**English Poor Law Cases Annotated, 1691-1834 (Dataset) (Updated)**

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**Introduction**

This is a dataset of annotated cases concerning the right to a settlement by hiring under poor law legislation which was in force between 1691 and 1834. During this period, parishes could contest their liabilities to pay poor relief by taking appeals from decisions of the quarter sessions to the Court of King’s Bench. The decisions of the Court of King’s Bench were reported in a number of nominate reports, and analysed in several treatises and textbooks. The dataset consists of all legally relevant cases on settlement by hiring, that is, those deemed sufficiently important to be reported and analysed around the time they were decided. The cases are listed in alphabetical order.

To construct the dataset, cases were firstly identified by consulting editions of the leading textbooks on the poor law, Nolan’s Nolan’s *Treatise of the Laws for the Settlement and Relief of the Poor* and Burn’s *Justice of the Peace and Parish Officer*. We initially found around 260 cases relating to settlement by hiring from index entries in Nolan and Burn, which we then reduced to around 240 after deleting duplicates and decisions which turned out not to disclose a relevant point of law. Original texts were sourced from hard copies of law reports held in the Squire Law Library in Cambridge. The texts were copied and scanned, then digitised using an optical character recognition (OCR) reader, translating typed or printed words into machine-encoded text.

We then cleaned the data, deleted or amended incorrect transcriptions, and annotated it. The annotation uses a schema that breaks each judgment text into its component parts, including ‘facts’, ‘arguments’, ‘judgment’ and ‘ruling’. Next, we labelled each case according to a binary categorical classification, which defines a decision as either ‘liberal’ or ‘restrictive’.

The purpose of this classification is to identify whether a decision expanded or rendered more ‘liberal’ the scope of the yearly hiring concept, making it more straightforward for a claimant to receive poor relief in the parish in which they had most recently worked, or made it narrow or more ‘restrictive’, rendering it more difficult to do so. The liberal-restictive binary is one used by the courts themselves in certain of the leading cases (see *R.* v. *Fifehead Magdalen* (1737) Burr S.C. 116).

We then annotated each case, identifying key words. The purpose of the annotation was to assist in building a dictonary of terms for use in sentiment analysis. Passages containing keywords are highlighted in the texts of the cases. A keyword is normally highlighted once (the first time it appears in the text of a case).

Having identified keywords, we classify them as either ‘liberal’, ‘restrictive’ or ‘neutral’. Initially, we identify ‘liberal’ words as those which are more typically found in the liberal decisions, and ‘restrictive’ words those which are more typically found in the restrictive decisions. We add a further category of ‘neutral words’, which are associated with both types of decision. We then check the initial classifications to see if they are consistent with the meanings attributed to legal terms and concepts in use at the time the cases were decided.

Table 1 below lists words identified as ‘liberal’, ‘restrictive’ and ‘neutral’. In the ‘liberal’ category are words indicating the presence of a stable and enduring employment relationship (*continuous, indefinite, retained, served, subsist*), service connected across two or more different contracts (*connect, join*), and the employer’s willingness to overlook or give permission for periods of leave (*agree, assent, consent, dispense, voluntarily, whole*). The word *discharge* at this point normally signified that a dismissal was for cause, again favouring the stability of the relationship. By contrast, in the ‘restrictive’ list are words indicating the employer’s power to discipline the servant (*coercion, command, compel*), to exercise physical force over them (*beaten*), and to end the contract before its due term had been completed (*denied, depart, determinable, discontinuance, dissolved, end, interruption, leave, rescinded*). Also in this category are words indicating reasons for termination including disobedience (*dangerous, defeat, denied, depart, improperly, inconsistent, insolent, misconduct, negative, threatened, unreasonable*), unauthorised absence (*absent, parted, quit, withdrawn*), and having a child out of wedlock (*bastard*). The word *several* is associated with there being a series of contracts which could not be connected or joined together to make a single hiring.

Next, we score the words. Liberal (or positive) words are included in the dictionary with a score of +1, restrictive (or negative) words as -1, and neutral words as 0. Then we use a word-embedding method, the GloVe approach, to augment the dictionary’s content beyond our core words. This means employing cosine similarity to identify words which are ‘similar’ to liberal and restrictive words respectively, similarity here meaning that their usage is statistically correlated with them. Our classification of certain words as ‘neutral’ avoids them as being mistakenly classified as ‘liberal’ or ‘restrictive’ on purely correlational grounds.

For example, of the liberal words, *validity*, *legality*, *respect* and *adhere* are similar (closely related) to *dispensation*, and the words *continuing*, *returning*, *remaining*, and *contrivance* are similar to *sufficiently*. Of the restrictive words, *argued*, *fraudulently*, and *mischief* are similar to the word *denied*. The words *offence, quashing,* and *deduction* are similar to *removal,* and the words *fraudulent* and *defective* are similar to *dissolved*. These new lists of words are then added to the dictionary, with a score of +0.75 for the liberal ones and -0.75 for the restrictive ones. The end result of this process is a score which indicates the degree to which the overall sentiment of a body of text is liberal or restrictive. This is a continuous variable, in contrast to the binary classification we have for decisions.

Table 1. Liberal, restrictive and neutral words

|  |  |  |
| --- | --- | --- |
| **Liberal words** | **Restrictive words** | **Neutral words** |
| abate, acceptance, agree,  assent, competent, connect, conditional, consent, continuance, continue, discharge, dispense, entire, favour, favourably, forgiveness, good, hired, holiday, inclusive, indefinite, joined, liberally, limited, new, perfected, pleasure, reasonable, recompense, retainer, returned, reward, served, subsist, sufficiently, valid, voluntarily, whole | absent, bastard, beaten, coercion, command, compel, compleat, control, dangerous, defeat, denied, depart, determinable, discontinuance, dissolved, end, exception, exemption, fraud, half, ill, improperly, inconsistent, insolent, interruption, leave, misconduct, negative, part, parted, presumed purged, quit, reciprocal, rescinded, refused, removal, remove, retrospective, several, strict, threatened, unreasonable, withdrawn | agreement, contract, employment, hiring, hours, master, parish, pauper, notice, servant, service, settlement, wages, weekly, year |

For analysis of the resulting measures of language sentiment, see Simon Deakin and Linda Shuku, ‘Exploring computational approaches to law: the evolution of judicial language in the Anglo-Welsh poor law, 1691-1834’, *Journal of Law and Society*, 2024. For further information on the dataset and paper, please contact Simon Deakin ([s.deakin@cbr.cam.ac.uk](mailto:s.deakin@cbr.cam.ac.uk)).

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(1) Case name

*Bishop's Hatfield* v. *St. Peter's*

(2) Date

1714 (1 George I)

(3) Report

2 Bott 276

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Bishop’s Hatfield

(6) Order sought

Quashing

(7) Facts

The case stated, That the pauper, Henry Langley, was hired by a Mr. Arnold in the parish of St. Peter's, to serve him for one year in the capacity of huntsman Mr. Arnold was an inhabitant of the parish of St. Ann's, Soho, and had no settlement, habitation, or place in St. Peter's, except his dog-kennel, but lived sometimes at his house in Westminster, and sometimes at his seat in Northamptonshire. The pauper boarded and lodged with John Brown, in the parish of .St. Peter’s, merely for the purpose of looking after his master’s hounds. He served out the year in the parish of St. Peter’s, where, though he was occasionally absent, he lived during the last forty days of the year.

(8) Argument

These orders were removed into the Court of King’s Bench ; and Mr. Strange, in support of the order or Sessions, contended, that a servant hired for a year could not gain a settlement by serving in a place in which his master had no settlement.— Mr. Lacey, in support of the original order of the two justices, cited the case of *St. Peter's Oxford v. Chipping* *Wycomb* (b), where the hiring was at one place and the service at another, and yet it was held that the pauper gained a settlement where the service was performed; and in the present’ case, both the hiring and service were in St Peter’s

(9) Judgment

The Court : The order of Sessions must be quashed ; this case is exactly like that of *Chipping Wycomb*. This man certainly gained a settlement in *St. Peter's*, though his master never lived there.

(b) Ante, page 295, pl. 348.

(10) Ruling

A servant gains a settlement where the last forty days are served, although his master has no settlement in the parish. S.C. Foley, 197. S.C. Stra. 763. See *Rex v East Ifley*, post.

(11) Comment

This is in keeping with the 40 day rule of the servant gaining settlement where he serves his last 40 days, whether or not his master is settled there.

(12) Type

Liberal

(1) Case name

*Brightwell* v *Westhalley*

(2) Date

Easter term, 1714 (1 George I)

(3) Report

2 Bott 251

(4) Court

King’s Bench

(5) Parties

The Parish of Brightwell against the Parish of Westhalley

(6) Order sought

Quashing

(7) Facts

The Pauper, Joseph Smith, was hired to serve from three weeks after Michaelmas to the Michaelmas then next ensuing, which time he regularly served. On the ensuing Michaelmas he was hired again by the same master into the same place, to serve him for a year; but under this second hiring he only served for eleven months.

(8) Argument

(9) Judgment

The Court: by the statute of the 3 Will. & Mary, c11. A hiring for a year, and a service of only forty days under it, was sufficient for the purpose of gaining a settlement; but by the 8 & 9 Will. 3. C. 30. the service must be during the space of one whole year. Now it appears from the facts of the present case, that the words of this last statute are satisfied, for there was a hiring for a year, and a service for a whole year; and although that service was not under the hiring for a year, yet as the service was never discontinued, we think upon the authority of *Overton v. Steventon* (b), and upon considering the intent of the Legislature in the framing of the former statutes upon this subject, that the latter statute is answered, and that the pauper gained a settlement by this hiring and service.

(10) Ruling

A service on a hiring from three weeks after Michaelmas to Michaelmas, may be joined to a service of eleven months under a new hiring for a year. S.C. Foley, 143. S.C. 1 Sess. Cas. 92. 10 Mod. 198. Andrews, 63. See 5 Term Rep. 100.

(11) Comment

The court finds that two successive hirings for the same master can be coupled together to confer settlement.

(12) Type

Liberal

(1) Case name

*Chesterfield* v. *Walton*

(2) Date

Easter 1703 (Term Pasch 9 Will 3)

(3) Report

Carthew 400

(4) Court

King’s Bench

(5) Parties

The Parish of Chesterfield versus the Hamlet of Walton

(6) Order sought

Quashing

(7) Facts

Upon a motion to quash an order of sessions for the county of Derby, by which an order made by two justices was confirmed ; and by which one Jerrison and his wife were settled in the hamlet of Walton, which lies within the parish of Chesterfield, which order of sessions was special, reciting, that this Jerrison had been a foot-boy to Sir Paul Jenkinson, who lived in the hamlet of Walton, so long as to gain a settlement there, (viz.) for three years, and more.

[401] Then Sir Paul put him out to one Thorpe, a barber, (who lived in Chesterfield, but out of the hamlet of Walton) for one year, to learn to shave, and the barber was to have the benefit of the boy’s work, and that Sir Paul gave the master some money to teach the boy to shave, who lived with the barber accordingly in the said parish for one year; but no notice of his coming was given by him to the parish, nor any warning from them to him.

(8) Argument

The question was, if this made a settlement of the boy in the parish of Chesterfield, as an hired servant, within the intent of the explanatory statute, concerning the settlement of poor people.

(9) Judgment

Et per Curiam, This is not such an hiring or such a service as is within the intent of the statute ; because here was no reciprocal contract between the boy and the barber, for the boy was not obliged to stay in the service of the barber, and he had no remedy to compel him to serve; and every hiring within that statute must be reciprocal; but here the boy was in nature of a scholar, and not of a servant, so the order of sessions was affirmed.

(10) Ruling

What shall be an hiring, and what a service. Skin. 671. 5 Mod. 328, S. C. 2 Salk. 479, S. C.  Comb. 445, S. C. called *Jerrison's case*.

(11) Comment

The court finds that one master lending his servant to another master for a year does not create a 'hiring for a year'. A 'hiring for a year' requires a reciprocal contract between the master and the servant, and the court here focuses on the lack of a contract (a requirement of form) and that the servant could leave at any time within the year without the master having any remedy to compel his return (a substantive issue). This contrasts, however, with the approach taken in cases such as *Ozleworth* where the servant gained a settlement despite there being no contract and despite the servant and master being under the apprehension that the servant was free to leave at any time. These cases (as opposed to *Chesterfield*), focus on the practice of the work rather than either the contract form or the subjective intentions (in modern contract law terms) of the servant or the master.

(12) Type

Restrictive

(1) Case name

*Coombe* v. *Westwoodhay*

(2) Date

1719

Hilary Term, 5 Geo

(3) Report

1 Strange 143

(4) Court

Court of King’s Bench

(5) Parties

Between the Parishes of Coombe and Westwoodhay

(6) Order sought

Quashing

(7) Facts

In 1715 Michaelmas-Day happened to be of a Thursday. A man was hired upon the Saturday following, to serve from the said Thursday after Michaelmas-Day to Michaelmas following. All this was stated for the opinion of the Court.

(8) Argument

And the first question was, whether there was a compleat hiring for a year, for if the word said be rejected, then there wants a week, but if you keep it in and refer it to Michaelmas-Day, then by rejecting the words after Michaelmas-Day it will stand as a hiring from one Michaelmas to another.

(9) Judgment

And Eyre J. thought it might well be so. Sed caeteri contra, for it would be to make it nonsense, in contracting to serve for a time past; whereas if the word said be rejected, the rest is natural enough. The other question was, whether (admitting the hiring to be compleat) there was any service for a year in pursuance of it as the statute requires, the contract being made upon the Saturday. And Eyre J. said it might be intended he was those two days upon trial, and so the service would be sufficient. But the rest held, that such a service would signify nothing, for it is not in pursuance of any hiring; there must first be an hiring, and then a service, and not vice versa a service, and then a hiring.

(10) Ruling

There must be a compleat hiring and service for a year to gain a settlement.

(11) Comment

The Court rules that there must be first a hiring for a year and then service for that year. The hiring cannot be implied from the fact of service alone. This is a ruling which prioritises the contract form over the provision of work; the mere supply of labour does not give rise to a contract.

(12) Type

Restrictive

(1) Case name

*Dunsford* v. *Ridgwick*

(2) Date

1709

Mich. 9 Ann B.R.

(3) Report

2 Salkeld, 535

(4) Court

Court of King’s Bench

(5) Parties

Inter the Inhabitants of the Parish of Dunsford and Ridgwick.

(6) Order sought

To quash a removal order.

(7) Facts

It appeared by a special order, that one was hired as a servant to live at Ridgwick for half a year, and after that was hired again to live there for another half year with the same person, and thereupon served a year in one continued entire service, but by several hirings.

(8) Arguments

Sir Peter King urged, that here was a service for a year, and a hiring for a year, though by several contracts; and that the hiring need not be by one entire contract, and that so it had been held ; and he cited a case where H. took a tenement of 5 l. a year, and also another tenement of 5 l. a year, and occupied both, and this was held to be a renting of a tenement of 10 l. per annum.

(9) Judgment

It ought to be one entire contract, and one entire service; the one is required by the statute as well as the other. If a service under several contracts shall gain a settlement, one that serves by the month, by the week, or by the day, may, if he continues a year, gain a settlement; one may hire by the day for charity ; but there is danger of being chargeable in hiring such a person by the year: for such a term as a year it is not supposed a master would hire one, unless able of body, and so a person not likely to become chargeable. Also the Chief Justice observed, that by the Statute of Eliz., the retainer of servants was for a year; that 14 Car. 2, requires forty days stay, and that this was inconvenient, for by gaining a settlement in forty days, servants grew insolent; and that these latter Acts, viz. 3 & 4 W. 3, c. 11, 8 & 9 W. 3, c. 30, do but turn the forty days service into a year’s service, and the hiring to be a retainer for a year (a) according to the Statute of Eliz. (a) R. acc. 1 Str. 83. Foley 137. Cald. 133.

(10) Ruling

Two several hirings for half a year, and service for a year, not sufficient to gain a settlement.

(11) Comment

In this case the claim failed because although the servant had worked for a year, there was not a single hiring for a year.  On one view this should have been enough, but the court takes a strict view of the statute and could be said to have elevated form over substance. In substance terms, he worked for a year and so might be held to have deserved rights, but the court is strict.  In terms of timing, this is an early case and so maybe it shows that the law was always quite restrictive; the hypothesis would be that in fact they were stricter later than this.  It could be an early outlier.

(12) Type

Restrictive

(1) Case name

*Eardisland* v. *Leominster*

(2) Date

6 Geo 2 (1732)

(3) Report

2 Bott. 255

(4) Court

King’s Bench

(5) Parties

Eardisland v. Leominster

(6) Order sought

Quashing

(7) Facts

Two justices removed *Elizabeth Wright*, a single woman, from the parish of Eardisland to the parish of Leominster, she being pregnant with a child, which if born would be a bastard, and therefore likely to become chargeable to the said parish of *Eardisland.* The Sessions, on appeal, quashed the order, and stated the following case: The pauper, *Elizabeth Wright,* as appeared from her testimony given

upon oath, lived with *John Smith* in the parish of *Leominster,* as a covenant servant, from the latter end of the month of *May* 1731 to the beginning of *May* 1732, for the wages of two guineas and sixpence. She continued in her service during the whole of that time; and a day or two before the

expiration of the time for which she was hired, she was again hired by the said *John Smith* for a whole year, at the wages of two pounds five shillings, and continued in the same service, pursuant to the second hiring, until the middle of the month of *July* following, and then went away from her service without her master’s consent.

(8) Argument

(9) Judgment

The Court, without any difficulty, quashed the order of Sessions, for that there was a hiring for a year and a service for a year, and it is not necessary that the hiring and service should be under one and

the same contract, for if there he a continuation of the same service of forty days after a hiring for a year, and a previous service under a different hiring, so that there is in the whole a service for a year, it is enough. The order of Sessions was quashed.

(10) Ruling

The service under an imperfect hiring cannot be connected with the service under a perfect hiring unless under such perfect hiring there is a residence of forty days. But see Rex v. Adson, post, that it is not necessary for the residence of forty days to be under the hiring for one year.

(11) Comment

A liberal ruling in which the court finds a hiring when the servant was hired for 11 months, then re-hired for a year, served the whole of that year except for two days, and then quit. There was a service even though the hiring and the service were not precisely coterminous.

(12) Type

Liberal

(1) Case name

*Eastland* v. *Westhorsley*

(2) Date

Trinity Term, 1722 (8th year of King George’s rule)

(3) Report

1 Strange 526

(4) Court

King’s Bench

(5) Parties

The Parish of Eastland against the Parish of Westhorsley

(6) Order sought

Quashing

(7) Facts

The fact was stated specially on an order of sessions, that a servant was hired for a year, and the day before the year expired the master told him, that to prevent his gaining a settlement in that parish, he should go away immediately, which the servant refused to do, insisting to serve out the year, whereupon the master turned him out of doors.

(8) Argument

None

(9) Judgment

And the Court held this to be such a fraud in the master, as should not prevent the settlement of the servant (1).

(1) *Rex v. Islip*, ante, 423. *Seaford and Castlechurch*, post, 1022, and the cases there cited.

(10) Ruling

Turning the servant out of doors before the end of the year doth not prevent the settlement. Fort. 216, S. C. by the name of *The Inhabitants of West Hertley* and *East Clendon*.

(11) Comment

Turning a servant out to avoid a settlement is fraudulent, and the court will give a settlement. This prevents masters from taking unfair advantage of the one year requirement.

(12) Type

Liberal

(1) Case name

*Farringdon* v. *Whitty*

(2) Date

1703

Pasch. 1 Ann B. R.

(3) Report

2 Salkeld 528

(4) Court

Court of King’s Bench

(5) Parties

Inter the Parishes of Farringdon in Berks and Witty in Oxfordshire.

(6) Order sought

Quashing

(7) Facts

A servant came into the parish of S. was hired for a year, and having served half a year of the time, married a woman in the parish of Witty; and the question was, 1st, Whether the justices, on complaint of the churchwardens, could make an order to remove him to the place of his last legal settlement1? 2dly, Whether his serving here would not gain a settlement?

(8) Argument

To the first point it was admitted, that the contract between the master and servant was not dissolved by the marriage; and that, admitting it might be dissolved by an order made on complaint of the master, yet, without that, and upon complaint of the officers only, it could not be dissolved; therefore Broderick (of counsel) admitted that the justices could not in the principal case so remove him, as that he could not come to serve his master, but held he might be removed, so as that the order should disturb him, and prevent a settlement; and this he said was a medium that would neither prejudice the contract, nor evade the statute. He compared it to an order to remove on 14 Car. 2, before forty days stay; in which case the very making of the order obstructed a settlement; and it may be executed after the forty days.

(9) Judgment

Holt, C.J. and Powell contra, that an order to disturb him and not remove him, was not within the meaning of the Act; disturbing him, without power to remove, is vain ; and this does not unsettle, nor is it like the case of forty days. 2dly, It was questioned, whether such a stay, &c. would gain a settlement; because the statute make the party’s being unmarried a qualification as well as his stay, viz. if any such person, being unmarried, being hired, &c. such service, &c. So that the words such service goes to all, not only the stay, but the state of the party. To this Powell inclined ; Holt, C.J. contra, Such is only such service, and the marriage does not hinder the service; the contract continues; and suppose the woman he marries be of the same parish, shall not that gain a settlement?

(10) Ruling

Unmarried person hired for a year, marrying before the year is expired, cannot be removed, and performing the service, gains a settlement.

(11) Comment

The court rules that marriage during the term of the yearly service does not prevent the servant from acquiring a settlement. Counsel tries to argue for an order to disturb the service, allowing removal. The court refuses this on the ground that that there is no such power under the statute. Counsel argues for a ‘medium’ (device) that will not ‘prejudice’ the contract or ‘evade’ the statute, but the court declines this line of argument; service determines both the ‘stay’ and the ‘state’ (status) of the servant.

(12) Type

Liberal

(1) Case name

*Frencham* v. *Pepperharrow*

(2) Date

1715

Easter Term The First of George the First

(3) Report

10 Modern Reports 292

(4) Court

Court of King’s Bench

(5) Parties

The Parish of Frencham against The Parish of Pepperharrow

(6) Order sought

Quashing

(7) Facts

This was the case of a settlement; and in the order of the justices the fact was stated specially. A servant was hired two or three days after Michaelmas, to serve until Michaelmas next; but he served as many days after Michaelmas as made his year compleat, and then received his wages.

(8) Argument

Darnell, Serjeant, argued, that this was no settlement; for the Court must take the fact as stated by the justices; and therefore, though the circumstances set forth in the order might have been sufficient to have induced the justices to have found this a fraud, and that the real hiring was for a whole year, yet since they have expressly stated the fact otherwise, and that he was hired three or four days after Michaelmas, until Michaelmas next, the Court must take the fact for granted; and then there can be no settlement, because there is no hiring for a year, as the law requires.

(9) Judgment

Adjourned. But afterwards, ut audivi, it was held no settlement.

(10) Ruling

A service for a year will not gain a settlement, unless there is also a hiring for a year.

(11) Comment

This is another case in which the court emphasizes the need for there to be both a yearly hiring and service for the whole year. Here, the court insists on the need for a precise overlap between the period envisaged by the contract, and the service for the year.

(12) Type

Restrictive

(1) Case name

*Gassington* v. *St Trinity in London*

(2) Date

1714 from the file name (but to check) - none given, but the next case is dated Trinity term 1716

(3) Report

Cas Settl. & Remov. 95, N.R. 74-75

(4) Court

King’s Bench

(5) Parties

The Parish of Gassington in Oxon against the Parish of St Trinity in London

(6) Order sought

Quashing

(7) Facts

A Certificate-Man goes into Gassington, and is elected Tithingman, serves the whole Year, but was not sworn into the Office till Half a Year after. The Order was drawn up specially, and brought into the King’s Bench; but it was quashed for Want of Form.

(8) Argument

None given.

(9) Judgment

But the Court were of Opinion, as to the Merits, that the Man gained a Settlement in Gassington, all Settlements being expounded favourably, liberally, and most beneficially for poor People. Note: the Act says legally admitted into any annual Office.

(10) Ruling

N/A

(11) Comment

The court finds that an elected tithingman gains a settlement in the parish into which he was elected, even if he is sworn in later. The court also expressly states that it will take a liberal approach towards granting settlements.

(12) Type

Liberal

(1) Case name

*Gregory-Stoke* v. *Pitminster*

(2) Date

1726

Michaelmas, Thirteenth of George

(3) Report

Session Cases 163

(4) Court

Court of King’s Bench

(5) Parties

The Parish of Gregory-Stoke against Pitminster.

(6) Order sought

Moved to quash an order of two justices, and an order of sessions confirming the first order.

(7) Facts

A. was born in P. in the year 1699, and thirteen years ago, viz. being 14 years old, she served her grandmother in G. for the space of four years, on an allowance of meat, drink, washing and lodging. G. removed her to P. and upon that P. appeals. The justices held this to be no settlement at G.

(8) Argument

It was urged for the settlement, that where no time is set out, the Statute of Labourers 45 Eliz. will imply a year and no less. The Court denied here was any contract between the grandmother and the girl, for she might have left her grandmother at any time, and only lived with her as a relation, not as a servant, and it does not amount to a contract. Then it was urged, that there was no adjudication of a settlement in the order of sessions.

(9) Judgment

It appeared by the order of justices she was settled at P. therefore the Court said, if we set aside the order of sessions, we must refer you to the original order, and there it is adjudged she is settled at P.

Mr. Justice Fortescue cited the case of Sir Lionel Pilkington’s servant who was put to a barber to learn the art of shaving, and after a year’s stay there, held it was not a settlement under the Statute W. 3. Michaelmas, First of George the Second.

(10) Ruling

[No quashing order]

(11) Comment

The court here declines to infer a contract from the mere provision of work in return for board and lodging.

(12) Type

Restrictive.

(1) Case name

*Hanmer* v. *Ellesmere*

(2) Date

Michaelmas term, 1731 (4th year of King George II’s rule)

(3) Report

2 Strange 878

(4) Court

King’s Bench

(5) Parties

The Parish of Hanmer in com’ Flint against the Parish of Ellesmere in com’ Salop

(6) Order sought

Quashing

(7) Facts

Upon a special order of sessions, the case stated was, that Randal Fidian being unmarried, and having no child, was hired into Hanmer for a year, and served the same; and afterwards in 1718, he being still unmarried, and having no child, was hired into Ellesmere in Salop, to serve from Lady-Day to Christmas following, (which he did) and was then hired again for a year by the same master, and served to the end of May. And the sessions adjudged it no settlement, and sent him to Hanmer.

(8) Argument

Strange moved to quash the order, there being in the whole a service for a year in Ellesmere, and that is enough to satisfy the statute, which requires both a hiring and service for a year. And cited the cases of *Overton v. Steventon*, Hil. 10 W. 3, and *Rex v. Inhabitantes de Brightwell* in com' Berks, in both which it is held, that the service for a year need not be of the same identical year for which the hiring for a year was.

(9) Judgment

And upon the authority of these cases the Court held it a settlement in Ellesmere, and quashed the order of sessions, that adjudged it otherwise (1).

(1) *Rex v. Southmoulton*, 1 Ld. Raym. 426. *Brightwell v. Westhally*, 2 Bott by Const. 417, pi. 387. *Rex v. Aynhoe*, ib. 420, pi. 389. *Rex v. Fifehead Magdalen*, Burr. S. C. 116. *Rex v. Under Barrow and Bradley Field*, ib. 545. *Rex v. Bagworth*, Cald. 182. *Rex v. Grendon Underwood*, ib. 359, S. P. From these cases it appears to be immaterial as to gaining a settlement what is the number or particular duration of each of these contracts under which the year’s service is performed, that is to be coupled with service under the yearly hiring, provided they are connected. It seems equally immaterial whether the nature of the services performed under the several contracts are different or not, provided they are such as that a contract to perform each of them for a year, and service under it would be sufficient to give a settlement. *Rex v. Wrinton*, Burr. S. C. 280. Where it was held that service under a weekly hiring to burl cloth could not be coupled with service under a yearly hiring, so as to confer a settlement, seems at first view to contradict this opinion. But the ground of that decision was, that the contracts and not that the services were of a different nature, the weekly hirings being such, as that service under a similar one would not confer a settlement, though it had been extended in its duration to a year. Mr. J. Foster lays particular stress upon the pauper’s not being “ in her master’s service either at night or on Sunday’s.” There was therefore a special exemption in the contract, which not being created by general law or by local custom, but by the agreement of the parties, would prevent a settlement from attaching to a year’s service, under a similar contract, for a year. As to which point vide *Rex v. Macclesfield*, Burr. S. C. 458. *Rex v. Buckland Denham*, ib. 694. *Rex v. Kingswinford*, 4 Term Rep. 219. *Rex v. North Nibley*, 5 Term Rep. 21.

(10) Ruling

Connected service for a year, although part of it not under the hiring for a year, gives a settlement. 1 Barn. B. R. 378. 2 Sess. Ca. p. 166, No. 133.

(11) Comment

The court finds that service under different contracts for the same master can be coupled for the purposes of settlement. There is no need for the service under each contract to be of the same nature, in contrast with *R v Alton* (1784)’s “same species of work” requirement.

(12) Type

Liberal

(1) Case name

*Hardingham* v. *Brisley*

(2) Date

Michaelmas 1649

(3) Report

Style 168

(4) Court

King’s Bench

(5) Parties

The Parish of Hardingham versus the Praish of Brisley

(6) Order sought

Quashing

(7) Facts

For quashing an order of sessions for the settling of a vagrant.

An order of sessions made for the settling of a poor woman in the parish of Hardingham was returned hither by a certiorari granted to the said parish, and upon the return read, and opening the matter by counsel, the case was this. An inhabitant dwelling within the parish of Brisley, did hire a maid servant for a year, and covenanted to give her forty shillings for her wages, and entertained her into his service. The maid servant some time after fell sick in his service; her master thereupon turns her out of his service, without giving her anything: the maid, for necessity, in travelling from Brisley toward Hardingham where her friends lived, and where she was born, was forced to beg for relief : whereupon she was sent as a vagrant to Hardingham, where she was born. The vill of Hardingham send her back to Brisley, where she was entertained as a covenant servant: whereupon they of Brisley

procure an order of sessions to settle her at Hardingham.

(8) Argument

The question was, whether this were a good order, or not, for settling her at Hardingham according to the statute? Or, whether she ought to be settled at Brisley, where she was entertained as a covenant servant and turned out of service, and forced to beg by that means.

(9) Judgment

Roll Chief Justice said, that here seems to be fraudulency in the master to make his servant a vagrant, that so he may be rid of her; but if one beg meat and drink, for necessity, in passing between one town and another, this is not begging to make one a beggar within the statute.

(10) Ruling

And therefore the Court ordered that the party should be settled at Brisley, where she was entertained for a covenant servant, and not at Hardingham where she was born, if cause were not shewn to the contrary.

(11) Comment

The court finds that it is fraudulent to turn a servant away for the purposes of making her a vagrant and avoiding settlement. This accords with the underlying idea that a parish benefitting from the servant’s labour should grant them settlement.

(12) Type

Liberal

(1) Case name

*Horsham* v. *Shipley*

(2) Date

1714

Hillary, Twelfth of Queen Anne

(3) Report

Sessions Cases 17

(4) Court

Court of King’s Bench

(5) Parties

Parish of Horsham against Shipley

(6) Order sought

Quashing

(7) Facts

J. S. settled in Horsham, is hired nineteenth of February one thousand seven hundred and ten, to serve in Shipley to May-tide following; at that time agreed to serve till Lady-Day following; at that time agreed to serve till May-tide next.

(8) Argument

(9) Judgment

Quashed, unless cause, because no hiring for a whole year. N.B. J. S. hired for half a year, serves a year; then is hired for a whole year, and serves half a year. Held it gained a settlement, for here was a hiring and a service for a year.

(10) Ruling

Quashed

(11) Comment

The court rules that there was no settlement where the servant, while working for more than a year, was not hired for a year. The first hiring was from February to May-tide; the second from May-tide to Lady-Day the following year (late March, Feast of the Annunciation); the third from Lady-Day to May-tide. The court is asserting the importance of contract form over work supplied. But in the alternative, had the servant been hired for half a year, served a year, and then hired for a year but served a half a year, that would suffice: this suggests that the contract and the service do not need to be precisely coterminous, as long as there is a contract (hiring) for a year at some point and service for a year.

(12) Type

Restrictive(1) Case name

*Molsworth* v. *Goring*

(2) Date

No date given, but estimated Easter term 1695 (date of next case, Jerrison’s Case, was Trinity Term in the 9th year of King William III)

(3) Report

Cas. Settl. & Remov. 219, N.R. 177-178

(4) Court

King’s Bench

(5) Parties

The Parishes of Molsworth and Goring

(6) Order sought

(7) Facts

A poor Man gained a Settlement at Molsworth, and was afterwards hired by two Partners of a Boat at Goring, for a Year, to serve in the said Boat, which ply’d between Goring and London for the Year:

(8) Argument

And whether by the said Service, the Party gained a Settlement at Goring, was the Question ?

(9) Judgment

Et per Cur. This is not to be distinguished from the Case of a Man taken on Board a Ship, in which he serves for a Year ; and there held, no Settlement is gained thereby ; and so it was holden in this Case in Affirmance of an Order of Sessions. Idem 255.

(10) Ruling

(11) Comment

If a servant works on a boat going between places A and B for a year, the servant cannot gain a settlement in place A (and presumably not place B either).

(12) Type

Restrictive

(1) Case name

*Missenden* v. *Chesham*

(2) Date

13 Ann (1713)

(3) Report

2 Bott. 178

(4) Court

King’s Bench

(5) Parties

Missenden v. Chesham

(6) Order sought

Quashing

(7) Facts

The pauper, *Sarah Barnes*, had gained a settlement in the parish of *Chesham* and afterwards came to live with her father, who was a poor man that had no settlement, and lived in a ruinous cottage that had been built upon the waste lands in the parish of *Missenden,* and for which he paid no rent. To induce his daughter to live with him, he promised to give her 10 *s.* a-year, and also what she might be able to gain by her extra service and labour. She served the father under these circumstances for more than a year, but on his death became chargeable to the parish, and was removed by two justices to the parish of *Chesham.* The Sessions on appeal confirmed the order, conceiving that as the father had no settlement himself in the parish, he could not confer a settlement on his daughter; but they admitted that there was a hiring, although it appeared to be under very suspicious circumstances.

(8) Argument

(9) Judgment

The whole Court agreed that a settlement may be gained by serving a man who has no settlement himself, because a servant does not derive the settlement from the master, but from the service, and that the suspicion of fraud was unfounded, for that the cottager might be old and infirm, and it was natural for a parent to desire the assistance and comfort of his own daughter in such a situation: and the order removing her from *Missenden* was quashed.

(10) Ruling

A daughter who is emancipated may be hired as a yearly servant by her father.

(11) Comment

The court hold that a daughter who serves her elderly father can thereby gain a settlement. The court emphasizes that it is the service which confers the right to the settlement, not the status of the master, who here was a propertyless (‘poor’) cottager, living in a ‘ruinous’ house on ‘waste land’.

(12) Type

Liberal

(1) Case name

*Pawlet* v. *Burnham*

(2) Date

1714

Michaelmas Term, 1 Geo 1

(3) Report

10 Modern Reports 261

(4) Court

Court of King’s Bench

(5) Parties

The Parish of Pawlet against The Parish of Burnham.

(6) Order sought

Quashing

(7) Facts

A covenant servant for a year, at the rate of three pounds a-year wages, left his master by consent, three weeks short of a year ; his master deducting six shillings for the three weeks out of his wages. By order of two justices it was adjudged a good settlement.

(8) Argument

Upon an appeal to the sessions, the Court being divided, the order of the justices was confirmed, and a case stated specially (a); which being removed by certiorari, It was urged in support of the order: First, that it being set forth in the order, that he was a covenant servant, it must be intended a covenant in writing; for the law knows nothing of a parol covenant; if so, the covenant could not be discharged by parol; and consequently, in point of law, he continued a servant to the end of the year. Secondly, it was said, that his departure but three weeks before the end of the year shews it to have been a fraud, contrived to prevent a settlement.

(9) Judgment

The Court quashed the order; and held actual service for a year necessary.

(10) Ruling

Actual service for a year, as well as hiring for a year, are necessary to make a settlement.

(11) Comment

The court rules that there must be both a contract for a year and service for a year. It disregards an argument to the effect that the ending of the contract by mutual consent three days early might have been an attempt at evasion (‘fraud’). The court is also not convinced by an argument that a written contract of service (covenant) cannot be prematurely terminated, and so was deemed to be in force, and the servant to be working, for the full year.

(12) Type

Restrictive

(1) Case name

*R*. v. *Ackley*

(2) Date

1789

(3) Report

3 Term Reports 250

(4) Court

Court of King’ Bench

(5) Parties

The King against The Inhabitants of Ackley

(6) Order sought

Reversal of order of sessions.

(7) Facts

The pauper being unmarried, on Saturday, 13th October 1787, being three days after Old Michaelmas Day, which happened on a Wednesday, was hired to T. Clarke of Ackley, in the county of Oxford, to serve him until the next Michaelmas. He accordingly went into such service, and continued therein till Saturday the 11th of October 1788, being the day after Old Michaelmas Day, which (it being Leap-Year) happened on a Friday, and was paid his wages and went away. As this was a service of 365 days, the Court of Sessions thought it gained him a settlement in Ackley, and

confirmed the order of removal, by which he and his wife were removed from Bicester Market End to Ackley.

(8) Argument

Woodeson, in support of the order of sessions, contended that, as the terms of the contract itself were ambiguous, since the hiring until the next Michaelmas meant till that time of the year, it might be explained by the subsequent acts of the parties: then, as the pauper continued in service for 365 days, it was sufficient to give him a settlement. But even if the contract were confined to Michaelmas Day, as the word “until” has been held to be inclusive of the day, he was then hired for and served a legal year, which consists of 13 lunar months, or fifty-two weeks.

(9) Judgment

The Court were clearly of opinion that here was no hiring for a year: it is stated that the pauper, three days after Michaelmas, contracted to serve till the Michaelmas following; this was therefore a hiring for two days short of a year. And though this Court has been extremely indulgent in determining that services, which have been in point of fact less than a year, shall be sufficient to confer a settlement, as where the pauper has been absent with leave, &c. yet they have been always strict in regard to the contract of hiring.

(10) Ruling

A hiring three days after Michaelmas, till the Michaelmas following in Leap-Year, together with a service till the day after Michaelmas Day, making 365 days, will not give a settlement.

(11) Comment

The court reiterates the need for a full year to be both contracted for and served. The judgment notes that the Court has been flexible on other matters relating to the requirement of a full year’s service, by disregarding short periods of absence with leave, it has always taken a stricter view on the requirement for a contract for a year. The judgment thereby asserts the importance of the contract form.

(12) Type

Restrictive.

(1) Case name

*R.* v. *Adson*

(2) Date

1793

(3) Report

5 Term Reports 98

(4) Court

Court of King’s Bench

(5) Parties

The King against The Inhabitants of Adson

(6) Order sought

Reversal of order of sessions

(7) Facts

Two justices removed T. Jakeman and his wife from Adson to Church Stow, both in Northamptonshire; on appeal the order was quashed, and the following case was stated for the opinion of this Court. The pauper was hired in Church Stow eight days after Old Michaelmas 1786 to the Old Michaelmas following, and continued in his master’s service till the day after Old Michaelmas-Day 1787, when he was hired by his master till the Michaelmas following; and under that hiring he only served ten days. The Court of Quarter Sessions thought that the second hiring was a hiring for a year, but that the pauper had gained no settlement under it, as he had not served forty days subsequent to that hiring.

(8) Argument

Bower, Gaily, and Morice, in support of the order of sessions.—The pauper gained no settlement in Church Stow, because he did not serve forty days after the hiring for a year. In order to determine this question, which immediately depends on the true construction of the statute 8 & 9 W. 3, c. 30, it is necessary to advert to the prior statutes on this subject. The statute 13 & 14 Car. 2, c. 12, enables two justices, within forty days after any person shall come to settle in any tenement under 10 l. per annum, to remove him, &c. By stat. 1 Jac. 2, c. 17, s. 3, the forty days’ continuance shall be accounted from the delivery of notice, &c.; and by 3 W. & M. c. 11, s. 3, from the publication of such notice in writing. By the seventh section of the same Act, if any unmarried person shall be lawfully hired, &c. such service shall be deemed a good settlement, though no such notice in writing be delivered. And by the 8 & 9 W. 3, c. 30, s. 4, no person, so hired, shall be deemed to have a good settlement, &c. unless he shall continue and abide in the same service during the space of one whole year. The point therefore to be considered in all these Acts of Parliament is, whether or not there be forty days after the Act required to give the settlement. A residence for forty days was necessary after the notice required by the stat. 1 Jac. 2, c. 17 ; and the hiring and service being substituted by the Statutes of W. 3, in lieu of notice, a service for forty days subsequent to the hiring for the year is equally necessary. Of this opinion was Lord Ch. J. Parker, in R. v. Brightwell (a)1; “ If there was a service for a year on a hiring from week to week, and then a hiring for a year and serving for forty days, he should adjudge that a settlement.” And in the report of the same case in 10 Mod. 287, his Lordship’s opinion is put negatively, thus : “A servant during the whole year is hired from week to week, then is hired for a year and serves one week; this is no settlement, for want of continuance in the service forty days after the second hiring” (a)2. There indeed the pauper had served more than forty days under the yearly hiring, and the principal objection made was, that the services under the two hirings could not be connected ; but the Court in deciding that such services might be coupled, seem to have added this qualification to that general rule, that such services might be joined, provided there was a service for forty days under the yearly contract. In R. v. The Inhabitants of Aynhoe, Lord Ch. J. Raymond, speaking of this case, thought himself bound by the determination, though, had it been res integra, he should have been of a different opinion. In that case the Court thought that the decisions upon the Statutes of Will. 3 had been carried too far in coupling a service under a hiring short of a year with a service under a yearly hiring; then the rule ought not to be extended farther. The opinion of Ch. J. Parker is express; it is warranted by the different statutes; and there is no adjudication opposed to it. And the consequence of a different decision would be, that a settlement may be gained in a day, or even an hour, by serving that hour under a yearly hiring, and coupling it with services under preceding hirings for less than a year.

Bearcroft, Dayrell, and Bramston, conbrtt, relied on the various cases in which it had been determined that if there be a hiring for a year, and a service for a year, though not under the yearly hiring, a settlement is gained. That perhaps the Courts had departed from the words of the Stat. 8 & 9 W. 3, which requires a continuance and abiding in the same service for a year, by deciding that a service not under a yearly hiring might be coupled with a service short of a year under a yearly contract. But they observed that that rule had become an established rule of decision, which ought to be invariably observed, but which would be considerably shaken by a determination that any precise given part of a year’s service must be performed under the yearly hiring ; for that the rule already laid down was general, without any discrimination between the time of service under the yearly hiring and that before it. That that was a plain rule, not capable of being misunderstood by those who were to execute the poor laws ; whereas any nice distinctions, introduced upon that rule, would probably tend to confound them. That what was stated in 10 Mod. 287, and 1 Sess. Cas. as the opinion of Parker, Ch.J. was not noticed in the report of the same case in Fol. 143; that if such an opinion were delivered by the Chief Justice, it was extrajudicial; it not being necessary to the decision of the case, or even made a point of at the Bar. And that the recognition of this case, expressed in that of R. v. Aynhoe, was not a recognition of the dictum of Lord Ch. J. Parker, but of the point determined in that case, which was merely this, that a service for eleven months under a yearly hiring might be coupled with a preceding hiring and service short of a year.

(9) Judgment

This case was argued in Michaelmas term last, when only two Judges were present, Lord Kenyon, and Grose, J.; the former of whom expressed an opinion that a settlement was gained by the hirings and service stated in the case, and the latter a different opinion. It stood over for further consideration ; and now Lord Kenyon, Ch.J. said that he and Mr. J. Grose were both of opinion that the pauper had gained a settlement in Church Stow; and consequently The order of sessions was quashed.

(10) Ruling

A settlement may be gained by serving a year under different hirings, if one of them be for a year, though there be not forty days’ service under the yearly hiring.

(11) Comment

The Court gives a flexible interpretation to the legislation to allow a settlement in a case where there is service for a year and a separate yearly hiring, even if the service under that hiring is for less than a year. There is discussion of earlier case law establishing this degree of flexibility and some doubt expressed over this earlier line of cases, but the court declines to depart from them. The concept of ‘coupling’ is used to deal flexibly with a situation in which the contract and the actual service do not precisely overlap.

(12) Type

Liberal

(1) Case name

*R.* v. *All Saints Worcester*

(2) Date

4 February 1818

(3) Report

1 B. & A. 322

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Worcester

(6) Order sought

Quashing

(7) Facts

Upon appeal, the Quarter Sessions for the county of Worcester, quashed an order of justices for the removal of Alfred Canning and Ann his wife and their two children, from the parish of All Saints in the City of Worcester to Shoreditch in the county of Middlesex, subject to the opinion of this Court in the following case: The pauper Alfred Canning in the year 1812, was engaged by Messrs. Bruce, De Ponthieu, and Co. for a year, at the yearly salary of 801., as one of their house clerks at their East India agency house, in Saint Peter Le Poor in the City of London. The pauper went into the service, and continued in it upon the same terms for two years and a half, during the last eight months of which he slept in the appellant parish of Shoreditch. He did not sleep in the house of Messrs. Bruce, De Ponthieu, and Co. during any part of his service, but came to their counting-house at the [323]

usual mercantile hour, (that is to say) about nine o’clock in the morning, and staid there till five or six o’clock in the evening, with the exception of half an hour or an hour in the course of the day, when he went away for the purpose of getting his dinner; the hour of which varied to accommodate the other clerks, of whom there were thirty or forty. When the business of the counting-house closed in the evening at the usual mercantile hour, the pauper went where he pleased, without asking any

leave of Messrs. Bruce, De Ponthieu, and Co., and he also went where, and did what he pleased on Sundays. The Court of Quarter Sessions was of opinion, that, under the circumstances, and from the nature of the pauper’s employment, he was not so under the control of Messrs. Bruce, De Ponthieu, and Co., as to be considered to have gained a settlement in Shoreditch as a yearly servant.

(8) Argument

Puller in support of the order of sessions. In *The King* v. *North Nibley*, Lord Kenyon lays down the rule thus : there must be a hiring and service for a year so far as that the servant must be under the control and coercion of the master during the whole time; and in that case where the service was under a hiring for five years to serve twelve hours each day, the Court held, that no settlement was gained; and in *The King* against *Buckland Denham*, which was a hiring for five years to work only

during Shearman’s hours, the Court pronounced a similar decision. Here the case states the hours when the pauper was employed and when not; he came at nine o’clock in the morning, and stayed the usual mercantile hours; at other times he did what he pleased and went where he pleased : the custom of the trade must be considered as part of the contract. Could the master have compelled his service out of the usual hours? or suppose he had brought an action for not attending at other times, could he have sustained it? here it is stated, that he was hired as a clerk, and also what the usual hours of a clerk’s attendance were.

(9) Judgment

Lord Ellenborough C.J. There is in every contract of hiring some implied exception of hours for relaxation, food, and rest; I cannot at least suggest to myself any contract in which such exceptions do not exist. The master here has a right to the service of the pauper at all times, but he does not require his services at any hours than those mentioned : there is not any exception in the contract, The hiring then being general, and there being no exception but such as are necessarily implied in every contract, I think that the pauper by serving under it for a year, gained a settlement in the parish of Shoreditch.

Bayley J. The distinction between the two classes of cases relative to this subject is, that in the one the exception to the service is expressed in the contract, and in the other it is left by the custom of the particular trade to be raised by implication. This case seems to me to range itself under the latter class; and therefore I think the pauper gained a settlement by this hiring and service.

Abbott and Holroyd Js. concurred.

Order of sessions quashed

Russel was to have argued contra.

(10) Ruling

A clerk in a mercantile house, hired by the year, but serving only during the usual hours of business, thereby gains a settlement, although those hours did not, by the custom of the trade, ever occupy the whole day, and he went where he pleased, without asking his master’s leave, when those hours

were over.

(11) Comment

No exception in a case where a clerk worked regular hours, on the basis that it was the custom of the trade to allow time off for dinner and for rest.

(12) Type

Liberal

(1) Case name

*R.* v. *Allendale*

(2) Date

1789

(3) Report

3 Term Reports 383

(4) Court

Court of King’s Bench

(5) Parties

The King against The Inhabitants of Allendale

(6) Order sought

Quashing

(7) Facts

John Drisdale and his wife were removed by an order of two justices from Lambley to Allendale, both in the county of Northumberland ; and the sessions on appeal confirmed that order; subject to the opinion of this Court on the following case: In February 1786 the pauper, John Drisdale, being then an unmarried man, not having child or children, was hired for a year to serve Thomas Benson at Allendale from May-Day 17S6 to May-Day 1787 as a hind. It is the custom in that country to hire married men, as hinds, because their wives are bound to perform certain services for the master in the time of harvest; and when the wife of a hind dies, he must have a female servant to perform such services. It was in the contemplation of both the master and the servant, and perfectly understood by them, at the time of hiring, that the pauper would marry before he entered upon his service. After such hiring and before the commencement of the service he married his wife, the other pauper, and entered upon his service a married man, and served out the whole year a married man at Allendale.

(8) Argument

Chambre, in support of the order of sessions, was stopped by the Court. Erskine, contra. The pauper must be considered as a married man within the restriction of the statute 3 W. & M. c. 11, s. 7 ; which enacts that “if any unmarried person, not having child or children, shall be hired into any parish for one year, such service shall be deemed a good settlement therein;” for the Legislature meant to restrain those person, who were married at the time of entering into the service, from bringing a charge upon the parish. Otherwise, according to the strict letter of the Act, if a person were hired to serve at any distant period, and before the service commenced he married and had a large family, he would be entitled to a settlement by such hiring and service. But, in construing this Act of Parliament, the Court has looked to the spirit, and not to the letter, of it. For in R. v. Bank Newton, the Court held that a person, who was married at the time of the hiring, but whose wife died before he entered into the service, gained a settlement by hiring and service. And though in that case the pauper was hired by an agent for the principal, who did not confirm the contract till after the death of the wife, yet when he did ratify the act of his agent, it had reference to the time when the original contract was made. The time therefore when the service commences (not the time of the hiring) is the criterion by which the Court is guided in determining whether or not the case comes within the statute.

(9) Judgment

Lord Kenyon, Ch.J.—The principle, on which this question must be decided, has been long settled. So long ago as the 1st Anne, in a case between The Parishes of Farringdon and Witty, it was held that the pauper, who was unmarried at the time when he entered into his contract of service, though he married during his year, should not for that reason be prevented from gaining a settlement in the parish where he performed the service. And in deciding that case the Court went on the words of the statute 3 W. & M. c. 11, which enacts that if any unmarried person, not having child or children, shall be lawfully hired, such service shall be deemed a good settlement, &c. Therefore on the words of this statute the pauper in the present case gained a settlement by hiring and service at Allendale ; for though he married before the service commenced, yet he was unmarried when he entered into his contract: and whether he married the day before the service commenced or six months afterwards, it makes no difference. The case of R. v. Bank Newton, which was alluded to in the argument, also settles the principle on which we decide this case. It has been argued now as if the Court in that case had proceeded on the idea that the pauper was hired on the 16th February; but the Court expressly took it as the foundation of their decision that he was not hired till the 24th, when he had ceased to be a married man. The Court therefore in that, as well as in the former instance, seemed to think that the time to be attended to was the time when the contract was made: and that has ever since been considered as the rule.

Buller, J.—Neither the custom of the country nor the agreement between the parties went to compel this pauper to marry before he entered upon his service, he was at liberty to do so or not as he pleased. The custom of the country only amounts to this, that part of the service is to be performed by a female : it is therefore indifferent to the master whether the servant be married or not, because, if he be single, he must hire some female to perform those services. As to the case put at the Bar of a contract at an unreasonable distance of time before the service is to commence, that would be strong evidence of fraud. So if this pauper had been under an agreement to marry, and the master had told him that he should not marry for a month in order to evade the statute, that also might be considered as fraudulent. But there is no pretence to say that there is any fraud in this case.

(10) Ruling

If a servant be unmarried at the time when he is hired for a year, he gains a settlement by a year’s service, tho’ he marry before the service commences.

(11) Comment

The court rules that there is a hiring where the servant is unmarried at the time of the hiring, even they marry before the work under it begins. The court gives priority to the contract over the work.

(12) Type

Liberal

(1) Case name

*R.* v. *Alton*

(2) Date

14 May 1757

(3) Report

Burr S.C. 418

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Alton

(6) Order sought

Quashing

(7) Facts

Two Justices removed Anne Crockford, the Wife of Richard Crockford junior, and her four Children by him, viz. John (aged eleven Years,) Richard (aged six Years,) William (aged four Years,) and Jude (aged eighteen Months,) from Elvetham to Alton, (both in Hampshire :) Which Order was confirmed by the Sessions.

The special Case stated by the Sessions was this---The Parish of Alton, in 1722, gave a Certificate with Richard Crockford the Father of Richard Crockford junior, and Elizabeth the Wife of the said Richard Crockford senior to the Parish of Elvetham, acknowledging them to be legally settled in the said Parish of Alton: Under which Certificate, the said Richard Crockford the Father and Elizabeth his Wife went into the Parish of Elvetham, and have dwelt there ever since. - That the said Richard Crockford junior was born at the Parish of Elvetham, after the Certificate granted as aforesaid; and neither the said R. C. the Father, nor R. C. junior did any Act whereby to gain a Settlement in the said Parish of Elvetham. That the said Richard Crockford junior, on 29th of August 1734, was hired for a Year, as a Covenant-Servant, by Sir Henry Calthorpe Knight of the Bath, in the said Parish of Elvetham, and served that Year out, in the Parish of Elvetham. That the said Richard Crockford junior was, at the Expiration of the said Year, hired again as a Covenant-Servant, by the said Sir Henry Calthorpe, at Elvetham aforesaid, for another Year; and served the second Year out: But the last forty Days Service of the second Year, which the said R. C. junior lived with the said Sir Henry, was in the Parish of Scarborough in the County of York. That the said R. C. junior did not, at the End of the said second Year, quit the Service of the said Sir H. C: But at the Expiration of the said second Year, viz. on 29th August 1736, the said R. C. junior applied to the said Sir Henry to make a new Agreement for another Year; when the said Sir Henry said, “ it would be Time enough, when they returned home to Elvetham.” Whereupon the said R. C. junior continued on for about six Weeks, until the said Sir Henry returned back from the said Parish of Scarborough unto the said Parish of Elvetham: When the said R. C. junior was again hired, bys the said Sir Henry, for a third Year, at advanced Wages, and served the said third Year out, in the said Parish of Elvetham ; and continued in the Service of the said Sir Henry for seven Years more, in the said Parish of Elvetham; and his Wages were advanced every Year, by Agreement between the said Richard Crockford junior and the said Sir Henry Calthorpe. That the said R. C. junior, after the quitting the Service of the said Sir Henry, married Anne, named in the Order ; by whom she has the four Children also named in the said Order, and now living.

The Sessions confirm the original Order; for that the Parish of Alton gave the Certificate, under which, the said R. C. junior was born; and neither his Father nor himself did any Act, whereby to gain a Settlement in Elvetham.

(8) Argument

Upon a Motion made by Mr. Gould, on Tuesday 25th of January these two Orders, two Objections were made to them; viz.

1st Objection------That the Wife and Children, only, are removed ; without any Notice at all being taken of the Husband; So that this Removal is, or at least (for aught that appears to the contrary) may be, a Divorce of the Woman from her Husband.

2d Objection------That though Richard Crockford junior, the Husband, could not indeed originally gain a Settlement at Elvetham, by his Service there, so long as he remained Part of his Father's Family, (as his Father came thither by Certificate,) yet he might, and actually did regularly gain a Settlement for himself at Scarborough (which was a third Parish,) by his serving there above forty Days: And then, after that Time, and after having once gained a Settlement of his own, he consequently must gain a subsequent Settlement at Elvetham, under his new Hiring and Service with Sir H. C. for the third Year; having been, before such Hiring and Service; already emancipated from his Father's Family, by having already gained a Settlement for himself at Scarborough.

Rule to shew Cause.

Upon shewing Cause (on Thursday 10th February 1757,) it was answered by Mr. Nares and Mr. Norton, of Counsel for the Parish of Elvetham,

1st, That as the Husband's Place of Settlement appears, upon the Order, there can be no Doubt but that the Wife and Children may be sent to it.

2dly, That the general Position upon which this second Objection is founded, is contrary to the Intent and Meaning of the Certificate-Act, and would defeat it’s End.

Besides, here was a Continuation of the first original Contract: Which went on, notwithstanding this casual Residence at Scarborough, and was never dissolved, or even interrupted.

And the Court determined accordingly, upon both Objections; after having taken Time to consider of the Case, with regard to the 2d Objection.

(9) Judgment

Lord Mansfield delivered the Opinion of the Court.

1st, Alton appears to Us, (for the Reasons I shall give in answer to the 2d Objection) to be the Husband's Settlement. He was at Elvetham, only under a Certificate from Alton; and he is expressly said to have gained no Settlement in Elvetham, by any other Act than what is particularly stated; And we can't intend that he did. Therefore his Wife and Children were \* properly sent thither : He himself couId not he removed from Elvetham, if he was not at Elvetham: And if he should be found there in future, he may be removed by another Order.

2dly, The original Service at Elvetham (to which Parish this Man was certificated from Alton) continued and went on, during the whole Time; notwithstanding the casual intermediate Residence at Scarborough.

Undoubtedly, a Servant may gain a Settlement, by serving forty Days, in a Place where the Master himself has none.

And it may so happen, that a Servant may gain a Settlement in a Place where the Master never comes : For the Service may be performed, in a Place from which the Master, in his own Person is locally absent; or if the Servant has his Master's Leave to be absent at any Place, for his Health, yet his Service continues.

But in the present Case, the Servant gained no Settlement at Scarborough; either upon the general Grounds of these Determinations ; or upon the particular Circumstances of the Case itself; or upon the Authority of those Cases that have been imagined to be similar to it.

This Person was a Certificate-Man, hired by Sir H. C. (a Gentleman of Fashion,) in a Parish where Sir Harry lives and resides. Sir Harry goes to Scarborough, (a Place of public Resort,) for his Health or Amusement; and not as an Inhabitant, but only as a Sojourner. Whilst they were there, the second Year of his Service ended. This was mentioned by the Servant to his Master: And on the Servant’s proposing a new Agreement, for another Year, the Master said “ It would, be Time enough when they returned Home." When he came home, he hired the Servant for another Year: And the Servant continues to live with him seven Years.

Now if this Service for forty Days at Scarborough were to acquire a Settlement there, it would be a very great Hardship, both upon the Parish of Scarborough, the Place of public Resort; and aIso upon the Parish of Elvetham, who depended upon the Certificate given them by the Parish of Alton.

Suppose, a Servant was to break his Leg, and be left by his Master upon the Road; or should be waiting at a Seaport Town, for a Passage above forty Days; the Service, in both these Cases, continues : And yet, would it be reasonable that this should gain a Settlement in such Parish ? This could never be the Intent of the Law-Makers.

The Master’s Place of Abode, his Domicil, can never be supposed to be at Scarborough: And if his casual sojourning there were to obtain a Settlement there for his Servant, attended with the Consequences drawn from it, this would be a Fraud upon the Parish to which the Certificate is given, and where the Servant was hired upon the Faith of such Certificate.

Indeed, the Case of *the King against the Inhabitants of St. Peter's in Oxford*, reported in 1 Strange 524, has been strongly urged,to prove that the Servant shall, in the present Case, gain a Settlement in Scarborough; since the Maid, in that Case, was adjudged tohave gained one in Fawly, only by serving her Mistress there duringa Visit.

But—[Here, his Lordship entered into a very full Discussion of this Case ; and expatiated very largely upon it. In doing which, he observed that the Report of this Case, as it appears in 1 Strange 524,. is very insufficient and incorrect, in Point of Fact; and that the Reason there given, is as incorrect as the Fact: And added that he had looked to see how this Case was stated by Mr. Burn, and by Mr. Foley; (for it is mentioned in Mr. Burn's Book, Title Poor, Fo. 526, in the Folio Edition, and in Foley's Cases on the Laws relating to the Poor, Fo. 215,) and found that none of them date it truly. However, out of them all, he said, one might discover it: And accordingly he stated what he collected, from all these Accounts, compared together, to have been \*probably the true State which he took to be this-----Mrs. Cooke was Mother in Law to Dr. C!avering, and also to Mr. Freeman ; and lived, (as a Lodger, or Visitor, or Friend,) sometimes with Dr. Clavering in Christchurch, and sometimes with Mr. Freeman at Fawly-Court: So that she had really no Place of Abode; and was as much at Home, with Mr. Freeman, as with Dr. Clavering. Therefore she could not be considered upon the Foot of a Person who had a settled Dwelling at Christchurch, and only went on a mere Visit to Fawly-Court. Upon the whole, he concluded that this Case did not at all stand in the Way of the Court’s determining, in the present Case, that R.C. junior, the Servant of Sir H. C. did not gain a Settlement at Scarborough.

Note—Since there has been so much Doubt and Misapprehension concerning the Case here cited, I have had the Curiosity to transcribe it from the original Record: And the true Case is as follows—

“ Rex v. Inhabitantes Sancti Petri in Oriente in Civit. Oxon’.

Two Justices removed Mary Norris from the Parish of St. Peter in the East in the said City, to the Parish of Fawly in the said County of Oxford: Which Order was discharged by the Sessions, upon Appeal ; it appearing (as it is dated in the Order of Sessions) That the said Mary Norris was hired at Christchurch in Oxon, an extra parochial Place, on the 16th of May 1717, for one Year, to Mrs. Cooke, who then lived, and ever since hath lived with her Son in Law Dr. Clavering, Canon.

(10) Ruling

(11) Comment

The court finds that a servant cannot gain a settlement in a place for which he has a Certificate, even if he is hired there under a yearly contract and works for more than a year. The court also finds that a servant cannot gain settlement by working for forty days in a place where his master is only a visitor (even if the other conditions, including hire for a year and service for a year in total for that master, are fulfilled). In its reasoning, the court notes a number of factors such as the fact that the servant continued in his master’s service after Scarborough and that the service in the public place was just “casual intermediate Residence”, that there was a re-hiring, and that the servant was on a Certificate in Elvetham – in the later case of *Bath Easton* (1774), the court uses these factors to justify its deviation from *Alton.*

(12) Type

Restrictive

(1) Case name

*R.* v. *Alton*

(2) Date

5 May 1784

(3) Report

Cald 424

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Alton

(6) Order sought

Quashing

(7) Facts

Two justices by an order remove Benjamin Johnson and Mary, his wife, from the parish of Midhurst in the county of Sussex to the parish of Alton in the county of Southampton. The Sessions on appeal adjudge the settlement to be at Alton, confirm the order, and date the following case :

That the pauper Benjamin Johnson was a settled inhabitant in the parish of Alton: that, subsequent to the settlement, the pauper hired himself to his uncle, Daniel Johnson, a turner, in the parish of Midhurst for a year; and the pauper was to be found in board, lodging, pocket money and cloaths by his uncle, for whom he was to work in his trade of a turner, and his master was to have the benefit of his work : that after the pauper had served six months his master finding he was idle, and did not work as he ought to have done, he and the pauper came to a new agreement, and the pauper was by such new agreement to work in the said trade, by the piece, and he was to be paid in future by the piece for what he should earn ; and was also to find himself in board, lodging, pocket money and. cloaths : and upon these last mentioned terms he continued with his master till the end of the year ; sometimes working by the piece lodging and boarding out of his master's house, and at other times serving in the house as a servant, when he was boarded and lodged by his master.

(8) Argument

Bearcroft shewed cause in support of these orders ; and contended, that, though the Court had decided, that two hirings, provided one was for a year, might be coupled and would give a settlement, yet that this was so only, where they were hirings ejusdem generis and where there was a continuance of the same service : that the species of service was different in this case, the pauper being under one hiring a menial servant by the year in constant employ at annual wages and supported by his master, in the other working only by the piece, living out of the house, and providing himself with every necessary article : that such contracts and services could not connect: that by the terms of the second hiring the pauper was under no obligation to work exclusively for his master, who could not command the whole of his service; and that therefore being by this contract sui juris and not under his master’s control, he was no servant at all.

Hurst in support of the rule to quash these orders insisted, that the new agreement made no alteration in the hiring for a year : that it did not work any discontinuance : that it by no means discharged the pauper from his contract for the year: that on the contrary the same species of service continued under the same original hiring, and that little more was varied by it than the mode of compensation.

(9) Judgment

Willes J

The only question here is, whether there has been a service in pursuance of the hiring ? The new agreement is not for a different species of service, nor is any thing there said of a waiver of the original contract ; but at the end of six months the pauper is instead of annual wages to be paid by his earnings by the piece. The manner, in which the latter part of the service is performed, leaves it also equivocal, which agreement was their guide, or rather establishes that both were acted upon indifferently ; as it is plain that the terms of the second agreement were not uniformly followed. If so slight a variance as the present were to vitiate Settlements, they would be acquired under very few contracts; as nothing is more common than to do more than this, to transfer a servant from one species of work to another, as from the garden to the stable, and so throughout the whole of the economy of a family. [a]

Ashhurst J

The question is, whether the original contract is interrupted and wholly done away, or only the terms of it varied. It is clearly the latter. The servant is to work by the piece instead of the gross and the conduct of the parties, subsequent to the new agreement, shews, that, with respect to the mode of performing the service, in the understanding of the parties, the original contract still continued to subsist.

Buller J.

In this case there is no doubt any way: but, even if there had been a discontinuance, which I think there was not, the second agreement, being general and not for any particular time, must be taken to be for a year, as all general indefinite hirings are ; and consequently gives a settlement.

Lord Mansfield was absent.

Rule absolute and both orders quashed.

Vide the cases of the *K. v. the Inhabitants of Bagworthy* E. 22 G. 3. 1782. ante 179. and the *K. v. the Inhabitants of Grendon Underwood*, Tr. 23 G. 3, 1783. ante 359.

[a] And that such an alteration in the nature of the service will not operate to defeat a settlement was agreed by the whole court (though there was a difference as to the main point before them) in the case of the K. v. the Inhabitants of Great Chilton. Tr. 34 G. 3. 1794 5 Durnf, and East.672.

(10) Ruling

During a contract as a menial servant for a year, a new agreement to work in the same species of labour by the piece and find himself lodging as well as all other necessaries (the servant afterwards at times serving in his master’s house and being then lodged and boarded there) does not prevent his gaining a settlement.

(11) Comment

The court takes a broad view towards when hirings can be coupled to grant a settlement, allowing hirings to be coupled so long as the nature of the work done under the hirings is of the same nature. Part of the judgment expressed this as a test of whether the original contract has been “wholly done away” or only varied, for example by varying payment arrangements. This approach very much focuses on the practice of the work as the determinative factor. However, Willes J seems to go beyond the “species of work” limitation, suggesting that hirings to do different work for the same master can be added together, in light of how servants are often given different roles at different times within a family.

(12) Type

Liberal

(1) Case name

*R.* v. *Alveley*

(2) Date

18 May 1803

(3) Report

3 East 563

(4) Court

King’s Bench

(5) Parties

The King against The Inhabitants of Alveley

(6) Order sought

Quashing

(7) Facts

Two justices by an order removed Jane Hinson, single woman, from the parish of Kinver in the county of Stafford to the parish of Alveley in the county of Salop; in which order it was stated, that upon the complaint of the churchwardens and overseers of K. unto the said justices “ that Jane Hinson, single woman, had come to inhabit in the said parish of K. not having gained a legal settlement there, and that the said J. H. is with child, and is therefore deemed chargeable to the said parish of K., they the said justices, upon due proof made thereof, as well upon the examination of the said J. H. upon oath as otherwise, and likewise upon due consideration had of the premises, did adjudge the same to be true, and did likewise adjudge that the lawful settlement of the said J. H. was in the said parish of A.” &c. they did therefore require the said churchwardens, &c. of K. to convey and deliver, and the said churchwardens, &c. of A. to receive the pauper. The sessions on appeal confirmed the order, subject to the opinion of this Court on the following case.

The pauper was settled by birth in the parish of Alveley, and some time previous to Michaelmas 1801 hired herself to Edward Cox of Dunsby in the parish of Kinver for a year, at the wages of 4l. She entered upon her service on the 1st of October following, and continued therein without interruption till the 2d of September 1802, when she being about seven months gone with child, the parish officers of Kinver insisted upon her going before two magistrates for the purpose of being examined as to the place of her settlement, and accordingly took her away from her service on the evening of that day, and the next morning brought her before the magistrates, who made the order of removal. The pauper's master had made no complaints against her : he did not consent to her being taken away, but objected to it; as did the pauper herself, who was perfectly able to do her work; and it being harvest time the master could ill spare her. After the pauper’s examination had been taken she returned to her master’s service; and on the following day the parish officers removed her under the order from Kinver to Alveley, telling her at the same time that she might return to Kinver. The master also told the parish officers that he should insist on the pauper’s returning and serving out the rest of her year. The pauper accordingly returned to Kinver and served out the rest of her year, and received her whole year’s wages.

(8) Argument

Touchet and Puller, in support of the order of sessions, contended that the pauper was removeable by the express provision of the stat. 35 Geo. 3, c. 101, s. 6, “that every unmarried woman with child shall be deemed and taken to be a person actually chargeable within the true intent and meaning of this Act to the parish, &c. in which she shall inhabit, and may be removed as such to the place of her last legal settlement,” &c. Now the object of that Act was to enable parishes to remove paupers not legally settled therein when they became actually chargeable, instead of removing them upon the supposition only of their being likely to be chargeable, as the law stood before the Act. The necessity of this clause was obvious, to prevent such persons having it in their power to settle their bastard children in the place of their birth instead of in the parishes to which they respectively belonged, which is only provided for by the latter part of [565] the clause in case of the birth pending an order for the removal of the mother. The only case on this branch of the Act is *R. v. Great Yarmouth* (a), where the Court put a strict construction on the words of the clause, and held that they extended to a certificated single woman with child, though such a person was certainly not removeable before that Act, as was ruled in *R. v. St. Mary Westport* (b). If it be said that an order of removal cannot dissolve the contract between the master and servant, the answer is, that no private agreement of the parties can intervene to prevent the execution of a public law in a case falling within it. And in *R. v. Kenilworth* (c), where a pauper was removed by an order out of the service of his master in the parish of A., against which there was no appeal, it was holden to dissolve the contract of hiring for a year under which he was then serving; so that though he returned a few days afterwards to his master in A., and served out his year, and received his full wages, he could not thereby gain a settlement. Buller J. there said, “ that the order of removal put an end to the service.” And in a subsequent case, R*. v. Fillongley* (d), where one residing on a tenement of 10l. a year was removed, Lord Kenyon distinguished it from *R. v. Kenilworth*, because “that was a case of master and servant, and there the justices have a power of putting an end to the contract.” Then here if the old contract were dissolved by operation of law, the service afterwards was under a new contract, and could not gain the pauper a settlement.

(a) 8 Term Rep. 68. (b) 3 Term Rep. 44. (c) 2 Term Rep. 598.

(9) Judgment

Lord Ellenborough C.J. If the order of removal were good, no doubt it would operate to dissolve the contract. In *Rex v. Kenilworth*, the order of removal being unappealed from was therefore to be deemed a valid one: but this is now under appeal, and may be controverted. And that brings it to the question whether the order were properly made? Was it not the meaning of the Act to prevent the removal of persons until actually chargeable, who were before removable if likely to become so : but not to make persons removable who were not proper objects of removal before that Act ? Could it be meant that a person in this situation should be liable to be torn away from her parents, whatever her condition in life may be, and however far removed from any probability of being a charge on the parish ? Is there any instance to be found in the books before this Act of a woman under these circumstances, being a person of substance, and yet deemed to be removable? The substance of a person so situated repels the idea of her being chargeable: and the Act did not mean to make any person removable who was not so antecedently to the passing of the Act. The general provision is, that no person shall be removable till actually chargeable, and the 6th section introduces an exception to that general rule, leaving the persons so circumstanced to the operation of the law as it stood before the passing of the Act.

The respondents’ counsel observed, that there were no facts stated in the case to shew that the woman was not a person who was likely to become chargeable at the time of the order made, or that the removing magistrates had not exercised their judgment upon that fact: on the contrary, they adjudge her to be chargeable; and before the Act in question such a person was removable.

[567] Lord Ellenborough C.J. There is nothing of that sort stated in the case, nor any thing in the order itself to shew that the magistrates adjudged her to be chargeable otherwise than as a consequence of law in their understanding of the Act of Parliament; they adjudge that she is with child “and is therefore deemed chargeable to the parish of Kinver.” But though the Act says that such a person shall be “ deemed and taken to be actually chargeable ;” yet that must be understood secundum subjectam materiam, or as the Act itself expresses it, “chargeable within the true intent and meaning of this Act,” which I have before explained. It goes on to say, that such a person may be removed ; it does not say that she shall be so. It lies then upon the respondents to shew that before this Act passed the mere circumstance of a single woman in the service of another being with child operated as a dissolution of the contract, and made her liable to be removed against the consent both of the master and servant.

Lawrence J. Can it be contended that a single woman in this situation who was a person of substance was liable to be removed before the late Act?

Le Blanc J. The respondents must contend that a single woman within a week of the end of her service, upon being discovered to be three months gone with child, was a person likely to be chargeable.

Gibbs, Clifford, and Jervis, control, after the opinion of the Court thus expressed, referred to *Rex v. Marlborough* (a)1, and *R. v. Brampton* (b), as confirmatory of that opinion, that a single woman servant being with child [568] was not a good cause of removal from the service by the overseers of the poor of the parish where she lives, though a good cause of discharge by the master.

Per Curiam. Order of sessions quashed (a)2.

(d) 2 Term Rep. 709. (a)1 12 Mod. 402, and 2 Const, 495. (b) Cald. 11.

(a)2 Vide R. v. Ozleworth, Burr. S. C. 302, 4, where a servant who had contracted to serve his master for 3 years at so much a week under certain conditions was removed during the term, and while he was actually in his master’s service, Lord C. J. Lee put an end to the argument upon the nature of the contract by saying, “How could the justices remove him out of the service? It appears that the man was actually in the service at the time of the removal.” And the Court quashed the orders.

(10) Ruling

A single woman living in service with her master is not removeable ever since the stat 35 Geo. 3, c, 101, s. 6, against the consent both of herself and her master; though adjudged by the order of removal to be with child, and therefore deemed chargeable to the parish in which she was serving ; that statute not extending to make persons removeable, who were not proper objects of removal before, but only to leave certain descriptions of persons excepted out of the Act liable to be removed, though not in fact chargeable, if otherwise proper objects of removal.

(11) Comment

The court finds that an order of removal doesn’t automatically remove a single, pregnant woman from the parish of her master, and the contract of hire will be kept alive if both the master and the servant both consent (and the servant will be eligible for settlement after a year). This approach gives weight to the parties’ actual intentions, rather than being ‘status’ based (i.e. the servant being removed just because she is a woman, single, and pregnant).

(12) Type

Liberal

(1) Case name

*R.* v. *Ardington*

(2) Date

3 May 1834

(3) Report

1 Ad. & E. 260

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Ardington

(6) Order sought

Quashing

(7) Facts

On appeal against an order for removing George Barrett and his family from the parish of Ardington, in the county of Berks, to the parish of Aldbourne, Wilts the sessions quashed the order, subject to the opinion of this Court on the foIIowing case:- Three or four days after Old Michaelmas-Day 1823, the pauper, being then about sixteen years old, and settled in Aldbourne, was hired by his father to Mr. William Brown, a farmer in the parish of Little Hinton, Wilts, (the father being in Brown’s service also,) to serve as shepherd, for his board and lodging, in the house of Brown at Little Hinton, until the following Old Michaelmas, at 51., and 6s. a week wages for the father. The pauper served accordingly as shepherd under that hiring, boarding and sleeping in Brown’s house, till Old Michaelmas-Day 1824, on which day he, by his father’s leave, went to Highworth fair for pleasure, and returned in the evening to his master’s house. Mr. Brown settled with the pauper’s father for the wages due to himself and his son up to Old Michaelmas, four or five days after Old Michaelmas,

the father receiving the wages for his son. On the day the wages were paid the master hired the pauper’s father, the pauper, and his brother, to serve him until the Old Michaelmas following, at 6s. a week for the father, and 5l. 10s. for each of the sons at Michaelmas. The pauper and his brother continued, with their father, to board and lodge at Little Hinton, the pauper being employed as before, till Old Michaelmas Day 1825, when the pauper drove his master’s sheep to Highworth fair

and returned in the evening to Little Hinton. A few days after Old Michaelmas 1825 the master again settled with the pauper’s father for the wages agreed upon for himself and his sons at the previous hiring, and asked the father ‘‘if he and his sons chose to go on with him? ” to which the father said “Yes.” The wages were to be the same. The pauper remained at his master’s house, boarding and lodging and working on the farm, as usual, till about the 10th of March 1826, when he was sent

by his master with sheep to a farm he was about to occupy at Lockhinge in Berkshire. He remained there, receiving 5s. a week board wages, till Lady-Day 1826, when he returned to Brown at Little Hinton, and continued there, as before, till the beginning of April, when Brown quitted Little Hinton, having paid the pauper’s wages due to him at Lady-Day 1826, to his father, without deducting anything on account of the pauper’s absence at Lockhinge. The pauper then entered the service of the incoming tenant. The pauper boarded and lodged at Brown’s house, and was employed on his

farm as shepherd continually from three or four days after Old Michaelmas 1823 to a few days after Lady-Day 1826. No other person was ever hired or employed by Brown in place of the pauper during that time. The father received the pauper’s wages from Brown without accounting to the pauper, but found him in clothes and pocket money during his service. The pauper might have left his master’s service at Old Michaelmas 1824. On these facts, the sessions held that a yearly hiring of the pauper by Brown in Little Hinton must be implied, and they quashed the order of removal. The case now coming on for argument, the Court asked the counsel who supported the order of sessions, what ground there was for implying a yearly hiring?

(8) Argument

Carrington and Tyrwhitt in support of the order of sessions. The sessions have found that a hiring in Little Hinton was to be implied. [Lord Denman C.J. But they send the evidence here, and put the question to us. We cannot imply a distinct fact.] If there be any premises to support their conclusion, this Court will not disturb it, though they may not agree in the conclusion: *Rex* v. *St. Andrew the Great, Cambridge* (8 B. & C. 664). The conversation after Old Michaelmas 1825, amounted to an indefinite hiring; and the service under it, though for less than a year, will connect with the preceding service. This is like *Rex* v. *Macclesfield* (3 T. R. 76), where the master told the pauper “he might as well stay on an end,” and it was held to be a general hiring. [Lord Denman C.J. There Lord

Kenyon said that the words had that meaning by the custom of the country.] The words here are stronger. [Patteson J. The wages here upon the new hiring are the same gross sum as on that of the former year.] It was admitted by the Court in *Rex* v. *Apethorpe* (2 B. & C. S92), that a hiring for a year might be presumed from the servant continuing in the service, at the expiration of a previous

yearly hiring, without any alteration of the terms. A presumption almost as strong arises in this case: the pauper, at the expiration of his service at Michaelmas 1825, entered on a new one which continued several days without any specific agreement as to terms; and the inference of a general hiring, which might be drawn from that fact, is not repelled, but strengthened, by the subsequent conversation between Brown and the pauper’s father.

(9) Judgment

Per Curiam. It would be difficult to say how the master in this case could have done better than he has to avoid a yearly hiring, and that seems to have been the intention of the parties. The words used by the master clearly do not import an indefinite hiring.

Order of sessions quashed.

Shepherd was to have argued against the order of sessions.

(10) Ruling

Pauper was hired as a shepherd for a term rather less than a year, ending at Old Michaelmas 1825, when he was to receive 5l. 10s wages. Upon, and for a few days after Old Michaelmas, he continued to live with and work for his master as before, but without any new agreement. The master then paid the wages to the pauper’s father, who had also been in his service during the above mentioned term; and asked “if he and his sons chose to go on with him.” The father consented. The pauper continued in the service as before, till Lady-Day 1826, when the master, being about to quit the farm, paid him his wages down to that time, and he went into the service of the incoming tenant: Held, that the hiring: after Michaelmas 1825 was not a general hiring, and that the service under it, connected with that of the preceding year, did not give a settlement ; and the Court quashed an order of sessions made in favour of such settlement.

(11) Comment

The Court declines to find a general hiring where the servant was initially hired for less than a year, stayed on after the end of the year. The report appears to show the Court condoning the master’s intention to avoid a settlement.

(12) Type

Restrictive

(1) Case name

*R.* v. *Arlington*

(2) Date

23 June 1813

(3) Report

1 M. & S. 622

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Arlington

(6) Order sought

Quashing

(7) Facts

Upon appeal, the Court of Quarter Sessions quashed an order of two justices removing a pauper from the parish of Arlington to the parish of Wilmington, both in the county of Sussex, subject to the opinion of this Court on the following case : The pauper was hired for a year from Michaelmas 1809 to Michaelmas 1810, as shepherd, to receive 13s. 6d. per week wages, and an allowance for a hog, and to be at liberty to be absent during the sheep-shearing season, but to find a fit man at his own expense, to do his work during the time of his absence, but his own wages of 13s. 6d. a week were to go on during the whole time. The pauper served the year in Wilmington accordingly, was absent during the sheep-shearing season, and employed and paid a person to tend the stock, but occasionally returned during that period, and assisted in the management of it, especially on Sundays, and from time to time gave directions to the person employed by him.

(8) Argument

D’Oyly and Roe, who had argued against the order of sessions, were called upon by the Court, and asked how a year minus the sheep-shearing season could be made to amount to a year. They admitted that if it was to be taken as part of this contract that the pauper had an unconditional liberty of being absent during the sheep-shearing season, the case would fall within *Rex* v. *Empingham* (a); but they relied on this distinction, that this was only a conditional liberty of absence provided the pauper could find a substitute at his own expense, but his wages were still to go on as usual, which implied a continuance of the service, and it appears he did occasionally come backwards and forwards. Under these circumstances the question was whether the servant of A., though for a time working with another person, might not continue the servant of A., or whether this was any thing more than an alteration in the nature of his service with his original master.

(9) Judgment

Lord Ellenborough C.J. It has never been determined that a contract for service by deputy is service by himself. The distinction taken in all the cases is whether the liberty of absence forms a part of the original contract, so as to be an exception out of it, or whether it be by permission of the master during the continuance of the contract. If this hiring could be deemed to confer a settlement, the consequence would be that a person might gain as many settlements as there are 40 days in one

year. He might hire himself to A., with liberty to be absent with B. and C., and so on, and if he could get 40 days service with each, he might accumulate eight or nine settlements in the course of a year. Such a consequence would be preposterous. What does this hiring really mean? A hiring for a year is where the servant is to be under the control and command of his master for the whole year; but here the pauper was not to be so, but was to be at liberty to find a substitute for the sheep-

shearing season. The case will scarcely bear a serious argument. It has been laid down in *Rex* v. *Empingham* and other cases, that if it be an exception out of the original contract at the time of making it, no settlement can be gained under it; here it was an exception, and therefore no settlement.

Per Curiam. Order of sessions confirmed.

Courthope and Bowen were in support of the order of sessions.

(10) Ruling

Hiring for a year at 13s. 6d. per week, and to be at liberty to be absent during the sheep-shearing season, but to find a fit man, at his own expense, to do his work during his absence, but his own wages to go on during the whole time, will not gain a settlement.

(11) Comment

A hiring under which the servant had the right to provide a substitute to do part of the work did not confer a settlement.

(12) Type

Restrictive

(1) Case name

*R.* v. *Atherton*

(2) Date

1742

Hillary Term 16 Geo 2

(3) Report

Nolan, p. 203.

(4) Court

Court of King’s Bench

(5) Parties

Rev v. Inhabitants of Atherton

(6) Order sought

Quashing

(7) Facts

On Saturday last a Motion was made by Mr. Bootle, to quash an Order of Sessions confirming an Order of two Justices for the Removal of Ralph Harrison and Martha his Wife and John their Child from the Township of Barton in Lancashire to Atherton in the Parish of Leigh, in the same County. Case—Ralph Harrison, being unmarried, and not having any Child or Children, and being legally settled in Atherton, was in the Year 1729, hired by Thomas Barlow, an Inhabitant of and legally settled in Barton for one Year, at 4/. Wages payable quarterly: And it was agreed between the said Barlow and Harrison, at the Time of the said Hiring, “that either the said Master or Servant should be loose from or at Liberty to determine the said Contract or Hiring at the End of any Quarter of the said Year; Either of them giving a Month's “ Notice to the other.” But it appears that no Notice of dissolving or determining the said Hiring or Service was ever given by either the said Master or Servant; and that the said Ralph Harrison continued in his Master’s Service in Barton aforesaid, the whole Year. It also appeared, that the said Ralph Harrison, at the Time of the said Hiring, declared that the Reason of the said Hiring being made determinable at the End of any Quarter upon such Notice as aforesaid, was “ that he would not be hired so as to lose his former Settlement.”

(8) Argument

On shewing Cause, now, against quashing the Orders, it was said, by Sir John Strange, that it is essentially necessary that there be an absolute Hiring for a Year. The Reason of it is, that it should appear that the Person came fairly into the Parish to get his Livelihood there and to do real Service, and not merely to gain a Settlement. But this Contract was determinable, by either Party, at the

End of every Quarter.: And the Intention of the Parties is most expressly specified, in the present Case, to be that the Man was not “to lose his former Settlement.” This Case differs from the Case of Rex v. The Inhabitants of Stroude. For there the Contract was originally for a Quarter of a Tear, but the Maid was to continue for a Year if her Master and she liked one another: And the general Case of hiring Servants is much like that. But here are express negative Words: And a particular Time is fixed for the Determination of the Contract. On the contrary it was said, that there appears upon the Face of this Order, a Design to evade the law. In the Cafe of Lidney and Stroude, the original Hiring was but for a Quarter of a Year : This is for a whole Year. And in the Cafe of Rex v. The Inhabitants of New Windsor, Colonel Meyrick hired the Servant for a Month upon Liking; and she was to go away on a Month's Wages or a Month’s Warning But, as she was to have 5 l. a Year Wages, and continued above a Year, it was holden to gain a Settlement.

(9) Judgment

Lord Chief Justice Lee held it to be a good Settlement at Barton, upon the Authority of the Cases cited. And, he observed that that the Words of the Acts of Parliament are complied with: For here is both a Hiring for a Year, and a Service for a Year. The two Reasons that seem to be the Foundation for gaining a Settlement of this Kind are the Credit given to the Servant, and the Service done by him. This conditional Agreement is inserted into the Contract purely to avoid the Settlement. It don’t seem to have been intended to be put in Execution: It is plain, at least, that it never was executed. It appears, in the Event, most clearly, that this Liberty of putting an End to the Service within the Year was never taken: The Service did in Fact continue during the whole Year. And the Hiring is expressly stated to have been “for one Year”. It is therefore stronger than the Case of Lidney and Stroude, or than that of New Windsor. For, in the former, the first Hiring was but for a Quarter of a Year; and in the New Windsor Cafe, the first Hiring was but for a Month: But in both, it was, collectively, upon the whole Circumstances, taken to amount to a Hiring for a Year. Yet they were, Both, to be conditionally void, as well as the present Hiring.

(10) Ruling

Therefore both Orders must be quashed. Mr. J. Wright and Mr. J. Denison concurring—

Per Cur.\* unanimously— Both Orders quashed.

(11) Comment

The court disregards a provision for quarterly notice, to hold that service for a year and hiring for a year together conferred a settlement. The court considered that the quarterly notice period was a ruse or sham, which the parties had never intended to act on, and which had not been put into practice. The case report contains a specific reference to the justification for the right of settlement.

(12) Type

Liberal.

(1) Case name

*R.* v. *Aynhoe*

(2) Date

1727

(3) Report

2 Ld. Raym. 1511

(4) Court

King’s Bench

(5) Parties

The King versus the Inhabitants of Aynhoe

(6) Order sought

Quashing

(7) Facts

Two justices of peace, by their order under their hands and seals of 22 Sept. 1727, removed Thomas Edmonds and Elizabeth his wife from the parish of Ashenden cum Pollicutt in the county of Bucks to the parish of Aynhoe in the county of Northampton, as the place of their last legal settlement. From which order the inhabitants of Aynhoe appealed to the next Quarter Sessions of the Peace held for

the county of Bucks, 5 October 1727, where upon hearing the order of the two justices it was confirmed; in which order of confirmation the fact was stated specially, to the intent a certiorari might be brought to remove the orders into the King’s Bench, that the opinion of that Court might be had thereupon. And the fact specially stated was this, viz. that the said Thomas Edmonds about fourteen years since was hired for a year to Abraham Wrighton at Aynhoe, and served him the same year, and received his year’s wages, and afterwards at Michaelmas 1725 went to Mr. Thomas Potter at Bisseter in the county of Oxon to be hired; who told him he would not hire him then, for that he expected a man-servant in three weeks; but if he the said Thomas Edmonds would supply the place of such man-servant till he came, then he the said Thomas Potter would pay him for his time: whereupon the said Thomas Edmonds entered into the service of the said Thomas Potter, and lived

there till near Christmas following, and then was hired to him and served him at Bisseter till Michaelmas then following; and then at Michaelmas 1726 he was hired at Bissetur aforesaid for a year to his said master Potter, and stayed in such service till the Midsummer following, and no longer.

(8) Argument

These orders being accordingly removed into the King’s Bench by certiorari, it was argued by Mr. Lee for the defendants, that the order ought to be quashed, Thomas Edmonds appearing to be last settled at Bissiter ; because, though the statute requires a hiring for a year, and a service for a year, it does not require the hiring and service should be under the same contract. And he relied upon the case of *The Inhabitants of Brightwell and Westhanning*, 10 Mod. 287, 1 Sess. Cas. 92, pi. 37, fol. 198, as the very case in point: where it was resolved and settled, Hil. 1 Geo. 1, B. R. when the Earl of Macclesfield was Chief Justice. Mr. Reeve contra argued, that it did not appear, Edmonds was settled at Bissiter; because he insisted, he ought to be hired for a year, and serve that year. And he said, it had been held between *The Inhabitants of Rudwick and Dunsfold*, Salk. 535. Sett. & Rem. 2, that if a poor man is hired for half a year, and serves that half year, and then is hired to the same master for another half year, and serves that half year also, that would not make a settlement.

(9) Judgment

But the Court upon the authority of the case of *Brightwell and Westhanning* held, these hirings and service did make a settlement; for he was hired for a year, and served a year. And the orders were quashed.

(10) Ruling

A service for a year uninterruptedly will confer a settlement, if any of those hirings was for a year.

(11) Comment

The Court rules that continuous service across two hirings can confer a settlement if one of the two hirings was for a year.

(12) Type

Liberal

(1) Case name

*R.* v. *Bagworth*

(2) Date

1 May 1782

(3) Report

Cald 179

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Bagworth

(6) Order sought

Quashing

(7) Facts

By an order of two justices of the county of Leicester, the form of which was as follows:—

“Whereas, &c. we, the said justices, upon examination of the premises upon oath and other circumstances, do adjudge the same to be true, and also do adjudge the place of the last legal settlement of the said Sarah Ward is in the said parish of Ratby, &c”

The said justices remove Sarah Ward from the parish of Bagworth in the county of Leicester to the parish of Ratby in the same county. The sessions on appeal adjudged the settlement to be in Bagworth, quashed the order, and stated the following case :

That about nine weeks before old Michaelmas 1780, the pauper was hired by William Hunt of Ratby, for one week at two shillings and sixpence per week wages, and continued to live in that service in the said William Hunt's house at Ratby by the week till old Michaelmas, and received her wages every week. That during that time she considered herself at liberty to have quitted her service at the end of any one week, and to have hired herself to any other person. That at said old Michaelmas 1780, she was hired for a year from that time, and that she served till about a fortnight before the following old Michaelmas; when, being with child, she was desirous to conceal the knowledge of it from her master, and applied to her master to leave her service; and they parted by consent, and he paid her her wages, up to that time. That she was employed in the same manner during the time she served by the week, as under the hiring after Michaelmas.

(8) Argument

Dayrell shewed cause in support of the order of sessions; and contended that, though the old rule, which was universally acknowledged to be the true as well as the most political construction of the act of parliament, i.e. that there must be not only an entire service for a year, but that such service must be under one entire hiring also, to gain a settlement, had by a long series of later authorities been overturned, the court ought not to extend a principle they did not approve, beyond the line of any former decision: that in every case which existed, in which a hiring and service for a broken period of time had been holden to connect with a service under a hiring for an entire year, such broken period had always been a considerable portion of time and in no instance less than a quarter of a year: that the act in its very terms [a] requires a continuing and abiding in the service: that, if the court were to hold, that these words were satisfied by a hiring for a week, they must also by a hiring for a day; and it would consequently be in the power of any master in twenty-four hours to settle in his parish any day-labourer, who had worked with him for twelve months: that the ceremony of a hiring for a year was in such case the only requisite: that, however, unlikely it might be to be frequently acted upon, the court would not think fit to lodge such a power [b] in the hands of masters: and that by the provisions of Stat. 5 Eliz. [c] weekly servants are considered and put upon the same footing as day-labourers.

But in what view soever this might be considered by the court, he insisted, that the order itself could not in point of form be supported : that it did not appear to have been made upon proper and sufficient evidence : that it was made only upon examination of the premises: that an inquiry generally into the subject master is not enough : that the pauper himself must be examined, and that that has been so holden in the case of [a] *the King* *v. Wykes and Others*.

[а] 8 & 9 W. 3. c. 30. f. 4.

[b] Vide Dennison, J. in the case of *Rex v. the Inhabitants of* Wrinton otherwise Wrington. M. 22 G. 2. 1748. Burr. Settl. Cas. 280, and Page, J. in the case of *K. v. Aynhoe*. M. 1 G. 2. Bott. 292. and the court in the case inter the

Inhabitants of *Dunsfold and Ridgwick*. M. 9 Ann. 2 Salk, 535.

[c] c.4. f. 12.

Buller J. It cannot be necessary in all cases, that the pauper should be examined. In that of an infant of tender years it would be impossible. There is no such general rule : and as to the case cited, it was an information, and must therefore have gone on different grounds. The Justices probably [b] had refused to hear the pauper.

Dayrell. Still, as in the present case, the pauper is not stated to be an infant or under any such disability as would prevent her giving material evidence, it should appear that she had been first summoned, she ought to have had notice and to have been heard, before her removal ; as she might have produced a certificate, or shewn other sufficient cause why she ought not to have been removed.

Buller J. To this objection an anonymous case in (c) *Comberbach* is in point. In that case Holt, Ch. J. says, “ If it can be, ’tis fit it should be so, but not absolutely necessary.

[a] Tr. 11 &12G.2. 1738. Andr. 238.

[b] It was at the instance of a substantial person, the party removed, against Wykes, an inhabitant of the parish from whence the removal was made, and who took an examination without summoning the party and in which no complaint appeared, that the party was “ likely to become chargeable,” but only that he “ had endeavoured to gain a settlement there contrary to law” and then sent the party to two other Justices to be removed. This the other justices did, under the examination taken by Wykes. The information went against them all; but against Wykes, as the case states, principally, not on account of the neglect of the summons, but because it was not said in the complaint. “ that the party was likely to become chargeable.”

[c] E. 10 W. 3, Comb. 478.

Bearcroft and Gally were in support of the rule to quash this order: and Bearcroft insisted, that with respect to the last objection, even if there were not a case in point in his favour, nothing less than an authority directly in point against him, could, in this stage of the business, have induced the court to let it prevail: and that, whatever the practice and the readied rule in general for investigating the fact might be, a discretion was still to be exercised by the magistrate; and that the statute did not contain any peremptory direction to examine the pauper. That, as to the point made upon the facts stated, the words of Parker Ch. J. in the case of [a] *the King against the Inhabitants of Bright*well applied exactly, and must; govern the present case: and if there existed any decision in which the court had holden that a weekly service could not be coupled with a service by the year, there were other ingredients in the case; and it must have gone upon the principle, that the two services [b] were in a different character and not ejusdem generis: that therefore, in the instance of a day labourer or other workman, not an inmate, as these circumstances made the whole difference in point of law, the ill consequences pointed at could not possibly arise ; but that the present was the case of a domestic, a menial servant, and it was expressly found, that the weekly service was performed, while the pauper “ continued to live in her master’s house,” and that during this service she was employed in the same manner as under the hiring after Michaelmas ”

(9) Judgment

Willes J. (stopping Gally)

The question raised upon the merits is perfectly clear; and indeed seems to have been yielded at the bar. The pauper did not live in this family occasionally, or work under their directions merely as a day-labourer or charwoman, but constantly as a menial servant, and employed throughout in the same services : and a hiring for a year with a year’s service in the whole, and that of a similar nature throughout, though it is made up of several hirings, (provided there be no discontinuance) gives a settlement. To the objection in point of form the case cited from Comberbach is decisive. And, if it were not, I should have no difficulty. We are to presume in favor of orders. An examination of the premises is an investigation of every fact relevant to the subject: this cannot be but by means of the testimony of every necessary witness : and injustice cannot have been done; for, as this case went in course of appeal to the sessions, had there been an actual failure of this or any other necessary evidence, advantage would have been inhabitants taken of it upon the case stated.

[a] E. 1 G. i. 1715. 1 Ses. Cas. 92. 10 Mod, 287. See also Cas. of Settl. 297. S. C.

[b] Vide *Rex v. the Inhabitants of Wrinton otherwise Wrington*, M. 22 G. 2. 1748. Burr. Settl, Cas. 280. and *Rex v. Inhabitants of Grendon Underwood*, Tr. 23 G. 3. 1783\* post. from whence the dear inference seems to be, that, though the capacity in which the servant acts, and the nature of the services performed, are not of the same denomination or genus, yet, if throughout the whole period of the two services, the pauper continues to be a menial servant and part of his master’s family, such services will in point of law connect, and give a settlement.

Buller, J. Here is a continuance in the service for a year: and it has been long settled, that, where the service extends throughout the year, you may couple any number of preceding hirings and services with a hiring for a year. The extent and duration of the several preceding services, where such services have been similar, have never been adjudged to vary the law: but there must be one entire hiring for a year. As to the other objection, independent of the authority, where it is doubtful whether an order is good or bad, the court will presume it good : and, as the settlement may. be made out by other evidence, and cannot always by that of the pauper, it cannot be indispensibly necessary that she should be examined. In the *King v. Honiton*, as reported by Mr. Bott p. 202, the order is set out at large, and is open [a] to the same objection ; but none such was taken.

Ashhurst, J. concurring,

Rule absolute.

Order of sessions quashed, and

Order of two justices affirmed.

Lord Mansfield not having been in court during the whole of the argument, gave no opinion.

[a] The form of the order in that case was as follows: “ And whereas upon due examination and inquiry made into the premises by us, the said Justices, it appears unto us, and we accordingly adjudge, &c,”

(10) Ruling

Service under a hiring for a year will connect with similar preceding Services under any number of hirings from week to week. An order of removal need not state an examination or summons of the pauper.

(11) Comment

The court focuses on the duration of the work in practice for the requirement of service, and finds that service under a hiring for a year can be coupled with service under contracts for shorter hirings so long as the work was of a similar nature and the servant was working as part of the master’s family (rather than a day labourer) throughout. The court used the same approach in the alter case of *R v Alton* (1784).

(12) Type

Liberal

(1) Case name

*R.* v. *Bank-Newton*

(2) Date

1758

(3) Report

Nolan p. 455

2 Salkeld 529

(4) Court

Court of King’s Bench

(5) Parties

*Rex* v. *Inhabitants of Bank-Newton*

(6) Order sought

Quashing

(7) Facts

Two Justices removed George Ayrton, Ellen his Wife, Anne, Elizabeth, Isabel, Jane and George their Children from the Parish of Marton in the West-Riding of Yorkshire, to Bank-Newton in the said Riding: And the Sessions, upon an Appeal, confirm their Order. The State of the Case was this – George Ayrton, the Pauper, and his Wife, being legally settled at Bank-Newton, on the 16th of February 1738, John Wilcock, a Son of Henry Wilcock of Marton, by Order of his Father, on the said 16th of February 1738, agreed on the Behalf of his said Father, with the said George Ayrton the Pauper, who was then a married Man, to serve the said Henry Wilcock his Father, for a Year, from the 24th of the same Month of February (when his Father's then Servant was to go away,) at five Guineas Wages in case the said Henry Wilcock should approve the said Terms. That afterwards, the Wife of the said George Ayrton died, on the 18th of the same Month of February without Issue. And on the 24th of the fame Month of February, the said George Ayrton, then having neither Wife nor Child, went to the said Henry Wilcock the Father, who then lived in Marton aforesaid. And the said H. W. then asked him the said G. A. “Upon what Terms and Conditions, he the said G. A. and his Son John Wilcock had agreed. And the said G. A. then told the said H. W. That the Terms agreed upon between him the daid G. A. and the said J. W. were, “ that He the said G. A. should serve the said H. W. for a Year, from the 24th Day of the same Month of February, for 5 /. 5 s. and 0 d. Wages, in case He the said HW should approve the said Terms. And thereupon the said H. W. said That he did agree to the same Terms. And accordingly, the Pauper G. A. did, on the said 24th of February 1738, then having neither Wife nor Child, enter into the Service of the said H. W. and did serve the said H. W. in Marton aforesa id for One whole Year from the said 24th Day of February 1738 and received 5/. 5 s 0 d of the said H. W. for a Year’s Wages. The Sessions were of Opinion, That the Pauper served the said

Year, under the said Contract made with the said John Wilcock, as aforesaid; And that at the Time of the said Contract and Hiring, He was not an unmarried Person without a Wife, and that therefore He did not, by such Hiring and Service, gain a Settlement in Marton; And therefore they confirm the said order of Removal.

(8) Argument

Mr. Norton having moved, on Wednesday the 8th of February 1758 to quash both the original Order and the Order of Sessions – Mr. Aston now shewed Causes why these Orders should not be quashed. By 3 & 4 W & M. c. 11. sect. 7. He must be unmarried at the Time of the Hiring. The Words are, “That if any unmarried Person, not having Child or Children, shall be lawfully hired into any Parish or Town for one Year, such Service shall be adjudged and deemed a good Settlement therein; though no such Notice in Writing be delivered and published, as is therein before required. Here, the Hiring, He said, was on the 16th and the Wife did not die till the 18th. So that he was not an unmarried Person, when he was hired. The Agreement might perhaps be made with a married Person on purpose, by Way of Caution, to prevent a Charge upon the Parish. And in 10 Mod. 393, Ranton v. Horton Parish—per Pratt Ch. Jut. The Intent of such a Caution is lawful. [See Lucas 393.] To prove that the Time of the Contrail, must be referred to the Inception of it---He cited Bro. Contract, p. 15. The Retainer is the proper Inchoation of the Service. So is Bro. Laborers, pl. 9 & 11. Mr. Norton, contra—for quashing the Orders – The Intent of the Restriction of this Law to unmarried Persons without Children, was to prevent the consequential Damage that might accrue to Parties from hiring Servants incumbered with Wives or with unsettled Children. But this Man is within both the Words and Meaning of the Qualifications admitted by the Act. He could bring no consequential Charge upon the Parish. If a Person hired unmarried, shall marry during the Service, Yet He shall gain a Settlement, both to himself and his Wife. So if a Female Servant happening to be then with Child, be hired; She and her Child shall both gain a Settlement, if She serves out her Year. It is enough, that when he began his Service, there was no Danger of a consequential Charge to the Parish. And this is all that the Court have their Eye upon. And though this should, as between the Parties, be a Contract between them, from the 16th; Yet that will not affect the Parties. But, however, the Contract was not complete, but a mere Nullity till the Agent of the Principal, (the Father:) For he had it in his Power to disapprove. It was not bindings till his Assent was given: For the Agent only acted under a limited Authority. And when the Principal did assent, the Servant was unmarried. As to Bro. Contract, 15. It certainly was binding upon both the Parties, when J. N. set the Price: But had not been so if J. N. had refused to set a Price. So Bro. Laborers, pi. 9 & pi. 11. But still this affests only the contrasting Parties; and not the Parish.

(9) Judgment

Lord Mansfield stopt Mr. Norton from proceeding; It being clear that the Hiring was on the 24th. For the Father might have dissented from the conditional Agreement made by his Son on the 16th. But the Man was unmarried on the 24th when the Father made the complete Agreement with him. And the three other Judges declaring themselves most clearly to be of the same Opinion.

(10) Ruling

Both orders were quashed.

(11) Comment

The servant was unmarried at the time of contracting; although his wife had died only a few days before, the case fell within the Act. Counsel makes express reference to the purpose of the legislation. There is discussion of the idea of a ‘caution’ being a lawful way to draft a contract to avoid the Act; but not here.

(12) Type

Liberal

(1) Case name

*R.* v. *St. Bartholomew by the Exchange*

(2) Date

9 May 1778

(3) Report

Cald 48

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of St. Bartholomew by the Exchange

(6) Order sought

Quashing

(7) Facts

Two Justices remove Ursula Owen from the parish of St. Faith under St. Paul's in the city of London, to the parish of St. Bartholomew by the Exchange in the said City. The Sessions on appeal confirm the order, and state the following case :

That the pauper, Ursula Owen, a single woman, was hired by the year to Mr. Lewis Diedrick Heshuysen in the parish of St. Bartholomew by the Exchange, London, on the 11th June 1771 : That in the month of April following, Mr. Heshuysen went to Manchester and purchased a manufacture there, and upon his return in the same month he told all his servants that he was going to reside at Manchester, but did not mention any time; and that they might look out for other services if they chose, or they might stay with him till he went to Manchester. That the pauper Ursula Owen did not look out for any other service, but continued with her master till the 4th day of June following ; on the evening of which day her master paid her the whole year’s wages, and gave her half a guinea over, and the same evening left London and went for Manchester. That Mr. Heshuysen did not know in the morning of the 4th of June, that he should leave London in the evening, or even before the expiration of the year’s service : But that his going was quite a casual matter, and depended upon circumstances which he could not at that time foresee : That if he had remained in London he should have continued the pauper in his service, as she was a good servant; and that the pauper went into a new service two days after her master left London.

(8) Argument

Silvester began to shew cause in support of these orders; but, Lord Mansfield calling upon the other fide, Haworth, in support of the rule to quash them, insisted ; that the master, having left his place of abode with a declared intention never to return, and having on that account discharged his servants before the end of the year, it must: be taken as a complete dissolution of the contract : that whether the whole, or a rateable proportion only, of the wages were paid ; or whether months, or a week only, of the service were left unperformed, was totally immaterial. That the conduct of the servant in making a new contract and entering upon her service under it two days afterwards, plainly shewed the light, in which she understood it. Tho’ at first it might be considered only as a dispensation of the service for the remainder of the year, yet, still as that dispensation was in favour of the servant, she might waive it and dissolve the contract : That she must be taken as having done so here; or it would be holden that the pauper could be gaining two settlements at the same time under different contracts; which would be absurd. He relied strongly on the cases of [a] the *King v. the Inhabitants of* *Castlechurch*, and the *King v the Inhabitants of Godalming*, H. 12 G. 1. cited in that case: in both which cases, upon a separation by consent about a week before the expiration of the year, and the whole wages paid, the court held, that it was a determination of the service. He also cited the case of [b] the *King v. the Inhabitants of Caverswall,* and said that the circumstance in the present case of the new contract and service entered into, and the new settlement for the second year being in the act of acquiring during the lapse of the first, clearly distinguished this from the case of [c] the *King v. the Inhabitants of Richmond*: and that to hold this a settlement, would be to repeal the stat. 8 & 9 W. 3. c. 30. by which servants must continue and abide in their service during a whole year.

[rf] M. 9 G. 2. 1735. Burr. Settl. Caf. 6S.

[4] E. 31 G. 2. 1758. Burr. Settl. Caf. 461.

[c] E. 13 G. 3. 1773. Burr. Settl. Caf. 740.

Dunning and Silvester in support of the orders, insisted, that this was no dissolution of the contract: that in the case of [a] *the King v the Inhabitants of Christchurch*, where there was an absence of seventeen days on account of illness at the end of the year, and the servant looked upon herself as discharged, the court held that continuing and abiding in the service means not deserting it ; and that such servants have their settlement as a reward: and here it is stated, that the pauper is a deserving servant. The object of the stat. 8 & 9 JV. 3. was to prevent servants running away; and therefore it was inapplicable to this case. That the true question was, whether this was a dissolution of the contract or a dispensation of the service ? That, if the master had altered his mind and returned to his house, the servant would have continued with him ; and the relation of master and servant could only be destroyed by a desertion. Should not the servant have the reward she had merited ? Should her master’s kindness place her in a worse situation than she would otherwise be in? Should the remainder of her service be dispensed with, and should she not make the same advantage of the time given her as any other servant who had fulfilled his contract ? This case therefore could not be distinguished from the *King v. the Inhabitants of Richmond*: That in that case all the authorities cited on the other side had been insisted upon, and overruled : and they agreed, that, if it was with leave, the time of absence, was immaterial; and to this point was cited the case of [b] the *King v. the Inhabitants of Neither Heyford*.

[a] E. 33 G. 32. 1760 Burr. Settl. Cas. 494

[b] E. 32 G. 2. 1759. Burr. Settl. Cas. 479

(9) Judgment

Lord Mansfield. The only question is, Whether the servant continued bona fide in her service during the whole year? To be sure there is a distinction between exceptions from the contract and dispensations of the service : but if the case be of the latter description and bona fide it can make no difference, when the servant is engaged or where ; or whether the service be in the same or another occupation. Why then does she quit the service ? At the desire and for the convenience of her master, who gave her half a guinea beyond her wages, as an equivalent no doubt for her board. It was accidental and a favour to the master. The case of the *King v. the Inhabitants of Richmond* is full as strong as this ; for there a new servant came into the very place which the pauper had vacated upon a dispensation of his service. Fraud vitiates everything ; but the justice as well as reason of the thing are here with the settlement. Suppose she had come from a distant country [a], and had no other settlement, shall she lose her only one, which she deserves so well ?

Willes, Ashhurst and Buller, Justices, concurring,

Rule Discharged, and

Orders Affirmed.

[a] See the words of Foster J. in the case of the King t/. the Inhabitants of Chrifl Church.

Burr. Settl. Cas. fo. 498. ad finem

(10) Ruling

Where the dispensation of a week's service at the end of the year is bona fide, tho’ a new service is entered upon, a settlement is acquired by the first service.

(11) Comment

The court grants a settlement where the ending of the hire a week before the one year threshold is not the servant’s fault. This is a liberal decision but it isn’t clear how far this ‘grace period’ extends, for example if the hire is ended a month before the end of the year.

(12) Type

Liberal

(1) Case name

*R.* v. *Barton-upon-Irwell*

(2) Date

29 January 1814

(3) Report

2 M. & S. 328

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Barton-upon-Irwell

(6) Order sought

Quashing

(7) Facts

The Court of Quarter Sessions for the County Palatine of Lancaster, upon appeal, confirmed an order of two justices for the removal of Joseph Edwards and his children from the township of Pendleton to the parish of Barton-upon-Irwell, subject to the opinion of this Court on the following case :— The pauper J. Edwards, having gained a settlement by hiring and service in Barton-upon-Irwell, and being unmarried, was hired for a year as a servant to one Watkins, of Great Lever, whom he served for about 19 months there. After having been in that service about two months, being then married, he was taken before a magistrate on the complaint of his master, and committed to the house of correction for one month. When he had been in custody nine days, at the instance of his master he obtained a discharge from his imprisonment, returned immediately to Great Level, and served him as before. On such return no mention was made of the terms on which he was to serve. He received no wages for the time he was in custody. The case then set forth the warrant of commitment, by which it appeared that the pauper had been charged upon the oath of Watkins (his master) with divers misdemeanors, and not acting in his service as a servant ought to do, and particularly in using a horse of his master’s in a cruel and inhuman manner, and also with disobeying and neglecting the orders of his master, contrary to the statute : that the justice had convicted him of the offence so charged against him, and had sentenced him to be imprisoned in the house of correction, and there kept to hard labour for one month.

(8) Argument

Paley, in support of the order of sessions, contended that the commitment of the pauper operated as a dissolution of the contract with Watkins, and that as the pauper was married at the time of the commencement of the second service, that service could not be referred to any new contract capable of conferring a settlement. The rule by which to try whether this be a dispensation or dissolution of the contract is this, whether the master could have compelled the service of the pauper, or maintained any action against him for not serving him. Now it seems clear that he could not during the imprisonment, because that was the master’s own act. If that be so, then there was a period of the contract during which the relation of master and servant no longer continued, or, in other words, there was a dissolution of the contract. And so it was considered in *Rex* v. *North Cray*, where the servant was committed before the end of his year for not giving security respecting a bastard child, and the master was overseer, and had been active in his commitment, and afterwards deducted out of his wages on account of his absence, and the Court held it to be a dissolution. That case differs only from the present in this particular, that there the servant never returned, his year having expired ; but a return to the service, though it may serve to explain the nature of the absence where it is equivocal, has never been held to convert a dissolution into a dispensation of the service. Here the master could not have compelled a return, there being a complete dissolution of the contract by the commitment; so that the return cannot vary the question. Besides, admitting that

it could, and that it might raise an inference that the master had no objection to consider the period of his absence as a period of service, such an inference is completely rebutted by his deducting out of the wages for the period of absence. And it should seem, from the case of *Pawlet* v. *Burnham*, that a clear discontinuance of the service is sufficient to prevent a settlement, although there be not a dissolution of the contract.

Scarlett, contra, referred to stat. 20 Geo. 2, c. 19, s. 2, which empowers magistrates to punish servants for misbehaviour either by commitment to the house of correction, or by abating some part of their wages, or by discharging them from their service. Here he was stopped by the Court.

(9) Judgment

Lord Ellenborough C.J. It would be clearly against the policy of the law if the servant by his own act of delinquency should have the power of dissolving the contract. The justices have that power, but they have not exercised it. The imprisonment of the servant was so far from being a cessation of the service, that perhaps his labour might have been required of him by the master even while he was in prison. Then what farther circumstances appear upon this case? It is stated that the master deducted the wages for the period during which the pauper was absent. But after that period he returns into the service, (then indeed he was married, but he goes on under the old contract,) and nothing passes between the master and the servant with respect to any alteration, or any new contract, during the remainder of the 19 months. The master indeed had an election to avoid the contract, but he made his election to continue the pauper in his service, which it was in his power to do. In *Rex* v. *North*

*Cray* there was an incomplete service.

Le Blanc J. The pauper being single when he was hired was capable of gaining a settlement, and his marriage during the year will not prevent it. It appears then in consequence of his misusing a horse, a complaint was made against him by his master, and he was committed; but at the end of nine days his master applies to have him released, and takes him back again without any fresh agreement; and he goes on upon the footing of the original hiring until the end of 19 months, but he receives no wages for the time he was in custody. On this statement I think there was not any dissolution of the contract; the master might have discharged him, but he did not; he must have then returned on the footing of the old hiring. It is said indeed that there was an interruption of the service, but during the whole time he was subject to his master. It was under the authority of the contract that his master acted when he punished him for misconduct; therefore it was not a dissolution. The master might perhaps have elected to dissolve it, but he has not done so. Neither do I think this was an interruption of the service to prevent a settlement.

Bayley J. The relation of master and servant continued notwithstanding the commitment of the servant procured by the master. The commitment did not set free the servant from his contract to go wherever he pleased after the imprisonment ceased. That would be allowing him to avail himself of his own wrongful act. Then as to the service during the nine days. Perhaps the servant could not strictly be said to be actually serving while in prison, but there was a service for more than

a year under a hiring for a year.

Dampier J. It seems to me that the master had no intention of dissolving the contract, for instead of that, he hastens back the return of the servant by begging off his punishment for the whole of the period except nine days.

Orders quashed.

(10) Ruling

Where a servant under a yearly hiring served two months, and was then committed and imprisoned under stat. 20 G-. 2, c. 19, for misbehaviour to his master, and at the instance of his master, and after nine days imprisonment, was upon the application of his master discharged, and returned to him, and served him as before, and no mention was made of the terms on which he was to serve, and he served in the whole from the time of the hiring for about 19 months: Held that the commitment and imprisonment were not a dissolution of the contract, or such an interruption of the service as to prevent a settlement, and therefore he gained a settlement by such hiring and service, although he was married when he returned to his master, and received no wages for the time he was in custody.

(11) Comment

The court finds that a period of imprisonment for disobedience to the master did not prevent the servant gaining a settlement when there was a hiring for a year and service for more than a year.

(12) Type

Liberal

(1) Case name

*R.* v. *Bath Easton*

(2) Date

16 May 1774

(3) Report

Burr SC 774

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Bath Easton

(6) Order sought

Quashing

(7) Facts

Two Justices made an Order for the Removal of Thomas King from Enborne in Berkshire to Bath Easton in Somersetshire: Which Order was, upon an Appeal, confirmed by the Sessions.

The Special Case Rated upon the Order of Sessions was as follows—

The said Thomas King, about the latter End of August or Beginning of September 1763, was hired as a Covenant-Servant, for a Year, to the reverend Mr. William Robinson; who then resided at Bath Easton aforesaid. He accordingly entered upon the said Service, and served, the said Year and some Months over. About the latter End of April or Beginning of May 1764, the said Mr. Robinson went to Exmouth, with his Wife and Family, to bathe there; and the said Thomas King went with them; where they staid till Michaelmas following. Upon their coming to Exmouth, the said Mr. Robinson hired an House for three Months: During the whole of which Time, the said Thomas King was with him there. Mr. Robinson then hired another House, for two Months; being obliged to quit the former, on Account of it's being engaged to some other Family for three Months. During the latter two Months, the said Mr. Robison was once absent from Exmouth a Fortnight, or three Weeks at most. He returned to Exmouth ; and discharged the said Thomas King there.

And it likewise appeared to the Court, upon the Examination of Mrs. Sheppard who lived in the same Service with the said Thomas King, that Exmouth was a Place resorted to for Bathing; and that her Master and Mistress, the said Mr. Robinson and his Wife, did bathe there: And being asked as to the Nature of the Place, “ What Company there might be there,” and “ whether she heard of any Balls and Assemblies there,” said, that she attended her own Business, and therefore could give no Account of it; that there were but one or two Families there during the whole Time her Master and Family were there”; and “ that she did not know of any Balls or Assemblies.”

James Pettit Andrews Esq; (another Witness) said “ that some Time about the Year 1763 or 1764, he went with his Brother and a Party upon a Tour into Devonshire, and went to Exmouth ; that it was a Place where Company went to bathe, and where there were Balls and Assemblies; and that he considered it in the Nature of Brighthelmstone”.

Bernard Brocas Esq; (another Witness) said “that he himself never was at Exmouth ; but that he has frequently heard it spoken of as a Place of public Resort; and that he knew of several Families going to it in that Light”

The Sessions confirm the Order; and further order, by Consent of the Counsel and Attornies on both Sides, “ that the said Order of Confirmation, together with the Merits of the said Appeal, be referred to the Judgment of his Majesty’s Court of King's Bench at Westminster, on the above State of the Facts.”

Mr. Vansutart moved, on Friday the 30th of April 1773, to quash these Orders : And on Thursday the 13th of May following, Mr. Bearcroft was to have shewn Cause against it. But Mr. Bearcroft objected, that the Case was not fully stated. The material Question, he said, was “whether Exmouth is a public Place, or not”: And nothing is here stated, but the mere Evidence. Neither is the rent of the House which the Master took at Exmouth, nor the Value of it stated. It was, in Fact, he said, a ready-furnished Lodging-house only ; and the Owner lived in it. However, upon the present imperfect State of the Case, it must be taken that Exmouth is a public Place : And the Master was there occasionally only, and not as his Residence. The Servant did not therefore gain any Settlement there; but his Settlement at Bath Easton remained. The only Case like this, he said, was that of *the King and the Inhabitants of Alton* (ante, pa. 418. No. 134.)

Lord Mansfield and Mr. Justice Aston told him, that that Case went upon very particular Circumstances; and the Servant was born under a Certificate too.

However, they agreed with him, that the present Case was incompletely stated; and that it had better be sent back, to be dated more particularly.

It was, accordingly, sent back, to be restated.

It was afterwards returned up again, re-dated as follows—viz.

The Pauper, about the latter End of August or Beginning of September 1763, was hired, as a Covenant-Servant, for a Year, to the reverend Mr. William Robinson, who then resided at his House at Bath-Easton, as his only Place of general Residence. He accordingly entered upon the said Service; and served the said Year, and some Months. He served the first Part of the said Year at Bath-Easton : But, about the latter End of April or Beginning of May 1764, he attended the said Mr. Robinson with the rest of his Family to Exmouth, where Mr. Robinson went for Sea-bathing, and that his Child (who was ill) might also use the Sea-bathing at that Place; where the said Mr. Robinson hired by the Week, at fourteen or fifteen Shillings by the Week, the whole of a Small Lodging-house which belonged to an lnn-Keeper who kept it ready furnished, solely for the Purpose of letting it to Strangers; in which he staid for the Space of ten Weeks; during the whole of which Time, the said Pauper served him there. Mr. Robinson then hired, by the Week, Lodgings in another House in Exmouth; being obliged to quit the former on Account of its being engaged to a Lady and her Niece from London, who came to Exmouth for the same Purpose of Sea-bathing. He staid at the last mentioned Lodgings, and the Pauper with him, for the Space of two Months, except an Absence of about three Weeks on an Excursion into Kent, where the Pauper attended him : After which, he returned to Exmouth, and the Pauper with him ; who continued in his Service at Exmouth, till his Master discharged him, just before his leaving that Place and returning to his said Residence at Bath-Easton; which was when he gave up the Lodging last mentioned, at the Expiration of the said Space of two Months.

That Exmouth was a Place generally resorted to by Persons from Exeter and London, for Sea-bathing : But that Merchants did also resort to it from Exeter, as to a Village; 'just as Merchants from London resort to Greenwich or Hampstead.

That it was in the Nature of Brighthelmstone ; but of inferior Estimation.

That no Physician resided at Exmouth, or nearer than Exeter, which is ten Miles distant : But that the bathing Accommodations were extremely good.

That there were Balls there, and a Card-Assembly once a Fortnight.

That the Pauper gained no Settlement after his Discharge as aforesaid.

It is ordered by the Court [of Sessions] that the said Order of the said two Justices be, and the same is hereby confirmed.

And it is further ordered by this Court [the Sessions] by and with the Consent of the Counsel and Attornies on both Sides, that this present Order of Confirmation, together with the Merits of the said Appeal be, and the same are hereby referred to the Judgment of his Majesty’s Court of King's Bench at Westminster, on the above State of the Facts.

(8) Argument

On Tuesday 8th February 1774, Mr. Davenport moved to quash this restated Order of Sessions and the original Order which stood confirmed by it; and had a Rule to shew Cause.

On Monday 16th May 1774, Mr. Bearcroft and Mr. Harding endeavoured to shew that the Pauper's Settlement was at Bath-Easton which was his Master's only Place of general Residence; and not at Exmouth, which now appears to be a public Place of Resort for Sea-bathing, and where the Master was only a casual Resident, a mere Sojourner, his Domicil being at Bath-Easton. They relied on the Alton-Case, as laying down a general Rule exclusive of and unconnected with the particular Circumstances of that Case, “that if a Master goes to a public Place, and resides there as a Sojourner forty Days, having a Domicil elsewhere, his Servant who attends him thither shall not gain a Settlement at such public Place, by serving him 40 Days in his casual Residence there.” [v. ante, pa. 421.]

And they said, that the same Idea was recognized in the Case of *East Ifley*: (Which Case v. ante, No. 223. pa. 723.)

Mr. Wallace who was Counsel for Bath Easton, argued for quashing the Orders; and to shew that the Pauper’s Settlement was at Exmouth, where he served the last forty Days. He denied that any such general Rule was laid down in the Alton-Case, as had been suggested. That Case turned upon particular Circumstances: It was never laid down generally, “ that a Servant could not gain a Settlement by serving his Master at Scarborough or any other public Place.” Here are none of the Circumstances upon which the Court laid particular Stress in that Case Here is no Continuation of the original Hiring ; no Return of the Master to his former Home; no Re-hiring; no Certificate. The Master went, with his whole Family, to Exmouth : It is not material how, or for what Purpose, he went thither. The Servant attended him thither; served him there forty Days; and finished his Service there.

(9) Judgment

Lord Mansfield and Mr. Justice Aston said, there was a manifest Distinction between the present Case and that of Alton. Here, the Service ended at Exmouth: In the other Case, it was continued; and was renewed at Elvetham, and the last forty Days were served at Elvetham. There, the Servant was a Certificate-Man from Alton, to Elvetham, when he was hired by Sir Harry Calthorpe at Elvetham. That Case was considered as a Continuation of the Service at Elvetham: This is no Continuation of the Service at Bath-Easton. And Lord Mansfield mentioned, that in that Case, he laid great Stress upon the Contract not being finished at Scarborough, but continued over; and also upon the Servant’s being re-hired at Elvetham, and serving there seven Years ; and likewise upon his being under a Certificate from Alton, when originally hired. So that Scarborough's being a Watering-Place was far from being the sole Ground of that Resolution. However, we will think of it: There should be Certainty established in Cases of this Sort. And Mr. Justice Aston observed, that the Settlement of the Servant does not depend upon the Settlement of the Master: It is the last forty Days Service, that gains a Settlement to the Servant, in the Place where it is performed. Here, the last forty Days Service was performed at Exmouth: And the Service ended there. Therefore he gained a Settlement at Exmouth. To prove that the last forty Days Service gains the Settlement, he cited the *Cases of St. Peter's Oxford* and *Fawley-Court*, (v. ante, pa. 180 and pa. 422.) and *Silverton and* *Ashton* which (with some otherlike Cases) maybe seen in the *Ladock* Case, ante pa. 180.\* And. he did not. see any Hardship upon public Places, if after getting a great Deal of Money by Persons coming to reside at them, they should sometimes be charged with a Servant who had gained a Settlement by serving a Master who had hired a House there : The Benefit they receive from the Masters more than balances the Inconveniences likely to arise from the accidental Settlement of the Servant. And if Servants do gain a Settlement by serving forty Days there, yet they generally remain forty Days longer in the Service of their Masters, in the Parishes where their Masters are usually resident in their ordinary Course of Life. So that this Incumbrance upon public Places does not happen so frequently as might perhaps be imagined; nor is, upon the whole, at all injurious to them.

Mr. Justice Willes thought that though all the Circumstances of the Alton Case did not indeed occur in the present Case; and though several other Reasons were given in Support of that Resolution ; yet the general Doctrine that had been mentioned seemed to be plainly laid down in that Case ; and appeared to him to be founded in good Reason: For, it would be very hard upon public Places of Resort, if they should be obliged to maintain all the Servants of Persons who had come thither for Health or Amusement, and stayed there 40 Days. The Case of *Silverton and* *Ashton* was not a casual Residence of the Master : He had removed from Ashton to Patchel, and had lived there six Months. In the Case of *Ilfley*, the Rule that has been mentioned seemed to be recognized : And when the present Case was sent down to be restated, it seemed to be understood that if Exmouth should come out to be a Place of public Resort, like Scarborough, this Case would then be within the Reason of the *Alton* Case.

Mr. Justice Ashhurst thought, with Mr. Justice Aston, that it was reasonable that public Places, which profit greatly by the Resort of Company coming to them for Health or Pleasure, should bear their Share in the Burden of supporting the Servants who have attended them there long enough to gain a Settlement. He also noted a material Difference between the present Case and that of Alton; where the Servant did not serve the last forty Days in Scarborough, but went back with his Master to Elvetham, was re-hired there for a third Year, served it out at Elvetham, and continued in his Master's Service there for seven Years more: Whereas the last-forty Days off the Service now under Consideration were at Exmouth, where the Servant was discharged, and never returned to Bath-Easton He inclined, therefore, at present, to think that his Settlement was at Exmouth.

The Court took Time to advise.

And on Wednesday 22d June 1774,

Lord Mansfield delivered their unanimous Opinion “that the Pauper's Settlement was at Exmouth." ;

This is a common Hiring for a Year : There is nothing particular in it. And in the Case of a common Hiring for a Year, a Service with the Master for a Year gains a Settlement to the Servant in the Place where the last forty Days of such Service were performed. Here, the Service with the Master for the last forty Days ended at Exmouth: There was no Continuance of Service with the Master, after the Master’s Return to Bath-Easton:

In the *Alton* Case, there were many particular Circumstances. The Servant was born at Elvetham, under a Certificate from Alton and could not gain a Settlement there, by his original Hiring and Service in that Place; nor without a Discontinuance of it, and a new subsequent Hiring. But no such Discontinuance ever happened in that Case : The Service did not end at Scarborough; it continued. The Servant, at Scarborough, proposed a new Agreement for another Year. His Master said “it would be Time enough, when they returned home to Elvetham.” Whereupon, the Servant continued on, for about six Weeks, until they returned to Elvetham; when he was again hired by his Master for a third Year, and served it out at Elvetham, and continued in his Master’s Service for seven Years more, in Elvetham\* (v. ante, pages 419, 421, 424). So that it was a Continuation of the original Hiring: The Contract did not end at Scarborough. The Question therefore, in that Case, was “Whether serving his Master who resided at Scarborough as a Sojourner, for above forty Days, should gain the Servant a Settlement there, when his former Hiring at Elvetham was not discontinued nor ended at Scarborough, but (on the contrary) continued and went on until and after their Return to the Master’s general Residence at Elvetham.”

But that Case does not lay it down generally, “that no Servants can gain Settlements at Places where People go to drink Waters, though, they serve their Masters or Mistresses there for forty Days.” If it does, it is wrong : For, no such general Rule ought to be laid down.

We are all of Opinion, that this Servant, who went with his Master to this Place, and served him there for the last forty Days of his Service, which ended at this Place, and was not at all continued at any further Time or Place, is legally settled there, by serving the last forty Days at it.

Mr. Justice Willes strongly declared his assent to this Opinion; and added, that he hoped it would now be understood “that serving a Master forty Days at a public Place gains the Servant a Settlement at that public Place.”

(10) Ruling

By the Court, unanimously,

The Rule for quashing both

Orders was made absolute.

(11) Comment

The court finds that a servant will gain a settlement at a public place if he serves his master there during the last 40 days of his service. The court distinguishes this case from the earlier case of *Alton* (1757) using a number of factors: that the servant’s hiring ended in the public place Exmouth (in contrast to the servant continuing in his master’s service after the public place Scarborough in *Alton*), that there was no re-hiring here, that the servant did not return with the master to his place of ordinary residence, and that the servant was not serving in Exmouth on a Certificate. The court also cites the more general public policy consideration that public places which benefit economically from masters coming there with there servants should share the burden of supporting settlements. In this aspect, the court’s view differs from its earlier judgment in *Alton,* where it stated that: “Now if this Service for forty Days at Scarborough were to acquire a Settlement there, it would be a very great Hardship…upon the Parish of Scarborough, the Place of public Resort”.

(12) Type

Liberal

(1) Case name

*R.* v. *Bath-Easton*

(2) Date

7 February 1776

(3) Report

Burr. S.C. 823

(4) Court

King’s Bench

(5) Parties

Rex against the Inhabitants of Bath-Easton

(6) Order sought

Quashing

(7) Facts

Two Justices removed John Amesbury from Mangotsfield in Gloucestershire to Bath-Easton in Somersetshire : And the Sessions confirmed their Order; stating the Facts.

The Facts dated upon the Order of Sessions were these—

That the Pauper is a single Man, and was bred a Barber. That in the Year 1748, he was settled at Bath-Easton, by being Owner of an Estate there, of the yearly Value of 20*l.* and living in the Parish. That in the Month of November 1748, he sold his Estate to one Samuel Fuller. That after he had so sold his Estate, he quitted Bath-Easton, and went to Devizes in the County of Wilts, in order to get

Employment as a Barber; and accordingly offered himself to one John Giles a Barber of the Parish of St. John in said Town of Devizes; who engaged him into his Service as a Journeyman-Barber, and agreed to give him Meat Drink and Lodging, but would not give him any Wages : In lieu of which, he was to have the Christmas-Boxes. The Pauper accepted these Terms: But nothing further passed at that Time; and no particular or precise Time was stipulated or agreed on between the Master and him, that he Should serve. That thereupon, Pauper entered into his Service, and lived with said Giles, in the Parish of St. John in said Town of Devizes, for four years: During which Term, he was found with Meat Drink and Lodging by his said Master in his own House; and he, during all those Years, received the Christmas-Boxes that were given by the Customers; and thought himself at Liberty to leave his Master when he thought proper. The Pauper then left his said Master, and went to Mangotsfield, and Served Mr. John Bedford (who keeps a public House there) in his Stable: And said John Bedford agreed to find him Meat Drink Walking and Lodging in his own House; but he was not to give him any other Wages than what he might receive as Perquisites of the Stables, from Horses that came there. But no particular or precise Time was stipulated or agreed on, that he Should serve: And Pauper apprehended that his Master might have turned him off, or he might have gone away from him, at their Pleasures. Nevertheless, there was no Agreement between them for that Purpose.

That from the Time Pauper began to serve said John Bedford, to the Time at which he left him, was sixteen Years.

That during said Time of 16 Years, he left said John Bedford several Times, at his Pleasure: But from the Time of his first going into the Service, he was with said John Bedford two Years and upwards, without leaving him at all; and at the End of the said Term of 16 Years, he was with said John Bedford for three Years together, without Interruption; and during the whole Time he lived with said John Bedford, he was found by him in Meat Drink Washing and Lodging.

(8) Argument

Mr. Clifford moved, on Wednesday 31st January 1776, to quash these Orders ; and had a Rule to

shew Cause ; the general Hirings being subsequent to his original Settlement at Bath-Easton.

*V. ante*, No, 107. Rex v. Inhabitants of Winecaunton, H. 24 °G. 2. 1750. pa. 299. to 301. and the Cases I have referred to at the End of it. See also the Case of the Inhabitants of Stockbridge, ante, No. 236. pa. 759. to 761.

Mr. Bearcroft was now to have shewn Cause : But he owned that he could not support the Orders.

(9) Judgment

N/A

(10) Ruling

Rule made absolute:

Both Orders quashed.

(11) Comment

A non-continuous hiring over a number of years can confer a settlement, so long as there are periods of uninterrupted service for at least a year. There is no need for the contract to stipulate the period of the hiring, so long as the service was rendered for a year or more.

(12) Type

Liberal

(1) Case name

*R.* v *Beccles*

(2) Date

1 May 1744

(3) Report

Burr S.C. 230

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Beccles

(6) Order sought

Quashing

(7) Facts

Two Justices made an Order for the Removal of Thomas Elem and Ann his Wife from Lowestost to Beccles (both in Suffolk:)

And the Sessions, upon Appeal, confirmed that Order. Special Case—Thomas Elem, the Person removed, being legally settled at Beccles, let himself, some short Time before Michaelmas 1732, to Samuel Corbett a Blacksmith, in Lowestost, at the Wages of 3l. or 3l. 10s. to serve him there for one whole Year from the said Michaelmas to the Michaelmas following, to receive the said Wages from Time to Time as he wanted; and accordingly entered upon his said Service on the Michaelmas Day, and continued his said Service until the Michaelmas following: And then he again let himself for another Year to his said Master, and continued about ten Weeks; when he and his Master agreed to part, and actually did part.

But it further appeared to the Sessions, That the said Thomas Elem, within the Year, worked, with his Master’s Consent, for a Week, with one Lincoln, as a Journeymen-Blacksmith; and, with the like Consent, with one Lawes, for a Fortnight ; and at some Times, not exceeding twenty four Hours at any one Time, nor above three Days in the whole, within the said Year, with his Master's Consent, did go off to Sea, in a Fishing-boat belonging to Mr. Manclark. And it was agreed between the said Elem and his Master, at the Time of such Absence, that the said Elem should have all the Wages he then earned, the said Corbett deducting during the Time of such Absence in Proportion to his aforesaid Wages of 3l. or 3l. 10s. And that the said Lawes, Lincoln and Manclark severally paid him the said Elem for the Time he so worked with them and the said Elem allowed the said Corbett, out of his said Wages, for the Time of his said Absence : So that Corbett received no "Part of the Wages the said Elem earned during his Absence; but only deduced a proportional Part of the said Wages of 3l. or 3l. 10s.

Therefore the Court [of Sessions] is of Opinion “that the said Elem hath not gained any legal Settlement at the Parish of Lowestost aforesaid, by Virtue of the aforesaid Service;” and doth affirm the said Order.

(8) Argument

On Saturday the 14th of April last, a Motion was made by Mr. Stanford and Mr. Lloyd, to quash these Orders; and the Court did not seem then to doubt of its being a good Settlement in Lowestost.

Rule to shew Cause.

Cause was now shewn: And it was argued.

In Support of these Orders, it was urged by Mr. Pilsworth and Mr. Vanheythuissen, Counsel for Lowstost, that what was here dated amounted to a Dissolution of the Contract: And when the Contract was once dissolved, it could not be taken up again and continued. It appears also, from the Manner of the Wages being payable, (not at the last, but at particular precedent Times,) that he was no more than a Journeyman to Corbett.

The Act of 3 & 4 W. & M. c. 11. has been construed strictly, with Regard to Hirings: 2 Salk. 535. the Case of Dunsford and Ridgwick. And there is the same Reason for Strictness with Regard to Service.

In M. 1 G. 1. B.R. between the Parishes of Pawlet and Burnham—the Settlement was holden to be in Burnham ; because the Servant went away three Weeks before the End of the Year, by Consent of the Master, and 6s. was abated of his Wages.

(9) Judgment

Lord Chief Justice Lee observed that the whole Absence of the present Pauper in the first Year, was just three Weeks and three Days, by the Consent of his Master:\_ And the Money deducted out of his Wages was to be in Proportion to his Absence.

Firstly It appears that the Parish of Lowestost have had all that the Words or the Intention of the Act of Parliament require : For, there was a clear Hiring for a Year; and, taking in the ten Weeks of the second Year, a Service for more than a Year.

We can not intend any Thing of a Fraud: For none is stated.

The Question depends upon two Acts of Parliament. Upon the Negative Act, it is not necessary that the Service be with the same Person: It is sufficient if it be with the Successor in the Farm, or the Assignee. Therefore this Act has not been taken so strictly.

Then the Agreement about the Payment of the Wages, “as the Servant might want it”—will not vitiate the Contract. Nor will the Contract be dissolved by any Thing here stated. It is only a Licence of Departure for a certain Time: The Contract remains.

Indeed where the Servant departed, by Consent of both Parties three Weeks before the End of the Term, the Contract was dissolved ; as in the Case of *Pawlet and Burnham*. [V. ante, pa. 69.]

And according to the Cases that have been determined, the subsequent Service of ten Weeks may be taken in, in the present Case.

But the Service by the Master’s Consent, with another Person, was Service of the Master : It is not necessary that the Service be with the same Person. Nay, if it had been without the Master’s Consent, yet the Absence had been dispensed with, by the Master’s thus receiving him again.

Therefore the original Order is wrong; and both Orders must be quashed.

The three other Judges concurred in Opinion “ That this was no Dissolution of the Contract, but a mere Lending of the Service of his Servant:” Than which, nothing is more customary, in Harvest-time.

V, ante, N° 14. Np 20. Poll, N° 85, *Rex v. Inhabitants of Goodneston* : 1st July 1745. And the Cases referred to at the Bottom of Page 48.

(10) Ruling

Per Cur. unanimously—

Both Orders quashed.

(11) Comment

The court construes working for another person with the master’s consent as a lending of services which does not defeat a settlement. This contrasts with later decisions such as *Bishop’s Hatfield* and *Empingham*, where the court finds that absence taken during the harvest month or sheep-shearing season to work for another (with the Master’s consent) defeats a settlement.

(12) Type

Liberal

(1) Case name

*R.* v. *Berwick St. John*

(2) Date

12 May 1760

(3) Report

Burr. S.C. 502

(4) Court

King’s Bench

(5) Parties

Rex against the Inhabitants

(6) Order sought

Quashing

(7) Facts

Two Justices made an Order for the Removal of Benjamin Beach and Mary his Wife and Elizabeth and William their Children, from Hanley in Dorsetshire to Berwick St. John’s in Wiltshire : And the Sessions, upon an Appeal, confirmed this Order; Stating the Case specially.

Special Case stated—Sometime in September 1756, The Pauper, Benjamin Beach, being then an unmarried Man and legally settled in Hanley, happening to meet Mr. Stephen Jones then Head-Keeper of Rushmore-Lodge (One of the Lodges of Cranborne Chace) Who resided at Rushmore-Lodge aforesaid, which lies within the Parish of Berwick St. John aforesaid, and had then lately parted with one Edward Hill, who had been for many Years One of his Servants or Under-Keepers at the Wages of 3*l.* a Year and a Keeper’s Livery besides Meat Drink and Lodging; The said Mr. Jones addressed the Pauper in these Words, “ Do you like the Life of a Keeper?” Which being answered in the Affirmative, He said further, “ Then go into “Ned Hill's Place ; And you shall want no Encouragement: I'll “ give you a Suit of Clothes directly.” That the Pauper readily consented; and, without further Conversation, went immediately into the said Service, and continued therein for the Space of three Years, residing all that Time with his said Master at Rushmore-Lodge aforesaid within the Parish of Berwick St. John aforesaid. That upon or soon after his entering into the said Service, he was furnished with a Keeper's Livery, was, during the said three Years, provided with Meat Drink and Lodging; and at the End thereof, was paid 9*l.* for his Service. That at the Time of the Conversation beforementioned, the said Pauper did not know upon what Terms the said Hill had served the said Mr. Jones. That the Pauper’s Service being agreeable, the Question “ Whether or no he was at Liberty to quit it,” never occurred to him: Put that in his Apprehension, if it had been disagreeable, he should have thought himself at Liberty to have quitted it, since Nothing to the Contrary had been stipulated between them, in the Conversation beforementioned. And that the said Pauper thought he ought to be paid the same Wages Hill had; but did not consider himself as having a legal Title to Wages, since there had been no mention of any, in the Conversation beforementioned. That the said Pauper, after quitting the said Service, married the said Mary now his Wife, and had Issue by her the Children mentioned in the Order; and has done no Act to gain a Settlement, except as aforesaid. Therefore the Sessions are of Opinion “That the Settlement “is in the Parish of Berwick St. John;” and therefore confirm the Order of the two Justices.

(8) Argument

Mr. Glynn, who moved to quash these Orders, on Wednesday the 6th of February last; objected “that this was no Hiring in the “ Parish of Berwick St. John” and cited a \* Case between the Parishes of Gregory Stoke and Pitminster, in M. 13 G. 1. B. R.

Rule to shew Cause.

Mr. Norton, Mr. Grove, and Mr. Dunning now shewed Cause why the Orders should not be quashed ; And argued this to be a Hiring for a Year : For the Law knows no other Servant but One for a Year. Co. 1 Inst. 42.b. A General Hiring is a Hiring for a Year. So, on $ Eliz. c. 4. Sect. 7. Besides, this has an express Reference to Hill’s Service ; Which was for a Year.

This Point was fully discussed and settled in the Case of Rex v. Inhabitants of Wincaunton 31st January 1750 : (Crediton was the other Parish.)

The Case cited between the Parishes of Gregory Stoke and Pitminster is not like this : That was a Living with a Grandmother.

Mr. Gould, and Mr. Glynn, contra—Here is no actual Hiring at all: And None can arise by Implication, from the bare Service alone. Pitminster Case was holden to be no Hiring for a Year.

The Reference to Ned Hill's Service relates to Hill's Work only; not to his Contract: For the Pauper did not know upon what Terms Hill had served Mr. Jones.

They mentioned a § Case of a Boy who lived from 8 Years of Age till he was 14, with his Master; and yet was holden to have gained no Settlement.

The Statute of 5 Eliz. c.4. Sect. 7. enacts “that every Boy above “ 12 Years of Age, shall be compellable to be hired in Husbandry.” And in Wincaunton-Case, the Boy was 17, and was hired in Husbandry.

(9) Judgment

Lord Mansfield—This Man served three Years ; and received three Years Wages: But it is objected “ that he was never “ hired at all”.

It is admitted “ That if He was hired at all, it would, by Law, “be a Hiring for a Year.” And upon this Dialogue stated in the Order of Sessions, it is a clear Hiring: For Hill was a hired Servant.

Therefore the Justices have done right.

The Three other Judges were clear of the same Opinion.

(10) Ruling

Both Orders affirmed.

(11) Comment

This is a flexible interpretation where the court finds a yearly hiring based on the practice of the work, that is the fact of service for three years, and the context of the hire, namely the new servant being hired to replace the previous one, who had a yearly hiring. These two elements give rise to the legal presumption of a yearly hiring (“if He was hired at all, it would, by Law, ‘be a Hiring for a Year’”), even though the new servant did not have an express contract for one or know the contractual terms of the previous servant’s hire.

(12) Type

Liberal

(1) Case name

*R.* v. *Beaulieu*

(2) Date

19 November 1814

(3) Report

3 M. & S. 229

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Beaulieu

(6) Order sought

Quashing

(7) Facts

Upon appeal against an order of two justices, removing Ruth Peters and her two children from the parish of Milton to the parish of Beaulieu, both in the county of Southampton, the sessions confirmed the order, subject to the opinion of this Court on the following case : The pauper is the wife of Hans Peters, and her maiden settlement is in the parish of Beaulieu. Hans Peters is a Swede. Some years ago he entered into the British service, as a soldier in the 3d battalion of the 60th Regiment of Foot, and in 1806 was invalided, and sent to the depot at Lymington. During the period of his being at that depot, it was suggested to Government by the commanding officer there, that it

would be an economical plan to give the invalids leave of absence, upon their agreeing to relinquish their pay during such absence. The suggestion was approved by Government, and ordered to be carried into execution. In the beginning of the year 1808 Hans Peters hired himself as a monthly servant to Mrs. Bowies, of Lymington, and afterwards, on the 20th of July in that year, being then unmarried, hired himself to Mrs. Bowles for a year, and served such year in the parish of Lymington.

Previously to this second hiring Mrs. Bowles applied to the commanding officer at the depot, to know if Peters might hire himself for that period, and was told that he might. During the whole of his service for a year with Mrs. Bowles he received no pay, nor was he called upon to perform, nor did he perform, any military duty; but he used to go to the depot in Lymington from time to time to get his furlough renewed, which never took him more than half an hour. The commanding officer, on his evidence, said, that he could send for him at any time, if the exigencies of the State required it. The books of the depot were produced, from which it appeared that Peters was invalided in September 1806; that on the 25th of September 1808 a furlough was granted to him till the 25th of December; that on the 23d of December it was prolonged till the 23d of June 1809 ; that on that day it was prolonged till the 23d of October, from thence to the 23d of December, and from thence to the 23d of April 1810; that he returned again to the depot on the 12th of February 1810, and was discharged on the 5th of November 1810.

(8) Argument

Selwyn, in support of the order of sessions, contended that Peters did not gain a settlement by this hiring and service, inasmuch as, by reason of his being a soldier at the time, he was not sui juris to hire himself for a year. And, 1st, be observed that the 3 W. & M. c. 11, by which persons might formerly have gained a settlement by delivery and publication of notice, expressly excepted a soldier from the operation of that provision until after the dismission of such soldier. From which he argued that the 7th section of the same statute, which enabled persons to gain a settlement by hiring and service without delivery of notice, though not followed by a similar exception of the soldier, yet must be taken as subject to it, for the language is, “if he shall be lawfully hired,” which means lawful as well in respect of the foregoing exception, as in other respects. But, independently of that objection, and upon the same principle on which it has been held that an apprentice during the subsistence of his indentures (a), or a soldier who is a deserter, are incapable of acquiring a settlement by hiring and service, a settlement was not acquired in this case. The principle is, that to every contract there must be parties competent to contract; from which it follows, that the party who hires himself as a servant must be disencumbered from any other relation which may defeat the performance of his engagement; for unless he be so, he is not free to contract, and if he be not free to contract, he cannot be lawfully hired. Now the obligation that results from the relation in which a soldier stands, is at least of equal force with that of an apprentice; his duties to the State may surely be placed in the same scale with the duties of the apprentice to his master; both are incompatible with an unqualified engagement to serve another. Nor does the consent of the commanding officer to this hiring alter the case ; for supposing he had authority to give such consent, yet he could have sent for the man at any time according to exigencies; his consent, therefore, was revocable; and for this reason the consent of the master to the apprentice’s hiring himself to another, will not entitle the apprentice of a settlement by hiring and service. Also *Rex* v. *Norton* seems decisive of the present case, for the Court came to that determination, not upon the ground of the party’s being a deserter,

but because, being a soldier, he was not sui juris, and they expressly put it upon the footing of the apprentice’s case, which was decided, say the Court, not on the ground of its being an excepted case, or as standing upon any occult efficacy in the indenture of apprenticeship, but on the broad principle of his not being sui juris. As to *Rex* v. *Westerleigh* and *Rex* v. *Winchcombe*, perhaps the best way of considering those cases is, that the militia-man is not, like the soldier, incapable of contracting for

his service, but that he may do so, subject to the master’s dispensing with the excepted month, in case he should be called out. And a distinction seems also to have been observed in *Rex* v. *Walpole, St. Peters*, and *Rex* v. Woburn between the nature of a militia-man’s service, and that of a soldier in the line.

Scarlett and Gaselee, contra, denied that the words “ lawfully hired in the Statute of W. & M.” were to be *construed* as being subject to the exception mentioned, which they said was made di verso intuitu, namely, that a soldier who before the statute was not an object of removal, should not by notice, which was applicable only to persons who were removable, become entitled to a settlement. And therefore the question was simply, whether the pauper’s husband was lawfully hired. To try that question by the principle laid down on the other side, it cannot be doubted that he was competent to hire himself, for he had leave so to do, and had purchased that leave by paying an equivalent for it in the relinquishment of his pay; by which means be was disencumbered from that relation, the fulfilment of which would have been incompatible with the performance of any other service. But though he was disencumbered, he was not divested of it; a time might come when his services would be required, and therefore he made known his situation before he hired himself, which was in effect hiring himself upon a condition that his duty as a soldier did not call him away; for so the law, which will not compel a man to contract beyond his ability, will imply, and that which must of necessity be implied need not be expressed. It may be asked, then, what rule of law is there against his so hiring himself, or whether there be any real difference between such a hiring, and a hiring for a year, either party to be at liberty to determine the contract, at any quarter of the year, giving a month’s notice or a hiring for a quarter of a year, and if the parties liked each other, to continue for the remainder of the year; or, as in several other cases of conditional hiring, all of which have been held to confer a settlement. And surely if the two cases of the militia-men be supportable, it follows that this must be. Although a month only was expressly excepted in those contracts, yet the duties of the militia-man might have called him away for a longer time, or even for the whole time he had contracted for; a militia-man can no more contract for a period of service which shall be liable to no interruption, than can a soldier. And if, because some paramount duty may interpose to defeat the performance of his engagement, a party shall be precluded from making any engagement at all, by the same rule a sailor, after he is paid off at the end of a war, would be precluded from hiring himself, because, his name king still on the books, he is liable to be called upon again by the Admiralty in case the exigencies of the State demand his services; or if this rule were pushed a little farther, every subject would be incapable of hiring himself, because his services may by possibility be required by the paramount call of the State. The services of an invalided soldier are but in a small degree more likely to be put under requisition than those of a subject; here, therefore, was the strongest probability of the party’s being able to perform this contract, and he made known, and provided for the alternative, to which the mistress must be taken to have assented. The condition, however, has not taken place, and he has served the whole year; therefore he has acquired a settlement. The incapacity of an apprentice to contract for his service during the continuance of his indentures is for this reason, that his indentures being under seal cannot be dispensed with by a parol contract; but still if his master assent, he may acquire a settlement, by agreeing to serve and serving another; only for the above reason, it will be a service referable to the indentures. So *Rex* v. *Norton* was adjudged upon circumstances quite beside this case, for there the pauper was a deserter, and was guilty of an offence in the very act of hiring himself, and imposed upon his master by concealing from him his situation ; so that there was no ground for considering it as a hiring upon an implied condition resulting from his situation, for that situation was not known to the master, and if it had been, he would have been particeps criminis if he had hired him.

(9) Judgment

Lord Ellenborough C.J. To confer a right to a settlement by hiring and service for a year, as there are no words in the statute which qualify the general sense of the word hiring, I must take it to mean an absolute, unqualified, indefeasible hiring, that is, a hiring by which the party, who hires himself, has the power of communicating to the master an absolute right to his service for the whole time. In order therefore to do this, the party must be sui juris, and have the faculty of disposing of his own

service. I think this case falls strictly within the analogy of the case of the apprentice, who in respect of his obligation to serve one master, is disabled from entering into a contract to serve another. However, the cases of the militia-men have been pressed upon our attention. I would wish to speak of those cases, as of the decisions of persons who have gone before us so highly venerable, with all the respect that is due to them, and I would therefore avoid trenching upon them as little as possible. But when I find them speaking of leaning in favour of settlements, and when I recollect

that a pauper must be provided for somewhere, either as a settled inhabitant, or as casual poor, and when I find too that one of those decisions goes the length of holding, that 11 months may mean a year, I really am unable, with all the respect I bear to those persons who decided them, to go along with them so far. Perhaps, therefore, it may be the best thing to say of the militia-men’s cases, that they are to be considered as exceptions. Here it appears there has been a hiring for a year, but not a lawful hiring in the sense of an effectual hiring. An effectual hiring is, where the servant is enabled to give the master a quid pro quo. Had this person the power of so doing? He had not. There was a halt, and pause to be made four times during the year, until he should renew his furlough. If the question were raised upon special verdict, whether this was an effectual hiring, understanding by that that the party must have a capacity of conferring what he stipulates for, could it be argued upon a statementof these circumstances, that the pauper’s husband really passed to the master an interest in the whole of his service? His service in reality belonged to the Crown, and he could only contract for so much of it as was remitted out of the right of the Crown. It appears to me therefore that here has been no lawful hiring for a year, inasmuch as the servant had not the faculty of communicating the service he contracted for. It is said, here was no fraud, and that is true; but there is the vice of the argument, for this is not a question between the master who hires, and the man who is hired, whether a condition, which the Legislature has imposed on this branch of settlements, has been complied with. The question is, whether this be such a hiring as the Legislature intended. It seems to me that it is not, and that the reasoning in the case of the apprentice applies with full force to the present case. Therefore there not being such a hiring as the statute requires, the pauper’s husband

has not gained a settlement.

Le Blanc J. The pauper and her children have been removed to her maiden settlement, which removal has been confirmed at the sessions. And the question now made is, whether or not she is entitled to a settlement from her husband. Her husband was a person who originally had no settlement of his own; and the doubt is, whether he has gained one by hiring and service. The case states him to be an invalided soldier in the British service, and under military orders at the depot. In

that situation be was, no doubt, to all intents and purposes a soldier, and subject to a control and command inconsistent with his entering into any other absolute engagement to serve another master. While however he remained at the depot, a plan was devised for giving the invalids leave of absence, they agreeing to relinquish their pay. Still the invalid was only to be absent on such leave as was granted, and that leave was to expire at a limited period ; and if not renewed, he would be obliged to return to his duty under the penalty of being treated as a deserter. In this situation of things, the pauper’s husband enters into this contract. And the doubt is, if it be a lawful contract; not lawful, as it regards his being guilty of a crime, or as it affects his right to recover wages, but whether lawful within the meaning of the statute. I pass by the argument that by the 3d and 4th of William the Third a soldier is made incapable of gaining a settlement by notice, because I think it does

not apply to the present case. The question turns simply on this, whether that is within the meaning of the statute a lawful hiring for a year, where a person, who is under a legal disability in consequence of having entered into a different obligation which subjects him to be called upon whenever the exigencies of the State require, contracts the relation of servant absolutely for the period of a year. In this view the case steers clear of the cases upon conditional hirings, where the party being perfectly sui juris, is capable of contracting, but reserves a power of determining the

contract with notice at any given time or times. For here at no time could the party make a valid contract for a year. He could not transfer to the master the control over his services for that time. Nor do the cases of *Rex* v. *Westerleigh* and *Rex* v. *Winchcombe*, respecting the militia-men, which have been particularly pressed upon the Court, seem to me to be precisely in point. Those cases, which have decided that a militia-man may enter into a contract of hiring and service for a year, with a reservation of a time for performing his military duties, are not to be disturbed, but still they are not to be extended, and to be applied to soldiers in the King’s service, who contract in a way incompatible with the obligations of that service. The present case seems rather to fall within that class of cases which have decided, that if a man be under an engagement which obliges him to render to another his full services, he is incapable of entering into a lawful contract of hiring and service within the statute. Such was the apprentice’s case; and it makes no difference that the master to whom be is bound does not avail himself of his rights to call for the service of his apprentice.

Such also was the case of *Rex* v. *Norton*; there indeed the pauper was a deserter; but the principle of that decision did not turn entirely on that circumstance. The term “lawful hiring” was not construed according to the sense of whether the party, in making the engagement, was acting morally or legally wrong; he was, indeed, in consequence of desertion, subject to military punishment; but the principle of that decision was this, that he was liable at any moment to be taken from the service of

his master. His contract therefore was of that description which did not give the master an absolute control over his services during the period contracted for. I would wish to lay out of the case all distinctions which do not apply to the true principle, viz. whether the party was in a condition to make the contract. Here certainly nothing was criminal ; the mistress had notice, and so had the commanding officer; and it is to be collected, from what is stated, that it was his opinion at least that it was not probable the man would be taken out of the service during the time; but still he remained liable to be called on, whenever the exigencies of his military duty required, and in compliance with that duty was actually obliged at stated intervals while he was in the service of his mistress, to repair to the depot and there present himself, in order to obtain a renewal of his furlough. It might perhaps have been renewed by means of an application by letter, without personal attendance, but still the terms upon which the leave of absence was granted, were for a limited time only; and unless he had returned at the expiration of that time, he would have been liable to be apprehended as a deserter. And as to his being able to renew the furlough in so short a space of time as stated, that will not alter the question ; the law must be the same, whether the mistress lived 100 miles off the depot, or in the same town. It seems to me, therefore, that the husband of this pauper did not gain any settlement at Lymington by this hiring and service, inasmuch as he was incapable of entering into a lawful contract within the statute.

Bayley J. I am so unfortunate as to entertain a different opinion; and to think that this hiring was sufficient to confer a settlement at Lymington. I do not find it mentioned in the Act of Parliament that there must be an indefeasible, but only a lawful hiring. Here there certainly has not been an indefeasible hiring, but I think there has been a lawful hiring, for a year, subject to be defeated in one event, but that event on which it might have been defeated has not occurred. Under these circumstances it seems to me that we should be doing no violence to the Act of Parliament by holding that this was a sufficient hiring for a year to confer a settlement. The words of the Act are, “If any person shall be lawfully hired ;” and it is agreed that here was nothing unlawful in the hiring; that is, that the person who hired himself had a power to contract for a year, provided he was not taken out of the service by his military duties. The mistress was given to understand that he was liable to be taken away; there was therefore no improper concealment, and the contract was such as the party contracting might lawfully make, subject to the above understanding, being made at a time when he was sui juris. It was certainly, as I have said, liable to be defeated, but so may many other contracts, which nevertheless would be sufficient to confer a settlement. To instance in one particular, namely, the case that has already been put in argument. Suppose the master of a servant, having occasion to go abroad, was to say to his servant, whom he left at home, I may be absent only six months, or possibly I may be absent five years; in the mean while take you care, in the bargains

which you shall make, that you keep yourself at liberty to come back to me on my return. Suppose under these circumstances the servant does enter into a contract with another master to serve him for a year, provided his former master should not in the mean time return, I apprehend that that would be a good and valid contract of hiring for a year, such as would confer a settlement. The case of *Rex* v. *Norton* seems to me perfectly distinguishable; because, there the servant in the very act of

making the contract was doing that which was unlawful. He was a deserter, and beside that, he never apprised the master of his situation, who was deceived by this concealment, and did not acquire that control over his service which he, the master, had a right to expect. Every moment of his continuance in the service was an illegal act. So in the case of an apprentice, if he contracts to enter into the service of another, he does so either with or without the consent of his master. If with the

consent of his master, it is a service to the second master under the indenture; and he gains a settlement by such service, it being referable to the indenture. If he hires himself to a second master without the consent of his first master, it is an illegal act on his part, and he is not in the terms of the statute lawfully hired. The cases of the militia-men are certainly not such as I should choose altogether to rest my opinion upon ; in the first of them the pauper was only probably liable to be taken out of the service for one month ; however, he was possibly liable to have been taken out for

the whole year, if the Crown had thought fit to require his services. The bargain was this: I will serve for a year, but may have occasion to attend my duty as a militiaman for about a month; but if I am taken out of your service, I will pay another to serve in my place, or make allowance in my wages for the time of absence. Now if that which today is contended to be an objection, is valid, it would have been open in that case to have objected, that the party was not in a condition to make any contract at all to serve for any portion of time, because he was liable to be called upon in another service during the whole time; but yet that hiring was held sufficient. As to the doctrine that settlements ought to be favoured, it is not a doctrine on which I rely; because I conceive it to be in the eye of the law a matter perfectly indifferent where the party is settled. The next case of *Rex* v. *Winchcombe* is open to the objection that there was a service but for 11 months. However, without the aid of these

cases it seems to me that here the party was sui juris, to enter into the contract; that this was a contract which was only defeasible, and would confer a right of action to the master, if the servant absented himself on any other grounds except that of his being called upon by the act of government. For these reasons, and as I do not find anything in the statute but the word lawful, to limit the nature of the hiring, and inasmuch as there has been a defeasible hiring for a year, which has not been defeated, and the party who was hired committed no fraud, but communicated the circumstances to the person who hired him, it strikes me, that this was a sufficient hiring to confer a settlement.

Dampier J. was absent.

Orders confirmed.

(10) Ruling

An invalided soldier at the depot, who in pursuance of an order from Government, had leave of absence upon agreeing to relinquish his pay for the time, which leave was renewed from time to time, by furlough, for different periods of three, six, and four months, which he procured by going to the depot for them, was held not to gain a settlement by hiring and service for a year, not being sui juris lawfully to hire himself within the stat. 3 W. & M. c. 11, though before such hiring the mistress applied to the commanding officer at the depot, to know if he might hire himself for a year, and was told that he might, and during the year’s service he received no pay, nor was called upon, nor did perform any military duty.

(11) Comment

The Court finds against a settlement where the contract of hiring was made an invalided soldier, on the ground that he lacked capacity. Lord Ellenborough CJ’s judgment argues against an over expansive reading of the cases on militiamen. Bayley J dissented.

(12) Type

Restrictive

(1) Case name

*R.* v. *Bilborough*

(2) Date

12 November 1817

(3) Report

1 B. & Ald. 115

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Bilborough

(6) Order sought

Quashing

(7) Facts

Upon an appeal against an order of two justices, by which John Tilford, his wife, and child, were removed from the parish of Basford in the county of Nottingham, to Bilborough in the same county, the sessions confirmed the order, subject to the opinion of the Court on the following case ;

The pauper’s settlement in the appellant parish having been established by evidence, it was proved that the father of the pauper subsequently made the following parol agreement with one Willoughby Smith : that Smith should teach the pauper to make stockings, during the year next ensuing, and should receive the sum of two guineas for such instruction ; that the pauper should have his earnings, and pay Smith for the use of his frame, needles, and other utensils, and for seaming such stockings as the pauper should make. One guinea was paid at the time, and the other guinea was to

be paid by instalments of a shilling a week during the continuance of the agreement. The pauper went to learn the business, and work for Smith in the manner specified, and continued to do so a year and a half, during which time he paid the second guinea at one shilling per week, and the stipulated price for the use of the frame, needles, and other utensils, and for seaming the stockings made : during this year and a half, the pauper resided in the respondent parish.

(8) Argument

Clarke, in support of the order of sessions, was stopped by the Court.

Denman, contra, contended that the pauper under the agreement gained a settlement by hiring and service for a year; and he relied on *The King* v. *Burbach* (a).

(9) Judgment

Lord Ellenborough C.J. In this case the pauper never contracted to serve the master; the only agreement was, that the master should teach the pauper for a year. In *R.* v. *Burbach*, there was an agreement on the part of the pauper to work for two years ; that forms an essential distinction between the two cases.

Per Curiam. Order of sessions confirmed.

(10) Ruling

Where by a parol contract the master agreed to teach the pauper to make stockings during the year, for which he was to receive two guineas, and the pauper was to have his earnings, paying his master for the use of the frame, &c.and the pauper continued in the service a year and a half: it was holden that the pauper did not gain a settlement by hiring and service.

(11) Comment

The Court finds against a settlement by hiring on the grounds that the contract was one to teach a trade.

(12) Type

Restrictive

(1) Case name

*R.* v *Birdbrooke*

(2) Date

21 May 1791

(3) Report

4 T. R. 244

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Birdbrooke

(6) Order sought

Quashing

(7) Facts

Two justices removed M. Meers, his wife, and children, from Stoke by Clare, Suffolk, to Birdbrooke, Essex. The sessions confirmed the order, and Stated the following case :

The pauper M. Meers, being settled at Birdbrooke, was hired when he was single, by John Obley, farmer, at Stoke by Clare, at three shillings per week the year round ; each was to be at liberty on a fortnight’s notice; but the pauper was not to go away at seed-time, hay, or harvest. He stayed in that service a year at Stoke, and received his wages at different times whenever he pleased.

(8) Argument

J. Heywood, in support of the order of sessions, contended, that the pauper gained no settlement at Stoke by Claro, because he only served there under a weekly hiring. *R. v. Newton Tory* (a)1. There is nothing to shew that this was a hiring for a year; for the expression of “ the year round ” is not stronger to that effect than that “ of summer and winter;” which was held in *R. v. Denham* (b)1 not to be hiring for a year. The addition of the words “the year round” to the weekly wages was merely to regulate the price of the pauper’s labour at the different seasons of the year, in case he consented to stay ; but the proviso, that he should not leave the service at particular times of the year, affords a strong inference that he might have left his master at any other part of the year, without being guilty of a breach of his contract; and this is further confirmed by his being at liberty to put an end to the contract, on giving a fortnight’s notice.

