attorney's bill, exonerates the auditor from the responsibility of deciding on the reasonableness of the charges in such bill, but it is not, in the opinion of the Commissioners, conclusive as between the attorney and his clients, and does not interfere with the right of a party to have a bill taxed by the usual taxing officer, and in the usual manner: when the more conclusive course is resorted to by the parties, of a taxation by the master of the Crown Office, or other officer authorised by the 6 and 7 Vic. c. 73, the Commissioners think that the auditor, although not obliged to do so, would exercise a sound discretion in being guided by this taxation, rather than by that of the clerk of the peace.

XVIII.—TREASURER.—CANNOT ACT AS AN EX-OFFICIO GUARDIAN OF THE UNION OF WHICH HE IS TREASURER.

———— *Union*—Inquired whether the treasurer of the ———— Union, who has recently been made a justice of the peace, could act as an ex-officio guardian of the union while he continues to hold the office of treasurer.

Ans.—The Commissioners think that the treasurer of a union is a paid officer engaged in the administration of the laws for the relief of the poor, within the meaning of the 14th section of the 5 and 6 Vic. c. 57; and consequently that any person holding that office is thereby rendered incapable of serving as a guardian. The Commissioners further consider that the words used in that section, "serving as a guardian," standing as they do without limitation, would include an *ex-officio* as well as an elected guardian, and that a person holding the office of treasurer in a union is therefore, so long as he retains that office, incapable of acting as an *ex-officio* guardian.

XIX. — WORKHOUSES. — WHETHER THE WIFE CAN BE DETAINED IN THE WORKHOUSE WHILST THE HUSBAND IS AN INMATE THEREIN.

May 12th, 1845.

Clerk of Alton Union—A. B., and C. his wife, are both inmates of Alton Union Workhouse. The husband, who is seventy-four years of age, is bedridden from paralysis; but the wife, who is sixty-two years of age, is in good health, and she has latterly been called to attend upon her afflicted husband. A few days since she applied for permission to quit the house, leaving her husband behind her. Her conduct appearing so unreasonable and unnatural, her application was refused, but she persisted in her desire to leave. The guardians requested to be informed whether they were empowered to enforce the attendance of the wife on the husband, under the circumstances.

Ans.—The Commissioners are not aware that the guardians have any power to restrain the wife from leaving the workhouse. The refusal of the wife to remain in the workhouse with her husband and her family is not an offence for which she would be punishable under the Vagrant Act, inasmuch as the legal obligation to maintain the family attaches to the husband, and relief to or on account of the family is relief to him, (sec. 56 P. L. A. Act.) In the case of A. B. it does not appear that he has any children dependent upon him for support, but this makes no difference as regards the power of the guardians to restrain the wife. The Commissioners are of opinion that a woman may be restrained by the control of her husband from leaving the workhouse, and, if he declines to use his marital control, it is in the power of the guardians to dismiss the husband. But whether it is expedient or judicious to pursue such a course, must depend on the peculiar circumstance which each individual case presents. One consideration is particularly important in dealing with any case of this description—this is, whether the husband is in a condition practically to exercise his control over his wife. Where he is not, it would be very unadvisable, in the opinion of the Commissioners, to make it a condition of the relief of the husband or of his children (if he have any) that he should exercise an authority over his wife which practically he cannot exercise.

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AN

OFFICIAL CIRCULAR

OF PUBLIC DOCUMENTS AND INFORMATION:

DIRECTED BY THE POOR LAW COMMISSIONERS TO BE PRINTED, CHIEFLY FOR THE USE OF THE MEMBERS AND PERMANENT OFFICERS OF BOARDS OF GUARDIANS, UNDER THE POOR LAW AMENDMENT ACT.

No. 49. CIRCULAR ISSUED JULY 1ST, 1845.

THE Poor Law Commissioners directed that the following documents be printed and circulated for the information of Guardians and Officers of the several Unions, viz.

(Signed) By Order of the Board,
EDWIN CHADWICK, *Secretary*.

I.—ACCOUNTS.—AUDIT OF.

March 15th, 1845.

Auditor of —— District.—Referred to the case of Reg. *v.* St. Andrew's Holborn, and inquired—1st, how far it is the duty of the auditor to call upon the overseers to account for rates made for the separate purpose of county rates, borough rates, lunatic asylum rates, and lighting and watching rates, in cases where separate rates for the relief of the poor are separately made and duly accounted for. 2nd. Whether the amount of maintenance of paupers under orders of removal, during the twenty-one days of the pendency of the notice previous to removal, when paid by overseers, should form an item in the overseers' accounts, or should be repaid to the overseers by the relieving officer, and form an item in the relieving officer's weekly relief list. 3rd. Instances have occurred in which small quantities of lime and other articles have been supplied for the use of the Union by persons who are guardians; in one instance at a sale, by the guardians, by public auction, of hogs kept at the workhouse, a hog has been bought by a guardian. He presumed that the several parties were liable to penalties under the 55 Geo. 3, c. 90, if prosecuted, but inquired what will be his duty in regard to accounts for such articles of sale when they are presented to him as auditor. 4th. In some parishes the proprietor of tithes is rated for his commuted tithes, which he is entitled to receive half yearly; by arrangement he receives his tithes yearly, and, in consideration thereof, he is not called upon to pay his several poor rates until the end of the year; by this means occupiers of houses, &c. not liable to the payment of tithes, are called upon to pay an undue proportion of poor rates during the intermediate part of the year. In case the justices allow new rates to be made whilst such arrears of the assessment on the tithes are unpaid, inquired what will be his duty and power in regard to such arrears at each quarter. 5th. The order of the Commissioners directs the medical officer to keep an annual index; inquired whether the medical officers are bound to keep such index posted up and produced to the auditor at each quarterly audit, or only at the end of the year. 6. Inquired further whether, as a general rule, boards of guardians are authorised to make any new erections, to any and what extent, without the order of the Commissioners.

Ans.—It appears to the Commissioners that the decision in Reg. *v.* St. Andrew, Holborn, establishes no more than that overseers (or other officers) are bound to account to the auditor, under the 46th and 47th sec. of the Poor Law Amendment Act, for all money raised by them as *poor-rate*. It does not determine that, where separate rates are levied for objects which are in some places provided for out of the money raised as poor-rate, the officers are bound to account to the auditor for such separate rates. And the Commissioners are disposed to think that there is nothing either in the Poor Law Amendment Act, or in the 7th and 8th Vic. c. 101, which requires such an account to be rendered to the auditor. 2. With regard to the "mode of charging out-relief paid under orders of removal," the Commissioners do not clearly perceive whether your question refers to relief given before removal, or to the repayment of such relief after the removal of the pauper. If the latter, the Commissioners think that, although the 84th sec. of the Poor Law Amendment Act is not distinct upon this point, yet, as all the other duties in connexion with removals still devolve upon the overseers, it is most proper for the overseers to make the repayment of relief required by that section; and, of course, if such repayment be made by them, it must be charged in their accounts. At the same time, the Commissioners see no objection (if the overseers and the guardians prefer such an arrangement) to the repayment being made by the relieving officer (either in person or through the overseers), and charged by him in his accounts accordingly. 3. Without a full statement of each case it is difficult for the Commissioners to say whether any of the guardians to whom you allude as having supplied goods to the union, have rendered themselves liable to penalties. Certainly, the Commissioners think that the enactments on this subject do not prevent a guardian *buying* a hog sold by the board of guardians, by public auction; which is clearly a very different case from that of a guardian *selling* any article to the Union. The Commissioners do not think that *coffins* are within the terms of the 6th sec. of the 55th Geo. 3, c. 137; which speaks of "goods, materials, or provisions, for the use of any workhouse, or otherwise for the support and maintenance of the poor," although they might, perhaps, be held to come within the scope of the 77th sec. of the Poor Law Amendment Act, which relates to "goods, materials, or provisions,

