

THE SETTLEMENT REQUIREMENT IN GENERAL ASSISTANCE*

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Settlement, a statutory residence period which usually must be coupled with an intent to make the locality in question a home, is ordinarily a prerequisite to the receipt of general assistance. The first part of this article traced the history and development of this requirement and outlined the law applicable to the acquisition of a settlement. In the remaining portion attention will be directed to the limitations on the acquisition of a settlement and to the application of settlement rules in the family situation.

CONDITIONS LIMITING THE ACQUISITION OF SETTLEMENT

Warning Out

In addition to those judicially-imposed requirements which, in effect, place qualitative limits on the acquisition of a settlement, the general assistance statutes contain many other provisions which have the effect of reducing the number of persons able to acquire a settlement by residence. The first to be discussed, though now practically a matter for history, is the colonial practice of "warning out."

Warning out provisions are still contained only in the general assistance laws of Iowa and South Dakota.¹ Both statutes provide that persons coming into the state or going from one county to another within the state, who are "likely to become" public charges, may be prevented from gaining a settlement through the serving of a warning out notice. Once having been served with such a notice, an individual cannot acquire a settlement unless he fulfills the statutory residence period without receiving another notice.²

The persistence of warning out provisions in only two jurisdictions would not deserve more than passing mention were it not for the fact that they represent the contemporary survival of an ethnocentric exclusionary practice which was common to early Teutonic tribes

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1. IOWA CODE ANN. § 252.20 (1949); S.D. CODE § 50.0102(6) (Supp. 1952).

2. The Iowa statute also authorizes the warning out of persons who are "county charges." Furthermore, before settlement may be acquired the individual who has been warned must file with the county board of supervisors "an affidavit stating that such person is no longer a pauper and intends to acquire a settlement" in the county. IOWA CODE ANN. § 252.16(1) (1949).

antedating truly civilized history.³ For this reason these statutes are symbolic of the true motivation behind settlement laws. Besides, the practice of giving warning out notices, at least in Iowa, has hardly subsided. In a representative six-month period in 1946 it was found that a total of 1,240 warning out notices had been served by Iowa counties.⁴

Interestingly enough, the judicial treatment of warning out notices has been far from sympathetic to the enforcement of these statutes.⁵ This seems to have resulted in a tendency to find noncompliance with the terms of the statute⁶ and to resolve problems of statutory construction in favor of the individual seeking settlement.⁷ Judicial hostility to these statutes simply emphasizes the inconsistency between a national policy favoring freedom of movement and a statutory requirement with a decidedly local bias. Repeal of the last remaining warning out statutes seems long overdue.

Personal Incapacity

The chances of securing general assistance are further lessened by rules which prevent some individuals from acquiring a settlement because of their status or from counting the period during which they occupy that particular status toward the statutory period of residence.⁸ Wives and unemancipated minor children fall into this

3. 1 PALGRAVE, *RISE AND PROGRESS OF THE ENGLISH COMMONWEALTH* 83 (1832). Vermont, in 1817, was the last New England state to abandon warning out. BENTON, *WARNING OUT IN NEW ENGLAND* 114 (1911). The practice of warning out by the early colonies has been defended as an essential barrier against the invasion of persons who would contribute little to community life, yet would draw on the community's slim provisions against hard times. *Id.* at 118.

4. ROSS, *LEGAL SETTLEMENT AND WARNING OUT IN IOWA* 97 (unpublished thesis in University of Nebraska Library 1951). The effect of the service of such a notice on the unsuspecting newcomer cannot be underestimated. The Pottawattamie County form of warning out notice states that "it is presumed that you are a county charge or are likely to become such." *Id.* at 102.

5. The following statement seems typical:

This is a free country. People generally have the right to settle where they please [This statute] is the placing of an unusual power, the exercise of which might cause serious hardship, and it is because of this unusual power that the courts universally have held that the power, in order to be effective, must be exercised strictly according to statute.

Emmet County *ex rel.* Johnston v. Dally, 216 Iowa 166, 169-70, 248 N.W. 366, 367 (1933). See also *Inhabitants of Franklin v. Inhabitants of Dedham*, 35 Mass. (18 Pick.) 544 (1836) (under prior law).

6. See the cases cited in note 5 *supra*.

7. See, e.g., *Jaffrey v. Mont Vernon*, 8 N.H. 436 (1827) (under prior law, warning out notice must name the person to be warned; general authority not sufficient); *Wayne Township v. Stock Township*, 3 Ohio *171 (1827) (under prior law, statute not explicit on the point construed to require new notice every year to prevent acquisition of settlement).

8. Fortunately, aliens residing in the United States have been held to have the same rights as American citizens to acquire a settlement for general assistance. *Inhabitants of Knox v. Inhabitants of Waldoborough*, 3 Me. *455 (1825); *Litchfield v. County of Meeker*, 182 Minn. 150, 233 N.W. 804 (1930); *Town of Barton v. Albany*, 108 Vt. 531, 189 Atl. 853 (1937); *Town of Derby v. Town of Salem*, 30 Vt. *722 (1858). See *Augusta v. Waterville*, 106 Me. 394, 76 Atl. 707 (1910).

Connecticut still retains a provision that a person first coming to reside in any

group. Because they are not considered *sui juris* under the law of domestic relations, they are denied the opportunity to acquire a settlement in their own right. Wives and children, however, receive protection from the law of derivative settlement, which will be discussed in the next section.

At this point, however, it would seem appropriate to discuss other groups of individuals who are equated with persons not *sui juris* and who may not be protected by derivative settlement principles. To begin with, most courts which have passed on the question have held that mentally incapacitated persons may not acquire a settlement in their own right,⁹ though some courts have held to the contrary.¹⁰ Why mentally incapacitated persons cannot acquire a settlement is not clear except for what appears to be the influence of free will theories on the law of settlement. This seems implied in the intent requirement itself,¹¹ but it is explicitly advanced as a reason for disqualifying persons not of sufficient mental capacity.¹²

Why should the concept of free will be linked with the acquisition of

town from outside the United States can gain a settlement in that town only upon a vote of the inhabitants or of the overseers of the poor and the justices of the peace acting together. Presumably, when the individual changes his residence to another town, that section of the statute will apply which allows him to gain a settlement by residence even though he is still an alien. See CONN. GEN. STAT. §§ 2574-75 (1949). Similar provisions were applied in *New Hartford v. Canaan*, 52 Conn. 158 (1884); *Bridgeport v. Town of Trumbull*, 37 Conn. 484 (1871); see *Somers v. Barkhamstead*, 1 Root 398 (Conn. 1792). Montana has a statute prohibiting aliens illegally in the United States from acquiring a settlement. It is apparently aimed at Mexican "wetbacks." MONT. REV. CODES ANN. § 71-304 (1953). New Jersey has an identical provision. N.J. REV. STAT. § 44:8A-5(g) (Supp. 1954).

9. *Payne v. Town of Dunham*, 29 Ill. 125 (1862); *Fayette County v. Bremer County*, 56 Iowa 516, 9 N.W. 372 (1881); *Phillips v. Boston*, 183 Mass. 314, 67 N.E. 250 (1903); *County of Burke v. County of Buncombe*, 101 N.C. 520, 8 S.E. 176 (1888); *Valley Township v. Northumberland Borough*, 24 Pa. Dist. 692 (Q.S. 1914); *Town of Brownington v. Town of Charleston*, 32 Vt. *411 (1859). The cases may involve applications for poor relief or attempts to fix the county of settlement responsible for the support of an institutionalized individual.

10. *Town of Madison v. Town of Guilford*, 85 Conn. 55, 81 Atl. 1046 (1911); *Town of Ridgefield v. Town of Fairfield*, 73 Conn. 47, 46 Atl. 245 (1900); *Plymouth v. Waterbury*, 31 Conn. 515 (1863); *Inhabitants of Friendship v. Inhabitants of Bristol*, 132 Me. 285, 170 Atl. 496 (1934); *In re Settlement of Peniondtz*, 218 Minn. 525, 16 N.W.2d 902 (1944). However, a mentally incapacitated individual who continues to reside with his family after reaching his majority is accorded the status of a minor and awarded the settlement of his parents.

11. Those courts which disqualify mentally incapacitated persons tend to be those which have adopted the rule that settlement requires an intent to make the locality a home. However, in Connecticut and Maine, where a mentally incapacitated individual may acquire a settlement, the courts also adhere to the intent rule. See Mandelker, *The Settlement Requirement in General Assistance*, 1955 WASH. U.L.Q. 355, 369 n.54.

12. Thus, an individual who becomes mentally incapacitated after arriving in a locality is not barred from acquiring a settlement, since he had the requisite volition upon his arrival and this satisfies the requirement of the statute. See *Washington County v. Mahaska County*, 47 Iowa 57 (1877); *Inhabitants of Chicopee v. Inhabitants of Whately*, 88 Mass. (6 Allen) 508 (1863); *Town of Topsham v. Town of Williamstown*, 60 Vt. 467, 12 Atl. 112 (1887). In these states a person mentally incapacitated upon his arrival in a community may not gain a settlement.

a settlement? It would seem that the purpose of settlement laws is to place financial responsibility on the localities where people in fact live, regardless of their will in that regard. Besides, the application of this disqualification would appear somewhat difficult. Contemporary psychiatry recognizes many forms of psychoses, neuroses, and psychopathic maladjustments, any of which could be said to disable the individual from making a "free" choice regarding his place of residence.¹³ Indeed, psychiatry may be said to have abandoned the concept of a free will altogether.

The free will influence, however, has created other situations in which the individual is deprived of a settlement because of his dependent or subordinate status. One of these situations involves the individual who is institutionalized for mental or physical incapacity, or imprisoned for the commission of a crime. It seems clear that time spent in an institution cannot be counted toward a residence in the locality in which the institution is located.¹⁴ Several statutes, of varying scope, also provide that time spent in an institution may not be counted toward the residence required for settlement anywhere, including the place the individual has just left.¹⁵ In the absence of statute the decisions of the courts on the problem have been divided.¹⁶ Those courts

13. See Katz, *Law, Psychiatry, and Free Will*, 22 U. CHI. L. REV. 397 (1955); cf. *In re Settlement of Underwood*, 231 Minn. 144, 42 N.W.2d 416 (1950) (individual with cerebral palsy treated as mentally incapacitated).

14. A few statutes provide that time spent in a public institution does not count toward the acquisition of a settlement in that locality. IOWA CODE ANN. § 252.16(3) (1949); S.D. CODE § 50.0102(1) (Supp. 1952). On the ground that settlement cannot be gained by virtue of a coerced residence, this also seems to be the rule in the absence of statute. *Town of Freeport v. Board of Supervisors of Stephenson County*, 41 Ill. 495 (1866); *Town of Northfield v. Town of Vershire*, 33 Vt. *110 (1860) (imprisonment); cf. *Township of Equality v. Township of Star*, 200 Minn. 316, 274 N.W. 219 (1937).

