

# A TREATISE OF THE LAWS FOR THE RELIEF AND SETTLEMENT OF THE POOR

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In two volumes  
Vol. II

Michael Nolan

ROUTLEDGE LIBRARY EDITIONS:  
THE HISTORY OF  
SOCIAL WELFARE



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Volume 16

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MICHAEL NOLAN

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Michael Nolan

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OF LINCOLN'S INN, ESQ. BARRISTER AT LAW

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## T R E A T I S E

ON THE

## L A W S O F T H E P O O R ,

*&c. &c. &c.*

## CHAPTER XXII.

*Of Settlement by serving an Office.*

## SECT. I.

*Of the Kind of Office.*

**T**HIS species of settlement depends upon 3 & 4 W. 3. c. 11. sect. 6. which enacts, "that if any person, who shall come to inhabit in any town or parish, shall for himself, or on his own account, execute any public annual office or charge in the said town or parish, during one whole year, then he shall be adjudged and deemed to have a legal settlement in the same, though no such notice in writing be delivered and published, as is hereby before required."

Ground of settlement. 3 & 4 W. & M. c. 11. s. 6.

1st, It must be a public, but need not be a parish office. Not only those of parish clerk (1), and sexton (2),

1. Offices which confer settlement.

(1) *Gatton v. Milwich*, 2 Sa. k. 118. 2 *Bott*, 166. Pl. 211. *Ib.* 170. 516. 2 *Bott*, 156. Pl. 198. Pl. 215. and the church or chapel in

(2) *Rex v. Liverpool*, 3 Term Rep. this case was not the parish church.

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but



but also a warden for the borough (1), a tithing man (2), petty constable (3), or borseholder (4), collector of the land-tax (5), and duties on births and burials created by 6 & 7 Will. 3. c. 6. (6), are offices within the act. Likewise the office of bailiff, or aletaster for a borough; which consists in inspecting weights and measures within the borough, and warning the jury to serve at the court leet there (7); that of aletaster of a borough (8); and a hogringer for the parish; the duty being to attend the open commons, to see that all hogs turned thereupon, are rung, and to impound such as are not, the officer receiving one penny for impounding, and six pence for ringing each hog, being an office of great antiquity, and serviceable to the inhabitants of the parish (9), have been adjudged to confer settlements when duly executed. Lastly, where the sessions stated in their case, that the pauper was legally appointed governor in the work-house in the parish of J. at an annual salary, and that the said office is a public annual office; the court were of opinion, that the facts stated precluded discussion of how far it was within the act, for the sessions had found that the pauper served a public annual office in the parish (10).

Where sessions find the office public and annual. B. R. will not discuss the question.

Offices not within the act.  
1. Curate.

But where a person was nominated by the rector, and licensed to perform the office of curate in the parish and

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|---|--|
| (1) <i>St. Mary v. St. Lawrence</i> in Reading, 10 Mod. 13. 2 Bott, 155. Pl. 197.   | S. C. 223. 2 Str. 1299. 2 Bott, 161. Pl. 104.  |
| (2) <i>Holy Trinity v. Garlington</i> , Caf. Sett. & Rem. 72. 2 Bott, 157. Pl. 201.   | (5) <i>Rex v. Hammond</i> , 2 Bott, 156. Pl. 199.  |
| (3) <i>Rex v. Hope</i> , Mansf. Cald. 2; 2. 2 Bott, 166. Pl. 210. <i>Rex v. All Cannings</i> , Burr. S. C. 634. 2 Bott, 164. Pl. 208. See also <i>Rex v. Winterbourn</i> , Burr. S. C. 520, <i>post</i> , §, (2). | (6) <i>Bisham v. Cook</i> , <i>ib.</i> Pl. 200. See also <i>Rex v. Whittlesea</i> , <i>post</i> , (9). |
| (4) <i>Wingham v. Selkings</i> , Burr.  | (7) <i>Rex v. Whitchurch</i> , Burr. S. C. 365. 2 Bott, 162. Pl. 206.                                  |
|   | (8) <i>Rex v. Bow</i> , 8 Term Rep. 445. 2 Bott, 717. Pl. 1001.  |
|   | (9) <i>Rex v. Whittlesea</i> , 4 Term Rep 807. 2 Bott, 166. Pl. 212.                                   |
|   | (10) <i>Rex v. Ilminster</i> , 1 East, 83.   |

parish

parish church by the bishop, who assigned him a yearly stipend, and the person performed the duties for six years. The sessions were of opinion, that this was no service of an annual public office or charge under the act, and the court thought it impossible to argue against this conclusion. For *per* Lord Kenyon C. J.—“The statute was evidently intended to be confined to inferior annual officers, such as constables and the like, known to the parish, and though, in some instances, the construction had been carried further, yet he was not inclined to extend it to cases still further from the contemplation of the legislature (1).”

2d, The office, or charge, must be a public institution. The exercise of a private employment confers no settlement, although ever so notorious in the parish.

2. Must be a public office.

“Every employment in the parish is not equal to express notice, though it be a matter of notoriety to the parish. It was once made a question, whether shoeing the horses of the lord of the manor was not equal to notice, but it was determined not to be equivalent. If a person is hogringer to certain individuals only (2), he would not thereby gain a settlement: but if he is not merely an officer of A. B. or C., but of all the inhabitants of the parish, he does (3).”

Notoriety of employment insufficient.

The pauper was a school-master, and officiated as school-master (4) in the parish of Melborne for ten years. During his continuance in the said school, Lady Betty Hastings conveyed by deed, inrolled, certain lands to trustees, and their heirs, to receive and pay the rents and

2. School-master no office.

(1) *Rex v. Wantage*, 2 East, 65. *ante*, 2, (9).

(2) *Ante*, 2.