(a)1 Ante, 2 vol. 453.

(b)1 Burr. S. C. 653.

(9) Judgment

Lord Kenyon, Ch.J. (stopping Erskine and Hay, contra) said, no doubt can be entertained on this case. It does not [246] even rest on a general hiring, for this was an express contract to serve “the year round.” But it is said, that this cannot be considered to be a hiring for a year, because there was a reservation of weekly wages, and because each party was to be at liberty to put an end to the agreement on giving a fortnight’s notice; but whether the wages be to be paid by the week or the year cannot make any alteration in the duration of the service, if the contract were for a year. This therefore was a contract for a year, at so much a week, with liberty to quit at any time except seed, hay, or harvest-time, on giving a fortnight’s notice; but the power of giving notice makes no difference, for it has been held, that an agreement to leave the service on giving a month’s warning, did not defeat the settlement (a)2.

Asbhurst, J. of the same opinion.

Buller, J.—The only question is, whether this were a yearly or a weekly hiring? In support of the order of sessions the latter has been contended ; but a hiring for a week, requiring a fortnight’s notice, was never heard of.

Grose, J. absent.

Both orders quashed (b)2.

(a)2 *R. v. New Windsor*, Burr. S. C. 19.

(b)2 Vid. *R. v. The Inhabitants of Hampreston*, post, 5 vol. 205.

(10) Ruling

Service for a year under a hiring “at 3s. per week the year round,” with liberty to go on a fortnight’s notice, will give a settlement. [2 East, 224.]

(11) Comment

The court finds a yearly hiring, placing emphasis on the duration of the service (the fact of service for a year) rather than formal contractual elements such as wages being paid by the week. This contrasts with the earlier decision of R. v. Bradninch (1770) where the court took hire by the week to mean that the servant had no continuing obligation to serve and thus did not find a settlement. The servant’s liberty to go on a fortnight’s notice also will not defeat a settlement (again in contrast to R. v. Bradninch).

(12) Type

Liberal

(1) Case name

*R.* v. *Birmingham*

(2) Date

12 February 1780

(3) Report

1 Doug. 334

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Birmingham

(6) Order sought

Quashing

(7) Facts

This was a special case, upon an order of removal, which set forth [1];

That Thomas Baker, the husband of one of the paupers, on the 17th of October, being unmarried, and having no child, was hired [334] in the parish of Birmingham, by John Jennings, a wood-screw maker, resident in that parish for a year, good earn good hire, to work for him, and no other master, to make screws at so much a gross; and this was all that passed upon the hiring. That persons are often hired at Birmingham under the terms “good earn good hire,” the meaning of which is, that their pay is to depend upon their work. Baker had no wages. He was to have what he got. If he got nothing, he was to have nothing. His master had no business but that of a screw-maker. He was to work in his master’s shop, and do no other work. He served a year under the hiring, and, during the year, sometimes lodged with his master, sometimes in another house in the parish, and when he lodged with his master, he paid him for his diet and lodging. He sometimes absented himself to drink or play, for a week or fortnight, and never asked his master’s leave for such absence. His master, on his return, was angry, and checked him, but always received him again. During such absence, he never worked for his master, nor did he, nor could he, for any other person. He took the same liberty of absenting himself, as other persons in the same way. The master had often found fault with him, and asked him to work, which he had refused to do, saying, “I won’t work unless you will advance me money,” to which the master said, it would be worse for him. Masters do usually advance money to persons hired under those terms. Baker had said to his master, that he could not compel him to work, and the master, in his absence, had said, that he thought he had no right to compel him. It is generally understood at Birmingham, that persons hired to work in shops, under the above terms, may occasionally absent themselves, but cannot work for any other master. Whether the master could or could not prevent Baker from absenting himself, or compel him to work, did not appear from any facts, but those above stated. He was hired again under the same terms, and perfected his service in the same way.

The Court of Quarter Sessions, (for Shropshire,) confirmed the order of justices removing Baker’s widow and child to Birmingham.

[1] The case had come on before in T. 19 Geo. 3, but having found evidence, instead of facts, it was sent back to be restated.

(8) Argument

On Wednesday, the 9th of February, the Solicitor General and Plumer shewed cause.—They insisted that a complete hiring for a year was stated. The absences in the middle of the service were cured by the master’s taking the servant [335] back, so that the only question was on the contract, which was to be construed by what passed when it was made. Payment by the piece had always been held as good, for the purpose of a settlement, as yearly wages [f 1]. The circumstances set forth in the case, (a great deal of which was evidence, and ought not to have been stated,) only explained the nature of the service, but did not affect the terms of the hiring. The apprehension of the parties was of no consequence, as was determined in Rex v. King's Norton(a). In Rex v. Macclesfield (b), and Rex v. Buckland Denham (c), which might perhaps be cited on the other side, there was an exception in making the contract, as to certain days or hours in the day when the servant was to be at liberty; in the first, it was particularly “stipulated, that the said service was to be only eleven hours in the six working days; and all the rest of the time, as well as on Sundays, the pauper was to be at his liberty, and his own master; ” in the other, the pauper was hired, to work shearman’s hours only.” In Rex v. St. Agnes (d), the Court distinguished between an exception which is part of the contract, and one arising from the custom of the country [f 2].

Dunning and Leycester, in support of the rule, argued, that when local terms are used, they must be construed according to the sense affixed to them by the understanding of the place. The Court of Sessions therefore had done right in stating the meaning in which the terms used in this case are understood in the country, and the question would be, whether, if instead of the words, the interpretation stated had been used in making the contract, that would have been a sufficient hiring'? The contract, according to the explanation set forth in the case, was this, “ I hire you for a year, but you may absent yourself when you please.” This therefore was an exception in the contract itself, not of any particular time, but of all times, at the option of the servant. If the bargain had been to work at such hours as screw-makers usually work, the case would not have been near so strong, and yet it would then have been exactly like that of Rex v. Buckland Denham. In Rex v. King’s Norton, only the apprehension of the servant was stated. Here it was the general meaning of the whole country in the use of the particular words by which this [336] hiring was expressed. To make a hiring for a year, the master should have it in his power to require the service of the person hired at all times. This was rather an agreement not to work with others, than to work with the master. It was like a contract not to marry any other person, which is void. On such a contract as the present, the master could not have maintained an action for the servant’s absence, nor could a magistrate have compelled him to serve.

(9) Judgment

Lord Mansfield absent.

Willes, Justice, said, there was some nicety in the case, and therefore the Court would take time to consider of it.

This day, being the last day of the term, he delivered his opinion, and that of the two other Judges who had heard the case argued, that there was a sufficient hiring and service at Birmingham. He stated the reasons of the judgment at large, and discussed the cases and arguments which had been produced on both sides; but I had then left the Court.

Both orders confirmed.

[f 1] Nor does the nature of the work to be performed by the servant make any difference; even where part of the object of the servant is to learn the business. R. v. Eccleslon, 2 East, 298.

(a) T. 13 & 14 Geo. 2, Burr. Settl. Cases, No. 52.

(b) E. 31 Geo. 2, ibid. No. 146.

(c) H 12 Geo. 3, ibid No. 218

(d) T. 10 Geo. 3, ibid. No. 209.

[F 2] The same distinction was adopted in R. v. North Nibley, 5 T. R. 21 ; in which it was held that a hiring for five years, as a colt-shearman, to work twelve hours each day, was insufficient for the purpose of giving a settlement.—Also in R. v. Sutton, 1 East, 656, where service under a weekly hiring, without any particular stipulation with respect to Sunday, was held a sufficient service for the whole week, so as to give a settlement when coupled with hiring for a year and service under it. See R. v. Winchcomb, infra, 391.

(10) Ruling

A hiring for a year to work by the piece, with an implied liberty, from the usage of the place, to be absent when the servant pleases, but not to work for any other master, gains a settlement, though he may have absented himself at different times in the course of the year.

(11) Comment

The court, with reference to a local custom, takes the broad view that short-term absences for holiday do not defeat a yearly hiring, so long as the Master takes the Servant back at the end of each holiday. It is not entirely clear (as some of the judgment was not reported) whether the court would have found a yearly hiring if the allowance for taking holidays had been expressly stated in the contract rather than by local custom, but the earlier case of R. v. Buckland Denham held that there would be no settlement in such circumstances.

(12) Type

Liberal

(1) Case name

*R.* v. *Birmingham*

(2) Date

1829

(3) Report

9 B. & C. 925

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Birmingham

(6) Order sought

Quashing

(7) Facts

Upon an appeal against an order of two justices, whereby W. Stean, his wife and children, were removed from the parish of Birmingham in the county of Warwick, to the township of Atherstone in the said county; the sessions confirmed the order, subject to the opinion of this Court on the following case:— W. Stean, the pauper, being settled at Atherstone, and unmarried, went to live

with James Owen, a button-caster, of Birmingham. After he had been with him some time, Owen hired him for a year at the wages of 4s. 6d. per week; nothing was said about Sundays. It was a part of the terms of hiring that the pauper was to work from six in the morning to seven in the evening, and might make as much overwork as he chose. He received earnest when he was hired. He served his master under this contract for a year, during which he lived in his master’s house and boarded himself, he lived there on Sundays as well as week days, and on Sunday morning be used to ask if any thing was to be done, and if there was, he did it. He made a good deal of money by overwork, but never did any for any one but the master, and was never paid for it but by him ; he was allowed 2d. an hour for overwork. At the expiration of the first year, he was hired by Owen for a second year

on the same terms, except that he was to have 5s. 6d. per week wages, and 4d. an hour overwork. He served the whole of the second year. He [926] was then hired for and served a third year upon the same terms, except that he was to have 6s. a week, and 6d. an hour for overwork.

(8) Argument

Goulburn Serjt. and Amos in support of the order of sessions. The pauper did not gain any settlement by hiring and service in Birmingham. To constitute a good hiring for a year, the servant must be under the control of the master during the whole year. In *Rex* v. *North Nibley*, (5 T. R. 21), a service under a hiring for five years as a colt shearman, to work twelve hours each day, was held not to give a settlement, because the servant was under his master’s control during the twelve hours only, and could not be compelled to work at other hours. So in this case the pauper was under his master’s control during thirteen hours of each day only, and could not be compelled to work at other times. This is distinguishable from *Rex* v. *Byker* (2 B. & C. 114); there the time was mentioned as the measure of wages only. Here the pauper was at all events to receive 4s. 6d. per week, and to work

from six o’clock in the morning till seven in the evening. The time, therefore, was not mentioned as the *measure of wages*. This is very like the case of *Rex* v. *Winford* (4 T. R. 219). There service under a hiring for seven years, to work thirteen hours in the day, Sundays excepted, was held not to give a settlement; the agreement being construed to mean that the pauper was to be his own master on Sundays an other days, after he had served the thirteen hours.

Hill contra. The question which arises in this case upon the construction of the contract of hiring, is not merely whether the servant could be compelled to work beyond the number of hours named in the contract, but whether he continued under the controul of the master during the whole year. In Rex v. Byker (2 B. & C. 114), the pauper was hired at 1s. 10d. for a good day’s work, not exceeding fourteen hours, and 2d. a day more when that time was exceeded, and the Court held, that was not an exceptive contract, but that the pauper gained a settlement by serving under it for a whole year.

(9) Judgment

Bayley J. This case is very different from *Rex* v. *Byker*. There the pauper was hired by indenture, and the master was to pay 1s. 10d. for every good day’s work not exceeding fourteen hours (and 2d. per day when that time was exceeded), and the Court thought that the time was only mentioned as the measure of the wages, and that the contract did not impose any limit upon what reasonably was required by the master, and that the relation of master and servant continued during the whole

twenty-four hours. But in this case there was a stipulation that the pauper was to work from six in the morning till seven in the evening, and might make as much overwork as he chose. It was optional in him to do overwork or not. He had a right to say to his master, I have worked thirteen hours, and will not work more. This is clearly an exception in the contract, limiting the control of the master to the specific period of time therein mentioned.

Littledale and Parke Js. concurred.

Order of sessions confirmed.

(10) Ruling

A pauper was hired for a year, at the wages of 4s. 6d. per week, to work from six in the morning to seven in the evening, with liberty to make as much over-work as he pleased : Held, that this was an exceptive hiring, and that no settlement was gained by serving under it.

(11) Comment

The Court makes a finding of an exceptive hiring in a case where the contract set a limit to daily working hours, distinguishing *R.* v. *Byker* as a case in which the hours were stated only for the purpose of identifying the wages due, not placing a limit on working time.

(12) Type

Restrictive

(1) Case name

*R.* v. *Bishop’s Hatfield*

(2) Date

9 February 1758

(3) Report

Burr. S.C. 439

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Bishop’s Hatfield

(6) Order sought

Quashing

(7) Facts

Mr. Wade shewed Cause against quashing an Order of two Justices made for the Removal of 'James Arnold, Anne his Wife, and Elizabeth, Mary, and Anne, their Children, from Saundridge to Bishop's Hatfield (both in Hertfordshire;) and an Order of Sessions confirming it : Both which Orders Mr. Yates had moved to quash, as being founded upon a mistaken Judgment.

The State of the Case was this—James Arnold was hired to one Parsons, a Parishioner of Saundridge at 5*l.* for one Year, to wit, from Michaelmas 1752, to Michaelmas 1753; with "Liberty to let himself for the Harvest-Month, to any other Person. That the said James Arnold served the said Parsons until the said Harvest-Month; and, a little before the said Harvest, without the Knowledge of the said Parsons, hired himself for the said Harvest-Month, to one Thrale of the same Parish: But went, with the Knowledge of the said Parsons ; and worked with the said Thrale for the said Harvest-Month; and received Wages for the said Harvest-Month. That in the said Harvest-Month, the said Arnold brewed for the said Parsons: And after the said Harvest-Month, Arnold served the said Parsons for the Remainder of the Year. And the said Arnold lodged in the said Parson’s House in the said Parish of Saundridge, during the whole Year: And at the End of the same, the said Arnold received the said 5/. for his Year’s Wages.

Whereupon the Sessions adjudge that the said James Arnold, under the said Hiring and Service with the said Parsons, in the said Parish of Saundridge, did not gain any Settlement in the said Parish of

Saundridge: And therefore they confirm the Order of the two Justices, and disallow the Appeal.

(8) Argument

Mr. Wade argued That this was not a complete Hiring for a Year, and Service for a Year. To prove this, he cited I *Strange* 143, Rex v. Inhabitants of Weft Woodhay—[between the Parishes of Coombe

and West Woodhay :] Where a Hiring “ from the Thursday after Michaelmas, till the next Michaelmas, ” was holden inefficient. 1 *Strange* 83, Rex v. Inhabitants of Haughton------Several Hirings, each for eleven Months, were holden insufficient: And the Court said " It would be dangerous to depart from the Words of the Statute. 2 *Strange* 1022, between the Parishes of Seaford and Castlechurch "Going away twelve Days before the End of the Year, “prevents the Gaining a Settlement.”

He agreed that where there is a regular Hiring for a Year, the Court will not be over rigid as to the Service. 2 *Strange* 1 232, — Between the Parishes of St. Peter in Sandwich and Goolaston [Goodnestone] in Kent was so §: There, the Servant went to the Herring-Fishery, with his Master’s Leave. 1 *Strange* 423, Rex v. Inhabitants of Iflip were small Absences; and after a complete and perfect Hiring for a whole Year. Now this is only a Hiring for eleven Months; and a Service for eleven Months.

Mr. Yates contra—The Master was bound ; though the Servant was at Liberty. The Servant was not removable. He served his Master, in some Respects, even during this Month.

(9) Judgment

Lord Mansfield—It is, in Effect, only a Hiring for eleven Months. And the Harvest-Month is the principal Month of the Year.

It is safest, to keep to the Statute. If we allow this, we shall not know where to stop.

Mr. Justice Denison concurred. And he observed that tho the Construction had been, in many Respects, favourable as to the Service, yet they had been stricter as to the Hiring: And if this

was allowed to be a good Hiring, it would tend to enervate the Act, and set the Construction quite loose.

Mr. Justice Foster agreed, in both, with Mr. Justice Denison: And he mentioned some Instances of the former; and particularly the Case of West Woodhay, abovementioned. But this is only a Hiring for eleven Months.

Mr. Justice Wilmot concurred—It does not turn upon the Obligation the Master was under; but upon the Obligation the Servant was under: And the Servant was not obliged to serve the whole Year. It is very clear that this is not a Hiring within the Act.

(10) Ruling

Per Cur. unanimously—

Rule discharged : And

Both Orders affirmed.

(11) Comment

The court takes the restrictive view that the servant must work for the same master for a full year in order to gain a settlement, even if the contract of hire expressly allows the servant to hire himself out to another master for a period of time, such as the Harvest Month.

(12) Type

Restrictive

(1) Case name

*R.* v. *Bow*

(2) Date

1800

(3) Report

8 Term Reports 445

(4) Court

Court of King’s Bench

(5) Parties

The King against The Inhabitants of Bow

(6) Order sought

Quashing

(7) Facts

An order made by two justices, for the removal of George Heard, his wife and children, from the parish of Chumleigh to the parish of Bow, both in the county of Devon, was confirmed by the sessions on an appeal, subject to the opinion of this Court on a case reserved. The pauper was settled in Bow, by apprenticeship. At a Michaelmas court-leet, holden by adjournment for the manor and borough of Chumleigh, on the 16th of November, 1792, the pauper was appointed to the office of ale-taster of the borough, and duly sworn, according to the custom of the manor, “to execute the said office for one year thence next ensuing, or until he should be lawfully discharged from the same.” He accordingly entered upon and executed such office until the 1st of November, 1793, when at a similar court, holden by adjournment for the said borough, a new officer was appointed in his stead, and sworn in the same manner. The tythingman, constables, and other officers were apointed at such court in a similar manner. No business is transacted at the original courts, but all officers are appointed at some adjournment thereof. There is only one original court-leet in the year for the said manor and borough ; and that at some day within the month after Michaelmas, according to the convenience of the steward.

(8) Argument

Gibbs and East in support of the order of sessions. Upon the very statement of the case it appears, that the pauper did not execute the office during one whole year, according to the express words of the stat. 3 Will. c. 11, s. 6, which was necessary to enable him to gain a settlement in Chumleigh ; for he only executed it from the 16th of November in one year to the 1st of November in the year following. Nor does it even appear that, in the event, he was appointed to the office for a year; for the appointment was conditional, being for one year, or until he should be lawfully discharged ; and, in fact, he was lawfully discharged before the end of the year : but admitting that, by relation of law, an appointment to an office at an adjourned court, would refer back in general to the original court; yet no such relation can take place here, because the appointment was not general, but from thence; which must mean from the very day of the appointment: and, at any rate, it would not be alone sufficient if the appointment related back to the original court; for though relations in law are sometimes admitted, yet there cannot be a relation in fact; and the Statute of William does not merely require a legal appointment to the office for a year, but an actual execution of it for that whole period. In R. v. Fittleworth, where a certificated man, who had been appointed tythingman, was removed on his becoming chargeable before the end of the year, the Court held, that he gained no settlement by virtue of his office, because he had not executed it all the year; and yet the removal

in that case did not vacate the appointment.

Clapp and Dampier, who were to have argued on the other side, admitted, that the words of the statute were strongly against them ; but referred to the case of R. v. The Inhabitants of Newstead, where, by an equitable construction of the 3 Will, c. 11, s. 7, it was holden, that a hiring and service, according to the custom of the country, from Whitsuntide to Whitsuntide, though less by sixteen days than the year, would confer a settlement on the servant.

(9) Judgment

Lord Kenyon, Ch.J.—That is at least a case of doubtful authority; and perhaps it would have been better if we had never heard of what is called An Equitable Construction of the Statutes relating to Settlements. It would have been better in all cases to have adhered to the plain words of the statutes : but this is an attempt to carry the point farther than it was carried in R. v. Newstead. This is not an appointment for a year, from one moveable feast to another,—but from one court until it should please the steward to hold another. The words of the statute on which this question arises are express; and the case of R. v. Fittleworth, which has been cited, shews that they have been construed according to their plain and obvious meaning.

Per Curiam. Order of sessions confirmed.

(10) Ruling

A. who at an adjournment of a court leet, holden 16th Nov. 1792, was appointed to an annual office “for a year, or until he should be discharged,” and who executed the office until the adjournment of another court-leet, holden 1st Nov. 1793, did not thereby gain a settlement.

(11) Comment

The judgment is notable for rejecting an ‘equitable’ interpretation of the statute in favour of a strict reading, finding against a settlement.

(12) Type

Restrictive.

(1) Case name

*R.* v. *Bow, otherwise Nymett Tracey*

(2) Date

18 November 1815

(3) Report

4 M. & S. 383

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Bow, otherwise Nymett Tracey

(6) Order sought

Quashing

(7) Facts

Upon appeal, the Quarter Sessions for the county of Devon quashed an order of justices for the removal of John Hawkins from Bow, otherwise Nymett Tracey, to Okehampton, subject to the opinion of this Court on the following case: The pauper on the 24th of January 1767, when he was nearly eight years old, was bound as a parish apprentice by indenture to one Sillifant of the parish of

Northtawton, to serve until he attained the age of 24. He served accordingly until within a short time of his attaining the age of 21, when his master being about to leave Northtawton, and no longer wanting the pauper’s service, told him that he might leave him, and go where he liked, and shift for himself, but that if he could not provide for himself he might return to him. Upon this the pauper quitted Sillifant, but his indentures were not given up to him, nor cancelled, nor was anything said

about them. Upon quitting Sillifant he hired himself to another person in Northtawton, and served until nearly four months after his being of age, when without any communication with Sillifant he bound himself as an apprentice by indenture to one Webber at Okehampton for three years, to learn the business of a tanner, to which indenture his father was a party as a security for his service. Under this indenture be served Webber at Okehampton for the three years. And the question was, whether

the pauper acquired a settlement by this service with Webber at Okehampton.

(8) Argument

Peake in support of the order of sessions argued that he did not. For the original indenture with Sillifant being made before stat. 18 G. 3, c. 47, was good to bind the pauper until his age of 24, and nothing was done to discharge it; for in the case of a parish apprentice under age the indenture cannot be discharged by his consent alone, but the parish officers also ought to give their assent; neither does the apprentice’s coming of age render his consent given during nonage good to discharge the indenture. And it seems that in no case can an indenture of apprenticeship be discharged, but by being actually cancelled, or delivered up, or by something done which is equivalent, as the payment of money; whereas so far was this from being the case, that the pauper was told that he might return to his master. Also, the indiscriminate leave of the first master to go whither he liked, and shift for himself, did not make the pauper’s service with the second master a service under the indenture with the first, because the leave must be applied to a particular service, and not general to serve any person. Nor can it be said that here the pauper has elected to vacate this indenture upon attaining his full age, as by law be might do; for where the binding is under the authority of an Act of Parliament, this takes away the power of electing to vacate the indentures; besides, the pauper did no act after coming of age to signify his intention to vacate the indenture, or to give notice of it to his master; for the merely deserting it is not sufficient.

Gifford, contra, argued that the first indenture was at an end, and therefore the pauper acquired a settlement in Okehampton under the second. For a parish indenture, notwithstanding it is made under the authority of the Stat. 43 Eliz. may be vacated, after the apprentice attains his full age, by agreement between the master and apprentice; and this may be done without either cancelling or giving up the indenture; and the payment of money is no farther material than as it serves to

shew that the parties agreed to vacate the indenture, which may be evinced by other circumstances as well as this; as if the apprentice by the consent of his master enters into an engagement inconsistent with the continuance of his former obligation, this shews that the parties meant to put an end to it; the intention being evidence by the act done; after which if an action had been brought by the master on the indenture, this would have been a good defence. Or take it that the first master might have avoided the second indenture, yet he has not done so, and therefore a settlement was acquired under it; besides, as the second indenture endured for nearly four months after the expiration of the first, and the pauper served under it, there was a sufficient period of service under an indenture which was no longer voidable to gain him a settlement.

(9) Judgment

Lord Ellenborough C.J. If the pauper was not in a condition to convey to Webber a present right to his service at the time when he bound himself by indenture to him, I am at a loss to discover how it could enure as a valid binding afterwards. Now at the time when the second indenture was made, the first master had not parted absolutely with the apprentice, though I agree that he had done that which might be an answer to any action by him on the indenture, or for harbouring his apprentice. Still this being but a parol agreement on his part that the apprentice might go whither

he would, the master might by parol resume what he had granted by parol, the relation which had been created by deed not being capable of being dissolved by parol. The original indenture therefore still subsisted both as to master and apprentice: as to the master, because he might revoke his licence and resume his authority; and as to the apprentice, because if he was unable to provide for himself, he was at liberty to return.

Le Blanc J. The difficulty of maintaining that here was a good binding to Webber at Okehampton is, that at the time of the binding there does not appear to have been any dissolution of the first contract; on the contrary, both parties contemplated that it still subsisted; for the licence given to the apprentice was to go and see if he could shift for himself; and if he could not, he was to return under the indenture. There was a very sufficient reason therefore for the not giving up the indenture, in order that the parties might have the benefit of it.

Bayley J. Unless the first indenture was at an end when the pauper entered into the second, he was not at that time sui juris to contract; which I take to be the question ; and that to say the second indenture was only voidable is no answer to it.

Per Curiam.

Order of sessions confirmed.

(10) Ruling

A parish apprentice was, before the passing of stat. 18 G. 3, c. 47, bound till twenty-four, and served till nearly attaining twenty-one, when his master, being about to leave the parish, and no longer wanting his service, told him that he might leave him and go where, he liked, and shift for himself, but if he could not provide for himself he might return to him, upon which he quitted, and when he was about four months past twenty-one bound himself by indenture as apprentice to another master for three years, and served with him the three years : Held that he did not acquire a settlement by service under the second indenture.

(11) Comment

The Court rules against a settlement by hiring on the grounds that a parish apprentice did not have the capacity to make a new contract during the term of the parish apprenticeship.

(12) Type

Restrictive

(1) Case name

*R.* v. *Bradninch*

(2) Date

12 February 1770

(3) Report

Burr. S.C. 662

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Bradninch

(6) Order sought

Quashing

(7) Facts

Two Justices removed William Davy, Mary his Wife, and their three Children, (specifying their Names and Ages,) from Bradninch to Shobrooke; Both in the County of Devon. Their Order was confirmed by the Sessions, on a Case stated.

The Case stated upon the Order of Sessions was this — The Pauper came to one Samuel Ruddall, in the Parish of Crediton; and agreed to live with him by the Week, at two Shillings and Six-pence per Week; and to part at a Fortnight’s or Month's Notice. The Pauper being asked “how long he intended to live with Mr. Ruddall” replied, “ He did not know ; but, as long as they liked.” And accordingly, the Pauper lived with Mr. Ruddall for eight Years, under that Agreement ; the Pauper and Master being both at Liberty to part from Each Other on a Fortnight or Month’s Notice. The Pauper received his Wages of two Shillings and Sixpence per Week, sometimes at the End of the Week, sometimes at the End of a Fortnight, and sometimes longer, as he wanted Money. This Court [of Sessions] being of Opinion “that the Pauper gained a Settlement ” by such Service in the said Parish of Crediton,” doth therefore vacate the said Order: And the same is hereby vacated accordingly.

(8) Argument

Mr. Mansfield had moved, on Saturday 27th January 1770, to quash this Order of Sessions; objecting “that here was no Hiring “for a Year:” And he had a Rule to shew Cause.

Mr Heath now Shewed Cause; and endeavoured to maintain “that this was a Hiring by the Year.” Every general Hiring is a Hiring by the Year : And so the Law shall construe it; For, that Retainer is according to Law. Co. Litt. 42. b. lays this down expressly. And this is a Sort of general Hiring. ' ‘It can’t be taken as a Hiring by the Week only ; because they were not to part but at a Fortnight's or a Month's Notice : which is inconsistent with the Idea of a Hiring only by the Week. But,

(9) Judgment

The Court, without hearing the Counsel on the other Side, over-ruled Mr. Heath's Argument. And

Lord Mansfield observed, that this Pauper was under no Obligation 'to serve for a Year: whereas, in order to gain a Settlement, there must be an Obligation upon the Pauper, to serve for a Year.

(10) Ruling

Order of Sessions quashed:

Original Order-Affirmed.

(11) Comment

The court takes the restrictive view that an agreement to work by the week, with the right to terminate upon a fortnight’s or a month’s notice, does not confer a settlement. A settlement cannot be inferred from either the fact of service for over a year (in this case eight years), nor the requirement of a fortnight’s notice (and its inconsistency with the framing of the hire as a ‘hire by the week’ with no continuing obligation to serve).

(12) Type

Restrictive

(1) Case name

*R.* v. *Brampton*

(2) Date

11 February 1777

(3) Report

Cald 11

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Brampton

(6) Order sought

Quashing

(7) Facts

Two justices remove Hannah Wright from the parish of Ashover in the county of Derby to the parish of Brampton in the same county. The sessions, on appeal, confirm the order, and state the following case :

The pauper being legally settled at Brampton, hired herself to one Mr. Longsdon of Eyam for a year, and served under that hiring till within three weeks of the end of the year ; when her master discovering her to be with child, turned her away, and paid her her year's wages, and half a crown over ; whereupon she went home to her father’s at Ashover, from whence she was removed as above stated. The pauper on her examination in court said, she was willing to have staid her year out, if she might ; but that it was not material to her whether she staid or went, as she had received her whole year’s wages ; and that she was not half gone with child when she left her service ; and hoped she could have done the work of her place to the end of the year.

(8) Argument

Dunning and Balguy shewed cause in support of these orders.

Dunning. The question is, was this contract dissolved before the end of the year ? This depends upon the fact, whether the master has acted either arbitrarily or fraudulently ? For a master, upon just and reasonable cause, may discharge his servant ; and there can be no doubt but that a criminal conduct, like the present, amounts to a reasonable cause. Though it has been said in [a] the *King v. the Inhabitants of Marlborough*, cited in Viner’s Abridgement, Tit. Removal C. “ That a maid-servant, got with child, can’t be removed from her service.” [b]. This can only mean removed by the parish officers before the contract is dissolved ; but this misconduct is a good reason for the master to dissolve it ; and there can then be no objection to the removal by the parish officers.

[a] 12 Mod. 403. Tr. 12 w. 3.

[b] Dunning cited this case from Bott 266 ; adding from thence “This is however good cause to discharge her of her service ; and, after her master has discharged her, she may then be removed, &c. This passage Mr. Bott cites from *Rex v. Marlborough*, Vin. Tit. Removal, 459 r but the authority in Vin. which is cited from 12 Mod. 403. goes no farther than is stated above. There is indeed a marginal note in Vin. cited from Shaw’s Parish Law, p, 241. “ That in such case a justice upon complaint of the master may discharge her ; but nothing is said in the page cited, from Vin. or in 12 Mod. from which it can even be inferred, that there is any authority in a master so to discharge. The above citation from Shaw I find in p. 242. of his 3d edition J736. Tit. Workhouses, c. 5S. f. 22. It appears to be an observation of his own, I do not find it in his two last editions of 1755 and 1763. In the case of *Apprentices* Dr. Burn says expressly, that “ the master may not of his own accord discharge his apprentice,” but may proceed under one of two statutes. Vol. 1. p. 72. Edit. 1785.

Balguy. It has been said, that there ought to have been an application to a magistrate to discharge the servant : but, in the first place, this is not the case of a servant in husbandry, and therefore a justice of peace has no jurisdiction to discharge : or, if he had, it was in this case unnecessary, as the servant consented ; and the interposition of a justice could be only necessary, in cases where the parties were not agreed. The payment of the whole year’s wages has been also insisted upon; and that this payment could not have been made on any other idea, than that of the contract continuing to the end of the year: but it has again and again been determined that a deduction of wages does not prove the contract dissolved within the, year : [a] Aston J. in the *King v. the inhabitants of Weflerleigh* ; and, if so, the full payment of them cannot prove the contract continued: to this the case of [b] *the King v. the Inhabitants of Castlechurch*, and *the King v. the Inhabitants of Godalming*, H. 12 G. 1. cited in the above case, are fully in point.As to the fact found, “That the pauper hoped she could have doneher work,” it is not her ability, but her criminal conduct, thatmust be the tell; or otherwise a master might be obliged to keep awoman in his house for many months under these circumstances,though he were a clergyman, or had a wife and daughters. Thecase of [c] *the King v. the Inhabitants of Richmond* is not applicable. It was the case of a marriage; and the master with goodreason dispensed with a fortnight’s service ; for the pauper’s wifehad stayed a fortnight beyond her year at the instance and for theaccommodation of the master.

[a] His words were “ The only difference between this case (*Weflerleigh*) and *the King v. the Inhabitants of Goodneston* in Burr. Settl. Cas. 251. is the abatement of the wages; but there are several cases where that has been held to signify nothing,” M. 14 G. 3. 17731

[b] Burr. Settl. Cas. 68. Mich. 9 G. 2. 1735\*

[c] East 13 Geo. 3. 1773. Burr. Settl Cas. 740.

Wallace and Wills, in support of the rule to quash the orders : The stat. 5 Eliz. c. 4. extends to maid servants; and therefore at least the intervention of a magistrate is neccessary : without it, the contract could not legally be dissolved ; nor is there any authority to support the contrary doctrine. But a magistrate could not in this case interfere, it not being the case of a servant in husbandry ; neither is there even a dictum to support such a doctrine, except the marginal note in Viner, cited from Shaw; and that is but a loose observation unsupported by any authority. That on the contrary the case itself in Viner was expressly in point ; that there was no pretence for the construction suggested on the other side, that the court must mean “can’t be removed till after the contract is dissolved by a discharge that the case affords nothing on which such a conjecture can be founded ; but on the contrary says “ shall not for that be removed, but shall serve out her time : And since she is not removeable &c.” So as to leave no solid foundation to support the sense contended for. Tis argued, that because a deduction of wages does not vary the nature of the contract, the payment of them cannot vary it ; but all the authorities say, that when the dismissal of a servant is accompanied, as here, with the payment of the whole wages, it shall be considered as a dispensation of the remaining service ; or in other words a constructive continuance of it to the end of the year. They denied the consent of the pauper to dissolve the contract ; and insisted that the half crown beyond her wages must be considered as an equivalent for her board : and that the only object of the master was to defeat the settlement of the servant in his parish.

Wills also cited the case of [a] *the King v. the Inhabitants of Hanbury* ; where it was adjudged that,. though the magistrate had' allowed the discharge of the servant upon the complaint of the master, yet, because this was an act of jurisdiction in the magistrate,. which- ought to be by order, and it was stated that no order was made, the court held that the contract was not dissolved. And from hence, and from the circumstance of its being said by the court “That a servant cannot be thus discharged against his own consent” he inferred, that a master has not any such authority by law vested in himself. He also insisted, that an unmarried woman by being with child is not guilty of any crime, or even misdemeanour at common law : that all misdemeanours are indictable, which this is not. That though it may be an offence cognizable in the ecclesiastical courts, yet, after the woman is brought to bed, it is not so in the temporal courts, even by the provisions of any statute, unless the child becomes chargeable. That the pauper was willing to stay, and the whole wages were paid.

[a] Burr. Sett, Cas. 322, 26 & 27 G. 2. 1753. In the same case reported in Sayer 100 under the name of *the King the Inhabitants of Tardeligg*, the judgment of the court is stated as express and positive upon this subject. It was the case of a servant discharged for marrying a woman big with child. And by the court. It is very doubtful, whether, as the power given to a justice of the peace by 5 Eliz. c. 4. par. 5. of discharging a servant, is only given for reasonable cause, marriage is a reasonable cause of discharge ; but, if it be, as the justice of the peace made no order for the discharge of the pauper, the discharge by his master was illegal. And it appears from the report in Burrow, fo. 324, that this point was made at the bar; Mr. Ingram insisting, that marriage made the contract voidable at the election of the master, who might discharge for this cause.

(9) Judgment

Lord Mansfield. The statute of 8 & 9 W. 3, c. 30, is an explanatory law, and must not be carried beyond the words by construction. [a] It declares that there must be a hiring for a year, and a continuance for a year in that Service, to gain a Settlement. With respect to the hiring, in conformity to the nature and object of the act, the court has been critical and exact; but service, from the nature of the thing, admits often of questions upon the circumstances ; as whether the absence was with leave, from sickness, &c. But these questions have always been brought to this point, whether the contract was put an end to within the year ? This cannot be done by the dismissal of the Servant without good and sufficient cause. In [b] *the King v. Castlechurch* there was a discontinuance by agreement, and the contract therefore determined. In Such case the payment of the full wages, which might be mere benevolence could make no difference. The question then is, Is this contract dissolved within the year ? The answer depends upon this ; Has the master done right or wrong in discharging his Servant for this cause ? I think he did not do wrong. The marginal note cited from Viner, whatever degree of authority it may be entitled to, is well warranted in principle, [c]. If the master agrees to the contract’s going on, the overseers, ’tis true, shall not take her away, because she is with child ; but shall the master therefore be bound to keep her in his house? To do so would be contra bonos mores; and in a family, where there are young persons, both scandalous and dangerous. Where a servant’s absence is said to be purged (which is an improper expression) by. receiving him again, the receiving only explains and shews the nature of the absence ; the consequence of it indeed is, that such reception must generally be considered as amounting to a dispensation, and thereby subjects the master to the payment of the whole wages. But the effect of a positive act of the master, in the dismissal of his servant under a criminal charge, shall never be done away by an implication arising from the payment of his whole wages.

[a] Vide the words of Lord Hardvenke. Burr. Sett]. Cas. fo. 69.

[b] Burr. Settl. Cas. 68. Mich. 9 Geo. 2. 1735.

[c] Whether the jurisdiction of justices of the peace extends to servants in general, or is confined to servants in husbandry, or whether masters in general may on reasonable cause, by their own authority, discharge their servants, does not seem to be fully and absolutely settled ; both points at least were questioned in this case. All that seems established by this case is, that a master may, without the intervention of a magistrate, dismiss his servant for moral turpitude even though it be not such, for which the servant may be prosecuted at common law. Whether he may or not for any other species of misconduct or general misbehaviour, though there are authorities to shew that he cannot, seems, as I have said, from this case, not to be fully and absolutely settled. By the general practice throughout kingdom, and particularly in large towns, this power, however warranted, is exercised by masters. Certainly this question has not of late years been brought before the court for argument, except in the case in Burrow and Sayer Tr. 27 G. 2. 1753 ; but at the Sittings at Westminster 1773, it arose before Lord Mansfield. A wet nurse, retained for the year, was discharged by her mistress, who tendered her her wages in proportion to the time she had served : this was refused, and the action brought for the whole year. It was proved on behalf of the defendant, that the plaintiff had been frequently insolent to her mistress, the defendant’s wife ; and was subject to violent fits of passion, in which she had several times frightened, and once awakened, her mistress, while sleeping, before her recovery. It was also proved that these fits of passion much be injurious to her milk ; and it was mulled, that all these circumstances amounted to reasonable cause, and even created a necessity, of discharging the plaintiff. But per Lord Mansfield.

“ No person can be judge in his own cause ; and this first principle could not be meant to be overturned by any law or usage whatsoever.” And though it was stated as the general usage or practice in London, Westminster, and the environs, to dismiss servants with a month’s wages, it was disregarded by the court, and the plaintiff had a verdict for the whole year *Temple v Prescott*, Esq.

But previous to the stat of Eliz this appears to have been the law ; for under the authority of a case in 19 H. 6. cited in Br. Abr. Tit. Laborers, p. 27. it is expressly laid down by him, “ That the master cannot discharge his servant within the time, &c. unless he agrees to it; no more than the servant can depart without the agreement of his master.” And so Dalton in his Justice, Tit. Labourers, c. 58. p. 82. Edit. 1626. “ The master cannot discharge his servant during his term, &c. without the agreement of his servant : and now by the stat. 5 Eliz. 4. it must be for some reasonable cause to be allowed, &c.” And it is so laid down in the resolutions of the judges of affizes 1633 inferred in the later editions of Dalton, Tit. Poor, c. 73. p. 173. Edit. 1747. qu, 22. “ Whether a justice of peace may, discharge a servant, being with child, from her service, allowing that as a reasonable cause that she is thereby made unable to do the service, which otherwise she might have done ; and if he may discharge her, whether that parish shall provide for her, till her delivery, if she cannot provide for herself; and so also, if her time be expired before her delivery, who shall provide for her after her time ended ?”

Resol. (a) “ If a woman, being with child, procure herself to be retained with a master who knoweth nothing thereof, this is a good cause to discharge her from her service. And if she be gotten with child during her service, it is all one. But the master in neither case shall turn away such a servant of his own authority. But if her term be ended, or she lawfully discharged, the master is not bound to provide for her ; but it is a misfortune laid upon the parish, which they must bear, as in other cases of casual impotency.”

[a] The authority of these resolutions seems to have been brought in question principally by their having been insisted upon as the opinion of all the judges. They appear from Dalton's Justice, Tit. Poor, c. 73. p. 231. Edit. 17Z7. to have been unquestionably she opinion of Heath, Ch. J. and from the case of the *K. v. Fairfax*, Comb. 94. Comb. 164. 1 Show. 76. and 3 Mod. 270, 271. S. C. the weight of evidence is in their favour, as having been recognized by all the judges, or at most with a single exception.

By the reference to reasonable cause in the above question, it must, I conceive, have been in the case of a servant in husbandry ; and to this description of servants alone,' this statute has been holden to apply. Mr. De Vall, E. 28 Car. 2. Sir. T. Jones, 47. 3 Keb. 626. 640. 642. S. C. *Ryecrost’s Case* in the *King v. Gately*. M. 7 W. 3. 5 Mod. 140. K. & London, Tr. 3. Ann. 2 Salk. 442. and *K. v. Gregory*, ib. 484. Dr. Burn indeed in Vol. 3. p. 410. Edit. 1785, .has said, generally and without any reference to the statute, that “ if a maid servant shall happen to be with child, the master, if he pleases, may complain to a justice of the peace, that the servant is less able to perform the service ; and the justice (if he sees cause) may discharge her.” But he gives no reason or authority. And, I conceive, that till this or some of the statutes have been considered as extending to every denomination of servants, such authority does not exist in the magistrate. That this statute is in this respect deficient, is dated by Dr. Burn himself, vol. 4. p. 161. and in the same page he inclines to think, that the general words in 20 G. 2. r. 19. Sect. 1. “Servants in husbandry, who shall be hired for one year or longer, or artificers, &c. potters and other labourers employed for any certain time or any other manner, &c.” ought not to be universally extended ; and seems to entertain little doubt but that the construction of the word “Labourers” ought to be restricted to labourers of the class and denomination before enumerated. If then this is to be taken as the true construction of the word “ Labourers” in this act, I conceive that the words, “ for any certain time or in any other manner,” are merely opposed to the words in the preceding branch of the same section “ for one year or longer;” and mean only to describe hirings either for some definite period less than a year, or conditional hirings and hirings for less than a year, under those loose indefinite engagements made under the custom of many of the particular trades enumerated in the act : neither is it easy to forget, why the legislature should by particular act interpose on behalf of agriculture and particular manufactures, if the same remedies were open to all descriptions of persons and in every occupation under the general law. At the same time it may be proper to add, that Dr. Burn in Vol. 1. p. 73. produces adjudications upon this very act with respect to apprentices, viz. *The King v. Collingbourn*, and another case therein cited, M. 12 G. Lord Raymond, 1410. 1 Str. 663. 5. C. which he says, contrary to former refutations, viz. *The K. v. Gately*, M. 7 IV. 3. Carth. 366. 5 Mod. 138. S.C. and *the Q v. Furnese*, Mich. 1713 Cas. of Settlement, No. 29 , seems to extend the equity of the act to other trades not mentioned in the statute ; but these cases appear upon principle to be irreconcileable with the adjudications upon this act with respect to servants ; and seem hardly to consist with a subsequent stat. 20 G. 2. c. 19. Sect. 3. ; which gives a power to two justices to discharge such apprentices, upon whose binding no larger sum than 5l. was paid without taking any notice of this statute ; which regulations, as Dr. Burn upon the same ground of reasoning in Tit. Servants, Vol. 4. p. 163. observes, if this statute had been supposed to extend to them, would have been superfluous and impertinent.”

It is also remarkable, that the very phrase and wording of the stat. 5 Eliz. c. 4. Sect. 5. which if it were holden to extend to servants in general, and were to be read as some writers give it, would determine this point, is dated by different writers and different editors of the statutes in terms directly contradictory. By some editors of the statutes, as Keble, Bill and the executrix of Newcome, King’s printers, and the assigns of Richard and Edward Atkins, Esquires, in 1706, and Serjeant Hawkins, it is given thus ; “No person, which shall retain any servant, shall put away his said servant, unless it be for some reasonable or sufficient cause or matter, or be allowed before one justice.” This reading, if the true one, gives an authority to the master of servants in husbandry at least, to discharge them on sufficient cause ; and in the case of the *King v. the Inhabitants of Hanbury*, Burr. Settl. Cas. fo. 324. it is stated by Mr. Ingram arguendo and not contradicted, that the statute runs in the disjunctive ; on the contrary by other editors, as Rasteil, Pulton, Cay, Pickering, and Ruffhead, and by Mr. Dalton in his Justice, it is thus read : “ unless for some reasonable, Sec. cause to be allowed before one justice.” This reading, in cases of husbandry at lead, confines the power of discharging servants to the magistrate : and the general tenor of the act seems to support this reading ; for Sect. 8. which inflicts a penalty on the master, who puts away his servant, &c. follows in all the editions the reading adopted by the later editors ; setting out in the very words of Sect. 5. the necessity of an allowance by a magistrate to protect the master, and not referring at all to any other branch of that Section, which had it run in the disjunctive, would have been necessary, and therefore would not probably have been done : and the next Section of the statute, which inflicts penalties on the servants that depart from their service. &c. runs in the same manner. The circumstance also of the discharge of apprentices not being left under this act to the discretion of the master, but to the judgment of the magistrate, strongly confirms the last reading. It was thought the more necessary to enlarge upon this point, as the same disagreement is to be found in the common books upon, the subject; Dr. Burn having adopted the last reading, Vol. 4. p. 127. Edit. 1785 ; and Mr. Bolt having followed the other reading in the disjunctive. Extracts of Statutes prefixed to his Decisions upon the Poor Laws p. 11. Edit. 1773.

Willes, Justice. This case differs from that of *the* *King v. the Inhabitants of Richmond*; nor is it like that of *the* *King v. the Inhabitants of Iflip*, in Stra. 423. where the cause of the discharge of the servant by the master was not reasonable. Here, if the master had daughters, it would not be fit that he should keep such a servant ; though I think he could not avail himself of the authority of a magistrate the jurisdiction of the justices being [a] confined to cases in husbandry.

Ashhurst J. of same opinion.

Aston, J. was absent\*

Rule discharged, and. Both orders affirmed\*

[a] Vide *R. v. the Inhabitants of Welford*, Tr. 18 G. 3. 1.778. Post.

(10) Ruling

Maid servant turned away three weeks before the end of the year for being with child, though her whole wages are paid, gains no settlement.

(11) Comment

The court finds that turning a maid away before the end of the year defeats the ‘continuance’ of her contract for a year and thus defeats settlement. Paying her the whole year’s wages does not amount to constructive service for the purpose of settlement.

(12) Type

Restrictive

(1) Case name

*R.* v. *Bray*

(2) Date

10 May 1771

(3) Report

Burr S.C. 682

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Bray

(6) Order sought

Quashing and discharge of recognizance and the rule for restatement of the case at Sessions

(7) Facts

Two Justices removed John Hunt and Elizabeth his Wife from the Parish of Sherfield upon London in the County of Southampton, to Bray in the County of Berks : And the Sessions, upon an Appeal, confirmed their Order; stating the underwritten Particulars, viz.

It appearing upon Oath, That on Thursday before Michaelmas Day 1767, the Pauper John Hunt agreed with John Lee, of the same Parish of Bray, Farmer, as a Carter, “to go into his Service on the Monday following, until Michaelmas 1768, for six Guineas”—

That at the Time of the Agreement, John Lee desired Him “to go into his Service before Monday”—

That John Hunt said “It would not suit Him, as He was then in Service and that John Lee replied, “ He would come into his Service on the said Monday Morning, He would shift till that Time"—

That He went into his Service on the Monday accordingly—

That Michaelmas Day was the Saturday next after that Thursday on which He made the Agreement—

That at the Time of the Agreement, the Pauper was in the Service of John Lewis of South Stoke, under a Contract: which expired on Michaelmas Day 1767 : Which Service He left on the Night of the Michaelmas Day 1767—

That He continued in the Service of John Lee, till the Day before Michaelmas Day 1768 : When John Hunt desired leave of the said John Lee his Master; “to go to see his Relations, before He went to another Service’’—

That his Master deducted One Shilling from his Wages, for that Day ; and paid him the Residue—

That He then went away, and returned no more into the Service of the said John Lee—

That the said John Lee, on the Pauper’s going away, told Him, “that if He quitted the Service before Michaelmas Day, there might be a Dispute about his Settlement;” and desired Him to come back-----

This Court the Sessions is of Opinion, and doth adjudge, “ that the said recited Order ought to be confirmed:” And the same is hereby confirmed accordingly.

(8) Argument

A Motion having been made, on behalf of the Parish of Bray, to quash these Orders; and a Rule thereupon obtained, to shew Cause why they should not be quashed ;

Mr. Impey and Mr. Mansfield shewed Cause, on Tuesday 27th November 1770 ; Alledging that this was a sufficient Hiring and Service, to gain a Settlement in Bray.

Mr. Dunning and Mr. Kerby, on the Contrary, contended on behalf of Bray, that no Settlement was gained there; and that the Orders ought to be quashed. They insisted that there was neither a Hiring for a Year, nor a Service for a Year. First, The Hiring is incomplete : It is manifestly for less than a Year. The Contract did not commence, in point of Obligation, till the Monday after Michaelmas Day: That was the Commencement of the Term for which he was to serve ; which Term was only till the next Michaelmas. Whereas there ought to be a Hiring for a complete Year. This is a Rule the Court will keep strictly and precisely to : They can’t recede from it. The smallest Diminution prevents a Settlement. It is absolutely necessary, that the Original Contract be for a whole Year. This is not an Original Contract for a Year, with leave of Absence for the first Day or two : but tis a Contract to serve for a less Space of Time, than a Year. Under this Head, they cited the Cases of *Coombe* and *West Woodhey*, and that of *Coltsbourn* and *South-Cerney*; The former is reported in 1 Str J. S. 143 ; the latter, in Sessions Cases published in 1750, Vol. I. pa. 174, Case 156. [and v. ante, pa. 158, 160, 434, 440, & 670. in N° 208 ] Secondly, the Service is also imperfect and insufficient: The Quitting it before the End of the Year dissolved the Contract, and is fatal to the Settlement. The Master plainly understood it to be so; and desired Him to come back : but he would not.

Mr. Impey and Mr. Mansfield argued in Support of both the Hiring and the Service. They said, a Day’s Absence, either at the Beginning or End of the Service, would not prevent a Settlement ; especially, if it be for a reasonable Cause, or with Leave. And they cited the *Goodneston* Case, ante, No 85. pa. 251. and that of *Iflip*, in Sir J. S. 423, 424.

Lord Mansfield expressed Himself with much Concern at the Expenses which Parishes are put to, in the Execution of the present System of the Poor Laws; and said, it was best to keep to the Rules that have been laid down and settled in relation to them, 'without nicely entering into the Reasons upon which they have been founded. One of those Rules is, “that there must be a Hiring for a Year.” But here the Justices have not dated the Fact of any Hiring at all: They have only dated Evidence. The Court cannot draw Conclusions from the Evidence. If He was to draw the Conclusion from this Evidence, He said He should clearly think it a hiring for a Year, with a Dispensation of the first

Day. Why, else, should the Master desire Him to go into his Service before Monday? or say, “ that he would shift till that Time?” It appears, that the Master understood it to be a Hiring for a Year. And this appears likewise from his desiring the Pauper to come back, led his Settlement should be disputed, if he quitted the Service before Michaelmas Day. Neither had his Lordship any Doubt about the Leave for the last Day. The Pauper thought he had his Master’s Leave. He allowed a Shilling for it: Which is more than one Day's Wages.

\*It is very near three.

Mr. Justice Aston had no Doubt but that it was meant to be a Hiring for a Year: And so it appears, from all that the Master said. But he concurred with Lord Mansfield in thinking the Case imperfectly and defensively dated. He thought it did not clearly date the Time from whence the Service was to commence; And was of opinion, that it ought to go back to the Sessions, for them to date the Fact as to the Hiring.

It was accordingly sent back to the Sessions to be restated. When it came before the Sessions, (which was upon the 15th January 1771,) The Majority of the Justices then and there present determined not to hear any further Evidence, or to re-examine the Pauper John Hunt, although he attended to be examined as a Witness; and although three of the Justices then on the Bench were not present at the former Sessions, and had not heard any Evidence on the said Appeal. Five of the Justices present were Mr. St. Andrew St. John, Sir Simeon Stuart, Dr. Durnford, Mr. Charles Powlet, and Mr. Swanton: Of whom, Mr. St. Andrew St. John, Sir Simeon Stuart, and Mr. Charles Powlet, were not present at the former sessions. The Counsel for the Appellants (the Parish of Bray) contended, “that the Sessions ought to hear Evidence, before they re-stated the Case.” Whereupon, the Question was then put, by the Clerk of the Peace, to the Justices then on the Bench, “ Whether they would hear any Evidence:” Which was determined in the Negative. Mr. St. John and Mr. Powlet refused to give their opinion as to the Manner of re-stating the Case; because they had not heard the Evidence. Yet, notwithstanding such their Dispute and the Refusal to examine the Pauper, the Sessions did restate the Case, and did adjudge “ that the Order made at the former Sessions should ‘be confirmed’” And the same was confirmed accordingly. Note, the only Difference between the former State of the Case, and this re-stated Case, was, an Addition in the latter, “that the Pauper was hired for a Year.”

Mr. Kerby hereupon moved, on Monday 22d April 1771, that the Case might be again sent down to the Sessions, to be a second Time restated ; because several Justices who were upon the Bench at this second Sessions, but were not present at the first Sessions, had never heard the Evidence at all, and must consequently be incapable of re-stating the Case.

He cited two Cases, which he said were like the present. One of them was Rex v. Page, Mich. 1764, and Hil. 1765, where the Question was “ Whether a Man was Occupier of Tithes, or only ‘Baliff’ . The Sessions were ordered to hear further Evidence; and did so. The other Case was *Rex v. Inhabitants of Hitcham*, Hil. 33 G. 2; where the Sessions did re-examine the Fact, “Whether the Pauper was a single or a married Man, when hired.”

The Court were not satisfied that the Sessions were obliged to hear Evidence over again ; having heard it before. However, they gave Mr. Kerby a Rule upon the Prosecutor, to shew Cause “why the Orders returned with the Certiorari, and also the last re-stated Order should not be sent back to the Sessions, for them to hear Evidence, and to restate the Case”.

Mr. Impey and Mr. Mansfield now shewed Cause. They said, the two Cases cited were not like to the present Case. In both of them, it was necessary to hear the Evidence over again : In the present Case, it was not necessary. The Matter was fully examined into before ; and the Sessions had stated the Evidence, without drawing, the Conclusion : The Court thought the Sessions ought to have drawn the Conclusion ; and sent it back to them for that Purpose only. They have now done so : They have stated a Hiring for a Year. And this Court have now received all the Information they wanted. The Majority of the Justices who constituted the latter Sessions were present at the former: And the Pauper was then fully examined, and strictly cross-examined ; and the Whole of the Evidence was stated: Nothing was wanting but the Conclusion ; which it was not the Province of this Court, but of the Sessions, to draw.

Mr. Dunning and Mr. Kerby answered, that it was sent back to the Sessions, in order to have the Fact ascertained, which were before doubtful. The Pauper was present at this second Sessions ; and might and ought to have been examined in order to clear up the Doubt : There was also another Witness, who attended, and might have been examined. It would then have appeared, that the Pauper was only hired from the Monday after Michaelmas Day and consequently not for a Year. This was in the Nature of a new Trial. The three Justices who had never heard the Examination, ought to have been permitted to hear it : Otherwise, the Opinion of the Majority ought not to bind them. Their Opinions and Reasons might have altered the Opinion of the others. The Chairman Himself was One of those who never heard the Examination : And without hearing it, they could not judge. In the two Cases cited, the Justices re-examined the Matter, and heard further Evidence ; And the Court approved of their Conduct.

(9) Judgment

Lord Mansfield—From the Affidavits that have been produced, it must be taken “ that no other Witness was offered for Examination at the second Sessions, but the Pauper.” I had no Doubt, before, but that it was a Hiring for a Year ; and I wonder any Body should doubt it, upon the Facts then dated. But the first Order of Sessions wanted Form: For the Sessions had only stated the Evidence, without drawing the Conclusion. Both Master and Servant were clear, that at the End of the Year there was only an Absence of One Day : And at the Beginning of the Year, the Pauper had his Master's Leave for being absent the first Day. Both Master and Servant meant it as a Settlement.

“ Whether the Justices at the second Sessions were or were not obliged to hear new Evidence is a Question that must depend upon the Nature of the Case. In Page's Case, new Evidence was

necessary : But in the present Case, it was sent back only to cure an Informality. Here, the Pauper had before given a full Account of the Agreement. Therefore the Justices at this second Sessions did

very right, in not examining Him over again.

The other three Judges concurring,

Lord Mansfield said,

Let the Rule be discharged.

It being now settled “that the Order of Sessions (being thus cured of its Original Informality) ought to be affirmed;” (though I don’t find in the Rule-Book, that it actually was so;)

Mr. Dunning moved, on behalf of the Parish of Bray, “that their Recognizance might be discharged For that they had succeeded in their Objection to the Order of Sessions, which was a bad One till amended. And he cited the before-mentioned Case of the *Inhabitants of Hitcham*, where, upon the amended Order’s being affirmed, the Recognizance was discharged.

Mr. Impey opposed this ; and litigated it for some Time, But

Lord Mansfield declared, in the End, that as the Order of Sessions had been varied, the Parish that had objected to it as it originally stood when it was returned up, ought not to be obliged to pay Costs.

(10) Ruling

Recognizance discharged.

The two Rules were these—

It is ordered that the Rule made on Monday next after three Weeks from Easter, “ that the Prosecutor should shew Cause why the Order returned with the Certiorari, and also the last re-stated Order returned hither by virtue of a Rule of this Court, should not be sent back to the Session, for the Justices there to hear the Evidence again, and re-state the Case,” be now discharged.

On the Motion of Mr. Impey.

It is ordered that the Recognizance of the Defendants in this Cause be discharged.

On the Motion of Mr. Dunning.

(11) Comment

The court finds that absence of one day with the master’s consent does not defeat the settlement. This is consistent with previous cases such as *Eaton* and *Goodnestone*.

(12) Type

Liberal

(1) Case name

*R.* v *Brighthelmston*

(2) Date

24 April 1793

(3) Report

5 T.R. 188

(4) Court

King’s Bench

(5) Parties

The King against The Inhabitants of Brighthelmston

(6) Order sought

Quashing

(7) Facts

Two justices removed J. Humphrey his wife and their two children from Wivelsfield to Brighthelmston ; the sessions confirmed the order, subject to the opinion of this Court on the following case :

J. Humphrey, who was born in the parish of Hellingly, was at the age of 15 years bound apprentice, by indentures regularly executed, to J. Soper of the parish of Alfriston, weaver, to serve from the 3d of November 1774 for seven years. He entered accordingly into the apprenticeship, and served and resided with Soper in Alfriston from the 3d of November 1774 until the 9th of July 1781 ; from that time until the 21st of September following he served and resided by direction of his master in a [189] shop hired by his master in the parish of Brighthelmston. He then returned to and continued to serve and reside with his master in Alfriston until the 22d of October following, when he was sent by his master to the master’s father, James Soper, in the parish of West Grinstead, to serve out his apprenticeship; where he resided until the 3d of November following, when his apprenticeship expired.

(8) Argument

Mingay and Leach, in support of the order of sessions, contended that the pauper’s settlement was in Brighthelmston, where the last forty days’ service was completed, although he afterwards served a month in Alfriston, in which place he had served 40 days under the indentures before he went to Brighthelmston. This precise point was taken for granted by the Court in *R. v. Fremington* (a)1: it was not argued indeed, the question there made being, whether the service in the second parish were with the master’s consent? but the decision of that case must necessarily be wrong if a service under indentures for a period short of 40 days can be connected with a prior service in the same parish, so as to defeat a settlement gained in some third parish in the intermediate time. And in *R. v. St. George Hanover Square* (b), Page, J. in commenting on a case where the apprentice had served 40 days in A., then 40 days with another master in B., and where the question was, whether the second service were with the master’s consent ? said—“The time not being out, if the child come back again after the lending for a year, and continue 40 days with the master, I should very much doubt whether this would not quite turn the matter back again, and make a subsequent settlement in the first master’s parish.” It is true there are modern cases, where the settlement of an hired servant, who served more than 40 days in the whole in different parishes, but not 40 nights successively in any, has been held to be in the parish where he served the last day; *R. v. Lowess* (c), and *R. v. Hulland* (d) but the case of an hired servant is in this respect distinguishable from that of an apprentice. In the former, the service for the last day in the year must be connected with the prior parts of the services in order to complete the settlement. For some time the two cases were similar. By the stat. 3 W. 3, c. 11, s. 8, (whose object was to dispense with notice in certain cases) if any unmarried person be hired into any parish for one year, such service shall be adjudged a good settlement therein, though no [190] notice be delivered and published. On the construction of that Act a service for 40 days conferred a settlement, if there were a hiring for a year. It was held under the same statute that an apprentice, who served 40 days under indentures of apprenticeship, gained a settlement, though the indentures were afterwards cancelled. Thus far the cases resembled each other, because a service for 40 days in either gave a settlement. But an additional qualification was made to the settlement of servants by the 8 and 9 W. 3, c. 30, under which this question arises; for that Act requires that the servant shall continue in the same service for a year; and since the passing of that Act the cases of servants and apprentices fall under different considerations. As therefore since that Act no servant can acquire a settlement by serving 40 days even under a yearly hiring, the operation of that Act is to suspend the settlement until the last day of the year; because until that moment he acquires no settlement. But an apprentice gains a vested settlement by serving 40 days, which cannot be devested but by some other Act which is in itself sufficient to confer a settlement. In this case the pauper first gained a settlement by serving 40 days in Alfriston, and then a second settlement in Brighthelmston by serving 40 days there : but that last settlement cannot be defeated by a subsequent residence for a month in Alfriston, because that residence is not of itself sufficient to give a settlement. It must indeed be admitted that in *R. v. Sandford*(a)2 the Court said there was no difference between the cases of servants and apprentices: but there the attention of the Court was principally directed to another question: Whether the service to the second master were with the consent of the first; and it was not necessary to determine the point now in dispute, because the Court considered all the services (except that with the original master) as not being performed under the indentures, and the pauper was held to be settled in the parish where he served the first 40 days.

(a)1 Burr. S. C. 416.

(b) Ib. 15.

(c) Ib. 825.

(d) Dougl. 656, 3d edit, and Cald. 118.

(a)2 Ante, 1 vol. 281.

Bearcroft and Partington, contra.—It has been held in a variety of cases, that in the case of a servant the forty days’ service need not be successive, but may be coupled together, and that the party is settled where he sleeps the last night, provided there be a service for forty days in the whole in that parish. *R. v. Lowess*; Burr. S25 : *R. v. Hulland*; Doug. 656: Cald. 118; *R. v. Iveston*; Cald. 288: and *R. v. Great Bookham*; [191] ib. 290. In R*. v. Hulland*, Mr. J. Buller said, that a rule which had been contended for at the Bar, namely, that the settlement should be in the place where the first forty days’ service was performed might have been a very proper one, but he thought the contrary rule too clearly established to be departed from. And in *R. v. Sandford* it was held that there was no difference in this respect between the cases of servants and apprentices ; that they were both governed by the same rule; and that a service of an apprentice for a period short of forty days might be coupled with a prior service in the same parish, so as to make up 40 days in the whole, notwithstanding there was an intervening service for 40 days in a third parish. Nor can what was said by the Court in that case upon this point be considered to be extrajudicial; for it was made a point in the case; it was fully argued at the Bar on both sides, and expressly determined by the Court; which circumstances, Buller, J. observed in *R. v. Piddletrenthide* (a), were sufficient to obviate the objection of its being extrajudicial. But even if the case of *R. v. Sandford* be open to that observation, it was expressly decided in *R. v. Cirencester* (b) that an apprentice need not reside 40 days together in the same parish, it being sufficient if there be 40 days’ residence in the whole.

(a) Ante, 3 vol. 772.

(b) 1 Str. 579.

(9) Judgment

Lord Kenyon, Ch.J.—I should be very sorry that any of the decisions on the poor laws should be disturbed by any doubts of mine. But, as this case is sent by the sessions for our opinions, I am bound to deliver mine; wishing, however, that, if this point be already settled, it may never be sent here again on account of my doubts. This case has been ingeniously argued, and an attempt has been made to distinguish the cases of servants from those of apprentices in this respect: but I do not think that that distinction can be supported, but that they both fall within the same rule. In the cases of *R. v. Fremington*, and *R. v. St. George Hanover Square*, it was taken for granted, and strongly intimated by Mr. J. Page in the latter, that the apprentice was settled in the parish where the last 40 days’ service was unbroken and connected. Other cases say that that is not the rule, but that the settlement is to be ascertained by the last day’s service, provided there be 40 days’ service in the whole in that place. As these cases depend on the positive words of an Act of Parliament, I wish that the Act had been referred to as the ground of decision ; and it certainly ought to be our guide, unless the determinations upon the point have varied from the words of the Act. Under the 13 and 14 Car. 2, a residence in a parish for 40 days conferred a settlement: subsequent statutes have superadded other qualifications ; the binding by deed of apprentices ; and the hiring for a year and service for a year by servants ; and unless both those circumstances concur, no settlement is acquired by a residence for 40 days; but if they both concur, the Stat. 13 and 14 Car. 2 appears to be the law, which confers the settlement, namely, the 40 days’ residence. If a servant serve 40 days in one parish, and then serve any time short of 40 days in several different parishes, he is settled in the former, if he complete the year : but if there be a residence for 40 days in several parishes, the settlement floats from place to place, and is at last fixed, as I always understood, where the last 40 days’ service is performed. During my practice at the sessions the residence of 40 days was considered as the criterion : it was then understood that, as a settlement is a durable thing, it could not be defeated but by another complete settlement gained subsequently, and that a subsequent complete residence for 40 days in one parish was necessary to defeat the settlement previously acquired in another. If, therefore, this were res integra, and there were no determination to the contrary, I should have thought that this pauper was settled in Brighthelmston : but the modern cases are certainly against such a decision ; and as they are uniform, I desire that my doubts may not disturb them. With those decisions, therefore, I acquiesce, merely because these subjects should not remain in doubt.

Ashhurst, J.-—It is much to be lamented that there has been so much contrariety in the decisions respecting settlements : it would be better for the public that they were reduced to a regular system; for whatever may have been the foundation of a rule on this subject, if a rule be once established it should be adhered to, unless it be glaringly absurd. Now, according to all the modern authorities, it is not necessary that the 40 days’ residence should be successive, but they may be coupled together so as to make 40 days in the whole. It was established in *R. v. Lowess* that the settlement is shifting until the end of the year, and is at last fixed where the servant sleeps the last night, if there be a residence for 40 days in that parish in the whole. This line has also been adopted in other cases. That, therefore, being the rule according to the general current of the late authorities, and it being immaterial whether the rule were originally established one way or the other, I think it ought to govern the present case.

Buller, J.—When the case of *R. v. Hulland* came before the Court, I did not entirely agree with the opinion laid down by the Court in some of the former cases, and I thought that the rule contended for, by the counsel who argued against that opinion, might have been a proper one : but as the great object in settlement cases is to have a fixed rule, I found myself bound by the opinion of the Court in *R. v. Lowess*. And from that time to the present I have always considered it as a fixed principle, that the pauper is settled in the parish where he sleeps the last night, provided there be 40 days’ residence there in the whole. If so, it is better for the public that we should adhere to that rule than consider first principles.

Grose, J.—It is now too late to resort to that kind of reasoning which would have influenced my opinion if there were no determination upon this subject; because it has been established in several cases that a servant gains a settlement in the parish where he sleeps the last night, if he have resided there forty days in the whole; and it was expressly held in *R. v. Sandford* that there is no distinction in this respect between the case of a servant and an apprentice. I am therefore compelled in this case to say that the rule should be made absolute.

Both orders quashed (a)1.

(a)1 Vide *Rex v. Undermilbeck*, post, 387.

(10) Ruling

If an apprentice live with his master 40 days in A. then 40 days in B. and then one day in A. he is settled in A. [13 East, 454.]

(11) Comment

The court finds that the apprentice gains a settlement in the place where he last slept, provided that he served 40 days there in total (though not necessarily successively) out of at least a year of service under a hiring for a year. The court treats apprentices and servants in the same way.

(12) Type

Liberal

(1) Case name

*R.* v. *Buckland Denham*

(2) Date

24 January 1770

(3) Report

Burr. S.C. 694

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Buckland Denham

(6) Order sought

Quashing

(7) Facts

Two Justices removed Joseph Hibbard, Cloth worker, from, Buckland Denham in Somersetshire, to Mells in the same County. The Sessions, upon Appeal, discharge their Order.

The special Case, as appeared to the Court of Sessions, (so the Order expressly states,) and as agreed on by Henry Hobhouse Esq; Counsel for the Respondents, (though not agreed to by Thomas Hobhouse Esq; Counsel for the Appellants,) is as follows—

The Pauper lived with his Father in Mells (where he was legally settled) until he was about 17 Years of Age ; when his Father hired him to — Adams, a Clothier of Buckland Denham : And an Agreement was made, in writing; and left with the Master.

The Matter being served with a Subpoena “ to produce such Writing” and being examined on Oath, said “that he had searched “ amongst his Papers for it; but could not find it:” But, being a Payer to the Parish-Rates of Buckland Denham, he refused to give Evidence of the Contents of the said Writing. On which, the Contents thereof were, by the Pauper’s Father, proved to be, “ that the “said Adams should teach the Pauper the Business of a Shearman; “and that the Pauper should serve the said Adams as a Shearman; “for five Years from thence next ensuing: for which, he was to “ have, for the first half Year, the weekly Wages of 3*s*. and to be “ advanced Sixpence weekly Wages every succeeding half Year; “and was to find Himself in Meat, Drink, Washing, and Lodging.”

“The Pauper was to work Shearman’s Hours only: Which are “uncertain.”

The Pauper’s Father declared “that though he could not say whether it was or was not Part of the Writing, yet it was understood “ that the Pauper should be at his own Liberty at all other Times.”

The Pauper served his Master, as a Shearman, during the Term aforesaid, according to the said Agreement; working the same Hours as his Matter's other Shearmen did; and hath not since acquired any other Settlement.

The Sessions discharged the Order of the two Justices, with Liberty of making a special Case (to be agreed upon by the Counsel on each Side) for the Opinion of this Court.

(8) Argument

Mr. Hobhouse moved, upon Thursday 14th November 177, on behalf of the Parish of Buckland Denham, to quash this Order of Sessions: For that the Pauper had not gained a Settlement there, by the Hiring and Service here stated.

Mr. Dunning now shewed Cause ; and Mr. Hotchkins argued on the same Side, (viz. on behalf of the Parish of Mells, and in support of the Order of Sessions.) They disputed the Regularity of its coming before this Court: And Mr. Hotchkin said, that the Justices at the Sessions considered it as a general Hiring; and did not mean to make a special Case of it. They have not stated these Particulars as Facts, but only, that such Evidence was- Here is no express Exception of any particular Part of Time, when the Pauper was to be at his own Liberty: Nor does it appear with Precision, that there was any Part of it, when he could not be required to work. They cited the Case of St. Agnes (ante, No. 209. page 671;) and insisted, that the present Case falls within the Determination of it; and that the Sessions have rightly determined “that the Pauper gained a Settlement in Buckland Denham.”

Mr. Serjeant Burland, contra, on behalf of Buckland Denham, answered that the Sessions have stated it as a Fact, “ that the Pauper “worked only the same Hours as his Master’s other Shearmen did:” And the Agreement was, “that he should he at his own Liberty at “ all other Times.” The Case of St. Agnes and Peranzabulo was a Hiring for a Year, and no Exception in the Original Contract, of Holidays and Sundays. The Reason why a Settlement was gained in that Case was because there was no Exception in the original Contract: But here the Exception was in the Original Contract. And this is the Point upon which the Distinction turns. [V. ante, No. 209. pa. 671.]

(9) Judgment

The Court were of Opinion, “ that the Sessions have made “a wrong Determination.” The Judges of this Court (of King's Bench) looked upon this special Case returned up to them by the Sessions, as a State of the Facts; and therefore thought themselves obliged to proceed upon the Facts stated.

Lord Mansfield—It is impossible to say what Evidence the Master might have given. The Sessions proceeded upon the Evidence that was given : And so must we take it, as founded upon the Evidence actually given ; without supporting any that might have been given, but was not given. This is not a good Hiring; because there is an Exception in it, “that the Pauper was to work Shearman’s Hours only, and to be at his own Liberty at all other “Times.” But if the Contract be an absolute Contract for a Year the not working on Sundays or Holidays, if it be the Custom of the Country “not to work on those Days,” ought not to hinder the Gaining of a Settlement; because, otherwise, no such Servant could gain a Settlement in those Countries where such a Custom is established.

Mr. Justice Aston spoke to the same Effect. He thought this Case not to be distinguishable from the Cases of *Wrinton* and *Chewstoke* (which vide ante No. 98. pa. 280.) and *Macclesfield* and *Sutton*, (which vide ante, No 146. pa. 258.) and he repeated what Mr. Justice Denison and Mr. Justice Foster said in the former Case, (which may be seen ante, pa. 282.) and particularly “ that a “ hired Servant is, even on Sundays, to be under the Government “ and Control of his Master.” The Definition taken in the Case of St. Agnes was very nice, He said ; but very right. [See it, ante, pa. 673, at the End of that Case.] Where a Person is hired and it is Part of the Contract, “ that he shall be at his own Liberty “for Part of the Time,” it is rather a Hiring within the Statute of Queen Elizabeth, than within that of King William. And in the Case now before us, the Wages are weekly : Which, though it does not strictly make a Difference, yet it strengthens the Case. There is no Inconvenience in keeping to the Definition that has been laid down. A great Burden might, otherwise, be brought upon Parishes, by Manufacturers hiring great Numbers of Workmen to work only at limited Hours, and have the Rest of their Time at their own Disposal.

(10) Ruling

Per Cur.

Order of Sessions quashed:

Original Order affirmed.

(11) Comment

The court takes the restrictive view that contracts for limited hours (i.e. contract to work a particular trade’s hours, i.e. shearmanship, and allowing the servant to be at liberty for the rest of his time) do not confer a settlement. However, the court carves out an exception for holidays that are the custom of a locality – these will not defeat a settlement.

(12) Type

Restrictive

(1) Case name

*R.* v. *Byker*

(2) Date

1823

(3) Report

2 B. & C. 114

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Byker

(6) Order sought

Quashing

(7) Facts

Upon an appeal against an order of two justices for the county of Durham, for the removal of William Gray and Mary his wife, from the township of Houghton-le-Spring, in the said county of Durham, to the township of of Byker, in the country of Northumberland, the Court of Quarter Sessions at Durham confirmed the order., subject to the opinion of this Court, upon the following case. By an indenture, bearing date the 23d day of October, 1809, and purporting to be made between James Potts, of Byker, in Northumberland, of the one part, and the several persons whose names or marks were thereunto subscribed, of the other part, the said James Potts did hire and retain the several other parties thereto, and they did hire and bind themselves as workmen or servants, to be employed in a certain colliery for the term of a whole year, from the 21st day of January, 1810, and to serve J. P. in the colliery for certain hire or wages in the indenture mentioned; and J. P. did covenant to pay to every driver, for every good and sufficient day’s work, not exceeding fourteen

hours, in single-shaft pits (and 2d. per day when that time was exceeded) 1s. 10d. And the several persons hired and retained by the indenture did covenant with J. P. that each of them would, in their several stations, diligently perform and obey his orders and directions as to the manner of working the colliery, and work the colliery fairly and regularly, and as therein further expressed ; or in default thereof, should forfeit and lose (to be retained out of their wages) the sum of 10s. 6d. for

every act of disobedience; and also the sum of 2s. 6d. per day for lying idle upon each hewer, deputy-craneman, on-setter, sinker, driver, or off-handman, to be deducted as aforesaid ; and for every working day which they or any of them so hired and bound as aforesaid should absent themselves from their employment, or should neglect or refuse to fulfil and execute the whole of the business of an usual day’s work, unless prevented by sickness or some other unavoidable cause, the defaulters should forfeit and lose (to be retained as aforesaid) the sum of 2s. 6d. for every such default, refusal, or neglect; all which said forfeitures and penalties should be deducted and retained

out of the wages or earnings of each offender at the first pay-day next after the offence should be committed. And in the said indenture was contained a proviso, that the indenture should not, nor should any covenant or clause therein contained, be construed to extend to oust or exclude any justices of the peace from any jurisdiction or cognizance which the statute law of this kingdom hath given to such justices over masters and servants; but, on the contrary, that each of the said several parties thereto should be at full liberty, notwithstanding anything therein contained, upon any breach of any of the before-mentioned covenants, to call for and require the aid and assistance of any justice or justices, to compel the performance, or punish any breach of such covenants, as far as by law they could or might if the said indenture had not been made. And it was further covenanted and agreed, that in case the said J. P. should think it necessary, at or about Christmas, 1822, to

repair, alter, or amend any engines or machines of or belonging to the said colliery, or to remove or prevent any obstructions or hindrance which might have happened to the same, or to do any other thing which he the said J. P., his executors, &c. should think needful to be done in the said colliery, or the working of the same, that then it should be lawful for him to stop the workings at all or any of the pits of the colliery for any length of time not exceeding in the whole the space of seven days, without paying or allowing any wages or sums of money to any of the several parties who should thereby be prevented from doing their daily work, save and except such of them as should be employed by him in any other work in and about the colliery, or otherwise, who should be paid or allowed reasonable wages for such his or their other work. This indenture was executed by James Potts and by William Gray, the pauper, together with a great number of other workmen, upon the day it bears date. William Gray was retained and hired by the said indenture as a driver. He was at

that time under age, unmarried, and without any child. At the time when the indenture was executed William Gray was in the service of J. Potts, at the colliery, and he continued in his service as a driver for a whole year, from the 21st of January, 1810, till the 21st January, 1811, and resided during all that year in the township of Byker. There was no evidence, either that the pauper, William Gray, had or had not incurred any penalty or forfeiture during his year’s service under the indenture, or that any deduction had or had not been made from his wages.

(8) Argument

E. Alderson, in support of the order of sessions. The pauper acquired a settlement in Byker. The question here, is very different from *Rex* v. *Gateshead*. In that case there were several clear exceptions out of the contract. Here, there is nothing of that kind. The service is not limited to any stated number of hours in each day. The question must be decided by this principle, that the exception must be in the contract itself. It will not be an exception if by the custom of the country,

or by the custom of a particular trade, or by special leave of the master, the servant works during certain hours only. The clerk in a mercantile house attends during certain hours only ; but if he were hired for a year, the hours of rest would not be an exception out of the contract. There are certain implied exceptions in every contract. *Rex* v. *All Saints, Worcester* (1 B. & A. 322). Here, the number of hours during which the service was to be performed, was merely introduced as a mode of calculating the amount of the wages. The hiring was general, although the mode of calculating the wages was special; and wages were not to be paid for fourteen hours’ service only ; if the service were longer, the pauper was to have higher wages. So, also, the retention of part of the wages in case of negligence, was merely for the purpose of enforcing obedience. And besides the forfeiture for absence, there is a special provision, that the jurisdiction of the magistrates shall not be ousted; and

they might compel the party to serve. That does not restrain the original unqualified hiring for a whole year. The stipulation as to repairing the engine applies to the master alone, and does not give the servant any power to go away. The master might employ him elsewhere. That, therefore, was not an exceptive hiring, and the service under it was sufficient to confer a settlement. *Rex* v. *Edgmond* (3 B. & A. 107), is distinguishable; for in that case there was a clear stipulation for absence, and leave

to serve any other master during severe frost. That, too, was considered as a contract for a certain quantity of work per day. Here, the pauper was compellable to serve for the whole day. There was no liberty for the pauper to go into another service during the repair of the engine; and if the work at the pit was discontinued for more than a week, the master was to pay wages.

Tindal, contra. This was an exceptive contract. The agreement was, that the pauper should receive a certain sum for a day’s work not exceeding fourteen hours. No magistrate could have compelled the pauper to return to work after the expiration of the fourteen hours. Then, according to *Rex* v. *North Nibley* (5 T. R. 21), that did not confer a settlement. It is no answer to say that the hiring was originally fora year or years; for that was the case in *Rex* v. *Edgmond*. In that case Abbott

C.J. says, “I do not see what remedy the master could have had, supposing the pauper to have refused to work after the usual hours.” The stipulation in that case for absence during frost, resembles the provision here for the repair of the engine. In this case, it must be admitted, the pauper has not any express liberty to work elsewhere ; but if the master chose to turn his men off for a time, they would not be bound to remain idle, but might enter into another service; the cases, therefore, are not to be distinguished. *Rex* v. *Gateshead* is also in point for the appellants. In that

case there were certain forfeitures for absence, and at the end of the agreement a proviso, that nothing therein contained should have relation to the jurisdiction of Magistrates in cases of disputes between master and servant. And it was observed by the Court: “The last clause cannot control the express stipulations previously agreed to. That of the servant’s leaving his work is contemplated by the parties themselves, who agree, that for any default he shall pay certain fines or penalties. This case is not to be distinguished from *Rex* v. *Edgmond*.” Neither is the present case distinguishable; and if those cases were well decided, the order of sessions must be quashed.

Cur. adv. vult.

(9) Judgment

The judgment of the Court was, on a subsequent day during the sittings, delivered by

Bayley J. The question in this case was, whether the hiring were conditional or exceptive. Many cases of this description are to be found in the books, between which the distinction is rather subtle, and at first sight not easily discovered. Adverting to them all, the proper distinction appears to be this ; if the bargain be originally made for an entire year, and terms are introduced applicable to a continuance of the relation of master and servant during the whole year, but there is also a provision, that in a given event it shall be competent to the parties to put an end to, or suspend the service for a part of the year, still a settlement is gained if the service is actually performed for a whole year, and neither party avails himself of the condition. A conditional hiring is, for this purpose, the same as an absolute hiring, unless the condition is acted upon. An exceptive hiring is one by which the relation of master and servant will not subsist for the whole year, unless some further arrangement is entered into; and if by the bargain days or hours are excluded from the service, that is an exceptive hiring. It has been contended that here both days and hours are excluded, but we are of a different opinion. The pauper was hired by indenture, and it was agreed that the master should pay for every good day’s work not exceeding fourteen hours, (and 2d. per day when that time was exceeded,) 1s. 10d. It was said that the pauper was entitled to absent himself at the expiration of fourteen hours, and that the master could not compel him to work any longer. We are of opinion, that the time was only mentioned as the measure of the wages; that the contract does not impose any limit upon what might reasonably be required by the master; and that the relation of master and servant continued during the whole twenty-four hours. Upon the forfeitures also, we think that the pauper might not, upon payment of them, be absent if he thought fit, but that they were inserted to enforce regular attendance; and this view of it is confirmed by the clause stipulating that nothing in the contract shall be construed to abridge the power of the magistrates. Another clause has been insisted upon for the appellants; that relating to the repair of the engine. If that was an exception, this was a contract for a year, minus seven days. But we think it a contract for a year, with power to the master to stop the work if he thought fit. Had he done so, the question would have been different; but that is not found. This, therefore, was a bargain for a year with liberty to suspend the service, which constitutes a conditional and not an exceptive hiring. This distinction between conditions and exceptions is consistent with all the decisions. In the cases where a servant having liberty to be absent, has been held not entitled to a settlement, it will be found, either that the servant availed himself of the liberty, or that the time was necessarily excepted out of the original contract. This being a conditional hiring, and the condition not having been acted upon, the pauper gained a settlement in Byker. And the order of sessions was therefore right.

Order confirmed (a).

(10) Ruling

A pauper was by indenture hired for a year as a driver in a colliery, at the wages of 1s. 10d.

for a good day’s work, not exceeding fourteen hours, and 2d. a day more when that time was exceeded; and he was to forfeit 10s. 6d. for every act of disobedience, and 2s. 6d. per day for lying idle (to be deducted out of his wages). There was a proviso, that nothing in the indenture should be construed to oust the jurisdiction of the justices, or to prevent either master or servant from applying to them in case of disputes; and a covenant, that in case the master about Christmas should wish to repair any engine, &c. belonging to the colliery, he might stop the workings for any period not exceeding seven days, without paying any wages to the pauper, unless employed in other work: Held, that this was a conditional, and not an exceptive contract, and that the pauper gained a settlement by serving under it for the whole year.

(11) Comment

The Court declines to find an exceptive hiring in a case of a contract to serve in a coal mine, on the grounds that an agreement to work for a certain number of hours had the purpose of establishing the wages due, not placing a limit on the availability of the worker.

(12) Type

Liberal

(1) Case name

*R.* v. *Caverswall*

(2) Date

1 May 1758

(3) Report

Burr S.C. 461

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Caverswall

(6) Order sought

Quashing

(7) Facts

Mr Morton shewed Cause against quashing the following Orders.

Two Justices removed Samuel Brassington, Mary his Wife, and their five Children, (naming them, and specifying their Ages) from Trentham to Caverswall (both in Staffordshire:) And their Order was confirmed by the Sessions.

The Special Case stated was this-------Samuel Brassington, the Pauper, was hired for a Year, and served a Year in Caverswall. And afterwards was hired for a Year, to Edward Brassington of Trentham, at five Pounds Wages; and served him till within three Weeks of the End of the Year: When, on some Disputes arising betwixt him and his Master, He was, with his own Consent, discharged from his Service; and received All his Wages except what was deducted for the three Weeks.

As soon as he left this his Service, He went to London; and was absent about a Fortnight.

Upon his Return, at Mrs. Brassington's Request, (his Master being then from Home,) he went again into their Service; and within a Week after the Expiration of the first Year, his said Master hired him again for another Year ; And He served Him, in Trentham, for about Six Months of that second Year, and then left him.

The Sessions, being of Opinion “That, as the Pauper had absolutely quitted his Service, before the first Year was expired, the subsequent Service, under the second Hiring, though with the same Master could not be taken in Aid, so as to make up a Year's Service, and give a Settlement, within the Meaning and Intention of the Statute of 8 & 9 W. 3.” confirmed the Order of Removal from Trentham to Caverswall.

(8) Argument

This Court was moved by Mr. Gilbert (on 10th February last) for a Rule to shew Cause “ Why these Orders should not be quashed:” Because here was, as he said, an undoubted regular Hiring for a Year: And the whole of the Service, taken together, was for more than a Year. And he cited 2 Strange 878, Inter Par. of *Hanmer v. Ellesmere*: Where it was adjudged “ that the Service needs not be in the same identical Year.” 2 Raym. 1511, *Rex v. Inhabitants of Aynhoe*, S. P. accord. *Rex v. Inhabitants of Fifehead* *Magdalen*, M. 1737, 11 G. 2. B. R: Where the Servant left his Master’s Service, (leaving a Shirt at his Master’s House) then went to his Father’s House (in the same Parish) before any Discourse about a new Contract: But in about one Hour met his Master, and made a new Agreement for a Year. This was adjudged to be a Continuance of the former Service.

Mr. Morton and Mr. Ashurst, the Counsel for the Orders, upon shewing Cause now, insisted that the Sessions had determined right: For that the former Service, under the first Hiring, was at a total End. They stated the Acts of 3 & 4 W. & M. c. 11. and 8 & 9 W. 3. c. 30. The Case indeed of *Rex v. Inhabitants of Aynhoe*, 2 Ld. Raym. 1511 ; And the Case of *Brightwell and West-hanning*, upon which that Resolution was grounded, (though otherwise not in itself agreeable to Lord Raymond's own Opinion,) they allowed, are Authorities not to be shaken now, “ that a Hiring for a Year, and a Service for a Year, though not under the same Hiring nor within the same Year, shall be construed to gain a Settlement.” But then that must be an uninterrupted Continuance in the same Service. And accordingly that was the Case of a continued uninterrupted Service : But here, the Contract was absolutely determined and dissolved. Tr. 1745, 18 & 19 G. 2. B. R. *Rex v. Inhabitants of Goodnestone*, is rather an Authority that this present Settlement is bad: For there the Court considered the Man, as being all the Time in the Service of his Master, (though he was, with his Master’s Leave, gone to Sea upon the Herring-Fishery.)

They also insisted that this could not possibly be esteemed a Continuance in the same Service, under the Act of Parliament: not Which the Case of *Fifehead*, Tr. 9 G. 2\*. B.R. might very well be construed to be.

Mr. Norton and Mr. Gilbert, the Counsel on the other Side—, for quashing the Orders, cited the same Case of *Goodnestone*, (v. supra,) as a liberal Construction in Favour of Settlements: Where the Servant had Leave to go and did go to the Herring-Fishery, three Weeks before the End of his Year yet the Settlement was holden good.

The Gaining Settlements has been always favoured: And Natural Birthright and Justice demand that the Right of the Subject should not be narrowed. And in those Cases where subsequent Hirings and Services have been taken in Aid, yet there has been a total End of the first Contract as well as there can be said to be in the present Case. However, it is not necessary that the Contract should continue uninterrupted during the whole Time.

The Court have allowed them to be acquired under different Contracts, under different Services, in different Parishes. And a temporary Interruption or even Dissolution of the Contract will not vary the Case: For in many of the adjudged Cases, the first Contract was even totally dissolved, as much as it can be pretended to be in the present Case.

This Man was of Credit enough, to be hired for a Year : And that is the proper Test, of his being a Person likely or not likely to be chargeable. Nay, he is even of Credit enough to be hired for a Second Year, after his first was expired: Which makes it till stronger.

And this Service also is in itself sufficient to gain him a Settlement. The Wife received him again &c. And the Wife’s Act is the Act of the Husband ; and besides, is ratified by him. And it appears that the Servant\* returned to his Service (Note: the words of the order are “went again into their service”), within the first Year.

To the Cases cited in Support of the Orders-------

It was replied-----that in the Fishery-Case, *Rex v. Inhabitants of Goodnestone*-----the Man hired a Deputy to serve for him : And thatwas adjudged to be a Continuance in his Master's Service. Whereashere, his Service was absolutely at an End. And the Words of theAct are “ That he shall continue and abide in the same Service during the Space of one whole Year.” [V. 8 & 9 TV. 3.c. 30. Sect. 4]

(9) Judgment

Lord Mansfield said the Determinations upon these Poor Laws ought to be according to plain common Sense, and with the lead Subtlety possible.

A Hiring for a Year was necessary by the former Act (3&4 W. & M. c.11 Sect. 7): A Service for a Year was added, by the latter (8&9 W. 3 c.30 Sect. 4)

And where the Master gives Leave, it is a Continuance in the same Service : As in that Case of the Herring-Fishery, where a Man with his Master’s Consent, hired one to serve for him. (V. 2 Str. 1232.) So where there has been both a Hiring for a Year, and a Service for a Year, (though the original Hiring was for less than a Year,) and the Service continues; it has not been required that the Hiring for the whole Year should be strictly reckoned from the first Moment of the Service : But it shall be considered as sufficient, that there were both a Hiring for a Year and a Service for a Year.

In the Case of *Fifehead*, the Service was, in my Apprehension, (and so Ld. Ch. Just. Lee and the rest of the Court also took it,) a continued Service.

But here was a Chasm of a Fortnight or three Weeks. And the first Contract was absolutely dissolved; and so continued for a Fortnight or three Weeks. Therefore this last Service can not be connected with the former Part of the Year. For if a Chasm of a Fortnight or three Weeks be not a Discontinuance of the Service, it will be hard to say what is.

Therefore I hold that here was no Settlement gained in Trentham.

Mr. Justice Denison—The true Reason of the liberal Constructions of Services for a Year has been because the same Service continued: Whereas this Case is the very reverse ; it being expressly stated “ That he was discharged.” So that We cannot help taking it to be totally dissolved.

Indeed in the Case of *Aynhoe*, and in that of *Brightwell* and *West-hanning*, the Court (though indeed they were upon a Construction somewhat strained too) determined them upon the Foot of the Service continuing : Whereas this Service was totally at an End.

Therefore He concurred.

Mr. Justice Foster—The Case of *Fifehead* confirms the Principle that the Court now go upon. There they did not consider so small an Interruption as One Hour or thereabouts, as an entire Dissolution of the Contract. But here it is a total Dissolution, and the two Services can not be connected.

Therefore he concurred, and upon the same Principle, “ That it ought to be a continued uninterrupted Service.”

Mr. Justice Wilmot concurred.

The Cases of Hiring for less than a whole Year, and Service (under such Hiring) for Part of a Year; and then a second Hiring for a whole Year, and Service for Part of it, is indeed within the Words of the Act; where the whole Service together amounts to One whole Year. But here is both a Dissolution of the Contract, and also an End of the Service; Both, within the First Year. Whereas in the Cases cited, the Service continued. The Case of *Fifehead* was only, as Lord Ch. Just. Lee expressed it, a Hesitation of the Boy, for an Hour. Therefore it is plain that if Lord Ch. Just. Lee had considered it as a Dissolution of the Contract and an End of the Service, He would have held the Settlement to be bad.

And it is much the best Way to determine these Cases upon the Poor Laws, according to plain and common Sense. For if once We go upon Niceties of Construction, we shall not know where to stop: For one Nicety is made a Foundation for another; and that other for a Third ; and so on, without End.

Therefore He concurred entirely with the Rest of the Court; and upon the same Principle, “ That it ought to be an uninterrupted Continuance of the same Service;” or else, that the second Service could never be connected with the former.

(10) Ruling

Per Cur. unanimously—

Both Orders affirmed.

\* This Principle was also fully settled and established, in *Rex v. Inhabitants of Croscombe* M. 1745, \*9 G- z. B. R. Vol. 1. pa, 256, N° 87.

(11) Comment

The court finds that a discharge of the servant, with his consent, in the third week before the end of the year is a dissolution of the contract rather than a dispensation with service. Following this, the court finds that the servant being received and hired again didn’t purge his absence and that his periods of service can’t be connected for the purposes of settlement. A key factor here seems to be that the mutual consent of the master and servant to dissolve the contract when the servant left. This distinguishes the present case from later cases finding dispensation rather than dissolution, such as *St. Andrews Holborn, St Philip Birmingham, Sutton,* *Grantham* etc, and cases finding that returning to the master’s service purges absence such as *Eaton* and *East Shefford*.

(12) Type

Restrictive

(1) Case name

*R*. v. *Castlechurch*

(2) Date

Michaelmas 1736 (Michaelmas term, 9th year of the rule of King George 2)

(3) Report

Burr S.C. 68

(4) Court

King’s Bench

(5) Parties

Rex v. The Inhabitants of Castlechurch

(6) Order sought

Quashing

(7) Facts

Two Justices made an Order for removing the Pauper from Syford in Staffordshire to Castlechurch: And upon Appeal, the Sessions confirmed that Order.

Case.—The Pauper was hired for a Year to W. B. in Castlechurch; and came to live with his Master there, on the 7th of January 1733, and continued with him till the Day after Christmasday following ; and then went away, by his Master's Consent; and took his Clothes with him, and received his whole Year's Wages. The Sessions held this a good Hiring and Service for a Year and confirmed the Order of the two Justices.

To this Order an Exception was taken, as not being within 8 & 9 W. 3. c. 30. which expressly requires a continuance in the Service during the Space of one whole Year ; and which is an explanatory Act.

In the Case of *Burnham* and *Pawlet*, P. 1 G. 1. the Master and Servant parted by Consent, three Weeks before the End of the Term; and 9s. were deducted out of the Servant’s Wages for that Time: This was holden to be no Settlement.

In the Case of *Rex v. The Inhabitants of Godalming*, H. 12 G. 1. the Servant stayed till about a Week before the End of the Year, and then went away by Consent, and received his whole Year’s Wages: It was argued three Times ; and holden to be no Settlement.

In the Case of *Rex v. The Inhabitants of Preston*, PI. 4 G. 2. the Servant received 2l. 2s. from two of the Parishioners of Ampney, to leave the Service of his Master five or six Days before his Time. And there, though Fraud was objected; yet the Court said they could not take Notice of it, not being found : But they thought it no Settlement in Ampney.

The Consent of the Master cannot affect a third Person (as the Parish is) though it may determine his own Contract.

(8) Argument

A Rule was made to shew Cause why the Orders should not be quashed.

On Wednesday 25th June 1735, Cause was shewn : And the *Case of Rex v. Inhabitants of Eaton*, in last Term, was cited.

Lord Hardwick:.—The Act of 8 & 9 TV. 3. c. 30. is N° 14. an explanatory Law; and therefore, according to the general Rule, is not to be extended by Construction: For the Legislature having thereby made a Construction themselves of a former Act, there would be no End of Constructions, if we were to make Constructions upon Constructions. Now it requires expressly a Continuance in the Service for a whole Year. How then can we abate it ?

In the Case of *Rex v. Inhabitants of Eaton*, the Servant went in the Middle of his Service to see a sick Relation; and returned to his Master again, upon the Master’s Demand : And the Court took it to be an Absence by Licence; because the Master’s subsequent Assent was tantamount to a Licence. But this is so much cut off from the End of the Year. Indeed it was Holiday-time (if that can make any Difference.)

The Counsel for the Orders mentioned the *Case of Rex v. Inhabitants of Iflip*, P. 7 G. 1.\* where the Servant failed of his Servicethirteen Days; six whereof when he was sick; four Days in theMiddle absent without Leave, and three at the End, contrary to theWill of the Master; and there was an Abatement of Wages for thelast three Days Absence at the End of the Year: And yet it washolden a good Settlement.

On this last Day of Trinity Term 1735, the Rule was enlarged.

On Monday 10th November 1735, it came on again.

Lord Hardwicke asked the Counsel for the Orders, If they had any Case of a Settlement being holden good, where the Servant never returned to his Master after his absenting himself, and yet such Service had been holden to be a Service within this Statute. There is a great Deal of Difference, he said, between the two Cases: For, where the Servant returns and the Master receives him, it is always esteemed a Dispensation in the Master, and helps the Discontinuance, and works in the Nature of a Remitter.

To this they answered—That in the Case of *Iflip*, the Servant absented himself the three last Days of the Service ; and that too against the Consent of the Master, who deducted 6d. for such three Days Absence; and the Servant never returned: And yet it was holden a good Settlement.

In the *Cases of Ivinghoe and Solebay*, P. 4 G. 1. [v. Foley 157; Fortescue 317; Cases of Settlements, pa. 83, NQ 109;] *Pepper Harrow* and *Frencham*, M. 1 G. 1. [v. Foley 144; Lucas 293; Fortescue 322; Cases of Settlement, pa. 58, N° 80;] *Rex v. West Horsley*, T 8 G. 1. [Foley 209; Fortefcue 216;] and *Horton and Houghton*, P. 3 G. 1. [Lucas 392; Cases of Settlements, pa. 80, N° 104;] the Interruptions in Point of Time had no Weight with the Court: But the Services were holden to be good.

On the other Side, it was urged by the Counsel for Castlechurch, that neither the Letter or Intention of the Act of 8 & 9 W. 3. Had been complied with; because it plainly appears upon the Face of the Order, that both the Contract and Service determined within the Year. The four Cases last cited, they said, turned upon the particular Contract between the Master and Servant: None of them come up to the present Case; nor do they seem to be relied on, as applicable to the present Question. The Case of *Iflip* is the only Case the other Side seem to rely on. But that Case differs from this: For it was in that Case holden by Lord Chief Justice Pratt? “That where the Master plainly intimates that he intends to part with his Servant at the End of the Year, it was but reasonable the Servant should look out for another Service.” And in some Countries, where Servants are customarily hired at Statute-Fairs, it may be necessary for the Servant, if the Master will not give him Leave for that Purpose, to go the Statute-place without his Leave to seek out for himself;, though he should absent himself from his Service, on that Occasion, three or four Days before the Expiration of the Year.

To carry the Consent of Masters in these Cases so very far as is attempted, would really establish the Mischief under the 4 & 5 W. & M. which the 8 & 9 W. 3. was designed to remedy. For the Master may consent to the Absence of the Servant so far, that there may be only forty. Days of real Service left.

(9) Judgment

Lord Hardwicke.—Unless the Court be bound by the Cases already adjudged, I should think that this is not a good Settlement.

By 8 & 9 W. 3. which is an explanatory and declaratory Law with negative Words, it is enacted that “no such Persons so hired as aforesaid shall gain a Settlement without continuing in the same Service during a whole Year;” And we ought to take Care that we do not carry the Equity of Construction so far as to overturn the Meaning and Intention of the Act. It is a Rule with Respect to explanatory Acts, not to carry equitable Constructions too far, and beyond what the Words will justify.

The Legislature has in this Act expressly determined the Time of the Service: They require that it shall “ continue, during the “ Space of one whole Year.”

In the Cases cited, it does appear that the Contract was determined. But, in this Case, the Facts are stated so as that, upon the whole, the Contract was determined, and the Pauper ceased to be a Servant to the Master. If so, he could not be said to continue in the Service during the twelve Days mentioned in the Order : .And: consequently, it was not a Service for a whole Year. The Case of *Iflip* is not an Authority, in the present Case; because there was no Determination of the Contract; it being stated in the Order “ that the Master refused to give the Servant Leave to go to the Statute; and that the Servant declared he would serve out his Year, and refused to allow for the last three Days,” And the Reason given by Lord Ch. Just. Pratt for the Opinion in that Case, is a very good Reason; and shews that the Contract was not dissolved before the End of the Year, and that the Departure of the Servant to seek out a new Service was not in the Servant a Desertion of his Service.

Fraud infects every Thing in these Cases : But where there appears no Fraud, We can not intend it. If there be any Fraud in this Case, it seems to be in the Master, in paying the Servant his Wages even for his absence.

Too great a Latitude in these Cases may be very dangerous; because there will be no knowing where to stop.

I think, upon the whole, that this is no good Settlement; and that the Orders ought to be quashed.

The Reasons upon which the Court has gone, in the Cases cited, are not inconsistent with either the Letter or Intent of the Act of Parliament; because there the Contract subsisted, no Act having been done to determine it.

Mr. J. Page was of the same Opinion.

Mr. J. Probyn was also of the fame Opinion. The Consent of the Master and Servant can’t alter the express Law.

The Case of *Islip* is not at all in Point. There, the Contract was not dissolved before the End of the Year.

Mr. J. Lee. —This is a very clear Case. It appears, the Servant went from his Service before the Year was out, and that the Master consented to it: Which is a plain Determination of the Service within the Year. No Fraud appears in the Case: The paying the Wages for the Time of the Servant’s Absence might be an Act of Benevolence in the Master.

The Case of *Islip* differs from this Case; because there was no Determination of the Service within the Year,

(10) Ruling

Per Cur.

Both Orders quashed.

V. Post, NQ . *Rex v. Inhabitants of Hanbury*, 7r. 26 & 27

4?. 2. Thursday 28th June 1753.)

(11) Comment

The court takes the restrictive view that absence for a few days at the end of the year, with the master’s consent, dissolves the contract and prevents settlement. The payment of the whole year’s wages is taken to be a mere act of benevolence on the master’s part and not ‘constructive service’. This early decision contrasts with the later cases of *Goodnestone, Richmond,* and *Potter Heigham* which all state that absence with the master’s consent does not vitiate a settlement and with the first two cases on the point that payment of the full year’s wages will be taken as constructive service (a dispensation of service). It also contrasts with later cases such as *St. Philip Birmingham*, *Richmond, Bartholomew,* and *St Mary Lambeth* which all accept that absence at the end of the year can be construed as constructive service.

(12) Type

Restrictive

(1) Case name

*R.* v. *Chadderton*

(2) Date

12 November 1801

(3) Report

(4) Court

King’s Bench

(5) Parties

The King against The Inhabitants of Chadderton

(6) Order sought

Quashing

(7) Facts

Two justices by an order removed John Buckley, his wife and five children by name, from the township of Little Bolton to the township of Chadderton, both in the county of Lancaster. The sessions, on appeal, confirmed the order, subject to the opinion of this Court on the following case :

The respondents proved that the pauper John Buckley, when he buried his first wife, applied to and received relief from the overseers of Chadderton ; and that the pauper’s mother, being with child of a bastard some few years after his father’s death, went from another township to Chadderton to lie in there, and “as the pauper had heard from his mother,” who has been dead some years, she was relieved there by Chadderton. This hearsay evidence was objected to by the counsel for Chadderton; but it was received : and the removants did not give any other evidence of a settlement in Chadderton. The sessions, conceiving the above sufficient evidence of a settlement in Chadderton, directed the appellants to go into their case; and the appellants proved that when the pauper was about 12 years of age, his mother and stepfather made a verbal agreement with James Platt of Great Bolton, cotton weaver, that the pauper, who was then able to weave a little, should weave for him three years. The stepfather and mother were to have half the earnings of his weaving, and Platt the other half. Platt was to learn him to weave and find him looms, but the stepfather and mother were to find him in everything else. He served out the three years with Platt, during which time he slept in Great Bolton. The Sundays he passed with his mother, and the rest of his time at Platt’s; but this was not mentioned in the agreement.

(8) Argument

When this case was called on in the paper for argument,

Lord Kenyon C.J. said, that whatever doubt might be raised as to the settlement in Great Bolton, concerning which he thought the sessions should have found the fact one way or the other, whether the pauper contracted to serve as an apprentice, or only as a hired servant, in the former of which cases no settlement could be gained, as the binding was not by deed, which Lord Holt says (a)1 is necessary in the case of an apprentice; yet at any rate the orders could not be supported, there being no evidence of any settlement in Chadderton, to which the removal was made; the bare fact of the paupers’ having been relieved there being no proof of it, as they might have been relieved as casual poor.

Holroyd and Cross, in support of the orders, observed, that the fact of the paupers’ having received relief from the overseers of Chadderton was at least prima facie evidence of their being there settled, so as to call upon them to account for it by shewing that such relief was given to the paupers as casual poor, or under a misapprehension of their being settled there; nothing of which was stated in the case : and therefore the fact must be taken as equivalent to an acknowledgment by Chadderton that the paupers were their parishioners at the time.

[29] Lord Kenyon C.J. The hearsay from the pauper’s mother is no evidence at all of any fact (a)2; and then the only fact applicable to the settlement in Chadderton is, that when the pauper buried his first wife he received relief there from the overseers : but the bare fact of his receiving such relief is no evidence of a settlement, for the reason I before gave. If the paupers were in want of relief while they were in Chadderton, the overseers were bound to give it, whether the paupers were settled there or elsewhere. And by the last Act of Parliament (b) they could not have been removed till they were actually chargeable.

The respondents’ counsel then desired that the case might be sent back to the sessions to be reheard, as there was other evidence of a settlement in Chadderton ; and the subsequent settlement was what was understood to be principally contested.

Topping contra said, that both the settlements were contested ; and the respondents ought to have come prepared with all their evidence on the trial of the appeal. But

(a)1 *R. v. Cullingwood*, 2 Ld. Raym. 1117.

(a)2 Vide post, *R. v. Ferryfrystone*, and *R. v. Abergevilly*.

(9) Judgment

Lord Kenyon C.J. said, that as the respondents might have given other evidence of the settlement in Chadderton, if the sessions had not been satisfied with this, there seemed no impropriety in sending the case back to be reheard; and he would recommend to the magistrates to determine the fact in what character the pauper contracted to serve his master, which would decide the principal question one way or other, and make it unnecessary to send the case back again for the opinion of this Court.

Per Curiam. The case remitted to the sessions.

(10) Ruling

Where a case from the sessions only stated the bare fact of a pauper’s having received relief from the respondent’s parish, it was holden that this was not even prima facie evidence of a settlement there, since he might have been relieved as casual poor, which the overseers were bound to do if wanted, whether the pauper were settled there or not. Hearsay evidence of a fact is not to be received upon a question of settlement, tho’ the party who gave the information respecting her own settlement were dead.

(11) Comment

The mere fact that a pauper received relief from a parish does not confer settlement, since parishes are obliged to relieve casual poor.

(12) Type

Restrictive

(1) Case name

*R*. v. *Charles*

(2) Date

4 July 1772

(3) Report

Burr S.C. 706

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Charles

(6) Order sought

Quashing

(7) Facts

Two Justices removed John Hodge from the Parish of Knowstone in the County of Devon to the Parish of Charles in the same County : And the Sessions confirmed their Order ; stating the following Facts—

The Pauper John Hodge was bound by the Parish of Knowstone to John Fisher, for an Estate which he rented in that Parish, of John Loosemore ; who covenanted with said Fisher, “ that if a second Apprentice was bound to Him for that Estate” (which second Apprentice the said John Hodge was,) “ He the said John Loosemore and his Representatives would discharge the said John Fisher from any Expense that he might incur thereby.” The said John Hodge being bound to the said John Fisher, He the said Fisher applied to the Widow and Representative of said Loosemore ; who took the Pauper, and received the Parish-money with Him ; and went with the Pauper into the Parish of Roseash),where She then lived, and where He continued with Her about two or three Years ; when the said Mrs. Loosemore intermarried with John Slader of the Parish of Charles; and there the Apprentice resided with Her for about three Years; when the Boy became a Cripple, by losing both his Feet : Whereupon, said Slader and his Wife, about two Months before the Apprenticeship was discharged, sent the Apprentice to said Fisher, his Original Master (who knew of his being a Cripple,) and insisted on his receiving the Pauper; which Fisher refused, until She promised to pay Him all the Expense he should be at in taking Care of the Pauper; And then Fisher; put the Pauper to live with the Pauper's Grandmother, in the said Parish of Knowstone, at 18 d. per Week ; where he resided seven Weeks; when he was removed, having been first discharged by the Court of General Quarter Sessions from his Apprenticeship, after a Residence of more than forty Day's of the said seven Weeks; for which, Fisher paid Her accordingly, and also two Shillings for dressing his Wounds ; Of which, he hath since received 10s. 6d. of Slader. and been promised the Remainder.

This Court [the Quarter Sessions] being of Opinion that the “Pauper did not gain a Settlement by such Residence of seven Weeks in the Parish of Knowstone” doth therefore confirm the said Order, &c.

(8) Argument

Mr. Hawtrey moved, on Friday 15th May 1772, to quash Both these Orders : For that the Pauper gained a Settlement in the Parish of Charles, by his last forty Days Residence there.

Serjeant Glynn and Mr. Heath now shewed Cause. Mr. Heath argued, that Fisher's Application to Mrs. Loosemore “to take the Apprentice,” and her taking him, operated as an Assignment of the Apprentice ; And that the first Master was thereby discharged of Him. But their main Argument was, that this is not such a Residence of the Apprentice in Knowstone as could gain Him a Settlement there; It was only a casual, accidental, temporary Residence; and like residing in an Hospital, for Cure. They cited, to this Purpose, the Case of *Alton and Elvetham*, ante, pa. 418. NJ 134. and reasoned from what Lord Mansfield said in that Case ; (which see, ante, pa. 421. to 424.) They insisted, that actual Service was necessary, in order to an Apprentice’s gaining a Settlement. And therefore this Apprentice’s legal Settlement was in Charles, where he performed the Service of his Apprenticeship during the Space of three Years; and not in Knowstone, where he lay ill, as a Cripple, and was totally incapable of performing any Service at all. In this Case, it appears, negatively, that he neither did nor could perform any Service in Knowstone. He was received by Fisher as being incapable of serving Him ; and was accordingly maintained upon Charity only, in Charles, without any Regard or Relation to the Contract of Apprenticeship, which he was altogether incapable of performing, and was soon after discharged from. Therefore the Case is just the same as if he had never returned to his Master at all.

Mr. Hawtrey, contra, on behalf of the Parish of Charles, observed, as to the 1st Objection, that here was no Assignment: It was only a Performance of Mr. Loosemore's Covenant, by his Widow and Representative. And as to the 2d Point, The Apprentice gained a Settlement in Knowstone by residing there the last forty Days. The Act of 3 & 4 W. & M, c, 11. § 8. says only that if any Person shall be bound an Apprentice by Indenture, and inhabit in any “Town or Parish:” It says Nothing about Service or performing any thing.' Besides, might not the Matter dispense with the Performance of Service ? The Cases about Casual Residence don’t apply to this Case. Here, the Master was obliged to receive the Apprentice again : And Knowstone was the Parish where the Original Binding was.

(9) Judgment

Lord Mansfield being gone,

Mr. Justice Aston stopped Serjeant Eurland, who was beginning to speak on the same Side with Mr. Hawtrey ; It being a clear Case, he said, in favour of the Parish of Charles,

The Boy was bound to Fisher in Knowstone; And the Original Indenture continued : It was never discharged by any thing that is here stated to have passed between Fisher and Mr. Loosemore, the Widow and Representative of "John Loosemore who had covenanted to discharge Fisher from the Expense that he might incur by having a second Apprentice bound to Him for the Estate in Knowstone which he rented of Loosemore.

The Boy resided about three Years in the Parish of Charles; then became a Cripple ; was lent back to Fisher at Knowstone ; received by Him ; and put, by Him, to live with his Grandmother in Knowstone; and resided there above forty Days. The Performance of actual Service is not the Thing material: It is the Residence, the Inhabitancy of an Apprentice, in a Town or Parish for forty Days, that gains the Settlement. And this Residence here stated can not be deemed a casual accidental Residence; and therefore is not to be compared to the Cases under that Head. I know, it has been said that the Benefit the Parish has received from the Labour of the Pauper is the Reason of gaining a Settlement in it.” But that is not the true Reason : It is the Residence or Inhabitancy for the last forty Days, that gains the Settlement.

The other Two Judges concurred.

(10) Ruling

Both Orders quashed\*.

(11) Comment

The court finds that inhabitancy in a parish for forty days or more due to illness will gain the servant a settlement, even if no actual service was performed in that parish. This contrasts with the cases of *Titchfield* and *Sutton* which both held that inhabitancy due to sickness will not confer a settlement. A possible factor differentiating this case from the other two are that here the original apprenticeship contract was in Knowstone where the servant resided when injured. In terms of policy, here the court states that it accepts constructive service and that it is residency rather than the benefit of the servant’s labour that grounds a settlement.

(12) Type

Liberal

(1) Case name

*R.* v. *Chertsey*

(2) Date

1787

(3) Report

2 Term Reports 37

(4) Court

Court of King’s Bench

(5) Parties

The King against The Inhabitants of Chertsey

(6) Order sought

Quashing

(7) Facts

Two justices by an order removed the pauper Jane Filly from Thorpe to Chertsey, both in the county of Surry. This order being appealed against to the sessions, was confirmed, subject to the opinion of this Court on the following case : The pauper was hired for a year at the wages of 41. and served out that year with Mr. Shirley in the parish of Chertsey. About three weeks before that service expired, her father, who was a day-labourer, in consequence of his wife’s death, came to the pauper and applied to her to come and live with him to do the offices of a servant for a year in the parish of Thorpe, and offered her her board and lodging, and such profits as she could make by keeping fowls, and what she could earn by her own labour ; and if that did not produce as much as she got at Mr. Shirley’s, her father was to make up the difference. She agreed to come on those terms, and came accordingly ; and lived with him in pursuance of that agreement in the parish of Thorpe for a year and upwards, during which time she got about one guinea and a half by keeping fowls, and two guineas and a half by going out charing, and taking in plain work; and at the end of the year her father gave her ten shillings, as an additional recompence for her having gone out with him to reap in the harvest month.

(8) Argument

Silvester and Shepherd, in support of the order of sessions, admitted that a father might hire a child as a yearly servant so as to enable the child by the service to gain a settlement, but contended that in the present case there was not a sufficient hiring of, and service by the pauper in the parish of Thorpe. It appears in the special case, that the pauper’s father on his wife’s death applied to the pauper to come and live with him, but she was not hired to supply the place of any other servant; and it appears from the facts stated, that the daughter was not under the control of her father as a servant, for she was expressly permitted to earn what she could by her own labour by serving whom she pleased. The pauper therefore could not possibly be considered as the servant of the father within any of the adjudged cases upon this subject, for she was not under the command and control of her master during the whole year; the contract was not binding, for she was at liberty to work for whom she pleased, the father was not entitled to her earnings, nor could he compel her to perform his work. Now if the pauper were not hired as a servant, her living with and serving her father will not give her a settlement in Thorpe. This point was determined between the parishes of Gregory Stoke and Pittminster. If the case between the parishes of Jessop and Missenden (b) be cited on the other side, it is to be observed that that case only determined that where there was a hiring, the circumstance of its being a hiring by a father could make no difference: there the hiring was stated as a fact; but here no such fact appears.

Palmer, contra, was stopped by the Court.

(9) Judgment

Ashhurst, J. All that is necessary to give a settlement under these statutes is, that there should be a hiring for a year and a service for a year. As to the hiring for a year, it is only necessary to read the words of the case to determine it; it states that the pauper’s father applied to her to come and live with him to do the offices of a servant for a year on certain terms, which she agreed to, and that she came accordingly and lived with him, in pursuance of that agreement, for a year. The objection is, that this is no hiring, because the sessions have not stated that the pauper lived as an hired servant; hut there is no occasion for the sessions to state that expressly, if it sufficiently appear from the terms of the contract: now in the present case that does appear. Then it was objected that the contract was not binding: but that is not so; she was hired to do all the offices of a servant for a year. The terms of the contract are not such as would enable the pauper absolutely to leave her father’s service, but only to do particular work for her own benefit: she was first bound to perform all his work, and consistently with that she was at liberty to gain as much as she could earn by her own labour. This therefore was a good hiring for a year. And as to the service, the case states that the pauper lived with her father in pursuance of the agreement for a year. This is by no means like the Pittminster case ; for there was no hiring at all for any time.

Grose, J. In order to gain a settlement by hiring and service, there must undoubtedly be a hiring for a year and a service for a year. But in the hiring it is not necessary to use technical terms : the word “ hiring ” need not be stated on the case ; it is sufficient if it appear that the servant agreed to serve and the master to pay for that service for a year. Then the circumstance of the father being the master of his own child will not vary the case. This was not a hiring generally by the father as long as he lived, but a hiring for a year expressly. The father offered the pauper certain terms, which it is stated she agreed to accept; then there was a contract between them for the hiring. According to the terms of this contract, she was not at liberty to desert her father’s service; she was only permitted to do what other work she could consistently with her father’s service; which she was first bound to perform. She did every thing which related to her father’s service; and her earning besides that will not prevent its being considered as a hiring for a year. And as to the service, it is expressly stated that the pauper lived with her father for a year in pursuance of that agreement. Therefore the rule must be made absolute for

Quashing both the orders.

(10) Ruling

An agreement by a daughter to live with her father, and to do the offices of a servant for a year, for her board and lodging and other perquisites, is a good hiring for a year, though the daughter is to be at liberty to earn what she can by her labour; and a service under it will be sufficient to gain a settlement.

(11) Comment

The court flexibly interprets the concept of the contract of service to include an oral and informal arrangement for a daughter to serve in the household of her father. The daughter was not under the control of her father and could take on additional work. The court held that this conferred a settlement: an agreement to serve for a year and an agreement to pay wages in return are required. The court’s emphasis on the contract is noteworthy.

(12) Type

Liberal

(1) Case name

*R.* v. *Child Okeford*

(2) Date

9 June 1832

(3) Report

3 B. & Ad. 810

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Child Okeford

(6) Order sought

Quashing

(7) Facts

Upon appeal against an order of two justices, whereby E. Miller was removed from the parish of Child Okeford to the parish of Marnhull, both in the county of Dorset; the sessions quashed the order, subject to the opinion of this Court on the following case : On the 17th of April 1825 the pauper was hired to serve Mr. J. Rossiter, in Child Okeford, as a servant in husbandry at five guineas a year. He served him under that agreement till the 11th of April 1826, when the pauper made a fresh agreement with his master at 5s. a week as an out-door servant, and served him under this second agreement for upwards of two [810] months. The service was never discontinued, nor was the nature of it changed, except as to the pauper becoming an out-door servant, from the 11th of April 1826. The pauper resided from the 17th of April 1825 till the 3rd of May following in the parish of Child Okeford. On the 3d of May 1825 he accompanied his master to and resided in that of Marnbull till the 6th of April 1826, when he returned with his master to Child Okeford, and resided there during the remainder of his service, under the first agreement, from the 6th to the 11th of April, and under the second agreement, upwards of two months.

(8) Argument

Gambier and Lucena in support of the order of sessions. It is not necessary for the purpose of gaining a settlement by hiring and service, that the whole forty days’ residence should be under the yearly hiring. It is sufficient if part be under that hiring and part under a hiring for a less period. The authorities establish that if the pauper has the character of a yearly servant for any part of the forty days, however short, he gains a settlement. *Rex* v. *Apethorpe* (2 B. & C. 892), shews only that some

part of the service must be under a yearly hiring, and *Rex* v. *Adson* (5 T. R. 98), decides that a settlement may be gained by serving a year under different hirings, provided one of those hirings be for a year, though there be less than forty days’ service under that hiring.

Lord Tenterden C.J. There all but ten days’ service was antecedent to the yearly hiring.

It is not necessary here to go the whole length of that case. In *Rex* v. *Brightwell* (1 Sess. Ca. 92. 10 Mod. 287), Parker C.J. says, “ If a servant is hired during a whole year from week to week, and is then hired for a year, and serves one week, this is no settlement for the want of continuance in the service for forty days after the second hiring.” Here there has been a residence of forty days subsequent to the yearly hiring. The Act 13 & 14 Car. 2, c. 12, s. 1, first required a residence of forty days in the capacity of a servant in order to give a settlement. The statute 1 Jac. 2, c. 17, s. 3, enacted, that the forty days’ continuance in a parish intended by the former Act to make a settlement, should be accounted from the delivery of a notice as there specified ; and the 3 W. & M. c. 11, s. 7, substi-

tuted a yearly hiring for the notice. Then as it was necessary that the forty days’ continuance in a parish should be subsequent to the notice, it may also be necessary that they should be subsequent to the yearly hiring, but they need not be under it; and that is consistent with the construction adopted by the Court in *Rex* v. *Apethorpe* (2 B. & C. 892). The words in the 8 & 9 W. 3, c. 30, s. 4, “continue and abide in the same service during the space of one whole year,” have been held, in several cases, to mean with the same master or some one in privity with him. The three requisites,

hiring for a year, service for a year, and forty days’ continuance, are independent of each other, but the place of residence must be that into which the pauper comes under the yearly hiring. Here the pauper resided forty days in Child Okeford after the yearly hiring. If it is necessary that the whole time should be under the yearly hiring, the case of *Rex* v. *Fillongley* (1 B. & A. 319), cannot be supported. There it was assumed that a residence for three or four days under a yearly hiring was

sufficient.

Erie and Barstow contra. No settlement was gained, because the forty days’ residence was not completed within the compass of the same year with the hiring for a year and service for a year. In *Rex* v. *Denham* (1 M. & S. 222), it was said by Lord Ellenborough that the Legislature by requiring a hiring for a year and a continuance and abiding in the same service during the space of one whole year, seem to have contemplated something that was to be complete within that period, and it was

decided that no settlement could be gained unless there was a residence of forty days within the compass of a single year. In *Rex* v. *Apethorpe* (2 B. & C. 892), it was merely decided that some part of the residence must be under the yearly hiring, and in *Rex* v. *Findon* (4 B. & C. 91), that the whole forty days need not be under the last yearly hiring; but in the latter case, the whole forty days were comprised within a year of service, (from the 2d of April 1812 to the 2d of April 1813,) in which year, namely in November 1812, the last yearly hiring took place. This is consistent with the rule that the year’s service need not all be under the yearly hiring, and which allows the forty days to be taken from any part of that year in which all the requisites of the statute are complied with. In the present case, the attempt is made to take one year for the service, beginning before the yearly hiring, and another year for the forty days’ residence, beginning after the yearly hiring. But if the forty days’ residence may be completed in a different year from that in which the year’s service is completed, may not the residence be so completed, although in such different year the party is in a different service, or in no service at all? The principle of the former statutes required forty days’

continuous residence after notice, as the common law required forty days’ continuous abiding to make a guest a resiant within the jurisdiction of a town and view of frankpledge. When the requisites of a settlement were extended over a year, the forty days were no longer required to be continuous from a given event, but might be taken from any part of the year in which the party was performing that service which dispenses with notice. If the settlement in the present case is established, the principle requiring a continuance for forty days will be further infringed without reason, and with increase of complexity; because a case may be put of a party residing in several parishes for thirty-nine days during the year of service, and completing the forty days in each of them after the end of that year, in which case his settlement would be varying from time to time by a mere residence for a night.

(9) Judgment

Lord Tenterden C.J. The authorities establish that, in order to gain a settlement by hiring and service, some part of the forty days’ residence must be while the party is serving under a yearly contract. It is now sought to add another term to that, namely, that the whole forty days’ residence shall be within a year from the time of the yearly hiring. *Rex* v. *Denham* (1 M. & S. 221), does not go so far. Nothing was said in that case as to the time when the computation of the year was to commence. Lord Ellenborough there dwells upon the inconvenience which would result from picking out a few days’ service in several years, and thus extending the enquiry in a case of settlement, through an unreasonable period of time; but all that is decided there is, that to give a settlement by hiring and service, there should be forty days’ residence within the compass of one year. It is not said, that that year is to be computed from the time of making the yearly contract. There is no ground for holding that it must be so reckoned.

Littledale J. It is sufficient if the forty days’ residence be within the compass of a year; it need not be within one year from the yearly hiring.

Parke J., having been present only during a part of the argument, declined giving

any opinion.

Taunton J. concurred.

Order of sessions confirmed.

(10) Ruling

To gain a settlement by hiring and service, the whole forty days residence need not be within the compass of a year from the time of the yearly hiring. A servant was hired for a year on the 17th of April 1825, and served in parish A. till the 11th of April 1826, when he made a fresh agreement with

his master as a weekly servant, and continued to serve under that agreement for upwards of two months. He resided in parish A. from the 17th of April to the 3d of May 1825, when he accompanied his master to and resided in another parish till the 6th of April 1826. He then returned with his master to parish A., and resided there during the remainder of his service, viz. under the first agreement from the 6th to the 11th of April, and under the second for two months : Held, that he gained a settlement in A.

(11) Comment

The Court interprets the need for the 40 days’ residence flexibly, holding that they don’t need to be precisely coterminous with the period of one year from the hiring.

(12) Type

Liberal

(1) Case name

*R.* v. *Christchurch*

(2) Date

3 May 1760

(3) Report

Burr S.C. 494

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Christchurch

(6) Order sought

Quashing

(7) Facts

Two Justices made an Order for the Removal of Elizabeth Maxey Spinster, from Christchurch to St. Matthew's Bethnall Green, (both in the County of Middlesex :) And the Sessions, upon an Appeal, discharged the said Order; Stating the Case specially.

The special Case stated-------On the 24th of August 1757, the said Elizabeth Maxey was hired into the Service of Robert Gilman of Christchurch, for a Year; and continued in such Service there, from that Day till the 7th of August then next following; When She was frightened into Fits, and thereby rendered incapable of doing any Service. That her Master being taken very ill, and being disturbed by the said Elizabeth Maxey's Fits, her Mistress desired the Sister of the said Elizabeth Maxey to go with the said Elizabeth Maxey to one Mr. Lemonier's in the said Parish of St. Matthew Bethnall Green (where the said Elizabeth Maxey's said Sister then lived as a Servant,) and to request Mrs. Lemonier to receive her into their House, that she might be there under the Care of her Sister ; But if the said Mr. Lemonier refused to admit her, she was then to bring the said Elizabeth Maxey back to her said Master’s House again. That Mr. Lemonier accordingly received Her; and She resided there about Five Days; and then She was taken into the Hospital. That the Day after the said Elizabeth Maxey had been received into Mr. Lemonier's House, She returned to her said Master’s House, to fetch away her Cloaths: And her Mistress gave her two Shillings; which, with what She had before received, made up the full Year's Wages. That no Words of Discharge passed between the said Pauper and her Mistress : But the said Elizabeth Maxey looked upon Herself as then discharged from her said Service ; ’but believed that had She recovered her Health, her Master would have received her again into his Service. That She continued under the same Indisposition, till after the Year from the said Time of Hiring was expired; and never returned again into her said Master's Service. And that on the 17th of August 1758, her Master hired another Servant in her Place.

And it is admitted, on Behalf of the Appellants, That the said Elizabeth Maxey was legally settled in the said Parish of St. Matthew Bethnall Green ; Unless a subsequent One was gained by Her in the said Parish of Christchurch, under the above mentioned Circumstances.

The Sessions, upon Consideration of the Premises, allowed of the Appeal, and vacated the Order of the two justices: And they further Ordered the Pauper to be removed from St. Matthew s Bethnall Green to Christchurch, and require the Parish of Christ church to receive and provide for Her, until they can free themselves from the Charge thereof by due Course of Law.

(8) Argument

On Tuesday 12th February 1760, Mr. Norton moved to quash this Order of Sessions, and to affirm the original Order: and obtained a

Rule to shew Cause.

Mr. Nortons Objection to this Order of Sessions was “That this Service in Christchurch was not sufficient to gain a Settlement; being seventeen Days short of the Year for which She had been hired."

Mr. Aston and Mr. Stowe now shewed Cause; and argued this to be a good Service, within 8 & 9 W. 3. c. 30. Sect. 4.

This was either an Inability by Sickness, or an Absence with Leave of her Master. In either Case, it is a good Settlement.

In 1 Strange 423, 424, *Rex v. Inhabitants of Iflip*, Sickness during six Days in the Middle of the Year, was no Objection to the Service; Nor Absence three Days, at the End of the Service, upon a reasonable Cause ; Nor an Absence of four Days, without Leave, in the Middle of the Year. So, in the Case of \* *Rex v. Inhabitants of Goodneston*, Tr. 19 G. 2. B. R.—Leave to go to the Herring-Fishery, though the Servant was absent about three Weeks at the End of the Year, and did not return till three Weeks after the Expiration of it was held a good Settlement.

In the Case of *Rex v. Beccles*, cited in 2 Strange 1207,) Absence, by his Master’s Leave to work for other Persons three Weeks and three Days (in all) was holden “ not to prevent the Gaining a Settlement."

And here are no Words of Discharge ; nor any Consent of the Master to her being discharged.

Betides, the Master was bound to provide for and take Care of her, while she was sick: And therefore it must be taken that she continued in the Service. The Failure arose only from the Act of God.

Mr. Norton, Mr. Morton, and Mr. Lane, contra--------argued that this Service was insufficient to gain her a Settlement in Christchurch: For she did not “ continue and abide in the Service, one whole Year,” as the Act of Parliament expressly requires.

In the *Iflip* Case, The Servant’s Absence (to visit his Mother) and his Sickness too, were in the Middle of the Year: And the Absence was purged, by the Master’s receiving him again. And the 3 Days Absence at the End of the Year, (to go to the Statute-Fair) was holden to have been unreasonably opposed and denied by the Master, and with a fraudulent Declaration “ that the Servant should gain no Settlement with him.”

In the *Goodneston* Case, where the Servant went to the Herring-Fishery—It was holden that the Servant was to be considered as all the While in the Service of the Master; It being by Leave, and another Person hired by the Servant to do the Business: And the Servant returned again to his Master after the Expiration of the Year, and received from him his whole Year’s Wages.

But here, the Absence was 17 Days at the End of the Year; and She looked upon herself as discharged; and. the Master hired another Servant in her Place. If this be allowed at the End of the Year, where can the Court stop ? It may as well be a Want of 3 Weeks, or a Month, or 2 Months,

In 2 Strange 1022, *Seaford v. Castlechurch*\*, “ Going away (without Leave) 12 Days before the End of the Year, prevented a Settlement; though the Master paid him the whole Year’s Wages.”

The Master's Generosity, in paying the whole Wages, makes no Difference in the Case. To gain a Settlement, there must: be a complete Hiring for a Year, and Service for a Year : So it was determined in 1 Strange 143, *Coombe v. Westwoodhay* ; Where a Week being wanting at the Beginning of the Year, it was holden to be no Settlement.

The Acquiring a Settlement in a Parish, by Service, is no Benefit to the Servant: For a Servant has no more Benefit (in general) by having a Settlement in One Parish, than in Another.

(9) Judgment

Lord Mansfield----------This Case is an additional Proof, amongst many others, upon how inconvenient a Foot the Law of Settlements stands.

This must appear a very clear Case to any Person of common plain Sense and Understanding. It is certainly a fair bona fide Service for a Year, without any Fraud on either Side, either of the Master or of the Servant.

If a Master gives his Servant Leave to go upon any other Service, or to be absent for a short Time, and pays him his whole Wages, This is a fair bona fide Service.

If the Servant is taken ill, by the Visitation of God, It is a Condition incident to Humanity, and is implied in all Contracts. Therefore the Master is bound to provide for and take Care of the Servant so taken ill in his Service; and can not deduct Wages in Proportion to the Continuance of the Servant’s Sickness.

Here, the Master requested Mrs. Lemonier to take in his Servant; the Master himself being, at the same Time, sick at Home. Then She was afterwards sent to the Hospital by her Master's Consent. And the Master and Mistress paid Her her whole Wages, and were satisfied with what was done. Can any One doubt of this being a Service, bona fide, for a Year ? Being sent to an Hospital by a kind Master ought not to hurt the Settlement of a Servant visited by Sickness.

And I see no Difference between such an Accident of Sickness happening in the Middle, or happening at the End of the Year: It is equally the Act of God, and without any Fault of the Servant.

Mr. Justice Denison said He thought this the weakest Ground of Objection to a Settlement that he had ever met with. He concurred with His Lordship, That the Illness of the Servant happening at One Part of the Year, or at Another, (being always the Act of God,) could make no Sort of Difference. And he was extremely clear that this Act of God ought not to prevent the Servant from gaining a Settlement. And if, by the Consent of the Master, She be sent to an Hospital; shall that alter the Case, and make it different from her being kept at Home in the Master’s own House ? Surely, not. She certainly does “continue and abide in the Service” of her Master. For, “Continuing and abiding in the Service ” means not deserting it And she can not be considered as having deserted her Service.

There was no Need of any Cases being cited upon this Occasion : That of *Iflip* comes nearest to the present Case.

Mr. Justice Foster concurred with His Lordship and Mr. Justice Denison. He said that the Relation between the Master and Servant certainly continues: It is not put an End to, by this Visitation of God. And He observed that the Sending her out of the Master’s House to Mr. Lemonter's, and afterwards to the Hospital, was for the Ease of the Master, and for his own Convenience.

Mr. Justice Wilmot said It was the clearest Case that could be.

The Distinction between the Servant’s Absence in the Middle and at the End of the Year, turns upon the Absence in the Middle of the Year being purged by the Master’s receiving the Servant again, which is not the Case of an Absence at the End of his Year, when He does not return.

But with Regard to the Act of God, Illness; It is just the same Thing, whether that happens at the Beginning, Middle or End of the Year: The Time makes no Difference, in the Reason of the Thing. And in the present Case, the Servant’s being at Mr. Lemonier's, or in the Hospital, is just the same Thing as her being kept in the Master’s House, under his own Roof.

I do not agree to the Position “That the Servant has no Benefit by gaining a Settlement in a Parish.” It is not indifferent to a Servant (very often) in what Parish he gains a Settlement: It is, in many Cases, an Advantage, in Fact; and has always been, and ought to be looked upon as such. It is a Reward for their Labour and Service: And in that Light, it is but reasonable to consider it.

Mr. Justice Foster agreed with Mr. Justice Wilmot, in this. Is it Indifferent to a Foreigner who has no Settlement of his own ? It is certainly a Benefit to such a Person : For He obtains a Settlement by the Hiring and Service, instead of being (as he was before) without any Settlement at all.

(10) Ruling

Per Cur. unanimously\*------

Order of Sessions confirmed.

Order of two Justices quashed.

(11) Comment

The court finds that absence due to illness will not defeat a settlement. The court expressly states that fault is an important factor in their decision, and this reasoning is followed in the 1770-80s illness and injury cases of *Madington* and *Sharrington*, though it was departed from in the 1790-1800s (*Whittlebury*, *Sudbrooke*). The fault element was also used in later cases (unrelated to injury) such as *Bartholomew* (1778).

(12) Type

Liberal

(1) Case name

*R.* v. *Clare*

(2) Date

22 November 1775

(3) Report

Burr. S.C. 819

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Clare

(6) Order sought

Quashing

(7) Facts

Mr Andrew Pemberton moved (on Monday 13th November Wednesday 1775) to quash an Order of Sessions, which confirmed an Order of two Justices made, for the Removal of William Davy from Cavendish in Suffolk to Clare in the same County; and also the Order thereby confirmed.

The Case stated on the Order of Sessions, was—

That the Pauper, being a Journeyman Miller, at Michaelmas 1768 let himself to Elizabeth Stammers of Clare aforesaid, by the Month, at the Wages of eight Shillings a Month; and that he was at Liberty to depart his said Service at a Month's Wages or a Month's Warning: And at the Time of his Hiring, it was agreed between the Pauper and the said Elizabeth Stanmers, “that if “he continued in her Service till Harvest-time, he should be at “Liberty, during Harvest-Month, to let himself to any other Person he chose, for the Harvest-Month.” The Pauper continued five Years in the Service of the said Elizabeth Stammers; and during that Time, constantly let himself to some Person or other, for the Harvest, and received the common Wages of eight Shillings from his said Mistress, for the Harvest-Month in each Year; and paid her one Moiety of the Wages earned at such Harvest, annually and during his Service with the said Elizabeth Stammers; but generally at the End of every Month, and sometimes weekly, received his Wages of eight Shillings a Month, or in that Proportion : And that he considered himself as a monthly Servant, ands at Liberty to leave his said Mistress at the End of any Month, paying a Month’s Wages, or giving a Month’s Warning, according to his first Agreement.

Whereupon, this Court [the Sessions] doth confirm the said Order of Removal made as aforesaid; subject to the Opinion of the Court of King’s Bench.

(8) Argument

Mr. Pemberton’s Objection was, that this was no Hiring for a Year, which is essentially requisite, by 3 & 4 W. & M. c. 11. § 7. It is only a Hiring by the Month. Rule to shew Cause.

This Case now standing in the Crown-Paper, (v. ante, pa. 806.)

Mr. Mayhew, who was to have shewn Cause, gave up the Order, as indefensible.

(9) Judgment

Whereupon, Mr. Pemberton’s Rule was made absolute.

(10) Ruling

Both Orders quashed.

(11) Comment

A restrictive decision finding that if the contract for hire is worded to be by the month, service in fact lasting several years is not sufficient to confer settlement.

(12) Type

Restrictive

(1) Case name

*R.* v. *Clayhydon*

(2) Date

24 November 1790

(3) Report

4 T.R. 100

(4) Court

King’s Bench

(5) Parties

The King against The Inhabitants of Clayhydon

(6) Order sought

Quashing

(7) Facts

The pauper, being settled at Usculm by hiring and service, made a bargain with W. Hodges in Dunkeswell for a year, at the wages of 2l. 15s. and served till nine days before the expiration of the year, when he went away on a Sunday morning, in order to get another place when his year should be up, without asking any leave of, or mentioning it to his master; he returned on the Tuesday following, about six o clock in the morning, when he asked his master what work he should go about. The master told him he might go and serve the master he had worked for the day before. He saw his master about an hour afterwards, who then paid him his wages up to that time only. No conversation passed ; he then went away, and did not afterwards return : he wished to have stayed out the year, but his master would not let him. The sessions on appeal quashed the order of justices, by which the pauper and his wife were removed from Clayhydon to Usculm, and stated the above case.

(8) Argument

Morris and Fanshaw in support of the order of sessions. The pauper gained a settlement in Dunkeswell, notwithstanding the absence for the last nine days of the year, because it was a reasonable cause of absence; as much so as the absence on account of illness was held to be in *R. v. Maddington* (a)2; or that in *R. v.*  *Islip* (a)3, where the servant went to hire himself to another master for the next year. The latter case, indeed, was a stronger one than the present; for there the servant absented himself against the express order of the master; and yet it was held that, as it was a reasonable request, which the master ought not to have refused, a settlement was gained, notwithstanding the absence for those three or four days. If, then, the master in this case could not have refused, it would have been nugatory in the servant to have asked his consent. The licence to be absent for such a cause may be considered as a licence given by the law. Then, as this was a reasonable cause of absence, the master ought to have received the servant on his return : instead of which he discharged the servant, contrary (as it appears by the case) to his will. For the acceptance of the wages by the servant did not amount to a consent on his part to dissolve the contract; neither does the deduction of part of the wages vary the case, as was held in *R. v. Islip*. A constructive service is sufficient to give a settlement: here, on the servant’s return, he tendered his service, which was refused by the master: now the tender by one and refusal by the other, were equivalent to actual service ; and if this will not give a settlement, it will be in the power of a master to defeat the settlement of a servant, by discharging him a few days before the end of the year.

Rook, Serjt., and Clapp, control, insisted, 1. That the contract between the master and the servant was dissolved before the end of the year by the mutual consent of both parties; the consent of the former was manifested by his insisting on turning away the servant, and paying him his wages ; that on the part of the latter by accepting his wages. *R. v. Gresham*, ante, 1 vol. 101 ; and *R. v. Grantham*, ante, 3 vol. 754. It does not appear by the case, that, when the master proposed to discharge the servant, the latter made any objection to the proposal; but, on the contrary, it is stated expressly, that no conversation whatever passed at that time. It must, therefore, be taken to be a dissolution of the contract on the proposal of one party, acceded to by the other. The private wishes of the servant to serve the remainder of the year, not communicated to the master, cannot vary the case. But, secondly, if the servant did not consent to put an end to the contract, the master was justified in discharging him. If a servant may leave his master for two days without leave, or without assigning any reason at the time, it may equally be extended [102] to any length of time. On such an absence, the master does not know whether or not the servant will ever return : he may therefore provide himself with another, and discharge the first on his return. In order to gain a settlement by hiring and service, there must be either an actual or constructive service during the whole year : but in this case the former is not pretended ; and it cannot be said that the pauper was constructively in the service of his master, when he left the service before the expiration of the year without consent, and was not received again.

(a)2 Burr. S. C. 675.

(b) See *Marks v. Upton*, post, 7 vol. 305.

(a) 8 Str. 423; and Bott. 301, pl. 561.

(9) Judgment

Lord Kenyon, Ch.J. It is now too late to say that a constructive service, pursuant to a hiring for a year, will not confer a settlement on the servant: though I very much doubt whether a greater certainty on this subject would not have been attained by attending strictly to the words of the Act of Parliament: however, in order to preserve an uniformity of decisions, we must adopt the construction which has so frequently been put upon it. But I do not know that it ever has been decided, that a settlement was obtained, unless by construction the relation between master and servant continued during the whole year. The cases of *R. v. Islip*, and *R. v.* *Haddington*, which have been relied on, do not govern the present. In the former the servant did not return until after the expiration of the year; and the facts of that case left the question open, whether or not the relation between the parties subsisted during the whole year? The Court there thought, that the master improperly refused his consent; and that though the servant were not in the actual discharge of his duty in his master’s house, yet, as he was liable to be called into the master’s service during the remainder of the year, that he was constructively in the service down to the end of the year. But the present case differs from that, because during the continuance of the year a further act was done ; when the servant returned after his absence, the master not only found fault with him, but refused to take him again into his service: it is true that the servant wished to continue, but both parties did that which put an end to the contract; the one paid, and the other received the wages. After that period the servant was no longer subject to the control of the master. In *R. v. Islip*, the servant was under the master’s control during the whole year; he was liable to be called into the master’s service whenever the master thought proper: but here the relation between the master and servant was rescinded before the end of the year by the act of both parties; then it is impossible to say that the pauper was [103] constructively in the service after that time. So in the case of *R. v. Haddington*, though the servant left the service three weeks before the end of the year, and went to his friend, because he was not able to perform his service, yet there was no act done during the year to put an end to the contract; afterwards, indeed, when the master paid the servant his wages, he deducted a part of them; but he could not by an act ex post facto deprive the servant of the benefit to which he was before entitled. But the case of *R. v. Gresham* is extremely like the present; there the Court held, that, by the act of accepting the wages, the servant agreed to put an end to the contract. I am, therefore, of opinion, that there could be no constructive service in this case, when the parties themselves, by mutual consent, put an end to the relation of master and servant within the year.

Ashhurst, J. It is much to be lamented that the distinctions in these kind of cases have been so nice, that it is difficult to discover the principles on which they have been decided. The question then is, what is the principle on which they have turned ? I think that will be best supported in this case by determining that the service did not continue during the whole year. It is not now to be contended, that an actual service is necessary, it must be admitted that a constructive one is sufficient. But this case is distinguishable from that of *R. v. Islip* ; for here was a dissolution of the contract before the end of the year. On the servant’s return, the master insisted on discharging him, and offered his wages; and though the servant wished to continue in the service, yet he at length consented to put an end to the contract, by taking up those wages. The acceptance of wages was a signifying of the consent on his part. And this brings it within the case of *R. v. Gresham*.

Grose, J.(a)1. Though there has been some contrariety in the cases as to what shall be said to be a hiring for a year, yet it is clearly settled, that, if during the year there be a dissolution of the contract, no settlement can be gained. Now on the facts of this case, it is clear that the contract was dissolved before the end of the year. The master refused to receive the pauper into his service when he returned; to which the latter made no objection, but received his wages up to that day only. It is indeed stated afterwards, that the servant wished to have served out the remainder of the year, but that his master would not let him, yet it is clear, that at the time when the wages were paid, both parties consented to put an end to the contract; for it is stated, that no conversation passed at that time; and though the servant may have wished to stay till the end of the year, yet he did not communicate that wish to his master. And the other fact stated, namely, that he accepted a sum short of the whole year’s wages, shews, that it was understood by both that they intended to dissolve the contract. This case is distinguishable from those of *R. v. Islip*, and *R. v. Maddington*. for the reasons already given ; and it is like that of *R. v. Gresham*.

Order of sessions quashed (a)2.

(a)1 Buller, J. was absent.

(a)2 Vid. R. v. The Inhabitants of Whittlebury, post, 6 vol. 464, & 8, 239.

(10) Ruling

The servant a few days before the end of the year for which he was hired, went away, in order to get another place for the next year, without asking his master’s consent. On his return before the end of the year, the master insisted on turning him away, and offered him his wages up to that time, which he accepted without making any objection ; this was held to be a dissolution of the contract and defeated the settlement, though the servant wished to stay out the year. [6 T. R. 185, 465. 8 lb. 236, 478.]

(11) Comment

Where a servant takes leave of his master without consent and is subsequently dismissed, the determinative factor for settlement seems to be whether the dismissal occurs before or after the completion of the year (regardless of when the servant took leave). The court’s reasoning is based on the principle of ‘constructive’ service, so a servant returning after the completion of the year was in theory still obliged to work for his master during his period of absence, but it seems to lead to an odd discrepancy between *Clayhydon* and *Islip* or *Haddington.*

(12) Type

Restrictive

(1) Case name

*R.* v. *Clent*

(2) Date

1 Geo 1 (1714)

(3) Report

2 Bott. 296

(4) Court

King’s Bench

(5) Parties

Rex v. Clent

(6) Order sought

Quashing

(7) Facts

It appeared upon the order of the Sessions, that one *John Cooper* was hired for a year in the parish of *Elmley Lovet,* being an unmarried man, for three pounds and ten shillings wages, about the month of *August,* and served for the said year; but that about the month of *February* then next following his

hiring, he was married, and continued after such his marriage, to the end of the said year, in his said service. Two justices removed this *John Cooper* and his wife from *Clent* to *Elmley Level;* but, upon appeal, the Sessions quashed that order, and stated the above case.

(8) Argument

(9) Judgment

And now the Court of King’s Bench quashed the order of Sessions, and said, that the hiring for a year, and service for that whole year, though the pauper married before his year was out, gained

him and his wife a settlement in *Elmley Lovet.*

(10) Ruling

Marriage between the hiring and the completion of the service is not impediment. S.P. determined in the same term between the parishes of St. Saviour and St. Dennis.

(11) Comment

The court liberally interprets the marriage rule, so that marriage during the period of service does not prevent there being a settlement.

(12) Type

Liberal

(1) Case name

R. v. *Combe*

(2) Date

7 May 1828

(3) Report

8 B. & C. 82

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Combe

(6) Order sought

Quashing

(7) Facts

Upon an appeal against an order of two justices, whereby J. Davies the younger, his wife and children, were removed from the township of Presteign, in the county of Radnor, to the

to the township of Combe, in the county of Hereford; the sessions considering that the contract between the pauper and one Cole, was a defective contract of apprenticeship, and not of hiring as a servant, and that its sole object was the instruction of the pauper in the trade of a carpenter, confirmed the order, subject to the opinion of this Court on the following case: -

The pauper, J. Davies, had a derivative settlement from his father in the township of Combe. J. Davies the Elder, the pauper’s father, sixteen years ago, when the pauper was about fourteen years o age, was about to put him out to service, and took him to Presteign, with the intention of hiring him, but did not hire him. Shortly afterwards, one James Cole, a carpenter, residing in Presteign (the brother of the pauper’s mother), suggested that it was better for the pauper to go and learn his (Cole’s) trade of a carpenter, instead of going to service. At length Cole hired the pauper from his mother to learn his trade. The pauper was to do any other work as well as that of a carpenter. Cole was to find the pauper part of his food and part of his clothing, but be was to lodge at his father’s house. In pursuance of this contract the pauper went to Cole and served him for five years, lodging

in the township of Presteign with his parents, who provided part of his clothing and victuals. During the whole five years the pauper did any work Cole put him to do, as well as working at the trade of a carpenter. In the second or third year after the pauper had entered upon his service, a conversation took place between the parties about indentures being drawn to bind pauper to Cole until the age of twenty-one, in order to exempt the pauper from the Militia. The indenture was to be drawn to bind

the pauper till he was twenty-one, but it was understood that he was to be free at the end of five years, to be computed from the time of the original contract : no indenture was drawn, nor any thing afterwards said upon the subject. At the expiration of the five years, (that being understood by the parties to be the termination of the original contract, whatever was the nature of it,) the pauper agreed to work with his uncle Cole as a journeyman carpenter, under a weekly hiring, and to be paid weekly wages, the pauper boarding and clothing himself; and be was to be at liberty to go away at

the end of any week ; and be continued with Cole under these terms (except upon one or two occasions varying the amount of the weekly wages) for nine or ten years.

(8) Argument

Campbell in support of the order of sessions. The question is, whether a settlement was gained by hiring and service in Presteign? The sessions, by confirming the order of removal to Combe, have negatived any contract of hiring, and unless their decision be manifestly wrong, the Court will not interfere. But the decision of the sessions is right. Here there was no contract of hiring. The principle to be collected from the authorities relating to contracts of this nature is, that if the object of the master be to teach, it is to be considered as a contract of apprenticeship, but if his object be to get a servant, then it is to be considered a contract of hiring, although the service is to be coupled with learning a trade. The cases of *Rex* v. *Little Bolton* (Cald. 367. 2 Bott, 222, pl. 280), *Rex* v. *Eccleston* (2 East, 298), and *Rex* v. *Burbach* (1 M. & S. 370), will be relied upon. The first of these cases has been considered anomalous, and is distinguishable. The object of the master was to get a servant, and the decision proceeded on the ground since overruled, that the relation of master and apprentice could only be created by express words. In *Rex* v. *Hitcham* (Burr. S. C. 489), the essence of the contract was hiring. In *Rex* v. *Burbach* it is said by Bayley J. that apprenticeship was not contemplated. *Rex* v. St. *Margaret, King's Lynn* (6 B. & C. 97), is expressly in point. There a master shoemaker made a proposal to a poor woman, to take her son to learn his business; the son was to serve him for four years, to board and lodge with his mother, and to have half what be earned. No indentures were executed on account of the poverty of the mother; and it was held that this was a defective contract of apprenticeship, and not a contract of hiring, and, consequently, that the pauper did not gain any settlement by hiring under it.

Taunton contra. It is true that the intention of the parties must govern the construction of the contract, but that must be ascertained from the contract itself; and if that be ambiguous, the acts done must be taken into consideration. The case states that Cole hired the pauper to learn his trade, and do any other work. The learning of the trade was only incidental to, and not an essential part of, the contract. Now it is established by the authorities, that if a party be hired to learn a trade, and do any other work, that is a contract of hiring. A settlement was therefore gained by the pauper at the end of the first year’s service. Then, during the whole five years, the pauper did any work Cole put him to. The subsequent statement as to indentures shews that apprenticeship was not contemplated in the first instance. Besides, a special purpose is stated for which the indentures were to be executed. *Rex* v. *Little Bolton* (Cald. 367), has always been considered a leading case on this subject, and never has been over-ruled. In *Rex* v. *St. Margaret, King’s Lynn* (6 B. & C. 97), there were circumstances to shew that apprenticeship was contemplated ; for it was stated that there would have been indentures at the commencement of the service, but for the poverty of the mother. In *Rex* v. *Burbach* (1 M. & S. 370), the sessions found that there was a contract of hiring and service, and this Court thought them justified in so doing.

Cur. adv. vult (*d*).

(9) Judgment

Lord Tenterden C.J. now delivered the judgment of the Court; and, after stating the facts of the case, proceeded as follows:— The question in this case is, whether the pauper served in Presteign as an

apprentice, or as a yearly servant? It is clearly established by the authorities, that if an apprenticeship was only contemplated by the parties, and there was an imperfect contract of apprenticeship, the service will give no settlement. The case of *The King v. St. Margaret, King's Lynn* (6 B. & C. 97), was relied upon in support of the order of sessions. There a master shoemaker made a proposal to a poor woman to take her son to learn bis business. The son was to serve him for four years, to board and lodge with his mother, and to have half what he earned. No indentures were executed on account of the poverty of the mother; and it was held that that was a defective contract of apprenticeship, and not a contract of hiring; and, consequently, that the pauper did not gain any settlement by serving under it. The judgment in that case delivered by my brother Holroyd appears to me to apply to this. He there says that he was of opinion “That the relation of master and apprentice was contemplated by the parties, or at least that there was not sufficient ground to warrant the Court in concluding that the relation of master and servant was contemplated by the

parties.” I think that, in this case, there was not sufficient ground to warrant the sessions in concluding that a contract of hiring was contemplated by the parties. My brother Holroyd proceeds : “It appears that application was made by the master, who was a shoemaker, to the mother of the pauper, and he offered, if she would agree to bis proposal, to take her son, then a boy, to learn his business. That was the subject of the application, [87] and it was for the mother to consider whether she would consent to the proposal made to her.” In this case it appears that the father of the pauper was about to put the pauper out to service, and that Cole, a carpenter, suggested that it was better for the pauper to learn his (Cole’s) trade, instead of going to service. This was the proposal made by Cole, and it was for his father to consider whether he would consent to it. If the father had then put the son out to Cole, it would clearly have been in the character of an apprentice, and not in that of a hired servant. The case then states, that Cole hired the pauper from his mother, to learn his trade. The object, therefore, of the master was, that the pauper should learn his trade, or, in other words, that he should serve him as an apprentice, and not as a servant. That being so, I think, to use the words of my brother Holroyd, in *Rex* v. *St. Margaret, King's Lynn* (6 B. & C. 97), there was not sufficient in this case to warrant the sessions in finding that the relation of master and servant subsisted between these parties. The fair inference from the facts stated is, that there was not in this case any contract of hiring, but a defective contract of apprenticeship. No settlement,

therefore, was gained in Presteign, and the order of sessions must be affirmed.

Order of sessions affirmed.

(10) Ruling

The father of a pauper was about to put him out to service, when it was suggested to him by A, a carpenter, that it would be better for the pauper to learn his (A’s) trade, instead of going to service , and A. afterwards hired the pauper to learn his trade, and to do any other work, as well as that of a carpenter. The pauper went to A. and served him for five years, living during that time with his parents, who provided him with victuals and part of his clothing, the remainder being

provided by A. The pauper did any work his master ordered him to, and at the end of that time he agreed to work for the master as a journeyman at weekly wages. The sessions having found that this was a defective contract of apprenticeship, and not a contract of hiring, this Court confirmed the order of Sessions.

(11) Comment

A case of a defective contract of apprenticeship.

(12) Type

Restrictive

(1) Case name

*R.* v *Corsham*

(2) Date

19 May 1802

(3) Report

2 East 302

(4) Court

King’s Bench

(5) Parties

The King against The Inhabitants of Corsham

(6) Order sought

Quashing

(7) Facts

Two justices by an order removed Mary the wife of Charles Isaac, and their five children by name, from the parish of Kington Saint Michael in the county of Wilts to the parish of Corsham in the said county. The sessions on appeal confirmed the order, subject to the opinion of this Court, on a case stating:

That the pauper’s husband Charles Isaac was born at Box in the county of Wilts, and about 14 years since was hired for a year, and served the same in the parish of Colerne. That he was afterwards hired by Mr. Dalmer of Corsham at four guineas per annum, with whom he continued to serve till within a fortnight or three weeks of the expiration of the year ; when, upon a dispute between him and his master, he, in consequence of his master’s kicking him, would not stay, but went to his father’s house in Kington Saint Michael. In the course of the following week, and before the end of the year, he returned with his father to Mr. Dalmer’s house, and received the whole of his wages, and half a crown over for himself: his master asked him to stay, but he refused, and went back to his father’s house.

(8) Argument

Jekyll and Williams, in support of the order of sessions, said, that according to the case of *The King v. St. Peter of Mancroft* in Norwich (a), it was the province of the sessions to draw the conclusion, whether the contract of hiring were dissolved, or whether the master only dispensed with the service ; and by confirming the order of removal to Corsham they had virtually found that there was a dispensation only of the service. This too was the proper legal conclusion ; for it has been long settled that a master shall not by injuriously turning away his servant defeat his settlement; and here the master compelled the servant to depart by his maltreatment in the first instance : and, what is material, the master paid him his wages up to the end of the year, and something over as a compensation. Then if the remainder of the service were once dispensed with, the master could not compel the completion of it against the servant’s will, though the contract still subsisted in law.

Casberd, contra, was stopped by the Court.

(9) Judgment

Lord Ellenborough C. J. The cases of *Rex v. Grantham* (b) and *Rex v. Upwell* (c), have decided the present question. In both of them there was a payment by the master of the whole year’s wages, and a departure from the service before the end of the year against the will of the master ; and in both the Court held that no settlement was gained. There is nothing material to distinguish this case from those ; and therefore it is better to abide by them. Whether there were a dissolution of the contract or a dispensation of the service is indeed a question of fact, but of fact mixed with law ; and the sessions, having stated all the circumstances, have sent us the case that we may draw the proper legal conclusion.

Grose J. This is not like the cases where the master has turned away the servant to prevent his gaining a settlement; for the master wished him to stay, and the pauper refused : then the payment of the whole year’s wages by the latter was merely to prevent an action, and argues no consent on his part to dispense with the service.

The other Judges concurred.

Orders quashed.

(a) 8 Term Rep. 477.K. B. xxxi.—13

(b) 3 Term Rep. 754.

(c) 7 Term Rep. 438.

(10) Ruling

A servant hired for a year departed from his master some short time before the end of the year, on ill usage, but received his whole year’s wages and something over : Held, that he thereby gained no settlement, he having refused to serve out the year when required by his master.

(11) Comment

In line with *R v. Grantham*, the court finds that a servant cannot gain a settlement if he leaves before the end of the year, even if it is for a reasonable cause such as ill-treatment. The court takes a strict approach towards the one-year requirement and ‘fault’ in the dismissal is not a factor, in contrast with *R v. Bartholomew* (different facts in that there was no ill-treatment, but the servant was dismissed at no fault of her own and the court emphasised this as the ground for still conferring her a settlement despite her having worked for slightly less than a year; arguably the same logic could apply to the ill-treatment cases).

(12) Type

Restrictive

(1) Case name

*R.* v. *Cowhoneyborne*

(2) Date

29 June 1808

(3) Report

10 East 88

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Cowhoneyborne

(6) Order sought

Quashing

(7) Facts

Two justices by their order, dated September 8th, 1807, removed William Gray, a pauper, from Teddington to Cowhoneyborne. The sessions, on appeal, confirmed the order, subject to the opinion of this Court on the following case. The pauper W. Gray, being legally settled in Cowhoneyborne sometime after the death of his wife, who died in childbed fifteen years ago last Whitsuntide, went to service, and hired himself to one Clarke of Cowhoneyborne, who afterwards removed to Teddington, and the pauper left him at Michaelmas last 1806, having served him the five preceding years under a hiring for a year in Teddington. On the death of the pauper’s wife, W. Nightingale who had married his sister, took to and maintained the infant, of which she had been delivered, out of kindness to the pauper; and the pauper’s daughter, Elizabeth, then about 11 years of age, went, with the pauper’s consent, to Nightingale, for the purpose of nursing her infant sister. The infant died in about a year; and from that time to this she has continued to live in the house of Nightingale, as one of the family, but doing the work of a servant. Nightingale, who, previously to the paupers daughter living with him, kept a servant, would have hired a servant if she had left him: but he never hired her, or paid her any wages ; though he found her in board, clothes, and such pocket money as he thought fit. The said Elizabeth will be 27 years of age in June 1808. During all the time she so lived with Nightingale she considered herself as liable to be sent away whenever he pleased; and he considered

her as at liberty to quit him when she chose ; and the pauper conceived himself as her father, bound to receive and support her if Nightingale ceased so to do. But the pauper was not a house-keeper at any time after he went into Clarkes service. The pauper’s daughter Elizabeth was never hired as a servant to Nightingale. The question intended for the opinion of the Court was, whether the pauper’s daughter Elizabeth were, under the circumstances of the case, so emancipated, as to enable the

pauper to gain a settlement by his service with Clarke in Teddington, under such hiring as aforesaid?

(8) Argument

Park, Peak, and Petit, in support of the orders, contended that Elizabeth, the pauper’s daughter, was not emancipated from her father’s family at the time of his service with Clarke, and consequently that he could not gain a settlement in Teddington by such service, not being an “unmarried person, not having child”, within the stat. 3 W. & M. c. 11, s. 7, and the cases which have settled the construction of that clause. It is clear that Elizabeth did not live with Nightingale in the character

of a servant, but as one of his family, and that she had not gained any settlement in her own right. And it is equally clear that the mere circumstance of her being of age did not emancipate her : for though in *The King* v. *Roach* an adult leaving her father’s house, and going into service, was held to be emancipated, as having contracted a relation inconsistent with parental control; yet Lord Kenyon expressly disavowed an opinion which had been attributed to him in the case of *Witton cum*

*Twambrooks* that the mere circumstance of a child’s attaining 21 was an emancipation. The only established cases of emancipation are, 1. By the child gaining a settlement of his own ; 2. By marrying and becoming the head of another family; 3. By contracting, after being of age, a relation inconsistent with parental authority. The only question is, whether this case fall within the last class? But here she contracted no new relation with her uncle ; and her father could at any time have recalled her to him, at least before she came of age. Then whether at that time there still remained the animus revertendi on her part, and the animus recipiendi on the part of the father, are matters of fact to be collected from the acts and declarations of the father and daughter, on which it was competent for the sessions to decide, as they have done, in the affirmative. It is plain that the parties themselves considered that the daughter was still part of her father’s family; and Grose J. laid great stress on the intention of the parties, upon the question of emancipation, in *The King* v. *Roach* as Lord Mansfield had done before in *Rex* v. *Tottington*. In *The King* v. *Broadhembury*, the father had put his daughter in the work-house at the age of 20, where she remained at the time of the order made; after which he gained a settlement in another parish which was held to be communicated to the daughter. In *Rex* v. *Woburn* the child under age was actually under another control than the father’s, being a drummer in the same Militia regiment with him; yet he was still considered as part of his family, being so considered by themselves. While the intention of the daughter to return to her father continued unbroken, her stay with the uncle could only be considered temporary : and in *Rex* v. *Sowerby* there was a temporary absence of the son, after he was of age, from his mother’s family, for three weeks during harvest-time, which was not considered as making any difference in the case. And here the residence with the uncle was by consent of the father and for his benefit. They next objected, that supposing the fact of the daughter’s living apart from her father, at the time when she was of age, amounted to an emancipation, still the facts of this case would not warrant the conclusion that the father gained a subsequent settlement in Teddington ; for it appears that he went to serve Clarke in Teddington at Michaelmas 1801, under a hiring for a year ; and the daughter did not come of age till June 1802: after which it does not appear that there was any new contract of hiring, but he went on in the service under the original contract. Now the description of the servant must be regarded at the time of the hiring and not afterwards, according to *Rex* v. *Allendale* and *Rex* v. *Forest*.

The Court, however, considered the pauper as having lived in Teddington under successive yearly hirings, the first hiring being stated to be for a year: and nothing further was said upon this point. And they thought it unnecessary to hear the Attorney-General and Joseph Martin for the parish of Cowhoneyborne, on the principal point.

(9) Judgment

Lord Ellenborough C.J. The daughter having been originally placed, the infant, by her father in her uncle’s family, continued to live with her uncle after she came of age as part of his family ; receiving no assistance from her father, and being at liberty to depart from her uncle’s when she pleased and to go where she chose. She was of age, living apart from her father, having her support from sources independent of him, and was at liberty to quit her uncle when she pleased, as she herself considered. If this be not emancipation, it would be difficult to say what is so, and when it can take effect. Then if she were emancipated after she came of age, it follows that the father, by the construction which has been put upon the Statute of King William, gained a settlement by the subsequent hiring and service for a year in Teddington, as “an unmarried person, not having any child.”

Grose J. The daughter lived apart from her father after she was 21, not under his control, nor having any contemplation of it; nor receiving any assistance from him ; she was therefore emancipated when her father was hired for a year, and served in Teddington.

Le Blanc J. The question is, whether any settlement gained by the father under these circumstances could be communicated to the daughter; for, if so, he could not gain a settlement by the hiring and service in Teddington; and that question depends upon this, whether the daughter continued to be part of his family at the time. On the death of the father’s wife he broke up housekeeping, and the daughter was sent to her uncle, with whom she continued to live from that time; he supplying her with clothes and pocket money : and there she still remained after she came of age. Under these circumstances, living away from her father before and after the age of 21; he having no house of his own, nor giving her any support; I think she ceased, after she came of age, to be part of her father’s family; and consequently no future settlement gained by him could be communicated to her: and if so, he gained a settlement by the hiring and service at Teddington.