15. CAL. WELFARE & INST. CODE §§ 2555(b), 2556 (1952) (public institution); IND. ANN. STAT. § 52-147(g) (Burns 1951) (penal, charitable, and related institutions); MASS. ANN. LAWS c. 116, §§ 2, 5 (1949) (similar); MICH. STAT. ANN. § 16.455(a-1) (2) (Supp. 1953) (public institution); MINN. STAT. ANN. § 261.07(2) (Supp. 1954) (various named public and private institutions); NEB. REV. STAT. § 68-115(2) (Supp. 1953) ("public or private charitable or penal institution"); N.J. STAT. ANN. § 44:8A-5(d), (e) (Supp. 1953) ("charitable, custodial or correctional institution"); N.Y. SOCIAL WELFARE LAW § 118 (various named public and private institutions); N.D. REV. CODE § 50-0205 (1943) (public institutions); Vt. Laws 1953, No. 58, at 40 (various named public and private institutions); WIS. STAT. § 49.10(4) (1953) (while institutionalized as public charge).

16. The Connecticut court has held that time spent in mental institutions and prisons cannot be counted toward the period required for a settlement by residence in the locality from which the individual was committed. *Town of Chaplin v. Town of Bloomfield*, 92 Conn. 395, 103 Atl. 118 (1918) (mental institution); *Town of Reading v. Town of Westport*, 19 Conn. *561 (1849) (imprisonment). These cases rely in part on the point that as an institutionalized non-resident is not subject to removal it is impossible to prevent his acquisition of a settlement. *Contra*, *Inhabitants of Topsam v. Inhabitants of Lewiston*, 74 Me. 236 (1882) (imprisonment). The Maine court handled the problem as it would any case involving an absence from a locality in which a settlement by residence is sought. For a similar approach, see *Town of Northfield v. Town of Vershire*, 33 Vt. *110 (1860) (settlement not interrupted by imprisonment in local jail while

which hold that time in an institution may not be counted toward settlement seem influenced in part by the coerced nature of the individual's habitation during the period of confinement. Since this situation is really another facet of the problem of absence from a locality,¹⁷ it is difficult to understand why it should be singled out for separate treatment rather than governed by the general rules relating to absence. It might be suspected that mentally incapacitated and institutionalized persons are not permitted to acquire a settlement because these people are likely to become dependent on relief.

Receipt of Relief

A similar and equally important problem arises in connection with the individual who has received some form of public assistance during the statutory residence period. While in the absence of an explicit statutory provision it has been indicated that the receipt of relief does not disqualify an individual from acquiring a settlement, there are early decisions to the contrary.¹⁸ The reasoning of the early cases is that a person receiving assistance is not capable of performing the necessary duties of an inhabitant of the community. The decisions also appear to have been influenced by the traditional view that a person receiving relief is subject to the control of the relief authorities and therefore is not a free agent.¹⁹ Whether the courts have abandoned such notions seems highly problematical.

awaiting trial). The result of this case may have been changed by statute. See note 15 *supra*. See also ME. REV. STAT. c. 94, § 3 (1954).

For a case concerning a related problem, see *Acosta v. County of San Diego*, 126 Cal. App. 2d 455, 272 P.2d 92 (1954), 2 U.C.L.A.L. REV. 143 (Indian residing on federal reservation may acquire settlement by residence). *Contra*, WIS. STAT. § 49.10(4) (1953). See also *Town of Salisbury v. Town of Fairfield*, 1 Root 131 (Conn. 1789) (person living with guardian does not acquire settlement).

17. Mandelker, *The Settlement Requirement in General Assistance*, 1955 WASH. U.L.Q. 355, 372-75.

18. For a case indicating that in the absence of an explicit statutory provision the receipt of relief does not disqualify an individual from obtaining a settlement by residence, see *Barton County v. Stafford County*, 133 Kan. 494, 1 P.2d 80 (1931). See also *Belknap County v. Carroll County*, 13 A.2d 150 (N.H. 1940), implying that the receipt of relief does not prevent the acquisition of a transitory county residence under the New Hampshire law. *Contra*, *Inhabitants of West Newbury v. Inhabitants of Bradford*, 44 Mass. (3 Met.) 428 (1841); *Inhabitants of Brewster v. Inhabitants of Dennis*, 38 Mass. (21 Pick.) 233 (1838); *East Sudbury v. Sudbury*, 29 Mass. (12 Pick.) *2 (1832); *Town of Croydon v. County of Sullivan*, 47 N.H. 179 (1866).

By the same token, the voluntary furnishing of aid by a locality does not estop it from denying that the individual helped has a settlement, since the locality may simply have been fulfilling its statutory duty toward nonresidents. However, the courts may construe such facts as an admission by the locality that the individual had a settlement within its borders. *Town of Canaan v. Town of Hanover*, 47 N.H. 215 (1866); *Thornton v. Campton*, 18 N.H. 20 (1845); *Stillwater v. Green*, 9 N.J.L. 59 (Sup. Ct. 1827); *Town of Danville v. Town of Hartford*, 73 Vt. 300, 50 Atl. 1082 (1901). Conceivably, a court could mitigate the effects of the relief disqualification by freely finding admissions of settlement in cases where aid had been given voluntarily.

19. *Cf.* *Freeport v. Board of Stephenson County*, 41 Ill. 495 (1866); *Randolph v. Town of Greenwood*, 122 Ill. App. 23 (1905).

While a few statutes seem to have dropped this disqualification²⁰ almost one-half of the settlement laws contain provisions to the effect that a person receiving relief may not acquire a settlement.²¹ Although the courts have not explicated the purpose behind laws of the latter type, the cases interpreting these statutes can be reconciled only on the basis suggested above—that the real purpose of the statutory requirement is to prevent the acquisition of settlement by the marginal income group from which persons needing assistance are most likely to come. This may also explain those decisions which have incorporated this disqualification even in the absence of an express statutory provision.

The effect of this disqualification may be best emphasized by a survey of the Wisconsin decisions. Formerly, the Wisconsin statute provided that any person "supported as a pauper" was disqualified from acquiring a settlement. A similar provision is still found in a few states.²² Under this provision the Wisconsin court made it clear that neither the source from which the support came, whether from voluntary agencies, friends, or relatives, nor the amount of that support was controlling. Instead, whether the individual who had received help was disqualified depended upon his status at the time he was supported.²³ The consequences of such an approach are illustrated

20. Some states, New York for example, appear to have repealed their provisions disqualifying an individual who receives relief with the aim of eliminating this disability to the acquisition of a settlement. Illinois and Montana have adopted variants of this approach and authorize the acquisition of settlement in the locality in which the individual is residing at the time he applies for assistance even though he receives assistance during the statutory residence period. These provisions apply to persons already having a state residence. ILL. ANN. STAT. c. 23, § 439-6 (Supp. 1954); MONT. REV. CODES ANN. § 71-302 (1953).

21. CAL. WELFARE & INST. CODE § 2555 (b) (1952) ("relief or support"); CONN. GEN. STAT. §§ 2575-76 (1949) ("shall have maintained himself and family" during the period of residence); IND. ANN. STAT. § 52-147 (d) (Burns 1951) ("supported . . . as an indigent person"); IOWA CODE ANN. § 252.16 (3) (1949) ("supported by public funds"); ME. REV. STAT. c. 94, § 1(VI) (1954) ("without receiving supplies as a pauper"); MASS. ANN. LAWS c. 116, § 2 (1949) ("while receiving public relief"); MICH. STAT. ANN. § 16.455 (a-1) (2) (Supp. 1953) (state residence, like California); MICH. STAT. ANN. § 16.121 (Supp. 1953) (local residence, "without receiving any public relief or assistance"); MINN. STAT. ANN. § 261.07 (2) (West Supp. 1954) (poor relief and other types of assistance); NEB. REV. STAT. § 68-115 (2) (Supp. 1953) (poor relief or "state assistance"); N.H. REV. LAWS c. 123, § 7 (1942) ("while assisted as a pauper"); N.J. STAT. ANN. § 44:8A-5 (Supp. 1954) (public aid or assistance); N.D. REV. CODE § 50-0205 (1943) (similar to New Jersey); OHIO REV. CODE § 5113.05 (Supp. 1955) ("poor relief"); S.C. CODE § 71-152 (4) (1952) (similar to Connecticut); UTAH CODE ANN. § 17-5-60 (8) (1953) (by indigent person while recipient of "charity"); VT. REV. STAT. § 7105 (1947) (relief); WIS. STAT. § 49.10 (4) (1953) (without receipt of "aid" under general assistance chapter except where otherwise provided).

22. See statutes of Indiana, Maine, New Hampshire, and Utah cited in note 21 *supra*.

23. Milwaukee County v. Village of Stratford, 245 Wis. 505, 15 N.W.2d 812 (1944); Town of Ellington v. Industrial Commission, 225 Wis. 169, 273 N.W. 530 (1937) (support from relatives); Town of Rolling v. City of Antigo, 211 Wis. 220, 248 N.W. 119 (1933) (marginal family supported by voluntary association); City

by the case of *Town of Saukville v. Town of Grafton*.²⁴ The individual in question had not received public aid for a length of time considerably in excess of the statutory residence period, during which he had worked as a hired hand for one individual. But, having previously received public relief, when he again fell in need the court held that he had not acquired a settlement because he was a "pauper" dependent on "charity" all during the time he was self-employed. However, this approach to the problem may well be altered by the present Wisconsin statute which provides that the "time spent by a person in any municipality while supported therein as a dependent person . . . shall not be included as part of the year necessary to acquire or lose a settlement."²⁵

Other jurisdictions have accomplished practically the same result as that reached in the *Saukville* case. They have allowed the relief administrator, by granting present relief to the individual concerned, to decide, in effect, who is to be later disqualified in the acquisition of a settlement. For example, as the relief official has the authority to extend aid whenever the need for it arises, a grant of assistance upon the application of the father of the person in need will prevent the acquisition of settlement by the person in need.²⁶ Also, it is not necessary that the latter be aware that he is receiving aid as a "pauper." This will be presumed from the fact that the recipient is a needy individual who has in fact received such aid.²⁷ Even more significant, the courts have disregarded the fact that at the time relief was given

of *Port Washington v. Town of Saukville*, 62 Wis. 454, 22 N.W. 717 (1885). It may be noted, however, that the apparent harshness of this approach may be mitigated in certain cases. For example, in the case last cited the fact that the individuals in question had received public help in the small amount of \$1.67 was relied on as evidence to support a finding that they had not been supported as paupers. Furthermore, it appears that support from relatives is not considered disqualifying in the usual case.

