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must have known when they purchased them, to what liabilities they were exposed from the buildings of their opposite neighbours, I cannot but think the advantages derived from the custom probably exceeded its evils. The growing necessity for lofty buildings is shewn by the great multiplication of them in all parts of the metropolis, and I cannot but fear that serious inconvenience may be felt by the abolition of the alleged custom, assuming that I was correctly informed as to its existence prior to the statute. With all this however, sitting here to administer the law, I have no concern.

Solicitors for the Plaintiffs: Messrs. Church & Co.

Solicitors for the Defendant: Messrs. Chandler & Crouch.

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Feb. 24;
March 3.

DRENNAN v. ANDREW.

Practice—Appeal in Formâ Pauperis.

When a party has obtained the common order to *sue in formâ pauperis* at any stage of the suit, it will carry him through all subsequent stages; and no special order is required to enable him to appeal without payment of a deposit.

*In re Roberts,
Kiff v Roberts,
23 Ch. 2. 265.*

*Biggs v Bagnall.
(1895) 1 Q. B. 207.*

THIS was an application on behalf of the Plaintiff in this suit, who was suing *in formâ pauperis*, that his Petition of appeal might be received without paying the usual deposit.

The facts of the case were as follows:—

The bill was filed in May, 1860, at which time the Plaintiff was not suing as a pauper. On the 5th of March, 1861, a decree was pronounced by Vice-Chancellor *Kindersley* declaring the Plaintiff entitled to a share in a house, and directing a sale.

On the 30th of November, 1865, the Plaintiff obtained an order on the common Petition at the Rolls for leave to *sue in formâ pauperis*. His object in obtaining this order was to apply to the Vice-Chancellor in Chambers to add to the decree a direction to take an account of rents received and in the hands of the Defendant. This application was, however, refused; and thereupon Plaintiff presented his Petition for a rehearing of the decree.

The Petition was signed by counsel and taken to the Secretary's office for the Lord Chancellor's *flat*; and the order to sue *in formâ pauperis* produced, in order that it might be set down to be heard without any deposit being made. The Lord Chancellor's Secretary, however, refused to receive it, on the ground that by the present practice, no order to sue *in formâ pauperis* having been obtained until after decree, the common order was not sufficient, but that a special order was requisite.

Mr. *Elberton*, in support of the application, referred to *Seton* on Decrees (1), and *Daniell's* Chancery Practice (2), where the practice is stated to be that where a party is made a pauper for the purpose of appealing, he must obtain leave from the Lord Chancellor or Lords Justices on a special application; but that this is not necessary when he has sued *in formâ pauperis* in the Court below. In the present case the Plaintiff had carried on proceedings *in formâ pauperis* in the Vice-Chancellor's Chambers, and was entitled to appeal as a pauper without special leave. He also referred to *Blund v. Lamb* (3); *Bradberry v. Brooke* (4); *Grinwood v. Shave* (5); *Clarke v. Wyburn* (6).

The LORD CHANCELLOR reserved judgment that search for precedents might be made by the Registrar (7).

(1) Vol. ii., p. 1271, 3rd ed.

(2) Vol. i., p. 40, 4th ed.

(3) 2 Jac. & W. 402.

(4) 4 W. R. 699.

(5) 5 W. R. 482.

(6) 12 Jur. 167.

(7) The Reporter has been favoured by the Registrar, Mr. *Monro*, with the following note upon the practice on this point:—

“By the 11 Hen. 7, c. 12, poor persons were allowed to sue *in formâ pauperis*. By the 23 Hen. 8, c. 15, a pauper was not to pay costs, if he was unsuccessful, but was to suffer *other punishment* in the discretion of the judge. Accordingly the common form of the order allowing a poor person to sue *in formâ pauperis* contained this clause: ‘But if the matter shall fail

out against the Plaintiff, he shall be punished with whipping and pillory.’

“There are many orders of the time of Queen *Elizabeth* which contain this clause; and there was one instance, in 1596, in which Sir *Thomas Egerton*, L. K. (afterwards Lord Chancellor *Ellesmere*) ordered a female pauper Plaintiff to be flogged; and Mr. *Lambard*, an old Master in Chancery, the real author of *Cory's* Reports, being then present, said that so was the opinion of all the justices of the equity of the statute 23 Hen. 8, c. 15, for the Chancery and Star Chamber; the statute mentioning only actions at Common Law.—(Harg. MSS. No. 249, fol. 6.)

“At this time no suitor could regularly appeal from a decree in Chancery.

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March 3. LORD CRANWORTH, L.C., directed the Petition of appeal to be received. His Lordship said that there appeared to be some conflict of practice on the point, but he was of opinion that where the common order to sue *in formâ pauperis* had been

It is said in some of the old orders in the time of *Elizabeth*, speaking of the Court of Chancery, 'from which Court the subject has no appeal.' As to persons not paupers, this practice was changed, and their right to appeal established; but as to paupers there appears to have prevailed, as late as 1774, and perhaps later, an idea that a pauper could not appeal.

"In *Taylor v. Bouchier* (2 Dick, 504), before Lord Chancellor Apsley (afterwards Lord Bathurst) on 21st July, 1774, it was said that 'a pauper cannot appeal, and on inquiry of the Bar that proposition could not be disproved, and, in fact, was assented to.' *Taylor v. Bouchier* was an appeal on which a deposit had been previously made (27th April, 1774) in the usual way; and therefore the proposition reported by Mr. Dickens must have been a statement casually made in the course of the argument, but not arising in the case before the Court.