Bayley J. To constitute emancipation, it is clearly not necessary for the child to have acquired a new settlement of its own : the case of *The King* v. *Roach* is in point to that; where the daughter, being an adult, by leaving her father’s house and going out to service was held to be emancipated. Now where is the difference between going out from the father’s house after 21 to seek a livelihood, and continuing out for the same purpose after that age, where the absence from the father is so long as it was here : the father too, during all that time, having no house of his own, and having indeed contracted a relation which precluded him from receiving his daughter at home.

Orders quashed.

(10) Ruling

A widower having a daughter, placed her at 11 years of age with an uncle, by whom she was wholly maintained after that time and with whom she continued to reside after she came of age, doing service for him, but without any contract of hiring to give her a settlement of her own; the father

in the meantime having gone out to service. Held that on her coming of age she was emancipated, although her father conceived himself bound as such to receive and support her if she left her uncle’s; and consequently the father was capable of gaining a settlement by hiring and service for a year, as “an unmarried man, not having a child,” (i.e. not having a child who would follow his settlement) within the stat. 3 W. & M. c. 11, s. 7.

(11) Comment

A hiring and service for a year conferred a settlement on the basis that the claimant was unmarried and without a child; his daughter was treated as emancipated (adult) at the relevant point.

(12) Type

Liberal

(1) Case name

*R.* v. *Crediton*

(2) Date

1831

(3) Report

2 B. & Ad. 493

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Crediton

(6) Order sought

Quashing

(7) Facts

On appeal against an order of removal, whereby Joseph Middlewich, his wife and children, were removed from the parish of St. Mary Major in the city and county of the City of Exeter, to the parish of Crediton in the county of Devon, the respondents proved a settlement by hiring and service in Crediton. The appellants then set up a subsequent hiring and service in a third parish, St. Edmund’s. The sessions confirmed the order, subject to the opinion of this Court on the following case, respecting the alleged settlement in St. Edmund’s :— The pauper agreed with one West, a sawyer of the parish of St. Edmund’s in the City of Exeter, for a twelvemonth, to learn sawing, and was to have 7s. 6d. out of every 20s. earned by his master and himself. He served out that year, providing his own board and lodging. At the end of the year he made a new agreement with West for another year, under which he was to receive 8s. out of every 20s. earned by his master and himself. Nothing was said about Sundays, or the hours he was to work, but he was occasionally absent without permission from West. He lived out the second year with West in the parish of St. Edmund’s.

(8) Argument

Crowder was to have argued in support of the order of sessions, but the Court called upon

Praed contra. It may be conceded, that where an apprenticeship only is intended, a contract of hiring cannot be set up. But it must appear that the relation of teacher and pupil was contemplated. A pauper may hire himself in order to learn a trade, but the master may be incompetent to teach. There must be a mutuality in the contract. There must not only be an intention on the part of the pauper to learn, but an obligation on the part of the master to teach. In *Rex* v. *Mountsorrel* (2 M. &

S. 460), where the contract was held to be one of apprenticeship, the master received pay for teaching his trade to the pauper. In *Rex* v. *St. Margaret, King's Lynn* (6 B. & C. 97), there was no indenture on account of the poverty of the parents, but there was an undertaking by the master to teach. In *Rex* v. *Combe* (8 B. & C. 82), the master contracted to teach. In the present case there was no contract by the master to teach, without which there can be no contract of apprenticeship. Here, too, after the term for which the parties had contracted the relation had expired, the pauper served for another year under an entirely new agreement, in which there was no mention of learning or teaching the trade. Besides, the nature of the service is to be considered. A sawyer, whether he hires an apprentice or not, must have some person to work with him. *Rex* v. *Little Bolton* (Cald. 367), and *Rex* v. *Eccleston*, (2 East, 298), are authorities to shew that a contract like the present is one of hiring and not of apprenticeship ; and in *Rex* v. *Coltishall* (5 T. R. 193), where A. clubbed with B. for three years, (which signifies one person contracting to serve another for the purpose of being taught some art or mystery,) and also agreed to do any work that B. set him about, it was held that A. gained a settlement by serving B. *Rex* v. *Martham* (1 East, 239), is to a like effect.

(9) Judgment

Littledale J. It seems to me the sessions came to the right conclusion. In all the cases cited there was some work to be done, though there was a contract to learn. This case falls within *Rex* v. *Bilborough* (1 B. & A. 115). There one Smith, by parol, agreed with the pauper to teach him to make stockings during the year, for which Smith was to receive two guineas, and the pauper was to have his earnings, paying the master for the use of the frame, &c., and it was held that no settlement was acquired by living out the year under the agreement, for the pauper never contracted to serve the master, the only agreement was that the master should teach the pauper for a year. In *Rex* v. *St. Mary, Kidwelly* (2 B. & C. 750), the father of the pauper agreed by parol to give a shoemaker a guinea a week for teaching his trade to the pauper for twelve months, and it was held that that agreement created the relation of teacher and scholar, and not that of master and servant. In Rex v. *The Hamlet of Walton* (Garth. 400. 2 Bott, pl. 267), the pauper was put out to a barber for one year to learn to shave, and the barber was to have the benefit of the boy's work, and received some money for teaching, and the boy lived with him for a year: it was held that the boy was in the situation of a scholar, and not of a servant. On the other hand, in *Rex* v. *Hitcham* (Burr. S. C. 489), where the pauper agreed to let himself to his brother, who was a carpenter, for a year, and was to receive no money by way of wages, but his brother was to teach him as much as he could of the trade during the time, and provide him with meat, drink, washing, and lodging, and the pauper was to do all his brother's business in the farming way : that was clearly held to be a contract for service and a hiring for a year. Here, as by the express terms of the contract, the pauper was to learn, an obligation on the part of the master to teach must be implied. The agreement for the second year is substantially the same as that for the first. The only difference is that the wages are increased.

Parke J. I think the sessions have put the right construction on this contract. To gain a settlement by hiring and service, the pauper must have hired himself to serve for a year. Here, the relation of master and apprentice, not that of master and servant, was created. The case is not distinguishable from *Rex* v. *Bilborough* (1 B. & A. 115). There the contract was that the master was to teach the pauper; here it is that the pauper shall learn; but if the one is to learn, it must be implied that the other is to teach. The only difference between the agreement for the first, and that for the second year, is that the wages were different; in other respects the contracts are the same.

Taunton J. I am of opinion that the relation contemplated in this case was that of master and apprentice. The only difference between the first and second agreement is in the sum to be received by the pauper. What then is the purpose for which the pauper agreed to contract any relation with West? It is stated expressly in the agreement to be to learn sawing. I take the true distinction in these cases to be this: where teaching on the part of the master, or learning on the part of the pauper is not the primary, but only the secondary object of the parties, that will not prevent (where work is to be done for the master) the contract being considered one of hiring and service. In all the cases cited, where the contract was so considered, it appeared that the pauper agreed to work for his master, and the master undertook to teach him the particular trade in which he was conversant; but the teaching and learning were incidental, and therefore it was held to be a contract of hiring. But

where teaching and learning are the principal object of the parties, though there was a service, the contract is considered to be one of apprenticeship.

Order of sessions confirmed.

(10) Ruling

A pauper agreed with a sawyer for a twelvemonth to learn sawing, and was to have 7s. 6d. out of every 20s. earned by his master and himself; he served out the year in the parish of A., providing his own board and lodging ; at the end of the year he made a new agreement for another year, at an increased allowance; and he lived out the second year with his master in A. : Held, that he did not thereby gain a settlement in A., inasmuch as the principal object of the agreement between him and

his master being, that he should learn and his master teach him sawing; it was a defective contract of apprenticeship.

(11) Comment

A case in which a defective contract of apprenticeship was found, defeating a settlement by hiring as a servant.

(12) Type

Restrictive.

(1) Case name

*R.* v. *Croscombe*

(2) Date

7 November 1745

(3) Report

Burr S.C. 256

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Croscombe

(6) Order sought

Quashing

(7) Facts

Two Justices made an Order for the Removal of Joseph Garnsey and Mary his Wife and their six Children, viz. James, John, Joseph, George, Robert and Sarah, aged about twelve, ten, eight, six, four Years, and six Months, respectively, from Croscombe to St. Cuthbert’s the In-parish, Wells (both in Somersetshire:) And, upon Appeal, the Sessions quashed the Order of the two Justices.

Special Case—Joseph Garnsey the Pauper was born in Croscombe, and lived there with his Parents till about fifteen ; then hired himself (being single) to live with Dr. Lucy, as his Servant, for a Year, for 4l. and a Livery; and accordingly lived with his Master, in the Liberty of St. Andrew, during that Year, and had his Wages and Livery; and, without coming to any new Agreement at all, continued with his Master, in the Liberty, about a Quarter of a Year longer. Then the Master took a House, above ten Pounds a Year, in the Parish of St. Cuthbert the In-parish, Wells; and with his Family (Joseph Garnsey the Pauper being one) removed out of the said Liberty into that House in the Parish of St. Cuthbert the In-parish Wells aforesaid; where the said Joseph Garnsey the Pauper, the Father, continued to live with him about six Months, still under the first Contract, and was paid the same Wages, in Proportion to the Time. The Sessions, being of Opinion “that the Place of the last legal Settlement of the said Joseph Garnsey and his Wife and their six Children is in the Liberty of St. Andrew aforesaid, by Virtue of such Living and Serving with the said Dr. Lucy there, for one Year as aforesaid,” doth Order that the said recited Order be vacated set aside and discharged.

(8) Argument

On Monday 4th June 1744, (in Trinity Term 17 & 18 G. 2.) a Motion was made by Mr. Gundry, to quash this Order of Sessions; for that they were mistaken in Point of Law; the Service in St. Cuthbert's being a Continuance of the first Contract, and under it, and for six Months: The Servant’s last legal Settlement must: therefore be in St. Cuthbert's, where he served the last six Months. He cited several Cases: *Rex v. Inhabitants of Aynhoe*, M. G. 2. *Brightwell v. West Hanning*, H. 1G.1. *Silverton and Ashton*, Tr. 12 Ann.(V. Foley's Poor Laws, pa. 210.) *Ivinghoe and Solebury*, P. 4 G. 1. *Rex v. Inhabitants of Ladock*, P. 15G. 2. (ante, Np 64.) *West Stower and Fifehead*, H. 11 G. 2. (meaning *Rex v. Inhabitants of Fifehead Magdalen*, ante, N° 37, printed, erroneously, 73.^. pa.116.)

Rule to shew Cause why the Order of Sessions should not be quashed, and the original Order affirmed.

Cause was now shewn: And it was urged, that this was not the same Service as the first Year’s was: For that the first Contract was completed and executed on both Sides, and was determined. It had gained the Servant a Settlement in St. Andrew's. And there was no new Contract or Agreement at all: Nor is any Thing stated that can destroy the Settlement gained in St. Andrew's by serving a whole Year there.

Mr. Gundry replied, That it is the constant Practice, for Servants to go on upon the first Agreement, without any new one: And that upon the Principles laid down by his Opponents, a Servant who had lived with his Master twenty Years in different Parishes, without any new Contract, must be settled in the Parish where his Master had lived in the first Year of his Service.

(9) Judgment

After it had been thus argued by Mr. Gundry for the Order of the two Justices, and Mr. Henley and Mr. Gould for the Order of Sessions ------

The whole Court were unanimous, That as there was a Hiring for a Year, and a Service for a Year, and a Continuance under the same Service, it was sufficient to gain a Settlement and that such Settlement must be in the Parish where it was performed for the last forty Days.

Lee Lord Ch. Just. observed that the Statute of 13 C. 2. c. 12. Sect. 1. authorizes the Justices (upon Complaint made by the Churchwardens or Overseers within forty Days) to remove to that Parish which was the Pauper’s last Place of Settlement for forty Days; either as a Native, Householder, Sojourner, Apprentice, or Servant: (For, then, Service for forty Days gained a Servant a Settlement.) Then the 3 & 4 W. & M. c. 11. Sect. 7. enabled “ that if any unmarried Person, not having Child or Children, shall be lawfully hired into any Parish or Town for one Year, &c, such Service should gain a Settlement.” But this Statute was doubtful upon “the Service” ; it being, that such Service should gain a Settlement, “ though no Notice in Writing should be delivered and published, as that Act required.”

The 8 & 9 IV. 3. c. 30. Sect. 4. explains therefore the former Act of 3 & 4 W. & M. by requiring, that it shall be not only a Hiring for a Year, but also a Service for a Year, and a Continuance in the same Service during the Year.--- “That no such Person so hired as aforesaid shall be adjudged or deemed to have a good Settlement in any such Parish or Township, unless such Person shall continue and abide in the same Service during the Space of one whole Year.” (See Foley’s Poor Laws, ps. 212, 213, 214, where this Act of Parliament and the History of it are well explained by L.C. Just. Parker, in the *Silverton* and *Ashton* Case).

The two Confederations of a Settlement gained in this Way, are—The Benefit to the Parish, and the Labour of the Person.

Mr. Henley says that he had completely gained a Settlement in St. Andrew’s and “ that it shall not be destroyed by what followed.”

But I say, He has destroyed that Settlement and gained a new one, by what he has done since : for it is certainly the same Service ; and the last forty Days of it make the Settlement. And by gaining a latter Settlement, he of Course loses his former one.

His Lordship said he could not distinguish it from the Cases cited (V. *Silverton and Ashton*, Tr. 12 Ann. B.R. (V Ses. Cases Ed. 1750 Vol 1. No 46, pa 41. And *Fortescue* 308 and Fol. 210) *Rex v Inhabitants of Ladock*, P.15 G.2 B.R. (ante, No 64 pa 179)) of a Hiring for a Year and a Service for a Year; which is holden to gain a Settlement, though the Service be not under the same Hiring: And he thought it quite indifferent in what Parish the Service was ; since it was the same Service.

The three other Judges concurred, upon the same Principles.

(10) Ruling

The Court, therefore, being unanimous, the Rule was that the

Order of the two Justices be affirmed;

And Order of Sessions Quashed.

V. Post, Np 98, *Rex v. Inhabitants of Wrinton alias Wrington*, Mich. 1748, 22 G. 2. and No , *Rex v. Inhabitants of Caverswall*, Easter Term 1758, 31 G. 2.

(11) Comment

The court finds that the servant gains a settlement in the place where he serve the last 40 days, provided that he has served the master continuously (albeit at different places) for at least a year under a hiring for a year.

(12) Type

Liberal

(1) Case name

*R.* v. *Creech St. Michael's.*

(2) Date

25 April 1774

(3) Report

Burr S.C. 765

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Creech St. Michael's

(6) Order sought

Quashing

(7) Facts

On Thursday the 3d of February last, Mr. Hobhouse moved to quash an Order of Sessions made for discharging an order of two Justices, made for removing John Every, Grace his Wife, and their six Children, specifying their respective Names and Ages,) from the Parish of Creech St. Michael in the County of Somerset to the Parish of Pitminster in the same County.

The Case stated by the Sessions, was as follows—

Upon hearing the Appeal, (the Pauper John Every being run away,) in order to prove his Birth in the Parish of Pitminster, the following Copy of a Register was produced, taken from the Parish-Register of Pitminster—Christenings 1735. John, Son of John Every and Mary his Wife, baptized December 5.”

John Carter was then called, to prove that the Pauper lived, many Years since, with him : That John Every, who lived in Pitminster, and died long ago, was considered as the Pauper’s Father ; and that he knew Mary Every, who lives in Pitminster, and whom he understood to be the Pauper’s Mother, and heard the Pauper call her “ Mother,”

The Court [of Sessions] was of Opinion “that this was not Sufficient Evidence to prove the Birth, and to identify the Pauper; as better Evidence might have been adduced for that Purpose.”

The Mother was proved to have been subpoenaed : But she did not attend; although it did not appear that she was under any legal Disability of so doing.

Lord Mansfield seemed, at the Time of making the Motion, to think this Evidence sufficient.

(8) Argument

Rule to shew Cause.

And Cause being now shewn by Mr. Hotchkins and Mr. Heath; who were opposed by Mr. Gould.

(9) Judgment

(10) Ruling

The Order of Sessions was quashed; and

The original order affirmed.

(11) Comment

A copy of a birth register and the evidence of someone with whom the pauper lived is enough to prove birthplace and residence for the purpose of settlement.

(12) Type

Liberal

(1) Case name

*R.* v. *Dawlish*

(2) Date

28 January 1818

(3) Report

1 B. & A. 280

(4) Court

King’s Bench

(5) Parties

The King versus the Inhabitants of Dawlish

(6) Order sought

Quashing

(7) Facts

Upon an appeal against an order of two justices by which Ruth Hookway was removed from the parish of Clyst Honiton, in the county of Devon, to the parish of Dawlish in the same county. The sessions confirmed the order, subject to the opinion of this Court on a case which stated in substance as follows: The pauper by indenture dated September 3, 1804, was bound apprentice by the

parish officers of Broadhembury to Robert Pearcy of that place till she should attain the age of twenty-one, whilst under this indenture she served John Blackmore, with Pearcy’s express consent, for two years in the parish of Dawlish, after which in May, 1812, she hired herself as a yearly servant to Mrs. Bryant of the parish of Clyst Honiton for 4l. a year. In the September following the indentures expired. At the end of her year, the pauper again hired for another year to Mrs. Bryant, and served

ten months under this last hiring. There was no interruption between the two services. The first year’s service with Mrs. Bryant was without the knowledge and consent of Pearcy the master.

(8) Argument

Moore, in support of the order of sessions, contended that no settlement had been gained in Clyst Honiton by the hiring and service. The first hiring to Mrs. Bryant was in May, 1812, at which time the apprenticeship was still in existence, consequently no settlement could be gained under that contract, then after the expiration of the apprenticeship there is a fresh hiring under which the pauper only served ten months, and though part of the first year’s service was subsequent to the expiration of the indenture, that cannot be coupled with the service under the last hiring, because

the first contract was made at a time when the party was incapable of contracting. A service under no contract may undoubtedly be coupled with a service under a yearly hiring; but this is a case distinguishable from that, for here the first service is under an unlawful contract.

(9) Judgment

Lord Ellenborough C.J. If this were res integra, there might be some difficulty in admitting the principle that a service without a contract might be coupled with service under one, so as to gain a settlement; but that having been decided, this case ranges itself under the same class. Here, after September, 1812, when the incapacity ceased, the pauper became a regular servant to Mrs. Bryant. There is no interruption in that service, and she continued there above a year after that time : she therefore gained a settlement at Clyst Honiton.

Bayley J. concurred.

Abbott J. The first contract was either valid or void ; if valid, then there is a good hiring and a good service; if void, then the first year’s service will be a service under no contract at all, which, according to the argument, it is admitted may be coupled with the service under the second hiring. In either case the settlement is at Clyst Honiton.

Holroyd J. concurred.

Order of sessions quashed.

(10) Ruling

A pauper, before the expiration of her apprenticeship, hired herself and served for a year, the four last months of which were after her indentures had expired, and then hired herself to the same person for another year, but only served only ten months : Held that the first service (although without the knowledge or approval of the master) might be coupled with the service under the last contract, and that the pauper thereby gained a settlement.

(11) Comment

The Court allows service under a contract which might have been void to be coupled with service under a yearly hiring, although less than for a year to grant a settlement.

(12) Type

Libera

(1) Case name

*R.* v *Dedham*

(2) Date

28 November 1769

(3) Report

Burr. S.C. 653

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Dedham

(6) Order sought

Quashing

(7) Facts

Two Justices removed Samuel Bolton and Mary his Wife from Bedfield in Suffolk to Dedham in Essex: And the Sessions, upon an Appeal, confirmed their Order; stating the following Facts—

Samuel Bolton, the Pauper, was bred up to the Trade of a Plumber and Glazier. In the Month of April 1767, He let Himself to John Mason of Dedham aforesaid Plumber and Glazier, at the Wages of six Shillings a week, Board, Lodging, and Washing, Summer and Winter. He served under that Agreement, for the Space of eleven Months: When his Master, having taken an Apprentice, informed Him, “that he must lodge out of his House.” Upon which, the Pauper demanded Sixpence a-week more; alledging “ that he “ would otherwise quit the Service, on account of his Master's having withdrawn from the original Agreement.” He continued to receive the additional Sum of Sixpence a-week, till the September following: And during all the said Service, his Master paid him his Wages, in different Proportions, as he wanted them. And that, by the aforesaid Hiring, the Pauper apprehended He was bound to stay with his Master a Year. Whereupon, this Court [the Sessions] is of Opinion “ that the said Samuel Bolton gained a Settlement in the said Parish of Dedham by reason of the Facts above stated ;” and doth therefore confirm the said Order of the said two Justices, for Removal of the said Samuel Bolton and Mary his Wife from the said Parish of Bedfield to the said Parish of Dedham ; subject to the Opinion of the Court of King’s Bench.

(8) Argument

Mr. Thurlow moved, on Wednesday the 15th instant, to quash both these Orders. His Objection was, “that here is no Hiring for a Year.” There is nothing here stated, that imports a Contract for a Year : And consequently, the Pauper was not bound to serve a Year, whatever he Himself might apprehend about it.

Mr. Dunning and Mr. Soame now shewed Cause against quashing the Orders. They argued, that here was a Hiring for a Year, as well as a Service for a Year. A general Hiring is a Hiring for a Year. The Mention of “ six Shillings a-week,” is only to ascertain the Rate of the Wages; but does not mean to consider the Service as a weekly Service : And, as the Wages in this Trade are higher in Winter than in Summer, the Words “ Summer and Winter” shew that this was intended to be a continued Contract for both those Seasons; and that by fixing the Wages to be the same in both, it was understood by Both Parties to be a Contract for the whole Year. But it is, at least, an indefinite Contract: And an indefinite Contract is a Contract for a Year.

Mr. Thurlow was going to reply. But,

(9) Judgment

Lord Mansfield stopt him ; saying that the Case was too plain, to require any Thing more to be said upon it, on Mr. Thurlow’s Side.

All the Cases require a Hiring for a Year. But there must be a reciprocal Obligation upon both the contracting Parties. I see Nothing here, that can be laid Hold on, to make it a Hiring for a Year. It was a Hiring at so much a-week : And when the Master could not lodge the Servant any longer, they came to a new Agreement for an additional Sixpence a-week. The Servant at that Time alledged, “that he would quit the Service, unless the “Master would comply with his Demand:” And to prevent his

doing so, the Master complied, and agreed to pay Him Sixpence a-week more.

Mr. Justice Yates—There must be a Hiring for a Year; either in Law, or in express Words. These Words do not express it: And here is a Circumstance stated, which destroys the Presumption of its being a general Hiring for a Year; namely, “that the “Servant demanded an additional Sixpence a-week, alledging that “he would otherwise quit the Service; and the Master complied:” So that neither of them seems at that Time to have thought the Contract originally made between them was binding for a Year.

Mr. Justice Aston—Though a general Hiring is a Hiring for a Year, yet there must be an Obligation upon the Servant “ to serve for a Year,” in order to his gaining a Settlement under such a Hiring. But there is Nothing in the Contract here stated, that infers such an Obligation upon this Servant. The six Shillings a-week Wages, “Summer and Winter” only imports the Agreement to have been “ that the Wages should continue always the same, and not be varied according to the Seasons:” It does not import “that the Contract was to continue during the whole Year.”' And the Master’s complying with the Servant’s Demand of the additional Sixpence a-week, upon the Servant’s declaring “that he would otherwise quit the Service,” shews how the Contract was then understood by Both of them. The Pauper’s Apprehension stated in this Order of Sessions is Nothing \* : We can not regard it; especially, as he is stated to have alledged “that he-would quit the Service, “ unless his Matter would comply with his Demand.”

Mr. Justice Willes concurred in Opinion.

(10) Ruling

By the Court unanimously,

Both Orders quashed.

(11) Comment

This is a restrictive case finding that a variation in a contract of hire, where the original contract is expressed to be by the week, will prevent the conferral of a settlement even if the servant in fact worked for the same master for over a year. It emphasises the importance placed upon formal contractual arrangements and takes a narrow view of the contract wording. The court states that wages expressed to be by the week, “summer and winter” is neutral phrasing which not imply that the contract is for the whole year, only that the wages won’t be varied by the season (contrasting the later *R. v. Birdbrooke* (1791) where the contractual wording of “three shillings per week the year round” did mean hire for a year. Interestingly, Buller J in *R. v. Newton Toney* (1788) took “summer and winter” in *Dedham* to mean that the parties intended for the contract to last a full year). The presumption in law of hire for a year is rebutted here by the variation in wages – the court takes the variation and the servant’s threat to quit to indicate the original contract was not binding for a year.

(12) Type

Restrictive

(1) Case name

*R.* v. *Denham*

(2) Date

12 May 1735

(3) Report

Burr. S.C. 35

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Denham

(6) Order sought

Quashing

(7) Facts

Two Justices removed Edmund Walker and Elizabeth his Wife from Dalham to Denham : And the Sessions, upon an Appeal, confirm the Order.

The Order of Sessions Rates the Case especially. Edmund Walker hired a House and Farm of 10*l*. a Year and upwards in Denham, and lived therein from the Year 1725 to the Year 1730, and was rated and paid to the Poor’s Rates of the said Parish: Afterwards, he hired another House and Farm in Southwold Park, of 150*l.* a Year, and lived there for several Years. But Southwold Park aforesaid is an extra-parochial Place, consisting of two Houses and about 300 Acres of Land only, belonging to and in the Occupation of different Persons, being in the whole of the Value of near 300*l.* a Year. And it does not appear that within the said extra-parochial Place there are or ever were any Persons appointed to receive or provide for the Poor happening therein. Upon deliberate hearing of Counsel on either Side, The Sessions do, under the Circumstances aforesaid, confirm the Order so made for Removal as aforesaid.

(8) Argument

The Counsel who moved to quash these Orders (Mr. Strange) said, It was now established, “ That a Person may be removed to an “extra-parochial Place, which may be looked upon as a Township or Vill, and has more Houses than one;” and “that a Mandamus will lie, to appoint Overseers for an extra-parochial Place.” To prove which, he cited the Case of Dotting Stoke Lane and Brookham Lodge, H. 11 Ann. and Rex v. The Inhabitants of Rufford, P. 8G.

Therefore the last legal Settlement of the Paupers was at Southwold Park ; not at Denham.

On the contrary, it was argued (by Mr. Abney and Mr. Filmer) that the general Rule is, “that Persons cannot be lent to or from extra-parochial Places.” And there is no Inconvenience in this Doctrine: For as they are not to take other's Poor, so neither are others obliged to take theirs. Indeed if such extra-parochial Place be so populous as to be looked upon as a Town or Vill, that may make a great Difference.

In the Case of the Inhabitants of Stoke Lane, Dotting, and Brookham Lodge, the Pauper was sent to an extra-parochial Place, called Brookham Lodge: And the Order was quashed, because the extra-parochial Place did not come under the Notion of a Township or Village.

The Act of 13 & 14 C. 2. r. 12. extends to all England, if the extra-parochial Place can come under the Notion of a Township or Village; but not otherwise. A Place consisting only of one House certainly does not. It ought, at lead, to consist of several Houses, to answer that Idea in any Degree.

In the Case of Rex v. The Inhabitants of Belvoir, M. 2 G. 2, B. R. there are two Houses, the Duke of Rutland’s (Belvoir Castle) and an Alehouse: But there were not, nor ever had been, any Officers there. And the Order of Removal thither was quashed.

In the Case of Rufford it appeared upon the Allegation in the Mandamus, and was admitted by the Return, “ That it was a Vill” though insisted to be extra-parochial. And that Vill might consist of 500 Houses, possibly.

But two Houses only, are not sufficient to be considered as a Vill. And unless an extra-parochial Place be a Township or Village, it is not within 13 & 14 C. 2. c. 12. A Town or Village should, according to Finch’s Law, contain ten Families. And by 1 Mod. 78. Waldron’s Case, it appears that a Village is “a District that has a petty Constable over it.” The Definition in *Co. Litt*. 115. Is this— "*Villa est ex pluribus Mansionibus vicinata, et collata ex pluribus Vicinis*.” This Place, therefore, having only two Houses in it, cannot be considered as a Township or Village.

The Counsel for quashing the Orders (Mr. Strange and Mr. Lloyd) replied, That extra-parochial Places may have Officers appointed for them by Mandamus.

In the Case of Dotting and Stoke Lane it was holden, “ That there must be more Houses than one.” It has been said, It was there holden “ that there must be several.” But more than one are several.

This present Case answers the Definition in Co. Litt’: It is a Vill consisting *ex pluribus Mansionibus & Vicinatis*: For it has two Houses and 300 Acres of Land belonging to and in the Occupation of different Persons.

If a Town be decayed, it is still a Town. And to prove that this shall be intended and taken to be a Vill, they cited Greene v. Proude, 1 Mod. 117. and Addison v. Sir John Ottway, 1 Mod. 251. If this be not a Vill, what is it? It must be either a Vill, or Part of another Vill: (For Parish is only an Ecclesiastical Division.) All England is divided into Vills: And therefore this must be a Vill or Part of a Vill, or else no Part of England.

In the Case of Belvoir, there was a material Fault. For it was directed, “ To the Churchwardens and Overseers of the Parish or Liberty of Belvoir: Whereas it was particularly dated “ that “there were none.” Besides, the Rule was made absolute without any Defence made against it.

(9) Judgment

Lord Hardwicke. — This is a new Case : At least, it is so to me.

Before the Case of Dotting and Stoke Lane, it had been generally taken that there was no Power lodged in the Justices of Peace to send Paupers to extra-parochial Places where there were no Overseers of the Poor : But in that Case, all the Court held “ that within 13 & 14 C. 2. c. 12. the Court might oblige the Justices to appoint Overseers, where the Place was such as might come under the “Notion of a Village or Township.” Now that Clause was plainly intended for Townships in the large northern Parishes only; (and that appears by the recital Part of the Act:) But in the enabling Part, the Words “Towns, Hamlets and Vills” are mentioned at large. Whereupon the Court did there construe the Equity of it to be, “ that a Settlement might be gained in such Parishes at large” without confining it to those Parishes only which were particularized in the Recital. That alone was a very liberal Construction of the Act: But they thought it within the Mischief provided against by the Act, and reasonable. And I believe my Lord Chief Justice Parker's Words were, “That a Settlement might be gained in an “extra-parochial Place consisting of more Houses than one:” But then he went on—“ So as to come under the Notion of a Town or Village.” The Substance of the Opinion rested therefore upon this Limitation “ of its amounting to the Notion of a Township or Village.”

Now this Place is called a Park, and described as such. It is certainly very hard to define exactly what is a Township or a Village: It must be left to the Judgment of the Court, upon the Circumstances of the Case dated.

By the 43 Eliz. c. 2. there must, in every Place, be more Overseers than one. And when there are only two Houses in a Place, must the whole Parish be perpetual Overseers? And in such a Case there is no Body over whom they are to have Jurisdiction, or any Body to choose them, excepting themselves.

Now really this Place does not appear, to my Satisfaction, to be a Town or Village. In the Case of Dolting and Stoke Lane the Order was quashed because Brookham Lodge was holden by the Court not to be a Town or Village; notwithstanding that the general Law was there laid down as I have before mentioned. And here the Place docs not, in my Opinion, come under the Notion of a Town or Village : And the Orders ought therefore to be affirmed. Mr. J. Page held that a Single House, or two Houses can not amount to the Notion of a Town or Village. If the Place formerly consisted of more than two; or had been a Town, and fallen to Decay; it ought to have been so stated. However, if the Houses were really and in Fact decayed and gone, it would then cease to be a Town or Village.

A Town or Village, in common Parlance, is an aggregate Number of Houses.

Therefore he concurred.

Mr. J. Probyn was of the same Opinion.

The least Division known in the old Law is a 'Tithing ; which consisted of ten Families. I should therefore think a Vill must consist: of at least as much as a Tithing: It seems indeed to be something between a Tithing and a Town. Since there is no certain Definition of a Vill, why should we not fix it to the Number of a Tithing, at least?

The 13 & 14 C. 2. c. 12. was, I believe, intended for the northern Parishes: But it was at length construed to extend to all others in England, as coming under the same Equity and Reason.

The Limitation of the “more Houses than one,” in the Case of Dolting, is— “So as to come under the Notion of a Township or Village.” Now if there are but two Housekeepers, are these two People to choose themselves, and to be perpetual Overseers ? I think two Houses are not within the Rule, “ So as to come under the Notion of a Township or Village.

Mr. J. Lee was of the same Opinion.

It is now thoroughly settled, “That the Justices may appoint Overseers in extra-parochial Places'' But it is upon the Principle and Foundation, that the extra-parochial Place comes under the “Notion of a Village or Town." I think the Notion of a Village, according to the ancient Law, is a Tithing confiding of ten Families : According to the modern Notion, it is a Place that has a Civil Officer called a Constable. I think that it ought, at the lead, to have the Reputation of a Vill or Town. But this Place is not dated to have had the Reputation of a Vill or Town : but only “ to consist of two Houses.” Lord Coke's Definition of a Vill “*ex pluribus Mansionibus vicinata*” must mean more than two Houses.

If they had applied for a Mandamus to appoint Overseers, the Question would have come properly before the Court upon the Return. But, upon the present Motion, it does not appear sufficiently to the Court to be such a Place as we can say is within the Statute of 13 & 14 C. 2. for the Paupers to be removed to as their last legal Settlement.

The Counsel for quashing the Order would have had this Case spoken to again. But

Lord Hardwicke said, He did not see how it was possible, upon this State of the Case, that the Court could take this Place to be a Township or Village. He said he was satisfied that the Justices have done right: And it falls exactly within the Reason of the Case of Belvoir Castle.

(10) Ruling

Per Cur. unanimously—

The Rule was discharged; And

Both Orders affirmed.

(11) Comment

Settlements can only be gained in extra-parochial places if they fall within the definition of a ‘town’ or ‘village’. Two houses is too little to qualify as either a town or a village. The court suggests that the minimum threshold for a ‘village’ is 10 families, and more for a town, and there must be an overseer of the poor.

(12) Type

Restrictive

(1) Case name

*R.* v. *Denham*

(2) Date

11 February 1813

(3) Report

1 M. & S. 221

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Denham

(6) Order sought

Quashing

(7) Facts

Upon appeal, the Quarter Sessions for the county of Southampton confirmed an order for the removal of Charles Tranter, his wife and family, subject to the opinion of this Court on a case stated.

(8) Argument

The case was argued in Michaelmas term last by Maule in support of the order of sessions, and by Gaselee and Selwyn contra. The Court took time to consider and this day

(9) Judgment

Lord Ellenborough C.J. delivered the judgment. This was a settlement case upon a removal from Basingstoke to Denham, and the question was upon the residence necessary to confer a settlement by hiring and service, whether it was necessary there should be 40 days residence within the compass of a year; or whether, if the service were for several years uninterruptedly, a

residence of 40 days within those several years would be sufficient .The facts were these ; the pauper was hired for a year to George Smith, and served that year: at the expiration of which he was hired to him for another year, and served half of it; and during that year and a half he was resident in Basingstoke for 40 days, but he did not reside in Basingstoke for 40 days either within the first year, or within the half year, nor (as was admitted) within any one period of a year whilst he continued with Smith. The sessions were of opinion that this residence was not sufficient, and we think their opinion right. By stat. 13 & 14 Car. 2, e. 12, s. 1, poor persons coming to settle in any parish, if likely to be chargeable to the parish, may be removed within 40 days after they so come to settle as aforesaid; and it is under this Act that 40 days residence is required. By stat. 1 Jac. 2, c. 17, s. 3, the 40 days continuance in a parish, intended by the Stat. 13 & 14 Car. 2, to make a settlement, shall be accounted from the delivery of notice in writing to one of the officers of the parish to which such poor person removes: which notice, by stat. 3 & 4 W. & M. e. 11, s. 3, is to be read in church the next Lord’s-Day, and registered in the book kept for the poor’s accounts. By the same statute 3 & 4 W. & M. e. 11, s. 7, if any unmarried person, not having child or children, shall be lawfully “hired into any parish or town for one year, such service shall be adjudged a good settlement therein, though no such notice in writing be delivered and published as aforesaid.” And by stat. 8 & 9 W. 3, e. 30, s. 4, “No person, so hired as aforesaid, shall be adjudged to have a good settlement in any such parish or township, unless such person shall continue and abide in the same service during the space of one whole year.” Upon these clauses settlements by hiring and service now stand. It has been decided that so as there is a hiring for a year, and service for a year, it is not necessary the whole

of the service should be under the yearly hiring, but service not under a yearly hiring may be connected with service under a yearly hiring, and both services, if uninterrupted, may be taken into the account: but it has never been decided that residences beyond the compass of a year can be connected ; and as the Legislature, by requiring a hiring for a year, and a continuance and abiding in the same service during the space of one whole year, seem to have contemplated something which was not to be complete in less than a year, but was to be complete within that period; we think we abide most closely by the words, and give effect to the most probable intention of the Legislature, by holding that the whole residence must be within the compass of a single year. Suppose the same service to continue uninterruptedly for 20 years, and the servant to sleep twice in every of such 20 years at the same inn in travelling, and to be at that inn the last night of his service, would it be expedient and reasonable that an inquiry extending over so long a period of time at detached intervals should be gone into for the purpose of ascertaining the settlement of a pauper? What notice could the officers of that parish have had that he was come to settle there? and yet there his settlement would be, if we were to hold that residence for 40 days beyond the compass of a single year would do. We are therefore of opinion that a settlement in Basingstoke in this case was not established, and that the order of removal and the order of sessions, which proceeded upon the disallowing the settlement, should be confirmed.

(10) Ruling

The 40 days residence necessary to confer a settlement by hiring and service, must be within the compass of a year.

(11) Comment

The Court holds that for there to be a settlement by hiring, the servant must have resided in the parish concerned for 40 days continuously within the span of a relevant year, and not over the course of two separate years.

(12) Type

Restrictive

(1) Case name

*R.* v. *Dodderhill*

(2) Date

19 November 1814

(3) Report

3 M. & S. 243

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Dodderhill

(6) Order sought

Quashing

(7) Facts

The Court of Quarter Sessions for the county of Worcester discharged an order of two justices for the removal of John Hill, his wife and children, from that part of the parish of Dodderhill lying in the borough of Wych, otherwise Droitwich, to the parish of St. Peter, in the said borough, subject to the opinion of this Court on the following case: John Hill, the pauper, being legally settled in Wolverby, hired himself as a servant in husbandry to one Broad, who occupied a farm in the parish of St. Peter, to serve him for the weekly wages of four shillings, board, washing, and lodging, except in the harvest month, when his wages were to be increased to ten shillings an sixpence per week, and then again to be reduced to four shillings. At the time of the hiring nothing was said as to the length of time the pauper was to continue in the service of Broad. Under the above hiring the pauper served Broad eighteen months in St. Peters, residing there, and receiving the four shillings per week, as agreed upon, except during the harvest month, when his wages were raised to ten shillings and

sixpence, and at the end of that time fallen again to four shillings.

(8) Argument

Peake, in support of the order of sessions, relied on *Rex* v. *Pucklechurch* , and the rule there adopted after a consideration of all the cases upon the subject, “that where nothing is said in the contract about time, but only a reservation of weekly wages, it is only a weekly hiring.” Such, he said, was the case here; for *Rex* v. *Dedham* shews that the reservation of higher wages in the harvest-month does not necessarily import that the parties intended more than a weekly hiring: there the servant let

himself summer and winter, yet as it was at so much a week it was held to be but a weekly hiring. And if the mention of summer and winter, which comprises the whole year, had not the effect of altering the import arising from the reservation of weekly wages, a fortiori the mention of the harvest-month, which is but a small portion of the year, shall not have that effect. Nor is this case like *Rex* v. *Hampreston* and that class of cases, where, upon a hiring at week y wages, with liberty to part at a month’s notice, it has been held a hiring for a year; because there the introduction into the contract of a month’s notice being inconsistent with a weekly hiring, shews that the reservation of weekly wages could not be intended to control the duration of the contract.

Puller (with him Abbott) contra, agreed to the rule in *Rex* v. *Pucklechurch*, but he relied on these two circumstances to shew that the parties contemplate a yearly hiring, 1st, that he was hired as a servant in husbandry, the period of which service was usually for a year; next, that exception was made in the harvest-month, which could not reasonably be referred to anything else than that the parties were providing for the relation of master and servant beyond the period of a week ; and it so, it became a hiring unlimited in duration, and therefore was a hiring for a year. And he cited *Rex* v. *Hampreston* and *Rex* v. *Birdbrooke*.

(9) Judgment

Lord Ellenborough C.J. I take the rule of law to be, that if no particular time is expressed for the continuance of the service, or is reasonably to be implied, a hiring for a year is to be intended. But it has also been laid down, that a reservation of weekly wages imports a hiring by the week, unless the inference which arises from the reservation of weekly wages be repelled by other circumstances. Where there is a liberty to part at a month’s notice, that imports that as there must be a month to determine the contract, the reservation of weekly wages is not to limit the duration of the contract, and therefore it becomes a hiring unlimited in duration, which the law terms a general hiring or a hiring for a year. What is the case here? The hiring is at weekly wages, except in the harvest month, when the servant is to be paid according to a higher rate of weekly wages during that month ; he is to be paid 10s. 6d. per week, the parties contemplating the possibility of the service continuing during the harvest month. If the exception had been “for the harvest month,” instead

of “in the harvest month,” it might have afforded a more plausible argument that the contract was meant to endure at least for the period of a month ; or if instead of 10s. 6d. a week, it had been stipulated that the servant should receive two guineas for the month, that would have imported a consolidated month, and might have repelled, on the same principle as the month’s notice, the inference arising from the reservation of weekly wages; but that is not the language of this contract. All that is stated here is the payment of weekly wages, which according to the cases controls the duration of the contract.

Le Blanc J. I am of the same opinion. The case is perfectly clear. The pauper was hired as a servant in husbandry at weekly wages, which is a weekly hiring, because if there be nothing else to ascertain the duration of the hiring, the payment of the wages shall ascertain it. Is there any circumstance here to shew that the hiring was intended to be for more than by the week? If there be any such circumstance, then it will be a yearly hiring, unless it can be shewn that it was intended to be for a less period. Now the only circumstance is this, that in the harvest month the weekly wages were to be increased, and afterwards reduced. Is that more than was expressed in *Rex* v. *Dedham*, where the pauper let himself at 6s. a week summer and winter? That was understood if the parties should happen to go on together summer and winter, and so it must be understood here if they should continue until the harvest month. So in *Rex* v. *Mitcham* a hiring at so much a week for as long

time as the master and servant could agree, was held to be a weekly hiring, being a hiring for so long as they could agree from week to week. Here it is in effect so long as the parties can agree, and if they should go on to the harvest month, then from week to week at a higher rate of wages during that month.

Bayley J. There is nothing in this case to shew that the master bound himself to keep the man, or the man to serve the master, for a year. The parties were only providing, that in case the weekly contract should continue up to the harvest month, the weekly wages should be increased. There was no obligation either upon the master or the servant to continue it beyond the week.

Order of sessions confirmed.

(10) Ruling

A servant in husbandry, hired to serve for the weekly wages of 4s., board, washing, and lodging except in the harvest month, when his wages were to be increased to 10s. 6d. per week, and then

again reduced to 4s., does not gain a settlement; for that is only a weekly hiring.

(11) Comment

The Court declines to infer a yearly hiring, finding a weekly one instead, where the wages were paid for each week’s work.

(12) Type

Restrictive

(1) Case name

*R*. v. *Dremerchion*

(2) Date

5 April 1832

(3) Report

3 B. & Ad. 420

(4) Court

King’s Bench

(5) Parties

The King versus the Inhabitants of Dremerchion

(6) Order sought

Quashing

(7) Facts

On appeal against an order of two justices, whereby John Williams, his wife and children, were removed from the parish of Northop, in the county of Flint, to Dremerchion in the same county, the sessions confirmed the order of removal, subject to the opinion of this Court on the following case :— The pauper, John Williams, hired with one W. Evans for a year, from the 1st of May 1819 to the 1st of May 1820, and served with him for a year, residing in Dremerchion from the 1st May 1819 until November in the same year, when he married. From that time he resided [421] on the week days, from Monday to Saturday evening, at his master’s house in Dremerchion, during which time he was

working for his master; but Saturday night, the whole of Sunday, and until Monday morning, the pauper passed with his wife in St. Asaph parish. The pauper’s year expired on Sunday the 30th of April 1820. He had slept the night before in St. Asaph, and he slept there that night (Sunday night) also, and on Monday morning he returned to his master’s residence in Dremerchion, and commenced working as a day labourer. The contract of hiring was agreed by the pauper and his master not to be dissolved by the marriage in November 1819. The pauper slept more than forty nights during the year in St. Asaph, but no part of the time passed in St. Asaph was in furtherance of the service, being only allowed by the pauper’s master as an indulgence, nor was there any service in fact performed by the pauper for his master in St. Asaph. The question reserved was, whether the pauper was properly removed to Dremerchion.

(8) Argument

R. V. Richards and Miller in support of the order of sessions. No settlement was gained in St. Asaph, because the residence of the pauper was not in pursuance of the contract of hiring. In *Rex* v. *Ilkeston* (4 B. & C. 64), it was held that, to satisfy the words binding and inhabitation in the eighth section of the 3 W. & M. c. 11, which applies to apprentices, the residence must be in the character of apprentice, and in some way or other in furtherance of the object of the apprenticeship. Section 7

enacts, that if a person “shall be lawfully hired into a parish or town for one year, such service [422] shall be deemed a good settlement therein.” By analogy to the decisions as to apprentices, the residence must be in pursuance of the contract of hiring. *Rex* v. *Hedsor* (Cald. 51. 2 Bott, pl. 405, 6th edit.), will be relied upon by the other side. There it was decided that a person who, during his service, married, and then lodged for the last forty days with his wife in another parish than that where the service was performed, gained a settlement in the parish where he lodged. Rex v.

Nympsfield (Cald. 107. 2 Bott, pl. 405 n. (a)), was decided on the authority of that case; but in Rex v. Sutton (5 T. R. 657), where a yearly servant being deprived of his reason forty days before the end of the year, was taken home by his father, who lived in another parish, and who received the wages for the whole year; it was held that the servant was settled in the master’s parish, though he continued in his father’s house during the remainder of the year; and there Lord Kenyon said, “That he could

not consider the pauper’s residence with bis father as a performance of service with his master; he was there diverse intuitu, in order to recover from his illness, and not for the purpose of serving his master.” Here, after the pauper’s marriage, from the Saturday night, until the Monday morning, the master had no control over him ; his residence with his wife in St. Asaph was not at all connected with his service, and the sessions have so found.

Fynes Clinton contra. This is the first instance in which an attempt has been made to extend the doctrine as to the residence of apprentices to cases of hired servants. In Rex v. Ilkeston (4 B. & C. 64), the decision proceeded on the construction of the words of 3 W. & M. c. 11, s. 8, binding and inhabitation. In cases of hiring and service, it has always been considered as established, that the servant is settled in the parish where he completes the last forty nights. He was then stopped by the Court.

(9) Judgment

Lord Tenterden C.J. There is a distinction recognized in several cases, between apprentices and hired servants. The last parish in which the servant completes a forty days’ residence is that in which he is settled. But, as to apprentices, the residence must be in furtherance of the contract of apprenticeship. The 7th and 8th sections of the 3 W. & M. c. 11, are differently worded; the seventh provides that if a party be hired into any parish, such service shall be a good settlement; the eighth requires a binding and inhabitation in the parish. Why there should have been such a distinction I do not know, but it has been made. Rex v. Hedsor (Cald. 51. 2 Bott, pl. 405), is a stronger case than this; there the sleeping out of the master’s parish was without his consent.

Littledale J. concurred.

Parke J. It is clearly established that a servant is settled in the parish where he sleeps for the last forty days of his service. Here it is agreed that there was no dissolution of the contract.

Patteson J. concurred.

Order of sessions quashed.

(10) Ruling

A hired servant is settled in that parish in which he last completes a forty days’ residence, although he performs no service there for his master.

(11) Comment

The Court affirms earlier case law to find that the parish where the servant lodges is where a settlement is gained even if the work is done in another parish.

(12) Type

Liberal.

(1) Case name

*R.* v. *Dunton*

(2) Date

22 April 1812

(3) Report

15 East 352

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Dunton

(6) Order sought

Quashing

(7) Facts

The Justices by their order, removed Benjamin Collins from the parish of Ingrave to the parish of Dunton, both in the county of Essex; which order was confirmed by the sessions, on appeal, subject to the opinion of this Court on the following case. Benjamin Collins, before he lived with Smith, as after mentioned, belonged to Dunton. Previously to Michaelmas 1S09 he went to one Eastwood in the parish of East Horndon, and worked for him for some time at 6d. a-day. Afterwards he was taken into Eastwood’s house, where he lived two years in his employment. On leaving Eastwood’s service, (by which it is admitted that no settlement was gained, as the pauper was sent into it by the overseer of Dunton without any act of his own) and in his way to Dunton, he was met in a field by a labourer, who said to him, “Do you want a service? You would suit Smith.” Smith being in the field at the time,

the pauper immediately applied to him; when Smith said to him, “Are you willing to go with me, and bind hay, or thatch, or do whatever else you are bidden?” The pauper said he was willing; and Smith took him home to his house in the parish of Ingrave. This happened a little before Michaelmas 1809, and the pauper was then about 16 years of age. Nothing was said about wages; and neither then, nor at any other time, was any [353] other agreement made between the pauper and Smith. A day or two afterwards Smith said, “I see you are in a bad state about clothes; if you cannot get clothes, I cannot keep you.” The pauper replied, “Mr. Maunder, the overseer of Dunton, will find me clothes.” On the next day the pauper and Smith went to Maunder, when Maunder undertook to provide clothes, and asked Smith what he would give him a-week. Smith engaged to pay one shilling a-week to Maunder for the parish, on account of clothes found. The overseer then gave an order for the clothes that the pauper wanted. Maunder, in the presence of Smith, asked the pauper if he went willingly into Smith’s service. The pauper replied that he did. Smith, during the service, occasionally gave the pauper small sums. About four months after the pauper had been in the service of Smith, the latter, unaccompanied by the pauper, and without his knowledge, went to the overseer and told him that he could not keep the pauper any longer if he was to pay the one shilling a-week. The overseer released Smith from the payment, and the pauper staid the year out in Smith’s service. At Michaelmas 1810 Smith said to Maunder that he would have the pauper no longer without fresh clothes : to which Maunder said that he must wait till the town-meeting, which would take place in a fortnight. The overseer then asked the pauper, if he was willing to live with Smith another year? He said, that he was willing, as he used him very well. The overseer asked Smith to make the pauper some allowance. Smith promised to give him a pair of shoes, and to do the best he could for him. The pauper served the second year with Smith, who gave him a pair of shoes, and laid out 1l. 8s. 6d. in the purchase of clothes for him. The sessions were of opinion that a settlement was not gained in the parish of Ingrave.

(8) Argument

Pooley and Boucher, in support of the orders, argued that there was no contract of hiring between the pauper and Smith, but the contract, if any, was between Smith and Maunder, the overseer of Dunton, which was the pauper’s original place of settlement. The case of *Gregory Stoke* v. *Pitminster*, long ago decided that the taking and employment of a poor boy as an act of charity, without any contract of hiring, though acts of service were performed by him, would not give a settlement. And in *The King* v. *Rickinghall Inferior*, a pauper placed by the parish officers with a parishioner, for whom he was to work upon certain terms agreed upon between the officers and the parishioner, was not considered as a contracted servant. Here the decision of the sessions is equivalent to a finding that there was no contract; and that is warranted by the facts, that though the pauper and Smith had communication upon the subject of Smith’s employing the pauper before the intervention of the parish officer, yet before anything was concluded, Smith had refused to keep the boy without

he could get clothes, when the latter referred him to the parish officer, with w on Smith afterwards made the contract, reserving the weekly payment to be made to the parish, and not to the boy, to reimburse them the expense of the clothes. And when Smith intended to put an end to the agreement, he applied to the overseer, without the knowledge of the boy, and declared be would not have him any longer without fresh clothes. They also referred to *The King* v. *Stowmarket*.

Bosanquet and Knox, contra, were stopped by the Court.

(9) Judgment

Grose, J. The question is whether the contract was made by the master with the boy, or with the overseer? Now, the boy offered and declared himself willing to serve the master, and the master agreed to take the boy, before any intervention of the parish officer: and though facts are afterwards stated to shew that reference was made to the officer, yet that was only to enable the boy to make the contract by getting clothes from the overseer, without which the master refused to keep him.

Le Blanc, J. Here there was an original agreement for a hiring and service between the boy and his master, before the overseer knew anything of the matter; how then can it be said to be a contract made between the master and the overseer for the letting out of the boy, without the real assent of the latter? The law indeed says, that an overseer cannot contract with another for the services of a

pauper without his consent: but there is no law which says that an overseer may not furnish a pauper with clothes to enable him to make a contract of hiring with another. When Smith objected to keeping the boy for want of clothes, the latter said he would apply to the overseer, who was to him in loco parentis : and it is true that when the master met the overseer, it was agreed between them that the master should pay the other Is. a-week for the parish, to reimburse them the expense

of the clothes : but the overseer himself, in Smith’s presence, asked the boy if he were willing to go into Smith’s service ; and the boy answered that he was willing.

Bayley, J. The boy acted throughout suo jure: he chose his own master, and fixed his own terms ; and therefore I see no objection to his gaining a settlement under the contract of hiring made by him.

Order quashed.

(10) Ruling

A poor boy of A., 16 years of age, offered to serve a parishioner of B., who asked him if he was willing to bind hay, &c. and do whatever else he was bid ; to which the boy said he was willing; and the other took him home to B.; but a day or two afterwards told the boy he could not keep him if he could not get better clothes, when the boy said that the overseer of A. would find him clothes; and the next day accompanied his master to the overseer of A., who agreed to find clothes, but stipulated with the master, and the latter agreed to pay the overseer Is. a-week for the parish, on account of the clothes found. The overseer at the same time asked the boy, in the master’s presence, if he went willingly into the master’s service; to which the boy assented. Held that this was a contract of hiring by the boy himself, and not merely by the overseer, under which a settlement might be gained by a year’s service.

(11) Comment

The court infers a contract for a yearly hiring notwithstanding the involvement of a parish overseer in the arrangement.

(12) Type

Liberal

(1) Case name

*R.* v. *East Ilsley*

(2) Date

28 November 1772

(3) Report

Burr S.C. 722

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of East Ilsley.

(6) Order sought

Quashing

(7) Facts

Two Justices had removed James Allen and his Wife from East Ilfey in Berkshire to Weybridge in Surrey. Upon an Appeal from their Order, the Sessions had reversed it; having first stated the following Facts.

James Allen, the Pauper, was in June 1768 hired, at a Place called Barrows Brook in Gloucestershire, as a Groom, for one Year certain, to the Earl of Portmore (who had then a Seat at Weybridge aforesaid,) by one Thomas Bell, then a Servant to the said Earl, at the Rate of three Pounds and three Shillings and a Livery, for the Year; to look after the said Earl’s Running Horses, which then stood at the said Thomas Bell's at Barrows Brook aforesaid. That he lived, the former Part of that Year, at Barrows Brook aforesaid ; and went from thence, with the said Horses, to the Parish of Marrow in Surrey ; where he stayed the Remainder of that Year, within about twenty Weeks ; and received his Year’s Wages. During all that Year, he was an Attendant on the said Earl’s Running Horses; and never once was at Weybridge during all that Year. At the Expiration of the said Year, he was again hired, at Marrow aforesaid, as a Groom, for another Year certain, to the said Earl of Portmore, by one Jenkins, Steward to the said Earl, at the Rate of six Pounds and six Shillings and a Livery for that Year; still to look after the said Earl’s Running Horses. He stayed with the said Horses, at Marrow, for some short Time: From whence he went, with the said Horses, to Weybridge aforesaid ; where he stayed about three Weeks, and then went from thence to East Ilfley aforesaid, with the said Horses; where he remained about ten Weeks. He went with the said Horses, to Ebbison Races in Surrey; where he stayed about ten Days. He then returned, with the said Horses to Weybridge aforesaid; where he remained about three Weeks. He then went from thence to Marrow aforesaid, with the said Horses ; where he stayed, about twenty Weeks; during, which, his second Year expired; and he received that Yeans Wages, and continued under that last Hiring, in the Capacity of a Groom and to attend the said Earl’s Running Horses, for another Year, without making any fresh Contract. He went from Marrow to East Ilfley aforesaid, with the said Horses ; and continued with them there, at one William Frogley's in the said Parish of East Ilfley, for the Space of ten Months, when the said William Frogley paid him his Wages, by the said Earl's Orders;. And thereupon he was discharged from the said Earl’s Service. During all the said three Years, he never served the said Earl in any other Capacity but as a Groom, to look after and ride the said Horses ; and never was once at Weybridge during the last Year, nor hath ever gained any legal Settlement since. It is stated, that the Pauper did not serve the said Earl of Portmore at Weybridge aforesaid, for the Space of forty Days together at any one time ; but did serve the said Earl at other Places, for the Space of forty Days together at one Time. The Order of Sessions also stated, that it appeared by the Evidence of the said James Allen, that East Ilfley is a Public Place for exercising and training of Running Horses; and that the Earl of Portmore had not any House in East Ilfley aforesaid, nor any Estate there Upon hearing Counsel and the Merits, The Sessions order, that the Original Order be reverted, and the Appeal allowed; referring, however, (by Consent of both Sides) their Order of Reversal, together with the Merits, to the Judgment of this Court.

(8) Argument

On Saturday the 23d of May 1772, Mr. Thornton moved, on behalf of the Parish of Ilfley, to quash this Order of Sessions; Proposing it as a Question, “ whether a Groom residing at a public Place, where his Master had no House nor Estate, merely for the Purpose of training Race-horses, should gain a settlement at that public Place ”

Mr. Vansittart and Mr. Cox now shewed Cause why the Order of Sessions Should not be quashed.

They denied this to be a public Place. Besides, if it were so, yet it is here used for a private Purpose, of training Horses. The last forty Days Service was performed here: And there are no Circumstances to take this Case out of the General Rule. They cited the Cases of the Huntsman who gained a Settlement in St. Peter’s in St. Alban's, where his Master had no Settlement: and the Stage-Coach-Driver who gained a Settlement in Chopping-Wycomb, where he performed his Service, and where his Master never resided : (Both which Cases may be seen ante, pa. 423 and 424)

However, it was enough for them, they said, to shew that the Pauper did not gain a Settlement at Weybridge. Now, first, he never served there forty Days together. Secondly, he served twenty Weeks at Marrow ; and his second Year then expired. Thirdly, he never was once at Weybridge during the last Year. So that there was no Settlement at all at Weybridge.

Mr. Wallace and Mr. Davenport attempted to support Mr. Thornton in attacking the Order of Sessions.

(9) Judgment

But the Court were unanimous, that it was a right One : And Lord Mansfield observed, that it was just the Case of the Huntsman, mentioned in the Case of Sir Harry Calthorpes Servant, ante, pa. 423, 424.

(10) Ruling

The Rule was discharged ; and the Order of Sessions affirmed.

(11) Comment

The court finds that servant will gain a settlement in the place he last served, even if it is a public place, provided that he served 40 days there in total (though not necessarily successively) out of at least a year of service under a hiring for a year. This contrasts with the earlier case of *Alton* (1757), but it is consistent with the later case of *Bath Easton* (1774). The court does not state its reasons here, but they are possibly similar to Bath Easton, i.e. that the servant’s hiring ended in the public place and there was no rehiring at the place of the master’s ordinary residence.

(12) Type

Liberal

(1) Case name

*R.* v. *East Kennett*

(2) Date

23 November 1785

(3) Report

Cald 562

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of East Kennett

(6) Order sought

Quashing

(7) Facts

Two Justices by an order remove Stephen Clements, Susannah his wife and their two children from the parish of East Kennett in the county of Wilts to the parish of Preshute in the same county. The Sessions, on appeal, adjudge the settlement to be in East Kennett, confirm the order, and state the following case:

The pauper, Stephen Clements, being settled at East Kennett, at Midsummer 1783 hired himself to Thomas Canning of Preshute to serve till the next Michaelmas, at the expiration of which term he hired himself for a year to the same farmer Canning for the wages of 7l. for the year, and served under that hiring until some time in May following ; when, hearing there was a warrant out against him to take him up for getting a bastard child, he went to his master and told him he must be off, and asked him for money to go off with: on which the master paid him three guineas and an half, and he ran away leaving some clothes and his threshing tackle; but was taken up two or three days afterwards and obliged to marry the woman. He then after nine days’ absence returned to his master’s house for the threshing tackle and clothes, which he had left behind; upon which his master said, “ where are you going,” and pauper answered, “he did not know:” on which the master said, “you may as well work again for me as for any other;” to which the pauper agreed, and continued to work there to the end of the year without any fresh agreement, and at the expiration received, including the three guineas and an half before paid him, his 7l. wages all but half a crown, which the master deducted for his absence. The pauper, when he ran away from his master, never thought of going back to him, but considered himself as discharged.

(8) Argument

Morris and Jekyll shewed cause in support of the order of Sessions; and insisted, that this service could not in found and just reasoning be said to satisfy either the letter or the spirit of [a] the statute: that, so far from a “ continuing and abiding in the same service,” the facts of the case manifested a discontinuance and dissolution of the first, and the making of a new contract within the year: that the act was an explanatory [b] act, and could not be extended by construction : that it was as difficult to mistake in conceiving the intention of the parties as it was in reading the act; and that, if it was their intention to dissolve the contract, the Court could not see it in any other light, than as a dissolution : that the leaving of his clothes at his master's house might under some circumstances be used as an argument, that, though he had disappeared for a short time, he still considered that house as his home ; but that the known occasion and precipitancy of his flight, and still more the conversation upon his return and new hiring, put this out of all doubt, and left but one construction open upon the subject: and that the case of [c] the *King v. the Inhabitants of Caverswall*, was directly in point.

That the offence, of which the servant had admitted himself guilty, gave the master a right to discharge him, had been decided in many cases; and they cited those of [d] *the King v. the lnhabitants of Brampton*, [e] *the King v. the Inhabitants of Westmeon*, and [f] *the King v. the Inhabitants of North Cray* : and that it was apparent from the whole circumstances of this transaction, that the intention to exercise this right, and which originated in the avowed moral turpitude of the servant, had been acted upon by the master, and was the principle of his conduct.

[a] 9 & 10 W. 3. c. 11.

[b] *Rex v. the Inhabitants of Castlechurch*, M. 9 C\* 2. 1735. Burr. Settl. Cas. 68. *Rex v. the Inhabitants of Brampton*, H. 17 G. 3. 1777. ante 11. but see *the King v. the Inhabitants of Fillongley Port*.

[c] E. 31 G. 2. 1758. Burr. Settl. Cas. 461.

[d] H. 17 G. 3. 1777- ante 11.

[e] M. 22 G. 3. 1781. ante 129.

[f] H. 25 G. 3. 1785. ante 495.

Wiilson J., Mingay and Le Mesurier, in support of the rule to quash the order of Sessions, stated the question, to be, whether there had been a service sufficient, and whether the contract had been dissolved? and they contended, that, in the cases last cited, the judgment of the Court had gone, not upon the idea of a dissolution of the contract, but upon the grounds of its never having been perfected; upon the ground, that the Servant’s absence, in gaol or otherwise, had left the service for the year incomplete : that here, unless the contract was dissolved, there was sufficient service, the year having been served out : that retainers or hirings were ever taken strictly, because they were presumed to prove credit and ability ; but that the reverse was the rule in services, which might be favourably construed, and always were so: that therefore, if this was not an absolute discharge from the service, the absence was purged by the subsequent reception; and that it was clear from the Servant’s conduct at the time, that he had no notion of his having forfeited his situation, and that his service was at an end: that when he went off, he did not ask for his wages, but only for something to enable him to remove, and something for his subsistence during absence: that his intention to remain in his service, if he returned, was manifest : that the parting therefore was conditional only, and that he did return to the same service and completed it: that, had he run away under any circumstances and whatever his conduct, and had been received again, he would have acquired a settlement by continuing to the end of his year ; and that nothing less than a dismissal previous to the time of his absenting himself, if the case afforded such opportunity, or a rejection of him upon his return, clearly made out, could afford the least pretence for defeating it. That it had been adjudged in [b] *the King v. the Inhabitants of Wooton St: Lawrence*, even in the case of a Servant’s absconding for four or five days and an actual discharge upon his return and afterwards a refusal to receive him but upon an abatement of wages, that, the service having been completed, the contract was not under these circumstances vacated: that the facts of the case, as reported by Sir James Burrow, correspond with this statement ; but that this point was also made, though it was not there noticed, Mr. Wilson affirmed, and read to this effect from his own note of the case.

That, with respect to the case of the *King v. Caverswall*, there was a clear dissolution, an absolute discharge, in consequence of a disagreement; and the servant accordingly received the wages he was entitled to; and that here on the contrary there had been no discharge, no disagreement upon which to found it, no payment, at the time the discharge was by inference contended to have taken place, of the whole wages due; and consequently no dissolution.

[a] There was no pretence for this argument in the *King v. the Inhabitants of Brampton.*

[b] H. 8 G. 3. 1768, Burr. Settl. Cas. 581.

(9) Judgment

Lord Mansfield.

All along you have left out of your view of the case the consideration of the two last lines of it.

Wilson J. The apprehension of the pauper cannot, as has been repeatedly adjudged, vary the law.

Ashhurst J.

True ; but, in a question of intention, it will go very far towards shewing what was the understanding of both parties upon the subject

Lord Mansfield.

It will not alter the law, but it shews the fact. This case resolves itself into a mere question of fad: and, upon the only point, the dissolution of the contract, the question is, whether the two men agreed to dissolve it? He, who was to have the benefit under it, asks to be off: for what ? It may be, his first object was, that the warrant, out against him, should not reach him. But, had he no way offended, was it possible, that, during an uncertain absence of four months, he could conceive, that his place was to be unsupplied and kept open for his return .? And how is this interpreted by his conduct? The facts are, that the warrant does reach him, he makes his peace on that subject, and returns : but is it to his service, does he claim to be restored to, or to continue in his date and condition, as a servant in the family ? No such thing: he claims his clothes, he comes to take away the implements of his trade, his threshing tackle, the means by which he is to earn his subsistence elsewhere; declaring he does not know, where that place is: and then the conversation on both sides is decisive evidence of a new contract. Besides the case positively and expressly states, that “ he never thought of returning’ He never thought then of reassuming this character. There is no doubt. miles, Ashhurst, and Buller, Justices, concurring,

Rule discharged, and

The Order of Sessions confirmed.

(10) Ruling

The absence of a servant for nine days under charge of a crime or moral turpitude, though with the privity of his master and by him supplied with money for the purpose of absconding, is a dissolution or the contract of hiring and service, and is not purged by being again received in the family.

(11) Comment

In contrast with the earlier case of *R. v. Eaton*, the court construes an agreement to take the servant back, after the servant runs away due to fear of being charged with a crime, as a new contract. The old contract is dissolved by the servant’s act of running away and the fact that he makes no mention of continuing to serve upon his return, presumably defeating any possibility of coupling the contracts to confer settlement.

(12) Type

Restrictive

(1) Case name

*R.* v *East Shefford*

(2) Date

23 June 1792

(3) Report

4 T.R. 805

(4) Court

King’s Bench

(5) Parties

The King against The Inhabitants of East Shefford

(6) Order sought

Quashing

(7) Facts

Two justices removed John Mills, and Phoebe his wife, from East Shefford in the county of Berks, to Welford in the same county. The sessions on appeal quashed the order, and stated the following case : The pauper was hired by one Stephen Birch of Welford, to serve him from Michaelmas 1790 to the Michaelmas following, at four guineas wages. He accordingly went to his master’s on the day appointed, and continued there eight weeks, when he ran away, and was absent for thirteen weeks; during which time he worked with and received wages from another person. S. Birch then apprehended him by a warrant; but, in his way to a justice, asked him whether he would come back to his place or go to prison ; and if he would come back, and go on in his place as he ought to do, he might. [805] The pauper said he would come back : and his master asked him then, what he should be willing to abate for the time he had been absent. The pauper said he thought one shilling a-week would not hurt him, which was agreed to; and the pauper returned into his service, and continued till the end of his year, when he received all his wages, except the thirteen shillings which had been agreed to be deducted.

(8) Argument

Milles and Blackstone in support of the order of sessions.—In order to establish a settlement by hiring and service, there must be an abiding in the service throughout the year. Now here the servant, by an improper act of his own, left his master’s service for thirteen weeks; therefore that was a complete abandonment of the service. But it will be urged, that here was a dispensation of the service during that time by the master’s receiving him again ; but if the circumstances under which he was received be duly considered, they will be found to differ this case from others of the same kind which have been already determined. It may be observed, that in none of them was the absence so considerable as here ; and in all, there is an implied forgiveness of the master for the absence; whereas here the master apprehended the servant, and was in the act of taking him before a justice for the purpose of punishment ; and insisted upon it as a preliminary condition before he received him again, that so much of what he had before agreed to give him should be deducted. This therefore amounted in effect to a new contract. The master so far forgave him as to be willing to take him again upon the same terms as before, but he would not consider him as a servant during the time of his absence. In R*. v. Nether Heyford* (a)1, where a servant who had been absent for five weeks paid his mistress what he had earned during the absence, Lord Mansfield said, “The sum deducted was not proportioned to the time of his absence; which would have been the measure of deduction, if the contract had been considered by them as totally dissolved and at an end, when he went away from her. But the paying her the exact sum that he had earned, shews that these five weeks’ service was treated by them as a part of the service done to her.” So that his Lordship thought that the deduction of wages (properly so called) for the time of absence would have been a dissolution of the contract. In all the other cases of dispensation where some part of the wages was deducted in consequence of improper absence, it was done at the end of the service, and the acceptance of the servant again after his absence was unconditional, which it was not in this instance; and therefore this cannot be considered as a constructive assent to the departure, which was presumed in the other cases. From the circumstance of the servant’s being received after an absence without previous consent, a presumption has been raised in many cases that the master was willing to dispense with the service during such absence: but here that presumption is rebutted by the master’s conduct in taking up the servant on a warrant, and in deducting his wages for that time. So that the Court cannot say that the servant was constructively in his master’s service, when the master has by his own act negatived it. The servant could not in an action have recovered his wages for the thirteen weeks, as was observed on a similar occasion in *R. v. Westmeon* (a)2; and if not, he could not, as against the parish, claim a settlement.

Lane and Nares, contra, were stopped.

(a)1 Burr. S. C. 481.

(a)2 Cald. 129.

(9) Judgment

Lord Kenyon, Ch. J.—If the old contract was dissolved when the servant absented himself, and a new one entered into on his return, I agree that the pauper could not gain a settlement by serving under it. And therefore the question is, whether the service after the pauper’s return were performed under the old or a new contract? This is one of the many cases in which we have to regret that the words of the statute have been departed from : but as there is a series of adjudged cases, the principle of which applies to the present, it is too much for us to overturn them, though if the question were now to arise for the first time, perhaps we should make a different determination. It has been decided, that absence at the beginning, the middle, or the end, of the year, may be dispensed with, either with the consent of the master or for an excusable cause. In *R. v. Hanbury*(b) it was held that an absence for a fortnight did not defeat the settlement, though the wages were deducted for that time. Now it is impossible to distinguish this case from that in principle. It has been said, however, that the absence in that case was for a shorter period than in the present: but I wish that those who used such an argument would have drawn the line, and given us the ne plus ultra. Probably, if the first ease after the statute had arisen upon an absence of thirteen weeks, the Court would have started at the question : but the Court [807] have gone on, step by step, and having held that service for a fortnight may be dispensed with, I think we are bound by the principle of those cases to say that this pauper gained a settlement in Wolford by hiring and service. For on his return he was received again into his master’s service, where he continued under the old contract. There is no pretence to say that he entered into a new contract; and the master’s object in apprehending him by a warrant, was to compel him to complete the service under the old contract.

Buller, J. and Grose, J. of the same opinion.

Order of sessions quashed.

(b) Burr. S. C. 322. K. B. xxix.—42

(10) Ruling

Service for 13 weeks dispensed with; though the pauper ran away without leave, was brought back by a justice’s warrant, and consented to have a deduction made out of his wages for that time. [6 T. R. 185. 4 East, 351.]

(11) Comment

The court finds that the servant’s absence was purged by the master receiving him again, in line with the earlier cases of *Eaton* and *Hanbury*. This case also implies that ‘constructive’ service (a retrospectively excused absence) suffices for settlement, since the servant was not actually working for his master during those 13 weeks he was absent.

(12) Type

Liberal

(1) Case name

*R.* v. *Eaton*

(2) Date

14 June 1735

(3) Report

Burr S.C. 47

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Eaton

(6) Order sought

Quashing

(7) Facts

Two Justices removed William Drackett and Ann his Wife from North Wheatley in Nottinghamshire to Eaton in the same County: And upon Appeal to the Sessions, they confirmed the Order of the two Justices.

The Case was specially stated in the Order of Sessions thus:---- That about seven Years ago, the said William Drackett was hired as a Servant, to one William Cocking a settled Inhabitant in Eaton, for a Year, from Martinmas to Martinmas; and that, about the Middle of the Term, he absented himself from his Master’s Service, without his Consent, for about three Weeks together; and then, upon the Demand of his said Master, he returned, and served out the Remainder of the Year with his said Master at Eaton. The Sessions being of Opinion that this Service gained a Settlement, therefore confirmed the original Order.

(8) Argument

The Counsel who moved to quash these Orders (Mr. Makepeace) objected that this was not a Service for a Year, pursuant to the Statute of 8 & 9 W. 3. c. 30. Sect. 4. which makes “a Continuance and Abiding in the same Service during the Space of one whole Year,” to be as necessary as a Hiring for a Year. For, it is dated in the Order of Sessions, “ that he absented himself for about three Weeks of that Time without the Consent of his Master:” And he did this without serving so much Time beyond the Expiration of the Year as to make the whole Time up a complete Year. He could not therefore under such a Service gain a Settlement: And, consequently, the Orders are bad and ought to be quashed.

In Support of the Orders, it was answered (by Mr. Abney) That this Exception was over-ruled in the Case of *The King against The Inhabitants of Iflip,* P. 7 G. 1. where one Wilson (whose Settlement was then in Dispute) absented himself from his Service four Days, without his Master's Consent; afterwards, he went to see his Friends for three Days more (but that was with the Consent of his Master;) and about three Days before the End of the Year, he went away to seek a new Service; all which amounted to ten Days Absence. And when he and his Master came to settle Accounts, the Matter deducted out of his Wages a proportionable Sum of Money to the ten Day's Absence; which was a Circumstance that made that Case much stronger than this : And yet the Court held the Service in that Case to be a Service within the Meaning of 8 & 9 JV. 3. And that the Party thereby gained a legal Settlement in Iflip. [See this Case very well reported in Sir John Strange’s Reports, Vol. 1. pa. 423.]

(9) Judgment

Per Cur.—This is a very good Order; the Absence of the Servant for the three Weeks being purged by the Master's receiving him again ; which ought to be considered in this Case as a Dispensation : And in Strictness of Law, he still continued in the Service of the Master, notwithstanding such Absence. And besides, if we were to be over-nice in Services upon this Statute, it would be attended with very great Inconveniences: For, a Servant would not be able to go for two or three Days to see his Friends without running the risk of forfeiting his Settlement; which would be too hard.

(10) Ruling

The Orders were therefore affirmed,

V. Post; *Rex v. Inhabitants of Ozleworth*, P. 1751, and *Rex v. Inhabitants of Hanbury*, Trin. 1753; and see the 4th Part of my Reports, pa. 945, *Rex v. Inhabitants of Christchurch*.

(11) Comment

The court interprets the master taking the servant back after the servant’s absence as a cure for the lapse in the contract (in contrast with the later case, *East Kennett*), so the servant still gains a settlement. This retroactive legal fiction is motivated, as the court says, by the desire not to be too harsh towards servants and to allow them to take time off without jeopardising their settlement. The court’s liberal tendency in this case (where the servant did not have consent to take leave) contrasts with its much more restrictive view in later cases such as *Bishop Denham* and *Empingham*, where absences defeat settlement even when the absence is expressly allowed under the contract of hire.

(12) Type

Liberal

(1) Case name

*R.* v. *Edgmond*

(2) Date

6 November

1819

(3) Report

3 B. & Ald. 107

(4) Court

King’s Bench

(5) Parties

The King versus the Inhabitants of Edgmond

(6) Order sought

Quashing

(7) Facts

Two justices, by their order, removed James Ankers and his family from Manchester to Edgmond, in the county of Salop. The sessions, on appeal, confirmed the order, and stated the following case:

The respondents proved a case of settlement in the parish of Edgmond, by relief given to William Ankers, the grandfather of the pauper James Ankers. In answer to this, the appellants put in an agreement entered into by James Ankers, the pauper, with Messrs. Jones and Evans, who were bricklayers and plaisterers at Stoke-upon-Trent, and contended that, having served under it for a year and a half, he had gained a settlement by hiring and service in that place. The agreement was dated

July 9th, 1803, and recited that the pauper, in consideration of certain wages, did agree to serve Messrs. J. and E. from the day of the date thereof, for the term of three years, if he should so long live. And it then stated that Messrs J. and E. did agree to provide for the pauper during the first year of the said term the sum of 13s. per week; but in case he should neglect his masters’ business, or lose any time on his own account, in any one week during the first year of the term, then he consented that Messrs. J. and E. should be allowed to deduct from his weekly wages in proportion to the time neglected or lost on his own account. And Messrs. J. and E. agreed that in case the pauper should earn any over-work in any one week during the first year of the said term, then they would pay him wages for such over-work equally in proportion to his daily wages, or weekly wages, during the first year of the term. There were similar stipulations for the second and third years of the term,

the rate of wages only being altered for each year. The agreement also contained the following clause : “And it is hereby mutually agreed upon, by and between all the said parties, that in case they cannot work through severity of weather in any one year, in the winter-time, during the said term of three years, then the said J. and E. shall pay no wages unto the said James Ankers during such severity of weather, but shall and will permit and suffer the said James Ankers to employ himself in any other business whatever during such severity of weather with respect to frost.”

(8) Argument

W. D. Evans, in support of the order of sessions. The pauper gained no settlement in Stoke-upon-Trent under this agreement; for there were exceptions in the contract between the parties: first, the pauper was only bound to work certain hours, and if he worked less than the usual time, he was to be paid less than the stipulated wages; and he was also to be paid for all over-work that he might do.

This shews, therefore, that he was not bound to work during the whole of any one day. Besides, it was stipulated, that in case of frost he should receive no wages, but be permitted to employ himself in any other business whatever. And this, therefore, was an express exception in the contract.

Tindal and Abraham, contra. The question in all these cases is, whether the exception be expressed, or only implied from the nature of the service. For in all services there are some implied exceptions, which, nevertheless, do not prevent a settlement from being gained. *Rex* v. *Harwick* (10 East, 489), *Rex* v. *All Saints, Worcester* (1 B. & A. 322). The case of *Rex* v. *Buckland Denholm* (Burr. S. C. 694), is distinguishable from the present; for there the pauper agreed to work shearman’s hours, and to be at his own liberty at all other times, which latter stipulation does not exist here. As to the second exception, relating to the frost, it is sufficient to say, that that was only a contingent exception, which, it appears, never happened. For it is found as a fact, that the pauper served a year and a half; and this is precisely similar in principle to *Rex* v. *Martham* (1 East, 239).

(9) Judgment

Abbott C.J. It appears to me, that in this case no settlement was gained by this service. For the agreement contains in substance an engagement by the pauper to work only during certain hours in each day, and I do not see what remedy the master could have had, supposing the pauper to have refused to work after the usual hours. It is necessary that there should be a covenant to serve for the whole year; but, taking the whole of this agreement together, it seems to me only to contain a promise to serve for a part of the year. I, therefore, think that the sessions have come to the correct conclusion in this case, and that we ought to confirm their order.

Bayley J. The rule of law is, that if there be an express exception in the contract, it will not confer a settlement; but if it be not so, although by the usage of trade certain exceptions are impliedly introduced, still they will not prevent a settlement. The question, therefore, is, whether there be in this contract any express exception; and it seems to me that there clearly is one, namely, the period of frost. The contract, it is to be observed, is general, and not confined to a service in the particular trade of a bricklayer; and, at the conclusion of the agreement, there is this provision, that in case they cannot work through severity of weather, in any one year, in the winter-time, during the terra, the master shall pay no wages to the pauper during that time, but shall permit him to employ himself in any other business whatever. Under this contract, therefore, he might engage to serve other persons, and so might contract inconsistent relations at one and the same time. I think, therefore,

that this hiring was not sufficient to confer a settlement. The case of *Rex* v. *Martham* is distinguishable from the present, because there there was no such express authority as this to contract a relation of service with another master; besides, that was not a general contract of service, but to serve in the particular trade of a bricklayer. Upon the other point, I am also of opinion, that there is in this agreement an express exception as to part of the year.

Holroyd J. I am of the same opinion. There was not a sufficient hiring and service to gain a settlement in Stoke-upon-Trent. Taking all the parts of the contract together, it seems to me an express agreement to serve only during the usual hours. The pauper does not engage to serve for more than that period, for he is to be paid for all over-work ; and the master could not compel him, under this agreement, to serve more than that time. As to the other point, I had at first doubts whether it was sufficient to invalidate the settlement; but I am now satisfied that it is. The provision is, that the pauper should be at liberty to employ himself with any other master during the time of frost; and that, therefore, would impliedly give to him a reasonable time, even after the frost was over, to finish the business he had so undertaken. Upon both these grounds, I think the hiring insufficient.

Best J. I am of the same opinion on both grounds. The master does not, in this case, stipulate for an entire service during the whole year, but only for certain hours during each day; and that, according to *Rex* v. *Kingswinford* (4 T. R. 219), invalidates the settlement. As to the other point, the case of *Rex* v. *Martham* at first produced doubts upon my mind ; but I am now quite satisfied that that case is distinguishable from the present in the circumstance, that here the servant was at liberty to serve

any other master during the time of frost. As soon as the frost commenced, all control of the master over the servant would immediately cease. The decision of the sessions was therefore right.

Order of sessions confirmed.

(10) Ruling

A pauper, in consideration of weekly wages, agreed to serve T. S., a bricklayer, for three years; but, in case he should neglect his master’s business, or lose any time on his own account in any one week, during the first year, then that T. S. should deduct from his weekly wages in proportion; and T. S. agreed that he would pay wages in proportion to any over-work which the pauper might do in any one week. There were similar stipulations for the second and third years of the term; and it was also agreed that in case they could not work through severity of weather in any one year, in the winter time, then that T. S. should pay no wages during that time, but should permit the pauper to employ himself in any other business whatever. Held, that these were express exceptions in the contract, and that the pauper, by serving a year under it, did not gain a settlement.

(11) Comment

The Court treats as an exceptive hiring a contract in which the servant was not under an obligation to work during periods of bad weather. An express exception in the contract defeats a settlement, but an implied one, based on the custom of the trade, does not.

(12) Type

Restrictive

(1) Case name

*R.* v. *Edingale*

(2) Date

8 May 1830

(3) Report

10 B. & C. 739

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Edingale

(6) Order sought

Quashing

(7) Facts

Upon an appeal against an order of two justices, whereby Henry Brown, his wife and children, were removed from the township of Edingale, in the county of Stafford, to the township of Clifton and Haunton, the sessions quashed the order, subject to the opinion of this Court on the following case :— The pauper, Henry Brown, before the death of his father, which took place about thirty years ago, when the pauper was ten or eleven years of age, had used to work with his father at his trade of a tailor. After the death of his father, he was put by his mother from time to time to work with other tailors, who paid him for the work he did. At the age of fourteen be went to live with John Tricklebank, a tailor residing in the township of Clifton and Haunton, under an agreement, the circumstances of which were as follow:—The pauper first saw Tricklebank when he went over to his

shop on an errand for a suit of black. Tricklebank said the pauper was just such a one as he wanted ; he thought he would suit him. The pauper said his mother would like to make him an apprentice. Tricklebank said he would not take him apprentice, because if he did he should offend the farmers: he would take him on agreement for four years. A week after this, Thornton the pauper’s father-in-law, and the pauper, went over again to Tricklebank, and Thornton agreed with him that the pauper should serve him four years. He was to go to him to learn his trade, to have meat, drink, washing, and lodging the whole time ; to receive no money for the first two years, but 2s. 6d. a week for the last two years. It was said at the time when the agreement was made, that the pauper was to go to him to learn his trade. When the pauper had lived with Tricklebank under this agreement about a year and eight weeks, his father-in-law having neglected to supply him with clothes, Tricklebank agreed with the pauper to give him Is. 6d. a week from that time for the remainder of the term, instead of 2s. 6d. a week for the last two years. In the third year the pauper, having quarrelled with his master, ran away and went to his mother at Tamworth ; upon which he was taken by Tricklebank before a magistrate, who made him return to his master, with whom he continued to live until the expiration of the four years, and remained four days over to make up the lost time. During the whole time that he thus lived with Tricklebank he worked at his trade of a tailor, and did nothing else. He slept in the township of Clifton and Haunton during all the time.

(8) Argument

Whateley in support of the order of sessions. – The principal object of the parties to this contract was, that the pauper should learn the business of a tailor, and not merely serve; and therefore, according to *Rex* v. *St. Margaret’s, Kings Lynn* (6 B. & C. 97) and *Rex* v. Combe (8 B. & C. 82) the sessions were right to find it to be an imperfect contract of apprenticeship.

Campbell, Shutt and McMahon, contra. It appears manifestly from the facts stated in the case, that the intention of both parties to this contract was, that it should be one of hiring and service, and not one of apprenticeship. The pauper promised to serve as an apprentice. This distinguishes this case from *Rex* v. *St. Margaret’s, Kings Lynn* (6 B. & C. 97) and *Rex* v. *Combe* (8 B. & C. 82).

(9) Judgment

Lord Tenterden C.J. The question is, whether the contract between the master and the pauper is to be is to be considered a contract of apprenticeship or of hiring and service? If that was a question of fact, as it may be, the sessions have decided it. If, other hand, it be a question of law for the decision of this Court, I am of opinion the contract was one of apprenticeship, and not one of hiring and service. We must form our judgment of the nature of the bargain between the parties. It appears that when the pauper first saw the master, the latter said he would not take him as an apprentice, because if he did he should offend the farmers; but at the same time when the agreement was finally made between the master and the pauper’s father-in-law, it was stated that the pauper was to go to him to learn his trade. That being the object of the parties, expressed at time of making the agreement, I cannot distinguish this from the case of *Rex* v. *Combe*, which followed shortly after that of *Rex* v. *St. Margaret’s, King’s Lynn*, in which the master offered to take the boy to learn his business; and that being the object for which he was taken, the Court thought that there was not sufficient to warrant the sessions in finding that the relation of master and servant subsisted between those parties.

Bayley J. A plain intelligible rule is laid down *Rex* v. *St. Margaret’s, King’s Lynn*, which was acted upon in Rex v. Combe, that where the substantial object of the parties to the contract is to learn, the contract should be deemed one of apprenticeship, and not one of hiring and service. In this case, it is manifest that learning and teaching were solely in the contemplation of the parties at the time when

the contract was made. The sessions, therefore, were right in coming to the conclusion that it was an imperfect contract of apprenticeship. If it were a mere question of fact we ought, before we reverse their decision, to see clearly that there were not sufficient premises to warrant that conclusion.

Littledale and Parke Js. concurred.

Order of sessions confirmed.

(10) Ruling

Where a pauper applied to a master to take him as an apprentice, and the master said he would not, because if he did he should offend the farmers, but would take him on agreement for four years ; and a week afterwards it was agreed between the master and the father-in-law of the pauper that the pauper should serve the master four years to learn his trade, to have meat, drink, washing, and lodging the whole time, and 2s. 6d. a week for the last two years : Held, that the principal object of the parties being that the pauper should learn the trade of the master, it was to be deemed a contract of apprenticeship, and not one of hiring and service.

(11) Comment

Another case in which the court rules against a settlement by hiring on the grounds that there was a defective contract of apprenticeship.

(12) Type

Restrictive.

(1) Case name

*R.* v. *Eldersley*

(2) Date

4 Geo 1 (1718)

(3) Report

2 Bott. 274

(4) Court

King’s Bench

(5) Parties

Rex v. Eldersley

(6) Order sought

Quashing

(7) Facts

*A.* hired himself for a year to be warrener in the parish of *Eldersley* in a warren there, to joint occupiers of it who lived in two parishes, different from the parish of *Eldersley.* He dieted and lodged for eight weeks with one of the occupiers; and for the rest and last part of the time in the

warren.

(8) Argument

(9) Judgment

Per Curiam: His settlement is in Eldersley.

(10) Ruling

If a servant be hired to two masters in two different parishes, he shall be settled where he lodges.

(11) Comment

Where there are two masters, the settlement is gained in the parish of the master with whom the servant lodged.

(12) Type

Liberal.

(1) Case name

*R.* v. *Ellisfield*

(2) Date

8 February 1777

(3) Report

Cald 4

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Ellisfield.

(6) Order sought

Quashing

(7) Facts

Two Justices remove Samuel Bulpit and Sarah his wife from the parish of Popham in the county of Hants, to the parish of Ellisfield in the same county. The Sessions, on appeal, confirm the order and state the following case :

That the pauper was hired on the 6th of December, 1773, to John Dallman of the parish of Ellisfield, to serve till the Michaelmas, 1774. That he went into the service the next day, and continued therein till 9 o’clock on said Michaelmas day; at which time his master paid him his wages, and the pauper took his clothes, and left his master’s house and service. About half an hour afterwards, his master came to him in the said parish, and desired him to stay with him ; but pauper desired a sum for his wages, which the master refused ; saying, “ He should see him presently at Basingstoke fair, held that day, for hiring servants.” That at the fair, at one o’clock, he there made an agreement with the master to serve him till Michaelmas following, 1775, and went into his service that evening, being the evening of the said Michaelmas day 1774 and continued therein for three months. That pauper thought himself at liberty to hire himself to any other person as soon as he left his master’s house ; and should have hired himself to any person, who would have given him the wages he asked of his master.

(8) Argument

Lawrence shewed cause in support of these orders ; the service having been continued during every day of the whole year, the pauper must be considered as having served for a year within the meaning of Stat. 3 W. & M. c. 11. and 8 & 9 W. 3. c. 30. 5 and he insisted upon the case of (a) *The King v. The Inhabitants of Fifehead Magdalen*, as in point.

Lord Mansfield, calling upon the other side ; Mansfield, Dunning and Kerby, in support of the rule to quash the orders, contended, that this case differed from that of *Fifehead* ; for that there the pauper had left part of his clothes (his shirt,) behind at his master’s ; and that the service might be well considered as continuing, while the pauper went home for that advice, which he received from his father. But that in this case the separation of the parties, though short indeed, was complete and perfect ; that if, after an interruption of three hours, the relation between master and servant could be considered as continuing, there certainly could be no reason, as there was certainly no provision of any statute, to prevent its being holden as subsisting and uninterrupted at the end of three days. That, the dissolution of the contract being so complete without a pretence of fraud, no settlement could be gained under such a service ; even if the court would connect two services, contrary to the true sense and spirit of the statutes 3 W. & M. c. 11. and 8 & 9 W. 3. r. 30. and the repeated declarations of dissatisfaction from time to time by so many of the judges, [a]

[a] Burr. Settl. Cas. 116. M. 11 G. 2. 1737.

(9) Judgment

Lord Mansfield—There is not the difference of an iota between this case and that of *Fifehead* ; and every argument used there would apply in the present. It is said there, as here, that the pauper left his master’s service, received his wages, and was absent some time. He might have hired himself with any other master during his absence. Upon his return he does not agree to continue the old service, but, makes a new contract for more wages. There was therefore a compleat abandonment and discontinuance.

The ground, on which the court went in that case, and which holds equally in the present, was, that the law will not make a fraction of a day : and the reason and justice of the case is with the settlement. As to the interruption and discontinuance, Chappie justice observed very properly in the *Fifehead* case, that upon every new contract there is a sort of a discontinuance : and that the law of connecting two hirings within the year, which was now settled, could not have been supported, where the first period was suffered to elapse before the second contract was made, [b] if this were otherwise.

Aston, Willes and Ashhurst, Justices, concurring,

Rule discharged, and both orders affirmed.

[a] Ld. Ch. J. Raymond and Page J. in *The King v. The Inhabitants of Aynho*. M. i G. 2.

Foley, 144. and Powys, J. as said by Lee, Ch. J. in the *Fifehead* case.

[b] And such are all the cases cited in Burn.

Vide *Rex v. the Inhabitants of Under Barrow and Bradley Field*, H. 20 G. 3. 1780. Post,

(10) Ruling

A Settlement may be gained under two hirings within the year if the discontinuance does not exceed a day; of which the law will not make a fraction.

(11) Comment

The court finds that where a servant leaves at the end of his year of service, and is paid his wages, then is rehired on new terms, that is two different contracts rather than a continuation of the original contract. The court also finds that the periods of service under the two different hirings can be connected if they were separated by a day or less. The court cites the reasoning of the earlier case of *Fifehead Magdalen* that there is inevitably some sort of discontinuance between one contract and another (but does not cite the dicta from *Fifehead* stating that the statute should be liberally construed). The later case of *Sulgrave,* where there was a gap of a fortnight between the two contracts, does not follow this one-day rule but *Sulgrave* might be explained on the basis that the fortnight’s absence was at the request of the master (and so excused as a discretionary absence with consent, in accordance with the absence cases). The court does not mention the one-day limit in cases about connecting service done under hirings for a year and hirings by the week (though in those cases, there weren’t any gaps exceeding one day).

(12) Type

Liberal

(1) Case name

*R*. v. *Elmley Castle*

(2) Date

9 June 1832

(3) Report

3 B. & Ad. 826

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Elmley Castle

(6) Order sought

Quashing

(7) Facts

On appeal against an order of two justices, whereby G. Hall, his wife and children, were removed from the parish of Kemerton, in the county of Gloucester, to the parish of Elmley Castle, in the county of Worcester, the sessions confirmed the order, subject to the opinion of this Court on the following case :— G. Hall, the pauper, hired himself on the 10th of October 1811 to Thomas Bluck of Elmley Castle, until Old Michaelmas-Day in the following year, at 14l. 14s. wages. Having been called upon to serve in the Warwickshire local Militia, in the course of the preceding year, he informed Bluck of that fact at the time of hiring, and at the same time told him, that he expected to be called out to serve again in the May following; and it formed part of the agreement between them, that the pauper should allow his master to deduct out of his wages 1s. a day for as many days as he should be absent on service with the Militia. The pauper entered into the master’s service, and resided and served the whole year in the appellant parish, except fourteen days, during which he was absent on service with the Militia. At the end of the year he received his wages, with the exception of 14s. which Mr. Bluck deducted for the fourteen days’ absence.

(8) Argument

W. J. Alexander and Talbot in support of the order of sessions. It must be conceded, that a balloted militia-man is incapable of making an unconditional contract to serve for a whole year, and upon that ground it was held, in *Rex* v. *Holsworthy* (6 B. & C. 283), where it appeared that the pauper did not, at the time of hiring, inform his master of his being a militia-man, that he gained no settlement by serving for a year under such a contract: but here the pauper did, at the time of the hiring, communicate to his master, the fact of his being liable to be called out to serve in the Militia. That case was recognised in *Rex* v. *Taunton St. James* (9 B. & C. 831), where also the pauper had not communicated to the master the fact of his being in the Militia, and it was held, that notwithstanding the 48 6. 3, c. Ill, s. 15, the Militia Act then in force, he was not, at the time when he hired himself, capable of making an absolute contract to serve for a year; and, consequently, that he was not lawfully hired for a year, and gained no settlement. Here, the pauper made a conditional contract only, which it was competent for him to do. There was, therefore, a good contract of hiring for a year; and by the last local Militia Act, the 52 G. 3, c. 38, the sixty-fifth section of which repeals the 48 G. 3, c. Ill, and which received the Royal assent on the 20th of April 1812, it is expressly provided (as in sect. 15 of the former Act) that no service by any apprentice or servant in the Militia shall be deemed an absence from the master’s service. At all events, there was a dispensation by the master with the service, for there was an allowance made to him for the time the pauper was absent, and he took him again into his service when his duty of a militia-man had ceased. Besides, this case falls within *Rex* v. *Westerleigh* (Burr. S. C. 753), and *Rex* v. *Winchcombe* (Dougl. 391). In the former case, the pauper told his mistress that he was in the Militia, and he might be absent about a month in a year to attend on that duty, and he would pay a man to serve in his place, or else he would make her an allowance out of his wages for the time he was absent. In the latter case, the pauper, being hired for a year, told his master, that, being a balloted man in the Militia, he should be absent for a month, and in lieu of that month would serve another at the end of the year: and these hirings were held to be good on the following grounds, as stated by Mr. Nolan (c), that there was not a chasm in the contract, but a dispensation with the [829] personal service; that it was not an absolute exception of a month; there was an alternative, as it might happen that the servant would not be called out; and

the agreement as to the absence for a month in the Militia, was only what would have been implied, and what the master must have consented to, as the law would have compelled the absence, and the exception was not of time which it was in the option of either to dispense with. In the subsequent case of *Rex* v. *The Inhabitants of Over* (1 East, 599), Lord Kenyon said, that Rex v. Winchcombe was decided altogether on the last of these grounds. Here the Court called upon

Justice and Greaves contra. It is conceded that this was, in the first instance, a conditional hiring; that is, the hiring was for a year, provided the party should not be called out to serve as a militia-man. But the moment he was called out, it had the same effect as if the number of days which he served in the Militia had been excepted out of the contract. In *Rex* v. *Arlington* (1 East, 239), the pauper was hired for a year as a shepherd, to receive weekly wages, with liberty to be absent during the sheep-shearing season, but to find a man at his own expense to do his work during his absence, his own wages to go on during the whole time ; and it was held he gained no settlement, because there was an exception in the original contract. In *Rex* v. *Martham* (1 M. & S. 622), where it was held that a settlement had been gained, there was no exception of time when the contract was made, but it was

merely stipulated that there should be a deduction from the wages, provided the pauper were prevented from working by bad weather, illness, &c. The cases decided as to militia-men were spoken of with disapprobation by Lord Ellenborough in *Rex* v. *Beaulieu* (3 M. & S. 229). In *Rex* v. *South Killingholme* (10 B. & C. 802), the pauper hired himself at 5l. a year to his aunt, who occupied six acres of land ; when she had no work for him, he was to work for anybody for his own benefit; and it was held that this was an exceptive hiring, and that service under it did not confer a settlement. [Lord Tenterden C.J. How can you get over the sixty-fifth section of the 52 G. 3, c. 38?] That applies only to contracts existing at the time of the ballot or enrolment, and not to contracts subsequently made. Here, the contract of hiring was made after the enrolment.

(9) Judgment

Lord Tenterden C.J. I think the pauper clearly gained a settlement in the parish of Elmley Castle, and my opinion is founded on the terms of the contract of hiring, and the language of the sixty-fifth section of the 52 G. 3, c. 38. It appears that the pauper, on the 10th of October 1811, hired himself to Old Michaelmas-Day following; and he informed his master, at the time of hiring, that he had been called upon to serve in the Militia in the course of the preceding year, and expected to be again

called out to serve in the May following; and it was part of the agreement, that his master should deduct out of his wages Is. a day for as many days as the pauper should be absent on service in the Militia. There is nothing of absolute exception in the terms of the contract. The exception or condition, if any such there was, arose from the operation of law on the individual. He was a militia-man, and, as such, was bound by law to serve, if called upon so to do. Then the 48 G. 3, c. III, s. 15, and the 52 G. 3, c. 38, s. 65, enact, “That no ballot, enrolment, and service under this Act, shall extend to make void, or in any manner to affect, any indenture of apprenticeship or contract of service between any master or servant, notwithstanding any covenant or agreement in any such indenture or contract, and no service under this Act, of any apprentice or servant, shall be deemed to be an absence from service, or a breach of any covenant or agreement as to any service or absence from service in any indenture of apprenticeship or contract of service.” The service of the pauper, therefore, in the Militia is not, in point of law, an absence from his service with his master. It is true, that in this case, the parties by their contract have provided, that while the pauper was serving in the Militia, though, in point of law, he must be considered as serving his master, he was not to receive any wages. But that makes no difference; the general words of the Act are sufficient to enable us to say, that under a contract as the present, and notice having been given at the time of hiring that the servant was liable to be called on to serve, he was, in point of law, serving his master while he was in the Militia, so as to acquire a settlement by hiring and a service for a year.

Littledale J. This case comes very near those of *Rex* v. *Westerleigh* (Burr. S. C. 753) and *Rex* v. *Winchcombe* (Dougl. 391); but whether those decisions were right or not, the effect of the clauses in the Militia Act is to place this party in the same situation as if he had served the master during the time he was in the Militia.

Parke J. This case is undoubtedly very like *Rex* v. *Westerleigh* (Burr. S. C. 753), and *Rex* v. *Winchcombe* (Dougl. 391). In Rex v. Taunton St. James (9 B. & C. 831), the objection was, that the pauper was not, when he hired himself, capable of making an absolute contract to serve for a year, and, therefore, having made such contract without reference to his liability as a militia-man, he was not lawfully hired for a year, and gained no settlement. But here, the pauper did communicate the fact of his being a militia-man to the master. There is nothing in that case to shew that under such circumstances a service in the Militia may not be considered as service to the master.

Taunton J. I am of the same opinion, and I think the sessions would have done better not to send up this case. *Rex* v. *Westerleigh* (Burr. S. C. 753), and *Rex* v. *Winchcombe* (Dougl. 391), were decided by Judges who were eminent sessions lawyers, and I think the principles upon which those decisions took place are correctly stated by Mr. Nolan in bis treatise on the Poor Laws. *Rex* v. *Holsworthy* (6 B. & C. 282), was decided on the ground that the pauper did not, at the time of hiring, inform bis master that he was a militia-man. Here the pauper did so. There was a good hiring for a year. The statute enacts, that no service in the Militia shall be deemed to be an absence from service with the master; but, independently of that statute, my opinion, founded on the decisions of *Rex* v. *Westerleigh* and *Rex* v. *Winchcombe* would have been the same.

Order of sessions confirmed.

(10) Ruling

A. hired himself to serve for a year, but told his master, at the time of the hiring, that he had been called upon to serve in the local Militia the year before, and expected to be called out again in the May following; and it was agreed that the master should deduct out of his wages Is. a day for as many days as he should be absent on service in the Militia. A. having served under that contract a year all but fourteen days, during which he was absent on service in the Militia, and Is. a day was deducted from his wages ; it was held, that he thereby, and by virtue of the Militia Act, 52 G. 3, c. 38, s. 65, gained a settlement.

(11) Comment

The Court finds that an anticipated absence for service in the militia does not prevent a hiring, being more akin to a conditional hiring than to an exception.

(12) Type

Liberal.

(1) Case name

*R.* v. *Elstack*

(2) Date

29 January 1785

(3) Report

Cald 489

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Elstack

(6) Order sought

Quashing

(7) Facts

Two justices remove Hannah Driver, single woman, from the township of Wadsworth in the West Riding of the county of York to the township of Elstack in the same Riding, The Sessions on appeal confirm the order, and state the following Case :

That the pauper, Hannah Driver, was hired to John Smith and Isaac Smith of Wadsworth, two brothers, who kept house and lived together: that she was the only female servant in the house, and did all the menial and household business : that no mention was made about being hired for a year: that she hired herself to them at the wages of one shilling and fourpence the week and board and lodging, for as long a time as they should want a servant: that when she had served seven weeks she was paid her wages, and afterwards, when she had served two or three months: and she was paid again, as she wanted them ; and continued to live a year and five months in the service of the said John and lsaac Smith, and declared she did not think herself loose every week nor every month.

(8) Argument

Bearcroft shewed cause in support of these orders; and insisted, that, as no mention was made in the contract of any retainer for a year, the reservation of the wages must supply this deficiency, and explain for the parties what their intentions were, as to the duration of the contract: and that as this was expressly for a week only, opinion or conjecture ought not to extend it further.

Lee and Cockell in support of the rule insisted; that no principle upon this branch of the law was more clearly established as well as universally received, than that the duration of the service is the point to be adverted to, and not the period of the reservation of wages : that it was established, that an indefinite hiring was a hiring for a year : that this, which was for as long a time as the master should want a Servant, was as indefinite as language could make it: that this contract was stronger in its terms and more permanent in its nature than that in the case of [a] the *K. v. the Inhabitants of* *Stockbridge*: that there it was insisted at the bar, that a contract at will is a contract for a year, till the will is determined : that the settlement was in that case supported, and its principle recognized in the case of [b] the *K. v. the Inhabitants of Bath Easton*: that in the case of [c] the *K. v. the Inhabitants of Dedham*, which otherwise might have afforded some argument on the other side, the servant under the original agreement, which continued unvaried throughout the whole service, compelled his master to raise his weekly wages under the threat of leaving him in the middle of a year : that thereby the nature of the contract was ascertained, and it was proved by the conduct of him, who would have derived the benefit of a settlement from its continuance, that its duration was not meant to extend to the end of the year : and that the period at which it might be convenient to the servant to make her wages payable, though it might demonstrate the urgency of her wants, did not by any means determine the point of time, at which her obligation to serve would cease.

[a] M.14 G. 3 1773 Burr. Sess. C. 759.

[b] H.10 G. 3 1776 Burr. Sess. C. 823.

[c] M.10 G. 3 1769 Burr. Sess. C. 633.

(9) Judgment

Lord Mansfield.

It is settled, that where there is a general hiring without limitation of time, it shall be presumed to be for a year. But this like all other preemptions, can only stand, till something positive appears to the contrary. Does then the presumption here from the circumstances appear to have been taken away; i.e. does the contract amount to shew, that by the agreement of the parties it was to hold for less than a year? It plainly appears, that it was so. The wages were to be paid weekly : there was nothing to prevent the matter from turning her off at the end of any week ; but he could not do so in the middle of a week. This is the only reflection : had the year closed in the middle of a week, he would not have been entitled to dismiss her.

Willes, Ashhurst and Buller, Justices, concurring,

Rule discharged and

Both orders affirmed.

(10) Ruling

A mere indefinite hiring without any mention whatsoever of time, which is otherwise a hiring for a year, if accompanied with a reservation of wages weekly, will not be considered as a hiring for a year.

(11) Comment

The court focuses on the contractual form, finding that an indefinite hiring with wages paid by the week does not confer a settlement, regardless of the actual duration of the work. It is possibly a stricter view than the earlier case of *R. v. Dedham* (1769), where the court suggests that an arrangement for weekly wages, “summer and winter”, is merely neutral as to whether there is hire for a year, but *Elftack* is consistent with *R. v. Bradninch* (1770). (Contrast *R. v. Birdbrooke* (1791) where wages paid by the week “the year round” plus actual service for more than a year sufficed to confer settlement)

(12) Type

Restrictive

(1) Case name

*R.* v. *Empingham*

(2) Date

25 November 1774

(3) Report

Burr. S.C. 791

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Empingham

(6) Order sought

Quashing

(7) Facts

Two Justices removed Joseph Langton, Elizabeth his Wife, and Ann and Elizabeth their Daughters, from Fleckney in Leicestershire to Empingham in Rutlandshire: And the Sessions confirmed their Order ; subject to the Opinion and Determination of this Court on the following Facts.

The Pauper was a Shepherd; and some short Time before Harborough-Fair 1736, hired to Henry Hubbard of Fleckney, from that Harborough-Fair to the Harborough-Fair following, being one Year, at the Wages of three Pounds; subject to a Liberty of being absent eleven or twelve Days in the Sheep-shearing Season, and to have the Benefit of what he got during that Time.

He entered upon his said Service at Harborough-Fair 1736, and served the said Henry Hubbard at Fleckney for above three Quarters of the Year.

He went to shear Sheep, in the Season, (which was during that Space of Time,) for about eleven Days; and served the said Henry Hubbard at Empingham, the Remainder of the Year.

He received to his own Use what was paid him for the Sheep-shearing, over and besides his said Wages of 3*l*.

One Day in the Season, he asked his Master to go a Sheep-shearing. His Master said, he was going out, and could not “ spare him that Day.” And in Consequence of that, he did not go.

The Pauper, during the Shearing-Season, returned frequently to his Master’s House, and did what Work was to be done; and his Master found him his Board, as often as he returned home.

That it appeared to the Court (of Sessions) that this was a Manner not unusual, of hiring Shepherds, in that Part of the County.

(8) Argument

Mr. White moved, on Wednesday 22d June 1774, (the last Day of last Term,) to quash these Orders. He denied the Settlement of the Paupers to be in Empingham ; as this was not a Hiring for a Year: For, it was Part of the original Contract , to except 11 or 12 Days out of it. He cited the Case of Bishop's Hatfield, (ante, pa. 439. No. 141.) where a Hiring for a Year, “with Liberty to let himself for the Harvest-Month to any other Person,” was holden to be only a Hiring for eleven Months. He had a Rule to shew Cause.

Mr. Dayrell now shewed Cause. He argued that this ought not to be considered as an Exception out of the original Contract; but upon the foot of a Leave of Absence consented to by the Master: And he insisted that the present Case was exactly like that of the *Militia-Man*, ante, pa. 753. No. 234. and not like that of *Bishop's Hatfield*; nor within the Case of *Macclesfield* (ante, pa. 458. No. 146.) nor any of the other Cases which turn upon Exceptions out of the original Contract. [See these Cases all cited or referred to, in my Report of the Case of St. Agnes, ante pa. 671. No. 209. and at the End of the Abridgment of it in pa. 713, 7I4-3.]

Mr. White, on the contrary, insisted that this is clearly an Exception out of the original Contract, at the Time of making it; and therefore no Settlement can be gained under such a Hiring. In Proof of which, he cited and relied upon two Cases which I have already reported, in the former Continuation of these Decisions: One of them was that of *St. Agnes*, pa. 671. No. 209. the other, that of *Buckland Denham*, pa. 694. No. 218.

(9) Judgment

The Court were unanimously of Opinion, that this was an Exception out of the Contract, at the Time of making it. They held it to be Part of the Contract: It is not to be considered upon the foot of Leave of Absence given by the Master; who, being bound by the Contract, could not refuse agreeing to it-

The *Militia-Man*’s, they said, was a particular Case: It was no more than the Law would have implied. And it was holden to be distinguishable from that of *Bishop's Hatfield*. [v. ante, 753- to 756.]

Note: This Rule was once made absolute without Defence; (viz. on Wednesday 9th November 1774 :) But it was afterwards opened again, and defended as above.

(10) Ruling

Rule made absolute:

Both Orders quashed.

(11) Comment

The court distinguishes between absences taken pursuant to an exception written into the contract versus absences applied for later and taken with the master’s consent. The former precludes a settlement. This follows the view taken in *R. v. Bishop’s Hatfield* (1758).

(12) Type

Restrictive

(1) Case name

*R.* v. *Farleigh Wallop*

(2) Date

1830

(3) Report

1 B. & Ad. 336

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Farleigh Wallop

(6) Order sought

Quashing

(7) Facts

Upon appeal against an order of two justices, whereby John Bullpett and his wife were removed from the parish of Basingstoke in the county of Southampton, to the parish of Farleigh Wallop in the same county, the sessions confirmed the order, subject to the opinion of this Court on the following case :— In the first week of January 1824, the pauper was hired by Mr. Faithful in the parish of Farleigh Wallop, to serve as under carter from that time till the following Michaelmas at 3s. 6d. a week, and 11. at Michaelmas for wages. The pauper served till Michaelmas 1824, when Faithful again hired him till the following Michaelmas, if he had no sale, at 3s. 6d. a week, and 31. at Michaelmas for wages; if he should have a sale the pauper was to go. The pauper served till February 1825, when Faithful had a sale, and the pauper went away from his service, having received 11. 10s. from Faithful for wages. It was contended, on the part of the appellants, that the latter hiring was not a hiring for a year; for it was liable to be defeated by a contingency within the year, which contingency happened within that period. The sessions however, held, that it was a sufficient yearly hiring to allow of the service

under it being connected with the previous service, and that, therefore, a settlement was gained in the appellant parish.

(8) Argument

Bosanquet in support of the order of sessions. The hiring from Michaelmas 1824 to the following Michaelmas, [337] if the master should have no sale, was a hiring for a year, subject to a condition that, in a given event, it should be competent to the master to put an end to the service. The moment the contract was made the pauper was under an obligation to serve for a year, subject, only, to be defeated by a particular event. A hiring of a house at twenty guineas a year, the rent to be paid

weekly, and either landlord or tenant to be at liberty to determine the tenancy at three months’ notice from any quarter day, is a hiring or renting for a year, on the principle, that when the party is in, he is in of the whole estate for a year, though liable to a defeasance on a particular event. *Rex* v. *Herstmonceaux* (7 B. & C. 551). The same principle applies to a conditional hiring of a servant. *Rex* v. *Byker* (2 B. & C. 120). Then, if the hiring from Michaelmas 1824 to Michaelmas 1825 was a hiring for a year, the service under the weekly hiring will connect with that under the yearly hiring. *Rex* v. *Overton* (Burr. S. C. 549, n.); and, therefore, there has been a hiring for a year and a service for a year.

Dampier and Sir George Grey contra. No adjudged case is precisely in point. *Rex* v. *Herstmonceaux* (7 B. & C. 551), *Rex* v. *Byker* (2 B. & C. 120), and *Rex* v. *Sandhurst* (7 B. & C. 557), are converse cases to the present, and, in that point of view, are an authority for the appellants; for there settlements were held to have gained because the condition was performed ; whence it may be argued that if a condition be broken, the settlement will not be gained. In *Rex* v. *Herstmonceaux* (7 B. & C. 551),

what is said by Bayley J. that a tenant under a lease for a year with proviso for determining it in a particular event, is in at first of the whole estate, though defeasible, is misapplied by the respondents, who contend that in this case during the service the pauper was in of the whole year for which he was hired, and that by service during a part of that year, coupled with the previous service, he has gained a settlement not defeated by a subsequent breach of condition. But *Rex* v. *Herstmonceaux* is a case in which the whole year’s service was performed under the defeasible

hiring; and, secondly, though it may be that one is in of all at first, yet it by no means follows that all consequences of being in absolutely shall ensue; else what is conditional has, whilst conditional, an absolute effect, notwithstanding the condition. But a conditional surrender does not destroy a contingent remainder as an absolute surrender would; and a patron who has a conditional estate in an advowson can only confirm conditionally, Co. Litt. 300 b. Thirdly, granting that all consequences of being in absolutely did follow, the absolute effect endures only till the condition is broken. When the condition is broken, that which had existence becomes by relation as if it never had existed; for there are many cases where the law, after the question of voidability is decided, regards the subject matter as having been absolutely established or absolutely void ab initio, though at one time it existed as voidable merely. The event guides the decision in such cases. Thus a surviving joint tenant in fee may

plead the feoffment as having been originally made to him alone, Co. Litt. 37 b. 185 a. An alternative when decided, may be pleaded as having been originally absolute; a lease from year to year as a lease originally made for the eventful number of years. Where an ecclesiastical lease was surrendered on condition to have a new lease, it was held that the new lease was not concurrent; for when it was made the old lease was absolutely surrendered, *Wilson* v. *Carter* (2 Str. 1201). And it seems a new lease by the warden and poor of an hospital is valid, though made when the old lease has more than four years to run, if in the event the old lease be surrendered within three years, *Grumbrell* v. *Roper* (3 B. & A. 711). If so, then what is prima facie invalid may by matter subsequent be destroyed or confirmed, though at first no such contingency was expressed. A power of appointment when executed supersedes from the beginning the original estate, and destroys right of dower already vested, *Ray* v. *Pung* (5 B. & A. 561). The effect of a seisin may be so destroyed by the event, that it will not even serve in a writ of right, Co. Litt. 278 b. though in many cases a defeated

seisin will serve, Litt. s. 482, Co. Litt. 280 b. From Litt. s. 350, it appears that a feoffee in fee on a condition is dispunishable of waste, and may be dispunishable for ever in one event. In the other event he is subsequently punishable for that very waste done while he had in fee, and of which be was once dispunishable. To regard the present hiring as absolute, would destroy all distinction between absolute and conditional hirings. This may, indeed, have been absolute till the condition was broken, so as to have given the pauper a settlement during that time, just as a conditional fee will give dower or non-impeachment till the condition is broken. But if he remains till the event happens, the effect of the contract is decided by the event. Settlement is no personal privilege, and therefore no injustice will be done by allowing it to be defeated by matter subsequent, and thereby maintaining a distinction between an absolute and a conditional contract.

(9) Judgment

Bayley J. I am of opinion that there was in this case a sufficient hiring and service to confer a settlement. The statute 3 W. & M. c. 11, s, 7, enacts, “That if any unmarried person, not having child or children, shall be lawfully hired into any parish or town for one year, such service shall be adjudged and deemed a good settlement;” the subsequent statute 8 & 9 W. 3, c. 30, s. 4, requires that the person so hired shall continue and abide in the same service for the space of one whole year. The question in this case is, whether the pauper was lawfully hired for a year within the meaning of the former statute? In order to form a judgment whether there was a hiring for a year, we must look to what took place at the time of the hiring. The sessions find, that at Michaelmas 1824, Faithful hired the pauper till the following Michaelmas, if he should have no sale, at 3s. 6d. per week, and 31. at Michaelmas for wages; if he should have a sale the pauper was to go. There was liberty, therefore, reserved to the master to put an end to the contract of hiring within the year.

But until he exercised that liberty the hiring was for a year. The pauper was under an obligation to serve for a year, provided the master required his service for that period, and did not do any thing to [341] determine the contract. A hiring may be for a year absolutely or conditionally; in either case it is a hiring for a year. Here the pauper served more than eight months before Michaelmas 1824 :

then that which I consider a hiring for one year, within the statute 3 W. & M. c. 11, 7, took place, and there was a service of four months under the yearly hiring. It is quite clear, that service for the whole year, under the yearly hiring, is not necessary to confer a settlement. Here the pauper served more than a year under two hirings, and one of them was for a year. If he had left the service of his master

after he had served under the two hirings for a year, but before any sale had been determined on, he would have been settled in the parish where be resided the last forty days before he quitted the service. In that case it would have been wholly immaterial whether there had been any sale or not. A settlement once gained cannot be defeated by a subsequent event. There having been a service for a year, and the service in part having been under a yearly hiring, I am of opinion that a settlement was gained.

Parke J. I am of the same opinion. The case depends on the statutes 3 W. & M. c. 11, s. 7, and the 8 & 9 W. & M. c 30, s. 4. The first of these statutes requires a hiring for a year, and the second a service for a year, but the whole service need not be under the yearly hiring. The sessions have found that there was a hiring from Michaelmas 1824 to Michaelmas 1825, determinable in a given event, viz. in case the master should have a sale. That was a hiring for a year defeasible within the year by matter subsequent, and such a contract is a good hiring for a year within the meaning of the statute. There was altogether more than a year’s service, and part of that service was under the yearly hiring. No case has been cited to shew that a settlement once obtained can be defeated ab initio by matter subsequent; and there is no reason for our so holding, looking either at the words of the Act of Parliament or decided cases; for the pauper has been *lawfully hired* into the parish within the words of the 3 W. & M. c. 11, s. 7, and having been so hired, has continued and abided in the same service so as to satisfy the words of the statute 8 & 9 W. & M. c 30, 2.4. I cannot distinguish this from a case, where the contract being originally for a year, has been dissolved within the year by mutual consent. In that case a settlement would be gained, provided there has been in the whole a year’s service.

(10) Ruling

A pauper was hired to serve as carter, from Michaelmas to Michaelmas, if the master had no sale, and if he should have a sale the pauper was to go : in a few months the master had a sale, and the pauper left: Held, that the hiring was a good contract for a year, and the pauper having served the master a year, and part of that time under such yearly hiring, gained a settlement.

(11) Comment

The Court finds that there was a settlement, following earlier precedents to the effect that the yearly hiring and the period of service do not have to precisely match, and confirming that a conditional hiring can confer a settlement, even if the condition is not met.

(12) Type

Liberal

(1) Case name

*R.* v. *Feversham and Graveny*

(2) Date

1721 (7 George 1)

(3) Report

Fort 221

(4) Court

King’s Bench

(5) Parties

The King against The Inhabitants of Feversham and Graveny

(6) Order sought

Quashing

(7) Facts

A maid was hired for a year to a master, and served for a year, the house stood in two parishes, the master lay in the parish of A. and all the service was done to the master in A. but the maid lay in the parish of B. in the same house.

(8) Argument

None

(9) Judgment

The Court referred it to the Judge of the Assize (which was Judge Eyre) and he conferred with two other Judges, and all three were of opinion that she was settled in B. where the maid servant lay.

The Saxons used, when a person lodged only one night in anyplace, to call him uncuth, i.e. unknown in English ; if he lodg’d two nights in one place, he was called lest, i.e. in English, guest; if three nights, he was then call’d in Saxon Agenhine, i.e. servus or familiaris.

(10) Ruling

Servant gains settlement in parish where he lies.

(11) Comment

This case establishes that the servant’s settlement is determined by where she sleeps, not by where the service is performed. This is consistent with the approach taken by the 40 day rule in later cases where the servant has worked in multiple parishes under the same service – she will be settled in the place she last slept, provided that she has served 40 days there. *Feversham* also suggests that the service and residence need not be in the same parish. This contrasts with *St. Peter’s in Oxford* which states that a servant is settled where he performs his service, but the reason behind *Feversham* might be that the house where both the service and residence occurred just so happened to span two parishes.

(12) Type

Liberal

(1) Case name

*R.* v. *Fifehead Magdalen*

(2) Date

26 November 1737

(3) Report

Burr S.C. 116

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Fifehead Magdalen

(6) Order sought

Quashing

(7) Facts

A Rule was made on Tuesday next after the Morrow of All Souls 11 G. 2. on the Motion of Mr. Bennett, to shew Cause why the original Order made for removing William Trim, Ann his Wife, William, Robert and Thomas their Children, from West Stower to Fifehead Magdalen (both in Dorsetshire,) and also the Order of Sessions made in Confirmation of it, should not be quashed.

The Case stated upon the Order of Sessions was this — William Trim the Father was born in West Stower, and afterwards hired himseIf for a Year with one R. P. of Fifehead Magdalen: With whom he lived, in Pursuance of such Hiring, for one Year, and received his Wages. The said Pauper afterwards went into the said Parish of West Stower, and hired himself to one R. H. of West Stower, from Midsummer to Lady-day following, at 40s for that Three-quarters of a Year: And at the said Lady-day, he received his said Wages of 40s. and left his Master's Service; and then went to his Father's House in West Stower aforesaid, before he and his said Master had any Discourse about continuing in his Service or making any new Contract. After he had been with his Father about one Hour, his Father advised him to go to his Master, and see if he could not agree with him for a Year. He accordingly went up thereupon, and met his Master, and agreed with him for a Year, at 3l. 10 s. a Year; and lived with his Master but half a Year, viz. to Michaelmas following, in Pursuance of such second Agreement; when his Master turned him away, and paid him only half a Year’s Wages, which he accepted of, and quitted his Master's Service. When he went from his said Master’s House as aforesaid, he had no Clothes but what he wore, except a Shirt, which he left at his said Master’s House in West Stower aforesaid.

(8) Argument

The Objection made to these Orders by Mr. Bennet, supported by Serjeant Hussey, was, That William Trim, the Father, gained a good Settlement in West Stower, by being hired for three Quarters of a Year and serving it, and then serving half a Year, in Pursuance of a Hiring for a whole Year. For, that here was, upon the whole taken together, both a Hiring for a Year, and a Service for a Year; which is all that the Statute of 3 & 4 W. & M. c. 11. Sect. 7. even after its Explanation by 8 & 9 W. 3. c. 30. Sect. 4. requires: And it has been determined not to be necessary that both should be upon the same “Contract.” In Proof whereof, they cited the Cases of *Brightwell* and *West Hanning*, Hil 1 G. 1. (which is printed in Lucas's Reports 10 Mod. 287.) and *The King against the Inhabitants of Aynhoe*,M. 1 G. 2. (which is in Fitz-Gibbon 3. and 2 Lord Raymond 1511.)

The Answer given to this Objection, by Mr. Gundry and Mr. Brodrep (who were of Counsel for the Orders) was, That the former of these Acts requires a Hiring for a Year; and the latter, the 8 & 9 W. 3. c. 30. Sect. 4. expressly requires “that the Person Shall continue and Abide in the same Service during the Space of one whole Year.” Whereas the first Hiring, in the present Case, was only for three Quarters of a Year; and that Contract was discontinued and at an End, before the second Contract was entered upon : So that it was not a Continuing in the same Service. He left his Service, was his own Master, and might have hired himself to another. Nor were these two Services both under the same Contract. For, the first Contract was for forty Shillings for the three Quarters of a Year: The second was for 3l. 10s. for the whole Year; which is a quite different Contract.

(9) Judgment

Lee Lord Chief Justice.—I remember, the Resolution “that a Hiring for a Year and a Service for a Year were sufficient to gain a Settlement, if there were in Fact both; though all the Service should not be under the same Contract,” was first come into in Lord Macclesfield's Time: And Sir Thomas Powys (who was just come into the Court) boggled very much at it. But it is now established “ That a Hiring for a Year and a Service for a Year will gain a Settlement, though all the Service be not in Pursuance of the first Hiring for a Year.” The Reason given by Lord Macclesfield for this Resolution was, That the Words of the Acts of Parliament were complied with, by there being both a Hiring for a Year and also a Service for the Space of a whole Year, although the whole Service for a Year was not performed under the Hiring for a Year: And the Intention of the Acts was to prevent Persons of no Credit from intruding into Parishes. The Hiring for a Year was thought necessary, to shew that the Person had Credit enough to be hired for a Year by any Parishioner who had so much Confidence in him. And another Consideration was the Benefit received by the Parish from the Person’s Labour for a whole Year. These were the Reasons of the Resolution: And this Resolution has been adhered to ever since. The only Difference between the Cases adjudged and the present Case, is, that in the Case now before us it Stated “ that after the Servant had received his Wages for the three Quarters of a Year, and left his Master's Service, he went to his Father’s, was absent about an Hour, and then came back to his Master and entered into the Fresh Agreement for a Year.” Now I see no Reason why this should be looked upon as a Discontinuance of the Service. The Servant was a little doubtful about a new Contract: He goes to consult his Father, and in an Hour’s Time returns and makes a new Contract, and serves as long under it as to make up (in the whole) a complete Service for a Year. The Sameness of the Contract has not been so strictly insisted upon, as to make it absolutely necessary that it should be under the very same Bargain. I remember a Case (which I argued myself) between the Inhabitants of Ivinghoe and Solebury, where a Shepherd was hired for a Year into Ivinghoe by a Farmer who quitted the Farm to another Person before the Year was out, and the Servant served out his Year with that other Person; and was holden to be settled in lvinghoe; it being a Continuance in the same Service, under the same Hiring, in the same Farm, and under the same Contract which had never been dissolved.

Mr. Justice Page concurred in the same Opinion ; and did not look upon this Absence for an Hour, under the Circumstance of going to consult his Father, to be a Discontinuance of the Service sufficient to prevent a Settlement.

Mr. Justice Probyn.—This Matter was first settled in Lord Macclesfield's Time, as my Lord Chief Justice has mentioned : There was much Doubt about it at first. The Reason of the Resolution was, that these Acts were restrictive of the Liberty of the Subject, and therefore ought to receive a liberal Construction. They require a Hiring for a Year, and a Service for a Year: And Both Requisites were complied with.

The present Case was not an absolute Determination of the Service, was not a total Departure: He only went to his Father for an Hour, leaving Part of his Clothes at his Master’s House; and then agreed with him for a Year, and lived on with him. So that the Service actually continued. It is not stated to be a Departure from the Service, with the Consent of his Master.

And it is the same Service though performed under two Contracts.

Mr. Justice Chapple also concurred in Opinion “that this short Absence, under these Circumstances, was no Discontinuance of the Service.’’ He thought this Determination to be agreeable to the former Cases. Upon every new Contract, there is a Sort of a Discontinuance. The last Day of the former Contrail was the first Day of the second Service: And this was only an Hour’s Absence within the Space of that same Day. Therefore he remained a Servant during the whole Time of the Completion of his Year.

The Court considered this special State of the Case as containing the only and the whole Question relating to the Settlement of the whole Family. And upon that Foot, they overruled an Argument “that the original Order ought to be confirmed as to the Settlement of the Children, because it had adjudged their Settlement to be in Fifehead Magdalen, and the special Master stated by the Sessions concerned only the Father and his Settlement, without taking any Notice of the Children”: For, they said, they must take the Settlement of the Father to be the single Point of Doubt as to the Settlement of all the Family, as the Sessions had stated nothing else.

(10) Ruling

Both Orders quashed.

Sec my Reports, 4th Part, pa. 591, Rex v. Inhabitants of Caverswall: Where the same Point is fully discussed and settled.

(11) Comment

This is an early case finding that periods of service under different contracts for the same master can be coupled to confer settlement. The court explicitly states that it will take a liberal view of the relevant statutes. Similar reasoning is used in the later case of *Ellisfield*, especially the reasoning about there inevitably being a gap between one contract and another*.*

(12) Type

Liberal

(1) Case name

*R*. v. *Fillongley*

(2) Date

19 November 1788

(3) Report

2 T.R. 709

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Fillongley

(6) Order sought

Quashing

(7) Facts

Two justices by an order removed John Glover, his wife, and their six children, from Fillongley to Kinwalsey, both in the county of Warwick. On appeal, the sessions quashed the order, and stated the following case.

The pauper John Glover, on the 1st January 1786, and for some years before, rented, and resided on a tenement in the parish of Fillongley, of the yearly value of 10l. and upwards, and continued thereon until the 29th April in the same year, when he was removed by an order of removal from the parish of Fillongley to the hamlet of Kinwalsey ; and on the same day on which he was delivered with the said order of removal, he returned back to the tenement in the parish of Fillongley, where he resided without making any new contract with his landlord for the same, and without any interruption for about three quarters of a year, and then was removed by the present order to the said hamlet of Kinwalsey. An appeal against the said order of removal of the 29th April 1786 was entered, but was not prosecuted.

(8) Argument

[710] Dayrell, in support of the order of sessions, was stopped by the Court.

Bearcroft and Willis, contra. The order of removal of the 29th of April, as the appeal was not prosecuted, was conclusive to all the world that the pauper was not then settled in the parish of Fillongley. Then the question is, whether he did any act subsequent to that day to gain a settlement in Fillongley ? It appears that he returned there on the very day of the order of removal; and then he was in statu quo. But this return was an offence against the poor laws, for which he was punishable by the 13 & 14 Car. 2, c. 12, and 17 Geo. 2, c. 5, as a vagrant. And though he remained there three quarters of a year afterwards, yet, as it is stated that he entered into no new contract on his return, he cannot be considered as “coming to settle on a tenement of 10l. per annum within the statute.” They admitted, that under the determinations on this subject no lease was necessary, but there should be some contract or other. But here no new contract can be inferred after the pauper’s return, because it is negatived by the case. And the former contract was entirely done away by the order of removal. In *The King and St. Michael’s, Bath* (a), it was held, that no settlement was gained by the pauper’s being barely in possession of a tenement of 10l. per annum, but that there should be a privity of contract. The pauper’s remaining in the parish was a mere continuation of an unlawful act; and it is a clear principle that a right cannot be derived out of a wrong. In order to support the settlement of Fillongley, the Court must virtually reverse the first order of removal. But the Court must now presume that the first taking was fraudulent, otherwise a settlement would have been gained. And even thought that removal were wrong, that question cannot be entered into now. The case of *The King v. Kenilworth* (b) is like the present. That indeed was a case of hiring and service : but the principle is the same; for there no settlement was gained, because that could not have been done without having recourse to the contract and service before the order. In that case, Buller, J. said, the pauper was indictable for returning to the parish in defiance of the order; and that the order of removal put an end to the contract between the master and servant. So here the contract was dissolved by the first removal, and no new contract was made.

(9) Judgment

[711] Lord Kenyon, Ch.J. This case is abundantly too clear to raise any serious doubt. Nothing can be better established than that the order of removal, unappealed from, is conclusive as to the pauper’s settlement at that time : but there is nothing in the order which prevents the pauper’s return, provided he does not return in a state of vagrancy. It is also clear that it is not in the power either of the two magistrates who remove the pauper, or of the justices at their sessions on an appeal, to put an end to a contract between the parties respecting the taking of a tenement. As far as respects the settlement of the person removed, they may determine, but no farther. And that distinguishes this case from the *The King and Kenilworth*: that was a case of master and servant, and there the justices have a power of putting an end to the contract. But here, at the time of the first removal the justices had no right to put an end to the contract, nor can we see on what ground the pauper was removed; for it is stated that he rented and resided on a tenement of 10l. per annum, which infers a contract. That contract was most clearly not dissolved by the adjudication of the justices, and then the pauper cannot be considered as returning in a state of vagrancy. And though he did not return under a new contract, yet that was not necessary, for the old contract remained ; and then by residing at Fillongley forty days after the removal, he gained a settlement. It has been said that the Court may presume fraud in the first taking: but there is no rule better established than that fraud is never to be presumed ; and I believe in a case sent for the opinion of this Court which was pregnant with fraud, they would not presume fraud, because it was not stated.

Ashhurst, J. The first order of removal could not possibly rescind the prior legal agreement between the pauper and a third person. And though an order is conclusive as to the settlement at the time when it is made, that is merely technical, and so far we are bound ; therefore in this case it must be taken that the pauper bad not gained a settlement in Fillongley at the time of the first removal. But when he returned, it was under the old contract which had never been rescinded. Then he did not return as a vagrant; but he came to the parish of Fillongley to settle on a tenement of 10l. per annum, and he there required a settlement by a residence for more than forty days. It is not necessary to determine here [712] what would have been the effect of his residing in Fillongley for a shorter space of time than forty days after the first order of removal. The case cited from Caldecott does not apply to the present; for it is there stated that the pauper resided on the premises against the consent of the landlord ; but in this case the pauper resided under a contract.

Grose J.(a)1. This case is distinguishable from that of *The King and Kenilworth* for the reasons given. I think, if we could proceed on supposition, that the real transaction was this ; after the appeal against the first order was made, the justices discovered that he was wrongfully removed, and then they agreed that he should be at liberty to return to Fillongley on his dropping the appeal. However we are to determine on the facts stated. And, for the reasons given, I am of opinion that the contract was not dissolved by the first order; that the pauper had a right to return to the parish of Fillongley ; and by residing there more than forty days he gained a settlement in Fillongley.

Rule for quashing the order of sessions discharged.

(a) Cald. 110.

(b) Ante, 598.

(a)1 Abs. Buller, J.

(10) Ruling

Where a person renting and residing on a tenement of 10l. a year in A. was removed to B. by an order of two justices, and afterwards returned to the same tenement without making any new contract, and resided there more than forty days, he thereby gained a settlement, though the order of removal was unappealed against; for the contract was not thereby dissolved. [3 East, 565.]

(11) Comment

The court finds that an order of removal from a tenement does not dissolve the underlying lease contract, and that upon returning to the tenement and residing for forty days the pauper gains a settlement under the old contract.

(12) Type

Liberal

(1) Case name

*R.* v. *Friendsbury*

(2) Date

12 June 1769

(3) Report

Burr S.C. 644

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Friendsbury

(6) Order sought

Quashing

(7) Facts

Two Justices removed Jonathan Bowler, Sarah his Wife and their four Children (specifying their Names and Ages,) from Sheerness to Friendsbury, (Both in Kent:) And the Sessions, upon Appeal, confirmed their Order; stating the following Case—

That Jonathan Bowler, when a Boy and unmarried and without Child or Children, hired himself, at 50s. per Annum, for a Year certain, to One Siborne, who was Boatswain of the Chatham Hulk ; and that He continued in his said Master's Service, under the same Contract and without any fresh hiring, for the Space of eighteen Months. That during all that Time, Siborne, the Master, kept House and lived and resided at Queensborough Kent, with his Family: But that the Pauper, during the first twelve Months of his Service, laid out and victualled on board the Chatham Hulk, in the River Medway, which laid at her Moorings there ; having the Parishes of Chatham and Gillingham on the East Side of the River, and the Parish of Friendsbury on the West Side ; But the said Hulk laid nearest to the Parish of Chatham. That about Six Months before the said Jonathan Bowler left the Service of his said Master Siborne, the Chatham Hulk went into Chatham Dock, to be repaired ; and that the said Jonathan Bowler was, during that Time, by the Order of his said Master Siborne, removed and laid and was victualled on board the Sterling-Castle Hulk ; which likewise laid in the River Medway, having the Parish of Gillingham on the One Side, and the Parish of Friendsbury on the other: But the said Hulk laid nearer, by a third of a Cable's length, to Upnor-Castle, which is in the Parish of Friendsbury in Kent, than it did to the Parish of Gillingham. That after the said Jonathan Bowler had been on board the Sterling-Castle Hulk about five Months, the Chatham Hulk (of which, the said Siborne his Master still continued Boatswain) came out of the Dock, and the said Pauper returned on board of Her ; where he continued about a Month; At the Expiration of which Time, he quitted his said Master’s Service.

That these several Hulks are always afloat, and swing-round with the Change of the Tides: And that the Places where they laid, were the Homes of each of the Vessels, respectively.

That after the said Jonathan Bowler quitted his said Master’s Service, He entered Himself as a Rigger, in his Majesty’s Service, at Sheerness; where he continued to live and reside for about 24 Years, and till his Removal by the said Order of two Justices.

That Sheerness is a Ville, and maintains its own Poor.

That the Way of maintaining them is, “that the gross Sum of Sixpence per Quarter, and no more, is stopt out of the Pay of every Person serving in his Majesty’s Dockyard under the Commissioners of the Admiralty there, for the Support of a Chest for the Maintenance of the Poor. That the Stoppage is made on every Person serving his Majesty as aforesaid, indiscriminately, and without any Attention to his Ability to pay the same, or his being likely to become chargeable to the said Ville of Sheerness, by the Pay-Clerks of the Dock-Yard at Chatham, (to which, that of Sheerness is an Appendage,) before the Commissioners of Chatham Dock-Yard, at the Time of paying every Person’s Wages ; and afterwards is paid over, by the Commissioner of Chatham Dock Yard, to the Clerk of the Cheque of Sheerness ; who therewith relieves the Casual, as well as settled Poor of the said Ville of Sheerness, without the interfering of the Overseers of the Poor of the said Ville; who never received these Stoppages, but are wholly employed in obtaining Orders of Removal: And then the Pay-Books are returned up to the proper Officers in London.”

That this Jonathan Bowler, during all the Time of his Residence at Sheerness, had the usual Deduction of Sixpence per Quarter stopt out of his Wages, by the Pay-Clerks, in the same Manner as every other' Person in his Majesty's Service there, as aforesaid.

That there is no legal Rate made by the Overseers of the Ville of Sheerness, and allowed by Justices of the Peace for Kent, for the Maintenance of the Poor there: Nor does any Person contribute for that Purpose in any other Manner than as aforesaid; except that when the Money stopt out of the Pay of the Persons in his Majesty’s Service as aforesaid, is not sufficient for the Maintenance of the Poor, then voluntary Contributions are collected for that Purpose, not only from the several Householders and other Persons who live there, but from those of the Ordinance, Captains of Ships, and such others who are willing to contribute thereto; and in which Case, every Contributor gives what He thinks fit, and no more. That these Stoppages are made in consequence of an Application, some Years ago, from the Persons in his Majesty's Service, as aforesaid, at Sheerness, to the Commissioners of the Admiralty for that Purpose, at the Time that the Ville of Sheerness first began to maintain its own Poor, in order to enable them thereto.

The Sessions, after several Adjournments, confirm the Order of two Justices, made for removing these Paupers from Sheerness to Friendsbury.

(8) Argument

On Friday 2d June 1769,

Mr. Robinson moved to quash both these Orders. He denied that Bowler the Pauper had gained any Settlement in Friendsbury. The floating Hulk, He said, could give Him none there. The Chatham Hulk, where he lay and was victualled for the first twelve Months of his Service, lay nearest to Chatham : So that his first Year's Service was completed in Chatham; or at least not in Friendsbury, which was not the Parish where it lay : And he was on board the Sterling-Castle Hulk only six Months. It is not stated, that he served for a Year in Friendsbury ; nor does it at all appear that he did so. It does not even appear that he served his Master on board the Sterling-Castle Hulk : He only went thither for Maintenance. His Master had nothing to do there: And therefore he could not be in his Master's Service there. Mr. Robinson observed also, that though the Places where the Hulks lay were the respective Homes of the Vessels, they were not stated to be the Home of the Master. He insisted that the Pauper's true legal Settlement was in Sheerness ; and that he gained a Settlement there, by having contributed for 24 Years, to the Maintenance of the Poor of that Parish in the usual Manner in which the Poor of it are supported.

Mr. Dunning (Solicitor General) now shewed Cause, on behalf of the Parish of Sheerness. He said, that the present Case was understood by the Sessions, to have fallen within the Reason of the Dorsetshire Case of *Bridport Harbour*: [See this Case, at large, ante pa. 531. N° 171.] But the Fact is not here sufficiently stated; It being stated, “ that the Sterling-Castle Hulk lay nearer to the Parish of Friendsbury, than it did to the Parish of Gillingham :” Whereas the Fact: was, “that the Hulk on board of which the Boy resided, lay within the Parish of Friendsbury." Therefore he proposed that the Counsel on the other Side should admit “ that it lay within the Parish of Friendsbury”

But Mr. Serjeant Leigh, who was Counsel for Friendsbury, was so far from admitting it, that he disputed its being the Truth of the Fact: And he said, there would be a further Doubt, “Whether the Boy could gain a Settlement by only six Months Residence on board the Sterling-Castle, when he had before gained a Settlement in Chatham, by a complete Year’s Service on board the Chatham Hulk.” However, he seemed chiefly to rely on the Objection of the Pauper’s having gained a subsequent Settlement in Sheerness, by contributing to the Maintenance of their Poor for 24 Years. He cited Viner's Abridgment, Title “Settlements” Letter K. Case 9. *The Queen against the Inhabitants of St. Giles's Cripplegate* and *St. Mary Newington*; where a Scavenger’s Rate, made by Constables and Inhabitants only, and allowed to be illegal and void, was yet holden to give a Settlement, as the Money collected under it was to be paid to the public Levies of the Parish: Therefore, though the Court held the Rate to be void, yet they held the Payment to be a Contributing to the public Levies of the Parish; it being a Parish-Charge, and the Parish having had as much Benefit from the Contribution, as if it had been a good Rate, So here, This Man had contributed 24 Years to the Support of the Poor of the Parish of Sheerness, in the usual Manner, though not the legal One: And that Parish have had equal Benefit from his Contribution, as if it had been in the strict legal Manner. It is only a new Mode of collecting the Money : And as the Parish of Sheerness have, had the very same Benefit from it, they ought not now to take Advantage of their own Irregularity in the Mode of collecting.

Mr. Dunning denied that this Stoppage of Sixpence per Quarter for the Chest is such a Contributing to the public Levies of the Parish of Sheerness, as is sufficient to gain a Settlement there. As to the Case cited from Viner—He agreed, that it is not absolutely necessary that a Rate be strictly and exactly legal; provided that it be acquiesced in: If it be acquiesced in by the Parish, it would be unreasonable that the Pauper, who has paid it, should lose his Settlement, The Rate there mentioned was acquiesced in by the Parish: But the Parish of Sheerness could never mean, that their permitting their Poor to receive Relief from this Chest should burden them with all the Workmen of the Dock-Yard. This is no Rate, nor any authoritative Collection, or obligatory Contribution for the general Maintenance of the Poor of Sheerness. As to its not being Rated “ Whether the Boy served his Master on board the Sterling-Castle Hulk, or not?”—He answered, that an Apprentice would gain a Settlement in the Place where he lodged the last forty Days; whether his Master had Employment for him in that Place or not. As to Mr. Robinson’s Observation, “ that the Place where the Hulks respectively lay was not Rated to be the Home of the Boy's Master”—He answered, that it was Rated here, exactly as it was in the Case of Burton-Bradstock, “that it was the Home of the Ship:” Which is sufficient. If the Ship lay in Friendsbury Parish, the Pauper was certainly settled there : (And, upon his appealing to Mr. Robinson for the Truth of that Fact, Mr. Robinson candidly acknowledged “ that the Justices at Sessions did think that the Place where the Sterling-Castle Hulk lay, was within the Parish of Friendsbury.”)

(9) Judgment

Lord Mansfield—It is impossible to make the Contribution here Rated a sufficient Foundation for gaining a Settlement, under the Statute of 3 & 4 W. & M. c. 11. § 6. which requires the being “charged with and paying his Share towards the public taxes or Levies of the Town or Parish.”

But it seems a great Hardship upon these Men, that they should pay all this Money, and yet have no Benefit from it. And he expressed his Disapprobation of such an improper Method of collecting the Poor-tax.

Mr. Justice Yates—In order to gain a Settlement, the Person must be rated, as well as pay.

The whole Court were clear, that the Pauper gained no Settlement in Sheerness, by contributing in this Manner, towards the Maintenance of their Poor. And as to his gaining a Settlement in Friendsbury, They sent it back to the Sessions, to be restated, and to have the fact ascertained “ Whether the Place where the Sterling-Castle Hulk lay, was within the Parish of Friendsbury, or not.”

But it never came before the Court any more, I believe.

(10) Ruling

None

(11) Comment

The court takes a strict view towards what counts as a contribution to the public taxes or levies of a parish, finding that this excludes stoppage payments. It is not clear what the court’s view is towards settlement in Friendsbury (possibly this would have been allowed if seessions had confirmed that the Sterling-Castle Hulk lay within the parish of Friendsbury).

(12) Type

Restrictive

(1) Case name

*R.* v. *Frome Selwood*

(2) Date

14 June 1766

(3) Report

Burr S.C. 565

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Frome-Selwood

(6) Order sought

Quashing

(7) Facts

Two Justices made an Order for the Removal of Betty Stent Widow and her five Children (naming them, and specifying their Ages) by Richard Stent her late Husband deceased, from Frome-Selwood in Somersetshire, to Brixton Deverel in Wiltshire: On Appeal to the Sessions, the first Sessions took it up, and stated the following Case ; and confirmed the Order of the two Justices, subject to the Opinion of this Court on the Case so stated : After which, they rejected the Appeal.

Case-------Richard Stent (the Husband of Betty) was hired for a Year by William Prangley at King's Weston, at the Wages of 5l. And, under this Contract, he served the said William Prangley in King's Weston till within ten Days of the End of the Year; when the said Richard Stent declaring to his Master “that he wished not to be settled in King's Weston,” asked his Leave to go and visit his Relations : To which, the Master consented. After the Year was expired, the said Richard Stent returned to his said Master; and then hired himself as a Day-Labourer ; and as such he continued with him for about three Months. Sometime after the said Richard Stent's Return, he and Prangley made up their Accounts; allowing for the Days he had been absent the preceding Year, out of his daily Wages.

This was the Case as stated by the first Sessions.

Then the subsequent Sessions take up the Appeal, (reciting that it had been respited by the preceding Sessions,) and upon the Facts and Circumstances then admitted on both Sides, absolutely discharged and vacated the Order of the two Justices.

(8) Argument

On Friday the first Day of this Term, Mr. Gould moved to quash this Order of Sessions, insisting that the Hiring and Service was dissolved by the Agreement entered into between the Master and the Servant, “to finish the Service before the Year should be up : ” And he had a

Rule to shew Cause.

(9) Judgment

But on shewing Cause,

The Court held the said Richard Stent's Settlement (upon the State of this Case) to be in King's Weston; Looking upon the Leave and Consent of the Master as fraudulent, and a mere Evasion of the Settlement.

(10) Ruling

And therefore now

The Order of two Justices was quashed :

And Order of Sessions affirmed.

(11) Comment

An agreement created with the specific purpose of avoiding settlement is fraudulent and invalid. Here the servant initiates the agreement, but this is consistent with *Eastwood v Westhorsley* which found that a master can’t dismiss his servant for the purpose of avoiding a settlement.

(12) Type

Liberal

(1) Case name

*R.* v. *Frome Selwood*

(2) Date

1830

(3) Report

1 B. & Ad. 207

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Frome Selwood

(6) Order sought

Quashing

(7) Facts

Upon appeal against an order of two justices, whereby John Bagnall, his wife and children were removed from the parish of Birmingham, in the county of Warwick, to the parish of Frome Selwood, in the county of Somerset, the sessions confirmed the order, subject to the opinion of this Court on the following case: — The pauper being settled at Frome Selwood, was hired by John Wright, a bedstead-maker at Birmingham, on which occasion the following agreement in writing was entered into between the parties :—“Articles of agreement made the 16th day of August 1820, between John Bagnall of Birmingham, in the county of Warwick, bedstead-maker, of the one part; and John Wright of Birmingham aforesaid, bedstead-maker of the other part. First, the said John Bagnall doth undertake and agree with the said John Wright by these presents, that he, J. Bagnall, in consideration of the wages hereinafter agreed to be paid to him by the said J. Wright, shall and will, from the date hereof, for and during, and unto the full end and term of three years from thence next ensuing, and fully to be complete and ended, work for and serve the said J. Wright in the business and employment of a bedstead-maker, and in such particular branches thereof, as the said J. Wright shall from time to time think proper to employ him. And also that he, the said J. Bagnall, shall and will, from time to time, during the continuance of the aforesaid term, to the best of his power and capacity, make, manufacture, and complete such goods as shall from time to time be given or delivered to him, or which he shall be requested to make. And also that he, the said J. Bagnall, shall work from six o’clock in the morning to seven in the evening in summer, and from seven in the winter to eight o’clock in every working day during the said term, and shall not, nor will, during the said term, work for or serve any other person whomsoever ; and the said J. Wright, in consideration of such work and service, doth hereby undertake and agree with the said J. Bagnall to find him full employment during the said term, and to pay him on Saturday night in every week for the first year 7s., the second year 8s., and the third, 9s.” The pauper stayed in Wright’s service in Birmingham for a year under the above agreement. The question for the opinion of this Court was, whether or not the pauper gained a settlement in Birmingham by the hiring and service above mentioned.

(8) Argument

Amos and Hill in support of the order of sessions. This case is not distinguishable from *Rex* v. *Birmingham* (9 B. & C. 925), *Rex* v. *North Nibley* (5 T. R. 21), *Rex* v. *Kingswinford* (4 T. R. 219). It is now clearly established, that when particular hours of work are bargained for, it operates as excluding the power of the master to compel the servant to work beyond those hours, and this restraint of the master’s power is an exception in the contract which prevents the gaining of a settlement.

Waddington and Reynolds contra. *Rex* v. *Birmingham* is distinguishable, for in that case there was an option reserved to the servant to do overwork or not, as he chose; besides there the pauper did not stipulate, as here, to work for nobody but his master. The principle of the decisions is not, that in order to gain a settlement, the servant shall be bound to work, if called upon, during the whole twenty-four hours, but that he is to be bound to serve during the twenty-four hours, that is, to be under his master’s control and in his service during the whole year. In *Rex* v. *Kingswinford* (4 T. R. 219), *Rex* v. *Macclesfield* (Burr. S. C. 458), the servant contracted to continue in the service only certain hours; and it was held that there was an exception, not merely of the right to compel the servant to work, but of the service during the rest of the twenty-four hours. In *Rex* v. *St. John, Devizes* (9 B. & C. 900), Littledale J. thought that the cases on this subject had already gone to a great extent.

(9) Judgment

Bayley J. The rule is, that if a party contract generally to serve in a particular trade, though he may be bound to work only during the usual hours of work in that trade, yet by so working he will gain a settlement. But if it be made part of the bargain that the person hired shall serve for specific hours only, then the relation of master and servant does not subsist out of those hours, according to the maxim, Expressio unius est exclusio alterius, and that is an exceptive hiring. In *Rex* v. Buckland Denham (Burr. S. C. 694), there was an express exception in the contract; the pauper was hired as a shearman, to serve for five years, to work shearman’s hours only. The same observation applies to *Rex* v. *Kingswinford* (4 T. R. 219). The hiring there was for seven years, to work for thirteen [210] hours in the day (Sundays excepted). *Rex* v. *Birmingham* (9 B. & C. 925), goes further than either of those cases. The pauper there was hired for a year, to work from seven in the morning to seven in the evening, with liberty to make as much overwork as he pleased ; and as it was optional in him to do overwork or not, and as he might refuse to work more than thirteen hours, the Court held that there was an exception in the contract limiting the control of the master to the specific period of time therein mentioned. In the case of *Rex* v. *North Nibley* T. R. 21, the terms of the hiring were the same as in the present case. They do not admit of the distinction contended for with regard to the difference between serving and working. There the pauper was hired as a colt shearman, to work twelve hours each day, and that was held to be an exceptive hiring, upon the ground that the servant, to gain a settlement, must be under the control and coercion of the master the whole time of service. Now, in this case, although the servant could not have worked for any other master out of the stipulated hours, he might have worked for himself, or, at all events, might have refused to execute during those hours any commands of bis master in his business. This, therefore, was an exceptive hiring, and no settlement was gained by the service under it.

Littledale J. I thought in *Rex* v. *St. John, Devizes*, and I think now, that if the case were res integra, an engagement to work thirteen hours in the day ought to give a settlement, being all the work that could be reasonably exacted. But it appears to me that the authorities are conclusive in favour of the finding of the sessions.

Parke J. I think this case is governed by the principle to be collected from *Rex* v. *Birmingham* (9 B. & C. 925). And it is to be observed that the agreement is not simply for service, but for service in a particular trade, so that the exception in the hours of working was an exception of the very thing which was the subject-matter of the contract of hiring.

Order of sessions confirmed.

(10) Ruling

A pauper was hired for three years, to work in summer from six in the morning to seven in the evening, and in winter from seven in the morning to eight in the evening, and he was not to work for or serve any other person: Held, this was an exceptive hiring, and no settlement was gained by a service under it.

(11) Comment

The court applies the exceptive hiring rule to find that there was no settlement. A distinction was drawn between a contract to work only during usual hours for the trade, and a contract to serve for specific hours only, the latter not conferring a settlement.

(12) Type

Restrictive

(1) Case name

*R.* v. *Gateshead*

(2) Date

Easter Term 2 G 4

1822

(3) Report

2 B. & C. 114

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Gateshead

(6) Order sought

Quashing

(7) Facts

The pauper was, together with many other persons, hired to work in a colliery from the 5th of April, 1813, to the 5th of April, 1814. Amongst other things, it was stipulated that each man should on each working day do such a quantity of work as should be deemed equal to a full day’s work, and

should not leave the pit until that quantity was completed, or in default thereof should forfeit 2s. 6d. The master stipulated to find work for the men during the whole year, and to forfeit 2s. 6d. for every day that he should oblige them to lie idle, except at the Christmas holidays, which were not to exceed ten days. There was also a proviso, that nothing in the agreement should oust the jurisdiction of the magistrates. The pauper worked for the whole year, including the holidays, except on certain Saturdays called pay Saturdays, when the wages were paid, and the men did no work. The justices at sessions held that this hiring and service did not confer a settlement.

(8) Argument

Williams, in support of the order of sessions, relied upon *Rex* v. *Edgmond*, B. & A. 107, and contended that the agreement between the pauper and his master was merely for a certain quantity of work.

Tindal, contra, referred to the proviso at the end of the agreement to shew that the relation of master and servant existed throughout the year.

(9) Judgment

Per Curiam. That would not authorise the magistrates to interfere contrary to the express contract of the parties. The case is not distinguishable in principle from *Rex* v. *North Nibley* and *Rex* v. *Edgmond*. The pauper has not stipulated to be under the control of the master for the whole year.

(10) Ruling

Order of sessions confirmed.

(11) Comment

The Court finds an exceptive hiring, it seems on the grounds that there was no contract to serve, that is, to be under the control of the master, merely, on the part of the master, to pay for work done.

(12) Type

Restrictive

(1) Case name

*R.* v *Goodnestone*

(2) Date

11 July 1745

(3) Report

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Goodnestone

(6) Order sought

Quashing

(7) Facts

Two Justices made an Order for the Removal of William Markham the Elder and Catharine his Wife, and their six young Children, to wit Hannah, Catharine, William, and Thomas, aged about seven, six, five, four, one and a half Years respectively, and one other Daughter aged about five Weeks, not then baptized, from St. Peter's the Apostle in Sandwich to Goodnestone next Wingham (both in Kent;) And, upon Appeal, the Sessions confirmed that Order.

Special Case—William Markham, being settled in Goodnestone, unmarried, and without Child or Children, was hired by John Wyborne of Northbourne to serve him from Michaelmas 1731 for a Year, at 8l. a Year; and lived with and served his said Master in Northbourne till within three Weeks of Michaelmas day following; when he asked his Master to give him Leave to go to the Herring Fishery; and his Master consented that he should go, if he could get a Man to do his Work to his (the Master’s) Liking. William Markham accordingly procured one German to do his Work, and agreed to give him 5s. a Week for the same, and paid him the said Sum ; and brought the said German to his said Master, and his Master approved of him; and German did Wyborne’s Work in the said Parish of Northbourne to the End of the Year. Markham went to Sea, and returned at the End of the Herring Fishery; which was about three Weeks after Michaelmas: And what he earned at the said Fishery was for his own Benefit. When he went to Sea, his Master paid him, on his Request, 3l. Part of his Wages; but paid him no more at that Time, because the said Markham said he had then no Occasion for more Money : And when he returned, his said Master paid him 5l. the Residue of the Wages left in his Hands. And then Markham made a new Agreement to serve the said Wyborne; and served him about three Quarters of a Year more, under the second Contract.

And they state that William Markham gained no other Settlement in Northbourne, save as aforesaid; nor hath since gained any Settlement in any other Parish.

(8) Argument

On the 9th of February last, a Motion was made to quash these Orders: For that the Settlement of William Markham appeared to be in Northbourne; since this Service for three Weeks was equivalent to a personal Service, upon the Maxim “Qui facit per alium facit per se”. To prove which, the following Cases were cited-------------Littleton, Sect. 157. 11 H. 4. 72. 24 Edw. 3. 32.a. C0. Lit. 107.

It came on again, on Wednesday 22d May 1745; but was then adjourned.

It now came on again, and was argued by Mr. Thomas Robinson and Mr. Knowler.

Mr. Robinson, who was for the Motion to quash the Orders, stated the before-mentioned Cases, and added two more, viz. P. 7 G. 1. *Rex v. Inhabitants of Iflip*, and P. 17 G. 2. *Rex v. Inhabitants of*

*Beccles*. [f. ante, Nu 78.]

Mr. Knowler, who shewed Cause against quashing these Orders, said, The Question turned upon the Service not continuing to the End of the Year: The Master and Servant parted by Consent ; and by this, the Contract was dissolved.

In the *Iflip* Case, the Servant only went to a Statute Fair; and the Contract was not dissolved. [V. ante, pa. 71. and Sir J. S. 423.]

In the Case of *Rex v. the Inhabitants of Beccles*, P. 1744. 17G. 2. B.R. the Servant worked with another by the Consent of his Master : But here was a Parting by Consent; and it was known “that

“ the Fishery would last till after Michaelmas”.

(9) Judgment

Lord Chief Justice Lee—Here is a Hiring for a Year stated: The Question is, Whether there is a Service for a Year, too.

Now I cannot distinguish this Case from that of *Beccles*. In which Case, the Absence with the Master’s Consent were holden not to vitiate or dissolve the Contract. So in the Case of *Iflip*—It’s plain the Court did not hold it to a Scrupulous Exactness, when there was a Hiring for a Year; though there were, in that Case, many instances of Absence—Two were Sickness: And the last was, by a liberal Construction, looked upon as a just Cause of going away; and therefore not a Dissolution of the Contract.

In the present Case, no Dissolution of the Contract is stated: And the Master paid him his Wages for the whole Year. Here was Leave given by the Master, three Weeks before Michaelmas, to be absent during the Herring Fishery: And in the mean Time, he provided one to do his Business, and received his whole Year's Wages.

I am of Opinion that both Orders must be quashed.

The three other Judges concurred in the same Opinion, for the same Reasons. And Mr. Justice Wright and Mr. Justice Denison thought this even a stronger Case than that of Beccles.

Mr. Justice Foster added, That as the Master had the Benefit of the Contract during the whole Year, so ought the Servant to have it also.

(10) Ruling

Per Cur. unanimously—

Rule made absolute to quash both Orders.

See the Cases referred to, at the End of No 78, in Page 232.

(11) Comment

The court finds that absence within the year does not defeat settlement. It considers a number of factors, including that the master consented to the leave, the servant later returned to the master’s service (unlike *Clayhydon*, *Islip*, or *Haddington*), the master paid the whole year’s wages without deduction (again unlike *Clayhydon*, *Islip*, or *Haddington*), and the servant himself sought and provided a substitute during his leave. In contrast,

(12) Type

Liberal

(1) Case name

*R.* v. *Grantham*

(2) Date

12 June 1790

(3) Report

3 T.R. 755

(4) Court

King’s Bench

(5) Parties

The King against The Inhabitants of Grantham

(6) Order sought

Quashing

(7) Facts

Two justices by an order removed William Read and Mary his wife from the parish of Allington to the parish of Grantham ; the sessions, on appeal, confirmed the same, subject to the opinion of this Court on the following case.

W. Read was hired a fortnight after Martinmas 1784, by N. Leadenham of Allington, farmer, to serve him for a year at the wages of 6l. 10s. and entered upon his service, and continued therein about six weeks, when with his master’s permission he went to assist his father who then was ill in the said parish of Allington, and with whom he stayed thirteen weeks; at the expiration of which time he returned, in consequence of [755] a warrant having been obtained against him at the instance of his master, into his service under the original contract, and continued with his said master until Sunday evening, three days before the expiration of the year; when his master came home in liquor, abused the pauper, threw him down, and afterwards turned him out of doors. The pauper slept at his father’s that night in Allington, and the next morning his master would have had him return to his service, and stay the remainder of the year, but the pauper refused going into his master’s service again, and threatened that unless he paid him the whole of his wages, he would complain of the ill usage he had received to a magistrate. The master then agreed to pay him his full year’s wages, deducting for the thirteen weeks he was with his father in his illness, which the pauper took, and then left his master’s service contrary to the express request of his master.

(8) Argument

Erskine and Dayrell in support of the orders. The pauper gained no settlement in Allington under the hiring and service, as stated in the case, because the contract was dissolved three days before the expiration of the year by the mutual consent of the master and servant. The conversation, which passed the morning after the servant was turned out of doors, is decisive that both parties then considered the contract at an end ; otherwise the master would not have desired the servant to return into his service, and the latter would not have refused going. A similar circumstance was much relied on by the Court in *R. v. Gresham* (a); where, as it was stated that the servant returned at the request of the master, it was inferred that he was not bound so to do. And if the contract were dissolved, the payment of the wages, without deducting for the three days’ service, will not vary the case.

Balguy, contra. It is not necessary that the pauper should continue in the actual service of the master during the whole year: a constructive service is sufficient for the purpose of giving a settlement. The contract could not be dissolved without the consent of both parties : on the evening when the servant was turned out of doors, there is no pretence to say that the contract was dissolved, for that was against his consent; and if there were no dissolution of the contract at that time, nothing appears on the case, from which any subsequent agreement to put an end to the contract can be inferred. But, on the contrary, the servant, after the master had paid him his whole wages, which [756] he was induced to do by the threats of the servant, left the service against the master’s consent; consequently there was no agreement at that time to dissolve the contract. The wrong in this case proceeded wholly from the master; then the servant ought not to be prejudiced by it. The absence of the servant for the three days at the end of the year was for a reasonable cause, in consequence of the ill-treatment of the master; and in *R. v. Christchurch* (a)1, an absence even of seventeen days, it being for a reasonable cause, did not defeat the settlement.

(a) Ante, 1 vol. 101. K. B. xxix.—27\*

(9) Judgment

Lord Kenyon, Ch.J.—The circumstance stated in the case, that this transaction happened only three days before the end of the year, might have led us at first to suppose that there was some fraud intended on the part of the master: but none is stated. It has been said, and rightly so, that an actual service is not necessary, for that a constructive service is sufficient: but the question here is, whether we can say that there was a constructive service for the whole year; and whether the relation of master and servant subsisted during that time. If the absence be for a reasonable cause, it is immaterial whether that absence be at the beginning, the middle, or the end, of the year. And it has been argued, that this was an absence for a reasonable cause, on account of the ill-treatment of the master. But here there was no animus revertendi, which distinguishes the present from the class of cases alluded to. When the servant was ill-used, though he could not have left the service without his master’s consent, or without applying to a magistrate to be discharged on that account, yet the master did consent to the servant’s leaving him, and both parties agreed to put an end to the contract. If the master had afterwards complained of the pauper’s not serving him for those three days, the latter might have answered by saying that the contract was dissolved. And if it’s being absolutely put an end to only three days before the expiration of the year will not defeat the settlement, what line can be drawn with respect to the time of the service which is necessary to give a settlement? If one day, or three days, may be dispensed with, any other time may be equally so. In some cases indeed, where it has been equivocal what the transaction really was, and the servant has paused and considered whether he would absolutely quit the service or not, other circumstances have been admitted to explain the absence : but here was no suspense, no locus peniteniae; for both the master and the servant agreed to put an [757] end to the service. The master wished to turn away the servant though unwarrantably ; and though the latter was not bound by such ill treatment, he afterwards consented to dissolve the contract.

Ashhurst, J.—If there be any interruption in the service, however small, it will prevent the servant gaining a settlement. And though an absence does not necessarily defeat a settlement, yet to prevent that it must be either with the master’s consent, or be such as the law will warrant. But this was neither; for both the master and servant agreed to put an end to the service: and though the former at length consented to give the latter the whole wages, that was not intended to operate as a dispensation with the remainder of the service, but as a redemption of his credit.

Both orders confirmed (a)2.

(a)1 Burr. S. C. 494.

(a)2 Vide *R. v. The Inhabitants of Clayhydon*, post, 4 vol. 100.

