

no ground of appeal that the pauper has become irremovable by virtue of the statute since the order was made.

[S. C. 3 New Sess. Cas. 256; 17 L. J. M. C. 171; 12 Jur. 1071. Not applied, *R. v. Chedgrave*, 1849, 12 Q. B. 215. Distinguished, *R. v. Cudham*, 1859, 1 El. & El. 412. Adopted, *R. v. St. George in the East*, 1870, L. R. 5 Q. B. 369. See *Medway Union v. Bedminster Union*, 1888-89, 21 Q. B. D. 281; 14 App. Cas. 465; *Tewkesbury Union v. Birmingham Union*, [1904] 2 K. B. 405.]

On appeal against an order of justices, made on 20th July 1846, for the removal of Margaret James, widow, and her children, from the township of Mottram in Longdendale, in the county of Chester, to the parish, township or place of Glossop, in the county of Derby, the sessions (October, 1846) confirmed the order subject to a case.

It appeared from the case that the paupers were settled in the appellant parish in right of the deceased [118] husband of the pauper Margaret; that he died in 1844; that the paupers had resided in the respondent parish for more than five years continuously next before the making of the order of removal; and also that the pauper; had not been actually removed under the said order.

The questions for the opinion of the Court were: first, whether the paupers were irremovable by virtue of stat. 9 & 10 Vict. c. 66; secondly, whether, the order having been made before the passing of the said statute, there was any right of appeal before actual removal.

The case was argued, on a former day in this vacation (a)¹, by Pickering, in support of the order of sessions, and Egerton, contra.

The argument is sufficiently noticed in the judgment of the Court.

Cur. adv. vult.

Lord Denman C.J. now delivered judgment. In this case the question was raised, whether residence as widow would coalesce with residence as wife, to complete the five years' residence required for irremovability; and we are of opinion that it would. Such residence is within the terms of the statute (sects. 1, 2): it is residence; and we see no reason why full effect should not be given to the meaning of that word.

[119] The question, also, was raised, whether the statute created a ground of appeal against an order of removal made before the statute, and valid at the time it was made, by reason that the pauper had become irremovable before the time the appeal was heard: and we think this question ought to be answered in the negative. The appeal was given by stat. 13 & 14 C. 2, c. 12, s. 2, to any person aggrieved by the judgment of the two justices. Now the order afforded no ground of complaint, having been valid when made, and not having been acted on by removing since the statute had taken away the power of removing. As the statute provides both that no person shall be removed, and also that no warrant shall be applied for, it appears to us that effect can only be given to both clauses by deciding that the pauper may become irremovable although a valid order existed. The sessions, therefore, did right in confirming the order. But, as the order is not to be acted on, and the only use of the confirmation is as evidence of the settlement in case the question should arise hereafter, and as the circumstances are peculiar, we would suggest that the entry of the judgment by some such expression as "order confirmed, although the pauper has, since it was made, become irremovable under it," would explain the matter in case it should be necessary hereafter to recur to it.

Order of sessions confirmed (a)².

See the preceding and following cases, from p. 103 to p. 216.

[120] THE QUEEN against THE INHABITANTS OF ST. MARY, WHITECHAPEL. [Wednesday July 12th, 1848.] Pauper was residing in parish W. with her husband at the time of his death, which happened before the passing of stat. 9 & 10 Vict. c. 66. The parish obtained an order for her removal, and served notice of chargeability, &c. Before actual removal, the statute passed, the widow not having completed a residence of twelve calendar months from the husband's

(a)¹ June 19th. Before Lord Denman C.J., Coleridge and Erle Js.

(a)² Reported by H. Davison, Esq.

death. Held that, by sect. 2 of the statute, she was irremovable till the completion of such residence, for that the clause, though prospective as to the removals contemplated, might be construed retrospectively as to the conditions under which removal should or should not be lawful. Held, also, that, although the order was valid when made, it might be quashed on appeal, upon the widow being actually removed, after the passing of the Act, and within the twelve calendar months.

