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

In two volumes
Vol. II

Michael Nolan

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Volume 16

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MICHAEL NOLAN

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Michael Nolan

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A

TREATISE OF THE LAWS

FOR THE

RELIEF AND SETTLEMENT

OF THE

POOR

By MICHAEL NOLAN,

OF LINCOLN'S INN, ESQ. BARRISTER AT LAW

IN TWO VOLUMES.

VOL. II.

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TREATISE

ON THE

LAWS OF THE POOR,

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CHAPTER XXII.

Of Settlement by ſerving an Office.

SECT. I.

Of the Kind of Office.

THIS 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 Salk. 536. 2 Bott, 156. Pl. 198. 118. 2 Bott, 166. Pl. 211. *Ib.* 170. Pl. 215. and the church or chapel in this caſe was not the pariſh church.

(2) Rex v. Liverpool, 3 Term Rep.

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

(1) St. Mary *v.* St. Lawrence in Reading, 10 Mod. 13. 2 Bott, 155. Pl. 197.

(2) Holy Trinity *v.* Garſington, Caſ. Sett. & Rem. 72. 2 Bott, 157. Pl. 201.

(3) Rex *v.* Hope, Manſel. Cald. 232. 2 Bott, 166. Pl. 210. Rex *v.* All Cannings, Burr. S. C. 634. 2 Bott, 164. Pl 208. See alſo Rex *v.* Winterbourn, Burr. S. C. 520, *poſt*, 8, (2).

(4) Wingham *v.* Sellinge, Burr. S. C. 223. 2 Str. 1299. 2 Bott, 161. Pl. 204.

(5) Rex *v.* Hammond, 2 Bott, 156. Pl. 199.

(6) Biſham *v.* Cook, *ib.* Pl. 200. See alſo Rex *v.* Whittleſea, *poſt*, (9).

(7) Rex *v.* Whitchurch, Burr. S. C. 365. 2 Bott, 162. Pl. 206.

(8) Rex *v.* Bow, 8 Term Rep. 445. 1 Bott, 717. Pl. 1001.

(9) Rex *v.* Whittleſea, 4 Term Rep 807. 2 Bott, 166. Pl. 212.

(10) Rex *v.* Ilminſter, 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. Schoolmaſter no office.

(1) Rex v. Wantage, 2 Eaſt, 65.
(2) *Ante*, 2.
(3) *Per* Lord Kenyon C. J. Rex v. Whittleſea, 4 Term Rep. 817.
ante, 2, (9).
(4) In the charity-ſchool: ſee the 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 Wilſ. 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) Helſington *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.* Garſington, *ante*, 2, (2).

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

(6) Gatton *v.* Milwich, *ante*, 1, (1), and ſee St. Maurice *v.* St Mary Kallendar, 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.

The office need not extend over the whole pariſh.

Tithing-man in part of 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 aletaſter 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 Whitchurch, *ante*, 2, (7); and ſee Wingham v. Sellinge, Burr. S. C. 223. 2 Bott, 161. Pl. 204.

SECT.

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 borſholder 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, borſholder 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 borſholder; 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 borſholder 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. Borſholder, evidence of his appointment, inſufficient.

(1) 3 & 4 W. 3. c. 11. ſ. 11, *ante*, 1.

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. S. C. 223. 2 Bott, 161. Pl. 204.

(2) Rex *v.* Winterbourn, Burr. S. C. 520. 2 Bott, 167. Pl. 207.

(3) Holy Trinity *v.* Garſington, *ante*, 2, (2); and ſee St. Maurice *v.* St. Mary Callendar in Wincheſter, 2 Bott, 158. Pl. 203. Fittleworth *v.* Pullborough, *ib.* 167. Pl. 213.

(4) Rex *v.* Liverpool, *ante*, 8, (2).

(5) Rex *v.* Hope Manſell, Cald. 252. 2 Bott, 166. Pl. 210. But a deputy is in ſeveral caſes an independent officer.