ordered to be given in parochial relief." With regard to the lime, the straw, and the bricks you advert to, the Commissioners are not prepared, without further information, to express any definite opinion; but they direct your attention to the several decisions of the courts on the construction of the 55th Geo. 3, c. 137, sec. 6, especially the cases of Proctor *v.* Mainwaring (3 B. and A. 145) and Henderson *v.* Sherborne (2 Mees. and W. 236.) The Commissioners will add, however, that they consider it to be your duty as auditor to disallow any payments really made in contravention of the enactments in question. 4. The Commissioners do not consider that the overseers are justified in purposely allowing any rates duly assessed and actually recoverable, to continue in arrear, but, on the other hand, the Commissioners do not see in what way the auditor could interfere in such a case as that which you describe as occurring in certain parishes with regard to the collection of the poor-rates on the tithes. 5. The Commissioners desire to observe that the medical officer is not required to make up the annual index (Form C) to his weekly register (Form B) until the year's end. Indeed, it would be impossible to arrange the names in strict alphabetical order, if the index were prepared from time to time during the year. 6. The guardians should obtain the Commissioners' sanction to all additions or alterations in the workhouse; but there are cases where the work and the cost are comparatively trifling, in which the Commissioners do not feel it incumbent upon them to issue a formal order as an authority for the expense.

II.—BASTARDY.

TRANSMISSION OF DUPLICATES OF ORDERS IN, TO CLERKS TO GUARDIANS.

Clerk of —— Union—Wrote to the clerk to the justices at ————, calling his attention to that part of the 5th section of the 7 and 8 Vic. c. 101, which directs the clerks to justices to send a duplicate of any order made on the putative father of a bastard child, or appointment of any person to have the custody of such child, to the clerk to the guardians of the Union or parish in which the mother of such bastard child resided at the time of making such order or appointment, and requesting him to forward duplicates of such orders as had been made in conformity with the provisions of the Act. The clerk to the justices replied that the section above referred to was applicable only to cases of death, unsoundness of mind, or criminal punishment of the mother or persons appointed to have the care of illegitimate children, and that as no cases of that kind had occurred, no duplicates had been sent: but that the guardians might have duplicates of such orders as had been made on payment of his charge. The guardians are of opinion that the section in question refers not only to those cases mentioned by the clerk to the justices, but to "any order made on the putative father of a bastard child;" and as regards the payment of the charge of the justices' clerk, for the duplicates of orders, the guardians think no claim can be made upon them; but that such charge would be properly included in the costs on the putative father under the following words of the 3rd section of the Act, viz., "in such costs as may have been incurred in the obtaining of such order." The guardians requested the Commissioners' opinion on the subject.

Ans.—The Commissioners do not concur in the interpretation put by the clerk to the justices at ————, on the 5th section of the 7 and 8 Vic. c. 101. In regard to the point in question, the terms in the section are, "the clerk to the justices making *any* order on the putative father of a bastard child * * * * as herein-before provided, shall, as soon as may be, send by post, or otherwise, a duplicate of *such* order," &c. The Commissioners understand this provision to require that the clerk to the justices shall furnish duplicates of *all* such orders, without exception; and the Commissioners see nothing in any other part of the statute, or in the nature of the subject matter, to limit that requirement in any way. With regard to the payment of fees to the justices' clerk for such duplicates, the Commissioners desire to point out that there is no provision for such payment in the 7 and 8 Vic. c. 101. The duty is imposed absolutely on the clerk of the justices for public purposes; and he appears to have no specific claim for remuneration for this service. This, however, will probably be borne in mind by justices in settling the table of fees which he may take in the course of the previous proceedings. At all events, the duty is so easy, that the payments which he may claim at present for the performance of his duties must be very closely adjusted to his services, if they do not compensate him also for this additional labour.

2. RELIEF TO BASTARDS.

Clerk of Bath Union—Inquired, whether the guardians are justified in refusing relief, either in or out of the workhouse, to a bastard child, who has been affiliated under the provisions of 7 and 8 Vic. c. 101; and if the mother (being destitute) and child are admitted into the workhouse to whom the weekly allowance ordered by the justices is to be paid; or whether the putative father becomes exonerated from such payment.

Ans.—Where in any case the mother of an illegitimate child may apply for relief for her child, and an order on the reputed father may have been made, under the statute 7 and 8 Vic. c. 101, it would be proper for the guardians, in considering whether the woman is or is not destitute so as to require relief, to take into consideration the existence of such order on the reputed father for the indemnity of the mother. There may be cases in which it would not be advisable that relief should be refused to the mother merely from the circumstance that the father makes the weekly payments required by the order. Each case must, therefore, the Commissioners consider, be dealt with by reference to its peculiar circumstances, and especially as to the means or opportunities afforded to the mother of maintaining her child independently of the aid derived under the order. Generally, the existence of an order under the statute, and the payment of money under it by the putative father, are to be regarded as evidence of ability upon the part of the mother to maintain the child. Where the mother is relieved in the workhouse with her child (which will be the proper course if the mother be an able-bodied person, and relief be necessary in the case) the moneys payable under the order will still be due to the mother, and should be paid to her. The 5th sec. of the 7 and 8 Vic.c. 101, enumerates the cases or circumstances in which the custody of the child can be transferred to persons other than the mother, and the payments made to such persons. But chargeability is not one of those cases. The chargeability of the child does not exonerate the reputed father from liability under the order.

III.—BURIAL OF PAUPERS.—WORKHOUSE CHAPLAIN NOT ENTITLED TO A FEE.

April 12th, 1845.

Clerk of ——— Union—T. S. residing at S. in this union, became chargeable to that parish in consequence of his wife's sickness. The wife subsequently died and was buried in that parish; and a bill for burial fees, including the fee of the minister, who is the chaplain of the union workhouse, was presented to the board of guardians for payment. The board declined to order the payment of the minister's fee, conceiving that the 31st section of the Act 7 and 8 Vic. 101, rendered the payment illegal. Inquired, whether the guardians decided correctly in the case, and also whether, in the event of the burial of a pauper in the parish of S. by any other than the minister of the parish, the minister's fee can be legally paid by this board.

Ans.—In the case of T. S., as stated in your letter, the Commissioners consider that the chaplain was prevented, by the 31st sec. of the 7 and 8, c. 101, from taking any burial fee. The terms of the sec. are, "It shall not be lawful for any officer connected with the relief of the poor, to receive any money for the burial of the body of any poor person which may be within the parish, &c., in which the death may have occurred." The Commissioners are advised, that a chaplain to a union workhouse is an officer connected with the relief of the poor, within the meaning of this provision. It appears that the wife of T. S. died in S. and was buried there; so that the case was in fact that of the burial of the body of a poor person within the parish in which the death occurred. In reply to your inquiry whether, in the event of any other minister officiating in such cases, the usual fee could lawfully be paid, the Commissioners desire to observe that they think the fee might be paid, under such circumstances, to the officiating minister, but, that it would not be lawful for the chaplain to receive it, directly or indirectly.

The Commissioners, in another case similar to the above, have replied as follows—It appears impossible to maintain that the chaplain is not "an officer connected with the relief of the poor;" and consequently within the prohibition contained in the proviso to the 31st section of the Poor Law Amendment Act. But the proviso has reference to the general enactment which precedes it, relating to the payment of fees for burial by the guardians or overseers. The prohibition contained in the proviso, therefore, only prohibits the receipt of the fee in the cases where it is to be paid by the guardians or overseers, and does not affect the case where paupers are buried otherwise than by the direction and at the expense of the guardians or overseers.

IV.—CHARGEABILITY—CERTIFICATE OF.

July 4th, 1845.