24. 68 Wis. 192, 31 N.W. 719 (1887). While this is an old case, it does not seem out of line with more recent pronouncements by the Wisconsin court.

25. WIS. STAT. § 49.10(4) (1953).

26. *Town of Weston v. Town of Wallingford*, 52 Vt. 630 (1880). The Maine statute provides that relief must be applied for by the applicant himself or by some person "authorized" by him. ME. REV. STAT. c. 94, § 2 (1954). The statute has been interpreted to mean that the wife, as well as the husband, may apply on behalf of the family. *Inhabitants of Sebec v. Inhabitants of Foxcroft*, 67 Me. 491 (1877). The courts also seem to have held that the receipt of relief is disqualifying regardless of the place in which it is given. *Randolph v. Town of Greenwood*, 122 Ill. App. 23 (1905); *Inhabitants of Oakham v. Inhabitants of Warwick*, 95 Mass. (12 Allen) 88 (1866); *Gilmanton v. Sanbornton*, 56 N.H. 336 (1876).

27. *Town of Bridgewater v. Town of Roxbury*, 54 Conn. 213, 6 Atl. 415 (1886). *But cf.* ME. REV. STAT. c. 94, § 2 (1954) (recipient must receive assistance "with a full knowledge"). The construction put upon the Maine statute seems similar to that adopted by the Connecticut court in the absence of a statute. *Inhabitants of Linneus v. Inhabitants of Sidney*, 70 Me. 114 (1879); *cf.* *Town of Wallingford v. Town of Southington*, 16 Conn. 431 (1844). The sum claimed to have been given as relief must actually have been expended by the locality. *Town of Randolph v. City of Barre*, 116 Vt. 557, 80 A.2d 537 (1951).

the recipient was able or had promised to repay the amount received.²⁸ However, an individual who can pay for assistance could be said not to have received it at all. The fact that he was given assistance may, of course, indicate that he is the type of person who may need relief again and thus prompt the courts to hold that this interrupts the acquisition of a settlement.

The courts, other than the Wisconsin court, seem to have arrived at conflicting conclusions in situations which do not clearly fall within the statute. For example, the courts are divided on the point whether private relief or the receipt of relief from relatives amounts to the receipt of indirect public relief under the statute.²⁹ Some statutes now expressly include private relief as a basis for denial of settlement.³⁰ There does seem to be a tendency to disregard insubstantial amounts of public aid given to an individual, especially if it is given to reimburse particular items of indebtedness.³¹ In light

28. *Inhabitants of Norwich v. Inhabitants of Saybrook*, 5 Conn. 384 (1824) (by inference); *Inhabitants of Bar Harbor v. Inhabitants of Town of Jonesport*, 133 Me. 345, 177 Atl. 614 (1935); *Veazie v. Chester*, 53 Me. 29 (1864). *But see* *Town of Montpelier v. Town of Calais*, 5 Vt. 572 (1833). Receipt of relief is not disqualifying in Massachusetts if the recipient tenders reimbursement within two years. MASS. ANN. LAWS c. 116, § 2 (1949). This provision has created doubts as to the location of an individual's settlement during the two-year grace period. *Cf. Inhabitants of Dedham v. Inhabitants of Milton*, 136 Mass. 424 (1884). If fraud can be shown, of course, the giving of relief will not affect the acquisition of a settlement. See note 31 *infra*.

29. That casual assistance does not constitute the receipt of relief, see *Standish v. Windham*, 10 Me. 97 (1833) (support by son); *Inhabitants of Wiscasset v. Inhabitants of Waldoborough*, 3 Me. 388 (1825) (support by brother); *Summit County v. Trumbull County*, 116 Ohio St. 663, 158 N.E. 172 (1927) (under prior law, support by private organizations). *Contra*, *Town of Manchester v. Town of Townshend*, 110 Vt. 136, 2 A.2d 207 (1938), in which support from a trust fund established by a private benefactor for the relief of the poor of the town was indirectly held to be the equivalent of general relief. See also *Town of Cavendish v. Town of Mt. Holly*, 48 Vt. 525 (1876), in which the support given by a town in return for a conveyance of a farm was held not to be public relief on the ground that it was rendered pursuant to contract. Conceivably, this case could be interpreted to mean that relief given in return for a voluntary lien on the recipient's property is also given pursuant to contract. All of these cases involve more than casual assistance from private sources.

30. MICH. STAT. ANN. § 16.455(a-1)(2) (Supp. 1953); NEB. REV. STAT. § 68-115(2) (Supp. 1953); OHIO REV. CODE § 5113.05 (Supp. 1955). The Michigan statute makes an exception for support received from legally responsible relatives.

31. See *County of Grand Forks v. DuFault*, 66 N.D. 518, 267 N.W. 136 (1936) (receipt of free medication consisting of a jar of salve held not to constitute relief). In some of the cases the locality had reimbursed a private individual; the courts relied on the rule that aid voluntarily given by a third person without expectation of reimbursement does not constitute relief. *Inhabitants of Lebanon v. Inhabitants of Hebron*, 6 Conn. 45 (1825) (advancement by locality to woman to prosecute putative father of child eventually reimbursed by father); *Inhabitants of Hampden v. City of Bangor*, 68 Me. 368 (1878) (reimbursement of private householder voluntarily boarding relief applicant for a few days); *Inhabitants of Canaan v. Inhabitants of Bloomfield*, 3 Me. 172 (1824) (third party voluntarily filled store order not made out to him); *cf. In re Kelly*, 46 Misc. 548, 95 N.Y. Supp. 53 (County Ct. 1905). *But cf. In re Settlement of Youngquist*, 203 Minn. 530, 282 N.W. 272 (1938).

In some of these cases the element of fraud seemed to be present, *i.e.*, one of the localities furnished relief with the intent of preventing the individual from

of the judicial decisions concerning the acquisition of a settlement, it might have been expected that the courts would find any of the circumstances mentioned above indicative of a dependent status and therefore disqualifying.

The purpose of a statute denying settlement to persons receiving relief is also put in question when an individual receiving a grant under one of the categorical assistance programs suddenly requires medical assistance or other help from general assistance. While these categorical grants are aimed at preventing destitution, they are also awarded to fulfill other public objectives. The aid to dependent children program, for example, helps preserve the unity of families in which the father is no longer present by preventing the necessity of the mother's going to work, thus lessening the possibility that the children will be dispersed to other homes.³² Perhaps it is because of this dual purpose behind such assistance that the courts are divided in their treatment of aid to dependent children and other categorical benefits.³³ There are a few statutes which equate them with general assistance.³⁴ On the related problem of the disqualification for settle-

acquiring a settlement within its borders. This circumstance may serve as the basis for disregarding the relief that has been awarded. See *Town of Weston v. Town of Wallingford*, 52 Vt. 630, 631 (1880). *But cf.* *Inhabitants of Orland v. Inhabitants of Penobscot*, 97 Me. 29, 53 Atl. 830 (1902); *Inhabitants of Foxcroft v. Inhabitants of Corinth*, 61 Me. 559 (1873); *Oakham v. Sutton*, 54 Mass. 192 (1847).

The fact that public relief is received indirectly, however, does not alter its character. *Inhabitants of Lee v. Inhabitants of Winn*, 75 Me. 465 (1883) (use of farm owned by town); *Inhabitants of Hampden v. Inhabitants of Levant*, 59 Me. 557 (1871) (indirect receipt of relief by member of family unit); *Sheboygan County v. Town of Sheboygan Falls*, 130 Wis. 93, 109 N.W. 1030 (1906) (same). Of course, the relief must have been properly awarded by the authorized officials. See *Inhabitants of Fort Fairfield v. Inhabitants of Millinocket*, 136 Me. 426, 12 A.2d 173 (1940).

32. See ABBOTT, FROM RELIEF TO SOCIAL SECURITY 263-89 (1941). See also the comments of the court in *Town of Cohasset v. Town of Scituate*, 309 Mass. 402, 34 N.E.2d 699 (1941).

33. The Iowa court appears to have held that support from "public funds" under its statute does not include old age assistance. *Warren County v. Decatur County*, 232 Iowa 613, 5 N.W.2d 847 (1942). Most of the cases, however, involve aid to dependent children or state programs of a similar nature antedating the enactment of the federal statute authorizing grants for this purpose. For cases holding that aid of this type is the equivalent of poor relief, see *Moscow Borough Poor District's Appeal*, 119 Pa. Super. 533, 180 Atl. 718 (1935) (under prior law); *Milwaukee County v. Waukesha County*, 236 Wis. 233, 294 N.W. 835 (1940). *Contra*, *Town of Hagen v. Town of Felton*, 197 Minn. 567, 267 N.W. 484 (1936) (under prior statute); *In re Settlement of Skog*, 186 Minn. 349, 243 N.W. 384 (1932) (under prior statute); *Town of St. Johnsbury v. Town of Lyndon*, 180 Atl. 892 (Vt. 1935).

34. The problem presented in note 33 *supra* has now been handled by statutory changes in each of these jurisdictions. Pennsylvania has repealed its provision disqualifying persons who receive relief from acquiring a settlement. The rule of the Wisconsin case has been confirmed by a statute equating all of the categorical programs with general relief. WIS. STAT. § 49.10(4) (1953). The rule of the Minnesota case has been reversed by a statute equating all but the aid to the blind program with general relief. MINN. STAT. ANN. § 261.07(2) (West Supp. 1954). The Vermont statute now provides explicitly that categorical assistance is not the

ment purposes of the person liable for the support of the institutionalized individual, the courts have held that the public support of a member of one's family in a public institution is the equivalent of general relief.³⁵ They have rejected the suggestion that this situation should be distinguished because of the fact that other public purposes besides the relief of destitution are served by confinement. In this day and age, in which many groups receive loans and grants from government in aid of various public objectives, it is difficult to see why the receipt of categorical benefits, for example, should be considered the receipt of "relief." As well might it be contended that a person living in a low-rent public housing project constructed with the aid of a federal grant is receiving relief on the ground that the rent he pays is reduced by the amount of the federal subsidy.³⁶

equivalent of general relief. VT. REV. STAT. § 7105 (1947). For a provision similar to the Wisconsin statute, see Me. Laws 1953, c. 249. See also S.D. CODE § 50.0102-1 (Supp. 1952).

A similar problem arose during the depression with reference to persons receiving direct or work relief under one of the federal emergency relief programs. Most of the courts held that either type of relief was the equivalent of general assistance. Application of Dibble, 261 App. Div. 346, 25 N.Y.S.2d 571 (3d Dep't 1941); *In re Youngs*, 172 Misc. 155, 14 N.Y.S.2d 800 (County Ct. 1939); *Ward County v. Ankenbauer*, 65 N.D. 220, 257 N.W. 474 (1934). The Pennsylvania Superior Court, however, taking cognizance of the fact that great numbers of people ordinarily able to support themselves were forced to rely on the federal program, held that such persons did not have the status of "paupers" and therefore were not disqualified from obtaining a settlement under the Pennsylvania statute. *In re Commitment of Dennis*, 5 A.2d 406 (Pa. Super. 1939). The rule of the New York cases was eventually codified by a statute, now repealed.