[S. C. 17 L. J. M. C. 172. Referred to, *Salford Overseers v. Manchester Overseers*, 1863, 3 B. & S. 603.]

On appeal against an order of justices, for removing Sarah, the widow of William Badman, and her five children, from the parish of St. Mary Magdalen, Bermondsey, in Surrey, to the parish of St. Mary, Whitechapel, in Middlesex, the sessions confirmed the order, subject to the opinion of this Court upon a case, which was stated, in substance, as follows.

William Badman, the husband of the pauper, was residing in St. Mary Magdalen, Bermondsey, at the time of his death, which took place on 6th June 1846. His now widow, the pauper, was residing with him in the said parish at the time of his death. On 11th August in the same year an order was made by two justices for the removal of the pauper and her five children from St. Mary Magdalen, Bermondsey, to St. Mary, Whitechapel, as the place of their legal settlement. A copy of the said order, together with a copy of the examinations and a notice of chargeability, was duly served on the churchwardens and overseers of St. Mary, Whitechapel, on the said 11th August. On the 26th of the same month the Act 9 & 10 Vict. c. 66, was passed and came into operation.

On the 3d of September in the same year, the pauper and her children were removed by virtue of the said order from St. Mary Magdalen, Bermondsey, to St. Mary, [121] Whitechapel. On 1st October in the same year the notice and grounds of appeal against the said order of removal were sent by the churchwardens and overseers of St. Mary, Whitechapel, to the churchwardens and overseers of St. Mary Magdalen, Bermondsey: and the appeal, having been adjourned by consent at the October Sessions, came on for hearing and was heard at the Epiphany Quarter Sessions for Surrey. The pauper had continued to reside from the time of the death of her said husband until the said 3d September 1846, and, at the time of her removal under the said order, was residing in the said parish of St. Mary Magdalen, Bermondsey; and during all that time had continued, and at the time of her removal still was, a widow and unmarried.

At the hearing of the said appeal, no objection was taken to the form of the order of removal, nor to its validity at the time at which it was made; nor was any objection taken to the form of the notice or grounds of appeal; and the settlement of the pauper in the parish of St. Mary, Whitechapel, was not disputed: but it was contended on behalf of the appellants that, by the operation of stat. 9 & 10 Vict. c. 66, s. 2, the pauper was rendered irremovable from the respondent parish on the said 3d day of September. On behalf of the respondents it was contended: first: that the provisions of the said Act with reference to widows are not retrospective, and that, as the pauper had become a widow before the passing of the said Act, she was removable: and, secondly, that, if the said Act be retrospective, and consequently the pauper was not legally removable, yet, the order of removal having been good and valid at the time when it was made, such irremove-[122]-ability did not render the said order invalid, and was no ground for quashing the said order on appeal.

The questions for the opinion of this Court were: first, whether the pauper was, under the circumstances stated, irremovable at the time when the removal took place; and, secondly, if she were then irremovable, whether such irremovability was a ground for quashing the said order on appeal.

If this Court should be of opinion that the pauper was removable at the time when the removal took place, or that, although she was not then removable, such irremovability was no ground for quashing the order, in either or both of these cases the order of sessions was to be confirmed. But, if the Court should be of the contrary opinion on both points, then the order of sessions was to be quashed.

The case was argued in Trinity term, 1848 (a).

(a) June 10th. Before Lord Denman C.J., Patteson, Wightman, and Erle Js.