Clerk of Great Boughton Union—Inquired whether in a certificate of chargeability made under the 69th sec. of the 7th and 8th Vic. 101, the first day on which the pauper became chargeable, or the day on which the certificate was signed, should be stated as the date of his chargeability.

Ans.—The Commissioners do not think it necessary that, where such a certificate is given, the pauper should be actually chargeable when the order of removal is made. Such certificate, according to the form in Schedule C. to the Act, certifies that on a certain day, the pauper became chargeable; and this is all that it does certify. Consequently, there is nothing in the certificate to show that the pauper is chargeable, even at the date of the certificate.

V.—CONTRIBUTION ORDERS.

April 18th, 1845.

Clerk of Shipston-on-Stour Union—Orders were made on the overseers of the several parishes in the Union, for the usual quarterly contributions on the 1st March, and served a few days afterwards. The payments were to be made on the 29th March. The sums were intended to be applied, partly to meet the expenses of the then current quarter, and partly to meet the expenses of the quarter ending June. Some of the parish officers having refused to obey these orders, inquired, whether the parish officers upon whom the orders were served can legally resist the payment upon the ground that the money was not required to be wholly expended during their year of office.

Ans.—If the orders of contribution in the present instance were in conformity with the form prescribed by the orders of the Commissioners, the Commissioners do not see how the objection adverted to in your letter could be raised, as the orders, on the face of them, not purporting to be made for any particular period, there would be nothing to show that the money called for was not wanted to meet the present wants of the guardians. But assuming that the objection as to the prospective nature of the orders could be properly raised before the justices by the overseers, the Commissioners do not consider it valid. The guardians are made responsible for the relief of the poor, and this duty cannot be effectually discharged by them unless they are provided with the funds by anticipation: of the sums necessary for this purpose the guardians and not the overseers are the judges. The overseers on their part are responsible for providing and supplying to the guardians the moneys necessary for the relief of the poor and the other purposes of the Union, (see 7 and 8 Vic. c. 101, sec. 61,) and this obligation is not discharged until they have satisfied the prospective orders of the guardians. Accordingly the law has furnished the overseers with the requisite powers of making poor rates to meet future charges. If the guardians were (as appears to be supposed) restrained from requiring overseers to pay a greater sum by way of contribution than was actually necessary for the relief of the poor, during the period of office of such overseers, the result would be that there would be an interval during which the guardians would be without funds, and during which the poor would consequently go unrelieved; for, on this supposition, the funds of the guardians would be exhausted on the overseers quitting office, and no further supplies could be obtained until the guardians could make an order on the succeeding overseers, and until a reasonable time had elapsed to allow of their raising the funds necessary to comply with such orders. The Commissioners would add, however, that if (as they suppose) the overseers upon whom the orders of contribution were made are no longer in office, it would seem that they cannot now be proceeded against under the 2 and 3 Vic. c. 84, sec. 1. But the difficulty of so proceeding is quite independent of the objection raised in the present case, and is occasioned by the terms of the statute, which appear to the Commissioners to confine the remedy to persons who are overseers or acting as such at the time the proceedings are taken for the recovery.

VI.—COUNTY RATE.

1. ACCOUNTS.

June 21st, 1845.

Clerk of Preston Union—Inquired in what way the payments to be made under the Act 7 and 8 Vic. c. 33, to the county, are to be debited to the townships, so as to appear in the Union quarterly abstracts, in place of the parochial abstracts as heretofore.

Ans.—As regards the overseers of the several parishes, they should continue, as heretofore, to enter in their receipt and payment books, the payments made by them for county rates; the only change effected by the law as respects such payments

by the overseers, consists in the fact that they are now made to the board of guardians instead of the high constable. These payments should also appear in their appropriate column, in the parochial quarterly abstracts, B. 12, as before. As regards the Union accounts, it will be necessary to open, in the Union ledger, a separate account with the county treasurer; and the payments made to him by the board of guardians, on account of the several parishes, should be entered in the Union quarterly abstract, B. 11, for which purpose a new column must be added.

2. COUNTY TREASURER REQUIRED TO GIVE STAMPED RECEIPTS.

June 3rd, 1845.

Clerk of Windsor Union—Inquired whether the board of guardians will be justified in paying any county-rate without a receipt from the county treasurer for the same on a stamp.

Ans.—By the 7th and 8th Vic. c. 33, sec. 1, the treasurer of the county is required to give a receipt for any sum of moneys received by him from any person on behalf of the guardians in payment of county rate. Such receipt being a memorandum or note given to a person upon the payment of money by which a debt or demand is acknowledged to be discharged or satisfied, appears to be subject to stamp duty under 55th Geo. 3, c. 184, in all cases where the demand is of the amount of £5. The Commissioners do not perceive that payments in respect of county rate are included in the list of exemptions from the duties on receipts. The Commissioners, therefore, consider the guardians should require to be furnished with receipts on stamps for the payments they may make under 7 and 8 Vic. c. 33.

VII.—GAS RATES.

ON WORKHOUSE.

Clerk of —— Union—The parishioners of —— in which the workhouse is situate, have adopted the provisions of the 3 and 4 Will. 4, c. 90, for a part of the parish (under the 73rd section,) for the purpose of lighting the town of —— with gas, that town being in the above parish. A district has accordingly been formed which includes the Union workhouse and premises. Inquired whether the guardians are liable to pay the sum of £1. 9*s.* 2*d.*, now claimed from them as a gas-rate, at 2*d.* in the pound on the rateable value of the Union house and premises.

Ans.—It appears to the Commissioners, that the 33rd sec. of 3 and 4 Will. 4, c. 90, contemplates that the same description of property which is subject to the poor-rate should contribute to the rate which the overseers of the parish by which the Act may be adopted, are empowered to levy for the purposes of the Act. The section provides that "the sum shall be assessed upon the full and fair annual value, to which lands, houses, buildings, and other property within the said parish shall be rated or shall be rateable, according to the last valuation made and acted upon for the rate for the relief of the poor within the said parish." These terms clearly include the Union workhouse. It makes no difference, the Commissioners apprehend, as regards the question of liability, that the Act may in the present case have been adopted for a part of the parish only. The overseers have still power to levy the rate within such part, (see sec. 73.)

VIII.—GUARDIANS.

1. RIGHT OF INDIVIDUAL GUARDIAN TO TAKE COPIES OF OFFICIAL DOCUMENTS.

Clerk of —— Union—Inquired whether individual guardians have a right, during the sitting of the board, to take copies of, or extracts from, any letters, minutes, or other documents belonging to the board.

Ans.—The books, in which are recorded the proceedings of the guardians, communications made to the guardians by the Commissioners and others, and copies of the answers of the guardians to these communications, are the property of the guardians as a board:—no individual guardian possesses, by virtue of his office, any right to take copies or make extracts from those documents; but the guardians can expressly authorise any member of the board to make a copy of, or extract from, any document in their custody. The Commissioners believe, however, that the common practice is to allow such copies, or extracts, to be taken by a guardian, without express authority, nor are they aware of any inconveniences having arisen from the existence of this practice.

2. MINUTES OF THE PROCEEDINGS OF GUARDIANS.

Clerk of ——— Union—Inquired whether it is the duty of the clerk of the guardians to record on the minutes, a motion which is made and seconded at a meeting of the board, but which the chairman refuses to put to the vote.

Ans.—By the Commissioners' general order of the 21st April, 1842, (Art. 17, No. 1,) the clerk to the guardians is required to keep "a true

record of the proceedings of the board." The Commissioners are disposed to consider that a motion not put to the board (though made and seconded) cannot be properly regarded as "a proceeding of the board," and that consequently the clerk is not bound by the Commissioners' regulations to enter such a motion on the minutes. At the same time, it appears to the Commissioners to be competent to the guardians in any such case to determine and direct that the motion so made and seconded, but not put, shall be entered on the minutes; and the Commissioners think that it would be the duty of the clerk to obey such direction, if given by the board.