The Minnesota court at first held that the receipt of federal aid was not disqualifying because it was not technically "relief from the poor fund of a county" as required by the statute then in effect. *In re Settlement of Wroblewski*, 204 Minn. 264, 283 N.W. 399 (1939). This rule was eventually changed by the statute cited above. For the application of this statute, see *In re Settlement of Hansen*, 206 Minn. 371, 288 N.W. 706 (1939); *In re Settlement of Blackwell*, 205 Minn. 262, 285 N.W. 613 (1939). The Wisconsin statute cited above also equates federal, state, or local work relief with general assistance. It was interpreted to apply to employment with the WPA, *City of Madison v. Dane County*, 236 Wis. 145, 294 N.W. 544 (1940), but not with the CCC, *Milwaukee County v. City of Hurley*, 245 Wis. 77, 13 N.W.2d 520 (1944). The court reasoned that the CCC program had purposes, such as soil conservation and forest preservation, that distinguished it from ordinary public assistance. See Annot., 120 A.L.R. 621 (1939).

35. *Treasurer & Receiver General v. Town of Natick*, 320 Mass. 715, 71 N.E.2d 225 (1947); *Treasurer & Receiver General v. Town of Dedham*, 300 Mass. 238, 15 N.E.2d 252 (1938); *City of Charleston v. Inhabitants of Groveland*, 81 Mass. 15 (1860); *Milwaukee County v. Oconto County*, 235 Wis. 601, 294 N.W. 11 (1940).

The Massachusetts statute provides that institutional aid to veterans and their dependents does not affect the acquisition of settlement. MASS. ANN. LAWS c. 116, § 4 (Supp. 1954), applied in *Treasurer & Receiver General v. Natick*, *supra*. For a statute to the contrary, see N.J. STAT. ANN. § 44:8A-5(i) (Supp. 1954). Similarly, the receipt of veterans' aid does not affect the acquisition of a settlement under the Massachusetts statute. MASS. ANN. LAWS c. 116, § 2 (1949). For a decision to the contrary in the absence of statute, see *Juneau County v. Wood County*, 109 Wis. 330, 85 N.W. 387 (1901). See also the statutes cited in note 15 *supra* which disqualify an institutionalized individual regardless of whether he is receiving public support.

36. For a discussion of the subsidy principle in this field, see Riesenfeld & Eastlund, *Public Aid to Housing and Land Redevelopment*, 34 MINN. L. REV. 610 (1950).

Another rule applicable to the receipt of relief which has the effect of reducing the number of persons capable of acquiring a settlement involves an application of the family responsibility concept. A few of the statutes provide that the individual must support himself and his "family" in order to acquire a settlement.³⁷ Even in the absence of such a provision the courts have held that, if the duty to support the dependent person who receives aid exists either under the family responsibility statute or at common law, the aid is considered to have been given to the responsible relative who should have provided the help. While the rule may be justified if the person receiving aid is a member of the relative's immediate family and is in fact dependent on him, it is difficult to understand why the rule is to be applied to situations in which this is not the case. While it has been held that aid given to a dependent person who has been abandoned by the responsible relative is still aid to the relative,³⁹ there is authority to the contrary based on the ground that the relative need not support an

In *Marshall County v. Anoka County*, 212 Minn. 127, 2 N.W.2d 816 (1942), an outright grant to a farmer from the former Federal Resettlement Administration to help meet costs which resulted from the destruction of crops by the elements was held not to constitute the giving of relief. *But cf.* Opinion of the Justices, 120 N.E.2d 198 (Mass. 1954), upholding the constitutionality of a Massachusetts statute authorizing local authorities to build housing, apparently to rent at a rate below the market figure, for older persons in the lower economic groups. The court pointed out that this legislation, like old age assistance, was simply another form of relief for the needy. See also Vt. REV. STAT. § 7105 (1947), explicitly providing that unemployment insurance and federal social security benefits do not constitute relief.

37. CONN. GEN. STAT. § 2575 (1949); N.J. STAT. ANN. § 44:8A-5(c) (Supp. 1953) (aid to wife or minor child for whose support the individual is "responsible"); OHIO REV. CODE § 5113.05 (Baldwin Supp. 1954) (aid to wife or minor children in another state); S.C. CODE § 71-152(4) (1952); VT. REV. STAT. §§ 7097, 7105 (1947).

38. *Inhabitants of Taunton v. Inhabitants of Middleborough*, 53 Mass. (12 Met.) 35 (1847); *Town of Croydon v. County of Sullivan*, 47 N.H. 179 (1866); *Stocklein v. Priddy*, 31 Ohio N.P. (n.s.) 369 (Prob. Ct. 1934); *Dane County v. Barron County*, 249 Wis. 618, 26 N.W.2d 249 (1947). However, if the duty to support does not exist, the receipt of aid by the dependent person does not disqualify the relative alleged to be responsible. *Gleason v. Boston*, 144 Mass. 25, 10 N.E. 476 (1887) (wife has no duty to support minor children); *Inhabitants of Brookfield v. Inhabitants of Warren*, 128 Mass. 287 (1880) (no duty to support stepchildren); *Town of Manchester v. Town of Rupert*, 6 Vt. 291 (1834) (no duty to support daughter-in-law).

It should be noted that the cumulative effect of the rules applicable to the receipt of relief is to disqualify individuals who come from families having a marginal status, whether they themselves are marginal or not. That is, an individual may be disqualified from acquiring a settlement either if he receives support from a relative or if he provides support to a relative.

39. *Town of Cheshire v. Town of Burlington*, 31 Conn. 326 (1863); *Inhabitants of Norwich v. Inhabitants of Saybrook*, 5 Conn. 384 (1824). The following decisions also seem to have adopted this view: *North Dakota v. Kambitz*, 65 N.D. 260, 258 N.W. 116 (1934); *Stocklein v. Priddy*, 31 Ohio N.P. (n.s.) 369 (Prob. Ct. 1934); *Town of Tunbridge v. Town of Norwich*, 17 Vt. 493 (1845); *Dane County v. Barron County*, 249 Wis. 618, 26 N.W.2d 249 (1947). The Connecticut and Vermont decisions were influenced by statutory provisions requiring the individual seeking to acquire a settlement to support himself and his family. See the statutes cited in note 37 *supra*.

individual who is no longer under his care and protection⁴⁰ or who receives aid without his knowledge.⁴¹ The view first stated might be preferred if it is felt that a person ought not to be able to avoid the consequences of aid to his family simply by not fulfilling his obligations. If, however, it is felt that the fault for breakdowns in family relationships cannot be placed solely on one of the individuals involved,⁴² then it might be better to adopt the view that the aid to the dependent does not constitute aid to the responsible relative.

It has been noted that a person who once receives relief may well need it again and that this fact has probably prompted statutes excluding the period during which relief is received from the residence period necessary to acquire a settlement. To use this evidence of dependent status as a device to prevent the acquisition of a settlement does not seem fair or desirable. Indeed, the fact that an individual has received aid from any one community for any length of time may be evidence that he has a home there.⁴³

Assuming, however, that the receipt of relief or any other form of personal incapacity disqualifies an individual from acquiring a settlement, the question then presented is the effect of the disqualification. In view of the fact that most of the settlement statutes require a continuous residence, it could be argued that personal incapacity interrupts the acquisition of a settlement so that the statutory residence period must begin anew once the disability has been removed. The

40. *Inhabitants of Islesborough v. Inhabitants of Lincolnville*, 76 Me. 572 (1885); *City of Lewiston v. Inhabitants of Harrison*, 69 Me. 504 (1879); *Inhabitants of Eastport v. Inhabitants of Lubec*, 64 Me. 244 (1873); *Inhabitants of Bangor v. Inhabitants of Readfield*, 32 Me. 60 (1850); *Inhabitants of Green v. Inhabitants of Buckfield*, 3 Me. *136 (1824). The Maine court seemed to be influenced by the fact that the statute did not contain a provision requiring the individual to support his family. For the duty of support to cease, the court requires a complete abandonment by the parent whether with or without cause.

The Maine view also appears to have been adopted by the following cases: *Town of Croydon v. County of Sullivan*, 47 N.H. 179 (1866); *Scranton Poor District v. Directors of the Poor*, 106 Pa. 446 (1884); *Damascus v. Buckingham*, 3 Pa. Dist. 744 (Q.S. 1894). When the Pennsylvania cases were decided there was no statutory provision disqualifying an individual who received relief. The opinions seem based in part on the theory that in the absence of such a provision the receipt of relief would not be disqualifying.

41. *City of Worcester v. City of Springfield*, 310 Mass. 217, 37 N.E.2d 480 (1941); *Inhabitants of Wareham v. Inhabitants of Milford*, 105 Mass. 293 (1870); *Inhabitants of Berkeley v. Inhabitants of Taunton*, 36 Mass. (19 Pick.) 480 (1837). In the usual case of an abandonment it would be expected that the responsible relative would not know that aid had been extended.

42. See HAMILTON, *THE THEORY AND PRACTICE OF SOCIAL CASEWORK* 276 (2d ed. 1951).

43. The courts are always at liberty to find an estoppel to deny settlement in this situation. See note 18 *supra*. Mention should also be made of the Illinois plan under which an individual acquires a settlement in the community in which he receives relief after having resided there six months. Prior to that time the cost of relief is borne by his previous place of settlement. This scheme helps mitigate the impact of migrant relief costs on communities attracting large numbers of new residents. See ILL. ANN. STAT. c. 23, § 439-6 (Supp. 1954). See also the Montana statute in note 20 *supra*.

other possible position is that the period of personal incapacity is to be excluded, but that a settlement may be acquired by tacking together the period preceding and the period subsequent to incapacity. It would be expected that the solution to this problem would be handled by an explicit legislative provision. While some of the statutes have adopted the rule that personal incapacity interrupts the acquisition of a settlement,⁴⁴ and others appear to have adopted the noncontinuous approach,⁴⁵ most of the statutes seem to have left the question unresolved. In the absence of a statutory provision the courts seem inclined to adopt the noncontinuous view.⁴⁶ This appears fortunate because if personal incapacity interrupted the acquisition of a settlement the individuals involved might never be able to acquire one. This would particularly be true of persons who have to apply for relief from time to time.

In summary, then, personal incapacity of the type above described may operate to prevent or impede the acquisition of a settlement. For the reasons that have been stated, it is hard to justify the retention of these disqualifications.