(10) Ruling

A servant who was ill treated and turned out of doors by his master three days before the end of the year, and who refused (on his master’s request the next day) to return into the service, did not gain a settlement by his service, though his master paid him his wages for the whole year. [7 T. R. 438. 8 T. R. 236, 478. 2 East, 303.]

(11) Comment

The court takes the view that paying the whole year’s wages does not amount to constructive service and confer settlement, if the contract has been dissolved before the end of the year by mutual consent (even if it was for reasonable cause, such as ill treatment).

(12) Type

Restrictive

(1) Case name

*R.* v. *Great Bookham*

(2) Date

1786

(3) Report

Nolan p. 290

(4) Court

Court of King’s Bench

(5) Parties

Rex v. Inhabitants of Great Bookham

(6) Order sought

Quashing

(7) Facts

Two Justices remove James Longhurst, Nancy, his wife and their son from the parish of Great Bookham in the county of Surrey to the parish of Fetcham in the same county. The sessions on appeal adjudged the settlement to be at Great Bookham, quashed the order and stated the following case: That the pauper, James Longhurst, was born in the parish of West Clandon in the county of Surrey. That at Michaelmas 1784 he was hired a yearly servant to Martin Richmond of the parish of Fetcham, farmer, at the yearly wages of 7/. : that he served the year out : that he was single when hired ; but married the January afterwards : that he resided forty days in the parish of Fetcham during his service and before his marriage : but after his marriage he took a house in Great Bookham, and slept constantly with his wife in the parish of Great Bookham during the remainder of his service, excepting the last night of his service; on which last night he slept at his master’s in the parish of Fetcham.

(8) Argument

(9) Judgment

And now upon the motion of Mr. Palmer, no cause being shewn, Rule absolute, and Order of sessions, discharging the order of two justices, quashed.

(10) Ruling

(11) Comment

The settlement was in the parish of hiring even though the servant lived in another parish for the duration of the service. The servant did not need to live with the master.

(12) Type

Liberal

(1) Case name

*R.* v. *Great Bowden*

(2) Date

1827

(3) Report

7 B. & C. 249

(4) Court

King’s Bench

(5) Parties

The King versus the Inhabitants of Great Bowden

(6) Order sought

Quashing

(7) Facts

Upon appeal against an order of two justices, whereby they removed J. Harding, his wife, and children, from the hamlet of Sutton, in the parish of Castor, in the county of Northampton, to the parish of Great Bowden, in the county of Leicester, the sessions confirmed the order, subject to the opinion of this Court on the following case: The pauper, J. Harding, came to one Hamshaw, an innkeeper, residing in the parish of Great Bowden, and asked for a place. Hamshaw had no objection, and put him on as an ostler, but said that he did not mean him to have a settlement, as the parish was very particular. No earnest or wages were given, but the pauper was to have what he got as ostler. He had his lodging and his board in his master’s house. The pauper could have left at any time he pleased, or the master might have turned him away at any time. The pauper lived with Hamshaw as ostler under these terms about a year and a half. The sessions were of opinion that this was a general hiring, followed by a service of above a year, and that the master’s remarks at the time of hiring could not prevent the pauper from gaining a settlement.

(8) Argument

Thesiger, in support of the order of sessions, contended it was a term implied in every general hiring, that either party should be at liberty to determine the service when he pleased. [Bayley J. If that be so, it would not be a hiring for a year; under a yearly hiring the servant is bound to serve, and the master to employ him, during the whole year.] Then it must be admitted, that if it were part of the original contract that either party should be at liberty to determine the service when he pleased, there was not in this case any hiring for a year, but that is a fact found by the sessions, and a conclusion drawn by them from the evidence, and founded perhaps on the opinion entertained by the master and the servant of their rights under the contract. That opinion, however, cannot alter the effect of the contract, which, being general, was, in law, a contract for a year. *Rex* v. *Stockbridge* (Burr. S. C. 759).

Nolan, contra, was stopped by the Court.

(9) Judgment

Bayley J. This clearly would be a general hiring, unless it were a term engrafted upon the contract that the pauper might leave, or that the master might turn him away at any time. It is said that this is a mere conclusion drawn by the sessions from the evidence, and that it was not a condition engrafted on the contract; but inasmuch a general hiring has been held to be a hiring for a year, and as in a yearly hiring there is no such condition implied by law that either party shall be able to determine the service at any time, I think we must take it upon the finding that it was part of the contract, that the parties should be at liberty so to do in this case; and if that be so, then the cases of *Rex* v. *Christ Parish*, York (3 B. & C. 459), and *Rex* v. *Trowbridge* (b) are decisive authorities to shew that the contract in this case was not a hiring for a year. No settlement, therefore, was gained by the service under it, and the order of sessions must be quashed.

Holroyd and Littledale Js. concurred.

Order of sessions quashed.

(10) Ruling

Upon a special case, the Court of Quarter Sessions found, that a pauper hired himself as ostler to an innkeeper, that no earnest or wages were given, but he was to have what he could get, as ostler, and he lodged and boarded in his master’s house, and that either the master or servant might have determined the service when they pleased : it was held, that, upon this finding, this latter stipulation must be taken to have been part of the contract between the parties, and, consequently, that there was not any general or yearly hiring, and that no settlement was gained by serving under it.

(11) Comment

A casual hiring did not give rise to a general hiring for a year, even though the master framed the contract with a view to minimizing the parish’s obligations.

(12) Type

Restrictive

(1) Case name

*R.* v *Great Chilton*

(2) Date

2 July 1794

(3) Report

5 T.R. 672

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Great Chilton

(6) Order sought

Quashing

(7) Facts

Two justices removed W. Blakey, M. his wife and their five children, from Merrington to Great Chilton, both in the county of Durham : the sessions on appeal confirmed that order, and stated the following case for the opinion of this Court: The pauper William Blakey, about twelve years ago, at Martinmas, being then unmarried and without any child, was hired by W. Grenwell of Great Chilton as a servant in husbandry for a year commencing from Martinmas ; his wages were to be about eight

pounds a year, with meat, drink, washing, and lodging in his master’s house. The pauper entered upon his service at Martinmas and resided in his master’s house in Great Chilton. In the beginning of January then next, the pauper married his said wife, but continued as a menial servant with Grenwell until the May-Day following.

Some days before May-Day Grenwell and the pauper agreed that the pauper with his wife should go as a hind to reside on and manage another farm which Grenwell had in the same township: this second agreement was for a year from that May-Day, and the pauper was to have 5s. a week ; the house to live in rent-free ; and some other trifling perquisites as persons in that capacity usually have. And accordingly he continued to serve Grenwell as a hind for two years from May-Day, being during all the last-mentioned period a married man. He has not gained any settlement since.

(8) Argument

[673] Wood and Park in support of the order of sessions. It will be admitted that if an unmarried person be hired for a year, and serve that year, he thereby acquires a settlement, though he marry before the expiration of the year. It will be contended however, on the other side, that in this case the pauper gained no settlement in Great Chilton, on a supposition that the subsequent agreement destroyed the former one, and that consequently no settlement could be gained under the second, because the pauper was married at the time when he entered into that agreement: but, in answer, it may be said, that the first agreement was not thereby destroyed, but merely continued with some modifications. In *R. v. Alton* (a) the pauper, who was under a yearly hiring, after serving six months, made a new agreement with his master, which varied from the former one in the wages and in the manner of working; for under the first contract, he was to work generally for the master, and was to have board, lodging, pocket money, and clothes from the master'? under the second, he was to provide himself with those articles, and to be paid by the piece, and yet the Court held that that was not a dissolution of the former agreement and service, but a continuation in the same service, though under different terms. So here, though there was a variation in the terms of the agreements, yet both the services were ejusdem generis ; which is the criterion by which the Court has always been guided in questions of this kind. The mere circumstance of there being a difference of wages under the two agreements cannot affect the settlement; neither can that part of the second agreement, by which the service was to be prolonged half a year beyond the expiration of the original term. It is not stated as a fact, that the parties waved the first agreement; nor is there any thing else stated, from which such a waver can be presumed. The true construction of the second agreement is, that the terms of the former one were modified and adapted to the new situation of the parties for the remainder of the year, and that the pauper was to continue in the same service for half a-year after the expiration of the first year.

Chambre and Const contra. If there had only been an alteration in the quantum of wages, it may be admitted, that, according to the case of *R. v. Alton*, the pauper would have gained a settlement in Great Chilton : but as the pauper did not serve a year under the first contract, he could gain no settlement there by [674] coupling the service under that, with the service under another contract, entered into at a time when he was a married man. *R. v. St. Giles's Reading*, Cald. 54. The second was a new and distinct contract from the former one, and not merely a continuation of it. It varied from the latter in almost every particular ; in the wages, in the service, and in the duration of the term. As the second contract was inconsistent with the first, it operated as a dissolution of it. If a man who has a lease for a year, take a second lease on different terms, and for a longer period, it is a virtual surrender of the old lease. It was not necessary for the parties to enter into an express agreement to dissolve the former contract; it is sufficient that by their acts they manifested an intention to put an end to it. If the first contract were not destroyed by the second, it continued, and might have been enforced : but it is impossible to contend that, after the making of the second contract, either party could have compelled a performance of the former one : after that period the master could not have compelled the servant to perform the business of a servant in husbandry in general; the latter would have fulfilled his agreement by doing the duty of a hind : neither, if the servant had brought an action for his wages at the rate of 13l. per annum, due under the second contract, could the master have set up as a bar payment at the rate of 8I. per annum, which was the sum due under the first contract. The construction attempted to be put on the second agreement, that the pauper was merely to continue in the same service for the remainder of the year, and for half a year afterwards, is directly contrary to the fact stated in the case, that “ the second agreement was for a year.”

(a) E. 24 Geo. 3, 2 Const’s Bott, 382.

(9) Judgment

Lord Kenyon, Ch.J.—This case appears to me not free from difficulty and doubt, but upon the whole, I think that the pauper gained a settlement in Great Chilton. To the case of *R. v. St. Giles's Reading*, I perfectly accede, but that cannot decide the present case. There the pauper was hired generally, which the law construes to be a hiring for a year, at a time when it was competent to him to acquire a settlement by hiring and service ; he was then unmarried : when the year expired, there was an end of the contract; by continuing in service after that time the Court would infer a second hiring for another year : but at the end of the first year he was a married man and was disabled from gaining a settlement by a service under a contract entered into at that time. But in the present case, the pauper was unmarried when he made the first agreement; and though he married in the course of that year, it has been very properly admitted that that alone did not defeat his settlement, if he served out the remainder of the year under the original agreement, made before his marriage. But it has been contended that that contract was dissolved. I admit that, if there were an end of the relation of master and servant when the second agreement was made, the pauper could not gain a settlement in Great Chilton, but I do not think that that was the case. An alteration indeed in the man’s situation took place : perhaps it was more convenient for him to live with his wife in a separate house, than to continue to live in his master’s family, and therefore it was agreed that he should go to another farm of his master’s in the same township. But that alone did not put an end to the former contract. If a master, who had kept house and an establishment of servants, chose to break up housekeeping in the middle of the year, and to put his servants on board wages, that would not put an end to the relation between the master and his servants, nor defeat the settlements of the latter. Then it was objected that the servant’s employment after his marriage was different from that under the original contract: but I cannot discover much difference ; for under both agreements he was to serve in husbandry. And even if the nature of the service were varied, that would not defeat his settlement. A footman who was converted into a butler, would gain a settlement by completing a year’s service, notwithstanding such a change in his station. In this case also, there was a prolongation of the time of service, and he was to continue half a year beyond the period originally agreed upon ; there was also an alteration of wages, adapted to his change of situation. But I do not think that either of these circumstances affects the case. The whole question turns on this, whether or not there was a dissolution of the former contract ; for if there were, the second agreement was made at a time when by law he was disabled from gaining a settlement by hiring and service. I speak with great diffidence on this case, understanding that the majority of the Court are against my opinion. But it strikes me, that there was no end of the relation of master and servant, even for a moment, during the whole time the latter continued in service ; and that as the first contract was not dissolved by the subsequent alteration of situation, the pauper gained a settlement in Great Chilton by [676] serving more than a year under a yearly hiring entered into when he was an unmarried man. The case of *R. v. Alton* warrants this opinion ; though that indeed appears to be a more doubtful case than the present, because there under the second agreement the pauper was to work by the piece, which seems to imply a liberty either to work or not as he pleased.

Ashhurst, J.—At first I was inclined to think that the former contract was not absolutely dissolved, and that the second was merely a continuation and modification of it : but on further consideration, I am of opinion, that the first contract was entirely put an end to by the second. This is very distinguishable from the case of *R. v. Alton*, for there the principal alteration was in the terms of the contract respecting wages ; the servant was to be paid by the piece instead of by the year. Whereas in this case there was a variation also in other circumstances. Under the first contract the pauper was to live in his master’s house as part of his family and was to receive the yearly wages of 8l.; under the new contract, the terms were materially altered, the servant was to go into another farm of his master’s, he was to receive weekly wages, and was to continue in service for a year from that time. After the second contract, if the master had wished to compel the servant to return to his own house and to live in his family at the former wages, the latter might have resisted on the ground of the second contract, which shews that the former one was abandoned, and that the pauper was not serving under it. Then if the second were a new contract, distinct from the former one, the services under the two cannot be coupled for the purpose of giving the pauper a settlement, because at the time of entering into the second he was married.

Grose, J.—I agree to the *Alton* case; and here if the original agreement had continued in force, the pauper would have gained a settlement by serving a year under it. But the question is, whether or not there were a dissolution of the service and of the first contract? I cannot say that the service under the second contract was a service under the first, because on comparing the two contracts together, it appears that there is a difference in the duration of the term, in the kind of service, and in the wages, the former of which is the most material; and where two agreements are totally inconsistent, the second must operate as a dissolution of the first. By the first contract the pauper was hired for a year to commence at Martinmas ; he served under that till May following, when he made another agreement with his [677] master for another year to commence at that day. Suppose at the end of the first year, the servant had said that he would no longer continue in his master's service, for that he had been serving under the first agreement only, and was not bound to serve under the second, there is no doubt but that the master might have compelled him to serve until the May following, by virtue of the second agreement. This shews that the second agreement put an end to the first. It is not necessary to lay so much stress on the two other instances of difference between the two contracts, the kind of service, and the quantum of wages ; I rely most on the alteration of the term of service, which I think is decisive.

Lawrence, J.—It seems to me that in these cases no question arises respecting the benefit of any particular settlement gained by the pauper, but that the question must be considered on the facts as between the two contending parishes, because if the pauper be not settled in one, the burden of maintaining him and his family falls on the other ; and therefore there can be no bias in favour of one or the other settlement. In order to gain a settlement by hiring and service, there must be a hiring for a year, and a service for a year, and the service for the last 40 days must be performed under a contract of hiring entered into when the pauper was unmarried. Then the question in the present case is, whether or not there were a dissolution of the first contract'? and not whether there were a discontinuance of the service? for in *R. v. St. Giles's Reading* the pauper continued all the time in the master's service; and there is no difference in this respect, whether the contract be put an end to by flux of time or by agreement. The only way in which it can be considered that the pauper gained a settlement in Great Chilton, is by treating the second as a prolongation of the original contract; and it has been argued that by the second agreement the pauper was to serve until the end of the then current year, and for six months longer. But it strikes me that that is not the fair construction of the second agreement; at the end of the first six months’ service, the pauper did not agree to serve for six months after the end of that year, but for a year to commence at the time of the second agreement. On the whole, it appears to me that the second contract was distinct from the former one, and put an end to it, because the second was inconsistent with it; so that the pauper gained no settlement in Great Chilton, because the service for the last 40 days was not performed under a yearly hiring entered into when he was unmarried.

Both orders quashed.

(10) Ruling

A. was hired at Martinmas to serve in husbandry for a year at the wages of 8l.; in the middle of the year he married, and then agreed to serve his master as a hind for a year from that time, at the wages of 5s. per week, and he was to live out of his master’s family, but at another farm in the same parish belonging to his master ; held that the former agreement was dissolved by the latter, and that A. did not gain a settlement by serving under those contracts. [1 East, 658. 15 ib. 349.]

(11) Comment

The court finds that a new agreement with different terms dissolves the previous agreement, and so the two cannot be coupled together to confer settlement. Whether the old contract is dissolved or not depends on the extent of the variation, as the extensive variations here defeated the old contract but the change to just the wages in *Alton* still allowed the old contract to survive and the servant to gain settlement.

(12) Type

Restrictive

(1) Case name

*R.* v. *Great Yarmouth*

(2) Date

18 May 1816

(3) Report

5 M. & S. 114

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Great Yarmouth

(6) Order sought

Quashing

(7) Facts

The Court of Quarter Sessions, for the county of Suffolk, confirmed an order of two justices, for the removal of Samuel Gowing and Sarah his wife, from the parish of Bungay, to the parish of Great Yarmouth in Norfolk, subject to the opinion of this Court upon the following case: The pauper S. Gowing, previously to his marriage, and about eighteen years ago, hired himself to one Worts, at Great Yarmouth, as a journeyman baker. He let himself by the week, and was to have 5s. per week wages, and also meat, drink, washing, and lodging, and either party was to be at liberty to part with the other, by giving a month’s notice. The pauper stated he let himself by the week, and was to have 5s. per week, but at the same time stated, that nothing passed between his master and himself as to his being hired by the week, except that he was to have 5s. per week wages. The pauper served under this hiring, four years and three quarters uninterruptedly, and then quitted the service upon receiving a month s notice. He received his wages sometimes at the end of a week, sometimes at the end of a fortnight, three weeks, or a month, as he wanted them. He entered Wort’s service in the summer, and left him about Michaelmas.

(8) Argument

Scarlett and Primrose in support of the order of sessions, admitted the rule, that where the wages are weekly, and there is nothing but the wages from which the duration of the service is to be collected, the hiring is a weekly hiring; but they relied on the distinction arising out of the stipulation for a month’s notice for that is inconsistent with a weekly hiring.’

Topping and E. Alderson, contra, argued upon the statement of the sessions in this case, that this was a hiring by the week ; for the case states, “he let himself by the week,” so that there is an express finding of the fact in the first instance; and that which follows, as to what the pauper stated, is only evidence, and not fact. But this Court will only look to the facts, and will not nicely scrutinize the finding of the sessions, whether it be the proper conclusion or not, but rather hold to the fact as the sessions have found it(c). This being so, *Rex* v. *Bradninch* is in all respects similar, and is decisive of the present case. In *Rex* v. *Hampreston*, no period of hiring was mentioned, as in this case, to preclude the inference of his being for a year, and in *Rex* v. *Birdbrooke*, the hiring was expressly for the year round; so that they afford not any analogy.

(9) Judgment

Lord Ellenborough C.J. I believe the Court do not feel at all disposed to usurp the province of the Court below, as to the statement of the case; and the observations which I shall make will be founded upon the facts as stated in it. I do not think any very material argument arises from its being first found by the sessions, that the pauper let himself for a week ; because that is explained by the statement which follows. All the facts are to be taken together into consideration, without reference to the precise order in which they are found; and the sessions have come to this conclusion upon them, that the hiring was an indefinite hiring. The first fact stated is, that the pauper let himself by the week; but in order to discover whether that was intended as the measure of time for which the service was to endure, we must look to the context, and see how the contract was determinable. We find then, that either party was to be at liberty to determine it by giving a month’s notice. Can anyone say that it is a weekly hiring, when the parties were not at liberty to part without a month’s notice? I cannot say so. What then is the effect of a month’s notice? It does not follow from thence, that it was a monthly hiring, or for any definite number of days. Wherefore, as there is no limited period of duration to be assigned for the service, the law in such case implies, that it is for a year. This mode of considering the case, is somewhat strengthened, if we advert to that which the sessions have added, namely, that the pauper stated that nothing passed between him and his master, as to his being hired by the week, except that he was to have weekly wages. It is, therefore, in common sense and fair intendment a hiring, of which no certain portion of time can be predicated for its duration, and is consequently a general hiring, which the law says is a hiring for a year.

Bayley J. I am of the same opinion. The Court do not interfere with facts found by the sessions, but we take it for granted, that the sessions could not mean to find as a fact, that there was a distinct weekly hiring, and upon that to submit question to us, whether the pauper gained a settlement by service under it. It would be to impute ignorance to the sessions to suppose that they meant to put any such question; and therefore we apprehend they meant to submit, whether here was a hiring for a year. The sessions state, that the pauper let himself by the week, and if this were all, it would import that there was not any obligation on the master or servant beyond a week ; but the case does not stop here, but goes on to state, that either party was to be at liberty to part at a month’s notice. Now if there was to be a month’s notice before the one could quit or the other dismiss from the service, how is this consistent with a weekly hiring? This point was discussed, and, as I thought, was settled in *Rex* v. *Hampreston*, that the requiring a month’s notice is inconsistent with a weekly hiring. It has been urged, that we ought to reject the latter part of the case, because it is evidence only; but I do not agree to that, because it seems to me, that the sessions have purposely stated, that in order to ask our opinion, whether the right conclusion be, that the pauper let himself by the week. And if we look at the evidence, it puts the case out of doubt; for although the pauper stated, that he let himself by the week, yet he added that nothing passed between him and his master, as to his being hired by the week, except that he was to have weekly wages. Now if that were so, and a month’s notice were required, this was not a weekly hiring; and if not a weekly hiring, then there was no

definite period assigned for its duration, and it became a general hiring; and this the law has defined to be a hiring for a year. I consider this then as a hiring at weekly wages to be determined by a monthly notice, which according to *Rex* v. *Hampreston* is a hiring for a year.

Abbott J. This case is certainly not drawn up with the usual perspicuity of a case stated by the sessions, because it states evidence of the fact, instead of the fact itself, which ought to be found. If upon a case stating evidence only, this Court should think the conclusion which the sessions had drawn from it a wrong conclusion, they would probably deem it better to send back the case for revision; but where, as in the present case, the conclusion appears to be right, it would be useless to send it down again. Now, if we take the case upon the pauper’s evidence, it seems to me, that he agreed to serve for 5s. a week, and that they should be at liberty to part at a month’s notice; which according to *Rex* v. *Hampreston*, and the reason of the thing, amounts to a general hiring. It is plain, that the period of service was not fixed by the hiring, the contract was not confined to a week, for there was to be a month’s notice; neither was it for a month, for there were weekly wages; the hiring, therefore, was indefinite, and it now is too late to deny that this is a yearly hiring. For these

reasons, I think the conclusion of the sessions was right.

Holroyd J. I am also of the same opinion, that the sessions came to the proper conclusion. This, as [119] it appears to me, was a general hiring, determinable at any period by a month’s notice, which is in law a yearly hiring. It was not a weekly hiring, because of the month’s notice, nor a hiring for a month, for then it would have been determinable only at the completion of each month’s service, whereas this might have been determined at the expiration of a month’s notice, without regard to

whether it expired at the month’s end or not. I think, therefore, that the finding of the sessions was right.

Order of sessions confirmed.

(10) Ruling

A hiring at weekly wages, either party to be at liberty to part at a month’s notice, was held to be a yearly hiring; although the case stated that the pauper let himself by the week, it being also stated that at the time pauper let himself by the week nothing passed between him and his master as to his being hired by the week, except that he was to have weekly wages.

(11) Comment

A hiring in return for weekly wages with a month’s notice either side was deemed to be a general hiring and hence for a year.

(12) Type

Liberal

(1) Case name

*R*. v *Greenwich*

(2) Date

28 November 1744

(3) Report

Burr S.C. 343

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Greenwich

(6) Order sought

Quashing

(7) Facts

Two Justices made an Order for the Removal of Hannah Wall, Spinster, from Longdon in Staffordshire to Greenwich in Kent : And, upon Appeal, the Sessions confirmed that Order.

Special Case—Hannah Wall, the Pauper, is the Daughter of George Wall deceased; who, in his Lifetime, declared to a Witness now examined. That he had hired himself for a Year and served a Year as a Livery-servant, at 7l. Wages, to one Captain Saunderson, Commander of the William and Mary Yacht, who had a House and Family at Greenwich, and resided there when not absent on the King's Service ; and that his Master made frequent Voyages to and from Holland; and that he always attended him in the same; that he never was 40 Days together at Greenwich, though during his Service he might be there 40 Days at different Times.

And thereupon the Sessions adjudged “that the said George Wall was settled in the said Parish of Greenwich Under whose Settlement the said Hannah Wall derived her’s not having gained any in her own Right.

(8) Argument

On Wednesday the 14th of November last, Mr. Legge moved to quash these Orders; for that upon this Case, as stated, there is no Foundation to adjudge her Settlement to be at Greenwich. And a Rule was made to shew Cause why they should not be quashed.

The Counsel for the Order (Sir John Strange) who was now to have shewn Cause against quashing them, proposed to send the Sessions Order back to the Sessions, that they might state the Facts, instead of stating mere Evidence; which is all that they have at present done.

And Mr. Lloyd, who was on the other Side, observed that it was not even a State of Evidence, but only of what a Man once said; and that too was only “ That he might be 40 Days there at different Times.”

Rule Enlarged.

On Saturday next after the Octave of St. Hilary, 18 G. 2. by Consent of Sir John Strange, and on the Motion of Mr. Legge, it was referred to the Justices to state the Facts more fully.

And afterwards, on Wednesday 3d July 1745, upon the Motion of Mr. Jarvis and Sir John Strange, it being then stated “That he did reside forty Days at Greenwich, at different Times and Mr. Legge (who first moved to quash them) being now satisfied—

\* The proper Place, therefore, of this Case should have been under Trinity Term 1745, 18 & 19 G. 2. but it makes very little Difference.

(9) Judgment

(10) Ruling

Both Orders were affirmed.

(11) Comment

The court finds that residence for 40 days total in a place under a hiring and service for a year is sufficient for settlement, even if the 40 days were not served successively in that place.

(12) Type

Liberal

(1) Case name

*R.* v. *Grendon Underwood*

(2) Date

7 July 1783

(3) Report

Cald 359

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Grendon Underwood

(6) Order sought

Quashing

(7) Facts

Two Justices by an order remove William Baseley, Sarah, his wife and their three children, from the parish of Grendon Underwood in the county of Buckingham to the parish of Deddington in the county of Oxford. The sessions on appeal adjudged expressly for the settlement to be at Grendon Underwood, quashed the order and stated the following case :

That William Baseley, the pauper, was born in the parish of Deddington : that at Bicester hiring fair 1773, which was the Friday before Michaelmas day (old style), he hired himself from Michaelmas (old style) for a year to John Head, a farmer at Grendon Underwood, to be his carter: that he had 1 s. earnest, and was to have 6l. wages, and go into his master's service the Wednesday after Michaelmas day (old style) : the pauper accordingly came that day in the afternoon to his master’s at Grendon Underwood, where he had some refreshment; and his master told him he had hired another servant in the place he had hired him to do; but that he wanted a man to milk and go to plough, and if he liked that work he might stay : the pauper, thinking himself not well used, refused that service, and the master told him he might keep his earnest and go about his business ; upon which the pauper laid, “am I at liberty to hire myself to any other person ?” and his master answered him in the affirmative ; both the master and pauper looking upon themselves at liberty from their contract with each other. Upon this the pauper left his master’s house, taking his cloaths away with him, and went to an alehouse at Edgcott, another parish about half a mile from Grendon Underwood; and in the course of the same afternoon the master met with him at the alehouse and hired him to serve the place of milkman and to go to plough, and gave him 2 s. 6 d. earnest, and agreed to give him 6l. 6 s. wages, to serve him from that time till Michaelmas (old style): upon which the pauper immediately entered into his service and continued therein till the next February; when, his master’s carter having left his place, his matter hired him to serve the place of carter from that time to Michaelmas (old style) and gave him 1 s. earnest, and agreed to give him 10s. 6d. additional wages; and the pauper continued that service till the next Michaelmas (old style) and received his wages.

It was admitted upon the argument and appeared upon the Almanac, that Michaelmas day old style was in 1773 upon a Sunday.

(8) Argument

Cowper, T. and Whitchurch shewed cause in support of the order of sessions ; and insisted, that there was here both a hiring and service for a year: that what the law chiefly considers is the credit given; and then only requires that this should be evidenced by a retainer for a year : that such there was here : that though for the three first days the pauper was absent, he was no otherwise sui juris than as he had the permission of his master so to be: that he was then constructively, though not actually, in his service. That it was true that the master and servant had on the third day consented to avoid the contract ; but that, as they had agreed again on the afternoon of the same day, this could not operate as a discontinuance ; as it had been settled in the case of [a] the *K. v. the Inhabitants of Ellisfield*, that there can be no fraction of a day : that it was there said, that the case of [b] the *K. v. the Inhabitants of Fifehead Magdalen* had been determined upon the same principle ; but that at any rate that case, as reported, had decided that a temporary suspension of the relation of master and servant for no greater a length of time than that of the present case, would not amount to a discontinuance. That, as an absence with leave was equivalent to actual service, this circumstance distinguished the present case from that of [c] the *K. v. the Inhabitants of Winterfett*; inasmuch as there no leave having been given the contract never commenced.

Bearcroft and Wilson, G. argued in support of the rule to quash the order of sessions ; and Bearcroft insisted, that tho’ a parting, a mere absence for an hour after a final settling of accounts, would not disconnect two services, yet there must be a contract for a year; which here there was not, or at least not any of that description, under which any service ever commenced : and that even if there had, the subsequent hiring for less than a year, under which only the service was performed, would not couple with a contract which was not ejusdem generis in every sense ; being not only for different wages, but in a different character and with a view to [d] employment in a very different species of labour.

Wilson, G. contended, that there was here neither a hiring for a year, nor a service for a year : that there was no such legal hiring, for that the first contract, to enter upon the service three days after Michaelmas, could not be so considered, the absence stipulated for being an exception from the original contract, a matter of right and not of dispensation : that, where a servant absents himself even without consent during the term, at any time after the contract is once made, it may be purged; but, when his title to absent himself is made part of his contract, it cannot. That, though the exercise of authority in a matter may be matter of discretion, the power of coercion, the right of controlling his servant, must attach upon every instant of the term to constitute a legal service; and that here on the contrary the very terms of the contract created an independence in the servant, inconsistent with the very nature of the relation.

He also insisted, that there was no service for a year : that the whole conclusion, to be derived from the authorities of the *K. v. Fifehead Magdalen* and the *K. v. Ellisfeld* cited on the other side, was ; that a short interval, by which generally the subsistence of a relation between parties might be suspended, or in very strictness be said to have ceased, would not as applicable to the relation of matter and servant be considered so to disunite and sever two services, actually commenced under a renewal of such relation, as to abolish all claims consequent thereon and prevent a settlement. But that in this case there was no commencement of the first service at all : that, before it commenced, a total end by mutual agreement was put to the contract upon which it was founded : that it is therefore the case of a mere naked hiring without any service whatsoever under it ; a thing, to use the language of Mr. Justice Duller in the case cited of the *K. v. Winterfett*, executory only: that such an executory contract for a year could not (and had not in any instance been so holden) be coupled with a subsequent service under a contract for less than a year: that this therefore brought the present case directly within the letter as well as the principle of that of *Winterfett*, from which it was impossible to distinguish it.

[a] H. 17 G. 3. 1777. ante p. 4.

[b] M. 11 G. 2. 1737- Burr. Settl. Cas. 116.

[c] E. 23 G. 3. 1783. ante p. 298.

[d] It has indeed been holden, that hirings not ejusdem generis, as a weekly and a yearly hiring, will not connect. *Rex v. the inhabitants of Wrinton* *otherwise Wrington*. M. 22 G. 2. 1748. Burr. Settl. Cas. 280. : but in the case of the *K. v. the inhabitants of Bagworth* this difference in the two contracts was disregarded ; and the Court were of opinion, that, where the services were the same, and under each hiring the servant a menial servant, two hirings might be connected. E. 22 G. 3. 1783. ante so. 182\* note b.

(9) Judgment

Lord Mansfield.

It is lamentable that the poor laws should have produced so many decisions, each of them going upon their own circumstances. In this case it is expressly stated, that on the Friday before Michaelmas day the pauper was hired for a year from Michaelmas. It is then expressly stated, that they stood in the relation of master and servant from Michaelmas to Michaelmas. If so, it would be repugnant to say, that this was not a hiring for a year. The case itself contradicts the idea, that it was a hiring from the Wednesday after Michaelmas. Then the absence was matter of indulgence on the part of the master; and, whether revocable or not, is so common in these transactions and so reasonable upon the commencement of a service, that it never has been considered as impeaching or attesting the validity of a contract. But under all the circumstances I consider it as an indulgence, which the master might revoke : what passed upon the Wednesday was a conversation respecting the different kind of labour, in which the master then proposed to employ the servant. The servant gives up his objection ; the master betters his wages; and the service goes on and is completed. It seems therefore to be a hiring and service for a year without any interruption on account of the short disagreement.

Willes, J.

The case of *Winterfett* is very different from the present. There, after an absence of a month, the mistress refuses to receive the servant without a new contract; under which the servant submits to make a compensation to the matter for lost time during his absence; here on the contrary the master, having disappointed the servant of the service intended, makes a recompense to the servant by giving him another service and additional wages. Nice distinctions, subtleties, must not be admitted to deprive a man of his settlement. As to the rest, as the whole was the transaction of a day, this case seems to be governed by that of *Ellisfield*; where the Court would not allow of the fraction of a day.

Buller, J.

Whether in this case there was a sufficient service or not depends upon the hiring? The whole therefore turns upon the first question made, whether here is a hiring for a year ? for if there was not, there could be no valid service for a year. That question then depends upon the terms of the contract : and in this as in all other contracts, by the universal rule of expounding them, all the words must have effect given them, if possible. Now the whole of the argument on the other side turns on giving only part of them effect. The case states expressly a hiring for a year ; and, if you construe the conduct of the servant in not coming into his service till the Wednesday as an act of right, founded upon an exception in the original contract, you overturn that contract ; whereas by construing it as a license or dispensation you give effect to the whole. If then, after the hiring for a year which is expressly stated in the case, the leave of absence was given, absence by leave is the same thing as service.

Upon the ground that the service here never commenced, the case of *Winterfett* has been relied upon ; but does not apply. that case the pauper did not go to his place till a month after his term commenced, and never sent any notice why he did not go. There did not appear to have been any communication of any kind between, his master and the pauper during all that time, much less any intimation of his illness and inability to come : neither did it appear, at the time of the new contract being entered into, that he infilled upon or any way brought forward this plea. Therefore, though the act of God discharges the obligation of actual service, it did not appear, at the point of time to be looked to, the time when the first contract was rescinded, that the case came under that rule. It follows, that the pauper was there hired for eleven months only, and that no annual service ever commenced.

Lord Commissioner Ashhurst was absent.

Rule discharged, and

Order of Sessions, quashing the

Order of two Justices, affirmed.

(10) Ruling

Services under a hiring a few days before Mich expressly for a year, i.e. from Mich. to Mich. And under a hiring again to the same master three days after Mich, till the same Mich. ensuing, though at different wages and for a different service, will connect to give a settlement. An agreement made part of a hiring for a year from Mich, to Mich., that the servant is to go into the service three days after Mich, is an absence with leave ; a dispensation, and not an exception from the original contract.

(11) Comment

In contrast with the later case of *R. v. Great Chilton,* the court finds that a new agreement under different wages and for a different service will connect with the old one to confer settlement. One consideration appears to be that it was the master’s fault that the original job was no longer available.

(12) Type

Liberal

(1) Case name

*R.* v *Gresham*

(2) Date

28 January 1786

(3) Report

1 T.R. 101

(4) Court

King’s Bench

(5) Parties

The King against The Inhabitants of Gresham

(6) Order sought

Quashing

(7) Facts

This was a rule to shew cause why an order of the Court of Quarter Sessions of the City and county of Norwich confirming an order of two justices, by which the pauper was removed from Beeston Regis to Gresham in Norfolk, should not be quashed.

The case stated, “That William Thompson the Younger was, prior to Michaelmas 1780, a settled inhabitant in the parish of Gresham in Norfolk, when at the Holt Petty Sessions next before that Michaelmas he let himself for a year at the wages of 3l. to Mr. Creemer of Beeston Regis in the said county. That he duly entered upon his said service with the said Mr. Creemer, and continued therein for about a quarter of a year; and upon some dispute between him and his master, his master insisted upon turning him away, and threw down 15 shillings, which the pauper took up and went away to his father’s house in Norwich, where he continued for six days; during which time he looked upon himself as a free man. That the pauper then returned at the request of his master, and continued in the service to the end of the year, when his master paid him 45 shillings, being the remainder of his wages agreed for at the sessions.”

(8) Argument

Partridge against the rule contended that, in order to gain a settlement by service, there must be a continuation of the service for a year, not indeed under the eye, but under the control, of the master the whole time. Here there was an entire dissolution of the contract for a time, by the servant’s taking up the money which his master had thrown down, and went away with his consent: if so, no subsequent circumstances could revive the former contract. It is stated too, that the pauper returned at the request of the master, which proved that an option was left to the person so requested ; and although the servant did in fact return, yet that could not cure the chasm made by the interruption of the service. The cases in which time has been dispensed with, were either where there had been an express consent on the part of the master that the servant should live with some other person for a time, or an implied one, where the servant went without the leave of the master and returned again : but in this case there was a mutual consent to part.

In the case of *The King and Caverswall* (a)1 it was determined, that no settlement was gained, because there was a chasm for a fortnight. The cases of *The King and Ross* (b)1 and *The King and East Kennel* (c)1 decided also, that there was no settlement because there was a dissolution of the contract.

Bearcroft and Preston, contrra, relied on the distinction between the cases cited and the present. In *The King and Caverswall* the servant was discharged with his own consent. Here the master insisted upon turning him away. In that case too the servant was hired again for another year, which imported on the face of it to be a new contract. In the present there was no new contract, he continued serving for the remainder of the [103] year; there was no deduction in his wages, and no additional service in another year. The absence was purged by the subsequent consent of the master. In *The King and Ross* there was an acknowledged dissolution by the act of the parties; for they attempted to cure it by substituting a month in the next year. Here there was a continuation of the service under the original contract. *The* *King and East Kennet* also differed from this; there the master and servant parted by consent. In all those cases both the contracting parties consented to dissolve the contract, which distinguished them from the present case, where the master only signified such his determination : for as to the servant thinking himself at liberty, that has frequently been determined to have no weight (a)2. It was decided in the case of *The King and Islip* (b)2 that the master’s turning away the servant before the expiration of the year, without the servant’s consent, did not prevent his gaining a settlement.

(a)1 Burr. Sel. Cases, 461.

(b)1 Burr. Sel. Cases, 688.

(c)1 Mich. 26 G. 3.

(a)2 Burr. S. C. 152. Cald. 81.

(b)2 Str. 423.

(9) Judgment

Lord Mansfield, Ch.J. The absence of a servant from his master’s service is an equivocal act, and therefore may be explained by other circumstances: but if it appear that the contract has been once dissolved, it cannot be set up by a new agreement. In this case the contract was absolutely dissolved; the master insisted upon turning away the servant, and paid him down all his wages that were due; the consent on the other side was by taking up the money. Then how did he come back again? It was upon the request of the master. There is nothing by which the absence can be explained. The meaning of “ purging an absence” is where the act itself is doubtful.

Rule discharged (c)2.

(c)2 Vid. post, 2 vol. 624, *R. v. St. Philip in Birmingham*, Tr. 2S Geo. 3 ; *R. v. Grantham*, post, 3 vol. 754; & *R. v. Clayhydon*, post, 4 vol. 100.

(10) Ruling

Where the master insisted on turning away his servant, and threw down his wages, which the other took up and then went away, and after the expiration of six days returned at the master’s request, and served the remainder of the year, the absence was not purged by the subsequent return. A contract, once dissolved, cannot be set up by a subsequent agreement.

(11) Comment

The master receiving the servant again after an absence does not purge that absence for the purpose of settlement, in contrast with the earlier case of *Eaton*. The difference seems to be that the former was just an absence without consent whereas here there was a clear dismissal by the master and acquiescence by the servant when he left, dissolving the first contract so there was nothing to ‘cure’.

(12) Type

Restrictive

(1) Case name

*R.* v. *Hales*

(2) Date

1794

(3) Report

5 Term Reports 688

(4) Court

Court of King’s Bench

(5) Parties

The King versus the Inhabitants of Hales

(6) Order sought

Quashing

(7) Facts

Two justices removed Martha Mitchell from the parish of Hales in Norfolk to the parish of Wrentham in Suffolk. The sessions upon appeal quashed the order, and stated the following case for the opinion of this Court: “The pauper, M. Mitchell, being legally settled in Wrentham, a fortnight after old Michaelmas 1792, heard from Miss L. Garnham of Beccles, that her father, Mr. Garnham of Hales, farmer, wanted a servant; and agreed with her to go to Mr. Garnham’s a month upon liking; she went thither accordingly, and in the spring following Miss Garnham told the pauper that if she behaved well and did her work properly she should have four pounds for a year. The pauper continued in Mr. Garnham’s service without any other agreement until the Christmas following, when she quitted the service; but a fortnight after Michaelmas 1793 she received four pounds for a year’s wages then due; and for the remainder of the service from that time she received eighteen pence a week, being the proportion of wages then due at the rate of 41. per annum.”

(8) Argument

Harvey in support of the order of sessions was stopped by the Court. Bearcroft and Wilson, contr&, contended that this was a retrospective hiring for a year, if it could be said to be any hiring at all for that term; for here there was no conditional hiring for a year when the pauper went into the service, but she went upon liking without any agreement whatever. This therefore falls expressly within the case of R. v. Ham (a), where under similar circumstances the Court adjudged that no settlement was obtained. But they observed that at any rate this case was defectively stated, because the sessions had not found as a fact that the pauper was hired, either for a year, or generally, either at the time when the second conversation took place between the pauper and the master’s daughter, or at the end of the first year.

(9) Judgment

Lord Kenyon, Ch.J.—At present the case is so imperfectly stated that we cannot give any judgment upon it. A retrospective hiring certainly is not sufficient to confer a settlement. But as the pauper continued in the same service after the expiration of the first year, there was abundant ground for the justices to have presumed a hiring for a year from that time. However, as the fact is not stated one way or the other, the case must be sent back again to the sessions, where most probably the justices, after hearing the intimation of this Court, will find the fact of a hiring for a year, which will put an end to the case. The Court accordingly ordered the case to be sent back to the sessions.

(10) Ruling

If a servant after serving a year, part of which was under a retrospective hiring, so that no settlement could be gained by it, continue in service part of another year, the justices may presume a hiring for the second year.

(11) Comment

The court interprets the right to a settlement flexibly in a case where the hiring is initially for less than a year and is then confirmed for the year. There cannot be a retrospective hiring but working beyond a year is evident of hiring for a second year.

(12) Type

Liberal

(1) Case name

*R.* v. *Hampreston*

(2) Date

27 April 1793

(3) Report

5 T.R. 206

(4) Court

King’s Bench

(5) Parties

The King against The Inhabitants of Hampreston

(6) Order sought

Quashing

(7) Facts

On an appeal against an order of removal from Gillingham to Hampreston, in Dorsetshire, the sessions confirmed the order, and stated the following case for the opinion of this Court.

The pauper, W. Gray, having acquired a settlement in Hampreston, went to one S. Hannam, a miller of Gillingham, and agreed to serve him for 3s. 9d. per week; he considered himself obliged to serve his master on Sundays as well as other days ; and accordingly served on Sundays. “They had a liberty of parting on a month’s notice on either side.” He received one shilling as earnest to bind the bargain. There was no mention of time, or for how long he should serve. He continued under this contract about two years and an half, residing in Gillingham in the house of his master. He then went to Tisbury to be innoculated, where he remained two months. S. Hannam then sent [206] for him, and he was hired again by him at the rate of 4s. per week, the pauper insisting that the wages should be even money. He continued to live with Hannam under the last contract for two years and an half; during all which time he resided in his master’s house in Gillingham.

(8) Argument

Bearcroft, Templeman, and Woollaston, in support of the order of sessions, contended that this was not an indefinite hiring, but was either a hiring for a week, a month, or at the most for five weeks. In *R. v. Newton Toney* (a), Buller, J. laid down this rule, that if there be any thing in the contract to shew that the hiring was intended to be for a year, the reservation of weekly wages would not controul that hiring: but that if the payment of weekly wages were the only circumstance from which the duration of the contract was to be collected, it must be taken to be only a weekly hiring. Now this case falls within the latter branch of that rule ; for there is no other circumstance (except the liberty of parting at a month’s notice, which cannot enlarge the contract to be either a hiring for a year or an indefinite hiring) but the reservation of weekly wages, from which the duration of the contract is to be collected. In *R. v. Newton Toney*, and in *R. v. Odiham* (b), the paupers who were hired at so much per week as post-boys, and who continued in their respective services for more than a year, were adjudged not to have gained settlements by such hirings and services. So in *R. v. Dedham* (c) where the pauper “ let himself to J. M. at the wages of 6s. per week, summer and winter,” he gained no settlement. And in *R. v. Elftack* (d) no settlement was gained by serving a year under an agreement to live with two brothers at 1s. 4d. per week as long as they should not want a servant. Thus this case would rest upon the words of hiring, independently of the accompanying ones that “ they had a liberty of parting on a month’s notice : ” but those words do not vary the case. In *R. v. Birdbrooke*(e), Lord Kenyon expressly said that “the power of giving a month’s notice makes no difference.” And in *R. v. Bradninch* (f), where the hiring was by the week at 2s. 6d. per week, and to part at a fortnight’s or month’s notice, no settlement was gained, because the pauper was under no obligation to serve for a year. It is true that one expression in that case differs from the present, inasmuch as there the [207] pauper was hired by the week, and here “ he agreed to serve for 3s. 9d. per week.” But that case is a decisive authority to shew that the liberty of putting an end to the contract on giving a month’s notice will not enlarge the time of service before mentioned, or raise any obligation on the part of the pauper to serve for a year, which the Court in that case considered as the criterion. If indeed there had been an express hiring for a year, it may be admitted that the liberty of giving a month’s notice to part would not defeat the settlement; but here was no contract for a year. And the only effect that the introduction of those words can have is, that it may perhaps enlarge the contract from a week to a month, or to five weeks. According to the case of *Newton Toney* this would not be considered to be a general hiring, were it not for the power of giving a month’s notice; and the case of *R. v. Bradninch* shews that that circumstance cannot vary the case. No argument against this construction of the contract can arise from the pauper’s serving on Sundays, because that is equally consistent with a service for a week or a month as with a yearly service.

Bond and Durnford, contra, were stopped by the Court.

(a) Ante, 2 vol. 453.

(b) Ib. 622.

(c) Burr. S. C. 653.

(d) 2 Bott, 353, last edit.

(e) Ante, 4 vol. 246.

(f) Burr. S. C. 662.

(9) Judgment

Lord Kenyon, Ch.J.—It is admitted that, since the case of *R. v. New Windsor*, the circumstance of the parties having it in their power to determine the service on giving notice, will not defeat the settlement, where there is a contract for a year, and a year’s service under it. Neither could it be disputed by the counsel, who argued in support of the order of sessions, that a general hiring is not a hiring for a year. In each of the cases cited there was something to shew that the parties did not intend that it should be a general hiring; one was as long as the master wanted a servant, another as long as the parties liked, where, without any notice, the contract might immediately have been determined. But wherever the relation of master and servant is to continue for an indefinite time, and cannot be put an end to at the election of either party, without notice, there the hiring must be understood to be a hiring for a year. If this were not a general hiring, those, who disputed that proposition, should have pointed out for what time it was to continue ; and indeed it has been contended to be for a month, or a month added to a week ; but there is no foundation for either. For if that were so, the pauper might have left the service at the end of the first month, or of the five weeks, without giving any notice at all: [208] but there is no pretence for that; for by the terms of the contract he was to give a month’s notice before he could determine it. And this is distinguishable from *R. v. Bradninch*, for there was a hiring for a stipulated time less than a year. In this case, independently of the first contract, the parties met again after an absence, and the pauper was a second time hired at the rate of 4s.per week, the pauper insisting upon an increase of wages. This also was a general hiring, which in law is a hiring for a year; and the pauper having served more than a year under it in Gillingham acquired a settlement there.

Ashhurst, J.—It is observable that here were two hirings, entirely distinct from each other. The first was a general hiring at so much per week, which the law takes to be a hiring for a year. And it has been determined that the other part of the agreement that each party had the liberty of putting an end to the contract on giving a month’s notice, will not prevent the servant’s gaining a settlement. On the second hiring an observation arises from the difference of expression ; for there the pauper was hired at the rate of 4s. per week; which words clearly refer to the quantum of the wages, and not to the duration of the contract. This is a stronger case than that of *R. v. Birdbrooke*.

Buller, J.—A hiring at so much per week simply, and without any other expression, has been held to be only a hiring for a week, because that expression, if it be not explained by other words, has been taken to apply to the duration of the contract, and not to the wages : but here are other words to shew that the reservation of weekly wages could not confine it to be a weekly hiring, for neither party could determine the contract without giving a month’s notice. This is either a definite or an indefinite hiring : if the latter, the law says it is a hiring for a year. Then it was incumbent on the counsel, who contended that it was a definite contract, to define its duration : but nothing has been stated to shew that it was a definite hiring. It could not be merely a hiring for a week, because the contract was only to be determined by giving a month’s notice : nor for a month only, as one of the counsel admitted. It must then be taken to be a general hiring; and the condition of being at liberty to part on a month’s notice will not defeat the settlement; as well held in *R. v. New Windsor*, and *R. v. Birdbrooke*. What was said by Lord Kenyon in the latter of those cases has been misapplied; his Lordship had disposed of the former part of the case, namely, [209] that there was a hiring for a year, and then he added “ The power of giving notice makes no difference, for it has been held that an agreement to leave the service on giving a month’s warning did not defeat the settlement.”

Grose, J. of the same opinion.

Order of sessions quashed.

(10) Ruling

A hiring to serve for 3s. 9d. per week, with a liberty of parting on a month’s notice, is a general hiring; and the pauper serving a year under it gains a settlement. [2 East, 423. 5 ib. 382. 4 M. & S. 315.]

(11) Comment

The court takes the broad view that contractual wording for payment by the week can confer settlement if the servant in fact works for a year or more. The judgment takes into account other elements of the contract, such as the requirement of one month’s notice for termination, to come to the holistic view that the contract was for a hire by year (in contrast with *R. v. Bradninch* (1770), where the court ignored the inconsistency between the requirement of a fortnight or month’s notice for termination versus the arrangement for payment of wages by the week).

(12) Type

Liberal

(1) Case name

*R.* v. *Hanbury*

(2) Date

1753

(3) Report

Nolan, p. 322.

(4) Court

Court of King’s Bench

(5) Parties

Rex v. Inhabitants of Hanbury

(6) Order sought

Quashing

(7) Facts

Two Justices made an Order for the Removal of Richard Allen and his Wife from Hanbury in Worcestershire to Tardebigg in Warwickshire : And, upon an Appeal, the Sessions quashed that Order. Case.—The Pauper was hired for a Year, from Michaelmas to Michaelmas : He came three Days after the former Michaelmas and stayed one Day after the latter and was absent, at different Times near a Fortnight, for which Absence 6s. 6d. were abated in his Wages. This Service was in Tardebigg. From thence, he went to Hanbury where he was hired for a Year, and served three Quarters and then married to a Woman with Child. Of this, his Master complained to a Justice of Peace.—The Justice thought the Matter complained of to be a sufficient cause for the Pauper’s being discharged and allowed of his D if charge but made no Order in Writing touching the Matter. The Master thereupon discharged him, against the Pauper’s Consent. Upon Tuesday 14th of Nov. last, a Motion was made by Mr. Ingram, to quash the Order of Sessions: And a Rule was made to shew Cause.

(8) Argument

On shewing Cause on Monday 28th of the same Month (of November) Mr. Bathurst, for the Inhabitants of Tardebigg, argued that the Settlement was in Hanbury 3 at least, not in Tardebigg. To prove “ that it was no Settlement in Tradebigg he cited the following Cases. Rex v. Inhabitants of Islip\* was an Absence of four Days to see a sick Mother 3 and six Days, sick; and going away three Days before the End of the Year, having asked Leave, and for a reasonable Cause. All this indeed did not vitiate the Settlement: For the Servant continued in the Service, in Point of Law; though he actually left it three Days before his Time expired. But in Rex v. Inhabitants of Castlechurch there was a Hiring for a Year; and the Service was quitted, by Consent of the Master, twelve Days before the End of the Year: And it was holden to be no Settlement. And Rex v. Inhabitants of Newton shews that is must be a complete Year. As to the Settlement in Hanbury—The Justice could not discharge the Servant against his Consent: For it appears by, and was agreed in Bro. Abr. Title Laborers, pl. 27., That the Master cannot discharge his Servant within the Time etc, unless he agrees to it; no more than the Servant can depart, without the Agreement of his Master.” The Act of Parliament of 5 Eliz. c. 4. Sect . 5. does not make this Marrying during his Service to be a reasonable and sufficient Cause of Discharge ; such as a Justice of Peace may allow to be so, for putting away a Servant without his own Consent. And in the Case between the Parishes of Farringdon and Wilcot, A Servant who marries during his Service may serve out his Time: And if he does, it shall gain a Settlement, by the Opinion of Holt and Gould, against Powell. Therefore he must be considered, in Point of Law, as having continued in the Service to the End of the Year : For the Discharge by the Justice was absolutely void.

Lord Chief Justice Lee said the great Question is upon the Cause of Discharge; “ Whether that be sufficient.” But as the Cause and Manner of Discharge were a new Point, he thought it not fit for the last Day of a Term. Adjourned.

Mr. Bathurst now proceeded, and argued—1st, That no Settlement was gained in Tardebigg; because he did not serve there a whole Year. Absence either at the Beginning of the Year or just before the End of it will vitiate the Service. 2dly, That his Marriage is no Dissolution of the Contract, in Hanbury. To which Point; he 2 H. 4 13b Case 3. A Man may marry my Servant, a Feme Sole; but cannot take her out of my Service\*. He cited also FitzHerbert’s Abridgement, Title Barre, pi. 214. In the Act of 3 G 4 W. & M. c. 11. Sect. 7. the Word “unmarried” only relates to the Time of the Hiring. And so it was held by Holt and Gould, against Powell, in the Cafe between the Parishes Farringdon and Wilcot. The Case between the Parishes of Clent and Elmley Lovat Foley’s Poor Laws 160 proves fully “ that intermediate Marriage does not prevent a Person hired for a Year from gaining a Settlement." And Sessions Cafes, Edit. 1750. S. C. says, “An Hiring and Service gains a Settlement, notwithstanding Marriage within the Year.” And then it goes on thus: in Case of Farington, one hired for a Year in Farington marries; Two Justices remove out the Servant, by Consent of the Matter, to Wilcote in Oxfordshire, within the Tear. Upon Appeal of W. this Fact stated. Order confirmed : But King's Bench quashed it. 3dly. Mr. Bathurst obferved that the Justice has made no Order in Writing. Now 5 Eliz. c. 4. § 5. directs the Justice to “hear and order ;" which implies an Order in Writing, as All their Orders are : Whereas here is no Order at all, as far as appears by the State of the Case.

Mr. Ingram on the other Side (for the Inhabitants of Danbury) said, There are two Questions in this Cade— 1 ft. “Whether the Pauper gained a Settlement in Tradebigg”; 2d. “Whether He gained a subsequent One in Hanbury." These Questions will depend on the Construction of 3 & 4 W. & M. c. 11. and 8 & 9 W. 3. c. 10. Sect. 4. First—The little Absence of 3 Days at first, and a Fortnight afterwards, for which there was a Deduction of Wages, will not defray the Settlement in Tardebigg. To prove this, He cited P. Rex v. Inhabitants of Islip; and the Case between the Inhabitants of Eaton and North Wheatly, Rex v. Inhabitants of Castlechurch, and Rex v. Inhabitants of Beccles. Here, the Service continued during the Whole Year : For He was a Servant from Michaelmas; and the Absence for the three days was dispensed with by the Master's receiving Him. It is not necessary to be actually in the Service. Bro. Abr. Title Laborers, pi. 7. 11. sufficiently prove that a. Person may be a proper and true Servant without that. Second Point—(the subsequent Settlement in Danbury—) He admitted that the Marriage did not make the Contract void; but insisted that it made it voidable, at the Election of the Master. The Servant is not at Liberty to depart; but the Matter may discharge for this Cause. Mr. Bathurst's Cafes out of the Year-Book are determined upon the Old Statute of Laborers, (23 Ed. 3.) which is repealed by 5 Eliz. Trinity Term 26 & 27 Geo. 2. 5 E/iz. c. 4. § 1. The 5th Section of this Aft is in the disjunctive— No Person shall put away his Servant before the End of his Term, or Servant retained according to that Act depart from his Service, Unless it be for reasonable Cause or Matter, or be allowed before two Justices &c, or one at least, to whom any of the Parties grieved shall complain : Which said Justices or Justice shall have and take upon Themselves the Hearing and Ordering of the Matter between the Master and Servant according to the Equity of the Cause.” Therefore the Justice was the proper Judge of this Matter, and has done every Thing that the Statute requires. An Order to discharge a Servant needs not be in Writing. Bro Abr. Title Laborers, pi. 38. A Servant may be discharged by his Master, by Parol. The Contrast itself was made by Parol: And therefore it may be dissolved by Parol. And this same Justice who ordered the Discharge, made the Order of Removal. I do not deny “ that a married Servant may gain a Settlement”. But I say that it is in the Optionof the Master. The Cafe of Farringdon and Wilcot, in 2 Salk. 529. is an Authority for Us. It is adjudged “ That the Justices cannot annul” the Agreement between Master and Servant, unless it be upon Complaint of the Master. There the Master did not complain; Nor was there a previous Application to a Magistrate for his Discharge, before the Order of Removal. As to the Cafe of Clent and Elmley Lovat—It was there laid down that the Marriage did not destroy the Settlement where the Servant continued'' But it does not follow “ That the Master cannot discharge his Servant on Marriage.” If then the Pauper Himfelf be removable—To what Place must the Wife be fent ? The Answer is plain : She muft certainly be sent to Tardebigg, the Settlement of the Husband : For He has not yet gained any at Hanbury, before the End of the Year’s Service there. Therefore it follows, that He must be sent thither too: Otherwise, it would be a temporary Divorce.

(9) Judgment

Ld.Ch.J Lee and the Three other Judges thought the first Point (about the Settlement in Tardebigg) sufficiently answered by the Cafes cited by Mr. Ingram. In the Case of Rex v. Inhabitants of Islip, There were a great many Absences and One of them was 3 Days before the End of the Term, contrary to the Will, and after the Refusal of the Master; and the Servant did not return afterwards and an Allowance was made in the Wages for the Time He was absent: And yet it was holden to be a good Settlement. Therefore this Case is in Point, as to every Thing, but the Difference of the 3 Days being at the Beginning; which does not make any real Difference at all: For Service has not been taken strictly, though Hiring has. The 3 Days Abfence of the Servant in the Beginning of his Service was purged by the Matter's receiving him. 2d Point. As to the Discharge of the Servant—That ought to be done by the Justice as a Magistrate, that is, by an Order. It is an Adi of Jurisdiction in the Justice and therefore ought to be in Writing. The Act of 5 Eliz. c. 4. § 5. requires a sufficient Cause of Discharge, to be allowed by One or more Justices of Peace, on hearing and ordering the Matter. Now here does not appear to be any Hearing : And it is certain, there is no Ordering. Nor, as Mr. Justice Wright thought, is there any reasonable Cause : For what Objection is the Marriage? ’Tis no Misdemeanour : And the Justice cannot discharge but for Misdemeanour. Therefore He is not discharged ; nor (by Mr. Justice Denison and Mr. Justice Foster) can He be thus discharged against his own Consent. Consequently, the Settlement at Hanbury goes on and is his last legal Settlement.

(10) Ruling

Per Cur. unanimously—The last legal Settlement is in Hanbury: And therefore They affirmed the Order of Sessions which had quashed the Original Order made for removing the Paupers from Hanbury to that Part of Tardebigg which is in the County of Warwick.

(11) Comment

The Court rules that a wrongful discharge (on the grounds of the servant’s marriage) did not prevent a settlement, when the servant had been hired for the year but had only served three quarters of it.

(12) Type

Liberal.

(1) Case name

*R*. v. *Hanbury*

(2) Date

23 June 1802

(3) Report

2 East 422

(4) Court

King’s Bench

(5) Parties

The King against The Inhabitants of Hanbury

(6) Order sought

Quashing

(7) Facts

Two justices by an order removed J. Freeman, Mary his wife, and Ann their daughter, from the parish of Tardebigg to the parish of Hanbury, both in the county of Worcester. The sessions, on appeal, confirmed the order, subject to the opinion of this Court on the following case : The pauper, John Freeman, a blacksmith, went six and thirty years ago to one Saunders a blacksmith at Hanbury, to know if he wanted a man. Saunders told him he might come to work for a day or two, and he should see what he could do. The pauper went accordingly on the following Monday morning, and after two or three days’ trial Saunders approving of him, the pauper agreed to work for Saunders as a blacksmith, at three shillings and sixpence a week, with meat, drink, washing, and [424] lodging at Saunders’s house, and to part on a week’s notice by either party. No such notice was ever given ; but the pauper continued to serve Saunders until the time of his death, which happened about six years afterwards, without any alteration of terms, except that after he had served about four years the wages were raised from three shillings and sixpence to four shillings a week. The pauper constantly received his week’s wages every Saturday night or Sunday morning. He went where he pleased on Sundays without asking leave of his master ; though he was entitled to his board on Sundays as well as on other days if he chose to stay at home. He did not work on Sundays as the apprentices did who were kept at home for that purpose, except occasionally when asked by his master. On other days if he wanted a holiday he used to ask-his master for it, who gave it him, deducting his wages for the time. His master also used frequently to set him task work for the day which he sometimes finished in half the day, and then he was at liberty for the rest; but he frequently did over work upon those occasions ; and then he was paid for such over work. The sessions, being of opinion that this was a general hiring, confirmed the order.

(8) Argument

Touchet, in support of the orders, contended 1st, that the mere continuance of the service for six years was sufficient to warrant the conclusion that there was a general hiring during the period, which the law construes to be a hiring for a year: for which he referred to *Rex v. Lyth* (a)1 and *Rex v. Long Whatton* (b)1 in which latter case it appeared that the servant was at first only hired for a part of the year. [Lord Ellenborough C.J. Here the parti-[425]-cular terms of the original agreement are stated, and therefore we cannot presume that the pauper served under a different contract.] 2dly, the hiring was for an indefinite time, though the rate of wages was calculated at so much a week : and when the wages were raised nothing was said about time. At any rate it was a question of fact for the sessions, and there was evidence sufficient to warrant the conclusion they have drawn. The reservation of weekly wages in *Rex v.* *Hampreston* (a)2, did not prevent the operation of a general hiring.

Gibbs and Jervis control were stopped by the Court.

(a)1 5 Term Rep. 327.

(b)1 lb. 447.

(a)2 5 Term Rep. 205.

(9) Judgment

Lord Ellenborough C.J. The cases of *Rex v. Dedham* (b)2 *Rex v. Brandninch* (c), and *Rex v. Newton Toney* (d), have expressly decided this point. The first of these was much stronger than the present; for that was a hiring at so much a week, “summer and winter.” But Lord Mansfield said that all the cases required a hiring for a year ; but that was only a hiring at so much a week. So in *Rex v. Brandninch*, Lord Mansfield observed that the pauper was under no obligation to serve for a year; and unless that be so, it is clear there can be no settlement gained. The case of *Hampreston* turned on the circumstance of a month’s notice to quit being required ; but here the contract was determinable at a week’s notice. And though the sessions have drawn a conclusion that this was a general hiring, yet it is clear that they meant only to state it as a conclusion of law from the antecedent facts, the propriety of which they meant to refer to us. But [426] here there is no ground for presuming a general hiring; for it appears expressly what the original agreement was in fact, which negatives a hiring for a year.

Per Curiam. Both orders quashed.

(b)2 Burr. S. C. 653.

(c) lb. 662.

(d) Term Rep. 453, aud vide Rex v. Odiham, ib. 622, S. P.

(10) Ruling

A hiring at so much a week, meat, drink, washing, and lodging, and to part on a week’s notice by either party, will not warrant a conclusion of a general hiring, tho’ the servant continued six years with the master, and the wages were raised during the period : and therefore no settlement can be gained under such hiring and service.

(11) Comment

The court favours the form of the contract, that is the express wording that the servant is to be paid by the week, over the reality of the servant’s continued hire by the master for six years. However, a more holistic approach is taken here (following *R. v. Hampreston* (1793) and considering the requirement of notice for termination) than in *Bradninch* (1770) and *Elftack* (1785) where the court stopped at the contractual wording without considering the implications of the other contractual terms on the overarching characterisation of the contract as indefinite, hire for a year, or hire for a week.

(12) Type

Restrictive

(1) Case name

*R.* v. *Harbury*

(2) Date

1830

(3) Report

1 B. & Ad. 359

(4) Court

King’s Bench

(5) Parties

The King versus the Inhabitants of Harbury

(6) Order sought

(7) Facts

Upon appeal against an order of two justices, whereby Richard Gardner was removed from the parish of Harbury, in the county of Warwick, to Snitterfield, in the same county, the sessions quashed the order, subject to the opinion of this Court on the following case :—The pauper was hired on the 20th of September 1823, to serve Mr. Richard Smith, of Snitterfield, the appellant parish, for fifty-one weeks. The pauper went into Mr. Smith’s service on the 18th of October 1823, and served Mr. Smith for fifty-one weeks. On the 20th of September 1824, Mr. Smith again hired the pauper for a year, to commence from the Old Michaelmas ensuing. The pauper remained in Mr. Smith’s house, and worked for him regularly, from the 18th of October 1823 until about three weeks before Old Michaelmas 1825. He served under the said yearly hiring till about three weeks before the Old Michaelmas, when the contract was dissolved. The case merely stated these facts : no point was submitted for the opinion of the Court.

(8) Argument

Hill in support of the order of sessions. 1824 was leap year, therefore the first hiring ended on the 9th of October; the second did not begin till the 11th. The sessions have not found any facts amounting to a service on the intermediate day; and they have determined against the settlement, as they might do, even supposing that they have stated a prima facie case of service on the 10th, *Rex* v. *Yarwell* (9 B. & C. 894). Their decision, therefore, is conclusive.

Amos, contra. There was an interval of a day, but that was filled by a service, without contract, of a similar nature with the preceding and following services; and the case sufficiently shews this. The judgment of sessions was therefore contrary to *Rex* v. *Sulgrave* (1 T. R. 778), and *Rex* v. *Dawlish* (1 B. & A. 280).

(9) Judgment

Bayley J. There was no express hiring for the 10th of October, but there was a continuation of the service, not, as it appears, objected to by the master, *Rex* v. *Dawlish* applies.

Littledale J. The words of the case are sufficiently strong. We cannot understand from them that the pauper worked as a servant on all the other days, but not on the 10th.

Parke J. The sessions have, in substance, found a continued service from October 18, 1823, till the dissolution in 1825. I think their conclusion upon the facts as found by them, is wrong.

Order of sessions quashed.

(10) Ruling

Pauper was hired by R. S. (and served him accordingly) for fifty-one weeks, beginning October 18,

1823. During that term he made a new contract with S. for a year, to commence at the ensuing Old Michaelmas, which was October 11, 1824. That year being leap year, the term of fifty-one weeks expired October 9. The sessions found that “the pauper remained in S.’s house, and worked for him regularly, from the 18th of October 1823 until about three weeks before Old Michaelmas 1825;” but they quashed an order grounded on the settlement supposed to have been acquired under these circumstances: The Court held, that the case shewed a continuing service on the 10th of October 1824, which might be coupled with the two services under express hirings, so as to confer a settlement, and they quashed the order of sessions.

(11) Comment

The Court applies the hiring and service rules flexibly to find a settlement.

(12) Type

Liberal

(1) Case name

*R.* v. *Hardhorn with Newton*

(2) Date

27 June 1810

(3) Report

12 East 51

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Hardhorn by Newton

(6) Order sought

Quashing

(7) Facts

Margaret Lingard, a pauper, was removed by an order of two justices from the township of Newton with Scales to the township of Hardhorn with Newton, in the county of Lancaster. Upon appeal to the sessions against this order, the question was, whether a settlement had been gained by hiring and service in Hardhorn with Newton. The pauper was hired by R. Gratrix in Hardhorn, for a year: three weeks after the beginning of the year Gratrix, the pauper’s master, died, and the farm was continued on by his widow and two sons, George and William. About three weeks before the end of the year the pauper fell out with George, one of the sons, about her work, because she threw more sand upon the floor than be deemed necessary, and was by him turned out of doors, though she was willing to stay. The next day she came again for her clothes, when George paid her 4l. 10s. as for her full wages. There was a dispute about the amount of her wages; George insisting that the pauper was hired for 4l. 10s., and she demanding 5l. 15s. The pauper, however, accepted 4l. 10s., and never got anything more, though she employed an attorney for that purpose. The pauper, when she came the next day for her clothes, offered to stay to the end of the year, but George would not let her. The sessions being of opinion that a settlement was gained under the hiring and service above stated, confirmed the order.

(8) Argument

Scarlett, in support of the order, said that he did not know whether the death of the master within three weeks after the hiring were meant to be urged as a dissolution of the contract, notwithstanding the continuance of the service under the original hiring with the widow and sons on the farm. [But Le Blanc J. said there could be no question made as to that: and the counsel for the appellants said that he did not mean to raise any objection on that ground, but upon the subsequent dissolution of the contract by the acts of the parties.] Scarlett then observed that the cases which turned on the question of dispensation of the service, or of dissolution of the contract, ran very near to each other; but that which came nearest to the present, *Rex* v. *St. Philip in Birmingham*, classed this with the cases of dispensation. The pauper was unjustly discharged before the end of the year; and though she took her wages, yet they were the wages for the whole year, and she offered to stay and serve out her time. And that offer distinguished the case from *Rex* v. *Clayhydon*, where it was only stated that the servant wished to stay out the year; such wish not having been communicated to the master. [Lord Ellenborough C.J. having observed that the question here really was, whether kicking the pauper out of doors was a dissolution of the contract, the respondent’s counsel said it was unnecessary to argue the case any further.]

J. Williams contra, admitted that the contract could only be dissolved by the consent of both parties; but contended that the acceptance of the wages by the pauper before the end of the year shewed such consent on her part, though she would have preferred staying out the whole year. The Act of Parliament requires “a continuing and abiding in the service during the space of one whole year,” in

order to confer a settlement, and every case of dispensation is against the plain sense and letter of the Act: the Court therefore will not be inclined to go an iota farther than the express adjudications compel them to go ; and where there are conflicting authorities will rather abide by the letter of the statute. He then referred to *Rex* v. *Grantham*, *Rex* v. *Thistleton*, *Rex* v. *King's Pyon*, *Rex* v. *Sudbrooke*, *Rex* v. *Rushall*, and *Rex* v. *Leigh*, as cases of dissolution which materially trenched upon the other decisions, and shewed that though the master urged the dissolution of the contract, without or against the desire of the servant; yet if the latter acquiesced by accepting the wages and departing from the service before the end of the term, that put an end to the contract. Now here the pauper did at last accept that which the master insisted to be her full wages, and which would conclude her from any further demand; which made an end of the contract on her part, as the turning her out of doors by the master concluded him on the other hand from any further claim to her service ; and there was no longer any mutual remedy upon the contract.

(9) Judgment

Lord Ellenborough C.J. If indeed there were a conflict of cases upon this point, that would bring us back to the words of the Act, the true import of which we should have to consider: but there is no material conflict of the cases, nor any thing in the construction contended for by the respondent’s counsel which will clash with the words of the Act. There must be an abiding in the service for a whole year in order to confer a settlement: and as far as lay in the power of the pauper, there was an abiding in it for a year: but she was wrongfully and forcibly turned out doors by her master against her will; and when she returned the next day for her clothes he gave her 4l. 10s., which he said was the whole of her wages ; but she did not assent to that, and demanded more, though she took what he was willing to give her in part, and offered to stay to the end of the year, maintaining her right to her full wages. She therefore did all she could to abide in the service according to her contract, and did so, except so far as she was prevented by an act of force. The case of *The King* v. *Grantham*, which is principally relied on to shew the dissolution of the contract, is very distinguishable. The servant there having been improperly turned out of doors by his master in the first instance, took him at his word, and refused to return to the service, though invited by his master so to do: and when the master at last agreed to pay him his full wages, he left the service contrary to the express request of the master to stay.

Grose J. In the case of *The King* v. *Grantham* there was an agreement by both parties to dissolve the contract before the end of the year: and the same answer may be given to all the other cases which have been held to be dissolutions of the contract. But here there is nothing like consent on the part of the servant. The master turned her out of doors against her consent, and she wished to come back

and perform her service to the end of the year; but he would not permit her. Therefore though the service was not performed, yet she tendered herself to perform it, which is equivalent to the performance of it in law: and the contract could not be dissolved by the wrongful act of the master in turning her away.

Le Blanc J. The first point which was suggested has been very properly abandoned now; for there is no doubt that the death of the master after the pauper was hired for a year; she continuing to serve the widow and son on the farm; was a continuation of the same service. Then with respect to the other point, it is now too late to recur back to the strict words of the Act of Parliament, upon questions of dispensation or dissolution of the contract: a long current of cases has established the distinction: and where the dissolution of the contract has not been assented to by both parties, the Court has inquired into the cause of the master’s dismissal of his servant. Now here was a frivolous cause assigned by the master, which would not warrant him in turning the servant out of doors against her consent; and she offered to stay, but he refused to permit her. It was necessary however that she should have her clothes and something to maintain her; therefore her taking her clothes and what money he was willing to pay her does not shew her consent to abandon the contract, which she expressly offered to fulfil to the end of the year. Then after her departure, she did not hire herself into another service before the end of the year, as occurred in one of the cases, which was held to be a dissolution of the contract. Here then the pauper did everything she could to continue in

the service, from which she was wrongfully discharged : the sessions have decided that it was not a dissolution of the contract; and I cannot say that they have decided wrongly.

Bayley J. It would be much better if the sessions would decide the fact, whether of the dissolution of the contract, or of the dispensation of the service, and abide by their decision, without sending up a case with the evidence on which they formed their conclusion. In *The King* v. *Grantham* there was the consent of both parties at one time to put an end to the contract, and the master wishing the next day to retract his consent could not alter the case. But the question here is, whether a wrongful act of the master can dissolve the contract without the consent of the servant. It would operate very unjustly if it could; for then masters would often be induced to discharge their servants on frivolous pretexts towards the end of the year to prevent them from acquiring settlements.

Order of sessions confirmed.

(10) Ruling

Where the master died 3 weeks after hiring the pauper for a year, the latter, abiding in the service with the widow and sons to the end of the year, gains a settlement in the parish where she served. And it is no less an abiding in the service for a year, because one of the sons, on the frivolous pretence that the servant threw more sand on the floor than he deemed necessary, turned her out of doors three weeks before the end of the year; she being willing and offering to stay to the end of the year, but carrying away her clothes the next day, and taking what the son insisted was her full wages for the year according to the agreement, though she demanded a larger sum as her full wages.

(11) Comment

The Court finds a settlement in case whether the servant was discharged without good cause a few days before the end of the year.

(12) Type

Liberal

(1) Case name

*R.* v. *Hardwood*

(2) Date

1780

Trinity Term 20 Geo 3

(3) Report

Nolan p. 100

(4) Court

Court of King’s Bench

(5) Parties

Rex v. Inhabitants of Hardwood

(6) Order sought

Quashing

(7) Facts

Two justices removed Joseph Brown, Abigail his wife, and their child from the township of Leeds, in the borough of Leeds, in the West Riding of the county of York, to the township of Harwood, in the fame riding and county. The sessions on appeal confirm the order, and state the following case: That the pauper, Joseph Brown, the husband, in the year 1774 being then a Single man, and an inhabitant, as a servant in husbandry at Harwood, wanting again to hire himself as a servant in husbandry, offered himself at the Statutes Fair, at Harwood aforesaid, where there is a custom for servants to hire at the Statutes day, on the last Monday in October : but, not meeting with a master there, he went to the market-town of Otly, (about, eight miles distant from Harwood,) where there is a different custom for servants to hire by the year, at two different Statutes ; one held on the Friday before old Martinmas-day, the other on the Friday next after old Martinmas-day at which latter Statutes Fair they always hire till the the old Martinmas-day following, which by the custom is considered as a hiring for a year. That old Martinmas-day in the year 1774, was on the Tuesday. That on the Friday following, being the second Statutes Fair abovementioned, the pauper hired with William Pike, to serve his mother, Ann Firth, in Harwood, till the Harwood old Martinmas-day following : and that he did serve her in Harwood till the old Martinmas-day following.

(8) Argument

Dunning shewed cause in support of these orders : and said, as there could be no doubt, but that, if the pauper had been hired under the other custom of this place, he must have gained a settlement, it would be absurd and unjust, the principle not being new, and the case equally bona fide, to say that he had not gained one here and under this : that if settlements were to be favoured, and the spirit of a contract, affecting that very right, made by a numerous class of poor people acting without advice, had been under other circumstances permitted to prevail against the letter of the law, there could be no reason that it should not in the present cafe: that from the day next after Michaelmas-day, till Michaelmas-day, which was the case of the King v. the Inhabitants of Navestock, neither in terms or in strict legal construction comprised the period of a year, entire and compleat and that this case was equally protected by the custom of the country : that, in the case of the King v. the Inhabitants of Newstead, a hiring from Whitsun tide to Whitsuntide had been holden sufficient and that duration for 365 days is not the criterion of a good hiring.

Fearnly, in support of the rule to quash the orders, insisted that the act required a hiring for an entire year; that with respect to hirings the court was always strict; and that in the construction of this act the cases were uniform in ruling; that a retainer for a period, upon the face of the contract less than a year, would not give a servant his settlement : that the authorities to this point were, Frencbam v. Pepper Harrow, Coombe and Westwoodhay, the King v. the Inhabitants of Westwell, the King v. the Inhabitants of South Cerney, and the King v. the Inhabitants of Newton : that the cafe of Navestock was by no means an authority to the contrary ; for, upon the principle that there can be no fraction of a day, the court were then of opinion, that under the terms of the hiring, the Iast day was included: that, as to the King v. Newstead, such hirings, may prove more or less than a year : but that it did not, as here, appear to be less.

(9) Judgment

Wills, J. The question is, whether a hiring for three days less than a year is a hiring for a year within the meaning of this act? The cases cited are against it ; and one of them, the King v. Newton is full in point even against any custom for less than a year having effect. As to the two cases relied upon on the other side, they do not contradict this doctrine : the first was a hiring from one moveable feast to another ; the precise duration therefore of the service might probably have not been in the knowledge of either party at the time of the contract; and it might have exceeded a year. In the King v. Navstock, the hiring being till Michaelmas, the law, which makes no fraction of a day, included that day, by which the year was compleated : and the general dodtrine laid down by Mr. Fearnley was there recognized by the court.

Ashurst, J. It appears very extraordinary to me, that an idea could be entertained, that a custom, no older than King William, could control an act of parliament. The case of Navestock goes as

far as it ought, and I should not choose to go further.

Buller, J. There is no case in which a hiring, which must necessarily be less than a year, has been adjudged to give a settlement; and it would be dangerous to make a new precedent of that sort. The question in the King v. Navestock, was, whether, on a hiring from the day after Michaelmas-day till Michaelmas-day, that day should be holden inclusive or exclusive ? A custom is only material to explain the terms of a contract, when ambiguous. In that case therefore it was allowed to have its weight : but all the cases agree, that there must be a hiring for a year.

Lord Mansfield was absent.

(10) Ruling

Rule absolute and both

Orders quashed.

(11) Comment

A strict ruling on need for a full year’s service, distinguishing earlier more flexible cases on customary hirings treated as being for a year.

(12) Type

Restrictive.

(1) Case name

*R.* v. *Haughton*

(2) Date

1823

Hilary Term Geo 4

(3) Report

1 Strange 83

(4) Court

Court of King’s Bench

(5) Parties

Dominus Rex versus Inhabitants of Haughton

(6) Order sought

Quashing

(7) Facts

Upon a special order the case was stated, that about five years since one John Evans was hired into the parish of Haughton from Ash Wednesday to Christmas ; that at Christmas he went home to his father, who lived in another parish, took his clothes with him, and staid a week. That then he returned to Haughton, and hired himself to, and served the same master eleven months. Then he went home again to his father for a week, and returned, and was hired and served the same master other eleven months. That then by agreement between the master and him, and to avoid a settlement in Haughton, he went home to his father for a week, and afterwards served the same master for five weeks. And there being so many hirings and services, the justices adjudge the settlement in Haughton.

(8) Argument

Denton, Reeve and Foley moved to quash this order, there being no actual hiring and service for a year, both which the statute of 3 & 4 W. & M. c. 11, requires. Mich. 9 Ann. Paroch. Rudswicke v. Dunfolc, Salk. 535, there was a hiring for a quarter of a year, and afterwards for half, and then for another half year, and a service for all; but this was held to be no settlement, Hil. 10 W. 3, Paroch. Overton v. Steventon (1), there was a hiring and service for half a year, then a hiring for a whole year, and a service for half; and this was held to be a hiring and service for a year, and the settlement in that parish. So Pas. 1 Geo. B. R. Rex v. Inhabitants de Brightwell in Berks (2), there was a hiring and service from three weeks after Michaelmas 1712, to Michaelmas 1713, then a hiring to the same master for a year, and a service for eleven months, and these two hirings and services were held to gain the servant a settlement. Pas. 1 Geo. Paroch. Pepper Harrow v. Frencliam (3), a hiring and service from 3 October to Michaelmas, and the servant at the master’s request staid so long after as brought the year about; but this was held no settlement. Mich. 12 Ann. Paroch. Horsham v. Shipley {A), there was a hiring from 19 February to May-tide from thence to Lady-Day, then to May-tide again, then to Lady-Day, and then to the next May-tide; but there being no contract for a year, the Court held it no settlement.

Hawkins contra. A servant, whilst such, is not removeable by any Act, when a man is hired for a year in one parish, and serves the last quarter with his master, who removes into another parish, yet the servant gains a settlement, as has been adjudged, notwithstanding the Act says, a hiring and service for a year in any parish. Mich. 1 Geo. Paroch. St. George v. St. Catherine, where the master removed at half a year’s end. The statute says, apprentices bound out by indenture; and yet it has been extended to those bound out by deed poll. So the Statute of Gloucester as to waste has been extended beyond the letter, rather than it should be evaded. In the present case it plainly appears, that this was a contrivance from the beginning to exempt this parish, by sending him away at eleven months end.

(9) Judgment

Foley. He needed not to go away, to avoid that which he could not have gained by staying.

C.J. This is plainly a design to save this parish, and I suppose all the parishioners have agreed never to hire any servant for a year. The ground of the statute relating to servants was that a person who had strength of body enough to hire himself out for a year, would when that year is expired be able to support himself; and the same reason holds in the case of apprentices. I am afraid we cannot interpose in this case, but it is proper the Legislature should.

Pratt J. We must take the law as it stands, and follow former resolutions ; for the sessions have ever since for the most part acted pursuant to those resolutions; and if we should do otherwise, it will introduce the utmost uncertainty and confusion ; and little respect will be paid to our judgments if we overthrow that one day, which we resolved the day before. The statute expressly requires a hiring and service for a year; and it is admitted that if there was but one hiring and service for eleven months, that would give no settlement; and why any subsequent hirings of the same nature should gain him one, I cannot imagine. The reason of hiring servants at first for eleven months only is, because the servant may prove idle and good for nothing, and the master, as a prudent man ought to do, avoids bringing a charge upon the parish, till he has had experience of the diligence and fidelity of his servant; and when he has had eleven months experience of his diligence and fidelity, then if he hires him a second time, that is grounded upon his good service during the former hiring, but still the second hiring must be as full, as if the first hiring were out of the case, and if the first hiring were out of the case, then the second would stand in the same parity of reason with what I mentioned before, a single hiring and service for eleven months, which it is agreed will give no settlement. If there was any fraud, the justices should have examined into it. We cannot judge of the fact, but the law upon the fact. 1 Vent. 310. Demand and refusal is evidence of a conversion to a jury, but not to the Court. 1 Roll. Abr. 523. 10 Co. 56. Hob. 187. 1 Vent. 401. 1 Sid. 127. Hutt. 10. Salk. 531. If that case of The Parishes of Overton and Steventon was open again, I should not readily go into that opinion.

(10) Ruling

The Court took time to consider of it, and at the end of the term they held, that as the law now stands, the several hirings and services that were stated could give no settlement. They said it would be dangerous to depart from the (a) words of the statute, and if they once did, they should never know where to atop. Wherefore the order was quashed.

(11) Comment

Faced with an apparently clear case of hirings designed to evade the statute, the court rules that there is no hiring.

(12) Type

Restrictive.

(1) Case name

*R.* v. *Hedsor*

(2) Date

18 Geo 3

27 June 1778

(3) Report

Burr S. C., p. 51

(4) Court

Court of King’s Bench

(5) Parties

Rex v. Inhabitants of Hedsor

(6) Order sought

Quashing

(7) Facts

Two justices remove William Monk, Jane his wife, and their four children, from the parish of Little Marlow in the county of Bucks, to the parish of Hedsor in the same county. The sessions, on appeal, confirm the order, and state the following case: That William Monk, the pauper, being legally settled at Bampton in the county of Oxford, the place of his birth, about ten years ago, then being unmarried, was hired to the right honourable William, Lord Boston, of the parish of Hedsor in the said county of Bucks, for a year, as a gardener, and served him there several years: that about ninety-five days before the expiration of the fourth year’s service, he married a woman of the parish of Little Marlow; and, from the time of his marriage, and till the expiration of that year’s service, he lodged with his wife in the parish of Little Marlow; but not successively ; and did not lodge forty nights

elsewhere from the time of his marriage, till the expiration of the year in which he married. It does not appear that Lord Boston had any property whatever in Little Marlow parish. It also appears that he did not see Lord Boston within that year he married; also it appears he never asked his master’s consent to be absent for the said forty nights, in which he lodged at Little Marlow or any part of it ; nor did his master give any consent for such absence; it does not appear where he lodged the last night of that year in which he married, and which compleated his service with Lord Boston, under the hiring and service for a year; it also appears that be never performed any service whatever in Little Marlow on account of his said master, Lord Boston ; that he continued to serve his master Lord Boston several years after his marriage.

(8) Argument

Dunning shewed cause in support of these orders; and contended, that the inclination, which the court has always shewn in favour of settlements in consequence of service, need not be indulged in the present instance, because without question the pauper had gained a settlement in the service of the first year. The only doubt was upon the service of the last. Formerly it was questioned, whether the service ought not to be in the same house ; and though it was thought sufficient, if in the same parish, yet it has since been holden ; that if a servant continues forty days in a parish in his master’s service [a], the reason why the forty days gain a settlement is, because the servant comes into such parish with his master : and that the court would not permit a servant, in a parish where his master, had no property, and where he was not in his master’s service, where consequently he ought not to have been, and where in point of fact his master did not know that he was, clandestinely with respect to his master, and in fraud of the parish, who might not know where he slept, and therefore could not remove him, so to gain a settlement.

Wallace, Solicitor General, in support of the rule to quash the orders. A variety of cases have decided that a man is settled where he lodges the last forty days. Neither need these days be successive. The case of [a] the King v. The Inhabitants of Castleton is in point. The only difficulty is, whether the want of the master's knowledge of the fact can make any difference? If his master’s business is done as well as if he lodged in the family, which the case shews it must have been, it can make none.

[*a*] *Silverton* and *Ashton*, Tr. 12 Ann. Foley, 188

[*a*] 3 M. 7 G. 3. 1766. Burr. Cas. 569.

(9) Judgment

Lord Mansfield. The cases seem to have settled it.

Willes, Ashurst and Buller, Justices, concurring.

(10) Ruling

Servant sleeping with his wife, without his master’s knowledge, out of the parish, in which his master lives, gains a settlement there.

(11) Comment

The court rules that a settlement by hiring is lost if the servant lives with his wife out of the parish of settlement for 40 days; the parish of residence then becomes the parish of settlement.

(12) Type

Restrictive

(1) Case name

*R.* v. *Hensingham*

(2) Date

Trinity Term 22 Geo 3

15 June 1782

(3) Report

Burr S. C. page 206

(4) Court

Court of King’s Bench

(5) Parties

Rex v. Inhabitants of Hensingham

(6) Order sought

Quashing

(7) Facts

Justices by an order remove Bridget Gibson and her child from the township of Whitehaven in the parish of St. Bees in the county of Cumberland to the township of Hensingham in the same parish and county. The sessions on appeal confirm the order, and state the following case: That the pauper, Bridget Gibson, widow, on the 6th January 1773, married Andrew Camble at Whitehaven, who shortly afterwards went on a voyage to sea; and at Martinmas following she was brought-to-bed of a daughter by her said husband. On the 24th of February then next, the, pauper Bridget, her said husband and child being living, was hired by Mrs. Benn, wife of Anthony Benn, Esquire, of Hensingham, to nurse her child for two shillings and six-pence per week wages, so long as her child should remain at the breast : that she nursed Mrs. Benn’s child and continued in her service at Hensingham on said contract and wages till Whitsuntide 1774, during which time her child by the said Andrew Gamble died. That at Whitsuntide 1774, the laid Andrew Camble being then also living and being at Liverpool, Mrs. Benn went to the pauper, and said, “Bridget, I’ll give you four guineas a-year, which is more wages than I ever before gave a nursery-maid:” and the pauper agreed thereto, and continued in consequence of this contract with Mrs. Benn till Whitsuntide 1775 ; but about nine weeks before the expiration of that year, by reason of sickness in some of Mrs. Benn s family at Hensingham, Mrs. Benn’s family and also the pauper removed to Whitehaven, and stayed there till within ten days of the expiration of the term ; and then the family and the pauper returned to Hensingham and the pauper there continued till Whitsuntide 1775: and the pauper without any other contract or conversation whatsoever continued another year at Mrs. Benn’s; (to wit) till Whitsuntide 1776: but the pauper says, she considered herself at liberty at any time, if her husband should return. In August 1775 the pauper received a letter from an inn-keeper at Liverpool informing her of her husband’s death on the middle passage from Guinea, which letter is burnt; and on receipt of said letter, her master, at her request, wrote to his friend at Liverpool a letter and direction in these words: Dear Sir, At the request of Bridget Campbell, a servant in my house, I take the liberty of writing to you concerning some wages due to her late husband, Andrew Campbell, a seaman, who belonged to the ship, Violet in the African trade; which ship arrived at Liverpool on the first instant, and brought an account, that Campbell died on the tenth of April last: his wages were thirty shillings a month, but his wife does not know how many months are due, or whether he had taken up any part of them or not. If you can make it convenient to inquire into this matter I (hall be much obliged to you for your assistance, and will take care to have the necessary requisites performed, for enabling you to receive the money. I am, &c. ANTONIO BENN. To Mr. Allan Pearson, Merchant, Liverpool. And she received her husband’s wages in pursuance of the said letter; but his death, or the time it happened, does not otherwise appear. On the 2d of December 1777 the pauper was married to her late husband, William Gibson, who in his life-time told the pauper, he was born in Yorkshire; but, where his settlement was, he knew not: that the pauper had by the said William Gibson, her son William Gibson, the other pauper, lawfully born at Whitehaven. It appearing to this court, that the place of her last husband’s settlement is not known, and that the pauper hath gained a settlement in Hensingham by a year’s service with Mrs. Benn, subsequent to the death of Campbell, her first husband, the sessions doth therefore confirm the order, subject to the opinion of the honourable court of King’s Bench.

(8) Argument

Wallace shewed cause in support of these orders; and insisted, that a new service having commenced at Whitsuntide 1775, a period at which the pauper was in a capacity to acquire a settlement by hiring and service, her first husband and child being then dead, she had, by compleating that service at Hensingham, acquired a settlement there: that, upon proof of this settlement gained by her own right, it became incumbent upon that parish to shew Hensingham derivative or subsequent settlement: that, till such proof was made, the settlement that appeared must be taken to be her legal settlement; and consequently, that she had properly been adjudged an inhabitant of Hensingham.

Wilson, in support of the rule to quash these orders, stated this to be a new case : that the question was, whether the pauper's continuance throughout a compleat new year without any new agreement, at a time when she was capable, though she did not then know it, of making such contract as would in point of law give a settlement, in a service, the original contract respecting which had been made while she was under an incapacity of acquiring a settlement by such contract, could legally be so connected with such former contract, as by a reference to it to be considered a contract at all ? And he contended, that, as far as it was a contract, which could be by relation only, it referred itself to an original, from whence it was impossible that a settlement could be derived : that, if it must necessarily be taken as a branch of the contract of 1775, it could not have any other fruit than such as would spring from thence: and that subsequent events, not in the contemplation of either of the parties to this constructive contract at the time, and which if then known, might have prevented the mistress from suffering a continuance of the service, ought not to establish rights and produce consequences, as the fruit of such contract; when no such rights or consequences could possibly exist in the minds of either of the parties at the time the contract was entered into.

But the court intimating an opinion that this might very well be considered as a new and independent contract; and that, in favour of settlements, it would be enough, if at the time of making the contract, the party was, in point of fact, whatever might be in contemplation, capable [*a*] of acquiring a settlement, Wilson, without insisting much upon the point, resorted to his second ground of objection : which was, that, though the pauper, while unmarried, might have gained a settlement at Hensingham, before her settlement could be adjudged to be there, it ought to have been proved, that due diligence had been used by the parish of Whitehaven to discover the settlement of her husband : that at least, after what the husband had related of his birth in Yorkshire, some enquiry ought [*a*] to have been made there ; and that otherwise there could not correctly be an adjudication, that this was the place of her last legal settlement.

[*a*] To this point see the case of Rex v. Inhabitants of St. *Giles's Reading*, Tr, 18 G. 3, 1778, Ante, p. 54.

[*a*] Vide Rex v. Inhabitants of Ryton. H. 18 G. 3. 1778, ante, p. 39. Rex v. Inhabitants of Woodsford, H. 23 G. 3..17S3. post., and Rex w. Inhabitants of Edisore or Hedsor. M. 24 G.3. 1783. post.

(9) Judgment

Lord Mansfield. Nobody has found a letter. “Born in Yorkshire" affords about as much of certainty as “ born in England”. It is not a description sufficiently precise to furnish a clew for investigation. If the husband’s settlement does not appear, it is the same thing as if he had none : and then this is the woman's settlement. It is the party that alleges she has another settlement, that must shew where it is. The sessions have done right. A case was made to charge the parish of Hensingham, and they have not discharged themselves : which if they could, upon proof of the first settlement, they ought to have done.

Willes, Ashurst, and Buller, Justices , concurring,

Rule discharged and

Both orders affirmed.

(10) Ruling

A service entered upon in a second year, while in a capacity to acquire a settlement, referable only to a former contract entered into when not in a capacity to acquire a settlement, will, if completed, give a settlement, even though such capacity was unknown to both parties at the time the second service or new contract was entered into. In the first instance it is enough to show a woman’s settlement before marriage: and, if it were not, to know only that her husband was born in Yorkshire, is information of a nature too loose and general, to make an inquiry after him there necessary.

(11) Comment

The court finds that a contract for a yearly hiring when coupled with the necessary service could confer a settlement even though the parties were unaware when making it that the servant was unmarried, her husband having died at sea, and therefore qualified for a settlement.

(12) Type

Liberal

(1) Case name

*R.* v. *Hitcham*

(2) Date

33 Geo 2

31 January 1760

(3) Report

Burr. S. C. 489

(4) Court

Court of King’s Bench

(5) Parties

Rex v. Inhabitants of Hitcham

(6) Order sought

Quashing

(7) Facts

Two Justices made an Order for the Removal of Thomas Death and Anne his Wife and several of their Children (naming and describing them) from Hitcham to Ringshall (both in Suffolk.) Upon Appeal to the Sessions, they set aside the Justices Order, stating the Case specially. Case—The said Thomas Death, the Father, and Anne his Wife, having a legal Settlement in Ringshall, afterwards, about 18 Years ago, before the Michaelmas in that Year, let himself for One Year, to William Death his Brother, who was a legal Inhabitant of Hitcham, and exercised the Trade of a Carpenter in the said Parish ; and entered his said Service at Hitcham aforesaid, and continued his said Service for a Year according to his said Contract: But was, by his Agreement with his Brother, to receive no Money by Way of Wages, but his Brother was to teach him as much as he could, during the said Year, of the Trade of a Carpenter; And his Brother was to provide him Meat Drink Washing and Lodging during the said Time ; And the said Thomas Death was to do all his said Brother’s lawful Business in his Farming Way, (the said William, his Brother, occupying a small Farm at Hitcham aforesaid;) and was employed by his said Brother in his said Business of a Carpenter and his farming Way, and in doing any other Work that his said Brother ordered him; And particularly, in the Harvest-time, the said William Death having taken some Corn to cut, of a neighbouring Farmer, the said William Death ordered the said Thomas Death to cut it, which the said Thomas Death did; And the said William his Master, took the Money for cutting it. And it further appeared (to the Sessions) that the said several Children had not gained any Settlement, separate or distinct from their said Parents. Whereupon, the Sessions were of Opinion, that the said Thomas Death gained a legal Settlement for himself and for his said Wife and for their said several Children, in the said Parish of Hitcham, by Reafon of the Facts above stated; And therefore allow the Appeal, and set aside the Order of two Justices for removing them from Hitcham to Ringshall.

(8) Argument

In Michaelmas Term last, Mr. Norton moved to quash this Order of Sessions: Because, as the Pauper was a married Man with a Family, he could not gain a Settlement by a Hiring and Service; And this Letting Himself is nothing more than a Hiring for a Year and a Service for a Year.

Afterwards, Mr. Morton (who was for the Parish of Ringshall) moved That the Order of Sessions might be sent down to be amended in the State of the Facts. He produced an Affidavit that the Pauper was not, in Fact, a married Man at the Time of his letting himself to his Brother for a Year; nor was his being a Single Man at that Time, at all contested: But that the Recital of his having a Wife at that Time was inserted by a Mistake; And that “it then appeared to the Sessions, upon the Evidence, that he was then a Single Man.”

(9) Judgment

Lord Mansfield—Otherwise, there is no Question about the Settlement: And I wondered at it’s being made one.

A Rule was made to shew Cause why the Order of Sessions should not be sent back in Order to be amended. Which Rule was now made absolute, though very strenuously defended : For the Court

thought it likely to be a Mistake, for two Reasons. One of them was an Observation of Mr. Justice Denison’s “That if he was not a Single Man at the Time of his Hiring himself, no Question at all” could have arisen at the Sessions, about the Rest of the Case.” The other Reason to suspect that it was a mere Mistake, was added by Mr. Justice Foster; Namely, “That the Counsel concerned for” the Parish of Hitcham were so vehement in their Opposition to it’s being stated agreeably to the real Truth of the Fact.”

(10) Ruling

The Sessions thereupon re-examined the Matter, and heard new Evidence, which proved the hid Thomas Death to have been a Single Man at the Time of the Hiring: And They amended their Order

Accordingly.

(11) Comment

The Court reasserts the need to show that as a matter of objective fact, the servant is not married at the time of the hiring.

(12) Type

Restrictive.

(1) Case name

*R.* v. *Hoddesdon*

(2) Date

Easter Term 17 Geo 3

10 May 1777

(3) Report

Burr S. C. 23.

(4) Court

Court of King’s Bench

(5) Parties

Rex v. Inhabitants of Hoddesdon

(6) Order sought

Quashing

(7) Facts

Two justices remove Ann Hickley, from the parish of Cheshunt in the county of Herts, to the hamlet of Hoddesdon, in the parish of Broxbourn, in the same county. The sessions, on appeal, confirm the order, and state the following case: That the pauper, five or six days after Michaelmas day 1778, went to Hoddesdon, to enquire after a place at Mr. Vears's, but was told by his sister, he believed she should not keep a maid at all; on which the pauper went back to Cheshunt; but the carrier called on her the day following, and told her, she might come if Mr. Vears and she could agree. She then went back, and staid about three weeks or a month upon liking, without any terms being talked of; when her aunt came, and let her for a whole year, at the wages of four pounds, to commence from the day she first came to the service. The pauper staid till the day after Michaelmas day following, when her mistress paid her the whole year’s wages ; and she then quitted the service with her own and master’s consent, and went back to Cheshunt. On her examination she declared, that till her aunt came to let her, no agreement of any sort was made, and she thought herself at liberty to go to any other place, if one had offered; for that she would not let herself till her aunt came; and she also declared, that it was the day after New Michaelmas day when she quitted the service. Pauper, on her cross examination said, that her master gave her warning, her mistress and she having had some words : but she told her, she should not go till her time was .up ; or, if she did, she should go without her wages, or serve her time in Bridewell : and that Michaelmas day was on a Sunday, or else she would then have paid her her wages, as she apprehended she would be obliged to pay them over again, if she paid her on a Sunday. The aunt confirmed the above facts; but declared, she did not know whether it was the day after Old or New Michaelmas, that the pauper came away. But, pauper, being called up again, said, it was New Michaelmas day, and that she could not recollect within a week, when her aunt came to let her.

(8) Argument

Wallace was to have shewn cause in support of these orders, but acknowledged that, after the case of [*a*] the King v. the Inhabitants of *Ilam*, he could not maintain that a retrospective hiring was good.

[a] Vol. 3. p. 480. Edit. 1785.

(9) Judgment

Aston, J. To be sure you can’t.

(10) Ruling

A retrospective hiring will not give a settlement.

(11) Comment

The court strictly applies the principle, which here appears to be relatively recent and novel, that if the servant starts work without contemplating a year’s service, but is then hired for the year with the period beginning from the start of the service, there is no settlement because the hiring is deemed to be retrospective, and hence outside the scope of the statute.

(12) Type

Restrictive.

(1) Case name

*R.* v. *Holesworthy*

(2) Date

1827

(3) Report

6 B. & C. 283

(4) Court

King’s Bench

(5) Parties

The King versus the Inhabitants of Holesworthy

(6) Order sought

Quashing

(7) Facts

Upon an appeal against an order of two justices, whereby F. H. Trim, his wife and child, were removed from the parish of Thornbury, in the county of Devon, to the parish of Holsworthy in the said county, the Court of Quarter Sessions confirmed the order, subject to the opinion of this Court on the following case. In the month of May 1819, the pauper being a single man, was enrolled as a

substitute in the South Devon Militia as a private to serve for the space of five years; and in June 1822, while he was still a member of the corps, being at Plymouth, he offered himself as a recruit to one George M’Gie, a private in the Fifteenth Regiment of Infantry, who paid him a shilling for enlisting money, and took him to a serjeant of the regiment, and he was, after inspection by the surgeon, sworn in before the Mayor of Plymouth as a recruit in that regiment for unlimited service. At the time of receiving the shilling from M’Gie, he informed him that he belonged to the South Devon Militia, and was by him told not to mention it. He did not mention it either to the serjeant, the surgeon, or the commanding officer of the regiment. For this offence he was subsequently tried, convicted, and imprisoned. In February 1823, he being still a single man, hired himself for a year to one Penwarden, in the parish of Holsworthy, and performed a year’s service in that parish under that hiring. The question for the opinion of the Court was, whether by such hiring he gained any settlement in that parish.

(8) Argument

Crowder in support of the order of sessions. The question is, whether the pauper was sui juris, so as to make a valid contract to serve for a year at the time when he hired himself to Penwarden? He was not at that time a soldier in the Fifteenth Regiment. The pauper was in the Militia at the time of his enlistment, and consequently by statute 42 G. 3, c. 90, s. 64, his enlistment was void; that statute subjects him to punishment for concealing the fact of his being in the Militia, and enacts, that the party so enlisting is to belong to the corps in which he enlisted only from the expiration of his service in the Militia. Now, here the service in the Militia was to continue for five years from May 1819, which had not expired during the service with Penwarden. Secondly, as a militia man he was sufficiently sui juris to contract to serve for a year, and the service under it for a year confers a settlement. It may be urged, either that the pauper was not sui juris to contract, or if he was,

that it must necessarily have been an exceptive, or a fraudulent hiring. As to the first point, it will be said that a militia man subject to be called upon to discharge his duty at any moment, cannot bind himself to serve a master for a year, and *Rex* v. *Norton* (9 East, 207) will be cited. That was the case of a deserter hiring himself for a year, and it was held to be no lawful hiring; but there the pauper had committed an offence against the law, and every moment of his continuance in the service was an illegal act. In *Rex* v. *Beaulieu* (3 M. & S. 229), an invalided soldier at a depot, by permission of the commanding officer, and authorised by Government, hired himself for a year and served a year. Lord Ellenborough C.J. and Le Blanc J. held, that no settlement was gained by reason of the pauper’s liability to be called upon if the country required his services. Bayley J. thought the hiring and service sufficient, there being a lawful hiring for a year, though a conditional one. That case, therefore, is not one of any great authority. Every man is to this purpose sui juris who may lawfully hire himself for a year. It is not necessary that he should at all events be liable to accomplish his year’s service. It is quite different from the case of an apprentice, be cannot lawfully contract, being subject to the control of his master during the whole period of his apprenticeship to him. A militia man is free for the whole year, with the exception of the period of service mentioned in the Acts of Parliament, if he is called upon to exercise himself in that way. Then this is neither an exceptive nor a fraudulent hiring. It is not exceptive, even if it be assumed that Penwarden did not know the pauper to be a militia man. It is a contract in the nature of a conditional, and not an exceptive hiring, according to the distinction laid down in *Rex* v. *Byker* (2 B. & C. 120). It must be presumed, that the pauper at the time of hiring communicated to his master that he was in the Militia, for the concealment of that fact would be fraudulent, and fraud is not to be presumed ; it

ought to be expressly found, *The Chancellor of the University of Oxford's case* (10 Rep. 56 a.), *Bennett* v. *Clough* (1 B. & A. 461), *Rex* v. *Twyning* (2 B. & A. 386), *Williams* v. *The East India Company* (3 East, 192), *Rex* v. *Fillongley* (2 T. R. 709), *Rex* v. *Llanbedergoch* (7 T. R. 105), *Rex* v. *Weston* (Burr. S. C. 166), *Rex* v. *Newnhani* (Burr. S. C. 756). Besides, *Rex* v. *Westerleigh* (Burr. S. C. 753) and *Rex* v. *Winchcomb* (Doug. 391) are authorities to shew, that under such a hiring a settlement may be gained.

(9) Judgment

Bayley J. I think this case does not admit of any doubt. It is not necessary to say whether a militia man may or may not gain a settlement by serving under a yearly hiring for a whole year, if at the time of making the contract he communicates to the party with whom he is contracting that he is in the Militia, and therefore liable to be called out during the year. If the master chooses to engage the servant subject to the risk of his being called upon to perform duty as a militia man during the year, I do not see that there is anything illegal in such a bargain. It may be considered a conditional hiring, and if during the year the Militia be not called out, a settlement may perhaps be gained by serving under it. But what is the contract of hiring in this case? The contract is one by which the master stipulates to have and the pauper stipulates to give his services for one whole year. There is no qualification or condition whatever in the contract, and if there were any, it ought to have been stated in the case, and cannot be inferred. I do not presume fraud, for the non-communication of the fact of the pauper’s being in the Militia may have arisen from his considering it wholly immaterial, from omission, or from other circumstances. Without, therefore, breaking in upon any case in which it has been decided that a militia man, who in his contract of hiring stipulates for the time that he may be called upon to perform his duty in the Militia, may gain a settlement by serving for a whole year under such a hiring, I think that the pauper not having communicated to the party whom he contracted to serve for the whole year that he was in the Militia, cannot be said to have lawfully hired himself for a whole year within the meaning of the 3 W. & M. c. 11, s. 7, and that being so, I am of opinion no settlement was gained in the parish of Holsworthy.

Holroyd J. I am of the same opinion. It is not to be presumed, without being stated in the case, that the pauper at the time of making the contract with his master, communicated to him that he was in the Militia, and there is nothing on the face of the case to shew that such a communication was made. This case seems to fall within the principle laid down by Lord Ellenborough in *Rex* v. *Norton* (9 East, 209). He there says, “A variety of cases have occurred which have decided the question in the case of an apprentice; and this, not on the ground of its being an excepted case, or as standing upon any occult efficacy in the indenture of apprenticeship, but on the broad principle that one who has contracted a relation which disables him from serving any other without the consent of his first master is not sui juris, and cannot lawfully bind himself to serve such second master so as to gain a settlement by serving for a year under such second contract. In reason and principle it cannot make any difference whether he be originally bound by a contract of apprenticeship or by any other contract equally obligatory upon him, which disables him from binding himself to serve a second master.” It is said that this case differs from that, because the Militia not having been called out during the year, there was a year’s service under a conditional hiring, but the objection is, that the pauper was not capable of making a contract so as to give the master a control over his services during the whole year. Now no communication having been made to the master that the pauper had entered into a contract to serve in the Militia, I am of opinion that this must be considered an absolute and not a conditional hiring for a year. And if that be so, then it is quite clear that the pauper was not capable of making an unconditional contract to serve for a whole year. I am therefore of opinion, in this case, that the pauper was not lawfully hired in the parish of Holsworthy for one whole year, within the meaning of the 3 W. & M. c. 11, s. 7.

Littledale J. concurred.

Order of sessions quashed.

Fraser and Coleridge were to have argued against the order of sessions.

(10) Ruling

A. being enrolled as a substitute in the Militia, hired himself for a year, and performed a year’s service under that contract: Held, that as it did not appear that the pauper at the time of hiring informed the master that he was a militia man, no settlement was gained by serving a year under such contract.

(11) Comment

The Court finds that against a conditional hiring on a militia-related ground, in a case where the servant had not told the master that he was in the militia.

(12) Type

Restrictive

(1) Case name

*R.* v. *Holy Trinity in Wareham*

(2) Date

26 January 1782

(3) Report

Burr. S. C. 121

(4) Court

King’s Bench

(5) Parties

Rev v. The Inhabitants of the Holy Trinity in Wareham

(6) Order sought

Quashing

(7) Facts

Two justices remove Elizabeth, the wife of James Sampson, then abroad beyond sea, and their five children from the parish of Saint James, in the town and county of Poole, to the parish of the Holy Trinity, in Wareham, in the county of Dorset. The sessions on appeal confirm the order and state the following case : That it was proved, that the pauper’s husband was born in the of Beer Regis, in the county of Dorset: and it was also proved by the pauper, Elizabeth Sampson, that her husband was abroad beyond sea, and had been for two years past, if alive ; that to her knowledge he lived in the capacity of an ostler with Mrs. Lee, of the parish of the Holy Trinity, in Wareham, some years since deceased, at her house there about two years, where she had seen him brew ; but, whether there was any agreement or hiring relating to such service, was not proved; but that she had heard her husband say, he was settled in the parish of the Holy Trinity, in Wareham.

(8) Argument

Haworth shewed cause in support of these orders ; and insisted, that after two years service and a positive declaration by the husband, at a time when such declaration could be under no influence or suspicion, the court would presume that it had been made upon a good foundation ; and consequently that the services stated had been done under a legal hiring : that in the two cases, that might be cited on the other side, the King v. the Inhabitants of [*a*] *Weyhill* and the King v. the Inhabitants of [*b*] *St. Peter’s in Dorchester*, the fact of a hiring was expressly negatived.

Dunning and Bond N, in support of the rule to quash the orders, insisted; that a hiring for a year was indispensably necessary to a settlement [*c*] whatever-number of years of service might have passed : that in the cases, that have gone further, there have ever been some circumstances, though slight, from which a hiring might be inferred : that the leading circumstance here, the situation of the pauper’s husband in bis mistress’s family, the nature and character of his service, afforded a strong argument the other way : that nothing was more notorious, than that it was not usual to hire ostlers by the year; and that, aware of this and for the purpose of letting in a possible presumption of a different species of service, the circumstance of his having been once seen to brew was introduced : but that nothing could supply the want of all evidence of a hiring ; and that the King v. *Weyhill* was in point.

[*a*] H. 33 G. 2. 1760. Burr. Settl. Cases, 491. also in 1 Blackst. 206.

[*b*] M. 4 G. 3. 1763. Burr. Settl. Cases, 513. also in 1 Blackst. 443.

[*c*] St. 3 W. and M. c. 11. f. 7.

(9) Judgment

Lord Mansfield. The sessions have drawn their conclusion, that he was hired and I think they have done right.

Buller, J. Though the evidence is slight, there is nothing to contradict it.

Willes and Ashurst, justices, concurring,

Rule discharged and both

Orders affirmed.

(10) Ruling

Slight evidence, uncontradicted, will induce the court to presume a hiring. Hearsay evidence from a wife of the declarations of her husband, living abroad, respecting his settlement, are admissible; when supported by slight circumstances.

(11) Comment

The court is willing to infer the existence of a settlement on the word of the wife of the servant, in the absence of any other evidence.

(12) Type

Liberal

(1) Case name

*R.* v. *Houghton-le-Spring*

(2) Date

6 February 1819

(3) Report

2 B. & Ald. 375

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Houghton-le-Spring

(6) Order sought

Quashing

(7) Facts

Upon an appeal against an order of removal of two justices, whereby Ann Cowell, widow, and her four children, were removed from Houghton-le-Spring to Harraton; the sessions quashed the order, subject to the opinion of the Court on the following case: The pauper, Ann Cowell, was the widow of William Cowell, and the four children mentioned in the order were their children. William Cowell, on the 12th day of October 1805, being unmarried and without child or children, duly executed, together with sixty-one other persons, a deed, which purported to be an indenture, whereby it was witnessed, that they whose names or marks were thereunder written, and seals affixed, for and in consideration of one shilling a piece then received, and of certain wages to be paid to them, had hired and bound themselves to Thomas Croudace and Sober Watkin, and their heirs, to be their servants, workmen, barrowmen, hewers, and putters of coal, or drawers of horses, from the 18th day of October next ensuing, till the 18th day of October, 1806. This deed was executed by William Cowell, in the presence of an agent of Thomas Croudace and Sober Watkin, but it was not signed

by Thomas Croudace or Sober Watkin [376] themselves, or by any one on their behalf. William Cowell entered into the service of Thomas Croudace and Sober Watkin, in pursuance of the deed, on the 18th of October, 1805, and continued in that service, till the 18th of October, 1806, and received the wages specified in the deed, and lived, during the whole of his year’s service, in the township of Harraton, and acquired no settlement subsequently. The sessions thought that the deed was not legally admissible in evidence, because it purported to be an indenture, and was not executed by Thomas Croudace and Sober Watkin, or either of them, or by any person on their behalf; and considering further, that without it there was no sufficient evidence of a hiring for a year, they quashed the order.

(8) Argument

Nolan, in support of the order of sessions. To make this a valid contract, it must be binding on both parties: here it was not executed by the master, and therefore he was not bound by its stipulations. Then unless the deed be admissible, there is nothing but a service fora year; and the sessions have negatived the fact of there ever having been a hiring for a year.

Grey, contra. It is by no means necessary that a written agreement should be actually signed by the master, in order to constitute a valid contract of hiring and service. It is quite sufficient, to shew that the master accepted the services, upon the terms of such a contract; and it is quite clear in this case, that the master accepted the services of the pauper, upon the terms of the agreement. Then if so, the deed should have been admitted to shew what the terms were on [377] which the pauper came; and if that had been done, there would have been a clean hiring for a year, and a service for a year.

(9) Judgment

Bayley J. The only question in this case is, whether the execution of the indenture by the servant only is sufficient to constitute a valid contract of hiring. Now in order to do that, there must be an obligation both on the part of the servant and the master; here it is admitted, that the execution by the servant, bound him to serve for a year; and the objection is only that the master was not equally bound to keep him. But if the master, knowing the terms by which the servant is bound, accept his service, then I apprehend that the agreement must be considered binding on him, although he has not executed the deed. For it is laid down in Co. Litt. (230 b. note 1) that a party who takes the benefit of a deed, is bound by it, although he has not executed it. But the sessions have not found the fact, that the master had this knowledge; and although it is probable that they would have found it, still, having stopped the case in limine, it must now go back to them to have this fact determined. Their proper course would have been, to have received the deed in evidence, and then to have permitted the party to have proved such facts from which the knowledge on its contents by the master, and his acceptance of the service on those terms, might be inferred.

Holroyd J. The only difficulty in this case is, that the sessions should have found the fact of the acceptance of the service by the master, under the terms of the deed. It is stated, that the servant continued in the service for a year; and if it had been found as a fact, that the master was cognizant of the contents of the deed, his receiving the servant in pursuance of it, would, in point of law, have been a receiving him on the terms therein contained, which would be sufficient to confer a settlement. It is, however, for the sessions to find these facts, and to draw this inference.

Case sent back to sessions

(10) Ruling

To make a valid contract of hiring and service it is not absolutely necessary that the contract,

when by deed, should be executed by the master; it is sufficient that he accepted the services on the terms of the deed; and, therefore, where a pauper executed a deed, by which he became bound to serve the master for a year, and afterwards entered into and continued in his service for that period, it was held that such deed, although not executed by the master, ought to have been received in evidence to shew the terms of the hiring.

(11) Comment

The Court finds that a contract executed by deed by the servant can give rise to a yearly hiring even if the master did not execute it.

(12) Type

Liberal

(1) Case name

*R.* v. *Hulland*

(2) Date

23 May 1781

(3) Report

2 Dougl. 658

(4) Court

King’s Bench

(5) Parties

The King against The Inhabitants of Hulland

(6) Order sought

Quashing

(7) Facts

The Court of Quarter Sessions for the county of Derby, quashed an order of two justices, for the removal of a pauper and his family, from the liberty of Hulland, to the parish of Bradley ; and stated specially as follows :

At Whitsunday, 1768, the pauper, who was a blacksmith, being then a single man hired himself at Hulland, for a year, to one Joseph Copstake, blacksmith, who had a house, and shop at Bradley, and another house and shop at Hulland, and who resided occasionally at each place, but whose family resided constantly at Bradley. The pauper served the year. He worked at the shop at Hulland, and lay there five nights in the week during the year, except three weeks together, in the latter end of February, and the beginning of March, 1769, and sometimes a night or two in the week besides, when he lay at Bradley, and on the Saturday and Sunday nights the year through, he lay at Bradley and never at Hulland on those nights. He never resided 40 days together in either place ; but resided more than 40 days at each in the year, and the last two nights in the year he resided at Bradley.

(8) Argument

Dunning, and Parker Coke, shewed cause, in support of the order of sessions. They argued, that, where there is a mixed residence of this sort, the best rule is, what the sessions had followed, viz. to count backwards in each parish, and to establish the settlement where you first find 40 days. In the case of *Rex v. Lowess* (a), which had been cited when the rule was moved for to quash the present order, it appeared, that, during the greatest part of the end of the year, the [658] pauper had lodged in the parish where he had resided the last night. Neither the arguments of the counsel, nor of the Judges, are stated in the report of that case ; but it is probable the Court went upon that ground, and not on his having slept the last night in the parish where they determined his settlement to have been gained.

Balguy, on the other side, insisted, that the principle of the determination in *Rex v. Lowess*, was, that the last night of the residence was to be connected with the former service in the same parish, and reckoned as one and the same. That the decision did not proceed on the majority of time in the latter part of the year.

(a) E. 16 Geo. 3, Burr. Settl. Ca. No. 258.

(9) Judgment

Lord Mansfield absent.

Willes, Justice.—There must be some principle to govern such cases as this. Mr. Dunning has cited no authority in support of his position, that the majority is to be the rule, and, indeed, it is hard to say, here, in which of the two parishes the pauper resided most. The rule laid down by Mr. Balguy seems a very good one [f].

Ashhurst, Justice.—This case, from its circumstances, does not afford much room for argument. There ought, if possible, to be a certain rule, and the case cited seems to furnish one which is very reasonable.

Buller, Justice.—It is, in general, of much more importance to have a fixed rule, than what the rule is. If that which Mr. Dunning contends for had been established, it might have been a very proper one; but the Court, in the case of *Rex v. Lowess*, can hardly have gone upon that ground, because it does not clearly appear there, in which of the two parishes the longest residence had been [1].

The order of sessions quashed.

[f] Precisely the same point was reconsidered and confirmed in *R. v. Brighthelmstone*, 5 T. R. 188, the Judges declaring that the rule ought not to be disturbed, although they would have construed the statute differently, if they had not been bound by former decisions. K. B. xxviii.—14

[1] It was mentioned by a gentleman at the Bar, that he recollected Aston, Justice, in the case of *Rex v. Lowess*, to have given his opinion expressly on the circumstance of the last night [\*135]. The same principle is recognized as to settlements gained by apprenticeship, by Willes, and Buller, Justices, in *Rex v. Sandford*, T. 26 Geo. 3, I Term Rep. 281, 284, 285.

[\*135] In *Rex v. Iveston*, E. 23 Geo. 3, the rule in *Rex v. Lowess*, as stated in the present case by Balguy, was confirmed by Lord Mansfield, and the rest of the Court.

(10) Ruling

When a pauper has resided part of the year in one parish, and part in another, at different times and intervals, making, when added together, more than forty days in each, his settlement is in the parish where he slept the last night.

(11) Comment

The court finds that the servant gains a settlement in the place he last slept, if he has served there for a total of 40 days (though not necessarily successively) under a hiring and service for a year. This is consistent with the earlier cases of *Croscombe* and *East Ilfley.* The court also emphasises the need for a certain rule in cases where the servant has served in more than one place.

(12) Type

Liberal

(1) Case name

*R.* v. *Ilam*

(2) Date

25 Geo 2 1751

7 November 1751

(3) Report

Burr. S. C. 304

(4) Court

King’s Bench

(5) Parties

Rex v. Inhabitants of Ilam

(6) Order sought

Quashing

(7) Facts

Two Justices made an Order for the Removal of Thomas Smith, Mary his Wife, and John their Son from Tutbury to Ilam, (both in Staffordshire:) And, upon Appeal, the Sessions confirmed that Order. The Case stated was only this—Rowe Port of the Parish of llam Esq; hearing that the Pauper was a likely Boy to serve him as his Postilion, sent to the Pauper's Father, to have the Pauper upon Liking. After the Pauper had served Mr Port eight Weeks on Liking, Mr. Port hired him for a Year to commence from the Beginning of the eight Weeks. He served Mr. Port, in the said Parish of Ilam, including the said eight Weeks, a Year and ten Days, and no longer.

(8) Argument

On Wednesday 26th June last, a Motion was made by Mr. Gilbert, to quash the Orders: For that this retrospective Hiring is no Hiring for a Year, within 3 & 4 W. & M. c. 11. It ought to have commenced from the Time of the Hiring. Rule to shew Cause. Upon shewing Cause on Friday 25th of last Month, the following Cases were cited.—*Rex* v. *Inhabitants of Aynhoe*\*, M. 1727 1 G. 2. B. R. where it was fettled that a “Hiring for a Year and a Service for a Year acquire a Settlement, although the Hiring and the Service are not under the same Contract”. In the Case between the Parishes of *Lidney* and *Stroude*ⴕ, the first Hiring was conditional for a Quarter of a Year, upon Liking-, and if they did like each other, then to continue for a Year:” Yet it was holden a good Settlement; as they did like each other; and the Year’s Service was performed. In the Case between the Parishes of *New Windsor* and *Chepping Wycomb*§, Hil. 8 G. 2. B.R. it was uncertain till the End of the Year, whether the Hiring would be for a Year; yet happening so in Event, it was holden good. The Maid was hired to go into Col. Meyrick's Service a Month upon Liking, at 5/. a Year Wages; but was to go away on a Month’s Wages or Warning on either Side. In the Case between *Wandsworth* and *Putney*, M. 15 G. 2 a general Hiring and a conditional Hiring performed, were both allowed to be good, to acquire a Settlement.ll

From which Cases it was argued, that this was good, as a general Hiring for a Year, and also as a conditional Hiring, completed by the Event. And here was plainly a Service for a Year: And there is no Pretence of any Fraud.

The Counsel for quashing the Orders (Mr. Ford, Mr. Gilbert, Mr. Henley, and Mr. Simpson) cited *Rex* v. *The Inhabitants of South Cerney*\*, Tr. 5 & 6 G. 2. where the Pauper was hired at a Statute Fair the Wednesday after Michaelmas to Michaelmas following, and the Court would not depart from the Act; but held it to gain no settlement, though the Custom of the Country was so. The Case between, the Parishes of *Winford*ⴕ and *Chew Magna*, M. 22 G. 2. proves that Service alone will not do; unless the Hiring be as a Servant.

Indeed if there be such a Hiring, the Hiring and Service shall be coupled together; as in the Case of *Aynhoe*\*. In P. 5 G. 2. between the Parishes of *West Woodhay* and *Coombe*ⴕ, a Hiring from the Statute, which was only two Days after Michaelmas, to the next Michaelmas, was holden not good.

So that this Retrospect will not do. Indeed if there had been a general Contract for a Year when he First came, it had been otherwise. But here he only came to see if he should like and be liked. So that he was not a conditional Servant at the First: There was no Contract at all.

To these Cases it was replied by the Counsel who endeavoured to support the Orders, that only the last Case of *West Woodhay* and *Coombe*§, was applicable to the present: But in that, the actual Service did not commence till three Days after Michaelmas: Whereas here, the actual Service was concomitant with the Hiring.

\* 2 Ld. Raym. 1511.

ⴕ *V.* *ante*, no.1.

§ *V. ante*, no. 7.

ll *V. ante*, p. 300, in No. 107, the Note upon this case of *Rex* v. *Inhabitants of Putney*.

\* V. Sess. Ca. Ed. 1750, Vol. 1, pa. 174, No. 156.

ⴕ *V. ante*, No. 98. *Rex* v. *Inhabitants of Wrinton*.

\* 2 Ld. Raym. 1511.

ⴕ *V.*, *Cases of Settlement*, No. 107, No. 119, 120, Foley pa. 150.

§ *Hil.*, 1718.

(9) Judgment

The Court had some Doubt about the Validity of this Hiring; and therefore ordered it to stand for further Argument, by one single Counsel on each Side : And in the mean Time, they said, they would themselves look into the Cases which had been cited.

After it had now been accordingly again argued, by Sir Richard Lloyd, in Support of the Orders; and Mr. Henley, against them— The Court held this Case to differ from all the former Cases.

The sole Question is “Whether here be a Hiring for a Year?” It is agreed that there must be a Hiring for a Year, and a Service for a Year, to gain a Settlement; and that a Retrospect will not do. Which latter is the Case here: For the Lad came upon Liking; and at that Time, there is nothing stated of a Hiring ; nor till eight Weeks after, during which eight Weeks both Parties were at Liberty.

Mr. Justice Foster thought the Cafes of *Lidney* and *Stroude*, and *Chepping Wycombe* and *New Windsor*, had carried the Matter as far as possible; and if they were new Questions he should doubt of those Resolutions : But both these were Hirings for a Year, previous to the Service; and the Conditions were performed.

Mr. Justice Foster observed also, that the safest Way is to adhere strictly to the Words of the Act of Parliament: For Refinements upon these Questions have produced Infinity of Questions and Difficulties.

(10) Ruling

The Court\* held this to be no Settlement, Therefore

Per Cur.—

The Rule must be made absolute for quashing the Orders,

Both Orders quashed.

\*Mr. Justice Wright was not present, either now or on the first shewing Cause.

(11) Comment

The court takes a restrictive view on the need for the contract and hiring to coincide, treating an initial probation period as not part of the contract, a departure from earlier cases.

(12) Type

Restrictive

(1) Case name

*R.* v. *Islip*

(2) Date

Easter Term, 7 Geo.

1720

(3) Report

1 Strange, 423.

(4) Court

King’s Bench

(5) Parties

Dominus Rex versus Inhabitantes de Islip in Com’ Oxon

(6) Order sought

Quashing

(7) Facts

Upon a special order of sessions, the case was stated for the opinion of the Court. That Henry Wilson was regularly hired for a year by Samuel Jones into the parish of Islip; that during the year he was sick for six days, and incapable of doing any service; that afterwards he went without leave of his master to see his mother, and staid away four days; and that three days before his year was up he asked leave of his master to go to a statute fair, to be hired, which the master refused, but the servant persisting he must go, the master replied, I am resolved you shall gain no settlement in this parish, and therefore if you will go, it shall be for good and all. No, says the other, I will serve out the year, and thereupon he went, and never returned during the last three days; and when he came to be paid, the master deducted for the time he was sick, and when he went to see his mother, which deductions the servant agreed to, and the master at the same time abated 6d. for the last three days, which the servant refused to allow, but the master refusing to pay it, the servant took the rest of his wages. And whether these interruptions of the service should defeat the settlement in Islip, was the question; and the sessions adjudged it a settlement.

(8) Argument

It was argued largely by Mr. Hawkins, who moved to quash the order; and he cited the case between *The Parishes of Pawlet and Bernham* (a), Mich. 1 Geo. Where the master and servant parted by consent three weeks before the end of the year, and it was held no settlement.

(9) Judgment

And now Pratt C.J. delivered the opinion of the Court. In this case here is no doubt but that there was a compleat and perfect hiring for a year. The only question is, whether there has been such a service in pursuance of it, as will give a settlement to the party. Three objections have been made at the

Bar, which it will be proper to take notice of.

1. That the servant being sick for six days, and incapable of serving, can never gain a settlement, which is to be acquired only by a service for a year; but here say they, he did not serve for six days, and so there wants so much of a service for a year. This was lightly touched upon at the Bar, and surely there is little in it; a servant that lies thus under the visitation of the hand of God, which befals him not through his own default, is and must be taken to be all the while in the service of

his master (1); and if this exception was to be allowed, it might prevent all the settlements in the kingdom : it is not to be presumed, that the servant is less able to provide for himself at the year’s end, because he has had a slight indisposition during the year; and that presumption of an ability is the foundation of making it a settlement.

2. It was objected that his going to see his mother without leave was a desertion of the service, and the time he staid away takes so much off from a compleat service for a year. As to that we are all of opinion, that it will not prevent the settlement; it was never the intent of the statute, that if a servant happened to stay out a night or two, it should avoid the settlement; but here the master taking him again, has dispensed with his non-attendance, so there is nothing in that objection (2).

3. The third and indeed the most considerable objection was, that the going away three days before the year was up, and never returning again during the year, is a forfeiture of the settlement.

Now though that would prima facie be a good objection, yet as this case is circumstanced, we are of opinion it cannot prevail. Consider how the case stands with regard to the servant. He knew his master designed to part with him at the year’s end, and therefore it was high time for him to look out for another place. To this end he applies in a very proper manner for leave to go to the statute fair, which is a place where in all likelihood he might provide himself, and not be obliged to lie

idle all the year, it being usual for people in the country to go thither to hire their servants; the master like an unreasonable man refuses so reasonable a request, coupling it with a declaration, that the servant should gain no settlement with him, which is a badge of fraud on the side of the master that ought not to prevail; as therefore the request was reasonable, and upon a just ground on the side of the servant, and the refusal unreasonable on the side of the master, we think the servant’s

going afterwards without leave is no forfeiture of his former service, especially if we take in the declaration the servant made at that time, that he would serve out the year, and his refusal afterwards to allow the master 6d. for the last three days, which plainly shew that the contract was not dissolved before the end of the year, as was strongly insisted on at the Bar (3).

These are all the exceptions that were taken to this order; we are all of opinion, that they are not sufficient to overthrow the settlement, and consequently the sessions have done right in sending him to Islip, and the order must be confirmed.

(a) Cas. of Sett. and Rem. pi. 84. 1 Sess. Ca. 77, pi. 71. Foley 201. 2 Bott by Const, 494, pi. 434, S. C. cited Burr. S. C. 67.

(1) Vide *Rex* v. *Christ Church*, Burr. S. C. 494. *Rex* v. *Haddington*, Burr. S. C. 675. *Rex* v. *Sharrington*, 2 Bott 525, pi. 458. For what causes the master may put an end to the contract without the servant’s consent. Vide *Rex* v. *Marlborough*, 12 Mod. 402. Vin. Abr. tit. Removal 459, S. C. *Rex* v. *Brampton*, Cald. 11. *Rex* v. *Wallford*, ib. 57. *Rex* v. *Westmeon*, ib. 129. *Rex* v. *North Cray*, 2 Bott by Const 525, pi. 459.

(2) Rex v. *Eaton*, Burr. S. C. 47. *Rex* v. *Hanbury*, ib. 322. *Rex* v. *East Shefford*, 4 Term Rep. 804. Nol. Rep. 133. As to what circumstances have been held to amount to a dissolution of the contract, notwithstanding the servant’s return to serve his master. Vide *Rex* v. *Ross*, Burr. S. C. 688. *Rex* v. *East Kennel*, 26 Geo. 3. 2 Bott by Const, 527, pi. 461. *Rex* v. *Gresham*, 1 Term Rep. 101. *Rex* v. *Kenilworth*, 2 Term Rep. 598.

(3) Vide the authorities cited in the note *Seaford and Castlechurch*, post, 1022, and the distinction taken between the present case and *Rex* v. *Claydon*, 4 Term Rep. 100.

(10) Ruling

Sickness or absence of servant for part of the time does not prevent the settlement.

(11) Comment

The court gives a highly flexible ruling to the effect the interruption of service through temporary illness or absence does not bar a settlement. Also relevant is that the servant quit three days early with justification; that did not prevent a settlement either.

(12) Type

Liberal

(1) Case name

*R.* v *Iveston*

(2) Date

28 May 1783

(3) Report

Cald 288

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Iveston

(6) Order sought

Quashing

(7) Facts

Two Justices by an order remove James English and Margaret, his wife, from the township of Newburn in the parish of Newburn in the county of Northumberland to the township of Iveston in the parish of Lanchester in the county of Durham. The sessions on appeal confirm the order and state the following case:

That James English at Martinmas 1752 being then an unmarried person, not having child or children, was hired by Messrs. William Newton and Samuel Newton as a collier, to serve them for one year from thenceforth : that Kyo and Iveston are two separate townships in the parish of Lanchester, and maintain their own respective poor. That he entered into the service accordingly, and served out the whole year : that he resided at Kyo when he was so hired, and continued there till the May day following, and then, he married : that about fourteen days after his marriage he took a cottage in the said township of Iveston, which is not far distant from Kyo : and without the privity of his master removed thither from Kyo with his wife, where they continued above forty days, and until about fourteen days preceding the expiration of his service ; and then they returned to Kyo.

(8) Argument

Lee, Solicitor General, shewed cause in support of these orders; and contended, that a settlement by service is acquired in that place, in which the servant inhabits the last forty days of the year in such a capacity in which it is legally competent to him to acquire a settlement: that it is fully settled [a] that, provided the pauper is single (and thence capable) at the time of making the contract of service, marriage during any part of that annual service will not take away his capacity : that a man may acquire as many settlements as there are forty days in the year; but that the law and the sense is, that they must follow each other in an unbroken series, without interruption or interval.

[a] Vide the case of the K v. the Inhabitants of St. Giles’s Reading. Tr. 18 G. 3. 1778. ante p. 54.

Buller J. But during the forty days (in what manner soever they ought to be reckoned) in which the pauper inhabited at Iveston without the consent of his master, was he or was he not [a] removeable?

Lee. A hired servant is not removable during his service: and it will often happen that the service cannot, as here, be performed where the master resides ; and the justices have no power to dissolve a contract.

Willes J. But in the case of a servant working in a coal-pit, which is the present case, such servant may be in the service of his master: here it does not appear that the pauper was at the time in his service; and the case expressly finds that the residence in Iveston was without even the privity of his master.

Wilson J. in support of the rule to quash these orders, insisted that, as a settlement cannot be acquired by service till the year is fully compleated, the pauper, when he quitted Iveston, could not have acquired a settlement : that it was yet, it was then, uncertain whether he ever would ; and that the construction of the act of parliament was, that if there is an inhabitancy of forty days at any intervals throughout the year in any number of parishes, wherever the last days inhabitancy shall happen to be, such will connect with any prior inhabitancy in the course of the year; and if throughout the year the whole will there amount to forty, in that place the settlement attaches. That this was so settled in the case of [c] *the K. v. the Inhabitants of Lowess* ; and that the principle that decision had been confirmed in the case of [d] *the K. v. the Inhabitants of Hulland*. That that case differs from the present only in this circumstance, that there were not there forty days successive service in either parish; and this the law says there need not be: that as it could not be controverted, that, till the year was compleated, a settlement by service could not possibly be perfected ; it was absurd, and as contrary to reason as to the authorities, to say, that while the pauper was for the fourteen days preceding the expiration of the term inhabiting in Kyo, he was acquiring a settlement in another place. To be sure his marriage after the commencement of his contract could be no bar to his acquiring a settlement any where.

[a] Even if a servant becomes chargeable, this point seems to have been left as a matter of some doubt by Lee Ch. J. in giving his judgment in the case of the *K. v. the Inhabitants of Fittleworth*, M. 18 G. 2. 1744. His words are, as reported by Sir James Burrow: “It was said, that even servants [this was the case of a certificated man holding an office] were removable during their service ; but no case has been cited to prove that servants are so : and I should very much doubt it.” Settl. Cas. fo. 240. As given by Mr. Bott, his words are, “and if a servant should become chargeable to a parish, I think he might be removed.” fo. 342. S. C. But it should seem that if a servant, during his term, though at a time when he is not performing any actual service for his master and without his privity, inhabits a parish and by such an inhabitancy would acquire a settlement (and this appears to have been so adjudged in the case of *the* *K. v. the Inhabitants of Hedford*. Tr.18 G. 3. 1778. ante p. 51. and recognized in the case of *the* *K. v. the Inhabitants of Nympsfield*. EJ. 21 G. 3. 1781. ante p. 107.) I should conceive lie must a fortiori be irremovable.

[b] In *the K. v. Hedford* this view of the subject was indeed raised, but touched very slightly at the bar; neither did the court enter into any particulars in giving their judgment: And, without adverting to the authority, the principle seems here to have induced the court to entertain a different sentiment.

[c] E. 16 G. 3. 1776. Burr. Scttl. Cas. 825.

[d] E. 21 G, 3, 1781. ante p. 118.

(9) Judgment

Willes J.

Independent of authorities, the rule, as it is recognized in *the K. v. Hulland*, seems to me to be agreeable to the construction of the act of parliament for the service is not consummate till the last day : the servant shall therefore be settled in the place where he served, when it was so compleated. This case is similar in principle to that of *Hulland*; and precisely that of *Lowess*. We have laid down the rule and nothing is offered to impeach it and we are all of opinion, that it ought to be adhered to [a].

[a] And this point seems to have been considered as fully settled in the case of *Rex v. Inhabitants of Great Bookham*.

Lord Mansfield and Buller, J. concurring,

Lord Commissioner Ashhurst was absent.

Rule absolute, and both

Orders quashed.

(10) Ruling

If there is an inhabitancy under a hiring for a year of forty days at any intervals throughout the year in any number of parishes, wherever the last day’s inhabitancy shall happen to be, such will connect with any prior inhabitancy in the course of the year; and, if throughout the year the whole will there amount to forty, in that place the settlement attaches.

(11) Comment

Following *R. v. Hulland*, the court finds that the servant will gain settlement in the last place he served under a hiring for a year, provided that he has served for a total of 40 days in that place (not necessarily successively). This is consistent with the earlier cases of *Croscombe* and *East Ilfley*, as well as the later case of *Brighthelmstone*.

(12) Type

Liberal

(1) Case name

*R.* v. *Ivinghoe*

(2) Date

Easter Term, 1718 (4th year of King George I’s rule)

(3) Report

1 Strange 90

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Ivinghoe in Com’Bucks

(6) Order sought

Quashing

(7) Facts

On a special order of sessions the case appeared to be, that one Nicholas Young, being legally settled in the parish of Cholesbury, was at Michaelmas 1715, hired into the parish of Ivinghoe by Joh. Knight, to serve him as a shepherd till Michaelmas following. That he entered upon the service, and continued with Knight till Lady-Day, who then paid him half a year’s wages, and left the farm to one Smith, who entered and took all the stock and servants, and in harvest time took Young off from keeping sheep, and set him to harvest work, for which he paid him 5s. extraordinary, and at the year’s end paid him the other half year’s wages. That Knight when he left the farm never told Young he was no more his servant, nor were there any transactions between them two towards dissolving the contract; neither did Young over make any new contract with Smith for the last half year. And the justices adjudge the settlement in Ivinghoe, where the hiring and service were.

(8) Argument

Denton moved to quash the order. Because to make a settlement there must be both a continuance of the contract, and service; both which were broke off at the half year’s end. Mich. 9 Anne Paroch Rudswick et Dunsole, Salk. 538. There was a hiring and service for a quarter of a year, then for half a year, and afterwards for another half year, all which were held to give no settlement.

Yorke. By 8 & 9 W. 3, c. 30, it is required, that the party continue in the same service for a year. There must be an identity of the service, it must appear to be the same master, which this is not, and here is an alteration of the wages. The Court will not consider what is most for the benefit of the servant, but which is the proper parish to be charged ; it is all one to the servant, where he is settled.

Reeve contra. It being expressly stated, that there was no new contract, the first must be taken to have continuance all the year. And if Smith had not paid Young the last half year’s wages, no doubt but as this case stands he might have come upon Knight for them. The 5s. shew he was Knight’s servant all along, for otherwise Smith had no occasion to give him that extraordinary pay. The statute does not require an identity of the contract, for Hil. 10 W. 3, *Paroch Overton et Steventon* (a), a hiring and service for half a year, and then a hiring for a whole year, and a service [91] for half, was held to gain a settlement. So Pasch. 1 Geo. B. R. *Rex v. Inhabitantes de Brightwell* in Com. Berks, there was a hiring and service from three weeks after Michaelmas 1712 to Michaelmas 1713, then a hiring to the same master for a year, and a service for eleven months ; and this was held a good settlement. The statute of 3 & 4 W. & M. c. 11, says, that a binding and inhabitation shall gain a settlement, so that by the words a binding is required ; and yet Trinity 13 W. 3, B. R. *Rex v. Inhabitantes de Eccles* in Com’ Norf’ it was held, that if the master to whom the binding was, assigns his apprentice over to another, a bare inhabitation forty days with the assignee gives a settlement. In this case there is a hiring and service for a year in the parish of Ivinghoe, and that is sufficient.

Lee. By 13 & 14 Car. 2, c. 12, forty days inhabitation gave a settlement. But it being found, that diseased and disorderly persons often came into parishes and staid out the time, it was thought proper by the Statutes of 3 & 4 & 8& 9 W. 3, to require a hiring and service for a year. And this was thought a good remedy, because it was supposed no body would incumber themselves with a sickly or disorderly person for a whole year, who perhaps would have dispensed with them for forty days. And it is not presumed, that a person having ability of body enough to serve a year, will become chargeable; and he is looked on as bringing so much substance into the parish. I agree the word same in the latter statute is a word of relation, but it will be satisfied by referring it to the same place. Those statutes have always had a liberal construction, as before 3 & 4 W. & M. c. 11, that bearing offices in a parish amounts to notice. Show. 12. So the statute says, any unmarried person having no child, and yet a person having a child which was grown up, and no incumbrance to him, was held to be within the statute (1). So Pasch. 10 Anne, *Regina v. Paroch’ de Aldenham*, and Mich. 1 Geo. St. Saviour’s Southwark, marrying within the year was held no hindrance of the settlement (2). Salk, 527, 529.

Yorke. That case is within the very words, for the statute speaks only of persons unmarried at the time of the hiring.

(a) Burr. S. C. 549. 1 Ld. Raym. 426. Fort. 316. Sett, and Rem. 255 Fol. 153. 3 Salk. 257. 12 Mod. 224, S. C.

(1) *Anthony v. Cardigan,* Fort. 309.

(2) *Rex v. Clent*, Foley 148. Rex v. Sutton, 2 Sess. Ca. 133. *Rex v. Hanbury*, Burr. S. C. 322. Rex v. Allendale, 3 Term Rep. 382, S. P.

(9) Judgment

C. J. The statute requires two things ; a hiring, and a continuance in the same service for a year. There can be no doubt but that in this case there is a complete and perfect hiring for a year; but the question turns upon the service. Half of it was actually a service to Knight, and the rest in fact was a service to Smith ; but there being no new contract with Smith, nor any dissolution of the first

contract with Knight; it seems considerable, [92] whether the whole shall not be taken to be a service to Knight. As if I lend my servant to a neighbour for a week, or any longer time; and he goes accordingly, and does such work as my neighbour sets him about: yet all this while he is in my service, and may reasonably be said to be doing my business (3).

If the first contract be not discharged, it must have a continuance, and under it the servant is entitled to demand his wages of the first master. And the 5s. given him by Smith is no argument to the contrary, no more than if in the case I put before, my neighbour had given my servant a gratuity for his extraordinary trouble. What agreement there was between Knight and Smith, non constat, but here is no act done by the servant that shews his consent to change his master. And therefore I take this to be a service for the whole year pursuant to the first contract, and consequently the settlement is at Ivinghoe, where the service was.

Powys J. The private reason that we went upon in *The King v. The Inhabitants of Haughton*, where it was held that several hirings and services for eleven months gained no settlement was, because if we should once get out of the statute, there would be no end, and by the same reason that we abated one day we might abate two, et sic in infinitum. I think in this case the settlement is in Ivinghoe.

Eyre J. And so do I. This is a contract for a year between Knight and Young, and not to be dissolved during the year without both their consents. There is actually no consent on one side, and but an implied consent on the other. It weighs nothing with me, that Smith paid the last half year’s wages, for I look upon him only as a person to whom the servant was lent, and there is no doubt but that Young might have demanded the wages of Knight. The paying the 5s. is so far from being an argument that the contract was dissolved, that it is to me a strong evidence of its continuance; for when Smith goes to set him about harvest work, no says he. I was hired to be a shepherd, and had small wages accordingly; and thereupon the other agrees to give him 5s. an equivalent for the hardness of the work.

Fortescue J. The difficulty arises upon the word same, which may extend to master, parish, and business. And taking it in those senses, this case comes within the words of the statute; and there can be no doubt but that it comes within the reason of it, for he is no more likely to be chargeable now, than if he had actually served Knight all the year. Upon the reasons which have been given, I think, here is the same master, the same sort of service, in the same parish, and a continuance of the contract throughout the whole. The order was confirmed (4).

(3) *Saint Peter's in Sandwich and Goolaston* *in Kent*, post, 1232, S. P.

(4) *Rex v. Beccles*, Burr. S. C. 230, post, 1207. *Rex v. Ladock*, Burr. S. C. 179, post, 1164, S. P.

(10) Ruling

Where there is an hiring for a year, and a service for part to a stranger, yet if there be no dissolution of the first contract it is a settlement. 1 Sess. Ca. p. 129, No. 121. Cas. of Sett, and Rem. pi. 109, p. 81. Fort. 317, S. C. by name of Joyford and Solebury.

(11) Comment

This court finds that where the servant was transferred from one master to another due to the second taking over the farm, the original contract of hire stands and the servant’s periods of work for both masters can be added together to confer a settlement. The judges appear to be divided in their reasoning about whether there is a requirement for the ‘species/nature of work’ to be the same in order to connect the two periods of work (as required in the later case of *Alton*), with Fortescue J stating that the servant’s work as a shephard then harvester was of the same nature, whereas the C.J. and Eyre J viewed the nature of the work as different but did not think that prevented the gaining of a settlement.

(12) Type

Liberal

(1) Case name

*R*. v *Kenilworth*

(2) Date

31 May 1788

(3) Report

2 T.R. 598

(4) Court

King’s Bench

(5) Parties

The King against The Inhabitants of Kenilworth

(6) Order sought

Quashing

(7) Facts

Thomas Byfield, Mary his wife, and their three children, were removed from Birmingham to Kenilworth, both in the county of Warwick: on appeal the Court of Quarter-Sessions confirmed the order of justices, subject to the opinion of this Court on the following case.

The pauper Thomas Byfield was born and settled in the parish of Kenilworth. On the 10th of May 1765 he was hired to Thomas Chatterton of Birmingham for one year; on the said 10th of May he entered into the said service, and continued in the same in the said parish of Birmingham until the 1st day of April 1766 ; when he was taken up on a charge of bastardy, and was married the next day. His master did not make any complaint against him, nor discharge him from his said service. On the 3d of the said month of April 1766 the pauper was removed by an order of removal from Birmingham to Kenilworth, and was delivered with such order to the officers of the said last-mentioned parish, and continued under such order in the same parish until the 7th of the said month of April 1766, and then returned back to Birmingham into his said master’s service, who willingly received him again ; and the said pauper. continued with his said master in Birmingham in such service until the end of the year, for which he was hired to him as aforesaid, and received his full year’s wages. The order of removal of the 3d of April 1766 was not appealed against.

(8) Argument

Bearcroft and Silvester, in support of the order of sessions, replied upon the general rule, that the order of removal unappealed against was conclusive that the settlement of the pauper was in Kenilworth.

Willis and Shaw, contra, admitted the rule, but insisted that it must be understood with this restriction; that it could not destroy any contract then subsisting, nor prevent the pauper removed from gaining any subsequent settlement in that place. Now though in this case the pauper might have appealed against the first order of removal, because he was in actual service at the time of his removal, and therefore it is not now competent to the parish of Kenilworth to take advantage of that objection, yet that order of removal did not dissolve their contract, which was [599] then subsisting between the master and servant, neither could it operate to defeat the settlement which the pauper gained by his subsequent service in Birmingham. Marriage does not dissolve any contract between the master and servant. Salk. 527, 529. Neither does a legal detainer, or imprisonment for any offence, which may interrupt the service, avoid the contract; it only makes it voidable at the election of the master. The cases of *The King v. The Inhabitants of Westmeon*(a), and *R. v. The Inhabitants of North Cray* (b), shew that the master might have discharged him, if he had pleased : but he did not, and his receiving the servant again is decisive that he would not avoid the contract on that ground. The master might have maintained an action against the servant for not performing the contract; and this would have been a decisive answer to any indictment which might have been preferred against the servant for disobeying the first order of removal, by returning to Birmingham from whence he was removed. In Dalt. 246, it is said that an order of removal, unappealed against, is conclusive, except where an after-settlement can be fixed. And the reason of it is, that it is only an adjudication of the party’s settlement at that time. 1 Str. 232. Salk. 489. 12 Mod. 668. Burr. S. C. 276. Now here the pauper gained a settlement in Birmingham subsequent to the first removal. He was originally hired for a year, and continued in service under that hiring for ten months; then after an absence of seven days he returned into the same service under a legal contract then subsisting, was received by his master, completed the year’s service, and received his whole wages. And even if the absence were without the masters consent, it was purged by the subsequent reception by the master, which amounts to a dispensation of the service. *R. v. Eaton*, Burr. S. C. 47 ; *R. v. Ozleworth*, Burr. S. C. 302; and *R. v. Islip*, Str. 423.

(a) Cald. 129.

(b) H. 25 Geo. 3, B. K.

(9) Judgment

Buller, J. There is no proposition in the law of settlements more clear than this, that an order of removal unappealed against is conclusive against all the world; and this is so clearly and so universally established that it ought never to be impeached. At the same time the rule is, that the order of removal, though unappealed from, does not at all affect a subsequent settlement. Then the question here is, whether the pauper gained any settlement in Birmingham subsequent to the order of removal. Now in this case he did no act by which he could gain a settlement in Birmingham after the order of removal. The circumstances of the pauper’s having been apprehended on a charge of bastardy, and of his marriage, I lay entirely out of the question; for it was competent to the master to receive him again after he was discharged out of custody, if he pleased; and the servant might have served his master after he was married as well as before. But what I rely on is this, that after the order of removal, unappealed from, the pauper could not legally return to the parish from whence he had been removed; it would have been a crime in him to do so; and if he had been indicted for such a disobedience of the order, it would have been no defence to him to have urged that he returned for the purpose of completing his contract. The order of removal put an end to the service; and if he could not return without committing a crime, he could not be liable to an action by the master for not completing the contract. There is a great difference whether the party be disabled by his own act, or by the act of law, from performing his contract; he is answerable for the former; but if the law intervenes and says he shall not complete the contract, it puts an end to the contract. Now in this case the pauper returned after the order of removal to the parish of Birmingham, where he served a month ; but that could not gain him a settlement there; for the act subsequent to the order of removal, by which he was to gain a settlement, should be complete in itself.

Grose, J. I doubt whether the party was liable to be removed : but there having been an order of removal unappealed from, it is decisive; and he has done no subsequent act to gain a settlement.

Rule discharged (a)1.

(a)1 Vid. post, 709.

(10) Ruling

After an order of removal not appealed from, a new settlement can only be gained by some act or cause altogether subsequent to the removal. Therefore if a pauper in service at A. under a hiring for a year, be removed to B., and does not appeal, but returns in a few days to his master at A., is received by him, serves out the year, and is paid his full wages, yet he gains no settlement at A. [3 East, 565.]

(11) Comment

The court finds that an order of removal makes it a crime for the individual removed to return to the parish from which he was removed. It thus ends all previous contractual obligations, including contracts of hire. The finding that the periods of service before and after the servant’s absence (relating to the crime of having a bastard child) can’t be coupled is consistent with the earlier similar case of *R. v. East Kennett* (though no order of removal was made in that case) – in both cases the court appears to give weight to a ‘fault’ element (reference here to servant being ‘disabled by his own act’ and reference to the servant running away in *East Kennett*) . It contrasts, however, with *R. v. Fillongley*, which found that an order of removal from a tenement does not dissolve the underlying lease contract nor prevent the gaining of a settlement.

(12) Type

Restrictive

(1) Case name

*R*. v. *King’s Norton*

(2) Date

14 Geo 2

19 June 1740

(3) Report

Burr. S. C. 153

(4) Court

King’s Bench

(5) Parties

Rev v. The Inhabitants of King’s Norton

(6) Order sought

Quashing

(7) Facts

On Saturday the 17th of May last, a Motion was made by Sir John Strange, to quash an Order of sessions reversing an Order of two Justices made for the Removal of Mary Calcot from King's Norton in Worcestershire to Cambden in Gloucestershire. The Order of Sessions Rates, that it appeared to them upon the Examination of the said M. C.. taken upon her Oath in Court, that she was upon All Saints Day in the Year of our Lord 1735, hired with John Ellis of Cambden, Chapman, for a Year, to spin Wick-Yarn, at the Rate of 1.-6d. a Stone 3 and that she was to provide herself with Meat, Drink, Washing and Lodging where she pleased : And that she spun for him the whole Year; and lodged in her said Master’s house, and boarded with him at Cambden; and received 1s. 6d a Stone for her Work, allowing her Master 2 s. a Week for her Lodging and Board. And upon her Examination she said that by her said Contract as aforesaid she thought she was not at Liberty to work for any other Master : But she thought that she was at Liberty to play or be absent from her Work, as long as foe pleased; being to be paid at certain Rate for her Work done. Wherefore it is the Opinion of the Sessions that the said Hiring and Service aforesaid was not sufficient to gain the said Mary Calcot a Settlement. in the Parish of Camben: And accordingly they reversed the Order of Removal.

(8) Argument

Rule to shew Cause.

On shewing Cause, the only Question was, Whether this Hiring and Service was sufficient to gain her a Settlement in Cambden.

(9) Judgment

Lord Chief Justice Lee thought it plainly a good Settlement in Cambden. For here is a Hiring for a Tear, and a continuing in the same Service for a Year : Which are undoubtedly sufficient to gain a Settlement. Mr. J. Page and Mr. J. Probyn were of the fame Opinion, for the same Reason. And they all agreed that it was not material What the Service was. M. J. Chapple also concurred and observed that the Liberty she thought (he had, of playing and being absent as long as she pleased, depended upon her own Apprehension only but was not part of the Contract.

Post. N° *Rex* v. *Inhabitants of St. Peter's, Dorchester* M. 1763. and fee the fourth Part of my Reports, Rex v. *Inhabitants of Macclesfield* and the Cases there cited, in Page 565.

(10) Ruling

Per Cur. unanimously and clearly,

Order of Sessions quashed.

Order of two Justices affirmed.

(11) Comment

A flexible ruling that a contract was in existence binding the servant to serve even though she had no set hours, being a piece worker.

(12) Type

Liberal

(1) Case name

*R.* v. *King’s Pyon*

(2) Date

23 November 1803

(3) Report

4 East 351

(4) Court

King’s Bench

(5) Parties

The King against The Inhabitants of King’s Pyon

(6) Order sought

Quashing

(7) Facts

An order of two justices removed Alice Wheale from the parish of Weobly to the parish of Kings Pyon, both in the county of Hereford. The sessions on appeal confirmed the order, subject to the opinion of this Court on the following case.

The pauper proved that she was hired to Mr. Davies of Kings Pyon, to serve him from Old May-Day 1800 to Old May-Day following, at the wages of fifty-five shillings, and (if she behaved well) two pounds of wool. That she served him for about eight months, when a dispute happened with her master about some stockings which had been burnt, and he dismissed her from his service. That she applied to a magistrate, and when before him she was charged by her master with having neglected his feeding pigs by not giving them water, which she denied ; and also respecting the burning the stockings. That she was desirous of continuing in her service, but her master refused ; and the magistrate ordered her master to take her back into his service, or pay her the whole of her wages: that he refused to take her again, but paid her the whole of the money, but not the wool. That the pauper, from the time she received her wages, offered herself as a servant soon after to several persons. On cross examination the pauper admitted she had worn her mistress’s stockings once or twice, when she was wet, but that no charge was made against her on that account before the magistrate. The same magistrate who made this order of adjudication joined in the order of removal. The Court thought that the pauper’s master, by paying her wages, though he did [352] not receive her again, dispensed with the remainder of her service, and therefore confirmed the order of removal.

(8) Argument

Williams Serjt. and Clive, in support of the order of sessions. The question is, whether the circumstances stated amount to a dissolution of the contract between the master and servant, or only to a dispensation of the service by the master? It was not competent to the master to dissolve the contract against the consent of the servant, unless for some just cause ; and here no just cause was alleged ; and so the magistrate thought, to whom the complaint was officially referred ; for he ordered the master to take the servant back, or pay her the whole year’s wages. He preferred indeed the latter; but that did not make the discharge the less wrongful. And the servant’s taking the whole of her wages was no evidence of assent on her part to such a wrongful dismissal; but as Ashhurst J. said in *R. v. St. Philip in Birmingham*(a)1, it was a wrongful act of the master submitted to, but not agreed to by the servant. That case is not distinguishable in principle from the present. There a servant, eight days before the end of her year, having given warning to her mistress to quit her service at the end of the year, the mistress discharged her on the same day, paying her her full wages, which the servant accepted, but was willing to have staid out the whole year if the mistress would have let her: and this was ruled to be no dissolution of the contract, but only a dispensation of the service. The length of time before the end of the year cannot vary the question, as was said by Lord Kenyon in *R. v. East* *Shefford* (b)1; and there the service was dispensed with for [353] thirteen weeks. Nor is there any' difference between a dispensation of the service in the middle or at the end of the year (a)2. So in *R. v. Lambeth* (b)2, a master, about to quit his house seven days before the end of the year for which the servant was hired, told her he had no further occasion for her services, and paid her the whole year’s wages, she being unwilling to leave the service, and her master being otherwise inclined to keep her: this also was holden to be a case of dispensation. And all the cases establish the distinction that nothing but a dismissal for a just cause, or a voluntary agreement to part before the end of the year, will dissolve the contract. And the magistrate had no right to do so, even if he had so intended, which does not appear.

Const, contra, was stopped by the Court.

(a)1 2 Term Rep. 624.

(b)1 4 Term Rep, 804.

(a)2 *R. v. St. Peter of Mancroft in Nonvich*, S Term Rep. 479.

(b)2 8 Term Rep. 236.

(9) Judgment

Lord Ellenborough C.J. We are not called upon to say whether the magistrate had or had not a right to discharge the servant from her service : it is enough that he proposed an option to the master to take the servant back, or pay her the whole of her wages. The master refused to take her back, but agreed to pay the whole wages, and did pay them : and the servant shewed her assent to the dissolution of the contract by taking the wages and offering her services to other persons. Both parties gave the magistrate the power of dissolving the contract, by shewing their assent to what he directed in that respect. Then after all this could either the master or servant have maintained an action against each other, the one for not performing the remainder of the service, the [354] other for not employing her during that time? This is the true question to be considered ; and I should not wish to carry the idea of dispensation further than it has been already carried ; which in many of the cases seems to me to have been stretched as far as ingenuity could go, upon the false idea that the servant had a right to acquire in gaining a settlement; as if he must not have a settlement, at all events, in one place or another. I do not mean however to disturb any of the cases which have been already decided ; but I am not inclined to carry the decisions further still from the plain words of the Act of the S & 9 W. 3, c. 30, which are, that no servant shall gain a settlement “ unless he shall continue and abide in the same service during the space of one whole year.” And it seems to me, that when the parties stand in such a situation, that where neither the master can compel the servant to come back into his service, nor the servant can compel the master to take him back, and neither of them have any legal means of compelling redress against the other, there is a dissolution of the contract.

Grose J. I consider the master as having taken the option given him by the magistrate, and choosing to pay her the whole year’s wages then, rather than take her back again ; this was purchasing the dissolution of the contract on his part, which she assented to by taking the money and tendering herself to others as a servant.

Lawrence J. It is extraordinary that the cases should ever have departed from the plain words of the Statute of King William, which seem intended to exclude constructive services, by providing that a servant shall not gain a settlement under a contract of hiring for a year, unless he [355] shall “continue and abide in the same service” for “one whole year.” Now here is nothing like an abiding in the service for a whole year. In the case of *The King v. Thistleton* (a) Lord Kenyon said, that the cases in which it had been determined that a settlement was gained, notwithstanding the servant was not in the actual service of the master, proceeded on a supposition that the relation of master and servant continued throughout the year; but if the master had once parted with the control over his servant, and could not call upon him for his service, no settlement was gained ; and in *The King v. St. Peters*(b) be laid down the same distinction, and held that to gain a settlement the servant must continue liable to serve the whole year. If the pauper be absent with the concurrence of his master, remaining subject to his control, it is a dispensation ; but if the master cannot resume the right to the pauper’s service, it is a dissolution.

Le Blanc J. We are called upon to carry the principle of dispensation of service further than any of the cases have yet gone. For here both parties go before a magistrate, and agree to leave the decision of their dispute to him; and he, hearing what is urged on both sides, gives an option to the master to take the servant back, or to pay her the whole year’s wages ; and both parties go away acting as if they acquiesced in that determination of the master : for the master does not take the servant back again, but gives her her whole year’s wages; and she accepts the money, and offers her services to other persons.

Orders quashed.

(10) Ruling

A servant hired for a year, four months before the end of the year being discharged by her master upon a trivial dispute, applied to a magistrate for redress, being desirous of continuing in the service. The magistrate ordered the master to take her back, or pay the whole year’s wages. The master refused to take her back, but paid the whole year’s wages (but not some wool which he also had agreed to give her if she behaved well). The servant took the money, and tendered herself as a servant to others: Held that the contract was thereby dissolved, and no settlement gained under it, as in case of a mere dispensation of service.

(11) Comment

The court takes a strict view of the requirement that the servant must ‘continue and abide’ in the master’s service for a year. Payment of a whole year’s wages does not amount to ‘continuing and abiding’ in service. A similar distinction between payment of the whole year’s wages (and dispensation with service) versus dissolution of the contract was drawn in the earlier case of *Grantham*. The court’s reasoning in *King’s Pyon* also indicates a trend away from constructive service to a requirement of actual service, for the purposes of settlement.

(12) Type

Restrictive

(1) Case name

*R*. v *Kingswinford*

(2) Date

12 May 1791

(3) Report

4 T.R. 219

(4) Court

King’s Bench

(5) Parties

The King against The Inhabitants of Kingswinford

(6) Order sought

Quashing

(7) Facts

On an appeal against an order of removal of J. Lockwood, from Kingswinford to Birmingham, the sessions quashed the order, and stated the following case :

The pauper being settled at Wakefield, in October 1775, entered into an agreement with W. Bullock, by which he covenanted to work with and serve Bullock, as an artificer, in the art of a glass-grinder, or in any other part that Bullock should think proper to employ him in for 7 years; that he would not, at any time during the term, work for or serve any other person; and would not, at any time during the term, depart from or leave the work and service aforesaid, without the leave or licence of Bullock, his executors, &c. but would continue and be in such service as aforesaid, from 6 o’clock in the morning till 7 in the evening of each day, during the said term, including half an hour at breakfast, and one hour at dinner-times (except on Sundays) if in proper health. Bullock agreed to provide shop-room for Lockwood ; to pay him 3s. and 6d. per week during the term, and to provide meat, &c. The pauper served Bullock two years at Birmingham under this agreement, and lodged and boarded at Bullock’s. He occasionally worked in the night-time, and often went on errands for his master on Sundays; and never worked with any body else during that time, nor thought himself at liberty so to do.

(8) Argument

[220] Leycester moved for a rule to shew cause why the order of sessions should not be quashed ; attempting to distinguish this case from that of R: v. Macclesfield (a)2, by observing, that in that case the Court decided that there was an exception in the contract of hiring, as “ the service was to be only thirteen hours in the six working days, and all the rest of the time as well as on Sundays, the pauper was at his-own liberty, and his own master;” whereas here it did not form a part of the contract that the pauper should be his own master after seven o’clock in the evening, and on Sundays; but on the contrary, he expressly stipulated not to work for any other person during the whole term ; and it is stated in the case that he actually did work for his master occasionally in the night-time and on Sundays. But

(a)2 Burr. S. C. 458.

(9) Judgment

The Court refused to grant a rule to shew cause, thinking that it could not be supported. And

Lord Kenyon, Ch.J. said that there was no real distinction between this case and that of *R. v. Macclesfield*; for that the fair construction of this agreement was, that the pauper was to be his own master on Sundays, and on other days after he had served the thirteen hours, because he had only covenanted to serve those hours; and that the expression of one was the exclusion of the other : and he added, that it was essential in these cases that the servant should be under the power and coercion of the master during the whole time.

Rule refused (b)1.

(b)1 Vide *R. v. North Nibley,* post, 5 vol. 21, S. P.

(10) Ruling

Service under a hiring for seven years, to work only 13 hours in the day, (and Sundays excepted) will not give a settlement.

(11) Comment

The court takes a very formalistic view of the contract of hire and the concept of a servant being under the ‘power and coercion’ of the master. The case finds that a contract phrased as having a servant work for 13 hours a day except Sunday will not confer a settlement even though in practice the servant was likely working the same number of hours as he would have under a contract without any express stipulation for hours. It also doesn’t take into consideration factors such as the servant’s covenant not to work for any other person, take leave or depart without his master’s consent, though that in practice can evidence the principle of the master having ‘power and coercion’ over the servant.