3. QUALIFICATION OF EX-OFFICIO GUARDIAN.

J. H. —— Union—Inquired whether he is qualified to act as an *ex-officio* guardian of the —— Union, under the 24th section of the 7 and 8 Vic. c. 101, being a justice of the peace acting for the liberty and soke of P——, in the county of N——, (in which liberty the —— Union is situate), but residing at A——, in the county of H——, a parish within the —— Union.

Ans.—The latter part of section 24 of the 7 and 8 Vic. c. 101, provides that "every justice of the peace residing in any parish within such a Union, and acting for any *county*, *riding*, or *division*, in which any part of such Union is situated, shall be *ex-officio* a guardian of such Union." It appears that J. H. resides at A——, in the county of H. a parish within the —— Union, and therefore complies with the first of the two conditions imposed by this provision. But J. H. states—"I am a justice of the peace acting for the liberty and soke of P——, in the county of N——." The Commissioners are not precisely aware of the exact nature of the arrangements for the administration of justice in P——, but they presume that J. H.'s commission as a justice of the peace does not enable him to act in that character for the county of N—— generally, but is, in fact, confined to the limits of the soke or liberty of P——. As that liberty does not appear to be a county of itself, the only question seems to be, whether it is a "division" of a county, within the meaning of the above-cited section. The signification of the word "division," in its application to territorial districts, is not very certain or definite; but having regard to the decision in "Evans, *qui tam*, against Stevens," (4 Term. Rep., 224 and 459,) the Commissioners are disposed to consider that the soke or liberty of P—— would probably not be held to be a "division" within the meaning of the section in question. The decision in Evans *v.* Stevens turned upon the construction of this word, as used in the phrase "county, riding, or division," in 22 Geo. 3, c. 41. Lord Kenyon observed, (4 T. R. 227,) "The word *division* in this Act stands with county and riding, and therefore must mean something analogous to them; and the word *division* applies to the county of Lincoln, in the same manner that *riding* does to the county of York." And again, (4 T. R. 462,) "There are legal divisions which satisfy and directly apply to each of these words; *county* applies to every county in the kingdom, except two; *riding* to Yorkshire, and *division* to Lincolnshire, where there are three divisions, and three separate commissions of the peace, three quarter sessions, and three distinct rates."

IX.—JUSTICES.

1. SERVICE OF SUMMONS ON, TO ATTEND SPECIAL SESSIONS.

Clerk of —— Union—The overseers of some of the parishes in the ——— Union being in arrear with their contributions, the necessary steps have been taken, under the 2 and 3 Vic. c. 84, s. 1, to compel payment of such arrears; and the clerk to the magistrates has summoned the magistrates to attend a special sessions, by *personal* service of such summons on each magistrate within the division, thereby causing a very considerable delay, as well as great expense for messengers and horse-hire. Inquired whether it is necessary that each magistrate should be summoned by personal service of the summons.

Ans.—There is no doubt that, to constitute a legal special sessions, reasonable notice must be given to all the magistrates of the division, the notice specifying the particular purpose for which the special sessions is convened, Rex *v.* Justices of Worcestershire, 2 B. and Ald. 228. As to the manner of giving the notice, it seems to be laid down by the authorities that the notice must be personally served on the justices by the high constable or his agent, (see Dickenson's Quarter Sessions by Talfourd; and Rex *v.* Justices of Suffolk, 6 B. and C. 110.)

2. JURISDICTION OF JUSTICES.

Feb. 15th, 1845.

Clerk of Corwen Union—Inquired whether the justices acting in and for the county of Merioneth, can proceed against overseers of parishes situated in the portion of the Corwen Union, which lies in the county of Denbigh, for neglect-

ing to pay money to the treasurer, pursuant to orders of contributions issued to them by the guardians. The guardians meet, and the treasurer resides, in the part of the union situated in Merionethshire.

Ans.—Assuming the proceeding to be taken under 2 and 3 Vic. c. 84, there appears to be no question that, upon the terms of that statute, the justices who act for the district, or jurisdiction in which the parish in arrear is situate, would be alone competent to entertain it. Again, if it be sought to inflict a penalty upon the overseers for the neglect under the 95th or 98th sections of the Poor Law Amendment Act, the Commissioners still think that the proceeding should be taken before the justices of Denbighshire, in which county the defaulting parishes are situate. For, as the offence of the overseers consists, not in the commission of any specific act, but in the omission to perform a duty, the Commissioners consider that it can only be regarded as taking place where the overseers themselves, who omit the duty, happen to be; and not in some other place in which they ought to have performed the duty, but whither they neglect to go: (see the King *v.* Hazell, 13 East, 139.) The question is, however, one for the justices to decide, as affecting their own jurisdiction.

3. POWERS OF JUSTICES.

Auditor of —— Union—At the petty sessions of ——— five fishermen were fined £25, on an information of the conservators of the ——— fisheries, for using illegal nets, under 1 Geo. 1, c. 18, which directs that one moiety of the fine shall go to the informers, the other moiety to the poor. The overseer of ———, who received one moiety of the above fine, (minus the expenses,) has not debited himself with the amount in his accounts; but states that he has received the magistrates' directions to distribute the amount in bread to the poor of the parish, and that he has already done so to the extent of more than one-half of the sum received. Inquired whether the magistrates have the power of ordering the distribution of money so received at the overseer's discretion.

Ans.—The Commissioners observe that the 1 Geo. 1, st. 2, s. 18, directs one moiety of the penalty in such cases as those described in the auditor's letter, to be given "*to the poor of the parish*" where the offence was committed. The Act, however, does not specify what particular class of persons are to be considered "the poor of the parish," nor by whom, nor in what way, the money is to be distributed among them. With regard to charitable gifts, it has been expressly held that, where such gifts are left for the relief of the poor of a parish, they ought to be applied exclusively to *the poor not receiving parochial relief*, (Attorney Gen. *v.* Wilkinson, 1 Beaven, 370; 1 Lumley's Cases, 73.) But the Commissioners are disposed to consider that this principle would not be held to apply to the interpretation of the phrase "the poor of the parish," as used not only in the statute above-mentioned, but in several other statutes containing similar provisions. The Commissioners conceive that in these cases it was the intention of the legislature that the penalty should be appropriated in aid of the poor-rates. The Commissioners believe that the word "poor" is usually employed in the statutes as having reference to persons receiving or requiring parochial relief.

X.—MEDICAL ORDER.

1. CONSTRUCTION OF PROVISO IN ARTICLE 10.

Clerk of the ——Union—A woman having applied for an order for medical relief, the medical officer was directed to attend her, which he accordingly did, and after some time amputated her thigh, from which she has now recovered, and the medical officer claims the fee of £5, as fixed by the General Medical Order. Although the woman was fit to be removed prior to the operation, (as far as the guardians have been able to learn,) the medical officer never suggested to his patient that she should be sent to the general infirmary; but the woman states, that, had such a proposal been made to her, she should have refused to go. The concluding proviso in Article 10 of the Medical Order requires, "that *before* performing" any of the operations before recited, such medical officer shall "obtain, at his own cost, the advice of some member of the Royal College of Surgeons of London, or some fellow or licentiate of the Royal College of Physicians of London, and shall produce to the board of guardians a certificate from such member of the Royal College of Surgeons, or such fellow or licentiate, stating that in his opinion it was right and proper that such amputation or operation should be then performed." Inquired whether such *certificate* ought to be obtained previous to the operation being performed; or whether, if the required consultation took place prior to the operation, a certificate to that effect, although obtained some months afterwards, would be sufficient to enable the payment to be legally made.