(4) In the charity-school: see the

(3) *Per* Lord Kenyon C. J. *Rex v. Whittlesea*, 4 Term Rep. 817. report, 1 Will. 87.

profits *inter alia*, as follows: "Also the yearly sum of 10l. to the charity-school of Melborne, in the county of Derby, to be paid to the vicar there, for the time being," which sum of 10l. the pauper received from the vicar of Melborne aforesaid, from the execution of the said deed, to the time of his death. By the court.—"A school-master is not an office, but only an employment; and what interest the pauper had in the school, whether for life, or otherwise, or how he was admitted to, or came to the employment, does not appear. The vicar is the person entitled to the 10l. *per annum*, and not chusing to teach the school himself, he paid it to this poor man as his deputy, which could not gain a settlement for any person whatever (1)."

3. Curate of sequestered living.

On the first of October 1766, the vicarage of the parish of Over was sequestered for three years, or till the bishop should release the same. On the twelfth of October aforesaid, the pauper was ordained deacon, to supply the cure during the sequestration. From the fifteenth of October aforesaid, to the fifth of June 1768, he performed divine service as curate, and resided in the parish of Acton, by exchange, with Mr. M., who paid him 5l. a year for doing duty there, in addition to his salary of 35l. a year, which was paid him by the churchwardens, who were the sequestrators of Over, until the first of October 1769, when the sequestration ended. From June 1768, to the first October 1769, the pauper did the duty as curate at Over, and resided there; but it did not appear that he had any licence to the curacy of Acton. Lord Mansfield.—"There is no colour for considering this as an annual office: it is no office at all." Aston J.—"You cannot call it an annual office, when the sequestration may be determined at any time. It is not

(1) Rex v. Melborne, Burr. S. C. 244; from whence the case is here stated. 1 Will. 87. S. C. from which the opinion of the court is given. 2 Bott, 162. Pl. 205.

the annual office of a constable or a tithing-man; they are appointed yearly, and to serve for a year (1)."

3d, As it is unnecessary that the office should be of a parochial nature, it is equally so that the appointment should be in the parishioners. 3. Mode of appointment immaterial.

Thus, the collector of duties on births and burials appointed by the crown (2); a constable put in by the leet (3); a tithing man by the steward of a leet (4), or by the jurors (5); the clerk of the parish appointed by the parson (6); a sexton elected at a vestry by the proprietors of seats in the church or chapel (7), have been held to acquire settlements by serving these offices. Instances.

4th, The office must be annual; that is, the person appointed into it, must be liable to the duties for a year at least. 4. Must be annual.

The sessions found, that by a custom in the hundred of P., in which the parish of C. lies, the occupiers of small tenements serve the office of tithing-men for half a year only at a time. The pauper served this office for one half year; and after an interval of twenty years, for another: he gained no settlement. For by "the custom here stated, it is no annual office (8)." Tithing, serving half yearly by custom.

But it is not necessary that the office should be strictly annual, *i. e.* limited in duration to a year. A freehold May be longer than yearly.

(1) *Helfington v. Over*, Burr. S. C. 746. 2 Bott, 165. Pl. 209.

(2) *Bisham v. Cook*, *ante*, 2, (6).

(3) *Per* Powel J. *Gatton v. Milwich*, *ante*, 1, (1).

(4) *Holy Trinity v. Garfington*, *ante*, 2, (2).

(5) *Rex v. Allcannings*, *ante*, 2, (3).

(6) *Gatton v. Milwich*, *ante*, 1,

(1), and see *St. Maurice v. St. Mary Kalendar*, Burr. S. C. 27. *post*, 6, (3).

(7) *Rex v. Liverpool*, *ante*, 1, (2).

(8) *Cold Ashton v. Woodchester*, Burr. S. C. 444. 2 Bott, 169. Pl. 214.

office for life, as of sexton (1), or parish clerk (2), are public annual offices within the act.

5. Must exist in the parish.  
6. May extend beyond it.

5th, The office must exist within the parish where the party resides (but it may extend beyond it). Thus, a constable of a city, consisting of several parishes, the duties of the office being to be executed through all parts of the city, gains a settlement in the parish where he resides (3). The warden of a borough, exercising the office in the parish where he claimed a settlement, and in some others, gains a settlement (4).

Sexton of chapel.

So a person was elected sexton to the church or chapel of St. James; which, with part of the church-yard, stands in the parish of Walton, and the other part of the church-yard in the parish of Liverpool; but no corpse was ever buried in that part of the church-yard in Liverpool parish whilst the pauper executed the office, although they are since. The inhabitants of Liverpool attend the church of St. James in a large proportion, and the sexton resided in Liverpool. Lord Kenyon C. J. "The church-yard lies in two parishes, and the sexton gained a settlement in that in which he resided (5).

7. But need not extend over it.  
Tithing-man in part of parish.

The office need not extend over the whole parish.

Thus, a tithing-man, whose tithing did not extend over the entire parish, but comprehended the part wherein he resided (6). The bailiff, or ale-taster of a borough, which borough was not one fifth or sixth part of the parish, acquired settlements (7).

(1) *Rex v. Liverpool*, ante, 1, (2).  
(2) *Gatton v. Milwich*, ante, 1, (1).  
and the opinion of Aston J. *Helsington v. Over*, ante, 5, (1).  
(3) *St. Maurice v. St. Mary Kalendar in Winchester*, ante, 5, (3).  
(4) *St. Mary v. St. Lawrence in Reading*, ante, 2, (1).

(5) *Rex v. Liverpool*, ante, 1, (2).  
(6) *Fittleworth v. Pullborough*, 2 Bott, 167. Pl. 213  
(7) *Rex v. Whitechurch*, ante, 2, (7); and see *Wingham v. Sellinger*, Burr. S. C. 223. 2 Bott, 161. Pl. 204.

SECT. II.

*Of the Election, Service, and Residence.*

THE act requires, that the party, claiming a settlement, shall execute the office in the parish for himself, and on his own account, during one whole year (1).