(12) Type

Restrictive

(1) Case name

*R.* v. *Ladock*

(2) Date

Easter term, 1742 (same date as previous case in the report, which was not included in the PDF)

(3) Report

Burr S.C. 1

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Ladock

(6) Order sought

Quashing

(7) Facts

Two Justices made an Order for the Removal of John Roberts, Joan his Wife, John Roberts the Younger aged about eleven Years, Richard Roberts aged about nine Years, Walter Roberts aged about five Years, and Grace Roberts aged about two Years, (the Sons and Daughter of the said John Roberts) from Ladock to St. Enoder, (both in Cornwall:) And, upon Appeal, the Sessions discharged the Order of the two Justices.

Case.—John Roberts covenanted with one Daniel Huddy to serve him for one Year in Ladock, for 4l. 10s. and served him, and received the said Year’s Wages of him. Upon the Expiration of the said Year, John Roberts the Pauper, made a new Contract with the said Master, to serve him for another Year, for the Wages of 5l. 10s; and in Pursuance of the last-mentioned Contract, served with the said Master, and lived with him in Ladock till the Time of his Master's Death (which happened about half a Year after the last-mentioned Contract was made.) Upon the Death of the Master, one William Huddy of St. Enoder (the Executor of the said Daniel Huddy the late Master) asked the said Pauper “if he was willing to serve him (the Executor) for the Remainder of the said last-mentioned Year, according to the Bargain made between the said Testator and the said John Roberts:” Which Roberts agreed to, and thereupon went with and served the said Executor in St. Enoder during the Remainder of the said Year, and at the End of it, received of William Huddy some Part of the Wages that were due to the said Roberts at the Death of the said Testator (who had paid some Part, himself, to the said Roberts,) and the Executor also paid the said Roberts the Residue of the Year’s Wages contracted for with the Testator. Upon Consideration of which, the Sessions discharged the Order of the two Justices, and ordered the Paupers to be conveyed from St. Enoder to Ladock.

(8) Argument

On Friday 5th Feb. last, a Motion was made, by Serjeant Hussey, to quash this Order of Sessions ; the Man’s true Settlement being, as he said, in St. Enoder. He had a Rule to shew Cause.

And Cause was now shewn, by Mr. Clive and Mr. Gundry.

In Support of the Motion, it was urged that the Service of the Executor for the last Part of the Year in St. Enoder gained him a Settlement in St. Enoder: For the last forty Days Service makes the Settlement. So it was holden in Tr. 8 G. 1. B.R. between *St.* *Peter's Oxford* and *Fawley Court*. This was a Continuance of the Service : And it is not necessary that it should be under the same Contract. To prove these Assertions, several Cases were cited. Trin. 12 Ann. *Silverton* and *Ashton*. [V. Ses. Cases, Ed. 1750, Vol. 1. pa. 44. N° 46.] Hil. 1 G. 1. *Stoke Fleming* and *Bury Pomeroy*. [V. the same Book, pa. 88. No 83.] Mich. 9 Ann. *Dunsfold* and *Fletching*. H. 1 G. 1. *Brightwell* and *Henning*. [V. Lucas's Reports, 10 Mod. pa. 287.] *Pasch*. 4 G. 2. *Ivinghoe* and *Solebury*. Trin. 3 3 W. 3. *Rex v. Inhabitants of Eccles*. And HU. 8 G. 2. *Rex v.* *Inhabitants of St. George's Hanover Square*. [V. ante, No 5. p. 12.]

In P. 4 G. 2. B.R. between the Parishes of Ivinghoe and Solebury—a Service under the Assignee gained a Settlement. So an Apprentice served an Assignee, and gained a Settlement, *Rex v. The Inhabitants of St. George's Hanover Square*. H. 8 G. 2. B. R.

The Counsel for the Order of Sessions admitted the Hiring and Service for a Year to be good; And that the Settlement would have been in St. Enoder, if he had continued to serve the same Master. But they denied that the Service of an Executor could be considered as the same Service with the Service of the Testator, within 3 & 4 W. & M. r, 11, The Contract with the deceased Master and the Service to him were personal. By the Death of the Master, the Contract was at an End; and the Servant might have refused to serve the Executor during the Remainder of the Year. Therefore this was not one and the same Service: It can’t be esteemed a Continuance of it, after the Master is dead. The Cases cited on the other Side are all founded upon their being considered as Continuations of the Service under the same Master. But this Master is dead ; and William Huddy does not go on with the Servant as Executor to Daniel but makes a new Contract with him. Therefore they are not applicable to this Case.

(9) Judgment

Lord Chief Justice Lee.—The first Year’s Service (with Daniel Huddy) is not material to the present Case: The Question is “Whether he gained a Settlement at St. Enoder by serving the Executor”.

It is agreed, that where there is a proper Hiring and Service, the Place of Service for the last forty Days gives the Settlement.

The present Question depends, upon 8 & 9 W. 3. c. 30. Sect. 4. “ Whether it be a Continuance for a Year in the same Service.” The Words of that Act are—“ Unless such Person shall continue and abide in the same Service during the Space of one whole Year.”

This Case differs from that of Apprentices, where the Settlement is gained by Service under the Indenture.

There has been no adjudged Case of serving an Executor of the Master of a hired Servant. But I do not know how to distinguish this Case from that of *Solebury* and *Ivinghoe* ; where the Servant served the Assignee of the Farm; and the Court considered it as a Continuance of the Service under a Hiring for a Year. So, in this Case, the Contract is continued by the Executor ; and the Difference of Persons cannot be more material in this Case, than it was in that: Nor does the Act of Parliament require the Service to be the same as to the Place or Person; but only a Continuance of the same Service. And this is a Continuance of the same Service, and not a new Contract.

Where there is a Hiring for a Year and also a Service for a Year, they shall be joined together. I think this is the same Service; viz. a Hiring continued, like the Case of Solebury and Ivinghoe; with a Difference only as to the Person. Therefore the Order of the two Justices ought to be affirmed; and the Order of Sessions quashed.

Mr. Justice Chapple was absent.

Mr. Justice Wright and Mr. Justice Denison concurred in his Lordship’s Opinion.—They held it no new Contract. The Executor was the Representative of the Testator; and only asked the Servant “if he was willing to continue the former Contract.” The Contract was not determined and dissolved by the Death of the Master. The Servant was obliged to serve the Executor; and the Executor, to pay him. Dalt. 129.

And they agreed that this, being the Case of an Executor, was a stronger Case than that of Solebury and Ivinghoe, where the second Master was only Assignee of the Farm, (a mere Stranger.)

(10) Ruling

Per Cur. unanimously,

Rule made absolute for quashing the Order of Sessions, and affirming the Order of the two Justices.

(11) Comment

The court emphasises that the second service need not be for the same master, but only a ‘continuance’ of the original service. Following *Ivinghoe*, the court finds that a contract with the Executor is a continuation of the servant’s contract with the deceased Testator and that the case of an Executor is stronger than that of a Assignee (in *Ivinghoe*, some judges appeared to require the nature of the work to be the same in order to connect the two periods of work, but no mention is made of that factor in this case).

(12) Type

Liberal

(1) Case name

*R.* v. *Lambeth*

(2) Date

10 June 1815

(3) Report

4 M. & S. 315

(4) Court

King’s Bench

(5) Parties

The King versus the Inhabitants of Lambeth

(6) Order sought

Quashing

(7) Facts

Upon appeal, the sessions discharged an order of two justices for the removal of Elizabeth Pinnegar and her children from St. Mary Lambeth, Surrey, to East Gaiston, Berks, subject to the opinion of this Court, on the following case: The pauper’s husband was hired by one Wroughton at eight shillings per week, and two guineas for the harvest, to do anything the gardener should set him about; and under this hiring he served four years in the parish of Chadlesworth, and slept upon the premises of Wroughton ‘ The sessions were of opinion that the pauper thereby gained a settlement in Chadlesworth.

(8) Argument

Lawes and Barrow, in support of the order of sessions, endeavoured to distinguish this case from *Rex* v.- *Dodderhill*, in this particular, that here was an agreement for a gross sum to be paid for the harvest, and not merely, as in that case, for an increase of the weekly wages in the harvest month. And for the harvest imports for a consolidated period, at least as long as a month, for which period these wages are reserved, which is inconsistent with the notion of a weekly hiring; and therefore this

case falls within the principle of *Rex* v. *Hampreston*.,

(9) Judgment

But per Lord Ellenborough C.J. It does not distinctly appear whether the two guineas were to be paid de incremento, or were to cover the whole harvest. All that appears is that the hiring being by the week, the parties contemplated that possibly it might last through the harvest.

Per Curiam. Order of sessions quashed.

(10) Ruling

A hiring at 8s. per week, and two guineas for the harvest, to do anything the gardener should set him about, is not a yearly hiring.

(11) Comment

The Court declines to infer a general hiring from evidence of weekly work.

(12) Type

Restrictive

(1) Case name

*R.* v. *Leigh*

(2) Date

18 June 1806

(3) Report

7 East 539

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Leigh

(6) Order sought

Quashing

(7) Facts

Two justices by an order removed John Brazier, Hannah his wife, and their four children, by name, from the parish of Leigh to the parish of Clifton-upon-Teame, both in the county of Worcester. The sessions on appeal quashed the order, subject to the opinion of this Court on the following case.

The pauper John Brazier, being legally settled in Clifton-upon-Teame, on the 31st. of March 1795 hired himself as a servant in husbandry for a year to S. Jones of the parish of Lulsley, and agreed for 6l. 10s. for the year’s service. The pauper resided at Lulsley in Jones’s service from thence until the 25th of March 1796; upon which day, by permission of his master and for the purpose of seeking a new service for the ensuing year, he went to the Mop (a meeting for the purpose of hiring servants) at Bromyard, six miles from Lulsley. The pauper did not return to his master’s house till three o’clock in the morning of the 26th of March, when he came home with some ribbons in his hat, which he had purchased. In the course of the 26th his master came to him, and observed, “he supposed masters were scarce at the Mop, and that he had enlisted for a soldier, and told the pauper he should stop no longer in his service.” The pauper told his master he had not enlisted (which was

the fact,) and that he wished to stop his year out. But the master said he would not keep the pauper any longer in his service, and the pauper should stop no longer; and at the same time offered the pauper as wages for the time he had served something less than 6l. 10s., which the pauper refused to accept. The pauper would have accepted the full year’s wages if then tendered to him by his master; but that he had rather staid out his year. The pauper left his master’s house immediately in consequence of what had passed, and never returned to it. On the next day, the 27th of March, a summons having been taken out by the pauper against his master, they both appeared before a justice of the peace of the said county; upon which occasion the pauper applied to the magistrate to direct his master either to receive him into his service for the remainder of the year, or to pay him his whole year’s wages : and the magistrate verbally directed half a crown to be deducted from the year’s wages and retained by the master. The pauper on the same 27th of March hired himself as a servant to Mr. Smith of Broadwas, and on that day entered upon such service. About a week after the pauper went to his former master Mr. Jones for his wages, who paid the full sum of 6l. 10s. Mr. Jones some days afterwards applied for a return of the half crown directed by the magistrate to deducted, for the same was never returned to Mr. Jones. The sessions, being of opinion that the pauper under the circumstances above stated had gained a settlement in Lulsley by hiring and service for a year with S. Jones, quashed the order. The question for the opinion of the Court was, whether under the circumstances above stated above, the pauper served a year with S. Jones, so as to gain a settlement in Lulsley.

(8) Argument

Puller, in support of the order of sessions endeavoured to distinguish this from *Rex* v. *King's Pyon*, and *Rex* v. *Sudbrook*, in the former of which the master upon some dispute had discharged the servant so long as four months before the end of the year; and the magistrate to whom the servant applied for redress gave the master the option either to take her back or to put an end to the contract upon paying the whole year’s wages; and he elected to pay the whole wages, which the servant agreed to accept; but the master withheld some wool which he had agreed to give her if she behaved well. In the case of *Sudbrooke* it was stated that the servant, about a fortnight before his year expired, being too ill to work, left his master’s service upon receiving his whole year’s wages, from whence his assent to the dissolution of the contract was inferred; as in the prior case it was from the servant’s accepting the wages upon the terms offered by the magistrate to the master. In neither case was there any fraud, which is the distinguishing feature of this case. Here the servant going to seek for another place at the Mop was a lawful cause of absence, as was holden in *Rex* v. *Islip*, for which the master could not have discharged him, even if he had gone there without leave, and still less with it: and it was settled in the case of *Eastland and West-Horsley* that a master cannot prevent his servant gaining a settlement by wrongfully turning him out of his service before the end of the year. Now here the act of the master was wrongful and fraudulent, and the servant all along refused to put an end to the contract, and received bis whole year’s wages after the expiration of the year.

Peake and Petit contra were stopped by the Court.

(9) Judgment

Lord Ellenborough C.J. How can there be said to have been a constant refusal of the servant to put an end to the contract when he actually entered into another service before the time when his first contract would have expired? That is an insuperable difficulty. That he did not receive his wages before the year was out cannot vary the case; for he would have received them at the time, if offered. The case of *King's Pyon* is almost in terms the same as the present. The magistrate in both cases was made a sort of arbitrator between the parties, and both parties acquiesced in putting an end to the contract of master and servant.

The other Judges concurred. And Le Blanc J. added, that if there were any fraud in this case the magistrate must have been a party to it.

Order of sessions quashed.

(10) Ruling

Five days before the end of the year a servant absented himself by leave one day from his master’s service to look out for another place, and on his return the master on some trivial pretence said he should not stay any longer in his service, and offered him a trifle less than his whole wages; which the servant refused; but was then ready to have accepted his whole wages, though he would rather have staid out his year; and immediately applied to a magistrate to oblige his master either to pay him the whole or to receive him into his service tor the remainder of the year ; when the magistrate ordered half a crown to be deducted, and the servant thereupon hired himself to another master, before his first year was out; and after the year received from his first master his whole wages : Held that this was a dissolution of the contract before the end of the year by mutual consent, signified on the part of the servant by his entering into another service.

(11) Comment

The Court finds against a settlement in a case where the servant quit a few days early, treating this as a mutual dissolution of the contract.

(12) Type

Restrictive

(1) Case name

*R.* v. *Lidney* (*Lidney* v. *Stroud*)

(2) Date

Trinity Term, 6 Geo 2

1732

(3) Report

2 Strange, 950

(4) Court

King’s Bench

(5) Parties

Between the Parishes of Lidney and Stroud in Gloucester

(6) Order sought

Quashing

(7) Facts

Upon a special order of sessions it was stated, that a maid was hired for a quarter of a year, and if she and her master liked one another, she was to continue the whole year, and have 31. for her year’s wages: that she staid the year out, and had her 31.

(8) Argument

See (9).

(9) Judgment

And this on debate was held to be a settlement (1).

(1) *Rex* v. *New Windsor*, Burr. S. C. 19. *Rex* v. *Atherton*, ib. 203, post, 1182. *Rex* v. *St. Ebbs*, ib. 289, S. P. and vide the opinion of Foster J. that these cases have carried the matter as far as possible. *Rex* v. *Ilam*, ib. 306.

(10) Ruling

(11) Comment

The court finds a hiring notwithstanding the presence of a probation period during which it was not clear that the contract would continue. This type of case was later held not to give rise to a settlement.

(12) Type

Liberal

(1) Case name

*R.* v. *Little Bolton*

(2) Date

24 Geo 3

22 November 1783

(3) Report

Cald. 367

(4) Court

King’s Bench

(5) Parties

Rex v. Inhabitants of Little Bolton

(6) Order sought

Quashing

(7) Facts

Two Justices by an order remove John Wilde, Lucy, his wife and their six children from the township of Great Bolton in the county of Lancaster to the township of Little Bolton in the fame county. The sessions on appeal confirm the order and state the following case : That the pauper, being legally settled in the township of Little Bolton and being unmarried and having no child, Went into the township of Great Bolton, where one William Stott, a weaver, lived: the pauper went to Stott and asked him, if he would teach him to weave counterpanes : Stott answered, he would teach him, if he would work with him two years and an half or three years ; and the pauper’s earnings were to be divided between them : the pauper, was to find himself with meat, drink, washing and cloaths: he was engaged on these terms, and an agreement in writing was entered into accordingly. The pauper staid and worked with Stott under this agreement in Great Bolton about a year and half, and then the pauper gave the mailer twenty shillings to be free, having then married : he then worked journey work with the same master near a year : the master (whilst he was working under the agreement) found him looms, loom room and materials : he never employed the pauper in any work but weaving: the condition upon which he taught the pauper to weave was one half of his earnings. Stott received the money and paid the pauper one half, and looked on it that he had a right to receive it ; but sometimes he let the pauper receive it. The agreement in writing was Settlement proved to be loft, and therefore parol evidence was allowed to be given of it.

(8) Argument

Ccckell shewed cause in support of these orders; and insisted, that the only question was, what was the meaning of the parties at the time of the agreement: *i. e.* whether the pauper was taken in

the character of an apprentice or a servant? That nothing could be better understood than the distinction between them ; the one acting always for hire, the other for instruction or improvement: that this is a contract by which it is covenanted, that the pauper shall be taught, and is therefore in the nature of an apprenticeship ; and, being as such defective, cannot be converted into a hiring and service : that this was so laid down in many cases, particularly in that of [*a*] the *K.* v. *the Inhabitants of Kingsweare*: that the object of the two contracts is plainly different; and that this case is therefore in point: that a hiring must import pay, which there was not here : that the state of the case in [*b*] the *K.* v. *the Hamlet of Walton*, (*Jerrisons* case) was as far as respects the present question precisely the same as the present, tho' the principal ground of the decision was different: that the legislature meant to prevent such apprenticeships; and, if the Court so far supported them as to give them any effect in gaining a settlement, there would be great danger that the Statute would be eluded and the revenue defrauded.

Lee, Attorney General, and Sir Thomas Davenport were now called upon to support the rule to quash these orders ; and contended, that this had not the smallest resemblance of a contract of apprenticeship; that the pauper was to have half his earnings from the first: that no such idea as this was ever entertained in a contract for an apprenticeship : and that this therefore must have been meant as wages: that the same objection might have been taken in the cafe of [*c*] the *K*. v. *the Inhabitants of Buckland Denham* ; which was argued solely on the ground of exception from the contract, and determined accordingly upon that point, which did not occur here : viz. that a servant need not under every possible circumstance be during every instant of his term subject to the control of his master : that here, as there, there is a mutual agreement; a retaining and a contract to serve : that it was true it might be objected, that in that case there was a hiring found : that the hiring need not be stated in terms: that it is enough, if from the first it appears to the Court that the pauper was actually in the character of a servant: that there was no technical virtue in the words “ hiring or letting :" that when the sessions use words which imply a hiring, it is the same thing: that the Court would form their judgment whether it was a hiring or not : that here they have stated what is equivalent to it; for they have stated an agreement to work with the master for two years and a half: and that hiring must always turn on the nature of the contract : that the master in this case might have maintained an action against the pauper himself for not working, and undoubtedly against a stranger for seducing his servant : neither of which he could have done in *Jerrison’s* case; and therefore that the state of that case was no more to the purpose than the decision. That, with respect to the argument that a hiring must necessarily import pay, in the cafe of [*a*] the *K.* v. *the Inhabitants of Birmingham* the servant was to receive no pay but what he earned, the contract being “ good earn good hire,” and he could not have been compelled to work at all: and that, in the case of [*b*J the *K.* v. *the Inhabitants of Hitcham*, where the servant was to be taught by his master the trade of a carpenter, and by express agreement to have “ no money by way of wages, ” the Court held it to be a hiring and service and a settlement.

Cockell now added, as it was admitted that the intention of the parties at the time of forming this contract must guide the decision, that nothing could be more important in the discovery of that intention than the use of a term so peculiarly appropriated as that of hiring: that this had ever been so considered by the Court: and that there did not exist a single authority, in which a settlement under a hiring and service had been supported without the use of this word, or some other fully equivalent : that it was expressly so in the case of *Buckland Denham* : that in the cafe of *Hitcham*, the phrase was “ lett himself, ” and the employment of the servant was to be in different kinds of labour.

[*a*] Tr. 16 G. 3. 1776. Burr. Settl. Caf. 839. And also in more recent authorities, viz. the K. v. the Inhabitants of Highnam. H. 25 G. 3. 1785. port. p. and the K. tv. the Inhabitants of Sand ford. Tr. 26 G. 3. 1786. 1 Durnford and Eaft 281.

[*b*] E. 9 W. 3. Carth. 400. from whom it is copied by Mr. Bott. p. 282. Under different names and in different terms and years this cafe is reported in different books; but to the same effect in Comb. 445. 5 Mod. 328. Fort. 214. and 2 Salk. 479. In Skinn. 671. however the decision of the Court is stated to have been directly otherwise : upon which Mr. Bott observes, and it should seem very rightly, that this report is totally the " reverse of what it ought to be.”

[*c*] H. 12 G.3. 1772, Burr, Settl. Ca, 694. Bott. 297.

(9) Judgment

Lord Mansfield. This is not a hiring and service. If an indenture were not made necessary, there could be no doubt as to its being an apprenticeship ; for the pauper is to be taught, and pays a consideration for it, and is to do no other work: but, if these agreements were allowed to give settlements, there would be an end of indentures of apprenticeship, and also of the revenue [*a*] derived from thence.

Buller, J. I should have been better satisfied if the cases had gone the other way because when a man engages to work for another he hires himself to such an one : but the cases seem to have taken another turn, and if they have settled it, I adhere to the authorities. The rule was accordingly then discharged and both the orders affirmed.

But presently Willes, J. observed, that *Jerrison’s* case cited by Mr. Cockell did not apply.

Buller, J. That was the case of an agreement between a master and a third person, a tradesman, that he should teach his trade to the master’s servant ; the servant himself being no party. And the Court said they would look into the cases.

And now Lord Mansfield delivered the judgment of the Court. We have looked into the authorities and we find that all those cases of apprenticeships, which have been holden to be defective and not convertible into hirings and services, speak of the pauper as an apprentice, and that he was to serve as such. There is no such statement here, and we are therefore of opinion that it is a good hiring and service.

Willes J. The cases that apply are [a] the *K*. v. *the Inhabitants of Whitechurch Canonicorum*, [*b*] *The K*. v. the Inhabitants of AII Saints in Hereford, and the cafe of *Kingsweare* cited in the argument.

Lord Commissioner Ashurst was absent.

Rule absolute and

both Orders quashed.

[a] As an apprenticeship, like the present, for no longer a term than three years, does not intitle to set up a trade, it does not seem that the revenue could ever have been in any great degree affected by a fraud, of which the party practising it could not have the full benefit. And, as it has already been settled by a resolution of the Judges, in the case of Wallen qui tam Holton. Tr. 33 & 34 G. 2. 1760. 1 Blackst, Rep. 233, that serving *as* an apprentice for seven years does so intitle, this seems in point of extent to be carrying the mischief, if it were one, much farther.

[*a*] Tr. 5 G. 3. 1765. Burr. Settl. Cas. 540.

[*b*] H. 10 G. 3. 1770. Burr. Settl. Cas. 656. So also in the cafe of Salford and Storeford. M. 5 G. 2. 2 Barnardist, 39. and that of the K. *v.* the Inhabitants of Saint Mary Kallendar in Winchester. Tr. 21 *Sc 22 G. 2.* 1748. Burr. Settl. Cas. 274.

(10) Ruling

An agreement for a year to teach a trade, the pauper being to find himself in necessaries and the master to have half his earnings, if he is not retained eo nomine as an apprentice, is a sufficient hiring to give a settlement. The intention of the parties at the time must decide, whether a contract be in the nature of an apprenticeship or of a hiring and service. They are not convertible.

(11) Comment

The court flexibly considers the boundary between apprenticeship and service to find that this was a contract to serve and hence one which conferred a settlement.

(12) Type

Liberal

(1) Case name

*R.* v. *Little Coggeshall*

(2) Date

14 May 1817

(3) Report

6 M. & S. 264

(4) Court

King’s Bench

(5) Parties

The King versus the Inhabitants of Little Coggeshall

(6) Order sought

Quashing

(7) Facts

Upon appeal, the sessions confirmed an order for the removal of Thomas Raven, his wife, and three children from the parish of Great Tay, to the parish of Little Coggeshall, both in the county of Essex, subject to the opinion of this Court upon the following case :— The pauper, at Michaelmas 1806, was hired by one Blackbone, of Little Coggeshall, as a servant in husbandry, for a month upon liking, and if be suited his place he was to continue in it during the year, and to have three guineas as wages. The pauper entered upon his service at that time, and, when he had served the month, his master said that he suited him, and if he liked he might continue with him, but added that he must leave his place a fortnight before the end of the year, in order, that as he did not belong to the parish, he might not be any incumbrance to it, to which the pauper made no answer. He continued to live with Blackbone until fourteen days before the expiration of the year, at which time Blackbone called him,

and told him that his time was up, and as he had behaved himself well, he (Blackbone) would pay him the whole of his wages, which he did, and then desired him to go home to his father’s, where he would probably hear of another place. The pauper made no objection to what his master said, but accepted bis wages, quitted the house, to which he never returned, and went to his father’s. The sessions were of opinion that the pauper was absent during the last fourteen days of the year under a dispensation from service.

(8) Argument

The Court enquired of Knox, who was in support of the order of sessions, how he could make good any hiring for a year; to which he answered, that it was to be found in the original agreement. For a hiring for a month on liking, and if approved, to continue for the year at yearly wages, is a hiring for a year; defeasible, indeed, on a contingency ; but here the contingency did not happen. And, although afterwards an exception was introduced that he should leave a fortnight before the end of the year, this makes no difference; because if there be no exception at the time of making the original contract, then the absence is to be considered as a dispensation on the part of the master, and does not operate, like an exception out of the original contract, to defeat the settlement; besides which an exception is a stipulation on the part of the person for whose benefit it is introduced, but here it was made on the offer of the master. *Rex* v. *Sulgrave* (a), *Rex* v. *Atherton* (i).

(9) Judgment

Lord Ellenborough C.J. The point on which the settlement fails is, that there was not any hiring for a year. I should be glad to know how the master could have maintained any action against the servant for not serving him the year. He says, at the end of the month of probation, that he would continue him, but he must go away a fortnight before the end of the year, in order that he might not be an incumbrance to the parish. This, therefore, was a stipulation, by way of condition, that they should part within the year.

Bayley J. With respect to what has been said of the original contract between these parties, I would ask, whether at the end of the month the pauper had a right to insist upon his master’s continuing him the year.

Per Curiam. Order of sessions quashed.

Walford was to have argued against the order.

(10) Ruling

Where pauper was hired as a servant in husbandry for a month upon liking, and, if he suited his place, to continue during the year, and to have three guineas wages, and when he had served the month, his master said he suited, and if he liked, might continue, but he must leave his place a fortnight before the end of the year, in order that he might not be an incumbrance to the parish, and he continued till fourteen days before the end of the year, when his master told him his time was up, and, as he had behaved well, he would pay him the whole wages, which the master accordingly did, and the pauper quitted the house, and never returned, but went to his father’s : Held, that the pauper did not acquire a settlement under this hiring and service, for there was no hiring

for a year.

(11) Comment

The Court declines to find a hiring, rejecting the possibility of a dispensation, even though the reason for hiring for less than a year was explicitly to avoid the statute.

(12) Type

Restrictive

(1) Case name

*R*. v. *Little Lumley*

(2) Date

4 February 1795

(3) Report

6 T.R. 156

(4) Court

King’s Bench

(5) Parties

The King against The Inhabitants of Little Lumley

(6) Order sought

Quashing

(7) Facts

The Court of Quarter Sessions for Durham quashed an order of two justices for the removal of J. Greenwell, an idiot, from the township of Little Lumley to the township of Lamesley, subject to the opinion of this Court on the following case. The respondents, in order to prove the birth of the pauper in Lamesley, called as a witness E. Morallee, an inhabitant of Lamesley, not rated to nor paying any of the parochial taxes, but on the contrary receiving relief from that township at the time she was so produced : but the Court (of Sessions) having informed her that, as being an inhabitant of Lamesley, she was not compellable to give evidence on the part of the respondents, and she declining to give such evidence voluntarily, she was not examined. The respondents also produced S. Hall, the wife of W. Hall, in order to identify the pauper, by proving that she had maintained and had the care of the pauper ever since he was three weeks old. W. Hall and his wife are inhabitants of Little Lumley, but are not rated to and do not pay any of the parochial taxes. But the Court (of Sessions), being of opinion that the evidence of S. Hall was inadmissible, on account of her being an inhabitant of Little Lumley, refused to suffer her to be examined. And the respondents not producing any other witness in support of the order, the appeal was allowed, subject to the opinion of this Court on the following questions, whether under the circumstances of the case E. Morallee was or was not compellable to give evidence; and whether S. Hall was or was not a competent witness.

(8) Argument

Wood in support of the order of sessions.

Chambre against it.

(9) Judgment

[158] The Court said that the mere circumstance of inhabitancy (a)1 did not create an interest in the last witness called, so as to make her an incompetent witness, and that there was no reason why the former should not be compelled to give evidence ; and they ordered the case to be sent back to the sessions to be heard.

(a)1 Vide *R. v. T. Prosser*, ante, 4 vol. 17, and *R. v. The Inhabitants of South Lynn*, ante, 5 vol. 667.

(10) Ruling

On an appeal between the parishes of A. and B., the former may call an inhabitant of the latter, who is not rated to the poor, and compel him to be examined as a witness. An inhabitant of a parish, who is not rated, is a competent witness on an appeal between that parish and another. [2 East, 559. 10 do. 395.]

(11) Comment

The court finds that an inhabitant of a parish is a competent witness to the birth of a person in that parish, even if he or she is not rated.

(12) Type

N/A

(1) Case name

*R.* v. *Long Whatton*

(2) Date

23 November 1793

(3) Report

5 Term Reports 448

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Long Whatton

(6) Order sought

Quashing

(7) Facts

The pauper Agnes Hickling is now a lunatic. She formerly acquired a settlement at Belton by hiring and service. Afterwards in March 1780 she went to live with Mrs. Lowdham at Diseworth, to wait upon Mr. Lowdham, who was poorly; and she continued there till Mrs. Lowdham’s death, which happened two or three years afterwards. On the day of her going to Mrs. Lowdham’s she told her brother-in-law, Joseph Pegg, that she was hired till the following Michaelmas, with liberty to part

on a month’s wages or a month’s warning, and had received 2s. 6d. earnest. She made the same declaration to one Thomas Fisher; and at another time when her sister was just dead, and she was uneasy about her own situation, upon the said Thomas Fisher telling her she must be provided for somewhere, and asking her if she knew where she belonged, she said she belonged to Diseworth, where she had been hired, and received 2s. 6d. earnest. She made the same declarations to Pegg: but to neither of them did she ever mention any second hiring to the said Mrs. Lowdham, or any thing about her situation with Mrs. Lowdham, but what is mentioned above. Both Pegg and Fisher, during the time of her being with Mrs. Lowdham, repeatedly saw the pauper waiting upon her and acting as her servant. The respondents objected to the admission of the declarations of the pauper in evidence ; but the Court received them, and were of opinion upon the whole evidence, as well those declarations as the rest, that the pauper had gained a settlement at Diseworth.

(8) Argument

Dayrell, in support of the order of sessions, relied on *R.* v. *The Inhabitants of Lythe* (a)2 as decisive to shew that the justices at the sessions were warranted in presuming, from the pauper’s long service in Diseworth, that she was hired for a year by Mrs. Lowdham there.

Gally, contra, observed, that had it not been for the pauper’s declarations relative to her settlement, which ought not to have been received in evidence, the justices would not have formed the same conclusion; for that they had stated in express terms that they had formed their opinion “upon the whole evidence as well those declarations as the rest”.

(a)2 Ante, 327.

(9) Judgment

Lord Kenyon, Ch.J.—Independently of the declarations made by the pauper, there was sufficient evidence to warrant the justices in finding a hiring for a year in Diseworth ; though the pauper were at first only hired till the Michaelmas following, yet she continued in the same service for three years.

The counsel not desiring to have the case sent back again to the sessions,

The order of sessions was confirmed.

(10) Ruling

If a servant live 3 years in service with the same master, it is evidence from which the justices at the sessions may infer a hiring for a year, though it appear that at first the servant was only hired for part of a year (a)1.

(a)1 Vide *R.* v. *The Inhabitants of Stokesley*, post, 6 vol. 757.

(11) Comment

The Court interprets the yearly hiring rule flexibly, inferring a contract from the fact of several years of service, in a case where the initial contract was for only part of the year.

(12) Type

Liberal

(1) Case name

*R.* v. *Lowess*

(2) Date

1 May 1776

(3) Report

Burr S.C. 825

(4) Court

King’s Bench

(5) Parties

The King versus the Inhabitants of Lowess

(6) Order sought

Quashing

(7) Facts

Two Justices removed Edward Morgan from the Parish of Lowess in the County of Radnor to the Parish of Lanstephan in the same County. Upon Appeal, the Sessions quash the Order; subject to the Opinion of this Court, upon the following Case.

Edward Morgan was hired for a Year to one John Williams of the Parish of Lanstephan, where his Master occupied his own Estate. He continued with his Master in Lanstephan till some Time before St. Peter’s-tide; when his Master and Family removed to Lowess, in which Parish his Master rented another Farm. That he continued with his Master in Lowess, till the 16th of January following, altogether; when his Master, with his Family, removed to the Parish of Lanstephan. The Master, after his Removal to Lanstephan, constantly resided there: But the Pauper was sent by his Master back to Lowess, to thrash and look after his Master’s Cattle. The Pauper staid in Lowess, upon his Master’s Business, two or three Nights and Days, and eat and lodged there; and then returned again to Lanstephan for two or three Days or a Week at a Time, and eat and lodged there, and then returned again to Lowess in like Manner as aforesaid ; and so continued between the said Parishes, to the End of his Year, which was the 17th of May following. The Pauper is very positive he never continued forty Days together in either of the said Parishes, after the said sixteenth of January: But that he lived and resided as aforesaid, more than forty Days in the whole, in each Parish. That he verily believes he resided most Part of the latter Part of his Service, in Lanstephan, and lodged there the last Night; and from thence went to Lowess in the Morning, and took some Cattle of his Master's from thence to the Hay-Fair, where the Pauper finished his Service.

(8) Argument

Mr. Bearcroft argued for quashing this Order of Sessions; for that the Pauper’s Settlement was in Lanstephan.

Mr. Lewis argued in Support of it; and observed, that it is not positively alledged “that the Pauper lodged the last Night in Lanstephan:” He only verily believed that he did.

(9) Judgment

The Court held him to be last legally settled in Lanstephan.

(10) Ruling

Order of Sessions quashed.

(11) Comment

The servant’s settlement depends on where he sleeps the last night, provided he has served 40 days there in total. This can differ from the last place where the servant last performed work for the master. This issue does not arise in the other ’40 day rule’ cases as the servants in those cases last served where they last slept. However, the court’s approach in *Lowess* is arguably similar to *Feversham* where the place the servant slept also took precedence in determining settlement.

(12) Type

Liberal

(1) Case name

*R.* v. *Lowther*

(2) Date

Hilary Term 7 Geo 3

12 February 1771

(3) Report

Burr. S. C., p. 674.

(4) Court

King’s Bench

(5) Parties

Rex v. Inhabitants of Lowther

(6) Order sought

Quashing

(7) Facts

Tuesday Justices removed Catharine Nicholson, Single Woman, from Great Salkeld in the County of Cumberland, to Lowther in the County of Westmoreland: And the Sessions, upon an Appeal, confirm their Order ; subject to the Opinion of this Court upon the following Case. Special Case stated on the Order of Sessions. The Pauper, at the Age of 25, hired Herself as a Servant, with one William Thompson of Hackthorpe-Hall in the said Parish of Lowther, from Whitsuntide, as the Pauper believed, about four Years ago, to Martinmas ; and before the Expiration of that Term, hired Herself again to the said Thompson, at Hackthorpe, for the succeeding Half-year from the said Martinmas to the Whitsuntide following; and in pursuance of these Hirings, served the said William Thompson, at Hackthorpe aforesaid in the said Parish of Lowther, for the complete Year, viz. from Whitsuntide to Martinmas, and from the said Martinmas to Whitsuntide, without leaving her Service; and received the two Half-years Wages. That after such Service, the Pauper went upon a Visit to a Relation, who lived in the Parish of Great Salkeld; and being likely to become chargeable there, was removed to the Parish of Lowther, as her last legal Settlement; not having gained any subsequent One, nor having any other Settlement in the said Parish of Lowther. That the usual Custom of hiring Servants in Cumberland is from Half-year to Half-year. That it has been the invariable Practice of the Quarter-Sessions of Cumberland, as long as can be remembered, “ to adjudge, the said Hiring for two Successive Half-years, and Service in pursuance thereof for one whole Year with the same Person and in the same Place, should be a Settlement under the several Acts of Parliament made relating to the Settlement of the Poor. And the Court of Sessions being of Opinion “ that the said Catharine Nicholson gained a Settlement thereby, in the said Parish of Lowther”, doth order that the said Warrant of Removal be confirmed : And the same is hereby confirmed accordingly; Subject,

nevertheless, to the Determination of the Court of King’s Bench on the aforesaid State of the Case.

(8) Argument

Mr. Davenport had (on Monday next after 15 Days of St. Hilary in this Term) moved to quash both these Orders as here was no Hiring for a Year.

Mr. Wallace was to have now shewed Cause, on behalf of the Parish of Great Salkeld : But he candidly acknowledged that the Orders could not be supported 5 there being no Hiring for a Year.

(9) Judgment

The rule was made absolute for quashing the Original Order of Removal to Lowther, and also the Order of Sessions made in Confirmation of it.

(10) Ruling

Both Orders quashed.

(11) Comment

The court insists on the need for a yearly hiring, rejecting an apparent regional custom to treat two half-yearly hirings as equivalent to a single yearly one.

(12) Type

Restrictive

(1) Case name

*R.* v. *Lydd*

(2) Date

12 May 1824

(3) Report

2 B. & S. 754

(4) Court

King’s Bench

(5) Parties

The King against Inhabitants of Lydd

(6) Order sought

Quashing

(7) Facts

Upon appeal against an order of two justices for the removal of G. Goldsmith, his wife and children, from the parish of Lydd, in the county of Kent, to the parish of Thurnham in the same county; the sessions quashed the order, subject to the opinion of this Court on the following case: In the year 1810, the pauper gained a settlement by hiring and service in the parish of Thurnham. On the 26th or 27th of August, 1819, the pauper, being then unmarried and having no child, was hired to Mr. Fisher, in the parish of Midley, for three years at 20l. per annum, as looker and to spud thistles. (The duty of a looker ls to superintend the flocks and fences upon the lands of his employer, and he frequently has several masters, and works for any persons who may employ him adding as his time allows.) The pauper went into service of Mr. Fisher on the 26th of October, and was married on that day. He served Mr. Fisher for three years. He did not work for any person but Mr. Fisher for the first year and three quarters of his service, but at the expiration of that time he hired himself as looker to a Mr. Russell. During his service with Fisher, he did other work for him not belonging to his duty as looker, such as turning mould, lambing and shearing, for which he was always paid upon new and separate bargains on each occasion; and upon other occasions he did day-work as a labourer for Fisher, for which he was also paid by the day. At the time of the pauper’s contract with Fisher, nothing was said about his being at liberty to hire himself to, or work for other masters during the three years, but Fisher said he did not think he should have full employment for the pauper: he would employ him as far as he could. Whilst he was working for other people, his wife hoisted a signal by putting a flag out of the window, upon which he considered himself bound to quit his work and attend to his duty as looker to Fisher, for which he was originally hired; and he invariably returned to Fisher when so summoned, and never worked on any lands from whence the flag could not be seen during the whole of the three years. He was not, however, to do any work for Fisher, other than that for which he was originally hired as a looker, without receiving extra wages. His agreement with Russell was by the acre, and he bargained with him for a year at 141. During the whole of the three years he lived on Fisher’s land at Midley.

(8) Argument

Holland and Claridge in support of the order of sessions. The master was entitled to demand the service of the pauper so long as the species of service which he had contracted to do required his attention. Here was a contract for three years, and an actual service to Fisher during that time. But it may be said that he was not under Fisher’s control during the whole period. It appears, however, by the case that he never worked for any person but F. during the first year and three quarters. He therefore gained a settlement by that service. And when working for other persons during the latter part of the three years, he invariably returned to his duty as looker whenever his wife hoisted the flag. He was, therefore, under F.’s control during the whole time. The receipt of extra wages for extra work makes no difference, *Rex* v. *Harwick* (10 East, 489).

Berens contra. In order to confer a settlement by hiring and service, the contract must be such as to give the master the absolute control over the servant during the whole period of service. Here, from the very nature of the agreement, the master could never have had such a control, for the pauper was bound to serve so long only as the duties of looker required his attention, and for any other work he was paid extra. *Rex* v. *Edgmond* (3 B. & A. 107), is in point, and *Rex* v. *Polesworth* (ante, 715).

If the contract was for the whole year, there could be no necessity for making any new contract for extra work.

(9) Judgment

Abbott C.J. I am of opinion that there was not in this case any contract of hiring and service for one whole year. Here, the master had not the control over the servant for the entire year, but only for so much of the year as the duties of looker required his attention. At other times he was at liberty to employ himself in any manner he pleased, either in working for other persons or for his master, and when he worked for the latter he always received extra pay.

Bayley J. In order to gain a settlement by hiring and service there must be a contract for one whole year, and a service for the whole year. This is distinguishable from the cases cited, because here, from the very nature of the employment, it was not likely to fill up the whole time of the pauper. Scarcely ever more than a few hours each day would be required. It is very like the case of a person employed to attend, as an occasional servant, for the purpose of brushing clothes. The master has no control over the servant as soon as he has performed the required service, and that takes up but a small portion of his time.

Order of sessions quashed.

(10) Ruling

A pauper had been hired for three years at 20l. per annum as a looker. The duty of a looker is to superintend the flocks and fences of his employer. When he was hired, his master told him that he should not have full employment for him, but that he would employ him as much as he could. He was not to do any work for his master, other than that belonging to the office of looker, without receiving extra wages. During the first year and three quarters he worked for his master only, but was always paid extra for any work not belonging to his office of looker : Held, that there was not any hiring for a year, and that the pauper did not gain a settlement by service under such an hiring.

(11) Comment

The Court declines to find a settlement on the grounds that the employer did not promise to find work for the servant for the whole duration of the contract.

(12) Type

Restrictive

(1) Case name

*R.* v. *Lyth*

(2) Date

8 June 1793

(3) Report

5 Term Reports 327

(4) Court

King’s Bench

(5) Parties

The King versus the Inhabitants of Lyth

(6) Order sought

Quashing

(7) Facts

Two justices removed Thomas Carling from the township of Whitby to the township of Lyth, both in the county of York. The sessions on appeal confirmed the order, and stated the following case: On behalf of the respondents it was proved that the pauper was the legitimate son of W. and M. Carling, and was born in Lyth. On behalf of the appellants, in order to shew a derivative settlement in the pauper from his father in a third township, it was proved that W. Carling, before his marriage, was a few days after Michaelmas 1731 seen and known to be in the service of one M. Campion in the township of Barnby, in the said county, as a servant in husbandry ; and was from time to time seen and known to act in that capacity with M. Campion, at Barnby, for some time, upwards of a year. Evidence was then offered on behalf of the appellants, to prove that M. Campion, who is long since dead, had declared in his life-time that W. Carling had been hired with him for a year: but the Court were of opinion that such evidence was not admissible. It was then also proposed to give evidence of declarations to the same effect by W. Carling, who is also dead, touching such hiring; but the Court also refused to admit such evidence. Whereupon the Court, being of opinion that there was no evidence of an hiring for a year, confirmed the order, subject to the opinion of this Court upon the propriety of rejecting the evidence above offered of the declarations of M. Campion and W. Carling; and also whether, after rejecting such declarations they had done right in refusing to infer the hiring from the fact of service proved as above stated.

(8) Argument

When this case was called in the paper, Lord Kenyon, addressing himself to the counsel who were to argue it, said that the case was drawn up in too loose a manner for the Court to give any solemn judgment upon it: for in some parts of it, evidence was stated instead of facts; and the Court were left to draw inferences which the magistrates below ought to have done. But that if the sessions wished to know whether, from the evidence stated relative to the hiring of W. Carling, they were at

liberty to draw the conclusion of his having been hired for a year in fact, the Court had no hesitation in thinking that they might legally draw such an inference. He therefore thought that this advice of the Court might be given to the magistrates without the necessity of entering any regular judgment upon this case as it now stood, or putting the parties to the expense of stating the case again.

Wood, in support of the orders, shortly stated, that it had been always understood, that in order to prove a settlement by hiring and service, it was essentially necessary to prove a contract between the parties, and that such contract could not be inferred merely from the act of service, which was the only evidence in this case. That this was so held in *Gregory Stoke* v. *Pitminster* (*a*)1, where the pauper “served her grandmother four years on an allowance of meat, drink, washing, and lodging;” yet the Court held, that as there was no contract, no settlement could be gained. But if this sort of evidence were sufficient in the case cited, and a variety of others to the same effect, settlement might have been gained by merely proving the act of service for the year.

Chambre, contra, mentioned a case between *The Parishes of Crowland and St. John the Baptist* (*b*), where, in answer to an objection that it did not appear on the face of the order that the pauper was hired for a year in St. John’s, it only being stated that he was last legally settled there, “ having served there one whole year with one J. D.,” the Court said, “It was said, he was last settled there. The justices need not allege how he was settled there. And it being said he served a year, the law presumes he was hired for a year.”

(*a*)1 2 Sess. Cas., 120

(*b*) 19 Vin. Abr. 399, n. 2.

(9) Judgment

Lord Kenyon, Ch.J.—In *R*. v. *Pitminster* it appears that the pauper was taken out of charity; and therefore the presumption of an hiring was taken away. But this is the case of a servant in husbandry; whose service for a year affords very strong presumptive evidence of an hiring for a year (*a*)2. But however strong that presumption is, as only the evidence of the hiring is stated, and not the fact itself, we cannot decide upon the case; though the justices at the sessions must be directed to draw the conclusion, that W. Carling was hired for a year, from this evidence.

Buller, J.—In *R.* v. *Pitminster* the presumption of an hiring was rebutted by the peculiar circumstances of the case, but there is nothing of that kind here.

The Court ordered the case to be sent back to the sessions.

(*a*)2 Vide *R.* v. *The Holy Trinity, in Wareham*, Cald. 141 ; and *R.* v. *St. Matthew, Ipswich*. Per Lord Kenyon, ante, 3 vol. 451.

(10) Ruling

If a husband-man serve for a year, it is strong presumptive evidence that he served under a yearly hiring (*a*).

(*a*) See *R.* v. *Long Whatton*, post, 447, S.P.

(11) Comment

This is a flexible ruling in the course of which the court states that serving for a year creates a strong presumption that the service was done in connection with a yearly hiring; that is, the contract can be inferred from the practice of the work. This is not the approach taken in several earlier decisions. The court distinguished the earlier cases by reference to the nature of the work done; a presumption of a contract could be made in the case of a servant in husbandry, that is, working in agriculture.

(12) Type

Liberal.

(1) Case name

*R.* v. *Macclesfield*

(2) Date

22 April 1758

(3) Report

Burr. S.C. 458

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Macclesfield

(6) Order sought

Quashing

(7) Facts

Two Justices removed Joseph Bower, an Infant of eleven Years of Age, from Macclesfield to Sutton (both in Cheshire;) But the Sessions, upon an Appeal from this Order, discharged it.

The special Case stated was this—The said Pauper Joseph Bower was a Bastard-Child, born in Sutton, and maintained by the Overseers of Sutton.

When he was about the Age of eight Years, he was, without the Knowledge or Consent of the Overseers of Sutton, hired to one John Swain of Macclesfield, to work in his Silk-Mill there, for the Term of three Years; at 6d. a Week, for the first Year; 9d. a Week, for the second Year; and 13d. a Week, for the third Year : And the said Contract was made (as well with the Consent and Direction of the Mother of the said Pauper, as with his own free Will,) by a Person whom the Mother employed for that Purpose; she not being able to stir about, herself, or to do any Thing towards maintaining the said Pauper. The Master, John Swain, was not to find the said Pauper either Diet or Lodging : And the said Service was to be only eleven hours in the six Working-days ; and all the Rest of the Time, as well as on Sundays, the ’said Pauper was at his own Liberty and his own Master.

The Pauper continued three Years in the said Service; but within that Time, frequently absented himself from his Work; sometimes; for a whole Day or longer'; and at other Times, for several Hours in the Day; For all which Defaults, Deductions were made out of his Wages, in Proportion to the Time lost: But there was never any new or other Agreement made, save as aforesaid.

That during the said whole three Years, the said Pauper lodged with his Mother in Macclesfield; Who received his Wages: And the same not being sufficient to maintain him, and the Mother being un-

able to work, the Overseers of Sutton contributed 6d. a Week, during the whole time, towards his Maintenance.

That about, or soon after the Expiration of the said three Years, the Mother died ; And the said Pauper (being ill) required Relief from the Overseers of the Poor of Macclesfield; Who, thereupon, applied for the Order to remove him from their Township of Macclesfield to that of Sutton.

The Sessions declare their Opinion, “That this Settlement is in the said Borough and Township of Macclesfield:” And therefore they repeal and make void the said Original Order; and give 15s. 6d. Costs, to the Overseers of Sutton.

The Rule to shew Cause why this Order of Sessions should not he quashed, was made so long before, as in Hilary Term 30 G. 2. And had been enlarged for four Terms successively.

(8) Argument

Caused was now shewn.

Mr. Norton, who was for quashing this Order of Sessions, argued that the Settlement was in Sutton, and not in Macclesfield: For that the Facts stated could not be construed to amount to a Hiring for a

Year and Serving for a Year, within the Meaning or Intention of the Act of Parliament.

Mr. Yates, contra, argued that it was. See the Statutes of 3 & 4 W. & M. c. 1 J. Sect. 7; And 8 & 9 W. 3. c. 30. Sect. 4: Which give a Settlement by being hired and serving for a Year.

He cited the Case of *Rex v. White Chapel*, P. 11 G. 1. 1725; and *Rex v. Inhabitants of King's Norton* \*, B. R. P. & Tr. 1740 ; and *Rex v. Inhabitants of Wrinton* *alias Wrington*. M. 22 G. 2. B. R

\*V. ante, Vol.1 pa.. 152, No 52.

(9) Judgment

The Court held clearly with Mr. Norton.

Lord Mansfield premised that there was no Foundation on this State of the Case, to imagine that it could be a Settlement upon the Ground of an Apprenticeship: The only Question is “ Whether these Facts stated, amount to a Settlement in Macclesfield, as ‘a Hiring for a Year and Service for a Year’."

The Pauper was an Infant of only Eight Years of Age, at the Time of the Hiring: Therefore he was not bound by the Agreement. Indeed he might have affirmed it; (For the Contract of an Infant is not absolutely void, but only voidable, at his || own Election :) But the Master could not oblige him to stand to it.

Then as to the Contract itself—It was only “ To serve 11 Hours in the Day, of the Six Working-Days: But during all the rest of those Days, and the whole Sunday, the Servant was to be at his own Liberty and his own Master.” It is in the Nature of a Contract from Week to Week; And it cannot, in this Case, be construed to gain a Settlement, unless it had been intended that it should: Whereas it is plain that the Parish of Sutton have not understood it in that Light, as a Contract to change the Child’s Settlement ; because they have contributed towards it’s Maintenance during the whole 31 Years.

Upon the whole, therefore, this Pauper’s Settlement is clearly in Sutton.

Mr. Justice Foster concurred. He said He could not distinguish this Case from that of Chew-Stoke \*.

A Service sufficient to gain a Settlement, must be such a State, during the whole Time. Whereas this was not a Servitude during all the time, or was to at his own Liberty and his own Master during the greatest Part of every Day, and every whole Sunday. Consequently, this Person was not at all in a State of Servitude, at those excepted Times. And therefore this is not such a Service as is intended by the Act.

Mr. Justice Wilmot also concurred. The Servant’s Lodging in his Mother’s House, would have made no Difference, he said; Provided the Hiring and Service had been in all other Respects good; But here, the Infant was not bound. For an Infant has Power, either to avoid, or to confirm his Contract: And so it was determined in the Case of *Holt v. Ward*, Trin. 1732, B. R.

Then, As to the Contract itself----This is not such a Hiring and Service as will gain a Settlement within the Act of 3 & 4 W. & M. c. 11. fe5l. 7. For that Act intends only such Services, where the Servant is under the Command and Control of the Master, during the whole Year: Which this Servant was not to be; but seems only to have been hired for the particular Purpose of working-in these Silk-Mills, at certain Hours. He was not in a continued and abiding State of Servitude, during the whole Year : And therefore He did not gain a Settlement in the Burrough and Township of Macclesfeld. Consequently, the Sessions have determined wrong.

Mr. Justice Denison was absent.

|| This Doctrine was settled and established in the Case of *Holt v Ward,* B.R. Mich. 1732, 6F..2.

\*M. 1748, 22G.2. Cited before, by Mr. Yates, by the Name of *Rex v Inhabitants of Wrinton alias Wrington.*

(10) Ruling

Per Cur. unanimously —

Order of Sessions quashed:

Original Order affirmed.

(11) Comment

The court takes a strict view towards the requirement of “a continued and abiding state of servitude”, finding that a contract to work only for certain hours does not suffice. The judges also take into consideration that the servant was a child and his contract was voidable, as well as the continued maintenance payments he received from the Overseers of Sutton. However, the scope of the principle doesn’t seem to be confined to child servants, as the court in *R. v. North Nibbley* later applied it to an adult servant

(12) Type

Restrictive

(1) Case name

*R.* v. *Macclesfield*

(2) Date

4 February 1789

(3) Report

3 Term Reports 75

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Macclesfield

(6) Order sought

Quashing

(7) Facts

George Dean, Hannah his wife, and John, William, Sarah, and Mary, their children, were removed by an order of two justices, from Macclesfield to Wildboarclough, both in the county of Chester : on an appeal, the Court of Sessions vacated so much of the order as relates to the settlement of George Dean, Hannah his wife, and William, Sarah, and Mary, their children, subject to the opinion of this Court on the following case. The pauper, George Dean, being settled in Wildboarclough, was hired about fifteen years ago by Francis Besweck, late of Macclesfield, button-maker, for 11 months at 10 guineas wages. At the end of 11 months, the master and the pauper settled his wages for 11 months, and his master gave half-a-guinea over, saying that he had been a good servant, and added, “ You may as well stay on an end in your place; the place suits you, and you suit the place.” The pauper’s answer was, “Very well, sir, I have no objection.” And the pauper continued to follow his master’s business near three years. The pauper, being at Birmingham with his master’s cart, was taken ill, and stayed there some time, which occasioned him to lose his service. His master used to give him money occasionally during his service; but the pauper kept no account himself. A few days after the pauper’s return from Birmingham, his master settled with him ; the pauper did not know in what manner, but supposed the money was right; he thought his wages would come to about four shillings a week. It did not appear to the Court that the pauper or any of his children (except John) had gained any settlement in any other place.

(8) Argument

Leycester, in support of the order of sessions, was stopped by the Court. Bower and Manley, contra. The question is, whether this was a continuation of a limited hiring, or a general independent hiring? They admitted, that if it were the latter, it would be equal to a hiring for a year : but contended, that such an hiring could not be collected from the case; for then there was no contract for wages. This therefore must be taken to be a continuation of a limited hiring. The case states, that the pauper was hired for 11 months at the specific wages of 10 guineas ; after the expiration of which time the master told the servant “ he might as well stay on an end in his place.” Now this renewal of the agreement must have reference to the original contract, and then the pauper was hired for another 11 months for 10 guineas more. But it cannot be inferred from the second agreement, that the pauper was hired generally to serve at the same rate of wages which he had before received. This is not like the case of *R.* v. *Berwick, St. John’s* (*a*)1, where the pauper was told to go “into Ned Hill’s place;” for there, by a reference to Hill’s contract, it appeared that he served under a yearly hiring. But it is more like the case of *R.* v. *Clare* (*b*), where a pauper who was originally hired for a month, continued in the same service for five years, and yet gained no settlement by it.

(*a*)1 Burr. S.C. 502.

(*b*) Burr. S.C. 819.

(9) Judgment

Lord Kenyon, Ch.J.—It is clear that there must either be an express or an implied contract for a year, in order to give the servant a settlement. An express hiring for 11 months will not confer a settlement, unless the sessions find that it was fraudulent, and that a year’s service was intended, though only 11 months were expressed ; as in a case(*c*), which I remember, where there was an hiring for 11 months, with an agreement to give in another month’s service. Now in this case, the first hiring for 11 months was not sufficient to confer a settlement: but when that time was elapsed, the master told the pauper that he might as well stay on an end ; which in that part of the country means an indefinite time. This second hiring therefore must be considered as a general hiring, which the law construes to be an hiring for a year. As to this expression referring to the time for which the pauper was originally hired, it is too refined ; it only referred to the nature of the service in which he was before engaged. Then if we consider the wages for which the pauper served under the second agreement, it negatives the idea that the parties contracted for another 11 months for the same definite sura which the pauper received under the first agreement; for it is stated that he received about four shillings per week, which does not amount to the same apportionment of wages.

Ashhurst, J. and Grose, J.(*a*)2—concurring,

Order of sessions confirmed.

(*c*) *R.* v. *Milwich*, Burr S.C. 433.

(*a*)2 Mr. Justice Buller was sitting for the Lord Chancellor.

(10) Ruling

Where the servant had been hired for 11 months for 10 guineas, and at the expiration of which the master told him “ he might stay on an end,” without mentioning the wages, to which the servant assented ; the second agreement was held to be a general hiring, and the party serving a year under it gained a settlement.

(11) Comment

A flexible judgment in which the court infers a yearly hiring from the fact of service for a year.

(12) Type

Liberal

(1) Case name

*R*. v. *Madington*

(2) Date

12 February 1771

(3) Report

Burr S.C. 675

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Madington

(6) Order sought

Quashing

(7) Facts

Two Justices removed Robert Carter from Madington in Wiltshire, to the Parish of Wilsford and Lake in the same County. The Sessions upon an Appeal, quash their Order; stating the Case specially.

The Special Case dated upon the Order of Sessions, was this—

The said Robert Carter, the Pauper, being before settled at Madington, was about eight Years ago hired, three Weeks before Michaelmas, to Richard Chandler of Wilsford and Lake, to serve Him as a Carter, for a Year, from Michaelmas then next. About three Days after Michaelmas, he entered on his Service with Chandler, and continued in the same till about three Weeks before the next Michaelmas, when, having been kicked by one of his Master’s Horses, he went home to his Friends at Shrewton, about five Miles distant, without his Master’s Knowledge or asking his Leave, to cure his Leg ; and continued there during the Remainder of the Year, and never returned to his Master, except for his Wages, some short Time after Michaelmas when he was paid the Whole, except six Shillings, which the Master deduced on account of the said Absence ; which the Pauper consented to. This Court [the Sessions] doth therefore quash the said Order.

(8) Argument

Mr. Head had moved (on Saturday next after the Octave of St. Hilary, in this Term,) to quash this Order of Sessions; and had a Rule to shew Cause.

Mr. Dunning and Mr. Widmore now shewed Cause, on behalf of the Parish of Wilsford and Lake and contended, that the Pauper did not gain any Settlement there. They argued, that this was a Desertion of the Service. It does not appear that it was necessary for him to go Home ; or that he could not return again ; or that he was disabled by this Kick, from being able to perform his Service, at least in some Degree ; or that the Master knew where he was. And nothing shall be presumed, that it is not stated : It shall rather be presumed, that the Sessions have acted rightly. He could not have maintained an Action for the whole Year’s Wages : For he did not serve it.

They mentioned the *Case of Christchurch*, relating to Mr. Lemonier's Servant, and also the Case of *Iflip* ; and endeavoured to distinguish this Case from them. The former may be seen, ante, No 158. pa. 494. and the latter is therein cited. In the former Case, they observed, that the Master knew of the Absence, and assented to it : In the latter Case, there was an inhuman Refusal of a reasonable Request.

Mr. Serjeant Burland and Mr. Morris urged, on behalf of the Parish of Madington, that the Pauper gained a Settlement by serving as is here stated. He was disabled by a Kick from his Master’s Horse. The Master was obliged to take Care of Him. The Pauper did not desert his Master’s Service : He went Home, only to be cured ; which imports an Animus redcundi, when he should be cured. He had a good Reason for going to his Friends : and it shall be presumed, that the same Reason continued, and prevented his Return. The Master ought not to have deduced the six Shillings.

In both the Cases that have been mentioned, Settlements were gained : and there is no Difference between the Beginning, Middle, or End of the Year, in the Case of Sickness.

(9) Judgment

Lord Mansfield was gone.

The other three Judges were of Opinion, that the Servant gained a Settlement by the Service here dated: And they thought it to be within the Reason of the Determination of the *Iflip* Case. Here, the Cause of his going home to his Friends clearly and fully appears to have been, to cure his Leg, which had been hurt in his Master's Service and by a Kick from his Matter's Horse. This was a reasonable Cause of Absence : It did not dissolve the Contract, nor hinder his gaining a Settlement. The Abatement of Part of his Wages was unreasonable : The Matter ought not to have deducted any thing upon this Account. It was not like Running away or Desertion of his Service. It is diffidently stated, that his going was grounded upon a reasonable Cause, “to get cured of his Hurt.” It is not indeed precisely stated, that it was absolutely necessary for Him to go Home to his Friends for this Purpose, or to continue with them so long as he did. But the Justices had the whole Evidence before them ; and if it had been otherwise, they would probably have stated it. Here was no Fraud. We should lean in favour of Settlements. Upon the Whole, it seems to be a sufficient Excuse, and within the Principle of the *Iflip* Case.

(10) Ruling

Order of Sessions quashed :

Original Order affirmed,

V. post, No 215. *Rex. v. Inhabitants of Ross*.

(11) Comment

The court takes a liberal view towards absences where the servant is injured in his master’s service and takes leave to cure his hurt. Cure for injury is a reasonable cause of absence and will not defeat a settlement, and the absence will not reduce the servant’s wages. Furthermore, the court makes the general comment that it will lean ‘in favour of granting settlements’. This contrasts with the later case of *Whittlebury* (1795) where the court finds that absence due to sickness will defeat a settlement.

(12) Type

Liberal

(1) Case name

*R.* v. *Maidstone*

(2) Date

4 July 1810

(3) Report

12 East 550

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Maidstone

(6) Order sought

Quashing

(7) Facts

Two justices by their order removed Ann the wife of George Langridge, who had deserted her, and Elizabeth aged 9 years, Frances aged 2 years, and an infant male child not baptized, aged about 3 months, her children, from Maidstone to Thurnham, in Kent: the sessions on appeal quashed the order, subject to the opinion of this Court on a case, which stated that the order of removal made was dated the 13th of August 1808. That George Langridge, the husband of the pauper, previous to

Michaelmas 1797, was a settled inhabitant of Bletchingly in Surry, and at Michaelmas 1797 hired himself at the wages of 12 guineas for a year to S. Tomkin of Thurnham to serve him as a waggoner ; and entered upon his said service, and continued in it till the 8th of October 1798, on which day he was married to the pauper, and his master consented to his leaving his service, and paid him his wages. A few shillings were deducted by his master for the loss of a skid chain of a waggon, and for the wages of a labourer who was employed in the place of Langridge for one day during his absence at an early period of the said service; but nothing was subtracted from his wages on account of leaving his master on the 8th of October. Langridge on the following day, the 9th of October, hired himself to and went into the service of one Stone. Michaelmas Day fell on the 10th of October in the years 1797 and 1798. In 1803 Langridge entered into the Sussex Militia, and having afterwards volunteered into the 35th Regiment, embarked for Sicily in April 1806, where he remained till he returned to England on the 4th January 1808. Elizabeth, named in the order, was born on the 9th of January 1806 ; and the child, not yet baptized, was born in the parish of Maidstone on the 5th of May 1808. While the pauper’s husband was thus absent with the regiment, the parish of Thurnham frequently paid her money for the support of her child, though she was resident during all the time either in Maidstone, (where the child was at nurse,) or in other parishes, but not in Thurnham. The maiden settlement of the pauper was in Thurnham. It was also agreed upon the argument to be added as a fact to the case, that Ann Langridge, the wife, continued in England all the time that her husband was abroad with his regiment. And thereupon the Court all agreed that the youngest child must be taken to be a bastard ; and was therefore settled in the place of its birth ; though for the present it must go with the mother for nurture.

(8) Argument

Gurney then contended, in support of the order of sessions, that the husband of the pauper Ann did not gain a settlement in Thurnham by the hiring and service stated; for in fact he served one day short of the year, having been hired on Michaelmas Day the 10th of October 1797, and having quitted the service on the 8th of October 1798, Michaelmas Day being on the 10th ; and there was no dispensation of the service for the remainder of the year, but a dissolution of the contract, on occasion of the marriage of the pauper. There having been no deduction made, on account of the loss of the one day's service, in the payment of the wages, makes no difference in the case, according to *Rex* v. *Castlechurch*; for it is not only stated that the master consented to Langridge leaving his service on the 8th; which is the common mode of describing a dissolution of the relation of master and servant; but the man on the 9th contracted with a different master, which was inconsistent with his former contract. He also referred to *Rex* v. *St. Peter of Mancroft in Norwich*, and *Rex* v. *Sudbrook*, as supporting the conclusion that this was a dissolution of the contract.

Berens and Boiland, contra, contended, that the facts stated only shewed a dispensation of the service by the master upon occasion of the marriage of his servant; and the subsequent act of the servant, in hiring himself to another on the last day of the year, could not convert the prior act of the master into a dissolution of the contract. They referred to *Rex* v. *Bray*, *Rex* v. *Potter Higham*, and *Rex* v. *Richmond*. In the latter case the wife of the servant leaving the service 13 days before the end of her husband’s year, the master asked him whether he should not like to go too; to which the man assented, received his whole year’s wages, and’ went away: and this was held to confer a settlement. [Lord Ellenborough C. J. This case states expressly that the master consented to the servant leaving his service: and how, upon that statement, can we say that this was a mere dispensation of the service? If this opinion contradict the case of *The King* v. *Richmond*, which I do not mean to say that it does, I cannot help it: the statute, and the constructions which have been put on it, all concur in requiring that the relation of master and servant should continue for the whole year.] They admitted the critical force of these words as stated in the case; but said that that was not the meaning of the parties in drawing it up. They then adverted to the relief stated to have been given by the parish of Thurnham to the pauper for her child while she resided in Maidstone, as evidence of their acknowledgment of her settlement in Thurnham independently of the other facts stated.

(9) Judgment

But Lord Ellenborough C.J. said, that however in the absence of all other circumstances, such as those stated in this case, the inference of a settlement in the parish might be drawn from the fact of such relief; yet here no such inference was wanted to be made, the Court having all the facts before them of the hiring and service which was the foundation of the supposed settlement. The giving that relief amounts to more than shewing the opinion of the parish upon these facts, that the pauper was settled with them. His Lordship then continued— This was clearly a case of dissolution of the contract of hiring; and when the Legislature has given us a rule to go by, it is better to abide by that. I should have been sorry in any case to have originated the question of dispensation of service; but

it has been established to a certain extent by the decisions, and so far let it stand; but I will not extend it further. Here, however, there is no authority right or wrong for extending it; for it is stated that the master consented to his servant’s leaving his service, and I know not in what stronger terms a servant could answer in a plea to an action by the master against him for deserting his service : the master would undoubtedly be bound by such a plea, and would not venture to demur it. Then, though the opinion of the parties is not to be pressed, yet their acts are material, upon the question of dispensation or dissolution ; and here it is stated that after Langridge had left his first master’s service on the 8th, he went on the following day, which was the day before Michaelmas-Day, and hired himself into the service of a new master. Here then we have an express renunciation on the part of the master of his rights over the servant two days before the end of the year; and the servant’s assent to this, signified by his departure from the service, and contracting the next day an

obligation to another master, into whose service he entered immediately, subject to all the rights of the new master, over his service. How then can I say in the words of the Statute of William, that there was a continuing and abiding by the servant in the same service during the space of one whole year, when it appears that that period of service was abridged by the two last days of the year. It would, I think be contravening the clear commands of the Legislature, if we did not hold this to be a

dissolution of the contract.

Grose J. In two of the cases cited by the respondent's counsel, the whole year’s wages were indeed paid ; but here the servant, acting upon his master's consent that he should leave his service, entered into a new contract with a new master.

Le Blanc J. Upon the facts of the case as it appeared at the sessions, I think they would have been well founded in finding as a fact that this was a dispensation of the service on the part of the master, and not a dissolution of the contract; for according to the cases, it is always a question for the sessions to decide, whether the consent of the master to the servant's leaving his service a few days before the end of the year for a particular purpose, but paying him his whole year’s wages, be a

dispensation of the service for the remainder of the year, or a dissolution of the contract. Here the servant wanted to marry, and one entire day before the end of the year the master gave him leave to marry and go away from his service. It was a fair and reasonable conclusion to draw, that if the servant wished to go away one day before the end of his service for the purpose of marrying, the master would have no objection to dispense with his service and give him a holiday for that one day ; for it must be observed, that the service would have ended on the 9th, and the servant left his master’s service on the 8th. But the sessions not choosing to draw this conclusion themselves, which I think they might have done, send the case to us upon the dry facts stated, and have not found that the master did consent to give his servant a holiday and to dispense with his service for the remaining day of the year; but merely state as a fact that the master consented to his leaving his service. Under these circumstances I cannot say that the sessions have done wrong in quashing the

order of removal to Thurnham; though I think they might have drawn a different conclusion from the facts of the case.

Bayley J. It appears to me that the sessions have done right in quashing the order of removal as they have done. In order to constitute a case of dispensation of service, I think the master should have power to recall the servant to his service all through the year: but where the master agrees generally to let the servant go away from his service without reserving to himself the right of recalling him throughout the whole year, I think that puts an end to the contract of service altogether.

Order of sessions confirmed.

(10) Ruling

The sessions stated the facts, that the pauper was hired on Michaelmas-Day, 10th of October 1797, for a year ending on Michaelmas-Day, 10th October 1798; that he continued to serve till the 8th of October, when he married, and his master consented to his leaving his service, and paid him his full wages; and on the 9th the pauper hired himself to and went into the service of another master: Held by one Judge that these facts would have warranted the sessions in drawing a conclusion of fact that the master dispensed with the service for the remaining day of the year; but the sessions having impliedly drawn a different conclusion by quashing the order of removal, all the Court held that the case, as stated, shewed a dissolution of the contract before the end of the year, and consequently that no settlement could be gained by such hiring and service. The husband being found to have gone beyond seas above two years before the birth of a child borne by his wife, she remaining at home, the conclusion is irresistible that such child is a bastard.

(11) Comment

The Court declines to find a dispensation in a case where the servant quit a day early, with the master’s permission, in order to get married.

(12) Type

Restrictive

(1) Case name

*R.* v. *Market Bosworth*

(2) Date

1824

(3) Report

2 B. & C. 757

(4) Court

King’s Bench

(5) Parties

The King versus the Inhabitants of Market Bosworth

(6) Order sought

Quashing

(7) Facts

Upon an appeal against an order of two justices for the removal of Hannah Stain, single woman, from the parish of Fleckney, in the county of Leicester, to the parish of Market Bosworth in the same county ; the sessions confirmed the order subject to the opinion of this Court on the following case :

The pauper was hired by, and lived with, Mrs. W. in the parish of Market Bosworth, from Shrove Tuesday, 1821, until Old Michaelmas-Day following. Three weeks before the last-mentioned day, Mrs. W. asked the pauper “ to stay again,” to which she replied, that she had no objection if they could agree about wages ; they agree for 31. 10s., and one shilling earnest was paid. At the hiring, nothing was said as to the time for which the pauper was to serve. There was no interval between the first and second service. A fortnight before Old Michaelmas her mistress said to her, “Hannah, I have [758] hired you, but mentioned no time, remember you are hired for fifty-one weeks.” To this the pauper said, “Very well.” The pauper lived with Mrs. W. until Old Michaelmas-Day, 1822. She asked to have her week just before Christmas. Mrs. W. said, “You shall have three or four days now, I cannot spare you the whole week.” She staid away three successive days and nights then, and had the other four days at different times during the year, returning on each of them to sleep at her mistress’s, and her mistress gave her two or three holidays besides. She never was absent without her mistress’s permission, and always returned into the service, and at the end of the year received her wages.

(8) Argument

The case was argued by Reader, Hilliard, and Humfrey, in support of the order of sessions, and Marriott and Fynes Clinton, contra.

(9) Judgment

Bayley J.(a). The question in this case ought to have been decided by the Court of Quarter Sessions, but inasmuch as great expense has been incurred, we will pronounce our judgment upon the facts stated in the case. And I am of opinion that a settlement was gained in Market Bosworth. It appears, that three weeks before Old Michaelmas, the mistress asked the pauper to stay again, to which she replied, that she had no objection if they could agree about wages; they did agree for 31. 10s.,

and one shilling earnest was paid. Now it is quite clear that that constituted a general hiring for a year, and the question is, whether the subsequent conversation between the mistress and the servant amounted to an alteration of the original bargain, so as to convert that which had been a hiring for a year into a hiring for fifty-one weeks only, or whether it was a dispensation by the mistress with one week’s service. Now it is laid down in Mr. Nolan’s treatise on the Poor Laws (vol. I

297), that where the absence of the servant takes place on the master’s account and at his request, the Courts have been inclined to infer a dispensation, inasmuch as the absence originates with him in whom the power of dispensation is vested, and is only acquiesced in by the servant. Now, apply that rule to the present case. There having been a general hiring for a year, the mistress afterwards states to the servant that she had hired her, but that she had mentioned no time, and desires her to remember that she was hired for fifty-one weeks. The servant made no overture to the mistress for a change of the original agreement. According to the above rule, therefore, this ought to be construed to be a dispensation: the mistress acknowledges that there had been a hiring, and if she intended to explain the original agreement, her explanation of it was false; for in the first instance, there is a hiring for a year at an entire sum of 31. 10s., and there is no stipulation afterwards that the pauper

was to be paid wages for fifty-one weeks, at the rate of 3l. 10s. for the whole year. I think, therefore, that there was no alteration of the original bargain, but that there was a dispensation with the service of the pauper for one week, and I think that the sessions were warranted in considering this either a case of dispensation or of fraud. I cannot distinguish this case from that of *The King* v. *Sulgrave* (2 T. R. 376). There the pauper was hired in February to serve till Old Michaelmas. On the Friday before Old Michaelmas, his master asked him if he would stay again, the pauper said he would if they could agree about wages, and asked five guineas, which the master thought too much. Afterwards the master said he would give him five guineas, and he gave him one shilling in earnest; but while he was putting his hand in his pocket for the shilling, he said you shall go away a fortnight before Michaelmas because of your settlement, and that he would give him that time to get what he could, to which the servant assented. It was held that this was a mere dispensation with the service

for that time, and not such an exception out of the original contract as would make the hiring insufficient for the purpose of gaining a settlement; and Ashhurst J., in delivering his judgment, said, “That the contract was complete before anything was said relative to the fortnight’s absence; and that this was a dispensation with the service, and not an exception out of the original contract. An exception is a stipulation on the part of the person for whose benefit it is introduced, but here it was not made at the request of the servant, but on the offer of the master.” Upon the authority of that case, as well as upon general principles, I am of opinion that the sessions were warranted upon these facts, in coming to the conclusion that there was a hiring for a year; and that there was no exception in the contract of hiring, but a mere dispensation by the mistress with one week’s service : and I think, therefore, that the order of sessions ought to be confirmed.

Order of sessions confirmed.

(10) Ruling

A pauper was hired to serve for part of a year. Three weeks before the expiration of the period of service, the mistress asked the pauper to stay again. The pauper replied that she had no objection if they could agree about wages. They did agree for 3l. 10s., and Is. earnest was paid; nothing was then said as to the time for which the pauper was to serve, but a week afterwards, the mistress said to

the pauper, “I have hired you, but mentioned no time; remember that you are hired for fifty-one weeks,” to which the pauper assented: Held, that this was a good hiring for a year.

(11) Comment

The Court finds a dispensation rather than an exception in a case where the master purported to employ the servant for 51 weeks only.

(12) Type

Liberal

(1) Case name

*R.* v. *Marlborough*

(2) Date

1700

Trinity Term, 12th year of King William the Third

(3) Report

12 Mod 403

(4) Court

King’s Bench

(5) Parties

The King against The Inhabitants of Marlborough

(6) Order sought

Quashing (removal of an order of the justices)

(7) Facts

Certiorari was to the justices at sessions to send up what orders they had before them ; and hereupon an order of two justices for the removal of a servant-maid, who was got with child within the year in her service, was certified, without shewing how it came there.

(8) Argument

None stated.

(9) Judgment

And per Curiam, first, the order is well removed; for when two justices make an order, it is very proper for them to certify it to the sessions, and when they do so the sessions are legally possessed [403] of it, and it may be well removed from thence hither (a).

Secondly, if one hire a maid for a year, and before the year’s end she is got with child, she shall not for that be removed, but shall serve out her time(i); there shall be a year’s continual service to make a legal settlement for the charging of a parish ; but till the year be out none shall disturb the party from serving. And since she is not removable within the year, if she leave her master without his consent, she may be sent back to her service; but then it is to serve her time, but not a charge to the parish (c).

(10) Ruling

Two justices, when they make an order, ought to certify it to the sessions.—S. P. ante, 376. A servant-maid may be removed from her service on account of being with child. S. C. Comb. 354. S. C. 1 Sess. Cases, 298. S. C. Const P. L.

(11) Comment

The court finds that pregnancy is not a reason for dismissing a servant. Note: the ruling here does not seem to match the judgment – the ruling says the servant may be removed but the court said that “she is not removeable within the year”.

(12) Type

Liberal

(1) Case name

*R.* v. *Martham*

(2) Date

4 February 1801

(3) Report

1 East 239

(4) Court

King’s Bench

(5) Parties

The King against The Inhabitants of Martham

(6) Order sought

Quashing

(7) Facts

Two justices removed E. Green, Mary his wife, and their six children by name, from the parish of St. Paul in the City of Norwich to that of Martham in Norfolk. The sessions on appeal confirmed the order, and stated the following case for the opinion of this Court.

The pauper E. Green was legally settled at Martham, where he worked as a labourer with his father who was a bricklayer there. In 1782, being then 17 or 18 years of age, he came to the parish of St. Paul in Norwich, and worked as a labourer with Chadley a bricklayer for about six months, when by an agreement made by the pauper’s uncles J. and F. Littleboy he was clubbed to his said master for three years at the wages of 7 shillings per week for the first year, 8 shillings for the second, and 9 shillings for the third, to learn the trade of a bricklayer, and to do any other work his master might set him about. The above wages were the usual wages of a bricklayer at that time. The pauper was to board, lodge, and wash for himself; and if prevented at any time from working by badness of weather, illness, or from his master not having employment for him, a proportionable deduction was to be made from his week’s wages for such loss of time. Occasional deductions of a day or two’s labour were made. The pauper sometimes drove his master’s cart employed in his business, and sometimes drove his mistress an airing. [240] Whenever he was employed by his master either as a bricklayer or as above stated, no deduction was made from his wages. He continued three years in the employment of his master under the preceding contract. From these circumstances the sessions considered this as a contract of apprenticeship between the parties, and confirmed the order.

(8) Argument

When this case was called on, the Court asked the counsel in support of the order whether it were possible to distinguish this from the case of *R. v. Cottishall* (a), where a settlement was gained by serving under such a hiring.

Wilson and Marsh attempted to distinguish the cases by observing that here was a stipulation in the contract, that in case of illness, bad weather, or want of employment, the pauper was to have no wages : whereas to enable one to gain a settlement by hiring and service, the contract must continue during the whole year. But the necessary construction of this agreement must be, that if the master had no employment for the pauper, or the weather were too bad to admit of his usual work, in which cases he was to have no wages, he should be at liberty to work for any other master. But

(a) 5 Term Rep 193.

(9) Judgment

The Court thought that this did not sufficiently vary this case from the former; and that if they drew such refined distinctions they should leave the justices below without any rule to guide their determinations.

Both orders quashed.

Alderson was to have argued contra.

(10) Ruling

A. clubbed with B. (which signifies serving another for the purpose of learning a trade) for three years at a certain rate of weekly wages, with a proviso that if he were prevented from working by bad weather, illness, or want of employment, there should be a proportionable deduction of wages ; Held that A. gained a settlement by serving a year under this hiring, though occasional deductions on these accounts were made.

(11) Comment

The court looks at ‘hiring for a year’ holistically, focusing on whether the servant was working for his master whenever practically able, rather than taking a purely dogmatic or mathematical approach to whether the servant worked for a full year.

(12) Type

Liberal

(1) Case name

*R*. v. *Marton*

(2) Date

28 May 1791

(3) Report

4 Term Reports 258

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Marton

(6) Order sought

Quashing

(7) Facts

The pauper Ralph Dewhurst, and his wife and children, were removed from Marton to Singleton : the sessions discharged the order of removal, subject to the opinion of this Court, on the following case:

“It was admitted that the pauper’s original settlement was in Singleton. When he was about I8 or 19 years of age he went into the service of W. Fisher in Marton, and staid about a fortnight or three weeks without any hiring or agreement of any kind being made between them. The pauper’s father then made an agreement with Fisher for the pauper to serve him for a year at 2s. 6d. per week. The fortnight or three weeks which the pauper had been in Fisher’s service was to make a part of, and

be reckoned in the year. The pauper staid in Fisher’s service upwards of 15 months from his first coming, and received his wages according to the above agreement.”

(8) Argument

A rule having been obtained to shew cause why the order of sessions should not be quashed, Bearcroft, who was to have shewn cause, admitted that the order of sessions could not be supported, because a retrospective hiring (*a*) was not sufficient.

(*a*) *R.* v. *Ilam*, Burr..S. C. 304, and *R.* v. *Hoddesdon*, Cald. 23, S. P.

(9) Judgment

Accordingly the rule was made absolute to

Quash the order of sessions.

Topping was to have supported the rule.

(10) Ruling

A retrospective hiring will not give settlement.

(11) Comment

The court treats a case of service for fifteen months including a period of probation as a retrospective hiring, so not conferring a settlement, even though there was service for more than a year. In contrast to other decisions around this time, service for a year was not enough to give rise to a presumption of a yearly hiring.

(12) Type

Restrictive

(1) Case name

*R.* v. *Mildenhall*

(2) Date

27 June 1810

(3) Report

12 East 482

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Mildenhall

(6) Order sought

Quashing

(7) Facts

William Dowling, his wife, and three children, were removed from the parish of Wilcot to that of Mildenhall, both in Wilts. The sessions, on appeal, confirmed the order, subject to the opinion of this Court on the following case. The pauper being settled at Mildenhall, at Michaelmas 1803, agreed with J. Stratton of Wilcot to serve him for a twelvemonth at 6s. a week in the winter 6l. 6s. in the summer; with an allowance of small beer and lodging all the year, and victuals during the harvest. He went into the service at Old Michaelmas, and served his master at Wilcot till July, within eleven weeks of the expiration of the year. The pauper not behaving as he ought, and neglecting his business, his master and he had a dispute, in consequence of which the pauper asked his master to discharge him; but he answered he would not, unless the pauper would get another man to stand in his stead. The pauper accordingly got W. Racey, to whom he agreed to give a guinea and a half out of bis own pocket, to take his place, besides his wages, which were to be paid to him by Stratton, the master. The pauper stated, that when he brought Racey to his master, he said, “If this man does any otherwise than well, I can send for you and make you serve your time out:” to which the pauper replied “Very well”. On the contrary the master stated, that “he did not recollect having said to

the pauper that he should expect him to return; that it was not his intention to have him back; and that they parted on bad terms.” The guinea and a half was paid by the pauper to Racey at the time be entered the service, and Racey served out the remainder of the year with Stratton at Wilcot, and received the wages from him for that time. The pauper during the remainder of the year hired himself as a day-labourer in the adjoining parish, and occasionally slept at Wilcot. Racey continued

to serve Stratton under a new agreement till the end of the year.

(8) Argument

Casberd and Merewether were to have argued in support of the orders; but the Court thought it unnecessary to hear them. Le Blanc J. observed that there was contradictory evidence before the sessions, whether this were a dissolution of the contract, or a dispensation of the service ; and the sessions had decided upon it as it was their province to do.

Borrough, Gaselee, and Gunning, contra, objected that the sessions had received illegal evidence from the master, that it was not his intention to have had the pauper back again; by which they had been misled. They urged too that there was no contradiction in the evidence; for the master did not deny the pauper's statement, but only did not recollect it; and according to the testimony of the latter, the settlement was clearly established in Wilcot. The master insisted on keeping the pauper to his contract; he merely dispensed at the time with his personal service, but obliged him to procure a substitute; and said that if the substitute did not behave well, he should expect the pauper to return; and the pauper paid the expense of the substitute. [Bayley J. asked if there were any case where the pauper had been held to gain a settlement by hiring and service, where after leaving his master during part of the year he had actually hired himself to another master?] They referred to *Rex*

v. *Goodnestone*, where the master consented that the pauper should go to the herring fishery (where he must have served somebody else), if he could get a man to do his work to the master’s liking ; which the pauper did, and paid the man; and did not return till after the year : and yet he was held to gain a settlement by such hiring and service. And here the pauper, having only hired himself as a day-labourer, was at liberty to return at any time into the master’s service when called upon.

(9) Judgment

Lord Ellenborough C. J. The case of *The King* v. *Goodnestone* was an express case of dispensation of service, and the servant might have returned within the year. But let us see whether in this case the justices might not reasonably draw the conclusion which they have done, that what passed between the master and servant was a discharge of the latter. The pauper in consequence of his ill behaviour had a dispute his master, and desired to be discharged : the master refused, unless the pauper could get another man to stand in his stead: another man was accordingly procured and brought to the master. And then according to the pauper’s evidence the conversation between them is this :—The master said, “If this man does otherwise than well I can send for you and make you serve your time out.” The pauper answered “Very well.” In contradiction to this evidence, (for so the sessions must be taken to have understood it by the manner of their stating the case; for they say on the contrary,)

the master swore that he had no recollection of having said to the pauper he should expect him to return. This was evidence to impeach what the pauper had sworn, which the sessions were to judge : and then what follows giving evidence of the master’s intentions, but is merely stated by the master, in confirmation of his accuracy, in not recollecting what the pauper had stated him to have said; as if the master had said that what confirmed him in supposing that no such conversation passed what that he had no intention to take the pauper back. The sessions evidently understood what the master said as importing a contradiction to the evidence of the pauper; and can we say that they did wrong in drawing that conclusion? The pauper then left the service eleven weeks before the expiration of the year; the master agreeing to his discharge, upon his getting another man to serve in his stead, whom he did procure, and who did accordingly serve : and the pauper himself entered into another service. And though it is said that the pauper might have returned at a day’s notice if recalled, I do not think that varies the case. According to the master’s account, it was a case of dissolution of the contract; and the sessions have drawn that conclusion, and we cannot say that it is wrong.

Grose J. The pauper upon the quarrel with his master applied for his discharge: the master refused, unless upon condition that the pauper procured another person to serve in his stead ; and the pauper complied with the condition. And then the sessions, contrasting the master’s evidence with the pauper’s property, and which had received its damage within the three years, and have drawn the conclusion that he was discharged, and that the contract was dissolved ; and we cannot quarrel with that conclusion which it was competent for them to draw.

Le Blanc J. Though the statute has said that no settlement shall be gained by a servant unless there be a contract of hiring for a year and a service for a year, yet the cases have decided that if the servant be absent from the service any part of the year with the leave of his master, he shall still gain a settlement. Therefore it always becomes a question of fact in these cases, whether the absence be accounted for by a dispensation of the service or by a dissolution of the contract of hiring. Here the

sessions have concluded that the contract was dissolved; but they have also stated the evidence on which they drew their conclusion ; and we are now called upon to say whether that conclusion were wrong. The pauper and his master quarrelled : the pauper applied to be discharged : the master objected, unless the pauper got another man to stand in his stead; he therefore consented if the pauper did get another man: the pauper got another man who served out the time. Was it not competent for the sessions on these facts to conclude that he was discharged ? But the pauper was asked what passed at the time; and he said that his master said that if the man did otherwise than well, he (the master) could send for the pauper and make him serve out his time; to which the pauper assented. The master however, when questioned did not recollect any such thing to have passed, and he assigned a reason why it could not probably have passed : and the sessions, taking the whole together, considered his evidence as a contradiction of what the pauper had sworn to have passed, and drew their conclusion accordingly; by which it appears that they did not give credit to the pauper s account. Then it is said that the pauper only engaged as a day-labourer, and could have returned again into the service if recalled: but that is no confirmation of his account; for the time of year did not render it likely for him to engage in any other kind of service. There is nothing therefore to shew that the conclusion drawn by the sessions was wrong; and unless we could see clearly that it was so, we should not reverse it.

Bayley J. There was conflicting evidence for the sessions to decide upon ; and this being a matter of fact rather than of law, and they having drawn their conclusion from the evidence, we cannot say it is wrong.

(10) Ruling

A servant, 11 weeks before the end of his year, on a quarrel with his master, applied for his discharge, which the master refused, unless the servant could get another man to stand in his stead ; the servant accordingly procured another, to whom he gave money for the purpose out of his own pocket, in addition to the wages which the new man was to receive from the master; and the servant then left the service, and hired himself as a day labourer for the remainder of the year: Held that this was proper evidence from whence the sessions might draw the conclusion of a dissolution of the contract; though it was encountered by the evidence of the servant, that his master said to him at

the time, that if the other man did otherwise than well, he could send for the servant and make him serve out his time: to which the latter assented: which account was, in the judgment of the sessions, impeached by the master’s having no recollection of having so said, and saying that he had not any intention to have the servant back, they having parted on bad terms; which latter expression the Court received, not as evidence per se of the master’s intention, but only as a reason assigned by him why he was not likely to have said what the servant stated.

(11) Comment

In a case where the parties fell out and the servant left early, the Court finds a dissolution rather than a dispensation.

(12) Type

Restrictive

(1) Case name

*R.* v. *Milwich*

(2) Date

20 June 1757

(3) Report

Burrow’s Settlement Cases 433

(4) Court

King’s Bench

(5) Parties

Rex v. Inhabitants of Milwich

(6) Order sought

Quashing

(7) Facts

Two Justices removed Thomas Thacker and Margaret his Wife, and Anthony, Thomas, James, William, Hannah, and Mary, their Children, from the Vill of Creyton in the County of Stafford to Milwich in the same County : And the Sessions confirmed their Order, upon this Cafe stated – Thacker was hired by Mr. Blurton of Milwich, for eleven Months, for 4/. 10 s. And it was agreed between them, “ That Thacker should give Mr. Blurton a Month’s Service in, beyond the eleven Months.” Thacker served Mr. Blurton the eleven Months, in Milwich and also all the given-in Month, except the last three Days : And as to those three Days, Thacker could not say whether he served them, or went away without serving them 3 but he received the whole 4/. 10s. Wages. The Sessions confirm the Order ; being of Opinion “ that this “ was a Hiring for a Year, and a Service for a Year.”

(8) Argument

On Saturday 5th February 1757, Mr. Norton moved to quash these Orders and had a Rule to Shew Cause. He made two Objections. First, This is not a good Hiring for a Year, within 3 & 4 IV, & M. c, 11. being only for eleven Months. The Sessions seem to consider the Hiring as fraudulent; but have not stated it to be so: Therefore this Court cannot presume it to be fraudulent. In 1 Strange 83, *Rex* v. *Inhabitants of Haughton*—several Hirings and Service for eleven Months gained no Settlement. In 2 Salk. 535. between the Inhabitants of *Dunsfold* and *Ridgwick*, two several Hirings for Half a Year each, and Service for a Year, gained no Settlement. And by 1 Strange 143, between the Parishes of Coombe and West Woodhay—There must be a complete Hiring and Service for a Year, in order to gain a Settlement. 2dly, ’Tis not a good Service for a Year : Because three Days are wanting, at the End of it. In 2 Strange 1022, between the Parishes of *Seaford* and *Castlechurch*\*: Going away twelve Days before the End of the Year prevented a Settlement; though all the Wages were paid. The Servant’s going away before the End differs from the Middle of the Year. In the former Case the Service is discontinued: In the latter, not; but the Absence is purged by the Master’s receiving him

again ⴕ. So that, upon the whole State of the Cafe, it is plain, here was neither a Hiring for a Year, nor a Service for a Tear : Whereas both these are requisite to gain a Settlement by 3 & 4 W. & M.

Mr. Gilbert, contra, for supporting the orders, insisted: That this was clearly a Contract to serve for a Year; and cited Co. Litt. 42b. “ If a Man retain a Servant generally, without expressing any Time, the Law shall construe it to be of one Year”. And so it was agreed in the Case of *Rex* v. *Inhabitants* of *Wincaunton* II. So, a conditional Hiring has been holden a good Hiring for a Year. But yet the present Case is within the settled Resolution of this Court. It was solemnly determined, in P. 7 G. 1. 1 Strange 423, *Rex* v. *Inhabitants of Islip*, “that Absence for the last three Days, though against the Consent of the Master, did not hurt the Settlement.”

\* *V. ante*, Vol. 1, pa. 68, No. 20.

ⴕ *V. ante*, pa. 70, 71, and 324.

ll *V.ante,* Vol. 1, pa. 299, 300, No. 107.

(9) Judgment

And the Court, viz. Lord Mansfeld, Mr. Justice Denison and Mr. Juttice Foster, were extremely clear, That this Agreement (taken all together) is a manifest Contract “to serve for a Year” notwithstanding the Form of Expression : (which, by the way, they considered as an Attempt to prevent the Man’s gaining a Settlement, by a very paltry Evasion.) The real Question is no more than “Whether eleven Months and One Month make twelve Months.” There are no particular technical Words necessary, to make a Hiring for a Year. The Substance of this Agreement is “to serve twelve Months, for 4 *l*. 10 *s.* ” And: what signifies the Variation of Expression ? Every Contract to serve is a Contract to serve \* for a Year; unless there be something to explain it otherwise. Now certainly here is nothing to explain it otherwise. And Mr. Justice Foster observed that this was an entire single Contract and not like to the Cases of different Contracts, at different Times : And he added, that no Action would have lain for the

Wages, till the End of the whole twelve Months. 2dly, That as to the Servant’s going away three Days before the End of the Year—The State of the Fact don't support the Objection For it don’t appear that he did go away before the End of the Year. It is only stated “ that he could not say whether he served those three Days, or went away without serving them.” But it is positively stated “ that he received the whole 4 *l*. 10 *s*. Wages: ” Which, at least, seems to imply the Master's Consent or Permission. Whereas in the Case of The King v. *The Inhabitants of Islip* P. 7 G. 1. In 1 Strange 423, it was holden that the Servant’s going away three Days before the End of his Year, directly in Opposition to his Master's Will and express Prohibition, upon a reasonable Occasion, and upon,

a reasonable request (unreasonably refused,) did not vitiate the Settlement.

\* *V. Co. Lit*., 42. *b*.

Per Cur. unanimously—

Both Orders affirmed.

(10) Ruling

Per Cur. unanimously—

Both Orders affirmed.

(11) Comment

A flexible ruling following earlier precedents, suggesting that a brief absence from work does not vitiate a settlement.

(12) Type

Liberal

(1) Case name

*R.* v. *Mitcham*

(2) Date

22 May 1810

(3) Report

12 East 351

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Mitcham

(6) Order sought

Quashing

(7) Facts

Rebecca the wife of George Pendry was removed with her children, by an order of two justices, from the parish of Mitcham, in Surry, to the parish of Burghheld (called in the order Birchfield) in the county of Berks. The sessions, on appeal, quashed the order, subject to the opinion of this Court on the following case. Joseph Pendry, being settled in Burghfield, was hired by Graves, the keeper of a

toll-gate in the parish of Egham, at 3s. a week for as long time as his master and himself could agree, to assist in collecting the tolls; and continued to serve under such hiring for more than a year; during which time he assisted Graves in collecting the tolls, and occasionally took care of a horse and some hounds. Graves had no horse at the time he so hired Pendry, but bought one afterwards. The hounds were kept in premises belonging to the toll-house; and Pendry during all that time resided in the toll-house. Graves did not hire him as he had before hired a brother of Pendry, with whom he expressly contracted as for a yearly servant. Graves paid Pendry as he wanted money, pounds at a time. Pendry, after the hiring, married the pauper Rebecca, by whom he had the three children named in the order of removal, and afterwards deserted his wife and children.

(8) Argument

Nolan and Roots, in support of the order of sessions, endeavoured to shew that this was a yearly and not a weekly hiring of the pauper by the turnpike-gate keeper, in the parish of Egham; it being for an indefinite period, as long as master and servant agreed, though the quantum of wages was to be ascertained by the number of weeks in which the service was in fact performed. They admitted the general rule, as laid down in *Rex* v. *Newton Toney*, that a mere hiring at so much a week, without more, would not give a settlement: but here the parties looked to an indefinite period beyond the week, for the hiring was to continue at the rate of 3s. a week till the disagreement of one of the parties was expressed : and in *Rex* v. *Hampreston* a hiring at so much a week, with liberty to part at a month’s notice, was held to be a general hiring. They also referred to *Rex* v. *St. Ebbs* where the party

was only specifically hired for a quarter of a year, at the rate of 20s. a year, but if he and his master liked each other he was to continue on : and the servant having served for above a year after the quarter, was held to gain a settlement.

(9) Judgment

Lord Ellenborough C.J. That was an indefinite hiring, at the rate of so much a year, determinable at the end of the first quarter. This case is nothing more than a hiring at so much a week, which, where nothing else appears to the contrary, is a weekly hiring within the rule laid down in *The King* v. *Newton Toney*; and it cannot alter the case by adding that which must necessarily have been understood, that the hiring was to continue as long as the master and servant agreed: that is, from week to week.

Le Blanc J. The case of *The King* v. *Hanbury* which was subsequent to that of *Hampreston*, confirmed the rule laid down in *The King* v. *Newton Toney*.

Per Curiam. Order of sessions quashed.

(10) Ruling

A hiring at so much a week for as long time as the master and servant could agree is only a weekly hiring, under which no settlement can be gained.

(11) Comment

The Court declines to find a settlement where the servant was hired, in its view, from week to week.

(12) Type

Restrictive

(1) Case name

*R.* v. *Mursley*

(2) Date

5 May 1787

(3) Report

1 Term Reports 694

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Mursley

(6) Order sought

Quashing

(7) Facts

This was a special case, (upon an order of removal,) which set forth, that William Coleman, the pauper, on his oath declared that he was born in the parish of Redbourn, Herts, and that three days after Michaelmas 1782 he was hired by James Pollard in the parish of Mursley, Bucks, to serve him in husbandry until the Michaelmas following ; that he served him the whole of that time, and received the whole of his wages. That the pauper declared that James Pollard at the time of hiring him told him he should not belong to the parish of Mursley. The Court of Sessions stated that they were of opinion that all such transactions on the part of masters are fraudulent to prevent servants gaining settlements by virtue of their services. And they adjudged that the pauper gained a settlement in the parish of Mursley by virtue of such hiring and service, and confirmed the order of justices, by which the pauper and his wife were removed from Redbourn to Mursley.

(8) Argument

Bearcroft, in support of the order of sessions, contended, that as the sessions had found this hiring to be fraudulent, this Court could not adjudge it not to be fraudulent. And that even if they could, this case would not warrant a different conclusion; because the master hired the pauper in such a manner as to endeavour to defeat his settlement.

Manley, contra, was stopped by the Court.

(9) Judgment

Ashhurst, J. This is a very clear case. It is stated as a naked fact that the pauper was hired three days after Michaelmas. It does not appear to have been a concerted scheme between the parties to prevent the pauper’s gaining a settlement; for non constat that they ever saw each other till the actual time of hiring, which was three days after Michaelmas. This therefore cannot be taken to be a hiring for a year.

Buller, J. There must be by some means or other an hiring for a year and a service for a year, in order to give the servant a settlement. The question of fraud only arises where in truth there is such an hiring, but the parties endeavour to colour it in order to prevent the pauper’s gaining a settlement. In such a case, the Court may say it is fraudulent. For suppose the master had hired the servant three days after Michaelmas to serve till the Michaelmas following, and had agreed with the servant that he should give in three days after the expiration of that time; that would be construed to be an hiring and service for a year. But the master may, if he please, hire a servant for a less time than a year, for the express purpose of preventing his gaining a settlement.

Grose, J. If the opinion of the Court of Sessions amounts to anything, it goes the length of saying that all hirings for less than a year are fraudulent. It must be admitted that a master may hire a servant for six months only; and the same reason will equally permit him to hire a servant for a year short of three days.

Rule absolute (a)1.

(a)1 *R.* v. *Sulgrave*, post, 2 vol. 376.

(10) Ruling

No settlement is gained by a hiring and service for less than a year, tho’ the master tell the servant at the hiring that he shall not belong to the parish, and the sessions state such contracts to be fraudulent.

(11) Comment

The court ignores an evident evasion on the part of the employer to hold that if, under any circumstances, the service is for less than a year, no settlement can be acquired.

(12) Type

Restrictive.

(1) Case name

*R.* v. *Navestock*

(2) Date

13 Geo 3 (1773)

(3) Report

2 Bott. 238

(4) Court

King’s Bench

(5) Parties

Rex v. Navestock

(6) Order sought

Quashing

(7) Facts

The pauper at Ongar statute-fair held on the day next after Old Michaelmas-day, viz. on the 11h day of October 1760, let himself to Samuel Pasford of Navestock, to serve until the Michaelmas following, old style, at the wages of 10/. He entered on the service, and continued in it until the Old

Michaelmas-day following ; on which day he received his wages and quitted the service : it appeared to be the custom and usage of the country to hire a servant at the Statute-fair, viz. the day after Old Michaelmas-day, in the manner in which this pauper was hired.

(8) Argument

(9) Judgment

Lord Mansfield: There must be a hiring for a year. It has been determined that a hiring from a moveable feast to another feast is a sufficient hiring, being according to the custom of the country, although there would not be 365 days (*b*). On the other hand, a hiring two days after Michaelmas to the next Michaelmas has been determined to be no good hiring; and therefore the question is, Whether here was a hiring for a year ? Great criticism has been made on the word *till*; it may or may not be exclusive, according to the subject-matter (*c*). How shall we construe it here? The custom is very material to explain it; the custom is to hire from the next day after Michaelmas. If this be wrong, there has been no settlement gained in this part of the country. How have the parties construed this hiring? It is certain they have construed it a hiring for a year. The servant did not

want a place till the day after Michaelmas. His service did not end till then. The parties considered it as a hiring, including Michaelmas day, for the pauper was actually in the service on Michaelmas-day.

Aston, Justice: It appears that the pauper entered on the day after Michaelmas-day; “till” is the word relied on to prove it a hiring for less than a year. How has that word been understood? The pauper was in the service on the Michaelmas-day, and took his wages. The service explains the hiring; here is in effect a hiring for a year, and a service agreeable to it.

Willes, Justice: The custom of the country in such a doubtful case as this must be called in aid.

And it was accordingly determined by all the three judges to be a hiring for a year.

(10) Ruling

A hiring at a statute fair held the day after Old Michaelmas Day, to serve to Old Michaelmas Day following, is a hiring for a year, sufficient for the purpose of settlement; for the days shall be taken inclusively.

(11) Comment

The court takes the customary form of hiring at a statute fair into account to find a settlement.

(12) Type

Liberal

(1) Case name

*R.* v. *Nether Heyford*

(2) Date

18 May 1759

(3) Report

Burr S.C. 479

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Nether Heyford

(6) Order sought

Quashing

(7) Facts

Two Justices removed John Gare and Hannah his Wife, from Kislingbury to Nether Heyford (both in Northamtonshire:) And the Sessions confirmed their Order.

It appeared upon the Special State of the Case, That the Pauper’s last Service for a Year, under a regular Hiring for a Year, was at a Farm-House called Dirt-House; which the Pauper sometimes said was in the Parish of Nether Heyford, and at other Times, that it was in another Parish (named in the Order of Sessions.) But they Rate that it lay in One or the Other of the said two Parishes.

This Order was, by Consent, agreed to be too uncertain for the Court to judge upon: And it was ordered, by Consent, that the Matter should go back to the Sessions, for them to state, which Parish the said Dirt-House stands in.

On Thursday the 10th May 1759, Sir Richard Lloyd moved to file the New Order of Sessions, made and returned pursuant to the last Rule, which was “ To enlarge the former Rule for shewing Cause why the Original Order made for the Removal of John Gare and Hannah his Wife from Kislingbury in the County of Northampton to Nether Heyford in the same County, should not be quashed;” And also further Ordered, “That in the mean Time it be referred back to the Justices of the Peace in and for the said County, to settle the Fact particularly, and to state particularly in what Parish the Dirt-House (mentioned in the said Order of Sessions) lies ; and afterwards to return the same to this Court.”

Which Motion was granted ; And this Order of Return ordered to be filed.

It was as follows viz,

In Pursuance of and Obedience to the Rule hereunto annexed, This Court [the Sessions] doth hereby certify that upon hearing of the Appeal concerning the Settlement of John Gare and Hannah his Wife, at Epiphany Sessions, 31 G. 2. the Fact then appeared to be, That the said John Gare was born in Farthingstone in the County of Northampton. That before Michaelmas 1754, He was hired for one Year as a Servant to Edward Judkins, who then lived in a House called the Dirt-House adjoining to a High Road leading from Towcester to Daventry: Which Year’s Service the said John Gare performed at the said Dirt-House. That it did not then appear Whether the said Dirt-House was in the Parish of Stow Nine Churches, or Nether Heyford in the County aforesaid. That he the said Gare before Michaelmas 1756, was hired for One Year to Widow Bliss of Farthingstone aforesaid; and continued in her Service until five Weeks before Michaelmas 1757: When with his Mistress’s Leave, he parted with her and went to work with one Litchfield a Farmer at Kislingbury in the County aforesaid, and stayed with him, the said Five Weeks, at Kislingbury. That after Michaelmas 1757, the said Gare went to his said Mistress Bliss for his Year’s Wages: The whole whereof she laid down to him, and he thereout voluntarily deducted Ten Shillings for his Five Weeks Absence; being the same Sum he had earned and received for his Five Weeks at Kislingbury. That the original Contract, nor any New One, with his Mistress Bliss was dissolved or made, save as aforesaid. And that if his said Mistress had, during the said five Weeks, required him to return to her, he should have so done. Therefore this Court [the Sessions] upon hearing the said Appeal, for the Reasons aforesaid, did confirm the Original Order of Removal.

And in further Pursuance of and Obedience to the said Rule, This Court [the Sessions] doth hereby further certify, That at this present Sessions, it fully appeared to the Justices of the Peace in the said Rule mentioned, who were then present, on the Examination of Witnesses, that the said Dirt-House lies and is in the Parish of Nether Heyford aforesaid, and not in any other Parish or Place.

(8) Argument

Mr. Caldecott, who moved to quash these Orders, owning that it was now clear that the Dirt-House stood in Nether Heyford, urged that the Pauper had gained a Settlement by his Service with the Widow Bliss at Farthingstone: And he cited 1 Strange 423, *Rex v. Inhabitants of Iflip* 2. Strange 1232, *St. Peter in Sandwich v. Goodnestone*.

Sir Richard Lloyd contra, insisted that the Pauper’s Contract with the Widow Bliss was totally and absolutely discharged, by his parting from her Service Five Weeks within the Year.

Curia advisare vult.

(9) Judgment

Lord Mansfield now delivered the Resolution of the Court. The Question turns singly upon this, “Whether his Absence for Five Weeks was a Dissolution of the Contract.”

If he had his Mistress’s Leave, it was not: If he had it not, it was. And We are All of Opinion, that it was only an Absence with Leave. For it appears that both Parties considered the Contract between them, as subsisting and not dissolved. He paid her the Whole that he had earned in the five Weeks that he was absent; that is He voluntarily deducted it from the Wages she laid down to him ; considering himself as her Servant during that Time : For otherwise, the Deduction would not have been a Deduction of the particular Sum earned by him but a Deduction in Proportion of his whole Year’s Wages to the Time of his Absence. And he looked upon himself as liable to be called back within the five Weeks.

Therefore it was only a Leave to be absent for the whole Time, or for Part of the Time, as she should call him back sooner or later. And as she did not call him back sooner, It was a Leave for the whole Five Weeks. It is stated that the Man was willing to have returned within the five Weeks, and would have so done if his Mistress had required him to do it. And the Sum deducted was not proportioned to the Time of his Absence : Which would have been the Measure of Deduction if the Contract had been considered by them as totally dissolved and at an End, when he went away from, her. But the paying her the exact Sum that he had earned, shews that these five Weeks Service was treated by them as a Part of the Service done to Her.

And it is stated, “ That the Original Contract was not dissolved, save as aforesaid.”

Therefore, upon the whole Circumstances specially stated, We are All of Opinion, “That the Contract was not dissolved.”

(10) Ruling

Consequently, The Rule must be made absolute, And

The Orders quashed.

Both Orders quashed.

(11) Comment

The court finds that absence with consent to work for another does not defeat settlement. The court considers a number of factors, including the mistress’s giving of consent, that the servant considered himself obliged to go back if his mistress called him back during his absence, and that the servant paid her the whole of the wages he earned working for the other farmer (rather than the mistress deducting a sum proportionate to the duration of his absence). This liberal approach is consistent with the earlier cases of *Beccles* and *Goodnestone*.

(12) Type

Liberal

(1) Case name

*R.* v. *Nether Knutsford*

(2) Date

15 January 1831

(3) Report

1 B. & Ad. 726

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Knutsford

(6) Order sought

Quashing

(7) Facts

On appeal against an order of two justices, whereby George Hamond and his family were removed from the township of Nether Knutsford to the township of Pownall Fee, both in the county of Chester, the sessions quashed the order, subject to the opinion of this Court on the following case:—

In 1814, the pauper, who was then about fifteen years of age, and his father, and Thomas Webb, all residing in Nether Knutsford, agreed that the pauper, who had previously worked for Webb upwards of three weeks, should continue to serve him upon the terms contained in the following memorandum, except as afterwards altered :—“This memorandum, made the 1st day of December 1814, between Thomas Webb, weaver, of Nether Knutsford, on the one part, and George Hamond, son of Peter Hamond, weaver, of Nether Knutsford, on the other part, viz. the aforenamed G. Hamond, of his own free will, together with the united consent and authority of his father P. Hamond aforenamed, doth covenant, promise, and agree to hire himself in the service of Thomas Webb, to labour at the art, mystery, trade, or business of a cotton weaver for the term of three years from the date above mentioned unto the 1st day of December 1817 ; his secrets he will keep, all his lawful commands he will strictly observe and obey to the utmost of his power, he will serve him, justly, truly

honestly, and faithfully for the term of three years as above named. And the aforesaid Thomas Webb, on his part, doth covenant, promise, and agree with the above named G. Hamond and P. Hamond his father, that as a reward for all the honest and faithful labours of his son G. Hamond in the above business for the term of three years, he Thomas Webb will give him the one half of all his just earnings in the above business, according to present prices, monthly, be they more or be they less ; and in addition to wages named, he will give him every other fent (a)2, on condition of having the free use of his father’s fire for his son’s accommodation the time be may want the same. And the aforesaid T. Webb, weaver, doth covenant, promise and agree with the aforenamed G. Hamond and his father P. Hamond, that, as a complete compensation for all the industrious services of the aforenamed G. Hamond be will instruct him (or cause him to be instructed) in all the art, mystery, calling, business or trade of a cotton weaver, to the utmost of his power and ability so to do in the

above term of three years above mentioned. As witness our hands. Thomas Webb. George Hamond. Peter Hamond.” The memorandum was read over in the presence of T. Webb, the pauper, and his father, by Peter Bradburn, who had prepared it. Nothing was said about Sundays. At the word “ hire,” Webb gave the pauper a shilling, but nothing was said by either of them; and at the words “cause to be instructed,” the pauper’s father objected to them, whereupon Bradburn struck his pen through them, as appeared on the face of the memorandum. The pauper served T. Webb in Nether Knutsford under this agreement three years, and never did any other work for his master but weaving. At the expiration of two years, or thereabouts, Webb removed to Manchester, and the pauper remained in Nether Knutsford, and served the remainder of his time out with his father. The pauper lived and lodged with his father in Nether Knutsford during the whole time, and on Sundays he stayed at home, and did no work for his master. Bradburn, who prepared the agreement, proved that no [729] premium was given, and be was then stopped, by the Court quashing the order.

(a)1 Taunton J. was absent.

(a)2 A part of inferior quality, usually cut off the end of the cotton piece.

(8) Argument

Cottingham in support of the order of sessions. The memorandum was an agreement for service, and not a defective contract of apprenticeship. The master wanted a servant; the servant’s object was to learn a trade. At the word “hire” there was a shilling given. The engagement to instruct was not absolute, but only “as a complete compensation ” for all his industrious services, which were yet to be performed. The want of an express and positive contract to teach was relied upon by Le Blanc J. in *Rex* v. *Shinfield* (14 East, 541), and by Lord Ellenborough in *Rex* v. *Burbach* (1 M. & S. 370), in which cases it was held that no apprenticeship was contemplated. The words “cause to be instructed” would not have been erased, if an apprenticeship had been intended. *Rex* v. *Little Bolton* (Cald. 367), continues to be an authority, and this case must be governed by it. In *Rex* v. *St. Margaret, Kings*

*Lynn* (6 B. & C. 97), and *Rex* v. *Combe* (8 B. & C. 82), where the contracts were held not to be for service merely, there were circumstances, independent of the agreement itself, which shewed that an apprenticeship was contemplated, and which are wanting in this case; and in *Rex* v. *Tipton* (9 B. & C. 888), where there was a like decision, the term “out apprentice” was used in the contract.

Lloyd, contra, was stopped by the Court.

(9) Judgment

Lord Tenterden CJ. I am of the opinion that this was a defective contract of apprenticeship, and not a hiring. We must look at the substance of the agreement, rather than the precise words. The pauper is hired to labour at the art, trade or business of a cotton weaver for three years (and it does not appear from the case that any other duty was expected from, or was ever done by him); he promises the master that “his secrets he will keep, all his lawful commands he will strictly observe and obey to the utmost of his power,”, in the terms usual in an indenture of apprenticeship. The master, on his part, undertakes to give him, as a reward for his honest and faithful labours, one half of his earnings; and he further covenants, as a complete compensation for all the industrious services of the said G. Hamond, to instruct him in all the art, mystery or business of a cotton weaver, to the utmost of his power and ability. It appears to me, from the whole of the stipulations taken together, that the contract was for apprenticeship, and not merely for service. As to the promise, “to cause to be instructed”, which the father objected to, I should consider that to have been struck out, not with a view to giving up any claim to instruction, but to prevent the boy being handed over to another teacher.

Littledale J concurred.

Taunton J. I am of the same opinion. And the parties themselves seem to have put the same construction upon the agreement which we do now; for, when Webb removed to Manchester, the pauper is stated to have served the remainder of his time out with his father.

Order of the sessions quashed.

(10) Ruling

The pauper by an unstamped memorandum, to which his father was a party, hired himself in the service of T. W. to labour at the art and mystery of a cotton weaver for three years; and he promised T. W. that his secrets he would keep, all his lawful commands strictly obey, and serve him faithfully for the said term. By the same memorandum the master undertook, as a reward for pauper’s labours, to give him half his just earnings; and further covenanted, as a complete compensation for his industrious services, to instruct him in all the art and mystery of a cotton weaver, to the utmost of his power, in the above term. When the agreement was read over, at the word hire T. W. gave pauper a shilling. There was no premium. At the making of the agreement nothing was said about work on Sundays ; the pauper did none on those days, and never did any but weaving. At the end of two years T. W. removed, and pauper served the rest of his time out with his father. He lived with his father all the three years: Held that the agreement with T. W. was a defective contract of apprenticeship.

(11) Comment

The Court defeats a settlement by finding that there was a defective contract of apprenticeship.

(12) Type

Restrictive

(1) Case name

*R.* v. *New-Forrest*

(2) Date

29 January 1794

(3) Report

5 Term Reports 478

(4) Court

King’s Bench

(5) Parties

The King v. Inhabitants of New-Forrest

(6) Order sought

Quashing

(7) Facts

The sessions confirmed an order of two justices for the removal of E. Coates, his wife and two children, from Reeth to New-Forrest, both in the North Riding of the county of York; and stated the following case for the opinion of this Court: On old Martinmas Day in the year 1777, E. Coates hired himself for a year to serve G. Bowe in the township of New-Forrest, and served a year there accordingly. On the 22d of December 1777, E. Coates married his present wife. William Coates, a legitimate son of E. Coates by a former wife, being within one month of the age of 16 years, and having gained no previous settlement in his own right, on the same Martinmas Day 1777, hired himself for a year to R. Nelson of the township of Ellerton, which he accordingly served.

(8) Argument

Raine having on a former day obtained a rule to shew cause why the order of sessions should be quashed,

Charabre, who was now to have shewn cause, said, that the ground on which the sessions decided that the pauper gained a settlement in New-Forrest was this; that though he had a son, who was not emancipated at the time when he was hired, yet that, as the son was also hired for a year on the same day with the father, the settlement which the son acquired by the service under that hiring, might have relation back to the first day of the service, and in that way of considering the question,

the father might be deemed to be an unmarried man, not having child or children at the time when he was hired in New-Forrest, within the meaning of the statute 3 Will. & M. c. 11, s. 7.

(9) Judgment

Lord Kenyon, Ch.J.—It is impossible to support these orders. The Statute of William enacts “that if any unmarried person, not having child or children, shall be lawfully hired into any parish for one year, such service shall be adjudged and deemed a good settlement therein.” The construction which the Court has put upon that section of the Act is, that though the person so hired have children, yet if they have gained settlements for themselves distinct from the father’s, the statute will not prevent him acquiring a settlement by serving a year under that hiring (a)1. But in this case the son was not separated from the father, when the latter was hired ; he had gained no settlement for himself; the son indeed did, on the same day, enter into a contract, which might or might not have been completed, and which, when completed, would confer a settlement on the son : but at the time when the father entered into the relation of servant at New-Forrest, the son formed a part of his family.

Per Curiam (b). Both orders quashed.

(a)1 Fol. 131.

(10) Ruling

A widower having a son, who has no settlement of his own, cannot gain a settlement by hiring and service for a year; though the son be hired for a year on the same day when the father is hired, and serve that year.

(11) Comment

A restrictive (late) case on the requirement that the servant be unmarried and childless when hired.

The court rules that a widower with a child when hired cannot gain a hiring since he does not fall under the words of the statute which refer to a servant being an ‘unmarried person, not having child or children’ when hired.

(12) Type

Restrictive.

(1) Case name

*R.* v *Newtown*

(2) Date

3 May 1834

(3) Report

1 Ad. & E. 238

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Newtown

(6) Order sought

Quashing

(7) Facts

On appeal against an order removing John Stanley and his family from the parish of Newtown, Montgomeryshire, to the parish of Berriew in the same county, the sessions quashed the order, subject to the opinion of this Court upon the following case:- The pauper acquired a settlement in Berriew as a servant in husbandry. Immediately on Ieaving such service, when he was twenty-nine years old, and unmarried, and without child or children, he agreed by parol with John Williams, a master flannel manufacturer in Newtown, for three years to learn the art of weaving flannels, and was to be paid by his said master one half of what he could get, and to find himself meat, drink, clothes, washing, and lodging, and the master was to have the other half for teaching him the art of weaving. The pauper thereupon went and remained in the said John Williams’s employ six weeks, and during that time wove for him two pieces of flannel. The pauper then left J. W. by consent, and the said pauper thereupon applied to James Evans, another master flannel manufacturer in Newtown, to take him on the same terms as J. W. had, and informed him of his having left J. W., and what the contract with him was, and how he had been employed by him, and particularly that he had been employed by him to make slays, and could throw the shuttle, but had had bad slays to work with: to which Evans said that the pauper’s having had bad slays to weave with would improve him, and as to throwing the shuttle it was no more than a tailor threading his needle; that he would take him on the same terms he had been with J. W., but for twelve months only, adding that twelve months would be long enough if he was a good boy. The pauper agreed to go to Evans for twelve months to learn the art of weaving, and the said Evans engaged to take him and to teach him the art of weaving, and to give him half of his earnings. The pauper went to Evans on the following day, and continued to weave flannels in his master’s room, from his master’s materials, and with his loom, to the end of the year, on the terms originally agreed upon. The pauper could not leave nor be turned away during the twelve months, and was paid by his master one half of what he earned, and his master kept the other half for teaching him the trade. He found himself meat, drink, clothes, washing, and lodging, and lodged during the above time with his mother in the parish of Newtown. After his time was up with Evans he began to weave by the piece; then he had all he got, like other workmen.

(8) Argument

J. H. Lloyd and Cowling in support of the order of sessions. This was a contract of hiring and service, and not an imperfect contract of apprenticeship. The sessions have, in effect, found so, by stating that the pauper could not leave or be turned away during the twelve months. [Lord Denman C.J. They have stated facts, and perhaps assumed that as a consequence of them, which does not follow.] If there is a doubt as to that, the case should go back to be re-stated. [Littledale J. They state that the pauper agreed to go to Evans to learn weaving, and that he engaged to teach it. That may be the substance of what passed between the parties. The sessions are not obliged to set down the very words; it is more regular to state the effect. *Rex* v. *Crediton* was a different case from this; there the sessions had found that the contract was for apprenticeship, and the Court acquiesced in their finding. If the sessions may decide as to the effect of the contract, they may say what relation it created between the parties. Here they have stated that the parties had a certain intention in entering upon the engagement; but the conclusion they have afterwards drawn from the facts, as to the relative rights of the parties under the contract, is inconsistent with that, and is now said to be erroneous. If their finding on the latter point is not conclusive, the case ought to be sent back, in order that they may state whether the relation of master and servant was created here or not. [Lord Denman CJ. They must have wanted our direction on that intermediate fact, or they would not have sent the case.] The question is whether the Court will confirm the judgment of the sessions, or disturb it on their imperfect finding. *Rex* v. *Eccleston* (2 East, 298), where the contract was held to be for hiring and service, is nearly the same as the present case, and neither is materially distinguishable from *Rex* v. *Little Bolton* (Cald. 367). [Littledale J. Here the object for which the pauper agreed with Evans was to learn; in *Rex* v. *Eccleston* (2 East, 298), the agreement was that the pauper should serve, though it was said that the master was to teach. Patteson J. There is nothing here that shews an engagement for service, except the finding of the sessions that neither party should rescind the contract. And the modern cases shew that, if not a contract to serve, it was a defective contract of apprenticeship.] The inference drawn by the sessions is correct. The master agreed to pay the pauper for his services, as well as to teach him, and the services were of value. The pauper was to find himself necessaries, which is not usually the case in contracts of apprenticeship. The contract was only for a year, and was not even reduced to writing.

N.R. Clarke contra. Where, on the statement of a sessions case, it is doubtful whether a particular fact existed, the finding of the sessions may decide it; but where the sessions state all the facts, and then draw a conclusion from them, this Court is not bound by the finding. In *Rex* v. *St. Margaret’s, King’s Lynn* (6 B. & C. 97), which resembled this case, the Court held that the contract was an imperfect contract of apprenticeship, though the sessions had decided that the pauper gained a settlement by hiring and service. In *Rex* v. *Edingale* (10 B. & C. 739), this Court put the same construction on a like contract, assigning as a reason, that the object of the parties, expressed at the time of the agreement, was, that the pauper should learn the trade. *Rex* v. *Combe* (8 B. & C. 82), there cited, is to a similar effect. The facts here strongly support the same construction. In the contract with Williams the object was learning, and that with Evans was on the same terms. All that is stated of the conversation between Evans and the pauper, tends strongly to shew the intention. The terms of the contract being stated, this Court is to judge of its effect: the statement that the pauper could not leave or be send away during the year, is only the suggestion of the Court below. The doctrine on this subject has undergone some variations from the time of the decision in *Rex* v. *Little Bolton* (Cald. 367); but the plain and intelligible rule is that laid down by Bayley J. in *Rex* v. *Edingale* (10 B. & C. 742), viz. “That where the substantial object of the parties to a contract is to learn, and not to serve, the contract should be deemed one of apprenticeship, and not of hiring and service.”

(9) Judgment

Littledale J. There has certainly been some undulation of opinion in the Court at different times on this subject; but I think we are bound by the last decision. The present case is like *Rex* v. *Odiham* (2 B. & Ad. 493), but stronger; and there, as in this case, the pauper found his own board and lodging. On the facts of this case, as found by the sessions, I think the contract was for learning, and was not a hiring for service. In *Rex* v. *Eccleston* (2 East, 299), the contract was, generally, “to serve.” Here, by the agreement, the pauper was to learn the art of weaving flannels, and the master was to have half his earnings for teaching. The master’s observation, that twelve months would be long enough if the pauper was a good boy, strongly shews the intention of the parties to have been teaching and learning; and their language throughout has the same tendency. If the master had gone into a different business, I should doubt if he could have insisted on employing the pauper in it: I question whether he had a right to employ him in anything but weaving flannels. Upon the whole, there is nothing here to shew a hiring for the purpose of service, and I think that an apprenticeship was not merely the primary, but the only object of the contract.

Patteson J. I cannot distinguish this case from *Rex* v. *Crediton* (2 B. & Ad. 493), and, being bound by that authority, we must decide accordingly. I confess I am also unable to distinguish the case from *Rex* v. *Burbach* (1 M. & S. 370), but I think that is overruled by *Rex* v. *Crediton* (2 B. & Ad. 493). The distinction between cases where the agreement is to work, or to serve, and where it is to learn, seems to have been first distinctly taken by Lord Ellenborough in *Rex* v. *Bilborough* (1 B. & Ald. 116); yet, in *Rex* v. *St. Margaret’s, King’s Lynn*, the boy’s agreement was “to serve for four years,” and that was held an imperfect contract of apprenticeship. I cannot reconcile the cases; but ever since Rex v. Bilborough (1 B. & Ald. 116), the current of opinion has [244] been to consider agreements like the present as imperfect contracts of apprenticeship.

Williams J. I agree in the opinion expressed by Mr. Justice Lawrence in *Rex* v. *Eccleston* (2 East, 302), of the importance, in these cases, of adhering to what has been once expressly determined. When the Court begins to decide them on nice and evanescent distinctions, infinite trouble is occasioned. The tendency of opinion latterly has been to treat agreements like this as imperfect contracts of apprenticeship; and without considering the several instances in which an inclination has been shewn to depart from the doctrine laid down in *Rex* v. *Little Bolton* (Cald. 367), it is enough to say, that I think the present case is not distinguishable from *Rex* v. *Crediton* (2 B. & Ad. 493), and ought to be governed by it.

Order of sessions quashed.

(10) Ruling

Pauper agreed by parol to go to W., a flannel manufacturer, for three years, to learn flannel weaving, and was to be paid half his earnings and find himself necessaries, and the master to have the other half for teaching him the art. Pauper went into W.’s employ, and wove some flannel; he then left W. by consent, and went to E., another flannel manufacturer, told him of his former employment with W., and requested E. to $ake him on the’ same terms ; but E. told him that one year would be long enough, if he was a good boy. They had also some conversation as to what pauper had learnt with W. The sessions further stated, ‘‘That the pauper agreed to go to E. for twelve months to learn weaving, and E. agreed to take him, and teach it, and give him half his earnings;” and that the pauper went to E., and worked with him for the year, on the former

terms ; they also found that the pauper could not leave or be turned away during the twelve months ; and they decided, subject to a case, that the pauper thereby gained a settlement : Held, (notwithstanding the conclusion drawn by the sessions as to the power of leaving or of turning away,) that the object of the pauper’s engagement with E. was learning, not service, and, therefore, that it was an imperfect contract of apprenticeship.

(11) Comment

The Court finds that a contract to serve with an element of teaching a trade is a defective contract of apprenticeship and so does not confer a settlement by hiring.

(12) Type

Restrictive

(1) Case name

*R.* v. *New Windsor*

(2) Date

12 February 1734 (Hilary Term 8 Geo 2)

(3) Report

Burr SC 19

(4) Court

King’s Bench

(5) Parties

Rex v. Inhabitants of New Windsor

(6) Order sought

Quashing

(7) Facts

On Saturday the first of February 1734, Mr. Proctor moved to quash an Order of Sessions confirming an Order of two Justices, made for the Removal of Diana Brooks from Chepping Wycomb to New Windsor; together with the original Order. He made an Objection to the Order of the two Justices, That the Direction is to the Churchwardens and Overseers of the Burrough of Chepping Wycomb, not naming any Parish; and that the two Justices, who made the Order of Removal, do not appear to be Justices for the Burrough or for the County. He also objected to both the Orders, upon the Merits. The Case stated upon the Order of Sessions was—That in August 1731, she was hired to serve Colonel Meyrick at Thorpe in the County of Surry, and was to go into his Service a Month upon Liking, and was to have 5*l*. a year Wages ; but was to go away from her said Service on a Month's Wages or a Month's Warnings to be at any Time paid or given on either Side by the said Master or Servant; and that she continued in her said Service near the Space of two Years without any other Hiring, and received her Wages quarterly ; and that at the Time of her being hired to serve the said Colonel Meyrick, the said Parish of New Windsor was the Place of her last legal Settlement; and that she hath not since gained any other legal Settlement elsewhere or otherwise than by the said Hiring and Service to the said Colonel Meyrick as aforesaid.

(8) Argument

Upon shewing Cause (on the last Day of the same Term) against quashing the Orders, it was argued by Mr. Pilswortb, in Support of the Orders, That she gained no Settlement at Thorpe; because there was no Hiring for a Year; nor was she compellable to serve a Year. Even a Hiring for a Year with Liberty to go away upon forfeiting a Month’s Wages, would not have been within 3 & 4 W. & M: For the Servant ought to be compellable to remain a Year. The Mention of 5*l*. per Annum cannot amount to a Hiring for a Year : It is only to ascertain the Proportion of a Month’s Wages after that Rate. And the contrary Intention appears from the receiving her Wages quarterly, and not yearly. As to the Objections to the Form of the original Orders—They come too late, since 5 G. 2. c. 19, 21. which impowers the Sessions to amend and rectify them. Therefore having omitted to make their Objections before the Court of Sessions, they have waved them. The first of these Objections is, “That the Direction is to the Churchwardens, &c, of the Burroughs without naming a Parish.” But if a Vill in a Parish have particular Officers, it is sufficient: And they shall be considered as distinct Parishes in Respect of their Poor. And the Burrough of Chepping Wycomb is a distinct Vill. And they have actually submitted and removed the Parties. The second Objection is, “That it does not appear that the Justices are Justices of the Burrough or of the County.” But “Burrough of Chepping Wycomb” is in the Margin. The Intent of the Words in the Margin of an Order are to denote the Extent of the Jurisdiction of the Persons making it; (as England is a Lord Chief Justice’s Warrant:) And they relate to every Part of it. And it appears upon the Order of Sessions, that these two Justices are Justices of and for the said Burrough. So that the Sessions, who have Power to rectify any Omissions in Point of Form, have applied this.

On the contrary, it was argued by Serjeant Wright and Mr. Proctor the Counsel for New Windsor, That this is a Hiring for a Year, at Thorpe. “ 5/. a Year Wages” is tantamount to 5/. Wages for a Year. And she was compellable to serve for a Year, unless by further Agreement the former Contract should be dispensed with. This is a Point of great Consequence : For this is the constant Way and Method of hiring among Gentlemen. In the Case between the Parishes of *Lidney* and *Stroude* in Gloucestershire\*, a Hiring for a Quarter of a Year, and if she and her Matter liked each other, she was to continue a Year and have 3*l*. for her Year’s Wages. She did continue a Year, and received the 3*l*. Wages. This was held a good Settlement, on her having continued a Year. Yet that was not a direct and explicit Hiring for a Year. Though, in this present Case, the Pauper received her Wages quarterly it was no Part of the Agreement “that she should do so.” Therefore that cannot vary the original Contract. The Objections to the Order of these two Justices are not answered. There is no such Thing as Churchwardens and Overseers of a Burrough : They are parochial Offices. And a Parish is an Ecclesiastical District ; a Burrough a Civil District. As to the Justices appearing to be Justices for the Burrough or County—2 Salk. 474. *Rex* v. *Dobbyn*, proves it to be necessary that this should appear. And in the Case of *Rex* v. *The Inhabitants of Oulton in Cumberland*, P. 13 G. 1. B. R. The Court held that the Justices must shew their Jurisdiction. And the Order of Sessions can’t supply this defect. As to the late Act, of 5 G. 2. c. 19.—though the Sessions had Jurisdiction to amend ; yet since they have not done it the Objection is open. The Jurisdiction of this Court remains, since the Act does not take it away. Though the Words “Burrough of Chepping Wycomb” be in the Margin; there are no Words of Reference: Therefore the Order of Sessions cannot help it; for, that is only recital.

\* *V.* *Ante*, No. 1.

(9) Judgment

Lord Hardwicke.—The Question upon the Merits of this Case, is, “Whether the Fact, as stated, be Evidence of a Hiring for a Year.” For, if it be, we must adjudge upon the same Evidence. I think it is: Or else you would overturn most of the Settlements in England, upon Hirings in Gentlemens Services. I believe the ordinary Way of Hiring is at so much a Year, and a Month’s Wages, or a Month’s Warning on either Side. I think it is reasonable that the “ having 5*l*. a Year Wages” should be understood as meant to fix for how long a time the Service was to be, unless sooner determined. And I do not think the Limitation of its being to cease upon a Month’s Wages or Warning on either Side, will have any Effect: For that is the common Method. And it is expressly stated that she continued in her said Service near two Years: Her coming upon Liking for a Month, does not alter the Case, at all. As to the Limitations of a Month’s Wages or a Month’s Warning—the Case of *Lidney* v. *Stroude* is a strong Case : For that Service might have been determined at any Time. Therefore I think the Justices might have stated this to be a Hiring for a Year. I do not think we can take the Sessions to have amended the Order of the two Justices, only because they had Power to amend it. But I think it is a Settlement at Thorpe: And therefore the Sessions should have discharged the first Order.

Mr. J. Page. I am of the same Opinion.—I think the “having c 5. a Year Wages” shews that it was a Hiring for a Year. It is defeazible indeed: But so is an absolute and express Hiring for a Year, wherever there is a Power to determine it sooner. The other Objections against the original Order are out of the Case, because the Merits are plain : And upon them it ought to have been discharged by the Sessions.

Mr. J. Probyn. The natural Construction is, that it is a Hiring for it Year at 5*l*. Wages: And it is tantamount to faying that she was hired for a Year at 5/. a Year Wages. The Rest is Matter which is to go in Defeazance of the Contract. But notwithstanding those eventual Limitations, the Service actually subsists for near two Years: Though they might have avoided the Contract, they have not.

Mr. J. Lee was of the same Opinion, cc that upon the Face of “this special Order, it appears that she was legally settled at Thorpe.” For it is stated “that she was hired to Colonel Meyrick at Thorpe.” Now a general Hiring is a Hiring for a Year. Then it is stated “that she was to have 5*l*. a Year Wages.” The Contract depends upon the first Hiring. The Parties had it indeed in their Power to avoid the Contract: But they have not done so. The Reason of making a Hiring for a Year requisite, is the Credit of the Person thought worthy to serve for a Year. And here it is as strong; For after Trial, the Master lets the Service go on for near two Years. Therefore the Words and Intention of the Act are complied with in this Case.

Per Cur. Unanimously

(10) Ruling

Both Orders quashed.

(11) Comment

The court gives an expansive (and early, note date) reading to the concept of the yearly hiring, inferring a contract for a year while acknowledging the notice period and other elements of the contract’s ‘defeasability’.

(12) Type

Liberal.

(1) Case name

*R*. v. *Newton Toney*

(2) Date

26 April 1788

(3) Report

2 T.R. 453

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Newton Toney

(6) Order sought

Quashing

(7) Facts

William Salter, Margaret his wife, and their two children, were removed by an order of two justices from Harbridge, Southampton, to Newton Toney, Wilts. On appeal the sessions confirmed the order of the justices, and stated the following case for the opinion of this Court: The pauper, William Salter, went into the parish of Newton Toney to the house of William Postans, a publican there, who had before employed him three times to go into Shropshire with some hounds; and, on his return from the last of these journies, he agreed to live with Postans as hostler at 4s. 6d. per week; and continued with Postans as such hostler for one year and an half, and then went away. Before his departure, on demanding his wages, Postans alleged, that as he had received vails, 4s. 6d. a week would be too much, whereupon he agreed to accept after the rate of 10l. a year, in lieu of 4s. 6d. per week. The pauper having received his wages, he left his service and lived elsewhere for five or six months; at the expiration of which time he returned to Newton Toney, and agreed with Postans to serve him again as his hostler, as he had done before at 4s. per week, which was about 10l. a year; and which he received when he thought proper to ask for it. Under the latter agreement the pauper lived one year and an half, but thought himself as a weekly servant, and at liberty to leave his service at any time during the said services.

(8) Argument

Burrough, in support of the order of sessions, contended, that the first hiring in the parish of Newton Toney was a general hiring; and as the pauper served more than a year under it, he thereby gained a settlement in Newton Toney. The only difficulty, if there be any, in the cases, arises on the reservation of the wages; but that circumstance cannot vary this case, as it only ascertains the quantum of the wages, and does not limit the duration of the service, or control the general hiring. Under the first division of cases on this head may be classed those where there was a hiring for a year, for wages not reserved yearly, but for a shorter time, or by the piece; namely *R. v. Atherton* (a)2, and *R. v. King’s Norton* (b) ; in the former of which there was a hiring for a year, for wages payable quarterly, where the pauper, by serving a year, was held to gain a settlement; and in the latter of them, a settlement was gained by serving under an hiring for a year to spin at the rate of 1s. 6d. per stone. The next division where there was an hiring by the week, or for less time than a year, at weekly or other wages reserved for less time than a year, where no settlement was gained. And those are *R v. Wrinton* (c), and *R. v. Brandninch* (d), where there was a weekly hiring, at weekly wages; and *R. v. Elftack*(e), where the pauper was hired to serve so long as the master wanted a servant, at weekly wages. The third class of cases is where there was a general hiring at weekly wages, but where something afterwards passed to shew that the parties did not originally intend to contract for a year ; such as *R. v. Dedham* (f). In such a case no settlement can be gained, because the general presumption is rebutted, that it was intended to be a general hiring. There is also another head of cases where a settlement has been gained under a general hiring, at weekly wages, where nothing has afterwards passed between the parties to shew that they did not intend it to be a general hiring, of which description is *R. v. Seaton and Beer* (g). In that case the Court held, that the pauper should gain a settlement; and that the reservation of weekly wages could not of itself defeat a general hiring. Now the present case is precisely similar to that; here is a general hiring with weekly wages; and it cannot be collected either from the contract itself, or from the subsequent contract of the parties, that the hiring was intended to be for a shorter period than a year. Neither can the reservation of weekly wages control the general hiring, on the authority of *R. v. Seaton and Beer*. With respect to the apprehension of the pauper, it has been repeatedly determined that that cannot vary the case.

[455] Marshal, Serjt. and Portal, contra, were stopped by the Court.

(a)2 Burr. S. C. 203. Bott, 312.

(b) Ibid. S. C. 152. Bott, 282.

(c) Ibid. S. C. 280.

(d) Ibid. S. C. 662. Bott, 285.

(e) Hil. 25 G. 3, B. R.

(f) Burr. S. C. 653. Bott, 284

(g) P. 24 G. 3, B. R.

(9) Judgment

Ashhurst, J. The case of *The King v. Dedham* is much stronger than the present. There the pauper hired himself to a plumber and glazier, board, lodging, and washing, summer and winter, at six shillings per week. And though the pauper continued in his service above a year, the Court said that they could not make it a hiring for a year, and that the pauper could not gain a settlement by it. It is impossible to distinguish the two cases upon principle. In the present case the pauper hired himself as an hostler, at 4s. 6d. per week; but that cannot be considered as a general hiring; and if either party had chosen to dissolve the contract before the expiration of a year, no action could have been maintained by the other. With respect to the apprehension of the pauper, it has been decided in a variety of cases, that that cannot vary the contract.

Buller, J. This case is not so strong as that of *The King v. Dedham*; for there the expression “summer and winter” shewed that the party had it in contemplation to continue a year in the service. In the present case the hiring is merely at so much per week. Now if there be any thing in the contract to shew that the hiring was intended to be for a year, there a reservation of weekly wages will not control that hiring. But if the payment of weekly wages be the only circumstance from which the duration of the contract is to be collected, it must be taken to be only a weekly hiring. And the hiring in the present case is of that kind.

Grose, J. Considering the situation of the pauper, and what passed at the time of entering into this contract, this appears not to be an hiring for a year. The pauper was hired in the character of hostler, at 4s. 6d. per week; now that circumstance alone shews that he was not likely to continue a year in his service. Besides, it appears that he actually left his service in the middle of the year, which satisfies me that it was not intended by the contracting parties to be an hiring for a year.

Rule absolute (a)1.

(a)1 *R. v. Odiham*, post, 622, S. P. Vid. *R. v. Birdbrooke*, post, 4 vol. 245, where a service for a year, under a hiring at 3s. per week the year round, with liberty to go on a fortnight’s notice, was held to give a settlement. *R. v. Hampreston*, p. 5 vol. 205, a similar case, acc. : and *R. v. Worfield*, p. 5 vol. 506, as to an implied general hiring.

(10) Ruling

An hiring at so much per week is not an implied hiring for a year. [2 East, 423. 5 ibid. 382. 12 ibid. 351]

(11) Comment

A restrictive case finding that a hiring with wages paid by the week cannot confer a settlement. However, wages paid by the week does not automatically mean hire by week instead of for the year, because two of the three judges also take into consideration other factors such as whether any part of the contract indicated hire for a year and that the servant left his service in the middle of the year.

(12) Type

Restrictive

(1) Case name

*R.* v. *Newstead*

(2) Date

15 June 1770

(3) Report

Burrows Settlement Cases 669

(4) Court

King’s Bench

(5) Parties

Rex v. Inhabitants of Newstead

(6) Order sought

Quashing

(7) Facts

Mr. Wallace moved on Thursday 10th May 1770, for a Rule upon the Prosecutor, to shew Cause why the Order of Sessions made for reversing the Original Order of two Justices made for the Removal of Frances Downey, Spinster, from the Township of Newstead in the Parish of Balmbrough in the County of Northumberland, to the Parish of Holy Island in the County of Durham, should not be quashed; and also why the said Original Order should not be affirmed.

The Case was specially stated, upon the Sessions-Order. Frances Downey, being a Single Woman and unmarried, hired Herself at Whitsuntide 1767, to Thomas Hill an Inhabitant and Housekeeper in the said Parish of Holy Island to serve Him for a Year from the said Whitsuntide to the Whitsuntide following, at certain Wages. The said Frances Downey entered upon the said Service, at Whitsuntide 1767, and continued therein till Whitsuntide 1768, accordingly : When She received a Year's Wages from her said Master, for such Service.

It dates, That it hath been usual in this Country, to hire Servants from Whitsuntide to Whitsuntide : And that an hiring and Service from Whitsuntide to Whitsuntide has always, by the contracting Parties, been deemed a Year's Service ; and agreeable thereto, the Master hath always paid the Servant a full Year’s Wages for such Service, without any Diminution thereof or Addition thereto, and without making any Distinction or Difference whether the Space of Time between the one Whitsuntide and the other consisted of more or less than 365 Days.

Some of his Majesty’s Justices of the Peace at this Sessions are of Opinion, “that a general Hiring and Service from one Whitsuntide to another, without mentioning such Hiring and Service to be for

a Year, would make a good Settlement.” Nevertheless, it appearing to this Court [of Sessions] in this Case, that the Space of Time between Whitsuntide 1767 and Whitsuntide 1768, consisted of less than 365 Days; and was not a complete Year."—

It is therefore ordered, by the said Court of Sessions, That the said Order of Removal be reversed.

(8) Argument

Mr. Wallace alleged this to be a sufficient Hiring and Service for gaining a Settlement;. and obtained a

Rule to Shew Cause why this Order of Sessions should not be quashed ; and the Original Order affirmed.

Mr. Dunning now shewed Cause; and urged that no Settlement was gained in Holy lsland, by this Hiring and Service, which were Both of them incomplete ; Both being for less than a Year, and short

of 365 Days : Whereas the Hiring must always be for a complete Year, and can’t be dispensed with ; and the Service ought to be so too. Indeed the Court have sometimes relaxed a little, as to the

Service; but never, as to the Hiring. To prove which, he cited the Cases of \* *Frencham* and *Pepperharrow*. P. 1 G. 1. ⴕ *Comb* and *West-Woodhey*. H. 5 G. 1. *Rex* v. Inhabitants of ll *South Cerney*. P. 5 G. 2. [See also,- ante, 55. Rex v. Inhabitants of Newton]. But,

\* *V. Foley’s* Poor Laws pa. 144 and Sessions Cases Ed. 1750 Vol. 1 pa. 7 and 1 *Sir J. S.* 83.

ⴕ *V. ante* pa. 160 in Margine.

ll *V. ante* pa. 158.

(9) Judgment

The Court, consisting of Lord Mansfield, Mr. Justice Willes, and Mr. Justice Blackstone, (for Lord Com-

missioner Aston was engaged in the Court of Chancery,) were unanimous “that the Pauper gained a Settlement in Holy Island, under this Hiring and Service.” This is stated to be the usual Way of hiring Servants in this County, and such Service always deemed to be a Year's Service. There are many of the Clergy, in Durham : They compute from ecclesiastical Days. It is stated as a Hiring to serve for a Year,” though it is indeed added, “ from Whitsuntide to Whitsuntide.” Parish-officers are, by 43 Eliz. to be appointed in Easter-week, or within one Month after Easter, (which is a moveable Feast:) Yet they are considered as executing the Office a whole Year\* though it may fall short of 365 Days. There is no Case that proves the absolute Necessity that the Hiring should be for exactly 365 Days.

(10) Ruling

Order of Sessions quashed:

Original Order affirmed

(11) Comment

A flexible (mid-century) decision deeming a hiring short of 365 days but from Whitsuntide to Whitsuntide, this being a moveable feast, to be a hiring for a year.

(12) Type

Liberal.

(1) Case name

*R.* v. *Newton*

(2) Date

28 November 1740

(3) Report

Burrows Settlement Cases 157

(4) Court

King’s Bench

(5) Parties

Rex v. Inhabitants of Newton

(6) Order sought

Quashing

(7) Facts

Two Justices made an Order for the Removal of Abraham Greaves, Elizabeth his Wife, and Ann their Daughter, from the Township of Gouldesborough to the Township of Newton in the Willows, otherwise Newton-Kine; (both, in the West Riding of Yorkshire:) And the Sessions, upon Appeal, confirmed this Order.

Case.—Abraham Greaves, the Person removed, was in the Year 1733, on Wednesday after Martinmas-day, being the fourteenth Day of November and the Day on which the first Statutes for the public Hiring of Servants was held at Knaresborough in the said Riding, hired by Richard Ellerbeck of Newton to serve him from that Time till Martinmas-day following: And a Fortnight after and in Pursuance of that Hiring, he went into the Service of the said Ellerbeck, and remained there till some Time in the Spring following, when by Accident he became lame, and by his Master's Consent left the Service for some Weeks, and then returned and stayed till the tenth Day of November following, being the Day before Martinmas-day 1734 ; on which Day his Master and he accounted, and he left his Master's Service. On the Wednesday following he went to the first Statutes at Knaresborough aforesaid; where he contracted to serve one John Houseman till Martinmas following, and received 2s. 6d. as Earned: But before he entered into his said Service, viz. on the Sunday following, the said Houseman sent him Word “he was otherwise provided and discharged him of his Contract. The said Abraham on the Thursday following, being the 21st Day of November, went to Wetherby in the said Riding, in which Town two public Statutes for the Hiring of Servants are and Time out of Mind have been annually held; one, on the first Thursday after Martinmas and the other, (commonly called the latter Statutes or latter Club-day,) on the second Thursday after Martinmas-day; and on the said latter Club-day, being the said 21ft Day of November, was hired by John Simpson, an Inhabitant in Goldesborough, to serve till Martinmas then next. That in Pursuance of such Hiring, he immediately entered into the Service of the said Simpson, and served him till the Martinmas-day following, in the Township of Goldesborough. The Sessions were of Opinion “that Abraham did not gain any Settlement in Goldesborough by the said Hiring with Simpson but that he gained a Settlement at Newton, by Virtue of his Hiring to and Service with Ellerbeck," and adjudged accordingly, “ that his lad legal Settlement was at Newton;" and confirmed the Order of the two Justices.

On Saturday the 17th of May last, a Motion was made, by Mr. Fawkes, to quash these Orders; for that there was neither a Hiring for a Year, nor a Service for a Year. And they are, both of them, necessary: It has been several Times so adjudged.

(8) Argument

Rule to shew Cause. Upon Shewing Cause (on Wednesday 1st June,) Mr. Justice Probyn observed that the Case does not state any Custom about these Statute-fairs. But he had a Notion that there had been Cases where the Custom and Usage of the Country had been stated, “ to hire from the Statute-fair till Martinmas following;” and that such Hirings pursuant to the Custom had been allowed of.

But Mr. Fawkes alleged that there were Cases which adjudged “that if there was such a Custom, it could not control the Act of Parliament:” And he particularly named one, viz. *Rex* v. *Inhabitants of South Cerney*, Tr. 5 & 6 G. 2. [v. *Sessions Cases*, Ed, 1750, Vol. 1. pa. 174, No. 156 ]

It was now adjourned.

it came on again upon Saturday 21st of June; when an Objection was made to the Certiorari, by Mr. Denison, of Counsel for the Township of Gouldesborough, that it did not appear to be properly returned: The Return was only signed R. Whitton; not saying who or what he was; or that he had any proper Authority to return it. It is not even prefaced to be “ the Answer of such a one:” (Which is the usual Method.)

Mr. Justice Probyn.—It ought to be returned by the Persons to whom it is directed: And it is directed to the Justices of the Peace.

Lord Chief Justice Lee directed other Returns to be looked into: Which appeared to run thus—“ The Answer of A. B. and C. D. two of the Justices within named-,” and then told the Counsel who were for quashing the Orders, They had better look into it, and see if they could support it. It was therefore again

Adjourned.

But finding it could not be supported, they (on Wednesday 25th of June) moved to quash their own Certiorari : Which was granted.

On the first Day of this Term, they moved for a new one. But this was opposed. For

Note—On the 24th of June last, the new Act\* concerning Certioraries to remove Orders of Justces, &c, took Place: Which limits them to be moved for within fix Calendar Months, and directs six Days Notice in Writing to be given to the Justices. And Notice had been here given, in the Vacation, to two Justices who were at the Sessions: But none was given to the two Justices who made the original Order. Wherefore Mr. J. Chapple (to whom Application for a new Certiorari was made in the Vacation) would only grant his Fiat for a Certiorari to remove the Order of Sessions : But he referred them to a Motion in Court, as to granting a new Certiorari to remove the original Order of the two Justices.

Note also—This Application to the Court was not within six Months: But the original Application to Mr. Justice Chappie was within the six Months, (though-upon the very last Day of them.)

Upon shewing Cause, on Monday the 10th of this Month, against this Rule obtained on the first Day of this Term, the Clause in the Act of the last Session of Parliament was insisted on by Mr. Denison which makes two Things previously necessary before the Court issues a Certiorari; viz. (1st,) That it be issued within six Calendar Months after the Order is made : (For the Clause is prohibitory that the Court shall not otherwise grant it; and therefore there ought to be an Affidavit that the Order was made within fix Calendar Months.) (2dly) There mustbe six Days Notice given to the Justices who made the Order.

(9) Judgment

The Court thought this such a Cafe as they ought to assist if they could. Here was a regular Application to a Judge within Time, and with due Notice, as to the Order of Session; and he has granted a Fiat for a Certiorari to return it. So that you are in Possession already of a Fiat as to the Order of Sessions. And when that Order shall be before the Court, we may find a Method of having the original Order before us, without a new Certiorari, or without any Infringement of the Act. If the Certiorari commands the Justices to return the Sessions Order, cum omnibus eum tangentibus, we shall see what Return they will make to it. Therefore you had better take out your Certiorari upon the Fiat you are already in Possession of: And there don't seem to be any need of the new. one which you now apply for.

They accordingly did so. And on Wednesday the 19th of this Month, (both Orders being then returned up,) a Motion was made by Sir John Strange, to quash them; and a Rule granted, to shew Cause why they should not be quashed. It was now moved, by Sir John Strange and Mr. Fawkes, to make this Rule absolute: There was neither a Hiring for a Year, nor a Service for a Year, in Newton.

Mr. Justice Page said he believed great Numbers of Servants were hired in many Countries (and he was sure of it in his own) only from the Statute fair.

Lord Chief Justice Lee said it could never be supported to be a Settlement in Newton-, as there was neither a Hiring for a Year nor service for a Year: And after having spoken to Mr. Justice Chapple and Wright—

The Court, without reading the Orders, or Mr. Denison's attempting any Argument against it, made the

Rule absolute for quashing both Orders.

(10) Ruling

Rule absolute for quashing both Orders.

(11) Comment

In this (early) case, hiring at a statute fair from one moveable feast to another did not confer a settlement. The case can possibly be understood on the basis that the service was interrupted by a period of recovery from an injury.

(12) Type

Restrictive

(1) Case name

*R.* v. *North Basham*

(2) Date

23 November 1785

(3) Report

Cald 566

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of North Basham.

(6) Order sought

Quashing

(7) Facts

Two Justices by an order remove James Phoker, his wife and their six children from the parish of Salthouse in the county of Norfolk to the parish of North Basham in the same county. The Sessions on appeal confirm the order, and state the following case:

That about 22 years since the pauper, James Phoker, let himself for 4 years to Robert Colvin of North Basham, farmer, and duly entered upon and performed that year’s service ; and then lived another year with the said Robert Colvin at North Basham, and received the whole of his wages : that being then a single man he let himself for a year to Abraham Dusgate of East Basham in the county aforesaid farmer, and entered upon and continued in his service at East Basham until three days and an half before the expiration of his year's service; when he married a female servant of the said Abraham Dusgate, who was then big with child by him the said James Phoker: that after his marriage, in order to avoid gaining a settlement in East Basham and wishing to be settled elsewhere, he went with Abraham Dusgate, his master, before Henry Lee Warner Esquire, a neighbouring Justice, to be by him discharged from his said service ; and the said Henry Lee Warner, after hearing the said Abraham Dusgate and said James Phoker, did discharge him from, his said service; but whether only verbally or by an order in writing does not appear, as the witness, on being asked this question, could not recollect whether Mr. Warner did or did not sign any order: that, said Henry Lee Warner Esquire observing that Phoker was a likely young man, Dusgate, his master, said ; he was welcome to settle in his parish, if he pleased: that he paid his year’s wages, deducting one shilling and nine pence, being a proportionable share thereof for the three days and an half, which were wanting to complete his year’s service: that the said James Phoker soon afterwards went to reside at Salthouse, and hath continued there until removed by the said order; but hath not since he left East Basham in manner aforesaid done any act to gain himself a settlement.

(8) Argument

Mingay and Garrow shewed cause in support of these orders ; and insisted, that there was no principle whatsoever, under which it was possible to argue, that a settlement was gained in the parish of North Basham, unless it were the supposition that everything which passed there, relative to the pauper's discharge, was fraudulent; but that this Court had uniformly said, they would neither infer, or enter into the question of, fraud: and they relied upon the authority of *the King v. the Inhabitants of Preston* H. 4 G. 2., cited in the case of [a] *the King v. the Inhabitants of Castlechurch*,

Bearcroft and Fitzgerald in support of the rule to quash these orders, contended ; that if, from the facts disclosed, a plain and clear inference of fraud arose, the Court would enter into that question, although fraud was not expressly and in terms found : that here the very view and object of the whole business was by collusion to defeat the settlement: that the management and contrivance of the parties will not be allowed to alter or vary the operation of the law : that the Court no longer ago than Saturday last had said, that the question of fraud is a conclusion of law from facts : that in the case of [b] *the King v. the Inhabitants of Frome Selwood* long subsequent to that of Preston, where, under a wish of the servant's not to be settled the master gave him leave to visit his friends for ten days and then deducted a proportion of his wages for the absence; the Court held, that this was “ fraudulent and a mere evasion,’’ and did not defeat the settlement: That, as to the discharge by the magistrate here, it was a nullity : that it had been decided in the case of [f] *the King v. the Inhabitants of Hanbury*, that such a discharge, being an act of jurisdiction, must be by order; and therefore ought to be inwriting: and that in the case of [d] *the King v. the Inhabitants of Potter Heigham*, in which the pauper requested to be dischargedthree days before the expiration of his service, submitted to an abatement of his wages and even where it was expressly dated that heand his master parted by consent, yet the Court pronounced a similarjudgment in favour of the settlement.

[a] M. 9 G. 2. 1735. Burr. Settl. Caf. fo. 69.

[b] Tr. 6 G. 3. 1766. Ib. 565.

[c] Tr. 26 & 27 G. 2. 1753. Burr. Settl. Cas. 322.

[d] Tr. 11 G. 3. 1771. Ib. 690.

(9) Judgment

Lord Mansfield.

Certainly there was no fraud on the part of the master here. The discharge was before a magistrate ; and people, who mean fraud, do not go there. It was besides with the consent of the master, and at the instance of the servant; and by him the fraud was committed, if there were any thing like fraud in the case ; for it was then a fraud upon the parish, in which he was at the time settled, and in which, if the fraud succeeded, he would continue a settled inhabitant. It is a solemn act, done with advice and on full consideration by both parties, and unquestionably valid.

Willes, Ashhurst and Buller, Justices, concurring,

Rule discharged, and

Both Orders affirmed.

(10) Ruling

The discharge of a servant before a magistrate, with the contract and at the instance of the servant, cannot be fraudulent.

(11) Comment

An agreement to discharge the servant for the sole purpose of allowing him to avoid settlement is valid if taken before a magistrate. The difference with the earlier case of *Frome-Selwood* (1766) seems to be that the parties went to a magistrate (in the former case, a similar agreement was considered fraudulent and a ‘mere evasion’ of settlement and thus invalid).

(12) Type

Liberal

(1) Case name

*R.* v. *North Wingfield*

(2) Date

22 January 1831

(3) Report

1 B. & Ad. 911

(4) Court

King’s Bench

(5) Parties

The King versus the Inhabitants of North Wingfield

(6) Order sought

Quashing

(7) Facts

Upon appeal against an order of two justices, whereby Sarah Hughes, single woman, was removed from Woodthorpe to Northwingfield, the sessions confirmed the order, subject to the opinion of this Court on the following case:— The pauper was bona fide hired as a housekeeper by H. H., in Northwingfield in October 1810, by an agreement in writing for a year, at 401. per annum wages. She

entered into the service in pursuance of her agreement, and staid in the same (in the appellant parish) until February following, when Mrs. H. returned home, and she then left. Some time after she had been in Mr. H.’s service, she began to sleep with him. No agreement was made on this subject before she came into the service. She performed all the duties of a housekeeper, and lived with the other servants, and sometimes paid for articles wanted in the house, and was repaid by Mr. H. Upon

leaving Mr. H.’s, she went to London, and shortly afterwards Mr. and Mrs. H. came to London, and he hired her a second time, by a written agreement, for a year, as a servant, at the same wages as under the first agreement. According to this contract she entered again into Mr. H.’s service, in the appellant parish, and served him there for many years, and until he died, living in and managing his house and superintending his servants precisely as under the first hiring. She received her wages, but at time from necessity, expended a part of them in paying the expenses of Mr. H.’s house; and she provided herself with clothes. The former cohabitation between her and her master was continued. The second written agreement having been lost, and the loss of it proved, the pauper gave parol evidence of the terms of it to the effect before stated. The appellants then proposed to cross-examine her, for the purpose of proving that the contract of hiring was founded in part upon the pauper’s agreement to cohabit with her master, in which case the hiring would be “turpis contractus,” and could not confer a settlement. The respondents objected, that no evidence ought

to be received of a consideration that did not appear upon the written agreement, and the Court concurred in the objection, and refused to receive the evidence. The question reserved was, whether the evidence ought to have been admitted or not.

(8) Argument

Fynes Clinton, and Whitehurst in support of the order of sessions. The Court will not send this case back to the sessions, if, upon the facts found, they must of necessity come to the same conclusion. Now, the case states that the pauper was hired a second time as a servant for a year, at the same wages as under the first agreement, which is found to have been bona fide for service: the latter contract expressly refers to the first, and appears to be a renewal of it. Then she gained a settlement by a year’s service under that contract, because, even admitting there was an agreement for cohabitation, yet there was also a bona fide hiring as a servant; and where a contract is partly legal and partly illegal, and is divisible, it is good for so much as is legal, although void for the residue; *Bigot’s case* (11 Co. 27 b.), *Robinson* v. *Bland* (2 Burr. 1077). If this case were sent back to the sessions, the evidence, when admitted, could only prove that there was also a contract for cohabitation in addition to that of hiring and service, which the sessions have already found; the result, then, would be the same. Secondly, the evidence was not admissible to shew that there

was, beside the services stipulated to be given by the pauper, an additional consideration inducing the master to make the contract; for though parol evidence may be admissible to shew that the consideration expressed in a written contract is not the real one, it is not to shew that there was another consideration beside, and wholly distinct from that so expressed.

N. R. Clarke contra. The true question in the case was, whether the agreement was not in substance an agreement for cohabitation, and the contract for service merely a colour. In order to gain a settlement by hiring and service, the pauper must be lawfully hired into the parish. If there was at the making of this contract a stipulation between the master and the pauper that the latter should cohabit with her master, the contract would be wholly bad, for, supposing the considerations to be

distinct, one of them would be immoral, and therefore the whole void. If there be a promise to do two things, and the one is unlawful, it is void for the whole. Com. Dig. tit. Action on the Case upon Assumpsit (F), 4. Or if one of the considerations for a promise be unlawful, that vitiates the whole. Com. Dig. tit. Action on the Case upon Assumpsit (B), 13. The question of fact here was, whether there had been such a stipulation or not, and evidence was admissible to shew that there [915] had.

It is undoubtedly a general rule of evidence that a party to a written contract cannot shew by parol evidence a condition or consideration contrary to that expressed in the contract, but it is an exception to that rule that he may shew the condition or consideration to have been an illegal one (a). Besides, here the evidence was offered to ascertain an independent fact collateral to the written agreement; and then *Rex* v. *Scammonden* (3 T. R. 474), and *Rex* v. *Laindon* (8 T. R. 379), are authorities to shew it was admissible.

(9) Judgment

Lord Tenterden C.J. This contract may have been either a contract for service, or for cohabitation, or for both. In the first case a settlement would clearly be gained by a service under it; in the second it would be clearly void, and no settlement can be gained. If it were for both, then it is said that the contract is divisible, and good for so much as is legal, but void for the residue. As to that it is unnecessary to say anything at present. The evidence should have been received to ascertain the nature of the contract, and the case must therefore be sent back to the sessions for that purpose.

The rest of the Court concurred.

Case sent back to the sessions (d).

(10) Ruling

A female pauper having proved that she was hired for a year by contract in writing, which was lost; the appellants proposed to shew by her cross-examination that she had agreed not only to serve but to cohabit with her master : it being already in evidence that she had in fact cohabited with him during her residence in his family under the hiring: the sessions refused the evidence, on the ground that no proof of a consideration which did not appear on the written agreement, was admissible: Held, that the evidence ought to have been received, for the purpose of ascertaining whether the consideration for the hiring was wholly or in part cohabitation.

(11) Comment

A contract combining service with cohabitation cannot give rise to a settlement, so the justices should have heard evidence on the cohabitation point.

(12) Type

Restrictive

(1) Case name

*R.* v. *North Cray*

(2) Date

5 February 1785

(3) Report

Cald 495

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of North Cray

(6) Order sought

Quashing

(7) Facts

Two justices by an order remove George Goldings, Elizabeth, his wife, and their four children from the parish of Kingsdown in the county of Kent to the parish of North Cray in the same county. The Sessions on appeal confirm the order and state the following case:

That the pauper, George Golding, about seventeen or eighteen whether the years since, being a single man, hired himself as a servant a few days before Old Michaelmas-day, from that Michaelmas-day for one year at the wages of six pounds ten shillings to James Bedell of Ruxley in the parish of North Cray: that the pauper went to his said master the said Michaelmas-day; and continued with him in the said parish of North Cray, until eight or nine days before Michaelmas-day following: when, in consequence of being charged on oath with being the father of a bastard child, likely to be born in and to become chargeable to North Cray, he was apprehended by a warrant of a justice of the peace ; and, not giving security to indemnify the parish, or entering into a recognizance to appear at the next general Quarter Sessions, he was duly committed to Dartford Bridewell, his master, James Bedell, then being one of the churchwardens of North Cray, and one of the persons that apprehended him, and went with him to the Bridewell: that the pauper continued in prison until the eleventh of October, and on that day he executed a bond to indemnify the parish of North Cray against the expences, which the child might occasion to them, if born in their parish ; and on the same day the said James Bedell, his master, with the other officers went to the Bridewell to discharge the pauper ; and the said James Bedell then paid the pauper his wages agreed for, except four shillings, which he deducted contrary to the content of the pauper for the time he had been in confinement: the pauper did not recollect whether he gave any receipt for the wages ; but a receipt was produced and given in evidence, to which the pauper had let his mark. (It was herein let out at length : it bore date on the eleventh of October, and was given for the sum of six pounds six shillings and three half-pennys, in full for wages from the 30th of October 1765 to the 29th of September

That the parish officers consented to his release on the 11th of October ; but the keeper of the Bridewell refused to discharge him without a proper authority : and on the twelfth he was discharged by an order which was set out in the case, made by the magistrate who had committed him ; and which recited, that the commitment for refusing to give security, and the discharge upon having given it, were both at the instance of the overseer of North Cray.