LOSS OF ACQUIRED SETTLEMENTS

The rules regarding the acquisition of settlements are mitigated by the prevailing rule that in the absence of a statute a settlement cannot be lost until a new one has been acquired.⁴⁷ This rule seems to spring from the concept that settlement is the equivalent of domicile, and it

44. CONN. GEN. STAT. § 2575 (1949); IOWA CODE ANN. § 252.16(3) (1949); N.J. STAT. ANN. § 44:8A-5 (Supp. 1954) (state residence); N.D. REV. CODE § 50-0205 (1943), changing the rule in *Eddy County v. Wells County*, 73 N.D. 33, 11 N.W.2d 60 (1943). Only the New Jersey and North Dakota statutes may be said to be fully explicit on this point.

45. CAL. WELFARE & INST. CODE § 2555(b) (1953) amended by CAL. WELFARE & INST. CODE § 2555(a) (Supp. 1955); IND. ANN. STAT. § 52-147(d) (Burns 1951); N.J. STAT. ANN. § 44:8A-6 (Supp. 1954) (municipal residence); N.Y. SOCIAL WELFARE LAW § 118. Only the New York law is fully explicit on this point.

46. *Commonwealth v. Boston*, 316 Mass. 410, 55 N.E.2d 686 (1944). This also seems to be the rule in Minnesota. *Minneapolis v. County of Beltrami*, 206 Minn. 371, 288 N.W. 706 (1939); *In re Venteicher*, 202 Minn. 331, 278 N.W. 581 (1938). See the discussion of the Minnesota cases in JACOBSON, PUBLIC RELIEF AND LEGAL SETTLEMENT IN MINNESOTA 74 (1945). *But cf.* *Town of Scott v. Town of Clayton*, 51 Wis. 185, 8 N.W. 171 (1881); *Audubon County v. Vogessor*, 228 Iowa 281, 291 N.W. 135 (1940) (*semble*).

47. *Town of Newtown v. Town of Southbury*, 100 Conn. 251, 123 Atl. 278 (1924); *Norwich v. Windham*, 1 Root 232 (Conn. 1790); *County of Richland v. Township of Decker*, 275 Ill. App. 220 (1934); *Inhabitants of Phillips v. Inhabitants of Kingfield*, 19 Me. 375 (1841); *Inhabitants of Brookfield v. Inhabitants of Holden*, 247 Mass. 577, 142 N.E. 784 (1924); *County of Ramsey v. Township of Lake Henry*, 234 Minn. 119, 47 N.W.2d 554 (1951); *Parker City v. Du Bois Borough*, 9 Atl. 457 (Pa. 1887); *Anderson v. Miller*, 120 Pa. Super. 463, 182 Atl. 742 (1936); *Braintrim Township v. Windham Township*, 10 Pa. County Ct. 250 (Q.S. 1891); *Town of Manchester v. Town of Springfield*, 15 Vt. *385 (1843); *Town of Scott v. Town of Clayton*, 51 Wis. 185, 8 N.W. 171 (1881). This also appears to have been the rule under the English law. *Rex v. Inhabitants of St. Botolph*, Say, 193, 96 Eng. Rep. 851 (K.B. 1766). The North Carolina statute restates the common-law rule. N.C. GEN. STAT. § 153-159(5) (1952), applied in *McDowell County v. Forsyth County*, 121 N.C. 295, 28 S.E. 412 (1897).

will be remembered that everybody must have a domicile somewhere. However, it is not correct to say that as a consequence of this rule everybody must have a settlement, because the rule does not help an individual who has never acquired a settlement in the first place.⁴⁸

In addition, statutes presently exist in many jurisdictions which alter the rule just stated. These statutes apply to state or local settlements and typically provide that a settlement may be lost by an absence from the state or locality for a stated period, usually one year. The statutes differ, however, regarding the nature of the absence that will constitute a loss of settlement. Some simply provide that an "absence" or "removal" from the state for the statutory period will suffice,⁴⁹ others add the requirement that the absence must be "wilful"⁵⁰ or "continuous."⁵¹

48. Under this rule, however, it should be emphasized that a settlement cannot, in truth, be abandoned once it has been acquired. It will merely shift when the individual acquires a new one. See *Town of Roxbury v. Town of Bridgewater*, 85 Conn. 196, 82 Atl. 193 (1912); *Fayette County v. Bremer County*, 56 Iowa 516, 9 N.W. 372 (1881); *Inhabitants of Friendship v. Inhabitants of Bristol*, 132 Me. 285, 170 Atl. 496 (1934); *Grove City v. Township of Manannah*, 182 Minn. 197, 233 N.W. 875 (1930). Potential applicants are helped even more by the rule in some states, in the absence of statute, that a settlement is not forfeited by the acquisition of a new settlement in another state. *Payne v. Town of Dunham*, 29 Ill. 125 (1862); *Inhabitants of Canton v. Bentley*, 11 Mass. *441 (1814); *Landaff v. Atkinson*, 8 N.H. 532 (1837); *Township of Alexandria v. Township of Kingwood*, 8 N.J.L. 370 (Sup. Ct. 1826); cf. *Town of Granville v. Town of Hancock*, 69 Vt. 205, 37 Atl. 294 (1896). This rule appears to be based on the notion that settlement is a local question and therefore the court cannot take notice of settlement acquired under the laws of another "sovereign." Some decisions, however, have held to the contrary. *Inhabitants of Middletown v. Inhabitants of Lyme*, 5 Conn. 95 (1823); *In re Chapman*, 15 Misc. 296, 37 N.Y. Supp. 763 (County Ct. 1895); *Juniata County v. Delaware Township*, 107 Pa. 68 (1834); cf. *Plumcreek Township v. Elderton Borough*, 129 Pa. 626, 18 Atl. 549 (1889). These courts appear to have taken cognizance of the realities of the situation.

49. CONN. GEN. STAT. § 1093(c) (Supp. 1953); IOWA CODE ANN. § 252.17 (1949); N.H. REV. LAWS c. 123, § 2 (1942); N.Y. SOCIAL WELFARE LAW § 117(1); N.D. REV. CODE § 50-0206 (1943) (county residence); ORE. REV. STAT. § 411.720 (3) (1953); UTAH CODE ANN. § 17-5-60(7) (1953) (local law); WIS. STAT. § 49.10(7) (1953). Many of these statutes, of which the New York statute is typical, make an exception for absence in the armed forces or other government service. For a typical case construing such a provision, see *Inhabitants of Hartland v. Inhabitants of Athens*, 98 A.2d 542 (Me. 1953).

Some of the statutes also attempt to regulate the settlement status of recipients of general assistance and other forms of public aid. Cf. ARIZ. CODE ANN. § 70-121 (Supp. 1952) (recipient leaving state may receive aid until settlement acquired elsewhere, but not for period in excess of 5 years); LA. REV. STAT. ANN. § 46:110 (1950) (recipient may continue to get aid upon removal to another parish); MONT. REV. CODES ANN. § 71-302 (1953) (persons "voluntarily" absent from state not eligible for general assistance); S.D. CODE § 50.0102(7) (Supp. 1952) (recipient of any form of public assistance may not change settlement). See also *Town of Cordova v. Village of Le Sueur Center*, 78 Minn. 36, 80 N.W. 836 (1899) (person receiving private relief may change settlement). In *North Dakota v. Perkins County*, 69 S.D. 270, 9 N.W.2d 500 (1943), a statute providing for the loss of a settlement by absence was challenged on constitutional grounds which were impliedly rejected by the court.

50. ILL. ANN. STAT. c. 23, § 436-10(b) (Supp. 1954); IND. ANN. STAT. § 52-147(f) (Burns 1951) (state residence); MINN. STAT. ANN. § 261.07(5) (Supp. 1954); NEB. REV. STAT. § 68-115(4) (Supp. 1953); N.D. REV. CODE § 50-0207 (1943); S.D. CODE § 50.0102(6) (Supp. 1952). See also WYO. COMP. STAT. ANN. §

Unfortunately, in dealing with statutes of this type the courts sometimes confuse the loss of a prior settlement with the acquisition of a new one.⁵² When, however, the courts have been aware that the statutes require them to deal independently with the question of loss, they have been faced with questions similar to those raised by interruptions due to absence or personal incapacity of the continuity required to gain a settlement. For example, the question whether the acquisition of a settlement is interrupted by the temporary absence of an individual has sometimes been solved by reference to his intent.⁵³ Similarly, the courts have held that an absence for the prescribed statutory period does not result in a loss of settlement if the requisite intent to abandon the settlement is not present, even though the statute does not explicitly require this.⁵⁴

In addition, one court has held that an individual does not lose his settlement if he is mentally incapacitated during the period of absence prescribed by the statute.⁵⁵ The cases seem divided, however, on the question whether the receipt of relief interrupts an absence.⁵⁶ Both

25-123 (Supp. 1955) (recipient who moves to another state may continue to get aid if he "intends" to retain Wyoming residence).

51. CAL. WELFARE & INSR. CODE § 2555(b) (Supp. 1955); KAN. GEN. STAT. § 39-709a (Supp. 1953); ME. REV. STAT. c. 94, § 3 (1954); MASS. ANN. LAWS c. 116, § 5 (1949); MICH. STAT. ANN. § 16.455(a-1) (3) (Supp. 1953); N.J. STAT. ANN. § 44:8A-8 (Supp. 1954); OHIO REV. CODE § 5113.05 (Baldwin Supp. 1955); VT. REV. STAT. § 7097 (1947).

52. See, *et. al.*, *Town of Lakeville v. City of Cambridge*, 305 Mass. 256, 25 N.E.2d 757 (1940).

53. See Mandelker, *The Settlement Requirement in General Assistance*, 1955 WASH. U.L.Q. 355, 372-74.

54. *Town of Lakeville v. City of Cambridge*, 305 Mass. 256, 25 N.E.2d 757 (1940); *Town of Plymouth v. Town of Kingston*, 289 Mass. 57, 193 N.E. 576 (1935); *Waushara County v. Calumet County*, 238 Wis. 230, 298 N.W. 613 (1941). This also seems to be the holding in *In re Boise*, 73 N.D. 16, 11 N.W.2d 80 (1943); *Nelson County v. Williams County*, 68 N.D. 56, 276 N.W. 265 (1937). Of course, the individual must have been absent for the requisite statutory period. In the *Matter of Leslie*, 166 Minn. 130, 207 N.W. 323 (1926).

It is of interest that not all of these cases have arisen in states which impose the intent requirement as a prerequisite to the acquisition of a settlement. See Mandelker, *supra* note 53, at 369 n.55. Courts in these states, however, might hold that the absence necessary to lose a settlement, as well as the residence necessary to gain one, must be permanent and not temporary. Such a holding would be equivalent to a rule that an intent to abandon the settlement must be shown. See Mandelker, *supra* note 53, at 370 n.58.