Office must be executed on party's own account.

1st, He must therefore be legally placed in the office. J. H. was told by his wife, on his return home, "that a person, whom he knew to be borougher of the borough of W. in the parish of W. left a wooden tally for him, at his house, as a token that he J. H. had been chosen, at the court-leet, held for the manor, borougher for the borough of W. ; but she had burnt the tally before his return home." I. W. was not present at the court-leet, nor did he know, of his own knowledge, that he was chosen borougher ; and no record, or presentment of the jury of the leet, or any other evidence of his appointment or election, except what his wife told him, was produced at sessions. It appeared, that he never took the oath of office, but that, within the year after, his wife had told him the tally had been left at his house, he executed one warrant of a justice of the peace for the county, directed to the borougher of the borough, and for the year was willing and ready to execute the office. Lee, C. J.—" The act requires a legal placing in an annual office. It is stated, negatively, that there was no presentment, no admission, nor swearing ; so that here is no foundation for supporting a legal placing. The evidence of being told of the tally, is nothing that can merit any regard. The evidence of the legal placing in the office, is found in the negative ; for as

1. Must be legally placed in it. Borougher, evidence of his appointment, insufficient.

(1) 3 & 4 W. 3. c. 11. s. 11, 12, 13.

no presentment was offered in evidence, we must take it that there was no presentment at all (1).”

Constable not presented according to the custom.

So, where it is an immemorial custom to present all constables to serve for the tithing at the manor court-leet, one who is sworn into the office, but never presented at any court leet, gains no settlement (2).

Swearing into the office, when sufficient.

But it seems, that where swearing into the office is necessary, if the person appointed serves his year, he is legally placed therein, although not sworn until half the year is expired (3).”

Degree of service immaterial.

If the officer is properly appointed, the actual service performed in the parish seems immaterial (4). It is sufficient, if he is ready to do his duty when called upon.

Of service by deputy.

And when it is legal for him to execute the office by deputy, such service confers a settlement upon the principal (5).

Deputy gains no settlement.

But a deputy gains no settlement by serving the office (6), for the act requires that he shall execute it for himself, and on his own account.

A deputy constable.

At a court-leet of the manor of W. & H. R. B. esq, was presented, by the leet jury, to be constable for the year ensuing for the tithing of H; R. B. having notice of the appointment, procured the pauper, to serve the office, to give him a settlement. The pauper was accordingly sworn in before a justice of peace, and served for the year, but was never presented at any court-leet, as

(1) *Wingham v. Sellinge, Burr. v. Pullborough, ib.* 167. Pl. 213. S. C. 223. 2 Bott, 161. Pl. 204. (4) *Rex v. Liverpool, ante, s.* (2).  
 (2) *Rex v. Winterbourn, Burr. v. Hope Mansell, Cald.* 252. 2 Bott, 166. Pl. 270. But  
 2 C. 520. 2 Bott, 167. Pl. 207. a deputy is in several cases an independent officer.  
 (3) *Holy Trinity v. Garfington, ante, 2, (2);* and see *St. Maurice v. St. Mary Callendar in Winchester.* (6) *Lothfome v. Sheriffhales, 19*  
 2 Bott, 158. Pl. 203. *Fittleworth* *Via. Abr.* 379.

was the immemorial custom. He gained no settlement (1).

Even if the person is appointed to the office as principal, and not as deputy, he gains no settlement if he is placed there, and serves for, and on account of another.

Constable  
legally  
placed in office,  
but  
serving on  
another's  
account.

T. P. whilst he lived in Putney, was, at a court leet, sworn tithing-man for the manor and parish in manner following: "The jurors present to the office of tithing-man for the year ensuing M. I. A. who, by leave of the court, puts in his place T. P. and he is sworn." T. P. served the office, but J. A. whose turn it was to furnish a tithing-man, paid all his expences attending the execution thereof. Lord Mansfield.—"The question is, whether the pauper served this office for himself, and on his own account, or not? The question is not, how he was presented to it, but how he served it. M. J. A. was the person in turn to furnish a tithing-man, and he, by leave of the court, puts this man a day-labourer in his place, and paid him all the expences attending the execution of the office, and A. received the benefit of it, by being discharged of his obligation to serve in this, his turn, therefore he served for A. It is true, that A. was not liable for his misconduct, for he was not deputy to A. but yet it is clear, that he executed the office for A. and not for himself, and on his own account, according to the meaning of the act of parliament." Aston J.—"This man appeared to have served for A. and not to have executed the office for himself, and on his own account. Though he was indeed so far the legal officer, that he might have had a good defence upon an information in nature of a *quo warranto*, brought against him for executing the office, yet it don't follow that he executed

(1) *Rex v. Winterbourne, ant.*, 8, (2).



## Of Settlement by serving an Office.

it for himself, and on his own account, within the intent and meaning of this act (1)."

Service must be for entire year.

The service must be for one whole year. The pauper was chosen a tithing-man at a court leet, and continued to execute his office for five months, when becoming chargeable to the parish, an order of removal was made and executed, and the court were of opinion, that he was well removed, and gained no settlement (2).

The pauper, at a court leet holden by adjournment for the manor and borough of C. on 16th November 1792, was appointed to the office of ale-taster, and duly sworn, according to the custom of the manor, to execute the said office for one year then next ensuing, or until he should be lawfully discharged from the same. He accordingly entered upon, and executed such office until 1st November 1793, when, at a similar court holden by adjournment, a new officer was appointed in his stead, and sworn in the same manner. He gained no settlement, for the words of 3 W. 3 c. 11. s. 6. are to be construed according to their plain and obvious meaning; and he did not serve "a whole year (3)."

40 days residence.