(8) Argument

Lee, Robinson and Harvey shewed cause in support of these orders ; and contended, that here the servant continued throughout his year in that character, and therefore gained a settlement ; though had he gone away before the expiration of his term, it would have been otherwise : that all the cases, which under circumstances of this fort decide, that a settlement was not gained, go upon this idea, that the contract between the parties was dissolved before the end of the year ; but that here it was not so : that in argument it could at most be said to be suspended ; but that in the opinion of both master and servant, it fulfilled to the end of the year : that, had it not been so, the master would have paid him his wages at the time, and not have deferred it for three weeks and till his year was near expiring, for the purpose, by an after-thought, of defeating his settlement : that this therefore was a species of fraud in the master ; and that in the case of [a] *the K. v. the Inhabitants* *of Westmeon* the ground of the judgment of the court was, that the contract was dissolved.

[a] M. 22 G, 3, 1781. Ante 129.

Buller, J.

There must be either an actual or implied service. Here is no actual service. From whence is the Court to imply one?

Harvey. From the whole of the master’s conduct, no part of which was marked with any thing like dissatisfaction at his absence, but the contrary; inasmuch, as by not paying the pauper his wages at the time he apprehended him, it must be implied, that he had consented to his continuing in the character of a servant, and considered him as intitled to return, if discharged from Bridewell, before the end of his service: that there is nothing in the case but the bare act, to shew that he meant the apprehending of the servant under the warrant as a discharge from his service ; and this act he was bound, as a public officer, to do: and they cited the case of [a] *the K. v. the Inhabitants of Frome Selwood*, where the master gave the servant leave to absent himself for the last ten days of his term for the purpose of avoiding his settlement: and yet the court, though he did so absent himself, supported the settlement.

[a] Tr. 6 G.3. 1766. Burr. Set. Cas. 565.

(9) Judgment

Lord Mansfield.

The single question is, whether the pauper served his year ? In fact, he certainly did not. Did he then constructively? There is not a pretence that the master consented to dispense with the time, which the pauper did not serve : there is not a colour of fraud in the master's conduct. The servant's absence was the consequence of his criminality. His imprisonment was not illegal. No doubt.

Willes, Ashhurst and Buller, Justices, concurring,

Rule absolute and

Both Orders quashed.

See the case of the *K. v. the Inhabitants of East Kennett*. M. 26 G. 3. 1785. post.

(10) Ruling

If, by the servant’s default, he does not serve the whole year, he gains no settlement; whether the discharge or absence be immediately before the expiration of the year or a more distant period.

(11) Comment

The court takes a strict view towards absences that are a consequences of the servant’s criminal conduct. Such absences will defeat a settlement even if the master does not immediately dismiss the servant. In the case of *East Kennett* later that year, the court takes a similar approach (that the ‘fault’ and the criminality element to the absence defeat settlement).

(12) Type

Restrictive

(1) Case name

*R.* v. *North Nibley*

(2) Date

21 November 1792

(3) Report

5 T.R. 21

(4) Court

King’s Bench

(5) Parties

The King against The Inhabitants of North Nibley

(6) Order sought

Quashing

(7) Facts

Two justices removed T. Howell from Wotton Underedge to North Nibley, both in the county of Gloucester : the sessions, on appeal, confirmed that order, subject to the opinion of this Court on the following case :

“ The pauper T. Howell, who was born at North Nibley, after working some little time in the cloathing way, was hired by Mr. Smith of Wotton Underedge, for the term of five years, as a colt shearman, to work twelve hours each day : he was to have so much per week, and was to have the usual quarterage in his master’s hands ; the reason of which was (as he explained it) to secure the performance of the contract. He neither boarded or lodged in his master’s house, but served him the whole time, and received his wages and quarterage, and lodged the whole time in the parish of Wotton Underedge.”

(8) Argument

Bower and Dauncey in support of the order of sessions, after citing *R. v. Kingswinford* (a)2 as deciding the present case, were stopped by the Court.

Caldecott and Bragge contra. The general established rule in all the cases, and which will reconcile the apparent contradiction in them, is, that service under a hiring for a year will give a settlement, if there be no express exception in the contract. If the contract be generally, for a year, no implied exception will defeat the settlement ; otherwise no settlement could be gained by a service in any of the different branches of manufactures, for in none of them is the servant under the controul of the master during the whole year. Every hiring of a manufacturer necessarily excludes any Service on Sundays, and leaves it in the power of the servant to determine what part of the other six days he will work for his master. In the present case there was no exception; the pauper was hired for five years ; to which was superadded (what would otherwise have been necessarily understood) that he should work twelve hours in the day. It is not stated negatively, as in *R. v. Macclesfield* (b)1, that the pauper was to serve only twelve hours in the day, and was to be his own master all the rest of the time as well as on Sundays. The service of twelve hours was as much as the master could have compelled ; and perhaps the reason of inserting it was that the [22] servant should be under an obligation to his master to work for so many hours at least. But even if the express mention of the twelve hours’ service be considered as a virtual exemption from working the remaining hours, yet if such a reasonable exemption would in point of law have been implied, though no mention had been made of the time, (and a master cannot compel his servant to work an unreasonable number of hours,) the express mention of what would otherwise have been deemed a reasonable service under a general contract cannot alter the nature of that contract. In *R. v. St. Agnes* (a)1 the pauper who was hired for a year to work at stamp mills, gained a settlement, though he did not work on Sundays and holidays according to the custom of the country. The same point was also determined in *R. v. Birmingham* (b)2, where the servant was hired for a year “ good earn good hire,” to work for him, and no other master, to make screws at so much a gross. In *R. v. Buckland Denham* (c) there was an express exception in the original contract; for the pauper was to work “shearman’s hours only,” and to be at his own liberty at all other times : there Lord Mansfield said no settlement was gained, because there was an exception in the contract; but he added, “ If the contract be an absolute contract for a year, the not working on Sundays or holidays, if it be the custom of the country not to work on those days, ought not to hinder the gaining of a settlement; because otherwise no such servant could gain a settlement in those counties where such a custom is established.” In *R. v. Kingswinford* (d) there was an exception of Sundays in the contract itself ; and therefore that cannot govern this case. It is true Lord Kenyon, in giving his opinion, there said “ that it was essential that the servant should be under the power and coercion of the master during the whole time.” But the case was decided on the authority of that of *R. v. Macclesfield*, where there was an express exception in the contract; and therefore what was added by Lord Kenyon was unnecessary, and is contrary to the opinion of the Court in R. v. Birmingham; where Willes, J. in commenting on a similar expression of Aston, J. in R. v. Buckland Denham, said that, when used as a general proposition, it tended to confound and mislead ; that the true meaning of it was only that the contract should be for a year, by virtue of which the master should (subject to the general law of the land, or particular custom of the place) have a power to compel the servant to work throughout the year; for that if it were to be understood in a general sense, a handicrafts-man could never gain a settlement at all; for that however general the hiring might be, he could not be compelled to work on Sundays, or at unreasonable hours of the night. In the same case too Willes, J. said “ A distinction is settled between cases where there is an express exception in terms in the original hiring, and an exception made by the custom of the country or nature of the service ; and the last stated circumstances are expressly determined in *R. v. St. Agnes*, and *R. v. Buckland Denham*, not to prevent the party gaining a settlement.”

(a)2 Ante, 4 vol. 219.

(b)1 Burr. S. C. 458.

(a)1 Burr. S. C. 671.

(b)2 Cald. 77. Doug. 333, S. C.

(c) Burr. S. C. 694.

(d) Ante, 4 vol. 219.

(9) Judgment

Lord Kenyon, Ch.J.—It is of great importance that points which have been decided should not be set afloat again ; and more particularly so in that branch of the law which respects the poor, because by those the conduct of a very useful set of gentlemen, the justices of the peace, is to be regulated. This question arises on the words of the stat. 8 & 9 W. 3, c. 30, by which it is enacted that no hired servant shall gain a settlement, unless such person shall continue and abide in the same service during the space of one whole year. And I think that the determination in the case of *R. v. Macclesfield* (a)2 puts this question at rest; for it was there held that there must be a hiring and a service for a year, so far that the servant must be under the control and coercion of the master during the whole time. That was not then thrown out for the first time; for in *R. v. Wrinton* (b)3, Foster, J. said, “A hired servant is always under the government, discipline, and controul of the master, even on Sundays.” But it has been argued, that if we now decide that the pauper did not gain a settlement in Wotton Underedge, we shall overturn many decided cases : but this has no resemblance to those alluded to. In *R. v. King’s Norton* (c), the contract was expressly stated to be a hiring for a year generally: so in *R. v. Birmingham* (d), and in *R. v. St. Agnes* (e). Whereas in this case, taking it altogether, the servant was hired during the space of five years to stand in a certain relation to the master, during certain hours in the day ; he was to work twelve hours only. This case is similar to that of R*. v. Buckland Denham* (f), where the pauper was hired to serve as a shearman for five years, [24] to work shearman’s hours only ; which was held sufficient to make an exception, as to his service, for the rest of the year, though it were not so stated expressly’. There is no magic in words ; and if the words used be sufficient to convey the ideas of the parties, the Court must decide upon them. And though the word only is not used here, the fair import of the words here used conveys the same idea. Though in that case the relation of master and servant was to subsist on certain terms for five years, yet as the time when the labour was to be performed was expressed to be shearman’s hours only, the Court said, that it was not sufficient to confer a settlement. Between that case therefore and the present I can see no material distinction. I should not have referred to *R. v. Kingswinford*, because the reasons for that determination were given by me only, had it not been observed that it passed without argument. But it must be remembered that it was immediately acquiesced under by the gentleman who made the motion, and that the decision was that of the Court. The present determination is (I think) supported by every authority in the books. It is admitted that, if there had been an express exception in the contract, no settlement could have been gained by serving under it: and this is equivalent to it, for it amounts to this, that the pauper should be considered as the servant for only twelve hours out of the twenty-four.

Grose, J.(a).—The only question is, whether or not there were a hiring for a year'? For I admit that if there were no exception in the contract of any part of the year, it is a good hiring for a year : but I say here, as was said in a former case, that expressio unius est exclusio alterius. And when we consider what each party was to do under the agreement, it is impossible to say that there was not an exception in the contract. The pauper was “ hired for five years as a colt shearman to work twelve horns each day.” Then could the master have compelled him to serve more, or required any other service of him ; certainly not: he was only under his master’s controul during those hours; it is the same in substance as if Sundays and the rest of the twenty-four hours had been excepted ; it means that the servant should work for twelve hours in the day only, and then it comes within the case of *R. v. Buckland Denham*.

Both orders confirmed.

(a)2 Burr. S. C. 458.

(b)3 lb. 280.

(c) lb. 152.

(d) Cald. 77. Doug. 333.

(e) Burr. S. C. 671.

(f) lb. 694.

(a) Buller, J. was indisposed.

(10) Ruling

A service under a hiring for five years, as a colt shearman, to work twelve hours each day, will not give a settlement.

(11) Comment

This is another decision along the same restrictive vein as *R. v. Buckland Denham* and *R. v. Kingswinford* finding that contracts for limited hours cannot confer settlement. Again this prioritises the formality of contract wording (limited hours being viewed as an ‘exception’ carved out of the contract) at the expense of divorcing the legal outcome from the practical reality of the work and the extent of the master’s power of ‘control and coercion’ over the servant (a servant under a contract without such an exception would likely have been working similar hours).

(12) Type

Restrictive

(1) Case name

*R.* v. *Norton*

(2) Date

27 January 1808

(3) Report

2 East 206

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Norton, Juxta Kempsey

(6) Order sought

Quashing

(7) Facts

Two justices by an order removed Sophia the wife of Edward Lea, a marine, and their infant child William, from the hamlet of Oversley to the parish of Norton, both in the county of Worcester. The sessions, on appeal, confirmed the order, subject to the opinion of this Court on the following case.

Edward Lea, being legally settled at Norton, was duly enlisted as a private into His Majesty’s marine forces, from which he deserted, and then hired himself for a year to Mr. Shayle of Oversley, and served a year under that hiring. After the determination of this service he was taken up for desertion, tried by a court martial, and convicted of the same. The question for the opinion of the Court was, whether he gained a settlement in Oversley [207] (which maintains its own poor) by virtue of

such hiring and service.

(8) Argument

Reader and B. Morice, in support of the order of sessions contended that a soldier who had deserted from the King’s service was not sui juris, and could not within the words and meaning of the stat. 3 W. & M. c. 11, s. 7, be lawfully hired. He could not contract the relation of servant to any other master, the duties of which were inconsistent with those which he owed to the King. Upon the same principle it has been determined in several cases (a)1 that an apprentice, not being sui juris, cannot

contract himself as a servant to a third person, nor gain a settlement under a hiring and service. The case of the soldier is even stronger than that of an apprentice; or the former is guilty of a crime by deserting the King’s service ; whereas the latter is only liable civiliter : and the policy of the law is much stronger against the power to contract a second engagement for service in the one case than in the other.

Reynolds and Birch, contra, endeavoured to distinguish this from the case of an apprentice, which, they said, turned altogether upon the restrictive force of the indenture, and could not therefore apply to any case of a previous engagement by parol to serve another. In the case of a general hiring, if the servant depart before the stipulated time of service, the only remedy by the master is by an action on the contract; but it never was disputed but that if the servant immediately after made a new contract of hiring for a year, and served under it, he would gain a settlement: and the first master could not maintain an action against the second for the wages or work and labour of the servant. But it is otherwise in the case of an apprentice, for the recompense for whose work and labour as a servant the original master, and not the apprentice himself, may maintain an action against the the second master after notice. It is true that the King might have interfered, and defeated the service to the master by taking the pauper away; but the contract would still have been binding on both the parties to it; and as on the one hand, if the service were thus interrupted, the master would have had a remedy for the breach of contract against the servant; so on the other hand, where the service was in fact performed, the servant has his remedy upon the contract for the stipulated wages. The word lawful, in the Statute of King William, means a contract of hiring and service lawful in the terms of it, and not within the exceptions of any of the statutes relating to servants. It has been held in *Rex* v. *Westerleigh* (a)2 and *Rex* v. *Winchcomb* (b), that a militiaman might gain a settlement by hiring and service, though he were absent part of the time on duty ; the term of his absence having been stipulated for by him : and yet the same objection would have applied to him, if was not sui juris; for he might have been called out on duty the whole time.

(a)1 *Buckington* v. *Skepton Bechamp*, 2 Const’s Bott, 570. 2 Ld. Ray. 1352, and 1 Stra. 582. *Rex* v. *Austrey*, Burr, S. C. 441. *Rex* v. *Ecclesal Bierlow*, ib. *Rex* v. *Harberton*, 1 Term Rep. 139, and 2 Const’s Bott, 576. *Rex* v. *Sandford*, 1 Term Rep. 281. *Rex* v. *Hindringham*, 6 Term Rep. 557.

(a)2 Burr. S. C. 753.

(b) Dougl. 391.

(9) Judgment

Lord Ellenborough C.J. That was the case of a lawful contract with a just exception. The public had a claim upon the militiaman’s service for a certain time; and subject to that claim he might lawfully contract to serve his master. If this case were perfectly res integra, there might have been great doubt whether the word lawfully in the Statute of King William were not to be narrowed in its construction to a contract in the terms of it lawful: and if the contract were lawful in its form, it might have afforded an argument whether the party serving under it could be disabled from gaining a settlement under it, by reason of his having before contracted an engagement with another person inconsistent with it. But a variety of cases have occurred which have decided the question in the case of an apprentice: and this, not on the ground of its being an excepted case, or as standing upon

any occult efficacy in the indenture of apprenticeship; but upon the broad principle that one, who has contracted a relation which disables him from serving any other without the consent of his first master, is not sui juris, and cannot lawfully bind himself to serve such second master, so as to gain a settlement by serving for a year under such second contract. In reason and principle it cannot make any difference whether he be originally bound by a contract of apprenticeship, or by any other contract equally obligatory upon him, which disables him from binding himself to serve a second master. The objection is, that he cannot give the master a control over bis service for the whole period which the master stipulates for and has a right to require by the contract. The King’s officers might at any time have reclaimed him, and taken him out of the service in which he was engaged ; he cannot therefore be said to have been lawfully hired into it. The remedy which the master might in that case have had against him is another question : and the very want of power to bind himself, as he assumed, without authority, to do, might have founded a cause of action against him by the master. But a soldier is at least as much bound to the service of the King, as an apprentice is to that of his master: and nothing is to be inferred from the measured language of the Court in the case

of an apprentice, in not laying down the principle broader than the matter in judgment required : but nothing was said by the Court in any of the cases intimating an opinion that the rule there laid down was confined to the single case of an apprentice; and therefore we must look to the reason and principle of those decisions when we are called upon to apply the rule to similar cases.

Grose J. The words of the statute have been considered, and a construction put upon them in the instance of an apprentice ; and I cannot distinguish this case in principle from that.

Lawrence J. The decisions referred to have concluded the present question, if they were not made upon any ground peculiar to the case of an apprentice : but, as I understand them, they proceeded upon the ground that an apprentice was not sui juris, and could not therefore subject himself to the control of a second master for a whole year under a contract of hiring. And that principle will equally govern the present case.

Le Blanc J. The prior cases have decided this. The principle of them is, that if the party cannot make such a contract for his service, of which the master may avail himself for the whole year according to the contract, no settlement can be gained under it.

Orders confirmed.

(10) Ruling

A deserter from the King’s marine service cannot gain a settlement under a hiring and service for a year; not being sui juris, nor competent lawfully to hire himself within the stat. 3 W. & M. c. 11, s. 7.

(11) Comment

The Court holds that a deserter from the army cannot contract for a general hiring, so no settlement is gained.

(12) Type

Restrictive

(1) Case name

*R*. v. *Nutley*

(2) Date

16 May 1772

(3) Report

Burr S.C. 701

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Nutley

(6) Order sought

Quashing

(7) Facts

Mr. Kerby moved, on Thursday 7th May 1772, Order of Sessions, which quashed an Order of two Justices made for the Removal of John Merratt and Elizabeth his Wife and their four Children, (naming, them, and specifying their Ages,) from Nutley in the County of Southampton to Bentworth in the same County.

The Order of Sessions states—That the Appeal coming on, and being examined into, from the Testimony of Witness and other Evidence ; and argued and debated by Counsel on both Sides; and it appearing unto this Court, That six Weeks before Michaelmas, about 34 or 35 Years ago, One John Page was hired, in the Presence of Thomas Merratt since deceased, (Father of John Merratt the Pauper, and which said John Merratt is the Husband of Elizabeth and Father of John, William, Ann, and Richard mentioned in the said Order of Removal,) by Thomas Smith of the Parish of Bentworth, to serve for a Year the said Thomas Smith, as under-Carter to the said Thomas Merratt; when it was agreed, “ that the said John Page and Thomas Merratt should come into the Service of the said Thomas Smith on the Day after Michaelmas Day then next.” That the said Page and Thomas Merratt did accordingly go into the Service of the said Thomas Smith, on the Day after Michaelmas Day ; and that the said John Page served the said Thomas Smith during the Year, as under-Carter to the said Thomas Merratt ; and that then the said Page and Thomas Merratt left the Service of the said Smith ; and He, Page, received his Year’s Wages. That John Merratt the Pauper, never gained any Settlement in his own Right. That Rachel Merratt, “the Widow of the said Thomas Merratt deposed, “that her late Husband, the Michaelmas Day in the Morning after the said Thomas Merratt left the Service of the said Thomas Smith of the Parish of Bentworth, told Her He had hired Himself to Farmer John Smith in the Parish of Ilsfield; and had likewise told Her that He went into the Service of the said John Smith in the Parish

of Ilsfield, at the Michaelmas in consequence of such Hiring ; and that he continued in his Service till about a Month before the Michaelmas following; at which Time, to wit, about a Month before the Michaelmas Day, the said Smith turned Him going; and that he also told Her, that he was so turned away because he should not gain a Settlement in the Parish of Ilsfield; but did not tell Her that the said John did give that or any other Reason for turning Him away.” And the said Rachel further, deposed that the said Thomas Merratt frequently told her he was turned away against his will. And the said Rachel further deposed “that she was married to the said Thomas Merratt at Easter in the Year in which the said Thomas Merratt told Her he was in the Service of the said John and that She, twice saw Him, during the said Year, in the Service of the said John; and during that Year, till his being turned away, considered in the Service of the said John.” That so much of the said Rachel Merratt’s Evidence as related to the Declarations of her Husband’s Evidence being considered by the Court as mere Hearsay, was rejected) as not being admissible in Evidence.

This Court [the Sessions] is of Opinion and doth adjudge “that the said recited Order ought to be quashed”. And the same is hereby quashed accordingly.

(8) Argument

N. B. The Parish of Nutley insisted, at the Sessions, “That Thomas Merratt’s Settlement was in Bentworth,” upon the Facts given in Evidence by John Page. It was agreed, “that Thomas Smith (the Master of Thomas Merratt and John Page) was then Dead”

The Parish of Bentworth insisted; at the Sessions, and the Sessions were of Opinion (with them) “that John Page had not proved a Hiring of Thomas Merratt for a Year.” And moreover, they likewise set up the subsequent Hiring and Service of Thomas Merratt to Farmer John Smith of Ilsfield, as a good legal Settlement gained in Ilsfield subsequently to his Service in Bentworth: Which rendered it immaterial, they said, whether the Hiring in their Parish of Bentworth was sufficiently proved, or not.

In answer to this subsequent Settlement in Ilsfield, the Parish of Nutley insisted, “that it was only supported by Hearsay Evidence; viz. what Rachel Merratt's Husband had told Her.” And the Sessions being of Opinion with them, upon this Point, rejected the Evidence of Rachel.

Mr. Kerby, who was of Counsel for the Parish of Nutley, grounded his Motion for quashing this Order of Sessions, upon the two Petitions abovementioned to have been insisted upon by them at Sessions; namely, 1st That John Page's Evidence (Thomas Merratt and Thomas Smith being Both dead) was sufficient Evidence of Thomas Merratt's having been hired for a Year in Bentworth ; or, at least, of a general Hiring: And 2dly, That Rachel Merrat's\* Hearsay-Evidence, was insufficient to prove a subsequent Settlement in IIsfield For, an Account of what Persons deceased have declared in their Lifetime, shall not be received of any particular Facts, (though it may, in some Cases, be admitted in proof of general Customs, or Masters of Common Tradition or Repute-,) and Rachel Merratt's Evidence tends only to prove particular Facts. [V. Theory of Evidence, 111,. 112. and Mr. Justice Blackstone’s Commentaries on the Laws of' England, vol. 3. pa. 368.]

Mr. Impey and Mr. Mansfield now shewed Cause, on Behalf of the Parish of Bentworth, why the Order of Sessions should not be quashed. They said that the Sessions were of Opinion “that there was no Proof of a proper Hiring in Bentworth ; and consequently, no Settlement gained in that Parish.” Whereupon the Counsel for the Parish of Nutley desired that the Case might be stated especially, in order to have the Opinion of this Court. After which, the Counsel for Nutley set up a subsequent Settlement which the Pauper had, as they alledged, gained in Ilsfield: And they went into Evidence to prove this subsequent Settlement in Ilsfield. But the Sessions rejected the Hearsay-Evidence of Rachel Merratt ; holding it to be inadmissible. However they stated this Evidence, as well as the former Evidence given to prove Him settled in Bentworth.

So that it turns upon two Questions ; 1st, “Whether Thomas Merratt deceased gained a Settlement in Bentworth;” 2dly, “Whether the Sessions did right, in rejecting the Evidence of his Widow, relating to a subsequent Settlement in IIsfield." They argued, that if the Sessions are right in their Opinion “that there was not a sufficient Proof of a proper Hiring in Bentworth,” there can be no Doubt but that their Order must be confirmed. And if they have done wrong in rejecting Rachel Merratt's Hearsay-Evidence relating to the subsequent Settlement in Ilsfield, their Order ought not to be quashed: It ought only to be sent back to the Sessions.

As to the first Question—It doesn’t appear upon the Evidence, nor is it stated, “ that Thomas Merratt was ever actually hired to Thomas Smith of Bentworth:” There is not the least Proof of any Contract between them. Therefore there is no Proof of any Hiring in Bentworth. And so was the Opinion of the Sessions: And their Judgment must stand, unless it appears to be wrong.

As to the second Question—Though the Evidence of Rachel Merratt ought to have been admitted, yet the Rejection of it is no Reason for quashing the Order of Sessions: It can only be a Reason for lending it down again, to be re-stated. Undoubtedly, many Hearsay-Evidences have been received ; and rightly : The Sessions ought to examine every Thing to the Bottom ; They always receive the Evidence of the Pauper’s Family. And if this Evidence of Rachel Merratt. had been received, it would have proved a subsequent Settlement gained in Ilsfield under a legal Hiring and Service for a Year: And it would have proved that his Master’s turning Him away, against his Will, before the End of his Year, in order to prevent his gaining a Settlement there, was fraudulent; and, consequently, could not hinder or prevent Him from gaining it. So that it would, upon the whole of it, have proved a Settlement in Ilsfield, subsequent to the Service in Bentworth. They cited the *Case of the Inhabitants of Greenwich* (which may. be seen ante, pa. 343. Nv 82.) where, in a Case very like to the present, it was referred to the Justices to state the Facts more fully

Mr. Dunning and Mr. Kerby, contra, on Behalf of Nutley, stated the Question thus—1st, Whether this Thomas Merratt deceased was ever settled in Bentworth : 2dly, If he was, then How he lost that Settlement.

1st, The Transaction was near 40 Years ago. The Evidence to prove a Settlement in Bentworth is stated ; And the Sessions have drawn a Conclusion from it : But their Conclusion is a wrong one. Their Conclusion is, “ that He was not hired:” It ought to have been “ that he was hired.” And this Court will correct their Mistakes. Page could not be Under-Carter to Thomas Merratt, unless Thomas Merratt was Head-Carter: The Offices are reciprocal. Expressing the one implies the other. It appears, therefore, that Thomas Merratt was once settled in Bentworth. 2dly, How then has he lost his Settlement ? ”He has lost it,” say the Counsel for Bentley, “ by gaining a new one in Ilsfield.” But He did not, in Truth and Reality, gain any Settlement there : And so the Sessions have determined. And they have determined right ; though they have indeed given an unwise Reason for their right Determination. If the Hearsay-Evidence had been admitted, instead of being rejected, it would have been clear that the Man did not serve his Year out, or any Thing near it : And there is no Pretence to suppose that he was turned away by his Master, for the Reason which this Woman has fancied. It is not pretended that the Master gave any such Reason. for turning him away : It is all mere Imagination.

(9) Judgment

Lord Mansfield held the Settlement in Bentworth to be sufficiently proved: There is Evidence enough, both of a Hiring for a Year, and of a Service for a Year. Besides, The Court should lean, he said, in favour of Settlements.

Mr. Justice Aston likewise held the Settlement to be in Bentworth. He thought the Hiring for a Year in that Parish to be sufficiently proved; and, consequently, that the Sessions had done wrong, in determining “that a Hiring for a Year was not proved.” He also thought them in the wrong, for rejecting the Evidence of Rachel Merratt: For the Widow’s Account of her Family ought to have been received.

But he was of Opinion, that if it had been received, it would not have amounted to a Proof “that the Turning the Man away a Month before the End of the Year was fraudulent.” Consequently, it must: have appeared, upon the whole Evidence given by this Man’s Widow, “that he had not gained a subsequent Settlement in Ilsfield”.

The Court therefore made Mr. Kerby’s Rule absolute, for quashing the Sessions Order, and affirming that of the two Justices for the Removal of the Paupers to Bentworth.

(10) Ruling

Order of Sessions quashed :

Original Order affirmed.

(11) Comment

The court finds that evidence of an undercarter and the carter’s widow is sufficient to prove the hiring and service for a year of the carter. In that aspect, the judgment is liberal. However, the court finds that the word of the carter’s widow (hearsay evidence) about the carter’s declarations about why he was dismissed from Ilsfield is not sufficient evidence that the master’s dismissal of the carter in Ilsfield was fraudulent.

(12) Type

Liberal

(1) Case name

*R.* v. *Nympsfield*

(2) Date

8 February 1781

(3) Report

Cald 107

(4) Court

King’s Bench

(5) Parties

Rex v. Inhabitants of Nympsfield

(6) Order sought

Quashing

(7) Facts

Two justices remove Hannah Lloyd and her child from the parish of Avening in the county of Gloucester to the parish of Nympsfield, in the same county. The sessions on appeal confirm

the order, and state the following case : That John Lloyd was hired to Lord Ducie, who resided in the

parish of Woodchester at Christmas, 1771, as a game-keeper. That he lived the year in that service, and lay over the stables belonging to his Lordship’s house; which stables were in the parish of

Nympsfield in the said county of Gloucester, where some of the other men servants lay: that at Christmas 1772, he received his year’s wages and continued in the same service under the said hiring till Lady-day 1773, when he quitted his service : that in the month of February, 1773, he married Hannah, his now wife, who resided with her father in the parish of Avening, an adjoining parish in the said county : that, the said John Lloyd lay at Avening the greatest part of the last 80 days before the time of his quitting his said service, without the privity or consent of his Lordship or knowledge

of his house-steward ; who said, had he known thereof, he would certainly have acquainted his Lordship therewith.

(8) Argument

Baldwin had moved for the rule to quash these orders, and now, Clyfford admitting that he could not distinguish this case from that of [*a*] the King v. the Inhabitants of *Hedsor*,

[*a*] Tr. 18 G. 3. 1778. *Ante*, 51.

(9) Judgment

Per curiam

Rule absolute and both

Orders quashed.

(10) Ruling

Servant sleeping with his wife without his master’s knowledge, out of the parish in which his master lives, gains a settlement.

(11) Comment

A settlement is lost when the servant lives outside the parish where the service is being completed; the settlement is in the parish of residence.

(12) Type

Restrictive

(1) Case name

*R.* v. *Odiham*

(2) Date

7 June 1788

(3) Report

2 Term Rep. 622

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Odiham

(6) Order sought

Quashing

(7) Facts

Thomas Bowman, the pauper, went to live with Mr. Joseph Rhodes, of St. Mary Lambeth, Surry, livery-stable keeper and post-chaise letter, as under ostler, at 9s. per week, without fixing any time for the expiration of such service. Some time after he had been there, a post-boy went away, and the pauper was by his master Rhodes turned over to take his place at 3s. per week, and the money he could get from the persons he drove. He remained in such service upwards of two years, and more than one in the last employment as post-boy: during the whole time he found himself in victuals, and lodged in a room or loft belonging to his master in the yard, and received his 3s. per week, and what he could get for driving. Some time after the pauper left the said service he returned to it again, when Rhodes told him he might go to work, and then he remained one year under that agreement. Some time after he left the service he returned to it a third time, in or about the month of February, as an odd man, without wages, and continued under this last agreement till three weeks after

Christmas. When he first went he saw and bad some conversation with, the head ostler and was some days about the yard before he entered into any service ; be then asked his master Rhodes for but place, who told him he might have it. The pauper was removed together with his wife, from Odiham, Southampton, to Lambeth, Surrey, by an order of justices, which the sessions quashed on appeal.

(8) Argument

A rule having been obtained to shew cause why the order of sessions should not be quashed.

Shepherd and Cooke who were to have argued in support of it, said that the point had been determined in the case of *R.* v. *The Inhabitants of Newton Toney* in the last term.

Bearcroft, Burrough, and Portal, in support of the order of sessions.

(9) Judgment

Per Curiam. Rule discharged (b).

(10) Ruling

A service for a year, under an hiring to serve as an ostler at so much per week, without fixing any time of service, will not give a settlement.

(11) Comment

The Court confirms that no settlement can be obtained if the contract was for a weekly hiring.

(12) Type

Restrictive.

(1) Case name

*R*. v. *Offerton*

(2) Date

13 May 1775

(3) Report

Burr S.C. 802

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Offerton

(6) Order sought

Quashing

(7) Facts

Two Justices, by an Order of Removal dated 22d April 1774, removed John Redfearn, Hannah his Wife, Samuel (aged eight Years,) Mary (aged five Years,) John (aged three Years,) and Joseph (aged one Year,) their Children, from the Township of Offerton in the County of Chester, to the Township of Stockport in the same County : Which Order was vacated by the Sessions, upon , an Appeal, after dating the following Case; viz.

That the Pauper John Redfearn was originally settled in the Township of Hattersley in the Parish of Mottram Longdendale in in the said County of Chester ; and when of the Age of twelve Years, he the Pauper was, by an Indenture bearing Date the 25th of April 1759, bound an Apprentice, by the Churchwardens of the said Parish of Mottram and the Overseers of Hattersley aforesaid, to Benjamin Redfearn a Linen-Weaver in Hattersley aforesaid, for the Term of seven Years. That the Pauper was a Party to and executed the said Indenture; which was allowed by two acting Magistrates for the said County, pursuant to the Statute.

That the Pauper removed, with his Master, out of the said Township of Hattersley into the Township of Stockport, a few Days after the Date and Execution of the said Indenture.

That the Pauper served his said Master five Years and seven Months in the said Township of Stockport, under the said Indenture; and lodged at his Master’s House in Stockport aforesaid, during such Time.

That the Pauper and his Master then entered into the following Agreement—“ That the Pauper, upon paying his Master twelve Pence a Week, and providing for himself ', should be at Liberty to work for his own Benefit during the. Remainder of his Apprenticeship-Term ; and the Master should find the Pauper a Loom, for the Remainder of his Apprenticeship (which he did :) And that the Master was to receive the twelve Pence a Week, as a Satisfaction for his Service during the Remainder of his Apprenticeship.

That the Pauper, at the Time of making such Agreement, was of the Age of eighteen Years; and immediately after the same was concluded, he the Pauper married, and left his Master Benjamin Redfearn.

That neither the Churchwardens of Mottram nor the Overseers of Hattersley were acquainted or privy to such Agreement being made; nor was the Indenture cancelled or delivered up.

That the Pauper afterwards resided, as Master of a Family, about five Months, with his Wife, in the Township of Stockport; worked for his own Benefit, and was not accountable to his Master for what he earned ; nor did his Master provide him with the Goods he worked up, after such Agreement was made: But the Master provided him with a Loom as aforesaid, and received the one Shilling for several Weeks, under the Agreement from the Pauper, whilst he resided at Stockport.

That the Pauper took a House, and removed with his Family Into the Township of Offerton, which adjoins to the Township of Stockport, about twelve Months before the said Apprenticeship would have expired, and continued to reside in the said Township of Offerton from that Time till the Order of 22d April last was granted ; the Pauper working for the same Tradesman who employed the Master : But such Tradesman did not settle, nor any ways account with the Master, for the Pauper’s Work or Earning; but the Master provided him with a Loom, whilst the Pauper resided in Offerton.

That the Pauper, during the Time he resided in Offerton, (which was for the Remainder of the Time under the Indenture of Apprenticeship, and being near twelve Months,) did not work with any Person by the particular Direction or Consent of his said Master, but received the Profits and Emoluments of his Trade to his own Use : But the Master knew, during all that Time, when and with whom the Pauper was working; and the Master applied, two different Times, to the Pauper, during the Time that he so resided in Offerton; (and before the Time for which the weekly Payments were to be made was expired,) for Money upon account of the further Arrears of twelve Pence a Week due to him in Pursuance of such Agreement; but never received any Money from the Pauper, after he removed into Offerton but often demanded it, and would have received it, if the Pauper had been able to pay him, and often threatened him for not paying it.

The Sessions, upon Consideration of these Facts, and hearing what had been alledged relating to the Settlement of the Paupers, were of Opinion, "that their Settlement is in the said Township of Offerton:" And therefore they repeal and make void the said Order of the two Justices, which removed them from thence to Stockport.

(8) Argument

Mr. Butler having obtained a Rule to shew Cause why this Order of Sessions should not be quashed ;

Mr. Wallace, Mr. Pepper Arden, and Mr. Bolton, on Monday 13th February 1775, shewed Cause against quashing it.

The Apprenticeship, they said, was never dissolved: It continued in its full Force, notwithstanding this Agreement, and what was done in Consequence of it. It was all done by the Consent of the Master, and with his Knowledge and Approbation. It was all, therefore, a Service under the Indenture; and gained a Settlement to the Apprentice in the Parish where the last forty Days Service was performed: Which was in Offerton. The Master knew with what Tradesman his Apprentice was working: And that Tradesman must have known that the Pauper was Benjamin Redfearn's Apprentice; as that Tradesman employed Benjamin Redfearn, the Master, as well as John Redfearn the Apprentice.

They cited the Cases of *Austrey*, (ante, pa. 441. No. 142.) and of *Fremington*, (ante, pa. 416. No. 133.) and of *Tavistock*, (ante, pa. 578. No. 1 86.) and of St. Luke's in Middlesex, (ante, pa. 542. No. 174).

Mr. Buller and Mr. Dunning argued, on the contrary, for quashing the Sessions Order and affirming the original Order which removed the Paupers from Offerton, as not being their proper Settlement: And they argued that this could not be considered as a Service under the Indenture of Apprenticeship. The Agreement itself manifestly proved the contrary. It was express, “ that the Pauper was to work for his own Benefit and that the Shilling a Week was in Satisfaction for his Service.” In order to make it a Service under the Indenture of Apprenticeship, an express and explicit Leave must be given by the Master, to the particular Service. So it was resolved, in the *Austrey* Case; and so the Fact was, in the *Fremington* Case. Here was no Privity between the two Masters : Which is also necessary. For which, they cited the Case of *St. Luke's in Middlesex*: (See ante, pa. 544.) The tradesman at Offerton could not know that the Pauper was an Apprentice : He appeared to be sui juris. Therefore it is not like the Case of *Tavistock*. The twelve Pence a Week was never received by the Master, after the Pauper removed into Offerton.

(9) Judgment

The Court were of Opinion, that the Apprenticeship continued: There was no Dissolution of it, nor Intention to dissolve it. As between the original Master and the Apprentice, the Master knew that the Apprentice worked in Offerton, and demanded the twelve Pence a Week for it: An Apprentice may work in any Parish, with the Consent of his Master. And it is probable that the Tradesman with whom he Worked knew that he was an Apprentice: For, that Tradesman employed the Master.

They held, therefore, that the Service in Offerton was under the Indenture of Apprenticeship; and, consequently, that the Rule ought to be discharged.

(10) Ruling

Rule discharged :

Order of Sessions affirmed.

(11) Comment

The court finds that an agreement between a master and an apprentice for the apprentice to work for his own benefit but to pay the master a fixed sum per week in substitution for his service to the master qualifies as a continuance of the service to the master under the original apprenticeship indenture. Thus the servant gains a settlement in the place where he worked for his own benefit, under the 40 day rule. Several notable features of this form of constructive service are: that a sum in substitution for service (as opposed to actual service) suffices for the 'service for a year' requirement; that the sum in substitution for service does not actually need to be paid; that the master's consent to the arrangement is crucial to it qualifying as a continuance of service; and there is also a suggestion that third party knowledge of the continuance of the service matters (i.e. that the tradesman knew that the servant was the master's apprentice). This contrasts with the approach taken in cases such as *Sudbrooke*, which state that actual service is required.

(12) Type

Liberal

(1) Case name

*R.* v. *Over*

(2) Date

17 June 1801

(3) Report

1 East 599

(4) Court

King’s Bench

(5) Parties

The King against The Inhabitants of Over

(6) Order sought

Quashing

(7) Facts

Two justices by an order removed J. Rutter and Hannah his wife from Hemmingford Abbots in the county of Huntingdon to Over in the county of Cambridge. The sessions, on appeal, confirmed the order, subject to the opinion of this Court on a case, stating, that the pauper Rutter let himself two days after Michaelmas 1799 for a year to William Dare of Over, at the wages of six guineas; but that being a pensioner of the East India Company he was to have two days in each half year to himself, to go to St. Ives to receive his pension. He remained in his said service till old Michaelmas Day 1800, being a Saturday, when his master went to him in the field, and asked him if he would stay again. The pauper said he wanted more wages; he should expect seven guineas a year; which his master refused to give. His master then asked him whether he intended to go to St. Ives’ fair that day 1 The pauper said he did. He then unyoked his horses and went to the fair, where his master paid him part of his wages. On the next day (Sunday) the pauper returned to his master at Over: on that day he settled his wages, when his master asked him if he would stay again, which he assented to. The pauper then let himself to Mr. Dare again for another year at the wages of six guineas; but [600] the pauper expressly said he should expect to have the two days in each half year to go to St. Ives for his pension as before ; which his master consented to. He continued with Dare under this second hiring for about eleven weeks, when the pauper was apprehended for a bastard child. His master settled his wages, and the contract for the service was dissolved by mutual consent. The sessions were of opinion that the pauper’s hiring and service with Dare at Over were effectual to gain him a settlement there.

(8) Argument

Bevill, in support of the orders, said, that the sessions have in effect found that this was a dispensation of the service for the two days, and not an exception in the original contract; and contended that this case was governed by the principle of the militiaman’s case (a)2, who was deemed to gain a settlement notwithstanding an express exception at the time of the hiring that he should be absent on duty for a month. If that were such a reasonable cause of absence, as that the master could not have refused his consent for the party to be absent from his service while engaged on duty in the public service, it seems to be equally reasonable that one who has received a pension for the reward of past services should be at liberty to go and obtain his reward, although he had not stipulated for it: and then the stipulation to do that which the law would otherwise have allowed him to do upon a general contract, without any such exception, will not vary the case or defeat the settlement. Supposing a servant hired himself for a year, reserving liberty to go to church on Sundays, that would not be considered as an exception in [601] the original contract, but a necessary and implied dispensation by law.

(a)2 *R. v. Winchcombe*, Doug. 392.

(9) Judgment

Lord Kenyon C.J. said there was no colour for contending that the pauper gained a settlement by this hiring and service. The case of the militiaman went altogether upon the ground that the leave of absence stipulated for was no other than what the law would have compelled without any such stipulation. It was part of the public service. No conclusion therefore can be drawn from thence in support of this settlement. Here was an express exception of four days in the year, during which the pauper was not to be under the control of the master. An express reservation of Sundays out of the original contract of hiring was considered sufficient in *R. v. Macclesfield* (a)3 to prevent the gaining of a settlement under it.

Per Curiam. Both orders quashed.

Wilson was to have argued against the orders.

(a)3 Burr. S. C. 458.

(10) Ruling

A pensioner of the East India Company hiring himself as a servant for a year, with a reservation to himself of two days in each half year when he might go for his pension, cannot gain a settlement by service under such a contract.

(11) Comment

The court takes a very narrow view of the absences permissible under a contract of hire for the purposes of settlement – namely that only absences mandated by law are permissible. Any other absence taken pursuant to an express exception in the contract will defeat settlement. This is consistent with the line of cases on the issue since *R. v. Bishop’s* *Hatfield* (1758).

(12) Type

Restrictive

(1) Case name

*R.* v. *Overnorton*

(2) Date

22 April 1812

(3) Report

15 East 347

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Overnorton

(6) Order sought

Quashing

(7) Facts

The sessions on appeal, discharged an order of two justices for the removal of William Biggerstaffe, his wife, and their children, from the hamlet of Overnorton to the parish of Great Rollright, both in the county of Oxford ; subject to the opinion of this Court on the following case. On Monday after Michaelmas-Day, viz. on the 17th of October 1803, William Biggerstaffe, the pauper, was hired to serve Mr. Jolly, of Overnorton, for the year, at 9s. 6d. per week. He served under that hiring, and regularly received the 9s. 6d. every week, either on the Saturday or Monday following, till the 13th of October, on which day for the last time he received 9s. 6d. Three or four days previous to the 13th of October, he had a conversation with his master, and agreed to serve him for another year at 10s. a week. On the 20th of October he received 10s., concerning which no explanation took place at the time; but the pauper said in evidence, that he received it under the new hiring. He continued in the service all that year and seven weeks after. He was married eight weeks after the first hiring.

(8) Argument

Richolls, Abbott, and Peers, in support of the order of sessions, said there was no doubt but that this was an original hiring for a year: and the only question which could be raised was whether it was put an end to before the end of the year; which was a question of fact, and had been decided by the sessions in the negative. There was merely an increase of wages within the year.

Mackaness, contra, first contended that the hiring at so much a week for the year, must mean the current year, i.e. 1803. [But the Court said that the justices were to determine what year was meant, and they had considered that it was for the space of a year from the hiring.] Then he contended that the first hiring was put an end to on the 13th of October, before that year was expired ; and then the pauper, being married, could not gain a settlement under the second hiring; according to *The King* v. *Chilton*.

(9) Judgment

Grose, J. Whatever the decisions might originally have been upon the construction of the statute, the rule of law is now inveterate, that if the justices find a hiring for a year, and a continued service for a year, though not under the same hiring, that is decisive to give a settlement.

Le Blanc, J. The sessions would have done better not to have found any special case; for strictly speaking it is a question of fact, whether the first contract was intended to be for the space of a year, or only to the end of the current year. But if they thought it was only to enure to the end of the current year, they would have come to a different decision. But, however equivocal the expression might have been at first, when the master and servant on the 13th of October in the following year

spoke of a contract for another year, that shewed that they had originally intended a yearly hiring. Then there was clearly a continued service of the same description for a year.

Bayley, J. The sessions were the proper judges to draw the conclusion, as to whether the original contract was dissolved before the end of the year; and I cannot say they have done wrong. There was no reason for dissolving it.

Order of sessions confirmed.

(10) Ruling

An unmarried man agreed on the 17th of October 1803 to serve a master for the year, at 9s. 6d. a week; and received those wages till the 13th of October 1804; three or four days before which (having in the mean time married) he agreed with his master to serve him for another year, at 10s. a-week, which sum he received on the 20th of October, and served more than a year afterwards: Held that this was evidence upon which the sessions might draw the conclusion that the original hiring was for the space of a year, and not merely for the current year of 1803, and that there was a sufficient service for a year, coupled with such hiring, to gain a settlement.

(11) Comment

A flexible decision finding sufficient evidence of a hiring and service for a year.

(12) Type

Liberal

(1) Case name

*R.* v. *Ozleworth*

(2) Date

22 June 1748

(3) Report

Burr S.C. 302

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Ozleworth.

(6) Order sought

Quashing

(7) Facts

Two Justices made an Order for the Removal of William Hewett from Wotton under Edge to Ozleworth, (both in Gloucestershire:) And the Sessions, upon Appeal, confirmed that Order.

Case—The Pauper, William Hewett, had gained a Settlement in Ozleworth but, subsequent to it, agreed with Thomas Palsor, an Inhabitant legally settled in Wotton under Edge, Clothworker, to serve him in the said Business for three Years, at 3s. a Week for the first Year, 3 s. 6 d. a Week for the second Year, and 4s. a Week for the third Year. He was to work only twelve Hours in a Day, and to have one Penny for every Hour he should work above the twelve Hours: And that the said Thomas Palsor should retain 6d. a Week out of the above Wages, during the said three Years, by Way of a Deposit or Security for the said William Hewett'§ performing his Agreement ; but which said 6 d. by the Week was to be paid to the said William Hewett at the End of the said Term, if he performed the said Agreement, or if the said T. P. should discharge him of the said Service before the End of the said Term; but was to be kept by the said T P. if the said W. H. quitted the said Service before the End of the same Term. That the said T. P. was not to find or provide Meat Drink Washing or Lodging for the said W. H. during the said Term : And that it was understood between the said T.P. and W. H. “ that the said T. P. might turn the said W. H. out of his Service at any Time during the Term, paying to the said William the Sixpences before retained.” That the said W. H. worked with the said T. P. under the said Agreement, for about six Months ; and then, being ill, absented himself from the Service for about three Months; and then returned so, and was received by the said T. P. and continued to work for him under the said Agreement, till the Time of his being removed by the said Order of Justices, being for about three Quarters of a Year after the said Return to the said Thomas Palsor: And that, during the Time of his working with the said T. P. and during his Sickness, the said William Hewett lodged in the said Parish of Wotten under Edge; but not in the said Thomas Palsor's House.

(8) Argument

On Tuesday the 7th May last, a Motion was made by Mr. Bishop to quash these Orders: Who insisted that this was a good Settlement in Wotton under Edge, upon the special Case above stated.

The Sessions could not, he said, or ought not to apprehend that the Absence of the Servant during his Illness could vitiate the Settlement: Especially, as the Master received him again, when it was over. In *Rex v. Inhabitants of Iflip* \* (V. 1 Sir J. Strange 423 S.C. very well reported), P. 7 G. 1. B.R. the Servant was absent, being sick, six Days; to see his sick Mother, four Days; .and went away three Days before the End of the Year; and yet it was held a good Settlement. In *Rex v. Inhabitants of Eaton*, T.R. 8 & 9 G. 2. B.R. three Weeks Absence of the Servant was held to be purged by the Master’s receiving him again : And the Court declared against Nicety in construing these Settlements. In *Rex v. Inhabitants of Beccles* §, P. 17 G. 2. B. R. the Servant’s working with other Persons, by Consent of the Master, did not vitiate his Settlement. And in *Rex v. Inhabitants of Goodnestone*, Tr. 18 & H v. ante, 19 G. 2. the Servant went to the Herring Fishery three Weeks before the End of the Year, by Licence : Yet it was holden a good Service.

As to the Liberty of ending the Contract, on forfeiting the Six- pences, and what was understood between the Master and the Pauper about it—he mentioned the Case of *Rex v. Inhabitants of Wincaunton* in the last Hilary Term, where the Apprehension of the Pauper was holden to be quite immaterial.

As to his Lodging—He is stated to have lodged in the Parish: There was no Need that he should lodge in Palsor's House.

Here is an actual Hiring for three Years ; and a Service under it for one Year and a Quarter. Therefore both the two Justices and the Sessions have judged wrong, in holding “ that no Settlement was thereby gained.”

Besides (as Mr. Ford, who was on the same Side, observed) the two Justices removed him, whilst he was actually in his Master's Service.

The Counsel who now shewed Cause insisted on the Liberty of quitting, as vitiating the Settlement alledging that the Hiring ought to be absolute and conclusive.

(9) Judgment

Lord Chief Justice Lee—But how could the Justices remove him out of the Service? It appears that the Man was actually in the Service, at the Time of the Removal.

Both he and Mr. Justice Wright thought the Orders must be quashed.

Mr. Justice Wright observed that the Pauper had served a Year and a Quarter.

The two other judges (Denison and Foster) were both silent.

(10) Ruling

Per Cur.

Rule made absolute to quash both Orders.

V. ante, pa. 48, and the Cases referred to, at the Bottom of that Page.

(11) Comment

This is a liberal judgment in several aspects. First, the arrangement for wages to be paid by the week does not affect the court’s finding that the contract is a hiring for three years, unlike some later cases such as *Bradninch* and *Elftack*. Secondly, the court reaffirms the finding in *Wincaunton* that the servant’s interpretation of the contract (being at liberty to quit at will) is immaterial for determining whether there is a hiring for a year. Thirdly, the court states that there is no need for the servant to lodge at his master’s house. Fourthly, the fact that the servant’s contract was for 12 hours a day only with an overtime arrangement also did not affect the finding of a hiring for a year (the court does not mention this factor), unlike later cases such as *Buckland Denham, Kingswinford* and *North Nibley*. Fifthly, in terms of service for a year, the court finds that the servant’s absence does not prevent settlement (in a similar vein to earlier cases such as *Iflip* and later illness cases such as *Christchurch, Madington* and *Sharrington*). However, what is different is that Justice Wright calculates the period of service based on actual service (deducting the 3 months’ absence for illness). This suggests that Justice Wright did not treat the 3 months’ absence as constructive service, unlike later cases such as *Christchurch, Madington, Sharrington. Milwich*, and *East Shefford* which did not deduct the period of absence from the servant’s total period of service.

(12) Type

Liberal

(1) Case name

*R.* v. *Pendleton*

(2) Date

29 April 1812

(3) Report

15 East 449

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Pendleton

(6) Order sought

Quashing

(7) Facts

John Longden was removed, with his wife and children, by an order of two justices, from the township of Pendleton to that of Salford, in the county of Lancaster; which order was confirmed by the sessions, on appeal, subject to the opinion of this Court, on the following case. John Longden was in the year 1782 engaged as a servant to Messrs. Douglas & Co. of Pendleton, by the following instrument, sealed and delivered but unstamped. “Articles of agreement made this 24th of June 1782, between Thomas and William Douglas of Pendleton, on the one part, and J. Jebson, cotton worker, near Pendleton, on the other part, and J. Longden, on the other part; witnesseth that the said J. Jebson hereby covenants and agrees duly and faithfully, to serve the said T. and W. Douglas in the capacity of cotton workers, during the term of three years, night and day; and the said T. and W. Douglas consent and agree to pay unto the said J. Jebson 5s. 6d. per week for the first year, and to J. Longdale 6s. per week for the first year, 7s. per week for the second year, 9s. per week for the third year, in consideration of his due and faithful services. And whatever time the said J. Jebson and J. Longden shall be absent from their work, it shall be proportionately deducted from the amount of his wages. The present agreement to remain in full force for the said term of three years. (Then followed certain covenants not material to the question.) And for the due performance of this agreement and every article thereof, the said J. J. and J. L. bind themselves and their executors in the penalty of 100l.” (Signed and sealed by the respective parties.)

The pauper served Messrs. Douglas and Co. during the time stated in the abovementioned instrument; and after the expiration of that time, he continued on in their service for four years, without anything further being said as to wages, and without any express engagement as to the time or conditions of such service. On the part of the appellants it was contended that there was no hiring for a year, under which a settlement could be gained ; but the Court, being of opinion that a hiring might be presumed, confirmed the order.

(8) Argument

J. Williams, in support of the orders, first argued that this was, and was entitled, an agreement between the parties, and was made before the st. 23 G. 3, c. 58, s. 1, which first made an agreement stamp necessary, it was receivable in evidence, though under seal. But even considering it as a deed, and as such requiring to be stamped by a prior Act of the 17 G. 3, c. 50; yet as it was not produced for the purpose of making it evidence between the parties to it, nor as having any operation as a deed, but merely as affording a presumption that the subsequent service was under a continuation of a yearly contract of the same kind, he still contended that it might be received as evidence of the subsequent intention of the parties. But, 2dly, supposing the instrument was rejected altogether, which it must be, if rejected at all; then a presumption of a yearly contract may be made from the duration of the service. The law considers a general hiring as a hiring for a year. He referred to *Rex* v. *The Inhabitants of Lyth* and *Rex* v. *Langwhatton*.

Scarlett, contra. The instrument being under seal could not be received in evidence for any purpose without a deed stamp. [Lord Ellenborough, C.J. Supposing you to have succeeded thus far, address your argument to repel the presumption of a yearly hiring from the service in this case.] The terms on which the parties originally contracted having been reduced into writing, no parol evidence of any kind of contract between them could be received. [Le Blanc, J. No such objection to the reception of this evidence was taken at the sessions.] Then how can the Court say that the presumption of a general hiring which the sessions drew was not derived from this improper source? [Lord Ellenborough, C.J. Laying the whole of the written evidence out of the case, is there not sufficient without it to presume a hiring?] The first objection still remains, that there can be no presumption of any contract from other facts, when it appears that the parties had contracted in writing. How could the Court know, without having the contract in evidence, whether it might not have been for a less period than a year; in which case the implication from a continuance of the service would be that it was under a similar contract for time. [Le Blanc, J. rejecting altogether the evidence of a written contract, the case would stand simply upon the fact of a four years’ service, without evidence of any contract. Then may not a contract of hiring be presumed of the same duration as the service?] The case might have been different if no contract in writing bad been shewn: but no presumption of the sort ought to be made when both the parties were living, and might be called as witnesses to prove the actual contract. *The King* v. *Lyth*, was the case of a servant in husbandry, who is always presumed to be hired for a year, unless the evidence shew a hiring for a less term. In *The King* v. *Longwhatton*, the mistress was dead and the servant a lunatic, so that there was no witness of the contract capable of proving it directly. In a subsequent case of *The King* v. *Hales*, the presumption of a hiring for a year for the second year was founded upon express evidence of a hiring by the year for the first year, though that hiring, being retrospective, could not confer a settlement. Presumptions in general, which are mere secondary evidence, are never admitted where primary evidence can be obtained.

[Le Blanc, J. How was this contract capable of being proved ?] It was not capable of legal proof; but that was the fault of the contracting parties. [Bayley, J. Suppose the master and servant had been examined, they had said they had no recollection of the terms of the contract; might not the presumption have been made from the facts of the case? Suppose the respondents had rested their case on proof of a service for the last four years; could the appellant’s parish have struck out that evidence by producing a written instrument, which they could not legally prove?] The objection to the want of a stamp may in many instances be got over, if the very terms of the contract may be inferred from the acts of the parties under it: but here, the commencement of the service being under a written contract, the presumption must either be that that contract still continued, or that the service was continued under the same terms.

(9) Judgment

Lord Ellenborough, C.J. The fact of the service is always capable of distinct proof; for it is collateral and subsequent to the contract itself. The pauper served: that is a fact to be proved by parol evidence. He served T. and W. Douglas at Pendleton : that also is proved by the fact. He served them there during three years; which is a shorter way of expressing that which the sessions meant to find as to the time of the service, by referring to the time mentioned in the instrument; and he afterwards continued to serve them for four years longer. He served without any thing being said as to wages. The stress of the argument seems rather to shew that there were no certain wages reserved than that there [454] was no hiring for a year; for if there were only a general hiring, the law presumes that it is for a year; and if the rate of wages were not specified, he would be entitled to reasonable wages. Then were not the sessions warranted from the fact of a service for four years, at wages, though not specified, to presume that it was under a hiring for a year : the law says that they may make such a presumption when there is nothing to repel it; and that makes an end of the case.

Grose, J. The question meant to be put to us by the sessions is whether they did right in presuming a hiring for a year from a service for four years, at the rate of so much a week as was paid. We cannot say that they could not make such a presumption from the evidence.

Le Blanc, J. The argument has turned principally on the way in which the counsel would have put his case at the sessions. For anything which appears to us, the sessions received the evidence of the written instrument without objection made to it at the time : for if they meant to state the question reserved by them to be whether that evidence was properly received, they would have stated that objection was taken to it, and asked the advice of the Court on its admissibility. But as far as we can

see, the evidence was received without objection, and the facts stated in the instrument are joined on with the other evidence, which, without reference to the instrument, would probably have been stated more fully ; and the pauper would then probably have proved that he had served in fact for four years after the expiration of the articles; having before served for three years under them; and received wages at the rate of so much a week during that time : and then the sessions would have

sent to us to know whether they could from that evidence, putting the written instrument quite out of the question, have presumed a hiring for a year. And how can we say that they could not so presume?

Bayley, J. If there were premises from whence the conclusion of a hiring for a year could properly be drawn, the justices in sessions were the proper persons to make that presumption. Now here there was a service for four years, and wages paid during that period, from whence they might draw the conclusion. But it has been argued here that inasmuch as the pauper served for some part of the time at least under a written instrument, unstamped, we cannot look at the instrument even to see for what time it enured, and that no parol evidence could be given of any contract with reference to the subject-matter of it. But though we cannot look at the unstamped instrument for the purpose of proving by it any agreement between the parties; for such is the general import of the Stamp Acts; yet the Court may look at it to see whether it applies to other evidence of a contract between them. As if a contract in writing be made, not stamped, for the sale and delivery of certain goods on certain

terms, the Court in an action for the non-delivery of goods, upon a contract proved by parol evidence only, may look at the instrument to see whether it applies to the goods then sought to be recoverd for: and if those goods were not included in the contract, parol evidence may be received of the contract sought to be recovered upon. So here, the Court might look at the instrument to see the duration of the first contract under it, in order to guide them in receiving parol evidence of the

subsequent service, to which it did not apply.

Orders confirmed (a)1.

(10) Ruling

Where a pauper had served a master under unstamped articles of agreement to work with him for three years, at certain rates of weekly wages, and under certain covenants; after which he had continued to serve his master for four years longer, without coming to any new agreement; though such unstamped writing cannot be received as evidence for the purpose of proving the agreement

between the parties, yet the sessions may look at it for the purpose of seeing when it ceased to operate, in order to guide them in receiving parol evidence of service for the last four years, at wages; from whence the sessions might presume a yearly contract.

(11) Comment

The Court takes into account a written agreement (signed and delivered but unstamped) along with evidence of continuous working over several years to find a yearly hiring and service.

(12) Type

Liberal

(1) Case name

*R.* v. *Polesworth*

(2) Date

5 May 1819

(3) Report

2 B. & Ald. 483

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Polesworth

(6) Order sought

Quashing

(7) Facts

Two justices, by their order, removed James Barwel, Sarah his wife, and their four children, from the parish of Kingsbury, in the county of Warwick, to the parish of Polesworth, in the same county. The sessions, on appeal, confirmed the order, subject to the opinion of this Court on the following case. The pauper was hired by Mr. Hay of Polesworth, at Polesworth Statutes, a fortnight before Michaelmas, 1799, as waggoner’s lad, at 31. 10s. wages for a year, commencing from the day after

Falseley Fair, the Tuesday after Michaelmas-Day. The pauper remained in the service at Polesworth till a fortnight before Michaelmas in the following year, when he went to Middleton Statutes, having previously asked his master’s leave, who refused to let him go there. The following day the pauper asked his master what work he was to do; the master told him that he might go where he had been the day before, and that he would not employ him anymore. The pauper asked the master to pay his

wages, and said if he did, he would go. The master refused, and said he would obtain a summons, which he did; but neither of them attended the magistrate on that summons. The pauper left his master’s house on the day the summons was served: two days afterwards, the pauper called at his master’s house; and the same day they both went to Polesworth Statutes, when the pauper hired himself to a new master, from the day after the next Falseley Fair. On the day after Polesworth

Statutes, the pauper summoned his master before the magistrate. When before the magistrate, the pauper, in answer to a question put to him by the magistrate, said he was willing to serve his time out; but the master said he would not take him again. The magistrate then directed the master to pay the pauper his whole wages: which the pauper took, and was satisfied ; and went to his grand-

father’s, where he remained till the day after Falseley Fair, when he entered upon his new master’s service.

(8) Argument

Adams and Finch, in support of the order of sessions. The question in this case is, whether what took place before the magistrate amounted to a case of dispensation or dissolution ; and if there was any evidence upon which the sessions might draw the conclusion in favour of the former, this Court will not disturb the conclusion which they have drawn, *Rex* v. *Maidstone* (12 East, 550). The circumstances in this case shew that the master had no reasonable ground for dismissing the pauper, *Rex* v. *Islip* (1 Str. 423). Here, the pauper received his full year’s wages; and there is this additional circumstance, that he neither entered nor offered to enter into any other service, till after his year had expired. That distinguishes this case from those of *Rex* v. *King's Pyon* (4 East-, 354), and *Rex* v. *Leigh* (I East, 539), which will be relied on by the other side. And it appears from the judgment of Le Blanc J., in *Rex* v. *Hardhorn-cum-Newton* (12 East, 56), that that circumstance is most material. They

were then stopped by the Court.

Reynolds and Holbech, contra. The test to which all these cases must be brought is laid down by the case of *Rex* v. *King’s Pyon* (4 East, 354); for there Lord Ellenborough says, that where the parties stand in such a situation that neither the master can compel the servant to come back into his service, nor the servant can compel the master to take him back, and neither of them have any legal means of compelling redress against the other, there is a dissolution of the contract. Now, if this case be tried by that test, it is quite clear that the master, by his payment of the full year’s wages before the magistrate, lost all right of compelling, after that, the pauper to return to his service ; and the pauper, by accepting the wages, and declaring himself satisfied, lost all right of compelling the master to take him back. The only circumstance which is said to distinguish the two cases is this, that in *Rex* v. *King's Pyon* the pauper offered her services to other persons; but that was only evidence

from which her satisfaction at the arrangement might be inferred : and here the sessions have found, as a fact, that the pauper was satisfied. The same observation applies to *Rex* v. *Leigh*. Besides, in this case, the pauper was a servant in husbandry, over whose contract a magistrate has a jurisdiction.

(9) Judgment

Abbott C.J. It seems to me, that the Court of Quarter Sessions were quite right in refusing to consider this as a case in which the contract between the parties was dissolved. There can be no dissolution without a mutual consent of the parties, or some justifiable cause of complaint on the part of the master; but here he quarrelled with the pauper without sufficient reason, for the pauper had done no more than according to *Rex* v. *Islip* he had a right to do. There was therefore no justifiable ground for dismissal. Then is there any mutual consent? It appears that the parties went before a magistrate, and the pauper then stated that he was willing to continue in the service: the master, however, peremptorily refused, upon which the pauper, after receiving his full wages, said that he was satisfied; but he neither contracted nor offered to contract any other service. And I think that there is nothing in this case to shew, that if on the following day his master had ordered the pauper to return

into his service, he would not have been bound so to do. I think, therefore, that the order of sessions was right.

Bayley J. The case of *Rex* v. *Islip* seems to me to be in point. There the servant, as in this case, after having been refused permission to go to the statutes for the purpose of getting another place, went without such permission; and the master refusing to receive him back, the Court held that it amounted only to a dispensation, and not to a dissolution of the contract. In the two cases which have been cited, the servant either contracted or offered to contract a service with another master, and that materially distinguishes them from the present case, as appears from *Rex* v. *Hardhorn with Newton*. The only grounds for deciding in favour of a dissolution, are either mutual consent or some wrongful act of the servant; but here all that is stated is a wrongful act on the part of the master. And as to the servant stating that he is satisfied, that is easily to be explained; for his whole wages being paid, he was satisfied that the remainder of his service should be dispensed with.

Holroyd J. There is nothing in this case stated to shew, with sufficient distinctness, that the servant consented to put an end to his contract. I think that his not having contracted any other service before the end of the year inconsistent with his return to that of his master distinguishes this case from those which have been cited.

Best J. concurred.

Order of sessions confirmed (a).

(10) Ruling

Where a pauper, being hired for a year, and having served till within a few days of the end of the year, went, without his master’s leave, to the statutes to hire himself for the next year; and on the master dismissing him for that, went before a magistrate with his master, and there offered to serve his year out; but upon receiving his full year’s wages, was satisfied, and did not return to his service; but neither hired nor offered to hire himself into any fresh service till the year had expired : Held that this amounted only to a dispensation with his service for the remainder of the year, and that he thereby gained a settlement.

(11) Comment

The Court finds for a settlement, treating a wrongful dismissal as a dispensation rather than a dissolution.

(12) Type

Liberal

(1) Case name

*R. v* *Potter Heigham*

(2) Date

19 June 1771

(3) Report

Burr S.C. 690

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Potter Heigham

(6) Order sought

Quashing

(7) Facts

Two Justices removed Charles Whenn and Rebecca his Wife from Ludham in Norfolk to Potter Heigham in the same County: And their Order was, upon Appeal, confirmed by the Quarter-Sessions; subject to the Opinion of this Court; upon the following Case—

It was duly proved to the Court of Sessions, by the said Charles Whenn, the Pauper, on his Oath, That after having gained a Settlement in the Parish of Potter Heigham by Hiring and Service for a Year, He was hired for a Year from Michaelmas 1764 to Michaelmas 1765, by Samuel Thaxter of South Walsham in the said County. That such last-mentioned Service he the said Pauper entered upon, and continued therein until the Day before the End of the Year; when he desired his Master to discharge him, telling him, “ As he had let Himself for the next Year to a Person in a distant Place, and was removing further from his Friends, “ He (the Pauper) wished to go and see them and pass that day with them and requested to have that Time to Himself to spend with them ; and to which, the Master consented, and He was accordingly discharged; and then received the whole of his Wages, save Sixpence, which he allowed to his Master for that Day. Afterwards, the said Charles Whenn was hired for a Year to Mrs. Nuthall of Caisler in the said County, from Michaelmas 1765 to Michaelmas 1766, at the Wages of six Guineas ; and entered upon his Service at Michaelmas 1765, and continued there until a few Days before Lady Day following. That he had then received One Guinea in part of his Wages; when, without his Mistress’s Leave, he absented Himself from her Service for about three Weeks, and then returned and offered to serve out the Year with his said Mistress: But Mr. Nuthall, who acted as Agent for Mrs. Nuthall, as also Mrs. Nuthall Herself, refused to take the said Charles Whenn again, unless he would make a new Agreement, and a new Hiring. And accordingly, it was agreed between them, “that he should serve from that Time to the Michaelmas following ; and should receive three Guineas and an half for that Service.” He accordingly served Her till Michaelmas, and received such Wages of three Guineas and an half. It was likewise proved, that the said Charles Whenn was hired for a Year from Michaelmas 1766 to Michaelmas 1767, by Mr. Shreeve of Hardley in the said County of Norfolk. That he accordingly entered upon and continued in such last-mentioned Service until within three Days of the End of the Year; when the Pauper, being unwilling to gain a Settlement in the said Parish of Hardley, because there was a House of Industry in the Hundred in which Hardley is situate, and which with the Hundred adjoining were incorporated for the better Maintenance of the Poor in these two Hundreds, He the said Pauper requested his Master, the said Mr. Shreeve, to discharge Him the said Charles Whenn ; which he accordingly did, and they parted by Consent, the Pauper abating one Shilling of his Wages for the three Days.

This Court [the Sessions] upon due Consideration had of the Premises, adjudged “that the said Charles Whenn did gain a legal Settlement in the Parish of Potter Heigham aforesaid, for Himself and Rebecca his Wife; and did not gain any subsequent Settlement, by such Hiring and Service as aforesaid;” and doth therefore order that the said Order of Removal be, and the same is hereby accordingly ratified and confirmed.

(8) Argument

Mr. Wallace now shewed Cause against quashing these Orders ;

Mr. Dunning having obtained a Rule for that Purpose: And the Question between them was “Whether the Pauper Charles Whenn did or did not gain a Settlement in South Waltham, by the Service to Samuel Thaxter here stated.”

Mr. Dunning argued, that it was a continuing and compete Service for a Year.

Mr. Wallace denied this; and argued that it was totally at an End, and the Contract dissolved, before the Year was completed."

(9) Judgment

Lord Mansfield was not in Court.

The other three Judges (Aston, Willes, and Ashurst,) held it not to be a Dissolution of the Contract; but an Absence by Leave of the Master : And they made the Rule absolute, for quashing the Orders.

(10) Ruling

Both Orders quashed.

See the last Case, No 215. pa. 688, to 691; And also No 14. No 20. No 78. No 85. No’ 115. No 147.No 158. & No 211.

(11) Comment

The court finds that absence with the master’s consent does not dissolve the contract or defeat settlement. This is consistent with the earlier cases of *Goodnestone* and *Nether Heyford*. The absences in these cases were taken ad hoc as opposed to under an express exception in the contract (cases in the latter category include *Bishop’s Hatfield* and *Empingham*).

(12) Type

Liberal

(1) Case name

*R.* v. *Preston*

(2) Date

4 Geo. 2 (1730)

(3) Report

2 Bott. 303

(4) Court

King’s Bench

(5) Parties

Rex v. Preston

(6) Order sought

Quashing

(7) Facts

Two justices removed the pauper from Dunsborn Abbots to Preston. The parish of Preston appealed to the Sessions, where the order was confirmed, and the following case stated :—That Charles Hoare was a legal inhabitant of the parish of Preston ; that afterwards he was hired for a year to Benjamin Long of B., and served the said Long under such hiring until five or six days before the end of the year; and would have served out the whole year, but that John Howe and one or two substantial householders of the parish of B. gave him two guineas to leave his said master and go out of the

parish before his year was expired, on account of his having had banns of matrimony published in the church of the said parish in order to his being married ; that the said Charles Hoarce upon his receiving the said two guineas, went to his master to receive his wages, but that his master insisted on deducting nine shillings for the remainder of his year before he would let him go, and that he abated the same out of his wages, and then departed from his service ; that the said two guineas were afterwards repaid to John Howe by the overseers of the parish of B and allowed to them in their accounts out of the poor’s rate made for the said parish ; but that it did not appear that the master of the said Charles Hoare was privy to the payment of the two guineas until after Hoare was

discharged from his service; and that he, the master, received no benefit from the two guineas being allowed out of the poor’s rates, he not being rated to the poor of the parish of B.

(8) Argument

It was argued, on thee orders being removed into the Court of King’s Bench, that as the sessions had not found the fact of fraud, the Court would not, from any suspicious circumstance in the case, infer it ; and the cafe of *Kempton* v. *Paul’s Walder* was cited.

(9) Judgment

The Court: We certainly cannot intend that the fraud was practised upon this occasion; for fraud, being a matter of fact, must be specially found (c); but there cannot be a doubt but that this was done to avoid the settlement of this man in the parish. Upon the express words of the Statute, however, it is clear that he could not gain a settlement, for the Statute requires a year's service, and

there certainly has not been a year’s service in the present case. But it is immaterial to attend to this point or the case, for we are of the opinion that although Gloucester is in the margin of this order, as it does not in its recital say Dunsborn Abbots is in the county of Gloucester, or in the county aforesaid, it is not sufficiently set forth that the parish is within the county.

(10) Ruling

If an absence be precured by fraud, it will not avoid a settlement.

(11) Comment

The court proposes an anti-avoidance rule: if service is cut short by a sham or fraudulent device, that will not prevent a settlement, although the court declines the quash the order for other reasons.

(12) Type  
  
Liberal

(1) Case name

*R.* v. *Pucklechurch*

(2) Date

16 June 1804

(3) Report

5 East 382

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Pucklechurch

(6) Order sought

Quashing

(7) Facts

Two justices removed Thomas Pritchard, his wife, and daughter, by name, from the parish of Pucklechurch to the parish of Westerleigh, both in the county of Gloucester. The sessions, on appeal, quashed the order, subject to the opinion of this Court on the following case. The pauper T. Pritchard being settled in Westerleigh about ten years ago hired himself to T. King of Pucklechurch for eight weeks ending at Midsummer, at 5s. per week : at which time he hired himself again to the same master, at 4s. per week till the Michaelmas following. At Michaelmas he entered into a new agreement with his master to live, the master finding him board and lodging, and paying him 2s. 6d. per week : but no time was fixed or talked of by the master or servant for the duration of the contract. When the summer season arrived the pauper said to his master, “I must have more now I believe, master.” The master said, “ How much more?” and his wages were increased. And so as the winter or summer succeeded his wages were accordingly reduced or increased. At the time when the alteration of wages took place there was no conversation as to leaving the service or dissolving the contract. The alterations of wages took place at the beginning of the week. He entered and left his service on the same day of the week, being Sunday. There was a general settlement at the time he left the service with respect to wages, and some dispute ; but he could not remember what it was. The pauper was more than once absent from his master’s service two or three days at a time to see his friends with his master’s consent. He served in the whole five years and a quarter, and received money on account of wages at different times, sometimes a guinea and sometimes more ; but there was no complete settlement of wages till he and his master parted. But at the time he was not paid so much as he thought he was entitled to but whether on account of absence or not he did not know.

(8) Argument

Abbott and Hall, in support of the orders of sessions, relied on the last agreement of the servant to live with his master, without any limitation of time; which the law therefore deemed to be a hiring for a year ; and which was not varied by the circumstance that the wages were to be paid weekly; as in *R.* v. *Seton and Beer* and *R.* v. *Hampreston*. And they argued that this was different from the cases of *R.* v. *Bradninch* , where the contract of hiring was by the week, and R. v. Clare, where it was by the month ; and from *R.* v. *Newton Toney*, and *R.* v. *Hanbury*, where the hiring was at so much a week, which was considered as the same thing; and, in the latter case, either party might part at a week’s notice. That admitting the intention of the parties as to the generality or duration of the hiring to be

ambiguous, the fact of the pauper’s having continued in the service above a year was a circumstance which might be taken to explain the original intent; as in *R.* v. *Longwhatton*, where service for above a year as a domestic servant, there being no evidence of the contract, was deemed sufficient to raise a presumption of a general hiring. And here the master agreed to find board and lodging for the pauper as a domestic servant. Then the mere alteration of wages in the middle

of the year, the service continuing the same, will not prevent the gaining of a settlement; as in *R.* v. *Alton*.

Gibbs and Taunton contra were stopped by the Court.

(9) Judgment

Lord Ellenborough C.J. If nothing be said as to the term of the service but that the servant shall have weekly pay, it must prima facie be understood that the parties intended a weekly hiring and service. But circumstances may shew a different intent. Then are there such circumstances in this case, from which we can fairly collect that the parties intended a hiring for a year? In the first instance the hiring was for a specific term of eight weeks; the second hiring was also for a definite time short of a year. No time was mentioned at the third hiring, but it was a hiring at weekly wages. Then it falls within the cases of *Dedham*, of *Bradninch*, of *Newton Toney*, and others of the same class ; where a hiring at weekly wages has been holden to be a weekly hiring. And if it wanted any additional circumstance the conduct of the parties themselves afterwards shews that they so considered it; for the servant left his master at the end of the week in the middle of a year. If an indefinite hiring

were stated on a record, and nothing shewn to control it, it will be deemed a hiring for a year : but that is in the absence of any circumstance from whence a different intent is to be collected : and here weekly wages being reserved, and nothing else added to shew an intention to extend the contract further, will induce the conclusion in law of a weekly hiring and service intended by the parties. There is a current of authorities to this point.

Grose J. A reservation of weekly wages will make a weekly hiring, if nothing appear to the contrary. And here the circumstances do not furnish any other inference. In the first and second hirings certain definite times were mentioned, where it was meant to extend the contract beyond a weekly hiring: but at the third hiring there was nothing said, from whence the intended duration of it was to be collected, but the reservation of weekly wages. It appears also that the wages varied from time to

time at the different seasons of the year. That cannot furnish the inference of an implied hiring for a year; for then the wages must have continued the same as they were at first settled. The third hiring, therefore, was not a general hiring, but a hiring from week to week.

Lawrence J. I thought the law had been perfectly settled since the case of *Newton Toney*; for the rule was there laid down, that if there were any thing in the contract of hiring to shew that it was intended to be for a year, the reservation of weekly wages would not control it: but if the payment of weekly wages were the only circumstance from which the duration of the contract was to be collected, it must be taken to be only a weekly hiring. Then what is this but a weekly hiring by that

rule? The point having been before precisely determined, this case ought not to have been brought up.

Le Blanc J. Neither the first nor the second hiring can be pretended to give a settlement. Then as to the third, it is clearly a hiring for weekly wages, and there is nothing to denote that it was for a year except that no time was mentioned, from whence it is contended that in contemplation of law it must be taken to be yearly hiring. But it has been holden that a reservation of weekly wages, without more is only a weekly hiring. But if there were any doubt of that, there is another circumstance confirmatory of that construction; for the servant in the middle of the year required an advance of wages, which the master acceded to without any question ; a circumstance which was scarcely probable to have happened if the parties had considered that they had contracted for a year. These circumstances therefore rebut any implication of law, that this was a yearly hiring.

Lord Ellenborough C.J. then added, that he hoped it would be understood in future, that where nothing was said in the contract about time, but a reservation of weekly wages, it was only a weekly hiring.

Order of sessions quashed.

(10) Ruling

Where nothing is said in a contract of hiring about time but a reservation of weekly wages, it is a weekly hiring only. Therefore where the contract was for the servant to live with his master, the latter finding him board and lodging, and paying him 2s. 6d. per week, no settlement could be gained by service for more than a year under such contract.

(11) Comment

The Court rules that if the contract only states weekly wages, it will be construed as a weekly hiring, and hence can confer no settlement.

(12) Type

Restrictive

(1) Case name

*R.* v. *Ribchester*

(2) Date

13 November 1813

(3) Report

2 M. & S. 135

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Ribchester

(6) Order sought

Quashing

(7) Facts

Two justices by their order removed Robert Salthouse, his wife and children, from Ribchester to Church, both in the county of Lancaster. The sessions, on appeal, quashed the order, subject to the opinion of this Court upon the following case: The pauper R. Salthouse, when of the age of 17 or thereabouts, was bound apprentice by indenture, dated the 2d of November, 1790, to Messrs. Peel and Co. block or calico print cutters, for the term of six years, Peel and Co. by the indenture, covenanting (amongst other things) to pay the pauper six shillings weekly during the term. These indentures were proved to have been executed by the pauper and his mother, but no evidence was given of their having been executed by Peel and Co. The pauper during the first two years of his term served Peel and Co., and slept in the township of Ribchester. After the end of that period, he was sent by his masters to work for them in the township of Church, and he accordingly worked in the works of his masters in Church, and slept there, except on Saturday and Sunday nights, when he went to sleep at his mother’s in Ribchester, and returned on the Monday. Eleven other apprentices left the works at Church on Saturday and returned on Monday, which the masters, Peel and Co., knew, and it was the usual custom for the apprentices to do so. The pauper continued to work and sleep in this manner, for the term of two years longer, at the end of which time he entered into an agreement with one Walmsley of Ribchester, for five meals in each week, for one shilling and eight-pence a week, and he accordingly went every Saturday night to Walmsley’s house, in Ribchester, and returned to the works in Church, and slept there, except upon the Saturday and Sunday nights, as before. The pauper continued to reside and sleep in the manner last-mentioned for a quarter of a year, until the Saturday before Shrove Tuesday 1795, when he received his pay, and never returned again to the service of his masters; having on the night before this Saturday slept in the works

at Church. The pauper, when asked whether when he quitted the works on the said Saturday he had determined not to return again, said that he could not say that he did determine not to return, but that it seemed he did not return. When asked whether on quitting Messrs. Peels’ works in Church, for the last time on the Saturday afternoon, he had formed any intention not to return, he answered that he had not – being asked the said question as to Sunday, he made the same answer; and further

said that he could not fix upon any particular point of time when he determined not to return. The pauper slept at Walmsley’s, in Ribchester, on the Saturday night, and for the whole of the succeeding week, and then hired himself into another employment.

(8) Argument

Holroyd and Starkie in support of the order of sessions, contended that the pauper continued in the service under the indentures up to the Monday morning when he actually left it, or at least over the Saturday night, at which time he had not any intention of quitting it; and therefore his sleeping at Ribchester on the Saturday night was under the indentures, and entitled him to a settlement there.

This, they said, was not like *Rex* v. *Smarden* and *Rex* v. *Barmby*, a casual lodging of the apprentice at Ribchester, but was referable to the apprenticeship, because the case states that it was in the usual course and with the masters’ knowledge for the apprentices to sleep away from the works on Saturdays and Sundays. And they compared it to the cases of *Rex* v. *Stratford-on-Avon* (c), *Rex* v. *Undermilbeck* and *Rex* v. *Castleton*, some of which shewed that a residence in another parish away from and without any work performed in that parish for the master, might yet be referred to the service with him, and gain a settlement there. Then, if the sleeping at Ribchester

would be referable to the apprenticeship, unless the service under it was at an end, the question is when it was put an end to. As far as regards the masters, it certainly continued during the Saturday and Sunday ; for it must be taken, from what the case states, that they would have received the pauper, had he returned on Monday. Then as to the pauper; his departure on the Saturday afternoon was an equivocal act, and if it had been accompanied with an intention to quit the service, perhaps it might have been argued that that intention having been afterwards executed, the subsequent quitting on the Monday should be referred to the original departure; though even there, as there was a locus poenitentiae till the Monday, it might have been hard so to refer it; but where the original departure was equivocal, and was unaccompanied with any such intention, nor, as far as appears by the case, was any such intention formed before the actual quitting on the Monday, it would be inverting the doctrine of relation to apply it to such a case.

(9) Judgment

Lord Ellenborough C.J. This is a case in which there was not any express leave of absence given by the masters, but they had been in the habit of receiving back their apprentices after they had gone home and returned, and by so receiving them they shewed that it was not their purpose to renounce them on that account. In pursuance of this indulgence the pauper went as usual on the Saturday night, and it does not appear what his intention was at that time, or that he had formed any upon the subject either of returning or staying away. He did not, however, return on the Monday; the end and conclusion, therefore, gives a character and denomination to the original act of departure; finis nomen operi imponit. From what was finally done we must collect what was his determination when he first went away on the Saturday. We find that he did not return, and that he did not on this occasion, as formerly, avail himself of the absence from Saturday to Monday as an indulgence. In *Rex* v. *Stratford-upon-Avon* the apprentice continued to perform a species of service with his master while he lodged with his mother, which was a circumstance to cover what might otherwise have been an interruption of the service ; it was therefore held that he gained a settlement where he lodged. But here it appears that the apprentice, by not returning to his service on the Monday, had not left it on the Saturday under the usual indulgence; and therefore he must be considered as having broken the contract on the Saturday when he quitted his masters’ works; and, consequently, Friday night was the last night of his residence as an apprentice. The settlement, therefore,

was at Church, where he slept on that night, and not at Ribchester.

Le Blanc J. There is one question which has very properly not been touched upon in the argument. It is stated that no evidence was given of the indentures having been executed by the master. But it appears that they were executed by the pauper, and that is binding. Upon the point made in argument, one cannot, perhaps, but lament that it should ever have been determined that an apprentice serving another person, with the leave of his original master, in another parish should gain a settlement in that parish. The Court, however, do not wish to disturb those cases. The question here is, whether there was any residence under the indentures of apprenticeship after the Saturday, when the pauper left his master’s service, and never afterwards returned. Without being obliged to have recourse to any difficult inquiry into the operations of his mind, the necessity of doing which is much against the argument used, we have here one clear line of fact respecting this apprentice which cannot deceive, viz. that when he left the service on the Saturday he received his

wages up to that time, and after that time he never received any more. It appears, therefore, that he was not in the service of his master after quitting his service on the Saturday.

Bayley J. I am of the same opinion. It is impossible to say that this apprentice was serving under the indentures of apprenticeship after the afternoon of the Saturday, when he received his pay, and never afterwards returned. The Court cannot look to what was passing in the mind of the apprentice, but to his acts. From the nature of the service he was only employed locally at the manufactory during the ordinary working days : but from Saturday to Monday he was free from his master. If, then, he was to have that interval entirely to himself, and never returned after its expiration, at what time did he leave his masters’ service? It must be taken that he left it at the time that interval commenced, for he was not in a condition to do any act of service for his master after the Saturday afternoon.

Dampier J. I am of the same opinion. The case of *Rex* v. *Undermilbeck*, cited in argument, is the only case like the present ; but in that case the master recognized the departure of the servant: for he paid him his wages for the time of his absence. That therefore affords a distinction. Here the apprentice was at weekly wages, and was paid on the Saturday; and the Friday night was the last night of his being in the actual service of his masters under the indentures; and the only question is,

whether there was a constructive service, which was to go on during the Saturday and Sunday. It seems to me, that the circumstance of the apprentice not having returned on the Monday, shews the time when the service determined, namely, on the Saturday, when he received his last wages; although, if be had returned, the masters by receiving him again would have recognised him as their apprentice during the period of his being absent.

Order of sessions quashed.

Scarlett and J. Williams were against the order.

(10) Ruling

Where an apprentice who worked and slept at his masters’ works in C. at weekly wages, went with their knowledge on Saturdays and Sundays to R., and slept there, and returned to his work on Mondays, and was received by them, and on the Saturday afternoon before Shrove Tuesday (having the night before slept at C.) received his pay and never returned again to the service, and slept

that and the following night at R., but on quitting the works on Saturday had not formed any intention not to return, nor had he on the Sunday, nor could he fix the time when he determined not to return : Held that his settlement was at C., his service having ended on his quitting on Saturday.

(11) Comment

The Court finds that the parish of settlement is that in which the servant (here an apprentice) last slept or resided with their master’s permission, rather than that in which they regularly worked. The final absence here is not treated as a dispensation.

(12) Type

Restrictive

(1) Case name

*R.* v *Richmond*

(2) Date

28 April 1773

(3) Report

Burr S.C. 740

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Richmond

(6) Order sought

Quashing

(7) Facts

On Saturday 21st November 1772, Mr. Bearcroft moved to quash an Order of Sessions confirming an Order of two Justices made for removing Ann Springall the Wife of William Springall (gone from her,) with Thomas their Child (aged ten Months) from St. Margaret's Westminster to Richmond in Surrey.

The Facts stated upon the Order of Sessions were these — William Springall, being a single Man, was hired by the Year to Alexander Crawford, Esq; of Richmond, on the thirtieth of October 1769; and on the 4th of September 1770, married a Fellow Servant. The Wife had given a Month's Warning, in August preceding, “to quit the Service;” and was to quit it in September, in Consequence of such Warning; but was desired by her Master, “ to stay till the seventeenth of October”; which she did: And then the Master said to Springall (the Husband) “ that he supposed, as his Wife was going away, he (the Husband) would like to do so too,” The Husband replied, “ He would like it better, if it was agreeable to his Master”. His Master said “ He had no Objection, as he had another Footman coming ; and would pay him his whole Year’s Wages” Which he accordingly did, on the said seventeenth, in full to the thirtieth. On which said seventeenth of October, both the Husband and Wife left the Service: And the new Footman came in the Husband’s Place, on the said 17th of October at Night, under the abovementioned Circumstances. The Sessions, upon Consideration of the Premises confirm the original Order of the two Justices.

(8) Argument

Mr. Bearcroft's Objection to these Orders was “that William Springall did not gain a Settlement by serving for a Year in Richmond; because he left the Service thirteen Days before the Expiration of his Year”. The Act of Parliament of 8 & 9 W. 3. c. 30. § 4. is express “that no such Person so hired as aforesaid shall be adjudged or deemed to have a good Settlement in any such Parish or Township, unless such Person shall continue and abide in the same Service during the Space of one whole Year."

Mr. Lucas now shewed Cause against quashing these Orders.

This is a fair and honest Service for a Year, within the Spirit of the Law and of this very Act of Parliament ; which was only made to prevent Servants from gaining Settlements by being merely hired for a Year, and yet quitting their Service whenever they pleased. But the Master may still dispense with Part of the Service, either at the Beginning, in the Middle, or at the End of the Year: And at the End, of the Year, the Service may be dispensed with, even without the Master’s Consent if there be a reasonable Cause for not completely finding it. The Court have been very liberal in Favour of Settlements, where there has been a reasonable Ground, and no Fraud. The present Case is a Leave of Absence for a few Days at the End of the Year, voluntarily given by the Master; first proposed by the Master to the Servant; not applied for by him ; and the whole Year’s Wages offered by the Master, and willingly paid by him:

Mr. Lucas cited many Cases, in Support of his Argument namely, *Rex v. Inhabitants of Iflip* [v. ante, pa. 48. 71]. *Rex v.* *Inhabitants of Goodnestone* [v ante, No. 85. ] *Rex v. Inhabitants* *of Christchurch* [v, ante, pa. 494, No. 158.] *Rex v. Inhabitants of Frome Selwood* [v. ante, pa. 565. No. 181.] *Rex v. Inhabitants of Madington*. [v. ante, pa. 675. No. 211] *Rex v. Inhabitants of Bray* [v. ante, pa. 682. No. 214.] *Rex v. Inhabitants of Potters Heigham* [v ante, pa. 690. No. 216.]

Mr. Bearcroft insisted upon the plain express Words of the Act of Parliament: The imagined Spirit of it, he said, was a vague Rule of construing it. Mr. Lucas's Cases, he said, were not directly in Point. As to those where the Absence was in the Middle of the Year, such Absence is purged by the Master’s taking the Servant again. And many of his other Cases turned upon particular Circumstances. That of *Iflip* was an unreasonable Denial by the, Master': And the Contract was not dissolved. [v. ante, pa. 71] In that of *Goodnestone*, the Servant hired a Man to do his Work: And the Contract was not dissolved. [v. ante, 252, 253.]. In the Case of *Christchurch*, the Servant’s Inability arose from Illness : It was not reasonable, that the Visitation of God should prevent her gaining a Settlement, [v. ante, pa. 497.] The Case *Frome Selwood* was determined' upon the Fraud : The Servant's request “to go and visit his Relations’” was a reasonable one. [v. ante, pa. 565, 566.] In the Case of *Madington*, the Kick of the Horse, like Sickness, was the Visitation of God: And the Servant’s going Home “ to get it cured” was grounded upon a reasonable Cause. [y. ante, pa. 677.] The Case of *Bray* was but a Single Day : And that Case and the Case of *Potters Heigham* stand upon their own Circumstances; and the Contract was not dissolved. But here, the Contract was dissolved: And the paying the whole Year’s Wages can’t alter that Fact.

Mr. Bearcroft cited three Cases; *Rex v. Inhabitants of Preston*, from 1 Bornardiston 415. *Seaford* and *Castlechurch*, from 2 Stra. 1022. and *Pawlett* and *Burnham*, from Foley 206., That of *Seaford* is very shortly reported by Sir John Strange : It may be seen at large, in the 1st Volume of this Collection, page 68. No. 20. It was a Removal of the Pauper from Syford in Staffordshire (not Seaford) to Castlechurch. The other two Cases, of *Pawlett* and *Burnham*, and Preston and Ampney, were there cited. [\*v. ante, pa. 69.] and also another, from Godalming. In all these Cases, the Services short of a Year were holden not to gain a Settlement.

(9) Judgment

Lord Mansfield—There's no Necessity of an actual Service upon every Day of the Year. The Master can always dispense with it: He can give Leave of Absence. Nay, if the Servant is absent without Leave, in the Middle Part of his Year, such Absence may be purged, as it has been termed, by the Master receiving him again : that is, the subsequent Consent of the Master ratifies the Act done, and is given with a Retrospect.

I am clearly of Opinion, that the Servant has in the present Case sufficiently served his whole Year. The Master voluntarily gave him Leave of Absence for the last thirteen Days; and, of his own Accord, paid him the whole Year's Wages. I think, the Justices have determined rightly, upon both the Orders.

Mr Justice Aston concurred in the same Opinion, for the same Reasons. And he added, that there is no Difference between the End and the Middle of a Year; where the Master only gives Leave of Absence, which is not stipulated for in the original Contract. Indeed, where the Absence is stipulated for in the original Contract, and made Part of the original Contract, as an Exception out of the Service; the Case is then of a different Kind : As in the Case of *the King against the Inhabitants of Hatfield* (ante, pa. 439. No. 141.) where a Hiring for one Year, to wit from Michaelmas to Michaelmas, “ with Liberty to let himself for the Harvest-Month, to any other Person,” was determined “ not to be a Hiring for a Year." A Part of the Year was there excepted out of the original Contract: It was therefore only a Hiring for the other eleven Months. If the Servant goes away in the Middle of the Year, and returns again, and the Master receives him again ; the Master's taking him again purges (as it is called) the Absence, though the Servant had not his previous Leave for it; and shews the Master's Consent to it, though given subsequently. Here, the whole Years Wages were voluntarily paid by the Master, quite up to the End of the Year: Which confirms the Master's Acquiescence and Approbation.

Mr. Justice Willes was not in Court.

Mr. Justice Ashhurst concurred in Opinion with Lord Mansfield and Mr. Justice Aston ; and particularly repeated “that the Master’s offering and paying the whole Year's Wages, in the Manner stated upon the Order of Sessions, was a Proof of his Consent.”

(10) Ruling

Both Orders affirmed.

Vide ante, pa. 463, 464. No. 147. *Rex. Inhabitants of Caverswall*; and pa. 479. to 481. No. 152. *Rex v. Inhabitants of Nether Heyford*; in both which Cases, this Point iswell discussed and settled. See them abstracted, at the End ofthe 2d Volume of this Collection, under the respective Numbers 147. and 132 : Where I have expressed the Distinctionsthere taken, as concisely and clearly as I was able.

(11) Comment

The court finds that there is no need for actual service for the whole year. In contrast to *Grantham* and to comments made in *King’s Pyon*, payment of a whole year’s wages can be taken as constructive service if the absence was with consent. On the effect of absence upon gaining settlement, the court finds (in a similar vein to the earlier cases of *Goodnestone* and *Nether Heyford*) that absence does not defeat settlement if 1) the master gave consent and 2) the whole year’s wages were paid.

(12) Type

Liberal

(1) Case name

*R.* v. *Rickinghall Inferior*

(2) Date

30 April 1806

(3) Report

7 East 373

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Rickinghall Inferior

(6) Order sought

Quashing

(7) Facts

Two justices by an order removed Henry Saunders, his wife, and daughter, by name, from the parish of Rickinghall Superior to that of Rickinghall Inferior, both in the county of Suffolk ; which order was confirmed by the sessions on appeal, subject to the opinion of this Court on the following case;

The pauper H. Saunders, a Greenwich pensioner, settled in the parish of Redgrave, came there in the year 1801, disabled by the loss of a leg. On the 5th of March in that year the parish officers of Redgrave agreed verbally with Robert Crowe of Rickinghall Inferior, limeburner, that H. Saunders should live with him till the 8th of November following, and do for him whatever he set him about. The parish of Redgrave agreed to pay Crowe 2s. 6d. per week, and Crowe to find board, lodging,

and washing for Saunders. Under these terms Saunders lived with Crowe till Christmas following, when Crowe went with Saunders to the parish officers of Redgrave, and refused to keep him any longer unless they would increase the allowance. They consented to increase it to 4s. per week ; and Crowe thereupon agreed to take Saunders again till the Easter following. Saunders returned and staid accordingly in the same manner. At Easter the parish of Redgrave refused to continue Saunders upon an allowance, and thereupon Crowe sent him home to Redgrave, whence he returned to Crowe; and, without any new express agreement, continued to live with him in the same manner as before until October 15th, 1804, when he ceased to live with Crowe on account of his marrying. During the time that Saunders lived under the first agreement with the officers of Redgrave he attempted to absent himself from Crowe to make holiday; but Crowe told him he was his servant by the agreement with the parish, and that he could not go without his leave; which however he did. He went twice in the year to London to get his pension from Greenwich Hospital, and was absent about two or three weeks at a time. He used to tell Crowe when he was going; but he did not ask leave, nor did Crowe refuse. During the whole time Saunders lived with Crowe he was employed by him in chopping chalk. He did no work for any other person. He slept in the parish of Rickinghall Inferior, and received now and then sixpence from Crowe when he did little jobs for him on Sundays ; and has done nothing since to gain a settlement. While Saunders was with Crowe, after the parish officers of Redgrave had refused to continue the allowance, he received from them, on his application for relief, at one time half-a-guinea, and at another half-a-crown ; and once the parish officers of Redgrave took for themselves his pension from Greenwich Hospital. The sessions, besides confirming the order of removal, ordered the appellants to pay to the respondents the common costs of forty shillings, considering the Statute of the 8th and 9th W. 3, imperative on them in that respect.

(8) Argument

Frere, in support of the order of sessions, proposed to consider, 1st, if the relation of master and servant existed between the pauper and Crowe; 2dly, if the pauper’s absenting himself during the service prevented the settlement; 3dly, if the magistrates were obliged to give costs. Upon the latter the Court gave no opinion; and upon the first, finding the opinion of the Court strongly against him, as to the agreement between the parish officers and Crowe, he relied principally upon the service of the pauper with Crowe, from whence a general hiring was to be implied, after the parish officers had ceased to pay Crowe. But

(9) Judgment

The Court (Lord Ellenborough C.J. absent) were clearly of opinion that no settlement was gained. The relation of master and servant never existed between Saunders and Crowe. The former was placed with Crowe by the parish officers, as a pauper, to be maintained by him; and the parish officers had no authority to hire Saunders out to the other. And after the parish allowance for Saunders was withdrawn from Crowe, the latter permitted Saunders to live with him out of charity, without any contract as between master and servant.

Alderson, who was to have argued against the orders, was not heard.

Orders quashed.

(10) Ruling

A pauper placed by the parish with a parishioner, upon an agreement between the latter and the parish officers to find board, washing, and lodging for the pauper at 2s. 6d. per week, and that the pauper was to do what he was set about, does not constitute the relation of master and servant between such parishioner and the pauper so as to enable the latter to gain a settlement as by hiring and service. Neither does such relation arise by implication from a continuance of services by the pauper to the parishioner; living with him as before, after the parish had refused any longer to continue the parochial allowance; and the pauper, who was a Greenwich pensioner, going there twice a-year without asking or receiving the leave of the parishioner; the latter, however, not refusing leave when informed of the other’s going.

(11) Comment

The Court finds that an arrangement to provide work to a disabled pensioner, in receipt of poor relief, did not constitute a contract of service, capable of generating a settlement.

(12) Type

Restrictive

(1) Case name

*R.* v. *Road*

(2) Date

1830

(3) Report

1 B. & Ad. 362

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of the Parish of Road

(6) Order sought

(7) Facts

Upon appeal against an order of two justices, whereby T. Tipper, and his wife and children, were removed from the parish of Kingswood, in Wiltshire, to the parish of Road, in Somersetshire, the sessions confirmed the order, subject to the opinion of this Court on the following case :— About June, in the year 1812, the pauper, then about fourteen years of age, was placed by his father with S. Long, a collier at Kingswood. The pauper worked as a shearman, slept on Long’s premises, and received 5s. 6d. a week. After he had worked as a shearman about eight months, S. Long asked him to go to spinning for the residue of his year. He did go to spinning, and from that time worked by the

pound; and instead of being paid as before, was paid at so much by the pound weight of material spun. He never took account when the year ended, but stayed with Mr. Long, as a spinner, eleven or twelve years. He worked from six in the morning to seven in the evening generally, but sometimes till eleven or twelve at night, when Mr. Long paid him 6d. as an acknowledgment for unseasonable hours, but he never bad any demand for extra work. The question for the opinion of the Court was,

whether the pauper gained a settlement by hiring and service in Kingswood?

(8) Argument

Everett in support of the order of sessions. The question in this case was, whether the pauper was hired for a year in the parish of Kingswood? That was entirely for the sessions, and they by confirming the order of removal have negatived any hiring for a year in that parish. The Court will not disturb their decision if there be any premises to warrant their finding, *Rex* v. *Edwinstowe* (a). There was here abundant evidence to warrant their finding; for it appears by the case that when the pauper went into the service there was no express hiring for a year, and that he received weekly wages only. The inference is that the hiring was weekly; and though at the end of the first eight months he was hired for the rest of the year, and continued several years afterwards, it does not appear that the time of payment of the wages was varied.

Bingham and Moody contra. There were no premises to warrant a conclusion that there was not a contract for a year’s service. Such contract is an inference of law deducible from the facts stated. No time was mentioned when the pauper first went into the service; and as be continued for several years, the inference from the duration of the service would be that he was hired for a year. There was no reservation of wages, although for the first eight months they were received weekly. At the expiration of that time the pauper was hired for the residue of the year; another mode of payment was agreed upon, and he continued in the service for many years without any further mention of time. The sessions ought certainly to have found a general hiring from those facts. In *Rex* v. *St. Andrew, Pershore* (8 B. & C. 679), there was a hiring at so much per week, a month’s wages, or a month’s warning. The sessions seem to have been of opinion that that was only a weekly hiring; but the Court of King’s Bench thought there were no premises to warrant that conclusion, and that, under the circumstances, the law implied a hiring for a year.

(9) Judgment

Bayley J. It seems to me that this case depends upon a question of fact, which the sessions ought to have decided, and which they still ought to decide. The original bargain between the master and the father of the pauper is not stated; it does not therefore appear whether the wages were reserved weekly or not. After the pauper had continued in the service about eight months, the nature of his employment and the mode of payment were varied; it should be ascertained whether or not at that

period the time of payment was varied. It might also turn out, that after serving for several years at weekly wages, according to the new mode of calculation, the pauper quitted in the middle of the year without any notice; the sessions might from that circumstance fairly infer, that there was not a yearly hiring. I think the case should go back to the sessions.

Littledale J. I think this case should go back to the sessions, in order that they may, from the facts produced in evidence, draw the conclusion, whether or not there was any hiring for a year. It rather appears to me that the hiring was in the first instance by the week, but that that hiring ended at the expiration of the first eight months; that he was then hired for the residue of the year, and that he continued afterwards upon a yearly hiring; but that is entirely a question for the sessions.

Parke J. The case must go back to the sessions, in order that they may decide whether there was a general hiring, or any express hiring for a year, it appears to me that there is sufficient stated in the case to decide that there was a general hiring at the end of the first eight months. The sessions seem to have thought that there was a weekly hiring at first, and to have overlooked the hiring which took

place at the end of the first eight months.

Case sent back to sessions.

(10) Ruling

A pauper, being fourteen years of age, was placed by his father with a collier, worked as a shearman, slept on his master’s premises, and received 5s. 6d. a week. After he had worked as shearman about eight months, his master asked him to go to spinning for the residue of his year; he did go to spinning, and from that time worked, and was paid, by the pound ; and he staid with his master eleven or twelve years. The Court of Quarter Sessions having confirmed the order of removal, subject to a case stating these facts, this Court held that it was a question for the sessions to determine, whether there was a yearly hiring, and sent the case back to them for the purpose of deciding that point.

(11) Comment

The Court finds against a settlement on the grounds that the basis of the hiring was not clear. The mode of payment of wages varied and there was evidence to support a weekly hiring.

(12) Type

Restrictive

(1) Case name

*R.* v. *Ross*

(2) Date

11 June 1771

(3) Report

Burr S.C. 688

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Ross

(6) Order sought

Quashing

(7) Facts

Two Justices removed Thomas Chest and Elizabeth-Ann, his Wife, from Whitchurch in Herefordshire to Ross in the same County: And the Sessions upon an Appeal, confirm their Order ; stating the following Case—

Thomas Chest, the Pauper, was born in Ross; and, being unmarried, hired himself for a Year to Edmund Miles ; and served Him, in Langarren, only three Days. A Difference arising between them about the Business the Pauper was employed in, Miles (the Master) bid the Pauper go about his Business. On which the Pauper immediately ran away, and quitted his Service ; and hired himself to John Whitby for a Year, at 55 s. a year Wages, and served Whitby for six Months in Whitchurch. Miles then insisted on Whitby's not keeping the Pauper in his Service. Whitby paid the Pauper his Wages to that Time : and the Pauper quitted that Service, and went one or two Voyages up the River Wye, as a Labourer to a Bargemaster, for a Fortnight; Then at Whitby's Request and Miles's Consent, returned into Whitby's Service, without coming to any new Agreement or any mention of Wages. He continued in Whitby's Service in Whitchurch seven Months, being a Month over the End of the Year for which he was hired, in order to make out his lost Time; and then received his Wages, his Master deducting 7s. 6d. for the Breaking of a Plough.

The Sessions, being of Opinion “ That the Contract for a Year with Whitby was dissolved, by mutual Consent, at the Expiration of the said six Months,” confirm the Order, with 10s. Costs of the Appeal, to be paid by the Churchwardens and Overseers of Ross to those of Whitchurch.

(8) Argument

Mr Cocks on Monday 13th May 1771 (the last Day of last Easter Term) moved for, and obtained a Rule to shew Cause why both these Orders should not be quashed. He denied that the Pauper's- Contract with Whitby was dissolved.

Mr. Kenyon and Mr. Poole now shewed Cause. They insisted “ that the Contract with Whitby was dissolved:” and in proof of it, they cited the Case of *Caverswall*; (which may be seen ante, p. 461. No 147.) The Relation between them, as Master and Servant, was totally at an End. Their coming together again was casual. It was not a “continuing and abiding in the same Service during the Space of one whole Year;” which is required by 8 & 9 W. 3. c. 30. f 4. In the Case of *Christchurch* (ante, p. 69, & p.71. No 20 ) Lord Hardwicke observed that this Adi of 8 o3 c, W. 3. was an explanatory and declaratory Law, with negative Words ; and therefore ought not to be extended by Construction : And in that Case, the Contract was holden to be determined by the Servant’s quitting his Service within the Year ; though He went away with his Master’s Consent, and received his whole Year’s Wages.

Mr. Cocks and Mr. Morton, on the other Side, argued, that this may be considered as a Continuance in the same Service during the whole Year. Both Master and Servant understood it to be so : and Whitchurch Parish has had the Benefit of the Pauper’s Labour for the Space of a whole Year; and therefore ought now to maintain Him. The Statute of 8 & 9 W. 3. has, as they said, been liberally construed. The Case of *Caverswall* varies essentially, they said, from the present Case. There the first Contract was completely dissolved : But here, the Servant came again under the old Contract ; and remained a Month over the End of his Year, to make up the lost Time. They observed also, that here the Absence was in the Middle of the Year, and was purged by the Master’s receiving Him again : Whereas in that Case of *Caverswall*, it was at the End of the Year. And to this Purpose they cited the Case of *Eaton* (ante, p. 47. No 14.) where an Absence of three Weeks without his Master’s Consent was purged by his Master’s receiving him again : And it was there holden “ that it would be inconvenient to be over-nice in Services of this kind.” But,

(9) Judgment

Lord Mansfield pronounced this Case to be, in his Opinion, a very clear One. Here is an absolute Dissolution of the Contract, by both Master and Servant, at the End of six Months: whereas the Statute requires a Continuance in the same Service for a whole Year. The new Service can’t be connected with the old Hiring.

Mr. Justice Aston concurred with his Lordship, “ that this was an absolute Dissolution of the Contract ; and that the new Service can not be connected with the old Hiring.” In this Case, the Master and the Servant had nothing more to do with each other, after the latter had quitted the Service of the former. It is not like the Cases of small Absences and little Excursions, which have been overlooked and not objected to by the Master. Those Cases proceed upon the Principle of the Contract’s being continued and not dissolved: Whereas in the present Case, it was totally dissolved. The Case of *Caverswall* and *Trentham* is very strong to this Purport (v, ante, p. 463, 464, 465. N° 147. See also N° 87. p. 256 to 259.)

(10) Ruling

The Court discharged the Rule.

Both Orders affirmed.

(11) Comment

In line with *Caverswall,* the court finds that where a master dismisses a servant and the servant leaves, that dissolves the contract so the periods of service before and after that dismissal can’t be joined together. The factor distinguishing *Ross* from cases that found the master receiving the servant again purged the absence, such as *Eaton* and *East Shefford* seems to be that there was mutuality in the dissolution of the contract in *Ross* whereas in the other two cases the servant ran off without the master’s consent (it was a one-sided absence).

(12) Type

Restrictive

(1) Case name

*R.* v. *Roxby*

(2) Date

14 November 1829

(3) Report

10 B. & C. 51

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Roxby

(6) Order sought

Quashing

(7) Facts

Upon an appeal against an order of two justices, whereby R. Farmery, his wife, and children, were removed from the parish of Roxby, in the parts of Lindsey, in the county of Lincoln, to the parish of Winterton, in the same parts and county, the sessions quashed the order, subject to the opinion of this Court on the following case:— The pauper, being unmarried and without children, was hired before Old May-Day 1819 (13th of May), to serve James Barratt, in the parish of Winterton, from the

said Old May-Day to Old May-Day 1820, as a servant in husbandry, at 16l. wages. The pauper served Barratt, in Winterton, until the 11th May 1820, when, wishing to visit his friends, fifteen miles distant, and to attend some statutes on the 12th of May on the way there, and avoid returning back to his master, he requested his master’s permission to go for altogether; and they settled the pauper’s wages, and part was deducted for the time he had to serve. The pauper slept at his master’s house, with his permission, on the evening of the 11th of May, and finally left his master’s on the

12th (1820 was leap-year). The Court of Quarter Sessions considered this a dissolution of the contract.

(8) Argument

N. R. Clarke and Fynes Clinton in support of the order of sessions. The pauper gained no settlement in Winterton, because he did not serve an entire year. It is true that he served 365 days; but 1820, being leap-year, consisted of 366 days. Assuming that there was not a year’s service before the 12th of May, the question, whether there was a dissolution of the contract, or a dispensation from service by the master, was one for the sessions ; and there are ample premises to warrant the conclusion they came to. Here the master could not have compelled the pauper to serve him after the 12th, for he had paid him his wages, and the pauper had finally left his master.

Patteson and Whitehurst contra. There was a good service for a solar year, rejecting the fractional hours, for the pauper served 365 days. And this is the legal mode of computation. The calendar year, indeed is recognized by the law, but it is never used in legal computation, and the law knows no calendar year except that commencing on the 1st of January, and ending on the last day of December. There is no calendar year commencing in the intermediate months. Here the year commenced on the Old May-Day. In *Rex* v. *Ulverstone* (7 T. R. 564), a servant was hired from Whitsuntide to Whitsuntide, when the interval consisted of more than 365 days, and was discharged before the ensuing Whitsuntide, but after having served 365 days; and the service was held sufficient to confer a settlement. In *Rex* v. *Ackley* (3 T. R. 250), a hiring three days after Michaelmas, till the Michaelmas following in leap-year, and a service till a day after Michaelmas-Day, making 365 days, was held not to confer a settlement; but that was on the ground that there was not a hiring for a year. As to the other point, *Rex* v. *Potter Heigham* (Burr. S. C. 690. 2 Bott, 316), is precisely in point.

(9) Judgment

Lord Tenterden C.J. The question whether there was in this case a dissolution of the contract, or dispensation with the service, was for the sessions to decide, and they have decided it. I should not be disposed to interfere with their judgment, even if I thought it was wrong, which I do not: as to the other point, I think that the year for which the pauper contracted to serve was one of 366 days. He did not serve that number of days, and therefore there was not a year’s service.

[54] Bayley J. The statute 4 G. 2, c. 23, s. 2, enacts that leap-year shall consist of 366 days.

Order of sessions confirmed (a).

(10) Ruling

A hiring from the 13th of May 1819 to the 13th of May 1820 (that being leap-year), and a service under it till the 12th of May 1820, viz. 365 days: Held, not sufficient to give a settlement. The service must be for a whole year, although it happen to consist of 366 days.

(11) Comment

The Court rules that service for 365 days does not confer a settlement in a leap year.

(12) Type

Restrictive

(1) Case name

*R.* v. *Rushall*

(2) Date

11 June 1806

(3) Report

7 East 471

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Rushall

(6) Order sought

Quashing

(7) Facts

Two justices, by an order, removed Susannah White, single woman, from the parish of Wiston, in the county of Sussex, to the parish of Rushall, in the county of Wilts. The sessions on appeal confirmed the order, subject to the opinion of this Court upon the following case. The pauper being 30 years of age, and a native of Wiltshire, and her mother and other relations living near Rushall, some time before Old Michaelmas-Day 1802, the time at which the service in which she was then living at Wiston, in Sussex, was to end, wrote to her mother, desiring her to look out for a place for her; which she did, and in consequence treated with the wife of the Rev. K. Peck, of Rushall, Wiltshire; upon which Mrs. Peck informed the mother that she would give her daughter the same wages as she did to her other servants, (being 10 guineas a year, and a guinea for tea,) and wait till she came down, and desired that she would come as quickly as she could ; but the mother made no absolute agreement for her daughter, but afterwards informed her that she had got a place for her if she liked it. The pauper left her service in Wiston immediately on its expiration, and went into Wiltshire

without delay, and arrived on Saturday the 16th of October at her mother’s near Rushall; and on Monday the 18th Mr. Peck applied to her to know if she liked to come into his service, saying that he wanted her to come immediately, as he had company to dinner. She went to Mr. Peck’s house, and then it was for the first time agreed between Mrs. Peck and her, that the wages should be 10 guineas for the year and a guinea for tea, (which was the same as she had given to her other servants) with liberty of parting at a month’s wages or a month’s warning. She then went to work, and continued in Mrs. Peck’s service until Old Michaelmas-Day following. About five weeks before that time she gave her mistress notice that she should quit her service at the next Old Michaelmas-Day. On the said Old Michaelmas-Day 1803 the pauper came to her mistress to receive her wages, who paid her her whole year’s wages, and the guinea for tea; but told her she wanted a week of serving out her year. The pauper said she was willing to stay another week; but the mistress replied that it did not signify, as she had got another servant in her place, who was then in the house, (which she in fact was). She then left the house, and never returned into the service afterwards. Upon which facts the Court of Quarter Sessions were of opinion, that the pauper was settled at Rushall.

(8) Argument

Topping and D’Oyley, in support of the order of sessions, contended, 1st, that the mother was to be considered as the agent of her daughter, and that she had made an agreement for her with Mrs. Peck before Old Michaelmas Day, though reserving to her daughter the option of dissent if she did not like the service, (which was the meaning of the finding that the mother made no absolute agreement, &c.); but as the daughter ultimately approved of her place, that which was at first a conditional became an absolute hiring before Old Michaelmas, though her approbation were not signified till afterwards. And this was not varied by the subsequent stipulation for liberty to either party to part at a month’s wages or a month’s warning, such liberty not having been acted upon till the end of the year from the original hiring. And they said there was nothing unreasonable in the reservation by the mother of an option for her daughter to dissent from the contract, while the mistress was at all events bound if the daughter approved of the place ; because the daughter was to come from a great distance at her own expense. But 2dly, supposing the contract of hiring not to have commenced till the 18th of October; still a settlement would be gained; for when the mistress observed that the pauper had not served out her year by a week, she offered to stay another week in the service; and her mistress telling her it did not signify was a dispensation of the service for the remainder of the year: which distinguishes this from the cases of *Rex* v. *King's Pyon*, and *Rex* v. *Sulbrooke*: and that is confirmed by the mistress having paid the whole year’s wages, though that alone would not be decisive. Then the month’s notice to quit given by the pauper previous to Old Michaelmas-Day is no evidence of her intention to quit the service before the end of the year, as it was given under a mistake that the year ended at that time; and as soon as it was objected to by the mistress, it was abandoned by the pauper. And they said, that this was a stronger case of dispensation of service than *Rex* v. *Richmond*, where a footman left his service 13 days before the end of his year, because another servant, whom he had lately married, was then going away; his master having no objection, as he had another footman coming. Or than *Rex* v. *St. Bartholomew, Cornhill*, where on the master’s intended change of residence he told the servant to look out for another place ; and she went into a new service before the end of the year. And they compared it to *Rex* v. *St. Philip in Birmingham*, where the servant having given warning eight days before to quit at the end of his year, the master discharged him the same day, paying him his full year’s wages; though the servant was willing to stay to the end of his year: which was holden to be a dispensation only of the service, not a dissolution of the contract.

Sir V. Gibbs and Courthope, contra, were stopped by the Court.

(9) Judgment

Lord Ellenborough C.J. Upon the first point, if the justices had found as a fact from what time the hiring commenced, the case would have been clear; but as they have not done so, we must draw the inference from the facts stated. The mother, being desired to look out for a place for her daughter, applied to Mrs. Peck of Rushall, who informed her that she would give her daughter the same wages as her other servants, and would wait till she came; but the case expressly states that the mother

made no absolute agreement for her daughter. And indeed there was nothing at that time said about the quantum of the wages, or the time of service, or about the warning, afterwards introduced into the contract, on which either might relinquish the contract. The daughter arrived at Rushall about a week after Old Michaelmas-Day, when upon Mr. Peck’s application to her to know if she liked to come into his service, she went there : and then it was, as the case states, for the first time agreed

between Mrs. Peck and her, that the wages should be ten guineas for the year and a guinea for tea, with liberty, which was not before mentioned, of parting at a month’s wages or a month’s warning. This was on the 18th of October. Then about five weeks before Old Michaelmas-Day the pauper gave her mistress notice to quit at Old Michaelmas-Day. The mistress could not object to receive the notice, and therefore looked out for another servant: but when the pauper went to receive her wages, the mistress paid her the whole year’s wages, but told her that she wanted a week of serving

out the year. The pauper then said indeed that she was willing to stay another week; but as the mistress, in consequence of the warning which the pauper had given her, and which she had accepted, had provided herself with another servant, and did not want two of them, she told the pauper that it did not signify, as she had got another servant in her place : on which the pauper left the house. There can be no doubt upon this statement that both parties agreed to put an end to the contract before the end of the year. The servant gave above a month’s warning to quit at Old Michaelmas, which she had a right to do, and the mistress accepted the warning, and both parties acted upon it. And this it appears was in fact before the end of the year, whatever the servant might have supposed when she gave the warning. Now the rule which the Court has laid down as the test whether the circumstances attending the departure of a servant before the end of the year amount to a dissolution of the contract, or only to a dispensation of the service, is whether the master has

the power afterwards of compelling the continuance of the service: if he have not, there is an end of the contract: if he have, but choose to dispense with it, it is a dispensation. If, after this, any person had harboured the servant when the mistress desired her services, could she have maintained an action for it? Certainly not: and that is a fair test that the relation of master and servant had ceased to exist.

Grose J. The hiring in this case did not commence till the 18th of October, and consequently the year would not expire till the 18th of October following. But there was a liberty of parting at a month’s wages or a month’s warning; of which the servant availed herself, and gave due notice to quit at Old Michaelmas-Day. The reason of that is obvious; for that is the usual time for hiring of servants in that part of the country, and she meant to look out for another place. The mistress considered it as good notice, and procured another servant to come to her on that day. Here then was a notice by the servant to quit a week before the end of the year, which was accepted by the mistress, and the servant quitted accordingly. It is clear then that there was not a year’s service, and consequently no settlement gained by the pauper in Rushall.

Lawrence J. On the first ground, there is no pretence for saying that this was a hiring from Old Michaelmas-Day. The daughter desired her mother to look out for a place for her, and she before Old Michaelmas treated with Mrs. Peck of Rushall on behalf of her daughter ; but no absolute agreement was made at that time; nor was there any till the 18th of October, when for the first time it was agreed between Mrs. Peck and the pauper that the latter should have 10 guineas a-year wages and a guinea for tea, with a liberty of parting at a month’s wages or a month’s warning. That must be taken to be a contract to commence from that time, there being no reference to any antecedent time. And in truth both parties so considered it at the time of parting; for when the mistress, on paying her whole year’s wages, told the pauper that she wanted a week of serving out her year, the latter did not dispute that, but in effect admitted it, and said that she was willing to stay a week longer. The mistress however stood, as she had a right to do, upon the warning which had been given, and said that it did not signify, as she had provided herself with another servant in her place, who was then in the house: on which the pauper accepted her wages, and went away before the end of the year. There is clearly therefore no settlement.

Le Blanc J. If the sessions upon this statement of facts had found this to be a hiring from Old Michaelmas-Day, it would have been bad. But it is now contended that the hiring commenced, not from Old Michaelmas-Day, but from the day that the mother spoke to Mrs. Peck : but no agreement was then made; the mistress only told the mother what wages she gave, and that she would not fill the place which was vacant in her family till her daughter came, only desiring that she would come

quickly. Then when the daughter did come the terms were settled, which had not been mentioned before. In the absence then of any reference for the commencement of the hiring to the prior time when the mother spoke to Mrs. Peck, we can only say that it was a hiring from the time when the agreement was actually made, and the terms settled between the mistress and servant. Then on the second point; there was a liberty to part on a month’s wages or a month’s warning; which distinguishes this from all the other cases of dispensation of service, where the only duration mentioned was for the year. But here the servant had an option of determining the authority of the mistress upon a month’s notice; which she availed herself of; and gave a month’s notice to quit at Old Michaelmas-Day : the mistress accepted the notice, not as being to quit at the end of the year, but as a month’s warning. And though she gave the pauper the whole year’s wages, yet she pointed out to her that she was not entitled to so much, because she wanted a week of serving out her year. The pauper did not deny that, but offered to stay out the week. However the mistress did not consent to that, as she had got another servant, in consequence of the other’s notice to quit. The pauper therefore took her wages and departed before the end of the year.

Both orders quashed.

(10) Ruling

The pauper desired her mother to look out for a place for her, and the mistress on the application of the mother some time before Old Michaelmas said that she would give the pauper the same wages as her other servants, and wait till she came; but the mother made no absolute agreement for her daughter, though she informed her that she had got a place for her if she liked it. About a week after Old Michaelmas the mistress applied to the pauper to know if she liked to come into her service, and they then agreed for the first time for certain yearly wages (the same as the other servants) with liberty of parting at a month’s wages or warning: Held that the hiring commenced only from the day when the pauper and her mistress agreed on the terms specified, and not from Old Michaelmas or before, when the mother spoke to the mistress. And the pauper having given a month’s previous notice to quit at Old Michaelmas Day, which the mistress accepted, and procured another servant to come on that day, when the pauper received her whole year’s wages; but upon the mistress telling her that she wanted a week of serving out her year, she offered to stay another week; to which the mistress said that it did not signify, as she had got another servant in her place: Held that this was a dissolution of the contract before the end of the year, by the notice to quit given and accepted, and not a mere dispensation of the service ; and consequently no settlement was gained by such hiring and service.

(11) Comment

The Court finds that an absence at the end of the year signified a dissolution rather than a dispensation, hence negativing a settlement.

(12) Type

Restrictive

(1) Case name

*R.* v. *Rusholme*

(2) Date

19 November 1808

(3) Report

10 East 325

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Rusholme

(6) Order sought

Quashing

(7) Facts

Daniel Cotterell, his wife and children, were removed by an order of two justices from Disley in Cheshire to Rusholme in Lancashire, which order was confirmed by the sessions, on appeal, upon these facts, which were stated specially for the opinion of this Court. The pauper, D. Cotterell, was hired to John Tonge, in the township of Rusholme, for four years, with liberty to leave a week every year to see his friends, and he served four years accordingly.

(8) Argument

Topping, and J. Williams, in support of the orders. The hiring here was entire for four years on end, and not four successive hirings for so many successive years; and the only question is, whether the exception, if it be such, will make it a contract for less than a year? No argument can elucidate the case beyond the statement of the question; and accordingly as that is answered in the opinion of the Court, the legal consequence is clear: if it be an exception in the contract, so as to make it all events a contract for less than a year, no settlement can be gained: if only a dispensation, it may. And with respect to the latter, they observed, that this was only a liberty to go and see friends for a week in every year. The pauper was not at liberty to hire himself to any other person; as in *Rex* v. *Bishop’s Hatfield*, to let himself for the harvest month; and in *Rex* v. *Empington*, to hire himself during the sheep shearing season. [Le Blanc J. referred to *Rex* v. *Over*, where a pensioner of the East India Company hiring himself for a year, with a reservation of two days in each half-year for him to go and receive his pension, was held not to gain a settlement by service under such a contract.]

Scarlett, control, shortly referred to *Macclesfield* v. *Sutton*, *Rex* v. *Kingswinford*, and *Rex* v. *North Nibley*, as in point; where the stipulation in each contract was to work only certain hours in the day, under which no settlement could be gained: and this was in effect to serve only 51 weeks in each year.

(9) Judgment

Lord Ellenborough C. J. Here is a hiring for a period of four years, with an exception of a week in every year ; that is to be taken distributively, a week out of each year. Therefore the master had no dominion over the servant for any one entire year, but only for one year minus one week in that year, and so on.

Orders quashed.

(10) Ruling

No settlement can be gained by serving under a contract of hiring for four years, with liberty for the servant to leave for a week every year to see his friends; for that is to be taken distributively, i.e. reserving a week out of each year.

(11) Comment

The Court declines to find a yearly hiring in a case where the servant was allowed a week’s leave each year.

(12) Type

Restrictive

(1) Case name

*R.* v. *Sandhurst*

(2) Date

3 November 1827

(3) Report

7 B. & C. 557

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Sandhurst

(6) Order sought

Quashing

(7) Facts

Upon appeal against an order of two justices, whereby T. Slark, his wife, and children, were removed from the parish of Easthamsted to the parish of Sandhurst, both in the county of Berks, the sessions confirmed the order, subject to the opinion of this Court on the following case :— The pauper, T. Slark, being unmarried, and without any child, was hired on the 13th of May 1813, as a servant on the establishment of the Royal Military College at Blackwater, in the parish of Sandhurst. By a warrant under the hand of His late Majesty, bearing date the 27th May 1808, all matters relating to the interior regulations and economy of the establishment were placed under the cognizance of a collegiate board, consisting of the governor and several other persons mentioned in the warrant. Certain regulations for men-servants hired for the Royal Military College are entered in a book kept for that purpose, containing, among other rules, the following: “The servants are to obey all orders they may receive from the officers of the institution, the staff-serjeants, and the surveyor. They are allowed wages at the rate of sixteen shillings per week, with one dress and one undress suit of clothes per annum, subject to such stoppages as may be ordered, but which shall be paid up every three months, after deducting for the charge of breaking furniture, crockery, &c. belonging to the college, that may have been committed during that period. Should a servant wish to quit the college, he must give one month’s previous notice ; but should the college see reason to be dissatisfied with his conduct, it retains the power of dismissing him at a moment’s notice.” The customary mode of hiring such servants was by reading the rules over to them at the time of hiring, and then requiring their signature to them, in witness of their agreement to serve on the terms prescribed. The pauper was hired by Colonel Butler, the lieutenant-governor, one of the officers constituting the collegiate board, by whom the servants were usually hired. He heard the above regulations read at the same time by the quarter-master, and signified his assent in the usual manner, by subscribing his mark to them. He remained in the service, and received his wages as above agreed on, for two years and a half before he married. He lived and slept in the body of the college, and was employed in making the beds of the gentlemen cadets, assisting in sweeping and cleaning the rooms, and various other occupations for the service of the college exclusively, as directed by the officers of the college. He was discharged with several other public servants of the college, without notice, in the year 1819, on a reduction of the establishment by order of Government. The body of the college is exclusively appropriated to public uses for study and lodging of the gentlemen cadets, and is exempt from poor-rates, as being a public building. The pauper and thirty-two other persons were employed in the same service, not as the private servants of any individual, but as the public servants of the establishment, to obey generally the officers of the college : and they were paid by the pay-serjeant, out of the funds supplied for the maintenance of the college ; and they were not returned to the collector of the taxes, nor paid for, nor assessed as servants. The pauper, T. Slark, afterwards married his present wife, and the children removed with him are the issue of the marriage. Upon these facts, the sessions found that there was a general hiring sufficient to confer a settlement, if a settlement could be acquired by such hiring and service in a public establishment like the college ; and submitted this question for the opinion of this Court, whether the pauper, T. Slark, acquired a settlement by such hiring and service in the college? This case was argued at the sittings in Banc after last Trinity term.

(8) Argument

Shepherd and Talfourd in support of the order of sessions. This was a yearly hiring, and as the college did not exercise the power of dismissing the pauper he gained a settlement at the end of his first year’s service. Besides, the sessions find expressly a general hiring, and only ask the opinion of the Court on the effect of “such general hiring and service.” It is immaterial whether the contract be to serve one or more masters, as the statute 3 W. & M. c. 11, s. 7, does not mention any person as master to whom the hiring is to be; but only enacts that the person in order to gain a settlement shall be unmarried, without child or children, and shall serve under a lawful hiring for a year. It is the nature of the service, therefore, that must determine the settlement. There is no reported case in which a servant of His Majesty has gained a settlement by such service; but that may be because such right was never disputed. By the statute 52 G. 3, c. 72, s. 8, an Act for the enclosure of the New Forest, the servants of the Crown are expressly excluded from gaining a settlement, and it may, therefore, reasonably be inferred that, without such a disability by statute, they would have gained a settlement by such service.

The Solicitor-General, Nolan, and Stone, contra. If the facts in a case shew that the sessions have decided on wrong grounds, the Court is not limited by the return of the justices ; and the reason is, that the case when returned by the certiorari becomes part of the records of the Court; and as the Court will enforce obedience to any decision which they come to, they will take care that the record will lawfully enable them. First, there is no yearly hiring within the statute. An unilateral contract is not sufficient; it must be reciprocal. Supposing the contract on the part of the servant to be a general hiring, yet the power retained by the college of dismissing him at a moment’s notice, should they see reason to be dissatisfied with him, is parcel of the original contract, and is inconsistent with the notion of a yearly hiring. He was in fact discharged at a moment’s notice, not for any fault, but on the reduction of the establishment, which explains how wide a meaning was given to the word “dissatisfaction” by both parties at the time of hiring. Besides, it is an exceptive hiring: the terms of the engagement were read to the pauper at the time of hiring, and the persons hiring cannot go beyond these; so that when he had done his work, he was for the rest of the day sui juris. Secondly, from the nature of the establishment, a service in it will not confer a settlement. It was intended by the statute 9 W. & M. c. 30, s. 4, that persons gaining a settlement should have benefitted the parish for one whole year, but the establishment where the service was performed pays no rates, and if it could confer settlements it would impose burthens on the parish without contributing to their support. The statute 52 G. 3, c. 124, which vests in the Crown certain lands for the Royal Military College, recites that His Majesty had been pleased to establish a Royal military college, and had directed that certain persons should form a collegiate board for the controul of the interior regulations of such establishment; the persons in the establishment are, therefore, the servants of the Crown, though hired by the officers of the establishment, and the Crown not being mentioned in the Act of William is not subject to its operation, and its servants cannot gain a settlement. Indeed this is more like an office than a service, and the person serving, like a soldier, who is the servant of the King, and may be dismissed at the discretion of the Crown, and receives pay from the public purse, not from the pocket of any individual. No declaration could be framed in which such servant could bring an action against any of the officers for being turned away on the reduction of the establishment.

Cur. adv. vult.

(9) Judgment

Bayley J. on this day delivered the judgment of the Court. In this case the question is, whether the pauper had acquired a settlement in consequence of having been hired into the establishment at Sandhurst, and having served there for a year. That establishment is in the nature of a collegiate board, and the terms on which the servants are hired are, that “ they are to obey [562] all orders they may receive from the officers of the institution.” They are allowed at the rate of 16s. per week, with one dress, &c., per annum, subject to such stoppages as may be ordered, but which are to be paid up every three months, after deducting for the charge of breaking furniture, &c.; and should a servant wish to quit the college, he must give one month’s previous notice, but should the college see reason to be dissatisfied with his conduct, it retains the power of dismissing him at a moment’s notice. The sessions thought that this was a general hiring, so as to constitute a hiring for a year; but

they entertained a doubt whether the hiring, being by the officer of the establishment, was sufficient to confer a settlement on the individual hired. Another point raised in the discussion was, whether the power reserved in the original contract, of putting an end to the service by a month’s notice on the part of the servant, or at a moment’s notice by the college, should they be dissatisfied with him, prevented this from being a hiring for a year. On this point we are satisfied that this is to be deemed a yearly hiring notwithstanding the power of determining it in the meantime, as that power was not exercised before the expiration of the year. It is like the case of a defeasible contract, (similar to that in *Rex* v. *Herstmonceaux* (ante, p. 551),) to be determined on some contingency; but that contingency not having happened, and the contract not having been defeated during the year, it enures after the year’s service as a yearly hiring. But it was also said, that as this hiring was by the officer of the establishment, and as the party was to serve the officers of the establishment, and the

young gentlemen supported at it, and was not hired by, or to serve a private individual, that distinguished this from the ordinary cases of hiring, and prevented a settlement from being gained. The stat. 3 W. & M. c. 11, s. 7, only contemplates a lawful hiring and service under it; it does not say by whom the hiring is to be made. It has been urged in argument, that the party is to be considered as holding an office, not as a servant. But a man who does all the menial offices of a servant, and is at

the command of the persons in the establishment, is a servant, and not an officer. We think that the Legislature did not mean to make any distinction between one description of hiring and another, by a particular description of persons; all that it required was, that the hiring should be lawful, and that there should be a service under it. Here there was a lawful hiring and a service under it in the parish of Sandhurst, and, therefore, a settlement was gained.

Order of sessions confirmed.

(10) Ruling

A pauper was hired by the commanding officer of a Royal military college to act as a servant in that establishment. By the terms of the hiring, he was to obey all orders of the officers of the institution, and to be allowed weekly wages, and if he wished to quit the college, he was to give one month’s notice; but should the college be dissatisfied with his conduct, it retained the power of dismissing him at a moment’s notice : Held, first, that this was a good hiring for a year, although either party might determine it before the expiration of the year; secondly, that a settlement was gained by such hiring, although it was not to a private person, the statute 3 W. & M. c. 11, s. 7, only requiring a lawful hiring, and a service under it.

(11) Comment

The Court finds that the counterparty to the contract (the employer ) does not have not to be an individual human being (‘private person’), here, the Royal Military College at Sandhurst.

(12) Type

Liberal

(1) Case name

*R*. v *Seagrave*

(2) Date

8 February 1783

(3) Report

Cald 247

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Seagrave

(6) Order sought

Quashing

(7) Facts

Two justices remove Thomas Brown, Ann his wife, and their two children, from the parish of Barkby in the county of Leicester to the parish of Seagrave in the same county. The sessions on appeal confirm the order, and state the following case :

That the pauper was hired from old Martinmas to old Martinmas: that on September the 25th he told his master, he was going to be married: that his master made no answer: that he went away on Saturday and was married : that upon his return he had no intention of quitting his service : that the master said, he would not employ him any longer : that he said he would go, if he would pay him his year’s wages : that the master refused it; and said, he would only pay him for the time he had served ; and asked him if he would take his wages, or go before a justice: that the master set out about his business to his farm at Barrow; when the pauper called him back, and said he would take the money for the time he had served ; and that he parted with his own consent.

The two justices and court of quarter sessions had concurred in opinion, that, as the quitting of the service in this case appeared to be only an acquiescence by a servant in the interested commands of one who was in the habit of exercising acts of authority over him,

and that the servant had submitted to a small deduction of wages only to avoid going, as he otherwise must have done, before a magistrate this was not that free consent and contract, that ought to conclude him, and operate as a dissolution of the contract of hiring and service.

(8) Argument

(9) Judgment

But the court thought, that the last words of the case as stated were so clear and unequivocal a dissolution of the contract, that they would not permit it to be argued.

Per Curiam,

Rule absolute and both orders quashed.

Vide the next case.

(10) Ruling

The consent of a servant given in express terms to the dissolution of his contract, unless fraud is stated, must be conclusive.

(11) Comment

The court applies a strict threshold towards what circumstances can vitiate the validity of a termination of hire. Though the lower courts recognised the unequal bargaining power between the master and servant, and the economic pressure the servant faced (either taking reduced wages or none at all), and found that those factors vitiated the servant’s consent to the termination, the King’s Bench set the much higher threshold of ‘fraud’.

(12) Type

Restrictive

(1) Case name

*R.* v. *Seaton and Beer*

(2) Date

19 May 1784

(3) Report

Cald 440

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Seaton and Beer

(6) Order sought

Quashing

(7) Facts

Two justices remove Sampson Gill, Martha his wife and their four children from the parish of Broadclift in the county of Devon to the parish of Seaton and Beer in the same county. The Sessions on appeal confirm the order, and state the following case:

That Sampson Gill, the pauper, being settled in the said parish of Seaton and Beer, went into the parish of Broadclift, and made an agreement with one Samuel Ponsford (who kept a public house there) as follows: That Ponsford said to him, that he would give him a shilling a week, as he had given the other man or men, and the vails of the stables ; and that nothing was said about the time of his service : that at the end of the year his mistress said to him: “ You have been here a year, I will pay you:” to which the pauper replied, “ It was no matter, I may stay with you another year:’ she said “very well, Sampson:” that he did stay another year, and then received what was due to him, being 5l. 4s. : that the pauper worked in the stable as an ostler; and that neither at the time of making the first agreement nor at the end of the first year was any mention made by the master, mistress or pauper of a hiring for a year, or of the term for which lie was to serve ; but that he the pauper apprehended his master might have parted with him at any time on giving reasonable notice : and that no evidence appeared before this court of the time for which any such man or men, as above referred to, had been at any time hired by the said Samuel Ponsford.

(8) Argument

Fanshawe shewed cause in support of these orders; and contended, that there were in this case circumstances sufficient to shew, that this was not a hiring for a year : that there was a weekly hiring, and a reference to services of the same description and character by other persons : that in this respect the present case totally differed from that of [a] the *K. v. the Inhabitants of Berwick St. John*; in which by reference to the place, filled by a servant who received annual wages, the duration of the contract between the parties was fully ascertained and explained : that on the contrary it resembled the cases of [b] the K*. v. the Inhabitants of* *Dedham* and [c] the *K. v. the Inhabitants of Bradninch* ; in both of which the hirings were weekly; in both it is laid down that the obligation to serve must be mutual : and in the first the old rule is infixed upon, that “the Court has always been very strict with respect to the hiring and in the second the hiring was conditional : and a conditional hiring for a year [d] will give a settlement. That the case of [e] the *K. v. the Inhabitants of Stockbridge*, which would probably be cited on the other side, was that of a general hiring; and where there were not, as here, circumstances to repel the presumption, arising from the general terms of the contract.

[a] E. 33 G. 2.1760. Burr. Settl. Cas. 502.

[b] M. 10 G. 3. Bott. 284.

[c] H. 10 G. 3. Bott. 285.

[d] The K. v. the Inhabitants of Lidney, T. 6 & 7 G. 2. 1733. Burr. Settl. Cas. 1. The *K. v. the Inhabitants of New Windsor*. H. S G. 2. 1734- Burr. Settl. Cas. 19. the *K.* *the Inhabitants of Atherton*. H. 16 G. 2. 1742. Burr. Seed. Cas. 203.

[e] M. 14 G. 3. 1773. Burr. Settl. Cas. 759.

Silvester and Clappe, in support of the rule to quash these orders, admitted; that, wherever the question has been raised, whether a hiring for a shorter term than a year could be construed into a hiring for a year, the circumstances of the case have been reported to, as the proper interpretation of the meaning of the parties ; but insisted that a general indefinite hiring was a hiring for a year, and so established as well in the case cited of the *K. v.* *Stockbridge* as in those of [a] the *K. v. the Inhabitants of Wincanton* and [b] the *K. v. the Inhabitants of Bath Easton*. That the first hiring in this case was of this description and indefinite, as the duration of the service by reference to the contracts or services of other servants in the same place was not ascertained ; but that, if this were any way doubtful, the second hiring expressly referred to an annual service: and that to this point the case cited of the *K. v. the* *Inhabitants of Berwick St. John* directly applied. That the reservation of wages at short intervals could not conclude upon the extent and duration of the contract; though it might shew what was the convenience of the particular party, who made this stipulation ; and that the cases cited of the *K. v. Dedham* and the *K.* *v. Bradninch*: had no circumstances, by a reference to which it could be shewn, that even the service was meant to be annual.

[a] K. 24 G. 2. 1750. Burr. Sett). Cas. 299.

[b] H. 16 G. 3. 1776. Barr. Seal. Cas. 823.

(9) Judgment

Willes, J.

All the cases shew, that a general hiring is a hiring for a year: and the case cited of the *K. v. Stockbridge* puts it out of all doubt. The reference in the present case to the place of a former servant, and the terms on which he served, is something more than a general retainer in the service. The conversation at the end of the first year also amounts to a conditional hiring for the next.

Ashhurst, J.

I am not disposed to narrow those rules of construction, which have been admitted in favour of settlements; and this case does not go so far as some others have gone. As far as they may be said to constitute a general rule, the substance of the cases is ; that the interpretation of hirings for a less term than a year with a reservation of wages at the expiration of such term, shall be collected, if the services are continued throughout the year, from the various circumstances belonging to such hirings. Now, even if doubt might be entertained upon the effect of the first agreement, the terms of the second, which is plainly a conditional hiring for a year (whether the first did or did not amount to a general hiring either in its own terms or by reference to the circumstances attending it, seem to shew, that the original agreement had from the beginning been considered by the parties, as being of the same character and description as the last : and the terms of a contract in the language of the parties themselves will always be a key to the true construction of it.

Buller J.

It has been long and fully settled, that the private understanding of the parties either one way or the other, as to the legal effect of their contracts and whether they may or may not part with each other, can make no difference. That being laid out of the case, the opinion of Yates, J. in the case cited of the *K. v. Dedham* [a] is an authority precisely in point; and must govern this case. His words are “In the present case, if the master had not paid six- pence a week more at the time of this conversation passing, the servant said, he would have quitted the service. If it had not been for this circumstance, I should have inclined to have thought it a hiring for a year.” The manner of fixing the wages then, no more than the apprehension of the pauper, can make any difference as to the effect of the contract ; but the true state and explanation of the original contract, as it is there agreed by the master and servant to be, arises from a conversation during the service between them ; from which it was concluded that the alteration in the wages and the subsequent conduct of the parties was sufficient to shew, that the original hiring was not intended for a year. The subsequent conversation in the present case seems to unfold the object of the original contract as satisfactorily : but, if it did not, as a new contract it leaves no doubt whatsoever [b],

Lord Mansfield was absent.

Rule absolute and

Both Orders quashed\*

[a] Bott. 285. Ed. 1773.

[c] Since the date of this case there have been several determinations, in which hirings of a similar nature have, under their respective circumstances, been determined not to give and to give a settlement. Of the first class are those of the *K. v. the Inhabitants of Elflack*, H 25 G. 2. 1785. post. , the *K. v. the Inhabitants of Newton Toney*, E. 28 G. 3. J7S8. A Durnf. & East: 453 , the *K. v. the Inhabitants of Odiham*, Tr. 28 G. 3. 1788, lb. 622, and the *K. v. the Inhabitants of St. Matthew Ipswich*, Tr. 30 G. 3'. 1790, Durnford & East. 3. 449.

Of the other class, those which have been adjudged to give a settlement, are the *K. v. the Inhabitants of Alton*, E. 24 G. 3. 1784. ante 424, the *King v. the Inhabitants of Chertsey*,Tr. 27 G. 3. 1787. 2 Durnf. & East. 37., the *K. v. the Inhabitants of Birdbrooke*, E. 31 G.3. 1791. 4 Durnf. & East. 245, the *K. v. the Inhabitants of Hampreston*, E. 33 G. 3. 1793.5 Durnf. & Eafl. 205. Nolan 2. 216. and the *K. v. the Inhabitants of Lyth*. Tr. 33 G. 3.1793. Ib. 327. Nolan 2. 256.

And by a late decision it has also been laid down in the case of a servant in husbandry that “ living for 3 years” is certainly evidence of a hiring for a year, and by Lord Kenyon, strong and almost conclusive evidence, though his original hiring was for part of a year only. *R. v. the Inhabitants of Long* *Whatton*, M. 34 G. 3. 1793.

(10) Ruling

A general hiring is a hiring for a year. A weekly reservation of wages does not of itself determine, whether a contract is weekly or annual; but this must be collected from the circumstances attending the contract. The understanding or opinion of master or servant a to any obligation, which in point of law they may be subject to, can be of no weight.

(11) Comment

The court lays down the more holistic approach that wages paid by the week is only one feature of a contract of hire, which does not automatically defeat the presumption that a general hiring is a hiring for a year. Whether a contract is for a year or not depends on all of the circumstances of the contract. Thus the court finds a settlement here. The court in later cases such as *R. v. Birdbrooke* (1791)*, R. v. Hampreston* (1793) and *R. v. Hanbury* (1802) appears to follow this approach, although *R. v. Elftack* (1785) is an exception.

(12) Type

Liberal

(1) Case name

*R* v. *Sharrington*

(2) Date

13 November 1784

(3) Report

Cald 471

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Sharrington

(6) Order sought

Quashing

(7) Facts

Two justices by an order remove Robert Lound from the parish of Leatheringsett in the county of Norfolk to the parish of Sharrington in the same county. The Sessions on appeal confirm the order and state the following case :

That the pauper, having gained a settlement in the parish Sharrington before Michaelmas 1782, let himself for a year to Mr. Hardy of the parish of Leatheringsett, beer brewer: that he was to drive the best team out with beer and do what he was bid : that year, Mr. Hardy, his intended master, asked him if he could sow, he might have twenty acres of wheat: that he sowed about two acres and went about ten journies to plough : that he continued in his master's service for seven weeks, at the end of which time, when he was driving the beer wagon, he fell off and broke his thigh in the parish of Buxton: that, when he was so driving, he was standing on the shafts of the wagon and was in liquor; that the pauper could not tell, but he might have met with the accident if he had been sober: that he was taken up and carried by the parish officers of Buxton to the Norfolk and Norwich Hospital, where he continued twenty-nine weeks: that, when he had been there about three weeks, Mr. Hardy went to him, and told him if he wanted any thing to let him know it: that when he, the said Robert Lound, left the Hospital, he went to Sharrington aforesaid, being on a Saturday night, and that the next morning he went to Mr. Hardy's : that Mr. Hardy refused to take him, and offered to pay him for the seven weeks and make him a present, which the said pauper refused to take; and thereupon Mr. Hardy said he would go to Mr. Jewell's, a neighbouring justice : that the pauper returned to Sharrington aforesaid, and on the Friday following the pauper and Mr. Hardy went to Mr. Jewell’s, but nothing was done : that he, the said pauper, returned to Sharrington; where he continued upwards of fourteen weeks; and then, by an order dated the 30th day of September 1783, under the hands and seals of Edward Jewell and Zurishadai Girdlestone, Esquires, two of his Majesty’s Justices of the peace for the said county, he was sent to Mr. Hardy, who then also refused to take him under the said order; but the pauper continued in the said parish of Leatheringsett from that time at a public house, till removed by the above order of Sir Edward Astley, Bart, and William Wiggett Bulwer, Esquire: that Hardy had another man and a lad in his husbandry service, during the time the pauper lived with him: that he the pauper did no work for Mr. Hardy after he came out of the Hospital: that he went on crutches, and was at that time and still continues incapable of doing work.

(8) Argument

No one appearing in support of these orders, after Bearcroft, in support of the rule for quashing them, had stated, that it was a hiring for a year, under which there had been a service for forty days, soon after which the pauper had by an accident been prevented from performing any further service, though the contract had not been discontinued, [a]

[a] But where a servant is prevented by illness, the visitation of God, from completing his service, and is taken by his father to his house in another parish, his settlement is not in his father's parish, but in the parish in which he inhabited the last forty days in the service of his master. *The K. v, the Inhabitants of Sutton*, Tr. 34 G. 3. 1794. 5 Durnf. and East 657.

(9) Judgment

(10) Ruling

Per Curiam,

It is a clear case.

Rule absolute and

Both orders quashed.

(11) Comment

The court finds that where a servant is hired for a year but prevented from performing due to an accident at work, he gains a settlement at his place of work. This is consistent with the earlier case of *Madington*, though the period of absence is much longer here than in *Madington*; it contrasts with the later case of *Whittlebury* where absence due to illness dissolved the contract and defeated settlement.

(12) Type

Liberal

(1) Case name

*R.* v. *Shinfield*

(2) Date

20 November 1811

(3) Report

14 East 545

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Shinfield

(6) Order sought

Quashing

(7) Facts

Martha, the wife of Richard Lansbury, a private in the Royal Berks Militia, was removed by an order of justices from the parish of St. Giles in Reading, to Shinfield, in the county of Berks, which order was confirmed by the sessions, on appeal, subject to the opinion of this Court on the following case. The pauper’s husband in June 1806, (before his marriage) being then a minor, hired himself for a year to James Palmer of Shinfield, brickmaker, and continued from that time upwards of a year in Palmer’s service. On the 29th of September 1806 the pauper’s husband, (being still a minor) signed the following agreement on unstamped paper, and not under seals, under which the pauper’s husband served the whole three years. “A memorandum and agreement between James Palmer and Richard Lanesbury. This agreement made the 29th of September 1806 between James Palmer, brickmaker, of Shinfield in the county of Berks, and Richard Lanesbury of Sonning etc. I Richard Lanesbury, do hereby covenant and agree to serve James Palmer for three years, to learn to make bricks, the art of burning, on condition of the said James Palmer finding me the said Richard Lanesbury sufficient drink, victuals, lodging and clothes, and to be decently clothed in the habit of a working-man at the expiration of the three years, on condition of my helping to attend the kiln at nights. Whereas I have hereunto set my hand this 29th of September 1806.” (Signed) “Richard Lanesbury” and attested by two witnesses. And in the margin of the paper, near the attestation, was written, “I, James Palmer, consenting to the above agreement.” The appellants produced Richard Lanesbury’s mother, who swore that Palmer came to her, and asked if she had any objection to her son being apprenticed to him; and she said “No.”

(8) Argument

Abbott and Cooper, in support of the orders, admitting, first, that if the original parol agreement by Lanesbury to serve Palmer as a servant for a year were meant to be abandoned, and another contract for service as an apprentice substituted in the place of it by the written agreement entered into between them in three months after the commencement of the service, no settlement was gained by Lanesbury in Shinfield: they denied that such was the intention of the parties, or the operation of the written contract. For where one is retained to serve another generally, and not as an apprentice, eo nomine; though it be part of the contract that he is to be taught a trade; it only operates as a contract of hiring and service, and not of apprenticeship. This was decided in *Rex* v. *Hitcham*, and *Rex* v. *Little Bolton*, and is now the established rule. The conversation between Lanesbury’s mother and Palmer cannot vary the written contract. In *Rex* v. *Highnam*, it was expressly stated that the parties meant to constitute an apprenticeship; which prevented the gaining of a settlement as a hired servant. In this view of the case it is immaterial whether the written contract were valid or not: if valid, a settlement was gained as a hired servant under it; if invalid, as not being stamped, then the pauper continued to serve in Shinfield for more than a year under the original contract as a yearly servant, and gained his settlement there. But supposing the written contract would in its terms constitute an apprenticeship; then, not being stamped, it could not be received in evidence, to do away the former good agreement by parol.

Burrough, Wakefield, and Burnal, contra. Though the instrument of the 29th of September 1806 were invalid, as an apprenticeship ; yet if in fact Lanesbury intended to serve, and did serve, his master from that time in the supposed character of an apprentice, that put an end to the relation of master and servant; so that there was no service for a year under the first contract. The question therefore turns upon the true construction of the written contract, whether the parties intended by the terms of it to create a hiring or an apprenticeship. The distinctive character of the latter, in addition to the service of the master, which is common to both, is for the master to teach the person retained some trade or business; and that was stipulated for by the contract in question : no technical words can be necessary to create such a contract. The case of *The King* v. *Little Bolton*, where that notion prevailed, was afterwards overruled in *The King* v. *Highnam*, where an apprenticeship was established without a retainer eo nomine in the contract. So it was in *Rex* v. *Laindon*, and *Rex* v. *Rainham*, which followed. [Le Blanc, J. In *R.* v. *Laindon* a premium was given to the master; which was relied on as shewing the intention of the contracting parties to create an apprenticeship.] The reserving a premium is no necessary part of such a contract; and the circumstance that no wages are to be paid equally indicates the same intention in this case: for if a mere hiring and service were meant, as under the first general contract, though no particular sum was mentioned at the time, the mere relation of master and servant would have entitled the servant to wages upon a quantum meruit: which would not result from a mere contract of apprenticeship.

[Bayley, J. The boy was to have clothes provided for him as well as board and lodging, and he was to be so employed as to enable him to learn the trade : there was therefore an equivalent for wages. Lord Ellenborough, C.J. There are no terms in this contract by which the master binds himself to teach the boy his trade: the boy is to have the opportunity of learning it by serving the master in his trade for three years; but it does not therefore follow that an action would lie against the master for not teaching him.] In the *Laindon* case the master did not undertake to teach the party serving;

and yet the Court thought that an apprentice was intended, though defectively made. In *Rex* v. *Little Bolton*, and *Rex* v. *Eccleston*, there was a reservation of wages, which rather shewed an intention to create a hiring and service: and in the latter case Lord Ellenborough gave only a reluctant assent to the former decision.

(9) Judgment

Lord Ellenborough C.J. This was the case of a person, who, though a minor, had power to contract for a hiring and service to another, or as an apprentice, according to the principle laid down in the case of *Drury* v. *Drury*, cited in 3 Term Rep. 161, that if an agreement be for the benefit of an infant at the time, it shall bind him : and that has not been drawn into controversy upon this occasion ; but it is admitted that if the case had stood upon a contract of hiring alone, it would have been good and

binding to enable him to acquire a settlement in Shinfield by a service under it. The only argument has been upon the effect of the real or supposed apprenticeship created by the instrument, which it is said put an end to the service under the original contract. But quacunque via data, he gained a settlement in Shinfield: for if the instrument were invalid as being a fraud upon the law, it is clear that there was no good apprenticeship created, because it was not created in the manner prescribed by law: and if invalid, and not receivable in evidence, what is there to do away the former contract of hiring for a year? But supposing it to be valid, and not operating as an apprenticeship, but as a hiring in the relation of master and servant , what is this but the case of a continuing service operating under a new contract of hiring, merely superadding other terms, whereby the servant was to have food and clothing provided for him in the manner stated, and an opportunity of learning the trade

of his master, instead of seeking for a compensation for his service upon a quantum meruit. It is therefore unnecessary to determine whether or not this was a good contract of hiring and service, as created by the written instrument. And all of the cases cited by the appellant’s counsel differ from the present, because in none of those cases was there a good contract of hiring and service independent of the imperfect contract of apprenticeship in dispute. But here there was an original perfect contract of hiring and service, which was not defeated by an invalid instrument. With respect however to the case of *The King* v. *Little Bolton*, the Court in the case of *The King* v. *Ecclestone* considered it as a subsisting authority, whatever question there might have been upon the subject at first; and I think the convenience of the thing is in support of it; but it is not necessary now to discuss that point.

Grose, J. Here there was originally a good contract of hiring an service; and that was not done away with by the subsequent instrument, whereby the parties merely prolonged the duration of the contract, and fixed the compensation to be made by the master for the service.

Le Blanc, J. To give a settlement by hiring and service there must be a contract of hiring for a year; and this case is distinguishable from all the former cases, in which the question has been whether the contract was to serve as an apprentice, or as a hired servant, where if the Court considered that the contract was to serve as an apprentice, it could not enure to give a settlement as in case of a hired servant; for in none of those cases was there any valid contract of hiring and service existing before independent of the instrument in question. But here the husband of the pauper had first entered into a good contract by parol as a hired servant for a year; and pending that contract he and his master entered into a written agreement; by which it is contended that the parties meant to contract for an apprenticeship; and that this, though invalid for the purpose of creating an apprenticeship, yet, changed the nature of the service under the former hiring into a service as an apprentice, and therefore prevented the gaining of a settlement as a hired servant. But I do not accede to that argument: because if there were at one time a subsisting valid contract of hiring and service for a year, and, pending that, the parties enter into an invalid agreement, do not see how that can do away with the former valid contract. But upon the construction of the written instrument itself, I do not think that it is to be taken as a contract of apprenticeship. In all the former cases, where the instrument in question has been so construed, it has been stated that the parties intended to contract in the relation of master and apprentice, only they had contracted informally in order to avoid the stamp duties. But here the contract is for Lanesbury to serve Palmer for three years to learn the art of a brickmaker, on condition of Palmer’s finding him in board, lodging, and clothes: there is no contract by the master to teach him, but only for the boy to have the opportunity of learning the business. It is said that no wages are reserved : but that is no more than what often happens with boys at service: they get less at first, because they must first learn their business before they can be of use to their masters in it. men. Then, though it is stated here that the boy was to serve his master to learn his business, that would not prevent it operating as a contract of hiring and service. I do not think therefore that this was in the terms of it an agreement for an apprenticeship, so as to supersede the former contract of hiring and service. But even if it were intended as an apprenticeship, yet the instrument, being invalid, would not supersede the former valid contract.

Bayley, J. I consider the instrument as a contract of service, and not as an apprenticeship. There was an original good contract for a year between the parties as master and servant generally, and after three months service under it, they entered into a new agreement, by which the boy was to serve his master for three years, not generally, but to learn to make bricks and the art of burning, upon condition of being found in board, lodging, and clothes. The meaning of the parties therefore was that the general service before contracted for should be restrained to such service as would enable the boy to learn his master’s business. If an apprenticeship had been intended, there would have been words introduced into the agreement binding the master to teach the boy; and there being no such words of obligation on the master, and the written contract not having the ordinary words of binding to serve as an apprentice, and the intent of the parties, as collected from the terms of it, being at least equivocal ; we are warranted by the cases in saying that the object of it was merely

to confine the general service before contracted for to such parts of the master’s employ as would enable the boy to learn his business. If this therefore were to give an extraordinary benefit to the servant, the master might well stipulate for receiving such service without the payment of wages.

Orders confirmed.

(10) Ruling

Three months after a pauper, under age, had hired himself generally to a brickmaker for a year, they entered into a written contract, unstamped and without seals, whereby the pauper covenanted and agreed to serve his master for three years, to learn to make bricks, &c. on condition of his master finding him in board, lodging, and clothes, and for him to be decently clothed at the end of the three years, on condition of his attending the kiln at nights: Held that this contract, (assuming that an infant might bind himself by any contract made for his benefit at the time, if legally framed,) was no proof of an apprenticeship in the contemplation of the parties, but only of a new hiring, in the same relation of master and servant as the original hiring; only restraining the service to such employ of the master as would enable the boy to learn the trade; (for the master did not bind himself to teach him the trade.) But if the intention of the parties had appeared to be to contract for an apprenticeship, yet as such contract was illegal and void in the form and manner of it, it would not have done away the original good contract of hiring and service for a year; and therefore the servant would at any rate gain a settlement by serving his master for a year.

(11) Comment

The Court finds a settlement in a case where the parties initially contracted for a hiring and later agreed an informal and hence invalid contract of apprenticeship.

(12) Type

Liberal

(1) Case name

*R.* v. *Silverstone cum Bermer*

(2) Date

30 April 1777

(3) Report

Cald 19

(4) Court

King’s Bench

(5) Parties

Rex v. Inhabitants of Silverstone cum Bermer

(6) Order sought

Quashing

(7) Facts

Two justices remove Charles Dawson and Elizabeth his wife, from the parish of Binham in the county of Norfolk, to the parish of Silverstone cum Bermer in the same county. The sessions, on appeal, confirm the order, and state the following case:

That Charles Dawson, being legally hired, lived with Mr. Edward Glover 9 at Silverstone in Norfolk, as a Servant in husbandry, from Michaelmas day, 1769, until Michaelmas day 1770. On Old Michaelmas day 1771, one James Carrington, of Mileham in Norfolk, farmer, came to the Unicorn in Mileham, and asked Dawson if he would live with him, and upon what terms. Dawson asked eight guineas, which Carrington refused to give ; but offered him six pounds, which Dawfon refused to accept. Upon this they parted. On the next day (being the 1 ith of October 1771) between two or three o'clock in the afternoon, Carrington and Dawson were together at the Royal Oak in Mileham ; when Carrington asked him, whether he would take the wages he had offered, which Dawson again refused. But, after some conversation, Dawson let himself to Carrington, as a servant in husbandry, until the Michaelmas following, for seven pounds wages : and Dawson entered Carrington’s service on the evening of that day, being the eleventh of October and stayed in his service until the tenth of October following, being Michaelmas day 1772. On that day, Carrington not having finished harvest, asked Dawson to stay and help him up with his harvest ; and though he thought himself at liberty to go, Dawson did stay with said Carrington until the next day, being the eleventh of October, at noon; and after he had dined, asked said Carrington for his wages : whereupon Carrington paid him the said sum of seven pounds, and Dawson quitted his service, and did not ask or receive any recompence for his additional service. On Sunday the 8th day of October 1775, Dawson was in company, at Wighton, with one Robert Sillis, who was then employed as a labourer by Mr. Rix, a farmer at Binham in Norfolk. Sillis informed Dawson, that Mr. Rix, wanted a careful servant, and believed he could help him to the place. The pauper told Sillis, that he might learn his character of a person present (one William Cook) and Sillis, after making inquiry of Cook concerning his character, told Dawson; that if he would come to Binham on Michaelmas day, he would take care that he should have the place. Dawson according to his promise then made, went to Binham on Michaelmas day, being the tenth of October 1775, and enquired at Sillis’s house, whether Mr. Rix was at home. Sillis told Dawson, that Mr. Rix was gone to Norwich, but had desired that he (Dawson) would stay till his return. Dawson accordingly staid at a public house at Binham that night, and went to see bis father at Walsingham the next day; and returned to the public house at Binham that night. On the eleventh of October 1775, Mr. Pigge of Waterden sent for Dawson to hire him. Dawson sent word to Mr. Pigge, that he should wait for Mr. Rix’s place; but that if Mr. Rix and he did not agree, he would wait on Mr. Pigge. Mr. Rix returned home in the evening of the eleventh of October, and on the next morning, upon seeing Dawson, said to him: so, you have stopt till my return : and after some conversation about wages (Dawson at first asking nine guineas) he hired Dawson until the Michaelmas following for eight guineas; and Dawson told the said Rix, that he expected his service would expire at the Michaelmas then next; whereupon Rix said, with all my heart, so long as you have stopt, it makes no difference;

as I have not often a servant who stays with me so short a time as a year. Dawson stayed in the service of said Rix at Binham until Michaelmas last, when he married. In the course of the examination, Dawson was asked whether Sillis was usually employed to hire servants for Mr. Rix; to which Dawson answered, he did not know he was.

(8) Argument

Davenport shewed cause in support of these orders; and insisted that, though there was a conversation on the tenth, between the pauper and his master, yet, as it was not brought to any point, as it did not produce a hiring, and as there was not at that time the slightest reference to any future treaty, the agreement entered into on the next day, the eleventh, could not possibly be connected with it; and consequently that the hiring on the eleventh, till Old Michaelmas day, which was on the tenth, could not amount to a hiring for a year. That the law did not allow of such a thing as a retrospective hiring: [*a]* that as refinements upon these points have produced infinity of questions and difficulties, the safest way is to adhere strictly to the words of the Act of Parliament: that the only instance in which the court have departed from this rule, was in the case of [*b*] the King v. the Inhabitants of *Navestock*, where, upon a similar hiring, the court were influenced by the general custom and usage of the country at a public statute fair and, from a consideration that all servants in that part of the country must otherwise be deprived of their settlements, were induced [*c*] to decide, that it seemed to be no stretch to consider this as a hiring from Michaelmas to Michaelmas; but that here, where the transaction between the parties was private and at home, where no custom was stated, and of course no body or number of persons could be affected, the individual ought rather to take the consequences of his own ignorance or oversight, rather than a maxim, adopted for the purpose of preventing litigation, and now established, should be overturned.

[*a*] *Vide* Rex v. the Inhabitants of *Ilam*, Mich. 25 G. 2. 1751. Burr. Settl. Cas. 304.

[*b*] Mich. 13 G. 3. 1772. Burr. Settl. Cas. 719.

[*c*] It is true, that no other ground of the judgment appears in Sir lames Burrow’s Reports ; but it was certainly argued, and the court also went, upon the ground of the hiring having been till Michaelmas which they held to include that day. It is so stated by Mr. Bott in his report of this case, p. 386. “Lord Mansfield. The word word *till*, may, or may not be exclusive, according to the subject matter. How shall we construe it here? The custom is very material to explain it. Aston J.- How has this word been understood? Willes J. The custom in such a doubtful case as this must be called in aid.” And in the King v. the Inhabitants of Harwood, Tr. 20 G. 3. 1780. Post. Buller, J. expressly says : “The question in the King v. the Inhabitants of *Navestock* was, whether, on a hiring, from the day after Michaelmas

day till the next Michaelmas day, that day should be holden exclusive or inclusive ? The custom is only material to explain the terms of a contracl, when ambiguous.” This last cited authority has fully settled, that a hiring can in no case be retrospective ; and that the supposed exception to the universality of this maxim arose from a partial view of the grounds of the judgement of the court in the case of the King v. the Inhabitants of *Navestock* ; that the true ground of that decision was, that the terms of the hiring imported a contract for that day on which the year expired: that that decision derives also a further support from the ground of the present case, which upon the principle that there can be no fraction of a day, establishes, that a hiring, from any part of the second day of one year to the first day of the next, by analogy to the rule of law in other cases, gives a settlement. But, where such a number of days intervene, as is the cafe of the King v. the Inhabitants of *Harwood*, as to prevent the principle of there being no fraction of a day, by analogy to the rule of law in other cases,

from applying, or where such terms as will warrant a construction of intent between the parties, are wanting, in such case no custom of the country shall avail to controul the law and to give a retrospect.