Ans.—The Commissioners do not consider that the proviso in Article 10 of the General Medical Order, which requires that the medical officer shall produce to the board of guardians a certificate, to the effect that it was right and proper that amputation or operation should be performed, is a condition *precedent* to the performance of the operation.

2. MIDWIFERY CASE.

July 14th, 1845.

Clerk of Bromsgrove Union—Inquired whether in case of attendance on the confinement of a woman whose name is on the permanent pauper list (and who is in possession of a ticket for the supply of medical relief,) the medical officer who attends her is entitled to be paid the midwifery fee allowed by Article 12 of the General Medical Order of the Commissioners, although he may not have received any special order for his attendance.

Ans.—Seeing that Article 18 declares that the medical officer shall, on the exhibition to him of the ticket, and on application made on behalf of the party to whom such ticket was given, be held responsible for affording such advice, attendance, and medicines, as he may be bound to supply, in the same manner as if he had received in each case a special order from the board of guardians, or from any officer, to afford such advice, &c., it appears to the Commissioners that the medical officer so attending, would, if the case be one of childbirth, be entitled to be paid the usual midwifery fee. It must be understood that this answer only applies to the case of a person who is named on the list required to be made out by Article 16 of the order, and who shall be in possession of the ticket required to be given by Article 17, and shall have caused such ticket to be exhibited to the medical officer as provided by Article 18. The Commissioners desire at the same time to point out that the order provides that the medical officer shall be paid the usual midwifery fee, for attendance in childbirth in the case of any woman actually receiving relief (or whom the guardians may decide to have been in a destitute condition) under circumstances of difficulty or danger, without any order.

3. EXTRA FEES UNDER ARTICLE 10.

E. M. ——Union—Inquired whether a medical officer is entitled to the fee allowed by the General Medical Order for fracture of the arm, in cases of the fracture of the clavicle and of the acromion scapulæ.

Ans.—The surgical cases mentioned in E. M.'s letter do not come within the terms of the General Medical Order, art. 10, and the medical officer is not entitled to a special fee under that order for the treatment of them.

4. DITTO.

J. J., Medical Officer of —— Union—Inquired whether he can charge a fee, under the Medical Order, for his attendance in a case of compound fracture of the metacarpal bones of the hand.

Ans.—The case does not come within the provisions of article 10 of the General Medical Order, and a medical officer is not entitled to an extra fee for his attendance in such a case.

5. DITTO.

Clerk of Union—One of the medical officers has charged two fees in a case of fracture, where, after the fracture had been reduced, and the splints removed, a second fracture of the same limb occurred, through the patient getting out of bed. Inquired whether the two fees should be allowed.

Ans.—The Commissioners think that this can only be considered as one case, under the General Medical Order, and consequently as entitling the medical officer to only one fee for his attendance on the pauper.

6. DITTO.

Clerk of —— Union—A pauper named W. A. having sustained a compound fracture of the thigh, was attended by one of the medical officers, who has been paid the fee of £5 allowed by the General Medical Order for attendance in such cases. About two weeks ago, the man, while on his way home from a walk, fell again, and broke his thigh in the same place in which the former fracture occurred. The medical officer now makes a claim for a fee of £3 for a simple fracture of the thigh, which the guardians do not think he is entitled to, as he had not ceased to attend the pauper on account of the first accident at the time the second occurred. Inquired whether the medical officer is entitled to the second fee of £3.

Ans.—The Commissioners are of opinion that the case of W. A. was not complete at the time when the second fracture occurred; and as the second fracture took place in the same place as the first fracture, and as the medical officer was still in attendance on the patient, the Commis-

sioners think that there is no sufficient ground for his claiming a second fee, in addition to the original fee of £5 which was paid him by the guardians.

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7. Ditto.

Clerk of —— *Union*—Inquired whether a medical officer is entitled to two fees, of £3 each, for his attendance upon a pauper, in a case of lateral dislocation of the knee joint, and an oblique simple fracture of the tibia and fibula, both injuries being in the same leg.

Ans.—The Commissioners are of opinion that the medical officer is entitled to be paid two fees for his attendance in the case of the pauper alluded to.

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8. Ditto.

Clerk of —— *Union*—Two of the medical officers of the ——— Union have claimed fees of £1 and £3 respectively, under the General Medical Order; the former for a case of dislocation of the patella, the latter for one of dislocation of the hip-joint. Inquired whether they are entitled to the fees which they respectively claim for the cases above referred to.

Ans.—1. The Commissioners consider a dislocation of the thigh-bone, at the hip-joint, to be a dislocation of the thigh, and that the medical officer is in such a case entitled to a fee of £3 under the General Medical Order.—2. A dislocation of the patella is not within the cases for which fees are prescribed by the order; but the Commissioners are willing to sanction the allowance of some extra remuneration to the medical officer, if the guardians should wish to make him such an allowance.

XI.—OFFICERS.

Liability of Collector.

Auditor of —— *Union*—An assistant-overseer of the parish of ——— took a £5 note, in payment of poor-rate of a bank which stopped payment in a week after, and while the note was still in his possession. Inquired whether the assistant-overseer is personally liable for the loss, or whether it should be charged to the parish on account of which the money was collected.

Ans.—The Commissioners cannot state any invariable rule to be observed in cases where officers have taken bad money, or notes of banks which have subsequently stopped payment. In some cases the Commissioners think the loss will fall on the officer, in others upon the public; and in determining which of those consequences is applicable to any case, the auditor will find occasion for great vigilance and judgment. The Commissioners will proceed to state their general views upon the subject, but must leave the application of them to the auditor's decision. As a general rule, the officer is to be held responsible for taking good and lawful money in discharge of the claims of the parish. If he takes base coin, it is through a defect of vigilance. If he takes or keeps in his possession private notes, it is at his own option; he is under no obligation or legal necessity to do so. To regard him as exonerated generally from private loss, if he takes base money or private notes of insolvent banks, in payment of the demands of the parish, would, when he acts *bonâ fide*, encourage a most dangerous habit of negligence, and would in other cases enable an unscrupulous officer to cast on the parish losses incurred in his private business. In one parish, where it was the custom to allow regularly a certain sum for bad money taken, the parish officers were known to give to their friends good money for base coin. It will, before any relaxation is allowed of the general responsibility of an officer, therefore, be necessary that the auditor should be thoroughly satisfied that the base coin, or unpaid notes, came into the officer's hands in the *bonâ fide* exercise of his office. But though an officer is generally responsible for taking good money in liquidation of public demands, the Commissioners do not think that his responsibility extends beyond the duty of exercising such a caution as a prudent man would exercise in his own business. The caution of an ordinary person in his own concerns does not satisfy the exigences of a special trust in the case of common bailments or deposits of property, powers of collection and receipt, and the like; and certainly nothing less than such caution as a prudent person would use in his own concerns can exonerate an officer when any injury is incurred by his defaults. But the Commissioners think, that where an officer is shown to have acted *bonâ fide*, and to have neglected no precaution adopted by prudent persons in the protection of their personal interests, he may generally be considered to have done all that his office requires of him, and to be discharged from liability to personal loss or penalty, if injury is suffered, which such caution and good faith would not have prevented. The Commissioners would observe, with reference to the taking of country bankers' notes, that a question will arise between the collector and

the payer of the rates; because if the collector has not been guilty of laches, or negligence in presenting the note for payment, he is entitled to recover the amount of the note from the party paying it. Hence, the collector would have no loss to charge to the parish, and as he will only discharge the payer by negligence, it will seem that such negligence must necessarily render him responsible to the parish.

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2. Powers of Collector.

Clerk of —— *Union*—Requested the Commissioners' opinion as to whether the power of a paid collector of poor-rates appointed under the 62nd section of the 7th and 8th Vict. c. 101, extended beyond the collection of the rates, and more particularly to the summoning of defaulters in the payment of the rates.