There must be a residence of forty days, at least, in the parish in which the office is executed and the settlement claimed. No case has come before the court upon this subject, although some may be conceived which might give rise to discussion. It is undetermined, therefore, whether a residence of forty days is sufficient,

(1) *Rex v. All Cannings, Burr. S. C. 634, ante, 2, (3).*

(2) *Fittleworth v. Pullborough, 2 Bott, 167. Pl. 213. Burr. S. C. 238.* The pauper here resided under a certificate, by virtue of 8 & 9 W. 3. c. 30 and 9 & 10 W. 3. c. 11. But Lee C. J. observes; "the 3 & 4 W. & M. differs from this act; yet

it would be odd to place him (the certificated pauper) on a different footing from other paupers who are to gain settlements by the exercising annual offices, and that is, for, and during a year."

(3) *Rex v. Bow, 8 Term Rep. 445. 1 Bott, 717. Pl. 3003.*

or whether the party should reside for the whole year? If the former is sufficient, whether a residence at different periods will connect? Or, supposing the pauper to reside the first forty days after his appointment in A. where his office or charge is to be executed, and then to remove into some other parish, but still discharging the duties of his office in A. during the remainder of his year, whether he would thereby gain a settlement in A?

If any analogy exists between this species of settlement, and those by apprenticeship, hiring and service, or residence upon a rented tenement of 10l. *per annum*, or upon a man's own estate, the points are decided as to them.

SECT. III.

*Of the Proofs necessary to establish this Settlement.*

It will be necessary to prove, 1st, that the office is annual, of a public nature, and to be executed in the parish. 2d, That the party was legally placed therein. 3d, That he served for the whole year. 4th, The residence.

Proofs necessary.

1st, As to the nature of the office. Some are known to the law, and stand in no need of proof. Such is that of constable, which exists by common law; collector of the land-tax, which is created by statute.

1. Nature of office.  
1 Common law officers.

But offices of a local nature, either depend, 1st, upon charter or grant, which should be produced, if in existence; or, 2d, upon immemorial usage, when it may be shown by the court rolls of the manor (1), or an ancient

2. Of a local nature.

(1) *Ratcliffe v. Chaplin*, 4 Leon. 242.

custom-

## Of Settlement by serving an Office.

customary of the place (1), or by entries in the parish books (2), or by persons who are acquainted with the duties, from having seen them claimed and exercised.

a. The party's title to it.

2d, It remains to be decided, whether, in appeals of this kind, it is necessary to prove a regular title to the office, as the party himself must do, if it was questioned in an information in the nature of a *quo warranto*; or whether, acting in the office, is *prima facie* evidence of a legal appointment (3)?

In a case where a presentment of the jury of the leet was necessary to the appointment of a borsholder, and no record or presentment was offered in evidence, Lee C. J. observed, "as no presentment *was offered* in evidence, we must take it, that there was no presentment at all (4):" and upon an indictment against churchwardens for refusing to join with the overseers in making a poor rate, Pratt, C. J. held, that an appointment of the overseers, under the hands and seals of two justices, must be produced; for the court is to judge whether it be sufficient (5).

Proof of local custom.

Such proof seems necessary in all cases where the mode of appointment depends upon local custom, and although it may be unnecessary in others, it is at least the safest mode of proceeding to adduce it.

Copies of records, and public instruments.

Wherever the appointment depends upon a record, or written instrument, either the original, or an examined sworn copy, should be produced in evidence (6).

(1) *Denn. v. Spray*, 1 Term Rep. 466. *Edwin v. Thomas*, 1 Veru. 489.

(2) *Stead v. Heaton*, 4 Term Rep. 669.

(3) See the opinion of Bufter J. *Berryman v. Wife*, *ante*, Vol. 1. 379.

(4) *Wingham v. Sellings*, Burr. S. C. 223, *ante*, 8, (1).

(5) *Rex v. Arnold*, 1 Str. 101.

(6) For the law respecting copies under seal, which have little, if any reference to the present subject, see Bull, L. N. P. 226.

The principle which regulates the admission of copies of public instruments is thus laid down by Lord Holt, C. J.—“That wherever the original is of a public nature, and would be evidence, if produced, an immediate sworn copy thereof will be evidence (1),” because, since these matters lie for the public satisfaction, every man has a right to their evidence, and in several places they cannot be at the same time (2).

When evidence.

Where a sworn copy is given in evidence, it must contain a copy of the whole instrument, for the precedent or subsequent words or sentence may vary the sense (3).

What copied.

In order to let in the evidence of a copy, it must be proved on oath to have been duly examined. This is done by some person, usually the officer, who has the custody of the instrument, reading it over while the witness peruses the copy, and afterwards by the officer reading the copy while the witness holds the original, and observes whether it corresponds therewith.

How proved.

Circumstances attending the appointment which depend not upon custom, or written documents; such as the swearing in of the officer, &c. are to be proved by oral testimony (4).

(1) Lynch v. Clarke, 3 Salk. 154. Doug. 593. Bull. L. N. P. 228. *ib.* 247. 12 Vin. Abr. (A. b. 26.) Tillard v. Shebbeare, 2 Will. 366. Birt v. Barlow, Doug. 171. Rex v. Lord George Gordon, *ib.* 593.

(2) Gilb. Law of Evid. 3d Ed. 48. As to when copies of private instruments are admissible in evidence, see *ante*, Vol. 1. 384, *et seq.*

(3) Bull. L. N. P. 228. 3 Salk. 173. But this only means, that an entire copy should be given of what relates to the subject matter; *ex. gr.* If an entry in the manor books, or copy-hold rolls is relied upon, a complete copy of that particular entry must be proved, and not of the entire book, or rolls, see Bull. L. N. P. 228.

(4) *Ante*, Vol. 1. 384, *et seq.*

This

3. Proof of  
serving ap-  
pointment.  
4. Of resi-  
dence.

This proof, as also that of serving the office and residence, depend upon the same rules as the establishment of any other fact necessary to any other kind of settlement (1).

(1) *Ante*, Vol. 1. 301. *Ib.* 375.

CHAPTER XXIII.