(6) Lothſome *v.* Sheriffhales, 19 Vin. Abr. 379.

was

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, *ante*, 8, (2).

it

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 aletaſter, 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 it, for, and during a year.*"

(3) Rex *v.* Bow, 8 Term Rep. 445. 1 Bott, 717. Pl. 1001.

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.

Proofs neceſſary.

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.

1. Nature of office. 1 Common law officers.

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.

2. Of a local nature.

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

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

cuſtom-

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.

2. 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 Vern. 489.

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

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

(4) Wingham *v.* Sellinge, 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

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 Wilſ. 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 Atk. 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 appointment.
4. Of reſidence.

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. I. 301. *Ib.* 375.

CHAP-

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. 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)." Statute 13 & 14 Car. 2. c. 12.

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. 2 Bott, 96. Pl. 137.

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

(4) Harrow v. Edgeware, 2 Bott, 465. Pl. 485. Fol. 237. Rex v. Burcleer, *ib.* 524. Pl. 534. 1 Str. 163.

(5) As to the effect of 9 Geo. 1. c. 7. ſ. 6. upon the value of eſtates acquired by purchaſe, ſee *poſt*, chap. xxiv.

As

3. Leaſeholds.

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. c. 7., every body that came into a pariſh, and made *any purchaſe whatever*, was irremoveable (2)." It is likewiſe obſerved by Mr. Juſtice Denniſon, that in Murſley *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) Murſley *v.* Grandborough, 1 Str. 97. 2 Bott, 467. Pl. 486. Burcleer *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.* Sundriſh, Burr. S. C. 7; of Aſton J. Rex *v.* Uttoxeter, Burr. S. C. 538. 2 Bott, 479. Pl. 457; of Gruſe 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 irremoveably 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).

Annual value, when material.

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.

This ſettlement extends to other caſes than renting a tenement.

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

(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, (2). Harrow v. Edgeware, *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 Aſhton, 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.* Nethereſal, 4 Term Rep. 258, *poſt*, 41, (1). Rex *v.* Culmſtock, 6 Term Rep. 750, *poſt*, 41, (1). Rex *v.* Aldborough, 1 Eaſt, 597, *poſt*, 42, (3).

SECT.

SECT. II.

Of the Kind of Tenement.

Division of ſubject.

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.

Tenement, what.

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

" *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 10l. *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.

Lands 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. Whitechapel, 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. Piddletrenthide, 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 graſs and aftermath of a meadow, taken for ten months (5). The fogs, or after-graſs 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, 239. 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. Piddletrenthide, 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. Brampton, 4 Term Rep. 348. 2 Bott, 106. Pl. 115. But this was once doubted; ſee Rex v. Minchinghampton, 2 Str. 874; 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. Derſingham, 7 Term Rep. 671. 2 Bott, 111. 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 employer.

John Small contracted with the pauper's father to ſupply him with a pair of coach horſes for a quarter of a year, at 22l., and the father contracted with Small for a ſtable belonging to Small, and was to pay 2l. 10s. 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 20l. 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 6l. 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, 2 Bott, 118. Pl. 163. Burr. S. C. 677.

dwelling-

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 ſherl 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.

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

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

(1) Rex v. Lockerly, Burr. S. C. 315. *abſente* Lee C. J.

the ſoil 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 pernancy 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

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 pigs 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. Lockerly, 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. *Any thing is a tenement, which is a profit out of land.* In order to take a tenement, it is not neceſſary that the party ſhould have a fee ſimple, or fee tail; any minute intereſt in land, is *parcel* of a tenement. Such minute intereſt, indeed, cannot be entailed, but all the parcels, when conſolidated together, may."

"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 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. 673. 2 Bott, 106. Pl. 153.

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

means,

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

Renting a dairy in a common paſture.

The pauper, during the time he occupied a houſe of the annual value of 5l. 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 250l. 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 groſs, 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)."

Contract for uſe of machinery connected with a tenement.

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.

Renting the grinding of ſo many loads of corn.

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

(1) Rex *v.* Derſingham, *ante*, 21, (9).
(2) *Ante*, 24, (1).
(3) Rex *v.* Hollington, 3 Eaſt, 213.

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