(9) Judgment

Lord Mansfield, (without hearing the other side), To be sure there must be a hiring for a year; and this is one. Though he were hired on the afternoon of the eleventh, yet we shall say, that he was hired at twelve o’clock at night on the tenth : for it is settled, that the law will not allow a fraction of a day. He served till the tenth ; that is a year. If a man is born on the tenth, he is of age on the ninth.

Aston and Willes, Justices, concurring.

Ashhurst, J. was absent.

Rule absolute, and

both Orders quashed.

(10) Ruling

Hiring from the second day of one year *until* the first of another, and service under it, gives a settlement.

(11) Comment

A flexible ruling on how to count a year’s service.

(12) Type

Liberal

(1) Case name

*R.* v. *Skiplam*

(2) Date

25 November 1786

(3) Report

1 Term Reports 490

(4) Court

King’s Bench

(5) Parties

The King v. The Inhabitants of Skiplam

(6) Order sought

Quashing

(7) Facts

Two justices by an order removed Elizabeth, the wife of William Ware, from Beadlam to Skiplam, in the North Riding of Yorkshire. On appeal the sessions confirmed that order, and stated the following case :

That it appeared that William Ware, the husband of the pauper, at Old Martinmas 1777, being then unmarried, hired himself for a year to one J. Richardson of Skiplam, and actually served the said J. Richardson for a year at Skiplam, pursuant to such hiring. That the said William Ware on the next day after Old Martinmas-Day, to wit, on the 23d of November 1778, being then also unmarried, hired himself to one Richard Barker of Nawton, to serve him from thenceforth until the Old Martinmas-Day following; and that he did accordingly enter into the service of the said R. Barker a few days after such hiring, and continued to serve him in Nawton aforesaid, pursuant thereunto, until the Old Martinmas-Day following, on which day about twelve o’clock at noon he received his full wages, and left his master’s house in the evening of the same day.

(8) Argument

Fearnley shewed cause against a rule which had been obtained to shew cause why the order of sessions should not be quashed.

Chambre, in support of it, cited *R.* v. *Navestock*, Burr. S. C. 719. Bott, 386, and *R.* v. *Syderstone cum* *Bermer*, Cald. 19.

(9) Judgment

Ashhurst, J. It is much to be lamented that there is so much confusion in settlement cases; therefore whatever the latest determinations may be, they ought to be adhered to. Now the last case, namely, that of *The King* *and* *Syderstone*, seems to correspond with the present in every point. Before that, a distinction had been made, as where the hiring and service had been expressly found to be for a year according to the custom of the country. But in the last case no such distinction was taken : so here there is no custom stated ; and “ until ” must be taken to be inclusive. Therefore there was a hiring and service for a year; for the pauper’s husband entered into the service the first day of one year, and served till the first instant of the next.

Buller, J. The only question is, whether Martinmas-Day is to be taken inclusive or exclusive. The pauper’s husband was hired the day after Martinmas-Day to serve till the Martinmas-Day following. From the moment of the hiring he became the servant of his master, and continued in the service till Michaelmas-Day. Then does the word till include the day? The former cases have decided that it does. And if it only include a part of the day, as there is no fraction of a day, the service would be complete.

Rule absolute, for quashing both the orders.

(10) Ruling

Hiring and service from the day after Old Martinmas-Day until the Old Martinmas-Day following is sufficient to give a settlement.

(11) Comment

A flexible ruling that a hiring and service from one moveable feast to another confers a hiring.

(12) Type

Liberal

(1) Case name

*R.* v. *South Killingholme*

(2) Date

1830

(3) Report

10 B. & C. 802

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Killingholme

(6) Order sought

Quashing

(7) Facts

Upon an appeal against an order of two justices, whereby R. Robinson and his wife and family were removed from the parish of South Killingholme, in the parts of Lindsey and county of Lincoln, to parish or Elsham in the said parts and county; the sessions quashed the order, subject to the opinion of this Court on the following case:—The respondents proved a prima facie case in the appellants’ parish of Elsham. The appellants proved that the pauper being unmarried and without child in 1823, hired himself for a year for 5l. wages, and 5s. earnest, to his aunt, who resided in the parish of North Killingholme, and occupied six acres of land and kept two cows there; when his aunt had no work for him, he was to work for anybody else for his own benefit. The pauper entered the service, resided and worked with his aunt during the whole year, except that in harvest time he worked for a fortnight with another person at 2s. per day, which he received for his own benefit, sleeping every night at his aunt’s, and doing all the work she had for him to do every morning before he went to work, and generally in the evening when he returned, unless it was too late. He received his wages at the expiration of the year. The next year he was hired to another master at 9l. wages.

(8) Argument

N. R. Clarke and Whitehurst in support of the order of sessions. In *Rex* v. *Inhabitants of Chertsey* (2 T. R. 37), the party hired was to do the offices of a servant for a year, and was to have her board and lodging, and such profit as she could make by keeping fowls, and what she could earn by her own labour, and that was held to be a good hiring for a year. That case is expressly in point, and has never been overruled. But this case is still stronger in favour of the settlement: for there it was manifestly in the contemplation of the parties that there would be some portion of the year when the father would not require the services of his daughter, since he expressly undertook only to pay so much wages as, in addition to those she got by her own labour, would be equivalent to her earnings in her last place. Here the wages were certain, and the aunt might have insisted upon the pauper serving her every moment of the year, as be was only to work for his own benefit when she had not work for him to do. Suppose when he was working for any one else, something had occurred on his aunt’s farm which required his attendance, he could not have refused to come. The aunt’s title to his service was paramount to that of every other person ; and, in fact, it appears he did work for the aunt every day in the year, and on those days when he was absent at harvest, most probably got up sooner and

did all the work for the day before he went. *Rex* v. *Polesworth* (2 B. & C. 715), materially differs from this case. There the wages were a certain sum per day, and not to be paid when the master had no work. Here the wages were to be paid by the year, whether the pauper worked or not. There the master expressly told the pauper at the time of hiring he should not have work for him all the year, here nothing of the sort passed, but the aunt merely said, if it should happen that she had no work, he might work for others, as a matter of indulgence. The ground of that decision as stated by Abbott C.J. was, that the master had control over the pauper only so long as he had work for him ; here the aunt had control over the servant every moment of the year, though she might dispense with his services. At the sessions *Rex* v. *Edgmond* (3 B. & A. 107), was cited, but that was a hiring at weekly wages, and an engagement to work so many hours a day, and has no bearing on this case. In *Rex* v. *Lydd* (2 B. & C. 754), it was expressly found that the duty of looker never did nor was understood to occupy the whole of the pauper’s time, and be, therefore, was only under the master’s control so much of each day as that duty required; besides, there the pauper continually during the service made fresh bargains with his master for other work at other wages, which shewed that the master had not the control over the pauper the whole year by the first bargain. This is quite the

reverse in the present case, where there is but one bargain for the whole time, and at one sum for wages. The sessions therefore rightly decided that the pauper gained a settlement at Killingholme.

Fynes Clinton and Hildyard, contra. It is a well established rule, that in order to confer a settlement by hiring and service, the contract must be such as to give the master the absolute control over the servant during the whole period of service. Here the mistress of the pauper could not have had any such control over him, for the pauper was bound to serve her so long only as she had work for him, *Rex* v. *Edgmond* (3 B. & A. 107), *Rex* v. *Polesworth* (2 B. & C. 715), and *Rex* v. *Lydd* (2 B. & C. 754), are in point. In *Rex* v. *Polesworth* the agreement was, that the servant should serve for three years at Is.

per day, when the master had work to do, and when he bad no work the servant was not to be paid. At the time when the agreement was made, &c., the master told the servant that he should not have work for him during the whole year, and particularly during the winter, and that when he had not work for him he might get work for other people; and that was held to be an exceptive hiring, and that no settlement was gained by serving under it.

(9) Judgment

Lord Tenterden C.J. The decisions certainly are not very distinguishable from each other, but I think this case comes nearer to *Rex* v. *Edgmond* (3 B. & A. 107), *Rex* v. *Polesworth* (2 B. & C. 715), and *Rex* v. *Lydd* (2 B. & C. 754), than to the more early ones. The parties to the contract must have contemplated some portion of the year when the aunt would not have employment for the .pauper; and if that be so, the contract did not include the whole year, but only such part of the year as

she would have work for the pauper.

Bayley J. The fair meaning of the contract was, to limit the service of the party hired to that portion of the year during which the aunt might have occasion for it.

Littledale J. concurred.

Parke J. If the meaning of the words be taken to be that the aunt, when she did not choose to employ the pauper the whole year, might decline doing so, the contract of hiring was not for a year. And construing the words of it according to their natural import, I think that was the fair meaning, and that this was an exceptive hiring. In *Rex* v. *Chertsey* (2 T. R. 37), the pauper was hired for a year, and was to “have her board and lodging, and such profits as she could make by keeping fowls,

and what she could earn by her own labour.” The latter words were considered by Ashhurst and Grose Js., to give her liberty to do such work as she could consistently with the service which she was in the first instance bound to perform for her master.

Order of sessions quashed.

(10) Ruling

A pauper hired himself for a year, at 5l. wages, to his aunt, who occupied six acres of lane, when she had no work for him he was to work for anybody for his own benefit. Held, this was an exceptive hiring, and that service under it did not confer a settlement.

(11) Comment

The court finds an exceptive hiring on the grounds that the servant was not needed for parts of the year.

(12) Type

Restrictive

(1) Case name

*R.* v. *Sow*

(2) Date

22 November 1817

(3) Report

1 B. & Ald. 178

(4) Court

King’s Bench

(5) Parties

The King versus the Inhabitants of Sow

(6) Order sought

Quashing

(7) Facts

Upon an appeal, the sessions confirmed an order of two justices, for the removal of Elizabeth Darby, from the hamlet of Coundon to the parish of Sow in the county of Warwick, subject to the opinion of the Court on the following case: The pauper being settled at Kearsley, was hired in November, 1812, by the wife of Mr. Deeming of Sow, for a year, at 50s. wages, and what clothes Mrs. Deeming pleased. Previously to this hiring, the pauper, who is a natural daughter of Mr. Deeming lived with her mother at Kearsley, and the hiring was for the purpose of gaining a settlement in Sow. As soon as she was hired, she went into the service of Mr Deeming served him for a year, and continued to live with him until the month of July 1816 when she went away; during the whole of which time she did the household work as she did during the first year, but no conversation took place between the parties about hiring after she was so hired as aforesaid in November 1812 and there was no second hiring, unless from continuance in the service of Mr Deeming a hiring ought to be implied, which in the opinion of the sessions under the circumstances stated, it ought not. Some months after the expiration of the first twelve-months, Mr. Deeming gave the pauper 5l., fifty shillings thereof for the first year’s wages and desired her to keep the remaining fifty shillings, and say nothing about it. The pauper never afterwards received any sum on account of wages, but received at different times clothes and pocket money. Mr. Deeming, at Lady-Day, 1816, removed with his family to the hamlet of Coundon: the pauper removed with them and continued to live with them there till the month of July. The Court of Quarter SessIons further find, that there was no fraud in this case.

(8) Argument

Holbech and Finch, in support of the order of sessions, contended, that although the continuance of the service in ordinary cases was evidence of a continuance upon the terms of the original hiring, yet it was not conclusive; and in this case the relation of father and child subsisting, and the non-payment of wages after the first year, afforded abundant evidence, that the pauper was no longer a hired servant; but remained with Mr. Deeming on the footing of a child with its parent. This was

at all events a question of fact for the sessions to decide upon, and they have so determined it; and unless that decision be contrary to all the evidence, the Court will not interfere.

Reader and Adams, contra. The pauper continued to live with her reputed father, and do the household work after the first year, as she did during the first, for which there was a distinct contract, and it must thence be inferred, that she continued on the terms of the original hiring. There is nothing stated in this case, to shew that she lived on different terms after the first year, and might she not upon these facts, have maintained an action for her wages at the end of the second year?

In this case too, there is not only evidence of the service continuing during the second year, but of its being upon the same terms; for the pauper at the end of the first year received two years’ wages, which must be considered as a payment by anticipation of the second year’s wages. [Bayley J. It is perfectly clear, that the sum of fifty shillings was a gift, for she is desired to say nothing about it.]

(9) Judgment

Lord Ellenborough C.J. I cannot set the sessions more right than they have set themselves. They have drawn the right conclusion from the facts before them; the pauper was hired for a year, and fifty shillings were paid to her; that was paid with another sum, and there is no question that the one sum was paid as wages and the other as bounty ; it is true that the service continued the same, but there was not any hiring for the second or any subsequent year. Not being able to find fault with the inference which the sessions have drawn, I think there is no ground to disturb the order. Suppose an action had been brought by this servant for wages due to her for her service during the second year, and the jury had done what the sessions have done here; the Court upon motion would not, under the circumstances of this case, have granted a new trial. Although the service continued the same, there was not a hiring for the second year, as there was for the first.

Bayley J. I think the sessions have done perfectly right; where the parties are not related, it may fairly be presumed from a continuance in the service, that the terms on which they continue are the same as during the preceding year. But where the relation of father and child subsist, the ground for that presumption fails, and here there are a variety of circumstances to shew that there was not any new hiring. The parties were living during the second year upon different terms from what they lived during the first.

Abbott J. I think the sessions were perfectly justified in deciding this case as they have done, inasmuch as after the first year, the pauper was living as a child with her parent, and not as a servant with her master.

Holroyd J. It was the province of the sessions to draw their own conclusion, and I think they have drawn it rightly.

Order of sessions confirmed.

(10) Ruling

Where a female natural child was hired for a year by the wife of its reputed father, and continued doing the household work for three years, but after the first year no wages were paid, nor was there any new contract of hiring ; Held that the sessions were warranted in finding that after that time she did not continue on the terms of the original hiring.

(11) Comment

The Court declines to find a hiring on the basis that the servant was the natural child of the master.

(12) Type

Restrictive

(1) Case name

*R.* v. *St. Agnes*

(2) Date

22 June 1770

(3) Report

Burr SC 67

(4) Court

King’s Bench

(5) Parties

Rex v. Inhabitants of St. Agnes

(6) Order sought

Quashing

(7) Facts

Mr. Dunning moved, on Saturday 23d June 1770, to quash an Order of Sessions which discharged an Order of two Justices made for the Removal of Mary Nicholls and her six Sons and Daughters, (specifying their Names and Ages), from St. Agnes to Redruth, Both in Cornwall.

The special Case stated on the Order of Sessions was this— William Nicholls, the late Husband and Father of the Paupers, when two Years of Age only, went with his Father (who was at that Time settled at Redruth) into the Parish of St. Agnes : And when He was about 15 or 16 Years of Age, the Father made a Contract with one Mr. Nankivell (who then lived in the adjoining Parish of Peranzabulo\*) for his Son to work at the said Mr. Nankivell’s Stamps situate in the said Parish of St. Agnes (which Stamps are Mills wherein several Labourers, Men and Boys, are employed in cleansing and manufacturing Tyn), for one Year, at the yearly Wages of *L.* 5. In pursuance of which Contract, the said William Nicholls served the said Mr. Nankivell at his aforesaid Stamps, for said Year, by working therein daily, except Holidays and Sundays, according to the Custom of Tinners: And his Father received his Wages, as he had Occasion for it. But during the said Year, the said William Nicholls eat drank and lodged with his Father in the said Parish of St. Agnes, serving the said Mr. Nankivell at his Stamps aforesaid, and in no other Capacity; nor ever became a Part of his Family. At the Expiration of the first Year, a like Bargain was made, for another Year, at Seven Pounds; and a like Service under it ; and so on for another Year: But during the said last two Years also, said William Nicholls served said Mr. Nankivell in said Stamps, and in no other Capacity; continuing to eat drink and lodge with his Father, and never becoming any Part of his Master’s Family; and having Holidays and Sundays at his own Command during the three Years, as is usual for Persons hired in such Employ.

\* *Peran* in the *Sandes* *v.* Sir Henry Spelman’s *Villare Anglicum*.

Upon due Consideration thereof, This Court [the Sessions] doth adjudge, that the said Order of Removal be, and the same is hereby discharged'. And then they order the Paupers to be reconveyed from Redruth to St. Agnes, to be there provided for.

Mr. Dunning objected, That William Nicholls gained no Settlement at St. Agues ; and obtained a

Rule to shew Cause why the Order of Sessions should not be quashed, and the Original Order affirmed.

(8) Argument

Mr. Serjeant Burland now shewed Cause. He contended, that here was a Hiring for a Year, without any Exception : And the Service was according to the Custom, and as is usual for Persons hired in such Employ. It is therefore a complete Hiring and a complete Service in St. Agnes : And the Paupers are legally settled there. In the Cafe of \* *Macclesfield*, the Hiring was with an Exception: Here, ’tis without any. In the Case of ⴕ *King’s Norton*, the Pauper was holden to be settled at Camden, though she spun only by the Stone.

\* *V. ante*, No. 146. pa. 148.

ⴕ *V. Ante*, No. 52. pa. 152.

Mr. Dunning replied, that this is rather the Case of a Journeyman, than of a hired Servant. He was resident with his Father: He was his own Master, except as to performing the stipulated limited Service at the Stamps. He was only to do that particular Service: The Master had no Right to employ Him in any other. And Sundays and Holidays were absolutely his own, without any Control from the Master. This Contract is in Effect the same as that in the \* *Macclesfield* Case was. There, the Pauper was to be his own Master and at his own Liberty the whole Sunday and all the Rest of the other Days except the eleven Hours: Whereas the Act of 3 & 4 W. & M. c. 11 ⴕ intends only such Services where the Servant is under the Command and Control of the Master during the whole Year. The present Case is exactly like that Case : And in this Case the Exception must have been equally understood at the Time of the Hiring, though not particularly expressed.

\* *V. ante*, No. 146. pa. 148.

ⴕ *V. ante*, pa. 460.

(9) Judgment

The whole Court (which was now full) were unanimous that William Nicholls gained a Settlement in St. Agnes. They held this to be an entire Contract for a Year, without any Exception contained in it: And the Service was according to the Custom of the Country. And they made a Distinction between the Exception's being Part of the Original Contract, and its not being so: The Question turns upon this Distinction. In the Case of *Macclesfield*, it was Part of the Original Contract: Here, it is not so. And

they mentioned the Case of *Bishop's Hatfield*, which may be seen, *ante*, N° 141. pa. 439.

*V. post*, N° 218. *Rex* v. Inhabitants of *Buckland Denham*.

Rule discharged : And Order of Sessions affirmed.

(10) Ruling

Rule discharged : And Order of Sessions affirmed.

(11) Comment

A flexible decision finding that service for a year in a tin mine conferred a service. The court distinguishes earlier cases on the ‘exception’ point. Note counsel’s argument that the servant was a ‘journeyman’. There is no suggestion that industrial service as such cannot confer a settlement, nor was it necessary for the servant to be part of the master’s household, or to live with them. The timing is middle period (1770).

(12) Type

Liberal

(1) Case name

*R*. v*. St. Andrew Holborn*

(2) Date

7 February 1784

(3) Report

Cald 403

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of St. Andrew Holborn

(6) Order sought

Quashing

(7) Facts

Two justices by an order remove William Moore, Margaret, his wife and their five children, from the parish of St. Andrew Holborn in the city of London to the township of Aston juxta Budworth in the parish of Great Budworth in the county of Chester.

The Sessions on appeal adjudge the settlement to be in the city Bath, quash the order, and state the following case : That the pauper, William Moore, was born in the township of Aston juxta Budworth in the parish of Great Budworth in the county of Chester (where his father resided for many years and till the time of his death; and that being thereby legally settled in Aston aforesaid, about the year 1760 became a yearly hired servant to Mr. Squire, an attorney in Furnival’s Inn London, with whom he lived under such hiring about eight years: that the usual place of Mr. Squire’s residence was in Furnival’s Inn; but he used frequently to go to Bath for his health, where the said William Moore always accompanied him, and where his stay on such occasions was sometimes for four or five months together: that he was always in lodging's there, and generally on the South Parade in the parish of St. James in Bath; and that during the latter part of the eight years aforesaid, that is to say, during the Iast three years thereof, the said Mr. Squire resided rather more at Bath than at Furnival’s Inn; and, the last time the said William Moore was at Bath with him the said Mr. Squire stayed several months in his usual lodgings on the South Parade: that the said William Moore quitted the said Mr. Squire's service in May 1768, having resided with him about four months previous thereto in Furnival’s Inn, that is to fay from the preceding Christmas till the said month of May : that Furnival’s Inn is an extra-parochial place; and that the said William Moore hath not done any act whereby to gain a subsequent settlement, either before he entered into, or since he quitted the service of the said Mr. Squire.

This case came first before the court in Trinity Term last, when some doubt having arisen, whether under the authority of a very particular case, that of [a] *the K. v. The Inhabitants of Alton*, a settlement could be acquired by any intermediate service, where the last forty days of the service were performed in an extra-parochial place, the Court wished to be further informed; whether Furnival's Inn, which had been stated to be an extra-parochial place, was or was not of such description, that it might be made a vill; and directed the case to be sent back to the sessions for that purpose.

That Court returned, that “ Furnival's Inn is no township or vill within the meaning of the statute of the 13 & 14th years of the reign of the late King Charles the Second ; and that no removal has been made to it.”

[a] E. 30 G. 2. 1757. Burn’s Just. Ed. 1793, 3, 493. Burr. Settl. Cas. 418.

(8) Argument

And now Silvester, Leycester and Heywood S. shewed cause in support of the order of sessions; and insisted, that a removal to the birth-place of a pauper, as in the present instance, cannot be supported ; if the pauper has at any period of his life by any act of his own acquired a settlement: that a pauper may be said to be hired in every place, in which during his year he serves : that the case of [b] *the K. v. The Inhabitants of St. Peter’s in Oxford* (footnote: [b] Tr, 8G. Str. 524. Fol. 194, Cas. of Sett]. 105. 8 Mod. 49.) was in point; that there the service began, and ended in an extra-parochial place, and yet an intermediate service in any place, was holden to give a settlement; and that consequently a settlement was here gained at Bath: that this must be so, unless a difference arose from the circumstance that Both was a place of public resort : that this was a distinction not warranted by any authority, any more than it was by principle or the reason of the thing: that the words of the statute [a] were general : that it was highly unreasonable, that any such exemption should be claimed: that, if these places were sometimes subjected to an extraordinary burthen, they were much more than compensated by receiving at all times extraordinary benefits: that the *Scarborough* case, *the K v. Alton* abovementioned, which seemed to establish this doctrine, had been denied in [b] *the K. v.* *the Inhabitants of Bath Easton* : that, if it were still urged, that the service in that case, finally closed in a place where a settlement might be acquired, such circumstance could not vary the law : that if the pauper had been in a capacity to acquire a settlement in Bath, and had there acquired one, such settlement could not be done away by a subsequent residence in another place, where none could be acquired : that the law knew no mode by which a settlement acquired in one place could be divested, unless by the acquisition of a subsequent one in another : that it was no more than if his master had taken the pauper abroad, or had removed with his family, from time to time, into so many different parishes at home, as never to have been resident in any one, for the space of forty days : that the case of [c] *Doulting v. Stokelane*, is in point: that the Court there says, “Suppose one go and live as a servant in an extra-parochial place, being neither town nor village, would this discharge him of all other settlements? As he shall not say where he is not settled, so he must go where he is last legally settled, where he could be sent” That the *Scarborough* case, from what is said of it in that of Bath Easton, was throughout to be taken as a determination, founded upon its own numerous and very particular circumstances, or at most, as making an exception not to be carried farther than the case of certificated persons : and that this did not seem to be the rule in the case of apprentices, than which there could be none that bore a closer analogy to the present; for that there it had been determined in the case of [a] *the K. v. the Inhabitants of Petham*, that a pauper residing under a certificate in one parish, andbinding himself as apprentice in another to a master resident undera certificate (under which master he consequently could no moreacquire a settlement there, than he could in an extra-parochial place)may yet acquire one on an assignment to anew master in any otherparish ; and was adjudged to have done so in the very parish, in whichthe pauper had himself been a person certified.

[a] 13 & 14 Car. z. c. 12.

[b] E. 14 G. 3. 1774. Burr. Settlement Cas. 774. The judgment of the Court in this case was as follows. Lord Mansfield. Where the last forty days of his term arc served, there is the settlement of the servant. It is immaterial to him where his master is settled. The Scarborough case was very particular: whatever may be said in general, must be understood to apply to the particular circumstances of the case before the court. A certificated man hired for a year could gain no settlement at Elvetham, where he was certificated : at Scarborough they task of a new hiring ; and the master fays, time enough, when we get home: there was only a sojouming for part of the time at Scarborough in the middle of the service: had he not been a certificated man, no doubt could have arisen. That case does not lay down a general law, as to public places; if so, it is certainly wrong.—Aston J. As public places derive so much benefit from the resort to them, there is greater reason that they should be charged, than that they should be eased of the burthen. Willes J. A sojourner, for forty days is the term used as one of the descriptions of persons who are enumerated as objects of removal under the statute 13 & 14 Car. 2. c. 12, in future therefore it may be understood, that settlements may be acquired by service in public places.

[c] 11 Ann. Fort. 219.

[a] M. 14 G. 2, 1740. Burr. Settl, Cas. 154. (*The King v. the Inhabitants of Petham*)

Bearcroft and Dayrell, in support of the rule to quash the order of Sessions, contended ; that the Scarborough case precisely, and in every particular, corresponded with the present: and that, if it did not decide, that settlements could not be gained at public places, the point resolved must have been, that the settlement was defeated by the circumstance of the last forty days having been served in a place, in which a settlement could not be acquired : that this case confining the right of settlement to the place where the last forty days were served, to that place in the present instance no removal could be made; and there, consequently no such right could arise: that with a view to this point, whether a settlement could here be gained under such forty days, the case had been sent down to the Sessions to have it stated ; whether, though at the time there were no parish officers appointed, Furnival’s Inn was or was not a place, in which, under the statute 13 & 14 Car. 2. such appointment might be made: and that the Scarborough case was subsequent to that of St. Peters, and a very deliberate and solemn judgment.

(9) Judgment

Lord Mansfield.

There were a variety of circumstances in the Scarborough case. It settles no general principles at all; and the fact of the servant being a certificated man, which is a statutable disability, was to be sure a material circumstance in that case.

On the restatement it appears, that Furnival’s Inn is no vill or township under the statute of Car. 2; but the hiring there was such a hiring as lays a foundation for a settlement, though it could not fix a settlement there. You must look back therefore to the last place, Furnival's Inn excepted (i.e. the last place where rights of this sort could have effect given to them) in which during the contract forty days were served. That place is Bath : and it having been now established, that settlements may be gained at public places, this pauper was settled at Bath, notwithstanding the Scarborough case.

Buller J.

Not a word has been said by the counsel for St. Andrew upon the principle of the decision in the case of *St. Peters in Oxford*.

Rule discharged, and order of Sessions, quashing the order of Justices, affirmed.

(10) Ruling

Settlements may be acquired at public places: and when a contract is made and the year’s service entered upon, and also the last forty days of it performed in an extraparochial place, the pauper’s settlement is in that vill in which the last of any intermediate forty days have been served under the contract.

(11) Comment

The court finds that settlements can be gained in public places, distinguishing *Alton* on the basis that the servant there was on a Certificate. Secondly, the court adds that where the last forty days of service is performed in an extra-parochial place, the servant will gain a settlement in the last place he served an intermediate forty day period. This is a qualification to the court’s statement in the earlier case of *Iveston* that no settlement is gained till the end of the year, when the ‘service for a year’ requirement is complete.

(12) Type

Liberal

(1) Case name

*R.* v *St. Andrew Holborn*

(2) Date

7 June 1788

(3) Report

2 T.R. 627

(4) Court

King’s Bench

(5) Parties

The King against The Inhabitants of St. Andrew, Holborn

(6) Order sought

Quashing

(7) Facts

Two justices removed Mary Robinson from St. Catherine Creechurch in London to that part of the parish of St. Andrew, Holborn, which lies above the Bars, in the county of Middlesex : on appeal the sessions confirmed the order of justices, subject to the opinion of this Court on the following case.

Mary Robinson in June 1782 was settled in that part of the [628] parish of Saint Andrew, Holborn, which lies above the Bars, in the county of Middlesex, by hiring and service. About the latter end of the same month, or the beginning of the mouth following, she was hired as a nursery maid by Mrs. Potter, the wife of Christopher Potter, of Saint Margaret, Westminster, at the yearly wages of eight guineas ; she continued in the said service till within four or five days of the expiration of a year, when her master becoming a bankrupt, and the messenger taking possession of the house, her mistress discharged her, paying her the whole year’s wages.

(8) Argument

None

(9) Judgment

This case standing next in the paper to that of St. Philip, Birmingham, it was not argued; the Court being clearly of opinion that the bankruptcy of the master did not dissolve the contract of hiring without the servant’s consent; and that the pauper gained a settlement in St. Margaret, Westminster.

Both orders quashed.

(10) Ruling

If a servant hired at yearly wages be discharged four or five days before the end of the year, upon the master’s becoming a bankrupt, and receive the full year’s wages, the service is sufficient to give him a settlement. [3 M. & S. 20.]

(11) Comment

The court finds that if the servant is dismissed before the end of the year due to the master’s bankruptcy, but receives the full year’s wages, she gains a settlement in her place of work.

(12) Type

Liberal

(1) Case name

*R.* v. *St. Andrew in Pershore*

(2) Date

1828

(3) Report

8 B. & C. 679

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of St. Andrews in Pershore, Worcestershire

(6) Order sought

Quashing

(7) Facts

Upon an appeal against an order of two justices, whereby W. Horton, his wife, and two children, were removed from the parish of St. Andrew, in Pershore, in the county of Worcester, to the parish of Moreton in Marsh, Gloucestershire, the sessions quashed the order, subject to the opinion of this Court on the following case:— The pauper, W. Horton, was hired to one Fieldhouse, a stage-coach proprietor, to serve him as horsekeeper, and to look after his coach horses at Moreton in Marsh, at

11. a week. The terms of the hiring were a month’s warning, or a month’s wages. There was no further mention of the time during which the pauper should serve. The pauper continued to serve under this contract at Moreton in Marsh between two and three years. The question for the opinion of the Court was, whether the pauper, W. Horton, gained a settlement under this hiring and service in Moreton in Marsh.

(8) Argument

Godson in support of the order of sessions. By the contract, weekly wages were reserved. That, prima facie, raises a presumption that the service was to continue for a week only. It is true that there was a stipulation for a month’s wages, or a month’s warning. That, at most, would raise a presumption of a monthly, not a yearly hiring.

Campbell, contra, was stopped by the Court.

(9) Judgment

Bayley J. I think that the sessions had not any premises to warrant the conclusion to which they came in this case. If the reservation of weekly wages be the only circumstance from which the duration of the contract can be collected, the presumption is, that it is to continue for a week only. In this case, the stipulation for a month’s wages, or a month’s warning, rebuts the presumption of a weekly hiring. It was thence manifest that it was intended that the service should continue for a longer

period than a week. It then became a hiring unlimited in duration, in which case the law implies a hiring for a year.

Littledale J. The stipulation for a month’s wages, or a month’s warning, shews clearly that the contract was for a longer period than a week. That being so, and no precise time for its duration being fixed, it was a contract for an indefinite period; or, in other words, a general hiring for a year. I think that in this case, there were not premises to warrant the sessions in deciding that there was not a yearly hiring.

Parke J. concurred.

Order of sessions quashed (a).

(10) Ruling

A hiring at so much per week, a month’s wages or a month’s warning, is a hiring for a year.

(11) Comment

The court regards an indefinite hiring as presumptively for a year and so giving rise to a settlement.

(12) Type

Liberal

(1) Case name

*R.* v. *St. Ebb’s*

(2) Date

13 February 1748

(3) Report

Burr SC 289

(4) Court

King’s Bench

(5) Parties

Rex v. Inhabitants of St. Ebb’s

(6) Order sought

Quashing

(7) Facts

Two Justices made an Order for the Removal of Caleb Guy from Holywell otherwise St. Cross in the Suburbs of Oxford, to St. Ebb’s in Oxford: And the Sessions upon Appeal, confirmed that Order.

Case stated—Caleb Guy went to Holywell otherwise St. Cross, to be hired to Thomas White, who lived in and was an Inhabitant of the said Parish of Holywell; and being asked “What he would give,” he said “He would not give him more than he gave to his former Boy, which was 20 *s.* a Year.” He was then hired in this Manner; was to come for a Quarter of a Year, and to have after the Rate of 20 *s*. a Year; and if he and his Master liked each other, was to continue on. He continued a Year and a Half over and above the said Quarter, without any further or other Hiring; and received his Wages as he had Occasion for the same.

(8) Argument

On Wednesday the 1st Instant a Motion was made by Mr. Hares, to quash these Orders : For a Conditional Hiring is a Hiring for a Year, provided the Condition be performed. *Rex* v. *Inhabitants of Lidney* ⴕ Tr. 6 & 7 G. 2. B. R. and *Rex* v. Inhabitants of New Windsor ll H. 8 G. 2. B.R. (Colonel *Meyrick’s* Servant) accordingly. So that, upon the whole, the Settlement is in Holywell; and not in St. Ebb.

ⴕ *Ante* No. 1.

ll *Ante*  No. 7.

(9) Judgment

A Rule was then made to shew Cause: And now, upon Motion, it was made absolute; no Cause being shewn.

(10) Ruling

See (9).

(11) Comment

A flexible early decision on the idea of the ‘conditional hiring’: a probation or trial period does not rule in an otherwise general hiring does not rule out a settlement.

(12) Type

Liberal.

(1) Case name

*R*. v. *St. Giles’s, Reading*

(2) Date

27 June 1778

(3) Report

Cald 54

(4) Court

King’s Bench

(5) Parties

Rex v. Inhabitants of St. Giles’s, Reading

(6) Order sought

Quashing

(7) Facts

Two justices remove Daniel Davies, Elizabeth his wife, and their five children, from the parish of Monk Sherborne in the county of Hants, to the parish of St. Giles’s, Reading, in the county of Berks.

The sessions, on appeal, confirm the order, and state the following case:

That the pauper, Daniel Davies, being an unmarried man, on the 19th day of December, 1763, went into the service of Mr. William Wilder, who then kept the Bear Inn, in the parish of St. Mary in Reading, in the county of Berks, under a general hiring as a port boy, and continued in that service in the said parish for the space of seven months, where he married his present wife, Elizabeth. After his said marriage he remained in his said master’s service in the said parish, for the space of four months, when he took lodgings in the parish of St. Giles’s in Reading, and removed thither with his said wife, where he slept for the space of seven months, continuing to serve his said master for the whole of the said last mentioned seven months, without coming to any new hiring, and so served his said master for the space of eighteen months in the whole, and then left his said master’s service.

(8) Argument

Wilson, J, and Burton, shewed cause in support of these orders ; and said that it had frequently been determined, that marriage did not put an end to the contract between master and servant; and that the word “unmarried” in sect. 7. of stat. 3 W. & M. c. 11, went only to the hiring, and not to the service: and cited the case of *Farringdon* and *Witty*, P. 1 Ann. and *Farringdon* and *Wilcot*, E. 2 Ann. in 2 *Salk*. 527 and 529 : that this being so, and no new agreement having been entered into, the service of the first and second year were to be connected and referred to the same original hiring; when, the pauper being an unmarried man, the place, where the last forty days were served, was his settlement: and that to this, the cafe of [*a*] the King v. the Inhabitants of *Croscombe*, was in point.

Kerby and Lawrence, in support of the rule, admitted that marriage does not dissolve an existing contract; but that the marriage must have been had during the year; at the beginning of which there could have been a legal contract: that, though it was true that the general rule, that a general retainer was a retainer for a year, had been extended by construction beyond a year, yet that the court would be careful, that the particular rule of construction should not destroy the principle of the general rule : that the doctrine of the sameness of the contract, and its relation to the original hiring, holds in the case of unmarried persons, who are capable of renewing their contract at the expiration of the year; but not so, as here, in the case of persons married at the time, who by the express provision of the statute are incapacitated : that, if this relation could be carried over to the second year, a man, who happened to be hired in his first year’s service a week before he married, might, in direct contradiction to the policy of the statute, burthen the parish in which he was first hired with all the children he might have during the course of his life : and that the case of the *King* v. the Inhabitants of *Croscombe* was totally inapplicable; because there, at the time of the constructive hiring, in the beginning of the second year, the pauper was unmarried.

(9) Judgment

Willes, Ashurst and BuIIer, Justices, thinking the point new, took time to consider. Willes, Justice, the court being then full, delivered the judgment of the court. This case depends upon the construction of the 7th sect. of stat. 3 W. & M. c. 11. The Act was intended for the benefit of unmarried persons ; and the principle of it is, that the parish that reaped the benefit [*a*] of the labour of a man unincumbered with a family, ought to make a provision for that man, when disabled or incapable of working and providing for himself; but not for others from whom they had derived no benefit : that the burthens they were to be subjected to should be equal and correspondent, not unequal and disproportionate, to the benefits received from the pauper’s labour. Then the stat. 8. & 9 W. 3. c. 30. uses the very same words as the former statute : unmarried persons not having “child or children.” The meaning of these acts is obvious : that the labour of one man shall not be sufficient to encumber a parish with the maintenance of a numerous family. As to the other ground, the law is, as has been determined this term in the [*b*] case of the King v. the Inhabitants of *Hedsor*, and [*c*] the King v. the Inhabitants of *Hanbury* ; that marriage does not dissolve the contract, if it happen during the year in which a man has been hired as a single man. To such only the benefit of the act was meant to be extended and for this reason, that married persons ought to continue in the settlement, acquired previous to their marriage. If there had been a residence of forty days in the parish of St. Giles at the end of the first year, the pauper would have been well settled there: it would have been within the case I have cited of the King v. *Hedsor* but that is not the present case. The case of the King v. *Croscombe* does not apply, 1. Because that was the case of a servant unmarried during the whole of the year. 2. Because the court did mere presume the continuance of the old contract.—Here the pauper was incapable of making a new contract at the commencement of the second year: Presumption can go no further ; and at that time he was a married man. In this case, suppose at the end of the first year a new agreement had been made between the master and servant? A service under that could not have given the pauper a settlement. Shall he then by an implied contract do that, which in express and direst terms he could not do If the original hiring were constructively to be continued throughout the second year, it might last for twenty years; and parishes, on such a construction as is contended for in support of these orders, might be burthened by retrospect with families from whose labour they had received no benefit. We are all of opinion, that both orders ought to be quashed.

Rule absolute.

[*a*] And so this is laid down by Lee, Ch. J. in the King v. *Croscombe*: and, no doubt, whether it be or not the legal ground, on which the settlement stands, it was the motive and inducement of the legislature in passing the act ; and yet, in the case of the King v. the Inhabitants of *Charles*, Tr. 12 G. 3. 1772. Burr. Sett Cas. 706. Afton, J. with the concurrence of Willes and Ashhurst, Justices, says thus: “I know it has been said, that the benefit the parish has received from the labour of the pauper is the reason of gaining a settlement in it. But that is not the true reason ; it is the residence or inhabitancy for the last forty days, that gains the settlement.” But, that being the case of an apprentice, it went not, I presume, upon the 7th sect. of the act, upon which the judgment in the present cafe professedly does, but upon the 8th sect. to which in the margin the reporter refers ; and, if so, is conformable to the doubt suggested in the note on the last cafe. The 7th sect. of the act is confined to hired servants ; the 8th to apprentices.

[*b*] *Ante*, p. 51.

[*c*] Tr. 26 & 27 G. 2 1753. Burr. Settl. Cas. 322.

(10) Ruling

Services in successive years, without a new agreement, will connect only, when the servant at the commencement of the succeeding year is unmarried. Settlements are in recompence of the benefit of the pauper’s labour.

(11) Comment

The court rules that a settlement is not acquired, in the absence of an express hiring for a year, in a case where the servant marries in the course of the first year and then completes part of a second one; the servant must be unmarried at the start of the second year for the hirings to be connected.

(12) Type

Restrictive

(1) Case name

*R.* v. *St. Helens Auckland*

(2) Date

27 April 1833

(3) Report

4 B. & Ald. 718

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of St. Helens Auckland

(6) Order sought

Quashing

(7) Facts

Upon appeal against an order of two justices, whereby George Riley was removed from the township of Coundon in the county of Durham, to the township of St. Helens Auckland in the same county, the sessions confirmed the order of removal subject to the opinion of this Court on the following case :- The pauper was bound as a pitman to Dixon and Co., the owners of the Eden Main

Colliery, situate in the township of West Auckland in the county of Durham, by bond or memorandum of the 4th of February 1815, between G. D. J. D. and E. D., as copartners in the said colliery of the one part, and the several pitmen whose names were thereunder written on the other part, whereby it was witnessed that the said pitmen, in consideration of the wages to be paid as after-mentioned, did thereby severally agree with the said co-partners or masters to hew, pit, and work coals within the said colliery, from the day of the date thereof for and unto the 4th day of February 1816, in the manner and at the prices following; that is to say, to hew coals at 2s. 66.

a score of twenty-five corves to each score; the said pitmen also agreed to give to the said masters the usual fire coal corf for each day they were at work, over and above the said number of twenty-five corves to each score ; and further to drive their boards of such a breadth, and to prop and maintain their own work, and to work in workmanlike manner, properly, fairly, and orderly, as directed by their said masters, or their agent for the time being; and to drive headways a t 8d. a yard, and headway walls at 6d. a yard, when, where, and in such a manner as directed by the said masters or their said agent; and further, the pitmen agreed to send as many setters to bank as the seam would admit and afford; and also to put coals in their course at the prices then given, and to have the liberty to hew half a score of coals in the putting morning, which were to come to bank the same day. “And the said pitmen do hereby further severally undertake, promise, and agree, to work constantly at the said colliery until the said 4th day of February 1816, or to forfeit and pay, each man, to the said masters or their said agent, one shilling for each and ev**e**ry day that he shall absent himself from the said work, or not work a reasonable day’s work, to the satisfaction of the said masters or their said agent. And on the other hand, the said masters, for themselves, agree to pay to each said pitman one shilling a day for each and every day they shall wilfully, or without just cause, lay any of them off work.” The pauper served under this bond for a whole year, and received his wages; and during that period there was no forfeit incurred either by him or his employers, by reason of any interruption of the work in the colliery, or otherwise. He remained in the service of the same employers as a pitman for eleven months after the expiration of the bond, and from the date of the bond to the time of his finally quitting the colliery, a period of nearly two years, he slept in the appellant parish. The question for the opinion of this Court was, whether this was a service under such a yearly hiring as would confer a settlement?

(8) Argument

Ingham in support of the order of sessions. This was clearly a hiring for a year, and not exceptive. The case falls within *Rex* v. *Byker* (2 B. & C. 114). There the pauper was hired by indenture, for a year, as a driver in a colliery at the wages of 1s. 10d. for a good day’s work not exceeding fourteen hours, and 2d. a day more when that time was exceeded; and he was to forfeit 10s. 6d. for every act of disobedience, and 2s. 6d. a day for lying idle, or for absence on working days, to be deducted out

of his wages; and there was a covenant, that in case the master, about Christmas, should wish to repair any engine belonging to the colliery, he might stop the workings for any period not exceeding seven days, without paying any wages; and it was held that this was a conditional and not an exceptive hiring. Here, if the agreement was conditional, the condition has not been acted upon: but it appears clearly to have been absolute. The case is even stronger than *Rex* v. *Byker*, for the pitmen agree to work constantly during the whole year, which gives the masters a right to their service at all times, subject only to the implied exception of hours for food and rest, *Rex* v. *All Saints Worcester* (1 B. & A. 322). And the daily work is to be “a reasonable day’s work, to the satisfaction of the masters.” In *Rex* v. *Gateshead* (2 B. & C. 117, note), which will be relied on by the other side, it was stipulated that each man should, on each working day, do such a quantity of work as should be deemed equal to a full day’s work; and not leave the pit until that quantity was completed, or in default thereof, he should forfeit 2s. 6d.; and the Court held it to be an exceptive contract, because the pauper was not to be under the control of the master for the whole of every day. In that case, as reported in 3 Dowling and Ryland, 333, note b. there was an express exception in the contract, for the labourers were to work for the whole year except ten days during the Christmas holidays. If that be correct, the case differs essentially from this. The proviso there (which appears also in *Rex* v. *Byker*, but not in the present case,) that the jurisdiction of the justices should not be ousted, was held to be immaterial.

Stephen Temple contra. This was an exceptive hiring, for the agreement did not give the master a control over the servant during the whole year. If it was not all exceptive, it was a conditional hiring. But in *Rex* v. *Byker* (2 B. & C. 120), Bayley J. says, “If the bargain be originally made for an entire year, and terms are introduced applicable to a continuance of the relation of master and servant during the whole year, but there is also a provision, that in a given event it shall be competent to the parties to put an end to or suspend the service for a part of the year ; still a settlement is gained if the service is actually performed for a whole year, and neither party avails himself of the condition. A conditional hiring is, for this purpose, the same as an absolute hiring, unless the condition is acted upon.” Here there was no absolute agreement by the pitman to work for a whole year, but he had the option either to work or to absent himself a t any time, on paying Is. per day. [Parke J. That is like the stipulation in *Rex* v. *Byker* to forfeit 2s. 6d. for lying idle.] By the first clause of the indenture in that case, the master hired, and the other parties hired and bound themselves as workmen or servants, for a whole year, to serve in the colliery for certain wages ; and the master then covenanted to pay for every good and sufficient day’s work not exceeding fourteen hours (and 2d. a day when that time was exceeded) 1s. 10d.; and then the several persons hired, covenanted with the master to obey his orders as to the manner of working, and to work the colliery fairly and regularly, or in default thereof, to forfeit 10s. 6d. for every act of disobedience, and 2s. 6d. per day for lying idle, and the same sum for every working day when they should absent themselves from their employment; and the Court were of opinion that the mention of fourteen hours in the master’s covenant was introduced there for the purpose of measuring the wages payable by him; and that the stipulation in the covenant of the workmen, that they should forfeit 2s. 6d. per day for every day they should be idle or absent themselves, did not authorize them to absent themselves if they thought fit, but was inserted merely to enforce regular attendance. But the present is a very different case; for here the pitmen do not contract to serve the master absoIutely for a year, but they agree to hew and work coal from the 4th of February 1815 to the 4th of February 1816, in the manner following and afterwards they stipulate to work constantly at the colliery until the 4th of February 1816, or to forfeit 1s. a day for absence or not doing a reasonable day’s work. They have

an option, therefore, to work constantly at the colliery, or to absent themselves on payment of the fine. This case falls precisely within *Rex* v. *Gateshead* (2 B. & 6.117, note), where the pauper was hired to work in a colliery from the 5th of April 1813 to the 5th of April 1814, and it was stipulated that each man should, on each working day, do such a quantity of work as should be deemed equal to a full day’s work; and should not leave the pit until that quantity was completed, or in default thereof should forfeit 2s. 6d. The expression each working day imported that there were days when the pitmen might absent themselves ;and it was held to be an exceptive hiring because the pauper had not subjected himself to the control of his master for the whole year.

(9) Judgment

Denman C.3. The decisions in *Rex* v. *Byker* (2 B. & C. 114) and *Rex* v. *Gateshead* (2 B. & C. 117, note), run very near each other; but there is a distinction between them, and I think the former case an authority in favour of a settlement here. It is said that in this contract there is an exception, because an option is given to the pauper, either to work or to forfeit and pay 1s. upon each day that he absents himself or does not work a reasonable day’s work to the satisfaction of the master. In *Rex* v. *Byker*, the pauper, by indenture ,was hired for a year as a driver in a colliery, and the master covenanted to pay wages a t the rate of 1s. 10d. for a good day’s work, not exceeding fourteen hours, and 2d, a day more when that time was exceeded, and the pauper was to forfeit 2s. 6d. per day for lying idle, to be deducted out of his wages. It was contended, that that was an exceptive contract, because the master could not compel the pauper to work more than fourteen hours a day, and also because the pauper, on the payment of 2s. 6d. per day, was at liberty to absent himself. But the Court held, that the fourteen hours was only mentioned in the master’s covenant to regulate the amount of the wages, and that the relation of master and servant continued during the whole twenty-four hours of every day, and consequently during the whole year; and that the clause as to forfeitures was intended not to give the servants a liberty to absent themselves, but merely to enforce regular attendance. The same observation applies to the clause of forfeiture in this case. In *Rex* v. *Gateshead* it was stipulated, that each man should, on each working day, do such a quantity of work as should be equal to a full day‘s work, and should not leave the pit until that quantity was completed, or, in default thereof, should forfeit 2s. 6d. There, as soon as each man completed his full day’s work, he was at liberty to quit, and was no longer under the control of his master. According to the report of that case in 3 Dowling & Ryland, it was part of the contract of hiring, that the labourers were to work for the whole year, except ten days during the Christmas holidays, when

they were not to work, nor to be liable to any penalties for not working. If that were a correct statement of the contract, there would be a clear exception of ten days. It appears, however, from the reasoning of the Judges there given, that the hiring was heId to be exceptive, not because the pauper was not bound to work for his master during the ten days, but because he was not bound to work during the whole of every day, but during such part of the day only as might be required to

complete a full day’s work. The contract, as stated in 2 Barnewall & Cresswell, 117, was, that the master should find work for the men during the whole year, and forfeit 2s. 6d. for every day that he should oblige them to be idle, except a t the Christmas holidays, which were not to exceed ten days. According to that statement, the stipulation, as to the ten days, would appear not to be an exception in the contract of hiring, intended to give a privilege to the servant, but to be a provision introduced

for the benefit of the master ; and, considering the reasons on which the judgment of the Court was founded, that must be taken as the correct report of the case. I think, therefore, this case falls within *Rex* v. *Byker*, and that a settlement was gained in the parish of St. Helens Auckland.

LittIedale J. If the cases referred to had never been decided, I should not have had the slightest doubt on this case. By the agreement of the 4th of February 1815, the pauper agreed to hew, pit, and work coal till the 4th of February 1816, and to work constantly at the colliery or to forfeit 1s. for each and every day he should absent himself or not work a reasonable day’s work. Now, the latter stipulation bound the pauper to pay 1s. per day, if he did not perform his part of the contract. There was a contract to work for a whole year and every day in the year, and the master had a right to call on the pitmen so to work. The mere agreement to pay 1s. per day as a forfeiture does not make the contract exceptive, because neither party can be supposed to have covenanted, at the time when the contract was entered into, that there should be an absencee or neglect to work.

Parke J. I felt some little difficulty, at first, in distinguishing this case from *Rex* v. *Gateshead* (2 3.& C. 117, note), but I think it falls within *Rex* v. *Byker* (2 B. & C. 114). In the first of those cases there was a stipulation that each man should, on each working day, do a full day’s work, and that he should not leave the pit until that quantity of work was completed, and that., on default thereof, he should forfeit 2s. 6d. It was therefore stipulated by implication, that the men were not to be under the

control of the master on days which were not working days, nor on any day as soon as a full day’s work was completed. The order of sessions must be confirmed.

Order of sessions confirmed.

(10) Ruling

A pauper agreed with the owners of a colliery to work constantly in the said colliery, from the 4th of February 1815, to the 4th of February 1816, or to forfeit and pay to his master 1s. for each and every day he should absent himself from his work, or not work a reasonable day’s work to the satisfaction of his master : Held, not an exceptive hiring.

(11) Comment

The Court declines to find that a pit bond gave rise to an exceptive hiring.

(12) Type

Liberal

(1) Case name

*R.* v. *St. John Devizes*

(2) Date

1829

(3) Report

8 B. & C. 896

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of St. John Devizes

(6) Order sought

Quashing

(7) Facts

The pauper being at the time settled in Saint John, Devizes, on February 6th 1826, was hired by the foreman of one Spiers under the following agreement, which was signed by the parties named in it:—“Prudence Abrahams of Brumham, in the county of Wilts, silk winder or weaver, with the consent and approbation of her father Robert Abrahams, hereby hires herself to Mr. Joseph Spiers of Chippenham, to work in his factory as silk winder or weaver for four years from this day. And Mr. J. Spiers agrees to pay for the services of the said Prudence Abrahams 2s. a week for the first year, 3s. per week for the second year, 4s. per week for the third year, 5s. per week for the fourth year, and 5s. per week for the fifth year, subject to a proportionate reduction being made for loss of time occasioned by sickness, or her being otherwise absent from work. And it is hereby agreed that the said Prudence Abrahams shall in all things observe and obey all the rules and regulations of the said Mr. J. Spiers, as well with regard to the hours of attendance and of work, as the mode and other particulars of working; and shall in all things whatsoever conduct herself faithfully, honestly, and diligently, in her said engagement, and as a good servant ought to do. It is also agreed that in case the said Prudence Abrahams shall unnecessarily waste or otherwise lose, destroy, or make away with the silk entrusted to her, that she shall pay such reasonable compensation to Spiers as his superintendent shall appoint. If at the expiration of the above period the said Prudence Abrahams shall have behaved well, shall have done her work well, and shall in every respect have duly performed this engagement, but not otherwise, Mr. J. Spiers promises to give the said Prudence Abrahams the sum of 3l. as a gratuity and reward for her good conduct, over and above the weekly wages above specified, subject nevertheless to any deduction which may have accrued in the respect of absence by reason of sickness or otherwise above mentioned.” When the pauper executed the agreement, the foreman told her that she must observe the working hours, and if certain work was not done, must work twelve hours a day. The pauper entered on her service the day she executed the agreement. Rules for the factory had not at that time been reduced to writing. The foreman said they existed only in the breast of the master, but were known to and acted on by the work-people. They were during the service of the pauper occasionally altered in some respects by the master alone; but the foreman stated that the rule as to the hours of work was never changed. Time,

however, was at first allowed for tea, which allowance was afterwards revoked by the master’s sole authority. Under this hiring, the pauper served a year in Chippenham, and becoming afterwards chargeable, was removed to St. John’s, Devizes; which removal was the subject of the appeal.

The question was, whether this was an exceptive hiring, and whether the parol evidence had been properly received.

(8) Argument

Bingham and Follett in support of the order of sessions. This hiring was an exceptive hiring, even without calling in aid the parol evidence. It is sufficient if the intention to except appears clearly in the contract, *Rex* v. *North Nibley* (5 T. R. 21). It is expressly stipulated that the pauper shall obey the regulations of the factory with regard to the hours of attendance. That shews clearly she was not to be under the master’s control at all hours, for otherwise it was unnecessary to mention hours of attendance. They are never mentioned in hiring a domestic or agricultural servant. They are hired for a year, quarter or month, without reference to hours. The expression “hours of attendance,” ex vi termini, imports that there were to be hours of non-attendance. If she observed the hours of attendance, the master could not compel her to work during the hours of non-attendance. In *Rex* v. *Byker* (2 B. & C. 114), where the hiring was held not to be exceptive, the pauper was hired at Is. 10d.

per day for every good day’s work not exceeding fourteen hours; and 2d. more per day when that time was exceeded: but there the time was only mentioned as the measure of the wages. Secondly, the parol evidence was receivable. The regulations being referred to in the agreement, are part of the contract. As they were not, and need not be in writing, they could only be ascertained by parol testimony. Parol evidence, indeed, is not admissible to vary or add to a contract in writing, but

here the parol evidence does not add to or vary the contract; it is by reference incorporated in the contract. The agreement without it is incomplete. What is said at the time of making a contract, is often necessarily a part of the contract; as where an instrument would have one effect if delivered as an escrow is admissible. In *Rex* v. *Landon* (8 T.R. 379), in order to ascertain whether a written contract to learn a business was for service or apprenticeship, the Court admitted parol evidence that the person who learned the business agreed to give a premium.

Merewether Serjt. (and Awdry was with him) contra; was stopped by the Court.

(9) Judgment

Bayley J. Where there is in a contract of hiring, an express exception of any particular time, so that during that time the master cannot exercise any control over the servant, that is not a hiring for a year, and a settlement cannot be gained by service under it. We must look to the terms of the contract to learn what the bargain was in this case. By the agreement, the servant stipulates to obey all the rules of the factory with regard to the hours of attendance. In every contract of hiring, the law will imply that the party hired shall work at all reasonable hours when required. Generally speaking, the ordinary working hours in a manufactory are twelve hours per day ; but it does not therefore follow that the master may not on extraordinary occasions require his servants to work at other hours ; and whether he does so or not, the relation of master and servant continues during the whole day. It does not appear by this case, what the specific rules and regulations were as to hours of work. But assuming that one of them was, that the servant was to work twelve hours per day ; yet inasmuch as the regulations might be, and were, from time to time altered by the master, the stipulation that the servant should obey the rules and regulations of the factory with regard to hours of work, did not give the servant any right to say that the master should not require her services at all reasonable hours. Such a stipulation does not necessarily imply that she is not to work beyond

certain hours. The true meaning of this agreement is, that the relation of master and servant was to continue the whole day. There is no express exception in the contract, and no remission of service but such as the law will imply in every contract of hiring. The order of sessions must therefore be quashed.

Littledale J. To constitute a yearly hiring, the relation of master and servant must subsist during the whole year, and during the whole of every day in the year. It has been held in several cases, that a hiring in terms for a year, the servant to work for so many hours a day, is an exceptive hiring. Those cases have gone to a great extent. It seems to me that unless by the terms of such a contract there

is an express exception, shewing that the relation of master and servant is not to subsist during the whole year, or during the whole of everyday in the year for which the contract has been made; it is a yearly hiring. By the contract in this case, the servant was to conform herself to the rules and regulations of the factory. That is a stipulation which the law would imply in every contract of hiring; and we cannot from that infer that there was an exception of any period of time, during which the

lelation of master and servant was not to exist.

Parke J. I have no doubt that any thing which passed by parol between the foreman and the pauper, was not admissible evidence to explain the agreement. It is said that there is an exception in the agreement, by reason of that stipulation, whereby the pauper agreed to obey the rules and regulations of the factory. But that imports no more than a contract to obey the orders of her master, which is a term implied in every contract of hiring.

Order of sessions quashed.

(10) Ruling

A pauper hired herself to A. B., to work in his factory for four years, at weekly wages. There was a stipulation in the agreement, that the pauper should observe and obey all the rules and regulations of the factory, as well with regard to the hours of attendance and of work as the mode and other particulars of working. The pauper was told she must work twelve hours a day; but the rules of the factory were occasionally varied by the master : Held, that this was not an exception in the contract of hiring, and that a settlement was gained by service under it.

(11) Comment

The court declines to find an exceptive hiring in a case of factory employment, on the grounds that the employer had an implicit power to vary the hours of work.

(12) Type

Liberal

(1) Case name

*R*. v. *St. Mary, Lambeth*

(2) Date

24 April 1799

(3) Report

8 T.R. 237

(4) Court

King’s Bench

(5) Parties

The King against The Inhabitants of Saint Mary, Lambeth

(6) Order sought

Quashing

(7) Facts

The Court of Quarter Sessions for the county of Surry, quashed an order of two justices, by which Mary Walton was removed from St. Mary, Lambeth, to St. Martin-in-the-Fields, and stated the following case for the opinion of this Court:—

[237] The pauper, M. Walton, a single woman, being legally settled in the parish of Saint Martin, on the 15th of January, 1797, hired herself to one T. Serle, of the parish of Saint Paul Covent Garden, in the county of Middlesex, for a year, from the 18th of that month, at the wages of seven guineas: she went into his service on the 18th of January, and continued in it until the 11th of January following; when an information having been laid against her master for keeping a gaming-house, he quitted his house, and told his servants (and the pauper amongst them) that he had no longer any occasion for their services; and then paid the pauper her whole year’s wages. The master would have kept the pauper, but on account of his being so obliged to quit his house; and the pauper was unwilling to leave his service. She then left her master’s house and went to her sister’s; and did not engage herself in any new service until after the year expired, though from the time that her wages were paid she considered herself at liberty to go where she pleased.

(8) Argument

Garrow and Marryat in support of the order of sessions. The question in this case is, whether the master dispensed with the pauper’s service for the last seven days in the year? or, whether both parties agreed to put an end to the relation of master and servant before the expiration of the year. Now, it is manifest from the case stated, that neither party wished to put an end to the contract, it being expressly stated, that the master would have kept the pauper, had he not been obliged to quit his house; and that the pauper was unwilling to leave his service: and the circumstance of the master paying the whole year’s wages, shews that the master and servant acted upon the supposition that they were bound by their contract to the end of the year; although the master, on account of his own situation, dispensed with any further service; and these cases were relied upon: *R. v. The Inhabitants of Richmond*, Burr. S. C. 740 ; *R. v. The Inhabitants of Saint Bartholomew*, Cald. 48 ; *R. v. The Inhabitants of Saint Philip, Birmingham*, ante, 2 vol. 624 ; and *R. v. The Inhabitants of Saint Andrew, Holborn*, ib. 627.

Fielding and Best, contra.—The present case is distinguishable from those cited. In *R. v. Saint Philip, Birmingham*, Mr. J. Ashhurst, said, there was no evidence of the consent of the servant to dissolve the contract: “ It was a wrongful act of the mistress, which was submitted to, but not agreed to, by the servant:” and the case of *Saint Andrew, Holborn*, was decided on the same ground : but whatever rule may formerly have prevailed on this subject, all the cases cited on the other side have been considered by this Court, in several late determinations, in which (as well as in a prior case, *R. v. Castlechurch*, Burr. S. C. 68) a contrary line of decision was adopted, the Court strongly leaning against constructive services. Those late cases are *R. v. Gresham*, ante, 1 vol. 101 ; *R. v. Grantham*, ante, 3 vol. 754; *R. v. Clayhydon*, ante, 4 vol. 100; and *R. v. Whittlebury*, ante, 6 vol. 464. In the first of them the master insisted on turning away the servant, and threw down his wages, which the latter took up and went away, staying away six days. This was holden to be a dissolution of the contract, the Court saying, that the payment of the wages by the one, and acceptance by the other, shewed the consent of both to put an end to the contract. In the second, the master turned the servant out of doors three days before the end of the year; and the next day paid the servant his wages to the end of the year on the servant’s threatening him; and it was ruled, that the contract was thereby dissolved, though the servant left the master’s service “contrary to the express request of the master,” the Court saying there was no animus revertendi in the servant. In the third case, the servant went away a few days before the end of the year, without leave, to get another place. On his return, the master insisted on turning him away, and paid the wages up to that time: that was holden to be a dis- solution of the contract, “though the servant wished to have stayed out the year. There Lord Kenyon, after lamenting that the words of the Act of Parliament had not been strictly adhered to in these decisions, said, “But I do not know that it has ever been decided that a settlement was obtained, unless, by construction, the relation between master and servant continued during the whole year” and his Lordship relied on that which was the ground of decision in *R. v. Gresham*, saying, “ Both parties did that which put an end to the contract: the one paid, and the other received the wages. In the fourth case above alluded to, the servant being taken ill five days before the end of the year, went to his mother’s, and sent for his wages, which were paid, except 1s. which was deducted for the remainder of the year; and that was holden to be a dissolution of contract. These late cases (a), therefore, shew that the circumstances of the servant leaving the master, and actually receiving his wages before the end of the year, have been considered as decisive proof of the intention of both parties to dissolve the contracts, whatever wishes may have been entertained by either party before. Both those circumstances concur in the present case; and after the payment of the wages, the servant was no longer under the control of the master. During the last seven days, she certainly was not in the actual service of the master: nor was she constructively in his service, because he could not have compelled her to return to him.

(9) Judgment

Lord Kenyon, Ch.J.—If this point were not encumbered with decisions, and we were to resort to the words of the Act of Parliament on which the question arises, I should perhaps yield to the arguments of the counsel in support of the rule; or, if the cases cited by them proved the point for which they were cited, I should be strongly inclined to adopt them on this occasion : but it has been frequently said here, that it is of great importance that decided cases should be adhered to; and on this subject in particular I applaud the rule stare decisis. The cases cited by the counsel on both sides, are nine in number; and though they approach each other very nearly, there is a line of distinction between the four that were relied upon by the one side, and the five that were cited by the other. I cannot distinguish the present case from the four that were cited by the counsel in support of the order of sessions; and it was decided in each of those, that it was a dispensation with the service, and not a dissolution of the contract. Perhaps, I should have had some difficulty in saying, in some of those cases, that it was only a dispensation with the service; but it is sufficient to say, that those cases were so decided; and having been so determined, they ought not now to be shaken : but the cases cited by the counsel on the other side are distinguishable from those, because in them the contract was dissolved by the mutual consent of both parties. The distinction between the different sets of cases is certainly a very nice one; but I think that this case must be governed by the four to which I first alluded ; and if this be a question of evidence, it appears that the sessions, by their determination, have impliedly found that the parties did not consent to dissolve the contract.

(a) See also *R. v. Thistleto*n, ante, 6 vol. 185. [Post, 438.]

Grose, J.—I have frequently wished that, in decisions on this subject, the Court had always been as strict in requiring a service for the whole year as they have been in requiring a hiring for a year; because then no question could have arisen on constructive services. As, however, a different rule has been pursued, and as nice distinctions have been introduced in cases [240] of this kind, in deciding this case, we must endeavour to find out and adopt that case which most resembles the present : and I think that this most resembles the four cases that were first cited. In some respects, this is like that of *R. v. St. Philip, Birmingham*; for I consider that the servant was wrongfully turned away. The master could not continue any longer in his house, and the servant insisted on having her whole year’s wages; and though she received all her wages, she was unwilling to leave the service. Now, if it be considered that she was dismissed against her consent, there could be no dissolution of the contract by the consent of both parties.

Lawrence, J.—I think that the four cases first alluded to ought to govern the present.

Lord Kenyon then expressed a wish, that the justices at the sessions would in future find the fact, whether or not the parties put an end to the contract before the expiration of the year.

Order of sessions confirmed.

(10) Ruling

A master being obliged to leave his house seven days before the end of a year for which he had hired a servant, told the latter that he had no further occasion for her services, and paid her the whole year’s wages; the master would otherwise have kept her, and she was unwilling to leave the service : — Held a dispensation of the service for the rest of the year. [Post, 478. 4 East, 351. 3 M. & S. 20.]

(11) Comment

The court finds that a servant turned away against her will before the end of the year due to her master having to quit his house, but paid her whole year’s wages, gains a settlement. The judges consider a number of factors, most importantly that there was no mutual consent (thus no dissolution of the contract), that the servant was ‘wrongfully’ turned away (i.e. the dismissal was not her fault), that she was paid the whole year’s wages, and that previous cases established that constructive service suffices for the purpose of conferring settlement. However, the court also expressly states that it wishes to take a strict view of the ‘service’ requirement as excluding constructive service but has its hands tied by precedent, indicating that though the outcome of the decision is liberal, the tendency of the court is restrictive.

(12) Type

Liberal

(1) Case name

*R.* v. *St. Mary’s Kidwelly*

(2) Date

15 May 1824

(3) Report

2 B. & C. 750

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of St. Mary, in the Borough of Kidwelly

(6) Order sought

Quashing

(7) Facts

Upon an appeal against an order of two justices for the removal of William Williams, his wife and children, from the parish of Saint Mary, Kidwelly, in the county of Carmarthen, to the parish of Llandevilog, in the same county, the sessions quashed the order, subject to the opinion of this Court, on the following case : On the trial of the appeal the appellants admitted that the legal settlement of the pauper, William Williams, had been in the parish of Llandevilog, but contended, that he had gained a subsequent settlement by hiring and service. The appellants proved, that when Williams was about fourteen years of age he lived with his father, in the parish of Saint Ishmael, in the county of Carmarthen, and being desirous of being apprenticed to a shoemaker his father agreed with one John Thomas, a shoemaker in the parish of Saint Ishmael, to give him a guinea for teaching his son, the pauper, the trade of a shoemaker for twelve months, the father finding the pauper lodging, and

everything else during that time. The pauper served the whole twelve months under that agreement. There was no indenture or writing, but the pauper considered it as an apprenticeship, and his father and master treated and spoke to him as an apprentice during such twelve months; and his father and master told him there was a guinea paid for teaching him the trade. The pauper’s father, at the end of the year, came to an agreement with Thomas, that the pauper should work with Thomas for twelve months, making shoes at 3d. per pair the first half year, and at 4d. per pair the remaining half year. The pauper worked with him about six months under that agreement, and then went away and worked at several places, until his marriage, which happened 1785. He soon afterwards removed to the parish of St. Mary.

(8) Argument

Nolan and Davies, in support of the order of sessions, contended, that the pauper had gained a settlement by hiring and service in the parish of Saint Ishmael, for although the service under the second agreement was but for six months, yet that service might be connected with the previous service under the first agreement. That was void as a contract of apprenticeship; the service under it, therefore, was a service under no contract at all, and might be coupled with the service under the second contract, *Rex* v. *Dawlish* (1 B. & A. 280).

Oldnall, Russell, contra, was stopped by the Court.

(9) Judgment

Bayley J. The question in this case is, whether a settlement has been gained by hiring and service. In this case there was a contract of hiring, but under that contract there was only a service for six months. If, however, that service can be connected with the service of the preceding year, then a settlement was gained in the parish of Saint Ishmael. Now, in order to gain a settlement by hiring and service, the service must be under a contract, creating the relation of master and servant. Here, the first contract created only the relation of teacher and scholar, and the service under it not being under a contract of hiring, cannot be coupled with the subsequent service. *Rex* v. *Bilborough* (1 B. & A. 115), is an authority in point. There the master agreed, by parol contract, to teach the pauper to make stockings during the year, for which he was to receive two guineas, and the pauper was to have his earnings, paying his master for the use of the frame, &c.; and the pauper continued in the service a year and a half, and it was contended, that the pauper gained a settlement by hiring and service; but the Court said that the pauper never contracted to serve the master, and that the only agreement was, that the master should teach the pauper for a year. In the present case there was no obligation on the part of the pauper to serve the master, nor could he have been punished for

refusing to do so. The relation existing between them was that of teacher and scholar. Now, although it be clear, that services under different hirings may be connected, so as to complete the year’s service, yet the whole of the several services constituting the year’s service must be under a contract or contracts, creating an obligation to serve. In this case, there was not any obligation on the pauper to serve under the first agreement. That service, therefore, not being a service under a contract creating the relation of master and servant, cannot be connected with the subsequent service; and there being only a service of six months under a contract of hiring, no settlement was gained.

Littledale J. In order to gain a settlement by hiring and service, the service must be for a year, under a contract or contracts, creating the relation of master and servant. The pauper served only six months under such a contract. The contract under which he served during the former year, created the relation of master and scholar, and not that of master and servant. The service under that contract, therefore, cannot be connected with the service under the subsequent contract, for the effect of that would be, to enable the pauper to gain a settlement by a service, partly under a contract of hiring, and partly under a contract of a different description ; whereas the entire year’s service ought to be under a contract of hiring.

Order of sessions quashed (a).

(10) Ruling

The father of a pauper aged fourteen years, agreed by parol to give a shoemaker a guinea for teaching his trade to the pauper for twelve months. The son served the twelve months under that agreement. At the end of that period, the father agreed that his son should work for the shoemaker for twelve months, making shoes at 3d. per pair the first six months, and 4d. per pair the last six months; under this latter agreement the pauper served six months only : Held, that this latter service could not be connected with the service of the former year so as to give a settlement, inasmuch as the first agreement created the relation of teacher and scholar, and not that of master and servant, and the whole year’s service, required to confer a settlement, must be under a contract or contracts creating the relation of master and servant.

(11) Comment

Service under an invalid apprenticeship did not generate a yearly hiring.

(12) Type

Restrictive

(1) Case name

*R.* v. *St. Maurice in Winchester*

(2) Date

9 May 1735

(3) Report

Burr S.C. 27

(4) Court

King’s Bench

(5) Parties

The King against The Inhabitants of St. Maurice in Winchester

(6) Order sought

Quashing

(7) Facts

Two Justices having removed Joseph Talmage from St. Maurice's to St. Mary Calendar's in Winchester; on Appeal, the Sessions discharge this Order.

The Case appeared to be this:

William West a Certificate-man of St. Thomas's came, about 1718, or 1719, by Certificate, into the Parish of St. Mary Calendar in Winchester. About 1721, he was chosen one of the Constables for  the City of Winchester (which consists of federal other Parishes besides the Parish of St. Mary Calendar,) and legally placed in that Office, and executed, in and through all Parts of the said City, the said Office, for one whole Year: And during that whole Year, and as well for some Years before, as ever since, he constantly resided and inhabited in the said Parish of St. Mary Calendar. That, afterwards, he took Joseph Talmage an Apprentice to him, by Indenture duly executed; who continued with him as such for about four Years and a half: After which Time the said Joseph Talmage married, and intruded himself and his Wife into St. Maurice's; where he staid for about three or four Months, till being likely to become chargeable to the said Parish he was removed by an Order of two Justices to St. Mary Calendar's; who appealed to the Sessions. The Sessions, upon the Appeal, held “ That Joseph Talmage, by Virtue of his being Apprentice to William West, or Residence with him as such in St. Mary Calendar's, did not gain any Settlement in that Parish : For that William West had not, by serving the Office of Constable for the said City previous to the Time of taking such Apprentice, legally avoided or altered the Settlement he was acknowledged by the Certificate to have in St. Thomas's.” And therefore the Sessions quashed the Order of the two Justices.

On Monday 27th of January last, a Motion was made by Mr. W. Eyre, to quash the Order of Sessions: For that William West, the Master, had before he took this Apprentice avoided his Certificate by having executed this public annual Office in the Parish of St. Mary Calendar, being legally placed in the said Office.

Consequently, the Apprentice gained a Settlement in the same Parish); being quite out of the Statute of 12 Ann. St. 1. c. 18. Sect. 2. which excludes an Apprentice from gaining a Settlement by serving a Person who came into a Parish by Certificate, and had not afterwards gained a Settlement therein.

(8) Argument

On shewing Cause (within the same Term) why the Order of Sessions should not be quashed, it was insisted, That the Act of 9 & 10 W. 3. c. 11. must be intended to mean a parochial Office, in which the Certificate-man is placed by the Choice, or at least with the Approbation of the Parish). Whereas this is a foreign Appointment, and not the Act of the Parish); nor was it in their power to remove him from it. Therefore the Case is not within this Statute.

The Counsel on the other Side compared it to some Cases on 3 & 4 W.&M. c. 11. which says, “ That if any Man shall for himself and on his own Account execute any public annual Office or Charge in any Town or Parish, during one whole Year, he shall be adjudged and deemed to have a legal Settlement there, without Notice."

To which it was answered, by the Counsel who were for supporting the Order of Sessions, “ That the present Case did not arise upon 3 & 4 W.& M. c. 11. but on 9 & 10 W. 3. c. 11.”

This Argument was on Wednesday 5th of February : And the Difficulty that then occurred to Lord Hardwicke was upon the Consequence of determining both these Acts in the same Manner. For, there is this Difference between them—Upon 3 & 4 W.& M. c.11. the Question is, What shall amount to Notice to the Parish. And it enacts that one of these Equivalents shall be the executing any public annual Office in the Parish for a Year. But on the 9 & 10 W. 3. c. 11. not only the Parish had Notice before, by the Certificate; but, the Notice amounts to nothing because the Parish cannot remove him, till he becomes actually chargeable.

So that there is a great Difference in Point of Consequence. In the one Case they may remove him, if he is likely to become chargeable : In the other Case they cannot and yet when he shall have served his Year out, the Certificate is gone.

There was some Doubt too, Whether the Instances put in these Acts are upon the Foot of Notoriety merely, or whether they go upon the Idea of a Reward to the Person for his Service, and the Value and Credit of the Office he has served.

Mr. J. Probyn and Mr. J. Lee inclined strongly to the latter Opinion ; and thought that the Act should be construed liberally in Favour of Certificate-men.

The Court, upon the first Argument, took Time to consider it, and to look into the Cases.

Adjourned

Now, upon the second Argument, the Counsel who argued in Support of the Order of Sessions (that is, on Behalf of the Parish of St. Mary Calendar,) observed that it is now confined to a single Question,. “ Whether this be such an Office as will avoid the Certificate." If it is, then the Settlement is in St. Mary's.

The Case of "*The Queen v. The Inhabitants of St. Mary Readings*the Case of a Warden in Nature of a Tithing-man, H. 9 Ann. was upon 3 & 4 W. & M. c. 11. There are the Words; “ in a Town or Parish.” And under that Act the Paupers were removeable before they became actually chargeable [V. Cases of Settlements, Ed 1742, pa. 3. and Lucas's Reports (10 Mod.) 13, 14, 15.

The 8 & 9 W. 3. c. 30. compels the Parish to receive a Certificate-man: And therefore it ought to be considered upon the Foot of Estoppels. The 9 & 10 W. 3. c. 11. is the Act upon which this Question arises : And the Person is not removable till he becomes actually chargeable.

The Case between the Parishes of Garsington and The Holy Trin Oxford, H. 2 G. 1. was determined upon another Point. A Certificate-man executed the Office of Tithing-man, for a Year; but was not sworn in till half the Year was out. An Exception was taken to the original Order for Want of a Complaint of his being actually become chargeable: And upon that Exception it was quashed.

This is not nor can be esteemed an Execution of an annual Office in his Parish; nor had his Acts any Relation or Confinement to the Parish: He was a City-Officer, not a Parish-Officer.

The Counsel on the other Side (for quashing the Order of Sessions) observed, The choice was by the whole City, as appears from the State of the Case: So that there was no Inconvenience or Surprise.

The Cases of constructive Notice are out of this Question : For the only Question here is, Whether the Certificate-man avoided his Certificate.

The Act of 3 & 4 W. & M. is enlarged by 9 & 10 W. 3. For the latter docs not confine the Execution of the Office to be upon his own Account: Therefore an Execution as Deputy for another Person would be good upon this latter Act. And there are other Instances, beside those mentioned in the Act, that will gain a Settlement—As renting Lands in different Parishes. M. 9 G. 1. *Rex v. The Inhabitants of Broxhourn*. *Rex v. The Inhabitants of Melton*. The Court held it sufficient, though all the Lands were not within the Parish, according to the strict Letter of the Act. In P. 5 G. 1. between t*he Parishes of East Woodhay and Burclear*, a Certificate-man married a Copyholder, and lived three Years; and by that Means gained a Settlement. . [Cases of Settlements, Ed. 1742, Np 121.]

In the Case of *Garsington v. The Holy Trinity in Oxford*, the Tithingman was legally chosen, and sworn-in in sufficient Time : Therefore the Court held it a good Settlement. But the Counsel for Garsington, the Merits being against them, objected to the original Order ; and upon those Objections, it was quashed.

(9) Judgment

Mr. Justice Lee.—It is as you state it. My Account is, that the Case was upon this very Point: A Certificate-man was appointed a Tithingman by the Steward of a Leet: And he served a Year; but was not sworn in till half the Year was expired. The Court inclined that it was a good Settlement: But being a new Case and somewhat doubtful, they ordered a second Argument; and Lord Parker ordered the Counsel to speak to this Point, “ Whether he was legally placed in the Office, or not, as not having been sworn till half the Year was expired.” The original Order was afterwards quashed for Want of Complaint.

The Counsel for quashing the present Order of Sessions proceeded; and cited the Case of *St. John's Hertford and Amwell*: It was said that the Act never designed to put Certificate-men in a worse State than before. [V. Cases of Settlements, pa. 108, NQ 143. S. C. Trin. 1722.]

It would be hard to confine this Clause to parochial Offices; because they could not be appointed Churchwardens or Overseers, without being Parishioners and substantial Inhabitants.

In the Case of *Garsington v. The Holy 'Trinity in Oxford*, Lord Parker said, “ that these Statutes in Restraint of Settlements must be taken seriously”

Lord Hardwicke.—The State of this Case is, That a Man comes, by Certificate, from the Parish of St. Thomas to St. Mary Calendar's in Winchester; and is appointed a Constable for the City of Winchester.

The Question is, “ Whether the Apprentice of this Man gained a Settlement in St. Mary's by serving an Apprenticeship to him there.”

That Question immediately depends upon the Act of 12 Ann. Stat. 1. c.18. Sec. 2 The Words of which are—“And not having afterwards gained a legal Settlement in such Parish.” Which brings it to this Question, “ Whether the Master had by any Act discharged the Certificate and gained a Settlement in the Parish into which he came by Certificate.” And that depends upon the Act’s relating to Certificate-men.

The first of these is 8 & 9 W. 3. c. 30. which (in § 1.) enacts that a Certificate-person shall not be removed till he actually becomes chargeable: Though as soon as he does become so, he may be removed to the Parish6 from whence he brought the Certificate.

Yet still it was thought reasonable that there should be some Cases and Circumstances excepted; under which, he might gain a Settlement in the Parish to which he came with a Certificate. And therefore 9 & 10 W. 3. c. 11. was made, intitled, “ An Act for explaining an Act made in the last Session of Parliament, intitled, An Act for supplying some Defects in the Laws for the Relief of the Poor;” and reciting a Doubt, “ By what Acts any Person coming to reside within any Parish by Virtue of a Certificate may procure a legal Settlement in such Parish; and whether such Certificate did not amount to a Notice in Writing, in order to gain a Settlement.” (And it would have been a strange Thing if it had, when the Certificate was intended to prevent it) It enacts that no Person or Persons whatsoever, who shall come into any Parish by any such Certificate, shall be adjudged, by any Act whatever, to have procured a legal Settlement in such Parish, unless he or they shall really and bond fide take a Lease of a Tenement of the yearly Value of 10l. or shall execute some annual Office in such Parish, being legally placed in such Office.

The Question then upon this Act is, Whether it means an annual Office within the Parish ; or an annual Office in general, he being resident in that Parish.

When this Case was spoken to before, I own I did think that it differed from the Cases of poor Persons at large in whose Case, though they should be appointed in a Town at large (which may consist of several Parishes) the Appointment did not hinder the Removal : Whereas a Certificate-man could not be removed till he should become actually chargeable: So that there seemed to be a Difference in Point of Consequence to the Parishes. And therefore I thought that unless the Court was bound down by some Authority, it might deserve Consideration whether it ought not, in the Case of a Certificate-man, to be restrained to an Office in the Parish.

But *the Case between the Parishes of Garsington and The Holy Trinity* does now appear to be the Case of a Certificate-man and the Office was an annual Office at large; and the Certificate-man was not appointed to it by the Parishioners, but at the Leet: And the Court’s putting it upon the Legality of the Appointment, makes it sufficiently clear that they did not doubt of the Office being such as would intitle him to a Settlement within 9 & 10 W. 3. provided he was legally placed in it.

Then consider the Cases on 3 & 4 W. & M. c. 11. which will be too strong for the Court to get over. The former Acts required Notice in Writing: But other Equivalents being thereby allowed, that Act says “ that if any Person, who shall come to inhabit in any Town or Parish, shall for himself and on his own Account execute any public annual Office or Charge in the said Town or Parish during one whole Year, 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 thereby before required.”

Now here the Words are "Annual Office or Charge in the said Town or Parish” But the Current of Authorities is, that those Words were not confined to Offices belonging to the Parish, and to which the Parish appointed. And these Words in 9 & 10 W.3. being the same as in that Act of 3 & 4 W. & M. the Construction must therefore be the same.

It is said indeed, that the former Act has the Word Town, (“ in the said Town or Parish”) which Word "Town” is not inserted in the latter Act. But I think that that Word makes no Difference at all: For it must mean such a Town in which a Settlement can be gained; not a Town at large, consisting of a great many Parishes.

Therefore I am of opinion that the Master procured a legal Settlement in St. Mary's : And consequently the Apprentice gained a good Settlement there also.

Mr. J. Page.—The Case *between the Parishes of Garsington and The Holy Trinity* is in Point.

This Man was put in by the whole City. Therefore this Parish of St. Mary, which was a Part of the City, was interested, and had as good Notice as if he had been appointed by that particular Parish. And an Officer of a Hundred or of a City may be supposed to be a Man of better Substance and more considerable Figure, than an Officer of a single Parish.

Therefore I concur with my Lord, in Opinion.

Mr. J. Probyn.—This Act of 9 & 10 W. 3. does make Certificate-men capable of gaining a Settlement in the Parishes to which they come by Certificate. And how to distinguish this from the Reason of the Case of St. Mary's Reading would be difficult. There the Man executed his Office in every one of the Parishes : So did this Man. And here, the whole City joining in the Choice, it should seem to follow, that this Parish concurred in it. But if not, yet he must be settled in some of the Parishes within the City: And that must he in the Parish where he lived. All these Laws have been made in favour of Settlements in the Parish where the Party inhabits. And therefore where a Man rents a Farm lying in two Parishes, he is settled according to the Inhabitancy, not according to the Value.

Therefore he likewise concurred in the same Opinion, “ that the Pauper was settled in St. Mary's.”

Mr. J. Lee.—I think this a good Settlement in St. Mary's. These Acts have always been and ought to be taken favourably to the Persons endeavouring to gain Settlements: And it was so declared, in the Case of*Garsington v. The Holy Trinity*; and in the Case of *East Woodhay v. Burclear*, where the Certificate-man had married a Copyholder of Inheritance: And the Question was upon the Construction of this Act; which has stronger Words in that Particular, than in the present Case ; because it is expressly declared that no Certificate-persons shall gain a Settlement by any other Act whatsoever except the two therein specified. And yet, though that Case was neither of the two, all the Court unanimously held “ that a Settlement was gained by the Certificate-man ; and that this Act was not to be considered as an explanatory Act, but as a new Law." And that is true: For it enlarges the Certificate-man’s Power of gaining a Settlement. For, now, if he executes such an Office by Deputy, he gains a Settlement: Whereas by 3 & 4 W. & M he was to execute it for himself, and on his own Account.

The Case of *St. Mary's Reading* turned upon the same Point as the present; though it was on the former Act of Parliament.

As to the Difference of the Word “'Town” being omitted in 9 & 10 W. 3. tho’ added in 3 & 4 W. & M. Lord Hardwicke’s Answer is a very full one: It must mean such Towns wherein Settlements can be gained. And the Words of this Act are very strong: For it does not say Parish-Office, but “ some Annual Office in such Parish and therefore it is not to be restrained, in the Case of a Certificate-man, more than in any other Case.

So that, I think, both the Words of the Act and the Cases which have been determined upon it are very strong; and that the executing this annual Office, though not appointed by the Parish, gained this Certificate-man a Settlement.

(10) Ruling

Per Cur. unanimously—

The Order of Sessions quashed.

The Order of the two Justices confirmed.

V. Post, *Rex v. Inhabitants of Wingham*, M. 1743. *Rex v. Inhabitants of Fittleworth*M. 1744. *Rex v. Inhabitants of Whitchurch*, P. 1754.

(11) Comment

The court gives a broad interpretation to the statutes 9 & 10 W. 3. c. 11 and 3 & 4 W. & M., finding that the 'public office' exception to the rule that Certificate men cannot settle in a parish they are in by virtue of a Certificate covers positions spanning more than one parish, i.e. an entire city. The court also expressly states its liberal policy of construing the Acts in favour of people seeking settlements.

(12) Type

Liberal

(1) Case name

*R.* v. *St. Peter of Mancroft*

(2) Date

8 February 1800

(3) Report

8 T.R. 477

(4) Court

King’s Bench

(5) Parties

The King against The Inhabitants of St. Peter, of Mancroft in Norwich

(6) Order sought

Quashing

(7) Facts

Two justices by an order removed S. Gayfer from Botesdale in Suffolk, to the parish of St. Peter of Mancroft in Norwich ; on appeal the sessions confirmed the order, and stated the following case, for the opinion of this Court:—

“Sarah Gayfer the pauper was let to Mrs. Morton, of the parish of St. Peter of Mancroft, about a fortnight before Michaelmas 1797, by a letter sent by Mrs. Morton to the pauper’s friends, stating that she gave 3l. a-year wages; on which the pauper agreed to go, and sent to her mistress to let her know when she should come; and in consequence of a second letter, desiring her to come on Thursday the 11th day of October, she went to her service on the 12th of that month : on her going, her mistress objected to her not having come the day before; for which the pauper gave as a reason, that she had only quitted her last place late on Old Michaelmas-Day. About three weeks after she went, the pauper said to her mistress that it was proper to come to some agreement, as they had never had any further than a few lines; to which her mistress answered, ‘ You know what wages I sent you word, and as the general way is to let for a month’s wages or a month’s warning, I do not wish to confine you for a year’; but did not say anything about not choosing to hire for a year. She received her wages quarterly; and about a fortnight before New Michaelmas-Day, her mistress asked her, whether she chose to go away on New Michaelmas-Day or Old Michaelmas-Day assigning as a reason for her asking, that she had hired a new servant, who wished to come to her at New Michaelmas. The pauper said it was immaterial to her, as she had not got a place; and agreed to go at New Michaelmas, which she did ; at which time the other servant came into her mistress’s service. Her mistress was not in a condition of life to keep two servants; and if a place had offered at New Michaelmas, the pauper looked upon herself as in a situation to take it, though when she first got to her mistress, she considered herself as to live with her until Old Michaelmas. On quitting her service on New Michaelmas-Day, which was a fortnight after the agreement to go, her mistress paid to her the whole which remained due of the 3l. wages, although at the time when the pauper agreed to go away at New Michaelmas, nothing was said about wages. The pauper would not have objected to going away at New Michaelmas, if her mistress had proposed to make a deduction for the time, but would have mentioned it to her, and told her she was willing to stay till Old Michaelmas. The pauper liked to go away at New Michaelmas rather than Old Michaelmas; but would not have staid after Old Michaelmas if her mistress had requested her. The pauper considered the conversation which passed on the fortnight before New Michaelmas as a month’s warning to go away at Old Michaelmas.”

(8) Argument

(9) Judgment

When this case came on for argument,

Lord Kenyon, Ch.J. took an opportunity of expressing his regret that the Courts of Quarter-Sessions departed from the rule formerly established, by stating evidence instead of facts in the special case; but added, that upon this case, as disclosed, there was strong evidence to induce the Court of Quarter-Sessions to adjudge that the contract between the mistress and the servant was dissolved before the end of the year, and consequently that the latter did not give a settlement in Saint Peter’s, Norwich. That the distinction established in all the cases was perfectly clear; that where the servant continued liable to serve during the whole year, though the master dispensed (a) with the actual service for any part of it, the servant gained a settlement, because the relation of master and servant subsisted all the year, and the master might resume the right to the service if he chose; but that where the parties absolutely put an end to the contract before the expiration of the year, as in the present case, the servant did not gain a settlement (b). That, though it was at first doubted whether or not the master could dispense with the service at the end of the year, so as to give the servant the benefit of the contract for the purpose of a settlement, it had been long settled that it was immaterial whether the service were dispensed with at the beginning, the middle, or the end of the year.

Grose, J. The Court of Quarter-Sessions should state the result of the evidence; and in a case of this kind, they should state the fact one way or the other, whether this were a dispensation with the service or a dissolution of the contract.

The counsel in support of the order of sessions, saying, there were reasons that would probably induce the sessions to decide that there was a dispensation with the service,

The Court ordered the case to be sent down to be re-stated.

Alderson in support of the order of sessions.

Mure against it.

(a) Vid. *R. v. Richmond*, Burr. S. C. 740; *R. v. St. Bartholomew*, Cald. 48; *R. v. St. Philip, Birmingham*, ante, 2 vol. 624; *R. v. St. Andrew, Holborn*, ib. 627 ; and *R. v. St. Mary, Lambeth*, ante, 236.

(b) Vid. *R. v. Castlechurch*, Burr. S. C. 68; *R. v. Gresham*, ante, 1 vol. 100 ; *R. v. Grantham*, ante, 3 vol. 754; *R. v. Clayhydon*, ante, 4 vol. 100; and *R. v. Whittlebury*, ante, 6 vol. 464.

(10) Ruling

The sessions should state as a fact (in a settlement case) whether the master dispensed with the service before the end of the year, or whether there were a dissolution of the contract by mutual consent. [2 East, 303. 4 ib. 351.]

(11) Comment

The court does not make a decision, sending the case back to sessions for restatement. However, Lord Kenyon emphasizes the flexibility of the dispensation concept: that the master can dispense with service but allow the master-servant relationship to continue, and that it does not matter when in the year this dispensation occurs. On the facts, Lord Kenyon indicated that he thinks the contract was dissolved by the mutual consent of master and servant, hence the servant did not gain a settlement, but his conceptual approach is liberal.

(12) Type

Liberal

(1) Case name

*R.* v. *St. Peter’s in Dorchester*

(2) Date

28 November 1763

(3) Report

Burr. S.C. 513

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of St. Peter’s in Dorchester

(6) Order sought

Quashing

(7) Facts

Two justices made an Order for the Removal of John Millwood) Catharine his Wife, John (aged eleven Years), Anne (aged five Years) and George (aged two Years) their Children from the Parish of The Holy Trinity in the Borough of Dorchester to that of St. Peter in the same Borough : And upon an Appeal to the Sessions, they confirmed the said Order of the two Justices.

The Order of Sessions Rates the Facts as follows--—

That the Pauper John Millwood was born in the Parish of The Holy Trinity : But his Father's Settlement was in St. Peter's. Soon after his Birth, his Father died : And his Mother marrying again to one Edmund Oldis, an Inhabitant of The Holy Trinity, when the Pauper her Son was about six Years old, the Son removed with his Mother to the House of his Step-Father, and resided there till the Age of sixteen ; During all which Time he was employed by his Step-Father in his Trade of a Button-maker; who had the Benefit, of his Labour without any other Compensation than Maintenance and Pocket-money, as the Step-father thought fit.

About the Age of sixteen, the Pauper insisting on a larger Allowance for his Labour, and the Step-Father refusing to allow it him, the Pauper left his Step-Father’s House, and went to Bristol. After passing some Time there, he returned to the Parish of The Holy Trinity : Where he and his Step-Father came to an Agreement, by which the Son was to live with the Step-Father in his House, and to work as before at his Trade, and to be paid at the Rate of one Penny per Gross for the Buttons he should make (being the same Wages as the Step-Father paid to the other Workmen he employed) deducing at the Rate of 5s. a Week for his Meat Drink Washing and Lodging. There was no other Hiring or Agreement between the Parties.

Under this Agreement the Pauper lived and worked with his Step-Father in the Parish of The Holy Trinity four or five Years, and received Wages, and paid for his Maintenance at the Rate agreed on.

But the Step-Father Oldis, who was examined as a Witness, declared he thought himself at Liberty to have turned the Pauper off, or the Pauper to have left him at any Time, if either of them had been so disposed ; there being nothing expressed in the Agreement to the contrary. The Pauper had done no other Act to gain a Settlement: And the Wife and Children had no other Settlement than what they derived from their Father. Upon Consideration of these Facts, and hearing what had been alledged by Counsel on both Sides relating to the Settlement of the said Pauper, The Court [of Sessions] were of Opinion “that his Settlement is in the Parish of St. Peter.” It was therefore ordered that the before recited Order should be, and it was thereby confirmed.

(8) Argument

Mr. Dunning moved, on Friday the 13th of May 1763, to quash these Orders.

He said This was good as an indefinite Hiring; and cited the Case of *The King against The Inhabitants of Berwick St. John*, ante No 160, pa. 502.

Rule to shew Cause.

And now Mr. Dunning, assisted by Mr. Thurlow, argued that this was a Hiring for a Year, by Implication.

They insisted that here was a Hiring : And an indefinite Hiring is a Hiring for a Year.

At first, indeed, there was no Contract: But after the Pauper’s Return from Bristol to his Step-Father’s House in Holy Trinity, the Step-Father and he came to an Agreement whereby they became Master and Servant.

They said that the Case of the *Inhabitants of King's Norton* and *Camden*, relating to one Mary Calcut, a Spinner, was the same Point with the present Case ; only that that was an express Hiring for a Year, whereas this is so only by Implication : But that was a Hiring of the same Sort \* as the present.

\*It was so, v. *Rex v Inhabitants of King’s Norton*, Tr. 1740, 13 & 14 G.2. ante, No 52 pa. 452

Mr. Solicitor General contra (and Mr. Serjeant Glynn was on the Norton, same Side,) for the Order of Sessions--------

This is only a Service in Holy Trinity: There is no Hiring there for a Year, either express or implied ; nor any Reference to a Hiring for a Year or for any certain Time whatsoever. On the contrary, It was unfixed as to Time; it was to last only so long as both should agree : Each was at their own Liberty ; and so it was understood by the Step-Father himself. So that the Pauper lived only as a Journeyman with his Step-Father, and was hired upon that Foot and no other, and might have gone away and returned as often as he pleased, being to receive Pay in Proportion to his Work} and not to his Time.

In the Case of *Berwick St. John*, there was a Reference to a former Hiring of Ned Hill, who was a hired Servant by the Year: And upon the whole, it appeared to be intended as a Hiring for a Year, into Ned Hill’s Place.

The Case of Weyhill and Corfe Castle \* was much the same Case with the present: And that was holden to be no Hiring at all.

(9) Judgment

Lord Mansfield—This is the Case of a Workman hired to work by the Piece. It is not like any of the Cases where there was a Hiring for a Year. There was a Case somewhat like this, about burling of Cloth.

Indeed Hiring in general and indefinitely gives a Presumption of a Hiring for a Year, where the Nature of the Service and subsequent Facts concur to render it probable that it was so meant: But the Nature of the present Service is quite otherwise.

It is very clear, in this Case, that there was no Hiring for a Year, either express or implied. Therefore the Rule must be discharged.

H. 1760, 33 G. 2. *Rex v. Inhabitants of Weyhill*, ante, No I57, pa. 491.

4 V, ante, pa. 280, N° 98, *Rex v. Inhabitants of Wrinton*.

(10) Ruling

Per Cur.—

Original Order and

Order of Sessions affirmed.

(11) Comment

The court distinguishes between a general hiring, where wages are given in proportion to time (i.e. a week or year), versus hiring by the piece, where the servant is paid in proportion to each piece of work he does. Servants paid by the piece cannot gain a settlement even if their period of service lasts for over a year.

(12) Type

Restrictive

(1) Case name

*R. v St. Philip in Birmingham*

(2) Date

7 June 1788

(3) Report

2 T.R. 623

(4) Court

King’s Bench

(5) Parties

The King against The Inhabitants of St. Philip in Birmingham

(6) Order sought

Quashing

(7) Facts

Susannah Brookes, the pauper, was originally settled in the parish of Birmingham ; but subsequent to her settlement there she was hired for a year to one Elizabeth Poole, in the parish of Powick. She entered on such service, and served till within eight days of the end of the term, when, on account of some difference between them, she gave her mistress warning that she would leave her service at the end of the year. The mistress, on having hired another servant, by reason of some impatient behaviour of the pauper, discharged her from the service, but paid the pauper her full wages.

The pauper accepted the wages, and accordingly quitted the service, and left the parish eight days before the year ended; but she said she would have served her year, if her mistress would have let her. She was removed by an order of justices from Powick, Worcester, to St. Philip in Birmingham; and the sessions, on appeal, confirmed the order.

(8) Argument

Bower and Welsh, in support of the order of sessions. The question is, whether, under the circumstances stated in the case, the service for the last eight days was dispensed with by the mistress; or whether the contract was dissolved by the mutual consent of the mistress and servant? They admitted, that if the servant depart for any reasonable cause, as in *R. v. Islip* (a)1, where he went to a statute fair three days before the expiration of the year, though against the master’s consent, the wrongful act of the master in refusing his assent to so reasonable a request shall not prevent the servant from gaining a settlement. Or if a master fraudulently discharge a servant just before the expiration of the year, with a view of defeating his settlement, as in *Eastland v. Westhorsley* (a)2, that likewise will not defeat the settlement. But where there is acqueiscence on the part of the servant to quit the service before the end of the year, at the instance of the master, in such case the contract is considered to be dissolved by mutual agreement; and the servant cannot gain a settlement. In *R. v Gresham* (b), where the master insisted on turning away his servant, and threw down his wages, which the other took up and then went away, the Court held that the taking up of his wages, amounted to an assent on his part to the dissolution of the contract. So in the Present case, the assent of the servant to the dissolution of the contract equally appears from her accepting her wages and actually quitting the service This case is distinguishable from that of *The* *King against St Bartholomew by the Exchange* (c), where, though the whole wages were paid, and the servant quitted the service by consent a week before the end of the year, the Court held that a settlement was gained; for there were several other circumstances in that case which do not exist in the present, and the Court seemed to lay great stress on the circumstance of the master’s giving the servant half a guinea, which they considered in lieu of board-wages for that week. But here the relation of master and servant was absolutely put to an end to eight days before the end of the year. The fact stated in the case that the servant would have served the whole year if her mistress would have permitted her, does not vary the question; for it does not appear that she insisted on staying, as in *Eastland v. Westhorsley*, or even that she made any offer to stay. Neither can the circumstance of the whole wages having been paid make any difference, because the contract was dissolved before the end of the year. *R. v. Castlechurch* (d).

Bearcroft contra. The principle on which this case must be determined is laid down by Lord Mansfield in the case of *The King v. St. Bartholomew by the Exchange*, where he took a distinction between exceptions in the contract, and dispensations with the contract. If the case be of the latter description, and it be bona fide, a settlement may be gained by the servant, notwithstanding he is not in the actual service of his master the whole year. But there cannot be a dissolution of the contract without the consent of both parties. Now that was not the case here; but on the contrary it is stated that the servant was willing to have stayed till the end of the is an additional proof that she meant to stay till that time. And the impatient behaviour of the servant was not a sufficient ground to discharge her before that time. The facts therefore, in this case, only amount to a dispensation of the service by the mistress, and will not prevent the servant from gaining a settlement.

Silvester was to have argued on the same side, but was stopped by the Court.

(9) Judgment

Ashhurst, J. This was not an absolute dissolution of the contract. For though it be true that an agreement between the master and servant, before the expiration of the year, to put an end to the service, will defeat the settlement; yet if it be not a voluntary agreement between the parties to put an end to the contract, as if the master fraudulently turn away the servant with a view of preventing his gaining a settlement, or wrongfully discharge him before the end of the year, that will not defeat the servant’s settlement. Now in the present case, I think that this was a mere wrongful act of the mistress, which was submitted to, but not agreed to, by the servant. It appears by the case, that the mistress, on account of the servants behaviour, turned her away, but paid her the whole wages, on which she went away. But we cannot infer from that, that it was by agreement; for something should have been stated in the case to shew that it was voluntary on the part of the servant, and that she consented to a dissolution of the contract. But as far as we can collect from the case, it is to be inferred that the servant went away rather in consequence of the wrongful dismission of the mistress, than by her own consent; for she was desirous of serving the whole year. On the whole I am of opinion that this must be considered as a dispensation with the service; and that the pauper gained a settlement in Powick.

(a)1 Bott, 301.

(a)2 Bott, 312.

Buller, J. This is one of the clearest cases of a dispensation with service to be met with, whether the conduct of the servant or that of the mistress be considered. For it appears that neither of them thought that she could put an end to the service. The servant first was desirous of going, and gave her mistress warning that she would leave her at the end of the [627] year, because she was conscious that she could not go till that time. Then the mistress wished, for her own accommodation, to dismiss the servant before the end of the year ; but she was convinced that she could not dissolve the contract before the end of the year, and therefore paid the servant the whole years wages. This was dispensing with her service for the rest of the time. The case of *The King v. The Inhabitants of Gresham* is clearly distinguishable from the present. There, after the pauper had been in service a quarter of a year, his master insisted on turning him away, and threw down 15s. which was all that was due at that time, and this the servant accepted, and then went away. There the contract was clearly put an end to: and if so, it could not be revived again by any subsequent agreement; for when the pauper returned, it was under a new contract; and it appears that the pauper thought himself at liberty in the meantime.

Grose, J. It is clear that, if the servant be turned away by the wrongful act of the master before he has served the year, it will not prevent the paupers gaining a settlement. Now, here this is either the wrongful act of the mistress, or it is a dispensation with the service. The case of *The King v. Gresham* is distinguishable from the present, for the reasons given. This is more like that of *R. v. The Inhabitants of Richmond* (a), where the pauper left his service thirteen days before the expiration ofthe year, at his master’s request, but received his whole wages : and it was held thathe gained a settlement by such service.

Rule absolute (b).

(a) Burr. S. C. 740.

(b) Vide *R. v. The Inhabitants of Clayhydon*, post, 4 vol. 100; that the master’s turning the servant away, and deducting a few days’ proportion of wages, is a dissolution of the contract and defeats the settlement.

(10) Ruling

If a servant hired for a year give warning eight days before the expiration of the year, to leave his master at the end of the year, and the master discharge him on the same day, paying him his full wages, the servant being willing to stay till the end of the year, the contract is not hereby dissolved so as to prevent the servant’s gaining a settlement, but the discharge is merely a dispensing with the remainder of the service. [8 T. R. 236, 478. 4 East, 351.]

(11) Comment

*St Philip Birmingham* reinforces a line of cases where the court takes a liberal view towards absences just before the end of the year, and the view that payment of the whole year’s wages mean that these absences are a dispensation of service rather than a dissolution of the contract. A key factor seems to be the servant’s willingness to stay until the end of the year.

(12) Type

Liberal

(1) Case name

*R.* v. *St. Sepulchre*

(2) Date

8 June 1785

(3) Report

Cald 547

(4) Court

King’s Bench

(5) Parties

Rex v. Inhabitants of St. Sepulchre

(6) Order sought

Quashing

(7) Facts

Two justices by an order remove Sarah Freeth, widow, and her three children, from the parish of Birmingham in the county of Warwick to the parish of St. Sepulchre in the city of London. The Sessions on appeal confirm the order, and date the following case:

That the pauper, Sarah Freeth, was born in the parish of St. Luke Old Street in the county of Middlesex; and about nineteen years since married her late husband, Charles Freeth, who died about a year and an half ago; and that some time before his death, her said husband did, in her presence and hearing, inform the secretary of the Lying in Hospital in the county of Middlesex, that he was, before his marriage, a written articled servant for two years to Mr. Richard Spital, in the Old Bailey in the parish of St. Sepulchre ; and that he duly served him in the said parish, two years under the said article ; and that the said service was completed before his marriage with the said pauper; and that he worked at buckle-cutting and received one guinea per week, and lodged and boarded in the house of his master, for which he paid 9s. per week. That the master, Richard Spital, has been dead about twelve years, and that the pauper, Sarah Freeth, never saw the articles under which her said husband served the said Richard Spital; nor were the said articles produced at the hearing of the said appeal; nor was any evidence given of any inquiry after them.

(8) Argument

Bearcroft and Morrice shewed cause in support of these orders; and contended; that, the only question being upon the admissibility of this evidence, it had not been usual for this court to enter into that question or interfere, after such evidence had been given at the Sessions; because other evidence, sufficient to support the case, might have been there given: that this was however sufficient and legal evidence: that the testimony of husbands, wives and parents, who were dead or had run away, was universally received as to facts respecting their settlements; and very generally as to, the settlement itself: that it was true, that hearsay is not in general admissible in evidence; but that this is not the only instance, in which this rule has been relaxed: that the declarations of a bankrupt, made before his bankruptcy with respect to a doubtful act, as his intent to abscond (i. e. what was the meaning of his going from home to A.), are admissible to show the nature of the ftep taken, and establish the bankruptcy ; to prove which he is not himself a witness: that the declarations of a husband, now dead, at a time when he had no object in view and must have been supported somewhere else if he was not settled here, are less liable to objection : and they cited the case of [a] the King v. the Inhabitants of St. Michael Bath in support of this proposition. That with respect to the objection, that the hearsay evidence had in this case disclosed that there existed a written document, which must have decided the question if produced, but which had not even been inquired after, they insisted ; that the law never required any one to do an act that was nugatory, and from which no fruit could arise : that here the master had been dead twelve years : that this being a contract, which was good by parole, and to which, when reduced into writing, no stamp was necessary, there was no public repository to which resort might be had to ascertain the fact : that in the case of an apprenticeship, where the indenture must be stamped and might consequently afford this evidence, the court after an interval of no more than half this time, a service being proved, in favour of a settlement presumed that there had been an indenture, though no search had been made: that this court had so adjudged in the case already cited: that in the case of [b] *the King v. the Inhabitants of East Knoyle*, where the binding was proved by parole, the court, though no search had been made after it, presumed the indenture. That with respect to the case of [c] *the King v. the Inhabitants of Saint Helen’s in Abingdon*, which might be cited on the other side as an authority to show that parole evidence of an indenture was insufficient proof to establish a settlement, without application to executors or a proper search made, they insisted ; that that case was plainly distinguishable: that there a very strong presumption arose, from the facts stated, that the indenture never had been stamped; and this repelled and indeed absolutely precluded all presumption in its behalf.

Silvester and Gough, in support of the rule to quash these orders, insisted; that if there was any found principle, upon which this hearsay evidence could be supported, it must be that it was the best and indeed the only evidence, that could be resorted to: but that it was not much to the credit of the profession as a science, that there might be found one rule of evidence in Westminster Hall and another in the court of Quarter Sessions; and Hill less so, as had been stated in argument on the other side, one in one court of Quarter Sessions and another in another.

[a] H. 13 G. 3. 1773. Burr. Settl Cas. 73 f . and fee the King v. the Inhabitants of Bury, M. 25 G. 3. J784. ante 482. and the cases cited and referred to in the case of the King v, the Inhabitants of the Holy Trinity in Wareham. H. 22 G. 3. 1782. ante 141.

[b] Tr. 13 and 14 G. 2. 1740. Burr. Settl. Cas. 1.51.

[c] Tr. 22 and 23 G- 2. 1749. Burr. Settl. Cas. 292. 735.

That, if the argument, which had been used with respect to the nonproduction of the articles stated, were admitted, no inquiry could in cases of this description be necessary ; unless there existed some public repository, in which the thing fought after might he found: that this doctrine was wild and extravagant: that in the present case it was in proof, that there existed a written agreement to which resort might be had; and that consequently extreme laches was imputable, as it was neither shewn, that this instrument had been lost, or that any inquiry whatsoever had been made after it: that the cases cited of *the King v. East Knoyle* and *the King v. Saint Michael* *Bath* were not agreeable to [a] modern practice: that, subsequent to the case of *East Knoyle*, this objection was in that of Saint Helen's in Abingdon insisted upon at the bar; but that the court, as had been shewn on the other side, did not notice it; nor was it necessary to do so, as another objection was stated, upon which the court immediately gave judgment in favour of those who objected : that it would be dangerous, as parties, who found they had an interest in secreting instruments, would suppress them ; and it would also be another novelty in legal proceedings, under such circumstances to admit such evidence.

[a] See 3 Burn’s .Jus. edit. 1793. p. 436.

(9) Judgment

Willes J.

The first question is, whether the declarations of a husband to his wife are after his death admissible? They certainly are not so in general. In questions of custom and prescription, it is true they are, though not to prove particular facts. Yet it is insisted, that the usage of courts of Quarter Session allows such evidence to be received there; and the only case cited to this point, that of the *King v. Saint Michael Bath*, seems to confirm that proposition. But the case, which has been stated as analogous to the present, and another exception to the rule, does not apply. The declarations of a bankrupt are not admitted to prove the fact of his keeping house or absconding, to prove the act of bankruptcy; but, when this fact is proved, are received to show, quo animo he did such things. The orders might perhaps be supported on this ground ; but it is not necessary to give any express opinion on that head, as the case is so weak on the other point,

On the second question, whether, when a deed is shewn to exist, parole evidence can be given of the subject matter of it, though no inquiry has been made respecting it, I am of opinion, it cannot. The parties should have used due diligence to come at the articles, and have inquired of the widow or administrator to intitle themselves to do so. What is said by Aston J. in the case of Saint Michael in Bath, as reported in Mr. Bott’s appendix [a], seems in point.

Ashhurst J.

The gross neglect of the parties, to make the usual and obvious inquiries to intitle them to the advantage of the parole evidence in this case, makes it unnecessary for me, though I should have no difficulty in doing it, to pronounce here upon the admissibility of the husband’s declarations. So far from making it the best evidence, and using due diligence, they have done nothing,

Buller J.

The first part of this question appears to me to be perfectly clear, upon the grounds on which it has been put. The instance of a bankrupt’s declarations does not apply. He is considered as being criminal; and what he says, at the time he is proved to have committed the act, is evidence against him.

As to the second part of the question, there ought, and might, have been inquiries made in different places ; for there ought to have been two parts of the articles ; because each party is bound : but inquiry is made nowhere; not even whether the pauper had left any papers j and every inquiry ought to be made.

(10) Ruling

Rule absolute, and

Order of Sessions quashed.

Lord Mansfield was absent.

(11) Comment

The court finds that hearsay evidence from a wife of her dead husband’s declarations about his past service is not admissible in court, as it was not the best and only evidence available. The court also states that parole evidence of the subject matter of a deed is not admissible. This contrasts with the earlier cases of *Holy Trinity in Wareham* and *Nutley*.

(12) Type

Restrictive

(1) Case name

*R.* v. *Standon Massey*

(2) Date

11 February 1809

(3) Report

10 East 576

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Standon Massey

(6) Order sought

Quashing

(7) Facts

Alice Knight was removed by an order of Justices from High Ongar to Standon Massey, in Essex. The sessions, on appeal, confirmed the order, subject to the opinion of this Court, on the following case: Ongar Statute Fair is held yearly on the day after Old Michaelmas Day, except when Old Michaelmas Day falls upon a Saturday, and then upon the following Monday. At Ongar Fair 1806, held on a Monday, which was two days after Old Michaelmas Day in that year, the pauper was hired to serve W.C. of Standon Massey from the fair day to the Old Michaelmas Day following, at the yearly wage of 4l. 10s. She entered upon her service on the Thursday, and continued therein until the evening of the following Old Michaelmas Day, when she received her full wages. The sessions found that the service from the time of the hiring to the Thursday was dispensed with by the master.

(8) Argument

Bosanquet and Walford, in support of the order of sessions, contended that although the pauper was in fact hired for only 364 days, this was a good hiring for a year within the statute. They relied on *The King* v. *Newsted*, in which a hiring from Whitsunday to Whitsunday was held sufficient, although the period did not comprehend 365 days: and argued that if a hiring from a moveable feast in one year to the same moveable feast in the next year were good, a hiring from an annual fair to fair, as in this case was equally good. The period in the latter case could never be less than 364 days; but from Whitsunday to Whitsunday might be less than a year by several weeks.

Pooley and Knox contra were stopped by the Court.

(9) Judgment

Lord Ellenborough CJ. There is a clear distinction between this case and that relied upon. There the hiring was from a moveable feast to the same moveable feast in the following year: here it is from two days after Old Michaelmas Day to the Old Michaelmas Day following. The argument that this is a good hiring, because it is a hiring from fair day to fair day, is unsupported by the facts found by the sessions; the hiring was neither from Old Michaelmas Day to Old Michaelmas Day, nor from fair day to fair day. The cases upon this subject have gone far enough; and it is necessary to look back to the statute, which requires a hiring for a year. If we allow these constructive hirings to go on, we shall soon have it contended that a servant acquires a settlement who is hired by the keeper of a boarding-school from the breaking up at Christmas to the breaking up at Christmas, although less than a year should in fact be comprised in the period.

The other Judges concurring,

Order of sessions quashed.

(10) Ruling

A statute fair being held yearly on the day after Old Michaelmas, except when Old Michaelmas falls on a Saturday; and then the fair being held on the Monday ; Held that a hiring from such Monday till

Michaelmas-Day following is not a yearly hiring under which a settlement can be obtained.

(11) Comment

The Court reiterates the need for 365 days in the hiring and service.

(12) Type

Restrictive

(1) Case name

*R.* v. *Stockbridge*

(2) Date

29 November 1773

(3) Report

Burr. S.C. 759

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Stockbridge

(6) Order sought

Quashing

(7) Facts

Two Justices removed Aaron Alexander, Lucy his Wife, and their Son and Daughter, specifying their Names and Ages,) from Basingstoke in the County of Southampton to Stockbridge in the same County: And on Appeal to the Sessions, their Order was confirmed, with 40l. Costs, to be paid by the Churchwardens and Overseers of Stockbridge to those of Basingstoke.

The Order of Sessions facts the following Facts.—

That the Pauper was legally settled in Stockbridge.

That he deposed “that he was afterwards hired to one Michael Nicholas of the Parish of Wanston, to serve him as a Boot-Ketcher and occasionally as a Post-Chaise Driver”; no Term for which he was to serve, being mentioned. That he accordingly went into the Service of the said Michael Nicholas; and continued in it for one Year; and was, during that Time, found “ by his Master in Meat Drink and Lodging there; but received no Wages for such Service.”

Being cross-examined, he deposed that the only Conversation that passed between him and the said Michael Nicholas was as follows. The Pauper asked the said Michael Nicholas “Whether he wanted a Boot-Ketcher and Driver.” The said Michael Nicholas said, “ Yes.” The Pauper replied, “ that he was willing to serve him.” And thereupon, the said Michael Nicholas bid him go into the Yard, and look after the Horses. No Mention was made of Wages, or of Meat Drink or Lodging. That the

Pauper quitted the said Michael Nicholas; and was afterwards sent for by one John Watts, an Inn-keeper at Basingstoke. That he went to the said 'John Watts, and asked him if he wanted a “Driver.” To which, the said John Watts answered, “ Yes": And the Pauper said “ He should be glad to serve him.” Upon which, he was ordered by the said John Watts to take Care of his Horses, and not to drive them too hard. That no Mention was made of Meat Drink or Lodging. That the Pauper Served the said John Watts as a Postillion, for a Year, in the Parish of Basingstoke ; being found by him in Meat Drink and Lodging there; but received no Wages. That he the said Pauper understood, and believes that the said Michael Nicholas and John Watts both understood, that he was to have his Meat Drink and Lodging while he continued with them ; and that the Pauper thought he was at Liberty to leave either the said Michael Nicholas or John Watts, whenever be pleased.

That it was proved by several Witnesses, “that the customary Manner of engaging Postillions, is as above deposed by the said Pauper;” and “ that the Masters and Postillions think themselves at Liberty to part whenever they please”.

This Court [the Sessions] is of Opinion: that the said Pauper “did not gain a Settlement, either in the said Parish of Wanston, or Basingstoke'' and doth accordingly adjudge, that the said re- cited Order ought to be confirmed : And the same is hereby confirmed accordingly.

On Thursday 11th November 1773, it was moved to quash both these Orders ; upon a Suggestion that the Justices had determined wrong, in adjudging the Pauper to remain settled at Stockbridge, notwithstanding these subsequent Hirings and Services.

(8) Argument

Cause was now shewn by Mr. Dunning and Mr. Kerby, against quashing these Orders. They argued that the subsequent Hirings were not Hirings for a Year; nor were so understood, by either

the Masters or the Servant. It was neither permanent, nor obligatory. The Master contracted for nothing, not even for Meat, Drink or Lodging: Either Side were, and thought themselves, at full liberty to quit, at Pleasure. In the Case of *Gregory Stoke and* *Pitmister Parishes*, Mich. 130 G. 1. an Offer to the Girl, “ that she should have Meat Drink &c. if she would come and live with her Relation,” gained the Girl no Settlement; though she lived four Years as a Servant, in Acceptance of the Offer. So, in the Case of *Waybill* (ante, pa. 491. No. 157 ) six Year's Continuance gained the Child no Settlement; because there was no Contract for Continuance, Service, Wages, or Gratuity. This

present Case is not a general Hiring, (and consequently a Hiring for a Year,) like that of *Berwick St. Johns* (ante, pa. 502. No. 1 60.) “Go into Ned Hill’s Place.” Neither did the Justices look upon it to be a Hiring for a Year : For, if they had considered it as a Hiring for a Year, it would have been contradictory to that Idea, to have been of Opinion, “ that the Pauper did not gain a Settlement in either Wanston or Basingstoke!’

Mr. Mansfield and Mr Grose, who were for quashing the Orders, answered that, the Court must take it, that the Justices did believe what was deposed by the Pauper. And it appears, upon the whole of the Evidence, to be a good Hiring for a Year. A general Hiring is a Hiring for a Year. If it was a Contract at Will, it is Contract for a Year, till the Will is determined. Nothing is here stated, which limits the Hiring, or tends to shew that it was meant to be a Hiring for less than a Year : On the contrary, there is enough to ground a fair Presumption that it was meant to be Hiring for a Year.

(9) Judgment

Lord Mansfield was absent.

Mr. Justice Aston declared himself fully satisfied that the Justices were mistaken in their Opinion.

A general indefinite Hiring is a Hiring for a Year; unless something appears, that may raise a Presumption to the contrary. In Proof of which, he cited the Case of *Weyhill*, (ante, pa. 491. No. J57.) and that of *St. Peter’s in Dorchester*, (ante, pa. 513, No. 165.) the Case of *Wincaunton*, (ante, pa. 299. No. 107.) Now here is enough stated, to shew a general indefinite Hiring; Which is, by Law, a Hiring for a Year : And nothing is stated, to contradict it, or to raise a Presumption to the contrary. Therefore the Presumption must be “ that the Hiring was for a Year”

Mr. Justice Willes and Mr. Justice Ashhurst expressed themselves to the same Effect.

(10) Ruling

Orders quashed.

(11) Comment

In keeping with previous cases such as *R. v. Wincaunton,* where the contract doesn’t specify the duration, there is a legal presumption that a general indefinite hiring is a hiring for a year. There is no need for the contract to use particular wording or to be in a specified form.

(12) Type

Liberal

(1) Case name

*R*. v. *Stokesley*

(2) Date

11 June 1796

(3) Report

6 Term Reports 757

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Stokesley

(6) Order sought

Quashing

(7) Facts

Two justices by an order removed John Pickering, Isabel his wife, and their three children, from the township of Wylan in the parish of Ovingham in the county of Northumberland to the parish of Stokesley in the county of York. The sessions on appeal confirmed the order, subject to the opinion of this Court on the following case.

John Pickering the pauper was born at Little Whittington in the parish of Corbridge in the county of Northumberland, but not in wedlock, and was taken by his mother to Haigh in the parish of Stamfordham in the same county, and was kept there by her till she died; at which time he was about six years old ; after his mother’s death he went to live with her brother at Mordon in the parish of Sedgfield, in the county of Durham, as a relation and not under any hiring, being then about seven years of age; his said uncle farmed about 40 l. a year and set him to drive his plough the first or second day after he went to Mordon, and he continued working at the farm for the space of about eight years, but received no wages or any other reward during that time except meat and clothes; and he and his said uncle wrought all the work of the farm during the last three or four years of that period. The pauper having some words with his uncle shortly before May-Day went to Darlington hiring, and there hired himself to a Mr. John Lax of Aircy Holm in the North Riding of York, to be a servant in husbandry for one year, and he served the same at Aircy Holm aforesaid accordingly. Shortly before the expiration of his service at Aircy Holm her received a letter from his. uncle, requesting his return to Mordon; and saying that if he would come and live with him as before he (his uncle) could surely make it as good or better for him than a common service. During the year the pauper served Mr. Lax at Aircy Holm his uncle had no regular hired servant, but employed an elderly man as a labourer to lead his lime and manure, thrash his corn, and do such other work about his farm as he did not like to do himself; and which the pauper used regularly year after year as he grew in strength to do for him. Agreeably to his uncle's request he returned to him at Mordon as soon as he left his service at Aircy Holm, and lived with him there about three years; at the expiration of which he went with his uncle to Stokesley, and lived with him there about four years and a half, during all which time he performed the greatest part of the work of the farm, as his uncle at that time kept no other servant and was himself an elderly and infirm man. When the pauper returned from Aircy Holm to Mordon he made no agreement with his uncle either for what time or for what consideration he should serve him; but his uncle often promised him if he would stay with him for his life he would leave him his stock and crop and farm as his own, his uncle’s son having got a good place and being well provided for; and his uncle of course found him meat and clothes and used to give him a few shillings when he went to market or from home, but nothing more. The pauper left his uncle about the Martinmas time or a little after, and believed himself at liberty to leave him at any time ; immediately afterwards he married, and has not gained any settlement since. At the time the pauper and his uncle parted they had no reckoning and did not part friends.

(8) Argument

Chambre, in support of the order of sessions, admitted that if this were to be considered as a taking by the uncle of the boy out of charity no settlement was gained in Stokesley, according to the case of *Pitminster*, 2 Const, 326, and other cases there mentioned. But it was held in R. v. *Lyth*(a) that if there be a service in fact of such a nature as that usually performed by hired servants, that it is presumptive evidence whereupon to found a constructive hiring, unless the contrary appear. Now here the pauper went to live with his uncle the second time upon an express stipulation to serve him; for he said it shall be better for him than a common service. And the words to “come and live with him as before” relate merely to the nature of the service which he was required to perform, namely to manage the farm as a servant in husbandry. The situation too of the pauper at the time of his going to live with his uncle the second time rebuts the idea of his being taken out of charity ; for he was then in another service, in a state of independence; the application came to him from his uncle, and did not originate from himself. Therefore having performed all the offices of a servant for so long a time, though without wages, which has been held not to be necessary, the Court are warranted in raising the implication of a general hiring.

Law contra was stopped by the Court.

(9) Judgment

Lord Kenyon Ch.J. The argument that has been addressed to us might have had a good effect, if addressed to the Court of Quarter Sessions, but it cannot have any weight here, because the facts stated in the special case negative any hiring: indeed that argument applies as well to the first as to the second service, and the justices have expressly said that there was no hiring during the first service. They also state that before the pauper returned to his uncle the latter proposed to him “to come and live with him as before,” that is, in the same relation. This excludes the idea of any hiring for a year. I do not wish to break in upon those cases where it has been determined that a general hiring is a hiring for a year, or that a hiring under certain circumstances may be presumed; and if the justices in this case had found that there was a yearly hiring, it would have concluded the case. But here they have expressly found that the first service was not under any hiring, and that the second was “as before.” And we cannot contradict these facts, and introduce our own conjectures on the subject, in opposition to this finding.

Per Curiam.

Order of sessions quashed.

(10) Ruling

The pauper having lived with his uncle upon charity was afterwards hired as a yearly servant by another person, whom he served accordingly, at the expiration of which he returned to his uncle upon an invitation from him, that if he would come and live with him as before he would make it better for him than a common service, and lived with him several years in the parish of A. performing the work of a servant in husbandry: during the time he so lived with his uncle, the latter promised that if he continued with him for his life he would leave him his farm and stock, but he received no wages; held that he gained no settlement in A.

(11) Comment

The court declines to imply a contract for a yearly hiring from evidence of extended service.

(12) Type

Restrictive

(1) Case name

*R.* v. *Stowmarket*

(2) Date

27 January 1808

(3) Report

9 East 211

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Stowmarket

(6) Order sought

Quashing

(7) Facts

John Edward King, a pauper, and his wife were removed by an order of two justices from South Lopham in Norfolk to Stowmarket in Suffolk. The sessions, on appeal, confirmed the order, subject to the opinion of this Court on the following case: J. E. King, the pauper, being settled by birth in Stowmarket, was in the year 1801 a poor boy, at the age of fourteen, in the house of industry for the poor of the incorporated Hundred of Stow. In this hundred the directors and acting guardians

of the said house are empowered by the Act incorporating the hundred to apprentice poor children for seven years. It does not appear that they ever exercised this power: but instead of binding the children apprentices when of sufficient age, they were sent out of the house to their respective parishes; and the parish officers allotted them during three years to particular parishioners, either to retain them in their own, or to provide them with other services. Some time before Michaelmas 1801 the pauper J. E. King was sent by the directors and acting guardians of the house to Mr. Reynolds of Stowmarket, to whom he had been previously allotted by the officers of that parish. Mr. Reynolds, not having employment for the pauper, told him that he (Mr. Reynolds) had procured a service for him with Mr. J. Fox of Coddenham. The pauper made no objection to go, conceiving that he had no discretion on the subject. On the day after Michaelmas the pauper went to Mr. Fox, who received him, and told him that he would give [212] him clothes, and that he was to stay with him a year. Nothing further passed between the pauper and Mr. Reynolds, or Mr. Fox, respecting wages,

or the nature or duration of the service. The pauper continued in Mr. Fox’s service as a farming servant till the following Michaelmas ; receiving his clothes and maintenance, and now and then a little pocket money. On the 25th of September 1802 the pauper was sent for by Mr. Stutter of Stowmarket, to whom he had been allotted (in the same manner as he bad been in the former year to Mr. Reynolds) for the following year. On the ensuing Michaelmas Day the pauper went to Mr. Stutter, who gave him a holiday on that and the following day ; and having no occasion for his service, Mr. Stutter told the pauper that he had procured him a service with a relation, Mr. Frost, of Brent Eleigh. The pauper went to Mr. Frost, without making any application to the directors and acting guardians, or to the parish officers, and continued with Mr. Frost till Michaelmas 1803, in the same situation as he had done before with Mr. Fox. The pauper himself made no agreement with Mr. Fox, or with Mr. Frost, respecting wages, or the nature and duration of his service with them; nor was he consulted on the subject either by Mr. Reynolds, or by Mr. Stutter, to whom he had been previously allotted; but conceived himself obliged to accept the services, as being under the control and jurisdiction of the bouse of industry and of the parish officers of Stowmarket, where the directors and acting guardians had first sent him.

(8) Argument

Wilson and Hulton, in support of the orders, insisted that there was no contract of hiring at all, and of course the pauper could gain no settlement by his service with either of the masters to whom he was, in the language of the case, allotted. And the Court called on the counsel for the appellant parish to proceed.

Nolan and Frere, contra, contended that though the boy himself had made no contract with either of the masters whom he served, yet that by his service he must be taken to have acceded to the terms made on his behalf by the guardians of the poor, or those who stood in their place, and therefore to have adopted the contract of hiring made by them on his behalf. In the case of *The King* v. *Rickinghall Inferior* the relation of master and servant did not subsist at all, but the pauper was only placed out by the parish officers to lodge and board : but here be was expressly taken by the master to serve him as a servant; and the pauper assented to this by performing the service and receiving his clothing and maintenance. Then the pauper’s misapprehension of the effect of his contract has often been determined not to be material.

(9) Judgment

Lord Ellenborough C.J. All the parties seem to have acted under the idea that the boy was a parish slave, who might be handed over from one to another and disposed of as they pleased. But there was no agreement by him to either of the services in which he was engaged: he submitted to them because he thought himself obliged to do whatever they bid him. If we were to hold this sufficient to give a settlement, we should establish a new head of settlement by allotment. The law gave these directors of the house of industry a certain power to apprentice out poor children; and instead of executing that power in a proper manner as the Act directs, they assume to themselves a power to hand these children over to the officers of their respective parishes; who again hand them over to others; and so they are shifted from one to another. And now because the boy has done the work which he was made to do, and eat the meat and worn the clothes which were provided for him, it

is argued that he has adopted so many contracts of hiring to which he was no party, and which were made without any consideration of his will and consent. But the adoption of a contract must be the act of a free agent: and at what period of time is he found by the case to have consented or contracted at all ? On the contrary it is stated that when told by Reynolds that he had procured a service for him with Fox, the pauper made no objection to go, conceiving that he had no discretion on the subject. And again it is stated that the pauper made no agreement with Fox or Frost, respecting wages, or the nature and duration of his service with them : nor was he consulted on the subject by either of the persons to whom he had been allotted; but considered himself obliged to accept these services, as being under the control of others. Then can a person who is considered as a slave, and conceives himself to be such, be considered as having adopted the acts of bis masters'? It is against common sense so to construe his involuntary acquiescence. In the cases alluded to, where the pauper’s misapprehension of the contract of hiring has been held not to vary the legal effect of it, the pauper meant to exercise a contracting power, though he mistook the legal effect of the contract which he had made.

The other Judges assented ; and Le Blanc J. added that he hoped the consequence of this decision would put an end to the improper practice which the directors of the house of industry had adopted in sending the children out of the house to the respective parish officers to place out, instead of providing for them in the manner pointed out by the Act.

Orders confirmed.

(10) Ruling

A poor boy sent out of the house of industry at 14 years of age to the parish officers, and by them allotted to a parishioner, who handed him over to another person, by whom the boy was told that he was to stay with him a year, and should have clothes, &c.; to which the boy made no objection; conceiving himself obliged to accept the service; but made no agreement for wages or concerning the nature or duration of his service, nor was consulted upon the subject; does not gain a settlement by serving under this supposed obligation for a year; for neither did he consider himself, nor was he considered by the other parties, as a free agent; and such only can contract, or adopt a contract

made by others.

(11) Comment

No contract of service arises when a parish apprentice is put out to work with residents by the parish officers.

(12) Type

Restrictive

(1) Case name

*R.* v. *Sudbrooke*

(2) Date

23 November 1803

(3) Report

4 East 356

(4) Court

King’s Bench

(5) Parties

The King against The Inhabitants of Sudbrooke

(6) Order sought

Quashing

(7) Facts

An order of two justices removed George Peacock and his wife and daughter, by name, from the parish of St. Michael in the City of Lincoln to the parish of Sudbrooke in the county of Lincoln. The sessions on appeal confirmed the order, subject to the opinion of this Court on the following case.

George Peacock, the pauper, settled at Sudbrooke, about the beginning of May 1795 hired himself to Mr. Fitzhugh of Portland Place by the month, at monthly wages, under which hiring he served near three months, when his master saying he should want him for a continuance, they agreed for a year at twelve guineas wages. The pauper said, he considered the first contract at an end, though he never actually left the service. He lived with Mr. Fitzhugh under the yearly hiring till about the middle of April 1796, when being too ill of a fever to do his work, his master paid him his whole year’s wages, when he left his master’s service, and went down to the Lincoln Hospital, and never returned into the service of Mr. Fitzhugh.

When this case was called on, the Court asked whether it could be distinguished from the foregoing case, which had been just before decided?

(8) Argument

Torkington and Coke, against the order of sessions, said that the illness (a)1 of the servant was no cause of discharge from the service; and nothing appeared to shew that either party was desirous of dissolving the contract, as was evidenced in the last case. This therefore fell within the general class of cases, where the receipt of the whole wages by the servant, leaving the service in fact before the end of the year, without any adequate cause of discharge, or by mutual consent putting an end to the contract, has been holden to be evidence of a dispensation of the service by the master, and not of a dissolution of the contract. And they compared this to *Rex v. Christchurch* (a)2, where the servant seventeen days before the end of her year, being renderedincapable by illness of further service, was sent at the master’s desire to a Mr.Lemonier’s house, in another parish, that she might have the benefit of her sister’s care, who was a servant there, with directions to bring her back to the master’s ifMr. Lemonier refused to receive her. Mr. L. however took her in for five days, afterwhich she was sent to the hospital. The day after she quitted her master’s house shereturned there to fetch away her cloaths, when the master paid her the remainder ofthe whole year’s wages, and the pauper considered herself as then discharged, thoughno words of discharge passed : and this was holden to be only a dispensation of service;and the servant gained a settlement in the master’s parish. And they distinguishedthis from *Rex v. Whittlebury* (b)1; for there the pauper, who left his master’s house onaccount of illness, five days before the end of his year, sent to his master for the money,who deducted 1s. on that account, with which the servant declared he was satisfied ;and that was holden to be evidence of mutual consent to put an end to the contractbefore the end of the year.

[358] Holroyd and T. Carr, in support of the orders, shortly observed, in answer to *R. v. Christchurch*, that there the servant was placed with the third person by the master, and if that person had refused to take her in, she was to have returned to the master’s house. And they also referred to *Sheen v. Godalmi*n (a)3, and *R. v. Castlechurch* (b)2, to shew that the payment of the whole year’s wages makes no difference; if the servant leave the service before the end of the year, though without any express word of discharge by the master, no settlement is gained. And illness may be a cause for dissolving the contract by agreement, as well as any thing else.

(a)1 Le Blanc J. having noticed that it did not appear in the case that the servant continued ill during the remainder of the year; it was observed that the shortness of the period (about a fortnight) before the end of the year afforded a reasonable presumption that he did; and that fact was not disputed.

(a)2 Burr. S. C. 494. 2 Const, 507.

(b)1 6 Term Rep. 464.

(a)3 M. 10 G. 1, 2 Const, 497, and cited in Burr. S. C. 69, as of H. 12 G. 1.

(b)2 Burr. S. C. 68. 2 Const, 499.

(9) Judgment

Lord Ellenborough C.J. If there ever were a statute which required a strict construction, and where the very letter of it should have been abided by, it was this of the 8 & 9 W. 3, c. 30. For the poor can receive no greater benefit by one mode of construing it than by another; and yet it is a supposed interest of the poor in extending the facility of acquiring settlements which has introduced so much laxity in the construction of this and other statutes of the same sort; as if they must not have a settlement in some place or another. And therefore these statutes ought to have been construed according to the strict question of right between the two contending parishes, one or other of which is to bear the burden of maintaining the pauper. That mode of construction however has not been adopted ; and the doctrine of a dispensation of service has been introduced : but still that has only been allowed where both parties contemplated the [359] continuance of the relation of master and servant. But here the servant being ill and unable to do his work, voluntarily left his master’s service, as it is stated in the case, before the end of the year, when his master paid him his whole year’s wages : we must therefore take it to be not only a ceasing to abide, in the words of the Act, but a relinquishment of the service altogether. After that, neither party could maintain any action against the other for the affirmance of the contract, or continuance of the service. The servant who had left his master’s house and service, could not have maintained an action against the master for not taking him into his service again : nor could the master, who had assented to the other’s departure and paid him all his wages, have compelled him to return again. Then if neither had any remedy against the other upon the contract, nor any compulsory means of enforcing its execution it must be dissolved in point of law. In the case of *The King v. Christchurch*, at the time of the servant’s departure, both parties contemplated the continuance of the service if the servant recovered ; for she was sent to Mr. Lemonier’s at the master’s desire, and with a request from him to Mr. Lemonier to take her in ; and if he refused, she was to return to her master’s house. I do not overlook the circumstance pressed upon us, that there was an advance of the whole year’s wages before the end of the year; but the same circumstance occurred in *R. v. Godalmin*, and *R. v. Castlechurch*; and yet no settlements were there holden to have been gained by the servants who quitted their master’s service before the end of the year by mutual agreement.

Grose J. It may perhaps be difficult to reconcile all the cases upon this subject; but according to the construction of Lord Kenyon (a) on the Act of King William, the relation of master and servant must continue during the whole year; or in the words of the Act itself, there must be a continuing and abiding in the same service during the space of one whole year, otherwise no settlement can be gained. Now here it is expressly stated, that the servant left his master’s service and went down to Lincoln Hospital, having, previous to his going, received his whole year’s wages. Then how can we say that the contract continued, and that the servant abided in the service during the whole year.

Lawrence J. In the case of *The King v. Thistleton* (a) it was holden that if the master parted with his control over the servant before the end of the year, that made an end of the contract between them ; and in that case and *R. v. Castlechurch*, the payment of wages for the whole year was holden to make no difference. Here too the justices have stated that the servant left the service ; by which we are not merely to understand that he left his master’s house; for that could not be considered as a leaving of the service unless the contract were meant to be dissolved. In *The King v. Christchurch* it did not appear that the servant left the service when she quitted her master’s house : she was sent by her master to Mr. Lemonior’s, with his request to take her in ; and if Mr. Lemonier could not take her in, she was to return to the master’s house ; and Wilmot J. there considered, that “ the servant’s being at Mr. Lemonier’s or in the hospital, was just the same thing as her being kept in the master’s house under his own roof.”

[361] Le Blanc J. However we may lament that the words of the statute have been departed from, yet as an extended construction of it has been made in some of the cases, if this came within the words and precise determination of those authorities, we must have abided by them : but unless it be shewn to fall within some precise determination, the Court will not extend the departure still further from the words of the statute. I do not found my opinion upon the mere circumstance of the servant’s leaving his master’s house to go to the hospital; but I think that the parties came to a determination to put an end to the contract. The servant’s illness cannot enable the master to determine the contract; but if the servant chose on account of illness to go away, illness cannot prevent him from coming to an agreement with his master to put an end to the contract; and the question is whether they did not so agree here? It is stated that he received his whole year’s wages, and went away before the end of the year, and went to Lincoln Hospital, and never returned to his master again. Then are we not to conclude that this was done by mutual consent? the case of *The King v. Castlechurch* shews that the payment of the whole year’s wages makes no difference if the parties agree to put an end to the contract of service before the end of the year. So neither can it make any difference that the cause of this was illness; for though illness would not enable one of the parties alone to put an end to the contract, it might still induce them both to come to such an agreement: and here they did so.

Both orders confirmed.

(a) In *R. v. Thistleton*, 6 Term Rep. 185.

(10) Ruling

A yearly servant, about a fortnight before his year expires, being too ill to work, his master paid him his whole year’s wages, when he left the service, and went to an hospital, and never returned into his master’s service : Held a dissolution of the contract, and that no settlement was gained by such hiring and service.

(11) Comment

This case illustrates a number of restrictive trends in the court’s approach to settlements gained by hiring and service. Firstly, the court finds that absence due to illness before the end of the year prevents the gaining of a settlement. This continues the trend from *Whittlebury,* departing from the court’s view in the earlier cases of *Madington* and *Sharrington* that absence due to illness or injury did not dissolve the contract of hire or vitiate settlement. Secondly, this case illustrates the trend away from a liberal view of ‘service’ allowing constructive service based on the payment of the whole year’s wages (i.e. *Richmond, Bartholomew*, *St Andrew Holborn*) towards a strict view of ‘continuing and abiding in service’ as requiring actual service. Thus the court interprets the servan’ts act of accepting the wages and leaving as consent towards dissolving the contract rather than a dispensation of service (*Richmond, Bartholomew, St Andrew Holborn, St Mary Lambeth* are examples of the latter view). The ‘fault’ element from earlier cases, that absence at no fault of the servant’s did not vitiate settlement (the illness and injury cases of *Christchurch, Madington,* and *Sharrington* and the cases of the service ending being the master’s fault, i.e. *St Andrew Holborn, St Mary Lambeth*), also no longer plays a role in the reasoning.

(12) Type

Restrictive

(1) Case name

*R.* v. *Sulgrave*

(2) Date

16 May 1787

(3) Report

1 T.R. 778

(4) Court

King’s Bench

(5) Parties

The King against The Inhabitants of Sulgrave

(6) Order sought

Quashing

(7) Facts

On a rule to shew cause why an order of sessions should not be quashed, it appeared that the pauper had been removed from Chipping-Warden to Sulgrave, and that the justices at the sessions had confirmed the order, subject to the opinion of this Court on the following case.

The pauper, subsequent to his gaining a settlement at Sulgrave, was hired the latter end of November 1785, to Jonas Welch of Wormleighton till Michaelmas then next, at 61. 10s. wages. Two or three days before Michaelmas the master offered him the like sum for the year ensuing, which the pauper did not think sufficient. On Michaelmas Day the master offered him seven guineas, and they had agreed for wages all but the expense of washing. The servant had no intention of leaving his master, and he believed his master had no intention of parting with him. He continued in his master’s house, and did what was to be done as usual, but without any obligation ; lodged at his master’s house, and did not remove any of his clothes, or offer himself to any other master, nor did his master seek after another servant. He thought himself at liberty to have left his master if any better hiring had offered. He did not agree with his master on this day ; but the day next but one, being the second day after Michaelmas, the pauper agreed to accept the seven guineas as before offered him for the year ensuing.

He did not expect that his wages were to be due on the following Michaelmas, but at the expiration of the year from the day he agreed with his master to accept the seven guineas; and he continued in the service till the Whitsuntide following.

(8) Argument

Gally in support of the order of sessions, contended that the two services at Wormleighton could not be coupled because there was a chasm for a day. This question depends upon the construction of the S & 9 W. 3, c. 30, which, being an explanatory statute, cannot be extended beyond the words of it. Although it has been determined that a servant may gain a settlement by hiring and service under that statute if he continue in the same service during a year, though it be not performed under the same hiring, yet the Court has always been strict in requiring a continuation of the same service. And if there be an interruption between two services even for an instant, they cannot be joined for the purpose of giving the servant a settlement. In the case of *The King v. Fifehead* (a), where the pauper, after quitting his master’s service, returned on the same day and entered into a new contract, it was holden to be no discontinuance of the service, because there can be no fraction of a day. But in *Wishford v. Bretford*(b), where the servant returned to his master the day after he had left his service and made a new agreement, it was determined that the pauper did not gain a settlement, because there was an interruption between the two services. It appears, therefore, that the party must be in the capacity of an hired servant during the whole period of a year. Now it is stated in this case that on Michaelmas Day the pauper did not agree with his master, but the next day but one afterwards he did ; so that he was not in the capacity of an hired servant the day after Michaelmas Day. And though he continued to work for his master during that interval, yet the service of that time was not of such a nature as could be joined with the preceding and subsequent ones; for the pauper served that time without any obligation ; and hirings, which are not ejusdem generis, cannot be coupled (c). The agreement on the Michaelmas Day cannot be considered to be conditional in the first instance, so as to become absolute by a reference from the time when the contract was completed ; because it is expressly stated that they did not agree at that time. As to the pauper’s having no intention of leaving his master, it has been repeatedly determined that the apprehension of the pauper is perfectly immaterial (d).

(a) Burr. S. C. 116. Bott, 293.

(b) Bott, 270.

(c) Burr. S. C. 280.

(d) Caldec. 81.

Dayrell, contra, insisted that all the requisites of the statute were complied with, because there was a hiring for a year and a service for a year. It cannot be said that there was any discontinuance of the services, because the case states that the pauper did not depart from his master’s service : he not only continued in the service, but he had no intention of leaving it, neither had the master any intention of turning him away. The pauper did not cease to continue in his master’s service, because the contract was not completed till the second day after Michaelmas, since it is stated that he was in actual service and worked during that interval. And supposing no new contract at all had been made, the servant might have maintained an action against the master for his service on a quantum meruit. All those cases, where the services have not been coupled, have turned on a discontinuance of the service. In *The King v. Fifehead* there really was an absence, for the servant went away; and even there the Court held it was no discontinuance. And as to the case of *Wishford v. Bretford*, there was clearly a discontinuance, for the servant went away and actually left the master’s service.

(9) Judgment

Ashhurst, J. I think this was a good service in Wormleighton according to the authority of all the cases cited. All that the statutes require, is that there shall be a hiring for a year, and a continuance in the same service for a year. Now the case states that in November 1785 the pauper was hired to serve till the Michaelmas following; that two or three days before Michaelmas the master offered him the same wages for the next year ; that on Michaelmas Day he offered him seven guineas, and that on the second day after Michaelmas the pauper agreed to accept the seven guineas which had been before offered : it is further stated that the pauper had no intention of leaving his master ; and that he did all his master’s work as usual. And though he thought himself at liberty to leave his master’s service on the Michaelmas Day, and that, when he agreed with his master the second day after Michaelmas, he considered that the year was to be computed from that day, yet there was a good hiring and service for a year. If so, the only question is, whether there was any discontinuance? It appears from the case that there was not; for the servant continued in the same capacity ; he did his work as usual; and if he had continued to serve for half a year without entering into any new contract, he would have been entitled to a compensation for such service; the law would have implied that he continued under the former agreement, and would have measured his damages by his former wages. Then he must be taken to have been in the capacity of a hired servant during that time. This is like the case of *The King v. Croscombe* (a) there the pauper was hired to Doctor Lucy, who lived in St. Andrew’s for a year, and he continued with his master a quarter of a year longer without coming to any new agreement, when he removed with his master into the parish of St. Cuthbert, where he continued six months. There was a sufficient continuation in the same service so as to give the servant a settlement in St. Cuthbert. In that case the servant was as much at liberty to quit his master’s service after the first year, as the pauper in this case was on the Michaelmas Day, and it might as well have been said that in that case there was not a continuance of the same service : but there the pauper gained a settlement by his service in St. Cuthbert. The cases, which were cited, do not apply ; for one was determined on the ground of there being no fraction of a day; and in the other there was a total discontinuance of the service; and though the service was only discontinued for a day, it could not be coupled with the subsequent one so as to give the pauper a settlement.

Grose, J. I agree with the counsel, who argued against the rule, that two services cannot be joined if there be a chasm between them, or if they be not ejusdem generis: but in the present case there was no chasm, and the services were ejusdem generis. First, as to the supposed interruption : it is stated that the pauper was hired from November till the Michaelmas following, and that on the Michaelmas Day his master offered him seven guineas for the next year, which he did not agree to accept till the second day after Michaelmas : but I think that the moment he agreed to take the seven guineas he consented that the year should commence from the Michaelmas Day when the offer was first made. Then as to coupling the services : it was determined soon after the passing of the statute of 8 & 9 W. 3, c. 30, in the case of *The King v. The Inhabitants of South Moulton* (a)1, that a service for half a year under a hiring for a year might be joined with a service for another half year under a hiring for half a year, because they were ejusdem generis : so here the first hiring and service from November till the Michaelmas following may be coupled with the subsequent one, as they are both of the same nature.

Rule absolute.

(a) Burr. S. C. 256.

(a)1 1 Lord Raym. 436

(10) Ruling

If a servant be hired and serve from November to Michaelmas following, and before Michaelmas Day his master offer to hire him from Michaelmas for a year at certain wages, to which he does not agree, but remains in the house till the second day after Michaelmas, working as usual, and then accepts the offer and serves a part of the year; the service under the latter hiring commences on the Michaelmas Day, and may be coupled with the former service, so as to give a settlement.

(11) Comment

The court finds that working for a period without any contract, in between two contracts of hire for the same master, does not dissolve the contract. The court construes the whole of the servant’s work as one continuous service, emphasising factors such as the servant continuing in the same capacity, working as usual, and that any quantum meruit claim for that intervening period of service would have been calculated according to the servant’s wages under the first contract. These factors distinguish this case from previous cases such as *Ross*, where the servant leaves his master so there is no continuation of service. Thus the court in *Sulgrave* joins the periods of service done under the two contracts to confer settlement.

(12) Type

Liberal

(1) Case name

*R.* v. *Sulgrave*

(2) Date

19 April 1788

(3) Report

2 T.R.377

(4) Court

King’s Bench

(5) Parties

The King against The Inhabitants of Sulgrave

(6) Order sought

Quashing

(7) Facts

The pauper, Daniel Plester, being settled in Sulgrave, about five years ago was hired in February by Mr. Howes of Stouchbury to serve till Old Michaelmas following, and served [377] him accordingly. On the Friday before Old Michaelmas, his master asked him if he would stay again ; the pauper said he would, if they could agree about wages; and asked five guineas, which the master thought too much. The pauper immediately set out to go to a statute, and having gone about ten yards, returned for some things he had forgotten. He then met his master again, who said he would give him the five guineas, and gave him one shilling as earnest. The master, while he was putting his hand in his pocket for the shilling, said, You shall go away a fortnight at Michaelmas, because of your settlement; and I will give you that fortnight to get what you can ; to which the pauper then agreed. The pauper accordingly went to his father’s, and staid a fortnight; during which time he worked for Mr. Chester in digging sand on Mr. Howes’s land, and received from Mr. Chester one shilling a day; and once or twice during the fortnight he eat at Mr. Howes’s. At the end of the fortnight he went to Mr. Howes’s, and continued to serve him at Stouchbury till Lady-Day, when Mr. Howes removed, and the pauper with him, to Culworth. Mr. Howes soon after died, and the pauper continued to serve Mrs. Howes, in Culworth, till the time when he left her; and he then received his wages up to that time from a relation of Mrs. Howes; and the pauper believes that there was nothing deducted for the fortnight; but he does not remember what sum he received. The pauper apprehended that his master would not have hired him, if he had not agreed to go away for the fortnight. This piece of evidence was objected to by the counsel for the appellants; but the Court put the question.

The Court of Quarter Sessions for Buckinghamshire, being of opinion that the pauper gained no settlement by his service with Mr. Howes, confirmed the order of justices, by which the pauper was removed from Westbury to Sulgrave in the county of Northampton.

(8) Argument

Dayrell and Lowndes, in support of the order of sessions, contended that these two hirings and services could not be coupled together, so as to give the pauper a settlement in Stouchbury, because there was a chasm between those services for a fortnight. It is true indeed that some words of the agreement for the last year seem to imply that the fortnight was to be considered as part of the time for which the servant was hired : but as the whole conversation passed at the same time, the different parts [378] of it must be taken as forming one contract; so that before the master gave the shilling as earnest, which is the period when the contract was completed, it was stipulated by both parties that the pauper should not come into his master’s service till after the expiration of a fortnight. This agreement should have been more explicitly stated by the sessions : but it may be sufficiently collected from the evidence which they have returned, that these conversations between the master and the servant only formed different parts of the same contract: and though the case has artfully divided them, the Court cannot but see that it was an entire agreement. This was not an absolute, but a conditional, hiring; it being expressly provided that the pauper should not enter into the master’s service for a fortnight: it therefore was an exception out of the original contract, and thus defeats the settlement. This cannot be contended to be a dispensation with the fortnight’s service on the part of the master, on the ground that the contract was before completed which was obligatory on both parties, and therefore that it was not in the power of the master to except that time out of the original hiring ; because, if the whole of this conversation be taken together, the latter part must be considered as an explanation of the former, and the agreement was not completed, or binding on either party, till the whole of it had passed. For it is to be observed, that this was not an express hiring for a year, but only a general hiring, which the law construes into an hiring for a year, if nothing to the contrary appear: but as it only arises by presumption, it may be explained. In *The King v. St Peters in Dorchester* (a)1, Lord Mansfield said, “An indefinite hiring is only a hiringfor a year, where the nature of the service and subsequent facts concur to render itprobable that it was so meant.” But here it appears to have been the intention of the parties that this should not be such an hiring, and that the pauper should not gain a settlement by the service. It was competent to the parties to enter into such an agreement, even though it were expressly stated as a reason, that the pauper should not gain a settlement by the service. This was so determined in *The King v. The Inhabitants of Mursley* (b)1. But farther, there is nothing inconsistent in saying, thatafter a hiring for a year, there may be an exception of part of it, which will defeatthe settlement; as in The *King v. The Inhabitants of Bishop's Hatfield* (a)2, wherethe pauper was hired for a year, with liberty to let himself for the harvest month toany other person. Then if, where the parties have expressly contracted for a wholeyear, they are afterwards at liberty to control it by excepting a part of it, surely insuch a case as the present, where there is no precise hiring for a year, but where it isonly to be presumed to be of such a nature, it may be explained by the parties at thetime of entering into the contract. The cases of *The King against The Inhabitants of Buckland Denham* (b)2, and *The King against The Inhabitants of Empingham* (c), werecited to shew that this agreement must be considered as making an exception in theoriginal contract. It cannot be contended on the other side that this is a fraudulentcontract, for fraud is not stated by the sessions; so that this Court cannot go uponthe ground of fraud (d). And indeed a contrary inference is to be drawn, for thesessions have stated that the pauper gained no settlement under the terms of thishiring, which was in effect considering it not as fraudulent. If the contract had beensuch that the master would have had the benefit of the service, and the exception outof the service had been used merely as a colour to prevent the servant’s gaining asettlement, that might have afforded a reason for the sessions to adjudge the contractfraudulent. But in the present case, as the master was not only bound by the termsof the agreement to lose part of the pauper’s service, but as he did in fact lose it,there is no room even for the imputation of fraud.

Erskine and Wilson, contra, were stopped by the Court.

(a)1 Burr. S. C. 513.

(a)2 Burr. S. C. 439.

(c) Ibid. S. C. 791.

(b)1 Ante, 1 vol. 694.

(b)2 Burr. S. C. 694.

(d) Stra. 85. Burr. S. C. 166, 770.

(9) Judgment

Ashhurst, J. The rule established in these kind of cases is this: where there is a bona fide exception of part of the time at the time of the hiring, that is not an hiring for a year: but if there be no exception at the time of making the original contract, then a permissive absence is considered as a dispensation of part of the service by the master; and it does not operate in the same way as an exception out of the original contract, which defeats the settlement. And the question whether it be one or the other, must depend on the particular circumstances of each case. In this case there was a complete hiring for a year at the time. The parties having disagreed on the terms proposed, the pauper went away : but on his return his master said he would give him [380] the five guineas, which he agreed to accept, and gave him one shilling earnest. It is likewise stated, that while the master was putting his hand into his pocket, he told the pauper he should go away for a fortnight. But the contract was complete before that time; and what passed afterwards can only be considered as a dispensation with the service. For at that time the master had a complete right to his service for a year, and the pauper had agreed to serve him for that time, and the one shilling earnest was to bind the agreement for a year for the five guineas; otherwise it appears to be giving the servant more than he originally asked for the whole year, for serving him for a shorter period. If then the contract were complete before anything was said relative to the fortnight’s absence, this was a dispensation with the service, and not an exception out of the original contract. An exception is a stipulation on the part of the person for whose benefit it is introduced ; but here it was not made on the request of the servant, but on the offer of the master. And it appears that he said it was for the express purpose of preventing the pauper’s gaining a settlement. That is not such a reason as the Court would give much countenance to. Whether indeed the sessions might not have determined this on the ground of fraud, was for their consideration. As it is, there is no occasion to go into that ground, as we are of opinion that this was a dispensation with the service. With respect to the servant's apprehension, which is stated in the case, that cannot vary the question : we are to decide on the terms of the contract, and not on the apprehension of the pauper.

Buller, J. and Grose, J. of the same opinion.

Rule absolute.

(10) Ruling

If a master and servant before Michaelmas agree for yearly wages, and the master, while he is taking money from his pocket to give earnest, tell him that he shall be absent a fortnight at Michaelmas because of his settlement, and that he will give him that time to get what he can, to which the servant assents, this is a mere dispensation with service for that time, and not such an exception out of the original contract as will make the hiring insufficient for the purpose of gaining a settlement. The servant's apprehending that the master would not have hired him, if he had not agreed to the fortnight’s absence, will not alter the case.

(11) Comment

The court finds that where a master rehires a servant but asks him to be absent for a fortnight in the interim, that is a dispensation with service and the two periods of service can be coupled to confer a settlement. An important factor is that the contract for the rehiring was concluded before the master asked the servant to take a fortnight’s absence, and that the servant was bound by the earnest payment to come back. The court also reiterates the distinction from *Bishop’s Hatfield* about absences taken pursuant to an exception in the contract, which defeat settlement, and permissive absences, which do not.

(12) Type

Liberal

(1) Case name

*R.* v *Sutton*

(2) Date

28 June 1794

(3) Report

5 T.R. 657

(4) Court

King’s Bench

(5) Parties

The King against The Inhabitants of Sutton

(6) Order sought

Quashing

(7) Facts

H. Boardman, the pauper, resided with his father as part of his family upon part of a tenement of about 30l. per annum, in Bold in the county of Lancaster, and was hired for a year to Mr. Beckett of Sutton in the county of Chester, which he served in Sutton, and then returned to his father in Bold at Christmas. At Candlemas following he attained the age of 21, and having remained with his father from the time of his leaving Beckett’s service, he continued with him as part of his family, being employed in husbandry without any agreement as to service until Christmas afterwards, his father allowing him what he thought fit. He was then hired for a year by Mr. Kerfoot in Great Sankey to serve in husbandry at the wages of 7l. 10s., and 5s. more in case his master approved of his service; he continued in that service until he was unfortunately, by the visitation of God, deprived of his reason about the month of October or beginning of November next following, at which time his father became acquainted with his situation, and very soon afterwards fetched him away, taking him home to Bold, and in two or three weeks afterwards came and received the wages of 7l. 10s., but not the 5s.; and the father afterwards kept him at home as part of his family for about ten years in Bold, where the father lately died, the son during all that time, as well as since, continuing in the same unfortunate situation. The Court of Quarter Sessions on an appeal, being of opinion that the pauper was settled in Sutton, confirmed an order of two justices, by which he was removed from Bold to Sutton, and they stated the above case for the opinion of this Court.

(8) Argument

Law and Scarlett, in support of the order, argued that the pauper did not gain a settlement in Great Sankey, by his service with Kerfoot. In order to acquire a settlement by hiring and service, the statute 8 & 9 W. 3, c. 30, requires that the servant “shall continue and abide in the same service during the space of one whole year.” And though in the construction on that Act, it has been held that actual service during the whole time is not necessary, but that there may be a virtual service, this does not come within any of those cases, which may be ranged [658] in three classes. 1st, where the service has been obstructed or attempted to be so by the wrongful act of the master; 2dly, where the master has dispensed with part of the service; or, 3dly, where the service has been abridged by some temporary incapacity of the servant to discharge it. The first of these is totally out of the question here. Nor does this case come within the second class; because dispensation is an act of the will, and pre-supposes the power of compelling the performance of that which is dispensed with : whereas here the master could not have enforced the remainder of the service, the servant being physically incapacitated to perform it. Neither is this within the third class of cases ; for in those the service was only suspended for a time. In *R. v. Christchurch* (a)1 the absence was only for seventeen days; and there the master would have received the servant again into his service if she had recovered. In *R. v. Islip*(b), the servant was only ill for six days, and he continued in the master’s house during the time of the illness. And in *R. v. Sharrington* (c) the absence of the servant for the purpose of having his leg cured, which had been broken, was held to be a reasonable cause of absence in the servant, though the master did not consent to it: it is to be observed, however, of that case, that it was not argued. But this is distinguishable from all the former cases in this respect, that the servant not only resided out of the master’s house for the two last months of the year, and after the wages had been paid, but he was taken out of his master’s service before the expiration of the year by his father who was then bound by the Statute of Elizabeth to maintain him. The servant cannot then be considered as having been virtually in the service of his master for the remainder of the year, since the relation of master and servant did not exist after the father had received the wages. With respect to the wages too, it is to be remarked that they were not all paid ; the sum of 5s. was deducted : and even if the whole year’s wages had been paid, the servant was entitled to maintenance from the master during the remainder of the year, for which the latter made no satisfaction. Therefore whether this case be considered on the words of the Statute of Will. 3, or on the authority of the decided cases, the pauper gained no settlement in Great Sankey ; by determining that he did not, the Court will [659] not overrule any of the authorities; whereas a contrary decision will carry the doctrine of constructive service, which perhaps it was impolitic to introduce at first, and which has already been too much extended, farther than any case has yet carried it.

(a)1 Burr. S. C. 494.

(b) 1 Str. 423.

(c) Const’s edit, of Bott, vol. 2, 525.

Leycester and Lawes, who were to have argued on the other side, were stopped by the Court.

(9) Judgment

Lord Kenyon, Ch.J.—The cases that have already been decided on this subject, have settled the principle on which our judgment must proceed in this case. As this is a removal from Bold to Sutton, all that we are called upon to decide in this case is, whether or not the pauper be now settled in Sutton? and whether the settlement which he gained in that place has or has not been superseded by a subsequent settlement? for any question that may hereafter arise between the parishes of Bold and Great Sankey, will not affect the case now before the Court. It is stated in the case that the pauper was hired for a year in Great Sankey ; that he continued in that service as long as he was capable of performing it; but that in the course of the year he was deprived of his reason, and consequently rendered incapable of discharging his duty to his master. But in the consideration of questions of this kind it is immaterial whether the servant’s incapacity to perform his service proceed from an infirmity of body or of mind. Where indeed the servant commits a crime, the master may apply to a justice to have him discharged ; but if no such application be made, the relation of master and servant subsists. In this case there being no fault in the servant, nor any application to a magistrate to discharge him, (for which indeed there was no cause (a)2,) I am clearly of opinion that the relation of master and servant continued during the whole year, and consequently that the pauper acquired a settlement by that service. If he had recovered his reason before the expiration of the year, the master might have been compelled to receive him again into his house. It was said by Lord Mansfield in *R. v. Christchurch*, that the absence of the servant on account of sickness will not prevent his gaining a settlement, and that it is immaterial whether or not such absence happen in the middle or at the end of the year. With regard to the case of *R. v. Sharrington*, though it was not argued, it appears, that the Court exercised their judgment upon it, and I subscribe to the doctrine of it. These observations are sufficient to dispose of this case : [660] but there is another question behind, and as probably the magistrates below will be called upon to make another order, I will beg to say a few words upon it for the sake of their information. That question is, whether, supposing the pauper gained a settlement by reason of his service with Kerfoot, he is settled in Great Sankey, the parish where the master lived and where the service was in contemplation of law performed, or in Bold where the father lived and received his son for the last 40 days of the year? And upon this question I have as little doubt as on the other point; being of opinion that the settlement is in Great Sankey, where the service was in law performed, though the servant did not in point of fact reside there the last 40 days in the year. In general the servant is settled in the parish where he serves the last 40 days; but I consider the residence with the father under these circumstances as a residence in an hospital. We should thwart our own feelings, and act contrary to humanity and principles of public policy, if we were to determine that the father in this case brought a burden on his parish by receiving his son into his house from motives of tenderness and affection. And it must be remembered, that this is not a case sui generis; there are others that stand in pari ratione. In general a bastard is settled in the parish where he is born ; but if he be born in a gaol (a), or house of correction (b), his settlement is in his mother’s parish. And I think that the case of *R. v. Sharrington* goes some way to warrant my opinion in this case. For I cannot consider the pauper’s residence with his father as a performance of service with his master; he was there diverso intuitu, in order to recover from his illness, and not for the purpose of serving his master. I am therefore clearly of opinion, that the pauper’s former settlement has been superseded by the subsequent one which he gained in Great Sankey.

(a)2 Vide *R. v. The Inhabitants of Hulcott*, 583.

Ashhurst, J.—It is enough for the decision of this case that the pauper is not settled in Sutton.

Grose, J.—The principal question is, whether or not the pauper’s unfortunate indisposition dissolved the relation of master and servant. What was said by Lord Mansfield in the case alluded to, and in several others, is certainly true, that the illness of the servant, whether it happen at the beginning, in the middle, or at the end of the year, does not operate as a dissolution of the contract between master and servant. The master is bound to take care of his servant during illness, if the latter insist upon it. Then if the servant’s illness does not put an end to the contract, it subsists until the end of the year; and here in fact it did subsist, the master so considered it, and paid the whole year’s wages; though the sum of 5s. was not given, that was not to form part of the wages, but was to have been given as a bounty if the master approved of the servant’s conduct. If the service under the contract with Kerfoot were performed, it was not performed in Sutton ; and that is sufficient to warrant us to decide that the pauper is not settled in Sutton. It is not absolutely necessary to say where the pauper is settled, whether in Bold or in Great Sankey, but for the reasons given by my Lord it may be proper to give our opinion upon that point also ; and I perfectly agree that the settlement is in Great Sankey where the master lived. The case of *R. v. Sharrington* is strong in support of this doctrine. If we can find any case that warrants such an opinion we ought to adopt it. Though even without the authority of that case, I think we ought not to consider the residence with the father under these circumstances as a performance of the service, so as to give a settlement in the father’s parish. The consequences of such a determination would be highly inconvenient; for then a father would be afraid of receiving a sick son, who was out in service, into his own house, lest he should thereby bring a burden upon his parish.

