Pollard heard no more from Drywood, nor did he make any inquiry about him; but having occasion to go to Maidstone in November or December in the same year, he casually heard from a traveller that Drywood was then working with a basket-maker named Peters, in that town; and he called on Peters, and found him there; and it appeared that he had worked and resided there upwards of forty days before the 1st of October, 1816, on which day the 56th Geo. III. c. 139, came into operation. Pollard then asked for a portion of Drywood's wages, but being told by Peters that the wages were barely sufficient for Drywood's support, he went away. The pauper continued after this to work for Peters, and to reside in Maidstone several months, when he left that place, but he never returned into Pollard's service, or paid him anything on account of what he earned. Lord *Denman*, C. J. "*Rex* v. *Banbury* (p. 496) was not intended to interfere with the former decisions. We intended to bear out what was said by the court in *Rex* v. *Whitchurch* (p. 492). It is clear that in this case the apprentice was in the service of another master without the express assent of the original master, unless we can import into this matter the notion of a *ratification* by subsequent assent. It appears to me that we cannot do that. At all events there was no assent before the passing of the act of 56 Geo. III.; and no assignment since that time is valid unless made with the assent of justices. It appears to me, therefore, that no settlement was gained in Maidstone." *Littledale*, J. "I am of the same opinion. Before the 56 Geo. III. c. 139, it was considered that when there was an express assent of the original master to the service of the apprentice with a particular second master, there was something in the nature of an assignment; and on that ground it was that a service with the second master was in such cases held to be referable to the indenture. Now here the first master knows nothing as to whom the apprentice is to go to. He merely consents to the pauper's going to seek employment in Maidstone, and says that if he succeeds in getting work, he (the master) shall expect to be allowed a trifle out of his wages. There is nothing at all approaching to an assignment in this case. As to the ratihabitio, that took place in November or December, 1816, after the act of 56 Geo. III. had come into operation, and had put an end to informal assignments of parish apprentices. The settlement should have been completely gained before the passing of the act." *Patteson*, J. "The question is, whether there was an assent of the first master to the particular service. In *Rex* v. *Banbury* no such question arose. Here, the question is in fact whether the assent of the first master, in November or December, 1816, is to have relation back, and to have effect from the beginning of the service with the second master. I find no case that goes that length. In *Rex* v. *Bradninch* (p. 505) there was a service and residence for more than forty days subsequent to the assent. Here, there was no subsequent service and residence which could possibly confer a settlement. Unless we can say that the assent in November or December has relation back, no settlement was gained in this case; for in the first instance the master permitted the apprentice to go where he pleased. I think that we cannot so hold; and therefore I am of opinion that there is no sufficient assent to the particular service." *Williams*, J. "The principle upon which settlements have been held to be gained by service with a second master is, that the service was a service under the original indenture. It is reasonable therefore to require that the master should know with whom his apprentice was serving, and should assent to that service. In *Rex* v. *Banbury* the master pointed out a person, and advised the apprentice to go to him. That is wanting here. The original assent is not sufficient; and with regard to the sub-

56 Geo. 3, c. 139, (ante, p. 210,) without the knowledge of B. Subsequent assent to service does not relate back to the commencement of it.

The assent and service, it seems, must have been complete before 56 Geo. 3, c. 139.

sequent assent, I decline giving any opinion as to whether, if the act had not passed, that would have been sufficient; but I think it clear that the assent subsequent to the act could not affect the service previous to it." Order of sessions quashed.

If service by an apprentice with a second master can in other respects be construed to be a good service under the indentures with the first master, it is immaterial whether the second master know the fact of the apprenticeship or not.

Rex v. *Sandhurst* (1 N. & P. 296; 6 A. & E. 130). B. Roberson was removed from Battle to Sandhurst. Order confirmed. Case:—The pauper was born on the 10th November, 1805, and being settled in Sandhurst, was in 1816 put apprentice by his father, to his brother George, in Sandhurst, to learn the trade of a cordwainer. No indentures were then executed; but by indentures of apprenticeship bearing date the 22nd December, 1818, to which the father, the pauper, and George his brother, were parties, the pauper was, with the consent of his father, bound apprentice to George, who resided at Sandhurst, to learn his art, and with him after the manner of an apprentice to serve until the end of seven years, to be computed from the 10th November, 1816 (when the pauper first entered into the service of George, and from whence he had faithfully served him). George covenanted with the father to teach and instruct his apprentice in the art of a cordwainer, and to find him meat, drink, and lodging during his apprenticeship. And the father covenanted to provide proper clothes and medical aid for him during the same period. When the pauper had been with his master almost five years in the whole, the master being short of work, it was agreed between the father, master, and pauper, that the latter should endeavour to get work at Mr. Thorpe's at Battle, as they had heard that he took apprentices; but it was agreed that the indentures should not be given up. In consequence of this arrangement, the pauper's brother, Richard, who was also a cordwainer and resided at Sandhurst, accompanied the pauper to Battle, and applied to Mr. Thorpe to know if he could take him into his employ. Richard told Thorpe that the pauper had worked at the trade of a shoemaker for some considerable time, and that his brother, for whom he had been at work, had not sufficient employment for him; *but he did not tell him that the pauper was an apprentice.* Thorpe told Richard that his brother might come for a month on trial, and if he suited he would take him for two years. Thorpe was to have 5*l.* with him, and to board and lodge him, and teach him his trade. Richard Roberson, the younger, returned to Sandhurst and informed his father and brother George what had taken place, and his father agreed to pay the 5*l.* if the pauper suited, and George, the master, agreed that the pauper should go to Thorpe's. The pauper went accordingly to Thorpe's, at Battle, and having stayed the month, took a note from Mr. Thorpe to his father, to say he might remain on the terms agreed on; and the father thereupon sent the 5*l.* by the pauper, who continued with him at Battle, receiving board, lodging, and instruction from him in the art of a shoemaker, according to his agreement, until the expiration of two years, which took place in July, 1823. The indentures were retained by George, until a few months before the expiration of the two years, when George met the pauper at their father's house, and George then told the pauper he was his apprentice, and that he could claim him after he had left Mr. Thorpe's, for that he would leave Thorpe's in July, and his time would not be up till November. The pauper said he did not think it would be right for him to do so; and George then agreed to give the pauper out of his time. The following memorandum was indorsed on the indentures of apprenticeship, which were then given up: "George Roberson, the master of Benjamin Roberson, his apprentice, do, by consent of his father, give him out of his time, this 5th day of April, 1823, on account of not having employment for him." This memorandum was signed by George Roberson the master, Richard Roberson the father, and the pauper. "The sessions were of opinion that the service in Battle was not in pursuance of the indenture of apprenticeship entered into by the pauper with his brother." Lord *Denman.* "We will take time to consider of our judgment, but I

cannot help saying, that the facts in *Rex* v. *Banbury* (p. 496) were quite sufficient to warrant the sessions in finding that both of the masters with whom the pauper lived knew of the former apprenticeship." Lord *Denman* afterwards delivered the judgment:—"The question in this case is, whether the pauper, having been regularly bound apprentice to his brother in the parish of Sandhurst, and having served him there, has gained a settlement by subsequently serving a second master in the parish of Battle during the period of apprenticeship. In this case the first master expressly consented to the particular service with the second; and that service was on the express oral contract that the second master was to board and lodge the pauper and to teach him his trade, being the same trade as the first master carried on. It was, therefore, so far in furtherance of the indenture of apprenticeship, as that the two objects of that indenture, namely, the maintenance and teaching of the apprentice, were provided for. It was also expressly agreed between the first master, the pauper, and his father, that the indenture should not be given up; neither was it, in point of fact, given up, until long after the pauper had served the second master for forty days. It is, therefore, perfectly clear, according to the decided cases, that *as between the first master and the pauper*, the service to the second master was under the indenture, the relation of master and apprentice still subsisting between them, and the covenants in the indenture being performed on both sides by the teaching and maintaining by, and the service with, the second master. But it is found in terms, that the second master did not at any time during the service know that the pauper was an apprentice, and the only point in the case is, whether it is material that the second master should know that fact. Upon examination of the older cases upon this subject it will be found, that in some of them the second master did know the fact; in others it may be doubtful whether he did or did not; but in none of them is such knowledge expressly negatived. No point is however made in any of them upon the knowledge or ignorance of the second master, until the *Rex* v. *Ashby-de-la-Zouch* (p. 491), followed up by *Rex* v. *Whitchurch* (p. 492); but neither of those cases turns upon that point, inasmuch as in the former case the sessions negative the consent of the first master to the particular service, which is clearly necessary; and in the latter such consent was plainly never given. In the subsequent case of *Rex* v. *Banbury*, it seemed doubtful whether the second master knew the fact, and the court differed in opinion, both as to the fact of knowledge and its materiality. It can hardly be said upon these authorities that there is any clear and express decision upon this point. The question arises on the stat. 3 Will. & Mary, c. 11, s. 8, which enacts, 'That if any person shall be bound an apprentice by indenture, and inhabit in any parish, such binding and inhabitation shall be adjudged a good settlement.' The word *service* is not mentioned in the statute; but binding and inhabitation, as was observed in *Rex* v. *Linkinhorne* and other cases. The true construction to be collected from the cases appears to be, that it will be sufficient if the residence be in pursuance of the contract of apprenticeship, and in some way or other in furtherance of the object of the apprenticeship. Here the residence was in furtherance of the object of the apprenticeship, viz. maintenance and teaching; it was in pursuance of the contract, for the first master having no employment consented to the service with the second, that by these means he might perform his covenant; for, having been in part taught by the first master, he is permitted to go to the second to have his education completed under the indenture. Of what consequence, then, can it be whether the second master knew that the pauper was an apprentice or not? What difference would such knowledge have made in the situation or relation of the parties? None whatever: it would not have created the relation of master and apprentice between the second master and the pauper: such relation could only be created by a regular assignment of the indenture

The residence must be in pursuance of the contract of apprenticeship.

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(even supposing, for the purpose of the argument, that such would be the effect of an assignment of any other than a parish apprentice), or by cancellation of it and a new binding by another: it never subsisted, nor was intended to subsist, between the second master and the pauper, but continued uninterrupted between the latter and the first master. The dicta, indeed, of the learned judges in *Rex* v. *Ashby-de-la-Zouch*, and *Rex* v. *Whitchurch*, seem to lead to the conclusion that they thought that the relation of master and apprentice must subsist between the second master and the pauper; for they say, how could he be serving as an apprentice, when it was not even known that he was an apprentice? But if the point had been necessary to the determination of those cases, we cannot doubt but that they would have seen, that in the absence of a regular assignment, the actual relation of master and apprentice could not be created, and that knowledge of the fact of the binding would in no way constitute such relation. The expression, 'serving as an apprentice,' if it be understood with reference to the object of apprenticeship, namely, the being taught, and as distinguished from serving generally without such object, is quite correct; and it is obvious that in such sense the pauper in this case, under the oral contract for teaching, was 'serving as an apprentice:' but it is equally obvious, that this did not in any respect depend on his master's knowing that he was an apprentice, but upon the nature of the contract which he made. The second master is in some measure substituted for the first; inasmuch as the first consents that the apprentice shall learn from the second that which he has himself covenanted to teach: yet the second master need not be bound by the same engagements as the first, for if he need, then no service to a second master could be sufficient, except by a regular transfer of the contract, that is, the indenture, to hold which would be contrary to all the decisions as to service with a second master by consent of the first. It may be observed, that in *Rex* v. *Banbury*, my brother *Parke* gave only this effect to the decisions in *Rex* v. *Ashby-de-la-Zouch* and *Rex* v. *Whitchurch*, that the second master's ignorance of the apprenticeship furnished strong evidence that the second service was unconnected with any apprenticeship. Possibly what is said in those two cases as to the knowledge of the second master, may be supported on that ground; we think it cannot, as establishing the doctrine now brought into question: as to which doctrine this further remark is to be made, that my brother *Littledale*, considering the precise question on principle in *Rex* v. *Banbury*, declared a distinct opinion, that the second master's knowledge of the apprenticeship is not necessary. Upon the whole, we are of opinion that the true question in all such cases is, whether the service to the second master is a constructive service to the first master under the indenture, as between him and the apprentice; and that to the solution of that question it is wholly immaterial whether the second master knew of the apprenticeship or not." The order of sessions must be quashed.

Meaning of the words, "*serve as an apprentice.*"

What is sufficient connection of the service with the apprenticeship.

Rex v. *Banbury* (5 B. & Ad. 176; 2 N. & M. 105). R. Carpenter, &c. was removed from Banbury to Witney. Order quashed. Case:—By indenture of apprenticeship of the 10th of September, 1801, the pauper, R. Carpenter, was bound apprentice by the trustees of a charity in Charlbury, to J. Hobbs, of Witney, tailor and breeches-maker, to serve for seven years. The master's covenants were, to teach the trades, and to find the apprentice meat, drink, washing, lodging, clothing, and all other necessaries, during the term. The pauper entered into his service on the 5th of September, 1801, at which time he was about twenty years of age, and served his master in Witney about half a year. Hobbs, the master, then failed in business, but did not become bankrupt; and having little or no work for the pauper to do, said, "Richard, it is of no use your stopping here; I have nothing for you to do; you had better go, if you can get a place; Barry of Bloxham wants hands, and he is a

Witney man; you may go and work for him if you like; and, if you do not become troublesome to me or to Witney parish till the end of your time, you shall have my watch," which he then showed him. The pauper went to Barry at Bloxham, which is about twenty miles from Witney; he paid his own conveyance. The pauper agreed with Barry to work for him, and to receive 2*s.* 6*d.* a pair for making breeches, which was the regular price. Barry used often to go to Witney, and several times carried friendly messages between the pauper and Hobbs. The pauper worked for Barry, in Bloxham parish, a year, maintaining himself by the wages he received; he then heard that one Baker, of Banbury, wanted hands, and that he gave better wages than Barry. He therefore sent by letter to Hobbs for his leave to work for Baker, and received a verbal assent from Hobbs, and a promise to come and see him. The pauper went to Baker, and agreed to work for him to make breeches at 2*s.* 9*d.* a pair. After the pauper had been with Baker about three months, Hobbs came to Banbury to buy leather of Baker, and told the pauper he was glad to see him doing so well for himself, and going on so comfortably; he gave the pauper 1*s.*, and again promised him his watch when his time was out. He afterwards came again to buy leather, and again saw the pauper at Baker's at work, and repeated his promise of the watch. The pauper worked for Baker two years, living the whole time in Banbury, and then left. Hobbs then sent the pauper his watch; the same he promised and showed him when he left his house at Witney. The pauper maintained himself by the wages he received from Barry and Baker, and Hobbs had nothing to do with his earnings. The question was, whether the residence at Bloxham and Banbury was a residence under the indenture. *Denman*, C. J. "I am of opinion that a settlement was gained in Banbury. I am unwilling to introduce into the construction of an act of parliament terms or definitions which are not to be found in it. By the statute there must be a binding, as well as an inhabitation in a parish to give a settlement. But the authorities show, that where a party has been bound apprentice in one parish, and expressly permitted by his first master to work for another in a different parish, the service to the second master is, constructively, a service under the indenture, and that the original binding continues in force during the whole period of such service. That being so, the facts of this case show that the binding continued in force during the whole time of the pauper's service with the second and third master. It appears that the first master having failed in business, and having no work for the pauper to do, told him to get a place, and said that one Barry, of Bloxham, a breeches-maker, wanted hands, and that the pauper might go and work for him if he liked. The pauper accordingly agreed to work for Barry, and was to be paid by the piece. Barry carried messages to and from the first master and the pauper, and therefore must be taken to have known that the relation of master and apprentice existed between them. The pauper (having first applied for and obtained the consent of his first master) went afterwards to work in Banbury with one Baker, another breeches-maker; so that, during the whole time, he worked at his original trade; and both he and his first master considered the apprenticeship as continuing; for the pauper applied for leave to work for Baker, and the first master, on that occasion, promised, as he had done before, to give him his watch at the end of his time, and he afterwards gave it him. I agree that the binding must not only continue during the *whole* of the service, but that the *inhabitation* of the pauper, to give him a settlement, must, in some way or other, be connected with the apprenticeship. But as the pauper here not only continued to work at his original trade, but he and Hobbs both considered the relation of master and apprentice to continue between them, I think the inhabitation in Bloxham and Banbury was referable to the binding, and one of the consequences of the apprenticeship. Hobbs and the pauper may have thought that the best way for the latter to

Where there is consent, the service is constructively under the indenture.

learn the trade was by serving other persons in the same business. The third master, as well as the second, must be taken to have known that the relation of master and apprentice subsisted between Hobbs and the pauper, and he and the pauper considered the indenture still in force. I think, therefore, there was in this case a sufficient binding and inhabitation in the parish of Banbury, within the statute and decided cases, to confer a settlement." *Littledale*, J. "I am entirely of the same opinion. The indenture was not cancelled, nor intended so to be. The master gave an express assent to the apprentice working with Barry, and promised to give him his watch; he afterwards, on the application of the apprentice, assented to his working with Baker; and when he had been in the service of the latter some time, again promised him the watch. By the deed, the master was bound to provide the apprentice with board and lodging, but the apprentice went to a place where these were found for him, worked at the same occupation, and was paid by the piece. I think it sufficiently appears that he continued to work under the indentures; indeed, I hardly know how that could appear more strongly, unless there had been an *actual assignment* of the indenture. I consider the indentures to have continued in force during the whole term of the apprenticeship. The next question is, did the pauper serve the second and third master as an apprentice? The leave given by Hobbs must be taken to be for the pauper to work for Barry and Baker, as he did for him (Hobbs), viz. as an apprentice. It is not found expressly that Barry or Baker knew the pauper was an apprentice to Hobbs; and if that fact be necessary, it appears to me not sufficiently proved. But I do not see why it should be requisite that the second master should have that knowledge. In some of the cases on this subject there was want of notice to the second master, and in others not; and in some of them there are expressions which tend to show that such knowledge is necessary. I think, however, that it is not so, and that the assent of the first master is sufficient. The pauper, then, in this case, must be considered to have served the second and third master under a contract of apprenticeship and not of hiring." *Parke*, J. "I am of opinion that no settlement was gained in Banbury. In order to gain a settlement by apprenticeship, the statute requires a binding and inhabitation; and according to the construction put upon that provision in *Rex* v. *Ilkestone* (p. 481), and *Rex* v. *Linkinhorne* (p. 480), the inhabitation must be in the character of an apprentice, and in furtherance, or in pursuance of the object of apprenticeship. The statute does not, in terms, require a service in the parish; it is sufficient if there be an inhabitation, which is, in some way or other, connected with the apprenticeship. The question then is, whether the pauper, during the time he worked for Barry or Baker, worked for them in the character of an apprentice. It seems to me that he did not, but that he was employed as a servant. If the first master had assigned over the apprentice to the second, and thereby obliged the apprentice to serve in that character, the service would then be clearly referable to a contract of apprenticeship; or, if the first master had communicated to the second that the pauper was his apprentice, and the second master had received him in that character, the inhabitation would have been connected with the apprenticeship. But there is no authority to show that if the apprentice, having leave from his original master to work for another, goes and hires himself to, and works for, that other as a journeyman, such service is, in any way, connected with the indenture." In *Rex* v. *The Holy Trinity, Minories* (p. 503), the pauper lived with the second master in the character of apprentice; for by the very terms of agreement between them, he was to instruct the pauper in his business. The modern authorities are very strong on this subject. In *Rex* v. *Ashby-de-la-Zouch* (p. 491), the master of several apprentices, upon quitting business, proposed to assign all his apprentices, without mentioning either the names or number, to one Peel, but no assignment was made. The pauper, one of the apprentices, was

It is not requisite that the second master should know that the pauper was an apprentice.

afterwards hired as a servant by Peel for fifty-one weeks; and her former master, on meeting her, expressed his approbation of her having gone into Peel's service. The sessions having found that there was no particular assent of the original master to the second service, and therefore that the relation of master and apprentice never subsisted between Peel and the pauper, and the court thought them well warranted in that conclusion; and *Bayley*, J., observed that the master to whom the pauper went to be hired was never apprised of the relation of master and apprentice having subsisted; he hired her as a servant, which constituted a new and different relation. So in *Rex* v. *Whitchurch* (p. 492), it is said by the court, "In this case it is impossible to say that the pauper served Jenkinson (the second master) *as an apprentice* under the indenture: it does not appear that Jenkinson even knew that the pauper was an apprentice." In *Rex* v. *Shipton* (p. 500), where the master, not having sufficient work for his apprentice, proposed to him to go to a farm in a different parish, occupied by the master's sister: and the pauper agreed with her to work there for a twelvemonth for his meat and drink; and worked for her for four years and four months, receiving from her during the first two years meat and drink, and during the third and fourth, wages: Lord *Tenterden* said, "It appeared from the facts stated, that the pauper hired himself to Mrs. Corser, the master's sister; the service, therefore, was not under the indentures, but under a contract of hiring." The authorities show that an apprentice who, with the assent of his first master, serves a second, must, in order to gain a settlement in the place where he serves the second master, be inhabiting there in the character of an apprentice, and not in that of a hired servant. Now here, the pauper did not live with Barry and Baker in that character, because *non constat* that they ever knew he was an apprentice. If they had been privy to the relation of master and apprentice having subsisted between Hobbs and the pauper, they might be taken to have contracted the same relation, and to have received him into their service as an apprentice, and his inhabitation would in their parishes be considered as having been in that character. But in this case it seems to me that there was no obligation on the part of the second or third master to teach the pauper, or, on the part of the pauper, to perform the duties of an apprentice to either of them. Upon the whole, therefore, I have come to the conclusion, that there was no sufficient inhabitation in Bloxham or Banbury to give the pauper a settlement in either of those places. *Patteson*, J. "The cases on this subject are exceedingly difficult to reconcile with each other. On the whole, I think a settlement was gained in Banbury. I agree in the rule laid down by Lord *Tenterden* in *Rex* v. *Ilkestone*, that the inhabitation must be in the character of an apprentice, and in some way or other in furtherance of the object of apprenticeship. The pauper, in this case, was bound apprentice to Hobbs, a tailor, who failed in his business, and could not maintain him. The apprentice, therefore, went to Barry, and bound himself to work, not as servant, but as journeyman, by the piece; and while there, hearing he might do better for himself, applied again to his first master, and the latter consented to his working with Baker; and on that occasion, for the second time, promised to give his watch to his apprentice *at the end of his time*. Both master and apprentice, therefore, considered the contract of apprenticeship as still subsisting. The pauper did not bind himself to the third master for any specific time, but agreed to work by the piece. I think an action of covenant might have been maintained by either party (Hobbs or the pauper) against the other. In *Rex* v. *Whitchurch*, there was no assent on the part of the first mistress to the particular service. In the first instance she did not know to whom the apprentice was going; and when he had hired himself, and returned and told the mistress of his having so done, he did not mention the name of the second master. In these cases small circumstances are laid hold of in each particular instance: but I

should say, in general, that whenever the original contract continues, and the apprentice, with the consent of the first master, works at a trade with the view to be taught that trade, he must be considered as living with the person under whom he works in the character of an apprentice (*z*)." Order of sessions confirmed.

The apprentice must be employed in furtherance of his indenture.

A parish apprentice, at the suggestion of his master, B., goes to work for C., and without the knowledge of his master agrees to work with C. by the year, and serve C. a year under that agreement. He gains no settlement by apprenticeship, because the service is not referable to the indenture. (*Rex* v. *Shipton*, 8 B. & C. 88; 1 M. & R. 394.) *Bayley*, J. "*Rex* v. *Whitchurch* (p. 492) is expressly in point to show that no settlement was gained by apprenticeship, upon the ground that the service in Shipton was not referable to the indenture, but to the contract of hiring."

Service under a second indenture made by the first master is not referable to the original binding.

Rex v. *Christowe* (11 East, 95). Elizabeth Pain was removed from Moretonhampstead to Christowe. At the age of seven years the pauper was bound an apprentice by the parish of Christowe to William Ponsford, with whom she lived till she was eleven years old. During the apprenticeship, by a written paper legally stamped and called an indenture, Pain, with her consent, was bound by Ponsford to Smith, as an apprentice, till she attained the age of twenty-one. Smith covenanted with Ponsford to teach and feed Pain. The consideration was 5*l.* 5*s.*, and the indenture was signed and sealed by all three. Lord *Ellenborough*. "This instrument purports to be a new and original binding of an apprentice by indenture by Ponsford to Smith; it does not recognise or refer to the original indenture of apprenticeship as being an assignment of the apprentice under that indenture; nor does Ponsford thereby assume to have any right to assent to the apprentice serving another master under any former indenture, but only to bind her *de novo*. How then can I say that this was a consent on his part that she should serve *Smith as a continuation* of the relation of apprenticeship which she had contracted before with him, Ponsford? This would be to intend a consent contrary to what appears upon the face of the instrument to have been the intention of the contracting parties. I should be sorry to overturn the decided cases, but it appears to me that this is distinguishable from them: and that there is no case where the first master affected to bind his apprentice to another *de novo* by an original indenture, in which his consent to a service as under the former binding has been inferred; and, therefore, without disturbing those cases, but leaving them as we find them, I do not think that this instrument proved the consent of Ponsford to the service with Smith under the original binding." *Le Blanc*, J. "The leaning of the former decisions was to support every case of settlement, by implying the assent of the first master to the service with the subsequent master; but then it must be a consent to the service with the new master under a recognition of the original binding; and there is *no case* (*a*) where the settlement has been held to be gained under an entirely new binding by an indenture of apprenticeship: and if we were to hold this to be sufficient, we should be carrying the doctrine of constructive assent to a service under the original binding farther than any of the former cases." *Bayley*, J. "In this case the apprentice never undertook to serve the second master upon the terms of the original indenture of apprenticeship to the first master, nor did the first master consent to any such service." See also *Rex* v. *St. Mary, Kalendar* (p. 509).

(*z*) In *Rex* v. *Maidstone* (5 A. & E. 328), in allusion to this case, J. *Patteson* said, "Two or three words are left out there which would have been better added. The language must be viewed with reference to the subject-matter of the case. I meant to speak of the consent of the master to a service with a particular person."

(*a*) See the next case, of *St. Petrox* v. *Stoke Fleming*.

But an apprentice was assigned by her master to a second master by indorsement on the indenture; she then bound herself by a new indenture to the second master, and gained a settlement, as the service continued under the first binding.

St. Petrox v. *Stoke Fleming* (Burr. S. C. 248; 2 Bott, 558). Anne Giles, the pauper, was bound a parish apprentice to Rebecca Gregory, of St. Petrox, till her age of twenty-one. She served five years; when Gregory, by indorsement on the indenture, delivered it up, together with all her right, interest, and term of years then to come of the apprentice, to Philip Foale, of Stoke Fleming; and on the same day Anne Giles, being then fourteen years old, did voluntarily bind herself apprentice by indenture to Foale, and served him under the said indenture at Stoke Fleming for several years. The question was, whether a settlement hereby was gained at Stoke Fleming? It was objected that here was no regular assignment of the first indenture to Foale, it being only delivered up, but not assigned, and the term was not expired when she bound herself to Foale. By the court: "Though an assignment of an apprentice (except in London, by custom) cannot strictly be made, yet as this assignment was with the assent of the mistress, the service under it will be good for the purpose of gaining a settlement, for the service continued under the first binding."

Service under a second indenture is not sufficient, though the pauper had been previously serving under express consent.

Rex v. *Ecclesfield* (6 M. & Sel. 174). Order of removal of J. Wostenholm, &c., from Brightside Bierlow to Ecclesfield, confirmed. Case:—The pauper, at nine years of age, was bound in May, 1803, as a parish apprentice to S. Carr. He served him eight years, when, in consequence of some disagreement, it was agreed that he should serve P. Cadman for the remainder of the term. Cadman agreed to pay Carr 1*s.* 6*d.* per week during that period. The pauper went to Cadman on trial, and then served him with Carr's express consent. After three weeks the original indenture was given up, and another executed; to which the pauper, his father-in-law, Carr, and Cadman were parties. The pauper of his own liking bound himself to Cadman for seven years, to learn the trade of a scissors-maker, and Cadman agreed to take him; there were the usual covenants, and the master agreed to pay the pauper 2*s.* a week during the last year and a half of the term. No premium was paid to Cadman, but he continued to pay Carr the 1*s.* 6*d.* under the agreement. The pauper continued to serve Cadman during the greater part of the remainder of the original term. It was urged that this case was distinguishable from *Rex* v. *Christowe* (p. 500), where, if the second indenture failed, there was nothing to show consent: but that here there was a previous agreement, which continued after the second indenture was made, and if it was void it could not affect the original binding. Lord *Ellenborough*. "The second indenture is not to be rejected as an entire nullity: although it be not capable of the legal effect intended, that is, to constitute an apprenticeship, it may serve to indicate an intention that the service should not be continued under the original indenture, but should begin *de novo*. I think this case is concluded by *Rex* v. *Christowe*, which was decided on a review of all the cases." *Bayley*, J. "In *Rex* v. *Christowe*, it was settled, that unless there be a consent to the second service under a recognition of the original binding, an instrument purporting to be a new binding is not a consent. Is it possible, in this case, to say that the second service was a service of the nature above stated, when the time and manner of service are different from those under the original binding? The second master had not the same rights with respect to service as the first, neither had the apprentice the same rights with respect to his employment. In truth, the second indenture was made with another view, and shows that it was never intended that the service should be continued under the first on the same terms as *ejusdem generis*." *Abbott*, J. "He considered the parol agreement as entirely done away with by the subsequent instrument." *Holroyd*, J. "The second service being inconsistent with and in a different character from the first, must be referable to the engagement with the second, and not with the first master."

Of the Service by Parish Apprentices with another Master.

Prior to the 56 Geo. III. c. 139, the master of a parish apprentice had been enabled, by the consent of two justices, to assign a parish apprentice (32 Geo. III. c. 57); but this was an enabling, and not a prohibitory statute, and an informal assignment under that statute was held to be evidence of consent (*Rex* v. *Barleston*, ante, p. 491). The 56 Geo. III. c. 139, s. 9 (ante, p. 225), however, enacts that no settlement shall be gained by the putting away or transfer of a parish apprentice, without the consent required by that statute.

A parish apprentice sent to work on another farm belonging to the master's sister, and superintended by the master, is placed out within 56 Geo. III. c. 139, and gains no settlement, not being under the inspection of justices. (*Rex* v. *Shipton*, 8 B. & C. 88.) The facts of this case are stated (ante, p. 500). Lord *Tenterden* said, "I also think that no settlement was gained, because there was in this case a putting away of the apprentice within the 56 Geo. III. c. 139. The 32 Geo. III. c. 57, s. 7, recites, 'that it frequently happened that persons were compellable, under the 9 & 10 Will. III. to take a greater number of parish apprentices than it was convenient for them to maintain or employ in their own families, and they were therefore forced to *place out* or assign over such apprentices to other persons, and that it was proper that such assignment should be legally made under the inspection and control of two magistrates, as well for the benefit of the apprentice as that the original master might be discharged from his covenant in respect of such apprentice, and that it was fit that the person to whom such assignment should be made, and also the apprentice, should be subject to the ordinary jurisdiction of two justices with respect to master and apprentices;' and it then enacts, 'that it shall be lawful for the master of any such parish apprentice, by indorsement on the indenture, &c. with the consent of two justices, to assign such apprentice to any person willing to take such apprentice for the residue of the term mentioned in such indenture.' Notwithstanding this statute, it was discovered that many grievances had arisen from the binding of poor children as apprentices by parish officers to improper persons, whereby the parish officers and the parents of such children were deprived of the opportunity of knowing the manner in which such children were treated; and also from the permission given to the apprentices by the persons to whom such apprentices had been bound, to serve others without a formal assignment, whereby the discretion required by the statute to be exercised by magistrates in placing out apprentices to suitable persons was frequently rendered of no avail. Those mischiefs are provided for by the 56 Geo. III. c. 139." His lordship then read the recital of s. 9, and the enactment (p. 225), and added, "Here, the first master, not having sufficient work for the apprentice, proposed to him to go and work at a farm in the occupation of C., where he worked for her four years and four months with the assent of T. I think this was a putting away of the apprentice without the consent of the justices within the 9th section, consequently that no settlement was gained after the putting away of the pauper to Mrs. Corser." *Bayley*, J. "I think that the pauper gained no settlement in Shipton, because there was a putting away of the apprentice within the 56 Geo. III. c. 139, s. 9. The object of the legislature was to protect parish apprentices, who are unable to protect themselves, and to place them under the protection of the magistrates. We ought, therefore, to adopt such a construction as will best effectuate the intention of the legislature. The 32 Geo. III. prohibited masters from assigning parish apprentices without the consent of two justices. In the recital of the 7th section, the words '*place out or assign*' occur; in the enacting part the assignment alone is prohibited; but the 56 Geo. III. c. 139, s. 9, recites, 'that it is expedient that the *placing out* and assignment of parish apprentices

should, in all instances, be under the inspection of the magistrates,' and enacts, 'that it shall not be lawful for any master to put away or transfer any parish apprentice without such consent.' An *assignment* imports a transfer of the services of the apprentice for the residue of the term. But an apprentice may be said to be *placed out* when the master consents to an apprentice serving another individual, so as to become subject to the control of that other. Here it is evident that the legislature intended to prohibit the placing out, without the consent of the justices, as well as the assignment. I think that, in this case, the master placed out the apprentice to C., or put him away, and, consequently, that the service, after such putting away without consent, gave no settlement."

The master of a parish apprentice being abroad, his steward assigned the apprentice by writing signed A. (the master), by J. P. his steward, with the approbation of justices, as required by s. 9 of the 56 Geo. III. c. 139. J. P. had no special authority for this purpose; but the expense of this and of former similar assignments had been allowed in J. P.'s accounts with A.: held, that the assignment was bad, as the master ought to exercise a discretion as to making an assignment, and, at all events, to execute a special authority for the making of it by another person. But *quære*, whether the assignment must not be by the master himself. *Quære*, also, whether a parish apprentice can be bound to persons residing abroad, though occupying land in the parish. (*Rex* v. *Spreyton*, 3 B. & Ad. 818.)

A master not having sufficient employment for a parish apprentice, agreed with another person in the same trade with himself, but in a different parish, that the apprentice should work for him, he paying to the first master 5*s.* a week. This is a *putting away of* the apprentice, within 56 Geo. III. c. 139, s. 9, not being duly sanctioned by justices, and no settlement was gained thereby. (*Rex* v. *Wainfleet*, 3 P. & D. 72; 11 A. & E. 656.)

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§ 4. Of Vacating the Apprenticeship.

Of discharging the indenture or vacating the apprenticeship.

If the apprenticeship be prematurely determined, the apprentice is then in a capacity to enter into a new contract, either as a servant or as an apprentice to some one else, by which he may gain a settlement, although a small portion only of the term for which he was bound in the first instance has actually expired. Of course, when he is legally discharged from his indenture, the assent of his original master to his entering upon any other service is immaterial and nugatory; it is important, therefore, to see what amounts to a *discharge* of the original indenture, and what is insufficient for that purpose. And it will appear that, however the parties may intend to relinquish the connection of master and apprentice, and that intention is followed by an actual separation, the indenture will be still considered as in force, as far as the question of settlement is concerned, unless it be formally cancelled, or determined by one of those events which the law has said shall have that effect. There are exceptions to this rule in favour of infants, as will be seen in some of the subsequent cases.

The consent must be given before the indentures are given up.

Rex v. *Holy Trinity in the Minories* (3 T. R. 605). F. Whitfield, wife of Joshua W. (a patient in Guy's Hospital), removed from Bermondsey to Holy Trinity in the Minories. Order confirmed. Case:—Joshua was bound apprentice to J. Grimes, of Tower Hill, London, tailor, for seven years. He served his master about six years, when his master declined business, and informed the pauper that he wished him to get another master for his good. He then went home to his father who lived in Southwark, with whom he stayed three or four weeks, and if he could have got a service in that time he would have taken it; but not meeting with any, he returned to Grimes, who thereupon told him that he heard

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Mr. Edwards (who was a tailor, and lived in Holy Trinity) wanted a man: and told him to go to Edwards, and make an agreement with him for his good; and that he understood Edwards would take him for twelve months. He accordingly went to Edwards and entered into an agreement under seal, covenanting to serve him for twelve months in his business as a tailor; and Edwards covenanted to instruct him, and find him in victuals and lodging, and at the end of the term to pay him 12*l.* for his service. The agreement was not stamped. He was nineteen years of age when he left Grimes; and the indentures were not assigned or cancelled; but *after he had served Edwards two months, Grimes gave him up his indentures*, and he continued to serve Edwards to the end of the year, and then received his wages and applied them to his own use. Lord *Kenyon*. "It is extremely clear, that while the indentures of apprenticeship continue in force, the apprentice is not *sui juris*, and cannot gain a settlement as a servant. But it has been settled in *Rex* v. *St. George, Hanover Square* (ante, p. 487), that the apprentice need not continue in the actual service of the first master during the whole term, but that if he be assigned over by the first master, or continue with his privity and consent in the service of another person, he may gain a settlement by serving the second master forty days. The cases which have been decided upon this subject have been determined upon nice distinctions; but still these distinctions ought to be adhered to, as they have settled the boundaries on this point. The one is *Rex* v. *Fremington* (p. 487), where it was held that the apprentice gained a settlement by serving the second master with the consent of the first. The case on the other side is *Rex* v. *St. Luke's, Middlesex* (p. 506), where a general licence given by the master to the apprentice to serve whom he would, without any consent to serve any person in particular, was held not sufficient to gain a settlement. Now this case falls within the principle of the former of these; for the apprentice went not only with the consent, but with the express recommendation, of the first master to serve the second, and he went there to follow the same trade which his first master had exercised. It has been said that this case must be governed by *Rex* v. *Sandford* (p. 506); but there is a solid distinction between them. There the master gave up the indentures previous to the pauper's entering into the second service; but here the indentures were not given up till more than forty days had elapsed after the apprentice had served the second master: and that is sufficient to give him a settlement in that parish." *Buller*, J. "The pauper could gain no settlement by living as a hired servant with Edwards, because the indentures of apprenticeship still existed; and the only question is, whether the master did expressly consent to that service or not? For all the cases show that mere knowledge is not sufficient; knowledge does not imply consent. Now here was an express consent and recommendation of the first master to serve the second; and then the case comes precisely within *Rex* v. *Fremington*. If, indeed, the apprentice had not gone into Edwards's service, he would not have gained a settlement by serving any other person, because a general licence to serve whom the apprentice chooses is not sufficient. By going into the service of any other person, the apprentice would have gone without the express consent of the first master, and therefore might have been recalled by such master; but he could not have been recalled by the first master from the service of Edwards, because of the express consent to serve Edwards. This is distinguishable from *Rex* v. *Sandford*; for there the master had given up the indentures, and he had no longer any power over the servant; but here the indentures were in force during the first two months of the pauper's service with Edwards." The other judges concurred.

A general licence to serve whom the apprentice chooses is not sufficient.

Giving up the indenture does not cancel it, but, on the contrary, may be evidence of consent to serve with another under the indentures. (*Rex* v. *Langham*, Cald. 120; 2 Bott, 569.)

The master of a parish apprentice agreed that the apprentice should work for his own benefit, but did not give up the indenture; he provided him a loom, and knew for whom he worked: held, service under the indenture. (*Rex* v. *Offerton*, Burr. S. C. 802; 2 Bott, 566.)

The continuance of indenture inferred from payments made by apprentice to his first master.

Rex v. *Bradninch* (Cald. 461; 2 Bott, 570). The pauper was bound apprentice by the parish to C. Hill, till twenty-four years of age; he continued to live with his master till twenty-two, when his master agreed that if he would give him one guinea in hand, and two guineas more (being one guinea a year during the residue of his apprenticeship), the pauper should go and serve where he pleased; but the master said that he would not deliver the indenture, nor discharge him from his apprenticeship, for he considered him as his apprentice still: the pauper agreed to this, and paid his master a guinea in hand, and went into Gittisham and lived with his father, and paid him 6*d.* a week for his lodging. He hired himself as a labourer to Miss S. by the day, and continued to lodge with his father at Gittisham, and serve Miss S. till the expiration of his apprenticeship. At the end of the first year of his serving Miss S. he went to his master, Hill, and paid him one guinea for that year, according to the agreement; his master said, "*You continue to work for Miss S.; I think it a very good place, and hope you will continue in it.*" At the end of the second year he went and paid his master the other guinea, who said, you still continue to work with Miss S.; he replied he did: when his master said, he would look out for the indenture and give it him. The pauper did not know there was any conversation between the master and Miss S. respecting the apprentice, but Miss S. knew the pauper was an apprentice. The sessions held that the pauper gained no settlement in Gittisham. Lord *Mansfield*. "There can be no doubt in this case. The pauper was certainly not *sui juris;* for, if he had been, he would not have paid a guinea a-year." Order of sessions quashed.

In the report of this case in Cald. it is stated that the court were clearly of opinion that there was, in this case, with knowledge of the particular service, a consent; and more, a very strong approbation of it.

Where an apprentice agrees with his master for his discharge, and quits his service, but leaves the indentures till the money agreed for is paid, the indentures are not thereby discharged; and service under a second master, by the express consent of the first master, is a service under the indentures.

Rex v. *Chipping Warden* (8 T. R. 108). R. Lymath was removed from Chipping Warden to Great Robright. Order quashed. Case:— R. Lymath, in 1776, was bound apprentice by indenture to W. Goodwin, blacksmith, for five years: he served G. for two and a half years under the indentures, when his master left off business, and went to reside in Marston. At that time the pauper agreed verbally with his master to give him 7*l.* for the rest of his time, his master not wishing to turn him over to any one, and it was agreed that the master should keep the indentures till the 7*l.* was paid, which was to be from time to time as the pauper could earn it, and was convenient to him to pay it. The pauper considered himself at liberty to work with any master he pleased, and did work with different masters till the harvest of 1779, when, at the request of Goodwin, he came to serve him as a labourer for about a month, and received his wages according to the rate usually given to labourers in harvest, the amount being deducted from the 7*l.* which the pauper had agreed to pay G. Goodwin afterwards *recommended* the pauper to serve one Cherry, a blacksmith at Marston, into whose service he went with the knowledge of G., and continued there about twelve months. The indentures were not delivered up till five or six years after the apprenticeship had expired. Lord *Kenyon*. "It is clear that in general an apprentice is not capable of contracting the relation of servant 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 with any other master before the expiration of the term for which he was bound; then there is a third case, that where the apprentice leaves his master, and enters into the service of another. If the

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indentures still subsist, he is not *sui juris*, but is incapable of gaining a settlement by serving another master, unless he serve with the consent of his former master, and in such case he gains a settlement, not as a hired servant, but as an apprentice. These are axioms in this branch of settlement law, and cannot now be called in question. Now what are the facts of this case? The pauper was bound an apprentice to a master residing in Great Robright, who two years afterwards discontinued business: at this time the parties did not put an end to the apprenticeship: but, on the contrary, the apprentice agreed to pay 7*l.* to the master, who was to keep the indentures until that sum was paid, *the master all this time keeping a control over the apprentice;* the pauper then went into different situations, and among the rest he served a person of the name of Cherry, into whose service he went at the recommendation and with the knowledge of his first master, the indentures still continuing in force: then, according to all the authorities, this must be deemed a service under the indentures. My opinion, in this case, does not proceed on the ground that the pauper served Cherry a year as a hired servant, but that he served him under the indentures of apprenticeship with the consent of his original master." Order of sessions affirmed.

A mere agreement to discharge the indentures on payment of a sum of money does not operate in discharge before *actual payment*, and a residence of forty days before payment gives a settlement. (*Rex* v. *Gwinear*, 3 Nev. & M. 297; 1 Adol. & El. 152.)

A parish apprentice, bound till twenty-four, served till twenty-one, when his master, being about to leave the parish, told him that he might leave him and shift for himself, but, if he could not provide for himself, he might return to him: he quitted, and when about four months past twenty-one, bound himself by indenture as apprentice to another master for three years, and served with him the full term: he acquires no settlement by service under the second indenture. (*Rex* v. *Bow*, 4 M. & Sel. 383.) *Bayley*, J. "Unless the first indenture was at an end when the pauper entered into the second, he was not at that time *sui juris* to contract.

Telling an apprentice to go about his business and work for himself, where the indenture was not given up, is not a dissolution of the apprenticeship. (*Rex* v. *St. Luke's, Middlesex*, 1 Bla. Rep. 553.)

If an apprentice enters the king's service with the consent of his master it does not avoid the indentures. (*Rex* v. *Hindringham*, 6 T. R. 557.)

Delivering up the indentures to a parish apprentice, when he is under age, does not discharge the apprenticeship. (*Rex* v. *Sandford*, 2 Bott, 572.)

The master gave up his farm and apprentice to his son. That son cannot cancel the indentures.

Rex v. *Notton* (Burr. S. C. 629; 1 Bott, 712). In this case Benjamin Watson, the pauper, when an infant, was bound out a parish apprentice to Hannah Cuttle, of South Hundley, widow, until he should attain the age of twenty-four years. After he had served about six years she quitted her farm to her son Stephen, and left the apprentice there with him. The apprentice lived with Stephen several years. Afterwards, being desirous to leave the service, he applied to his master, who told him he might go where he pleased. Whereupon he hired himself at several places, and received the wages to his own use. In May, 1766, Stephen gave up his indentures to him. In February, 1767, he hired himself to John Baildon, of Notton; and Stephen being told of it in conversation, said he thought it a good place for him. He served Baildon at Notton above forty days, and then attained his age of twenty-four years. The court were clearly of opinion, that the service with Baildon in Notton was not a service under the indenture of apprenticeship, consequently his residence in that parish upwards of forty days was not sufficient to gain the apprentice a settlement there.