*Of Settlement, upon a Tenement of ten Pounds a Year Value.*

SECT. I.

*Division of the Subject.*

THIS kind of settlement depends upon 13 & 14 Car. Statute 13 & 14 Car. 2. c. 22.  
 2. which confines the power of removal, to cases where persons "come to settle in any tenement, under the yearly value of ten pounds (1)."

The act speaks of the annual value, without mention of the inhabitant's estate or interest, and at first view seems to require, that all tenements which give a settlement should be of the yearly value of ten pounds, without reference to the nature or manner of acquiring the estate, whether freehold, copyhold, leasehold, or a minor interest. Exposition of the word.

The judges entertained originally, some doubt, whether this was not the true construction (2). It has however been long settled, that where the inhabitant has a freehold (3) or copyhold (4) interest, the yearly value of the tenement is immaterial (5). Extends, 1. To freeholds. 2. Copyhold.

(1) *Ante*, chap. xvi. p. 147. This species of settlement, as also that by estate, are rather cases excepted out of this statute, than regulated by it.

(2) *Rex v. Stanmore*, Skin. 268. s. Bott, 96. Pl. 137.

(3) See cases cited, *ante*, Vol. 1. 149. *Puff.*, chap. xxiv.

(4) *Harrow v. Edgeware*, s. Bott, 465. Pl. 485. Fol. 237. *Rex v. Burcleer*, *ib.* 524. Pl. 534. 1 Str. 163.

(5) As to the effect of 9 Geo. 2. c. 7. s. 6. upon the value of estates acquired by purchase, see *Puff.*, chap. xxiv.

3. Lease-  
holds.

As it is likewise, where a leasehold interest devolves upon the party by operation of law (1). And the rule extends to leaseholds purchased for a valuable consideration. It is laid down by Lord Chief Justice Lee, that "before 9 G. 1. §. 7., every body that came into a parish, and made *any purchase whatever*, was irremovable (2)." It is likewise observed by Mr. Justice Dennison, that in *Murfley v. Grandborough*, it was holden by Lord Chief Justice Pratt, Mr. Justice Eyre, and Mr. Justice Fortescue, "that any person who has an estate of freehold, copyhold, or for years, by act of law, (as descent, marriage, executor, administrator,) or purchase, may dwell upon it as his own, and is not removeable, if he continues forty days; though under 10l. *per annum*. But he must abide forty days in order to gain a settlement. And notice is not necessary, because he is not removeable from it. But Powys held *contra*, as to a term for years under 10l. *per annum* value (3)."

And in a very recent case, Mr. Justice Lawrence remarks, that the justice's power to remove, is founded on 13 & 14 Car. 2. c. 12., which extends to any person who shall come to settle in any tenement, under the yearly value of 10l.; and these words never having been deemed to relate to persons living on their own estates,

(1) *Murfley v. Grandborough*, 1 Str. 97. 2 Bott, 467. Pl. 486. *Burclew v. Eastwoodley*, *ante*, 15, (4). and the cases cited, *post*, chap. xxiv. These cases seem excepted from 13 & 14 Car. 2. not only because the preamble of the statutes refers only to persons in a state of vagrancy, which such inhabitants are not, but also, because the words "coming to settle," are used in the enacting part, which seems to imply, that it must be the party's voluntary act, with the intention of settling himself. See the

opinion of the judges; and particularly, Lee J. *Rex v. Sundrith*, Burr. S. C. 7; of Aston J. *Rex v. Uttoxeter*, Burr. S. C. 538. 2 Bott, 479. Pl. 457; of Grout J. *Rex v. Stone*, 6 Term Rep. 295. 2 Bott, 506. Pl. 518.

(2) *Rex v. Stansfield*, Burr. S. C. 210; and see *Rex v. St. Mary's, Whitechapel*, *ib.* 55.

(3) *Rex v. West Shefford*, Burr. S. C. 310; and a note by Sir James Burrow, confirming the accuracy of Mr. J. Dennison's note.

*whether*

whether acquired by purchase or otherwise, or at whatever value; it followed, that every person residing irremovably for forty days in that parish where his own property was, gained a settlement (1).

There are two kinds of estates therefore, in which the annual value of the tenement is immaterial.

1st, Freehold, or copyhold.

2d, Leasehold interests, "which devolve upon the party by operation of law (2)," or are acquired by purchase (3).

In questions of settlement, therefore, the annual value of the tenement is material, only where the interest is less than freehold, or copyhold, or if leasehold is acquired by some act of the party, other than purchase.

Annual value, when material.

This species of settlement is generally considered as acquired by *renting* a tenement of the yearly value of 10l. (4), not only because the occupation is usually under a contract to pay rent, but also because the credit given to the tenant, and his ability to pay 10l. *per annum*, have been deemed reasons for this exception in the statute, and the ground of the settlement (5). But this

This settlement extends to other cases than renting a tenement.

(1) *Rex v. Martley*, 5 East, 44.

(2) See the opinion of Lord Kenyon C. J. *Rex v. Stone*, ante, 16, (1).

(3) *Semb. Rex v. Stansfield*, ante, 16, (2).

(4) See *Rex v. Stanmore*, ante, 15, (3). *Harrow v. Edgware*, ante, 15,

(4). *South Sydenham v. Lamerton*, 2 Bott, 128. Pl. 171. *Post*, 32, (1). The makers of 9 & 10 W. 3. c. 11. seem to have considered it in this light when they enacted, that no person coming into a parish under a certificate shall gain a settlement there,

by any act whatever, "unless he or they shall really, and *bonâ fide*, take a lease of a tenement, of the value of 10l. &c. This is considered as referring to the annual, and not the absolute value of the tenement, in conformity to 13 & 14 C. 2. See the words of Lord Mansfield C. J. *Rex v. Cold Aston*, Burr. S. C. 450. 2 Bott, 529. Pl. 538, and the cases cited hereafter.