Lawrence, J. declared himself of the same opinion.

Both orders quashed.

Leycester then referred to what was said by Lord Mansfield in *R. v. Alton*, 2 Const, 466, as confirmatory of the opinion now delivered on the second point; “Suppose a person in service has an accident upon the road by breaking a leg, and he stays 40 days in a place, shall that be a settlement?”

(а) 2 Bulstr. 358.

(b) 1 Sess. Cas. 94. See also *R. v. St. Peter & St. Paul*, Cald. 213, per Buller, J.

(10) Ruling

A yearly servant, being deprived of his reason 40 days before the end of the year, was taken home by his father who lived in another parish, and who received the wages for the whole year; held that the servant was settled in the master’s parish though be continued in his father’s house during the remainder of the year. [6 T. R. 464.]

(11) Comment

The court finds that absence due to illness does not defeat a settlement, which is consistent with the earlier cases of *Madington* and *Sharrington*. The court takes into consideration the public policy of encouraging family to take care of incapacitated relatives, without fear of bringing a burden on their parish. The absence of fault on part of the servant was also a factor in the court’s reasoning, again consistently with previous cases such as *Bartholomew*.

(12) Type

Liberal

(1) Case name

*R.* v. *Sutton*

(2) Date

20 June 1801

(3) Report

1 East 654

(4) Court

(5) Parties

(6) Order sought

(7) Facts

Two justices by an order removed Thomas Dunsford, together with his wife and three children, by name, from the parish of Mitcham to the parish of Sutton, both in the county of Surry. On appeal a case was reserved, stating, that the pauper, having gained a settlement in Cheam, hired himself by the week to Mr. Hatch of Sutton. Nothing was said about Sunday in the contract; but the pauper worked on that day occasionally when asked by his master without receiving any additional wages; though he sometimes received some victuals. lie received his wages every Saturday night or Sunday morning; and resided in his master’s house during no part of the time, but boarded himself. That at the expiration of nine months, on his master’s family servant going away, the pauper was hired in his place for a year, at 12l. per annum, and served eleven months under that hiring. The sessions, being of opinion that the pauper gained a settlement in Sutton under such hiring and service, confirmed the order.

(8) Argument

Nowlan and Cowley, in support of the order of sessions, contended that this case came within the principle of *Rex* v. *Bagworth* (*a*)1, where it was determined that service under a hiring for a year would connect itself with preceding services under any number of hirings from week to week. The only question then is, whether the pauper continued under the control of the master the whole time, Sundays included?

If so, no doubt a settlement was gained, according to what was expressed by Foster J. in *R.* v. *Wrington* (*b*)1; and at least it was evidence sufficient to warrant the finding of the sessions, as was said by Lord Kenyon in *R.* v. *St. Mary Lambeth* (*c*)1. A hiring by the week must prima facie be taken to include Sunday, if nothing be said to the contrary; and this presumption is much aided by the fact found, that the pauper did occasionally work on the Sundays for his master whenever he was asked, for which he received no additional wages; though sometimes he had victuals, which was evidently only by way of gratuity. Where the contract was general, though the servant claimed and exercised the privilege of having Sundays and even holidays to himself, it was holden to be no exception in the contract, and he gained a settlement under it. *Rex* v. St. Agnes (*d*)1. The case of *R.* v. *Birmingham* (*e*)1 went on the same ground. No difference is here stated in the nature of the services under the respective hirings, only that the pauper during the time that he served by the week did not lodge in the master’s house : but that is not material. In the last-mentioned case, the pauper sometimes lodged with his master, and sometimes not: and when he did, he paid for his board. Such also was the case in *R.* v. *Whitechapel* (*f*)1, and *St. Peters in Oxford* v. *Chipping Wycomb* (*a*)2. In *R.* v. *Seaton and Beer* (*b*)2, service under a hiring at weekly wages the same as the other man, (who had filled the same employ,) and the vails of the stables, was joined to a service under a yearly hiring, so as to confer a settlement. So an alteration in the wages or the service in the middle of the year will not prevent the gaining a settlement under a yearly hiring. *R.* v. *Alton* (*c*)2; and *R.* v. *Grendon Underwood* (*d*)1. In *R.* v. *Great Chilton* (*e*)2 it was not denied that the services, though differing in the same degree as in the present case, might be joined; but a majority of the Court held, that the first contract being dissolved, and the pauper being married when he made the second contract, therefore the services could not be joined. The only case which seems to bear the other way is *R.* v. *Wrington* (*f*)2 : but there the pauper, though stated generally to be hired by the week, always received her wages on the Saturday, and her master then told her to come to work again on the week following. She was afterwards hired for a year ; but the Court would not connect the services, because the pauper under the former hiring was not under the control of her master at nights or on Sundays. But here the contrary is found by the facts stated, and the conclusion drawn by the sessions. Something also turned there on the nature of the service, which was in a manufactory : but this was a general servant in husbandry. Besides, when that case was decided, the distinction between exceptions in the contract and dispensations of service were not so well settled as at present: and at any rate that determination was prior to the case of *R.* v. *Bagworth*, where the conclusion was different.

(*a*)1 Cald. 179.

(*b*)1 Burr. S. C. 282 (and vide *R.* v. *Macclesfield*, ib. 460).

(*c*)1 8 Term Rep. 239.

(d)1 Burr. S. C. 671.

(*e*)1 Doug. 333, and Cald. 77.

(*f*)1 8 Mod. 369. Foley, 146. 2 Const, 457.

(*a*)2 1 Stra 528.

(*b*)2 E. 24 Geo. 3, 2 Const, 352.

(*c*)2 E. 24 Geo. 3, lb. 382.

(*d*)2 Cald. 359.

(*e*)2 5 Term Rep. 672-

(*f*)2 Burr. S. C. 280.

Marryat and Lawes contra. The services to be joined must be ejusdem generis, and the servant must continue the whole year under the control of the master. Now here, 1st, the services were of a different nature; the one as a weekly labourer boarding and lodging out of the master’s family ; the other as a menial servant under a yearly hiring. But, 2dly, from the very nature of the first contract the Sunday's must have been excluded. The contract of a weekly labourer out of doors is always understood to be for the working days only of the week. The very circumstance of his master’s asking him occasionally to work on the Sundays shews that by the general contract he was not bound to do so; and accordingly he generally received some gratuity for it. The case of *R.* v. *Wrington*(*a*) is in point; and that is not contradicted by *R.* v. *Bagworth*; for there the pauper was a menial servant in the house all the time, which was mainly relied on by the Court in giving their judgment: but here it is otherwise.

(9) Judgment

Lord Kenyon C.J. It has now been too long settled to be recalled, that if there be a hiring for a year and a service for a year, though but a small part of the service were performed under the yearly hiring, a settlement will be gained. But an attempt has been made to introduce a new head of settlement law, of which I have no knowledge, under a notion that only services ejusdem generis, as it has been said, can be joined. That term got into fashion some time ago. At that period Mr. Justice Foster thought that settlements were too easily acquired by the construction which the Court was inclined to put on the statute: but since then the leaning has been in favour of them ; and it has been supposed that a person ought to gain a settlement in that parish where he has laboured for a certain time, as a reward for his labour: a strange idea, if examined ; because somewhere or other he must at any rate be maintained if he be in want of it. I know not how to state this as a question upon which any doubt can be made. The pauper was hired by the week: nothing was said about Sunday ; it is very seldom that there is: why then is that day to be excluded ? If a servant be hired for a year, nobody doubts but that Sundays are included. Then why not included in a weekly hiring, if no exception be made? The sessions have found that there was a hiring by the week, which must mean the whole week. There is nothing stated to shew it was otherwise intended. The pauper was paid sometimes on the Saturday, sometimes on the Sunday ; and whenever the master ordered him to do any work on the Sunday, he did it: what is to be concluded from thence, but that it was his duty to do so. How do these facts shew that he was not under the master’s control on the Sundays as well as other days of the week? In *R.* v. *Wrington*, it appeared from the circumstances that Sundays were excluded. But it is said, that the services cannot be joined, because they were not ejusdem generis. I really know not what that means, nor where the line is to be drawn. Suppose a postillion were made coachman; would those be deemed services ejusdem generis? It is said, that he was first an outdoor servant and then a family servant: but I do not know what difference that made in his services. Upon the whole, I cannot do better than adopt what the justices below have done : they have determined that there was a continuing service for a year and a hiring for a year, and that he gained a settlement; and I think they are warranted by the authorities in that conclusion.

Grose J.

First it is objected, that the servant was not under the control of his master the whole year. Secondly, that the services were not ejusdem generis, and therefore cannot be joined. As to the first, it is said that Sundays were not included in the weekly hiring. But why not? The hiring was by the week, and nothing was said about Sunday; and he did whatever his master bid him do on that day. What are we to collect from thence, but that the parties considered that Sunday was included ; and the justices have by their order found that it was. Then 2dly, as to the Services not being ejusdem generis; under both contracts the pauper was a servant in husbandry, only boarding in the one case out of the master’s house, and in the other boarding in it. Then what is this, but the same sort of service throughout.

Lawrence J. assented.

Le Blanc J.

I cannot see upon the facts stated, that the service under the one hiring was of a different nature from that under the other.

Order confirmed.

(*a*) Burr. S. C. 280.

(10) Ruling

A service under a hiring by the week (the servant boarding and lodging himself), nothing being said about Sunday, but the servant working on that day occasionally when asked by his master, without additional wages, though he sometimes received victuals, may be joined with service under a yearly hiring as a menial servant; so as to confer a settlement by hiring and service for a year.

(11) Comment

In a late case, the court nonetheless takes a flexible view, finding a settlement where the contract was initially for a weekly hiring and later a yearly one. Note the discussion of the control and exception concepts.

(12) Type

Liberal

(1) Case name

*R.* v. *Sutton-upon-Trent*

(2) Date

1727

Michaelmas, First of George the Second.

(3) Report

Session Cases 163

(4) Court

Court of King’s Bench

(5) Parties

The King against the Inhabitants of Sutton-upon-Trent

(6) Order sought

The order was specially stated for the judgment of the Court.

(7) Facts

J. S. being an unmarried person, and having no child or children served A. B. from March 1725, to March 1726, and in September intermediate he married, and served out his year;

(8) Argument

the question was, if this was a good service to intitle him to a settlement?

(9) Judgment

The Court held it was good, and to be unmarried at the time of the hiring is the only thing necessary, in order to get a settlement by the service, and that the service is not dissolved by the marriage. Another exception was taken ; it is said in the order he was last legally settled; but this was not allowed,

(10) Ruling

and the order of removal was quashed.

(11) Comment

The court holds that a year’s service coupled with an annual hiring confers a settlement as long as the servant was unmarried at the start of the service; it does not matter that they were married during the period of the service; the marriage does not dissolve the contract of service.

(12) Type

Liberal

(1) Case name

*R.* v. *Taunton St. James*

(2) Date

1829

(3) Report

9 B. & C. 831

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Taunton St. James

(6) Order sought

Quashing

(7) Facts

Upon appeal against an order of two justices, whereby W. G. Palmer, his wife and children, were removed from the parish of Taunton Saint James in the county of Somerset, to the parish of Melverton in the same county, the sessions quashed the order, subject to the opinion of this Court on the following case :— The pauper, aged about thirty-eight years, lived in the parish of Langford Budville the said county, till he was about seven years of age, when he was bound apprentice by the parish officers to Mr. John Locke of that parish, yeoman, and served him in that parish till he the pauper was twenty-one years old. The pauper afterwards, at Lady-Day 1811 hired himself as servant in husbandry for a year from that time to Mr. Thomas Handford of Milverton; and after serving him there three months, having at Christmas preceding volunteered into the local Militia, he went out into actual service for three weeks, and then returned to Mr. Handford’s service till Lady-Day 1812, and then received his wages, after deducting for the three weeks he was absent in the Militia. The pauper’s agreement with Mr. Handford was for a year’s service, at the wages of 11l. and his board and lodging, &c. The pauper did not tell Mr. Handford, when he first bargained with him, that he was in the Militia; but told him a week or two afterwards; and he Mr. Handford said that did not signify, for the pauper could at the end of the year deduct for the time he was absent.

(8) Argument

Rogers and Bere in support of the order of sessions. In *Rex* v. *Holsworthy* (6 B. & C. 283), it was held that a militia-man who hired himself for a year, and performed a year’s service under that contract, might gain a settlement by such hiring and service; provided he at the time of hiring communicated his disability to the master, and provided the Militia was not called out during the year. Mr. Justice Holroyd there puts the case on the ground that the pauper, at the time of the hiring, was not capable of making an absolute contract, so as to give the master a control over him during the whole year; and that, not having communicated to the master his disability, he had not made a conditional contract. Here the pauper, when he first hired himself, did not communicate to his master his disability ; he therefore entered into an absolute contract, which he was incapable of doing. That case, therefore, is precisely in point. It is true, that the pauper, within a week or two after he had hired himself, communicated his disability to his master. Assuming that to be a conditional contract, it was not for a year. *Rex* v. *Ruthall* (1 East, 471), is in point.

Erie and Follett contra. At the time when the contract in this case was made, the statute 48 G. 3, c. Ill, was the local Militia Act in force. The fifteenth section of that statute contains a proviso, “That no ballot, enrolment, and service under that Act, shall extend to make void, or in any manner to affect, any indenture of apprenticeship or contract of service between any master or servant, notwithstanding any covenant or agreement in any such indenture or contract; and no service under that Act of any apprentice or servant shall be deemed, or construed and taken to be an absence from service, or a breach of any covenant or agreement, as to any service or absence from service, in any indenture of apprenticeship or contract of service.’ [Littledale J. Does not that section apply to contracts existing at the time of the enrolment, and not prospectively to contracts made afterwards?] The words, taken in their ordinary sense, apply to all contracts whatever, and ought not to be confined by construction to contracts existing only at the time of the ballot or enrolment.

[Littledale J. Suppose the words “or in any manner to affect” had been omitted, and the words had been merely “to make void any indenture of apprenticeship or contract of service,” would they not then be confined to contracts existing at the time of the ballot or enrolment, and not to contracts subsequently made?] The other words, “in any manner to affect” cannot be rejected. The pauper in this case was a volunteer. By section 24, however, “All persons voluntarily enrolling themselves, are to serve in the same manner and under the same regulations, and be subject to the same provisions, as if they had been balloted for under that Act.” The 48 G. 3, c. Ill, was amended by the 49 6. 3, c. 40, and c. 82, and the 50 G. 3, c. 25, but there were no alterations introduced into those statutes so as to affect this question. All the former Acts were repealed on the 20th of April 1812, by the 52 G. 3, c. 68. The sixty-third section of that Act contains the same provision as to service. [Bayley J. There the words, by reference to the sixtieth section, evidently apply to contracts existing at the time of the ballot or enrolment, and not to contracts subsequently made. That is a legislative exposition of their meaning ; for the same words, applied to the same subject-matter in statutes in pari materia, ought to receive the same construction.] The words of the 48 G. 3, c. III, must be construed according to

their plain and ordinary sense, as they occur in that statute, and not by reference to the sense in which they are used in another statute made many years afterwards.

(9) Judgment

Bayley J. This case depends entirely on the construction of the fifteenth section of the 48 G. 3. c. 111. The statute of the 3 W. 3, c. 11, requires, that in order to gain a settlement by hiring and service, the party shall be lawfully hired for a year. It has been established by several decisions, that a party at the time of the hiring must be, sui juris, so as to be competent to give that species of service which e

contracts to give. Upon this principle it has been held, that neither a deserter ((a) *Rex* v. *Norton*, 9 East 207) from the King’s service, nor an invalided soldier ((b) *Rex* v. *Beaulieu*, 3 M. & S. 229) having leave of absence, nor a militia-man, can lawfully hire themselves for a year so as to gain a settlement. In *Rex* v. *Holsworthy* (6 B. & C. 283), a person who had been enrolled as a substitute in the Militia hired himself for a year, and performed a year’s service under that contract: and it was held, that as it did not appear that the pauper at the time of hiring, informed the master that he was a militia-man, no settlement was gained by a year’s service under such contract. Now that decision applies to the present case, unless it be distinguishable from it by reason of the enactment contained in the

48 6. 3, c. Ill, s. 15. That clause provides, “That no ballot, enrolment, and service under that Act, shall extend to make void, or in any manner to affect any indenture of apprenticeship, or contract of service between any master or servant, notwithstanding any covenant or agreement in any such indenture or contract, and no service under that Act of any apprentice or servant shall be deemed or construed or taken to be an absence from service, or a breach of any covenant or agreement as to any service, or absence from service, in any indenture of apprenticeship or contract of service, any thing contained in any Act or Acts of Parliament, or law or laws, or deed or indenture of apprenticeship, or contract of service, to the contrary notwithstanding.” These words will undoubtedly apply to all indentures of apprenticeship, or contracts of service existing at the time of the ballot or enrolment, as well as to those made afterwards. The question is, whether they include all contracts whatever, or those only which were in existence at the time of the ballot or enrolment. Now, in order to ascertain the sense in which they are used in this Act of Parliament, we may fairly

look to other Acts of Parliament relating to the same subject-matter; and if we find these very words used in a restrained sense in those Acts, we ought to construe them in the same sense in this Act, for it is a fair rule of construction, that the same words in a statute in pari materia respecting the same subject, should receive the same meaning. No such words are to be found in the 42 G. 3, c. 90, but they are found in the 52 6. 3, c. 68, s. 63; and if, as used in that statute, they apply to contracts existing at the time of the ballot or enrolment, that is a legislative exposition of them, and they ought to receive the same construction in the 48 G. 3, c. III, s. 15. Now, those words in the 52 G. 3, c. 68, s. 63, manifestly apply to contracts existing at the time of the ballot or enrolment, and not to contracts subsequently made. The sixtieth section enacts, that the enrolment of servants shall not vacate or

rescind contracts between master and servant unless the local Militia shall be called out, or unless the person enrolled shall leave the service for the purpose of being trained. That section applies to contracts existing at the time of the enrolment, for such contracts only could be vacated or rescinded by the enrolment. Section 63 is a transcript of the fifteenth section of the 48 G. 3, c. 111. It begins “provided always,” and then proceeds in the same words. Now a proviso is something engrafted on

a preceding enactment, and the proviso in the sixty-third section manifestly applies to the enactment in the sixtieth section, that the enrolment shall not rescind contracts made between master and servant. But that enactment applied to contracts existing at the time of the ballot or enrolment. The words of the proviso, therefore, apply to the same species of contracts. Then that being the fair meaning of the words used m the 52 G. 3, C. 68, they ought to receive the same construction in the 48 G. 3, c. 111, and giving them that construction, there is nothing in that statute

enabling such a person to make an absolute contract for a year so as to gain a settlement. The clause ends with a proviso as to service; that may make the service good, but my opinion is not founded on the description of service, but upon the want of capacity to contract. I think that the pauper was, at the time of the hiring, under a disability to contract to perform the service which he undertook to

P therefore, that no settlement was gained in the parish of Milverton.

Littledale J. It is a general principle of law, that if a man enters into a contract, he ought either to be in a situation to perform it, or to inform the person, with whom he contracts, of his disability. This is a duty founded upon moral principle, and is due from one member of society to another. If the words in an Act of Parliament be capable of two meanings, and one construction will have the effect of enforcing the performance of this moral obligation and the other will not, that construction should be adopted which will have the effect of enforcing it. Now, it is contended, that the words in the 48 G. 3, c. III, s. 15, “no ballot, enrolment, and service under this Act shall extend to make void, or in any manner to affect any indenture of apprenticeship or contract of service between any master or servant, notwithstanding any covenant or agreement in any such indenture or contract,” &c. extend not only to contracts existing at the time of the enrolment, but to contracts subsequently made. I think the words “make void,” ex vi termini, apply to contracts in esse. But supposing that to be doubtful, then calling in aid the principle that a man is bound to disclose any thing which may disable him from performing his contract, I will, in order to give effect to that principle, give the words a limited construction, and hold that they extend only to contracts existing at the time of the ballot or

enrolment. Putting that construction on those words, a party, in order to gain a settlement by a contract of hiring made after ballot or enrolment, must disclose his disability to the person with whom be contracts. This would be the construction I should put upon those words if the 48 G. 3, c. III, had stood by itself. But the local Militia Act, 52 G. 3, c. 38, s. 63, contains an enactment in the same words, and by the sixtieth section of that statute those words are confined to contracts

between masters and servants existing at the time of the ballot or enrolment. Now, where in two statutes in pari materia the same words occur, and in one of them the meaning is clear and in the other doubtful, I think we ought to call in aid the meaning put upon those words by the Legislature in the statute where they are not ambiguous, and give them the same meaning in the other statute. We violate no rule of construction, by giving to the same words in two Acts of Parliament relating to the same matter the same meaning. I think, therefore, that if there be any ambiguity in the words of the fifteenth section of the 48 G. 3, c. Ill, it is removed by the legislative exposition put upon the same words in the 52 G. 3, c. 68. I think, therefore, there was no lawful hiring for a year.

Parke J. The question is, whether at Lady-Day 1811 there was a lawful hiring for a year. Assuming that the subsequent conversation between the master and servant amounted to a second hiring, it was not for a year, but for a less period. To constitute a lawful hiring, the party must have a power to contract to serve for the period during which he agrees to serve. *Rex* v. *Holsworthy* (6 B. & C. 283), shews that if a party is under a disability, he may, by disclosing it to the person with whom he con-

tracts, make a conditional hiring. But if he does not disclose it, it is an absolute contract which he is not capable of entering into, and therefore not a lawful hiring. Here there was no disclosure. Then the only question is, is there any enactment in the 48 G. 3, c. Ill, giving a local militia-man a power to make an absolute contract of hiring? It cannot be intended that the Legislature meant to give such a power, for they might thereby enable a party by law to commit a fraud : the master would contract on the supposition that the party with whom be contracts had power to bind himself to serve for a year; the latter knowing all the time that he bad not. But on the other hand, it might properly be provided that a contract made bona fide while the party was a free man, capable of contracting, should not be avoided by reason of his subsequently becoming a militia-man. The statute does not in terms enact that an enrolled person shall be sui juris. The words of the fifteenth section of that

statute apply to contracts actually entered into at the time of the ballot or enrolment. No such power, therefore, is given by express words, or by necessary implication. Coupling the fifteenth section with the twenty-fourth, it appears to me doubtful whether a volunteer and a balloted man are thereby placed precisely in the same situation. But assuming that they are, all that the Legislature says is, that if a master contracts with a freeman the master must [840] take his chance in case of a ballot, and shall not contract against the chance of ballot; for such contract is made void. But there is no provision that a party shall have the same capacity to contract as if be was not a local militia-man. No power therefore is given to enter into an absolute contract to hire himself for a year. Here the pauper entered into an absolute contract when he had no power to do so. There was no lawful hiring for a year, and no settlement was gained.

Order of sessions confirmed

(10) Ruling

A local militia-man hired himself at Lady-Day 1811, to serve for a year, without communicating the fact of his being in the Militia to the person with whom he so contracted. By the local Militia Act then in force, the 48 G. 3, c. III, s. 15, it is provided, that no ballot, enrolment, and service under that Act shall make void or in any manner affect any indenture of apprenticeship or contract of service between any master or servant, notwithstanding any covenant or agreement in such indenture or contract; and no service under that Act, of any apprentice or servant, shall be deemed to be an absence from service: Held, that that section of the statute applied only to contracts existing at the time of the ballot or enrolment, and not to contracts subsequently made; and, therefore, that the pauper, at the time when he hired himself, was not capable of making an absolute contract to serve for a year, and, consequently, that he was not lawfully hired for a year, and gained no settlement.

(11) Comment

The Court finds that no settlement is acquired when the servant conceals his enrolment in the militia at the time of the hiring.

(12) Type

Restrictive

(1) Case name

*R.* v. *Thames Ditton*

(2) Date

27 April 1785

(3) Report

Cald 516

(4) Court

King’s Bench

(5) Parties

Rex v. Inhabitants of Thames Ditton

(6) Order sought

Quashing

(7) Facts

Two justices by an order remove Charlotte Howe from the parish of Thames Ditton in the county of Surry to the parish of St. Luke's Chelsea in the county of Middlesex. The Sessions on appeal adjudge the settlement to be in Thames Ditton, quash the order and state the following case:

That the said Charlotte Howe was bought in America by Captain Howe, as a negro slave, and by him brought to England in 1781: that in November 1781 the said Captain Howe went to live in the parish of Thames Ditton and took with him the said Charlotte Howe ; and she continued with him there in his service till the 7th. day of June 1783, when Mr. Howe died; soon after which the said Charlotte Howe was baptized at Thames Ditton by the name of Charlotte Howe: that the said Charlotte Howe continued after the death of Captain Howe to live with Mrs. Howe, his widow and executrix, who afterwards removed into the parish of St. Luke Chelsea, and the said Charlotte Howe continued to live with her there, as before, for five or six months, when she left Mrs. Howe: that the said Charlotte Howe was during all this time childless and unmarried; and was removed to the said parish of St. Luke Chelsea, as having served the last forty days in that parish.

(8) Argument

Palmer, in support of the order of Sessions, insisted; that the ground, on which the settlement was claimed here, being a service at St. Luke’s, it was enough for him to observe, that no hiring was stated: that the case did not find a hiring of any kind: that it not only did not shew an express and actual hiring ; it did not even disclose a single circumstance, from whence a hiring could be inferred: that indeed there cannot be any implication [*a*] by law of a hiring; although from facts, which do in themselves amount to a general hiring, the court will under circumstances infer such hiring (however indefinite in point of time) to be for a year: that there exists no authority, in which the court have implied a hiring upon the naked fact of a service, without something to build upon, and unaccompanied with some other fact referable to a contract: but that it was manifest from the nature of the relation that subsisted between the parties in this cafe, that there never was any contract: at all. Let it be shewn then, in what this hiring consists?

The court now calling upon the other side, Lee, Mingay and Bond G. in support of the rule to quash the order of sessions, contended ; that in an equitable view of those statutes, which had ever received a most liberal construction in favour of settlements, the claim of the pauper was by the circumstances of this cafe brought within the principle, upon which those laws had been framed : that, according to that principle, minute periods of service would not give a settlement, or throw the burthen of a pauper’s maintenance upon any parish; but where, for a long term, for more than a year, a party is in a condition to perform and bound also to perform service in the parish in which his master lives, he seems to be directly an object of those acts; and, if he performs such service, justly intitled to the benefits they hold out: that there was no law in this country, which, in the case of a contract for service, denied the obligation of such contract: though made to continue in force till the marriage of the party, during the continuance of his health, or throughout his life: that in the present case the slave had clearly this idea of the nature of his obligation, as she never thought of quitting the service of the family, till her master's death: that, to deprive her of her settlement, the court must hold, that she might have gone away at any time; but that it never had been determined, that a slave, brought into this country, might at pleasure leave his master: that the case of [*b*] the negro slave, did not go so far.

[*a*] But now see the case of the K. v. the Inhabitants of Long Whatton, M. 34 G. 3. 1793. 5 Durnf & East 447.

[*b*] Ex parte Somerset, E. 12 G. 3. 1772.

(9) Judgment

Lord Mansfield.

In the case of *Somerset* the court reasoned by analogy to the law of villenage [*a*]; and I have frequently had before me actions for wages brought by slaves, but I have ever denied that they were intitled to recover. They are intitled to maintenance.

They then contended, that it was sufficient for their purpose, if support might be taken as equivalent for wages; and that when the party, who was brought here under compulsion by the person under whom he had performed his contract of service for more than a year, had no longer any such person to look to for support, and was unable to support himself, he was intitled to subsistence from the country; and, like any other servant, might claim it in that parish, which he had benefited by his labour: and *Bond* further contended, that, though there was no proof of the nature of the contract of slavery, it had been defined by [*b*] Grotius, to be a perpetual obligation to serve in consideration of a similar obligation to find support ; and that this was a species of contract known to the laws of this land and recognized in many [*c*] of its statutes: that the law of England also admitted the principle, that a retainer for life may exist [*d*] and then, if a state of slavery existed only by the laws of other countries, it was by no means repugnant to the principles of our own, to support as much of this contract as was consistent with our own laws: that it had accordingly been holden, that the contract itself exists, wherever the party goes, here as well as in other countries: that the abuse indeed ceases here, and the party is under the protection of the laws, but that whatever respects personal service remains: that it is so laid down in [*a*] *Blackstone*, and in the case of [*b*] *Somerset*, the negro: that such a negro is intitled to take gifts or legacies to his own use, has been determined [*c*] in Chancery; and that he cannot be demanded as a chattel, but that the remedy by his master, if he is

taken away, must be by trespass *per* *quod servitium amisit*, not trespass for the taking, [*d*] has also been adjudged : that the privileges and punishment of a black servant brought into this country and every native of it in that station of life were therefore the same: that the pauper for the above reasons must, in the language of [*e*] this statute, have been lawfully hired, and consequently intitled to a settlement; unless a contract for service during life entered into by a negro abroad, a contract and relation acknowledged and inforced by the English law, is to this intent and for this beneficial end, alone denied to subsist: that, if he was a servant at all or in any view, the question was then simply, whether he was retained agreeable to the terms of the act; nor could it be necessary, that he should have been the immediate object of the legislature; whose attention would only be directed to the relation of master and servant, and could not be supposed to descend to the colour of the party or the nature of the service or contract: that, though this case speaks of a buying or purchase by the master, it was yet, with a view to the present question, the same thing in substance as a hiring; and was in fact a hiring for a service of a much longer duration than the act required : that, where there was some interest remaining, some reversion in the original owner or person hired, it was a hiring; where there was not and the whole was transferred to the master, it was a purchase: that it could not be supposed to be the object of the legislature to exclude those, who could not hope to be released from their obligation so long as they were capable of rendering useful service, while they intitled such as were bound comparatively for a short season: that, as to the contract being made by a third person and not the negro himself, its legality in that respect must be referred to the decision of the laws of those countries in which the contract was formed; but that there were various cases in which the laws of England allow one person [*a*] as well as several [*b*] descriptions of persons to contract that others shall serve, and that for no inconsiderable portion of their lives. That, in another view, though by the statute [*c*] of tenures villeins regardant had been virtually abolished, villeins in gross were considered as yet existing : that if the pauper could be taken as falling under the latter denomination, there could be no reason to suppose, that he was not made an object of the poor laws: that the system of the poor laws was matured in the reign of Q. Eliz. and if such a class of persons did or could then exist, there could hardly be imagined more fit objects of those provisions: but if the construction could be admitted, that this species of servants were alone meant to be excluded, no negro could be relieved in any other character than that of a casual pauper ; and in that he would not be so well provided, if he could obtain an adequate support.

Lord Mansfield.

This case does not admit of argument. The poor laws are a system of positive laws, created by many statutes. They began in the reign of Q. Eliz. The law of villenage was not then abolished, and villenage in gross may perhaps exist at this day ; but, by lapse of time and change of manners in the people, it is now altogether in disuse as it was almost at that time. But this statute is not adapted to the case of villenage: there is not a word throughout it applicable to that state: the legislature had nothing like it in contemplation. To become intitled under this positive law, a person must bring himself under the description given by that law. His colour, or his being born a slave, or his having become such, will not affect the question; but the statute requires a hiring, and there is none here. There is nothing in it.

Willes, Ashhurst, and Buller, Justices, concurring,

Rule discharged, and

Both Orders affirmed.

[*a*] They recognised the doctrine of Talbot, Attorney General; that a man, by confessing himself such in open court, might still become a villein in gross.

[*b*] De iure belli & pacis, 1. 3. c. 14. f. 2.

[*c*] 1 E. 6 c. 3. where throughout very slight misconduct is in express terms made to subject the party to this degrading condition ; and 5 G. 2. c. 7. s. 4. for the sale of negroes in the plantations to satisfy debts, &c.

[*d*] Yearb. 2 H. 4. fo. 14. pl. 12.

[*a*] Comm. 1. 425. 127.

[*b*] E. 12 G. 3. 1772.

[c] Shandley v. Harvey, Mar. 1762, cor. Ld. Northington Ch.

[*d*] Chamberlain v. Harvey, H. 8 W. 3.

[*e*] 3 W. & M. c. 11. s. 7.

(10) Ruling

A negro slave, brought into this country and continuing to live with her master and afterwards with his widow several years, gains no settlement by hiring and service.

(11) Comment

The court declines to infer a contract of service in a case where a slave brought to England from America served her master and his widow for a period of years. Mansfield’s judgment does not rule out the possibility of a settlement, but the ruling is that in this particular case, there was no hiring.

(12) Type

Restrictive

(1) Case name

*R*. v *Thistleton*

(2) Date

7 February 1795

(3) Report

6 T.R. 185

(4) Court

King’s Bench

(5) Parties

The King against The Inhabitants of Thistleton

(6) Order sought

Quashing

(7) Facts

W. Newton, and his wife and daughter, were removed by an order of two justices from Knawston to Thistleton; on appeal to the sessions the order was confirmed, and a case stated for the opinion of this Court. W. Newton, being settled at Thistleton, was hired to Mr. Raworth of Knawston from Martinmas, 1792, to Martinmas, 1793 ; he entered upon the service, and before the termination of the year he went to Billesden Statutes; which are before Michaelmas, and hired himself to Mr. Humphreys of Billesden, to enter into his service from Harborough Fair (19 October,) if Mr. Raworth would let him come then, and if Mr. Raworth refused, then he was to come at the expiration of his year with Raworth. The next day after the statutes the pauper asked his master whether he could let him go; his master told him he could not spare him, he must get a new servant first. Sometime after he hired a new servant, and then the master said “ I have got a new servant, you may go now, I have not work for you both.” The pauper then went into the house with his master to receive his wages, and Mrs. Raworth said to her husband “Do not deduct any thing from his wages;” Mr. Raworth replied “I do not intend it.” The master then paid him his whole wages, and the pauper went away. This was about a fortnight before Martinmas; and the pauper entered into his new service with Humphreys in three days.

(8) Argument

[186] Gally, in support of the order of sessions, after stating the question to be, whether this was a dissolution of the contract between the master and the servant, or only a dispensation with the pauper’s service, argued in support of the former proposition. Though the distinction between these two classes of cases is very nice, perhaps this line may safely be drawn, that where the application to leave the service proceeds wholly from the servant for his own accommodation, and is acquiesced under by the master, that discharges the servant from the contract altogether : but if the master give leave of absence of his own free will, without any solicitation from the servant, that may be considered as a dispensation with the service. With this distinction, a decision that the contract was dissolved in this case will be reconciled with the determination in *R. v. St. Bartholomew by the Exchange* (a)2 that an absence of seven days at the end of the year did not prevent the servant gaining a settlement; for there the servant had no wish or intention to leave the service : she was desirous of continuing to the end of the year; but the master for his own accommodation proposed that the pauper and the rest of his servants should leave his house in London, as he was going to reside at Manchester. So in *R. v. Richmond* (b), where the pauper gained a settlement though he was absent the last 13 days of the year, the proposal to leave the service proceeded from the servant. The present case is distinguishable from that of *R. v. East Shefford* (c), where an absence of 13 weeks did not defeat the settlement, for there the absence was in the middle of the year ; and in such cases as those the absence must be followed by some act of service, which is a recognition of the subsistence of the contract during the whole time : whereas here nothing was done by either party, after the pauper left the service, to shew either that the servant considered himself as the servant of the master, or that the master recognized him as his servant during the remainder of the year. In order to gain a settlement by hiring and service, the servant must be either in the actual or constructive service of his master during a whole year. This pauper was certainly not in actual service for the last fortnight; nor can he be considered as having been in the constructive service ; for in that case the master would have had it in his power to recall him into his service at any time before the last day of the year: but after the payment of wages the master had [187] lost all control over the servant, he having expressly agreed that the latter might go into the service of another master. The pauper himself was anxious to put an end to the contract, and to go into Humphrey’s service before, but that was objected to by the master : but when the master afterwards hired another servant, he told the pauper he might go, with a view to his going into another service ; and that second service was not only incompatible with the first, but the pauper could not have entered upon it unless the first master had consented to dissolve the contract with him.

(a)2 Cald. 48.

(b) Burr. S. C. 740.

(c) Ante,.4 vol. 804.

Perceval contra. There is no foundation for the distinction now attempted for the first time to be taken between those cases where the proposal to leave the service comes from the master, and those where from the servant; for in some of the cases where the proposal has proceeded from the master, it has been held that the contract was dissolved ; and in others, where it has proceeded from the servant, as in *R. v. Potter Higham* (a), it has been decided only to be a dispensation with the service. It is perfectly immaterial from which party the proposal comes ; it depends altogether on the nature of that proposal, and on the circumstance of its being acceded to by the other party ; and if it be merely a proposal to be excused performing the ordinary duty of the servant under the master’s roof, and to receive the whole year’s wages, it amounts only to an agreement to dispense with the actual service of the pauper: and such appears to be the present case. In *R. v. Richmond* absence for the last 13 days did not defeat the settlement, even though another servant was hired in the place of the pauper before the expiration of the year; which evidently shewed that the master did not intend to recall the pauper into actual service. And in *R. v. Bartholomew by the Exchange*, where the service for the last seven days was dispensed with, it was objected that the pauper by entering into a second service during the last seven days of the year might have been gaining two settlements at the same time by hiring and service, if the former were held sufficient to confer a settlement: but that objection was over ruled ; and it is clear that in both those cases the masters had parted with all control over their respective servants when the wages were paid.

(a) Burr. S. C. 690.

(9) Judgment

Lord Kenyon Ch.J. The distinction between the different cases upon this subject seems to be this; if the pauper [188] be absent from the service with the concurrence, remaining, however, subject to the control, of the master, he may acquire a settlement, because this only amounts to a dispensation with his service : but if the master has once parted with his control over the servant, there no settlement is gained ; and the receiving of the whole year’s wages does not make any difference. In this case the master had given up all control over the servant; he himself was instrumental in enabling the servant to make another contract with another master; and from what past between these parties, it was evidently the intention of both that the pauper should become sui juris, and should be enabled to contract with another master. The cases in which it has been determined that a settlement was gained notwithstanding the servant was not in actual service during the whole year, proceeded on artificial reasoning, on a supposition that the relation of master and servant continued throughout the year. But that idea is inconsistent with what was done in this case; for if that relation had subsisted here, the master might have insisted on the pauper’s returning into his service after the wages were paid : but he agreed not to insist on that when he parted with the servant. It is miscalling this a dispensation with the service; for upon the agreement to part, the pauper’s liability to serve the first master ceased.

Ashhurst J. The contract between the pauper and the first master was absolutely put an end to when the wages were paid. The pauper hired himself to the second master provided his first master would give him leave : the servant accordingly asked the consent of his first master, who refused at first, but afterwards when he had hired another servant he did give his consent, and then it was agreed that the contract should be dissolved ; for the pauper could not have two masters at the same time.

Grose J. I doubted at first whether we should not break in upon some former decisions, if we were to hold that the pauper did not gain a settlement in Knawston : but, on further consideration I do not think it will have that effect. It is difficult to reconcile many of the cases upon this subject with the Act of Parliament: but when cases have been decided, it is our duty to adhere to them. It is clear that the Legislature intended that there should be a whole year’s service in order to confer a settlement; and though the Court has departed from that strict line in deciding that a constructive service is sufficient, we ought not to extend that doctrine, of the original propriety of which we entertain doubts, farther than those cases require. And in this case the pauper, when he applied to his first master to permit him to go into another service, had it in his contemplation to destroy the contract with the first master. And if we were to say that the service for the latter part of the year was service performed under the first master, we should determine that he was serving two masters at the same time, which would be contrary to the statute, and absurd.

Order of sessions confirmed.

(10) Ruling

A yearly servant three weeks before the end of his year hired himself to a second master, provided his first would let him go : the master refused at first, but a week after he said, “I have got a new servant; you may go now, I have not work for you both,” and paid him his whole year’s wages; held that this was a dissolution of the contract with the first master, and prevented the pauper’s gaining a settlement under it. [S T. R. 206. Post, 464. 4 East, 351.]

(11) Comment

The court finds that where a servant leaves his master to work for another, that dissolves his contract with the first master. The key test for whether an absence amounts to constructive service (and thus only a dispensation with service rather than a dissolution of the control) is whether the servant remains subject to the master’s control while absent; if not, it does not matter that the servant was paid the whole year’s wages.

(12) Type

Restrictive

(1) Case name

*R.* v. *Tipton*

(2) Date

1829

(3) Report

9 B. & C. 888

(4) Court

King’s Bench

(5) Parties

The King versus the Inhabitants of Tipton

(6) Order sought

Quashing

(7) Facts

Upon appeal against an order of two justices, whereby James Smith, his wife, and children were removed from the parish of Birmingham, in the county of Warwick, to the parish of Tipton, in the county of Stafford; the sessions confirmed the order subject to the opinion of this Court on the following case :— James Smith, the pauper, gained a settlement by hiring and service in the parish of Tipton, in the year 1820. About two years afterwards, he entered into the following agreement in writing with John Tompson, of King’s Morton, in the county of Worcester. “An agreement made the 4th day of October 1822, between J. Tompson, of King’s Morton, in the county of Worcester, plumber, glazier, and painter, of the one part, and James Smith, aged about twenty-eight years, one of the sons of Jacob Smith, of the parish of Solihull, in the county of Warwick, of the other part. The said James Smith and Jacob Smith do severally promise and agree that the said James Smith shall and will serve the said J. Tompson as an articled servant for the term of four years, to commence from the 4th of October 1822, to learn his art or trade of plumber, glazier, and painter, at the wages of 6s. a week for the first year, and 7s. a week for the second year, 8s. for the third year, and 9s. a week for

the fourth year; and it is agreed that the said James Smith shall be considered as an out apprentice, and the said James Smith and Jacob Smith shall and will find and provide for the said James Smith sufficient meat, drink, washing, lodging, and clothing, and all other necessaries during the said term ; and the said James Smith shall and will do and perform gardening or any other work his master shall set him about during the said term. And in case the said James Smith shall be ill and unable to work, or shall absent himself from his master’s business, or lose any time during the said term, that the said master shall not pay him any wages during the time he shall be ill or lose any time as aforesaid. And that the said James Smith shall and will faithfully serve his said master in all lawful business [890] during the said term, and shall and will behave himself honestly, orderly, and obediently during the said term, and the said John Tompson doth promise and agree that he will teach and instruct the said James Smith in the art and mystery of a plumber, glazier, and painter, during the said term in the best manner that he can, and that he will pay the wages above set forth to the said James Smith during the said term, and the said parties do hereby severally bind themselves for the true and faithful performance of all the agreements above set forth at all times during the said term.” This agreement was signed by the parties, and attested by two witnesses, but it was not sealed or stamped. The pauper served Tompson under this agreement for more than a year, and boarded and lodged during that time at Tompson’s house in the parish of King’s Morton.

(8) Argument

Amos and Hill in support of the order of sessions. The contract in this case was an imperfect contract of apprenticeship, and not a contract of hiring. The parties manifestly appear to have contemplated the relation of master and apprentice. The rule laid down in *Rex* v. *St. Margaret, King's Lynn* (6 B. & C. 97), and recognized in *Rex* v. *Combe* (8 B. & C. 82), is, that wherever the parties appear to have contemplated the relation of master and apprentice the contract must be deemed to be one of

apprenticeship. The question is, what was the paramount and what the subordinate object of the parties to this contract? The paramount object was that the pauper should learn the trade of a plumber. It is true that the master agreed to pay weekly wages; but it is not from that necessarily to be inferred, that the parties contemplated a contract of hiring, *Rex* v. *Rainham* (1 East, 531). Neither are the circumstances that no premium is payable by the contract, or that the pauper was to do all kinds of work, conclusive against the contract being deemed a contract of apprenticeship. The term apprentice, as well as that of articled servant, is used in the agreement. But an apprentice is a servant. Both these words will have effect given to them if this instrument be construed as an imperfect contract of apprenticeship; and the instrument should be so construed as that effect should be given to every word. Every contract of apprenticeship, it is true, contemplates the performance of some service; and in most contracts of hiring it is the intention of the parties that

something should be taught; and the question in these cases is, which is the paramount and which the subordinate purpose? But in this agreement it is expressly stated that the pauper was to serve as an articled servant “ to learn the art or trade of a plumber.” Besides, the sessions having decided that this was a defective contract of apprenticeship, the Court will not disturb that decision if there are any grounds to warrant it. [Parke J. Is it not a question of law, depending entirely on the construction of the agreement?] It depended in some degree on the amount of the wages. The sessions may have thought these too low for a servant, and may thence have been induced to think that it was a defective contract of apprenticeship.

Waddington contra. The contract under which the pauper served was one intended by the parties to create the relation of master and servant, and not that of master and apprentice. This is very like the case of *Rex* v. *Coltishall* (5 T. R. 193). There the pauper clubbed with one Rolfe for three years (which signifies one person’s contracting to serve another for the purpose of being taught some art or trade), and also agreed to do any work that Rolfe set him about; it was held that the pauper gained a settlement by serving Rolfe for a year under this contract. Lord Kenyon there said that the stipulation that the pauper was to do any work his master set him about was decisive to shew that he must be considered a hired servant. That case was recognized and acted upon in *Rex* v. *The Inhabitants of Martham* (1 East, 239), which is also an authority that this was a contract of hiring and service. Here the pauper was to do gardening or any other work his master should set him about. Here, too,

wages were paid, but no premium. In *Rex* v. *St. Margaret, King’s Lynn* (6 B. & C. 97), and *Rex* v. *Combe* (8 B. & C. 82), there were no wages paid. No contract in which the term servant has been used, has ever been held to be a contract of apprenticeship. In *Rex* v. *Bainham* (1 East, 531), wages were reserved ; but in that case it was not necessary to decide whether the contract was one of apprenticeship or of service, because the pauper having served for more than a year, gained a settlement either as an apprentice or a hired servant.

Cur. adv. vult.

(9) Judgment

Bayley J. now delivered the judgment of the Court. In this case the pauper entered into an agreement that he would serve one Tompson as an articled servant for four years, to learn his art or trade of a plumber, at certain weekly wages therein mentioned ; and it was agreed that the pauper should be considered an out-apprentice. In this instrument, the character in which the pauper was to act is described both as that of an articled servant and of an apprentice. We must therefore look to the whole of the instrument to learn whether the parties contemplated the relation of master and servant, or that of master and apprentice. Now, first, it is not usual for a father to be a party to a contract whereby his son (of full age) contracts to serve. The fact of the pauper having contracted to do gardening or any other work does not necessarily shew that the parties contemplated a mere hiring. In Bex v. Combe (8 B. & C. 82), the pauper was to do any other work as well as that of a carpenter, and yet the contract was considered to be an imperfect contract of apprenticeship. So the stipulation to pay wages does not necessarily imply that the parties contemplated the relation of master and servant. Here the master undertook to teach his trade to the pauper. Learning the trade, therefore, was one great object of the parties to the contract. There is a provision in the instrument that if the pauper should be ill, the master should not pay him any wages during the time of his illness. That is not an improper stipulation in a bargain for an apprenticeship; but the law imposes on the master the obligation of providing for a servant during illness. There are some circumstances in this case tending to shew that the parties contemplated a contract of apprenticeship, and others that they contemplated a contract of hiring. But, on the whole, as it appears that the main object of the parties was that the pauper should learn the trade of plumber, and as the Court of Quarter Sessions may probably have thought the wages too low for a mere servant, we think that, though the case admits of great doubt, this contract was an imperfect contract of apprenticeship. The order of sessions must, therefore, be confirmed.

Order of sessions confirmed.

(10) Ruling

A. being of full age, entered, together with bis father, into the following agreement (not under seal), that he would serve B. as an articled servant for four years, to learn his art or trade of a plumber, glazier, and painter, at weekly wages; and it was agreed that A. should be considered an out apprentice. A. was to do gardening, or any other work his master should set him about, and in case A. should be ill, the master should not pay him any wages during the time he should be ill. The master agreed to teach and instruct A. in the art and mystery of a plumber, glazier, and painter. A. served for a year under this contract; the sessions having found that this was a defective contract of apprenticeship, and not a contract of hiring, this Court affirmed their decision.

(11) Comment

No settlement on the basis that the agreement was a defective contract of apprenticeship.

(12) Type

Restrictive

(1) Case name

*R.* v. *Titchfield*

(2) Date

26 November 1763

(3) Report

Burr S.C. 511

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Titchfield

(6) Order sought

Quashing

(7) Facts

Mr. Cornwall shewed Cause why an Order of Sessions made for quashing an original Order of two Justices made for the Removal of Philip Warsill and Anne his Wife, and William and Sarah their Children, from Litchfield to Milford (both in the County of Hants) should not be quashed; and why the said original Order should not be affirmed.

It appeared upon the Order of Sessions, that on such a Day the Difference between the Churchwardens and Overseers of Milford and those of Litchfield, touching the Settlement of Philip Warsill and Anne his Wife, and William aged five Years, and Sarah aged 1 ½ Year, their Children, coming then before the Court, upon the Appeal of the said Parish of Milford against the Order of James Ward and John Brett Esquires two of his Majesty’s Justices of the Peace &c, adjudging the Settlement of the said Philip and his Wife and Children to be in Milford; And the Masters and Merits of the said Appeal being fully heard by the Court, and argued and debated by Counsel on both Sides, The Court [of Sessions] is of Opinion and doth order and adjudge “that the said recited Order ought to be quashed,” and the same is hereby quashed accordingly; and doth order that the said Philip Warsill and Anne his Wife and William and Sarah their said Children be settled in the said Parish of Litchfield, there to be provided for according to Law: For that the said Philip Warsill bound himself an Apprentice by Indenture dated 24th Day of March in the Year 1761, for three Years, to William Footner Master and Mariner ; and that the said Philip Warsill inhabited above 40 Days with his Master in the said parish of Milford; that the said Philip Warsill falling sick, he, on account thereof, with the Consent of his said Master, went to his Father in the Parish of Bewley in the said County, and there continued 40 Days, and was sick all that Time, and to the present Time and on his going to his Father, the said Indentures were mutually given up, but not cancelled.

(8) Argument

Mr. Cornwall, in support of the Order of Sessions, argued

1st, That it appeared manifestly, by comparing Times and Dates, That this Philip Warsill must have been a married Man at the Time when he bound himself Apprentice : For it is stated upon the Sessions Order “That he had a Child of five Years of Age at the Time that Order was made; and that he bound himself Apprentice in the Year 1761.” Consequently he was married when he bound himself. And he urged that as the Statute of 3 & 4 W. & M. c. 11. requires Celibacy in a hired Servant in one Clause, the subsequent Clause concerning Apprentices must be construed to require them also to be unmarried. See Sections 7 and 8.

2dly, That Warsill the Pauper was settled in Bewley, by inhabiting 40 Days, with his Master’s Consent. And the Delivering up the Indentures was not a sufficient Discharge of the Apprentice, without cancelling them ; as appears by Dalton 180.

Mr. Solicitor General (Norton) contra—answered

1st, That his being a married Man when he bound himself an Apprentice is not expressly stated or meant to be made Part of the Case; but is a mere Inference now made at the Bar, by the Counsel. But; however, the Act does not require this Circumstance of Celibacy in an Apprentice, though it does in a hired Servant. Sell. 7. relating to hired Servants, says “If any unmarried Person ; ” Sect. 8.says, relating to Apprentices, “ If any Person : ” So that the Act itself makes an essential Difference between the two Cases.

2dly, An Inhabitancy by Reason of Sickness shall not gain a Settlement. Suppose a Servant breaks his Leg in a Strange Parish, and can not be removed within 40 Days ; shall that gain a Settlement there ?

And there is no Difference between the Indenture's being given up, and its being cancelled: They amount to the same Thing.

(9) Judgment

The Court being of the Opinion with Mr. Solicitor General.

(10) Ruling

The Order of Sessions was quashed: And

The Original Order affirmed.

(11) Comment

The court finds that the servant will not gain a settlement by reason of inhabitancy due to sickness – this is consistent with the later case of *Sutton* (1794). The court’s reasoning here is in keeping with the policy of settling servants based on hiring and service for a year rather than the arbitrary reason of a servant being injured or falling ill in a parish where he or she did not work.

(12) Type

Liberal

(1) Case name

*R.* v. *Turvey*

(2) Date

1818

(3) Report

(4) Court

(5) Parties

(6) Order sought

(7) Facts

Thomas Smith and his family were removed, by an order of two justices, from Stanwick, in the county of Northampton, to Turvey, in the county of Bedford. On appeal, the sessions confirmed the order, subject to the opinion of this Court, on the following case. The pauper, being legally settled at Turvey, by hiring and service, was afterwards hired by William Bayes, of Stanwick. The terms of the hiring were a year, from Old Michaelmas; to go away a month at harvest, and make the time after Michaelmas. He went away for a month at harvest, and continued in his master’s service a month after Michaelmas. The whole service was performed at Stanwick.

(8) Argument

Holbech and Adams, in support of the order of sessions. This is not a hiring for a year, for the party was not bound to stay for a consecutive year from any period. And *R.* v. *Rushulme* (10 East, 325), and *R.* v. *Buckland* (Burr. S. G. 694), are authorities to shew this. In the former, it was a hiring for four years, with liberty to be absent a week in each year; and in the latter, the party was hired to work only shearman’s hours. The case of *R.* v. *Winchcomb* (Dougl. 391) is distinguishable: there the law

made the exception, and not the parties ; and nothing turned in that case on the additional service at the end of the year. And they cited also *R.* v. *Over* (1 East, 599).

Marriott and Dwarris, contra. Here the party is bound to serve for twelve months altogether. And *R.* v. *Milwich* (2 Bott, 210), decided that a hiring for eleven months and one month, was a hiring for a year. Here it is a hiring for thirteen months, subtracting one month. This, therefore, as much as the other, is a substantial compliance with the statute. In *R.* v. *Rushulme*, the exception was made without an equivalent. Here the party stipulates, that he will serve a period exactly of the same

length as the excepted one. And the whole is done by one agreement.

(9) Judgment

Abbott C.J. It has been decided in this Court, that where there has been a hiring for a year, and a service for a year, although that service has not been under one hiring, the servant gains a settlement. But I hope no rash genius will ever carry the matter any further. The only question here is, what is the meaning of the word “year” in this statute. I apprehend the Legislature most clearly to have meant, one entire consecutive period of 365 days. Unless that were so, we might have to deduce a settlement of a pauper, by taking different unconnected days and weeks from a long series of years, so as to make up in the whole a year’s service. And so it would happen that a hiring for the month of August, for this and eleven successive years, would amount to a hiring for one year. I have often lamented, that in so many instances, the Court has departed from the plain and literal construction of the statutes relating to the settlement of the poor. As far as the authorities go, I have always held, and shall always continue to hold myself bound; but, where they are silent, I shall feel myself bound to construe these Acts of Parliament according to the plain and popular meaning of their words. For these reasons I am of opinion, this order of sessions should be confirmed.

Bayley J. The cases of *R.* v. *Buckland*, and *R.* v. *Rushulme*, are in point, and the latter is much stronger than the present. For there, though there was a hiring, which was to last in the whole for four years, yet, there being no stipulation for a service for any one consecutive year, the Court held that no settlement was gained.

Holroyd J. concurred.

Order of sessions confirmed (a).

(10) Ruling

A pauper was hired for a year from Old Michaelmas, to go away a month at harvest, and to make up the time after Michaelmas : Held that this was not a hiring for a year, and no settlement was thereby gained.

(11) Comment

The Court strictly applies the need for a continuous year’s hiring and service.

(12) Type

Restrictive

(1) Case name

*R.* v. *Tyrley*

(2) Date

27 June 1821

(3) Report

4 B. & Ald. 624

(4) Court

King’s Bench

(5) Parties

The King versus the Inhabitants of Tyrley

(6) Order sought

Quashing

(7) Facts

Two justices, by their order, removed Edward Peake and family from the township of Audlem, in the county of Cheshire, to the township of Tyrley, in the county of Stafford. The sessions, upon appeal, confirmed the order, subject to the opinion of this Court, on the following case. Edward Peake, the pauper, hired himself at 8l. and his washing, without any time being specified, but which the sessions found to be a general hiring for a year. The pauper entered into his service the day before New-Year’s Day, and quitted, with the consent of his master, two days after Christmas-Day, the usual time that servants, in that part of the county, go into and leave their places. The pauper received the whole of his wages at the time of his quitting, and stated, that when he left, he considered himself no longer under the control of his master. The sessions confirmed the order, and found this to be a hiring and service for a year.

(8) Argument

Nolan, in support of the order of sessions, was stopped by the Court.

Pearson, contra. Although the sessions have found it to be a hiring for a year, yet it is clear their decision is wrong, for there is no ground for presuming any dispensation with the service. It is expressly stated that this pauper quitted at the usual time, and came in also at the usual time. There was, in substance, therefore, only a hiring, according to the custom of the country, which it appears is for a less period than a year.

(9) Judgment

Abbott C.J. As the sessions have expressly found the fact of a hiring and service for a year, I think we are bound by it. I cannot say that no reasonable person could come to such a conclusion upon the facts stated, although I certainly should not have come to it myself. I should have thought, that, in this case, there was neither a dispensation with the service, nor a dissolution of the contract, but that the contract had arrived at its termination, and that before a year had expired. But still, as the question was properly for the determination of the sessions, who have expressly found the fact otherwise, I think their order must be confirmed.

Order of sessions confirmed.

(10) Ruling

A pauper having hired himself without specifying any time, entered into the service the day before New-Year’s Day, and quitted two days after Christmas, receiving his full wages: that being the usual time that servants in that part of the country go into and leave their places. The Court thought that this was a contract which had arrived at its termination before the expiration of a year; but the sessions having expressly found it to be a hiring and service for a year, the Court considered themselves as bound by that finding.

(11) Comment

While not reversing the decision made by the sessions, the Court reaffirms the need for a full year’s hiring and service.

(12) Type

(1) Case name

*R.* v. *Uckfield*

(2) Date

19 June 1816

(3) Report

(4) Court

(5) Parties

(6) Order sought

(7) Facts

Upon appeal, the Court of Quarter Sessions for the county of Sussex confirmed an order of two justices for the removal of James Marshall from Hurstperpoint to Uckfield, subject to the opinion of this Court upon the following case: The pauper, James Marshall, being legally settled in the parish of Uckfield, on the 10th of April, 1802, hired himself for a year to one Jeffery, then residing in the parish of Tonbridge, in the county of Kent, and continued in the service of Jeffery in that parish for the whole year. Marshall was a widower at the time of his hiring himself to Jeffery, and had one daughter, Frances, eighteen years of age, who had been separated from him at the age of four years, and had lived with her grandfather until his death in 1801, during which time she was entirely supported by the grandfather, the pauper contributing nothing for her maintenance. The grandfather by his will devised the residue of his estate (which amounted to 16001.) to his executors in trust, to place the same out upon security, and pay the interest to his wife for life for her own use; and he directed that his wife should, during her life, thereout educate and maintain Elizabeth and Frances, the children of his late daughter Elizabeth Marshall, and after the decease of his wife he gave the said residue equally to be divided between the said Elizabeth and Frances; but in case his wife should die before they attained twenty-one, the interest to be applied to their maintenance and education during their minority, and upon their attaining twenty-one respectively, the principal to be paid to them accordingly; and if either of them should die under age and without leaving issue, her share to go to the survivor; but if either should die under age leaving issue, her share to be equally divided between such issue, as they attained twenty-one, the interest in the meantime to be applied towards then

maintenance and education. After her grandfather’s death Frances continued to live with her grandmother, and was entirely supported by her until she had attained twenty-one, and was living with her at the time when the pauper hired himself to Jeffery, and never returned to her father. The question was, if the pauper gained a settlement in Tonbridge by this hiring and service.

(8) Argument

Courthope and Long, in support of the order of sessions, argued that he did not; because his daughter Frances, at the time of the hiring and service, not being emancipated, but still dependent on her father’s family, the pauper could not, within the intent of the statute 3 and 4 W. & M. c. 11, s. 7, be deemed “an unmarried person, not having a child.” For the distinction is, if the child be in a condition to follow the father’s settlement so as to be capable of becoming a burthen to the parish where the father is hired and serves, such hiring and service is not within the statute; aliter, if the child be emancipated from the father’s family. But a child may be separated from its family without being emancipated ; and so long as it is in a state of pupillage, or durante minoritate, it is, in the eye of the law, still dependent on and constituting a part of the parent stock, notwithstanding any [216] length or distance of separation, and may return and be incorporated into that stock; and authorities are not wanting to shew that the law respecting emancipation does not operate by relation to the time when the separation first took place, although such separation continue until after the child attain twenty-one (a). Which doctrine applies to the present case, as far as regards the separation of Frances the daughter, and her continued residence with her grandfather and grandmother, and the hiring and service of the father. And as to the provision made for her education and maintenance by her grandfather’s will, this did not alter the relative situation of parent and child : the assets might have

failed in toto, or might have been withheld in part or for a time, in which cases the child must necessarily have been remitted to the father for support.

D’Oyly and Marshall, contra, took a distinction, that here the daughter was not only separated at early infancy from her father’s family, and maintained by the bounty of others, and continued to live separate until she attained twenty-one, but from the death of her grandfather she became suo jure entitled to a maintenance of her own, for such was the effect of the direction in her grandfather’s will: so that from that time, which was prior to the hiring and service, she was no longer dependent on any

one for support; and the relation between the parent and child, so far as regards any dependence or support, was completely at an end. And though it be possible that the fund, to which she was entitled in her own right, might fail, may not the same be said of any other change of condition, which would clearly have worked an emancipation? As marriage, for instance, or the enlisting for a soldier: both these may fail to afford the provision usually to be expected from them; yet these have been held to work an emancipation. It is sufficient, therefore, that the independence acquired is in its nature permanent: the greater or less probability of its being defeated is not the question. It may be remarked, however, upon this point, if it were material, that the fund provided in the present case, being under the control of trustees, was more than ordinarily protected against failure. Nor does emancipation, with reference to settlement, import an exemption from parental authority. Suppose a child should acquire a settlement by renting a tenement, would it not be there emancipated, as to settlement? but would it cease to be subject to parental authority.

(9) Judgment

Lord Ellenborough C.J. This is a perfectly new head of emancipation. The question is, if, on account of a testamentary bounty left to this child by her relation, the child shall be deemed to be emancipated from all control of the father, and the father to be discharged from all claims of the child for maintenance, if that should become necessary. If such a provision as this amounts to an emancipation, consequence will be, that the devolution of an estate to a child, from the mother,

for instance, would operate in the same way, and discharge the father from the duty of maintenance. This, then, is quite a new head of emancipation. The cases of emancipation put by Lord Kenyon in *Rex* v. *Witton cum Twambrookes*, are the child’s attaining its full age, or being married, or gaining a settlement for itself, or, as in the case of the soldier contracting a relation inconsistent with the idea

being in a subordinate situation in his father’s family. Not one of these is the case here ; it is a case sui generis. If, therefore, it is to be considered as an emancipation, it must be on some reason or principle. Now, the reason why it should be considered is said to be this, that the provision made for the child secures to her an independence and maintenance, and to the parish a discharge from all probability of burthen on her account. The Statute 3 W. & M. enacts, that if any unmarried person, not having child or children, shall be lawfully hired, &c.; which has been construed to mean, that if he has no child that can be a burthen to the parish in consequence of bis acquiring a settlement there, he shall be considered as not having a child within the meaning of the statute. But was that the case of this pauper when he hired himself? The property devised was merely in trust for the use and benefit

of the grandmother, in the first instance, with a direction to her, certainly amounting in equity to an obligation to maintain the child, and after the grandmother’s death to the child. But this trust might have failed ; the trustees might have violated it and not paid the interest to the grandmother, or she might have proved unfaithful to her trust and refused or neglected to maintain the child; in which events, so long at least as they continued, the child must have resorted to her father for maintenance, who was not discharged by any emancipation of the child from the parental obligation of providing for her maintenance. It seems to me, therefore, under these circumstances, that the father was not in the situation of a person not having a child within the meaning of the statute ; because he had a child, who would have a right to share with him, if he should be unable to provide one, a maintenance from the parish where he should become settled, and who consequently might be a burthen to the parish.

He was a person having a child, who might, in the eventual failure of the funds bequeathed for her support, claim a provision from him, and he again might have claimed to have the control and custody of her at any time. The case has certainly been ingeniously argued ; but I think it does not amount to an emancipation either to discharge the rights of the one or the duties of the other.

Bayley J. I am of the same opinion. The rule is, that the child’s settlement shall shift with that of the father until the child is emancipated. This is a perfectly new case, and different from all the other cases of emancipation. A provision is made by the will of the grandfather for the maintenance and education of the child, who is living with her grandmother, apart from her father’s family; and the question is, if such a provision can be said to deprive the parent of his rights over his child, to resume

to himself the care and custody of her, or can relieve him from the duty of maintaining her. If this case amounts to an emancipation, would it not be the same, under the like circumstances, at whatever age the child might be? For the law makes no distinction in respect of the different ages of infants under twenty-one, at which time the parental authority ceases, and the father has no right to reclaim his child. Let us then put the case of an infant of very tender years, for whose maintenance the grand-

father should make a provision by his will; could it be contended that such a provision would preclude the father from insisting upon having his child returned to him ? I think that could hardly be contended. But, to come nearer to the present case : suppose, after the year’s service of the father, the child then being of the age of nineteen, had returned to the roof of her father, the father having then acquired a new settlement by such service, can there be a doubt that the child would have taken that settlement; and yet, if she was once emancipated, she could not, because she would be emancipated for ever. If, then, she would have been entitled to the father’s subsequent settlement, that shews that the separate provision made for her by her grandfather’s will could not operate as an emancipation. I therefore think, that as she was not emancipated, but, notwithstanding the separate provision made for her, continued part of her father’s family, and capable of deriving from her father any settlement which he might acquire, she was a child who might become chargeable to the parish in consequence of his acquiring a settlement. If so, it follows that the father was not in the situation of a person who is capable of acquiring a settlement by hiring and service : that is, a person not having a child within the meaning of the statute.

Holroyd J. I concur in opinion with the rest of the Court. Ihe maintenance provided for the child by the will was precarious, and the obligation of the father to maintain her still continued. The father’s control over the child also continued ; and therefore, there is no ground upon the cases, or upon principle, to hold that the child was emancipated. I therefore think that the father was not in a situation to acquire a settlement by hiring and service.

Order confirmed.

(10) Ruling

(1) Case name

*R.* v. *Ulverstone*

(2) Date

5 May 1798

(3) Report

7 Term Reports 564

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Ulverstone

(6) Order sought

Quashing

(7) Facts

Two justices by an order, removed E. Brocklebank, a pauper, from Hawkeshead to Ulverstone, both in the county of Lancaster. The sessions on appeal confirmed the order, subject to the opinion of this Court on the following case.

The pauper being legally settled in Ulverstone, and being an unmarried woman, was hired to one M. Hodgson of Hawkshead, to serve him from Whitsuntide, 1796, to Whitsuntide, 1797. She accordingly entered into his service on the Saturday after Whitsunday, being the 21st. May, 1796, and continued to serve him in Hawkshead, till the Thursday before the following Whitsunday, being the 1st of June 1797, when her master discharged her, she being pregnant of a bastard child, of which she was delivered on the 1st July following.

(8) Argument

Barrow, in support of the order of sessions, contended that as in *Newstad* v. *Holy Island* (*a*)2 a hiring from Whitsuntide to Whitsuntide, though less in the particular year than 365 days, was holden to be a sufficient hiring for a year to enable the pauper to gain a settlement, so where it appears to have been the intent of the parties that the hiring should be according to such ecclesiastical division of the year, the parties ought to be holden to the same term of service in order to acquire a settlement, though it happened, in this case, to be more than the 365 days. But as the pauper was discharged for a legal cause before Whitsuntide happened again, she could not gain a settlement in Ulverstone.

(*a*)2 Burr. S. C. 669.

Best and Raincock, contra, were stopped by the Court.

(9) Judgment

Lord Kenyon, Ch. J. The case is too plain for argument. The only question is whether a service for more than 365 days is not a service for a year. The term ecclesiastical year is altogether new and was never before applied to this subject.

Per Curiam. Order of sessions quashed.

(10) Ruling

Under a hiring from Whitsuntide to Whitsuntide, a service of 365 days, though less than the period of the contract in the particular year, is sufficient to confer a settlement.

(11) Comment

A hiring from Whitsuntide to Whitsuntide confers a settlement even if the contract is ended prematurely by the master, as a result of the servant’s pregnancy out of wedlock.

(12) Type

Liberal

(1) Case name

*R.* v. *Underbarrow and Bradley Field*

(2) Date

26 January 1780

(3) Report

1 Dougl. 309

(4) Court

King’s Bench

(5) Parties

The King versus the Inhabitants of Underbarrow and Bradley Field

(6) Order sought

Quashing

(7) Facts

Two justices having removed Thomassine Hallhead, from the town and hamlet of

Ulverton, in Lancashire, to the township or division of Under-Barrow and Bradley-Field, in Westmoreland, the Court of Quarter Sessions for Lancashire confirmed their order, and stated the following case. “Thomassine Hallhead, single woman, being settled in the township of Under-Barrow and Bradley-Field, in the county of Westmoreland, by a derivative settlement from her father, was hired for one year, from Whitsuntide 1770, to Whitsuntide 1771, to D. Burrow, then an inhabitant of the said township, for the yearly wages of 18s. where she lived with him, under this hiring, till the 12th of May 1771. Her master then removed with her into the township of Strickland Roger, in the said county of Westmoreland, and she there continued seven days in the said service, (which completed the year,) and received her wages. Then she again hired herself to the same master for another year, from Whitsuntide 1771, to Whitsuntide 1772, for the wages of 25s. and, under this last hiring, she continued in Strickland Roger, from Whitsuntide 1771, till Candlemas following, when, by mutual consent, she quitted her service, and received her wages up to that time.”

(8) Argument

Wilson and Wood now shewed cause against quashing the orders. They endeavoured to distinguish the case from that of *Rex* v. *Crosscombe*, where the pauper, having been hired for a year in one parish, and having lived that year there, and received his wages, continued a quarter of a year longer, and then went with his master into another parish, and lived with him there six months, without coming to any new agreement; and the Court held that he was settled in the last parish. That case, they said, was argued on the ground of there being no interruption,—no new contract,—but a continuance, and prolongation of the term of service, under the first hiring. So when there is a demise for a year, and the tenant holds over without any new bargain, he is still considered as holding under the original demise. But here the first contract was at an end, both in form and substance; there must have been a new bargain ; the wages were different ; and the sessions had not stated that there was not a chasm in point of time between the first and second hiring. The second must be considered exactly as if there had been a change of masters. The services in the two places could not be tacked together, as in the case of *Rex* v. *Crosscombe*, because the pauper having already a derivative settlement in Under-Barrow, the time she served there could not have operated so as to gain a settlement there, and therefore it ought not to be taken at all into the account.

Dunning, Chambre, and Howorth, argued on the other side. They observed, that, although, in the case of *Rex* v. *Crosscombe*, the circumstance of there being no new bargain was relied upon at the Bar, the Court did not decide upon that distinction, but, on the contrary, Lee, Chief Justice, mentioned several cases, in which a settlement was held to have been gained, where there was a year’s service under two hirings, and said he could see no difference. If a chasm of an hour or two were to be admitted to have taken place in this case, between the end of the first year, and the new bargain for an increase of wages, that, they said, would not make such an interruption as to prevent a settlement. For this, they cited, *Rex* v. *Fifehead Magdalen* (b), where there was an interruption and absence from the master’s house for above an hour; *Rex* v. *Ellesfield*, where the interruption was still longer, but not for a whole day [1]; and also a case from this very township of Under-Barrow (c).

[1] That case was argued H. 17 Geo. 3, by Lawrence on one side, and Mansfield, Dunning, and Kirby, on the other. The circumstances were very nearly the same with those in *Rex* v. *Fifehead Magdalen*. The ground of the decision, in both, was the maxim, that there is no fraction of a day. The pauper was in the service every day in the year. If a discontinuance however short were to prevent a settlement, there could never be one gained where the year was served under two hirings, because there can be no new hiring without some degree of interruption.— In the former case of *Rex* v. *Under-Barrow*, cited in this, it was attempted to overturn the doctrine in favour of settlements gained by a year’s service under two hirings tacked together, as being contrary to the true sense of the words of 8 & 9 Will. 3, c. 30, and Sir James Burrow, in his report of the case has investigated with great accuracy the history of the first decisions on this point. The Court thought themselves bound

by the authority of those decisions.

(9) Judgment

Lord Mansfield.—We are all very clear, that this was a continuance of the same service, with an increase of wages.

Both orders quashed.

(10) Ruling

If there is a hiring for a year and service in the parish of B., and, before the end of the year, the servant removes with the master to the parish of C., serves out the year there, is hired to the same master for another year, with an increase of wages, and serves him several months longer in

C, a settlement is gained in C.

(11) Comment

The Court affirms earlier authorities allowing service in different parishes to be joined together for the purpose of establishing a settlement in the final one.

(12) Type

Liberal

(1) Case name

*R.* v *Undermilbeck*

(2) Date

16 November 1793

(3) Report

5 T.R. 388

(4) Court

King’s Bench

(5) Parties

The King against The Inhabitants of Undermilbeck

(6) Order sought

Quashing

(7) Facts

The pauper, Ann Dixon, and her two children, were removed by an order of two justices from Undermilbeck to Dalton; and on appeal, the sessions quashed the order, subject to the opinion of this Court, on the following case; “John Dixon, the late husband of the pauper Ann Dixon, and father of the two children, was hired for a year, with J. Bowness, then of Caldbeck, to work as a waller, the latter end of March or beginning of April 1783, for the wages of ten guineas per annum. He entered upon his service accordingly, and continued with his master till about the middle of December following, when Bowness, having little to do in his business of a waller in the winter season, agreed with his servant Dixon that he might have leave of absence for six weeks to work for himself wherever he pleased, allowing 15s. out of his yearly wages. Dixon then went away from his master to his father’s house in Sawrey, and continued there till the beginning of February 1784 ; being absent from his service seven weeks, one week longer than he had leave for. About that time Bowness, the master, contracted with one John Braithwaite that he and his servant Dixon would assist Braithwaite in making some fence-walls in the parish of Pennington ; they accordingly entered upon their work, and Dixon continued with them above forty days, the same being till within about three or four days of the end of the term for which he was hired, when he went away again to his father’s house in Sawrey, [388] with his master’s consent; and whilst he so continued in Sawrey the year’s service with his master, Bowness, expired. During the time that Dixon worked in Pennington, he slept in the parish of Dalton, but never worked a day’s work in the latter parish. When Dixon went the last time to his father’s house in Sawrey, it was on the Saturday, and his year’s service would not have expired till the Tuesday following. On the Monday morning he went to make up some fence wall on his father’s account in Sawrey, but was unable to proceed owing to his being taken ill in the afternoon ; and he continued out of health for some weeks afterwards. Dixon afterwards went to his master, who paid him his wages, deducting 15s. for the six weeks’ absence, and half a crown for the week he was absent more than the six weeks agreed for.”

(8) Argument

Wood, in support of the order of sessions. The rule is, that where a hired servant serves a year, he is settled in the parish where he sleeps the last night, provided there be a service for forty days in that parish in the course of the year. In this case the pauper's husband served a year under his contract; he slept the last three nights in Sawrey, having before resided there more than forty days ; and consequently his settlement was in Sawrey. It cannot be argued that there was any dissolution of the contract on account of what passed when the pauper’s husband went to his father in Sawrey ; because the absence for the first six weeks was with the express consent of his master, and that for the seventh week was purged by the master’s receiving him into his service when he returned.

Chambre, contra, admitted that the contract was not dissolved by the absence for seven weeks, but contended that the residence in Sawrey for the last three days could not be connected with the former service in that place, because the pauper’s husband did not serve there at all during those three days; he was not employed there by his master in any kind of service. And that, in that way of considering the case, the last forty days’ service was performed at Dalton.

(9) Judgment

Lord Kenyon, Ch.J.—It has been properly admitted that the contract was not dissolved by the servant’s absence for seven weeks, because the master consented to it, and received part of the servant’s earnings ; and as the service continued, in contemplation of law, during the whole year, I think the servant was settled in Sawrey, where he slept the last night, he having before that time served there forty days in the course of the year. For it [389] has been decided (a), after much argument, that the last day’s service may be connected with any preceding service in the same parish, notwithstanding any intervening service elsewhere for forty days.

Per Curiam. Order of sessions affirmed.

(a) Vide *R. v. The Inhabitants of Brighthelmstone*, ante, 188; and the cases there recited.

(10) Ruling

A yearly servant served forty days in A. then forty days in B. and afterwards returned to his father’s house in A. for the three last days of the year, with the master’s consent; held that he was settled in A. [2 M. & S. 135.]

(11) Comment

The court decides that where a servant has worked in two parishes for at least forty days in the past year, the servant will be settled in the parish where he most recently slept. In other cases such as *Nether Heyford*, the court read permissive absences, like the one the servant took to return to his father in Sawrey, as dispensations of service which do not defeat settlement. This case is distinguished by the fact that the servant was eligible for settlement in two places, including the place he went during his period of absence at the end of the year.

(12) Type

Restrictive

(1) Case name

*R.* v *Upwell*

(2) Date

22 November 1797

(3) Report

7 T.R. 438

(4) Court

King’s Bench

(5) Parties

The King against The Inhabitants of Upwell

(6) Order sought

Quashing

(7) Facts

The Norfolk Sessions confirmed an order of two justices, by which Sarah Brown was removed from the parish of Downham Market to Upwell, and stated the following case for the opinion of this Court.

[439] The pauper was hired at Michaelmas 1791, by J. Fades of Upwell, for a year, and continued in his service until within fifteen or sixteen days before the following Michaelmas, when her master kicked and beat her ; the pauper complained to her father of this ill-treatment, and in conjunction with her father, required her master to dismiss her from his service, under a threat of applying to a magistrate for redress, on account of the assault; the master then paid her the whole of her wages, and told her she might serve the remainder of the year, but the pauper refused so to do, and immediately left the service.

(8) Argument

Mingay and Hulton were to have argued in support of the order of sessions, and

Erskine against it.

(9) Judgment

When this case was called on for argument,

The Court said there was no question in it; for that according to the facts stated, it must be considered as an agreement by both parties, to put an end to the contract several days before the expiration of the year, and consequently that the pauper had gained no settlement in Upwell. And that the case of *R. v. Grantham* (a) was decisive of the present.

Per Curiam. Both orders quashed.

(10) Ruling

A servant, who had been hired for a year, was beaten by her master 16 days before the end of the year, on which she desired him to dismiss her from his service threatening to apply to a magistrate for redress: the master paid her her whole year’s wages, and told her she might serve the remainder of the year; but the servant went away :—Held that the servant gained no settlement. [8 T. R. 236. 2 East, 303.]

(11) Comment

Following the reasoning in *Grantham*, the court refuses to grant a settlement where the contract was terminated before the end of the year, even though the reason was ill treatment. These cases sit slightly uneasily with the ‘no fault’ reasoning of the illness and injury cases, and the cases where the the termination of the contract was the master’s fault (i.e. *Bartholomew, St Mary Lambeth*) – though the cases might be distinguished on the basis that the servants in those cases would have been willing to serve out the rest of the year, circumstances permitting.

(12) Type

Restrictive

(1) Case name

*R.* v. *Welford*

(2) Date

1 July 1778

(3) Report

Cald 57

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Welford

(6) Order sought

Quashing

(7) Facts

Two justices remove John Dyer, Elizabeth his wife, and their child, from the parish of Feckenham, in the county of Worcester, to the parish of Welford, in the county of Gloucester. The Sessions on appeal confirm the order, and state the following case :

That the pauper, John Dyer, being legally settled in the parish of Welford, and not having wife, child, or children, did about two years since, hire himself for a year as a servant to John Truslove of the Hamlet of Samborne, in the county of Warwick, and continued to live with his said master at Samborne aforesaid, till within three weeks of the expiration of the year; when the master on account of a supposed criminal intimacy between the pauper and a servant girl then big with child, who had lived with the master, but was discharged from his service, insisted upon his quitting the service, and discharged him accordingly. The pauper being asked whether, if his master would have let him, he would have staid : he replied, that he would. That the master offered the pauper all his wages except four shillings ; which the master insisted upon detaining, as a satisfaction for the loss of the pauper’s service for the said three weeks; but which the pauper refused to allow. That the pauper, after he was turned out of his service, went to a justice of peace in order to recover his full wages; but the justice telling him he could not recover the whole, and the pauper having no money to subsist upon, accepted the money the master had offered him, abating the four shillings for the three weeks: and that no order in writing was ever made by any justice or justices for discharging the said pauper from his said master's service.

(8) Argument

Bearcroft and Caldecott shewed cause in support of these orders ; and insisted , that the service in this case was not compleated either in point of law or in fact. That the principal of [a] the case of *The King v. the Inhabitants of Brampton* was upon the law in point : for that the offence was equally contra bonos mores in the case of a man, as in that of a woman : that however reluctantly or for whatever reasons, the pauper had, in point of fact, consented to the dissoIution of the contract: and that this consent being only to an act, the effect of which, if refused, the law has given to the master by compulsion and against the pauper’s will, the court would not hold such an act void; because the pauper, though willing to do so, had not the means of controverting it. That the fact of criminality was fully proved below, and was meant by the court there to have been so stated.

Dunnings, in support of the rule, to quash these orders insisted, that the fact of the pauper’s criminal conduct was only hypothetically and not fully stated: that an imaginary crime could be no good cause of his discharge ; and that the court would not suffer a man’s right to be concluded upon by a consent, which arose solely from the misery of his situation.

[a] H. 17 G. 3. 1777. Ante, p. n.

(9) Judgment

Lord Mansfield. Had the fact of criminality been positively stated, to be sure it would have fallen within the principle of *the King v.* *the Inhabitants of Brampton*; but as the intention of finding this fact is represented to have been different from the finding ; and as there might have been a more compleat consent, the case must go down to be re-stated.

The case was re-stated at the following sessions : The fact of the pauper’s criminality was positively found; and the sessions, at the instance of the appellants, added the fact, that this was the case of a servant in husbandry : this was done with a view of taking it, in this respect out of the case of *the King v. Brampton*. But the case was abandoned : it never came again into Westminster Hall.

(10) Ruling

Servant, father of a bastard child, may be discharged by his master.

(11) Comment

The court finds that a servant may be discharged for the criminal conduct of having a bastard child, and that this will defeat his settlement. Similar reasoning is later used in *North Cray*.

(12) Type

Restrictive

(1) Case name

*R*. v *Westerleigh*

(2) Date

27 November 1773

(3) Report

Burr. S.C. 753

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Westerleigh

(6) Order sought

Quashing

(7) Facts

Two Justices removed William Ayliff, Mary his Wife, and their four Children, specifying their Names and Ages, from Old Sodbury in the County of Gloucester to Westerleigh in the same County : And, on Appeal, the Sessions confirmed their Order; flaring the following Facts, viz.

That the said William Ayliff was hired for a Year and served for a Year with and to Isaac Highmore of and in the said Parish of Westerleigh, and was, after the Expiration of that Year, entered And sworn to serve as a Substitute in the Gloucestershire Militia for three Years; That about a Year and an half after he was so entered and sworn, he was hired for a Year to Anne Tyler of the Parish of Old Sodbury aforesaid, to serve her for a Year: But at the Time of his being so to her hired, he told her “ that he was in the Militia, and he might be for about a month in the year to attend in that Duty;” and at the same Time told her “'that he would pay a Man to serve in his Place, or else would make her an Allowance out his Wages for the Time he was absent.”

That he entered on his said Service with the said Anne Tyler and served her till the Month of May following; and then joined and attended the Militia for thirty Days; and afterwards returned to the said Service of the said Anne Tyler, and continued therein until the End of his said Year, and then made her an Abatement of eight Shillings out of his Wages for the Time he was absent out of her service.

(8) Argument

On Wednesday 10th November 1773, Mr. C T. Morgan moved for and obtained a Rule to shew Cause why these Orders should not be quashed.

The Justices, he said, had mistaken the Law, in supposing Ayliff’s legal Settlement to be at Westerleigh : For that he had gained a subsequent Settlement at Old SoJbury, by being hired for a Year and serving for a Year to Mrs. Tyler, of this latter Parish.

Mr. Bearcroft and Mr. Selwyn now shewed Cause against quashing these Orders. They argued that this Man gained no Settlement at all in Old Sodbury ; For that here was no Hiring for a Year. It is true, indeed, that the Words are— “ to serve her for a Year!” But a Hiring for a Year, with Liberty to be absent for a Month, is really only a Hiring for eleven Months: And when a Part of the Year is excepted out of the original Contract, no Settlement can be gained. Now, here, it was stipulated at the Time of the Hiring; it was Part of the original Contract; “ that he might be absent about a Month of the Year.’ In Support whereof, they cited the Case of *Bishop's Hatfield* (reported ante, Vol. 2. pa. 4^9. No. 141. and mentioned and affirmed by Mr. Justice Aston, ante. No. 229.) where Liberty to let himself to any other Person during the Harvest-Month, was holden to make it no Hiring for a Year. They added, that by the Militia Man, the Man was not sui juris: He was entered and sworn “ to serve in the Militia for three Years;” and was liable to be called out to Service, at any Time of the Year. Therefore they prayed to have the Orders affirmed.

Mr. Dunning and Mr. Morgan, contra, argued that this was a good Hiring for a Year; and that the Pauper was sui juris to hire himself out for a Year. It is positively stated “ that he was hired to Anne Tyler for a Year, to serve her for a Year!' And what follows is not repugnant to this positive State, of that Fact: It amounts only to an Agreement to dispense with his perform Service for about a Month, upon the Terms he proposed (of hiring a Substitute, or making a proportionable Allowance,) in Case such an Event should happen. The Case of *Bishop's Hatfield* was a Hiring from Michaelmas to Michaelmas, with Liberty “ to let himself for the Harvest-Month, to any other Person": Which was, undoubtedly, only a Hiring for eleven Months; and no Relation at all subsisted between the Matter and Servant, daring the Harvest-Month. Whereas, here it was contingent; and the Man was to serve the whole Year, if the Contingency did not happen: And he actually did serve the whole Year, except these thirty Days, and made a proportionable Abatement out of his Year’s Wages. Here was an Alternative: It might have happened, that he had not been called out to serve in the Militia, within the Compass of his Year.

(9) Judgment

Lord Mansfield was not in Court.

Mr. Justice Aston said, this was a particular Case: But bethought it reconcilable to those of the *King and the Inhabitants of Beccles* (ante, pa. 230. No. 78.) and the *King against the Inhabitants of Goodnestone*, (ante, pa. 251. No. 85 ) and distinguishable from that of *Bishop's Hatfield*. In the *Beccles* Case, the Hiring was for a whole Year : and the Contract was not dissolved : For, the Absence was with the Consent of the Matter, and dispensed with too, by his receiving the Servant again. In the Case of *Goodnestone*, the Hiring was likewise for a Year; the Master consented to the Absence; the Servant hired a Substitute, and paid him : There was no Dissolution of the Contract. Absence for a particular time with the Matter’s Leave, not agreed for at the Time of the Hiring, does not vitiate the Contract. But in the Case of *Bishop's Hatfield*, the original Hiring was with Liberty to let himself, for the Harvest-Month, to any other Person. That made a clear Chasm in the original Contract : It was plainly a Hiring for less than a Year. in the present Case, the Man is hired for a Year, to serve for a Year; but mentions an Event that might happen, of his being called out to attend his Militia-Duty; and told his Mistress, that it should so happen, he would either pay a Man to serve in his Place, or make her an Allowance out of his Wages. This is not a Chasm in the Contract, but a Dispensation with the personal Service.

Mr. Justice Willes premised, that Settlements are to be favoured; and that Militia-Men ought not to have any additional Hardships put upon them, if it can be avoided. However, he could not help thinking that the Case of *Bishop’s Hatfield*, was very like the present Case ; and that the Absence was as much Part of the Contract, in the one as in the other. If the Mistress did not expressly agree to it, she at least acquiesced. Indeed, in the present Case, the Servant agreed, “either to find a Substitute, or to abate out of his Wages.” Now this was at the Election of the Mistress: And she dispensed with his Absence, upon an Abatement out of his Wages- Upon this Distinction, and this only, I would, for the Advantage of Settlements, distinguish this Case from that of *Bishop's Hatfield*.

Mr Justice Ashhurst said, that in a Case which might affect a vast Number of Militia-Men, he was for leaning in Favour of their gaining Settlements: And he thought this Case to be distinguishable from that of *Bishop's Hatfield*. That Case was certainly, no more than a Hiring for eleven Months: But here was an Alternative, and it might happen “ that the Servant should not be called out." Therefore he concurred in supporting the Settlement.

(10) Ruling

Both Orders quashed.

(11) Comment

The main factor making this decision more liberal than *Bishop’s Hatfield* seems to be the policy of allowing soldiers to fulfill their military duties while not jeopardising their settlement. The judges also give the reasons that the absence allowed in the contract is a contingency instead of a certainty, and that the mistress could elect to deduct the servant’s wages for the period of his military service rather than hiring a replacement, but these distinctions seem thin as (like *Bishop’s Hatfield*) the absence would still be one taken pursuant to a clause in the contract.

(12) Type

Liberal

(1) Case name

*R*. v. *Westmeon*

(2) Date

17 November 1781

(3) Report

Cald 129

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Westmeon

(6) Order sought

Quashing

(7) Facts

Two justices remove Robert White and Rebecca, his wife, from the parish of Westmeon, in the county of Hants, to the parish of Hartley in the same county. The session on appeal quash the order, and state the following case:

That on the 10th day of October, in every year (except when the same falls on a Sunday) a fair for hiring of servants is holden at Chichester in the county of Sussex, and when the same falls on a Sunday, then such fair is holden on the next day : that in the year 1779, the 10th day of October happened on a Sunday ; and that on the day following (being the day of holding such fair) the pauper Robert White, being legally settled in the parish of Hartley, in the county of Southampton, and being single and unmarried, was hired by John Gibbs, of the parish of Yapton, in the county of Sussex, farmer, to serve him as a carter for one year, at the wages of eight guineas : that the said pauper entered into the service of the said John Gibbs, on the same day, and continued therein in the parish of Yapton, until Friday the 6th day of October, 1780: that on the said Friday the said pauper was taken into custody by virtue of a warrant issued against him by a justice of the peace for the county of Sussex, on the voluntary examination before him of Rebecca Heberden a single woman, charging the said pauper with having gotten her with child ; which was born a bastard, about six months before the said 6th day of October ; and of which said bastard child the said Robert White was the father: that the said pauper was carried by the officer who took him into custody, to an inn at Chichester, attended by the parish officers of Westmeon ; and from thence carried to Westmeon : and there by the said officers kept in custody until the 10th day of October last aforesaid : that on Sunday, the 8th day of October, the said Robert White was married to the said Rebecca Heberden at Westmeon: that the said John Gibbs on the said 6th day of October last aforesaid, at the said inn in Chichester, settled with the said pauper his account of wages ; saying, that he might not see him again : and the said master deducted from his wages the sum of one shilling on account of his not serving him to the end of the year: that his matter thereupon said, that ‘though he had no objection to the pauper’s gaining a settlement in the parish of Yapton, yet perhaps the other farmers might:” that the said master did not in any other manner assent to or dissent from the said pauper's absence from his service, from the time of his being so taken into custody for the remainder of the year, for which he was so hired as aforesaid : that the said pauper from the time of his being so taken to Chichester did not return to the service of the said John Gibbs.

(8) Argument

Howorth and Watson shewed cause in support of the order of sessions; and they stated the question to be, whether getting a woman with child previous to the commencement of his service, was such an offence in a servant as could give his matter a legal authority to discharge him : and 2dly, whether, if the law did give that power, the master in this instance exercised the power, and dissolved the contract, upon that principle and for that reason ? And upon the first point they contended, that this was neither any offence at common law or by statute, unless the child became chargeable ; but that, however this might be considered, it was unjust, it was impossible, to make a retrospect beyond the period at which the relation of master and servant commenced: that that was the first moment, at which the servant could be considered as under any obligation of accounting to his master for his conduct: that the fact here must have been committed many months before this relation subsisted : that, upon this as well as other grounds, this case did not resemble that of *the King v. the Inhabitants of Brampton*; in which the cause of discharge must have originated during the service: but if being once father of a bastard child authorised this master in the discharge, it would also any subsequent master throughout the whole of the servant’s life : that also in that case the woman, who was six months gone with child, was less able to perform the duties of her service; and that her appearance was to every decent person a visible matter of offence. But that, as to the 2d point, as the master did not give this reason for the dismissal of the servant at the time, he should not be permitted to resort to it now : that the reason given, and no doubt the true one, was, lest he should gain a settlement in the parish: that in many cases [b] it had been holden that a discharge with such a view should not prevent a settlement, and that the service continued by construction and in point of law : that nothing was to be collected from the conduct of the servant, that looked like an acquiescence in the dissolution of the contract; that the deduction from his wages was made without his consent: and that the court would lean in favour of Settlements.

[a] H. 17 G. 3. 1777. Ante, p. 11.

[4] Vide *Eastland and Westhorsley*, 1 Str. 526. Tr. 8 G. *Rex v. Inhabitants de Iflip* in com. Oxon. E. 7 G. ib. 423. Cases of Settlement, 97. and in a case infinitely stronger, *Rex Inhabitants of Potter Heigham*. Tr. 11 G. 3. 1771\* Burr. Settl. Cases, 690.

Lawrence and Burrough argued in support of the rule to quash this order : and Lawrence insisted, that to a settlement by service it is necessary there should be a continuance and abiding during a whole year: that this is negatived by the finding of the present case; which dates expressly, that in point of fact the pauper was not in his service during the four last days. What circumstances were there then to induce the court to say, that he was so by construction ? It was true, that, where this power was exercised with a view to impose unreasonable conditions, or was otherwise fraudulent, the court had interposed to prevent the settlement from being defeated ; but that this court will not presume fraud, if not found by the court below : that it was not so found here : that indeed, if it was apparent, the court would take notice of it; but that here on the contrary the master had assigned an honest reason for his conduct: “that if he did not do that, which he had a right to do, others, who were interested, would say he had acted injuriously towards them in throwing upon them a burden unnecessarily and improperly:” that not objecting to the deduction made, was acknowledging its justice and propriety; and that, had the pauper thought otherwise, he would have scrupled to accept the remainder: that the statutes 1 8 Eliz. c. 3. cc 6 G. 2. c. 31. though they inflict no punishment, unless where a burden is thrown upon the parish, consider the conduct of parents of bastard children as criminal : that consequently, whether the deduction were made with or without the servant’s consent, the master was justified in saying, “ you have by your own immorality put yourself in a situation, that incapacitates you from performing your contract: that, though the absence here was no more than four days, yet there was no drawing the line; and that the reasoning was the same, as if the commitment had been earlier in the service, and the absence of as many months.

Burrough insisted, that the doctrine of favour in the case of settlements was merely referable to the construction of the statutes upon the subject ; and that this was so, because those statutes introduced settlements : but that, wherever a question arose upon the contracts of any parties, such contracts were to be expounded equally and indifferently, and by the rules of the common law : that the ground of the discharge in this case was the impossibility of the servant’s performing the duties of his service ; that impossibility having been created by his own misconduct : that upon this obvious motive the master acted instantly : that there was not the smallest pretence upon which fraud could be imputed : that the court never presumed fraud, [a] that did not plainly appear; and had refused to do so in cases, where it seemed to arise by very strong implication : as in [b] *the King v. the Inhabitants of Preston*, [c] *Rex v. the Inhabitants of Weston*, and [d] *Rex v. Inhabitantes de Haughton* : that fraud being out of the case, the *King v. Brampton* applied : that the principle, upon which that case went, was that such a conduct was contra bonos mores ; and that this applied equally in the case of a man or woman servant ; that in the case of [e] *the King v. the Inhabitants of Welford*, the case of a man servant, where it was only hypothetically, and not positively stated, that he was the father of a bastard child, the only doubt was upon the uncertainty of the finding ; and it was sent back to be re-stated for no other purpose than that of ascertaining the fact.

[a] Brixton, Deverell and King's Westwood, T. 6 G. 3. Held, where facts are equivocal, and only evidence of fraud, the fraud itself mud be dated in the order : but where a fact is fraud apparent, the court will fay, it is fraud. Wynne's Analysis of the Law concerning parochial provision for the poor, 1767. p. 43, ib. p. 50. The state of this case and its proper title, Rex v. inhabitants of Frome Selwood, is given in Burr. Settl. Cas. 565.

[b] H. 4 G. 2, Bott. 312. also dated arguendo in Burr. Settl. Cas. fo. 69.

[c] Tr. 14 and 15 G. 2. 1741. Burr. Settl. Cas. 166. 2 Str. 1156. 2 Seff. Cas. 1S9.

[d] H. 4 G. i. Str. 83. fol. 137. 10 Mod. 392.

[e] Tr. 18 G. 3. 1778. ante p. 57.

Lord Mansfield.

To be sure, they are both within the same rule.

Burrough. This fact was afterwards positively stated together with another, upon which some argument might have been founded; but it was not thought adviseable to bring it forward again : that if the servant could not, as against his master, during the imprisonment, which he had brought upon himself, support an action upon a quantum meruit for his wages, he could not, as against the parish, claim a settlement: that, if he was intitled to a recompence in either case, he was in both ; but that there was clearly no pretence for it in either.

(9) Judgment

Lord Mansfield.

It is not necessary to enter into the question how far this is a crime ; because the master has not discharged the pauper upon that ground. That it is wrong and an offence, no man will deny ; but whether to be animadverted upon both by the ecclesiastical and common law is not material here. To be sure, it was not punishable as a crime at common law ; and the statutes seem [f] only to go to the punishment of the parents, for the purpose of securing an indemnity to the parish. But here this offence is not assigned as the reason for discharging the servant ; and if it were, I have no difficulty to say, that I think a master, hiring a servant after an offence committed, and that not in his own house, shall not at the close of the year discharge him under this pretence : it is not a debauching of his servant, or turning his house as it were into a brothel. I do not go on that ground, nor upon the consent or implied agreement to go before the end of the year ; for there was none : it was against the intention of both parties, that it should affect the settlement : and if the case were to go upon that, it ought to be returned to the sessions to have that fact stated. There was no fraud intended, because there was no agreement : nor did the master mean either to prevent or promote the settlement; but he deducts a something, to leave that question open, which it was the object of other persons, who were interested, to have discussed.

The true point then is, supposing no wages paid and no agreement, here are four days wanting in the service ; and it is by means of his own act, that the servant becomes incapable of compleating it. This conduct is an offence against morality and the laws, in what jurisdiction soever those laws are administered ; and the consequences of it are equivalent to a wilful absence : I therefore think he did not gain a settlement. It is well put, that had an action been brought for his wages, he could not have recovered upon a quantum meruit for these four days.

Ashhurst, J.

There is no drawing the line : if four days may be dispensed with, four months may.

Buller, J.

There must be a service for a year, either actual or implied. Now here is no actual service ; and the case affords no circumstance that will warrant an implication.

Willes, J. concurring,

Rule absolute, the

Order of Sessions quashed, and

Order of two Justices affirmed.

Vide the case of the *King v. the Inhabitants of North Cray*. H. 25 G. 3. 1785. Post.

(10) Judgment

Rule absolute, the order of sessions quashed, and order of the two justices affirmed.

(11) Comment

The court insists on the need for a coterminous hiring and service.

(12) Type

Restrictive

(1) Case name

*R*. v. *Westwell*

(2) Date

1730

(Trin. 3 Geo. 2)

(3) Report

1 Barn. K.B. 354

(4) Court

King’s Bench

(5) Parties

The King and the Inhabitants of Westwell

(6) Order sought

Quashing

(7) Facts

On rule to shew cause, why an order of removal should not be quashed, the case was specially stated, that A. was hired to live with B. from six weeks after Michaelmas to Michaelmas following; and before his time was out he offered to live with B. for another year from that Michaelmas Day, if he would give him 41. per annum. But that proposal not being agreed to, he went away on Michaelmas Day. Three days after the master agreed to give him the money, and then immediately A. entered upon the second service, and lived with B. till the Michaelmas after.

(8) Argument

[None reported]

(9) Judgment

The justices upon this adjudged A. to have got a good settlement by this service. But the Court

made the rule absolute for quashing the order.

(10) Ruling

How far a person shall not be said to gain a settlement by living as a servant in a parish.

(11) Comment

The report is very short but it seem that the relevant principle here is that the contract and the service did not sufficiently align. The first year was short of a year by six weeks and the second year by three days.

(12) Type

Restrictive.

(1) Case name

*R*. v. *Weyhill*

(2) Date

6 February 1760

(3) Report

Burr SC 491

(4) Court

King’s Bench

(5) Parties

Rex v. Inhabitants of Weyhill

(6) Order sought

Quashing

(7) Facts

Two Justices removed John Pollard West, from Corfe Castle in Dorsetshire to Weyhill in Hants: And the Sessions, upon an Appeal, confirmed their Order.

The Facts were stated by the Sessions, to appear to them, on the Evidence of the said Pauper, (the only Witness produced on either Side,) to be as follows; viz. That Thomas West deceased, residing

and being legally settled in Corfe Castle, about the Year 1711, had Issue the Pauper; who continued there with his Father, till he was about eight Years of Age : At which Time, his Father being under

Misfortunes, Robert Pyke Esq; (since deceased) who then lived in the Parish of Worth Matraverse in the said County of Dorset, and to whom a final 1 Estate that belonged to the said Thomas West the Father was then in Mortgage, took the said Pauper into his Family, from Charity, and gave him his Meat Drink Lodging and Clothes, while he continued with him; which was about Two Years in the said Parish of Worth Matraverse aforesaid, and afterwards Four Years more in the said Parish of Weyhill, (to which Parish the said Mr. Pyke and his Family removed.) That neither at or before the Time of the said Pyke's taking the Pauper into his Family, nor at any Time after, was there any Contract between the said Parties, in Relation to the Pauper’s Service of the said Mr. Pyke or his Continuance with him, or to any Wages or other Gratuity to be paid him therefore. That during the Pauper’s Continuance with the said Mr. Pyke, he was employed in running of Errands and doing whatsoever the said

Mr. Pyke or his Servants thought fit to bid him. That no Wages were ever paid or given him. And that, in the Pauper's Apprehension, he was, during all the Time aforesaid, at Liberty to quit the said Mr. Pyke; Or the faid Mr. Pyke to turn him off as either Party should think fit. That the Pauper quitted the said Mr. Pyke and the said Parish of Weyhill, after Four Fears Residence there as aforesaid , and hath done no Act, to gain a Settlement, except as aforesaid. The Sessions were of Opinion, “That, at this Distance of Time, a Hiring for a Year, agreeable to the Statute, between the said Mr. Pyke and the Pauper or his Father, ought to be presumed, and do presume the same accordingly: For which Reason only, they are of Opinion and do adjudge that the Settlement of the said John Pollard West, the Pauper, is in the said Parish of Weyhill, and therefore confirm the Order of the two Justices.

(8) Argument

Mr. Glynn, who, on Thursday 22d November 1759, moved to quash these Orders, said That the Sessions were mistaken in their Opinion ; and had no Right to make this Presumption, contrary to the

Evidence.

Rule to shew Cause.

Mr. Gould, on Behalf of Corfe Castle Parish, now shewed Cause against quashing them. Upon a regular Service for above a Year, a Hiring shall be presumed: It was so, in the Case between the Parishes of \* Crediton and Wincaunton. In the present Case, the Lad continued Six Years in

the Service.

Wages are not necessary: So the Case just now cited proves. The Pauper's Apprehension does not vary the Case: And so the same cited Case proves. The only Witness speaks to a Transaction when he

was but 8 Years old. And he might have been hired out by his Father, though not by Himself.

Mr. Norton contra, for Weyhill Parish, and for quashing the Orders. A Hiring is as essential as a Service. And if the Justices have drawn a wrong Judgment upon the Fasts stated, the Court will quash

their Order. It is manifest, there was no Hiring at all: Mr. Pyke took the Pauper into his Family, from Charity.

\* *Rex* v. *Inhabitants of Wincaunton*, M. & H. 1750, 24 G. 2. P.R. *V. ante*, Vol. 1. pa. 299, No. 107.

(9) Judgment

The Court were clear that this was no Hiring at all, no Contract: But he was taken out of Charity, a Child 8 Years old, to run on Errands and do whatever he was bid ; and left Mr. Pyke, when he came to be 14 and capable of doing more Service.

And it is expressly stated “ That there was \* no Contract.” Indeed where there is a Hiring stated the Court will presume it to have been a regular One (unless the contrary appears:) And that was the Case of Wincaunton. A General Hiring was there stated: But here was no Hiring at all.

Per Cur\* unanimously—

\* *V.* Post, N° 160, *Rex* v. *Inhabitants of Berwick St. John*, P. J760, holden to be a Hiring for a Year; though the Contract was *not quite explicit*.

(10) Ruling

Rule made absolute.

Both Orders quashed.

(11) Comment

The court declines to imply a hiring in a situation where a child was taken into a household out of an act of charity.

(12) Type

Restrictive

(1) Case name

*R.* v. *Whitechurch Canonicorum*

(2) Date

20 June 1765

(3) Report

Burr SC 540

(4) Court

King’s Bench

(5) Parties

Rex v. Inhabitants of Whitechurch Canonicorum

(6) Order sought

Quashing

(7) Facts

Two Justices made an Order for the Removal of John Gay, Susannah his Wife, Matthew, Sarah, Mark, Luke, John and Catura their Children, from Wotton Fitzepayne in the County of Dorset, to Whitechurch Canonicorum in the same County: And the Sessions, upon an Appeal, confirmed that Order.

The Facts stated upon the Order of Sessions were as follow –

The Pauper John Gay was settled in Whitechurch Canonicorum. After he was so settled, and was of the Age of twenty-two Years, it was agreed between him and William Burridge, a Stone-Mason, who

lived in the said Parish of Wotton Fitzepayne, That the said William Burridge should take the said John Gay Apprentice for the Term of six Years, and teach him his Trade of a Stone-Mason and

should, during the Term of his Apprenticeship, provide for him Meat Drink Washing Lodging and Clothing, and that the Said John Gay should live with and work for him as his Apprentice in his said

Trade during that Term ; and that Indentures should be executed between them accordingly: But no such Indentures were ever executed. The said John Gay, immediately after the said Agreement was

made, went to live with the said William Burridge, and worked for him as an Apprentice in his Trade for five Years and upwards, in the said Parish of Wotton Fitzpayne, and was also some times employed by the said William Bur ridge in Husbandry-Business; of which the said John Gay complained to the said William Burridge as contrary, to the said Agreement by which the said John Gay was to work for the said William Burridge in the Trade of a Stone-Mason. The Pauper, before the Expiration of the last Year of the said Term, married, and left his Master with his Master’s Consent. There never was any other Contract or Agreement between the Pauper and the said William Burridge. No Wages were ever paid by the said William Burridge to the said John Gay : But a little Pocket-Money was sometimes given to him by the said William Burridge. The said William Burridge and John Gay always considered themselves as Master and Apprentice: But as no Indenture was ever executed between them, they thought that they were at Liberty to part when they pleased. And when the faid John Gay complained to the said William Burridge, “That he ought not to be employed except in his Business of a Stone-Mason,” the said William Burridge told the said John Gay, “That he might go away if he pleased.” The Pauper had not gained any Settlement save as aforesaid. Whereupon the Sessions adjudged “that the said John Gay did not gain any Settlement in the

said Parish of Wotton Fitzpayne” and therefore confirmed the Order of the two Justices.

(8) Argument

Mr. Dunning and Mr. Meseres having moved (on the third Wednesday in last Easter Term) to quash these Orders, a Rule was then made to Shew Cause.

And now Mr. Thurlow and Mr. Mansfield shewed Cause why the Orders should not be quashed.

This Man was neither bound as an Apprentice; nor hired as a Servant. He could not be an Apprentice because there is no Indenture: Nor is there any Hiring, either express or implied. The Objects are different: And a Binding as an Apprentice, and a Hiring as a Servant, cannot be converted one into the other. They cited 5 Mod. 328, *Rex* v. *Inhabitants of* *Chesterfield*, the Case of Sir Paul Jenkinson's Servant Francis Tenison ; and the Case between the *Inhabitants of Corfe Castle* and *Weyhill* \*, concerning Mr. Pyke’s Servant.

On the other side, it was contended to be good as a Hiring and Service. But

\* *V. ante*, No. 157, *Rex* v. *Inhabitants of Weyhill*.

(9) Judgment

The Court were clearly and unanimously of the opinion “that the Rule ought to be discharged:” and the Case of *Rex* v. *Inhabitants of St. Mary Kallendar in Winchester* ⴕ, was mentioned as in point.

ⴕ *V. ante*, pa. 274, No. 95.

(10) Ruling

Rule discharged,

And consequently

Both Orders affirmed.

(11) Comment

An informal apprenticeship, which confers no settlement, and cannot be treated as if it were a hiring for service.

(12) Type

Restrictive.

(1) Case name

*R.* v. *Whittlebury*

(2) Date

21 November 1795

(3) Report

6 T.R. 464

(4) Court

King’s Bench

(5) Parties

The King against The Inhabitants of Whittlebury

(6) Order sought

Quashing

(7) Facts

Two justices removed J. Roberts, his wife, and son, from Whittlebury to Paulerspury: the sessions, on appeal, being of opinion on the facts hereafter stated that the contract hereafter mentioned between J. Grimsdick the master of the pauper and J. Roberts was dissolved before the end of the year, quashed the order of removal, subject to the opinion of this Court on the following case. “ The pauper was born at Whittlebury; and in the year 1783 he was hired by John Grimsdick of Paulerspury to serve him from Michaelmas in that year until the Michaelmas following at the wages of 50s. He entered into the service and continued with his master unto within five days of the end of the year, when he went to Towcester Statute to seek for a service for the next year. While he was there, he was suddenly taken ill of a fever which continued for six weeks, and he was deprived of his senses during part of that time. He went from Towcester Statute to his mother : but neither he nor his mother having any money to maintain him under his illness, he that night desired his mother to go to his master for his money, and to bring away his clothes, the mother went the next day, and at her return she brought his money all but one shilling, which she told him his master had stopped for the remainder of the year, and gave it to him together with is clothes, with which he was satisfied ; and he thought himself at liberty to hire himself to another master if he had been well enough.

(8) Argument

Perceval and Vaughan in support of the order of sessions. First, the sessions having determined, and stated it as a fact, that the contract between the master and servant was dissolved before the end of the year, this Court are precluded from examining into the propriety of their determination ; *R. v. The Inhabitants of Ronton* *Abbey,* ante, 2 vol. 207. *R. v. Hurdis*, ante, 3 vol. 497, and *R. v. The Inhabitants of* *Folkstone*, ib. 505 (a)1. But secondly, if the propriety of their decision can be now examined, it will appear that they drew the proper conclusion from the facts in [465] evidence. It is not necessary to contend that absence or illness dissolved the contract, or that the latter is a sufficient cause for discharging the servant, for here the contract was put an end to by the agreement of both parties. Payment of wages by the master and acceptance by the servant within the year have been considered in all the cases as a dissolution of the contract. *R. v. The Inhabitants of Gresham*, ante, 1 vol. 101. *R. v. The Inhabitants of Clayhydon*, ante, 4 vol. 100, and *R. v. The Inhabitants of Thistleton*, ante, 6 vol. 185. And in this case it is manifest that, by the deduction of part of the wages in proportion to the part of the year that the pauper did not serve, both parties considered that the contract of service only continued to that time for which the wages were paid.

Leycester, Dayrell, and B. Morice, contra. It may be admitted that when the justices below simply state a conclusion from the evidence before them this Court are precluded from examining the propriety of that conclusion, but when they also state all the premises from which that conclusion is drawn, this Court consider them so stated for the purpose of enabling them to judge whether that conclusion be or be not rightly drawn. *R. v. The Inhabitants of Tedford*, Burr. S. C. 57, 60. Secondly, then the Court cannot but see that the sessions formed a wrong judgment on the facts of this case. That it is not universally true that in all cases payment of wages by the master within the year and acceptance by the servant dissolve the contract, appears from the cases of *R. v. Christchurch* (a)2, and *R. v. Richmond* (b). Here it does not appear that the parties intended to put an end to the contract by the payment of wages; the contrary is rather to be inferred. The sickness of the servant was a reasonable cause of absence ; and the master could not have discharged him for that absence. *R. v. Haddington* (c); and *R. v. Sutton* (d). In that situation the servant had a right to receive all the benefit of his contract for the remainder of the year, and to continue with his mother as long as he was ill; and his application to the master for money was not made with a view to dissolve the contract, but to enable him to procure assistance during his illness. In order to gain a settlement by hiring and service, it is necessary to “continue and [466] abide” in the service for a year : but in *R. v. Christchurch* (a)3 Denison J. said “continuing and abiding in the service ”means “ not deserting it.”

(a)1 Sed vid. *R. v. St. Mary the Less, Durham*, ante, 4 vol. 477, and *R. v. S. Field*,

ante, 5 vol. 591.

(a)2 Burr. S. C. 494.

(b) Ib. 740.

(c) Ib. 675.

(d) Ante, 5 vol. 657.

(a)3 Burr. S. C. 497.

(9) Judgment

Lord Kenyon Ch.J. I confess I have not been able to raise the least doubt in my mind on this case. The case of *R. v. Tedford* is a very considerable authority to shew that when the sessions state all the facts as well as their determination we are not precluded from examining the conclusion drawn by them from the facts. Therefore without saying more upon that head, but entering into the consideration of the premises here, as the justices intended we should, I think that the conclusion that the justices drew was the right one. There is no doubt but that the parties may put an end to the contract during any part of the year, either at the beginning, in the middle, or only a day before the end of it; and if they do, the servant gains no settlement, because the Act of Parliament requires that the relation of master and servant should continue during a whole year. It is not necessary here to decide whether in every case the receipt of wages before the expiration of the year puts an end to the contract, or whether if a servant be taken ill during the year the master can of his own authority discharge him and put an end to the contract, or whether in such a case justices may put an end to the contract: but it is stated in this case that five days before the end of the year (and it is immaterial whether that happened five months or five days before the year expired) the pauper sent his mother to his master for his money, the latter paid the wages stipulated for the whole year except one shilling, which he deducted because the whole year’s service was not performed. As far therefore as the master had the power, he did put an end to the contract before the end of the year: he had no right to deduct the shilling but on the ground that the pauper did not continue his servant until the end of the year. Then what was the conduct of the servant? he received this money, saying that he was satisfied; and it also appears that he thought he might have hired himself to another master before the end of the year. One party said, I put an end to the contract as far as lies in my power; the other said, I also agree to put an end to it as far as respects me ; therefore both parties, whose consent was necessary, did consent to dissolve the contract before the expiration of the year.

[467] Grose J. The question before us is not whether or not the master alone could have put an end to the contract on account of the servant’s illness, but whether there was sufficient evidence of a dissolution of the contract by the consent of both parties. It is a mere question of fact, which I think the justices should have finally determined : but having sent the case here for our opinion, I have no objection to give mine upon it. It must be remembered that at the time when the servant sent his mother to his master for his money, his wages were not due ; no money was due to him until the year expired, or until there was an end of the contract; this message therefore was an offer on the part of the servant to put an end to the contract. Then the master paid the whole year’s wages, deducting one shilling for the rest of the year ; the servant received this together with his clothes, and said that he was satisfied ; by that he signified his consent to put an end to the contract.

Lawrence J. Nothing could be due from the master to the servant until the completion of the year, or the end of the service. The servant applied for his money at a time when he was not entitled to it unless the master would consent to dissolve the contract: in answer to this application the master sent all that he thought was due; he deducted Is. for the remainder of the year; and the servant said he was satisfied. The cases of *R. v. Christchurch* and *R. v. Sutton*, are distinguishable from the present. In the former there was a dispensation with the service ; and it is immaterial whether the service be dispensed with in the middle or at the end of the year. And in the latter, both parties did not consent to dissolve the contract before the end of the year: but in this case they did.

Order of sessions confirmed.

(10) Ruling

A servant, who had been hired for a year, was taken ill 5 days before the end of the year, on which he went to his mother’s and sent to his master for his money; the latter sent him the whole year’s wages, deducting 1s. for the rest of the year, and the servant said he was satisfied : held that this was an agreement by the master and servant to put an end to the contract before the end of the year, and consequently that the servant gained no settlement by his hiring and service. [8 T. R. 236, 473.4 East, 356.]

(11) Comment

The court infers an agreement to dissolve the contract of hire from the master sending the servant wages reduced by the amount of time (rest of the year) he could not work due to illness and the servant accepting this.

(12) Type

Restrictive

(1) Case name

*R* v. *Wincaunton*

(2) Date

31 January 1750

(3) Report

Burr. S.C. 299

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Wincaunton

(6) Order sought

Quashing

(7) Facts

Two Justices made an Order for the Removal of John Forward and Sarah his Wife, and Martha and Sarah their two Children, from Crediton in the County of Devon to Wincaunton in Somersetshire: And, upon Appeal, the Sessions confirmed that Order. Whereupon this special Case is stated.—

John Forward was born in Wincaunton, where he lived with his Parents until his Age of seventeen ; when, being informed that Samuel Williams of Charlton Horethorne wanted a stout Boy, he went and offered to serve him; and the said Williams, liking him, hired the Pauper to serve him in Husbandry, and agreed to give him Meat Drink Washing and Lodging and Cloaths when wanted ; but no particular Time was agreed on; and the Pauper apprehended his Matter might turn him off, or he might have gone away from him, at their Pleasure: Nevertheless, there was no Agreement for that Purpose. That thereupon, the Pauper continued with and served the said Williams in Charlton Horethorne aforesaid for two Years and a Half: And, at the End of the first three Quarters of a Year, wanting Cloaths, his Master provided Cloaths for him ; and so afterwards, when he had Occasion for Cloaths. That the Pauper afterwards removed into the said Parish of Crediton : But having gained no Settlement there, was removed, with his said Wife and Family, by Virtue of the said Order. This Court are of Opinion and do adjudge that the said Pauper gained no Settlement by such Service in “ Charlton Horethorne aforesaid;” and do therefore ratify and confirm the said Order, &c.

(8) Argument

On Friday 23d Nov. last, a Motion was made by Mr. Gapper, to quash this Order.

The Question was, “ Whether this be a Settlement within the 3 & 4 W.&M. c. 11.”

To prove that a general Hiring is a Hiring for a Year, Bro. Abr. Title Labourer, pl. 20. was cited: —Which mentions that by the Statute of Labourers, 2^ Ed. 3. c. j. Quikbet potens in Corpore doit server. And Hankford said “ that every Infant of twelve Years, retained, ought to serve.” And pl. 23. per Hankford—“ Si feo face Covenant one un, de moi server, il viendra on mon Service pour un an entier.” And 1 Inst. 42.b. “ If a Man retain a “ Servant generally, without expressing any Time, the Law shall construe it to be of one Year: For that Retainer is according to Law.” 23 Ed. 3. c. 21. &c. The Act of 8 & 9 W. 3. c. 30. only requires a Service: The Hiring depends upon 3 & 4 W. & M: c. 11. Now here is an express Service Rated. So that the only Question is upon the Hiring. The modern Cases cited were *Crowland v. St-. John Baptist* in Peterborough, Viner,—Title—*Settlement of the Poor*; where it was said “he served for a Year;” the Order was held good : “For the Law presumes he was hired for a Year.” And *Jessop and Missenden Parishes*, Trin. 13 Ann. where Sarah Barnes came as a hired Servant, and lived with her Father for a Year in a little Cottage at Missenden. The Father gave her 10s. a Year, and what else she could get: She was holden to be settled at Missenden. And *Rex v. Inhabitants of Putney*, 13 to 15G. 2. These were cited to prove that a general Retainer is a Retainer for a Year.

Note—This Point was (in Mich. Term 1741, 15 G. 2.) taken for granted and undoubted in this last-cited Case, by Lord Chief Justice Lee, Mr. Justice Page, and Mr. Justice Wright; though the Case itself was never determined.

The Counsel who now shewed Cause argued that this was only a Hiring at Will : Though they admitted that the old Books do prove that a General Hiring is, upon the Statute of Labourers, a Hiring for a Year.

But yet the Circumstances of the Hiring may shew the Intention to be otherwise. And this Hiring seems, upon the Circumstances of it, to be only at the Will of each. The Rule is not to be taken so blindly and absolutely, as that it can not be otherwise: But only “that, prima facie, a general Hiring is a Hiring for a Year.”

(9) Judgment

Lord Chief Justice Lee—It is agreed “ That a general Hiring is a Hiring for a Year ” according to I Inst. 42. b. Therefore the only Question is “Whether the Circumstances of this Case shew an Intention to the Contrary.”The Apprehension of the Pauper is stated indeed to have been to the contrary : But it is also stated that there was no Agreement for that Purpose.” His Lordship said he did not see any Circumstances to vary it from the general Rule, which has been and must be agreed. The three other Judges were of the same Opinion. As to Hiring for a Year—V. Post, *Rex v. Inhabitants of Milwich*, Trin. 1757, 30 & 3 1 G. 2. in my 4th Partof Reports, 371. *Rex v. Inhabitants of Weyhill*, Hil.1760, ibidem, pa. 928. And *Rex v. Inhabitants of Berwick St. Joh*n, Easter Term 1760.

(10) Ruling

Per Cur.

Both Orders quashed.

(11) Comment

This is an early decision setting out the legal presumption that an indefinite hiring is a general hiring, and therefore a ‘hiring for a year’ (rather than a hiring at will). There was no mandatory form of contractual wording about the duration of the hire. The servant’s interpretation of the contract (i.e. being at liberty to end the contract at will) is immaterial.

(1) Case name

*R.* v. *Winchcombe*

(2) Date

5 May 1780

(3) Report

1 Douglas 392

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Winchcombe

(6) Order sought

Quashing

(7) Facts

Rule to shew cause, why an order of the Court of Quarter-Sessions for Gloucestershire should not be quashed. The special case stated as follows :

The Pauper hired himself in the parish of Chipping Norton, five weeks before Michaelmas, for a year, and, at the time of the hiring, it was agreed between him and his master, that his wages should be paid weekly, at eight shillings per week, and that, being a ballotted man in the militia, he should be absent for the month, and, in lieu of that month, should serve another at the end of the year. He was accordingly sent thirty days in the militia, and then returned to his service, but be only continued three weeks of the month which was agreed to be served in lieu of the month he was absent in the militia, leaving his master a fortnight before Michaelmas. He expressly swore, that he did not serve his master a year by one week.—Two justices had removed him from Winchcomb to Chipping Norton, and their order was quashed by the sessions.

(8) Argument

On Wednesday, the 3d of May, Bearcroft, and Clifford, argued in support of the order of sessions, and contended, 1, that there was no hiring, nor, 2, any service for a year, at Chipping Norton.—1. The exception was part of the original contract. There was to be an interval, and then the pauper was to come and serve in the ensuing twelvemonth as much more as, pieced to the former service, would make up a year , but a hiring under the statute must be for a whole year, without any interruption foreseen and stipulated for at the time of the agreement, as was determined in the case of *Rex* v. *Bishop’s Hatfield* (*d*). Indeed the present case was more properly to be considered as a hiring by the week.—2. Here was plainly no service for a year. In *Rex* v. *Castlechurch* (*e*), it was laid down by Lord Hardwicke, that the Act 8 & 9 Will. 3, c. 30, requiring a year’s continuance in the same service, is to be construed strictly, being an explanatory law, and in all the cases where different services have been tacked together to make up the year, there has been no interval of time between them. This case differs from that of *Rex* v. *Westerleigh* (*f*), which was determined on the ground that the hiring was conditional; there, by the agreement, it was uncertain whether the pauper would be absent or not; if he was, his place was.to filled up by another, & qui facit per alium, facit per se.

Dunning, and Poole, on the other side, contended, that, if there had been no agreement about the pauper’s service in the militia, and the hiring had been, in general terms, for a year, he would have gained a settlement although he had been called out, had been absent a month on militia duty. If a contrary doctrine were to prevail, militia-men would be in a worse situation, and less capable of gaining settlements, than the rest of the King’s subjects, which the Legislature certainly never intended. This was the principle of the determination in *Rex* v. *Westerleigh*. The reason for the

exception there, and in the present case, was the same ; and here, if the militia had not been called out, there would have been no interval of absence. The anxiety of the parties to guard against an event which required no provision to be made for it, could not make any difference in the law of the case.

Lord Mansfield.—I have no doubt that if this had been a common hiring for a year, and the pauper had served one month in the militia, and only eleven with his master, he would have gained a settlement. The master could not have refused his consent to his serving in the militia. The only question is, whether the particular agreement in this case does not make the additional month a part of the year. It is a great nicety, and we will think of it.

(*d*) H. 31 Geo. 2, Burr. Settl. Cases, No. 141.

(*e*) M. 9 Geo. 2, Burr. Settl. Cases, No. 20.

(*f*) M. 14 Geo. 3, Burr. Settl. Cases, No. 234.

(9) Judgment

His Lordship, this day, delivered the opinion of the Court.

Lord Mansfield.—There is in this case a hiring for a year, and there is also a service for a year, if it were not for the month’s absence in the militia. A service must be for a continuation, without interruption, or adding together broken pieces to make up the year. But here the agreement as to the absence for a month, in the militia, was only what would have been implied, and what the master must have consented to. The year was completed five weeks before Michaelmas, and the

additional month agreed for was only in the nature of a compensation for the want of the pauper’s service while absent in the militia, and equivalent to a deduction of so much wages. This case, if not the same, is very like that of *Westerleigh* [F 1]. The Court ought to lean in favour of settlements, and the bad consequences would be very extensive, if we were to determine, that a man should lose his settlement by serving his country in the militia. We are all of opinion, that this was a good settlement [F 2].

The order of sessions quashed, and the order of the two justices confirmed.

[F 1] This case, and that of *R.* v. *Westerleigh*, seem to be two insulated cases. In the case of *R.* v. *Over*, 1 East, 599, it was held that the reservation of two days out of every half-year made by a pensioner of the East-India Company for the purpose of receiving his pension, prevented him from gaining a settlement by service under the hiring. The decision of the principal case is there put on the ground that the law would have compelled the master to permit the absence in the militia, without any

stipulation. The Judges in many modern cases have disclaimed the principle of leaning in favour of a settlement in one parish rather than another.

[F 2] See *R.* v. *Birmingham*, supra, 333.

(10) Ruling

A militia-man being hired for a year, with an express exception that he shall be a sent on duty for the month, and, in lieu thereof, serve a month, over the year, gains a settlement without serving the additional month.

(11) Comment

An absence of a month to serve in the militia in a contract for a yearly hiring does not prevent a settlement.

(12) Type

Liberal

(1) Case name

*R*. v. *Wintersett*

(2) Date

31 May 1783

(3) Report

Cald 298

(4) Court

King’s Bench

(5) Parties

R. v. Inhabitants of Wintersett

(6) Order sought

Quashing

(7) Facts

Two Justices by an order remove George Challenger from the township of Wintersett in the West Riding of the county of York to the township of Stainburgh in the same riding. The sessions on appeal adjudged the settlement to be in Wintersett, quashed the order, and stated the following case:

That about three years ago the pauper was hired at Barnsley statutes, which are held a few days before Martinmas, to Thomas Oundsworth of the township of Stainburgh for one year, received 1 *s*. for his Godspenny, and was to have three guineas for his wages : that that very night of the hiring the pauper fell ill and continued sick and unable to go, and did not go into his service till a month after Martinmas; when the pauper and his mother went to the master's house, who complained that the pauper had not come to his service according to the agreement, and therefore refused to receive him : whereupon the pauper's mother said, “we must fall into your will for wages, and take what you will allow us”; and left the pauper in his service, where he continued until Martinmas following : when the mother was sent for and received for forty-eight weeks wages after the rate of 1 *s.* 2 *d.* per week; being less than the rate of the original wages.

(8) Argument

Fearnley, being called upon by the court to support the rule for quashing the order of sessions, insisted that an actual or a legal service for a year with , an inhabitancy of forty days was all that was necessary to be shewn here for the purpose of a settlement: that the payment or non-payment of the intire wages, even where the ground upon which the abatement had been insisted upon was just and warrantable, could make no difference if the matter, after the fast upon which the objection was founded had happened, continued the pauper in his service, and the pauper compleated his year : that this was settled by many authorities [*a*]. That, if it were not so, upon any subsequent displeasure conceived by the master a poor man might be compelled to engage in an expensive suit, or relinquish the earnings of his labour, as well as lose his settlement. But that inhabitants in the present case the point made on the other side being not the sickness of the pauper, and that being the visitation of God, his sickness could not be imputed to him as negligence or default; and consequently that in the eye of the law he was as much in the service during his absence for such a cause, as if he had been labouring under his master’s roof: that under the circumstances to have deducted any part of his wages without his agreement would have been injustice, and an injury for which an action would lie : that it was equally clear, that at what period of service an absence happened in any case, was perfectly indifferent, if the Servant was received again : but that he was not prepared with authorities, as he had not expected to be called upon, no supposing it possible, that an attempt would be made to support this order. That, when the pauper went into the service, though his mother consented that he should lie perfectly at mercy with respect to the terms upon which the contract was to be continued, yet it was still the fame, and no new, contract, and bound by the same Godspenny. That if a settlement was in any case to be favoured (and it was every where said that in all cases they ought) the court would not Suffer, and that contrary to the intention on both Sides, a favoured right to be defeated by a technical and critical interpretation of a concession, made by an ignorant man, in a case in which the justice as well as the law was strongly with him. But that there was no pretence to say that the original contract made between the boy and his master was by this talk with the wife and general submission by the pauper’s mother on bis behalf, annulled, and a new contract substituted : that the pauper was a legal or constructive, though not an actual, servant, from the first moment of the year, in which he had originally contracted to serve : that to take the question in the opposite point of view : suppose the mother of the pauper had in his presence told even his master, that unless the boy should have a coat into the bargain, or some other small gratuity, or rather generally something more (for no specific abatement was stipulated in the present case) he should not enter upon his service ; though the law in this case would have aided the master, as in the other it would the servant, was it conceivable, that the consent of the matter to yield this indefinite something could be holden, and in this kind of transaction and between such parties, to have cancelled the subsisting contract? That the uniform language of the court had been, that in these kind of adjudications, the subject of which were the parole contracts of ploughmen and farmers at country fairs, the rule of construction ought more especially than in any other to be plain and simple, without refinement or subtlety, and level to the common understanding ; and that he trusted the present decision would not form an exception to that rule.

[*a*]. Rex *v.* Inhabitants of Hanbury. 26 &27 G. 2. 1753. Burr. Settl. Cas. 322, &c, and in the case of the K. *v.* the Inhabitants of Westlerleigh. M. 14 G. 3. 1773. Burr. Settl. Cas. 753. it was said by *Aston* J. “As to abatement of wages, there are several cases, in which that has been holden to signify nothing.”

(9) Judgment

Lord Mansfield. The service had never commenced under the first contract: if it had, no doubt the master must have supported him in his sickness. But that is not the question: the point is, that the agreement acted upon here was a fresh agreement, when he recovered from his sickness; and the beginning of his service was then. Under the former the mistress refused to receive him. Then considering the old contract at an end, the annual service was but for eleven months ; that is, to the Martinmas next : and the submitting to the abatement of the month’s wages at the end of the year is an affirmance of the agreement made by his mother; and this, as rescinding the original agreement, destroys more than the Iegal or constructive service ; it shews also that there was no hiring for a year: so that both the hiring and service mutt be considered as imperfect and ineffectual.

Buller, J. If a servant is taken ill after the service has commenced, the master is bound to support him, and cannot turn him away on that account. But it is not true, that the service began under the first contract. That was executory. It was made some days before Martinmas to commence at Martinmas; and in fact it never commenced. When the pauper went, they made a new contract, and under that his service commenced.

Willes, J. concurring,

Lord Commissioner Ashhurst was absent.

Rule discharged, and

Order of sessions quashing the

Order of two justices, affirmed.

[*a*] Slender circumstances have been holden to constitute the difference between contracts with respect to their continuance or dissolution, and to decide whether services under them would or would not connect for the purpose of giving a settlement. Vide the K. *v.* the Inhabitants of Grendon Underwood. Tr. 23 G. 3. 1783, post. p.

Two days after, on the lad day of term, Fearnley said, he had looked into the authorities ; and begged leave to state a case or two applicable to this subject : that in the cafe of [*a*] the K. v. the Inhabitants of Hanbury, it was laid down by Lee Ch. J., “ that the absence of the servant in the beginning does not make any real difference at all: for service has not been taken strictly, tho hiring has.”

Lord Mansfield.

Whether at the beginning, middle or end of the term, if the service begins, absence is the same at all times : but the ground the court went upon was ; that here, under the hiring for a year, it never began at all.

Fearnley. That upon the subject of the period at which the service had its legal commencement, he must not presume to repeat what he had before submitted ; but that, even in that view of the question, and supposing the hirings to have been ejusdem generis, they might legally be connected; and would, if either were a hiring for a year, give a settlement. That in the cafe of [*b*] the *K.* v. *the Inhabitants of Fifehead Magdalen*, where there were two hirings in the same species of service, though the new contract was not only for a different sum and that near doubly the amount of the original contract, but also where there was an actual discontinuance of an hour between the two contrails, Lee Ch J. held, that “ the sameness of the contract has not been so strictly insisted upon, as to make it absolutely necessary that it should be under the very same bargain:” and Probyn said, “It is the same service, tho performed under two contracts”: [*c*] That here the difference in the amount of the wages was not made the subject of contract between the parties, or even, as appeared by the case, ascertained upon any principle in the final settlement dictated by the master : that therefore, though they were to be taken as two different contracts, still the law was the same; and that under such a service a settlement is acquired.

Lord Mansfield. Then the service under the last hiring for a year was there coupled with the former service under a hiring for less than a year. Here there are also two hirings, but there was clearly no more than one service, and that for less than a year. Your cases are good law ; but they don’t apply.

Fearnley further contended, that as no second hiring had been stated in the case, it ought to be returned to the sessions, to have that fact found.

But the court were of opinion, that this was unnecessary, as they had found enough to shew, that there was no service under the first.

[*a*] Tr. 26 & 27 G. 2. 1753. Burr. Settl. Cas. No. 326.

[*b*] M. 11 G. 2. 1737. Burr. Settl. Cas. No. 118.

[*c*] But this is a ground which Lord Mansfield would not admit in a case, where the hirings were ejusdem generis. He says, “upon his return he does not agree to continue the old service, but makes a new contract for more wages. There was therefore a compleat abandonment and discontinuance.” Rex v. Inhabitants of Ellisfield. H. 17 G. 3. 1777. ante. p. 4. And it is farther observable, that his lordship there represents the court in the K. v. Fifehead Magdalen to have gone not upon this ground, which the reporter expressly states that every one of the Judges took, and that they adjudged it not to be a discontinuance but upon the principle that there could not be a fraction of a day ; of which there is not the smallest trace in the report. His Lordship therefore appears to have been long and strongly impressed with this idea, as he first brought it forward at a time when, as far as it went, it operated against the judgment that the court pronounced.

(10) Ruling

Upon a refusal by the master’s wife to receive a hired servant, who had been prevented from entering into the service for the first month by illness, and the servant’s mother saying in his presence, that the *quantum* of wages should be left to the master and mistress, if any abatement is made in consequence, it is no settlement. Absence at any period of the service is purged by being received again. A master is bound to support his service in every period of his sickness.

(11) Comment

Where the servant was ill at the start of the service and never started it, a settlement was not established. Earlier authorities suggesting scope for flexibility in cases of illness were distinguished.

(12) Type

Restrictive.

(1) Case name

*R.* v. *Woodhurst*

(2) Date

4 February 1818

(3) Report

1 B. & Ald. 325

(4) Court

King’s Bench

(5) Parties

The King versus the Inhabitants of Woodhurst

(6) Order sought

Quashing

(7) Facts

Upon appeal against an order of two justices, by which George Herd, his wife, and their three children, were removed from the parish of Saint Ives in the county of Huntingdon to Woodhurst in the same county, the sessions confirmed the order, subject to the opinion of the Court on the following case: In the year 1809, George Herd the pauper, being legally settled in Woodhurst in the county of Huntingdon and unmarried, was afterwards hired by William Margetts of Saint Ives in the said county, brickmaker to work in Saint Ives under a written agreement which Mr. Margetts states to be lost, and to be as follows : “I George Herd have this day agreed to serve William Margetts as a brickmaker from Michaelmas to Michaelmas again. The said George Herd engages to make 70,000 bricks at so much for digging and turning, so much for moulding and making, and so much for running to the kiln.” This was all the contract; nothing was said as to the time he was to begin to dig; he probably began in November, and then worked on the said kilns under that contract, not having finished his 70,000 bricks till after Michaelmas following. It appeared from the evidence of the master and pauper, that as soon as the pauper had made the 70,000 bricks according to his contract, his master had no control over him, and he might go where he pleased, even if it was a month before Michaelmas, and if he stopped and made more than 70,000 bricks he was to be paid for them, and the master could set him to no other work than brickmaking. This was the custom of those kilns, but the pauper this year did not finish his contract till after Michaelmas, 1810. The pauper lodged and boarded himself in Saint Ives and drew so much money on account of the bricks in the winter, and so much in the summer; and when the bricks were all made the account was settled between the pauper and his master.

(8) Argument

Hart, in support of the order of sessions, was stopped by the Court who called upon

Nolan, contra. The contract in this case was for a year’s service. Although it be engrafted upon it as a condition that a given number of bricks shall be made the contract must be construed by itself, and the apprehension of the master or pauper as to its effect can make no difference; and although they might think that as soon as the bricks were made all control of the master over the servant ceased; yet the Court will look to the very words of the agreement, and must thence conclude that that was not so, but that the master’s control would not cease until the end of the year. The objection respecting the uncertainty of the time when the pauper’s service commenced is wholly immaterial; for at whatever time he might go into the service his being received by his master would be conclusive evidence that his previous service had been dispensed with.

(9) Judgment

Lord Ellenborough C.J. In this case the Court can entertain no doubt. There was not a contract which, properly speaking, had relation to time. The pauper engages to serve only until a particular job be done: if the bricks were made before the year expired, his service would terminate. So that unless he finished the last brick exactly at the year’s end, which would be very improbable, he would not serve for a year. It is therefore only a contract for that individual job, and the introduction of time into the agreement is wholly irrelevant.

Per Curiam. Order of sessions confirmed.

(10) Ruling

A pauper agreed to serve as a brickmaker from Michaelmas to Michaelmas, and to make 70,000 bricks at a stipulated price: Held that this was not a contract for a year’s service absolutely, but a contract to serve till the completion of the job; and therefore a settlement was not thereby gained.

(11) Comment

A task contract, not being a general hiring, cannot confer a settlement.

(12) Type

Restrictive

(1) Case name

*R.* v. *Worfield*

(2) Date

5 February 1794

(3) Report

5 Term Reports 507

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Worfield

(6) Order sought

Quashing

(7) Facts

The Quarter Sessions in Shropshire confirmed an order of two justices, by which Hannah Phillips was removed from St. Leonard in Bridgnorth to Worfield, both in the county of Salop, subject to the opinion of this Court on the following case: H. Phillips, the pauper, who was born in the parish of Worfield, where her father was legally settled, went about six years ago to live with A. Smith, in St. Leonard in Bridgnorth, and served him near a year, but was not hired to him as she knows of. While she lived with the said Andrew Smith, John Jones of St. Leonard met with her, and taking her into his house, asked her if she were hired again to Smith; to which she answered that she was not: Jones then asked her if she would come and live with him, and take care of his child, to which she consented ; and soon afterwards she went to him ; two or three days after she had been with Jones, he told her he would find her meat, drink, and clothes, and then asked if she should be satisfied with that; she told him she should ; he said he would have given her money, but that it was better for her to have clothes, as she was connected with bad friends, who would take her money. She went to Jones’s at Christmas, and lived with him about two years and an half, leaving him in the month of May, when her mistress told her that her child was then old enough not to require any further attendance, and dismissed her. The pauper said, in her opinion and apprehension she was at liberty to have left Jones’s at any time.

(8) Argument

Bearcroft and Syer, in support of the order of sessions, contended that the pauper did not gain any settlement in St. Leonard’s, Shoreditch, by her service with Jones, because the circumstances of the case negatived the presumption that she was hired for a year. In *R.* v. *St. Peter's in Dorchester* (*a*), Lord Mansfield said, “Hiring in general and indefinitely gives a presumption of a hiring for a year, where the nature of the service and subsequent facts concur to render it probable that it was so meant.” But here the subsequent facts rendered it improbable that it was so meant; for it is stated that the mistress dismissed the pauper in May, in the middle of a year, without any objection on the part of the latter, which shews that both parties understood that she was not hired for a year, and that the mistress could put an end to the service in any part of the year. So, in *R.* v. *Newton Toney* (*b*), where the pauper left the service in the middle of a year, Grose, J. said, “ It appears that he actually left his service in the middle of a year, which satisfies me that it was not intended by the contracting parties to be an hiring for a year.” And, though in general where a precise contract is proved, the apprehension of one of the parties that the contract is different from that proved is immaterial, yet, in a case like the present, where no contract for a definite time was proved, and where the duration of it is only to be collected from the circumstances which attended and followed it, the opinion of one of the parties, corresponding with the conduct of both, is material to shew what they both meant when they entered into the contract. This case is not unlike that of *Gregory Stoke* v. *Pitminster* (*c*), where a young woman lived with her grandmother for four years on an allowance of meat, drink, washing, and lodging; and where there appearing to be no contract between the grandmother and the girl, but that she might have left her grandmother at any time, it was adjudged not an hiring. At all events, this is a question of fact, and not of law, whether or not the pauper were hired for a year, and the justices at the sessions, as well as the two removing justices, were of opinion that there was no hiring for a year, by adjudging the settlement of the pauper to be in the parish of Worfield.

(*a*) Burr. S. C. 515.

(*b*) Ante, 2 vol. 455.

(*c*) 2 Sess. Cases, 120.

(9) Judgment

Lord Kenyon, Ch.J. (stopping Leycester, contra).—It has been so long settled, that a general hiring is a hiring for a year, that it ought not now to be controverted. In my opinion the hiring in this case was a hiring for a year; the circumstance of the pauper’s going away in the middle of a year, does not shew that this hiring was not of such a description ; for it was competent to both parties to put an end to the contract whenever they pleased ; and here they did dissolve it in the middle of a year. It is much to be wished, that in cases of this kind, the justices at the sessions would draw the conclusion, and state it as a fact, whether or not there was a hiring for a year. With respect to the case of *Gregory Stoke* v. *Pitminster*, it was determined early in the reign of George the Second, when these questions were not discussed or understood so well as they are at present.

Ashhurst, J.—The circumstances of this case shew that the parties intended that this should be a hiring for a year. The pauper was to be provided with clothes in lieu of wages : now, if she had been clothed by the master the day after she went into the service, could it have been the intention of the parties that she might have left the service immediately ? If not the next day, what other line can be drawn? This shews that both parties meant that the service should be permanent, and that it should not be in the power of the pauper to leave the service when she pleased. This then was a general hiring, which the law construes to be a hiring for a year.

Buller, J. and Grose, J. assenting,

Both orders were quashed.

(10) Ruling

A. went into B.’s service without making any contract at the time ; a few days afterwards B. agreed to find A. in meat, drink, and clothes, but no money. A. continued in the service two years and an half, when she was dismissed by B. ; held that this was a general hiring, and that A. gained a settlement under it.

(11) Comment

The court implies a contract from evidence of continuous service over several years. Earlier more restrictive cases are distinguished.

(12) Type

Liberal

(1) Case name

*R.* v. *Worminghall*

(2) Date

18 June 1817

(3) Report

6 M. & S. 350

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Worminghall

(6) Order sought

Quashing

(7) Facts

On appeal, the Quarter Sessions quashed an order for the removal of James Price, and Ann his wife and two children, from the parish of Worminghall, in the county of Bucks, to the parish of Iffley, in the county of Oxford; subject to the opinion of this Court on the following case :— The pauper was hired, in 1807, at Thame second fair, which is always held on the Tuesday next after Old Michaelmas-Day, and in this year happened on the 13th October, to serve Mr. Wright of Worminghall till the 11th October following, at the wages of eight guineas and 5s. 3d. He served Mr. Wright in Worminghall till the said 11th October 1808, on which day he received his full wages, and quitted the service. The year 1808 was leap-year. The question for the opinion of the Court is, whether this was a sufficient hiring for a year, so as, with the said service, to confer a settlement in Worminghall.

Order of sessions quashed.

(8) Argument

W. E. Taunton, in support of the order of sessions, argued, that a year, as it regards the acquiring of a settlement, was composed of a period consisting of 365 days; for which period, in consequence of its being leap-year, the pauper had been hired, and had served, and thereby gained a settlement in Worminghall; and he referred to *Rex* v. *Ulverstone*.

(9) Judgment

Lord Ellenborough C.J. In those years which consist of 366 days, a hiring and service for a year must be for that same number of days; in like manner as when the year has 365 days, it must have continuance during that number.

Bayley J. One day was wanting to complete the year; for in leap-year, the statute enacts that the year shall consist of 366 days.

Holroyd J. The statute for regulating the bissextile year ordains, that in leap-year the intercalary day with the day preceding it shall be accounted as one day.

Nolan and West were to have argued against the order of sessions.

(10) Ruling

A hiring on the 13th October 1807, to serve till the 11th October following, and service until that day, was held not to confer a settlement, although the year 1808 was leap-year.

(11) Comment

A hiring and service for a year must be for 366 days if the year is a leap year.

(12) Type

Restrictive

(12) Type

Liberal

(1) Case name

*R.* v. *Wrinton otherwise Wrington*

(2) Date

18 November 1748

(3) Report

Burr. S.C. 280

(4) Court

King’s Bench

(5) Parties

The King against the Inhabitants of Wrinton

(6) Order sought

Quashing

(7) Facts

Two Justices made an Order for the Removal of Ann Stokes, Single-woman, from Chewstoke to Wrinton otherwise Wrington (both in Somersetshire) And, upon Appeal, the Sessions confirmed that Order.

Case—The Pauper, being legally settled in Wrinton, and being about thirteen Years of Age, went into Chew Magna, to the House of her Aunt Hannah Spear, and soon afterwards went into the Parish of Winford, and worked with one Nicholas Walker, Cloth-worker, in the Business of burling Cloths, by a weekly Hiring or Agreement, at the weekly Wages of 1s. 6d. each Week in the Winter, and 2s. each Week in the Summer : And on the Saturday in each Week, the said N. W. when he paid the Pauper her Wages for that Week, said to the Pauper “that she should come the Week following which the said Pauper accordingly did, and renewed the Contrast for the Week ensuing, in the same Method. That the Pauper continued to work with the said N. W. in Winford aforesaid, in the Manner abovesaid, for the Space of one Year and a Half: But during all that time constantly returned in the Evening, and lodged at her Aunt's in Chew Magna aforesaid, and also resided with her Aunt there on Sundays during the said Time. That on the last Saturday of the said Service, the Pauper covenanted to serve the said N. W. for a Year, for the Wages of 1l. 10*s*. and immediately entered into the said Service, and continued therein, with the said N. W. in the said Parish of Winford, for eleven Months next following; and then, upon some Difference between her and her said Matter, they parted and she was paid the full Proportion of her said Wages for the said eleven Months. Whereupon the Sessions being of Opinion “ that of the said Pauper did not acquire a Settlement by such Service in Winford doth confirm the said Order of the two Justices.

(8) Argument

On Saturday 18th June last, a Motion was made by Mr. Gapper, to quash these Orders ; who urged that here was a good Hiring for a Year; and also a Service for a Year, within the Statute of 8 & 9W 3. c. 30. Sect. 4.

He cited the Case of *Rex v. The Inhabitants of South Moulton* in Suffolk, in 1 Lord Raymond 426. H. 10W. 3. where it was holden “that a Service for half a Year, and then for another half Year under a subsequent Hiring for a whole Year, is enough.” And 2 Lord Raym. 1511. v. Inhabitants of Aynhoe, Af. 1 G. 2. S.P. resolved accordingly; viz. “ That the Hiring and Service need not be under the same Contract.”

Rule to shew Cause.

The Counsel for the Parish of Winsford, who now shewed Cause, (Mr. Henley and Mr. Gould) admitted that the Service need not be under one and the same Hiring, as has been settled in the Cases above cited : (Though perhaps those Cases were carried full far.) But they argued that this Case differs much from those Cases: For, under 8 & 9 W. 3. c. 30. Sect. 4. there must be a Service for a Year. Now this is only a Service for eleven Months under an Hiring for a Year; though there was an Employment for above a Year and a half, if the Hirings for a Week are included. But a Day-labourer might as well be settled, as this Pauper, upon the same Principles. The Act requires a Continuing and Abiding in the Service; and the very Words themselves import, it: Service includes Residence in the House or at the Expense of the Master. And the 5 Eliz. c. 4 Sect. 12. Considers Persons hired weekly, as Day-labourers only: And the third Section of the same Act prohibits the Hiring or being hired for less than a Year, to Cloth workers.

Sir John Strange and Mr. Gapper, on Behalf of Winton, cited many Cases to prove how favourable the Court had always been to Settlements. And they said, it was not necessary that the Servant should lie in the House or even in the Parish where the Master resides : It is the Service that gains the Settlement. To prove which, they cited the Case of the *Oxford Stage-Coachman*; whose Servant was settled at Wycombe, where his Service was performed.

(9) Judgment

Lord Chief Justice Lee said it had been now settled “ that a Service for less than a Year, under a Hiring for a Year, may be coupled to a prior Service which was not under a Hiring for a Year; provided it be a Continuance of the same Service.”

But both he and Mr. Justice Wright said, Their only Doubt was, “ Whether on these first Hirings, the Girl was to be “considered as a hired Servant within the Acts; or whether she was to be considered as a Weekly-labourer, precedent to the Hiring of her for a Year.” But

Mr. Justice Denison said he had no great Difficulty: For he thought the Court should not go an Inch further than they did in the Case of *Aynhoe*.

This is a little Girl hired to burl Cloth : Probably twenty such Children were so hired. The Hiring was for a Week: She lay at Home, and was at Home on Sundays. This was certainly as a Day-labourer ; not as a Servant in the Family, and Part of the Family.

The Act of Parliament plainly means a hired Servant, who is Part of the Family, wherever he lies. I know this Cloth working Business; and am therefore afraid of the Consequences of extending these Settlements too far. These Cloth workers hire perhaps a hundred Children, in different Parts of the Work : And it would be very inconvenient, if the Hiring any of them for a Year, after some Time of Service under a weekly Hiring; and their subsequent Service of perhaps only a single Week under that yearly Hiring should gain them a Settlement.

Mr. Justice Foster thought the Cases had been carried full far enough already. He went through the Course of the Acts of Parliament, and descanted upon them and had no Doubt but the first Hiring ought to be ejusdem generis with the lad.

Now a hired Servant is always under the Government, Discipline and Control of the Master, even on Sundays. But this Child was not at all in this Master’s Service either on Nights or on Sundays.

The other Judges concurring—(For Lord Chief Justice Lee and Mr. Justice Wright were satisfied by what Mr. Justice Denison had said—)

(10) Ruling

Per Cur.

Both Orders were affirmed.

(11) Comment

The court gives a restrictive scope to the principle of a constructive ‘hiring by the year’ (which allows the court to couple work done under different contracts, i.e weekly hire contracts and hire for a year contracts, for the same master), by giving a narrow meaning to the term ‘hired servant’. There is some circularity in the reasoning, especially where the court states that ‘weekly labourers’ are not ‘hired servants’, which by definition defeats the operation of the constructive ‘hire by the year’ principle. The later case of *Hanmere v Ellesmere* tries to explain *Wrinton* as a case of the two contracts being of a different nature and thus not eligible for coupling, and states that the parties by agreeing that the servant would not work nights or Sundays created an exemption to the general rule that service under different contracts for the same master can be coupled. In substance, the outcome in *Wrinton* seems to stem from: 1) a very strict view of the requirement of the master having ‘control’ over the servant, which focuses on the contract form (most servants would not work at night and on Sunday, even if such an exception wasn’t expressly stated in the contract); 2) that express exceptions in the contract will preclude settlement (a view later picked up in relation to absences in cases such as such as *Bishop’s Hatfield* and *Empingham)* and 3) policy considerations about the business of cloth burling (that many children are hired on an irregular basis and to make all of them eligible for settlement under the constructive principle would be too great an economic burden).

(12) Type

Restrictive

(1) Case name

*Sheen* v. *Godalming*

(2) Date

10 Geo 1 (1723)

(3) Report

2 Bott. 302

(4) Court

King’ Bench

(5) Parties

Sheen v. Godalming

(6) Order sought

Quashing

(7) Facts

Two justices removed Robert Faner from the parish of Sheen to the parish of Godalming, both in the

county of Surrey. The Sessions, on appeal, quashed the order, and stated, That the pauper, Robert Faner, was hired for a year at Godalming, and served all that year, except one week, which he neglected to serve on account that he and his master could not agree respecting the wages he should have for the ensuing year; that he therefore quitted his service, without any compulsion on the part of his master, a week before the year expired; but that his master paid him his wages for the whole year.

(8) Argument

(9) Judgment

The Court held, that the words in the order, “without compulsion,” were to be understood that he had quitted the service by mutual consent, and that therefore the service was interrupted, and that he had gained no settlement thereby in the parish of Godalming. The order of Sessions was affirmed.

(10) Ruling

If a servant quit before the end of the year, though without compulsion, by the master, he gains no settlement.

(11) Comment

The court rules that if the servant leaves the service early after a dispute with the master over the following year’s wages, there is no settlement, even though the master paid the servant his whole year’s wages.

(12) Type

Restrictive

(1) Case name

*Silverton* v. *Ashton*

(2) Date

Trinity Term, 12 Anne

1713

(3) Report

Foley 210

(4) Court

King’s Bench

(5) Parties

Inter the Parishes of Silverton and Ashton, Com’ Devon

(6) Order sought

Quashing

(7) Facts

A servant maid was hired for a year to a substantial farmer, in the parish of Ashton, where she served half a year, then her master and she with him removed to the parish of Patshall, where her master took another farm; the servant continued with him in the parish of Patshall for the half year, and now is likely to become chargeable; and the Justices of the Peace send her from Patshall to Ashton; Ashton appeals to the Sessions, and they make an Order to send her to Silverton, which was the place of her settlement before; so that now the question is, whether she gained any settlement in either of these places? If she did, which of these places?

(8) Argument

It was much insisted on, that the service for a year ought to be in the same place.

(9) Judgment

Chief Justice Parker: sure this is no new case: before the Statute of 13 & 14 Car. 2 cap. 12 no person was removeable; then comes that Statute, and says it must be before forty days expire; for if they live there forty days, according to that Act, they gained a settlement; then comes the statute of 3 & 4 W. & M. cap. 11 and says, such forty days must be published in the Church; now that extended only to such as were removeable; but a servant who came in with his master was not removeable; then the Act goes on and makes a further provision; as any person being unmarried, not having child or children, shall be lawfully hired into any parish or town for one year, such service shall be adjudged and deemed a good settlement. Now as it stood upon this Act, there was a Quaere, what was the meaning of such service? Whether such service should relate to the contract which was for a year, or to the forty days? Then came the Statute of 8 & ( W. 3. Cap. 30 section 4. ‘Be it enacted, that no such person so hired, as aforesaid, shall be adjudged or deemed to have a good settlement in any such parish or township, unless such person shall continue and abide in the same service, during the space of one whole year.’ Now by this clause it plainly appears, that the service was to relate to the contract, and to prevent persons running away from their service; but it cannot relate to the forty days, for that stands upon the Statute of 13 and 14 Car. 2. So that if a person is hired to a master in one parish, and he goes with his master, and there continues for forty days in the service, and services his master for one whole year, the Parish he continues last in for forty days, before the end of the year, is the place of settlement; but if he runs away from his master, during the space of that year, he gains no settlement at all; and the reason why the forty days gains a settlement is, because he comes there with his master; and you cannot remove him or her from his or her master; and therefore being once settled, so as he or she cannot be removed, that is accounted a settlement; and there was a case to this purpose adjudged between the parishes of Edgware and Harrow; there the case was, a copyholder had twenty-five shillings a year of his own for life, where he lived; he had several children, and dies, his wife was admitted for life, and dies, the children were likely to be chargeable; and whether they could remove them or not? And it was held they could not; because they being once settled, could not be removed; besides, we all pretty well know the history of the Act of 8 & 9 W. and that it was made to end the dispute; for this Court, always before this Act, looked upon such service to be forty days service; and now by this last clause it is for a year. Besides, do but consider, here is what the Act requires, which is a hiring and service for a year; and it would be the hardest case in the world upon servants who come with their masters to town, and live half a year in town and half a year in the country, and they by this rule would gain no settlement.

(10) Ruling

So that the whole Court were all of Opinion that the Orders should be quashed, and that Patshall was the place of her last legal settlement.

(11) Comment

An early decision confirming that as long as there is a hiring for a year and continuous service, it does not matter that the service was performed in different parishes; a settlement is gained in the second one.

(12) Type

Liberal.

(1) Case name

*South Cerney* v. *Coultsbourn*

(2) Date

5 Geo 2 (1731)

(3) Report

2 Bott. 244

(4) Court

King’s Bench

(5) Parties

South Cerney v. Coultsbourn

(6) Order sought

Quashing

(7) Facts

Two justice removed Nicholas Reynolds from South Cerney to Coultsbourn, both in the county of

Gloucester. The Sessions, on appeal, quashed the order, and stated the following case: In the parish of North Leach, in the county of Gloucester, two mopps, or meetings, are held in every year for the purpose of hiring servants. The first mopp is held on the Wednesday preceding Michaelmas-day, and the other is held on the Wednesday after Michaelmas-day. The pauper, Nicholas Reynolds, was legally fettled in the parish of South Cerney but after he had gained such settlement, and about six years before the present order of removal was made, he went into the parish of North Leach, to the mopp held as aforesaid, on the Wednesday next after Michaelmas-day, which said Wednesday in that year happened on the fifth day of October, when and where he was hired by one

Robert Williams, for his mother Joan Williams of Coultsbourne, to serve her until the Michaelmas-day then next ensuing. On the Michaelmas-day next ensuing, the day on which was thus hired, he desired to be discharged, and Mrs. Williams accordingly paid him his wages as for the whole year, and he quitted her service.

(8) Argument

Mr. Stevens obtained a rule to shew cause, why the order of Sessions should not be quashed; for that the hiring being for a year, according to the custom of the country, it ought to be taken under the custom a good hiring for a year.

(9) Judgment

Page and Probyn, Justices, the other Judges being absent, were clearly of opinion, that even if this

mode of hiring had appeared upon the face of the order to be according to the custom of the place, yet it was impossible to permit any such custom to prevail, when contrary to the direct and express words of an act of parliament. The statute 3 Will & Mary, c. 11. s. 6, requires a hiring for a year; but in this case there was not a hiring lor a year; and whatever inclination the Court might feel to support a good custom, it was impossible to do it, either upon the facts stated in this order, or against the directions of the statute.

(10) Ruling

A retrospective hiring, though according to the course and custom of the country, will not gain a settlement.

(11) Comment

A literal rule of the need for a year’s service, overriding customary hiring practices.

(12) Type

Restrictive

1. Case name

*St. Peter’s in Oxford* v. *Chipping Wycombe*

(2) Date

1723 (Michaelmas Term, 9 George Regis)

(3) Report

1 Strange 528

(4) Court

King’s Bench

(5) Parties

Inter Paroch Sancti Petri in Civit Oxon and Chipping Wicomb in Com’ Bucks

The Parish of Oxford against the Parish of Chipping Wicomb in Com’Bucks

(6) Order sought

Quashing

(7) Facts

Upon a special order of sessions it appeared, that the master of the Oxon stage coaches hired a servant for a year, to stay in an inn in Wicomb where the coach baited, and to take care of the horses: he lived there for the whole year, but in as much as the master lived all the while in Oxford, the sessions adjudge the settlement of the servant to be with him.

(8) Argument

None

(9) Judgment

Et per Curiam : The order must be quashed, for the settlement is gained by the service, which was in Wicomb; and it would be hard to make it a settlement in Oxon, when the officers there had no power to remove him: the officers of Wicomb might have removed him, if they had pleased; they did not do it, and therefore they must provide for him (1).

(1) *Rex v. Whitechapel*, 2 Bott by Const, 457, pi. 407, fol. 158. Post, 794, S. P.

(10) Ruling

Hired servant is settled where service is. Fort. 318. Foley 215, 220. Sett, and Rem. 103.

(11) Comment

The court finds that a servant is settled where he performs his service, not where his master resides.

(12) Type

Liberal

(1) Case name

*Wandsworth* v. *Putney*

(2) Date

1740

Easter, the Thirteenth Year of George the Second

(3) Report

219 E.R. 93

(4) Court

King’s Bench

(5) Parties

The Parish of Wandworth against the Parish of Putney

(6) Order sought

Quashing

(7) Facts

Special order of sessions, case stated thus, that the pauper came to live there with ------- without any hiring; and then his master told him that if he stayed a year and behaved well, he would give him a livery and wages the next year; that he lived there one year and four months after, and then received a guinea and half wages.

(8) Argument

It was insisted upon by Mr. Solicitor General, that this was no hiring, because no agreement on the part of the pauper. Trin. 3 Geo. 1. *The King against The Inhabitants of Horton* *in Staffordshire*, Easter 1 Geo. 1. *Peperharrow against Frensham*, Mich. 12 Anne, *Horscham against Shipley*, Hil. 5 Geo. 1. 2 Salk. 535. Comb. 445. Mich.13 Geo. 1, *The King against Inhabitants of Pitminster*; Easter 3 Geo. 2, *The King against Inhabitants of Westwall*; Trin. 5 and 6 Geo. 2, *The King against The Inhabitants of South Cerney*.

Sir Thomas Abney on the other side: A hiring by a wife, without privity of her husband, has been held good. In the three first cases cited by Mr. Solicitor General, it was expressly stated, that there was no hiring for a year, and in the case of *Westwoodhay*, Lord Chief Justice Eyre said, that a conditional hiring was good; as when one says live with me a week, and if we like, you shall stay a year. Then the executing the service is an agreement on the part of the servant:

(9) Judgment

Lord Chief Justice : It is objected, that here was no assent of the pauper to what his master said ; but the question is whether his service is not an assent in fact. Hil. 8 Geo. 2, *Chipping Wycomb* against New Windsor, is the strongest case in this point.

I think this a good hiring, when the conditions are performed; and if we are too strict upon the words of contracts, we should avoid many settlements.

Mr. Justice Page was of opinion the first year was only upon liking, and that the hiring did not commence till the second year.

Mr. Justice Chapple: It seems to me that the pauper had liberty to stay or go away during the first year, for he was under no contract, but that was to commence the second year.

This case was argued again in Michaelmas term in the 15th year of King George the Second, and insisted that a conditional hiring was good; as in the case of *The Inhabitants of Lidney against The Inhabitants of Stroud*, Trin. 6 and 7 Geo. 2, the hiring was for a quarter of a year, and if she and her master liked each other, to stay a whole year; she entered upon the service, and continued in it a year; and that was held to be a good settlement. Trin. 13 Anne, Missenden Parish against Chesham. Hil. 8 Geo. 2, *New Windsor against Chipping Wycomb*, a maid was hired at the rate of five pounds a year, and liberty to part on each side on a month’s warning or a month’s wages, but she living out the year, it was held a good settlement.

The other cited Comb. 445, living with a person without being hired, gains no settlement.

Lord Chief Justice observed, that it was not stated in the order, that the pauper was a servant to Mr. Falkner, only that he lived with him, but taking it for granted that he was a servant, then the question is, if here is a good hiring.

A general retainer, without mentioning any time, is for a year. Co. Lit. 47.

I think this a good hiring for a year, for it must be considered according to the usual methods of such contracts as the Court did in *New Windsor against Wycomb*.

Mr. Justice Page: I agree an express hiring for a year is not necessary, but if it is according to the usual method, it is sufficient; but I doubt, upon the state of this case, if any hiring for a year, the order not saying he lived with Mr. Falkner as a hired servant; therefore it is uncertain when the year is to commence; for if the two months preceding this hiring, is not to be taken in, then only ten months; and it is uncertain whether he was hired before, or not.

Mr. Justice Chapple agreed with the Chief Justice, that it was a good hiring for a year, [220] and that it should commence from the time of the declaration made by the master; but it was referred back to be more fully stated at sessions.

(10) Ruling

None

(11) Comment

This is an early case setting out the principle that a general hiring is a hiring for a year, without the need for express contractual wording. It also distinguishes between service without any hiring at all (the trial period), which does not confer any settlement, and service under a general hiring.

(12) Type

Liberal

(1) Case name

*Wishford* v. *Bretford*

(2) Date

1712

(3) Report

Fort 311

(4) Court

King’s Bench

(5) Parties

The inhabitants of Wishford against the Inhabitants of Bretford

(6) Order sought

Quashing

(7) Facts

A Person five Days after Michaelmas 1709, was hired unto B. from the said five Days after Michaelmas 1709 to Michaelmas 1710, and on Michaelmas 1710 he departed from his Master and Service, and was paid his Wages to that Time ; and on the next Day after his Departure, he returned and Covenanted with his said Master, to serve him there for another Year, but a Month or five Weeks before the End of the last Year the Servant departed from the Service, and entered on another Service, and the Master deducted out of the last Year’s Wages 8 s. for the Month or five Weeks that was wanting of the Year ;

(8) Argument

None

(9) Judgment

This was held per Powis, Judge of Affize, to be no Settlement, because here is no Hiring for an entire Year, nor Service for a Year pursuant to the Hiring.

(10) Ruling

(11) Comment

The court finds that hirings cannot be coupled if they are separated by more than a day. This is consistent with the view taken in the later cases of *Fifehead Magdalen* (1737) and *Ellisfield* (1777).

(12) Type

Restrictive