A parish apprentice, when under

Rex v. *Austrey* (Burr. S. C. 441; 2 Bott, 542). F. Orton, at ten years of age, was, in April, 1744, bound a parish apprentice to S. Lythall, of

Grendon, till his age of twenty-four. He served with his master there till Michaelmas, 1754, at which time the master, in consideration of 40*s.* then paid to him by the apprentice, agreed to discharge him; which receipt and discharge were indorsed by the master on the indenture, which he then delivered up to the apprentice. The apprentice then hired for a year, and served that year in Higham. At Michaelmas, 1755, he hired for a year, and served that year in Austrey. He was then upwards of twenty-three, but not twenty-four years of age. The removal was to Grendon, and the sessions quashed the order. Lord *Mansfield.* "The whole depends upon the question whether he was of age, or under age, at the time of his consenting to the discharge? And by comparing the dates as above, it appears that he was under age; and then his consent signifies nothing, for the consent of an infant apprentice is as if he had given no consent at all. And if so, his subsequent services can never be considered as performed by the master's leave and consent, and so as being a service of his master under the indenture; because this is no express and implicit leave and consent given by the master to the particular service, but was intended to be altogether general, and is even founded in a mistaken apprehension that the apprentice could consent to his being discharged, which he, being an infant, was not capable of doing." The other judges were of the same opinion.

age, cannot consent to his discharge.

Rex v. *Ecclesall Bierlow* (Burr. S. C. 562; 1 Bla. Rep. 592). The pauper, S. Wilshaw, being a parish apprentice, after he had attained the age of twenty-one years, agreed with his master to cancel the indentures, and the same were accordingly cancelled. Afterwards he hired and served a year in Warslow, which was within the term comprehended in the indenture. It was objected, that as the binding was by the parish he could not cancel the indentures without the approbation of the overseers. Lord *Mansfield*, C. J. "There seems to be no necessity of the parish officers joining to the consent to discharge this apprentice. There is no authority for it. And I see no inconvenience to the parish, or to any one else, in its being done without their concurrence. The act empowers them to bind the man-child out apprentice till he comes to the age of twenty-four. And the act was necessary to make valid the binding of the male parish apprentice till his age of twenty-four, for he could not be bound longer than till twenty-one without the aid of the act; and two justices are to assent to this. But the same reason doth not hold as to the discharge of the apprentice; this concerns the master and the apprentice only. The latter part of the apprentice's time is of most service to the master: therefore the apprentice, being of age, if the master and he agree to it, they two may dissolve the contract; if so, then this person was *sui juris* when he hired himself at Warslow; and consequently he gained a settlement there by a hiring and service for a year."

But when of full age he may consent to his discharge, and the consent of the parish officers is not necessary.

Rex v. *Weddington* (Burr. S. C. 766; 2 Bott, 545). The pauper, T. Lawrence, was born in Chilvers Cotton, where his father then resided under a certificate from Weddington. When the pauper was of the age of eight years and a half, he bound himself apprentice by indenture, with his father's consent (who was party to the indenture), to W. Meigh, of Chilvers Cotton, for seven years, and served him there one year and a half, and then the indenture was destroyed, by consent of the master, the father, and the apprentice. The pauper, within half a year afterwards, bound himself apprentice by indenture, with his father's consent, to T. Maydlin, of Bulkington, for seven years, and served him in Bulkington for four years, and then this indenture was destroyed by consent of Maydlin, the father, and the apprentice. The pauper after this bound himself apprentice to Shaw, in Chilvers Cotton, and served him there two years. About three years after, he hired himself for a year to Smith, of Chilvers Cotton, and served him in that said parish for the

An apprentice, bound with his father's consent, may be discharged, although under age, by agreement of all the parties to the indentures.

year. He was removed to Weddington. Lord *Mansfield.* "The single question is, whether the indenture of the apprenticeship in Bulkington was void or not, there having been a former indenture, but such former indenture having been cancelled by agreement between the master and the father, and the apprentice? The case of *Austrey* (p. 506) was determined on particular circumstances. The question was, whether the parish officers who bound out the apprentice under a special authority ought not to have been consulted about discharging him, and to have given their consent to it? The whole policy of the 43 Eliz. might be defeated, if the master and parish infant apprentice could, by their joint consent alone, without the consent of the parish officers, discharge such a contract, and set the apprentice free from it. That case, therefore, is not applicable to the present. Here, the original contract was only between the father, the master, and the apprentice; and all of them consent to the discharge. An infant may make his condition better, though he cannot make it worse. The reason why an infant may bind himself apprentice is because it is for his benefit. If he was discharged of the former indenture, he was at liberty to execute another."

The mother of an apprentice, before the expiration of his apprenticeship, applied to his master to give him up to her, to which he assented, and the apprentice left him; but the indenture remained in the hands of the overseers, and was never applied for or given up: held, that the apprenticeship was not put an end to by this agreement, although the master refused to take back the apprentice.

Rex v. *Skeffington* (3 B. & Ald. 382). Removal from Halstead to Skeffington. Order confirmed. Case:—The appellants relied on an indenture of apprenticeship, dated 1805, by which the pauper bound himself apprentice to W. Dudgeon for ten years. A premium of 12*l.* was stated in the indenture to have been paid to Dudgeon with him by the parish of Tugby, which was also stated to have been paid by them out of a charitable donation fund belonging to that parish. No evidence, however, was given of the premium having been paid out of a charitable fund, except the above statement on the face of the deed, and the declaration of the parish officers at the time they paid it, that it was charity money. The deed was objected to as not having any stamp, but the objection was overruled. The pauper served under the indenture for four years in St. Mary, Leicester, when his mother applied to Dudgeon to give him up to her, she saying she had procured another master. The master said she might have him and welcome. They all agreed to part, and the boy went away with his mother. The indenture remained in the hands of the overseers of Tugby, and was never delivered either to the boy or his mother, nor applied for by any of the parties; but the master said he would have given it up if it had been at the time in his possession. The overseers of Tugby afterwards applied to Dudgeon to take the boy again; but he said he would not, adding, unless the magistrates make me take him again, I have done with him; and he never heard anything more on the subject. *Abbott*, C. J. "If it had been shown in the present case that this apprenticeship had ever been well constituted, I should have been of opinion, upon the authority of *Rex* v. *Bow* (ante), that the agreement between the parties in this case was not sufficient to put an end to the indenture. I think, also, that the fund out of which the premium is said to have been paid was a public charity within the meaning of the exception in the stamp act. But I think that there is no sufficient evidence in this case to show that the premium was in fact paid out of such a fund. It is stated in the case, as a fact proved by the master, that a premium of 12*l.* was paid with the apprentice. That being so, it would be very dangerous to say that the declaration of the parish officers should be admitted to prove the nature of the fund out of which it was paid, more especially when those persons might have been called to prove the fact. The case is not precisely the same as if a declaration of the parish officers had been offered as the only proof of payment. In that case the whole declaration would have been receivable. But here the fact of payment was itself proved. Upon that ground I am of opinion that the indenture ought not to have been received in evidence; and, therefore, that the sessions had nothing before them to show that the pauper was not *sui juris* at the time when he

Recital in a deed not sufficient proof that the premium was paid out of a charity. See p. 462.

served for a year in Skeffington. The order of sessions must, however, be confirmed, because their ultimate decision, although founded on wrong grounds, was correct."

As a general rule, it is for the benefit of an infant not to dissolve an apprenticeship. Some evidence must therefore be given to show that it is for his benefit, for the court will not infer it.

Rex v. *Great Wigston* (3 B. & C. 484; 5 D. & R. 339). John Samson was removed from St. Margaret, Leicester, to Great Wigston. Order confirmed. Case:—The pauper, when eleven years old, was bound apprentice to John Humberston for seven years. The indenture was executed by the master, the pauper, and the grandfather of the pauper; the pauper's father being a soldier abroad. The grandfather paid a premium of 7*l.* The pauper served H. under this indenture between three and four years at Great Wigston, when some disagreement taking place between them, H. agreed to sell the pauper the remainder of his time for sixpence. The pauper paid H. the sixpence, and left him the same day. The indenture had never been in the possession of any of the parties, but had been kept for all the parties by the person who prepared it, and no application was made for it to be delivered up. The grandfather was not even privy to the agreement for parting. A few days after the pauper left H. he bound himself apprentice to Thomas Wain, of St. Mary, for seven years, and served him under the indenture for five years, and resided during that time in that parish. *Abbott*, C. J. "I am of opinion that the order of sessions was right. It is a general rule of law that an infant cannot do any act to bind himself, unless it be evidently for his benefit. Binding himself an apprentice has been considered such an act, and therefore it has been held that an infant may be a party to an indenture of apprenticeship. But if the act of binding himself an apprentice is for the benefit of the infant, it is impossible to say generally that it is for his benefit to dissolve such a connection, for such a proposition involves a contradiction. That being the general rule of law, we must inquire whether the dissolution of the apprenticeship here was for the benefit of the infant. In *Rex* v. *Mountsorrel*, the master had run away and deserted the apprentice; the latter, therefore, could no longer derive instruction or support from him. Upon that ground the court thought that it was for the benefit of the apprentice to be released from the indenture, and in my opinion rightly, because otherwise he must have remained unemployed and unsustained. Here there are no facts stated from which we can infer that the dissolution of the apprenticeship was beneficial to the infant, and therefore this comes within the general rule; and the first binding never having been dissolved, the second is a nullity, and no settlement could have been gained by service under it." *Bayley*, J. "The sessions were clearly right in the decision to which they came upon this case; the only error they have committed is, that they have sent a case for our opinion upon which no reasonable mind could entertain a doubt." *Holroyd*, J., concurred.

Where an infant was bound apprentice by an indenture, he and his master being the only parties, and after serving some time, the master having run away, he procured the indenture to be given up to him with his master's consent, and afterwards served a year: held, that it was for his benefit, under the circumstances, that he and his master should be at liberty to put an end to the indenture. (*Rex* v. *Mountsorrel*, 3 M. & Sel. 497.)

Indentures being exchanged between the master and apprentice, amounts, in law or equity, to a cancelling of them.

Rex v. *St. Mary, Kalendar* (Burr. S. C. 274; 2 Bott, 540). J. Miles, the pauper, was bound by indenture an apprentice for seven years to J. Gregory, of St. Michael's, and under that indenture served him in St. Michael's for five years; when he left his master, the indentures were exchanged between the master and the apprentice's father, by consent of the apprentice. About a year afterwards the father of the pauper contracted with W. Stockdale, of Twyford, for binding pauper apprentice to Stockdale for four years; and in consequence of that agreement the pauper went to Stockdale on trial, and lived with him in Twyford for one year and three quarters; but no indenture was executed, nor any

other agreement made. While the pauper lived with Stockdale, Gregory knew of his being in the service of Stockdale. But no other proof was made that Gregory consented to the contract made between pauper's father and Stockdale. By *Lee*, C. J., and the court: "There can be no ground to consider this as a settlement at Twyford, but upon supposing the first indentures to have subsisted, and that the service at Twyford was under them. But that could not be; because the exchange of the indentures certainly amounted, either in law or in equity (and they are the same thing in this case), to a cancelling of them, and a determination of the apprenticeship under them. Besides, there is no consent of the original master, but the contrary is apparent; his knowledge of the fact doth not at all imply his consent to the transaction. The apprentice's living at Twyford was not under, but contrary to the first indenture; it was in consequence of a fresh agreement, and for a new term."

Exchanging is virtually a cancelling of indentures.

Rex v. *Titchfield* (Burr. S. C. 511; 2 Bott, 630). P. Warfield bound himself apprentice by indenture to W. F., and inhabited with his master above forty days at M., but falling sick, he on account thereof, and with the consent of his master, went to his father in Bewley, and there continued forty days, and was sick all that time, and to the time the order was made. On his going to his father the indentures were mutually given up, but not cancelled. The court held that an inhabitancy by reason of sickness shall not gain a settlement, and also that there is no difference between the indentures being *given up*, and being *cancelled*. They amount to the same thing.

A parish apprentice, being of age, paid money for his discharge, but the indentures were not delivered up, though offered to the apprentice's father, who did not take them because he thought it not material.

The indenture is considered as not existing from the time the money was paid.

Rex v. *Harberton* (1 T. R. 139). Order of removal of J. Egbert from Harberton to Ashpreington quashed. Case:—The pauper was bound by the parish of Harberton as an apprentice to W. Soper, until twenty-four years of age: he continued with his master until he was within one month of twenty-one years of age, when he deserted his service, and was absent seven months, and then he returned to his father at Harberton, where he stayed a few weeks, and then offered himself as a servant to one Edmonds, of Ashpreington, who refused to take him until he showed a receipt from his master, Soper, for buying off his time: the receipt was "Feb. 24th, 1783. Received of J. Egbert 4*l.* 4*s.* for the remainder of his time, by me, W. Soper." The receipt was obtained by the pauper's father, at the request of the pauper. At the time the receipt was signed and the money was paid, Soper offered to give up the indenture, which the father did not take, not thinking it material, and the pauper himself was not present; the master continued to keep the indentures uncancelled until after the pauper was twenty-four years of age, when he delivered them up to him: after signing the receipt, the pauper, being then in his twenty-second year, hired himself for a year to serve Edmonds, and also another year, both of which he served at Ashpreington: at the time of the pauper's hiring himself to Edmonds he showed him the receipt. Lord *Mansfield*, C. J., delivered the judgment: "As I have often said, it is of more consequence in most cases that the law should be certain than what the law is: it is particularly so in questions relative to settlements. And perhaps if this court had never gone farther on the present subject than to inquire whether the indentures were in fact cancelled or delivered up, it would have been more convenient than to have decided on the particular circumstances of each case, and to have examined whether they amounted to a relinquishment or cancelling of the indentures or not. But the cases have gone beyond that line; and therefore it might now be attended with more inconvenience to the public to overturn, than to adhere to them; even though we may not perhaps approve of the principles on which they have been determined. Where the facts stated are such that upon an action of covenant brought by the master against the apprentice, the pauper could plead the matter in bar, it seems to be settled that the indentures should be considered as cancelled. And to that extent the rule may be carried without much mischief; but if extended to every possible case in which

a court of equity would give relief, it would be productive of great inconvenience and uncertainty: it would increase the litigation of the poor laws, which are already a disgrace to the country, and would leave every case so much upon its own circumstances, that it must necessarily travel through every stage which the law allows, before the parties are to know what they are to expect. If the justices at their sessions, or even out of sessions, are to be erected into chancellors, it cannot but happen, but that on the same facts very different decisions must be made. Honest and good men, when left to decide *secundum discretionem boni viri*, must and will vary in their sentiments. Such a rule, therefore, would be highly inconvenient, and indeed would amount to say there was no rule at all. The question then is, whether the facts stated here are such as put an end to the indentures in law, or could be pleaded in bar to an action of covenant on them? In that light I shall consider it. The master received four guineas as a satisfaction for the remainder of the time: he gave a receipt for the money as such, and offered then to deliver up the indentures: if it was not done in fact, it was owing to the pauper's father not thinking it material; and on the pauper's attaining the age of twenty-four years, the master did in fact deliver up the indentures. After paying the money, if an action had been brought by the master on the indentures, the pauper might have pleaded accord and satisfaction in bar; or if the master had refused to deliver them up upon demand, the apprentice might have brought trover or detinue for them. The indentures must be considered as not existing from the time the money was paid, and then the pauper gained a settlement by hiring and service at Ashpreington." (See *Rex* v. *Gwinear*, p. 506.)

See *Rex* v. *Foulness* (ante).

The bankruptcy of the master of an apprentice did not discharge the indentures (*Rex* v. *Buckingham*, 2 Bott, 630), but 6 Geo. IV. c. 16, enacted that it should.

An apprenticeship is determined by the death of either master or apprentice. (*Rex* v. *Eakring*, Burr. S. C. 320; 2 Bott, 541; *Baxter* v. *Burfield*, 2 Str. 1267.) See however 32 Geo. III. c. 57, s. 2 (ante, p. 221).

A parish apprentice, not living, at the time of his mistress's death, with her appointee, under the provisions of 32 Geo. III. c. 57, cannot gain a settlement by service with another during the three months, though with the express consent of such appointee. (*Rex* v. *Sheepshead*, 15 East, 59.)

The manner in which apprenticeships are affected by certificates will be explained under the head "SETTLEMENT BY CERTIFICATE."

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§ 5. EVIDENCE OF SETTLEMENT BY APPRENTICESHIP.

As an apprenticeship can only be constituted by *deed*, the deed must be proved, or if it is lost or destroyed, *secondary* evidence of its contents may be given.

If an indenture be lost, other evidence may be received of its contents and existence. (*Rex* v. *East Knoyle*, Burr. S. C. 151; 2 Bott, 644.)

Rex v. *Long Buckby* (7 East, 45). Removal of the pauper from Long Buckby to Newport Pagnell quashed. Case:—The pauper, in 1774 or 1775, was bound apprentice to J. D., of Long Buckby, shoemaker, for seven years, for a premium of 12*l*., which was paid, and the indenture executed by the pauper, his mother, and Dickens, the master, with whom the pauper served his full time, in Long Buckby. Only one indenture was executed, which after seven years was given to the pauper, and was proved to have been lost. For twelve years past the pauper had resided at Long Buckby, during which time he had often been relieved by that parish, and had received *town's money* from it,

In 1806, a question arose on an indenture made in 1774 or 1775, which was lost. The presumption that all was rightly done after the lapse of so many years is right, notwithstanding negative evidence of stamp officers that such

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indenture had not been stamped, &c. during the above period.

which *town's money* is given away at Christmas to parishioners. No further evidence was given by the appellants: but the respondents proved, by the deputy registrar and comptroller of the apprentice duties, that it did not appear that any such indenture had been stamped with the premium stamp or enrolled, from 1773 to 1805. But the sessions presumed that all had been rightly done. Lord *Ellenborough.* "The question before the justices was, whether the presumption that all was rightly done, after the lapse of so many years, were sufficiently rebutted by the negative evidence of the officer; they thought not, and we cannot say they have done wrong, for the presumption of law is to be favoured; and against the negative evidence they may have set the possibility of an irregularity in the returns made to the office." Order of sessions confirmed.

The loss of the indenture must be proved. Stamp not always presumed.

Rex v. *St. Helen's, Abingdon* (Burr. S. C. 292, 735; 2 Bott, 600). The evidence relating to the indenture was, J. Hudson, the mother of Joseph Hutt, the father of the children removed (who had absconded) gave in evidence that Joseph, her son, in 1733, "was bound apprentice to his grandfather for seven years; and that the indenture was delivered into the custody of W. H., his grandfather, as she had been informed by Joseph; she never saw the indenture, and knew nothing of it, but from the information of Joseph; it was reputed in the family that Joseph was his apprentice; and he was so described in the grandfather's will." Joseph served the grandfather five years in St. Helen's under the indenture. The grandfather provided for Joseph during those five years in clothes and necessaries; the grandfather died in 1738, leaving M. H. his widow, and John H. his son; application was made by the parish of St. Saviour, in December, 1748, to John, who then lived with his mother in the house where the grandfather died, and where his goods and effects were, to know whether he had in his custody any indenture of apprenticeship between William and Joseph, and John said he could not find it. And here the inquiry stopped as to him and all other persons. And this was the only evidence that the indenture of apprenticeship was lost. John Hutt gave in evidence that he was employed by his father, William Hutt, to draw an indenture between his father and Joseph, which he did, but not on stamped paper; and that after the death of William Hutt, Joseph refused to serve his widow, because the paper writing was not stamped. The removal was of Joseph's wife from St. Saviour's to St. Helen's, and was confirmed by the sessions. And *per curiam:* "There is not stated enough to show that this is a binding within the act." Both orders quashed.

The loss of the indenture and counterpart must be proved.

Rex v. *Castleton* (6 T. R. 236). Martha Pedley was removed from Castleton to Bomford. Order quashed. Case:—The panper was alleged to have been bound an apprentice to N. Timms, of Castleton, by indentures, about 1780. There were two parts of the indentnre, one of which remained with the parish of Castleton, and was destroyed; the other was given to Timms, who delivered the same to Miss Taylor, of Bomford, at the time of the assignment hereafter mentioned. Application was made to Miss Taylor, not then nor now residing at Bomford, for that part of the indenture so delivered to her, who said she could not find the same, nor did she know where it was. Miss Taylor is living, but was not subpœnaed to the sessions. Timms afterwards, by parol, assigned the pauper to Miss Taylor, in Bomford, and the pauper, with his consent, served her in Bomford upwards of forty days. The sessions were of opinion that the above was not sufficient evidence of the indenture. The only question is, whether that part of the indenture which was delivered to Miss Taylor is properly accounted for? The court thought the case too clear for argument; that if the indenture could not be produced, evidence must be adduced to show that it was lost or destroyed. Here it was traced to the hands of Miss Taylor, and no further evidence was given to show what was become of it. Order of sessions confirmed.

Proof by an apprentice, that when his apprenticeship expired he asked his master for the indenture, who said it was with the overseers; and that their successors had searched for the indenture, but could not find it; is not sufficient, the master being alive, and not subpœnaed.

Rex v. *Denio* (7 B. & C. 620; 1 M. & R. Mag. Ca. 91). The pauper was bound by the overseers of Llanbeblig apprentice to John Connell, a hatter, residing at Pwllhely, in Denio, about twenty-three years ago, by an indenture for seven years, in which the pauper said he believed there was a stamp, that it was signed and sealed, but that there were no justices present at the time of the signing and sealing of the indenture, nor did the pauper recollect being at any other time before any justice respecting it; there was no evidence that the assent of two justices had been given, or that the parish officers were parties to the indenture; the indenture was kept by Connell, and the pauper never saw it afterwards: the pauper served in Denio, under the indenture, for the seven years; when the apprenticeship expired, the pauper asked Connell, who was then a rated inhabitant of Denio, but did not reside or pay taxes there when the appeal was tried, for the indenture, who said that he had not got it, but that it was with the overseers of Llanbeblig. No other witnesses were called, nor any further evidence given respecting it, except that the present parish officers of Llanbeblig proved at the trial that they had searched among the papers belonging to that parish for the indenture, and that it could not be found; and that all the parish books and papers of about that time were missing. *Bayley*, J. "The decision in that case (*Rex* v. *Morton*) did not proceed on the ground that the declaration of the executrix was admissible, but that of the declaration of the pauper was admissible, so as to show a possession of the indentures by him; it showed also that further search or inquiry was necessary, because he stated that it had been given up to him, and that he had burnt it. In this case the master was living, and might have been called as a witness to prove either that he had delivered his copy of the indenture to the parish officer, or had destroyed it. His declarations were clearly not admissible in evidence. There was not sufficient evidence to show that a *bonâ fide* and diligent search was made for the instrument, where it was likely to be found, so as to let in parol evidence of its contents. *Rex* v. *Castleton* (p. 512) is precisely in point.

Declaration of deceased apprentice respecting loss of indentures and their contents inadmissible, where it did not appear they had ever been in his possession, and the court refused to send the case back to be restated.

Rex v. *Rawden* (4 Nev. & M. 97; 2 Ad. & Ell. 156). On appeal against an order for the removal of Mary Oldfield, the widow of Thomas Oldfield, from Golcar to Rawden. Order confirmed. Case:—The respondents relied upon a settlement by apprenticeship alleged to have been gained by Thomas Oldfield in the appellant township. The indentures were not produced, but it was proved that they had been executed by Thomas Oldfield and his father and the master; and to prove the loss of the indentures, so as to let in parol evidence of the contents, the pauper, Mary Oldfield, was called by the respondents. The pauper stated, that a short time before her husband died, and during the illness which terminated in his death, she had some conversation with him about the indenture. She was then asked by the respondent's counsel what that conversation was. This was objected to on behalf of the appellants, but after argument the court decided that the evidence was admissible. She then stated that she had asked her husband what had become of his indentures, and he said that he had got them away from his master after the end of his apprenticeship, and had worn them in his pocket till they were all to pieces. Parol evidence was afterwards admitted of the contents. The question for the opinion of the court was, whether the above conversation was admissible in evidence or not. Lord *Denman*, C. J. "If the statement of the case was incorrect, it should have been set right before. This is at any rate a dangerous kind of evidence, and to be received with caution; and unless the requisite proof had been first given as to the possession of this indenture, the pauper's conversation on the subject was clearly not admissible. In *Rex* v. *Morton* (p. 514), inquiry had been made of the master's executrix for the indenture in question; here no such fact appears." The other judges concurred. Order of sessions quashed.

In *Reg.* v. *Fordingbridge* (E. B. & E. 678; 27 L. J., M. C. 290), where due but fruitless search was made for the indentures, it was held that the statement of the alleged apprentice was inadmissible to prove that the deed ever existed. But in order to show that a proper and reasonable search had been made for the indenture, so as to let in secondary evidence, witnesses may be asked what inquiries they had made of persons who were supposed to be likely to have it in their possession, and also what answers were given to these inquiries, not as evidence in the case, but to satisfy the conscience of the court whether the search has been a reasonable one. (*Reg.* v. *Braintree*, 1 E. & E. 51; 28 L. J., M. C. 1.)

To prove that an indenture of apprenticeship had been signed only by one overseer, and that only one had been appointed, the overseer of that year should be subpœnaed to produce the appointment.

Rex v. *Stoke Golding* (1 B. & Ald. 173). On an appeal against an order, the question was, whether one person only, or more than one, had been appointed overseer in a particular year? The respondents, who in order to vacate an indenture of apprenticeship, had to prove that only one overseer had been appointed in that year, had given notice to the appellants to produce all books and writings in their custody and power relating to the appointments of overseers; the appellants being called upon to produce under this notice, produced one parish book, which was the only one in existence, and the parish officer who produced it proved that no appointments were kept by the parish: the respondents then proceeded to inquire of a witness as to there having been in the particular year one or more overseers; but on an objection being taken, the sessions held, and K. B. confirmed their opinion, that as the appointments had been in writing, parol evidence could not be admitted. "The question," said Lord *Ellenborough*, "is, whether the justices below have done wrong in rejecting the parol evidence? This is clear, that the parol evidence could not be admitted until the case was ripe for the admission of secondary evidence; now it could not be considered as ripe for that purpose until the respondent parish had exhausted all the proper means of procuring the primary evidence. Have they done this? First, as to the appointment itself, they gave a notice to the parish; and supposing the parish had the actual custody, that notice would have been sufficient, but this does not appear. Have they then the legal custody? Certainly not, for the legal custody is in the officer who is the person most interested in the instrument, and who requires its production as a sanction for those acts which he may be called upon to do under its authority. Now here there has not been any notice to the overseer himself. I think, therefore, that as in this case there has been omission of the means of exhausting the primary evidence, recourse could not be had to that of a secondary nature." *Holroyd*, J. "The law presumes the appointment to be in the custody of some of the overseers, who are responsible for the acts done under it. Notice, therefore, should have been given to him."

The overseer is the proper custos of his appointment.

Proof of loss of indenture.

Rex v. *Morton* (4 M. & Sel. 48). It appeared that only one part of an indenture had been executed, that the pauper and master were both dead at the time of the trial, and that an inquiry for it had been made of the pauper shortly before his death, who said that the indenture had been given up to him after the expiration of the apprenticeship, and that he had burnt it; and an inquiry had also been made of the daughter and sole executrix of the master, who said she knew nothing about it: no evidence was given of any search made by any one, either amongst the papers of the master, or of the pauper. The Court of K. B. were of opinion, that a sufficient inquiry had been made to render parol evidence of the contents admissible; and the distinction made between this case and *Rex* v. *Castleton* (p. 512) was, that in that case there was evidence of a fact which made a further search necessary; but that in this case the same information which traced the instrument into the pauper's possession, plainly showed that any further search would have been nugatory. Here there was no proof that the instrument ever existed in the possession of the pauper, unless his declaration

could be taken as evidence; and if it could, he declared in the same breath that it existed no longer. When therefore the pauper, by whose information alone the parties were acquainted with the fact of his having had the instrument in his possession, at the very same time declared that it was destroyed, it became unnecessary to search among his papers. See also *Rex* v. *Piddlehinton*, 3 B. & Ad. 460.

Upon the hearing of an appeal, the respondents, in order to prove that S. W. had gained a settlement as a parish apprentice by serving T. B. in the appellant parish, put in evidence a document purporting to be an indenture of apprenticeship, by which S. W. had been bound by the parish officers of H. to serve with T. B. till he was twenty-one years old. The document was signed and sealed by T. B. but not by the churchwardens or overseers, and it was produced from the parish chest of H. It was proved that a search had been made among the papers of S. W., which he had left at his decease, and that no indenture of apprenticeship could be found. No further search was made. The sessions allowed the document to be used as evidence, and confirmed the order of justices, removing the pauper to the appellant parish. It was held, that inasmuch as it was more probable that the indenture would be kept after the expiration of the apprenticeship by the apprentice than by the master, and taking into consideration the time which had elapsed, a sufficient search had been made to justify the sessions in receiving the evidence. (*Reg.* v. *Hinchley*, 32 L. J., M. C. 158.)

It has been observed, that parol evidence of an indenture ought to be admitted with great caution, and not without sufficient proof that the original could not be come at. And in case of parol evidence, it seemeth that all those circumstances, without which the indenture would not be good if produced, ought to be proved satisfactorily to the court; as that the indenture was written upon stamped paper or parchment; that it was executed by the parties; what sum (if any) was given with the apprentice; and that an additional stamp upon the account of such sum of money or other valuable thing was also impressed. Otherwise, where the indenture upon the face of it would be bad, it may possibly be secreted by those whose interest it is that it should not appear.

If it appear by cross-examination, or otherwise, that the lost or destroyed indenture was never legally stamped, then, although the fault was attributable to the party making the objections, it cannot be received in evidence (*Rex* v. *Castle Morton*, 3 B. & Ald. 588; *Rippiner* v. *Wright*, 2 Bar. & Ald. 478), unless the loss or destruction was within the time allowed for stamping; (*Bousfield* v. *Godfrey*, 5 Bing. 418) (*b*).

Execution of an indenture must be proved by the party calling for it, though it come out of the hands of the adverse party.

In *Gordon* v. *Secretan* (8 East, 548), *Ellenborough*, C. J., said, "That *Rex* v. *Middlezoy* (*c*), which was much questioned at the time, had been since overruled; and that it was not enough to give notice to the opposite party in a cause to produce an instrument in his hands, in order to dispense with any further proof of it by the party giving the notice; but that the production of it at the trial, in pursuance of such notice, did not supersede the necessity of proving it by one of the subscribing witnesses, if any, as in ordinary cases." And *Lawrence*, J., said, "That it had been so decided by Lord *Kenyon* in case of a will, which the adverse party, in whose hands it was, had notice to produce and did produce, that the party calling for it was bound to prove it by calling one of the subscribing witnesses."

(*b*) Pending an appeal at sessions against a removal on a settlement by service under an unstamped assignment indorsed on indentures of apprenticeship, the overseers of the respondent township are not entitled to a mandamus to the overseers of the appellant township to produce the assignment to be stamped. (*Rex* v. *The Overseers of Westowe*, 1 N. & P. 222; 5 A. & E. 786.)

(*c*) 2 T. R. 41, where a contrary doctrine had been held.

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See also *Pearce* v. *Hooper and others* (3 Taunt. 62), and *Orr* v. *Morice* (3 Br. & B. 139).

Where it appeared that an indenture of apprenticeship, twenty-four years old, the expenses of which the overseers had paid, was sent to those overseers, and was not to be found in the parish chest: held, that it might be presumed to be lost, and that secondary evidence of its contents was admissible.

Rex v. *Stourbridge* (8 B. & C. 26; 1 M. & R. Mag. Ca. 297). George Layton was removed from Bromsgrove to Stourbridge. Order confirmed. Case:—The mother of the pauper proved that about twenty-four years ago she received some money from the overseers of Stourbridge to put her son out apprentice, and that she accordingly put the pauper, at the age of about seven years, apprentice to William Clay, of Bromsgrove, who was her brother-in-law; that the indenture was signed by her, the pauper, and the master, who had filled it up; that she gave the indenture to Nanny Badger, to take to Stourbridge to the overseers who had given her the money to pay for the stamp for it; that it was directed to the overseers of Stourbridge; that N. B.'s husband was a market-gardener, and used to attend Stourbridge market; that sometimes he and sometimes his wife went to the market; and the indenture was to be carried to the overseers either by the husband or the wife, when they went to the market: that both N. B. and her husband were since dead, but that she had survived her husband; that she did not know whether N. B. had left any will, but she had heard that she had. The overseer of Stourbridge stated, that he had searched diligently in the chest where the papers of the township are kept for the indenture, but had not been able to find it; and he had applied to the executor of the husband of N. B., who had informed him that the indenture had never come to his hands, and that he was certain that no such paper was in the husband's possession when he died. Secondary evidence was then offered of the due execution and contents of the indenture; but the evidence was disallowed. Lord *Tenterden*. "The question is, whether there was such reasonable evidence of the indenture having been lost as entitled the appellants to give parol evidence of its contents? Considering the nature of the instrument, and the circumstances of the case, I am of opinion that there was. It seems to me, that if care had been taken to preserve the indenture, it would have been deposited in the parish chest, and there found; and that not being found there, the fair presumption is that it was lost. If we were to hold otherwise, and were to require the sort of proof which it has been contended ought to have been adduced, it would be necessary, in such a case, to produce not only the parish officers themselves for the year in which the binding took place, if living, or their representatives, if dead, but the parish officers or their representatives for every year, no matter how many, between the date of the indenture and that of the inquiry. Such evidence would be endless and impracticable, and it would be unjust and absurd to require it. Upon this short ground, I am of opinion that the order of sessions is wrong." *Bayley*, J. "I am entirely of the same opinion. The parish chest was the natural and probable place for this indenture to be found in. Search has been made for it there, and it cannot be found. The only reasonable inference is that it is lost. Then parol evidence of its contents ought to be received. The case must be re-heard."

An apprenticeship presumed from the treatment of the pauper by his master as an apprentice.

The loss of indenture presumed from circumstances.

Rex v. *St. Mary-le-bone* (4 D. & R. 475; 2 D. & R. Mag. Ca. 325). John Pearce was removed from St. Paul, in Norwich, to St. Mary-le-bone, Middlesex. Order confirmed. Case:—Pearce, when a boy, lived with one Benson, a shoemaker, in St. Mary-le-bone, three years, and then ran away from him. To prove that the pauper resided as an apprentice, and to account for the non-production of the indentures, it was proved that a fire happened about twenty years ago in the apartment in which the pauper then resided, and burnt everything he had; that the father and mother of the pauper were dead; that Benson and his wife are also dead; that Benson left no property at his decease; and that no relatives of his are to be found. T. Nash proved that he was apprentice to Benson at the same time with the pauper and another apprentice, and that he saw in his master's hand an indenture, which he

understood to be the indenture of apprenticeship of the pauper; that the pauper, as well as the witness and the other apprentice, boarded and lodged in the master's house in St. Mary-le-bone. Another witness stated, that he knew Benson at the time the pauper lived with him; that Benson had then two other apprentices, and called his apprentices lazy rascals. It further appeared that the pauper afterwards married, and that while living in St Mary-le-bone his wife was admitted into the workhouse of St. Mary-le-bone, in a state of illness, and there died. *Rex* v. *St. Michael, Bath* (2 Bott, 459), was quoted, where upon a question of the settlement of the family of a militiaman, it appeared by his examination, taken under the mutiny act, that he served J. M. as an apprentice five years and a half; his wife proved that he had run away, and she knew nothing of him, and J. M. was dead. This was held reasonable evidence of a binding, and this *point* was not overruled in *Rex* v. *Clayton-le-Moors*, 5 T. R. 704 (post). *Bayley*, J. "I am of opinion, that the parol testimony admitted in this case was properly received, and that it was sufficient to found the presumption that an indenture was executed, and that the pauper's husband served and acquired a settlement under it. The general rule applicable to the doctrine of presumption is, that we are to presume that which reasonably accounts for the actual existing state of things, and I think that the presumption drawn by the sessions satisfies that rule. The facts in this case, unrefuted, appear to me conclusive. The pauper's husband lived with his master in the character of an apprentice, doing the same work, and receiving the same treatment, as his other apprentices did; and surely, after an interval of twenty years, it is not too much to presume that he really was an apprentice. With respect to proof of the destruction of the indenture, I think enough was given to let in the secondary evidence, and that the search at the Stamp-office was quite unnecessary. It must not be forgotten, that the fact of the first wife of the pauper having been received into the workhouse of St. Mary-le-bone. shows that that parish believed her husband to have been their parishioner, and that fact, coupled with the others I have alluded to, is, I think, decisive to show that he had acquired a settlement as an apprentice in that parish." *Holroyd*, J., concurred.

The case of *Rex* v. *Mary-le-bone* was approved in *Reg.* v. *Fordingbridge* (E. B. & E. 678; 27 L. J., M. C. 290), where it was held that after due but fruitless search for an indenture, proof that a deceased person more than sixty years ago served A. in the apparent position of an apprentice, raises the presumption that he was bound apprentice by indenture.

What is a diligent search for an indenture executed forty years since.

Rex v. *East Farleigh* (6 D. & R. 147; 2 D. & R. Mag. Ca. 71). The facts of this case are fully stated in the judgment delivered by *Bayley*, J. "In this case there had been two parts to the indentures, which were executed so long since as 1788. The first part has been satisfactorily accounted for by Mrs. Buckley, the widow of Buckley, with whom the apprentice's father left it to be enrolled. She proved that after diligent search it was not to be found. The other part was originally in the possession of the second master, who said he had either delivered it to Buckley, or to his solicitors, Messrs. R. and T. Mrs. B.'s evidence satisfactorily shows that it was not amongst her husband's papers. The question then arises, whether, supposing it had been left with Messrs. R. and T., it has been satisfactorily accounted for. Messrs. R. and T. were in partnership until 1803, and if it was delivered to them, it must have been shortly after Tanner, the second master, received it from Standen (the first master), which would be in 1793. The indenture would expire in 1795; and, supposing it to remain in R. and T.'s possession after that, it would be no more than waste parchment. No beneficial object, either to the master or the apprentice, could be gained by preserving it. However, there is a possibility that it was preserved, though it is not easy to divine for what purpose. At the dissolution of

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the partnership between R. and T., the presumption is, that being an useless instrument, it would be destroyed, for no sensible reason can be suggested for its preservation. But assuming it to have been preserved by Mr. T., the question is, whether there has been any essential defect in the search made afterwards? Upon the death of Mr. T., Mr. Cutts, at that time clerk to Mr. H., the executor of Mr. T., received two boxes of papers belonging to the latter, amongst which this indenture was not to be found. It is suggested, that these were not all the papers of which he died possessed. There is certainly a possibility that there were others, but no question was put to Cutts upon the subject. If, however, there were none others, and the probability is that the fact was so, then it would have been useless to call Mr. H. to prove the same fact, which was established by Cutts. It seems to me, therefore, that considering the lapse of time which has occurred since the indentures were executed, and that every person has been called in whose possession they might reasonably be expected to be found, such due diligence had been used to obtain the primary evidence without success as ought to have let in the secondary evidence." *Littledale*, J., concurred. Order of sessions quashed.

An assignment by indorsement on the indenture must be stamped, or cannot be received in evidence, nor can parol evidence be received if the agreement was reduced to writing.

Rex v. *St. Paul's, Bedford* (6 T. R. 452). C. Page removed from St. Paul's to Kempston. Order quashed. Case:—The pauper was bound an apprentice for seven years to W. Robinson, of Kempston, cordwainer; he served Robinson in Kempston near five years, when they removed together to Biddenham, where the apprentice continued with his master near a year, when his master died. About six weeks after, an agreement was entered into between S. Negus, executrix of W. Robinson, with J. Robinson, which was indorsed on the indenture, by which Negus assigned over the apprentice to J. Robinson for the remainder of the term, and J. Robinson agreed to teach the apprentice the same trade, and to provide for him to the end of the term. This agreement was signed by Negus and J. Robinson, but not stamped. Immediately after the assignment the pauper went into the service of J. Robinson, in Kempston, and continued there near a year. Lord *Kenyon*, C. J. "It has been settled ever since *Rex* v. *St. George, Hanover Square* (p. 487), that if an apprentice serve a second master forty days with the express consent of the first, he gains a settlement in the parish where that service is performed; the first master has not indeed the absolute control over the apprentice, so as to compel him to go to any part of the kingdom, and serve another master, but if he do serve a second with the consent of the first, it is sufficient; it must be with the consent of the first master, for it has been decided that his mere *knowledge* of such service will not answer the purpose. The question here is a question on evidence, whether the executrix of the master did or did not consent to the service with the second master? The sessions were of opinion, that the instrument which was produced to prove that consent could not be received in evidence, because it was not stamped, and therefore it becomes necessary to consider how far the 23 Geo. III. c. 58, affects this case. By that act all agreements are to be stamped, except they fall within the exceptions in the 4th clause. It is said that this person comes within some of them; but he was not a *servant;* he had acquired another specific denomination, well known in the law, an *apprentice*. The exception clearly refers to cases where there is a *hiring;* but that was not the present case: 'hiring' is not applicable with any propriety to the case of an apprentice. Apprentices and servants are characters perfectly distinct; the one receives instruction, the other a stipulated price for his labour. I think therefore that we should be doing violence to this act to determine that an apprentice comes within the terms in this clause of exception, and consequently the sessions did right to reject this instrument. And when an attempt was made to give parol evidence of the agreement, they also did right in refusing to receive it, because the agreement was reduced to writing.

Hiring, in the stamp act, not applicable to an apprentice.

Without canvassing the other point, I am satisfied that the sessions were warranted in rejecting the agreement; and if so, there was no evidence to show any consent that the apprentice served the second master with the consent of the executrix of the first." *Grose* and *Lawrence*, JJ., of the same opinion. Order of sessions confirmed.

Recital in indenture is no evidence that the premium was paid out of charity money; the fact of payment being proved *aliunde*.

Rex v. *Skeffington* (3 B. & A. 382). In this case it was stated in the indenture that a premium had been paid out of a charitable donation to the parish: at the time of payment, the parish officers said it was charity money. *Abbott*, C. J. "I think that the fund out of which the premium is said to have been paid was a public charity within the exception in the stamp act. But I think there is no sufficient evidence to show that the premium was in fact paid out of such a fund. It is stated, as a fact proved by the master, that a premium of 12*l.* was paid with the apprentice. That being so, it would be very dangerous to say that the declaration of the parish officers should be admitted to prove the nature of the fund out of which it was paid, more especially when those persons might have been called to prove the fact. The case is not precisely the same as if a declaration of the parish officers had been offered as the only proof of payment. In that case the whole declaration would have been receivable. But here the fact of payment was itself proved. Upon that ground, I am of opinion that the indenture ought not to have been received in evidence." *Bayley*, J. "The respondents having proved a case of hiring and service, it became the duty of the appellants to show that there was at the time a subsisting valid apprenticeship. To do that, they produce an indenture which on the face of it purports that a premium has been paid, and which is not stamped. If that premium was paid out of a public charity, it was the duty of the appellants to prove that fact, which was within their knowledge, and of which the respondents could know nothing. An indenture of apprenticeship is no evidence of the facts recited in it; if it were, the party might always recite that a premium was paid out of a public charity, whether it were the fact or not. But it is said, that if the payment of the premium be proved by the indenture, the recital also becomes evidence. This answer is not sufficient, for independently of the indenture, there is direct evidence of the fact of payment." *Holroyd*, J. "If the recital and the declaration of the officers had been the only evidence of the fact of payment, I should have been of the opinion that there was sufficient evidence also that it was paid out of a public charity; but on looking at this case, it is clear to me that the fact was proved substantially by the master."

In *R.* v. *Stainforth* (11 Q. B. Rep. 66; 17 L. J., M. C. 25), it was held, in the case of a parish apprentice, that the recital of an order for binding, in an indenture duly allowed, is primary evidence of such order.

The other matters which may require to be proved under particular circumstances, will be found in the cases collected under this class of settlements.

An indenture not duly stamped is inadmissible (*d*) unless in some cases, as where it was lost before the time for stamping had expired. (*Bousfield* v. *Godfrey*, ante, p. 515.)

Identity of apprentice.

Where an indenture was proved to be lost, and secondary evidence was given that the pauper, with his own consent (his parents being dead), was bound apprentice by an indenture dated, &c., and *duly stamped*, the court held this to be sufficient proof of a valid ordinary indenture. (*R.* v. *St. Anne's, Westminster*, 8 Q. B. 561; 16 L. J. 33.) An

(*d*) J. Edwards, an infant, was by his father bound apprentice by indenture, but the indenture was not stamped. The indenture, not being stamped, cannot be given in evidence at all, being absolutely void to all intents and purposes. (*Rex* v. *Llanvair Dyffryn Clwyd*, Burr. S. C. 236; 1 Bott. 647. See also *Rex* v. *Holbeck*, Burr. S. C. 198; 2 Bott, 864.) As to payment of stamp duty and penalty on the trial, see 17 & 18 Vict. c. 125, ss. 28, 103.

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indenture of apprenticeship purported to be made between John B. of the one part and J. R. of the other part, and was to the effect that John B. bound himself apprentice to J. R., and covenanted with him; and in a subsequent part of the indenture J. R., the master, covenanted with the said Joseph B., apprentice, and the indenture purported to be executed by Joseph B. It was held that evidence might be given that Joseph B. was the person who executed the indenture, and served under it, and that he was called John B. in the indenture by mistake: and that this was not such an ambiguity as to render the deed void. (*Reg.* v. *Wooldale*, 6 Q. B. 549; 14 L. J., M. C. 13.)