(5) *Kinver v. Stone*, 1 Str. 678, *post*, 20, (4). and the cases hereafter cited.



To lawful  
possessions,  
when no  
rent paid.

opinion is not strictly accurate. Lawful possession of a tenement, of sufficient value, confers a settlement, although the occupier is exempt from paying rent (1).

Land given  
to a pauper  
as tenant at  
will.

It seems therefore to include cases of voluntary donation, or permissive possession, where the occupier has no interest of sufficient permanency to entitle him to acquire a settlement by estate.

His brother gave the pauper a close, in the following manner: "I will give you a close in the parish of A., containing about four acres, to enjoy as long as I please, and to take again when I please, and you shall pay nothing for it." It was held, that such possession, when coupled with residence, conferred a settlement; for the words of the statute are satisfied, as the party comes to reside on a tenement, of the yearly value of ten pounds (2).

In considering this species of settlement, it is necessary to examine, 1st, What is a tenement within the meaning of the act. 2d, Its value. 3d, The occupation, or coming to settle thereon. 4th, The residence. 5th, The proofs necessary to support the settlement.

(1) This distinction purposely excludes the consideration of leasehold interests purchased for more than 30l., and of a less annual value than 10l., for which see *post*, Chap. 24.

(2) *Rex v. Fillongley*, 1 Term

Rep. 2 Bott, 121. Pl. 167. Also *Rex v. Nethersea*, 4 Term Rep. 258, *post*, 41, (1). *Rex v. Culmstock*, 6 Term Rep. 750, *post*, 41, (1). *Rex v. Aldeborough*, 1 East, 597, *post*, 42, (3).

SECT. II.

Of the Kind of Tenement.

THE consideration of what shall be considered a tenement upon which a person can come to settle, admits of a two-fold division. 1st, What sort, or kind of things are comprehended within the term tenement. 2d, Whether the local situation of a tenement, with respect to the parish, or the possession of distinct tenements, affect the settlement under 13 & 14 Car. 2. c. 12.

Division of subject.

1st, As to the several sorts, or kinds of things real, comprehended under the word tenement, Sir William Blackstone observes, that,

Tenement, what.

“*Land* comprehends all things of a permanent substantial nature; being a word of very extensive signification. Tenement is a word of still greater extent, and though in its vulgar acceptation, it is only applied to houses, and other buildings, yet in its original, proper, and legal sense, it signifies any thing that may be *holden*, provided it be of a permanent nature; whether it be of a substantial and sensible, or of an unsubstantial, ideal kind. Thus, *liberum tenementum*, frank tenement, or freehold, is applicable, not only to lands, or other solid objects, but also to offices, rents, common, and the like: and, as lands and houses are tenements, so is an advowson a tenement; and a franchise, an office, a right of common, a peerage, or other property of the like unsubstantial kind, are all of them, legally speaking, tenements (1).”

(1) 2 Black. Com. Book ii. Chap. ii. p. 16. and see the opinion of Lord Kenyon C. J. *post*, 25.

How used in  
13 & 14  
C.2. c. 12.

The legislature seem to have used the word in 13 & 14 Car. 2. in what the learned judge just quoted calls the vulgar sense, and to have intended it to signify houses and buildings, in which persons could come to dwell and settle (1).

Parts of  
houses.

Part of a house is a tenement, in this limited sense of the word. Thus a first and second floor unfurnished, there being only one door, and one stair-case (2); a shop communicating with the house, but occupied separately (3), have been held tenements.

Soon obtained a  
more extended construction.

But the term obtained a more extended construction owing to the received opinion, that the ability to pay 10*l.* *per annum* is the foundation of the settlement, and whether the party pay it for a house for habitation, or any other tenement, which brings him in a profit, is not material (4).

Tenements  
within the  
act.  
Water-mill,  
&c.

It has been held therefore, that a water-mill (5) and a windmill, although it had no house, or place of residence (6), are tenements which confer a settlement. So also a rabbit-warren, with a cottage upon it (7), although the tenant have no right in the soil of the warren, except that of entering upon, and killing the rabbits there (8), is a tenement.

Lends the  
colliery.

So a Land-sale colliery, *i. e.* not the mine only, but the stock of horses, gins, ropes, and other things,

(1) See *Rex v. Hollington*, 3 East, 113.

(2) *Rex v. St. George's, Hanover-Square*, Burr. S. C. 692. 2 Bott, 99. Pl. 143; and in *Rex v. White-chapel*, a furnished room was held a tenement. 2 Bott, 100. Pl. 146.

(3) *Rex v. St. Giles's in the Fields*, Burr. S. C. 798. 2 Bott, 99. Pl. 145.

(4) *Kinver v. Stone*, 1 Str. 678.

(5) *Evelyn v. Rentcomb*, 2 Salk. 536. 2 Bott, 96. Pl. 138.

(6) *Rex v. Butley*, Burr. S. C. 107. 2 Bott, 97. Pl. 141. *Rex v. Knighton*, 2 Term Rep 48, *post*.

(7) *Kinver v. Stone*, *ante*, (4).

(8) *Rex v. Piddletrentside*, 3 Term Rep. 772.

necessary

necessary for working, is a tenement within the statute, provided the mine, and engines affixed to the soil, are of the annual value of 10l. (1). So are the tolls of a market (2), as also tithes (3). And not only land (4), but a limited interest in the profits are tenements; such is the grafs and aftermath of a meadow, taken for ten months (5). The fogs, or after-grafs of a field, taken without specification of the time in which they are to be uplifted, and give a settlement if occupied forty days (6).

Limited profits in land.

So also, where a party held under a parol agreement the fishing of a pond, with the grates, &c. also all the spear, sedge, flags, and rushes, growing in, and about the said pond; "he held a tenement; for the court will consider, that the fishery and soil passed together." Buller J. "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 (7).

Fishing of a pond, &c.

although the soil don't pass.