Wallinger and Knapp, in support of the order of sessions. First, sect. 2 of stat. 9 & 10 Vict. c. 66, which enacts "that no woman residing in any parish with her husband at the time of his death shall be removed, nor shall any warrant be granted for her removal, from such parish, for twelve calendar months next after his death, if she so long continue a widow," is not to be construed retrospectively (*b*)¹. The right to remove here was like a vested right of action; and [123] it is laid down that the Courts will not give a retrospective effect to a statute, so as to take away such rights; *Gillmore v. Executors of Shooter* (2 Mod. 310), *Couch v. Jeffries* (4 Burr. 2460). That doctrine is not disputed in *Towler v. Chatterton* (6 Bing. 258); but, there, the words of the statute were conclusive: and in *Binns v. Hey* (1 Dowl. & L. 661), which may be cited, the language of the statute afforded grounds of decision which are not found here. In *Hodgkinson v. Wyatt* (4 Q. B. 749), the question whether the statute was retrospective or not became immaterial to the decision. But, secondly, supposing the clause to be retrospective, an appeal against the order did not lie. The order was made, and a copy served, with notice of chargeability, and a copy of the examinations, on August 11th: every thing, therefore, that was necessary to make the order perfect was done before August 26th when the Act passed. The removal took place afterwards, and was contrary to the statute; but an appeal was not the mode of objecting to it. An appeal is against the order, that is, the judgment of the justices, not against the act of removal. This appears from the language of stats. 13 & 14 C. 2, c. 12, s. 2, 9 G. 1, c. 7, s. 8, 35 G. 3, c. 101, s. 2. In *Regina v. Brixham* (8 A. & E. 375), which may be mentioned on the other side, the order itself was not perfect for want of notice of chargeability; and a similar observation applies to *Regina v. Mylor* (11 Q. B. 55), where that case was relied upon. *Rex v. Englefield* (13 East, 317), cited in *Regina v. Brixham* (8 A. & E. 375), bears strongly upon the present [124] case. In *Regina v. The Justices of Middlesex* (a) the sessions had refused to hear an appeal, because the order of removal was made before the passing of stat. 9 & 10 Vict. c. 66, and the pauper was not removed till after, by which time she had resided five years; and a mandamus was granted, calling upon them to hear; but Wightman J., who granted the writ, did not profess to decide the question of law. Although the removal cannot be appealed against, it does not follow that there is no remedy, if the appellants have a right to reject the pauper. They may refuse to receive her; perhaps an indictment might lie. There was no appeal against a vagrant pass (*b*)². The present case is one which could only arise within less than a year after the passing of the Act, and probably was not thought of by the Legislature. "When the words of a law extend not to an inconvenience rarely happening, and do to those which often happen, it is good reason not to strain the words farther than they reach, by saying it is casus omisus, and that the law intended quæ frequentius accidunt;" 19 Vin. Ab. 528, tit. Statutes (E, 6), pl. 157.

Pashley, contra. First: *Gillmore v. Executor of Shooter* (2 Mod. 310), was a very strong case of attempted interference with a vested right of action. But it is not a general rule in the construction of statutes that vested rights can be taken away only by express words. The general right to bring error on a judgment has been [125] held to be annulled by necessary implication; *King v. Simmonds* (7 Q. B. 289), on stat. 1 & 2 W. 4, c. 58, *Thorpe v. Plowden* (2 Exch. 387), on stat. 6 & 7 W. 4, c. 71, s. 46. As was said in *Butler and Baker's case* (3 Rep. 25 a. 27 b.), Acts of Parliament, like wills, are to be construed "according to the intent," "and not by any strict or strained construction." The opinion expressed in *Hodgkinson v. Wyatt* (4 Q. B. 749), as to the retrospective operation of stat. 2 & 3 Vict. c. 37, s. 1, was part of a deliberate judgment. (He likewise noticed, as to the prospective or retrospective effect of statutory words, *Doe dem. Evans v. Page* (5 Q. B. 767), and the particular grounds of judgment there, *Doe dem. Jukes v. Sumner* (14 M. & W. 39), *Nepean v. Doe dem. Knight*

(*b*)¹ This case was argued after *Regina v. St. Pancras*, p. 129, post, and while judgment in that case was suspended. The Court gave judgment in the present case first, and more in detail than in *Regina v. St. Pancras*, for which latter reason it is found necessary to print the cases in the order in which they were decided.