The register secondary evidence.

By 42 Geo. III. c. 46 (ante, p. 226), overseers of the poor are directed to keep a book for entering the name of every apprentice bound out by them, and each entry is to be signed by two justices, according to a form given in a schedule; and by sect. 3, it is enacted, "that every such book shall 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 the court that the said indentures have been lost or destroyed.

Evidence of allowance.

It seems that the register of parish apprentices, kept under the above statute, containing an entry of two justices consenting to the binding, is not alone sufficient evidence of the apprenticeship. (*Reg.* v. *East Stonehouse*, 10 Q. B. 230; 16 L. J., M. C. 49.) The Court of Queen's Bench said in that case, "This entry, in a case where secondary evidence was admissible, would, on general principles, and without reference to the provisions of the 3rd section of the statute, have been evidence of the fact that these two justices had assented to the binding; that the book had been produced to them at the time of their assenting; and that they had then signed their assent; for the entry purports to have been made in compliance with the requisitions of the statute, and, therefore, in the case of public functionaries, there would be the ordinary presumption that they had done so. But it is now sought to carry the presumption further, and because the justices appear to have complied with the requisitions of one statute, it is sought to be inferred they must have complied with the very special requisitions of another:—because proof was given of their assenting to the binding required by the statute of Elizabeth, and of the record of their assent, as required by the 42 Geo. III. c. 46, that it is therefore to be presumed that they made the order under hands and seals for the binding before it took place, and that the order was referred to in the indenture by date, and the names of the two justices who made the order, and that before the execution of the indenture by the parties, the same two justices signed and sealed the allowance thereof. Unless all these things were done no settlement was gained, and the only ground for presuming that all this was done is by an entry in the register of the two justices assenting and signing their names. Of these two facts the latter is quite without weight in helping to the inference; and if all this be inferred from the former, it would be carrying the presumption that all things have been rightly done as required much further than reason or authority warrants."

Some doubt was, however, thrown on *Reg.* v. *East Stonehouse* in *Reg.* v. *Broadhempston* (1 E. & E 154; 28 L. J., M. C. 18). In that case it was proved that in 1824 the alleged apprentice and his father were taken by the overseers before the justices; the alleged master and the overseers being present, papers were drawn up, and the justices asked the father whether he had any objection to his son being bound apprentice to P., the alleged master, and that the lad went the next day to him and remained with him two or three years. The register book of indentures was also produced, showing that a boy of the same name was in 1824 bound apprentice to P. It was held that a settlement by apprenticeship was properly inferred. Lord *Campbell*, C. J., said, that but for *Reg.* v. *Stonehouse* he should have thought the register book sufficient, without any evidence of the parties appearing before the justices.

CHAPTER XXIV.

Of the Settlement of the Poor—(*continued*).

Of Settlement by Renting a Tenement.

§ 1. Of Settlement by Renting a Tenement in general.

THE legislature considered that a person who was able *bonâ fide* to contract to pay 10*l.* a year as rent for an interest in real property, and resided in the parish for upwards of forty days, was a fit person to acquire a settlement in that parish, and that he ought not to be removable therefrom; this was the foundation of this description of settlement.

The law relating to this branch of settlements has undergone very material alterations, as to the nature of the tenement, the contract of renting, and the performance of that contract by the party in respect of whose renting the settlement is claimed.

13 & 14 Car. 2, c. 12. Persons coming to settle in tenements under ten pounds a year, are removable to place of legal settlement.

The 13 & 14 Car. II. c. 12, s. 1, enabled the overseers of the poor, within forty days after any person "coming to settle" "in any tenement under the yearly value of ten pounds," and likely to be chargeable to the parish, to obtain an order to remove such person to such parish where he was 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. See the statute, ante, pp. 316, 317 (*a*).

(*a*) Sect. 3 enabled any person to go into any parish to work in time of harvest, or at any time to work at any other work, so that he carried with him a *certificate* from the minister of the parish and one of the overseers for the year, that he had a dwelling-house in which he inhabited, and had left wife and children, or some of them there (or otherwise, as the condition of the persons should require), and is declared an inhabitant there.

Subsequent statutes made the forty days' residence (necessary to prevent the removability of persons other than those coming to settle in a tenement under the yearly value of 10*l.*) run from delivery and publication of notice; and the 8 & 9 Will. III. c. 30, s. 1, made fresh provisions with respect to certificates, requiring all persons coming to inhabit and reside in a parish to bring with them a certificate of their having settled elsewhere, and making them, on becoming chargeable, liable to be removed to the settled parish. See ante, p. 317.

The 9 & 10 Will. III. c. 11, after reciting the above section of the 8 & 9 Will. III. c. 30, and that doubts had arisen upon the construction of the act, by what acts any person coming to inhabit or reside within any parish, by virtue of such certificate, may pro-

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59 Geo. 3, c. 50. Settlement shall not be acquired by renting any tenement, except a house or land in the parish, of the actual annual value of ten pounds, held, and rent paid for a year.

The 59 Geo. III. c. 50, which received the royal assent on the 2nd of July, 1819, recites, "Whereas many disputes and controversies have arisen respecting the settling of poor people in parishes in England by the renting of tenements," and enacts, "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; nor unless the whole of such land shall be situate within the same parish or township as the house wherein the person hiring such land shall dwell and inhabit; anything in any act or acts, or any construction of or implication from any act or acts, or any usage or custom to the contrary in anywise notwithstanding."

6 Geo. 4, c. 57, repeals 59 Geo. 3, c. 50, so far as relates to settlement by renting tenements.

The 6 Geo. IV. c. 57, s. 1, which received the royal assent on 22nd June, 1825, recites, "Whereas the settlement of the poor has been made in some instances to depend upon the annual value of tenements which they may have rented, [or upon the annual value of tenements in virtue of which they have paid parochial rates (*b*);] and whereas the ascertaining such value in such respective cases has given rise to very expensive litigation; and whereas doubts have been entertained whether an act made in the fifty-ninth year of King George the Third, intituled 'An Act to amend the Laws respecting the Settlement of the Poor, as far as regards renting Tenements,' has been effectual for the purpose of altering the law in respect of the necessity of proving the annual value of tenements so rented; and it is expedient that further provision be made relating thereto; be it therefore enacted, that from and after the passing of this act, the said recited act of the fifty-ninth year of the reign of King George the Third, intituled, 'An Act to amend the Laws respecting the Settlement of the Poor, so far as regards renting Tenements,' shall be and the same is hereby repealed."

Requires a renting of building or land for a year, at 10*l.* per annum, actually paid, &c.:

Sect. 2. "That no person shall acquire a settlement in any parish or township maintaining its own poor, by or by reason of settling upon, renting, [or paying parochial rates for (*b*)], any tenement not being his or her own property, unless such tenement shall consist of a separate and distinct dwelling-house or building, or of land, or of both, *bonâ fide* rented by such person, in such parish or township, 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, or land, shall be occupied under such yearly hiring, and the rent for the same, to the amount of ten pounds, actually paid, for the term of one whole year at the least: provided always, that it shall not be necessary to prove the actual value of such tenement; anything in any act or acts, or any construction of or implication from any act or acts, or any usage or custom to the contrary notwithstanding."

not necessary to prove value.

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cure a legal settlement in such parish, and whether such certificate did amount to a notice in writing, in order to gain a settlement; enacted, "that no person or persons whatsoever, who shall come into any parish by any such certificate as aforesaid, shall be adjudged by any act whatsoever to have procured a legal settlement in such parish, unless he or they shall really and *bonâ fide* take a lease of a tenement of the value of 10*l.*, or shall execute some annual office in such parish, being legally placed in such office."

Settlement by certificate will be dealt with in a subsequent chapter, and in the meantime it is better not to confuse the subject of settlement by renting a tenement, by introducing this collateral question into the text.

(*b*) As to settlement by payment of rates, see post, Chap. XXVII.

The 1 Will. IV. c. 18, which received the royal assent on the 30th March, 1831, recites, "Whereas by an act passed in the sixth year of the reign of his late Majesty George the Fourth, intituled 'An Act for the Amendment of the Law respecting the Settlement of the Poor, as far as regards renting Tenements and paying Parochial Taxes,' it was among other things enacted, 'That no person shall acquire a settlement in any parish or township maintaining its own poor, by or by reason of settling upon, renting, or paying parochial rates for any tenement not being his or her own property, unless such tenement shall consist of a separate and distinct dwelling-house or building, or of land, or of both, *bonâ fide* rented by such person in such parish or township, 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, or land, shall be occupied under such yearly hiring, and the rent for the same to the amount of ten pounds actually paid for the term of one whole year at the least: provided always, that it shall not be necessary to prove the actual values of such tenements; anything in any act or acts, or any construction of or implication from any act or acts, or any usage or custom to the contrary notwithstanding: and whereas doubts have arisen with respect to the intentions of the legislature concerning the occupation of such house, building, or land by the person hiring the same, and concerning the amount of the rent to be paid and the person paying the same; and whereas it is expedient that such doubts should be removed; be it therefore enacted, that from and after the passing of this act, 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 ten pounds at the least, shall be paid by the person hiring the same."

1 Will. 4, c. 18, amends 6 Geo. 4, c. 57.

No person shall acquire a settlement by reason of a yearly hiring of a tenement, or of land, unless he shall actually occupy the same.

Sect. 2. "That where the yearly rent shall exceed ten pounds, payment to the amount of ten pounds shall be deemed sufficient for the purpose of gaining a settlement under the said recited act."

Payment to the amount of 10*l.* shall gain a settlement.

4 & 5 Will. IV. c. 76, s. 66. "That from and after the passing of this 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 year."

The 4 & 5 Will. 4, c. 76, s. 66, requires *a rating to and payment of poor rate* by pauper.

By s. 68 of the same statute, "no person can retain a settlement gained by possession of any estate or interest in any parish longer than he inhabits within ten miles thereof."

Statutory Disabilities.

The 23 Geo. III. c. 23, s. 1, enacted, that no prisoner in the King's Bench prison, or the rules thereof, should gain or be adjudged or deemed to gain a settlement in the parish of St. George the Martyr, in the borough of Southwark, in the county of Surrey, by renting a house, part of a house, lodging, furnished or unfurnished, or any other premises whatsoever within the said parish, or by being rated to and paying any rates or taxes for the same, whilst he should be such prisoner. This provision appears to have been merged in the more general enactment of 54 Geo. III. c. 170, s. 4 (ante, p. 319).

23 Geo. 3, c. 23. Prisoners in K. B. gain no settlement by renting a tenement or payment of rates; nor their servants by residence.

The 54 Geo. III. c. 170, s. 5, enacts, "That no gate-keeper, or toll-keeper of any turnpike road or navigation, or persons renting the tolls and residing in any toll-house of any turnpike road or navigation, shall thereby gain any settlement in any district, parish, township, or hamlet." (See ante, p. 319.)

54 Geo. 3, c. 170. Tolls and gate-keeper of navigation.

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3 Geo. 4, c. 126. No person to gain a settlement by renting tolls, or by residence in toll-houses.

4 Geo. 4, c. 95. Receiver of tolls for overweight.

The General Turnpike Act (3 Geo. IV. c. 126), s. 51, enacts, that no collector or person renting tolls, or residing in a toll-house, shall thereby gain a settlement in any parish or place whatsoever; and the amending act (4 Geo. IV. c. 95), s. 31, enacts, "that no collector or receiver of any tolls or penalties for overweight, residing in any house or building erected or used by the trustees of any turnpike road for the residence or accommodation of persons appointed for weighing any waggons or other carriages, shall thereby gain a settlement in any parish or place" (*c*).

Who may acquire this Settlement.

It would probably be difficult to say who may *not* gain this kind of settlement; of course, every person capable of entering into a contract for the renting of a house or land, is competent to acquire this right by such means; and even where, from the peculiar condition of the individual, it may be doubtful whether he is of ability to contract, yet if he actually hire a house or land, and continue in the enjoyment of the property the requisite length of time, it will be sufficient.

A foreigner, an alien amy, might gain a settlement by renting a tenement. (*Rex* v. *Eastbourne*, 4 East, 103.) Lord *Ellenborough*, C. J. "This man was not an alien enemy, but a German by birth; an alien amy; and as such, though he may not take a lease of a dwelling-house or shop, yet he may occupy a tenement of 10*l.* a year, and carry on his trade there like any other person (*a*). Then he has that interest which may enable him to gain a settlement by the provision of the legislature." Order quashed.

(*a*) 1 Saun. R. 1.

So a soldier, whilst on duty, may gain this settlement. (*Rex* v. *Brighthelmstone*, 1 B. & Ald. 270.)

Effect of Fraud.

If the renting is colourable between the parties to the contract, or in any way fraudulent, the settlement will be defeated (*Rex* v. *Woodland*, 1 T. R. 261); but the Court of Queen's Bench will not presume fraud. It must be expressly found by the sessions. (*Rex* v. *Fillongley*, 2 T. R. 709.) Lord *Kenyon* said, "There is no rule better established than that fraud is never to be presumed; and I believe in a case sent for the opinion of this court, which was pregnant with fraud, they would not presume fraud because it was not so stated. (See *Rex* v. *Llanbedergoch*, 7 T. R. 105.)

Fraudulent payment of rent.

In *Rex* v. *St. Sepulchre, Cambridge* (1 B. & Ad. 934), it was held that no settlement was gained under 6 Geo. IV. c. 57, where the case stated that the rent had been paid by the parish officers for the occupiers, *fraudulently* for the purpose of gaining the settlement.

A pauper settled in B. applied to the overseers for relief, and they gave him money, which enabled him to pay a year's rent for a tenement in A., whereby he would become settled in A.: held, that if the money was paid solely to enable the pauper to gain a settlement in A., the sessions ought to find fraud; but if it was paid to relieve him, they ought to negative fraud. (*Rex* v. *Tillingham*, 1 B. & Adol. 180.)

(*c*) Under a corresponding provision of an earlier Turnpike Act, it was held that a person renting tolls under a Local Paving and Lighting Act was disqualified, the court holding the roads to be turnpike roads, as the act enabled the commissioners to erect turnpikes. (*Rex* v. *Elvet*, 11 East, 93, as explained by *Rex* v. *Bibworth*, 1 M. & Sel. 514.)

The fact that a toll-house of a navigation had always been used as a public-house, and was worth more than 10*l.* a year if let as a public-house, alone does not take it out of the 54 Geo. III. c. 170, s. 5, supra. (*Rex* v. *St. Andrew, Cambridge*, 10 B. & C. 742.) But it was held, under an earlier corresponding provision, that a toll-keeper might gain a settlement by renting a distinct tenement, although residing in the toll-house. (*Rex* v. *Denbigh*, 5 East, 333.)

§ 2. Settlement by Renting a Tenement under 13 & 14 Car. II. c. 12.

In consequence of the statute 13 & 14 Car. II. c. 12, s. 1, confining the power of removal to cases where persons come to settle in a tenement under the yearly value of 10*l.*, the effect of the statute was, that those who occupied a tenement of that value were irremovable even within forty days of their coming to settle, and that at the expiration of forty days they acquired a settlement in that parish.

Although the statute was materially altered by the 59 Geo. III. c. 50, it is necessary to refer to the old cases relating to the statute of Charles, divided under the following heads, as questions may still arise as to settlements under that act.

(a) *What is a Tenement under* 13 *&* 14 *Car. II. c.* 12.
(b) *As to Joint Tenants.*
(c) *What is a "coming to settle" under the Statute.*
(d) *Occupation as Servant.*
(e) *Duration of the Contract.*
(f) *Residence.*
(g) *The Value.*

(a) *What is a Tenement under* 13 *&* 14 *Car. II. c.* 12.

Incorporeal hereditaments.

An *incorporeal* hereditament is a tenement within the meaning of the statute (*Rex* v. *Piddletrenthide*, 3 T. R. 772); where *Buller*, J., said, the question in such cases ought to be whether or not there was a contract to receive the profits out of land. (*Rex* v. *Hollington*, 3 East, 113; *Rex* v. *Chipping Norton*, 5 East, 239.)

A cony warren is a tenement.

Kinver v. *Stone* (1 Stra. 678). A special order of sessions stated, that the pauper rented a *cony warren* and a cottage upon it at 10*l.* a year. By the court: "A *mill* hath been held to be a tenement within the statute (*c*), and why not this? It is his ability to pay 10*l.* a year, that is the foundation of the settlement; and whether he pay it for a house of habitation, or for a warren which brings him in a profit, is not material" So in *Rex* v. *Piddletrenthide* (supra) it was held, that renting a rabbit warren, with a small house for nets, conferred a settlement, although the only right to the warren was the right to enter and kill rabbits.

A fishery is a tenement, and will confer a settlement.

Rex v. *Old Alresford* (1 T. R. 358). Removal from Old Alresford to Chilton Candover quashed. Case:—The pauper and his father resided in Old Alresford, under a certificate from Chilton Candover; the father rented a house and piece of land for several years at 3*l.* a year in Old Alresford, and during two years he held under a parol agreement *the fishery of Alresford pond, with the grates*, &c., containing about sixty acres, *and* also the *spearsedge, flags, and rushes* growing in and *about the said pond, and the right of cutting the sedge* growing *on a piece* of rough *meadow*, containing seven acres, not part ot the pond, for which the father paid Mr. Edwards 10*l.* a year, and supplied his house with fish. During the time the father held the premises of E., he rented under a parol demise *the fishery of Causeway river in New Alresford, with* the grates to a fish house there, at 3*l.* a year. The house and piece of land first mentioned, and the right of cutting sedge, &c. on the seven acres

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(*c*) *Evelyn* v. *Rentcombe*, 2 Salk. 536. Case was drawn up for the opinion of the court, whether renting of a water-mill of 10*l.* a year would make a settlement? And by the whole court: "Clearly a mill is a *tenement*, and the renting therefore must gain a settlement within the statute; that is, if the party live therein, or within the parish."

Rex v. *Butley*, 1 Sess. Ca. 320; Burr. S. C. 107; 2 Bott, 128. The question was, whether renting a *windmill* at 14*l.* a year gained a settlement, it having been determined that a water-mill did. By the court: "It is the same as if he had rented land of that value."

of rough meadow ground, and the fishery, &c. last mentioned, were together of the annual value of 10*l.*, without taking the pond, or anything thereto belonging, into the account. Evidence was offered at the sessions, to show that Edwards could only have a liberty to take sedge, as his lessor had granted no more to him. The sessions rejected it. Lord *Mansfield.* "Upon this state of the case, the court will consider that the fishery and the soil passed together; therefore the pauper took a tenement within the statute." *Ashhurst*, J. "There is no doubt but a fishery is a tenement. Trespass will lie for an injury to it, and it may be recovered in ejectment." *Buller*, J. "The court go upon this ground, that the sessions have no occasion to go into the title of the lessor at all. The fact of letting a fishery is sufficient, and we must presume that the soil passed along with it; though I am by no means ready to allow that if it had been any other kind of fishery, it would not have given a settlement. The sessions, however, ought only to admit evidence to controvert the fact of the parties taking the tenement."

Liberty granted by a corporation to take sand and gravel from the bed of a river, was held a tenement, and a settlement conferred.

Rex v. *All Saints, Derby* (5 M. & Sel. 90). A pauper, by order of a corporation, made at a common hall, was allowed the liberty to take sand and gravel from the bed of the river (of which the corporation were entitled to the soil), with a condition that he sold the sand to the inhabitants of the town at a certain rate; for which liberty he paid to the corporation at the rate of 10*l. per annum.* Lord *Ellenborough.* "This is a tenement as it subsisted in the corporation, and the pauper is, by their permission, let into the enjoyment of it. I do not know that we are obliged to go into the title; certainly a corporation cannot demise, except by deed; but we find the pauper in the occupation of the land by their permission, and this occupation must, by fair intendment, be taken to have been an *exclusive* one, for otherwise it would have been reduced to a thing of no value; the corporation could not have used the land without interfering with the pauper's right. The pauper seems to have been in the pernancy of the whole profits of the land; he took all which covered the surface of the land. It is, therefore, as much a tenement as *prima tonsura.* If the question turned upon the demise, I should feel difficulty; but I think, that, in point of pernancy and enjoyment, this must be considered as a tenement."

A cattle-gate is a tenement.

Rex v. *Whixley* (1 T. R. 137). Removal from Whixley to Healough quashed. Case:—The pauper served an apprenticeship to R. P. in Whixley, residing there under a certificate. In the two last years of his apprenticeship his master rented a dwelling-house, &c., of the value of 1*l.* 11*s.* 6*d.* a year, and a meadow of 7*l.* 10*s.* a year; and at the same time (viz. for those two years) he occupied two cattle-gates of the value of 1*l.* 4*s.* a year, in a stinted pasture, on consideration that he should keep in repair the common highway-gates, which the persons having a right to the cattle-gates were bound to sustain. It was urged that these cattle-gates are not like commons. They are conveyed by lease and release. The owners of them are tenants in common, they have a joint possession and several inheritance, and are as much demisable as any several tenement whatsoever. It was answered, that he occupied those cattle-gates on condition of keeping the highway-gates in repair, and that this was only a licence to depasture his cattle, in consideration of his keeping the said gates in repair. Lord *Mansfield*, C. J., said, "Those cattle-gates pass by lease and release, and cannot be devised but according to the statute of frauds, they are therefore to be considered as a tenement within the statute."

A right of common in gross is a tenement.

Rex v. *Dersingham* (7 T. R. 671). Removal from Ingoldesthorpe to Dersingham confirmed. Case:—The pauper, in June, 1795, went to reside at Dersingham, in a house with half an acre of land, and the going of two cattle on D. common, which he hired of one Pretty, at the rent of 6*l.*, till the Michaelmas following: he continued to occupy the same till the succeeding Michaelmas, at 8*l.* a year. In June, 1795, he hired of one Smith the going for three other cattle upon the same common till

the Candlemas following, at the rent of 1*l.* 11*s.* 6*d.*, and of one Chadwick the going for one other cattle on the said common for the same time, at the rent of 10*s.* 6*d.* The common rights in question were rights of common in gross. The whole rent paid was 10*l.* 2*s.* for the year. Lord *Kenyon*, C J. "It appears that the rights of common were rights of common in gross, and that puts an end to the question. A common in gross is a matter of tenure. Lord *Coke* says that a *præcipe* will lie for it. And there is no doubt but that the pauper rented those rights of common." Order of sessions confirmed.

But not the pasture of a piece of land.

Rex v. *Minchin-Hampton* (2 Sess. Ca. 320; 2 Stra. 874; Burr. S. C. 316). The pauper rented, in the parish of Bisley, lands of the yearly value of 8*l.*, from his father; a house, of the yearly rent of 1*l.* 10*s.*, from his uncle; and the same year *took the pasture* of a piece of land, in the said parish, from All Saints day to Candlemas, and paid 12*s.* for the same, which piece of land was worth 6*l.* a year. The court held, that *taking the pasture of a piece of land* was not more than taking the herbage, or than taking the common, which could not be esteemed part of a *tenement* within the meaning of the statute; but seemed to think, that if the words had been, that he had *taken a pasture ground* for three months, that would have made a good settlement. But the case went off upon another point, viz. for want of an adjudication.

Renting hay-grass and aftermath for ten months gains a settlement.

Rex v. *Stoke* (2 T. R. 451). Case:—The pauper, in addition to a house and land in Barlaston, took the hay-grass and aftermath of a meadow for 2*l.* 5*s.* 6*d.* for ten months, in the same parish. He paid no taxes, but he fenced the meadow and spread the hillocks. It was said, that the agreement for the hay-grass and aftermath conveyed no interest in the soil, so as to give the pauper a settlement; that he derived from the contract a mere personal right to take the hay-grass and aftermath; that he was to take, not the general, but only the particular profits of the land; that *Co. Litt.* 4 *b*, took the distinction between *pasturam* and *pascuum;* by the former the ground itself passes, but the latter conveys no interest in the soil. *Ashhurst*, J. "It is clear, from the stating of the case, that the land was intended to pass; it states, 'that for ten months the pauper took the hay-grass and aftermath of the meadow.' Now why should he have taken it for ten months if the soil was not intended to be conveyed? *there could be no other profits of this ground but the hay-grass and aftermath;* and *if a man grant all the profits of* the ground, *he grants the land* itself." *Buller*, J. "This is like the case put in *Co. Litt.* where *pastura* carries the land itself. The pauper was to have the hay and aftermath, which was all the produce of the soil. This is not like taking hay-grass after severance, for that is only a chattel; but here the contract was, that the pauper should take all the grass which should grow; he was to cut it, and make it into hay himself; and after that he was to have everything that grew on the land for ten months."

Renting ponds, or the rushes and flags growing therein, with the exclusive right of cutting at pleasure, is a tenement.

Rex v. *All Saints, Cambridge* (1 B. & C. 23; 2 D. & R. 47). Removal of Lydia Fowler from Holy Trinity to All Saints, Cambridge. Order confirmed. Case:—The pauper, in 1793, married William Fowler, a maker of chair-bottoms and mats. In 1807 Fowler hired a house in St. Peter's, Cambridge, of the value of 9*l.* 10*s.* *per annum*, and resided there above a year: during the same time he had two separate parol contracts for two ponds, or for the rushes and flags growing therein; one of the ponds was of the extent of three acres, in which he was to have the exclusive right of cutting the rushes and flags at his pleasure, but not of draining off the water; the owner had the right to use the water, or to drain it off, as he thought proper. For this W. F. was to pay 5*s.* a year to the occupier of the farm in which it was situated. The pond was not fenced off from the rest of the field, and the occupier's cattle, when depasturing there, used the pond for drinking at; but the rushes and flags were not such herbs as the cattle would eat. The other pond was only about a quarter of an acre, and was occupied under similar circum-

stances, at the yearly rent of 5*s.* and two door-mats of the value of 2*s.* The next year W. F. agreed to pay 10*s.* for the same, but died before the rushes were all gathered. The contracts for the ponds subsisted during all the time that W. F. occupied the house in St. Peter's. *Per curiam:* "There is no valid distinction between a lease of grass and one of rushes growing upon the land. This case is, therefore, similar to *Rex* v. *Stoke* (ante, 527). If this had been a bargain for anything in a state to be severed, as in *Warwick* v. *Bruce* (2 M. & Sel. 205), it would have been a personal contract: but here, the pauper's husband had a right to all the rushes which might grow in the ponds during the year. That gave him a continuing interest in the soil for the whole year: and by renting those ponds, together with the house in St. Peter's, he held a tenement of greater value than 10*l.* *per annum.* It is found as a fact, that he resided in that house for more than a year; he therefore gained a settlement in that parish." Both orders quashed.

Renting fogg or after-grass, confers a settlement. So taking land for a particular purpose.

Rex v. *Brampton* (4 T. R. 348). The pauper, T. Caile, rented premises in Brampton, in Cumberland, of the yearly value of 9*l.*, and during part of the time took the fogg or after-grass of two fields, the one for 30*s.*, the other for a guinea a year; the whole of which he occupied for more than forty days. The court were clearly of opinion that the pauper gained a settlement in Brampton; and that this could not be distinguished from *Rex* v. *Stoke* (ante, 527). They added, that taking land for a particular purpose, such as that of setting potatoes, was sufficient to confer a settlement.

A purchase of a crop of growing oats at an auction does not confer a settlement.

Rex v. *Bowness* (4 M. & Sel. 210). Where a person rented and resided on a tenement of 4*l.* a year, and in the same year bought at a public auction, on 12th August, four lots of oats growing on the field, for 12*l.* 14*s.*, which oats were of different kinds, that ripened at different periods, and he began to reap them on the 14th September, and continued reaping them as they ripened, and carted them away at intervals between the 14th September and 3rd November, on which day he carted off the last load: the court held that he did not thereby acquire a settlement. Lord *Ellenborough*, C. J., after observing that the statute of Charles required a holding in the character of tenant, said, "It is sufficient to say upon the present occasion, that this was a purchase and not a renting, or in any way a holding as tenant, and upon that construction this person did not gain a settlement. I feel no inclination to extend the decisions upon this subject; indeed I hardly go with them to the extent that they have gone already, and think it much better in this case to abide by the statute." *Le Blanc* and *Bayley*, J.J., were also of opinion that no settlement was gained, upon the ground that the pauper had not a tenement of the value of 10*l.* by the year for forty days, because his interest diminished in value *de die in diem*, as he cleared the land, and it was consistent with the statement, that before forty days from the 12th August he had cleared so much as would reduce the tenement below the yearly value of 10*l.*"

Depasturing cows.

Depasturing cows by the year, to be fed in particular grounds at so much a head, called "letting a dairy," coupled with a dwelling-house, is a tenement. (*Rex* v. *Tolpuddle*, 4 T. R. 671, overruling *Rex* v. *Lockerby*, Burr. S. C. 313; Bott, 137, n.; and see *R.* v. *Piddletrenthide*, 3 T. R. 772.)

But the land on which the cows are so depastured must be of the annual value of 10*l.*, for the principle on which the renting of dairies has been holden to confer a settlement is, that in truth it is a contract for a certain interest in the land, to be enjoyed in a particular manner, that alone constitutes it the taking of a tenement; and in each of these cases which have been decided on that ground, it was understood that the land itself was of the requisite value. (*Rex* v. *Minworth*, 2 East, 198.)

On the other hand, although the renter has not an exclusive right to the pasture where the cows are fed, it is a tenement. (*Rex* v. *Hollington*, 3 East, 113.)

So although the cows be not the renter's own, and the contract be only for the privilege of milking them, they being to be depastured on a certain farm, that conferred a settlement. (*Rex* v. *Stoke-upon-Trent*, 10 East, 496.)

So a contract for the milking of a particular cow for the season, depastured on land, was held to be a sufficient tenement to confer a settlement. (*Rex* v. *Darley Abbey*, 14 East, 280.) In that case Lord *Ellenborough* said, "It has been too long ago decided to be now shaken, that the hiring of the feeding of cows is a sufficient taking of a tenement to confer a settlement within the statute, if the tenement be of sufficient value; and here a contract for the mere milking of a cow is indeed no more than a contract for a personal thing; and, therefore, unless through the medium of the cow, he contracted for the pernancy of the profit of land, there could be no settlement gained. But the question is whether by this contract, explained as it is by the subject-matter and the circumstances, the owner was not to furnish the pauper with a cow to be fed upon the land."

A contract for the mere milking of a cow is insufficient.

The contract must be to feed the cattle with the growing produce of the land. (*Rex* v. *Sutton St. Edmunds*, 1 B. & C. 536; 2 D. & R. 800.) In that case the contract was to feed the cattle during the year upon the farm, according to the usual mode; that is, to feed them during the summer upon the pasture, and during the winter in the straw-yard: and it was held, that there was no renting of a tenement within the act. The summer keep upon the pasture living is found to be of no greater value than five guineas. *Bayley*, J. "The party, in order to gain a settlement, must come to settle upon a tenement of the yearly value of 10*l.* The right to take the herbage and produce of the soil is a right to the profits of the land, and constitutes a tenement. But the contract must be for taking the growing produce of the land. Now here it is stated that by the contract the pauper was to be at liberty to feed the cows on his master's farm during the year. By that contract the master would be bound to feed the cows during the whole year in the usual mode, viz., to feed them on the pastures during the summer, and in the straw-yard during the winter. The right to feed cattle for a period of the year when they are usually pasture-fed, by eating the growing produce of the land, is a tenement; but the right to feed cattle by dry food, not necessarily a part of the produce of any particular land, is not a tenement."

The contract must be to take the produce of the land.

Where to prove a settlement by renting a tenement of the yearly value of 10*l.*, under the old statute 13 & 14 Car. II. c. 12, s. 1, it was proved that A., the pauper's father, hired a cow from his master, which in the pasture season was kept on the pasture lands of the master's farm, and in the winter in the straw-yard, and that A. put the cow where there was feed for her, but nothing was said either by the master or himself as to the manner or on what particular lands the cow was to be fed; the court held, that there was no evidence from which they could infer a contract that the cow was to be fed upon the growing produce of the land, and that therefore no settlement was gained by it. (*Rex* v. *Mendham*, 9 Q. B. 971; 16 L. J., M.C. 67.)

The "going" of sheep on a farm without an agreement that they should be pasture-fed, was not a tenement. (*Rex* v. *Thornham*, 6 B. & C. 733; 9 D. & R. 752.) But otherwise where it was found as a fact that "going" meant "pasture-fed." (*Rex* v. *Nacton*, 3 B. & Adol. 543.) In that case the court inferred from the facts that the feeding of the cattle was to be in the parish.

Feeding sheep.

In these cases it is immaterial whether the rent is paid in money or in something equivalent to money.

A pauper was hired for a year, and had by agreement a house and garden, a rood of potato land, and the keep of a cow on his master's land. After the pauper had served ten years, his cow failing in milk the pauper had in lieu of the cow two heifers kept for him, through the

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kindness of his master, and not in consequence of any bargain. The potato land, and the keep of two heifers, were of the annual value of ten pounds: but the potato land, and the keep of the one cow, were of less annual value than ten pounds: it was held, that the keep of the two heifers was a tenement. (*Rex* v. *Benneworth*, 4 D. & R. 355; 2 B. & C. 775) (*d*). *Abbott*, C. J. "We are all strongly impressed with the inconvenience of considering a settlement to be gained under circumstances like the present; and under that impression, we thought it right to consider the subject before we delivered our judgment. We have done so; but we find the law so firmly established,—that a perception of the profits of land by the mouths of cattle, is a tenement within the meaning of stat. 13 & 14 Car. II. c. 12, and that an occupation of a tenement of the yearly value of 10*l.* will give a settlement, whether the rent be paid in money or in labour, and even if the occupation be gratuitous and no rent paid,—that we do not think ourselves at liberty to unsettle this doctrine... The inconvenience is retrospective only: the law, so far as it regards a case of this kind being altered by the 59 Geo. III. c. 50. So that no person need now abstain from such an act as is disclosed in this case, through the fear of bringing a burthen upon his parish." In this case it was found by the sessions, that "the keep of the heifers was not in consequence of any bargain," and the judgment therefore was supposed to be inconsistent with the previous doctrine, that the perception of the profits of the land by cattle would not be a tenement, unless it was a part of the contract that they should be pasture-fed. This is explained in *Rex* v. *Langriville* (10 B. & C. 899), where it was held that no settlement would be gained by the having the milk and feed of a cow, unless the person having it had an interest as tenant or occupier therein, and not by mere licence, nor unless it was part of the contract that the cow should be pasture-fed.

Tolls constituted a Tenement under the Act.

The tolls of a market are a tenement.

Rex v. *Chipping Norton* (5 East, 239). Removal from Chipping Norton to Over Norton. Order quashed. Case:—The pauper went to live at Chipping Norton, where he rented a house at 8*l.* 10*s.* per annum. The corporation of Chipping Norton *is possessed of* the *fairs and markets* within the borough, and *of the toll for all cattle actually sold at the same.* The pauper at a court-leet took the said toll by a verbal agreement of the corporation at 12*l.* a year, and continued to collect it under that agreement for two years, when it was agreed that he should have it for ten guineas, under which last agreement he collected it for several years more. Co. Litt. 19 b, 20, c. 2, was quoted in favour of the settlement. "The word *tenements* includes not only all inheritances which are or may be holden, but also all inheritances issuing out of any of those inheritances, or concerning or annexed to, or exercisable within the same, though they lie not in tenure; therefore these may, without question, be entailed as rents, estovers, commons, or other profits whatsoever, granted out of land; or uses, offices, dignities, which concern lands or certain places, &c., because all these savour of the realty." And it was added, that the renting of tolls had been so much considered as the taking of a tenement, that by section 56 of the general turnpike act, 13 Geo. III. c. 84, it is provided that no toll-gate keeper shall gain a settlement by renting the tolls (*e*). On the other side it was said, that this was a mere *personal contract;* and it was objected

Lord Coke's definition of "tenement."

(*d*) In *Rex* v. *Kenardington*, 6 B. & C. 70, Bayley, J., treats *Rex* v. *Benneworth* as having overruled the cases of *Rex* v. *Bardwell*, 2 B. & C. 161; and *Rex* v. *Shipdam*, 2 M. & R., Mag. C. 89; 3 D. & R. 384; and therefore those cases are not further noticed.

(*e*) See the disqualification in the existing act, ante, p. 524.

that a corporation could only demise under *seal*, and here the tolls were stated to have been taken by a *verbal* agreement. And Lord *Ellenborough*, C. J. said, "That as no interest passed to the pauper by such parol demise, the question could not be raised. It was a mere licence to him to collect the tolls, the right to which still remained in the corporation; though it might be a ground on which to apply to a court of equity. But if this difficulty (as to the mode of agreement) could be got rid of, the other point, as to the taking of the tolls being a taking of a tenement within the construction which had been put upon that statute, might be disposed of in favour of the settlement, upon the authority of Lord *Coke*, in his comment upon the statutes of Westminster 2; and on *Webb's case*, 8 Rep.; and on the opinion of Lord *Kenyon* in the case referred to (*f*), that a taking of an incorporeal tenement will confer a settlement." The court directed inquiry to be made if any interest in the tolls had passed from the corporation to the pauper, or any person under whom he claimed. But it was found that no other instrument had been executed, except a bond given by the pauper to the corporation, with sureties, for the rent, and the court said that could convey nothing *from* the corporation; and the order of sessions was quashed.

A parol demise of tolls by a corporation passes no interest.

So in *Rex* v. *North Duffield* (3 M. & Sel. 247), it was held that a demise of tolls of a bridge by members of a corporation (incorporated by a local act, and having a common seal), but not under the corporate seal, conferred no settlement: for the tolls were not things which lie in tenure, but only in grant; therefore, without a deed, an interest in them could not pass.

But where the sessions stated that the pauper rented tolls of a bridge a legal renting was presumed, and a settlement confirmed. (*Rex* v. *Bibworth*, 1 M. & Sel. 514.)

Rex v. *Dodderhill* (8 T. R. 449). Renting pointing places in a needle mill, not fixed in the floor, is not a tenement. The pauper Barnet went in 1791 to reside at Dodderhill, where he continued three years: during that time, being by trade a needle-maker, he worked for Webb in that trade at six pointing places in his mill, and afterwards W. not having in general use for more than four of them, B. rented of W. two of the said pointing places for more than one year, at the yearly rent of 16*l.*, but Barnet was to do all W.'s work in preference to that of any other person, although to do it it might be necessary to use all the six pointing places; and B. was paid by the piece for the work he did for Webb. No particular places were let to B., but by his contract with W. he might have the use of any two he pleased; but work or no work, W. was entitled to his rent of 16*l.* a year for the two places. The mill belonged to W. The pointing places are frames of wood, which support the spindles on which grinding stones turn, which are moved by means of leathern straps communicating with the great wheel of the mill, which is turned by water. The pointing places are placed on the floor of the room, and at each end of them a man sits; and the needles are pointed by being pressed against the grinding stones. The court were of opinion that there was no pretence for calling this agreement to work in the mill, the taking of a tenement (*g*).

Renting pointing places in a needle mill, not fixed in the floor, is not a tenement;

(*f*) *Rex* v. *Piddletrenthide*, 3 T. R. 772.

(*g*) In *Rex* v. *Hammersmith*, 8 T. R. 450, n., the pauper's father, Rogers, covenanted with B., the owner of a corn-mill, that he would with his horses and carts deliver and grind at the corn-mill a certain quantity of corn weekly, and pay B. per load. B. agreed, that during the time, Rogers should have the use and liberty of running and grazing fifteen horses in a named meadow, and the use of the stable and cart-house gratis. B. agreed at the expiration of the time to take the utensils of the corn-mill at an appraisement, and pay Rogers the amount. Rogers ground at the mill for two or three years, and resided in the parish. The court was clearly of opinion that there was no

nor runners for scouring needles, though they be screwed to the floor of the mill;

Rex v. *Tardebigg* (1 East, 528). The pauper's husband took three runners for scouring needles in a mill belonging to Milward in Tardebigg, and a packeting room 1*s.* a packet for every packet scoured thereat. He took afterwards at different times other runners and another packeting room of another person. The runners were a part of the machinery, fixed to the floor of the mill with screws. The pauper's husband and his family slept in the mill for two years. One floor of the mill will contain several runners. He had the exclusive right to the use of these runners and the packeting rooms. He also took a cottage of Milward, and the rent altogether amounted to more than 10*l.* *per ann.* Lord *Kenyon.* "There is no distinguishing this case from *Rex* v. *Dodderhill.* A runner is no more a tenement than a pointing place is so. It might as well be said to be a taking of a tenement if a man contracted to pound in a certain mortar, or to use a particular grinding-stone in a mill. It is not in effect a taking of a part of the mill as a tenant, but a licence to use a particular part of the machinery of it for the purpose of manufacture, and for no other purpose." *Lawrence*, J., said that, "*Rex* v. *Whitechapel* (2 Bott, 144, see post, p. 549) did not apply here, for here the particular value of the runner is found, which is necessary to be taken into the account to make up to the 10*l.* a year, and that not being a tenement, cannot confer a settlement; besides, it is not even stated that the runner was in the packeting room which was appropriated to the pauper's use."

nor standing place in a mill for a carding machine.

Rex v. *Mellor* (2 East, 189). Removal from Bramhall to Mellor confirmed. The pauper took a house at Stockport, of the value of 5*l.* a year: and he also took from the owner of a mill in S., worked by a steam-engine, *a standing place in a room for a carding machine* of his own, which was worked by the machinery of the engine, and fastened to the floor and the roof of the room. He was to pay his landlord 20*l.* a year, and agreed that each should give the other three months' notice to quit. He had a key to the room (as had other persons using the room in a similar way), and the owner had a master-key. It was urged against the order of sessions, that the only thing let was *the place in the room* where the machine was to be fixed: and that therefore the taking was of that part of the tenement itself, and not of the machinery itself, as in former cases. *Grose*, J. "This was a contract for nothing more than a liberty for the pauper to stand and work his machine in a room of the mill." *Lawrence*, J., said, that "this was only a licence to use the machinery of the mill, and not a letting of any part of the mill itself, and that therefore no settlement could be gained by it."

Butcher's stall.

Rex v. *Caversham* (4 B. & C. 683; 7 D. & R. 160). The pauper, a butcher, agreed to occupy one of several stalls in Reading market at 2*s.* 6*d.* per week. The stall was a permanent building, furnished with a door capable of being locked, and the key was in pauper's possession; but he had a right of access to the stall only on Wednesdays and Saturdays. *Bayley*, J. "I incline to think that this was a tenement within the statute of Car. II." The case was, however, decided on another point. (See post.)

Separate holdings.

Under the statute of Charles the annual value might be made up of separate holdings; as of a house of 6*l.* a year and land of 5*l.* 10*s.* a year (*North Nibley* v. *Wootten-under-Edge*, 1 Sess. Ca. 73; 2 Bott, 163); or a house of 6*l.* rented of one man and a stable of 2*l.* 10*s.* a quarter of another man. (*Rex* v. *St. Margaret, Fish Street Hill*, Burr. S. C. 677; 2 Bott, 170.)

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colour for construing this agreement as the taking of a tenement.

In *Rex* v. *Iken* (p. 544), *Patteson*, J., observed on *Rex* v. *Hammersmith*, that if it was properly decided, the only ground is, that the meadow was ancillary to the grinding, and not a letting of the land.

As the renting of a tenement of the prescribed annual value was all that was required, the court held, that if a person rented several different tenements, making together the required amount, it followed, that if these several tenements were situated in different parishes, that would not defeat the settlement, which would in such case be acquired in that parish in which the person resided.

The whole tenement need not be in one parish.

It was at one time thought that where the property lay in different parishes the tenement must be one and entire to confer a settlement. (*South Sydenham* v. *Lamerton*, 1 Stra. 57.) There a person rented a tenement of 10*l.* a year, being one entire tenement, but lying in two parishes. The question was, whether this gained a settlement. *Parker*, C. J. "The only difficulty is, that there is not in this case 10*l.* per annum in one single parish. As to that, I am of opinion, that if such a person as this should take a tenement of 8*l.* per annum in one parish, and another of 3*l.* per annum in a different parish, that would not gain him a settlement in either; but if the tenement be entire, and the house in one parish, as this case is, and part of the land in another, yet this may properly be called a tenement of 10*l.* per annum in that parish where the house is. Two distinct tenements, in two parishes, making together 10*l.* per annum, will give no settlement; but it seems to me to be otherwise where the tenement is entire." *Eyre* and *Pratt*, JJ., accordant. (And see *Elsted* v. *Hollibourne*, 2 Sess. Ca. 130; 2 Stra. 849.)

Different tenements, lying in different parishes, held under different takings, conferred a settlement.

But in *Rex* v. *Sandwich* (Burr. S. C. 44; 2 Bott, 107), a person rented a house in Studland at 30*s.* a year. After he had lived in it about two years he took lands in Langton of 12*l.* a year, on which there was no house, and occupied the lands two years; all which time he inhabited and rented also the house in Studland. By the court: "It hath been a question, whether two distinct tenements taken at different times (where neither of them alone amounted to 10*l.* a year in value) should make a settlement? But it is now settled that it does: and it is the same thing, whether the takings were distinct or entire, or in one parish or two parishes. The settlement is in the parish where he lives. The ground of these resolutions is the ability to rent a tenement of such a value; which excludes the presumption of his being likely to become chargeable to the parish. (And see *St. Lawrence* v. *St. Maurice, Winchester*, Burr. S. C. 588; 2 Bott, 169.)