A cattle-gate in a stinted pasture is a tenement, for it passes by lease and release, and cannot be devised, but by the statute of frauds (8). As is also a common in gross. Lord Coke says, that a præcipe will lie for it (9).

Cattle-gate, &c.

(1) *Rex v. North Bedburn, Cald.* 452. 2 Bott, 101. Pl. 147.

(2) *Rex v. Chipping Norton, 5 East,* 139. Where the court inclined strongly to the opinion on the authority of Lord Coke, Co. Lit. 19. b. Webb's case, 8 Co. 466. The opinion of Lord Kenyon, *Rex v. Piddletrentside,* 3 Term Rep. 775.

(3) *Rex v. Skingle,* 1 Str. 100. 1 Bott, 117. Pl. 153. Powell v. Bull, Com. Rep. 267.

(4) *Rex v. Shenstone, Burr. S. C.* 474. 2 Bott, 98. Pl. 142.

(5) *Rex v. Stoke,* 2 Term Rep. 451. 2 Bott, 103. Pl. 150.

(6) *Rex v. Bampton,* 4 Term Rep. 348. 2 Bott, 106. Pl. 115. But this was once doubted; see *Rex v. Minchinghampton,* 2 Str. 374; and the opinion of Wright J. *Rex v. Lockerley, Burr. S. C.* 318.

(7) *Rex v. Old Alresford,* 1 Term Rep. 358. 2 Bott, 102. Pl. 149.

(8) *Rex v. Whixley,* 1 Term Rep. 137. 2 Bott, 102. Pl. 148.

(9) *Rex v. Derlington,* 7 Term Rep. 671. 2 Bott, 112. Pl. 154.

Tenement  
must be of a  
permanent  
nature.

But as a tenement must be of a permanent nature, doubts have arisen whether particular lettings, although connected with the profits of land, were not rather contracts for the occupation of personal chattels, than a demise of the produce of the land.

Master of  
job-horses  
renting a  
stable from  
his em-  
ployer.

John Small contracted with the pauper's father to supply him with a pair of coach horses for a quarter of a year, at 2*l.*, and the father contracted with Small for a stable belonging to Small, and was to pay 2*l.* 10*s.* a quarter for it, Small reserving a separate stable for his own use. At the latter end of the fifth quarter, Small threatened to discharge him; but on the importunity of friends, agreed, that he should continue to furnish him with the pair of horses at 20*l.* only; having the like quarterly allowance for the use of his stables, as before. They acted under this contract for several years, till the pauper's father died; who, during the whole time, rented and lived in a tenement of 6*l.* a year, in the parish; but was never rated either for the house or stables. It was contended that this was not an independent contract for the stables, but a deduction from the price of the job-horses, on account of their standing in Small's own stables; and that no rent would be payable when the job was at an end. But the court, after taking time to consider, thought the agreement, though awkwardly pursued, was a contract for the stable. Mr. J. Aston, "There can be no doubt but that it is a good renting; suppose the master had paid the servant his whole wages, might not he have brought an action for the occupation and use of the stable (1)?"

Renting a  
dairy.

M. covenanted with E. to let and demise to him for a year, a dairy consisting of sixteen cows, with the

(1) *Rex v. St. Margaret, Fish-Street-Hill, & Bott, 118. Pl. 163, Burd. S. C. 677.*

dwelling-house, and feeding for the said cows, on twenty-one acres of clover ground; and thirteen acres of meadow land with the after-leaze of a mead; also the run of the yard and arshes belonging to the farm for feeding pigs, and the run of a horse with the cows. Also to allow him the shert wheat arising from the corn growing on the farm, and provide for the cattle when wanted five tons of hay, and cause ten acres of the clover, and thirteen of the meadow to be laid up, at Candlemas, and the other eleven acres of clover, at Lady-day; to put the house in repair, &c. and if any of the cows shall not calve before the first of May, the landlord to allow two shillings *per* week out of the rent for each cow until she is delivered, and what is reasonable for every calf wanting. The tenant to pay 3l. 5s. for every cow.

The court were of opinion, that this was not a tenement within the statute. "It is only an agreement for the use of the cows, and the feeding of them; and it is merely personal. Here is no interest in the land that passes, or was intended to pass (1)."

But this decision was at first questioned, and has since been overruled.

The pauper rented in Chaldon Herring, a dairy of thirty cows, some at 3l. 10s., and others at 5l. a cow, with liberty to cut furze on parts of the farm for the use of the dairy only, and a warren to kill rabbits for his profit, called Grange warren, and a small house on it to keep nets, in the same parish of the same man, at 30l. per annum. The cows were to feed on particular grounds, at particular seasons of the year, as is usual in the letting of dairies. The pauper and his man sometimes slept in the house in Grange warren. The pauper had no right in

Renting a dairy of cows to be fed in particular pastures.

(1) *Rea v. Lockerly*, Burr. S. C. 315. *ab/ente* Lee C. J.

the foil of the warren, except that of entering upon, and killing rabbits there; the person of whom he rented the warren constantly depasturing the same, and ploughing some part thereof. Lord Kenyon C. J.—“If we were now called upon for the first time to make a decision upon this statute, perhaps I should have some difficulty on the subject; but the courts have put a liberal construction on it. I cannot quite agree with the determination of *Rex v. Lockerly*, because, after it had been decided in so many cases, that an incorporeal hereditament would give a settlement, I should have thought that that case would have received a different determination. But without considering that case, I think that the pauper took a tenement in Chaldon Herring, both by renting the dairy and the warren. Lord Coke says, that *prima tonsura* is a tenement; then the dairy was a tenement; the other taking was also sufficient; for it was, if I may use the expression, a pernanacy of the profits of the land, by the mouths of the rabbits. A free warren is the subject of a family settlement; a precipe will lie for it, and the renting of it is sufficient to give a settlement (1).”

Renting a  
dairy, &c.