55. *In re Mortensen*, 68 S.D. 341, 2 N.W.2d 679 (1942). See MASS. ANN. LAWS c. 116, § 5 (1949) (time spent in public institution not counted toward the loss of a settlement).

56. That the receipt of relief from the locality of settlement interrupts the statutory period of absence, see *Town of Scott v. Town of Clayton*, 51 Wis. 185, 8 N.W. 171 (1881). *Contra*, *People ex rel. May v. Maynard*, 160 N.Y. 453, 55 N.E. 9 (1899) (under prior law, absence not interrupted by receipt of relief from any source); *Matter of Hawks*, 26 Misc. 359, 57 N.Y. Supp. 216 (County Ct. 1899) (same). See also WIS. STAT. § 49.10(4) (1953).

There has been some statutory recognition of the rule that the receipt of aid from the prior place of settlement will interrupt the period of absence under the statute. See N.D. REV. CODE § 50-0206 (1943). The North Dakota court has held that the receipt of relief at any time interrupts the absence. Therefore, the period of absence is held to begin one month after relief is furnished by the prior settlement. *Stutsman County v. Bowman County*, 68 N.D. 699, 283 N.W. 179 (1938); *Griggs County v. County of Cass*, 65 N.D. 608, 260 N.W. 417 (1935).

views seem motivated by the possibilities of "dumping" should the other position be adopted. For example, the Wisconsin court, in holding that the receipt of aid interrupts the loss of a settlement, pointed out that, otherwise, the locality of settlement could shift the settlement of the recipient simply by having him transported elsewhere.⁵⁷ Perhaps the best solution to this situation would be to allow the settlement to shift after the period of absence has expired unless it could be shown that either locality had attempted to procure or prevent the change.⁵⁸

Although the effect of statutes providing for the loss of settlement without the acquisition of a new one may be mitigated by the rule that an intent to abandon the previous settlement must be found in addition to physical absence from the locality, it should be noted that provisions like this in general assistance laws have created some of the most difficult problems for migrants. Because of differences in the settlement laws of the various jurisdictions it would be quite possible to lose a settlement in one locality without gaining it elsewhere. This result would be avoided if the rule that a settlement could not be lost until another is gained were to be reinstated by statute in those jurisdictions where it has been abandoned.

DERIVATIVE SETTLEMENTS: ACQUISITION AND LOSS

General Nature of Derivative Settlements

This discussion has already noted a tendency to treat the problems of settlement on a family basis. For example, the courts have imported the concept of family responsibility when determining whether the receipt of relief by members of a family will count as the receipt of relief by the head of the family. In part, this seems to have resulted from the fact that the application for general assistance is made on a family basis. It may also be a consequence of the law of domestic relations, which has merged the legal personalities of the wife and minor children into that of the father. This doctrine has also given rise to the rules regarding acquired domiciles and by this indirect route to the concept of a derivative settlement.⁵⁹ The principal effect of this application of the merger doctrine is that the settlements of the members of a family are traced to its head.

57. *Town of Scott v. Town of Clayton*, *supra* note 56. On the other hand, the New York cases cited in note 56 *supra* pointed out that if the receipt of relief interrupted the statutory period required for loss of settlement, the locality in which the individual was physically residing could prevent the change simply by giving relief and then charging it back to the locality of settlement.

58. For a holding that a settlement does not shift if the change has been procured fraudulently, see *Inhabitants of Stratford v. Inhabitants of Fairfield*, 3 Conn. 588 (1820). See also *Town of Leicester v. Town of Brandon*, 65 Vt. 544, 27 Atl. 318 (1893).

59. See GOODRICH, *CONFLICT OF LAWS* § 34 (3d ed. 1949) (domicile of married women).

Although there was no provision in the first English settlement law⁶⁰ providing for derivative settlements, the English courts appear to have incorporated this concept into the statute at an early date.⁶¹ The courts have also read this principle into the American settlement laws⁶² and several of the American statutes now contain explicit statutory provisions regulating the subject. It may be stated at the outset that the basic principles of derivative settlement, having been transferred almost bodily from the law of acquired domicile, are rather well-settled. Although these principles will be stated, the primary task of this section is to determine whether these rules as applied to general assistance problems have had socially desirable consequences.

In this connection, it is of interest to note the reasons for the derivative settlement concept that have been advanced by some of the American courts. Apart from adopting the legal fiction that women and children are not *sui juris*,⁶³ the courts have also pointed out that the principle of derivative settlement is based on the desirability of treating the family as a unit.⁶⁴ Whether the courts have achieved this goal is another matter. It should be remembered that if the members of a family are split for general assistance purposes by the rules of derivative settlement some of them will not be residents of the locality to which the family applies.⁶⁵ If their needs are not covered by the grant of assistance that is made the entire family will suffer.

Even if the nonsettled status of some of the members of the family is disregarded and assistance is granted, in most cases some other locality will ultimately be liable for their support. Procedures are often provided for the collection of relief costs from the place of settlement and in such a case the cost and complexity of relief administration will be increased if the rules of derivative settlement

60. 13 & 14 CAR. 2, c. 12 (1662).

61. *Inhabitants of St. Giles v. Inhabitants of Eversley Blackwater*, 2 Ld. Raym. 1332, 92 Eng. Rep. 368 (K.B. 1732); *Inhabitants of Cumner v. Inhabitants of Milton*, 2 Salk. 528, 91 Eng. Rep. 449 (K.B. 1703); *Whitechapel Parish v. Stepney Parish*, Carth. 433, 90 Eng. Rep. 851 (K.B. 1689).

62. See, e.g., *City of Willmar v. Village of Spicer*, 129 Minn. 395, 152 N.W. 767 (1915); *Wells v. Westhaven*, 5 Vt. *322 (1833). However, it should be kept in mind that the court may construe the absence of any provision in the general assistance law regarding derivative settlements as an indication that this principle was meant to be excluded. See *Town of Fairfax v. Town of Westford*, 67 Vt. 390, 31 Atl. 847 (1895).

63. See, e.g., *Town of Colchester v. Town of Lyme*, 13 Conn. *274 (1839); *Inhabitants of Huntington v. Inhabitants of Oxford*, 4 Day 189 (Conn. 1810).

64. *Polk County v. Clarke County*, 171 Iowa 558, 151 N.W. 489 (1915); *Inhabitants of Waldoborough v. Inhabitants of Friendship*, 87 Me. 211, 32 Atl. 880 (1895); *Jefferson Township v. Letart Township*, 3 Ohio *99 (1827).

65. For reports of actual settlement entanglements of the type indicated, see CONNECTICUT EMERGENCY RELIEF COMMISSION, REPORT, 76, 77 (1935); House Select Committee, *Interstate Migration of Destitute Citizens*, H.R. REP. No. 369, 77th Cong., 1st Sess. 644 (1941).

unnecessarily split the members of the family group.⁶⁶ The law of derivative settlement, then, will be examined for its effect on the family unit.

The Wife's Settlement

It is settled, even in the absence of a specific statutory provision, that a wife takes the settlement of her husband if he has one, but retains her own if he has none.⁶⁷ This principle has been explicitly enacted into the statutes of several jurisdictions.⁶⁸ This rule seems desirable since it tends to preserve the unity of husband and wife for assistance purposes.

Difficulties are presented, however, in cases in which the husband is dead or has deserted,⁶⁹ or in which the parties have secured a di-

66. Some mention might also be made at this point of the compulsory removal laws still found in many jurisdictions which authorize the removal of persons in need of relief, or likely to become so, to their place of settlement. If the members of a family have different settlements, the possibility exists that they might be split up through compulsory removals. See the comments of the court in *Inhabitants of Waldoborough v. Inhabitants of Friendship*, 87 Me. 211, 32 Atl. 880 (1895). However, the separation of members of a family does not seem to be a real possibility in most cases. See, e.g., *In re Rutland*, 215 Minn. 361, 10 N.W. 2d 365 (1943).

67. *In re Rutland*, 215 Minn. 361, 10 N.W.2d 365 (1943); *Bateman v. Mathes*, 54 N.J.L. 536, 24 Atl. 444 (Sup. Ct. 1892); *Town of Sherburne v. Town of Norwich*, 12 N.Y.C.L. Rep. (16 Johns R.) *186 (1819); *Spencer Township v. Pleasant Township*, 17 Ohio St. *31 (1866); *Buffaloe v. Whitedeer*, 15 Pa. 182 (1850); *Wells v. Westhaven*, 5 Vt. *322 (1833); *King v. Inhabitants of Brington*, 7 B. & C. 546, 108 Eng. Rep. 826 (K.B. 1827). There is a tendency in some of the American decisions to refer to the rules laid down in the early English cases as the "common law" of settlement. Cf. *Inhabitants of Newtown v. Inhabitants of Stratford*, 3 Conn. 600 (1821). The term is not accurate, of course, since settlement law is wholly statutory. Its use can probably be explained by the antiquity of the cases and the fact that they dealt with problems of interpretation that were not explicitly covered by the statute.

68. CONN. GEN. STAT. § 2577 (1949); ILL. ANN. STAT. c. 23, § 436-10(c) (Supp. 1954); IND. ANN. STAT. § 52-147(a) (Burns 1951); IOWA CODE ANN. § 252.16(4) (1949); ME. REV. STAT. c. 94, § 1(I) (1954); MASS. ANN. LAWS c. 116, § 1(Second) (1949); MICH. STAT. ANN. § 16.168 (1950); NEB. REV. STAT. § 68.115(3) (Supp. 1953); N.H. REV. LAWS c. 123, § 1(I) (1942); N.J. STAT. ANN. § 44:8A-11 (Supp. 1954); N.C. GEN. STAT. § 153-159(2) (1952); N.D. REV. CODE § 50-0201 (Supp. 1953); OHIO REV. CODE § 5113.05 (Baldwin Supp. 1955); OKLA. STAT. ANN. tit. 56, § 40(Second) (1950); S.C. CODE § 71-152(1) (1952); S.D. CODE § 50.0102(1) (1939); UTAH CODE ANN. § 17-5-60(2) (1953); VT. REV. STAT. § 7099 (1947); WIS. STAT. § 49.10(1) (1953).

The Maine statute has a provision stating that the wife's settlement is not changed if the marriage was collusively procured for the purpose of changing her settlement. For cases applying the statute, see *Inhabitants of Orrington v. City of Bangor*, 46 A.2d 406 (Me. 1946); *Inhabitants of Hudson v. Inhabitants of Charleston*, 97 Me. 17, 53 Atl. 832 (1902). At least one court seemed disinclined to adopt such a rule in the absence of a statutory provision. *Town of Concord v. Town of Goffstown*, 2 N.H. 263 (1820). The validity of a marriage may be attacked collaterally in a suit in which the settlement of the parties is at issue. If the marriage is void the wife's settlement has not been changed. *Johnson v. Huntington*, 1 Day 212 (Conn. 1804); *Inhabitants of Middleborough v. Inhabitants of Rochester*, 12 Mass. *363 (1815); *Farmington v. Somersworth*, 44 N.H. 589 (1863); *Town of Reading v. Town of Ludlow*, 43 Vt. *628 (1871).