"In *Bland v. Lamb* (2 Jac. & W. 402) the proposition that a pauper could not appeal is said to have been adverted to *arguendo* by Mr. Pemberton, and condemned by Lord Eldon, who is stated to have said 'it was a very singular proposition; and that he could not see why, because a party was poor, the Court should not set itself right.' And the report proceeds to say that the usual order for setting down the appeal was made.

"The inference from the above is, that an order was made for setting down the petition of appeal *in formâ pauperis*. This was not so; and there is nothing on record as to any party suing or de-

fending *in formâ pauperis*, except an entry in the minute-book of the registrar (Mr. Crofts), of a motion by Mr. Pemberton, for the Defendant, that he might defend the suit *in formâ pauperis*.—Cur.: Take the order, if I find nothing in my notes to the contrary.' But no order to defend *in formâ pauperis* was drawn up, and on the 27th November, 1820, the Defendant appealed, and paid a deposit on the appeal in the usual way. It was therefore not the fact that the usual order for setting down the appeal of a pauper was made.

"*Bland v. Lamb*, therefore, is no instance of an order to set down an appeal of a pauper without a deposit. The order has no existence. But *Bland v. Lamb* is cited by Mr. Sibney Smith, (1 *Smith's Chancery Practice*, p. 716, 7th ed.), as an authority for the proposition that liberty may be obtained to sue *in formâ pauperis* at any stage of the proceedings. This proposition rests on much older authority. It is to be found in *Harrison's Chancery Practice*, vol. i. p. 260 (4th ed.)

"In *Heaps v. Commissioners of Churches*, (8th June, 1820; Reg. Lib. A. 1820, fol. 1527), the order is said to have been drawn up on the authority of *Bland v. Lamb*.

"In *Clarke v. Wyburn*, 1st March, 1848 (12 Jur. 167), the order was made by Lord Chancellor Cottenham, following *Heaps v. Commissioners of Churches*; and in *Brudberry v. Brooke*, 9th July, 1856 (4 W. R. 699), a like order was most unwillingly made by the Lords Justices on the same authority.

"The order in *Grinwood v. Shave*,

obtained at any time during the suit, such order was sufficient to carry the pauper through all the stages of the suit; and that in that case an order for leave to appeal *in formâ pauperis* was unnecessary.

Solicitor: Mr. Strangways.

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BELL v. WILSON.

Mines and Minerals—Reservation in Deed—Freestone—Ore.

In a conveyance of land in Northumberland a reservation was made to the grantor of all "mines or seams of coal, and other mines, metals, or minerals," under the land granted, with liberty to dig, bore, work, lead, and carry away the same, and to make pits, &c.

Held, varying the decree of *Kinderley*, V.C., that the term "minerals" included freestone, but that the grantor had liberty only to get the freestone by underground mining, and not by working in an open quarry.

THIS was an appeal from a decree of Vice-Chancellor *Kinderley* (1).

The bill was filed for an injunction to restrain the Defendants, *Frederick William Wilson, George Beatty Wilson, and John*

20th April, 1857 (3 W. R. 482), was made by Lord Chancellor *Chelmsford*, allowing the Plaintiff to appeal *in formâ pauperis*. On this occasion his Lordship required a very special certificate to be made by counsel, which is entered in the Registrar's minute-book. The order is drawn in the exact form of the three last-mentioned orders. I do not recollect any other instance of such a certificate having been required.

"See also *Dresser v. Morton*, 17th July, 1847, L. C. (2 Phil. 286). *Ex parte* order to defend *in formâ pauperis* obtained after decree, on common affidavit on a petition at the Rolls; Defendant was afterwards dispaupered, and motion was made to discharge the order to dispauper him, *i. e.*, to restore

the pauper order. It was not argued by any one against this that the common order could not be had after decree.

"In *Hill v. Gomme* (decree by the Master of the Rolls, 10th August, 1839), Plaintiff is described as a pauper. Therefore the order to sue had been obtained before decree. Decree appealed from in November, 1839, and no deposit made, without any special order to dispense with it. Appeal heard and disposed of 24th December, 1839. This, therefore, is a case of the common order, had before decree, carrying the Plaintiff through the suit even to and beyond the appeal."

(1) Reported, 2 Dr. & Sm. 395.

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Jan. 22;
March 8.

Bill
Wakefield v Duke
of Buccleugh &
Co.

Mawson & Fletcher
10 Eq. 216.
Ballasorkish
Silver Lead and
Copper Mining
5 P. C. 58.

Attorney General
for the Isle of
Man v
Mytchrest &
App. Ca 296.
Midland Railway Co.
Harristown Brick &
Tile Co. 20 Ch. 2. 552.
Tucker v. Longley, 21
Ch. 2. 18. 8. App. Cas.
508.

Midland Ry Co
v. Innes. 33 Ch. 2.
632.

Shaffe v Holkew
Vaughan & Co.
34 Ch. 2. 425.

Midland Ry Co v Robinson.
37 Ch. 2. 386.

Earl of Jersey v Innes
of Leath. 22 Q. B. 2. 555.

Lord Provost & J Glasgow
Paris. 13 App. 66. 857.