And in a later case, *Rex v. Lockerly*, was expressly over-ruled. The pauper rented of Chapman, under a verbal agreement, twenty cows at 3l. 10s. a cow, per annum. It was also agreed, as is usual in such contracts, in the county of Dorset, that the owner of the cows should feed and support them, and for the purpose of doing so in the best manner, that such cows should depasture in certain lands, called the Cow Leeze Grounds, from May-day to the 18th of September, and after that time, in certain meadow grounds, which are kept for that purpose, from the time they are mowed, and when the pasture of the meadow grounds were consumed, that the cows should be kept by Chapman in some other of the

(1) *Rex v. Piddletrenthide*, 3 Term Rep. 777. 2 Bott, 104. Pl. 151.

farm grounds, with the other cattle, or to be foddered in the farm-yard with hay by him. The land called the Cow Leeze was to be laid up by Chapman at Lady-day, and not fed upon by any cattle whatsoever until May-day. Chapman was not to feed any other cattle, either in the Cow Leeze, or meadow grounds, whilst the same were fed by the cows rented by the pauper; but the hay of the meadow grounds was taken by Chapman, and the Cow Leeze ground fed by him after the cows had quitted it. If any cow did not calve before May-day, or died, or became barren, or sick, an allowance was to be made. The pauper was not bound to repair any fence in any ground in which the cows were fed. It was further agreed, that the pauper should have a dwelling house and a right of feeding a mare on the farm, keeping his pig in the yard, and cutting fuel for the use of the dairy; but he had no other right whatever. The contract continued in force five years; during which time the pauper resided in the said house on the farm. Lord Kenyon C. J.—“It being impossible to distinguish this case from *Rex v. Lockery*, I think we are bound to deny the authority of that case, and to substitute, in its room, a better exposition of the statute of Car. 2. It has been argued, that if we decide this to be a tenement, we shall depart from the words of the statute: but, in this case, the pauper took a tenement; emphatically, a tenement. *Anything is a tenement, which is a profit out of land.* In order to take a tenement, it is not necessary that the party should have a fee simple, or fee tail; any minute interest in land, is *parcel* of a tenement. Such minute interest, indeed, cannot be entailed, but all the parcels, when consolidated together, may.”

“A beaſtgate has been held to be a tenement; and yet that is not the whole land, but the profits of the land to a certain amount. So here the profits of these lands are to be taken exclusively by the cows which the pauper rented. If the cattle had been his own, and he had rented the  
the



the feeding of them, that would unquestionably have been a tenement; like the taking of the pasture, the hay, and aftermath: and I think that these cows were the pauper's for a certain period; they were not so far his own, that he could have sold them, but they were his, that he might use them under the contract for a limited time. And this was *not the less taking a tenement, because the pauper could only enjoy the land in a particular mode*; for in many farms the tenant stipulates, that he will not depasture sheep or horses on particular grounds. I do not see, therefore, why this is not, strictly speaking, a tenement; for the pauper had, for a certain part of the year, the exclusive right to the pasturage of these grounds, to be taken by the mouths of the cattle. The other judges concurred, Buller J. adding, "By the very terms of the contract, no other cattle, not even those of the farmer himself, were to be fed on those particular grounds on which the pauper's cows were to depasture; wherefore he had the exclusive possession of these fields during that time. This goes a great way to answer the difficulty stated at the bar; for as, at present, it seems to me, that if the pauper had the sole possession, or, which is the same thing, the sole profits, he might have maintained trespass (1).

And, in conformity to what was thus observed by Mr. J. Buller, leases of this sort have been held such a demise of the soil and exclusive use of all the grass (that should grow on the closes, particularly enumerated in the lease) to be taken by the mouths of the cattle, as to entitle the tenant to bring trespass, or distrain any other cattle of the lessor for doing damage there (2).

The right to the herbage need not be exclusive.

In the foregoing cases, there was a demise in effect of the exclusive right to the herbage and produce of the soil for a limited period. But a right to take the herbage by these

(1) *Rex v. Tolpuddle*, 4 Term Rep. 672. 2 Bott, 106. *Ph* 153.

(2) *Burt v. Moor*, 5 Term Rep. 329.

means,

means, in common with other persons, is equally a tenement within the statute.

The pauper, during the time he occupied a house of the annual value of 5*l.* rented the ley of two cows from May-day to Michaelmas, at six guineas, in a large pasture, containing one hundred acres, and of the annual value of 250*l.* belonging to Mr. Mundy. The pauper had not the exclusive pasture of the land, and was under no restriction as to what cows he kept in it. Lord Ellenborough C. J.—“The present case is nothing more than a common in grofs, which has been holden to be a tenement within the statute (1).” Lawrence J.—“In *Rex v. Piddletrenthide* (2), Mr. Justice Buller states, that the question, in cases like the present, is this, whether or not it be a contract to receive profits out of land? If that be so, it determines this case; for here the cows were the pauper’s own, and the contract which was for the pasturage of them was, to use the words of lord Kenyon in the same case, a contract for the pernancy of the profits of the land, by the mouths of the cattle (3).”

Renting a dairy in a common pasture.

But a contract, whether annual or otherwise, for the use of machinery affixed to a tenement, is not within the statute, although connected with a limited use of the building by a right of working therein, or even with an exclusive occupation of part thereof, if such part is not of the annual value of ten pounds.

Contract for use of machinery connected with a tenement.

The pauper entered into an agreement, under seal, with B. the owner of a corn-mill, whereby he covenanted with B. that he would, with horses and carriages, at his own costs and charges, from 25th September 1790, to 25th March 1795, deliver, at the corn-mill belonging to B. weekly, and every week, three loads and an half

Renting the grinding of so many loads of corn.

(1) *Rex v. Derfingham*, *ante*, 21, (9). (3) *Rex v. Hollington*, 3 *East*,

(2) *Ante*, 24, (1).

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