Ans.—The Commissioners apprehend that the collectors appointed under the above section would be empowered to take proceedings against defaulters to the extent of laying the necessary information as to non-payment before the justices: the warrant of distress, however, should be directed to the churchwardens and overseers and the constable. But the Commissioners are not aware that the collector would have any other powers, except such, indeed, as are necessarily incident to the office, viz., the power to make a valid demand of the rate, and the power to give a valid discharge for the payment of the same.

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3. Medical Officer, also Coroner.

May 20th, 1845.

The Commissioners having been informed that Mr. ——, medical officer of a district in the —— Union was also coroner of a division of the county of ——, informed him that they were in the habit of considering the two offices of coroner and medical officer as incompatible; and that they did not think it desirable that he should continue to hold both.

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4. Appointment of Overseers.

Clerk of —— *Union*—A difficulty has arisen in obtaining the contribution of the township of ——— to the expenses of the Union for the present quarter, under the following circumstances. The overseers acting for the township last year, returned two gentlemen to the magistrates to be appointed as overseers for the present year in the usual form, and they were accordingly appointed. In the return, they are described as C. S. S., and J. T., householders, but in fact neither of them are householders or residents in the township; Mr. S. being a clergyman of the established church, and vicar of the parish of W. (of which the township forms a part), and Mr. T. agent to the owner of the great tithes of the parish of W., but not even rated to the relief of the poor in the township. These gentlemen will not act, indeed Mr. T. resides a great distance from the township. The words "being substantial householders of the township of" have been erased from the appointment, and, it is believed, since it was signed by the magistrates. A question arises, therefore, what course should be adopted; the case of Rex *v.* Great Marlow, 2 East, 244, decided that the magistrates having made an appointment, were *functus officii*, and could not therefore make another. In that case, however, the appointment was good in the first instance, but one of the parties subsequently obtained an appointment, which exempted him from serving the office of overseer. Requested the Commissioners' opinion, whether the magistrates may, in this case, treat the appointment of Messrs. S. and T. as void, and appoint fresh overseers, on a representation of the facts being made to them by the board of guardians; and, if not, whether the board of guardians should tae anand ye at steps in the matter.

Ans.—If the persons named in the warrant are not householders in the township of ——— there is no doubt that the justices had no authority to appoint them overseers of the township. (Rex *v.* Morris, 4 T. R. 550.) You state that one of the persons so named is a clergyman of the established church; if so, this of itself would apparently be a ground of exemption. (Anon Gibs Codex, 215, 6 Mod. 140, 1 Bott. 12.) The appointment would appear to be void on the former ground, and, as the Commissioners apprehend, could not be enforced. The fact of their not being householders would be a defence to any proceeding (an indictment for instance) for not taking upon themselves the office. If the persons were householders in the township, and the objection were that they were not "substantial householders," this would be a point for the sessions to determine on appeal. The Commissioners see nothing to prevent the justices now proceeding to make an appointment, which can be done, though the period limited by the statute

has expired. (Rex v. Sparrow, 2 Sess. Ca. 140, 2 Str. 1123, 1.) The case of Rex v. Great Marlow, 2 East 243, is not opposed to this course. There a good appointment of overseers had been made for the parish of Marlow; and the court held, that other magistrates had no jurisdiction to make another appointment. That obstacle does not exist in the present case, as it must be taken that no appointment of overseers has yet been made.

5. Powers of Overseers.

July 29th, 1845.

Guardian of ——— *Union*—Inquired whether the auditor was empowered to allow any charge for law expenses incurred in any legal proceedings, either relative to appeals in settlement cases, or otherwise, without such proceedings having received not only the sanction of a vestry, but that of the board of guardians also.

Ans.—Notwithstanding the general powers as to the administration of relief conferred upon the guardians of unions by the Poor Law Amendment Act, there are certain powers and duties relating to the execution of the Poor Laws, which still belong to the overseers of the several parishes, independently of the guardians. Such, for example, are the assessment of the poor-rates, and the removal of paupers to the parishes of their settlement. In incurring any legal expenses in matters of this kind, the overseers are under no obligation to consult the guardians, and the guardians have no power to control the overseers.

6. Overseers, whether accountable for the whole amount of the Rates allowed by Justices.

Auditor of——*Union*—Inquired whether he is, as auditor, bound to insist on the overseers charging themselves with the whole amount of each poor-rate allowed by the justices, or only with so much thereof as they may have actually collected.

Ans.—Where the overseers of any given year do not collect the whole of the rates allowed during such year, the arrears remaining due on such rates may, and should, be collected by the succeeding overseers. (See 17 Geo. 2, c. 38, s. 11.) It appears to the Commissioners, therefore, that the overseers for the year in which such arrears originate are not responsible to their successors for such arrears as for a money balance; in other words, they are not bound to pay over to their successors, in cash, the amount of such arrears, which it is open to their successors to gather in from the parties assessed. This being, as the Commissioners conceive, the state of the law with regard to the liabilities of the overseers in this matter, the precise mode of entering the facts in any particular case in the overseers' accounts is a point of practice which the Commissioners leave to the auditor's discretion. If the overseers enter in their "receipt and payment book" only so much on the one side as they actually receive, and on the other side as they actually disburse, the balance will, of course, exhibit the exact sum of money actually due from them to their successors; and if the "rate book" is at the same time treated as a separate account, the difference between the "total amount to be collected" and the aggregate of the two columns, "amount actually collected," and "amount not recoverable, or legally excused," will of course be the sum of the arrears to be collected by such successors. If, on the other hand, the whole amount of the rate is entered to the debit of the overseers in their "receipt and payment book," credit must likewise be given them in that book for the "amount not recoverable, or legally excused;" and the balance appearing on the face of the account should of course be subdivided, according to the proportions of money and arrears of which it may really consist. The Commissioners, however, think it right to add, that they quite concur in the auditor's remark, that the poor-rates ought to be collected, if possible, by the overseers for the year in which the rates are made.

XII.—PAUPER.

Property of Deceased Pauper.

March 7th, 1845.

Clerk of —— *Union*—A pauper who died lately had been in receipt of regular relief for upwards of seven years, amounting to about £40. On his death it was found that he had secreted a sum of £44. 3*s.* 2½*d.* He owed £8. 10*s.* for rent, and his funeral and other expenses amounted to about £5. Inquired whether the parish officers, after paying the funeral expences and arrears of rent, may retain the balance of the £44. 3*s.* 2½*d.* towards the repayment of the relief given to the deceased.

Ans.—If the relief afforded to J. W., was given to him expressly by way of loan, the guardians of —— Union may repay themselves out of his effects, the relief so given; but if the relief was not granted upon loan, the Commissioners do not see that the guardians have any

legal claim to such repayment, except so far as regards the funeral expenses, which the guardians may, like any other person, repay themselves out of the effects of the deceased, although such expenses were not advanced as a loan.

XIII.—POOR ALLOTMENTS.

Recovery of Rents.

Clerk to the Magistrates of ——.—Under the provisions of the Act of 1 and 2 Will. 4, c. 42, s. 2, certain waste and common lands in the parish of A——, containing about twenty acres, were, in the year 1832, inclosed by the churchwardens and overseers of that parish, with the consent of the lord of the manor, and the major part in value of the persons having right of common thereupon, signified by writing under their hands and seals, in accordance with the provisions of the above section. The churchwardens and overseers have for several years past, let portions of the inclosed lands, in quantities varying from thirty to fifty rods, to the poor and industrious inhabitants of the parish, at fair and moderate rents, viz., at the rate of about 32*s.* per acre, the land being of good quality. Arrears of rent being now due from some of the tenants, the churchwardens and overseers have demanded payment, which has been refused, and application to the justices to enforce payment has become necessary. Inquired whether the churchwardens and overseers alone can make application to the justices, under the 11th section of the 2nd Will. 4, c. 42, for the recovery of the arrears of rent, the lands having been inclosed and let prior to the passing of the 5 and 6 Will. 4, c. 69, or whether the powers and provisions of the 2 Will. 4, c. 42, (so far as the same extend to the recovery of the said rents or otherwise,) are by virtue of the 4th sec. of 5 and 6 Will. 4, c. 69, subjected to the rules, orders, and regulations of the Poor Law Commissioners, and can only be exercised by the board of guardians of the Union in which the said parish of A—— is comprised, and not by the churchwardens and overseers of that parish. And if the latter, what steps should be taken for the recovery of the arrears of rent in question.