And a person renting a tenement in one parish, and residing rent free in a tenement in another, gains a settlement where he resides. (*Rex* v. *Fritwell*, 7 T. R. 197.) In that case Thomas Hearne, the pauper's father, rented two farms in Stoke Lyne, one at 35*l.* and the other at 10*l.* a year; during the last four months that he occupied the above farms he dwelt in Fritwell, in part of a house belonging to a relation, who permitted him to live in it rent free; the house consisted of two separate tenements, one of which the pauper occupied, together with a barn, &c. He kept a team there, and drew his corn from his farm at Stoke Lyne to Fritwell. In this separate tenement he continued nearly two years, but never occupied any land in Fritwell. The separate tenement and use of the barn, &c. were of the yearly value of about 35*s.* He never paid any rent in respect thereof, but his relation had all the dung and manure made by the pauper's cattle, and spread it upon his own lands in an adjoining parish. Lord *Kenyon*. "It is now too late to inquire into the propriety of all the decisions that have been made on the settlement laws since the passing of 13 & 14 Car. II.; for even though it should appear on such inquiry (which I do not suggest is the case) that the words of that statute have been in some instances strained, yet as there is a series of decided cases on the subject, we ought not now to depart from them; if when the question first arose it had been holden, that the party must have one single tenement in the parish of 10*l.* a year, perhaps such construction of the act would have fallen in with the general opinion of mankind: however, it was not long ago decided that

it need not be one undivided tenement held under one landlord, nor all lying in one parish, for that distinct tenements, held under different landlords, and lying in different parishes, may be joined together; and provided they all together amount to the annual value of 10*l.* they will confer a settlement on the party, and that being once decided I think it puts an end to this question. Here the pauper's father, who rented two tenements in Stoke Lyne, went to Fritwell, where he entered into part of a house forming a distinct tenement by itself, and belonging to his relation, where he was permitted to live, but not as has been argued out of charity. This is not like one of the cases cited, where the pauper was taken into the house of his son-in-law as a lodger, for here were two separate tenements, the whole of one of which he occupied, and I am not prepared to say that his relation could have turned him out of possession on a day's notice, and though it is stated in the case that the pauper paid no rent in money, it appears that there was an equivalent, there was a *quid pro quo:* the pauper brought all his dung and manure from his other tenements, and this relation had the benefit of it. As therefore he was in the occupation of more that 10*l.* a year in the whole, and some part of it lay in Fritwell, I am of opinion that this case was properly decided." *Ashhurst*, J., thought that it might be fairly collected that the parties stood in the relation of landlord and tenant. *Lawrence*, J., thought the manure was given as compensation for the use of the tenement, and the landlord might recover for use and occupation.

But a tenancy in one parish would not be coupled with a freehold let to a tenant in another parish. (*Rex* v. *South Bemfleet*, 1 M. & Sel. 154.) Nor with a freehold in the same parish, although in the *owner's* occupation. (*Rex* v. *St. John's, Gastonbury*, 1 B. & Ald. 481.) Lord *Ellenborough.* "I think that the coming to settle, in the 13 & 14 Car. II., must mean to *settle as tenant;* the act having said, that persons who shall come to settle on a tenement of the value of 10*l.* shall not be removable, must be construed to imply that they shall be removable if the tenement be of less value. Now it is clear that at that time a man was not removable who resided on a tenement of less value than 10*l.*, if that tenement were his own property (*h*): the legislature, therefore, could not have contemplated a residence on a man's own property, when they used the words 'coming to settle on a tenement.'" *Bayley*, J. "The legislature must, by the word tenement, have contemplated a description of property from which, if of less than 10*l.* yearly value, a party could be removed: now if the property were his own he could not at that time be removed from it, however small its value, therefore it seems to me this is not a tenement within that statute. *Abbott*, J., "was satisfied by the argument against his first opinion, that the pauper must come to settle on all as tenant." *Holroyd*, J., thought that the statute did not apply to a man's own property, and said, "but my doubt arises from this; I consider that the statute meant to enact, that when a man resided forty days on property where he was entitled to reside he should gain a settlement. Now here the party did reside forty days, and was irremovable all that time. I am therefore rather inclined to think that in so doing he gained a settlement."

(b) *As to Joint Tenants.*

Renting jointly a tenement, which, when divided as to value between the tenants, will not produce ten pounds a year for each tenant, will give no settlement to either (*Marden* v. *Barham*, Burr. S. C. 311; 2 Bott, 197); although one alone occupied and was alone rated (*Rex* v. *Great Wakering*, 5 B. & Adol. 971; 3 N. & M. 47); and although the

(*h*) See post, Chapter XXV., "SETTLEMENT BY ESTATE."

other merely became joint tenant because the landlord refused to let to the other. (*Reg.* v. *Aberdaron*, 1 Q. B. Rep. 671; 1 G. & D. 178.)

But where one originally takes a farm, and then takes a partner, so as to constitute him joint tenant or under-tenant of a moiety, although only at will, and his interest is of the requisite value, the latter also gained a settlement. (*Little Tew* v. *Duns Tew*, Burr. S. C. 398; 2 Bott, 168; and *Rex* v. *Seamer*, 6 T. R. 554.) See post, § 3, (a) as to a joint tenancy of land now.

The fact of a surety being taken for the rent is immaterial.

But the fact of the rent being guaranteed by another is immaterial if the guarantor was not tenant. (*Rex* v. *Butley*, Burr. S. C. 107; 2 Bott, 128.) The pauper took a lease of a windmill in Benhall for three years, but had a surety who engaged for the payment of the rent. *Page*, J., said, "The parish officers had nothing to do with looking into the fact of giving security. It is the credit of *taking* a tenement of such a value, that is the point; were it otherwise, a *much greater* rent might be insufficient to gain a settlement, though the act requires no more than 10*l.* a year. The *visible credit* is the grand point."

The question in such cases is, whether the person whose settlement is in dispute were *tenant* or not; and whether he acquired the interest of a tenant to the requisite value. (*Rex* v. *Hooe*, 4 East, 362.) In that case Lord *Ellenborough*, C. J., observed, "It is said that the only inducement to the landlord to let to the pauper was the security, and therefore credit was not given to him. But so a man's inducement to take a bill may be the security of the drawer as well as acceptor; still he gives the latter credit. Then where there is a tenement of sufficient value, and a tenant not removable, who is liable to all the burthens of a tenant, and all the liabilities of one, and against whom, as such, every proceeding in law may be had, he gains a settlement by forty days' residence on such a tenement." *Lawrence*, J. "It is argued, that unless credit were given to the pauper for 10*l.* a year in value of the rent, no settlement can be gained by him. But I do not know that that is a necessary conclusion. The 13 & 14 Car. II. c. 12, gives power to the justice to remove, on complaint within forty days, any person 'who shall *come to settle* in any tenement *under* the value of 10*l.*', &c., unless certain things are done which are required by that statute; but they have no power given to them to remove any person coming to settle in a tenement of that value or upwards. Such a person is not submitted to their jurisdiction at all. The question, therefore, is not a question concerning the credit of the party, but whether in point of fact he came to settle, *i. e.* acquired the interest of a tenant in a tenement of that value; for if he did, the justices had no power to remove him. Now, upon the facts stated, it is apparent that the pauper had an interest to that amount in a tenement, as the tenant thereof, which prevented him from being an object of removal." *Le Blanc*, J. "It is immaterial whether credit were given to the pauper for the rent, if he were the tenant of the whole premises."

Credit need not be given to the pauper for the rent, if he be the tenant for the premises.

Part of the premises may be underlet.

A tenant at 10*l.* a year gained a settlement, although he let part of the premises to under-tenants. (*Rex* v. *Llandverras*, Burr. S. C. 571; 1 Bla. Rep. 603.) E. Hughes, father of the pauper, rented a tenement of 10*l.* a year, and paid the rent to the landlord. He lived for above forty days in a part of it, which was of the value of 40*s.* only. Immediately after his taking the tenement he let the residue thereof to under-tenants, without residing thereupon at all himself. It was argued that being liable only to the rent did not gain him a settlement. He must occupy as well as take a tenement of 10*l.* a year value, and he ought to occupy the whole 10*l.* a year; otherwise many different poor families might be introduced into a parish upon one such taking. It would quite evade the act if the mere taking of a tenement would do so; for then one would gain a settlement by taking, and another by occupying the same tenement. By the court: "In case of a gross fraud, the sessions no doubt will find it so, and the settlement would be void. But no fraud being found, there is no doubt upon the law of the case,

but that Hughes was the tenant and liable to the rent, and had credit for the whole; and therefore he is as much settled as if he had rented a tenement of 10*l.* a year, and let lodgings. The act doth not require a person renting a tenement of 10*l.* a year to occupy it; it is enough if he rents it and resides forty days in the parish. The ground the act goes upon is a person's having credit sufficient to hire a tenement of that value. This man appears to have had such credit. The under-tenants do not take a tenement of the yearly value of 10*l.*, therefore they do not hereby gain a settlement."

So in *Rex* v. *Newnham* (Burr. S. C. 756), the pauper H. Denton, and R. Mann, his wife's father, jointly rented and occupied an estate at Newnham, of 80*l.* a year, for three years. Mann dying about the end of that time, Denton soon afterwards took a house of R. White at Awre, of the yearly rent of 3*l.*, and another estate, consisting of lands, of J. Sergeant, at Awre, at the yearly rent of 8*l.* Mann leaving a widow, and she and Denton being upon the death of Mann jointly possessed of the remainder of the stock, which had been on the estate at Newnham, they went and lived in the house at Awre, and jointly occupied that house and the said estate of 8*l.* a year, for one year, the stock on the house and estate being partly the property of Denton, and the other part the property of the widow; and sometimes one, and sometimes the other, sold parts of the stock and received the money; and at the time of taking the tenements by Denton, neither White nor Sergeant knew of any connection subsisting between Denton and the widow. A moiety of the stock was more than sufficient to stock the house and farm. The court declared themselves all thoroughly satisfied that the settlement was in Awre. *Aston*, J., observed, that "if two persons jointly take a tenement of less annual value than 20*l.*, this will not gain a settlement to either of them. But a man who takes more than 10*l.* in yearly value, may let part of it to under-tenants: and this will not destroy his settlement, though it will not gain one to such under-tenants who pay him less than 10*l.* a year, as was determined in *Rex* v. *Llandverras* (p. 535). The widow Mann was in the nature of an under-tenant to the pauper. The pauper had the credit of taking the tenement. He alone took the house and likewise the lands. Neither of the landlords knew of any connection between the widow and him; and he only was personally responsible for the rent. They were not partners in taking the tenement, though they were joint occupiers of it. She would gain no settlement by merely being a joint occupier, without having been concerned in taking it. Nor shall the person, who alone took it, lose his settlement by letting in a joint occupier."

(c) *What is a "coming to settle" under the Statute.*

There must be not merely a "tenement," but there must be a "coming to settle" upon it within the words of the act. "Coming to settle," in general, means a taking under a letting or renting.

"It has been uniformly adopted as the rule for construing the statute of Car. II., as much as if the word itself had been inserted in the statute, that the *coming to settle in*, means by renting or holding in the character of tenant."—Lord *Ellenborough*, C. J. (*Rex* v. *Bowness*, 4 M. & Sel. 210.)

Still, although this kind of settlement is usually founded on the renting of a tenement of 10*l.* a year, it is not necessary that it should be under a renting or in the character of tenant. Thus a curate, duly licensed and residing in the rectory-house (above the value of 10*l.* a year) for more than forty days, was said to "come to settle" within the meaning of the act, although he occupied the house free of rent, repairs, and taxes. (*Rex* v. *St. Mary, Newington*, 5 B. & Ad. 540; 1 N. & M. 357.) *Denman*, C. J. "The kind of settlement relied upon in this case has grown out of the 13 & 14 Car. II. c. 12, s. 1, which confines the power of removal to cases where persons come to settle on any tenement under the yearly

Curate residing in rectory.

value of 10*l.*, and by implication has been held to confer a settlement on a person who comes to settle on a tenement of that value; and the lawful occupation of a tenement of that annual value by a party in his own right, has been held to satisfy the words *coming to settle*. The word 'renting' is not to be found in the statute. It is true that this settlement is most generally considered to be acquired by renting, because the renting shows the occupation to be independent and for the convenience of the occupier, and not for that of the landlord; and on this principle many of the cases where a distinction has been taken between an occupation as tenant and an occupation as servant proceed: the statute, however, does not require that there should be an occupation as tenant, but a mere coming to settle; and here I think it quite clear that the pauper's father came to settle in the parish of St. Nicolas Cole Abbey." *Parke*, J. "It is not clear that the curate is not tenant to the rector; but it is not necessary for the purpose of gaining a settlement that he should be so. It is sufficient if he comes to occupy as having an interest of his own, and not as servant to another." *Taunton*, J. "The 9 & 10 Will. III. c. 11, which makes the *taking a lease* of a tenement of the value of 10*l.* per annum, confer a settlement, is confined to persons residing under a certificate (*i*). To satisfy that statute, there must undoubtedly be a contract for renting; but this is a case within the 13 & 14 Car. II. c. 12, s. 1, which has been held to give a settlement to any person coming to settle on a tenement of the yearly value of 10*l.* The case of occupation is usually founded on the renting of a tenement of 10*l.* a year, yet it is not necessary that it should be under a renting, or in the character of tenant. Here the pauper's father had a lawful possession of a tenement of the required value, and an interest therein sufficiently permanent to denote a coming to settle; and that is sufficient to satisfy the 13 & 14 Car. II. even though the occupier is exempt from payment of rent, or has not the character of tenant. The case comes within the doctrine of the passage cited in the argument from Mr. Nolan's Poor Law, which, though not strictly authority, is entitled to respect." *Patteson*, J. "There was clearly a coming to settle by the pauper's father, unless the occupation of the curate is in all cases to be considered the occupation of the rector, which it clearly is not."

Permissive occupation without payment of rent sufficient.

The pauper, in 1813, rented a tenement in the parish of *Sculcoates* of the yearly value of 10*l.* The bargain with the owner was, that the pauper should live a month in it for nothing on trial, and that if he liked it he should take it for a year at the rent of 14*l.* He resided on it for a month on trial, and then took it at the rent agreed upon, and without any interruption in the residence continued on it for the following month, and then went away: it was held, that he thereby gained a settlement. (*Rex* v. *Helsham*, 2 B. & Ad. 620.) Lord *Tenterden*. "I am of opinion that the pauper gained a settlement in Sculcoates. It is clear that he actually resided there more than forty days on a tenement of the yearly value of 10*l.* Then it is said that when he first came there he had not an absolute intention to settle for so long a time as forty days, but that it was his intention to try whether the premises would suit him; and if they did, then to stay for a year. There is no authority to show that the original intent of the party must be absolute and unqualified to continue for forty days, and I am unwilling to introduce a new term or condition to the gaining of a settlement by coming to settle on a tenement. Here the intention of the pauper was to stay for one month certain, and perhaps for a year; and it has been properly observed that the recital in the 13 & 14 Car. II. c. 12, does not import a permanent intent, but applies only to persons coming to settle for a short time." *Littledale*, J. "The 13 & 14 Car. II. c. 12, does not require that the party should come to settle permanently, or should make a contract to occupy for a year.

(*i*) See ante, p. 521, note (*a*).

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The time for which the tenement is taken is unimportant, provided there be an occupation for forty days. Accordingly, taking land from June till Lady-day following, or a house for five months, or a room for a week, has been held sufficient. (*Staunton-under-Barndon* v. *Ulescroft*, Burr. S. C. 558; *St. Matthew's, Bethnal Green* v. *St. Botolph's*, post; and *Rex* v. *Whitechapel*, post.) The question really is, whether the party, after he came to the tenement, was irremovable, and whether he resided there forty days? Here it depended on himself whether or not he would remove during that time. If he chose to continue after the first month he might do so by the terms of his contract, and he elected to continue and did reside forty days. He therefore gained a settlement, having an interest as tenant during the whole of that term. In *Rex* v. *Netherseal* (post), *Ashhurst*, J., says, 'that in order to acquire a settlement by taking a tenement of 10*l.* a year, it is not absolutely necessary that there should be an express contract for the tenement: it is sufficient if the tenant reside forty days on a tenement of such a value with the permission and consent of the landlord, for in such case the law implies a contract.' Here the pauper resided during forty days with the consent of the landlord, and therefore gained a settlement." *Parke*, J. "My first impression upon reading this case was that no settlement was gained by the pauper in Sculcoates; that in order to gain a settlement by coming to settle, there must be an intention to reside permanently; but I am now satisfied that I was wrong. The question turns upon the meaning of the words 'coming to settle,' and some light may be thrown on that point by the resolution of the judges of assize in 1633. One of them was 'that the law unsettleth none who are lawfully settled, nor permits it to be done by 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.' It would appear, therefore, from that resolution, that the word *settle* did not impart anything permanent. Here it is clear that the pauper's original intention was to reside for a month at least; and in fact he resided for two months, and in the character of tenant. He had an interest during the first month, though no rent was to be paid, and he afterwards had an interest in the premises for a year, and he resided during forty days, having during that time an interest as tenant. A person coming into a parish casually for some temporary purpose will not thereby acquire a settlement; but a person coming to reside in a house with a purpose of making it his home and continuing there for forty days, does by that residence become settled." *Taunton*, J. "The statement in the case, that the pauper was to live in the house a month on trial, created an impression in my mind that he had no interest in the premises during the first month sufficient to confer a settlement, but I am now satisfied that in that respect I was wrong. It appears from the case, that the bargain was that the pauper should live a month in the house for nothing on trial; and if on that trial he liked it, he should take it at Martinmas at the yearly rent of 14*l.* The intention was to ascertain whether the house would suit him, but at all events he was to have it for a month. The occupation during that month was by leave and licence of the owner, who could not lawfully disturb him; he then took it for a year at a certain rent and occupied for a month, and the two occupations may be coupled together so as to make up the forty days. There are many cases to show that a tenant at will or by sufferance, not paying any rent, may gain a settlement by residing on a tenement."

Permissive occupation.

The words "coming to settle" in the 13 & 14 Car. II. are satisfied if the party takes up his residence in the place, although he is not responsible for the rent and taxes of the premises in which he dwells, but has a permissive occupation only.

Where a pauper's brother-in-law, without any authority from the former, and without his knowledge, hired a house at 18*l.* a year, and

allowed the pauper to remain in possession for two years and a quarter, and then, without notice, directed him to quit, which he did immediately, not having paid any rent or taxes during the time: the pauper, as tenant at will, acquired a settlement under 13 & 14 Car. II. c. 12; for whether the house was hired by the brother-in-law as agent for the pauper, or whether he hired it for himself and underlet it to the pauper, still the latter was tenant. (*Rex* v. *Chediston*, 4 B. & C. 230; 2 D. & R. M. C. 137.)

A fugitive inhabitancy insufficient.

A soldier who deserted and returned and remained concealed for forty days in a tenement taken by his wife without his knowledge, and not as his agent, and the landlord not knowing of his existence, was held not to "come to settle." (*Rex* v. *Ashton-under-Lyne*, 4 M. & Sel. 357.) *Le Blanc*, J. "What the statute requires is a coming to settle in a tenement; the construction of which has been, that a person who comes into a parish to reside in a tenement must have some kind of interest in it. But in this case the husband had not any interest; for he neither took the tenement himself or by his agent; but the wife took it for herself in the absence of her husband, and without his privity or even his knowledge. Afterwards the husband came home to his wife, not knowing that she had entered into any contract, and resides with her for a time, during which it is communicated to him that she had made this contract. This is the whole of the case, and it does not appear to me to follow that the husband must be considered as having come to settle in this tenement, because he may be liable in respect of his wife's occupation. The contract of the wife was fraudulent, for the landlord was never made acquainted that she had a husband, and never knew or adopted him as tenant; he might have declined the contract altogether, or put an end to it, had he been informed that she was a married woman. It seems to me, that, under these circumstances, there was nothing to prevent the parish officers from removing him." *Bayley*, J. "I am entirely of the same opinion. It was never the intention of the landlord to let the tenement to the husband."

Removal before tenancy.

If the pauper be removed after the contract for, and before the actual tenancy commences, he gains no settlement. (*Rex* v. *St. Michael in Coventry*, 15 East, 567.) In that case it was held that the permission to the tenant to put some articles of furniture in the house, and the delivery of the key for that purpose before the commencement of the tenancy, was not such an occupation as to warrant the inference of a tenancy.

Effect of order of removal.

Removal under an order will not put an end to a contract for renting: and a pauper returning, after execution of an order of removal, to his tenement under such contract gains a settlement thereby. (*Rex* v. *Fillongley*, 2 T. R. 709.)

An express contract is not necessary; it is sufficient if residence be with the permission of the landlord. (*Rex* v. *Netherseal*, 4 T. R. 258.) In that case the husband of the executrix of a lessee continuing in possession and paying rent acquires a settlement as tenant although the will was not proved.

So if the party be let into possession by a tenant it will suffice, although no rent had been paid to the landlord, and the latter was ignorant of the change of occupation, the prior tenant having by law an authority to assign his interest. (*Rex* v. *Aldborough*, 1 East, 597.)

Tenancy at will.

And a tenancy at will is sufficient. (*Rex* v. *Fillongley*, 1 T. R. 458.) In that case the tenancy of a requisite part to make up the value was created by the pauper's brother in these terms:—"I am sorry for your family, and therefore I will give you a close in A., containing about four acres, to enjoy as long as I please, and to take it again when I please, and you shall pay nothing for it." John enjoyed the close, which was worth 2*l.* 10*s.* a year, for three years, during which time his brother paid the land-tax and poor-rates, and all the tillage was done

by the servants and horses of the brother, and they also got in the harvest; but his cattle were never put into the close, except for tilling the land; but the cattle of the pauper were upon the close during the time he so enjoyed it; and this was held a sufficient tenancy.

Master of charity school.

So the master of a charity school, removable from his office at pleasure, resided for seven years, rent free, in a house part of which he underlet to the parish at an annual rent, was held to acquire a settlement as tenant at will. (*Rex* v. *Lakenheath*, 1 B. & C. 531; 2 D. & R. 816.)

(d) *Occupation as Servant.*

A branch of this question as to what constituted a coming to settle under the statute of Charles had reference to whether the occupation was as tenant or as servant, for to constitute a settlement it must have been in the former capacity.

Tenant and servant combined.

A person may occupy as tenant, and yet be a servant: there is no inconsistency between the relations of landlord and tenant and master and servant. A servant may occupy a house of his master, independently of his service, and yet satisfy the rent of that house by a render of service; or, on the other hand, he may occupy the house as a means of performing the service. Upon such a distinction a great number of settlement cases proceeded. (*Tindal*, C. J., in *Hughes* v. *Overseers of Chatham*, 13 L. J., C. P. 44.)

A servant may be a tenant.

Rex v. *Melkridge* (1 T. R. 598). The pauper's father was appointed herdsman to several persons having a right of common on an extensive waste. He entered on his employment, and removed to a house situate on the common, where he resided several years. As a reward for his services, he was allowed the exclusive enjoyment of the house *and some meadow ground* adjoining. The house and ground were worth 20*l*. It was contended that he did not occupy the tenement as his own, but as servant of the commoners, who had no power to grant such licence. But the court thought no doubt could be entertained on the question: the service of the pauper was equivalent to paying his rent, and that the commoners, instead of giving him wages, had permitted him to occupy this house. The pauper had the exclusive enjoyment of it, and possession could not be stated in stronger terms. (See *Reg.* v. *Wall Lynn*, 8 A. & E. 379, post, "POOR RATE.")

A bailiff, at weekly wages, allowed the feed of two cows in the pastures. The feeding a tenement,

Rex v. *Minster* (3 M. & Sel. 276) (*k*). The pauper was hired as bailiff by Parker, who had a farm at Bishopsbourne, and resided great part of the year about three miles distant. The pauper was to have 10*s*. per week for wages, and his master was to find him a house, *and was either to furnish him with two cows, or the pauper was to be at liberty to hire two, and feed them on his master's farm.* He lived in the house of his master, and occupied the kitchen and two rooms upstairs, and his wife took care of the house. He hired two cows, which fed during the summer in the pastures of his master, and in the winter in his master's straw-yard with straw that was grown upon his master's lands. The rooms occupied by the pauper in the house of his master were not of the yearly value of 10*l*., but the pasturage and keep of the cows upon the lands of his master were above that yearly value. Lord *Ellenborough*. "Here the pauper had a profit issuing out of the land to be taken *in loco certo*, which has been adjudged by the cases to be a tenement. The distinction between the occupation of a servant in the house of his master and this has been adverted to, and the argument, as it seemed to me, has been properly answered, that the apartments of the servant are only as an appendage of the service; they are allotted to him for the more convenient performance of the service,

(*k*) This case was doubted in *Rex* v. *Bardwell*, 2 B. & C. 161, but it is conceived not on the point upon which the judgment proceeded. Moreover, *R.* v. *Bardwell* has been treated as overruled. See ante, p. 530, note (*d*).

which is the principal thing. Here it is stated that the pauper hired two cows, and that they were kept on the land of the master during the summer months; and it does not appear that this was connected with the service, or that it was necessary, for the convenient performance of it, that he should have the two cows. In this respect, therefore, this case may be distinguished from that of servants having apartments in the houses of their master for the better discharge of their duties to their masters. The case now before the court falls within those which have been decided, particularly *Rex* v. *Melkridge* (p. 540), the only difference being, that there he was the servant of many persons, here he is the servant of one only; still the compensation for the tenement in both is the same, namely, the service of the pauper, which the court held to be equivalent to his paying rent. *Le Blanc*, J. "If this case depended upon any consideration involving the value of the apartments or lodging which the pauper occupied in the house of the master, I should not think the case of *Rex* v. *Melkridge* an authority that called upon us to decide in favour of the settlement; but it is stated that the yearly value of the pasturage, independently of the house in which the pauper resided, was upwards of 10*l.* That being so, the cases which have been determined have held, that whether the pauper pay in service or in money it shall be a coming to settle on a tenement. In this case, if the pauper's occupation of the tenement was necessarily connected with the service of the master, as in the case of occupying apartments in the house of the master, I should have no hesitation in saying that that would not have conferred a settlement, although of a greater yearly value than 10*l.*, because the occupation would have been necessary for the performance of the service, for which the master might allot what apartments he pleased. In like manner, if the master had allotted to the pauper so much milk a day, I should have thought the pauper would not have gained a settlement. But in the present case the pauper has a distinct interest in the pasturage of the two cows, unconnected with his service to the master's dairy, and this liberty of taking the profits out of land is found to be of greater value than 10*l.* I do not know, therefore, how to distinguish this from the cases already decided." *Bayley*, J. "A clear and particular distinction enabling us to decide this case has been pointed out. Here something is given to the servant unconnected with the service. It is the same thing as if the servant had stipulated that as he had a family he must have certain land for his own occupation, and that the master should allow him to become a distinct occupier of land to the value of 10*l.* a year. If that had been so, there are not wanting cases to show that it is not necessary that a rent should be paid in money, or indeed that there should be any rent at all, in order to constitute him the occupier of a tenement, but a service is quite sufficient. The case of the herdsman (*Rex* v. *Melkridge*) is full to that point. If that be so, what is the present case but that of a servant who stipulates for a profit out of land of more than the yearly value of 10*l.* for which he is to pay in service." Orders quashed. (See *Rex* v. *Nacton*, p. 529.)

Another case of the same kind.

Rex v. *Cherry Willingham* (1 B. & C. 626; 3 D. & R. 13). The pauper at May-day, 1817, contracted to become the ground-keeper of John Hill, in respect of his farm at Hougham. The master, by one entire contract, agreed to give the pauper 20*l.* a year, a cottage to live in, and the agistment and whole profits of one cow for his own services; and the sum of 28*l.* and the agistment of and whole profits of another cow in consideration of his lodging and maintaining in the cottage two of his (Hill's) labourers. The pauper resided under these terms in Hougham, during the year, taking the whole profits of the cows, receiving his wages, the allowance of 28*l.*, and maintaining the two servants. The annual value of the lands on which the two cows were depastured exceeded 10*l.*; but the land necessary for one cow only would not be of that value, that is to say, the annual value of the agistment of two cows upon the land in

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question would be worth 10*l.* a year; but of one cow would not be 10*l.* a year. *Abbott*, C. J., delivered the judgment of the court: "We have considered this case, and are of opinion that the pauper acquired a settlement in Hougham. The tenement in question is the pasturage of two cows. It is found that the annual value of the land whereon the two were depastured exceeded 10*l.*; that the annual value of the agistment of the two would be worth 10*l.*; but of one, then not 10*l.* It was therefore contended, in support of the orders, that although the pasturage of one of the cows must be considered as a tenement upon the authority of decided cases, yet that the pasturage of the other was not a tenement, and this upon a difference in the terms of the contract. It is found that the contract was an entire contract, that the master agreed to give the pauper 20*l.* a year, a cottage to live in, and the agistment and whole profits of one cow for his own services; and the sum of 28*l.* and the agistment and whole profits of another cow, in consideration of the pauper's lodging and maintaining at the cottage two of the master's labourers. The question arose upon the cow thus last mentioned. Now, by this contract, the pauper does not engage to employ the milk of the latter cow in the maintenance of the labourers: he might, if milk formed a part of their diet, as it may be presumed to have done, have given the milk of the other cow, or he might have procured milk for them elsewhere, and might have sold or otherwise disposed of the milk of both the cows provided by his master. So that we cannot say the milk was given or appropriated for the maintenance of the labourers; but must say that it was given in consideration of the maintenance of the labourers. And the consideration given or paid for a tenement is wholly immaterial on a question of settlement, if the yearly value be 10*l.* Whether the consideration be paid in money, or by services rendered, or by any other matter beneficial to the party receiving, was of no importance at the time in question, which was before the 59 Geo. III. c. 50. We therefore think that the difference, as it was called in this contract, does not lead to any legal distinction which can justify us in saying, that the agistment of the latter cow was not a tenement." Both orders quashed.

Occupation ancillary to personal services.

A cottage was rented by the owner of a mill for the convenience of the families employed at the mill. A man, whose children were so employed, took this cottage at a rent to be deducted out of the children's wages: held, this was a sufficient occupation. (*Reg.* v. *Bishopton*, 1 P. & D. 598; 9 A. & E. 824.) *Littledale*, J. "This was clearly a taking of the cottage to rent; but it is urged that, as the cottage was merely let to him as ancillary to the service of his children, it was not an independent occupation. No doubt the pauper would not have been allowed to have the cottage but for that, but still he agrees to pay rent, and that *primâ facie* constitutes the relation of landlord and tenant; therefore, taking it altogether, I think he gained a settlement."

A waiter at an hotel had the tap or privilege of selling malt liquors there, and the use of the cellar for holding the liquors, which had a separate entrance, and of which he kept the key; he paid for his situation of waiter and for the tap and cellar the yearly sum of 60*l.*: held, not such an occupation of the cellar as to confer a settlement. (*Rex* v. *Seacroft*, 2 M. & Sel. 472.)

The pauper agreed to serve as a labourer for 20*l.* a year, a house and garden, a piece of land for potatoes, the milk of a cow, and feeding of a pig. This is an occupation as servant and not as tenant.

Rex v. *Kelstern* (5 M. & Sel. 136). The pauper, a married man, agreed to serve S. for a year as a labourer, and was to have 20*l.* a year, *a house and garden*, a piece of land for potatoes, the milk of a cow, and feeding of a pig, which were to run on a neighbouring field: the pauper had the exclusive occupation of the house, the house was about 100 yards from the house of S., a house was necessary for the performance of his service, and if he had not had it he would have had more wages. Lord *Ellenborough*, C. J. "I own I have no doubt in this case that the only occupation of this house was the occupation of the master and not of the servant, whom the master placed there for the mutual convenience of

both parties. The master's house was about 100 yards distant from it, and the servant had it thrown into the bargain in cumulation of wages. This may be compared to rooms allotted to a coachman over the stables of his master, or to an outhouse, where, being a family-man, it is more convenient that he should be out of the dwelling-house; but that is nothing more than the occupation of the master. So here I cannot see that the occupation goes farther. In *Rex* v. *Melkridge* (p. 540) the question did not turn upon whether it was an occupation by the herdsman or the commoners who employed him, for it did not appear that the commoners ever had an occupation in any way, but the herdsman had it exclusively. At present it seems to me to be incontestably plain that this was nothing more than the occupation of the master by the servant. Therefore the house cannot go to form a part of the tenement so as to make up the value of 10*l.* a year." *Bayley*, J. "I take the distinction as laid down in *Rex* v. *Minster* (p. 540) to be this, that if the occupation be unconnected with the service it will confer a settlement; but if it be necessarily connected with the service, as if it be necessary for the due performance of the service, it shall not confer a settlement. Now from this case I collect that the occupation of the house was necessary for the performance of the service; therefore it must be taken as the occupation of the master, and not of the servant." *Abbott*, J. "I am glad that the court is not called on to decide that this is a coming to settle on a tenement, for it would tend to deprive labourers in husbandry of many comforts accruing from this species of agreement. If it contained a settlement farmers would be unwilling to grant those advantages, for the loss of which no probable addition of wages would afford an adequate compensation in point of comfort." (See *Rex* v. *South-Newton*. post.)

A pauper, employed as a labourer by the Board of Ordnance, having previously occupied a house at an annual rent of 7*l.*, which was then purchased by the board, still continued to reside in part of the premises, at a weekly rent of 2*s.*, which was deducted out of his wages; and during such last occupation he also occupied a shop (the shop and house together being of the annual value of 10*l.*), and upon his dismissal from his employment he gave up possession of the house as required: Held, that his last occupation of the house was not as a tenant, but as a servant.

Rex v. *Cheshunt* (1 B. & Ald. 473). A pauper employed as a labourer by the Board of Ordnance, having previously occupied a house at an annual rent of 7*l.*, which was then purchased by the board, still continued to reside in part of the premises at a weekly rent of 2*s.*, which was deducted out of his wages, and during such last occupation he also occupied a shop (the shop and house together being of the annual value of 10*l.*), and upon his dismissal from his employment he gave up possession of the house as required. The board had several other houses for their labourers, which they occupied only as long as they were in the employment of the board. The court held, that his last occupation of the house was not as tenant, but as servant, and that no settlement was thereby gained. Lord *Ellenborough*. "In this case it seems to me that the party occupied this house as a servant only, and not in the character of a tenant. It is like the case of a coachman, who frequently occupies a room over the stables, but such occupation is not within the 13 & 14 Car. II. The pauper here was divested of the tenement as soon as his service terminated. He quitted the possession reluctantly, and was succeeded by the person who succeeded him in his employment under the Board of Ordnance. All this clearly shows that he was only entitled to hold it during and for the more convenient performance of his service. If the court should hold in this and similar cases, that the legal relation of landlord and tenant subsisted, it would become necessary to turn such persons out of possession by the regular proceedings in ejectment, and every gentleman having twenty or thirty cottages in which his labourers resided, would be compelled, on any change of their service, to have recourse to such means. This would be productive of the most serious inconvenience. Upon the whole view of this case, I think it plainly appears that the relation of landlord and tenant never did subsist here, and unless that were so, this was not an occupation within 13 & 14 Car. II." *Bayley*, J. "*Rex* v. *Minster* only decided that the occupation of a tenement which was wholly unconnected with the service would confer a settlement; but that the occupation of one

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The pauper went into the service of B., and, by agreement, was to have the use of a pot-kiln, &c., he paying to B. so much for every burning pot: the pauper resided in a cottage, in the same parish, the kiln, &c. and the cottage were worth more than 10*l.* a year: this is an occupation as tenant, not as servant.

connected with the service would not. In this case the tenement is connected with the pauper's service under the Board of Ordnance."

Rex v. *Iken* (4 Nev. & M. 117; 2 Ad. & E. 147). In 1813 George Chambers, at that time married and settled in Frostenden, went into the service of Samuel Barnes, of Iken, as a pot maker. Barnes rented a considerable farm in the parishes of Iken and Sudbourne, including a pot-kiln and sheds in Iken. Chambers was to make and burn pots; to do which he was to have the use of the kiln, sheds, and yards. Barnes was to keep the kiln and sheds in repair; to furnish and cart off all the clay wanted, and supply horses to grind it twice, and to find red lead, with whins and coal for burning the pots. Chambers was to receive 25 per cent. on the sale of the pots, for making and burning them; Barnes was to receive 25 per cent. for the use of the kiln, sheds, and yards, and preparing and carting the clay, and also for carting out the ware when sold; another 25 per cent. for coals, whins, and red lead; and the remaining 25 per cent. was allowed to shopkeepers for selling the goods. Chambers resided in a cottage in Iken, which he rented of Barnes for three guineas a year, and worked the kiln until 1815; when Barnes, being dissatisfied with the ware made by Chambers, put an end to the foregoing agreement without notice; and the parties entered into a new one, as follows:—The average number of kilns burnt, during the year, was about twelve; and, the value of each being about 24*l.*, it was agreed that Chambers should pay Barnes 6*l.* after each burning, for the use of the kiln, sheds, and yards, and for furnishing, carting, and grinding the clay, and carting the ware out when sold. Barnes was to keep the kiln sheds in repair, as before; to provide red lead, coals, and whins for burning the pots; for which Chambers was to allow him in the settlement of accounts; and Chambers was to dig the clay, and do as he pleased with the ware. Chambers continued to reside in the cottage at the same rent, and worked the pot-kiln under this second agreement until 1828, when he died. The clay furnished by Barnes was dug and carted in the winter time, for the succeeding summer, from lands in Sudbourne occupied by him, except for one season only, when it was taken from other lands in Iken not occupied by Barnes. The cottage, with the kiln and sheds, and land on which they stood, without the clay, were worth more than 10*l.* a year; but the clay itself was worth 15*s.* a year only. Lord *Denman*. "I think a settlement was gained in this case. It is contended that Chambers's occupation under the second agreement was merely a continuation of that under the first; that he had no independent interest, and that his occupation was merely ancillary to a service. But looking at the second agreement, I own I think he had an independent interest, and that he was not liable to be turned out at will. It is true that there are expressions in this case respecting the earlier agreement, which render it doubtful whether a settlement could have been gained by that; and we find that Barnes actually exercised the power of putting an end to it without notice, on being dissatisfied with Chambers. That fact, however, does not go far to interpret the agreement; and, at any rate, we cannot import the first agreement into the second, which appears to me to confer a substantial interest, and one under which Chambers was entitled to remain. Perhaps the best illustration of this case is that of *Rex* v. *Seacroft* (p. 542), where the alleged occupation was merely ancillary to the service, and consequently conferred no settlement. There, however, the party was engaged expressly as a servant. But here the party had a right to remain as long as he kept his agreement. He therefore had an interest which gave him a settlement." *Taunton*, J. "I am of the same opinion. If we had the first agreement only, it certainly would be a material fact, that the pauper went into Barnes's 'service;' and I should pause before saying that, in that case, I could infer a contract for a tenement. But the second agreement supersedes the first; and whatever my opinion on the

first might be, under the second there was clearly a taking. The pauper had the property in the pots manufactured, the landlord finding the clay, red lead, coals and whins necessary for the manufacture, and Chambers paying 6*l.* after each burning. Then it is found, as a fact, that the cottage, with the kiln, sheds, and land, is worth more than 10*l.* a year. Here the principal object of the contract clearly was, that the pauper should have the use of the kiln, sheds, and yard; and he could not have the use without the occupation. At the same time, if the occupation were merely ancillary to a service, it would not confer a settlement. But here I apprehend that there is no service. Chambers could not be called a servant at all under the second agreement. The use of the building and yards was in the pauper, and the property in the pots, when manufactured, was in the pauper. I agree in the decisions of *Rex* v. *Cheshunt* (p. 543), *Rex* v. *Langriville* (p. 530), *Rex* v. *Bowness* (p. 528), *Rex* v. *Seacroft* (p. 542). *Rex* v. *Hammersmith* (p. 531, n. (*g*)) is the strongest case; and it is somewhat difficult to distinguish it from the others: but I observe that counsel there gave up the settlement, and the reasons for the judgment are not stated: the only ground on which the decision, if right (and I do not say it was not), can be justified, is, to suppose that the court considered the grazing of a horse in the meadow, and the using of the buildings, to be ancillary to the principal contract. But that is a different case from this. *Rex* v. *Seacroft* is also distinguishable. There the pauper went into service expressly as a waiter: it never was contended that he was a tenant: it was a mere contract of service: he was to have the use of the tap and cellar, which is a profitable privilege often enjoyed by the principal waiter at large inns; it was a privilege, therefore, attached to him in reference to the principal thing; that is, to his contract as a waiter, which is inconsistent with the character of a tenant. Here the principal object was to enable the pauper to manufacture the pots, which he could not do without the buildings and yards. It is therefore a case of use and occupation." *Patteson*, J. "I ground my opinion on my construction of the second agreement: we are not called on to construe the first. Under the second agreement the relation of master and servant did not exist; such a relation is quite inconsistent with the stipulations. The pauper is to pay 6*l.* after every burning, and to burn what he pleases. Barnes, who had been dissatisfied with the old agreement, exercises under the new one no superintendence as master, or even as partner. The 6*l.* is evidently paid by way of rent. As to the cases cited, none of them create any difficulty except *Rex* v. *Hammersmith*. That case is certainly very loosely reported; and I cannot understand the ground of the decision. If the only debated point there related to the grazing in the meadows, and to the use of the buildings, I can understand it; for it may be that the court held that there was merely a licence, or, or at any rate, not the relation of landlord and tenant. But as to the stipulation respecting the mill, and the taking back of the utensils at a valuation, that part of the case I cannot explain; there must have been something not reported. Perhaps in the present case the sessions ought to have found the fact of relation of landlord and tenant; but it is clear that relation existed." *Williams*, J. "I am of the same opinion, and that upon the second agreement. Mr. *Follett* makes use of the first part of the case to explain the second; and if that could be done, there might be some foundation for his argument. He has also noticed the difference of language in the case, in speaking of the cottage and of the other buildings; but that I think arises merely from the sessions having doubted whether the circumstances as to the latter took away the quality which creates an occupation. I think that, under the second agreement, there was an occupation. The case has been argued as if this occupation might be referable to something else, like the situation, for instance, of a waiter or a butler, or, which would be stronger still, that of a porter of a lodge, who would occupy exclusively. But as to that point, I agree with the

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rest of the court, that the service there explains away the occupation. Here it is not so." Order confirmed.

It is to be observed, that the court of quarter sessions ought to find whether the occupation was as servant or tenant. (*Reg.* v. *Bishopton*, ante, p. 542.) Where the sessions find the point one way or the other, the court will not set it aside, unless it appears necessarily wrong. (*Rex* v. *Snape*, 1 N. & P. 429; 6 A. & E. 278.)

(e) *Duration of the Contract.*

The 13 & 14 Car. II. did not require that the tenement should be taken for any length of time. The holding *for a year* was first made an essential part of the contract by the 59 Geo. III. In cases arising under the former act, though the value is to be estimated by the year, yet the taking may be for less than a year, or for no definite period.

Taking a tenement for eight months gained a settlement, there being also a forty days' residence.

Rex v. *Shenstone* (Burr. S. C. 474; 2 Bott, 129). A person took a house of 30*s.* a year in Gratwich, and land in King's Bromley for the growing of potatoes, from Candlemas to Michaelmas, being eight months, for 11*l.*, and lodged the last forty days before Michaelmas in King's Bromley. He took them *bonâ fide*, and without any design of fraudulently obtaining a settlement in the parish; and it was adjudged a settlement in King's Bromley.

Staunton-under-Bardon v. *Ulescroft* (Burr. S. C. 558; 2 Bott, 215). Same point. (*St. Matthew, Bethnal Green* v. *St. Botolph, Aldgate*, Burr. S. C. 574; 2 Bott, 200.)

(f) *Residence.*

Residence for forty days is necessary and sufficient; and the law in this respect is not altered by the recent statutes.

Forty days' residence upon a tenement of ten pounds yearly value is necessary.

Rex v. *Dilwyn* (Burr. S. C. 54). William Smith, the pauper, agreed for a farm in Eardisland, to hold from Candlemas, at 44*l.* yearly rent; and in April following he sowed about fifteen acres of the land with grain; in May following he came to live on the farm, and inhabited there about three weeks; and then the greatest part of his stock of cattle was seized for rent due to a former landlord. Smith then came to a new agreement with his landlord in Eardisland, and agreed to quit that farm, and to continue in the farm-house and garden, and to have a small parcel of pasture with it, at the rent of 3*l.* 10*s.*, and he continued thereupon in Eardisland till Michaelmas following. By Lord *Hardwicke*, C. J. "There was no inhabitancy for forty days in Eardisland under the lease of 44*l.*; and, therefore, there can be no settlement gained under it. And the next agreement with his landlord in Eardisland was quite a separate contract, and cannot be tacked to the former. It did not take effect till the other was finished."

Rex v. *Caversham* (see ante, p. 532), where the pauper rented a stall in a market, to which he had access only on two days in the week, and rented it from 1st of November, 1817, to the 4th of March, 1818, the court held that as he did not occupy it for more than thirty-eight days, he gained no settlement.

A forcible removal by the parish officers and parishioners within forty days prevented a settlement. (*Rex* v. *Llanbedergoch*, 7 T. R. 105.) In case of *fraud*, it might be otherwise.

So if a person be arrested and carried to prison in a parish different from that in which his tenement is, before he completed a residence of forty days, he gained no settlement, though his family resided for seven weeks. (*Rex* v. *St. George the Martyr, Southwark*, 7 T. R. 466.)

Absence on business, but family continuing, may constitute residence. (*Rex* v. *Ditcheat*, 9 B. & C. 981.)

Residence for thirty-three days by a widow cannot be coupled with a residence on the same tenement with her husband for sixteen days preceding, so as to gain her a settlement. (*Rex* v. *South Lynn*, 5 T. R. 664.)