69. If the wife, widow, or divorcee has children dependent on her, she may, if in need, qualify for the aid to dependent children program. Eligibility for this program does not depend on the settlement or residence of the father. 49 STAT. 627

voce. When the husband dies or when a divorce is obtained, it now seems settled that the former settlement of the wife does not revive if the husband had a settlement. Instead, the settlement which the wife acquired through him continues until she has acquired a new one in her own right.⁷⁰ This rule works no hardship in the ordinary case since the husband will probably have acquired a settlement in the locality in which the couple actually resided.

However, the husband's settlement may be in a locality in which he lived prior to his marriage and with which the wife is not familiar. In that event, it may be preferable to allow the wife's settlement to revive. Since, however, the wife may also have been absent from the place of her settlement for a considerable period of time, she ought to be given the option to elect or reject it. There is some statutory acceptance of this approach.⁷¹ In this event, it may also be desirable to facilitate the wife's acquisition of a settlement in the locality in which she has in fact been living by authorizing her to add the time spent prior to the divorce or death to the time spent in the locality thereafter. Of course, this is presently not possible because of the view that the wife is not *sui juris* for settlement purposes during the marriage.⁷² However, at least one statute has changed this rule,⁷³ and perhaps this may lead to a possible change in judicial attitudes also.

If the wife has been deserted by her spouse, her position seems particularly disadvantageous. The traditional rule in this situation is that the wife may not acquire a new settlement since the marital relationship still subsists and the legal personality of the wife continues to be merged with that of her husband.⁷⁴ While there seems to be a

(1935), as amended, 42 U.S.C. § 602 (1952). In general assistance cases the courts seem to have had difficulty in dealing with situations involving the needs of mothers and dependent children.

70. *Inhabitants of Guilford v. Inhabitants of Oxford*, 9 Conn. *321 (1832); *Inhabitants of Dalton v. Inhabitants of Bernardston*, 9 Mass. *201 (1812); *City of Williamsport v. Eldred Township*, 84 Pa. 429 (1877); *Buffaloe v. Whitedeer*, 15 Pa. 182 (1850); *Town of Royalton v. Town of West-Fairlee*, 11 Vt. *438 (1839). An early New York case, *Town of Sherburne v. Town of Norwich*, 12 N.Y.C.L. Rep. (16 Johns. R.) *186 (1819), which held to the contrary now seems to be discredited. The majority American view was ultimately adopted by the English courts. *Reigate Union v. Croydon Union*, 14 App. Cas. 465 (1889). The same rule is applicable to acquired domiciles. GOODRICH, *CONFLICT OF LAWS* § 35 (3d ed. 1949).

71. See the Iowa and Utah statutes cited in note 68 *supra*. An election is permitted if the wife's settlement is in the state. These statutes also apply to an abandonment of the wife by the husband. The New Jersey and Vermont statutes, note 68 *supra*, enact the rule that the wife's settlement does not revive upon the dissolution of the marriage. If the wife's settlement could be analogized to a type of intangible personal property, it could be contended that she retains "title" to it during her marriage and regains control of it when the marriage is dissolved. See PECK, *DOMESTIC RELATIONS* 335 (3d ed. 1930).

72. *Inhabitants of Thomaston v. Inhabitants of St. George*, 17 Me. 117 (1840); *Town of Brookfield v. Town of Hartland*, 10 Vt. *424 (1838).

73. See the Connecticut statute, note 68 *supra*.

74. *Town of Howland v. Town of Burlington*, 53 Me. 54 (1865); *Inhabitants of Augusta v. Inhabitants of Kingfield*, 36 Me. 235 (1853); *Rhatigan v. Jones*, 271

reluctance to follow this rule in other contexts in which domicile is important,⁷⁵ it has recently been affirmed in a settlement case.⁷⁶ The rule seems unfortunate. In many cases the wife who is abandoned or deserted chooses to take up a new residence elsewhere. To deny her a settlement in the place where she desires to live does not seem fair to her and may have the effect of making her dependent on a locality to which she may have become a total stranger. Several settlement statutes now allow a married woman who has been abandoned and deserted to acquire a settlement in her own right.⁷⁷

By way of compensation it may be noted that the legally dependent position of the wife often helps her to retain her derivative settlement. Under a statute providing that a settlement is lost after a prescribed

App. Div. 328, 65 N.Y.S.2d 345 (1st Dep't 1946); *Town of Van Buren v. City of Syracuse*, 72 Misc. 463, 131 N.Y. Supp. 345 (County Ct. 1911); *City of Syracuse v. County of Onondaga*, 25 Misc. 371, 55 N.Y. Supp. 634 (County Ct. 1898); *Spencer Township v. Pleasant Township*, 17 Ohio St. *31 (1866); *Delaware Township v. Zerbe Township*, 3 Pa. County Ct. 643 (Q.S. 1886); *Town of Fox Lake v. Town of Trenton*, 244 Wis. 412, 12 N.W.2d 679 (1944); *Ashland County v. Bayfield County*, 244 Wis. 210, 12 N.W.2d 34 (1943); *Monroe County v. Jackson County*, 72 Wis. 449, 40 N.W. 224 (1888); *cf. Town of Windham v. Town of Norwich*, 1 Root 408 (Conn. 1792); *Town of Mount Holly v. Town of Peru*, 72 Vt. 68, 47 Atl. 103 (1899) (wife cannot acquire new settlement when parties separated, apparently without fault of either party).

75. The first exception was to allow the wife to acquire a separate domicile for purposes of securing a divorce. This rule has now been extended to other situations. *Williamson v. Osenton*, 232 U.S. 619 (1914) (suit for damages for alienation of affections); 1 BEALE, *CONFLICT OF LAWS* §§ 28.2-40.4 (1935); GOODRICH, *op. cit. supra* note 70, § 36.

76. *Ashland County v. Bayfield County*, 244 Wis. 210, 12 N.W.2d 34 (1943). *But cf. Bradford v. City of Worcester*, 184 Mass. 557, 69 N.E. 310 (1904).

77. ILL. ANN. STAT. c. 23, § 436-10(c) (Supp. 1954) (if the parties are living "separate and apart"); IOWA CODE ANN. § 252.16(4) (1949) (if the wife "lives apart" or is "abandoned"); MINN. STAT. ANN. § 261.07(3) (Supp. 1954) (wife "abandoned or deserted"); NEB. REV. STAT. § 68-115(3) (Supp. 1953) (same); N.D. REV. CODE § 50-0201 (Supp. 1953) (after uninterrupted separation without divorce for one year); UTAH CODE ANN. § 17-5-60(2) (1953) (same as Iowa); VT. REV. STAT. § 7099 (1947) (if divorced or legally separated, or if husband has deserted her for three years). The Indiana statute gives the wife a settlement in the township in which she was living at the time of abandonment if she had resided there for a prescribed period. IND. ANN. STAT. § 52-147(a) (Burns 1951). The Minnesota statute does not contain the rule allotting the wife the settlement of her husband, but does contain a provision authorizing her to acquire a settlement in her own right if she is abandoned. MINN. STAT. ANN. § 261.07(3) (Supp. 1954).

For a case applying the Iowa statute, see *Washington County v. Polk County*, 137 Iowa 333, 113 N.W. 833 (1907). The Minnesota court has held that if the wife abandons her husband she is not entitled to the benefit of the statute. *In re Baalson*, 211 Minn. 96, 300 N.W. 204 (1941). Some of the other statutes seem broad enough to include this contingency and some courts have reached a conclusion contrary to that of the Minnesota court in passing on questions of domicile in other contexts. GOODRICH, *op. cit. supra* note 70, § 36. It is hard to see why the method by which a settlement is acquired is any more important than the reason which prompts the need for general assistance.

Two statutes seem to allow a married woman to acquire a new domicile. MASS. ANN. LAWS c. 116, § 1 (Second) (1949) (only if husband has no settlement); N.H. REV. LAWS c. 123, § 1(II) (1942). Under the New Jersey law the wife loses her settlement after separation from her husband and absence from the state for one year. N.J. STAT. ANN. § 44:8A-11(c) (Supp. 1954).

period of absence from the locality, it has been held that the absence of the wife while residing with her husband during his lifetime is not a voluntary absence and therefore does not count as a statutory absence.⁷⁸ However, the same court also held that the wife's derivative settlement is not lost if her husband loses his settlement while he is residing apart from her.⁷⁹ Though the latter result seems commendable as it recognizes the independent status of the married woman, it does not seem consistent with the view that the wife's legal personality is merged with that of her husband. The result of this case was changed by statute.⁸⁰

A more equitable solution to the problems presented by the marriage situation could be achieved if the courts would attribute the husband's settlement to the wife only if they are in fact living together as man and wife. Once the parties have separated permanently, whether divorced or not, it would seem that each party should retain the marital settlement but should be permitted to lose or acquire a settlement thereafter in his or her own right. In this event it would be possible to award the wife a settlement in her real home if her residence prior to the separation were attributed to her.

Furthermore, the object of treating the family as a unit would be better served if the husband were allowed to take the wife's settlement if he had none at the time of the marriage. Under the present rule the wife retains her settlement and so the family is split for assistance purposes.⁸¹ This approach, then, would consider the family as a unit while the husband and wife are living together, but would give the wife an equal status in the relationship and would free her from the disabilities of marriage once the family home has been broken up.

78. *Town of Cohasset v. Town of Norwell*, 276 Mass. 100, 176 N.E. 924 (1931); *Inhabitants of Brookfield v. Inhabitants of Holden*, 247 Mass. 577, 142 N.E. 784 (1924). *But cf.* *City of Somerville v. Massachusetts*, 313 Mass. 482, 48 N.E.2d 8 (1943). In the *Somerville* case a widow who had acquired a derivative settlement through her first husband married a second time. The court held that because the second marriage was her own voluntary act, her derivative settlement was lost by her absence in the company of her second husband for the required statutory period.

79. *Treasurer & Receiver General v. Boston*, 255 Mass. 499, 152 N.E. 37 (1926); *Treasurer & Receiver General v. Boston*, 229 Mass. 83, 118 N.E. 284 (1918). It should be noted that this rule has the effect of preserving to the wife who has been abandoned or deserted the settlement that she acquired through her husband. This is of some importance in view of the traditional rule that a wife who is abandoned or deserted cannot acquire a new settlement in her own right.