Ans.—The Commissioners feel some difficulty in determining the exact effect of the 5 and 6 Will. 4, c. 69, sec. 6, upon the statutes 59 Geo. 3, c. 12, and 1 and 2 Will. 4, c. 42, and c. 59, and the 2 and 3 Will. 4, c. 42. But they think that the former statute only gives to the guardians the power of making the same inclosures, or obtaining the same allotments, as the parish officers could previously have done, and consequently that the guardians have nothing to do with allotments which have been taken and let by the parish officers, and the vestry, previous to the passing of the 5 and 6 Will. 4, c. 69. It appears that in the present case, the lands were taken under the 1 and 2 Will. 4, c. 42, and consequently they are brought under the operation of the 2 and 3 Will. 4, c. 42, by sec. 9. According to this latter Act, the rent of the land, when received, is to be applied in the purchase of fuel to be distributed among the poor parishioners. And if this be the correct construction of the Act, the rent of the land in question is not to be brought into the general accounts of the parish, nor mixed up with the general poor-rate. However this may be, the Commissioners see no reason to doubt the power of the churchwardens and overseers to recover the arrears of rent by the summary process referred to.

XIV.—POOR RATES.

1. Recovery of when Quashed.

Clerk of —— *Union*—The churchwardens and overseers of the parish of ——, made a rate for the relief of the poor in August last, which was duly signed, allowed, and published. The vicar of the parish, at the last quarter sessions for the county, appealed against the assessment on his tithe, and succeeded in quashing the rate. Subsequently, the overseers summoned a defaulter in payment of the same rate, before a bench of magistrates, who, upon hearing evidence that the rate was quashed, refused to enforce the amount claimed against this person. Inquired, 1st, Whether the justices were right in refusing to enforce payment of the rate in question. 2dly, In what manner the parish officers are to obtain funds for the purposes of the parish, during the period occupied in making a new valuation. 3dly, Whether the parish officers can make another rate, and enforce the same, on the valuation upon which the quashed rate was founded.

Ans.—The 1st section of the 41 Geo. 3, c. 23, expressly provides, that the court of quarter sessions, if they deem it necessary, may quash a poor-rate which has been appealed against, "but nevertheless, all and every sum, &c., by such rate or assessment charged on any person or persons, shall and may be levied and recovered by such ways and means, &c., as if no appeal had been made against such rate." It further provides, that the sums so recovered shall be treated as payments on account of the next effective rate or

rates. The 3rd section, however, empowers the court of quarter sessions, where a rate is quashed, "to order any sum, &c., by such rate or assessment charged on any person, &c. not to be paid;" in which case, no proceedings shall be commenced or continued for the recovery thereof. Unless such an order has been made by the court of quarter sessions, the Commissioners do not see why the justices should have refused to enforce payment of the poor-rate referred to in your letter, as having been quashed upon appeal. With regard to any future rates, the Commissioners desire to point out that it is the duty of the overseers to provide the necessary funds for the relief of the poor, and for this purpose to make the requisite rates to the best of their ability; which rates, if appealed against, may nevertheless be levied in accordance with the statute above alluded to, 41 Geo. 3, c. 23.

2. COST OF MAKING COPIES OF ENTRIES OF BAPTISMS, &c. NOT PAYABLE OUT OF THE POOR RATES.

April 2nd, 1845.

Auditor of ——— *Union*—Inquired whether he will be justified in allowing, in the accounts of the parish officers of ———, a payment of six guineas made to the rector for furnishing manuscripts of the baptisms and burials for three years to the bishop's registry.

Ans.—The 52nd Geo. 3, c. 146, sec. 6, requires that, at the expiration of two months after every year, copies of all the entries of baptisms, marriages, and burials, in the year preceding, are to be made by the officiating minister, or church or chapel-warden's clerk, or other person under his direction, on parchment, to be provided by the parishes; and when so made and properly verified and attested, to be transmitted by the church or chapel-wardens to the registrars of the diocese. The Commissioners presume that the charge of six guineas in the present case was for making copies of the church registers pursuant to the statute cited. The statute, it will be seen, throws the charge of providing the parchments on which the copies are to be made on the parish concerned. But it does not go on to specify "any fund" from which the payment is to be made. The question, therefore, arises whether the poor-rate can be lawfully resorted to for the purpose, and the Commissioners are of opinion that it cannot, and for these reasons. The object is one wholly unconnected with the relief of the poor or the administration of the Poor Laws. The persons charged with the duty of making the copies are ecclesiastical officers. It is true that churchwardens (who are mentioned in the 6th sec.) are, by virtue of their office, overseers of the poor; but it is clear, both from the nature of the duty itself, as well as from the terms of the statute, that it is in their character of ecclesiastical officers that the duty is cast upon the churchwardens. It is possible therefore that they might be justified in making the payment out of any church-rate raised in the parish. On this, however, the Commissioners are not called upon to give an opinion, and they can only say they consider the poor-rate is not liable.

XV.—RATING.

July, 1845.

———Inquired—1. Whether machinery, such as is usual in paper mills, roperies, and manufactories (other than the moving power) is rateable. 2. Whether the justices in petty sessions have power to amend a rate, by increasing or decreasing the rates of parties who have had no notice on an appeal for inequality by other parties, or whether the rate must be entirely quashed. 3. Whether the overseers are bound to assess all the small tenements in the parish, although occupied by poor persons, and if they are omitted in the rate whether that circumstance will be a good ground of appeal to the quarter sessions, it being presumed that, by the proviso to the 6th sec. of the Parochial Assessment Act, the petty sessions could not be appealed to on such an objection.

Ans.—1. It is clear, from all the decisions which have been given by the courts on the subject, that, where machinery is fixed to real property and occupied with it, such property is rateable to the poor-rate at its increased value, arising from the combination of such machinery with it. Those decisions do not distinctly point out the limits of this principle in its practical application; but the Commissioners believe it to be the general practice, to include in the assessment only so much of the machinery as constitutes the "moving power." 2. The question, whether the justices in special session, under the 6th sec. of the Parochial Assessments Act, have power to amend a poor-rate as to parties other than the appellant, where no notice has been given to such other parties, is a question of considerable difficulty, and one on which the Commissioners are not prepared to express any positive opinion. The 6th sec. itself empowers the justices to hear and determine *all* objections

to the rate, "on the ground of inequality, unfairness, or incorrectness, in the valuation of *any* hereditaments included therein," provided only that notice be previously given by the appellant "to the collector, overseers, or other persons by whom such rate was made." So far, therefore, as the 6th sec. is concerned, notice to parties assessed does not appear to be required; but as the 7th sec. gives the justices in special session all the power of *amending* a rate, which any court of quarter sessions has upon appeals, it may be contended that such powers of amendment can only be exercised in the one case under the same conditions as in the other, and that, consequently, the justices in special session cannot amend the rate as to parties other than the appellant, unless notice has been given to such other parties, according to the provisions of the 41 Geo. 3, c. 23, sec. 6. 3. The overseers are bound to include in every poor-rate all the properties in the parish which are legally liable to be assessed; and the omission of any such properties from the rate, would certainly be a good ground of appeal against it, to the quarter session, though not to the justices in special session under the Parochial Assessments Act. With regard to the rating of small tenements, however, the Commissioners direct your attention to the 59 Geo. 3, c. 12, sec. 19.

