

7 Vt. 407
Supreme Court of Vermont.

Town of NEWBURY
v.
Town of TOPSHAM.

March Term, 1835.

West Headnotes (1)

[1] **Public Assistance**
 **Legal settlements**

A single woman went to her brother's house in T. and carried thither her bed, chests, etc., which were kept there for a number of years. She usually returned there after occasional absences. No warning-out process was served against her. Held, that she thereby gained a settlement in T.

[4 Cases that cite this headnote](#)

****1 *407** This was an order of removal of Sarah Cunningham, a pauper, from the town of Newbury to the town of Topsham in said county, made by two justices of the peace. The appellants appealed from said order of removal, and duly entered their appeal in the county court, where an issue was joined to the country on the plea of unduly removed. A verdict was taken for the appellees, subject to the opinion of the supreme court, on the following case:

Sarah Cunningham, single woman, and the pauper, now aged about eighty years, about the year 1789, went to live with her brother, James Cunningham, in Topsham, and kept house for him till 1792, when she left her brother's and went to live with one Wallace, in said Newbury, with whom she resided until about the year 1804, when she left said Wallace's, and lived with one Ford in said Newbury, a few months, and then removed to one Bayley's in Newbury, and resided with him several years, and until about the year 1812. When the pauper first lived with her brother, in Topsham, she owned a bed, and one or two

chests, in which she kept clothing, and which she caused to be removed to said Ford's, after she had lived in Newbury several years.

In 1812, she again removed said bed and chests to her brother's in Topsham, and staid there herself a few weeks, and then went off to Newbury. From that time up to the winter of 1829, her bed, &c. were kept at her brother's, to whose house she went in the winter, and would generally stay with him from one to three months, when she would again leave and be absent in Newbury and the adjoining towns till the succeeding winter--generally, however, in the course of the summer, going to her brother's once or twice, staying but a few days.

In the winter of 1829, her brother removed from Topsham, where she conveyed her things to be carried to one Sanborn's, in Topsham, and from thence to her nephew's in the same town, where they were kept until the winter of 1832, when they were removed to Newbury. Since her brother left Topsham, she has continued to be at her friends' in Topsham occasionally, having several nephews residing there, from 30 to 40 years of age, but tarrying a shorter time than when her brother lived there.

***408** While her things were at her brother's, she would at times call Newbury her place of residence, "her home," as was the expression; and at other times, she would designate Topsham as "her home." While she resided at Wallace's and Bayley's in Newbury as aforesaid, she generally went to her brother's in Topsham once or twice each year, sometimes staying but a few days, at others, some weeks. Subsequent to the year 1812, she had at her brother's in Topsham, two beds, two chests, three or four chairs, and a spinning-wheel.

Now if the supreme court shall be of the opinion, from the foregoing statement of facts, that the last legal settlement of said Sarah Cunningham is in Topsham, judgment is to be entered on the verdict;--otherwise, the verdict is to be set aside, and a new trial granted.

Attorneys and Law Firms

Mr. Burbank, for Newbury, read 4 Mass. Rep. 312--7 do. 5.--2 Vt. Rep. 437--1 do. 385.

Smith and Peck, for defendant.--1. The pauper, by her residence in Newbury from 1792, down to 1812, acquired a settlement there under the act of 1801--she not having been warned out. She had previously, however, gained a settlement in that town by a year's residence, under the act of 1797. This settlement continues, unless she has subsequently gained one in some other place; and the

question is, has she, since 1812, acquired a settlement in Topsham? This question depends upon the construction of the act of 1801, applicable to the circumstances of this case. In order to gain a settlement under this act, it was necessary that the pauper should have *resided* one whole year in Topsham, without being warned out. The case shows, that in point of fact, she at no one time resided there a year; but that she made her brother's the place of deposit for such things as she had, visiting and staying with her brother some few weeks each year. This it is insisted, was not such residence within the meaning of the act, as made it necessary for the selectmen to warn her to depart the town. The statute contemplated that the residence or abode of the person to be warned, should be open and notorious, and such as could leave no one in doubt of the intention of the individual to fix his *domicil* in the town. The present case is not one of that character. The selectment of Topsham would have no reason to suppose, judging from the acts of the pauper, that she intended to take up her residence in that town; and it is evident from her own declarations, that she as much regarded Newbury as her home as she did *409 Topsham. The principal part of her time was passed in Newbury and the adjacent towns. Indeed, she can hardly be regarded as having any fixed place of abode, but is rather to be considered as a vagrant. Under these circumstances, it could hardly have been considered the duty of Topsham to have warned her out. In *Newbury vs. Harvard*, (6 Pick. 1,) it was held, that when a person went into a town while the Prov. Stat. (12 & 13 Will. 3) was in force, which is much like the act of 1801, and actually resided in such town several years, but secretly, he did not gain a settlement, though he was not warned to leave the town. The court seem to go upon the ground that the residence must be open and public to render a warning necessary. In the case at bar, the residence of the pauper, if it can be termed such, it is true, was not *secret*, but it was continued for such short periods of time, that the probability of such *residence* coming to the knowledge of the inhabitants, was not much greater than if the residence had been designedly secret. Under the English statute of 13 & 14 Geo. II. by which a settlement is gained by a residence of forty days upon a tenement of £10 annual value, the construction has been so strict as to require the personal residence of the party for that time, and it is not sufficient that his wife and family may have resided on the tenement for that length of time, if the pauper was even necessarily absent.-- *The King vs. St. George*, 7 Term Rep. 466. *The King vs. St. Mary Lambeth*, 8 Term Rep. 240.