Before the statute 54 Geo. III. c. 170 (ante, pp. 318, 319), where the tenant was in the rules of the Fleet, and he had in the same parish a tenement he rented, he paying the rent, he gained a settlement. (*St. Margaret's, Westminster*, v. *Ludgate* (2 Barnard, 76; 2 Bott, 127.)

The residence must be in the parish where some part of the tenement lies (*Rex* v. *Topcroft*, Cald. 478; 2 Bott, 221; same point, *Rex* v. *Knighton*, 2 T. R. 48); but the residence need not necessarily be upon any part of the tenement (*Rex* v. *Kenardington*, 6 Bar. & Cress. 70; 9 D. & R. 72). In that case the pauper, when about sixteen years of age, hired himself for a year to T. Knight, at the wages of four guineas: he served the year in the parish of Ulcomb, dwelling in his master's house there, and received his wages. He afterwards, and about twenty-two years ago, married Sarah his wife; and having, about four years after his marriage, removed to Kenardington, he entered into a contract with Joseph Stead, a farmer there, to serve him as a labourer upon his farm, at the wages of 16*s.* a week, to have his wheat at 6*s.* a bushel, butter at 1*s.* a pound, and a small house of his master's situate in his master's farm, rent-free to live in. He entered into the service, and continued in it under these terms for three years; and between Christmas and Lady-tide, in the third year of his service with Stead, the pauper, with two other persons, hired of Joseph Boon seven acres and a quarter of land in the parish of Kenardington, at the price and of the value of 25*l.* 7*s.* 6*d.*, being 3*l.* 10*s.* per acre; and at the same time he, on his own account, took an acre of land in the same parish of Joseph Boon, at the price and of the value of 50*s.* The seven acre piece was cultivated and cropped with potatoes, and the expenses and the rent for the same were paid equally by the pauper and his two partners; but the one acre piece was cultivated and cropped with potatoes by and at the sole expense of, and rent for the same was paid by, the pauper alone; thereby making his renting in the parish of Kenardington at one time 10*l.* 19*s.* 2*d.*; and these two parcels of land were held together by the pauper, and by the pauper and his partner six months. The pauper at no time resided on any part of the land taken of Joseph Boon, but resided in the small house of his master's on his master's farm, as his servant. At the end of the three years he quitted Stead's employment, and at the same time left his house. *Bayley*, J. "I am of opinion that the order of sessions was right; a settlement having been gained in Kenardington. The argument against the settlement is, that although the pauper rented a tenement of more than 10*l.* annual value, yet as he did not reside upon any part of it, but with a master, no settlement was gained. In *Rex* v. *Bardwell* (p. 530, n. (*d*)), expressions were certainly used by *Best*, J., and me, giving a larger meaning to the words *coming to settle* in the 13 & 14 Car. II. c. 12, than we ought to have done, and *Rex* v. *Shipdam* (p. 530, n. (*d*)), was decided on the same ground. In *Rex* v. *Benneworth* (pp. 529, 530, n.), the court took time to consider the question; because they were pressed with the former decisions, and re-considered them. The point is not mentioned in the judgment pronounced in *Rex* v. *Benneworth;* but that judgment could not have been given if the court had been of opinion that *Rex* v. *Bardwell*, and *Rex* v. *Shipdam*, were well decided. In *Rex* v. *Sutton St. Edmunds* (p. 529), it appeared that the pauper entered into a service where he was to have 18*l.* a year wages, and the keep of two cows. He lived in a cottage on his master's farm; but it was found that the occupation of the cottage was incidental to his service. The court held that he did not gain a settlement; because there was no bargain that the cows should be pasture-fed. If the court had then thought residence upon the tenement necessary, the case would not have admitted of an argument, and the other point would not have been made the ground of the decision. In *Rex* v. *All Saints, Derby* (p. 526), there could not be any residence on the tenement, and yet a settlement was gained. In *Rex* v. *Benneworth* also there was no residence on the tenement, and the

The residence must be in the parish, but not necessarily upon the tenement.

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renting of the tenement was during the service. It can make no difference, whether the bargain for the tenement is connected with the contract for service, or whether, as in this case, it is a separate contract made with a third person." *Littledale*, J., concurred. Order of sessions confirmed.

Residence in different parishes.

Where a residence is in different parishes, and in one of them for forty days at different intervals, and the pauper sleeps there the last night, the settlement is gained there. (*Rex* v. *St. Mary, Lambeth*, 8 T. R. 240, 241.) The pauper took a tenement at the yearly rent of twelve guineas, in St. Mary, Lambeth, and continued tenant thereof until 29th September, 1797. He resided in that tenement from the time of taking it, until 24th June, 1797, when he took a lodging for the convenience of his business, at the rent of 8*l.* 10*s.* a year, in St. Mary-le-bone, where he occasionally slept, leaving his family at Lambeth: both tenancies expired on 29th September. 1797. The pauper slept sometimes in Lambeth and sometimes at his lodgings in St. Mary-le-bone, and for above forty days in the whole upon the tenement in St. Mary-le-bone, and he slept there the last thirty nights of that tenancy. His family never accompanied him, or slept in St. Mary-le-bone, but remained at the house in Lambeth until about three weeks previous to Michaelmas-day, 1797, when she went away, and took the furniture away with her. The court said "there could be no doubt but that the pauper's settlement was in St. Mary-le-bone, where he had a tenement of above the annual value of 10*l.* when joined to the other in Lambeth, and in which former tenement he had resided on the whole above forty days, and where he had slept the last night. The question was too plain for argument." Both orders quashed.

Place of sleeping.

In *Rex* v. *Ringwood* (1 M. & Sel. 381), Lord *Ellenborough*, in the course of the argument, said, "The court will not enter into minute inquiries whether the pauper *slept*, in the literal sense of the word, during the last night of his residence,—what will satisfy *pernoctavit* is sufficient."

(g) *The Value.*

The value of the tenement, by the renting or hiring of which a settlement may be gained, has always remained the same, notwithstanding tenements, which were worth only 10*l.* by the year when that minimum was fixed, must have increased in annual value down to the present time many fold.

Before the important alterations introduced by the statute 59 Geo. III. c. 50, and subsequent acts on this subject, if a person came to reside upon a tenement of 10*l.* a year, and remained forty days, his settlement was complete, whether he paid his rent or not, or continued in the occupation the whole term for which he had hired the premises. The legislature, relying upon the caution and prudence of landlords not to let their tenements to persons too indigent to pay for the occupation, and the vigilance of parish officers in removing such poor persons as were *likely to become* a burden upon the parish by settling upon such tenements, gave authority to justices to remove them; but if this power was not exercised for forty days, then the settlement was accomplished; and when the 35 Geo. III. prevented the removal of any person not *actually chargeable*, greater facility was given for the acquisition of this species of settlement.

What has been deemed a tenement of 10*l.* annual value, sufficient for the purposes of a settlement under this statute of 13 & 14 Car. II., will appear by the following cases. The rent may be *primâ facie* the criterion of value; but whether the rent be more or less than 10*l.* the *real value* might have been inquired into.

The fact of the rent being less than 10*l.* is not material, if the

South Sydenham v. *Lamerton* (1 Sess. Ca. 115; 1 Stra. 57). Case:—A person took a lease of a tenement for ninety-nine years, determinable on three lives, and paid his fine, and the rent reserved was but 7*l.*, but

the real value was 13*l.* By the court: "The quantity of the rent is not material, but the value of the tenement. If there be a lease of land worth 10*l.* a year, and a fine be paid, or no rent reserved, yet if the tenement be worth 10*l.* a year, it makes a settlement; for the settlement depends on the value of the tenement, and not on the rent."

tenement be of the value of ten pounds a year.

So, on the other hand, a rent above 10*l.* may be superseded by proof of actual value, and the justices ought to receive evidence of the value beyond the rent. (*Rex* v. *Bilsdale Kirkham*, 2 Bott, 137.)

If a rent of 10*l.* be given in contemplation of improvements by the landlord, which are never made, and the house is thereby not worth such rent, no settlement is gained.

There a person took a house at the yearly rent of 10*l.* The landlord agreed to make new buildings, which improvements were never made. The house, without the improvements, was worth only 6*l.* 10*s.* a year. By the court: "The sessions must judge upon the facts; they have stated that the agreement was for 10*l.* a year; this is evidence of the value, but the justices have a right to inquire into the real value, and they have expressly stated as a fact, that this house was only of the value of 6*l.* 10*s.* a year; and the mere covenant to build, which covenant was never performed, cannot alter the case. Therefore this was no settlement." (*Rex* v. *Southwold*, 2 Sess. Ca. 198; 2 Stra. 1127.)

St. Matthew's, Bethnal Green, v. *St. Botolph's, Aldgate* (Burr. S. C. 574; 2 Bott, 200). John Fell, the husband of the pauper, hired a house for five months, for which he agreed to pay 4*l.* He came and resided with his family there during the five months. And the house, at the time of hiring and entering upon the same, was worth, to be let, 10*l.* by the year. It was argued that this could not gain a settlement, because the proportion of 4*l.* for five months falls short of 10*l.* a year by about 8*d.* a month. But by Lord *Mansfield*, C. J., and the court: "The rent is not material, but the value. And we are concluded from treating this tenement as under 10*l.* a year by the finding of the justices, who have stated it as a fact, that at the time when he took it it was of the value of 10*l.* a year to be let." And it was adjudged that he gained a settlement.

Rent *primâ facie* the criterion of value.

The rent is *primâ facie* evidence of value, and the court will act upon that if the sessions do not expressly find the value to be less, although they state facts on which they might have come to a different conclusion. (*Rex* v. *Weston*, 2 Sess. Ca. 141; 2 Stra. 1156; *Rex* v. *Whitechapel*, 2 Bott, 144.)

In *Rex* v. *Tissington* (Burr. S. C. 499; 2 Bott, 198), the pauper, Isaac Wibberly, took a farm in Kniveton of 8*l.* a year; and at the same place, jointly with Thomas Hill, took another farm of 3*l.* 15*s.* a year, and, at the taking of the said farm of 3*l.* 15*s.*, it was agreed between Wibberly and Hill, that Hill should take one-half of the corn and hay of the 3*l.* 15*s.* farm: and that Wibberly, after Hill had taken and carried away his half part of the corn and hay, should have the whole farm of 3*l.* 15*s.* till Lady-day following, paying 4*s.* for Hill's share of the farm. The question was, whether this were a tenement of the yearly value of 10*l.* It was argued that Wibberly was liable (as being joint-tenant with Hill) to pay the whole 3*l.* 15*s.*; and that he was sole tenant of that farm for the last half-year; or, even taking it at the strictest, that he was really and properly to pay 10*l.* 1*s.* 6*d.* a year; for he is to pay 8*l.* and half of 3*l.* 15*s.* (which is 1*l.* 17*s.* 6*d.*, and 4*s.* more for the last half-year), which is in all 10*l.* 1*s.* 6*d.* But the court unanimously held, "That this tenement, thus rented in Kniveton, was under the yearly value of 10*l.* The act fixes the value at 10*l.* And the value must be estimated by the rent, and always is taken to be according to the rent (*l*). And here the rent is 8*l.* a year, and the half of 3*l.* 15*s.*; which two rents taken together do not amount to 10*l.* Indeed he was to pay Hill 4*s.* for the advantage he was to have after the crop was off: but an agreement of this sort between two joint-tenants cannot be considered as rent."

(*l*) See, however, supra.

A contract at 10*l.* per annum, the landlord paying parish taxes, was a good taking of a tenement of the proper value. (*Rex* v. *Framlingham*, Burr. S. C. 748; 2 Bott, 201; *Rex* v. *St. Paul's, Deptford*, 13 East, 320.)

If the tenement be worth less than 10*l.* per annum, if let by the year, it is not sufficient that it produce more than that sum when let by the week. (*Rex* v. *Hellingly*, 10 East, 41.)

If land be taken ready sown for crop, the value may be computed higher on that account. (*Rex* v. *Purley*, 16 East, 126.)

So also if the land which had been improved in value by the landlord having previously dug it, and on that account let it at double the ordinary value. (*Rex* v. *Ringwood*, 1 M. & Sel. 381.) *Le Blanc*, J. "I think the court must look to what was the value of the tenement at the time the pauper came to settle upon it, without considering by what means it became of that value. I agree that the value of the tenement increased by the labour bestowed upon it *after the letting*, cannot be taken into the account; as if the pauper had taken it at the rent of 5*l.*, and had bestowed labour upon it to the amount of 5*l.* more, that would not have made a renting of 10*l.* But where the labour has been previously bestowed, so as to make the land fairly worth the rent at the time it is taken, the court cannot separate the value of that labour from that of the land." *Bayley*, J. "This is nothing more than a party taking land in a high state of cultivation, which has rendered it of the value agreed to be given for it at the time of the taking. Nor do I think that it would have been worth less if it had been taken for a whole year. It is urged, indeed, that if the pauper had taken it for a year he would have had to dig it himself, and then it would have been of less value to him than what was given for it for a shorter period; but it does not follow, that if he had taken it for a year he would necessarily have had to dig it. I think, therefore, that this tenement, coupled with the other property, amounts to a tenement of more than 10*l.* a year."

The value, at the time the pauper came to settle, to be regarded.

The pauper agreed to take land ready ploughed and manured. At that time the ploughing and manuring was begun, but not finished. It was finished when he entered on it. Being of 10*l.* value at the time of entry, is sufficient. (*Rex* v. *West Cramore*, 2 M. & Sel. 132.)

An increased value arising from manure, agreed for at the time, but put in after the holding commences, may be included. (*Rex* v. *Poulton with Fearnhead*, 6 M. & Sel. 252; *Rex* v. *Huntsham*, 2 B. & Adol. 503.) Lord *Ellenborough*. "If we are bound down to the precise moment when the party enters, the consequence will be, that in many cases the improved value to which the landlord contracts to raise the land, can never be taken into account. In many contracts there will be stipulations of some advantage to the tenant increasing the value of the tenement, which induce him to come to settle upon it, on the faith of having this improved value made good to him; these, therefore, when made good, may fairly be referred to the value at the time of the coming to settle. I might instance stipulations on the part of the landlord to paint and paper, or to make additions to the dwelling. In cases like these the value contemplated and engaged for by the contract, as it is an improvement from which the tenant is to derive a benefit, and perhaps his motive for coming to inhabit there may fairly be set down to the account of its value at the time he comes to settle, within the meaning of the act. I do not venture into all the cases for the purpose of reconciling the various *dicta* with the statute. It would be an Herculean labour to conflict with, and I am not sure that it would be attended with success." *Bayley*, J. "I agree that this was a tenement sufficient to confer a settlement. It has been argued that to constitute a tenement of the yearly value of 10*l.*, so as to make the party irremovable under this act, or, in other words, to confer a settlement, the tenement must be of the requisite value when he enters

Increased value after commencement of the tenancy.

upon it. But I think the argument would be more correctly stated thus—that the tenement must be of the value of 10*l.* at the time of entry, or be made of that value at the expense of the landlord; and that this is so appears from the distinction which has been taken where the improvement is to be at the expense of the tenant; in which case it has been held that it ought not to be taken into the account. This was the principle on which *Rex* v. *Aston* (infra), was decided. The observation of *Le Blanc*, J., in *Rex* v. *Ringwood* (p. 550), certainly was not made in reference to the distinction between the actual value of the land at the moment of entering, and its becoming of that value a short time afterwards by the agreement and act of the landlord. It seems to me, that whenever it is a part of the contract for the letting, that the land is to be improved at the expense of the landlord, and this is done, the tenement is to be accounted of the improved value. According to the language of some of the cases, the question is, whether the pauper was of sufficient ability to obtain credit for a tenement of the yearly value of 10*l.* And certainly it is the same thing as it regards his ability, whether the land were of that value at the moment of taking it, or whether it was stipulated to be made so, and was made so afterwards at the expense of the landlord. I think both cases are equally within the words and spirit of the act." *Abbott*, J. "It cannot escape our notice, that in *Rex* v. *Aston* the increased value arose out of several acts voluntarily performed by the tenant: here it arises, not out of any act done by the tenant, but from the act of the landlord stipulated for before entry, and done in pursuance of that contract. What is done by the landlord under such circumstances may, I think, fairly be considered as referable to the time of entry. If the court were tied down to the precise time of entering, it would lead to very subtle inquiries, which would be inconvenient, as to the instant of time when such and such repairs were made as increase the value of the tenement to the necessary amount. To avoid such inquiries, I say, what is contracted for, before the entry, to be done by the landlord, and is afterwards done in pursuance of that contract, may be considered as done at the time of entering." *Holroyd*, J., to the same effect.

Distinction between improvements to be made by the tenant, and those to be made by the landlord.

If the person is tenant from year to year, the value in any year is sufficient, for every lease from year to year begins afresh every year, and is in point of law a new demise. (*Rex* v. *Bilsdale Kirkham*, 2 Bott, 137.)

But value increased by buildings made by the tenant during a lease for ninety-nine years is not to be regarded. (*Rex* v. *Aston*, 6 M. & Sel. 54.)

Reg. v. *Fladbury* (2 N. & P. 471; 10 A. & E. 706). In 1811 Paul Berrington, the father of this pauper, rented under verbal agreement, and occupied for a year, a cottage, yard and garden, for which he paid 10*l.*, but included in the taking was a right of ferry over the river Avon, from the river bank of the premises in question to the opposite bank of the river Avon in the parish of Cropthorne. The use of the ferry-boat and line was also included. The emoluments of the ferry were derived partly from sums paid in gross, in lieu of tolls, and partly in specific tolls, which were paid sometimes on the Fladbury side, sometimes in the course of the transit, and sometimes on the Cropthorne side. The cottage, yard and garden were not worth 10*l.* per annum alone. Lord *Denman*. "With regard to the settlement we must look at the facts referred to us. The case states that the cottage, yard and garden were not worth 10*l.* per annum alone; and the question was made, whether the profits of the ferry could be added so as to make up the 10*l.* I think that these profits may as well be added as tolls, or any other incidental value which arises from the occupation of the premises. It is true that the use of the boat and line was also included under the rental, but it is not stated of what value these were,

The right of ferry may be included in the value of the tenement.

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or whether the payment for the use of them would have reduced the rent below 10*l.*

If a chattel (as a post-windmill) be placed upon land by the tenant, its value cannot be added to the rent of the land.

Rex v. *Londonthorpe* (6 T. R. 377). John Ingram took a tenement of 6*l.* a year, and rented a piece of waste ground at the yearly rent of 10*s.* 6*d.*, on which he had the privilege of building a post-windmill. This he did at the expense of 120*l.*, and worked it for three quarters of a year, but rented the ground for two years and a half, the greater part of which time the mill was standing. The mill was constructed on cross traces, laid upon brick pillars, but not attached or fixed thereto, which is the usual mode of building mills of that nature. The mill was considered as the property of the tenant. He let it to one J. for a quarter of a year at the rate of 9*l.* a year, and during that time resided in the said tenement at the rent of 6*l.* The pauper sold the mill afterwards as a chattel interest. It was never rated. Per Lord *Kenyon*, C. J. "There is no doubt but that the taking of a windmill attached to the ground of the value of 10*l.* a year will confer a settlement; a *præcipe* will lie for such a windmill. The taking of a rabbit warren was also held to give a settlement, because it was a tenement; and so in the case of the Landsale colliery. But this windmill, as described in the case, is nothing but a chattel. And if in questions of this kind we were merely to consider the ability of the pauper, without at the same time considering whether he rented a tenement, we should abandon the statute altogether, and the decisions upon it. It might as well be said, that an iron malt-mill would give a settlement. This post-windmill was the sole property of the tenant himself, and it was not fixed in the ground, but detached from it. But in order to confer a settlement it should be so connected with the land as in legal contemplation to fall within the description of a tenement." *Grose*, J. "It is no more a tenement than a large coffee-mill put up in a house."

A windmill was of wood, with a foundation of brick; but the wood work not inserted in the brick foundation, but resting upon it by its own weight alone. No part of the machinery of the mill touched the ground or any part of the foundation. This cannot be reckoned in the value of the tenement. (*Rex* v. *Otley*, 1 B. & Ad. 161.)

But landlord's fixtures, which are parcel of the freehold, may be taken into the valuation of a 10*l.* tenement, though without them the tenement would not be of sufficient value to gain a settlement. (*Rex* v. *St. Dunstan in Kent*, 4 B. & C. 686; 7 D. & R. 178.)

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§ 3. SETTLEMENT BY RENTING A TENEMENT UNDER 59 GEO. III. C. 50.

The 59 Geo. III. c. 50, which took effect from 2nd July, 1819, made important alterations in the requisites for gaining a settlement by renting a tenement (see the act, ante, p. 522); and although that statute was

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(*n*) The statute applied to cases where a settlement had not been completely gained at the time it passed. (*Rex* v. *St. Mary-le-bone*, 4 B. & Ald. 681.) In that case the pauper hired an unfurnished shop in St. Pancras, of the yearly value of 10*l.*, and lived therein eight months. He afterwards hired an unfurnished shop and parlour, part of a house in St. Mary-le-bone, at 26*l.* a year, which he took possession of on the 25th May, 1819, and resided in and occupied the last-mentioned premises upwards of forty days, but only thirty-eight days of such residence and occupancy had elapsed on the 2nd July, 1819. *Bayley*, J. "The question in this case turns entirely upon the construction of the 59 Geo. III. c. 50, which took effect from the 2nd July, 1819. The pauper had on that day resided in and occupied, for a period of thirty-eight days, part of a dwelling-house in Mary-le-bone parish, at 26*l.* a year; so that, if the statute had not been passed, he would undoubtedly have acquired a settlement in Mary-le-bone by his subse-

repealed (so far as regards renting tenements) on the 22nd June, 1825, by the 6 Geo. IV. c. 57, settlements between 1819 and 1825 are governed by it (*o*).

(a) *What is a Tenement under 59 Geo. III. c. 50.*
(b) *The Tenement must be in one Parish.*
(c) *The Tenement must be hired for a Year.*
(d) *The Renting must be bonâ fide.*
(e) *Occupation.*
(f) *Residence.*
(g) *The Rent.*
(h) *Payment of the Rent.*

(a) *What is a Tenement under 59 Geo. III. c. 50.*

By the statutes 59 Geo. III. c. 50; 6 Geo. IV. c. 57; and 1 Will. IV. c. 18, which in this respect are the same, the *tenement* must consist of a *separate and distinct dwelling-house* or *building, or of land, or of both.*

The 59 Geo. III. c. 50, was introduced to avoid those perplexing discussions which had arisen as to the kinds of tenement which had before that time been held to confer a settlement, and which being sometimes made up of small items, as for instance, a cow, tenement, and potato land, were very litigious and vexatious. That statute, therefore, was introduced, confining the description of the tenement in question to land and houses and buildings. But then it became necessary to provide against the joining together portions of different houses to make up a tenement, which would still have left great room for dispute, and there-

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quent residence and occupation, which in the whole considerably exceeded forty days. But he had not on the 2nd of July acquired such settlement. It was contended, that the statute, being wholly expressed in the future tense, did not apply to such a case, but must be considered as wholly and absolutely prospective, and confined to tenements hired after the day on which the statute took effect. If this be the true construction, then a residence of one day prior to the statute, connected with a continued residence in pursuance of the original hiring for thirty-nine days after the statute, will confer a settlement. The statute, however, had in view, as appears by the preamble, the preventing of the disputes and controversies which had arisen respecting the settlement of poor people by the renting of tenements. And we think this object will be best attained by giving to the words of the enacting part their full and absolute effect, and by considering the statute as applicable to every case within its scope, wherein a previous settlement had not been completely gained and established before the statute was passed. A contrary construction might open the door to many disputes and controversies as to the nature and effect of inchoate titles. Whereas, according to the construction which we adopt, the only inquiry hereafter will be, whether a settlement had been acquired *before* the 2nd July, and the case will be considered as if the pauper had died or removed from the tenement on the first day of that month, and as if he had resided *on*, but not *after* that first day of July."

(*o*) In *Rex* v. *Carshalton* (6 B. & C. 93; 9 D. & R. 132), it was urged, that as the 6 Geo. IV. c. 57, recited the 59 Geo. III. c. 50, and then repealed that statute, without making any provision for such cases as might arise in the interval between the passing of the two acts, as the pauper resided for forty days on a 10*l.* tenement in the interval between the two statutes alluded to, he gained a settlement under the 12 & 13 Car. II. which thus became revived. *Bayley*, J. "See the extent to which that argument might be pushed. Suppose, by a statute of Elizabeth, it was made felony without benefit of clergy to steal to the value of 40*s.* in a shop; that by the 10th Geo. III. the same offence was made clergyable, and that by the 20th Geo. III. the 10th Geo. III. was repealed; then, according to your argument, an offence of that description, which was committed between the passing of the two latter acts, but not brought to trial till after the repealing act passed, would be an offence not clergyable."

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fore it was enacted in 59 Geo. III. c. 50 (and the enactment was continued in the subsequent statutes), that the dwelling-house or building must be separate and distinct. *Williams*, J., in *Rex* v. *Wootton* (1 A. & E. 232; 3 N. & M. 312).

Cases as to separate and distinct dwelling-house, &c.

As the subsequent statutes did not alter this part of the qualification, the cases decided under them on this point will be inserted under this head.

A shop was held jointly with a house. The shop had an internal communication with and formed part of an adjoining house. This is not a distinct and separate building. (*Rex* v. *Rickinghall Superior*, 1 Nev. & M. 47.)

But the floor of a house, with distinct staircases, is a separate dwelling-house. (*Rex* v. *Great and Little Usworth*, 6 N. & M. 812; 5 A. & E. 261.)

A granary 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, was held not to be a separate and distinct building. (*Rex* v. *Henley-upon-Thames*, 1 N. & P. 445; 6 A. & E. 294.)

The pauper rented and occupied the ground floor of a house, such ground floor consisting of a shop and two small rooms, access to which was obtained by means of a passage leading from the street to a yard at the back of the house. The passage had a door at each end, and was used not only by the pauper as a means of getting to his shop and rooms, but also by K., who rented and occupied the first floor of the house, and who, as well as the pauper, had a key of the front door of the passage. Both of the doors were kept closed at night. K. cleaned part of the passage, and the pauper the other part: it was held, that this ground floor was not such a separate and distinct dwelling-house, as that the pauper could gain a settlement by the renting thereof. (*Reg.* v. *Elswick*, 30 L. J. (N. S.) M. C. 66.)

Rex v. *Macclesfield* (2 Bar. & Adol. 870). 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. This is a distinct building. Lord *Tenterden*. "I should have been better satisfied if the justices in sessions had themselves found that these premises formed one distinct building. But it seems to me that they have found so in effect, for it is stated that the whole was under the same roof; that being so, it is a distinct building, which satisfies the words of the act." *Parke*, J. "We must take it, from the facts stated in the case, that this was one distinct building. I am by no means satisfied that the occupation of a dwelling-house and another distinct building in the same parish may not be sufficient to confer a settlement. The object of the act was to exclude all questions about the occupation of rooms. It appears to me not to be less a tenement within the meaning of the act where one detached house is occupied with another. It is not, however, necessary to decide that point here." *Taunton*, J. "To prevent any misconstruction, it must be understood that the court decides on the statement of the facts in this case. It is stated that one garret went over both houses and they were under one roof. It may be too much to say that two dwelling-houses can constitute one distinct dwelling-house, but this is a separate and distinct building." *Patteson*, J. "It is not necessary now to decide whether the occupation of two distinct dwelling-houses or buildings in different parts of a parish will be sufficient or not. This was one distinct building under one roof."

So 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. He acquired a settlement under 6 Geo. IV. c. 57. (*Rex* v. *Iver*, 3 Nev. & M. 28; Adol. & Ellis, 228.)

Although the statute 59 Geo. III. c. 50, and subsequent acts, requires the tenement to be, if a dwelling-house or building, separate and distinct, separate takings of different tenements from different persons suffices. (*Rex* v. *North Collingham*, 1 B. & C. 578; 2 D. & R. 743.) In that case the pauper's husband came to reside at North Collingham in 1812, where he hired a house (being a separate and distinct dwelling-house) with a garden for a year, and from year to year, at the annual rent of 6*l.* 6*s.*; and he continued to hold and occupy such house and garden, and paid the rent for the same from 1812, to his death in December, 1821; but during the last four years of his holding the house, he let to a lodger, at thirty shillings a year, one of the rooms on the ground floor. The room communicated with the yard appurtenant to the house by an outer door, and with the adjoining rooms of the house by an inner door, of which doors the lodger kept the keys. As there was another outer door to the house, no alteration was made in the house or doors during any part of the period for which Barks was tenant. The room was let unfurnished, and the lodger occupied nothing but the room, and Barks was assessed and rated for the entire house to the poor, the highways and king's taxes, and paid such assessments during his tenancy. In 1819 (*p*) the pauper *bonâ fide* hired a piece of garden ground in North Collingham, for a year, at the rent of 3*l.* 15*s.*, which ground he occupied for a year, and paid the rent, and continued in the occupation thereof up to the time of his death. *Abbott*, C. J. "The question arises on the 59 Geo. III. c. 50, which was made for the purpose of restraining the acquisition of settlements by renting tenements. It is a general rule, that acts in *pari materia* shall receive a similar construction. Before the passing of the act, a party might gain a settlement by taking various tenements at different times. The question is, whether, since the passing of the act, the tenement must be taken at one rent, and at the same time. [He then read the statute.] Now by this act it is not sufficient that the hiring should be of a tenement of the value of 10*l.* per annum, but the house must be held, and the land occupied, and the rent paid for one whole year; the first question is, whether the pauper held a tenement within the meaning of the statute. Under the former acts a tenement might consist of various parcels taken at different times, and there is nothing in this act to alter the old law in that respect." *Bayley* and *Best*, JJ., concurred. *Holroyd*, J. "The word *tenement* in this statute must receive the same construction as it has in former acts, made in *pari materia*. The statute was only intended to alter the law in the particulars distinctly pointed out; and nothing is said to make it necessary that the whole of the tenement should be taken at one time."

After the 59 Geo. 3, c. 50, the pauper held *together*, for a year, a house and garden, and paid rent for the same during that period. They were taken of different persons at different times. The rent of the house was six guineas. Although there was a separate taking of the house and land, this is a tenement within the 59 Geo. 3, c. 50.

So, in *Rex* v. *Tadcaster* (4 Bar. & Adol. 703; 1 Nev. & Man. 466), where 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: held, that he gained a settlement under the 6 Geo. IV. c. 57. Lord *Denman*. "It has often been observed, that under the 12 & 13 Car. II., the word 'tenement' has received a wider construction than the legislature intended to give to it; still we must be bound by the cases which have been decided upon the subject, unless it clearly appears by some of the latter acts an alteration has been made in this respect by the legislature. Now it appears to me that the legislature has not, by any of the more recent enactments, hit this precise case. The same construction has been put upon similar words in the 59 Geo. III." *Littledale*, J. "I am also of opinion that a settlement was gained by renting the house and shed in this case. There has been a discussion as to the meaning of the word

(*p*) Admitted to be after 59 Geo. III. c. 50.

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'tenement.' A *tenement* means that which a man *holds*, and it is immaterial whether he holds it of one man or of two, or more. The object of the statute was that a man, to gain a settlement, should hold premises to a certain amount, whether they were taken jointly or by distinct takings. Suppose three fields are taken by different hirings, this would not be, as is contended, a tenement. Or suppose a man to take half a field of one person, and half a year afterwards hires the remainder of another landlord, this would not, according to the argument, be an entire tenement. But I think that the meaning of the word 'tenement' is not confined to what a man takes at one time. Then it is said that under the words 'shall consist of a dwelling-house or building, or of land, or of both,' it is not competent to join a dwelling-house and building. The language of the legislature is incorrect, but I think that a house and building may be connected; and I will even go further, I think that the word 'both' may mean all three put together."

So a person hiring a house and stable for a year in a parish under different landlords, at rents amounting together to 10*l.*, holding such house and stable, and residing in the house for the year, and paying the whole rent, acquired a settlement in such parish under the act 59 Geo. III. c. 50, though the house and stable were entirely separate from each other. (*Rex* v. *Gosworth*, 1 A. & E. 226; 3 N. & M. 303.)

Two different dwelling-houses (one of which the tenant underlet, and never occupied), and in different parts of a parish, are *separate* buildings.

Rex v. *Wootton* (3 Nev. & M. 312; 1 Ad. & E. 232). The pauper, about the year 1800, became tenant of a cottage in the parish of Wootton at the yearly rent of 8*l.*, and resided in it with his wife and family until February, 1832. In April, 1827, a son-in-law of the pauper applied to Hall's landlord, Mr. Harris, and wished to become his tenant of another of his cottages in a different part of the parish of Wootton. Harris declined taking the son-in-law as his tenant, but agreed to let the cottage to the pauper at 5*l.* a year. The pauper never occupied this last-mentioned cottage, but on the same day he let it at the same rent to his son-in-law, who immediately took possession of it and resided in it for about three years and a half, when he quitted it, and the possession thereof was forthwith given to and accepted by Mr. Harris. The rent for the cottage occupied by the son-in-law was paid by him to the pauper, who paid the rent for both the cottages to Mr. Harris, and Harris gave a receipt for the same, amounting to 13*l.*, stating that such sum was paid by the pauper for one year's rent of the two cottages. *Littledale*, J. "I think that in this case a settlement was gained. It is nearly the same in its circumstances as *Rex* v. *Iver* (p. 554); but independently of that decision, I think the sense of the words in question is not confined to a single dwelling-house. The tenement, by renting which a settlement may be gained, is described in nearly the same words in the three statutes, 59 Geo. III. c. 50, 6 Geo. IV. c. 57, and 1 Will. IV. c. 18; and I take the meaning to have been that the tenement should consist of something in the nature of land; not, for instance, tithes, but something capable of a regular occupation. If such a case as this be not included, the language of the act so far fails to operate according to the intention. Looking at the words, 'a separate and distinct dwelling-house, or building, or land, or both,' I think 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 tenement, in respect of which a settlement is claimed, shall be either one or another of those three, or several of any. The meaning of the word 'tenement' has been narrowed by these acts, but not to the extent contended for." *Patteson*, J. "I am of opinion that the renting here also was within the act. I have always thought that the words, '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 the limited sense contended for." *Williams*, J. "The meaning of the legislature in

The house must be "separate and distinct," as to other persons.

using the words, 'a separate and distinct dwelling-house and building,' no doubt was, that there should be entire holdings, and that settlements should not be gained by a split or subdivided tenement. In this case two things were held by the tenant, both of which are within the express language of the act, he therefore gained a settlement." Confirmed (*q*).

Joint tenancy.

Although a dwelling-house must be "separate and distinct," so as to give a settlement, yet that is not so as to land; and therefore where a rating and occupation of a house and land by two joint tenants was proved, the rent paid for the land alone being 20*l.* a year, each of the joint tenants was held to have acquired a settlement. (*R.* v. *St. Lawrence, Appleby* (*Inhabitants of*), 6 Q. B. 842; 14 L. J., M. C. 56) (*r*).

(b) *The Tenement must be in one Parish.*

Under these statutes, the whole must be in the parish.

Under the statutes 59 Geo. III. c. 50, 6 Geo. IV. c. 57, and 1 Will. IV. c. 18, a person can no longer acquire a settlement by renting several small tenements in *different* parishes, making together a total of sufficient annual value. This settlement can now only be acquired in respect of the renting in the same parish in which the settlement is claimed.

The 59 Geo. III. requires that the whole of such land shall be situate within the same parish or township as the house wherein the person hiring such land shall dwell and inhabit. The 6 Geo. IV. requires that the tenement shall consist of a dwelling-house or land, or both, rented by such person in such parish or township. The 1 Will. IV. c. 18, requires that the tenement "shall be actually occupied in the same parish or township." But it is not necessary that the whole of the tenement should be taken at one time.

(c) *The Tenement must be hired for a Year.*

All the three statutes, 59 Geo. III. c. 50, 6 Geo. IV. c. 57, and 1 Will. IV. c. 18, render it essential that the tenement should be rented or hired for *one whole year*.

The taking of a tenement at twenty guineas a year, the rent to be paid weekly, but either party to be at liberty to give three months' notice from any quarter-day, is a

Rex v. *Herstmonceux* (*s*) (7 B. & C. 551; 1 M. & R. 426). Order of removal of J. Start from All Saints, Hastings, to Herstmonceux confirmed. Case:—On the 20th December, 1827, the pauper agreed with Foster to take a house in All Saints at twenty guineas a year, the rent to be paid weekly, and either party to be at liberty to give three months' notice from any quarter day, and at the expiration thereof to determine the tenancy. The pauper continued a year in the occupation of the

(*q*) See *Reg.* v. *Mayor of Eye*, 9 A. & E. 679, as to similar questions under the Municipal Corporation Act.

(*r*) This case was under the 6 Geo. IV. c. 57, but in this respect the three statutes do not differ; and in *Reg.* v. *Husthwaite* (1 E. & B. 501; 21 L. J., M. C. (N. S.) 189), the case in the text was recognised as applicable to a settlement since the 1 Will. IV. c. 18.

(*s*) Though the 59 Geo. III. c. 50, expressly requires that the dwelling-house, &c. "shall be *bonâ fide hired* for the term of *one whole year*, yet a conditional hiring for that term, with liberty for either party to determine the tenancy at a shorter period, is sufficient, provided the tenancy *do in fact continue* for a whole year." The doctrine in this case is precisely within the principle laid down in *Rex* v. *Byker* (p. 407), as to *conditional hirings* of servants. "If the bargain be originally made for an entire year, and terms are introduced applicable to a continuance of the relation of master and servant [*landlord and tenant*] during the whole year; but there is also a provision, that on a given event it shall be competent to the parties to put an end to or suspend the service [*tenancy*] for a part of the year, still a settlement is gained if the service is actually performed [*tenancy actually exists*] for a whole year, and neither party avails himself of the condition. A conditional hiring [*renting*] is for this purpose the same as an absolute hiring [*renting*], unless the condition is acted upon."

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yearly hiring within the 6 Geo. 4, c. 57.

premises, and paid a full year's rent. *C. a. v.* Judgment delivered by *Bayley*, J. "The pauper in this case clearly acquired a settlement in Hastings, provided this was a renting for a whole year, within 6 Geo. IV. c. 57, which requires that the tenement be *bonâ fide* rented for the term of one year. This statute repeals 59 Geo. III. c. 50. There is nothing in the preamble of 6 Geo. IV. which shows that it was then in the contemplation of the legislature to require more than what would constitute in ordinary cases a tenancy for a year. We find no recital in the act of any inconvenience having arisen where the tenancy by the original hiring was defeasible at certain periods. There is nothing in the act to show that by the term 'one whole year' anything more was meant than what the law considers to be a tenancy for a year. The question in this case will therefore be whether this was a tenancy for a year; and I cannot entertain any degree of doubt but that this is *primâ facie* a yearly tenancy. The legal effect of this agreement was to create a tenancy from year to year, with a proviso for determining that tenancy at an earlier period. Upon principle, as well as upon authority, the legal estate was vested in the pauper, subject to being defeated. In the case of all defeasible estates, the legal estate passes in the first instance. A lease for twenty-one years is frequently made determinable at the expiration of seven or fourteen years; yet it is not the less a lease for twenty-one years in law, though it may be defeated by matter *ex post facto* (*t*). So where the lease contains a proviso for cesser of the term upon non-payment of rent or non-performance of covenants. In Co. Litt. 42 a (*u*), several cases are put of defeasible life estates. Lord *Coke* there says, "If a man grant an estate to a woman *dum sola fuerit*, or *durante viduitate*, or *quamdiu se bene gesserit*, or to a man and a woman during coverture, or as long as the grantee dwell in such a house, or so long as he pay 40*l*., &c., or until the grantee be promoted to a benefice, or for any like uncertain time; which time, as Bracton saith, is *tempus indeterminatum*;—in all these cases, if it be of lands or tenements, the lessee hath in judgment of law an estate for life determinable if livery he made; and if it be of rents, advowsons, or any other thing that lies in grant, he hath a like estate for life by the delivery of the deed; and in court or pleading he shall allege the lease, and conclude that by force thereof he was seised generally for term of his life" (*x*). Order of sessions quashed (*y*).

(*t*) So *e converso* in *Birch* v. *Wright* (1 T. R. 380), Mr. J. *Buller* says, "If a tenant from year to year holds for four or five years, either he or his landlord, at the expiration of that time, may declare on the demise as having been made for such a number of years. So it is expressly laid down by the court in *Legg* v. *Strudwick* (Salk. 414.") This dictum was cited and recognised by *Gaselee*, J., in *Lippincott*, *Burt.* v. *Yard*, Taunton Spring Assizes, 1828. The words of Salkeld, however, are "*et per curiam*, it was held first, that after the two years the lessor or lessee might determine; but if the lessee held on, he was not then tenant *at will*, but for a year certain; for this holding on must be taken to be an agreement to the original contract and execution of it; and the first contract was from year to year; 2ndly, the third year is not in the nature of a distinct interest, because it arises from the same executory contract, and therefore the lessor may distrain the third year for the rent of the second; and such an executory contract as this is not void by the statute against frauds, though it be for more than three years, because there is hereby no term for above two years ever subsisting at the same time; and there can be no fraud to a purchaser, for the utmost interest that can be to bind him can be only for one year."

(*u*) 1 Tho. Co. Litt. 621.

(*x*) And see Preston on Estates, 405.

(*y*) His lordship afterwards re-delivered the judgment of the court in *Rex* v. *Sandhurst*, which had been given at the sittings before Michaelmas term (ante), confirming the opinion then pronounced by a reference to the above decision.

Reg. v. *Chawton* (4 P. & D. 525; 1 Q. B. 245). W. Bone was removed from Chawton to New Alresford. Order quashed. Case:—"Articles of agreement made on the 9th day of December, 1829, between R. Waight, of New Alresford, and W. Bone. Waight agrees to let, and Bone agrees to rent and take of him, all that dwelling-house, &c. in New Alresford, with the appurtenances, for the term of six months from the 1st January next, and so on from six months to six months, until one of the said parties shall give to the other of them six calendar months' notice to determine the tenancy, at and under the rent of 13*l.* for every six months, the first payment to be made on the 1st July, 1830, free of the payment of all rates and taxes. Bone agrees to keep the premises in suitable repair (accidents by fire and tempest only excepted), being first made so by Waight, and being allowed bricks, slate, lime, timber, and sand for that purpose. Bone is not to assign or underlet the premises without the consent, in writing, of Waight, it being understood that Bone may take lodgers whilst he occupies the premises himself." Under this agreement the pauper entered into possession on the 1st of January, 1830, and continued to occupy the premises mentioned in it for several years; all the other requisites of the 6 Geo. IV. c. 57, were fully complied with, and the only question was whether under the above agreement there was a taking and renting of the tenement for one whole year within the above statute. Lord *Denman.* "I think it is clear that in this agreement the term six months means half a year, and then a demise for one half-year, and so from half-year to half-year, as long as both parties should please, is a demise for a year." *Littledale*, J. "The authorities show clearly that a demise for a half-year, and so from half-year to half-year, would be a demise for one year at least, and the circumstances of the periods of the payment of the rent, and the length of time required in the notice to quit, sufficiently explain that calendar and not lunar months were intended." *Patteson*, J. "*Primâ facie*, the word 'month' alone would mean a lunar month, but that ordinary presumption is here clearly rebutted." *Coleridge*, J., concurred. Order of sessions quashed.

A pauper became tenant of premises under a written demise for the term of six months from the 1st of Jan. then next, (1830,) and so on from six months to six months, until six *calendar* months' notice to quit by either party, at the rent of, &c. for every six months, the first payment to become due on the next 1st of July: this is a taking for one year at least.

An agreement to take a dwelling-house "for three months from 25th December, at the yearly rent of 18*l.*, the first monthly payment to be made on 25th January, three months' notice from either party to be a sufficient notice to quit," with an occupation for eighteen months under it, was held to confer a settlement on the ground that there was a demise for three months, but that if the parties should go on after that time there should be a yearly tenancy determinable by a three months' notice. (*Reg.* v. *Willesden*, 32 L. J. (N. S.) M. C. 109.)

In a subsequent case the court went still further, by treating occupation under an agreement to take a house from the 25th March at the monthly rent of 1*l.* 16*s.* 8*d.*, and an agreement that one month's notice, to expire either on the 25th March, 25th June, 25th September, or 25th December, should be a good and sufficient notice to quit on either side, as a sufficient occupation under a hiring for a year. (*Reg.* v. *St. Giles without Cripplegate*, 33 L. J. (N. S.) M. C. 3.)

So more recently it has been held, that occupation for a year under a hiring of a house quarterly, at a yearly rent of 25*l.*, to be paid on the 29th September, 25th December, 25th March, and 24th June, a quarter's notice to be given by either party, is sufficient. (*Hastings Union* v. *St. James's, Clerkenwell*, 35 L. J. (N. S.) M. C. 65.)

Rex v. *Wainfleet, All Saints* (8 B. & C. 227; 2 M. & R. 223). Order of removal of B. Markwell from Wainfleet to Horncastle quashed. Case:—The pauper previously to Lady-day, 1822, hired from his wife's mother seven acres of land in Horncastle, which she then rented, at the yearly sum of 8*l.* 1*s.* 6*d.*, and for which the pauper agreed to pay her the same rent and 3*s.* per week in addition; his tenancy to commence from the ensuing Lady-day. No time was specified for which the pauper was

The pauper may hire for a year of a tenant from year to year.

