

# The King against the Inhabitants of Eastbourne:

## Eastbourne's historic place in human rights law

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In 2003, the rights of asylum seekers and other foreigners in England were being much debated as a result of an appeal court case on behalf of several asylum seekers, which caused the then Home Secretary, David Blunkett, to become publicly annoyed with the judiciary. This article is not going to try to discuss the complex legal issues involved in the case, but to focus on an interesting detail – the fact that an early Eastbourne story featured in discussion of it. Mr Justice Collins, in his original judgement in the asylum seekers' favour, had quoted a 200-year-old case: *Rex v. The Inhabitants of Eastbourne*, 1803.

The 1803 case, according to the court reports, came from the quarter sessions of the county of Sussex seeking an opinion upon an order made upon the appeal of the parishioners of Eastbourne from an order or warrant of J Chambers and William Chambers, Esquires, two of His Majesty's Justices of the Peace, for the removal of Ann Borchert and her four children, John (6), Mary (4), Sophia (2) and Ann, a baby, from the parish of Seaford to the parish of Eastbourne, both in the county of Sussex. The Sessions, on appeal, had confirmed the order subject to the opinion of the higher court.

Ann Tutt was from Eastbourne and about seven years earlier, on 29

December 1795, she had married in the parish church one John Borchert, a German. They went to live in Seaford, where John Borchert worked as a baker for two years in the house where they lived with their children, at least one of whom, the baby, was born there. Then, as his business was not doing well, he moved it to Eastbourne. His wife and children, still in Seaford, needed public support because of their poverty, so they were removed to Eastbourne, Mrs Borchert's home town, by order of the local magistrates.

The court order stated that John Borchert had acquiesced in this removal and was living with them in Eastbourne. The court had upheld the order that the Borcherts could not receive assistance in Seaford and must move back to Eastbourne. Precisely how the case reached the higher court is not clear from the law reports, but I imagine it was the result of the two parishes disputing responsibility, as the Borcherts can hardly have had money for lawyers.

The court, presided over by the Chief Justice, Lord Ellenborough, was asked whether a foreigner was entitled to support from the parish. The Chief Justice decided that a minimum of two years' residence, the fact that he was carrying on a trade and occupied a

tenement of £10 (annual rent), qualified a foreigner as 'settled', so the baker was 'settled' in Seaford, and entitled to support from that parish. What ensured that the case was remembered was not part of the judgement itself but an *obiter dictum* – a remark made in passing: that 'The law of humanity, which is anterior to all positive laws, obliges us to afford them relief, to save them from starving'.

During the 2003 controversy, this remark was quoted several times in and out of court. *The Times* of 28 February 2003 carried this letter from a distinguished constitutional lawyer, Francis Bennion, commenting on the controversy over benefits and asylum seekers:

'Mr Blunkett is angry with Mr Justice Collins for thwarting his apparent desire to deprive certain true or putative asylum seekers of sustenance.

Exactly 200 years ago, the English town of Eastbourne occasioned the laying down of the definitive law on this point. In the case of *Rex v. The Inhabitants of Eastbourne* (1803), the Chief Justice, Lord Ellenborough, ruled that our law required relief to be afforded to all starving paupers, whether statutorily entitled or not, who were found wandering abroad and lodging in the open air in the Duke of Devonshire's salubrious town of Eastbourne.

Lord Ellenborough said:

"The law of humanity, which is anterior to all positive laws, obliges us to afford them relief, to save them from starving."

What he meant was that in this respect, as in many others, the common law of England embraces the natural law and serves humanity. In this it has led the way. When, just after the end of the Second World War, the European

Convention on Human Rights was drawn up, largely at the instigation of the British, it was based on the common law. Now the European Convention is backed up by the Human Rights Act 1998.

Mr Blunkett should understand that it all comes down to one simple fact. A civilised country does not stand by and allow anyone within its borders to starve – whether they got there legally or illegally.'

Mr Bennion's colourful remarks about Eastbourne suggest he had not noticed that the paupers in this case were eventually judged to be entitled to receive relief in Seaford, not in Mrs Borchert's home town of Eastbourne; or that in 1803 the seventh Duke of Devonshire had not yet been born, let alone made Eastbourne into the salubrious seaside resort it became. Lord George Cavendish, grandfather of the Duke, was one of the main landowners (with Charles Gilbert), but Eastbourne was still a small place. Seahouses had been developing as a resort for over 20 years, but it was still tiny and distinct from Eastbourne, Southbourne and Meads.

This case was heard in the period when the south coast was in fear of Napoleonic invasion, and only 11 years before, in 1792, hundreds of refugees from the French Revolution had landed at various places along the south coast, including Eastbourne. This was the context for the Borcherts' problems, not the complacent, prosperous town of the second half of the nineteenth century. It's possible that Borchert himself was a refugee from the upheavals on the continent. Perhaps there are descendants who know his story?

The Appeal Court in March 2003 again found in favour of the asylum seekers (*R (on the application of Q and others) v. Secretary of State for the Home Department* [2003] EWCA Civ. 364, [2003] 2 All ER 905), but the Eastbourne case was not cited in the judgement. The 'law of humanity' never had legal force, statute always supersedes case law and

there has been much legislation on the subject since 1803. Nevertheless, it is interesting to realise that Eastbourne has, through Lord Ellenborough's incidental comment and judgement more than two centuries ago, long had a place in the recurring debate on the rights of immigrants in this country.

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