All laws relating to the settlement of paupers, are to be construed strictly. Such is the rule that has been adopted both in this country and in England; and if this rule is to

be applied to the case before us, the wandering of the pauper into Topsham periodically falls far short of the residence contemplated by the act. The case of *Middletown vs. Poultney*, (2 Vt. Rep. 437) virtually disposes of the present question.

Opinion

The opinion of the court was delivered by WILLIAMS, Ch. J.

This is a question as to the settlement of a pauper. The evidence should have been submitted to a jury, under a charge of the court, for them to find the fact of the pauper's residence. Sufficient however is stated in the case, as it is presented, to enable this court to make a decision. It is contended, and probably correctly, that the pauper gained a settlement in Newbury, prior to 1812. If so, it was from the fact of her residing there after the year 1801, without being warned out. The statute of 1797 gave a settlement from *residence only* to persons coming and *410 residing in this state, in the town where they first resided for one full year. The statute of 1801 gave a settlement to all persons residing one year in any town, without being warned out. This pauper was never warned, either in Newbury or Topsham. As to persons having a family, their residence is usually determined by the place where their family reside, though the head of the family may be absent. The case of *Burlington vs. Calais*, (1 Vt. Rep. 385) was determined upon this ground. The case of *Middletown vs. Poultney*, (2 Vt. Rep. 437) was attempted to be placed upon the same ground by the town of Middletown, but it was distinguished from the cases where this principle was decided, from the fact that the family of the pauper was broken up, and the wife returned to her father's, not in consequence of any arrangement made by the husband. In relation to single persons, and those who go out to work, or reside, from time to time, with their connexions or friends, it is more difficult to ascertain the place of their residence, with a view of fixing their settlement. Questions in relation to the residence of these kind of persons, are frequent in the settlement cases, and they have usually been determined, on ascertaining the place where they have kept their clothes, or what little property they may have possessed, and to which they resort, as their home, when out of employment. Hence the inquiry where they have kept their chest or their furniture, when they have had any, has usually been considered as of importance, (as it is in this case) for the purpose of ascertaining where their home was.

In the case of *Boardman vs. Beckford and his Trustees*, (2 Aik. 345) this fact became of importance for the purpose

of ascertaining the residence of Beckford, and whether he had been an inhabitant of this state.--He was sued as an absconding debtor.--This was denied in the plea, and it was held that where a single man, having a usual place of resort as a home in New-Hampshire, came into this state under a contract to teach a school for three months, leaving a chest of clothes there, and going once or twice to exchange them during said term, and then returning at the expiration of three months, he did not thereby become an inhabitant of this state. The case of the *Mariner*, (4 Mass. Rep. 312) was of this description. The residence, wherever it is, must be open, not concealed. As to single persons, whose business or employment calls them away from home a great part of the time, or who are from time to time living with their friends and connexions, it is always attended with more or less difficulty to ascertain the place of their actual residence. It was not so however in the case under *411 consideration. Upon inquiry, the selectmen of Topsham could easily have ascertained facts sufficient to warrant them in warning this pauper, if they were apprehensive of her becoming chargeable, or did not wish to have her obtain a settlement in Topsham. Her residence was altogether different from the one mentioned in the case of *Newbury vs. Harvard*, (6 Pick. 1.) where the residence was designedly concealed. In this case, if the pauper gained a settlement in Newbury, it was because

she carried her bed and two chests to Ford's in Newbury, about the year 1804, and remained there until 1812. After that she carried them back to Topsham, to her brother's, and this was the place to which she usually resorted and returned, until her brother, in 1829, removed from Topsham--after which, she still continued there with her friends, until 1832. The facts found in this case are, that she had at her brother's, in Topsham, her beds, chests, chairs, &c. during the time of her remaining there, which was certainly enough to designate the town of Topsham as her residence or home. From this view of the facts, we come to the conclusion that her residence was in Topsham, and was of that character, as to give her a settlement under the act of 1801, and also under the act of 1817, having resided there more than seven years after the year 1823, without being chargeable to the town.

Judgment of county court is therefore affirmed, and the pauper was duly removed.

All Citations

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