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to take the land, but he occupied it from Lady-day, 1822, for three years, and paid the several rents as they became due; and he resided and slept in a house in Horncastle for upwards of forty days and nights in the year immediately subsequent to Lady-day, 1822. *Bayley*, J. "The case states that the pauper hired of his wife's mother seven acres of land, which she then rented at a yearly rent, and that he agreed to pay her that yearly rent, and also a weekly rent of 3*s*. *Primâ facie* a general hiring must be presumed to be a yearly hiring (*Doe* v. *Browne*, 8 East, 165; *Doe* v. *Watts*, 7 T. R. 83), and that presumption is the stronger where the subject-matter of hiring is land, because the land varies in its value at different periods of the year. It is said that the mother's estate was determined at the end of the current year, and that she could not therefore convey to the pauper an interest for a year, commencing on a future day. But the mother was tenant from year to year; she had an interest therefore which would continue beyond the year, unless something was done to determine it, viz. unless six months' notice to quit had been given. That interest she conveyed to her son. I think therefore the land in this case was hired for a year." *Holroyd*, J. "For the reason given, I am of opinion that the land was clearly hired for a year." *Littledale*, J., concurred.

A general taking is *primâ facie* for a year.

(d) *The Renting must be bonâ fide.*

By 59 Geo. III. c. 50, the tenement must be "*bonâ fide hired* by such person;" that is, the person claiming a settlement in respect thereof: the corresponding words in the 6 Geo. IV. c. 57, are "*bonâ fide rented* by such person;" the meaning of the legislature is the same in both forms of expression.

The renting must be *bonâ fide* by the pauper, but fraud of parish will not prevent a settlement.

Rex v. *Kibworth Harcourt* (1 M. & R. 691; 7 B. & C. 790. See the case more at length, post.) In this case, the pauper took a house and garden at 10*l*. a year; and shortly after his tenancy commenced, M. W., being churchwarden at the time, called upon him, and represented that the landlord had let the premises together with other lands to himself, and that the pauper was thenceforward to pay the rent to him; but that he should make a reduction of 8*s*. a year in his rent, to which the pauper assented, and he paid M. W. at that rate the two following quarters; and upon the death of M. W. two other quarters at the same rate to his successor in the farm. It appeared that this deduction of 8*s*. a year was repaid by the parish, which the sessions held to be fraudulent. *Bayley*, J. "As to the question of fraud, the case finds that neither the landlord nor the pauper was a party to the fraud; and though the act requires that the tenement shall be 'bonâ fide rented,' I think that expression can only be construed to mean that the renting shall be *bonâ fide* as between the landlord and tenant. Here the renting was *bonâ fide* as between the landlord and tenant. It seems to me therefore that all the requisites of the 6 Geo. IV. c. 57, have been complied with in this case; and that a settlement has been gained under that act."

It is a *bonâ fide* renting by the party, although a third person be surety to the landlord for payment of the rent. (*Rex* v. *Kegworth*, 2 M. & R. 29; 1 M. & R. Mag. Ca. 281.)

Case of minister of Wesleyan congregation.

By the practice of the Wesleyan congregations certain persons are appointed stewards for a given circuit, and are called circuit stewards. It is their duty to take houses as residences for the officiating ministers, and the rent and rates are paid by the stewards, or if by the hands of the ministers, the amount is repaid to them by the stewards. The ministers are appointed to officiate for one year certain, and are removed after the lapse of three years. It was held, that the minister so occupying a residence and paying by his hands the rent and rates (which were repaid to him), does not rent or hire the house so as to gain a settlement. (*Reg.* v. *Tiverton*, 30 L. J., M. C. 79.)

(e) *Occupation.*

The 59 Geo. III. c. 50, requires that such house or building shall be *held*, and such land *occupied*, for the term of one whole year at the least, by the *person hiring* the same. The 6 Geo. IV. requires that the *house*, or *building*, or *land*, shall be *occupied* under such yearly hiring for the term of one whole year at the least. And the 1 Will. IV. c. 18, requires that the house, land, or building, shall be *actually* occupied by the person hiring the same.

It may be doubtful whether the legislature did not intend that "to hold" and "to occupy" should be convertible terms, as they have used them both in these statutes upon the same subject. The courts of law, however, have felt themselves bound to notice the distinction in their legal signification, in adjudicating upon questions of settlement law, arising since these statutes were passed.

A panper occupied a tenement till within three days of the end of the year, when he died. His family remained in it beyond the year: no settlement was gained under 59 Geo. 3, c. 50.

The occupation must, therefore, be by the person hiring it, for a whole year. (*Rex* v. *Crayford*, 6 B. & C. 68; 9 D. & R. 80.) At Michaelmas, 1824, Thomas Stone, the pauper's husband, hired a house in Bexley, for a year, at the rent and annual value of 12*l*. He took possession on the 29th of September, and lived in it till the 26th September, 1825, when he died. His body remained in the house till the 30th. The rent for the first three quarters of a year was paid by him, and for the last quarter by the pauper. The pauper continued in the house till she was removed under the order, and paid rent up to 25th December, 1825. *Bayley*, J. "The safest rule to adopt in these cases is to adhere to the words of the act. [He then read the 59 Geo. III. c. 50, and added,] The settlement, therefore, is to be gained by the person who has hired the tenement, and occupied it for one whole year. Here the husband may have hired, but he has not occupied the house for a whole year, inasmuch as he expired three days before the end of the year; and assuming that the wife occupied and paid the rent for a year, still she is not the person who hired the house. This certainly is a very critical case, and perhaps if it had been foreseen by the legislature at the time of passing the act, some provision would have been made to meet it." Order confirmed. (See *Rex* v. *Carshalton*, post, p. 578.)

Effect of underletting.

A pauper who rents the whole house acquires a settlement, though he underlets part to lodgers, under 59 Geo. III. c. 50. (*Rex* v. *North Collingham*, 1 B. & C. 578.) The facts of this case are stated ante, p. 555. Upon the second question in this case, namely, whether the pauper gained a settlement when he underlet a part of his tenement, *Abbott*, C. J., said, "As to the second question, it is to be observed that a different expression is applied to land and to houses. The house is to be *held*, but the land is to be *occupied:* it was probably intended that a party taking lodgers, properly so called, should not be thereby prevented from gaining a settlement. The question is, did the pauper *hold* the whole dwelling-house? It is said that the lodger held a part distinct from the rest, so that a burglary committed in that part might in an indictment be laid to have been in the dwelling-house of the lodger. I think, however, that that proposition is not established by the facts stated. It is said that putting the key of the inner door into the hands of the lodger, was the same thing as if there was a brick wall between his and the adjoining room. If indeed it had been stated that the key was delivered to the lodger, for the express purpose of preventing the communication between the different apartments, there would be the more weight in the argument. But the key may have been delivered to him for the purpose of enabling him to enter either way; and if that was the object, then he had not any distinct dwelling-house. I rather infer from the facts stated, that that was the object for which the key was delivered; and if so, then the pauper held the whole house, and it is to be considered as one entire tenement; and in that case a burglary committed in the part occupied by the lodger, must have been laid to have been in the dwelling-house

of the pauper. For these reasons I am of opinion that the pauper gained a settlement in North Collingham." *Bayley*, J. "The second point is a question of fact, rather than of law. The sessions might have found it a separate holding, but I see nothing in the facts stated, from which a separation of the part occupied by the lodger from the rest of the house must be necessarily inferred." *Holroyd*, J. "I am of opinion upon the facts stated, that the whole dwelling-house is to be considered as the dwelling-house of the pauper." *Best*, J. "It was probably the intention of the legislature that a settlement should not be gained in such a case as the present; but we are bound to decide according to the words of the statute. As to the second point, I have no doubt that in an indictment for burglary, the room occupied by the lodger might be described as the pauper's dwelling-house. Notwithstanding the underletting, in point of law he still continued the tenant of the whole house."

In a subsequent case it was held that a settlement was gained under this statute by holding for one year a dwelling-house, part of which was let by the week to an under-tenant, who had no means of access to the rest of the house. (*Rex* v. *Great Bolton*, 8 B. & C. 71; 2 M. & R. 227.) The pauper's mother, Mary Hall, being a widow, went to reside in Little Bolton in May, 1823, where she hired a house, consisting of six rooms and a cellar, and being a separate and distinct dwelling-house, for a year, and from year to year, at the annual rent of 11*l.*; and she continued to hold such house, and actually paid the said rent for the same, for the space of two years and upwards. Before she went to live in the house, but after she had hired it and put some of her furniture into it, she underlet to one Clough the cellar under the house at 1*s.* 6*d.* per week, and he occupied the cellar during the whole of Mary Hall's tenancy. The cellar was let unfurnished, and Clough occupied nothing but the cellar. The cellar communicated with the street by an outer door, of which Clough kept the key; and at the time Mary Hall took the house the cellar communicated with the room above in the house by means of a step-ladder and a trap-door; but when she went to live in the house she took away the step-ladder, which she placed in one of the higher rooms of the house, and shut the trap-door, expressly for the purpose of preventing any communication between the cellar and the rest of the house. The trap-door was not fastened, except that the furniture of the house was placed upon it, as upon other parts of the room-floor. The trap-door was never used by the cellar tenant, or by Mary Hall. When the cellar was underlet to Clough there was no fire-grate in it, and soon afterwards Clough applied to Mary Hall for a grate to be put up in the cellar. Mary Hall furnished the grate at her own expense, and it remained there until she left the house, when she sold the grate to Clough, who paid her for it. The pauper lived with her mother, as part of her family, in this house, during the whole of her tenancy. The question was, whether the pauper's mother gained a settlement in Little Bolton under the 59 Geo. III. c. 50. Lord *Tenterden*. "The safest course is to give effect to the particular words of the enacting clause. Where the legislature uses in the same sentence different words, we must presume that they were used to express different ideas. The words are, 'that the house or building shall be *held* and the *land occupied*.' Here the house was *held* for one whole year, and the pauper's mother gained a settlement in Little Bolton." Order of sessions quashed.

It is not necessary that the hiring and occupation under 59 Geo. 3, should be for the same year.

Rex v. *Stow* (4 B. & C. 87; 6 D. & R. 110). *Three weeks after* May-day, 1820, the pauper took a house and land in Stow, at the annual rent of 15*l.*, for one year, from the preceding May-day to May-day, 1821; and at May-day, 1821, he took the same again at the same rent for the year then ensuing. The pauper resided in the house, and occupied the land from the time he first hired the same till *five weeks after* May-day, 1821, and paid the whole rent during the time he so occupied the house and land. *Abbott*, C. J. "All that the act in question requires for the obtaining a settlement has been complied with. There has been a hiring

of a house and land for a whole year, at a rent exceeding 10*l.*, and there has been a *bonâ fide* occupation and payment of rent for more than a year. That satisfies the whole of the act. It has been contended that the legislature must have meant the hiring, occupation, and payment to be for the same year (*z*). If that had been their intention, it would have been easy to say that the occupation and payment should be for *such* term. But as the words of the statute have been complied with, we cannot say that a settlement has not been gained, on the ground of some supposed intention of the legislature." *Bayley*, J. "Considering the state of the law before the act in question passed, the words of that act, and the decision of this court in *Rex* v. *North Collingham* (ante, p. 555), I think we are bound to say that a settlement was gained in Stow. Before the passing of the act it was not necessary that a tenement should be hired for any specific period; the mere occupation for forty days of one or more tenements, together of the annual value of 10*l.*, sufficed. Then came the 59 Geo. III. c. 50, requiring that the tenement should consist of a house or land, or both, that it should be hired for a year, occupied for a year, and that the rent should be paid for a year. All those requisites have been literally complied with, and *Rex* v. *North Collingham* decided that the taking need not be of one entire tenement; and I collect from that case, that the court did not think it necessary that, where there are several tenements, the holding of all should commence at one and the same time. And this is a reasonable construction of the act; for suppose a man to hire at Michaelmas land for a year at the rate of 9*l.*, and in like manner to hire at each quarter of the year land of the same value, and to occupy the whole, and pay the rent for five years, unless the occupation under different hirings can be connected, it would be difficult to say that he ever occupied a tenement of 10*l.* per annum for one whole year. That surely would be a very unreasonable construction. I am therefore of opinion, that the occupation under the different hirings stated in this case may be connected, and that the pauper thereby gained a settlement in Stow." *Holroyd*, J. "I think that a settlement was gained by the renting a tenement stated in this case, connected with the other circumstances of occupation and payment of rent. We are required to put a construction on a restrictive act; but even if that were not so, I should think that the words of it have been complied with. If it had been intended that the occupation should be for the same time as the hiring, the legislature would probably have introduced the words *for the said term.* It seems to me that the words 'nor unless' have been used in order to divide the sentence, and to exclude the construction now contended for on behalf of the appellants." *Littledale*, J. "Upon the strict words of the act I think that a settlement was gained in Stow, but at the same time I cannot but think the meaning of the legislature extremely doubtful."

Joint occupation.

As the tenement under 59 Geo. III. must be occupied by the pauper, if he agrees with another to share the expense and the profits equally of cultivating some garden ground, so as to constitute that other a joint occupier, then as the pauper cannot be considered as occupying more than a moiety of the garden, if that moiety is not of sufficient value, he gains no settlement though he pays the whole rent. (*Rex* v. *Tonbridge*, 6 B. & C. 88; 9 D. & R. 128.)

The mere abandonment of possession of a house within the year, without a determination of the tenancy, does not prevent a settlement being acquired.

Pauper took a house for a year at 10*l.* Having lived there nearly the whole term,

Rex v. *Stow Bardolph* (1 Bar. & Adol. 219). The pauper, M. Buck, at Old Michaelmas, 1819, hired a house in the parish of Downham Market, of one Jonah Weston, for a year, at the rent of 10*l.* He occupied the house from that time until a few weeks before Old Mi-

(*z*) This is required by the 1 Will. IV. c. 18, ante, p. 523, and post, p. 580.

he abandoned the premises a few weeks before the year ended, and they were then occupied by another person. It did not appear how that party came in. The pauper paid the whole year's rent. He gained a settlement under 59 Geo. 3, c. 50, by holding the house for a year.

chaelmas, 1820, when he removed to another house. The house was then occupied by one Mary Palmer. The pauper paid the whole year's rent, and took a receipt. The sessions found that the pauper had, previously to the Michaelmas, entirely abandoned the possession of the house, and stated the question to be, whether the pauper, having entirely given up possession of the house four or five weeks before Michaelmas, and being succeeded by another occupier, yet paying the whole year's rent, could be considered to have held the house for one whole year, within the 59 Geo. III. c. 50. *Bayley*, J. "This is a plain case. The distinction between land and houses, under 59 Geo. III. c. 50, was laid down in *Rex* v. *Tonbridge* (6 B. & C. 88). Land was to be occupied; a house might be held only. In the latter case, 'so as the tenure subsisted, it was sufficient.' Can it then be presumed here, that the relation of landlord and tenant was determined? It must be taken to have continued, unless a determination of it be shown. The case finds that the pauper hired this house for a year, and occupied it till a few weeks before Old Michaelmas, when he abandoned the possession, and removed to another residence; that the house was then occupied by another person, and that the pauper paid the whole year's rent. It does not appear how the succeeding occupier came in. The duty of a tenant on quitting possession is to give up the premises to his landlord; it was essential to the appellants' case that there should have been a surrender, but nothing of this kind is stated. The rent is not shown to have been paid before the end of the year, nor does any intervention of the landlord appear previous to that time. *Abandoning* does not determine a tenancy; the tenant held till he should give up to the landlord, and that, according to the case, must be taken to have been at the expiration of the year." *Littledale*, J. "It should have appeared that the holding was put an end to,—not merely that the possession was abandoned. If the pauper had given up the premises, and the landlord, with his assent, had accepted Mary Palmer as tenant, that would have been a surrender by act and operation of law, as in *Thomas* v. *Cook* (2 Bar. & Ald. 119). But we are not informed how Palmer came into possession." *Parke*, J. "The statute is not clearly penned, but construing it as other acts and writings are construed, we must suppose a distinction intended between lands and houses; that an occupation of the one for a year is required, but not of the other. In this case, for the purpose of the act, the house was the pauper's during all the year. Unless it could be shown that a regular surrender took place, or that another person was let into possession with the consent of the pauper as tenant (as in *Thomas* v. *Cook*), we cannot say that his interest ceased until the year was out." Order of sessions quashed.

Return after removal.

During the year the pauper, but not his family, was removed by an order. He returned the same day: held, sufficient occupation under 59 Geo. III. (*Rex* v. *Barham*, 8 B. & C. 99.) In that case the pauper, on the 6th April, 1823, hired a house in Dover for a year, of the value and rent of 12*l.* per annum, payable monthly. In January, 1824, the pauper became chargeable, and was by an order directed, with his family, to be removed to Barham. He alone was removed, and an overseer of Barham received him, gave him money, and directed him to return to Dover. He returned the same day to his house, and occupied it under the original contract till Michaelmas, 1824; when, in consequence of threats by the overseer of Dover to send him to gaol for coming back, he agreed with his landlord to take the house by the week. At Michaelmas, 1824, the pauper owed some rent. No final settlement took place till June, 1825, when, a distress having been put in, the pauper paid the rent, and left the house which he had occupied first under the yearly and then under the weekly hiring uninterruptedly since April, 1823. The pauper paid his rent on account as it suited him, part in meat (being a butcher) and part in money, but had no regular settlement till he left the house. Barham did not appeal

against the order in January, 1824. *Cur. adv. vult.* Judgment by Lord *Tenterden.* "The question depends on the 59 Geo. III. c. 50. [He then read it.] The language of this enactment is very peculiar. No person is to acquire a settlement by reason of dwelling forty days in any tenement, unless such tenement shall consist of a house (as it does in the present case) *bonâ fide* hired by such person at 10*l.* a year, for the term of one whole year; nor unless such house shall be held and the rent for the same paid for the term of one whole year at the least. It should seem, therefore, that if a pauper resides for forty days upon a tenement, and the other requisites of the act have been complied with, he gains a settlement. Now here the pauper resided in the house more than forty days, both before and after the removal, and all that the act requires in other respects was complied with; the house was taken for a year, held upwards of that period, and the rent paid. It has been contended, that the effect of the order of removal was to prevent the settlement only; all that the act requires has been complied with after that order was made. If the effect of the order had been to compel the pauper to abandon his tenement, it would make a difference; but he was absent from his home not even a day, and his family were never removed at all. It is admitted that *Rex* v. *Fillongley* (ante, p. 539) has decided that the removal did not put an end to the contract between the landlord and tenant; and under all the circumstances we think it safer to say that a settlement was gained under 59 Geo. III. by the residence before and after the removal. [His lordship then adverted to the supposed offence of the pauper in returning after removal, (for which see post,) and concluded.] Our decision may, perhaps, in this particular case, operate to defeat the object of 59 Geo. III.; but it is better to abide by the consequence than to put upon it a construction not warranted by the words of the act, in order to give effect to what we may suppose to have been the intention of the legislature." Order of sessions quashed.

(f) *Residence under 59 Geo. III. c. 50.*

Although the statutes require that the tenement shall be *occupied*, yet it does not follow that a longer *residence* is necessary than heretofore.

A residence therefore for forty days, and although not on the tenement, if it is in the parish, is sufficient under the statutes 59 Geo. III. and the subsequent acts, as it was before they were passed.

In *Rex* v. *Ditcheat* (post, p. 571), it was assumed that if the pauper himself had resided for forty days, he would have acquired a settlement. *Littledale*, J., said, that the legislature did not, by 6 Geo. IV. c. 57, intend to alter the law in that respect.

Residence for forty days sufficient since 59 Geo. 3, c. 50.

Rex v. *Wainfleet* (p. 559). *Bayley*, J. "Another objection is, that the pauper did not reside on the land, though he resided in the parish; and, secondly, that he did not reside in the parish for a year. Before the 59 Geo. III. c. 50, actual residence in the parish for forty days upon a tenement of the yearly value of 10*l.* conferred a settlement, although the party did not pay any rent for the forty days. But the 59 Geo. III. altered the law in that respect, and the language of that statute must be abided by as nearly as possible. It enacts, that no person shall acquire a settlement in any parish by reason of dwelling for forty days in any tenement rented by such person, unless certain conditions mentioned be complied with."

Such forty days must be within the year of occupation.

The residence must be within the year of occupation, but at what period of such year is immaterial. (*Reg.* v. *Willoughby*, post, p. 569.)

(g) *The Rent.*

The statutes 59 Geo. III. c. 50; 6 Geo. IV. c. 57; and 1 Will. IV. c. 18, are similar in this respect, and require that the tenement should

be *bonâ fide hired* or *rented* at and for the sum of 10*l.* a year at the least: and these statutes put an end to the too frequent perjuries and expensive litigations relative to the actual annual value of the premises.

By 6 Geo. IV. c. 57, s. 2, it is provided, that it shall not be necessary to *prove* the *actual* value of such tenement; it will, consequently, suffice to establish that it was *bonâ fide rented* at 10*l.* a year; and it will be no answer to prove that the premises were not of the yearly value of 10*l.*

If the rent is 10*l.* the real value is immaterial.

Rex v. *Ashfield-cum-Thorpe* (4 M. & R. 709; 9 B. & C. 939). Order of removal of W. Miller from Snape to Ashfield-cum-Thorpe confirmed. Case:—The pauper, after the passing of 59 Geo. III. c. 50, and before that of 6 Geo. IV. c. 57, *bonâ fide* hired a house and land for one year in Snape, at a rent exceeding 10*l.*, and held, occupied, and paid the rent for more than one year, though at the time the value of the holding and occupation was under 10*l.* *Bayley*, J. "The statute 59 Geo. III. c. 50, requires that the tenement be *bonâ fide* hired at and for the sum of 10*l.* a year. It seems to me that by that statute the actual value is immaterial, provided the tenement be *bonâ fide* hired at the specified rent. The provision, 'that it shall not be necessary to prove the actual value of the tenement,' was introduced into the 6 Geo. IV. c. 57, for greater caution." *Littledale*, J., concurred. *Parke*, J. "One fertile source of those disputes and controversies (mentioned in the recital of the 59 Geo. III. c. 50) was the necessity of proving the value of the tenement; and that statute, in order to prevent litigation, requires that the tenement shall be *bonâ fide* hired at the sum of 10*l.* a year. Generally speaking, the rent agreed upon between the landlord and tenant is the best criterion of value, and I think the legislature meant to dispense with any other proof of value. If the tenement hired turns out to be of much less annual value than 10*l.*, that would be evidence to show that it was not *bonâ fide* hired at that sum. But if it be *bonâ fide* hired at that sum, I think that is sufficient. That being so, the pauper gained a settlement in Snape."

Also immaterial if landlord pays rates and taxes.

The hiring of a house at 10*l.* a year, the landlord paying all levies and rates chargeable on the house, is a sufficient hiring and renting a tenement at and for the sum of 10*l.* a year within the 59 Geo. III. c. 50, and 6 Geo. IV. c. 57. (*Rex* v. *Thurmaston South End*, 1 B. & Adol. 731.) In this case:—The pauper, at Michaelmas, 1824, took a house for one year in St. Margaret, Leicester, of T. Mawley, at the annual rent of 10*l.*, Mawley agreeing to pay all levies and rates chargeable upon the house; and under this agreement the pauper occupied the house for one year, and paid 10*l.* by four quarterly payments. The question was whether the payment of the levies and rates by the landlord would defeat the settlement. Lord *Tenterden*. "Where the intention and the object of the legislature are doubtful, it is a safe rule of construction to be guided by the words of the act of parliament, taking them in their plain ordinary sense. The 59 Geo. III. c. 50, requires that the tenement shall be *bonâ fide* hired at and for the sum of 10*l.* a year at the least, for the term of one whole year, and that the rent for the same be actually paid. Here the house was *bonâ fide* hired at the sum of 10*l.*, and the rent has been actually paid for the term of one whole year. If it had been the intention of the legislature that the rent to be paid to the landlord should be 10*l.*, exclusively of all tenant's taxes, they would have said so in express terms. Perhaps the matter did not occur to the framers of the act; and if not, we cannot introduce such a provision. If it did occur to them, then the legislature must be considered as having intentionally omitted that provision. The cases put, of collateral benefit wholly unconnected with the occupation of the tenement, are not in point. In those instances, if they occurred, there might be ground for saying that the house was not *bonâ fide* rented at 10*l.* a year. But here the benefit conferred on the tenant was in its nature connected with the

occupation. We cannot say that he has not *bonâ fide* paid 10*l.* rent." *Littledale*, J. "This case appears to me to fall within the express words of the 59 Geo. III. c. 50, and the 6 Geo. IV. c. 57. The tenement was *bonâ fide* hired at and for the sum of 10*l.* a year, and the rent for the same actually paid for the term of one whole year. If the legislature had intended to make a distinction between cases where the landlord paid the rates and taxes, and where he did not, they would have introduced an express provision for that purpose. Their attention must in all probability have been called to it by the decisions in *Rex* v. *Framlingham* (ante, p. 550), and *Rex* v. *St. Paul's, Deptford* (ante, p. 550). In those cases it was considered that the 'yearly value of 10*l.*' mentioned in the 13 & 14 Car. II. and 9 & 10 Will. III., might be calculated without deducting the rates and charges usually deemed tenant's taxes. The legislature, by not altering the law established by those decisions, have adopted it. Here the word rent must be taken in its ordinary sense, to import not what the landlord put in his pocket, but the sum paid by the tenant for the use of the premises. The payment of the taxes by the landlord was a collateral term introduced by agreement. I think, therefore, the house was hired at and for the sum of 10*l.* a year at the least, within the meaning of the 59 Geo. III. c. 50, and that the rent for the same has been paid, and therefore that the pauper gained a settlement in the parish of St. Margaret, Leicester." *Taunton*, J. "I am of the same opinion. A general principle may be considered as established by *Rex* v. *Framlingham* and *Rex* v. *St. Paul's, Deptford*, with reference to all cases where tenant's taxes are paid by the landlord; viz., that if the sum paid to him by the tenant be 10*l.*, it will be a sufficient yearly value of 10*l.* to gain a settlement. That being so, does the statute 59 Geo. III. c. 50, revoke those decisions, and give any new rule on the subject? I find nothing of that sort. The statute merely requires, in addition to the hiring of a tenement at and for the sum of 10*l.* a year, that the rent shall be paid. The taxes here are collateral to the rent. As the decisions just mentioned were well known long before the statute 59 Geo. III. c. 50, passed, it may be presumed that if the legislature had intended to alter the law in this respect, they would have used the words 'at and for the sum of 10*l.* per annum, clear of all taxes, parliamentary and otherwise, and all other outgoings.' In *Rex* v. *St. Paul's, Deptford*, the judges, who expressed some doubts, still felt themselves bound by the authority of *Rex* v. *Framlingham;* and if so, *à fortiori*, we are bound by the two cases." See also *Rex* v. *St. John's in Bedwardine*, where it was held that the fact that the rent was 10*l.* instead of 9*l.*, because the landlord agreed to discharge all taxes and payments, and had paid the tithe, was immaterial.

(h) *Payment of the Rent.*

The *actual* payment of any rent for the purpose of gaining a settlement was first rendered necessary by 59 Geo. III. c. 50. The 6 Geo. IV. c. 57, contains a similar though less extensive provision. Under the former statute the rent, whatever the amount, must be paid for the term of one whole year at the least *by the person hiring the same.* These latter words are omitted in 6 Geo. IV. c. 57; and under that statute it was sufficient if the rent was paid by the person hiring or by any other person (*a*). But the 1 Will. IV. c. 18, again requires that the rent should be paid *by the person hiring the same.*

As regards the amount of rent paid the 59 Geo. III. c. 50, required the rent to be paid for the term of one whole year. The 6 Geo. IV.

(*a*) *Rex* v. *Ditcheat* (post, p. 571), *Bayley*, J., said, "That the words 'by the person hiring the same,' may be considered as struck out of the 6 Geo. IV. c. 57, and the law altered so far as it required that the rent should be paid by the person hiring the premises."

c. 57, required the rent to the amount of 10*l.* to be paid for the term of one whole year, which was held to require the whole year's rent to be paid. (*Rex* v. *Ramsgate*, 6 B. & C. 713; *Rex* v. *Ashley Hay*, 8 B. & C. 27.)

The 2nd section of the 1 Will. IV. c. 18, which is retrospective so far as 22nd June, 1825 (*b*), rendered payment of 10*l.* sufficient under 6 Geo. IV.; but it does not apply to the 59 Geo. III.

In ascertaining whether the pauper has acquired a settlement by renting a tenement, by complying with the law in respect to the payment of the rent, it is most material to attend to the *dates* of the transactions. The rent must be paid *by the person hiring* the tenement under 59 Geo. III.; *i. e.* from 2nd July, 1819, to 22nd June, 1825: from this time (the date of the 6 Geo. IV. c. 57), to the 30th March, 1831, the rent may be paid by any person. But from the latter period (the date of 1 Will. IV. c. 18) the payment must be by the person hiring the premises. The *whole* rent must be paid under 59 Geo. III., but rent to the amount of 10*l.* is sufficient after 22nd June, 1825.

Payment by assignees under an assignment of the tenant's personal estate upon trust inter alia to pay rent, was held not to be a payment by the tenant, for the payment would not be considered as a payment by one person by the hands of another. (*Rex* v. *Pakefield*, 4 A. & E. 612; 6 N. & M. 16.)

In January, 1831, 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

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(*b*) *Rex* v. *Dursley*, 3 Bar. & Adol. 465. In March, 1829, the pauper took a house in St. George's, Hanover-square, at a yearly rent of 36*l.* He resided in and occupied that house from Lady-day, 1829, until August, 1830, and paid during such occupation several sums on account of rent, amounting in the whole to 29*l.* The question was, whether 1 Will. IV. c. 18, s. 2, applied to this case. Lord *Tenterden*. "I think we must understand the second section to be retrospective, because it would be useless unless it were so. The words that 'payment to the amount of 10*l.* shall be *deemed* sufficient for the purpose of gaining a settlement *under the said recited act*,' import that, as to the payment of rent, the statute is declaratory. If the words had been 'it is hereby declared that payment, &c. shall be deemed sufficient,' there could have been no doubt that the clause would be retrospective. Here the words are the same in effect." *Littledale*, J. "The act is not very clearly expressed; but taking the words in the first section, 'the rent for the same to the amount of 10*l.* at the least,' to be descriptive of the amount of rent to be actually paid, which I suppose is meant, then the effect of the first section is, that 'after the passing of the act no settlement shall be gained unless rent to the amount of 10*l.* be paid;' and if that be so, then unless the second section be retrospective, it adds nothing to the former." *Parke*, J. "This act is to '*explain*' the former. Sect. 1 provides for settlements by renting for the future. Sect. 2, therefore, unless it be retrospective, is without object." *Patteson*, J., concurred. Order of sessions quashed. See *Reg.* v. *Brighton*, post.

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, that there had not been a payment of a year's rent by the person hiring. (*Reg.* v. *Melsonby*, 12 A. & E. 687.)

The rent must be paid before the order of removal is made, for without payment no settlement had been acquired. (*Rex* v. *Ampthill*, 2 B. & C. 847; 4 D. & R. 447.) *Bayley*, J. "In this case the pauper took the tenement at Midsummer, 1822, for one year; the year expired, and the rent became due and payable at the expiration of that time; and if the pauper had made a legal tender of the rent upon the premises before sunset, or the last hour of the day when it became due, and had been able to show that he was always afterwards ready to pay it, possibly such a tender might have been considered in point of law as equivalent to payment. But in this case he had neither paid the rent nor done anything which, in point of law, can be considered as payment at the time when the order of removal was made." *Holroyd*, J. "I am of opinion that the subsequent payment of rent does not, by retrospective operation, give the party a settlement in St. Botolph at the time when the order of removal was made." *Littledale*, J. "The subsequent payment of the rent cannot, by retrospective operation, give him a settlement at the time when the order of removal was made, and therefore the pauper had not gained any settlement at that time, and having then become actually chargeable, he was properly removed."

A tender may be equivalent to payment.

But where after an order of removal from parish W., in which the pauper had completed a settlement by renting a tenement all but payment of a second half-year's rent, to parish B., and appeal and the order confirmed, the pauper returned to W. and completed the settlement there by paying a second half-year's rent, and subsequently removed to B. and became chargeable there, it was held that it was competent to that parish to move him back to W., as the original order did not put an end to the inchoate settlement, and as the payment had no relation back, the settlement was acquired after the original order. (*Rex* v. *Willoughby*, 5 Nev. & Man. 457; 4 A. & E. 143.) *Patteson*, J. "This case depends upon the construction which we are to put on the statute, which requires that in order to gain a settlement by residence and renting and occupation of a tenement, the rent shall be paid for the same. There has not been any case in which the court has decided that the rent must be paid within the year of occupation, or within a limited time after the expiration of it. It is said that it is not the occupation for a year, nor the payment of rent for a year, but the residence for forty days, that is the substantial ground of the settlement. That I do not deny: I admit that it is so: but still the question is, what is the *date* that is to be given to the settlement when acquired? The *time* of the forty days' residence, whether at the beginning or the end of the year, is immaterial. In this case there was an occupation for a year, residence for forty days (which residence may be in any part of the year of occupation), and half-a-year's rent paid. Under these circumstances an order of removal was made; and there can be no doubt but that at that time no settlement was gained. The order was appealed against, and pending the appeal the party returned to Willoughby, and paid the remainder of the rent, so as to complete the conditions of the act of parliament. It is quite clear that this having been done, so as to fill up all the requisites, the party gained a settlement, unless it is affected by the order of removal which intervened. The order has been treated in the argument as if it had the effect of putting an end to every inchoate settlement. I do not find any authority for so treating it. * * * * Can it possibly be said that if a man is serving or renting a tenement, and the parish officers choose to get him removed, the contract is thereby put an end to? I see no reason for so saying. It is true that the order of removal is conclusive, that at the time of making the order the pauper had no settlement in Willoughby; but the whole question comes to

An order of removal does not put an end to a contract of hiring, or renting.

this, whether, when a man has done all that is required except one thing, the payment of the rent, and such payment is made after an interval, the settlement is to take effect from the time of completing the *main* requisites, or from the final completion by payment of the rent? We have the authority of *Rex* v. *Ampthill* for saying, that the payment has no reference back; and therefore, if the settlement is not to be dated from the time when the last requisite is complied with, there never can be a settlement gained in such case. The argument goes this length. That, however, cannot be right. The pauper did in this case, in my opinion, gain a settlement in Willoughby subsequent, in point of date, to the order; and therefore the order of sessions must be confirmed." *Williams*, J., and *Coleridge*, J., concurred.

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§ 4. SETTLEMENT BY RENTING A TENEMENT UNDER THE 6 GEO. IV. c. 57.

The 6 Geo. IV. c. 57, passed 22nd June, 1825, repealed the 59 Geo. III. c. 50 (*c*), and by its provisions removed doubts as to whether, under

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(*c*) See as to the effect of this repeal, ante, p. 553, note (*o*). In *Rex* v. *Oekley* (1 B. & Ad. 818). Case:—In 1824 the pauper rented a dwelling-house, garden, and meadow, in the parish of Dorking, at 7*l.* per annum, and continued to occupy the premises till Michaelmas, 1826. At Michaelmas, 1824, the pauper took four fields of meadow or pasture land, situate in the same parish, of Mr. Arthur Dendy, under an agreement, whereby Dendy covenanted, &c. with Wonham, to let him have the grass growing on ten acres of meadow land situate at Coldharbour, Surrey, from Michaelmas, 1824, to Michaelmas, 1825, in consideration of the sum of 8*l.* 10*s.* payable by Wonham to Dendy on or before Lady-day, 1825, and a further sum of 8*l.* 10*s.* payable in like manner on or before Michaelmas-day, 1825. In pursuance of this agreement, the pauper entered into possession of the fields at Michaelmas, 1824, dressed them, and turned his cattle upon them; but in April, 1825, having been compelled to sell his stock, and having none from that time to put in the fields, he agreed with his brother-in-law, Hills, to let him take the grass for the remainder of the term, upon payment of the rent from that time by Hills to Dendy; but Dendy was not aware of this agreement. In pursuance of such agreement, Hills stocked the fields, cut and carried away the crops, and enjoyed them until Michaelmas, 1825, when he went to Dendy and offered to pay him the rent; but Dendy refused to take it unless the pauper was present, and accordingly the pauper and Hills afterwards went together to Dendy, and Hills paid the rent in the presence of the pauper, and Denby gave the pauper a receipt for the same. The whole rent stipulated for by the agreement in August, 1825, was paid. The question for the opinion of this court was, whether, under the above circumstances, the pauper gained a settlement in the parish of Dorking, by renting a tenement under the 59 Geo. III. c. 50, and the 6 Geo. IV. c. 57. Lord *Tenterden*, C. J. "We are not called upon to say what would be the effect of the 6 Geo. IV. c. 57, as connected with the 59 Geo. III. c. 50, if the pauper had continued until the repeal of the last-mentioned statute, doing all the things thereby required. (See *R.* v. *Diteheat*, post, p. 571.) Here, the pauper had not only not gained a settlement by complying with the provisions of that act, when the new statute passed, but he was not in progress of gaining one, for he had ceased to occupy before the expiration of the year's tenancy. Unless therefore the 6 Geo. IV. c. 57, had passed, he never could have gained any settlement. Now that statute cannot have the effect of making that a good settlement which would not have been good within the 59 Geo. III. c. 50, if that act had continued in force. Besides, I must say, I do not think the statute 6 Geo. IV. c. 57, can be retrospective in part, but not so for all purposes. The order of sessions must be confirmed." *Littledale*, J. "We are not called upon to say whether the pauper would have gained a settlement if he had continued until the 6 Geo. IV. c. 57, to do everything which the 59 Geo. III. c. 50, required to be done;

the 59 Geo. III. c. 50, it was necessary to prove value (under the provisions of the statute of Charles) as well as a hiring for 10*l.*, by making the rent the sole criterion so far as relates to the amount.

The nature of the tenement remained the same as under the 59 Geo. III. c. 50.

Under this statute there must be a renting of the house or building or land at 10*l.* at the least for the term of one whole year, and an occupation of the house, building, or land under such yearly hiring, and the rent paid to the amount of 10*l.* for the term of one whole year at the least (see the statute, ante, p. 522).

The cases upon the distinctive points of this statute, as distinguished from the preceding and subsequent statutes, will be given under the heads of—

(a) *Occupation.*
(b) *Payment of the Rent.*
(c) *Apportionment of the Rent.*

(a) *Occupation under* 6 *Geo. IV. c.* 57.

The statute 6 Geo. IV. c. 57 differs from the previous statute 59 Geo. III. c. 50 in this respect: the statute of Geo. III. required, as has been seen, the house to be held and the land occupied *by the person hiring*. The 6 Geo. IV. simply required the building or land to be occupied under the yearly hiring. The consequence was, that an actual occupation by a third person was sufficient, if it was under the hiring.

Actual occupation by the wife of the tenant and of a part appropriated to a lodger entitled the husband to a settlement.

Rex v. *Ditcheat* (9 B. & C. 176; 4 Man. & R. 151). Jerrard rented a tenement in Lyncombe by the year, from Lady-day, 1825, to Lady-day, 1826, at the rent of 15*l.*, with liberty to quit at a quarter's notice. After the first month's occupation Jerrard left his wife living in the tenement,

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because, here, the pauper was not in progress towards gaining a settlement at the time when the last statute passed. That being so, I think that that which would not have been a good settlement if the 59 Geo. III. c. 50, had continued in force, is not rendered good by the subsequent statute." *Taunton*, J. "It is conceded that the pauper in this case did not comply with the provisions of the 59 Geo. III. c. 50, so as to gain a settlement under that statute. The provisions of that statute continued to be the law till the passing of 6 Geo. IV. c. 57. If no settlement therefore could be gained within that statute, I cannot understand how the 6 Geo. IV. c. 57, can govern the gaining of a settlement under hiring and renting which began at Michaelmas, 1824. To say that a settlement was gained by virtue of a statute which had not begun to operate, would extend the 6 Geo. IV. c. 57, over a period governed by another statute, and would give it not only a retrospective, but a suspending operation. But as there had ceased to be even an inchoate settlement, before the 59 Geo. III. c. 50, was repealed, I think it is impossible to maintain that a settlement was gained by virtue of the provisions of the 6 Geo. IV. c. 57, which did not begin to operate till the pauper's occupation had been discontinued." *Patteson*, J. "There was an interval between Michaelmas, 1824, and June, 1825, when there was not an occupation by the pauper sufficient to satisfy the existing law; and that defect cannot be supplied by a subsequent statute."

In *Rex* v. *Ditcheat* (9 B. & C. 981; 4 M. & R. 151, supra), it was held that a holding before the 6 Geo. IV. c. 57, and a holding subsequent to that period could be connected, provided the occupation before be such as satisfied the 6 Geo. IV. Per *Bayley*, J. "If a party, before 6 Geo. IV. began to operate, was in possession of a yearly tenement, and held it under such circumstances as that statute says shall be requisite to gain a settlement, a settlement will be gained. There are no words in 6 Geo. IV. which import that the taking shall be subsequent to the time at which that statute came into operation."

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and went to London and remained there about seven months (*d*). She remained on the premises, paid the year's rent, the receipts for which were given as if it had been received from the husband. A few days after Lady-day, 1825, Jerrard let an apartment in the tenement to Gay, at the yearly rent of 8*l.* with liberty to quit on a quarter's notice. Gay occupied till Lady-day, 1826, and paid his rent to that time. Jerrard gave notice at Christmas, 1825, to quit at Lady-day, 1826 (*e*). The landlord permitted the wife to occupy part of the tenement till Midsummer, 1826, on paying 38*s.* for the same, till which time she lived there. Jerrard never paid any parochial rates, although rated. *Bayley*, J. "The 59 Geo. III. c. 50, is repealed by the 6 Geo. IV. c. 57. The question therefore is, whether a settlement was or was not obtained under the last-mentioned statute? By the 59 Geo. III. c. 50, a settlement could not be obtained in the case of a house or building, unless such *house or building* were *held*, or in the case of *land*, unless it were *occupied*, and the rent for the same were actually paid for the term of one whole year at the least, *by the person hiring the same.* There was therefore a specific enactment that the house should be *held*, and the land *occupied*, and the rent paid *by the person hiring the same.* The language of the 6 Geo. IV. c. 57, is different. That statute is wholly silent as to the occupation or payment of rent by the person hiring; and it has been decided in *Rex* v. *Kibworth Harcourt* (post, p. 577) that according to the true construction of the statute, the payment of the rent need not be made by the party hiring. The words, *by the person hiring the same*, are to be considered therefore as struck out of the statute 6 Geo. IV. c. 57, and the law altered so far as it required that the rent should be paid by the person hiring the premises. It is now sufficient if it be paid either by the person hiring or by any other person. The words of the 6 Geo. IV. c. 57, s. 2, are, that the house, or building, or land, shall be occupied *under such yearly hiring*, and the rent for the same, to the amount of 10*l.*, shall be actually paid for the term of one whole year at

Effect of the words "by the person hiring the same," in 59 Geo. 3.

(*d*) With respect to whether there was a sufficient residence for forty days, the case was sent down to the sessions again, in order that it might be stated more distinctly what the nature of the residence was, or whether the whole forty days' residence required was actually by the husband himself. *Bayley*, J., observing that "the cause of the husband's absence, whether it arose from his own free will, or from compulsion, or from other circumstances, may possibly be material. In *Rex* v. *St. George, Southwark*, (ante, p. 546), the husband was incapacitated by law from residing in his own house; for he was in prison during the whole of the time, and had not the power of residing on his own property for forty days." *Littledale*, J., said that forty days' residence was "certainly essential; for the legislature did not intend by the 6 Geo. IV. c. 57, to alter the law in that respect. Upon the finding in this case, I rather collect that the pauper's husband had abandoned his wife, and gone to pursue his own course of living in some other place. If he had merely gone away for the purpose of business, with the intention of returning, the residence would be there still, though he was temporarily absent. I agree with my brother *Bayley* that the case ought to be sent back to the sessions, in order to have the fact ascertained."

(*e*) A question was raised in this case whether the holding before the 22nd June, 1825, when the 6 Geo. IV. c. 57, was passed, and the holding subsequent to that period could be connected? *Bayley*, J. "I am of opinion they may, provided the occupation before the 22nd of June be such as will satisfy the requisites of the 6 Geo. IV. c. 57; and therefore if a party, before the 6 Geo. IV. c. 57, began to operate, was in possession of a yearly tenement, and held it under such circumstances as that statute says shall be requisite in order to gain a settlement, a settlement will be conferred. There are no words in the 6 Geo. IV. c. 57, which import that the taking shall be subsequent to the time when that statute came into operation."

the least. Here the phrase is varied. The statute says, not that the house or land shall be occupied *by the person hiring the same*, but only that it shall be occupied *under such yearly hiring*. And although it may be difficult to arrive with certainty at the meaning of the legislature, which is not expressed in very intelligible language, I incline to think the true construction of those words is, that it shall be occupied by the person to whom that hiring gives the right of occupation, and that occupation by any other person, to whom that right is communicated either by assigning or underletting, is not an occupation under the yearly hiring within the meaning of the statute. That is my present opinion. If between this time and to-morrow morning I should change that opinion, I will certainly communicate it to the court. My learned brothers think that the words *under such yearly hiring* do not make occupation by the person hiring requisite, but that it is sufficient if either he himself or any other person under him occupy. I think that a party who occupies as an under-tenant, though he may be said in some sense to occupy under the yearly hiring, cannot be said to occupy under the yearly hiring within the meaning of this clause of the act of parliament; because though he does occupy in part under that yearly hiring, he does not *in toto;* he occupies under the yearly hiring and something else. As to the other question, viz. whether the holding before the 22nd of June, when the 6 Geo. IV. c. 57, was passed, and the holding subsequent to that period, can be connected, I am of opinion they may." *Littledale*, J. "The principal difficulty in this case arises upon the construction of the word 'occupied,' in the statute 6 Geo. IV. c. 57. 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. In this case it seems to me that the pauper has been the occupier of the house during the whole period. We have no distinct account how the apartment was let or occupied. In an indictment for housebreaking it might be laid to be the house of the pauper's husband. So in an action for use and occupation, he might properly be described not merely as holding but as occupying the house. In the 11 Geo. II. c. 19, s. 14, which gives the action for use and occupation where the agreement is not by deed, a distinction is made between the words held and occupied. That section enacts, 'that it shall be lawful for the landlord, where the agreement is not by deed, to recover a reasonable satisfaction for the lands, &c. held or occupied by the defendant, in an action on the case for use and occupation of what was so held or enjoyed.' By the 43rd of Elizabeth, the rate for the relief of the poor is to be on the occupier. The rate in this case must clearly have been made on the pauper's husband for the whole house though he underlet part. In Nolan's Poor Laws, 176, it is laid down that no lodger, though possessing the principal part of the house, was ever rated; but the owner, how small soever the part reserved for himself, is, in the eye of the law, the tenant for the whole, and is rated as the occupier. Then, as in an indictment for housebreaking (committed in the apartment let to Gay), the house might be described as the dwelling-house of the pauper's husband; and as he might be described as the occupier of the house in an action for use and occupation, and would be rateable to the poor as occupier in respect of the whole house, I think he must be considered in point of law as having occupied and resided in this house. It is not necessary in order to make a man an occupier that he should actually sleep or take his meals in a house, or that his family should actually dwell in the whole house; but the law considers him for this purpose an occupier if he hold the whole, and by himself or his family occupy part. I think therefore the pauper's husband may be considered to have occupied the house within the 6 Geo. IV. c. 57. It might have been otherwise if he had underlet the whole house and occupied no part. The word occupation as applied to a house

Effect of the words "under such yearly hiring," in 6 Geo. 4.