XVI.—REGISTRATION.

May 5th, 1845.

Clerk of the Westbury-upon-Severn Union.—In June, 1838, the registrar-general by his order directed that a certain part of the Forest of Dean should be, for the purposes of registration, part of the Newnham registrar's district in the Westbury-upon-Severn Union. In 1842, the Forest of Dean was, by an Act 5 and 6 Vict. c. 48, parochialised and divided into two townships, namely, East Dean and West Dean; the former township was added to the Westbury-upon-Severn Union, and the latter to the Monmouth Union. The Newnham registrar's district includes some parts both of East Dean and of West Dean, and the expenses attendant upon the registration in the district, cannot therefore be levied upon such district, but they have been defrayed out of the general funds of the Westbury-upon-Severn Union, and consequently, the proportion which East Dean pays towards its own registration expenses is very small. Suggested that the registrar-general should revise the order of June, 1838, and direct that for the future the township of East Dean shall form a district of itself, and, like a parish, pay the total expenses of its own registration; and also that West Dean should be formed into a district of itself in a similar manner.

Ans.—The general intention of the Registration Act is clearly this, that each parish shall bear its own burden in respect of registration; and this is so consonant with legal principles, that any construction which would defeat this end, would not, except where it was absolutely inevitable, be admitted. The inconvenience and inequality involved in the subsisting arrangement respecting the township of East Dean as described in your communication, appear therefore to afford a reason for supposing that it could not be the intention of the Act of Parliament to sanction it, where the more equitable and convenient arrangement under the general provisions of the Registration Acts, applicable to parochial divisions, was capable of being applied. It is clear that the power under the Act 1 Vict. c. 22, s. 9, can only be used originally in places not included in districts under boards of guardians; and the purview of the provision appears merely to be, to make arrangements applicable to places not under boards of guardians, and to have no object applicable to a place under a board of guardians. It seems therefore to the Commissioners that when East Dean became a township and was included in a Union, it acquired all the rights and obligations of a township in a Union, and that the provision specifically applicable to it as a non-parochial place out of the control of a board of guardians, ceased to have effect, and that the provisions applicable to it as a township in a Union became *ipso facto* in force then. Consequently, that the registrar-general's order of June, 1838, ceased then to be in operation there. This being so, the revocation of that order is not necessary. Adverting to the suggestion respecting West Dean, the Commissioners wish to add that the cases of East and West Dean appear to be identical in principle, and therefore the above remarks would seem to apply equally to both cases.

XVII.—SETTLEMENT.

BY HIRING AND SERVICE.

Feb. 8th, 1845.

The Rev. ——. —The widow of a man who belonged to a distant parish came to the parish of —— about thirty years ago, where she continued for many years in the service of a farmer as his

housekeeper, and received as wages four guineas per annum. She now applies for relief. Inquired therefore whether she gained a settlement in that parish by hiring and service; or, whether she is settled in her late husband's parish.

Ans.—The mere circumstance of the woman referred to being a widow, would not prevent her from acquiring a settlement by hiring and service. The words of the statute 3 Will. and Mary, c. 11, s. 7, are, "If any unmarried person, not having a child or children," &c. These words would certainly apply to a widow; and in the case of R. *v.* Hensingham, (Cald. 206) a widow was held to be within the statute. The Commissioners presume from your statement that a contract of hiring took place, and that there was a year's service under it prior to the 14th August, 1834, (see Poor Law Amendment Act, ss. 64, 65.)

XVIII.—VACCINATION.

March 7th, 1845.

Clerk of —— Union—Inquired whether the guardians would be justified in withholding relief from all paupers having children who have not been vaccinated, as a means of compelling them to have their children vaccinated.

Ans.—The guardians would not be justified in withholding relief from paupers on this ground, inasmuch as to constitute a valid claim for relief and an obligation on the authorities to grant all necessary relief, it is only required that the party applying be destitute and resident within the Union, or casually destitute therein. The Commissioners think that as so few persons have been vaccinated in the Union during the past year, as compared with the number of births, it would be advisable for the guardians to direct the vaccinators, as opportunities may offer to them, to visit the houses of the humbler classes, where they know there are unvaccinated children, and endeavour to obtain the consent of the parents of such children to their being vaccinated.

XIX.—VAGRANT ACT.

REFUSAL OF MAN TO MAINTAIN HIS FAMILY.

Clerk of —— Union—In November, J. O. was convicted as an idle and disorderly person, under the Vagrant Act, for refusing to maintain his wife and family, then and now in the workhouse; the conviction, however, being quashed on appeal. The wife and family were admitted into the workhouse in consequence of J. O. having been committed to prison on a charge of stealing corn from his master, of which charge he was subsequently acquitted. During this time his master, who was also his landlord, distrained upon his goods for rent. J. O. is in work at twelve shillings per week, and has a house, but it is believed little or no furniture. He refuses either to take his family out of the workhouse, or to provide for them in any way. Inquired whether the guardians should at once discharge the wife and children from the workhouse; or whether they should direct the overseer of the parish to which the paupers are chargeable to take them from the workhouse, and convey them in a cart to J. O.'s residence; or whether they should proceed against J. O. for refusing to maintain his family.

Ans.—Assuming the circumstances of the case to remain unaltered, it appears to the Comissioners that the guardians would be justified in discharging J.O.'s wife and family from the workhouse, as it appears that J. O. is in receipt of sufficient wages to enable him to maintain them, and is also provided with a habitation. If this course is taken, it would be advisable that the family should be conveyed (if the distance requires it) and delivered to J. O. If he still refuse, or neglect, to discharge his legal obligation with respect to his family, and in consequence of such refusal it should be necessary to re-admit the family, the case should then be dealt with under the Vagrant Act, sec. 3. It would perhaps be sufficient to sustain a conviction, under that Act, if the guardians caused a notice to be given to J. O. that his wife and family were chargeable, and required him to contribute to their support, and he should then make a default in doing so, and should also neglect or refuse to remove his family from the workhouse. But the former course will avoid any question which might possibly be raised under the 3rd section, as to whether the chargeability arose from the refusal to maintain.

XX. WORKHOUSE CHAPEL, LICENSING.

Jan. 16th, 1845.

Clerk of the Isle of Thanet Union—Inquired whether it was customary for chapels belonging to Union workhouses to be licensed by the diocesan.

Ans.—It is not usual for workhouse chapels to be licensed by the diocesan; and if no other persons than the paupers and inmates of the workhouse be admitted, the Commissioners apprehend that it is not necessary that a workhouse chapel should be registered and certified according to the provisions of the 52 Geo. 3, c. 155, s. 2.

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AN

OFFICIAL CIRCULAR

OF PUBLIC DOCUMENTS AND INFORMATION:

DIRECTED BY THE POOR LAW COMMISSIONERS TO BE PRINTED, CHIEFLY FOR THE USE OF THE MEMBERS AND PERMANENT OFFICERS OF BOARDS OF GUARDIANS, UNDER THE POOR LAW AMENDMENT ACT.

No. 50. CIRCULAR ISSUED AUGUST 1ST, 1845.

THE Poor Law Commissioners directed that the following documents be printed and circulated for the information of Guardians and Officers of the several Unions, viz.

(Signed) By Order of the Board,
EDWIN CHADWICK, *Secretary*.

I.—BASTARDY—ORDERS IN.

March 27th, 1845.

Clerk of —— Union—Inquired whether the guardians will be justified in paying the clerk to the justices of the sessions the sum of 2*s.* 6*d.* for each duplicate order in bastardy delivered to the board in pursuance of the