(a) 16 L. J. (N. S.) M. C. 135. S. C. 11 Jurist, 909. Bail Court, June 12th, 1847. This case had been cited by Pashley in *Regina v. St. Pancras*; see p. 132, note (c), post.

(*b*)² 2 Nol. P. L. 238, 9, 4th ed.

(2 M. & W. 894), and *Hume v. Haig* (i)). The word "residing," in sect. 2, though connected with the words "shall be removed," is not meant to confine the enactment to future residence; it is a descriptive word, having the effect of an adjective, and referable to any time. So, in the first proviso of sect. 1, the words "shall be" are not meant to give the enactments a prospective operation, their intent being only to shew how the time mentioned in the first clause is to be calculated. It may be argued that the provision of stat. 10 & 11 Vict. c. 110, s. 1, with reference to that clause, does not favour the retrospective construction: but, as was said in *Russell v. Ledsum* (14 M. & W. 574, 589), "The province of the Legislature is not to construe, but to enact; and their opinion, not expressed in the form of law as a declaratory provision would be, is not binding [126] on Courts, whose duty is to expound the statutes they have enacted." A strong instance of this is found in the case of *Dore v. Gray* (a). [Patterson J. What has the construction of sect. 1 to do with this case on sect. 2? The one cannot be wholly retrospective and the other wholly prospective. Secondly: it must be admitted that *Regina v. The Justices of Middlesex* (16 L. J. (N. S.) M. C. 135. 11 Jurist, 909), cannot be cited as a decision. But the appeal is regular. An appeal is always against the order, although that be not, strictly, the matter complained of. [Patterson J. Suppose the pauper is removed within twenty-one days after notice of chargeability.] In practice, the appeal is against the order: the grievance accrues under that. Before stat. 4 & 5 W. 4, c. 76, the only grievance which could so accrue was the removal: but that statute gives parties an interval for consideration between the making of an order and the actual removal, by directing the parish which has obtained an order to send a copy, with notice of chargeability: the parish may pause before doing so; but the sending these documents is an essential and not merely ministerial act; and, if it is omitted, or if, before it is done, some statutory impediment has arisen, the order itself becomes voidable, and must be avoided by appeal when the attempt is made to enforce it by serving notice or by removing; *Regina v. Bricham* (8 A. & E. 375), *Regina v. Westbury* (5 Q. B. 500), *Rex v. Penkridge* (3 B. & Ad. 538), *Regina v. The Recorder of Leeds* (8 Q. B. 623).

Cur. adv. vult.

[127] Lord Denman C.J. now delivered the judgment of the Court.

In this case a valid order of removal was made before the passing of the statute; and the removal took place after that time. The pauper had become a widow on the 6th June 1846, before the passing of the Act, and was removed on the 3d of September, 1846. The sessions confirmed the order of removal, subject to two questions, of which we take the effect, and not the precise terms.

First: was the pauper irremovable by stat. 9 & 10 Vict. c. 66, s. 2, which enacted that no woman residing in any parish with her husband at the time of his death shall be removed, nor shall any warrant be granted for her removal, from such parish for twelve months next after his death if she so long continue a widow? It was said that the operation of the statute was confined to persons who had become widows after the Act passed, and that the presumption against a retrospective statute being intended supported this construction: but we have before shewn that the statute is in its direct operation prospective, as it relates to future removals only, and that it is not properly called a retrospective statute because a part of the requisites for its action is drawn from time antecedent to its passing. The clause is general, to prevent all removals of the widows described therein after the passing of the Act; the description of the widow does not at all refer to the time when she became widow: and we are therefore of opinion that the pauper was irremovable at the time she was removed.