A holding under 59 Geo. 3, may be connected with one under 6 Geo. 4.

The distinction between *hold* and *occupy*.

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undoubtedly implies personal residence (*f*). But if a lessee of a house dwell in any part of it, though he let the other part, he in point of law is to be considered as the occupier of the whole. If that be the true construction of the word 'occupied,' the pauper's husband occupied the house." *Parke*, J. "I have entertained considerable doubt in this case; but I am inclined to think that a settlement was gained in Lyncombe. The question turns entirely on the 6 Geo. IV. c. 57. My judgment may have the effect of defeating the intention of the framer of that act. But it is a very safe rule of construction to adhere to the words of an act of parliament in their grammatical and natural sense, unless it appears clearly from the context that they were intended to be used in some other sense. There is a material difference between the 6 Geo. IV. c. 57, and the 59 Geo. III. c. 50. The latter expressly requires the building to be held, and the land to be occupied, and the rent to be paid, by the person hiring the same. The 6 Geo. IV. c. 57, omits the words 'by the person hiring the same.' It does not require the payment of rent or occupation *by the person hiring the same*, but occupation *under the yearly hiring*. These words may be satisfied by the continuance of the term and occupation by a sub-tenant or assignee during the continuance of that term. It is not necessary to decide in this case whether occupation by an assignee would be sufficient or not. Here there was an occupation by a person whose character is left doubtful. It does not appear by the case whether it was that of a sub-tenant having an entire occupation of one part of the building or that of a lodger. It seems to me there was an occupation by the husband of the pauper under the yearly hiring, provided the premises continued in the occupation of any person entitled under the tenancy created by the yearly hiring. I think we ought to give effect to the words of the act of parliament in their plain natural sense, unless we see clearly from the context that the intention of the legislature was different; but I find nothing in the context to show that that which those words taken in that sense import, was not their intention. I must suppose that the legislature, when they repealed the 59 Geo. III. c. 50, which expressly required an occupation by the person hiring, had some reason for omitting those words in the 6 Geo. IV. c. 57. Possibly that omission may have arisen from inattention on the part of the framer of the act, and it may have been intended to require occupation by the person who took the term. But it seems to me that the words used do not expressly require such occupation, and we must not presume the intention of the legislature, but collect it from the words of the act of parliament. Then if the meaning of the legislature be that which the words used naturally import, a settlement has been gained, provided there has been a residence of forty days." Case sent back to the sessions.

This case was followed by *Rex* v. *Great Bentley* (10 B. & C. 520), where it was held, that, under the 6 Geo. IV. c. 57, a pauper who rented a dwelling-house and land at a rent exceeding 10*l.* per annum, but who underlet the land, gained a settlement. Lord *Tenterden*. "The question in this case turned on the tenement act, 6 Geo. IV. c. 57. Upon consideration we are all of opinion that all that was required to be done by that act has been done in this case, and consequently that the pauper gained a settlement by renting the tenement in question. That statute enacts, that 'no person shall acquire a settlement in any parish or township by, or by reason of settling upon, renting, or paying parochial rates for any tenement, not being his or her own property, unless such tene-

(*f*) This remark has been misunderstood. Personal residence is not necessary for the purpose of a settlement. A party may occupy by retaining the key, and leaving a portion of his goods in the house. *Reg.* v. *St. Mary, Kalendar*, post, "SETTLEMENT BY PAYMENT OF RATES." See also observations of *Littledale*, J., on his judgment in this case in *Rex* v. *St. Nicholas, Rochester*, post, p. 581.

ments shall consist of a separate and distinct dwelling-house or building, or of land, or of both, *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.' Here the tenement consisted of a separate and distinct dwelling-house and land: it was *bonâ fide* rented by the pauper in the parish, and at and for a rent exceeding 10*l.* per annum for one whole year. But then the statute continues, '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.' The rent for the term of one whole year has been actually paid. The only question is, whether there was an occupation of the whole of the premises hired *under the yearly hiring?* It was objected that the pauper did not occupy the whole of the premises hired under the yearly hiring; that he let off the land, and that this clause of the act of parliament therefore was not satisfied. There is a difference between the language of 6 Geo. IV. c. 57, s. 2, and that of the 59 Geo. III. c. 50. The last-mentioned statute required that the house should be held, and the land occupied, *by the person hiring the same;* but those words 'by the person hiring the same' are omitted in the 6 Geo. IV. c. 57. The legislature, when they passed that statute, must have had in their minds the very act (59 Geo. III. c. 50) which they were repealing. We cannot, therefore, but consider that these words were left out by design. Then the only question is, whether the whole of the premises were occupied under the yearly hiring? It is clear that they were. That being so, every condition that was required by the terms of the act of parliament has been complied with, and the pauper has gained a settlement. We think it much the safer course to adhere to the words of the statute construed in their ordinary import, than to enter into any inquiry as to the supposed intention of the persons who framed it. The order of sessions must therefore be quashed. (See also *Reg.* v. *St. Mary, Kalendar*, post.)

What is occupation under the "yearly hiring."

Rex v. *Kibworth Harcourt.* (See the case, post, p. 577.) *Bayley*, J. "I also think that the pauper occupied the premises for one whole year under that hiring, for nothing that was done by Waterfield could have the effect of altering the original tenancy created between the pauper and the owner of the premises. The pauper remained tenant under the original taking, and the landlord ought to have distrained on him for the 10*l.* if it had been in arrear."

What a holding under the hiring.

The hiring of a cottage and land for a year, at the rent of 11*l.* 10*s.*, with an agreement that the land should be entered on at Lady-day, 1827, and held till Lady-day, 1828, and the cottage on May-day, 1827, and held till May-day, 1828: held, to be an occupation for one whole year sufficient to gain a settlement under 6 Geo. IV. c. 57. (*Rex* v. *Ormesby*, 1 Nev. & M. 27; 4 Bar. & Adol. 214.) *Denman*, C. J. "This question depends on the statute 6 Geo. IV. c. 57, which enacts, 'that no person shall acquire a settlement by reason of settling upon, renting, or paying parochial rates for any tenement, unless such tenement shall consist of a separate and distinct dwelling-house or building, or of land, or of both, *bonâ fide* rented by such person 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.' Now here the tenement did consist of separate and distinct building and land; they were *bonâ fide* rented for 10*l.* The question is, whether it was occupied for one whole year. The house and land were occupied under the yearly hiring, and each of them was for the term of one whole year. The words of the statute are therefore satisfied." *Parke*, *Taunton* and *Patteson*, JJ., concurred. Order of sessions quashed.

Under 6 Geo. IV. c. 57, no settlement is gained as joint-tenant of a dwelling-house, although the half of the rent paid by the pauper amount

to 10*l.* (*Reg.* v. *Caverswall*, 1 P. & D. 426; 10 A. & E. 270.) The pauper's late husband, during the years 1828, 1829, 1830, and 1831, rented *bonâ fide* a dwelling-house in Burslem, at the rent of 7*l.* a year, and occupied and paid the rent and poor-rates for the same, during the whole of that time, under that renting. 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, and paid a moiety, at least, of the rent and poor-rates due for the same, during the whole of that period. Lord *Denman*. "I am not aware that this question can be decided by reference to any previous cases. But I think that the words, 'separate and distinct,' in the statute meant that the tenant must be unconnected with any other person, and be a separate occupier." *Littledale*, J., concurred. *Patteson*, J. "I am of the same opinion, and it appears from the reports that I have been so for some time past." *Williams*, J., concurred. (See, as to joint-tenancy of land, ante, p. 534.)

In June, 1844, B. and W. rented and entered into possession of three acres of land in order to sink a coal-pit therein, at a yearly rent of 135*l.* an acre for the coal, and 50*s.* an acre for the surface. The rent for the coal was not to commence until after the coal had been reached; and it was agreed that the first half-year's rent should be paid six months after the coal was reached. The coal was reached in December, 1844, and in June, 1845, B. and W. paid half-a-year's rent for the coal, and one year's rent for the surface land. In September, 1845, the pit fell in and the coal and land were given up. From June, 1844, to September, 1845, B. rented a cottage in the same township for 5*l.* 10*s.* a year, and occupied and paid the rent. Without deciding whether a coal-mine was a sufficient tenement, it was held, that no settlement was gained by B., as there was no occupation by him for a year under a yearly hiring for 10*l.* (the rent of the cottage and a moiety of the surface not amounting to that sum). (*Reg.* v. *West Ardsley*, 32 L. J. (N. S.) M. C. 255.)

(b) *Payment of the Rent under* 6 *Geo. IV. c.* 57.

As has been already stated, there is a distinction between this statute and its predecessor 59 Geo. III. c. 50, and the amending act 1 Will. IV. c. 18. In a settlement by renting a tenement during the operation of this act (i. e. between 22nd June, 1825, and 30th March, 1831), it is not necessary that the rent should be paid by the person hiring the tenement; for the *first* section of 1 Will. IV. c. 18, which requires that the rent to the amount of 10*l.* for a dwelling-house, building, &c. must be paid *by the person hiring the same, is prospective only*. (*Rex* v. *Ruthin*, 2 N. & M. 97; 5 B. & Ad. 215.) The pauper took from a mortgagee in possession a farm, as tenant from year to year, at the rent of 24*l.* The tenancy was to commence according to the custom of the country; viz., as to the land *from St. Andrew's-day* (30th November), 1829, and as to the farm-house and outbuildings, from the 1st of May following. The rent was made payable half-yearly, on the 25th of March and the 29th of September. The pauper entered at the appointed periods, and occupied the land until after the 30th of November, 1830, and the house and outbuildings until the 1st of May, 1831. In August, 1830, the mortgagor and mortgagee having agreed upon a sale of the property, and a purchaser having been found, the three parties met, and were attended by the pauper's wife, whose husband sent her on his behalf. The mortgagee insisted upon being paid the half-year's rent due the 25th of March, 1830, and declining to complete the sale without it, and the pauper's wife being unprepared, the mortgagor, being anxious to avoid delay, without the previous knowledge or request of the pauper, but with the consent of the pauper's wife, paid the 12*l.* for the pauper. The pauper had not repaid the amount when the appeal was heard; but there had been dis-

puted accounts between him and Shaw. The year's holding as to the land, which was the principal taking, was begun and concluded, and the rent was due and paid as before mentioned, while the 6 Geo. IV. c. 57, was in operation, and before the passing of the act of 1 Will. IV. c. 18; but the year's holding of the house and outbuildings was not concluded until the 1st day of May, which was after the last-mentioned act came into operation. Lord *Denman*, C. J. "The only question here is, whether the rent to the amount of 10*l.* has been actually paid. The party entitled to receive the rent has been satisfied, and the stat. 6 Geo. IV. c. 57, does not require that it should be actually paid by the party hiring." *Littledale*, J., concurred. *Parke*, J. "The rent to the amount of 10*l.* has been paid by some person, and that is sufficient. The second section of the 1 Will. IV. c. 18, is retrospective; but the first is prospective only. The enactment is, that from and after the passing of that act, no person shall acquire a settlement except as there stated." *Patteson*, J. "The first section of 1 Will. IV. c. 18, prevents the gaining of a settlement, unless the rent to the amount of 10*l.* at the least shall be paid by the party hiring; if that were retrospective, section 2, which provides, that where the yearly rent shall exceed 10*l.*, payment to the amount of 10*l.* shall be deemed sufficient for the purpose of gaining a settlement under the recited act, would have been unnecessary."

Rent paid by the churchwarden sufficient, under 6 Geo. 4, c. 57 (*g*).

Rex v. *Kibworth Harcourt* (7 B. & C. 790; 1 M. & R. 691). About Lady-day, 1825, the pauper took of Thomas Bradshaw a house and garden situate in Kibworth Beauchamp, at the rent of 10*l.* for a year, to commence at the ensuing Michaelmas. The house and garden were then in the occupation of one Cooper, whose term expired at Michaelmas, but Bradshaw said he should expect Cooper to stand as tenant till Michaelmas, and should expect the rent when Matthew Waterfield, who was tenant of other premises to Bradshaw, paid his: and it should all be put in one receipt. The pauper was let into possession immediately by Cooper, and paid rent up to Michaelmas to Cooper; after which time he continued to occupy the premises, and paid rent as after mentioned up to Michaelmas, 1826. Early in the pauper's tenancy, Waterfield then being churchwarden of Kibworth Beauchamp, called upon the pauper, and represented to him that Bradshaw had let the pauper's premises, together with other premises, to him, Waterfield, and that the pauper was thenceforth to pay the rent quarterly to him. At the same time Waterfield told the pauper that he should make a reduction in his rent of 8*s.* a year, to which reduction the pauper assented, and a rent of 9*l.* 12*s.* was accordingly paid by the pauper to Waterfield, in the course of that year, by four quarterly payments, namely, the first two payments to Matthew Waterfield, and the last two, after the death of Matthew, to John Waterfield, his brother and successor in the premises. At the end of the year, a sum of 55*l.* was carried by John Waterfield to Bradshaw, the landlord, which sum included 10*l.* for the pauper's rent of the house and garden for the year just completed, and the residue was composed of rent for the other premises occupied by Waterfield. Bradshaw returned 5*l.* to Waterfield, and gave him one receipt for the whole rent. It further appeared that John Waterfield was reimbursed out of the parish funds the sum of 8*s.* paid by him to the landlord, over and above the 9*l.* 12*s.* The sessions found that there was fraud (*h*) in this case on the part of the township of Kibworth Beauchamp, but that neither the landlord nor the pauper was a party to the fraud. *Bayley*, J. "If 6 Geo. IV. c. 57, had required that the rent should be paid by the pauper, there would be some difficulty in overcoming the fact of fraud found. I am of opinion that the pauper did

(*g*) See this case observed upon by *Bayley*, J., *Rex* v. *Ditcheat*, ante, p. 571. But now by 1 Will. IV. c. 18, the rent must be paid by the person *hiring*.

(*h*) As to this, see the next case, and *Rex* v. *Tillingham*, ante, p. 524.

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acquire a settlement by renting a tenement in Kibworth Beauchamp under the 6 Geo. IV. c. 57. The renting, upon which the question in this case depends, did not commence till Michaelmas, 1825, after that act came into operation: therefore the former act of 59 Geo. III. c. 50, does not appear to me to bear upon the case. The new act does not require that the whole rent shall be paid by the person hiring the tenement, but only that it shall be 'actually paid.' Here the whole rent of 10*l.* was actually paid; and though a part of it was paid, not by the pauper, but by a third person, still the whole having been paid, I think the requisites of the statute have been satisfied in that respect."

Fraudulent payment.

In a subsequent case, however, it was held that where the payment of the rent by the parish officers for the occupier was found to have been made fraudulently, no settlement can be gained under 6 Geo. IV. c. 57. *Per curiam:* "The sessions having found that the 5*l.* 10*s.* was paid fraudulently no settlement was gained. It cannot be the meaning of the statute that the hiring or renting must be *bonâ fide*, but that the payment of the rent may be *mala fide*." (*Rex* v. *St. Sepulchre, Cambridge*, 1 Bar. & Ad. 924. See ante, p. 524.)

Payment after death.

Although the 6 Geo. IV. c. 57 did not require the rent to be paid by the person hiring the tenement, payment after his death out of the proceeds of the sale of his effects is not sufficient to confer a settlement under the operation of that act, for the settlement must be complete at the time of the death. (*Rex* v. *Carshalton*, 6 B. & C. 93; 9 D. & R. 132.) In that case, T. Long, the husband of the pauper, at Lady-day, 1824, came to reside in a house at Carshalton, which he had hired of his father-in-law by the year, at the rent of 14*l.* He put his own furniture into the house, and continued to reside there until July, 1825, when he died in possession. During his lifetime, no more than 25*s.* was paid by him on account of the rent. His widow, after his death, continued to reside in the house until September following, when the landlord put in a distress, under which he seized the furniture and goods put in by T. Long, which were purchased by the landlord (*i*). The following was the receipt: "Received from Mr. Savage, on advance of goods, 12*l.* 15*s.* for balance of rent due from T. Long, to Midsummer, 1825." Signed. *Abbott*, C. J. "The question is, whether the pauper had a derivative settlement from her husband; or, in other words, whether the husband had acquired a settlement in Carshalton at the time of his death? I think he had not, whether we consider the 59 Geo. III. or the 6 Geo. IV. as the governing law. There was not any payment of rent by the person hiring the tenement, as required by 59 Geo. III.; nor was there any payment of one whole year's rent, as required by the 6 Geo. IV. *at the time of his death;* and I think that the subsequent payment by means of the sale of his goods is not sufficient to satisfy the requisites of that statute. The husband not having acquired a settlement in his lifetime, the pauper cannot have any derivative settlement." *Bayley*, J., *Holroyd*, J., and *Littledale*, J., concurred. See *Rex* v. *Crayford* (ante, p. 561).

(c) *Apportionment of Rent under* 6 *Geo. IV. c.* 57.

Where the land lies in two parishes, evidence is admissible to show that the amount of rent paid for the land lying in one of those parishes is sufficient to confer a settlement, notwithstanding 6 Geo. IV. c. 57. (*Rex* v. *Pickering*, 2 Bar. & Adol. 267.) John Todd was removed from Pickering to Newton. Order quashed. Todd took of Hugh Kirby a dwelling-house and thirty-two acres of land, at the

(*i*) The house was taken in this case before the 6 Geo. IV. came into operation, but the rent became payable afterwards. The effect of a payment by a distress was argued but not decided. See, as to the latter point, *Rex* v. *Ruthin*, ante, p. 576, *Rex* v. *Pakefield*, ante, p. 568, and *Reg.* v. *Melsonby*, ante, p. 568.

annual rent of 20*l.*, to be holden from the 6th of April, 1826, for one year. The dwelling-house and twenty-seven acres of the land were situate within Newton, and the remaining five acres within Pickering. He entered and occupied the whole for the year, and at its expiration paid the rent of 20*l.*, residing during the whole time in the dwelling-house. It was objected by the appellants, that there was no evidence of the tenement within the township of Newton being of the yearly value of 10*l.* Whereupon the respondents offered to prove, that the proportion of the rent payable in respect of the dwelling-house and land in Newton was more than 10*l.* in amount, either by showing the land within Pickering to be of less value than 10*l.* a year, or by showing the dwelling-house and land within Newton to be of greater annual value than 10*l.* But the sessions refused to admit such evidence. It was stated by the appellants, that they were prepared to show that the land within the township of Newton was of no greater annual value than 6*l.* 5*s.* 3*d.* Lord *Tenterden.* "It was contended that no evidence of the value of the tenement could be received. The words of the 6 Geo. IV. c. 57, are undoubtedly very strong. The preamble recites, 'that the settlement of the poor had been made in some instances to depend upon the annual value of tenements which they may have rented, or upon the annual value of tenements in virtue of which they have paid parochial rates, and that the ascertaining such value in such respective cases had given rise to very expensive litigation, and that doubts had been entertained whether the 59 Geo. III. c. 50, had been effectual for the purpose of altering the law in respect of proving the annual value of tenements so rented.' Then section 2 enacts, 'that no person shall acquire a settlement by reason of settling upon, renting, or paying parochial rates for any tenement, unless it shall consist of a separate and distinct dwelling-house or building, or of land, or of both, *bonâ fide* rented by such person, 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.' Then comes the proviso that it shall not be necessary to prove the actual value of such tenement. Now it is said that as evidence of the entire value of the tenement as contradistinguished from the rent was not admissible, and no distinction is taken between cases where the whole tenement is situate in one parish and where it is situate in several, the evidence ought not to have been received in this case, and consequently that no settlement was gained in the parish of Newton. The effect of that would be, if the argument were to prevail, that if a party rented land in two parishes, for which he paid an annual rent of 300*l.* or 400*l.*, and one acre was in one parish and the residue in the other, he would not gain a settlement in either parish. We think the legislature never could have so intended. The rent stipulated to be paid must be taken, for the purposes of this case, as the criterion of the value of the entire premises; but evidence was admissible to show that the rent payable in respect of the land in the township of Newton amounted to 10*l.*: that is, supposing the house and all the land to be of the value of 20*l.*, it was a question for the sessions to consider how much of that sum was paid in respect of the land in Newton. The amount must depend upon the relative quantity and quality of the land in each parish. The case must go back to the sessions, in order that they, taking the entire value of the tenement to be 20*l.* (the annual rent), may ascertain by evidence how much of that sum was paid in respect of the dwelling-house and land in Newton." Case sent back to the sessions.

The rent for the whole must be the criterion of value.

So where there is a demise of land and an incorporeal hereditament at one fixed rent, and an occupation under the proportionate value of the land may be proved and a settlement required, although the demise

as regards the incorporeal hereditament is void as not being under seal. (*Reg.* v. *Hockworthy*, 7 A. & E. 493; 2 N. & P. 383.)

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§ 5. SETTLEMENT BY RENTING A TENEMENT UNDER 1 WILL. IV. c. 18.

Although the statute 1 Will. IV. c. 18 was apparently intended to operate merely as explanatory of the 6 Geo. IV. c. 57, yet as the courts decided that the 1st section was not retrospective (see ante, p. 576), the effect has been to create a distinction between the requisites of settlements under the two acts, in respect to the occupation. The 2nd section of the act, making the payment of rent to the amount of 10*l.* sufficient, being retrospective, does not make any distinction in the proof at the present day of a settlement acquired subsequent to 1825 (see ante, p. 568, note (*b*), p. 577).

Occupation under 1 *Will. IV. c.* 18.

The 1 Will. IV. c. 18, s. 1, made an alteration in respect to the occupation by requiring the house, or building, or land hired to be *actually* occupied under such hiring *by the person hiring the same* for the term of one whole year at the least.

Since 1 Will. IV. c. 18, there must be an *occupation* in *fact* of the *whole* dwelling-house or building of which the tenement consists *by the party hiring the same.* (*Rex* v. *St. Nicholas, Rochester*, 5 Bar. & Adol. 219; 3 Nev. & Man. 21.) In that case the pauper, on the 3rd of October, 1831, took a lease for a year of a house in the appellant parish, at the rent of 40*l.* per annum. Under this lease he entered into possession of the house, and remained there with his family until the 3rd day of October in the following year; he paid the rent for half the year, and fulfilled all the conditions of the statutes 6 Geo. IV. c. 57, and 1 Will. IV. c. 18, unless the court should be of opinion, that under the following circumstances the house was not occupied by the pauper within the meaning of the 1 Will. IV. c. 18. The house in question was a separate and distinct dwelling-house, consisting of three floors. When the pauper had been in possession of the premises about three months, viz. on the 4th of January, 1832, he underlet the two upper floors, unfurnished, to one Boucher; and during all the time Boucher stayed in the house the pauper occupied the ground floor only, by himself and his family. Boucher's agreement with the pauper was, that he should take these two floors of the pauper by the quarter, at the yearly rent of 22*l.*; that Boucher should have the use of a washhouse on the ground-floor in common with the pauper, and that the pauper should have a sleeping-room in the upper floor for one of his children, whenever Boucher did not want it for his own family. Boucher entered into possession of the two floors on the 4th of January, furnished the rooms himself, stayed in them upwards of two quarters, and paid the rent agreed on. During Boucher's residence there, he had the joint use of the washhouse, and the pauper's child, by the permission of Boucher, occupied the sleeping room in the upper floor about a fortnight or three weeks according to the agreement. The ground floor was not separated from the upper floors by any door or partition, and both the pauper and Boucher, during Boucher's residence in the house, had common access to it by the front and back doors, and each took the key of the front door whenever he had need of it, without asking permission of the other. *Denman*, C. J. "The meaning of the word *occupied* may vary according to the occasion or the subject-matter. The meaning, therefore, which it has received in considering what occupation was necessary to constitute a mansion-house in which burglary might be committed, or to give a right of voting, or to make a party rateable to the relief of the poor, is no test

of its meaning in this particular case. A new distinction is introduced by the 1 Will. IV. c. 18. Under 6 Geo. IV. c. 57, a constructive occupation was sufficient. This statute requires an occupation in fact. It recites the former act, and that doubts had arisen with respect to the intentions of the legislature concerning the occupation of *such* house, building, or land, by the person hiring the same, and enacts, that 'no person shall acquire a settlement in any parish 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 by the person hiring the same.' A constructive occupation will not satisfy these words. The statute requires in terms an actual occupation. Here it appears that the pauper underlet the two upper floors, and occupied the ground floor himself. It is impossible to say, in the face of the statute, that the pauper who occupied the ground floor only, actually occupied the whole house. The consequences resulting from this statute are remarkable; a person of whatever degree of respectability who hires a house by the year at a high rent, and underlets a part of it, will be prevented from acquiring a settlement by renting. But whatever the consequences may be I must say that the words which the legislature has used prevent a settlement being gained in this case." *Littledale*, J. "What I am reported to have said in *Rex* v. *Ditcheat* (p. 573) as to the meaning of the word *occupation*, applies to a constructive occupation only, which was sufficient to satisfy the statute that governed that case. The 1 Will. IV. c. 18, referring to the 6 Geo. IV. c. 57, enacts, that no person shall acquire a settlement by such yearly hiring of a dwelling-house, &c., unless such house, &c. shall be actually occupied under such yearly hiring by the person hiring the same. That evidently means an occupation in fact. But in this case another party, not the person hiring, had a right to occupy two-thirds of the premises; there was not, therefore, an occupation in fact of the whole house by the pauper, for he could not in an action of trespass justify going into the rooms which he had let, he had parted with all right to them from quarter to quarter. The word *actually* must have effect given to it; and giving the word full effect, it must mean occupation in fact, as distinguished from a constructive occupation. To the question I put during the argument, whether it would make any difference if the underletting were for a less period than a year, the proper answer has been given. If there be not an actual occupation of the whole house, within the statute, when part of it is let for a year, neither would there be when part of it is let for a week. It may be said, that deducting 22*l.*, which the under-tenant in this case was to pay, from the whole rent of 40*l.*, that part of the premises which the pauper retained was still rented at 18*l.*: but this cannot be taken into consideration. There must be an actual occupation of the whole house. The consequence undoubtedly will be, that all persons who let lodgings will be prevented from gaining a settlement by renting a tenement of any value. But it is better to adhere to the plain words of a statute than to depart from them on the ground of some supposed inconvenience." *Taunton*, J. "It is a safe rule of construction to adhere on all occasions to the language of a statute. It has been often much lamented that the judges have departed from the plain and literal construction of the statutes relating to the settlement of the poor. On the language of this statute, which was made to remove doubts arising as to occupation, I have no hesitation in saying, that it requires an occupation of the whole house by the party hiring. The word '*such*,' which comes before the words 'yearly hiring,' is very material, because, by reference to the recited statute, it must be taken to mean the yearly hiring of a separate and distinct dwelling-house or building, or land, or both. There must be an occupation in fact of a separate and distinct dwelling-house, and not only under the yearly hiring, but also by the person hiring the same. Now, were all these conditions performed

A constructive occupation is not sufficient.

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here? The pauper took a distinct and separate dwelling-house at 40*l.* a year, but divided the occupation of that dwelling-house between himself and Boucher. The latter probably had the larger part; but whether that was so or not is immaterial. We cannot say that the pauper actually occupied a separate and distinct dwelling-house under the yearly hiring, when there was an exclusive occupation of part by another person. I am therefore satisfied that there was not an actual occupation within the meaning of this statute. The order of sessions must be quashed." *Patteson*, J. "I am of opinion, on the plain words of this statute, that no settlement was gained by the pauper. The words '*actually occupied*' put an end to all question, and the case must be considered as if the word '*actually*' were incorporated in the former statute, which is not repealed by the 1 Will. IV. c. 18. Then reading the 6 Geo. IV. c. 57, as if that word as well as the words 'by the party hiring the same,' were incorporated in it, it will prevent any one from acquiring a settlement by renting a tenement, unless such house or building (that is, the separate and distinct dwelling-house, or building, or land, or both, of which the tenement is required to consist), shall be actually occupied under the yearly hiring, by the party hiring the same, for the term of one whole year. Now in this case it is clear that the whole dwelling-house was not actually occupied by the party hiring the same; part of it was occupied by another person. The decisions on the liability of persons to be rated, and their rights of voting, as occupiers, which have been referred to, are not affected by this case." Order of sessions quashed.

Same point.

So in *Rex* v. *Macclesfield* (ante, p. 554), *Parke*, J., observed, that the occupation in that case was sufficient under the 6 Geo. IV. "though it will not be sufficient since the 1 Will. IV. c. 18, as that requires an occupation by the person hiring the premises."

Underletting.

Rex v. *St. Nicholas, Colchester* (4 Nev. & Man. 422; 2 Adol. & Ellis, 599). Since 1 Will. IV. c. 18, a party who allows an under-tenant to have the exclusive occupation of rooms in the tenement, for a short time and small sum, acquires no settlement. By an agreement in writing, dated 24th March, 1831, the pauper and one Hutchinson hired a messuage at St. Nicholas for two years, at the rent of 60*l.*, payable half-yearly. Hutchinson was included in the agreement merely to guarantee the payment of the rent, the pauper only being intended to occupy the premises. 25th March, the keys were delivered to the pauper. 7th November, a distress was put in for the half-year's rent which had become due at Michaelmas, 1831, and the pauper's goods were sold under the distress by the bailiff, who, out of the proceeds, paid 30*l.* for the rent to the landlord who had employed him, and paid over the remainder, after deducting the costs of the distress, to the pauper. At Lady-day, 1832, the pauper gave up possession, in pursuance of an agreement made with Hutchinson, under which the latter took exclusively upon him the liability to pay the arrear of rent due from the pauper. During the year commencing Lady-day, 1831, and expiring Lady-day, 1832, three rooms in the said messuage were underlet by the pauper to Mr. D. W. Harvey, who had the exclusive occupation of them for three weeks, for which he paid 8*l.* Lord *Denman*. "This is in truth a question whether *Rex* v. *St. Nicholas, Rochester* (ante, p. 580), was well decided: for the attempt which has been made to distinguish that case from the present appears to me to fail. *Rex* v. *St. Nicholas, Rochester*, was decided after full argument, and upon great consideration, by my brothers and myself. At the same time, if there had been anything like a reasonable doubt raised as to the law having been improperly applied on that occasion, I am quite sure every one of us would have been willing to give the greatest attention to every argument that could be brought to show us that we were wrong. I recollect that upon the former occasion every judge who gave an opinion felt that the consequences were such as the legislature had not contem-

plated, and such as might involve some inconveniences. But we found the words of the statute too strong to grapple with. I am ready to declare that where I find the words of a statute perfectly clear I shall adhere to those words, and shall not allow myself to be diverted from the application of them by any supposed consequences of one kind or the other, as to which courts of justice are very often much deceived. The words of the statute (which came into operation on the 30th of March) are these: 'that from and after the passing of this act 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 (recited) 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.' The fact is found in this case, that during the year commencing at Lady-day, 1831, and expiring at Lady-day, 1832, several rooms were underlet by the pauper to Mr. Harvey, who had the *exclusive occupation* of them for three weeks, for which he had paid 8*l*. I find that this very case was contemplated by one of my brothers in the decision of *Rex* v. *St. Nicholas, Rochester;* and it was admitted that if *for any period* another person had the exclusive occupation of any part of the house, that would defeat the settlement; and it seems to me we should frustrate the object of the act if we said that under such circumstances the pauper would gain a settlement. Some difficulty is supposed to be raised by the case of innkeepers. I cannot say that I feel the difficulty, for there is no analogy between the occupation of a room by a guest, and the letting out to a person the exclusive occupation of a part of the house. The occupation in the former case is that of the innkeeper, who has a general control over the whole house, and who, in fact, occupies by means of his guest. I do not think that any doubt can be raised on that subject; nor do I think that any great inconvenience can result from any of the consequences which have been suggested. *Rex* v. *St. Nicholas, Rochester*, however, having been fully considered, and the words of the act completely warranting that decision, I think we are bound to say that in this case also no settlement was gained." *Littledale*, J. "I see no reason to depart from the opinion I gave in *Rex* v. *St. Nicholas, Rochester;* and I think that we are bound by that decision, and that this is not such an occupation as falls within the meaning of the act of parliament. Then the only question is, whether the year having commenced prior to the passing of the act, the inchoate settlement can be affected by it (*k*). Now it appears to me that the words of the act being 'that no settlement shall be gained from and after the passing of the act,' which was the 30th of March, it clearly does apply to this case." *Williams*, J. "I am of the same opinion. One of the reasons which induces me to abide by the decision in *Rex* v. *St. Nicholas, Rochester*, is, that I am quite satisfied of the truth of that which has been often said by learned judges, who have very well understood this subject, that it is as important, especially in cases of this sort, to abide by the rule of law when ascertained, as it is to determine the rule originally. Unless, therefore, I saw the clearest ground for doubting the correctness of the decision in *Rex* v. *St. Nicholas, Rochester*, I should certainly give my assent to that decision. It appears to me that it is perfectly consistent with the principles and objects of the acts which have been passed upon this subject. The 6 Geo. IV. c. 57, was introduced in consequence of the very expensive litigation occasioned by the then state of the law; and in order to remedy this evil, that act confined the legal settlement

(*k*) The 1 Will. IV. c. 18, was passed 30th March, 1831. As the pauper's tenancy commenced 25th March, it was objected that the new act did not apply to it.

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by renting a tenement, by enacting that no person should acquire a settlement in any parish, &c. by or by reason of settling upon, renting, or paying parochial rates for any tenement not being his own property, unless such tenement should consist of a separate and distinct dwelling-house or building, or of land, or of both, *bonâ fide* rented by such person in such parish, &c. at 10*l.* a year for one whole year; nor unless such house, &c. should be *occupied* under such yearly hiring, and the rent for the same to the amount of 10*l.* actually paid, for one whole year at the least. That at once got rid of much of the vexatious litigation which arose on the subject. After that act came the one upon which this question depends (1 Will. IV. c. 18), which is expressly stated to be 'An Act to explain and amend an Act of the Sixth of his late Majesty, as far as regards the Settlement of the Poor by the Renting and Occupation of Tenements.' Now in what respect does it explain and amend it? It explains and amends it by still further abridging and curtailing the power of gaining settlements by renting a tenement, in conformity with the principles of the former act; and it accordingly says, that 'no settlement shall be gained unless the house, &c. shall be *actually* occupied under such yearly hiring *by the person hiring the same* for the term of one whole year at the least.' It appears to me that the construction which was put upon those words by the court in *Rex* v. *St. Nicholas, Rochester*, is the true and right construction. It has been said, that this act ought not to have a retrospective operation (*l*). It is observable that the act does not affect the *contract*, but relates expressly to the *occupation*. It declares that after the passing of that act no settlement shall be gained unless an occupation of a particular sort shall take place. If the act had required a *contract* of a specific nature, an inchoate settlement, by reason of an occupation under a contract valid at the time when it was made, would not have been affected by this. This case is, however, totally different. I therefore am of opinion, that those words 'actually occupied,' &c. which are studiously introduced into this statute, must point to an entire exclusive occupation; and, if it does, we cannot enter into the question of degree—whether the underletting be of 10*l.* a year, or 5*l.*, or 50*s.* If there be a clear underletting by the party of any portion of the house, for however short a period of time, and for 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 party hiring the same. I should not have said so much upon this case if I had belonged to the court at the time of the former decision." Order of sessions quashed.

Assignment of part.

Where the pauper assigned the growing crops before the expiration of the year, but retains possession of the house only, he is not the occupier of the tenement so as to gain a settlement under 1 Will. IV. c. 18. Nor if he leaves the parish, with his goods and with that part of his family who resided with him, does he occupy, although a son sleeps in the house, boarding with his master in another part of the parish; nor although he leaves in the house a portion of his goods. (*Rex* v. *Pakefield*, 6 N. & M. 16; 4 A. & E. 612.)

On the other hand, a tenant, who takes in persons to sleep in some rooms, generally by the night only, but occasionally by the week, such persons having no right to the rooms during the day, and he retaining the keys of all the rooms and having constant access to and control over the whole house, actually occupies the whole. (*Rex* v. *St. Giles-in-the-Fields*, 6 N. & M. 5; 4 A. & E. 495.) In that case the pauper became the tenant of a house in the appellant parish in 1831, at the yearly rent of 24*l.* He held the house for three years, paid the rent, and complied with all the requisites of 6 Geo. IV. c. 57, and 1 Will. IV. c. 18, if

(*l*) See note (*k*), ante, p. 583.

under the following circumstances he was sufficiently in the occupation of the house. The pauper resided in the house with his family. The furniture in all the rooms was his, and he was in the habit of taking in labouring people to sleep in some of the rooms,—sometimes letting a bed, sometimes half a bed; the letting being generally by the night, but in some rare instances a bed having been let for the period of a week. The persons who thus slept in the house had no right to the rooms during the day, the pauper and his family having constant access to and control over the whole of the house, and the pauper always retaining the keys of all the rooms in his own possession. In the instances of letting for a week, which were of rare occurrence, the pauper let the bed only, reserving to himself the right of putting another bed in the same room at any time, if he thought proper. The question was, whether the pauper actually occupied the house within the meaning of the statute. Lord *Denman*. "It is clear that this was an actual occupation within the statute, although there was something which the pauper did not actually hold at all times, and although the parties, whom he took in, could not have been turned out in the dead of the night. The case of an innkeeper is a very strong illustration of the case, and nearly the same. A person who lives in a house, and merely lets out parts of it in the manner stated here, does not cease to be the actual occupier." *Littledale*, J. "The facts of this case completely distinguish it from *Rex* v. *St. Nicholas, Rochester*, where the tenant let a part of the house, and it was actually occupied by another person." *Williams*, J. "I am of the same opinion. It is true, as has been urged, that it is desirable not to fritter down plain rules, but we must deal with a case according to the facts, and here they put an end to all question."

So also a tenant who retained the key of the house, and left some trifling articles of furniture in it, and took another house, is an occupier within 1 Will. IV. c. 18. (*Reg.* v. *St. Mary, Kalendar*, post, "SETTLEMENT BY RATES."

The occupation must be of the whole.

Under 1 Will. IV. c. 18, the *whole* subject-matter of the renting must be occupied. Part of it equal to 10*l.* not sufficient. (*Rex* v. *Berkswell*, 1 N & P. 423; 6 A. & E. 282.) J. Wilday and family were removed from Berkswell to Ballsall. Order quashed. Case:—Before Lady-day, 1832, the pauper hired two cottages, being separate and distinct dwelling-houses, but adjoining to each other, and under one continuous roof, together with three acres of land, situate in the respondent parish, for a year from Lady-day, 1832, at the yearly rent of 14*l.* At Lady-day, 1832, the pauper entered into possession of one of the cottages and the land, and occupied the same, under the said hiring, till Lady-day, 1833. The other cottage he laid out money upon, and converted into a beer-shop, and underlet to J. Stoney at a yearly rent of 4*l.*, and Stoney occupied the same till near Lady-day, 1833, and paid the pauper the rent for it. The year's rent of 14*l.*, reserved by the agreement for the whole property, was paid by the pauper to the landlord. The cottage and land occupied by the pauper were worth more than 10*l.* of the remainder of 14*l.* paid by him for the whole premises. Lord *Denman*. "We think this statute (1 Will. IV. c. 18) cannot receive the construction contended for. Undoubtedly a great number of speculative questions may arise from that construction of the act which I think is the only true one, namely, that the subject-matter which forms the tenement should be occupied entirely by the party." *Williams*, J. "I am entirely of the same opinion. Before the passing of this act complaints used to be made of the *equitable construction* which had been put upon the statutes on this subject; now that we have to construe a recent set of acts of parliament, at least we ought to avoid that error. Each of these acts has been in restriction of the right of gaining a settlement. It seems to me the fair and obvious meaning of 1 Will. IV. c. 18, is, that the whole subject-matter of the taking should be occupied; and from the plain and obvious meaning I

think we ought not to depart." *Coleridge*, J. "I am quite of the same opinion, and I decide this case precisely on the same principle too; that is, desiring to give the full meaning to the plain words of the statute, and not allowing myself to speculate on what may be *equivalent* to it, or what may be within the spirit of it. I construe the statute simply according to its expressions. Looking at those expressions, I cannot doubt that it is necessary to say that the whole tenement, under the words of this statute, must be occupied by the person taking it—the whole tenement. And when we are pressed with the inconvenience or absurdity which may result from that, I cannot but recollect that exactly the same argument was used with regard to the whole rent. It was said, 'suppose a man rents 1,000*l.* a year, will you say he is not to gain a settlement, under the 6 Geo. IV. if he does not pay every farthing of that 1,000*l.* a year rent, when 10*l.* would be enough.' The court, however, then determined they would act on the words of the statute. If the decision leads to inconvenience, it will be easy for another act to be passed to remedy it. That seems the better course than for us to mould the words of the act."

The general rule of law that the fraction of a day is not to be regarded, applies to the computation of a year for the purpose of conferring a settlement by renting a tenement, and the 1 Will. IV. c. 18, requiring the occupation to be for "one whole year at the least," creates no distinction in this respect. Therefore an occupation from noon on the 30th September in one year to the 29th September in the next year is sufficient. (*Reg.* v. *St. Mary, Warwick*, 1 E. & B. 816; 22 L. J. (N. S.) M. C. 109.)

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§ 6. SETTLEMENT BY RENTING A TENEMENT SINCE 4 & 5 WILL. IV. c. 76.

No settlement shall be acquired unless occupier has been rated and paid poor rate for one year.

It has been seen that the 4 & 5 Will. IV. c. 76, s. 66, enacts that from and after the passing of this act (14th August, 1834), 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 year* (ante, p. 523). As to evidence of payment, see post, § 7.

Payment of rates by a joint tenant.

William Atkinson occupied a separate and distinct dwelling-house and farm in the parish of H., which were let to him and his father, Thomas Atkinson, as joint tenants, the rent and value of the land itself being sufficient to confer a settlement on both. The father resided in another parish, but he *bonâ fide* paid the rent of the farm occupied by his son. In the rate-books of H. "Mr. Atkinson" appeared as the name of the occupier of the house and farm in respect of two rates, and in a third rate the name of "Thomas Atkinson" appeared. The overseers had demanded and received payment of these rates from the father. It was held that the sessions were justified in finding first, that there was a sufficient occupation and payment of rent, as well as a sufficient assessment to and payment of rates to confer on William Atkinson a settlement in H. under the 1 Will. IV. c. 18, and 4 & 5 Will. IV. c. 76. (*Reg.* v. *Husthwaite*, 1 E. & B. 501; 21 L. J. (N. S.) M. C. 189) (*m*). Lord *Campbell*, C. J., in his judgment said: "As to the assessment of William, I think there was evidence of that * * * *. As to the question of payment by William, there seems to me to be no doubt Thomas was a joint tenant with William, and having paid the rates, he might bring an action or suit in equity for compensation, or, at all events, in settling their joint accounts he would be entitled to take credit for the amount paid, and he would take credit for it as having been paid on account of

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(*m*) As to the sufficiency of joint tenancy, see *R.* v. *St. Lawrence, Appleby*, ante, p. 557.

himself and William. Supposing there had been a joint assessment, and Thomas had paid, clearly that would have been a payment by both." *Wightman*, J. "We are to say whether there was any evidence to support a settlement, and as to that, two questions are raised: first, whether there was any evidence that William was assessed; and if any, then secondly, whether he was shown to have paid the rates. There was clearly some evidence that William was assessed to the rates. It might be doubtful who was meant by 'Mr. Atkinson,' but there was evidence of his being in actual possession, and that the other joint tenant was living at a distance off. There was, therefore, some evidence from which the sessions might draw the inference of his being assessed. As to the question of payment, there is much more doubt. Considering William to be the person actually assessed, no doubt he would be *primâ facie* liable to pay, and be taken to have paid; but payment is in fact made by Thomas. Thomas, however, is the person jointly interested with William and not merely a stranger, and as the rate is a charge affecting the joint occupation, the payment may be considered as made in respect of the interest really charged, and the person in actual occupation." *Crompton*, J. "Upon the facts stated, I think there was evidence to show that William was the person rated, and I cannot say that I feel any doubt upon the other question. I think there was a payment by both; the father acting for himself, and as agent for his son in respect of their joint tenancy and joint occupation. The privity existing between them was quite enough to give him an authority" (*n*).