The second question is: whether the removal of a person so rendered irremovable is a good ground of [128] appeal against an order of removal valid at the time it was made? The circumstances raising this question are so peculiar that former authorities afford small assistance for deciding it. On the one hand the appeal is to be against the judgment of the justices: and, as that was valid, an appeal against it ought not to be sustained; see *Regina v. Glossop* (ante, p. 117). On the other hand, if the pauper was irremovable, there is a grievance arising from the order, which cannot be redressed so conveniently in any other way as by appeal. On the whole, it appears to us that justice would be best effected by adjudging that the appeal should be

(i) 8 Bro. P. C. 196. See also *Moen v. Durdin*, 2 Exch. 22.

(a) 2 T. R. 358. See *Regina v. St. Ebbes*, post, p. 137, 140.

allowed, on the ground that the removal after the statute was illegal, although the order of removal, being before the statute, was valid.

As the judgment of the sessions was in favour of the respondents, and the judgment that appears to us right would be in favour of the appellants, we decide that the judgment of the Court of Sessions should be reversed in the manner above stated.

Judgment accordingly (b).

[129] *THE QUEEN against THE INHABITANTS OF ST. PANCRAS. (ST. LUKE'S against ST. PANCRAS).* [Wednesday, July 12th, 1848.] An order of justices, made before the passing of stat. 9 & 10 Vict. c. 66, for removing a pauper widow, resident with her husband at the time of his death, was executed, after the statute passed, by removal within twelve months after his death. Held, under sect. 2, that such removal was unlawful, and was a ground for quashing the order on appeal.

On appeal against the order of a Metropolitan police magistrate, dated 6th August, 1846, for removing Sarah Martha Taylor, widow, and her children, from the parish of St. Pancras to the parish of St. Luke, both in Middlesex, the sessions quashed the order of removal, subject to the opinion of this Court upon a case, the material parts of which were as follows.

The appellants relied on the following grounds of appeal.

3. That the examinations are, and each of them is, bad on the face and faces thereof respectively (a).

6. That, the husband of the said S. M. Taylor having died in your said parish in the month of April last, the said S. M. T. and her said three children were irre-[130]-moveable from your said parish at the time of the removal of the said S. M. T. and her said three children under and by virtue of the said order.

7. That the said S. M. Taylor was residing with her said husband, at the time of his decease, in your said parish, and, her said husband having died within the period of twelve calendar months next prior to the date of the removal under the said order, the removal of the said S. M. T. and her said three children from your said parish of St. Pancras to our said parish of St. Luke was illegal, she having continued a widow ever since the death of her said late husband.

At the hearing of the appeal, it was admitted that the husband of S. M. Taylor died at the time mentioned in the sixth ground of appeal, and that the order of removal was duly made and served before the passing of stat. 9 & 10 Vict. c. 66, but that the said paupers were removed under the said order after the passing of the said Act, and within twelve calendar months after the death of the husband of S. M. Taylor.

The Court being of opinion that the caption of the examinations was not sufficient to give the magistrate jurisdiction to make the said order, and also that, by reason of the provision contained in the second section of the said Act, the paupers were not removeable under the said order, for the reasons stated in the sixth and seventh grounds of appeal, allowed the appeal and quashed the order of removal, subject to the opinion of the Court of Queen's Bench.

If the Court of Queen's Bench should be of opinion that the caption was sufficient, and that the said Act did not operate to prevent the removal under the said order,

(b) See the preceding and following cases, from p. 103 to p. 216.

(a) The examinations were headed by a general caption, stating them to be "the examinations of," &c., "touching the place of the last legal settlement of the said S. M. Taylor" (an examinant and one of the paupers), "and her three children, severally taken upon oath this 6th day," &c., "before me," &c., "on complaint of the churchwardens and overseers of the poor of the parish of St. Pancras, in the said district and county, that the said S. M. Taylor, and her three children, are chargeable to the said parish." In support of the order of sessions, it was contended that the case fell within *Regina v. Molesworth*, 9 Q. B. 65; and reference was made to the other cases as to captions, which had been argued and were still depending. On the other hand, it was argued that, admitting *Regina v. Molesworth* to be well decided, the caption here gave as much information as was necessary of the matter of complaint. The Court gave no decision on the point.