Where the landlord of a tenement under 30*l.* yearly value was assessed to the poor rate under a local act rendering it obligatory on the parish officers to rate the landlord in such cases, but the tenant having claimed to be rated under the Reform Act, 2 Will. IV. c. 45, s. 30, his name was accordingly inserted, together with that of his landlord in the rate, and he paid the rate: it was held that this was a sufficient rating for the purpose of acquiring a settlement by renting a tenement. (*Reg.* v. *St. Giles-in-the-Fields*, 7 E. & B. 205; 26 L. J. (N. S.) M. C. 55.)

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§ 7. Of the Evidence of Settlement by Renting, &c.

An agreement in writing, unstamped, for the letting a tenement at a certain rent, having been lost: held, that parol evidence of its contents was not admissible for the sake of proving thereby the value of the tenement, for the written agreement was itself void. (*Rex* v. *Castle Morton*, 3 B. & Ald. 588.)

Production of contract.

A tenancy under a written contract might be proved by the payment of rent without the production of the contract. (*Rex* v. *Kingston-upon-Hull*, 7 B. & C. 611; 1 M. & R. 444.) In that case, on cross-examination of the pauper, who proved a settlement in the appellant parish, the appellants were proceeding to show that he had acquired a subsequent settlement by the occupation of a tenement, and to prove the rent paid, but the respondents interposed, and asked if the contract for the tenement was not in writing, and he admitted it was. The appellants contended that they might prove the fact of occupation, and the value of the tenement, without reference to the agreement, but the sessions refused it. *Bayley*, J. "The general rule is, that the contents of a written instrument cannot be proved without producing it. But although there

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(*n*) The court seems to have also held that there was evidence of a settlement by payment of taxes. It may be observed that the case as sent to the Q. B. hardly warranted the inference that the sessions found as a fact that William was rated. The evidence certainly pointed the other way, and it is quite clear that it was competent to the sessions to find that William was not rated.

may be a written instrument between a landlord and tenant, defining the terms of the tenancy, the fact of the tenancy may be proved by parol, without proving the terms of it. It was unnecessary in this case to prove by the written instrument either the fact of tenancy or the value of the premises." *Littledale*, J. "Payment of rent as rent is evidence of a tenancy, and may be proved without producing the written instrument." Case sent back to the sessions, to hear the evidence (*o*).

But the agreement if in writing must be produced, to show a tenancy under 6 Geo. IV. (*Rex* v. *Merthyr Tydvil*, 1 B. & Ad. 29.) The respondents called the pauper, who deposed that he rented and held possession of a house in Merthyr Tydvil from May, 1827, to June, 1828. The rent was 25*l.* per annum, payable quarterly. He paid the first three quarters as they became due, and had a receipt for the last, which was not paid in money, but for which, as he alleged, the landlord accepted an equivalent in fixtures. On cross-examination, he at first said that the contract between him and Rock, the landlord, for the premises, was merely verbal; but Rock, who was in court, handed the agreement in writing to the advocate for the appellants, and the witness, on the paper being held up to him, admitted that the contract was a written one. The respondents then objected to any parol evidence of the agreement, but the sessions received it. The appellants called Rock to show that the transaction respecting fixtures was not a satisfaction of the rent and that the receipt was unfairly obtained. The questions were, whether the parol testimony was properly received, and whether the payment of rent was sufficient. *Bayley*, J. "This case is clearly distinguishable from *Rex* v. *Hull*, the facts of which took place before the 59 Geo. III. c. 50 and 6 Geo. IV. c. 27, and when the proofs necessary for establishing this kind of settlement were that a tenancy subsisted, and that the value of the tenement was 10*l.* a year. At that time the terms of the agreement were immaterial, except as a test of value, and when proved, they did not preclude the sessions from determining for or against the settlement. *Rex* v. *Hull* decided this, only that where the terms of the tenancy were not material, the fact of tenancy might be proved without the terms, but under 6 Geo. IV. c. 57, they are essential. This act requires the tenement to be *bonâ fide* rented for the term of a year, at 10*l.* a year; and it is therefore necessary to know what was the rent contracted for, which cannot be proved without reference to the agreement itself: that having been in writing, the general rule of evidence prevails, and the order is therefore bad." The other judges concurred. Order of sessions quashed.

A presumption of tenancy, arising from occupation, cannot be negatived without proving the written agreement. (*Rex* v. *Rawden*, 8 B. & C. 708; 3 Man. & R. 426.) The pauper occupied a tenement for a year, and paid rent for it. In answer to this it was insisted, that the pauper was a joint tenant with two others, and to prove this the steward of the landlord was called, who said he did not know who occupied the tenement. He was then asked to whom he had let it, and who were the tenants, but being asked if there was not an agreement in writing, he admitted there was. The sessions received the parol evidence. *Bayley*, J. "The question in this case is, whether the evidence of the steward was sufficient to rebut a *primâ facie* case of tenancy made out by the appellants? In *Rex* v. *Hull* the question at the sessions was, whether the

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(*o*) In a case precisely similar in its circumstances (though it was an action for an injury to the reversion), the judges of the Court of Common Pleas were divided in opinion. *Best*, C. J., and *Burrough*, J., being of the opposite opinion to that given in the above case upon the point; and *Park*, J., and *Gaselee*, J., concurring in the opinion of the Court of King's Bench. See *Strother* v. *Barr*, 5 Bing. 136; 2 M. & P. 207. (See Taylor on Evidence, § 376.)

pauper came to settle on a tenement in the character of tenant? The proof was that he occupied and paid rent. The court thought that was *primâ facie* evidence that he came to settle in the character of tenant; there can be no doubt that a party may, by keeping out of view a written instrument, make out by parol testimony a *primâ facie* case of a tenancy, and it then lies on the opposite party to rebut it. Here the appellants made out a *primâ facie* case. The respondents attempted to vary it, by proving that the premises were let to the pauper jointly with others; but that letting was by a written instrument. It is quite clear it could be proved only by the production of a written instrument." *Littledale*, J. "This case is perfectly different from *Rex* v. *Hull*. There the tenancy was proved by occupation and payment of rent. That was *primâ facie evidence* of tenancy. Here the parol evidence was adduced to negative the presumption of tenancy arising from occupation and payment of rent." *Parke*, J. "A general hiring of land is presumed to be a yearly hiring." (*Rex* v. *Wainfleet*, p. 559.)

If the occupier is dead, proof of his occupation, and evidence of his declarations as to the terms on which he held, will suffice.

If the occupier of the tenement is dead, the fact of his possession being first proved, any declarations which he may have made when in possession, tending to show in what manner or on what terms he occupied, may be given in evidence. A *primâ facie* case being thus made out, may be met by proof that the occupation was *against* the consent of the landlord, or that the party occupied in the capacity of bailiff or servant to the owner of the property, or only a privilege allowed him in respect of something else, which was the principal thing. (*Doe* v. *Pettet*, 5 B. & A. 223.)

An entry of the receipt of rates by a deceased clerk of a collector, who was duly appointed, is evidence of payment of rates to satisfy the statute 4 & 5 Will. IV. c. 76, s. 66. (*Reg.* v. *St. Mary, Warwick*, 1 E. & B. 816; 22 L. J. (N. S.) M. C. 109.)

CHAPTER XXV.

Of the Settlement of the Poor—(*continued*).

Of Settlement by Estate.

§ 1. OF SETTLEMENT BY ESTATE IN GENERAL.

General observations.

THE favour with which the ownership of real property, as indicative of individual respectability, has always been regarded, is corroborated, among many other of our civil institutions, by the law of parish settlements.

It has been seen under the last title, that the *credit* and confidence reposed in a man who has been trusted *as tenant* with the occupancy and temporary possession of a 10*l.* a year tenement, was sufficient to exonerate him from the condition of legal vagrancy, and to confer upon him the privilege of a settlement, although he in fact remained in the place where he was thus located not more than forty days. The law on this subject has certainly in more recent times been limited and re-

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strained by various statutory regulations; but little alteration has been made as to settlements by *estate;* one condition added to the acquisition of this settlement is, that if the estate be acquired by the party's *own act*, that is, by pecuniary purchase, it must be of the value of, or rather that the price paid must be 30*l.* at the least. With this exception, where an individual is owner in fee, copyholder, mortgagee, or leaseholder, executor, or administrator, or comes to the possession in any other way by operation of law, his title to the land is sufficient to give him a settlement, although he may not have the beneficial ownership. It is also settled, that an *equitable estate* is sufficient for this purpose, though a mere *equitable interest*, which a court of equity *might probably* sustain and enforce, is not. The case of *Rex* v. *Stone* (post, p. 594) proves that the nature of the tenure or quantity of interest is immaterial, and that even an executor, by residing on a leasehold estate belonging to him in that character, may acquire a settlement.

The principle upon which these settlements are founded is, that the party ought not to be removed from his own, but is entitled to the superintendence and care of his property, however small the annual value. Having land in a parish will not of itself make a settlement, but *living* in a parish where one has land, will gain a settlement; for the act (13 & 14 Car. II. c. 12) never meant to banish men from the enjoyment of their own lands (*a*). No one can be removed from the parish in which his freehold is situated within the first forty days of residence: but if he quits it voluntarily before he has been resident forty days, and becomes indigent, he cannot be removed thither. In order, therefore, to acquire a perfect settlement by estate, the party must have resided forty days in the parish in which his estate lies, and while his interest continued (*b*).

Such a settlement, however, cannot now be retained if the party acquiring it ceases to reside within ten miles thereof.

No statute *expressly* creates any settlement by *estate.* The statutes relating to this subject are the 13 & 14 Car. II. c. 12, s. 1, and the 9 Geo. I. c. 7.

13 & 14 Car. 2, c. 12, does not mention residence as *owner*.

By 13 & 14 Car. II. c. 12, s. 1, within forty days after any person has come to settle in any tenement under the yearly value of 10*l.*, any two justices, if such person was likely to be chargeable, might remove him to the parish where he was last legally settled, "either as a native householder, *sojourner*, apprentice, or servant for the space of forty days at the least."

Per *Lee*, C. J., in *Rex* v. *St. Nyotts* (Burr. S. C. 132). "The statute 13 & 14 Car. II. c. 12, does not expressly mention residence as *owner* of an estate. This species of settlement must therefore either depend upon being an exception to the modes of acquiring settlement specified in the act, or upon applying the term '*sojourner*' to persons lawfully inhabiting a parish and who cannot be removed from it."

Per Lord *Ellenborough*, C. J., in *Rex* v. *Holm East Wavor Quarter* (16 East, 127). "This species of settlement does not depend upon any term in a statute, but is an excepted case in the law, standing upon the rule, that a man shall not be removed from his own."

9 Geo. 1, c. 7, s. 5, No settlement to be acquired by purchase, if consideration of purchase-money is under 30*l.*

The 9 Geo. I. c. 7, intituled "An Act for amending the Laws relating to the Settlement, Employment, and Relief of the Poor," sect. 5, enacts, "that from and after the twenty-fifth day of March, which shall be in the year of our Lord one thousand seven hundred and twenty-three, no person or persons shall be deemed, adjudged, or taken, to acquire or gain any settlement in any parish or place for or by virtue of any *purchase* of any estate or interest in such parish or place whereof the *consideration* for such purchase doth not amount to the sum of *thirty pounds*, *bonâ fide* paid, for any longer or further time than such person or per-

(*a*) Per *Holt*, C. J., in *Ryslip* v. *Harrow*, 2 Salk. 524.

(*b*) *Rex* v. *West Sheffield*, Burr. S. C. 307; *Wookey* v. *Hinton Blewett*, 1 Stra. 576; *Harrow* v. *Edgeware*, 2 Bott, 465.

sons shall inhabit in such estate, and shall then be liable to be removed to such parish or place where such person or persons were last legally settled before the said purchase and inhabitancy therein."

This act is confined to cases of estates acquired by *purchase* in the common acceptation of that term, for which a consideration amounting to 30*l.* must be *bonâ fide* paid. It does not *create* or *enable* persons to acquire a settlement, but *prohibits* them from gaining one, except under certain circumstances.

4 & 5 Will. 4, c. 76, s. 68. No settlement by possession of estate shall be retained longer than the person shall inhabit within ten miles thereof.

By 4 & 5 Will. IV. c. 76, s. 68, it is enacted, "that no person shall be deemed, 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* (*c*); 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."

Such a settlement is not merely suspended, it is extinguished by ceasing to inhabit within the prescribed distance. (*Rex* v. *St. Giles-in-the-Fields*, 1 G. & D. 557; 2 Q. B. 446.)

A person inherited a real estate, and acquired a settlement, by living in a house, part of the estate. He became insane and was removed by his relations to the county asylum, which was more than ten miles from the parish in which the estate was: it was held, that this was a "ceasing to inhabit" within the statute. (*Reg.* v. *Whissendine*, 1 G. & D. 568; 2 Q. B. 450.)

The statute does not deprive an emancipated child of such settlement, acquired by the father before emancipation (*Rex* v. *Hendon*, 2 G. & D. 394; 2 Q. B. 455); but a child unemancipated at the time of the removal loses the settlement with his father, and so also the wife loses it. (*Reg.* v. *Llansaintfraid*, 2 E. & B. 803; 23 L. J. (N. S.) M. C. 5.)

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§ 2. Of Estates acquired otherwise than by Purchase for Pecuniary Consideration.

(a) *The Nature of the Property.*
(b) *The Tenure and Duration of Interest.*
(c) *The Value of the Estate.*
(d) *The Interest in the Estate.*
(e) *Infants.*
(f) *Executor, Administrator, and Next of Kin.*
(g) *Trustee and Cestui que Trust.*
(h) *Estate in Remainder or Reversion.*
(i) *Dower.*
(j) *In Right of Wife's Estate.*
(k) *Guardian.*
(l) *Estate in Mortgage.*
(m) *Estate by Possession.*

(a) *The Nature of the Property.*

The nature of the *thing*, or property, out of which the interest which is to confer a settlement must arise, has not been expressly defined. The

(*c*) The words "within ten miles thereof" mean within ten miles measured in a straight line from the house where the person inhabits to the boundary of the parish in which the estate, which conferred his settlement, is situate. (*R.* v. *Saffron Walden* (*Inhabitants of*), 9 Q. B. 76; 15 L. J., M. C. 115.)

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reported cases generally respect settlements by estate in *land or houses*, and it is nowhere directly considered, whether a settlement can be acquired by *an estate in a "tenement,"* as that word has been explained under the 13 & 14 Car. II. c. 12, or in the more extensive denomination of property called an "*hereditament.*" The principle upon which these settlements are founded, before adverted to, seems to extend this right to all interest *in things immovable*, situate within a town or parish, which, as the party cannot take them with him to the place of his settlement, he must be allowed to remain where they are for the purpose of superintending them.

Must be some *realty.*

It is clear, however, that the interest must issue out of the *realty* locally situated in the parish where the settlement is sought (*d*); and it should seem it must be such an interest as would entitle the party to take possession of such realty, and therefore an annuity charged by will on *personalty* or *chattel real*, or even a *rent-charge* out of *freehold*, would not constitute a settlement. (*Rex* v. *Stockley Pomroy*, Burr. S. C. 762.)

Not a mere *rent-charge.*

Rex v. *Milborne* (1 Wilson, 87; Burr. S. C. 244). Therefore an annuity charged on real estates to a charity school to be paid to the vicar, is not an interest to the person officiating as schoolmaster which gives a settlement.

Rex v. *South Newton* (10 Bar. & Cres. 838). So where, in an award for the division of the common field lands, an allotment was made to the lord of the manor in trust for the shepherd of the common sheep flock for the time being of the tenantry farmers, in lieu of lands held by custom by the shepherds: held, that the shepherd being hired by the year had no such interest in the land as would give him a settlement by estate.

Rex v. *Warkworth* (1 M. & Sel. 473). The customary right of resident freemen of a town to a stinted common of pasture for cattle, and to cut peat, and to get limestone, &c. on a moor, not shown to have been actually enjoyed, is not such an estate as renders the party irremovable.

Rex v. *Belford* (10 B. & C. 54). The individual burgesses of a borough were entitled to receive such share of the rent of the corporate estates as the corporation assigned. The estates were let by and rent reserved to the corporation, who paid over the rents of each portion or "stent" to the burgesses entitled: held, a burgess in the enjoyment of a "stent," and annually receiving from the treasurer his portion of rent, did not acquire a settlement by estate, as he was not seised of any equitable estate.

Rex v. *Horndon-on-the-Hill* (4 M. & Sel. 562). Grant of a licence from the lord of a manor to erect a cottage, rendering an annual rent of ten shillings and sixpence as quit-rent, and also a licence to inclose a piece of ground for a garden to said cottage, and building a cottage thereon and residing in it a year and a half, is a mere licence, and not a grant of any interest in land, so as to confer a settlement. Lord *Tenterden*, C. J. "He was only entitled to such a portion of the rents as the body corporate might think fit to allow him. Whether they allowed him a portion of those rents, first throwing the whole together, and then dividing them among the freemen; or whether they assigned to each freeman the rent of a particular portion of land, seems to me immaterial. The freeman had no right to enter on the land."

(b) *The Tenure and Duration of Interest.*

The *nature* of the *tenure* is not material, so far as respects the law of parochial settlement. It may be acquired by an estate in lands held in

(*d*) The overseers of a parish are not estopped by the deed conveying the estate to the pauper, from shewing that the premises described in the deed as in the parish of A. are in reality in the parish of B. (*Rex* v. *Wickham*, 2 A. & E. 567.)

frank tenure, or freehold (*k*), or by copyhold (*l*). The *duration* of the estate is also immaterial, if it were sufficient to insure a residence of forty days (*m*). It may be either a freehold or copyhold estate, in fee or for life (*n*), or a leasehold interest, determinate on lives (*o*) or years (*p*). The right of a widow to continue forty days upon her husband's lands, until she is assigned her dower (*q*), has been held to be an interest sufficiently permanent to confer a settlement.

(c) *Of the Value of the Estate.*

Harrow v. *Edgeware* (Fol. 257; 2 Bott, 608; E. T. 11 Anne). The value of the estate if otherwise of a nature to give a settlement is immaterial (except in cases of purchase under the statute 9 Geo. I. hereafter noticed), for the statute 13 & 14 Car. II. c. 12, s. 1 (ante, p. 521), does not apply to estates for life or inheritance. Therefore a residence for forty days on a copyhold for life of the annual value of 25*s.* gains a settlement.

(d) *The Interest in the Estate.*

It seems that any person may acquire this description of settlement, and even an *alien*, though he cannot acquire a descendible interest, may yet hold till inquest found (ante). So an infant, and other persons under legal incapacity, may acquire the same.

(e) *Of Infants.*

An infant eight years of age may gain a settlement by estate.

Rex v. *Hasfield* (2 Stra. 1131). The mother of the children removed had an estate of 4*l.* a year in Tirley, where she and her husband lived and had these children. She dying, the husband became tenant by the curtesy; and whilst such took 30*l.* a year at Hasfield and lived one year there with his two children and then died. The Court of King's Bench confirmed the order removing them to Hasfield as to the girl, but quashed it as to the boy; for as to the boy, who was eight years old, he was tenant in fee of the 4*l.* a year. And though it was not stated that he was actually upon that spot, yet it was enough that he had such an estate in the parish, from which he could not be removed (*r*). But as to the daughter, it was otherwise; she could demand no maintenance out of her brother's estate.

(f) *Executors, Administrators, and next of Kin.*

Rex v. *Sundrish* (1 Sess. Ca. 200; 2 Stra. 983). An executor gains a settlement by residence as such upon leasehold. T. Perch, by indenture, demised to T. Gates, the father, a cottage at 5*s.* a year, which was the full value, for ninety-nine years. The lessee held it till his death, and devised it to T. Gates, his son. And the question was, whether the son, as executor, being entitled to the term, shall gain a settlement by inhabiting in such cottage? The court were unanimously of opinion that this estate, though a leasehold, was his own estate; that he had

(*k*) *Rex* v. *Charlton*, 2 Bott, 493; Cald. 416; *Rex* v. *Farringdon*, 6 T. R. 520.

(*l*) *Harrow* v. *Edgeware*, 2 Bott, 465; *Rex* v. *Burclear*, 1 Stra. 163.

(*m*) 2 Nolan, 71.

(*n*) Id. Ibid.

(*o*) *Rex* v. *Tharwood*, Burr. S. C. 386; *Rex* v. *Cold Ashton*, Id. 444, pauper certificated.

(*p*) *Mursley* v. *Grandborough*, 1 Stra. 97; *Rex* v. *Uttoxeter*, post, p. 594.

(*q*) *Rex* v. *Painswick*, Burr. S. C. 783; *Rex* v. *Long Wikenham*, Cald. 474; where the widow was certificated.

(*r*) It is to be collected from a MS. note of the late Mr. *Masterman* that the boy in *Rex* v. *Hasfield* was not living on his estate. It also appears that the settlement of the same pauper came in question again in *Ryslip* v. *Hendon* (5 Mod. 416), where *Holt*, C. J., incidentally said, "Let a man be settled where he will, we are all of opinion he may go and live where he has an *estate*, and therefore that he might have gone to the place where he had a freehold. (1 East, 258.)

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come into it under his father's will: that it is, together with other things, charged with 20*l.*, payable to his mother for her maintenance, and that in *Mursley* v. *Grandborough*, a leasehold estate, although it was not a beneficial lease of the whole, had been held sufficient to confer a settlement.

Rex v. *Uttoxeter* (Burr. S. C. 538; 2 Bott, 620). Coming to a tenement by executorship, although under 10*l.* a year, gains a settlement. The pauper, W. Gilbert, was settled at Uttoxeter. His mother rented and resided upon a farm of 22*l.* a year at Marchington Woodlands; which she devised to her five children, and made the pauper and her three other sons executors, and died. The pauper alone proved the will, and entered as her executor and resided upon the farm twelve or thirteen weeks. He afterwards returned to Uttoxeter, but continued to go over to Marchington Woodlands, to give directions from time to time, and had a servant upon the farm till the Lady-day following. The question was, whether he thereby gained a settlement at Marchington Woodlands? By the court: "It is very true that a share not amounting to 10*l.* a year, of a tenement of above 10*l.* a year in value, will not do. But here he has a right as executor. The value thereof is totally immaterial; because, by common law, no person can be removed from his own. And one who has a right to reside irremovably doth thereby gain a settlement, if he reside forty days.

Value immaterial.

Rex v. *Stone* (6 T. R. 295). And in such a case the executor to a tenant of an estate under 10*l.* a year gains a settlement by forty days' residence, although he do not prove the will. E. Symns removed from Salt and Enson to Stone. Order confirmed. Case:—The pauper went to live with his father-in-law, E. Bentley, in Salt and Enson, who rented from year to year a cottage and about six acres of land, under the yearly value of 10*l.* Bentley died, and by his will gave all his personal estate to the pauper in trust, that he would allow the testator's wife a sufficient maintenance thereout during her life; and at her decease his personal estate should be divided amongst his five children, the pauper's wife being one: and he appointed the pauper sole executor of his will. Upon the testator's decease, the pauper possessed himself of all his personal estate and continued in possession of the cottage and lands, without coming to any agreement with the landlord, buying and selling everything, paying the rent, and maintaining the widow until his removal, which was upwards of three years; but he did not prove the will till three days previous to his removal. Lord *Kenyon*. "I cannot distinguish this case from *Mursley* v. *Grandborough* (post), and the other cases in which it has been held that an executor or devisee of a leasehold estate, of less value than 10*l.* a year, gains a settlement by residing upon it for forty days. It is said, however, that this pauper was a mere trustee: but no one had a right to take the estate from him; he took it liable to all the testator's debts, and the creditors would have had a right to call on him for payment of their debts before he made any distribution of the testator's property under the will. In fact, the pauper resided on this estate for more than forty days; and the established rule, which we ought to preserve with anxiety, is, that though a person cannot acquire a settlement by a purchase for less than 30*l.* paid, yet if he take such estate by devise, he may: so, though he cannot gain a settlement by renting a tenement of less value than 10*l.* a year, yet, if such an estate devolve on him by operation of law, he may gain a settlement by forty days' residence on it. The distinction taken between a tenant from year to year, and a tenant for a term of years, is rather a distinction in words than in substance. A tenant from year to year is entitled to estovers, and the same advantages as a tenant for a term of years. In truth, he is a tenant from year to year as long as both parties please. And, considering how many large estates are held by this tenure, it would be dangerous to say that the term ceased at the end of the year, because then the landlord might lose his right of distress. Although, on my first reading this case, it struck me as a very minute interest to confer a settlement, on consideration I am satisfied that we cannot, without overturning a variety

Tenant from year to year same as tenant for a term.

of cases, determine that the pauper did not gain a settlement by residing on it for forty days." *Ashhurst*, J. "It is perfectly immaterial whether the pauper had a beneficial interest in the estate, it being sufficient that he resided there forty days for a necessary purpose, and could not have been removed from it." *Grose*, J. "It certainly seems strange, at first, that an executor should gain a settlement by a residence on the testator's estate, when such a residence by the testator would not have conferred a settlement upon him. But we must consider the difference of the situation of the two persons; the one comes in by his own contract, the other by act of law. This distinction was taken in *Rex* v. *Uttoxeter*" (p. 594). *Lawrence*, J. "It was settled in *Doe* d. *Shore* v. *Porter* (3 T. R. 13), that if a tenant from year to year died intestate, his administrator has the same interest in the land that the intestate had; then what was the interest of the pauper's testator? He had a right to continue on the estate another year, unless six months' notice to quit were given, and, of course, the pauper (his executor) had the same right. With regard to the want of probate, there is a case in 3 Dyer, 367 a, that gives a decisive answer to this; a termor devised his term to another, whom he made his executor, and died; the devisee entered and died without any probate, and it was held that the term was legally in the executor by his entry, and an execution of the devise without any probate. So that if there had been no probate of the will in this case, still the term was vested in the pauper, the executor."

South Sydenham v. *Lamerton* (1 Stra. 57). But in case of an intestacy, letters of administration are essential, and the next of kin of the lessee acquires no settlement until he has taken out letters of administration. Where the pauper was *sole* next of kin, secus. (*Rex* v. *Horsley*, post, p. 597.)

A father possessed of the residue of a term, dies intestate, leaving two sons. After order of removal made for one of the sons, he takes out letters of administration, he cannot acquire a settlement by virtue thereof.

Rex v. *Widworthy* (Andr. 4; Burr. S. C. 109; 2 Bott, 612). The pauper removed to Widworthy, and lived there with his father in a cottage-house of 30*s.* a year, working as day-labourer. The father died intestate, possessed of the cottage for the residue of a term, determinable on lives, leaving the pauper and another son. The pauper's brother took his distributive share of his father's estate in goods, and the pauper, after the father's death, continued in the cottage for five or six years until the lease was determined; after which, and since the making out the order for his removal, he took out administration to his father. *Page*, J. "At the time of making the order he had gained no settlement in W.; because nothing vested in him before administration was granted to him. If so, then the order for removing him to F. was a good order when made, and the sessions ought not to have quashed it; though administration had been afterwards taken out; for they could not quash a good order upon a matter which happened *ex post facto;* and if this administration really gained him a settlement, there ought to have been a new order of two justices to remove him back to W. When he was first removed from thence he had nothing to do with the cottage; for nothing vested in him till he took out letters of administration; consequently, if he gained a settlement at W. at all, it was gained subsequent to the making of the original order. But secondly, he had it not at all in his own right, even after administration; nor does it seem to be such a sort of estate as would gain him a settlement. This is a cot-house of so small a value as 1*l.* 10*s.* a year only, holden upon the residue of a term of years determinable upon lives. In the case of *Rex* v. *Wyley* (post, p. 612), there was a continuance of the quiet possession for thirty years and a descent cast. The pauper had a title against all the world except the lord of the waste; and it would be a good bar, even against the lord, in an ejectment. There the pauper clearly had such a possession as to be irremovable from it. But I apprehend that the pauper in the present case was removable even during the term; but afterwards he certainly was." *Probyn*, J. "The whole depends upon this single question, whether the pauper was

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The general rule.

removable during the five or six years that he lived in this cottage? *for I take the rule now settled and established to be, 'that if the pauper come to an estate by inheritance, or as executor or administrator, be it of ever so small value, he is irremovable; and if he remain forty days in possession and inhabitancy, he gains a settlement.'* Now I take it, that the pauper in the present case was removable. His possession rested only upon a private agreement between him and his brother. If he had taken out administration during the interest, he had had a vested right; but taking out administration after the term expired could never give him an interest in the expired term, in which he had none during its subsistence. He was in possession merely as a tenant at will; he was removable by the parish, and his right would have been without foundation if administration had been granted to any one else. Therefore he had no right at all till administration was granted. The case of Wyley was a strong case. That was a descent to the pauper after a possession of thirty years; which is a good title in an ejectment and a presumption of an inheritance. It was *primâ facie* a good title as heir-at-law: none but the lord could contest the right. And if a pauper live forty days under a right which makes him irremovable, it gains him a settlement."

Tenant at will of an estate less than 10*l.* can gain no settlement as such.

Chapple, J., was of the same opinion. "For there was no time during the continuance of this lease when the pauper was irremovable, and without remaining forty days irremovable, a settlement could not be gained by him." And he observed, "that there was no agreement at all between the brothers, that the pauper should take this lease as his distributive share; or, at least, no such agreement appeared. It is only stated that the other brother did take his share in goods; and John did live in the cottage; but it does not appear that this happened in pursuance of any preceding agreement that it should be so." (See *Rex* v. *Cold Ashton*, Burr. S. C. 444; post, p. 683.)

Where a wife and two children survive the intestate, the wife cannot gain a settlement by letters of administration taken out after assignment by her of the intestate's term, which was a lease for years determinable on lives.

Rex v. *North Curry* (Cald. 137; 2 Bott, 631). Betty Winter and children removed from North Curry to Ruishton. Order quashed. Case:—John Winter, late husband of the pauper, purchased a cottage and garden in North Curry of the yearly value of 20*s.* for fourteen guineas, which was demised to him, his executors, administrators, and assigns, for ninety-nine years, or three lives, at the yearly rent of 2*s.* He and his wife resided in the cottage for several years until his death; his widow and their children soon after became chargeable to North Curry: but were refused relief unless they would go into the workhouse, which they did, and quitted possession of the cottage and garden, where they were relieved until they were removed to Ruishton in February, 1781. Ruishton appealed at the Easter sessions, 24th April, 1781, which sessions was adjourned, and Betty soon after returned to the cottage and resided there till 28th April, 1781, when she sold the cottage and garden for six guineas for the residue of the term, and by indenture dated 28th April, 1781, assigned the term. On 11th July, 1781, being the day after the first day of the present session, Betty sued out letters of administration of her late husband's effects. It was argued that there was a difference between the sole next of kin, and where several persons in equal degree have an *equal right;* here the widow had before administration a specific right in the thing, and only a ceremony necessary to make the assignment by her indefeasible. Lord *Mansfield*, C. J., said, "That this case did not materially differ from *Rex* v. *Widworthy* (ante, p. 595); as the children were entitled to two-thirds of the effects, the widow is not properly and in the sense of the cases the sole next of kin (*s*). Order of sessions quashed.

(*s*) Can the widow be ever sole next of kin in such a sense as to be *entitled* to letters of administration? By 21 Hen. VIII. c. 5, administration is to be granted "to the widow or next of kin as by the discretion of the ordinary is good." The court, it is true, *prefers* a sole to a joint administrator. (4 Burn, Ecc. L. 277, 278.) See *Patteson*, J., in *Rex* v. *Barnard Castle*, 2 A. & E. 885.

Rex v. *Berkswell* (1 B. & C. 542; 3 D. & R. 9). Residence by the daughter (there being no son) of a deceased tenant of leasehold property does not confer a settlement, letters of administration having been granted to the widow.

Rex v. *Great Glenn* (2 Nev. & M. 91; 5 B. & Ad. 188). The husband of the pauper rented a house from year to year, and soon after his death the pauper told the landlord that she wished to pay the rent weekly, which she did for nine months. The respondent parish had relieved her in the meantime, and the attorney of that parish suggested her taking out letters of administration, and did so for her: held, that as the widow was bound by law to take out administration, it was not to be considered a fraudulent transaction, although the sessions had so found it; and that if she resided forty days after her husband's death before becoming a weekly tenant in her own right, she gained a settlement by estate. (See *Rex* v. *Barnard Castle*, post, p. 607.)

Rex v. *Horsley* (8 East, 405). Although letters of administration have no retrospective effect, a sole next of kin has such an equitable interest in a leasehold tenement of the intestate, as to gain a settlement by residing forty days in the same parish after the intestate's death, before administration granted. It matters not that the widow of the intestate survived him, if she died afterwards without having taken out administration, leaving the sole next of kin to the intestate. Lord *Ellenborough*, C. J., delivering judgment, said, "This is the case of a *sole* next of kin exclusively entitled, after the death of her mother-in-law, to administration of the personal estate of the intestate, her father; and the question is, whether the pauper, having, after she became such *sole* next of kin to the intestate, resided more than forty days in the parish, in which a leasehold tenement of 40*s.* per annum belonging to the intestate lay, thereby gained a settlement in that parish. The grant of letters of administration cannot operate for the purpose of rendering her not removable at a time past, when, as far as the letters of administration are concerned, she was removable for want of them; and when any order which might have happened to be made for her removal (as no letters of administration then existed), could not, as was held in *Rex* v. *Widworthy* (p. 595), be quashed afterwards upon the subsequent grant of them. Can then a person *for this purpose* become the owner of a chattel real, which had belonged to the intestate before the actual grant of administration to such person? Upon the death of her mother-in-law the pauper became *sole* next of kin to the intestate; it was in her power, therefore, at any moment afterwards, to have clothed herself exclusively with the legal character and rights of an administratrix. Lord *Mansfield*, in *Rex* v. *Cold Ashton* (post, p. 683), observes that there is 'a great difference between a *sole* next of kin, and where several persons in equal degree have all of them (as in that case they had) an equal right.' In *Rex* v. *North Curry* (p. 596), Lord *Mansfield* again observed, that the widow (the pauper in that case) 'was not properly, and in the sense of the cases, the sole next of kin.' The effect, however, of a forty days' residence by a sole next of kin has never yet received a judicial opinion. *South Sydenham* v. *Lamerton* (p. 595), was argued and decided on another ground. Adverting to the intimation given by other judges, of what would be their opinion upon such a case as the present, if it should come before them, and to the reason of the thing, according to which the exclusive right to enforce the proper means of acquiring a legal title to the property, coupled with the actual enjoyment of it in the meantime, through the occupation of a tenant, gives so much colour of right to reside without being removed within the parish in which the property is situate, as to exempt such residence from being considered as a vagrant intrusion into a parish, in which the party has nothing of *his own*, within the purview and scope of the poor-laws, and to the determinations thereupon; we are of opinion that in a

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case in which the language of no statute upon the subject precludes us from so determining, and where no principle of convenience, nor any decided case, is contravened by such a determination, we are well warranted in considering that a settlement was gained by a residence of forty days within the parish, in which a pauper thus circumstanced in respect to the real property there situate, resided; and of course that the order of sessions must be affirmed."

Rex v. *Canford Magna* (6 M. & Sel. 355). The widow daughter, and son-in-law, occupied a leasehold house of the husband for more than thirty years, no administration taken out: neither of them gained a settlement. Lord *Ellenborough*. "The presumption raised in *Rex* v. *Cold Ashton* (post, p. 683), was, that the pauper and his wife had agreed with the other children for their shares: no such presumption has been drawn here; nor do I think the case admits of it. There is not any circumstance from which to infer an abandonment by any of the parties to the others of their right."

Rex v. *Okeford Fitzpaine* (1 B. & Ad. 254). The pauper resided for many years in the same house with his father-in-law, who had a lease for ninety-nine years, determinable on three lives. Pauper added to his part of the house, and by agreement paid the rent (7*s*.). After his father-in-law's death, who left also three sons, the pauper and his wife and two of the sons resided on the premises, and the pauper resided there till the end of the term, which was above thirty years from his death; but there was no will, and no administration was taken out. held, that no settlement was gained, there being no legal estate in pauper, nor adverse possession, and that the case was not distinguishable from *Rex* v. *Canford Magna* (supra).

(g) *Trustee and Cestui que Trust* (*t*).

Reg. v. *St. Margaret, Leicester* (1 G. & D. 625; 2 Q. B. 559). Testator devised his real estate to trustees, to sell and divide the proceeds among his nine children, the share of such of his daughters as should be married at his decease to be to their separate use. The pauper, before testator's death, married one of the daughters, and resided with her in a house, part of the above estate, paying rent weekly to the testator. He resided also two years after testator's death, and before the real estate was sold, paying the rent to the trustees: held that he gained no settlement. *Coleridge*, J. "This case may be decided on two grounds. First, the pauper appears to have resided as tenant. Secondly, it is at all times a delicate matter for us to take cognizance of equitable rights, but we have one broad rule that we will notice nothing but a clear right, and will not go into doubtful cases of equity. Here there were nine persons interested in the devised property, and nothing has been done by agreement between them to turn it into real estate. I would rather not put our decision upon *Rex* v. *Geddington* (post, p. 621), which is of doubtful authority, and it is not necessary to do so." *Wightman*, J. "I think there was not such an equitable right here as to bring the case within the rule laid down in *Rex* v. *Toddington* (post, p. 611), and *Rex* v. *Berkswell* (ante, p. 585). There were nine persons interested, and the concurrence of all would have been necessary to induce a court of equity to convert the devised property: the power of sale would be much prejudiced if the whole could not be sold" (*u*).

Rex v. *Wivelingham* (Doug. 767). Where an estate was devised for sale, but one of the devisees took by agreement with the others, he gained a settlement.

(*t*) As to the equity of redemption, see *Rex* v. *Cregrina*, post, p. 612.

(*u*) The court threw doubt on *Rex* v. *Natland* (Burr. S. C. 793.) There an estate was devised to a wife during her widowhood, and then to be sold for the benefit of the children; one of them, after the death of the widow, continued to live therein, and it was held that he gained a settlement.

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Rex v. *Aslackby* (6 N. & M. 582; 5 A. & E. 200). The devisee of an equity of redemption has such an estate as will give him a settlement by residence in the parish. The solvency of the estate is immaterial. Although the property in that case was devised to trustees, in trust to sell and pay the mortgage and other debts, and to pay the residue to the testator's widow: it was held that the widow acquired a settlement by estate, although the property remained unsold, and the mortgage debt was still due, and the property was in the occupation of the trustees, who were willing to sell the estate for the mortgage debt and arrears of interest. *Littledale*, J., observed that the widow 'might have filed a bill to compel the devisees and executors to pay the debts, and, if there was sufficient without selling the estate, might have demanded a conveyance of it to her. Until sale, I think she certainly had an equitable estate." *Patteson*, J. "This is in truth a devise by a mortgagor in possession of the equity of redemption. The trustees are to pay the debts, and the residue is for the sole benefit of the wife; and the question is, whether she took any equitable estate. It is immaterial what the *value* of the equitable estate may be. This is not a case under 9 Geo. I. c. 7, s. 5, of a purchase,—but of an estate coming to the pauper by operation of law. *Roper* v. *Ratcliffe* (9 Mod. 167), and *Rex* v. *Natland* (ante, p. 598, n.), are in point. The question is, not whether the pauper had any *beneficial* interest, but whether she had any *equitable estate*. The situation of the pauper in this case comes most precisely within the decision in *Roper* v. *Ratcliffe*, as stated by Lord *Mansfield* in *Rex* v. *Wivelingham* (ante, p. 598); and *Rex* v. *Natland*, which is quoted by *Gould*, J., in the same case, is also much the same. The pauper did not reside upon the premises, and it is argued that she had no right to reside. I do not know whether, under this will, she would have the right to reside or not. That might be a question. The devisees and executors, however, in fact resided as trustees. This is, I think, a clear case of trustees and *cestui que trust*. *Rex* v. *Geddington* (post, p. 621) is a case of a purchaser, and depending upon the act of 9 Geo. I.; and *Holroyd*, J., there says, 'If you show that the vendor and vendee stood merely in the relation of trustee and *cestui que trust*, then the latter would have an equitable estate and gain a settlement.' This comes exactly within that position. In that case it was held, that no settlement was gained, because the parties did *not* stand in the relation of trustee and *cestui que trust*. The only remaining question is, whether the position of the pauper could be altered by going into the question of assets. I think that quite immaterial. The question is merely whether any equitable estate passed. In *Rex* v. *Darlington* (post, p. 600), which is a different case, I would just mention that no question was raised, but that if there had been a clear devise of the surplus, the pauper would have gained a settlement; but it was held that, looking at the will, it was clear that the pauper was only one of several persons to whom the trustees might, at their discretion, have given the rents, if there had been any to dispose of." *Williams*, J. "It is too late to raise the question whether a person, having an equitable estate, can gain a settlement in respect of such estate. That has long been entirely settled. The only question is, whether *this* was an equitable estate. The argument against the settlement is based upon the assumption, that if the estate had been sold the pauper would have got nothing. But that is immaterial. The question is, what is the *nature* of the interest which she takes under this will. The devisees are trustees for the pauper, who is the person equitably entitled. That in a great degree disposes of the other question. Letting alone the question whether the sessions is a *proper tribunal* for an inquiry of the nature proposed,—I think it was immaterial, because any inquiry of that sort could not change the nature of the interest. It is not necessary to reside actually on the estate. It is sufficient if the party have an equitable estate in

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the parish in which he resides. The possession of the devisees in t
case was not adverse, but as trustees for the pauper."

Rex v. *Darlington* (5 M. & Sel. 493). Referred to in the above c
there was a devise to the use of trustees in fee, in trust (after paym
of debts) to receive the rents for the benefit of the testator's brot
M. S., his wife and children, all or any of them, during his life, as t
should think proper, and, after his decease, in trust for her nephew, &
and it was held, that M. S., who, after the death of testatrix, by
mission of the trustees, occupied until his death a cottage in the to
ship where the lands devised were situate, did not acquire a set
ment thereby: the rents and profits of the lands having been
sufficient to pay testatrix's debts: and M. S., at the testatrix's dece
and from that time until his own decease, being an uncertific
bankrupt.

A testator devised a freehold to his wife for life, and directed
after her death it should be sold within six months, and be equa
divided between his children: it was held, that a daughter of the t
tator, residing for more than forty days on the property after the wi
death and before sale, acquired a settlement by estate. (*Reg.* v. *Burg*
23 L. J. (N. S.) M. C. 143; 3 E. & B. 323.)

A leasehold cottage is devised to A. P., with liberty to the paupers to dwell therein during their lives; by residence under the will they gain a settlement.

Rex v. *Woburn* (Burr. S. C. 680; 2 Bott, 528). A person entitled
a long term of years in a cottage in Eversholt, after having devised
to Andrew Powell, son of William Powell, adds, "it is also my w
and pleasure that William Powell, his wife and children, shall have f
liberty and power during their life to dwell in it." And according
W. P. and his wife, and their son A. P., and the two daughters,
paupers, resided in it till W. P.'s death. The court held clearly that t
settlement of the two paupers was in Eversholt.

W. S., a schoolmaster elected by trustees, occupied a school-house, yard, &c., under trustees, appointed by will, and directed to appoint such master: held, that the appointment gave W. S. a life interest therein, and a settlement by forty days' residence.

Rex v. *Owersby-le-Moor* (15 East, 356). Mary, wife of W. Saltfle
deceased, schoolmaster, was removed from Maltby to Owersby-le-Mo
Order confirmed. Case:—In 1705 Mrs. Bolle devised a farm in Malt
le-Marsh to certain persons and their heirs, in trust, to employ the re
yearly to the poor of the town 40*s.*, and the rest yearly to a fit pers
to be *nominated and elected by the trustees*, who should be a *schoolmas*
to teach the poor children of Maltby to read the Bible. On June
1807, the following agreement was entered into between W. Saltfl
and James Digby and Catherine Digby his wife, the heir-at-law of
only surviving trustee appointed by the will. "Memorandum of
agreement made 13th of June, 1807, between J. D. and C. D. his wi
of the one part, and W. S., schoolmaster, of the other part: Where
J. D. in right of his wife is entitled to a school-house, &c. situated
Maltby, which they have agreed to *let* unto W. S.: W. S. *shall have*
possession and the use and occupation of the school-house, yard, garden, a
premises, for the purpose of teaching the poor children of M. to read in t
Bible, pursuant to the will of Mrs. B.; and in consideration of W.
agreeing to teach children, &c., *he is to reside upon the premises rent fr*
and to be paid by J. D. *and* C. *his wife a salary, for the first year that h*
shall so teach, of 10*l.*, such year to commence from the 1st August nex
and 15*l.* for every year after." [Then a covenant by D. to pay as afore-
said. Then further agreement, that in case any reasonable complai
shall be made to J. D. and C., &c., it shall be lawful for him, &c., t
suspend the salary of W. S. for two years, and apply the same to such
purposes as J. and C. D., &c., shall think proper, without being liable
to make any renumeration to W. S. In case of the death of W. S. it
shall be lawful for J. D. and C. his wife, to turn out from the premises
the executors of W. S., *and to appoint another person to the situation of*
schoolmaster thereto, in such manner as he, &c., may think proper.]
W. S. (June 13, 1807) entered upon the school-house, &c., being part
of the farm so devised in trust, and resided upon those premises till his
death, about three years and a half afterwards. He taught the children