80. MASS. ANN. LAWS c. 116, § 5 (1949). For a similar statute, see ME. REV. STAT. c. 94, § 3 (1954), applied in *City of Portland v. City of Auburn*, 96 Me. 501, 52 Atl. 1011 (1902). See also note 100 *infra*.

81. Another example will illustrate the effect of the suggested change. If the wife were in the process of acquiring a settlement at the time of the marriage and the couple continued to reside in the wife's community, the wife would acquire a settlement upon the completion of the statutory period of residence and this would immediately be transmitted to her husband.

Settlement of the Children

The same reasons⁸² that have brought about the rule that the wife acquires the settlement of her husband have resulted in similar rules with reference to legitimate minor children. In the absence of an express statutory provision, while the child's place of birth is prima facie his place of settlement, he will take his father's place of settlement if he has one and, if not, the place of settlement of his mother.⁸³ Many jurisdictions have statutes which codify this rule.⁸⁴

82. See *Jefferson Township v. Letart Township*, 3 Ohio 100 (1827). The court points out that it has adopted these rules of derivative settlement of the legitimate minor children because they are not sui juris and because of a desire to preserve the unity of the family.

83. *Town of Washington v. Town of Warren*, 123 Conn. 268, 193 Atl. 751 (1937); *Town of Windham v. Town of Lebanon*, 51 Conn. 319 (1883); *Inhabitants of Sterling v. Inhabitants of Plainfield*, 4 Conn. 114 (1821); *Inhabitants of Newtown v. Inhabitants of Stratford*, 3 Conn. 600 (1821); *Town of Hebron v. Town of Colchester*, 5 Day 169 (Conn. 1811); *Inhabitants of Freetown v. Inhabitants of Taunton*, 16 Mass. 52 (1819); *Miller v. Banner County*, 127 Neb. 690, 256 N.W. 639 (1934); *Township of Little Falls v. Township of Bernards*, 44 N.J.L. 621 (Sup. Ct. 1882); *Township of Madison v. Township of Monroe*, 42 N.J.L. 493 (Sup. Ct. 1880); *Town of Bern v. Town of Knox*, 18 N.Y.C.L. Rep. (6 Cow.) *433 (1826); *Town of Vernon v. Town of Smithville*, 13 N.Y.C.L. Rep. (17 Johns. R.) *90 (1819); *Jefferson Township v. Letart Township*, 3 Ohio 100 (1827); *Wayne Township v. Porter Township*, 138 Pa. 181, 20 Atl. 939 (1890); *Exeter v. Warwick*, 1 R.I. 63 (1834); *Town of Bethel v. Town of Tunbridge*, 13 Vt. *445 (1841). This rule is consistent with the rule that the wife retains her settlement if the husband has none. In this event, the wife's settlement is transmitted to the child.

One court has held that a child born in another country of American parents does not acquire a settlement by derivation. *Town of Elmore v. Town of Calais*, 33 Vt. *468 (1860). The decision does not seem correct in view of the fact that persons born abroad of American citizens are also citizens of this country. For a decision holding to the contrary, see *Inhabitants of Oldtown v. Inhabitants of Bangor*, 58 Me. 353 (1870). However, no problem has been presented by children born in other states. *Town of New Hartford v. Town of Canaan*, 54 Conn. 39, 5 Atl. 360 (1886); *Town of Westford v. Town of Essex*, 31 Vt. *459 (1859). See also N.Y. SOCIAL WELFARE LAW § 117(2).

84. ALA. CODE tit. 44, § 5 (1940); CONN. GEN. STAT. § 2577 (1949); ILL. ANN. STAT. c. 23, § 436-10(d) (Supp. 1954); IND. ANN. STAT. § 52-147(b) (Burns 1951); IOWA CODE ANN. § 252.16(5) (1949); ME. REV. STAT. c. 94, § 1(II) (1954); MASS. ANN. LAWS c. 116, § 1(Third) (1949); MICH. STAT. ANN. § 16.168 (1950) (individual's settlement communicated to members of his "family"); MINN. STAT. ANN. § 261.07(3) (West Supp. 1954) (minor has settlement with person with whom he resides); MISS. CODE ANN. § 7354 (1952); NEB. REV. STAT. § 68-115(3) (Supp. 1953) (minor has settlement with parent with whom he resides); N.H. REV. LAWS c. 123, § 1(III) (1942); N.J. STAT. ANN. § 44:8A-12 (Supp. 1954); N.Y. SOCIAL WELFARE LAW § 117(2); N.C. GEN. STAT. § 153-159(3) (1952); N.D. REV. CODE § 50-0203 (1943); OHIO REV. CODE § 5113.05 (1955); OKLA. STAT. ANN. tit. 56, § 40(Third) (1950); S.C. CODE § 71-152(2) (Supp. 1952); S.D. CODE § 50.0102(2) (1939); UTAH CODE ANN. § 17-5-60(3) (1953); VT. REV. STAT. § 7100 (1947); WIS. STAT. § 49.10(2) (1953); cf. PA. STAT. ANN. tit. 62, § 2509 (Supp. 1954) (a child less than one year of age derives a settlement from his parent or from the relatives "with whom he is living").

For a case holding that the settlement of the child continues to be that of the father even after the divorce court has awarded legal custody to the mother, see *Town of Marlborough v. Town of Hebron*, 2 Conn. 20 (1816). *Contra*, *Summit County v. Trumbull County*, 116 Ohio St. 663, 158 N.E. 172 (1927), on the ground that the mother had legal custody. The view of the latter case seems preferred since it bases derivative settlement on the actual family unit. Statutes in several states now provide that the settlement of the child is derived from the parent who has been given custody. N.H. REV. LAWS c. 123, § 1(XII) (1942), and the Maine, Massachusetts, New Jersey, Vermont, and Wisconsin statutes cited above.

Beyond the natural relationship of parent and child, however, it might be expected that the courts would face difficulties in applying the concept of derivative settlement.⁸⁵ While adopted children have been held to be entitled to a settlement derived from their parents by adoption,⁸⁶ illegitimate children have not fared so well. Except in Connecticut,⁸⁷ which early held that the settlement of an illegitimate child follows that of his mother, most courts have held that in the absence of a statutory provision to the contrary the illegitimate has a settlement at the place of his birth.⁸⁸ This rule is the consequence of the theory that the illegitimate is "nobody's child." Therefore, he acquires nobody's settlement. It is apparent that this rule might operate quite harshly on the illegitimate. Since the settlement of the mother may be some place other than the place where the child was born, the mother and child living together will be split for relief purposes. Fortunately, several states have altered this rule by an explicit statutory amendment which gives to such a child the settlement of his mother if she has one.⁸⁹

A few statutes provide that a child does not have a settlement in the place in which he was born unless his parents had a settlement there. N.D. REV. CODE § 50-0203 (1943); S.D. CODE § 50.0102(3) (1939); UTAH CODE ANN. § 17-5-60(5) (1953).

85. Similar problems have arisen under the family responsibility provisions of general assistance laws. For example, because of lack of legal status at common law most courts have held that illegitimate children are not entitled to the benefits of these statutes. See, *e.g.*, *Town of Plymouth v. Hey*, 285 Mass. 357, 189 N.E. 100 (1934).

86. *Inhabitants of Waldoborough v. Inhabitants of Friendship*, 87 Me. 211, 32 Atl. 880 (1895); *Washburn v. White*, 140 Mass. 568, 5 N.E. 813 (1886). For statutes codifying this rule, see OKLA. STAT. ANN. tit. 56, § 40(Sixth) (1950); VT. REV. STAT. § 7103(III) (1947).

87. *Town of Plainville v. Town of Milford*, 119 Conn. 380, 177 Atl. 138 (1935); *Town of Windham v. Town of Lebanon*, 51 Conn. 319 (1883). The Connecticut court has had difficulty determining the settlement of an illegitimate who is born in a state having a different rule than that of Connecticut. Compare *Inhabitants of Woodstock v. Hooker*, 6 Conn. 35 (1825), with *Town of Bethlem v. Town of Roxbury*, 20 Conn. 297 (1850).

88. *Inhabitants of Blackstone v. Inhabitants of Seekonk*, 62 Mass. (8 Cush.) 75 (1851) (dictum); *South Hampton v. Hampton Falls*, 11 N.H. 134 (1840); *Delavergne v. Noxon*, 11 N.Y.C.L. Rep. (14 Johns. R.) *334 (1817); *State ex rel. Merritt v. McQuaig*, 63 N.C. 550 (1869). One court has held that this rule will apply if the parents' marriage was void, on the ground that this makes the children technically illegitimate. *Wayne Township v. Porter Township*, 138 Pa. 181, 20 Atl. 939 (1890). To an argument that it should hold to the contrary for sentimental reasons, the court replied, "But I know of nothing so free from sentiment as the poor laws of this state." 138 Pa. at 183, 20 Atl. at 940. The rule stated in the text does not apply if there was any collusion to secure the birth of the child in any particular place.

If by the marriage of his natural parents the child is legitimated, then the rules regarding the settlements of legitimate children apply to him. *Town of Simsbury v. Town of Hartford*, 69 Conn. 302, 37 Atl. 678 (1897); *Inhabitants of Wellington v. Inhabitants of Corinna*, 104 Me. 252, 71 Atl. 889 (1908); *Town of Rockingham v. Town of Mount Holly*, 26 Vt. *653 (1854). See ME. REV. STAT. c. 94, § 1(III) (1954).

89. IND. ANN. STAT. § 52-147(c) (Burns 1951); IOWA CODE ANN. § 252.16(6) (1949); ME. REV. STAT. c. 94, § 1(III) (1954); MASS. ANN. LAWS c. 116, § 1 (Fourth) (1949); N.H. REV. LAWS c. 123, § 1(IV) (1942); N.J. STAT. ANN. §

However, the chances of family-splitting as a consequence of the principles of derivative settlement seem greatest in the case in which a widow with legitimate minor children remarries. This poses the problem of the stepfather's relationship to his family. At common law the stepfather is not liable for the support of his minor stepchild.⁹⁰ As a consequence, a legitimate child who has the settlement of his mother, though he takes by derivation a settlement which his mother may subsequently acquire in her own right,⁹¹ does not take the settlement which she acquires by derivation upon her remarriage.⁹²

This rule has now been changed by statutory provisions in a few jurisdictions,⁹³ and it would seem that it has also been altered by the typical provision of many settlement laws that a child takes the settlement of his mother if his father has none. Under a statute of this type there is authority that the provision applies to a new settlement which the child's mother acquires by derivation.⁹⁴ However, this type of statute provides only a partial solution to this problem. If the father has a settlement in the state it will be acquired by the child, and since it will be retained on the father's death it will not be affected by the

44:8A-13 (Supp. 1954); N.C. GEN. STAT. § 153-159(4) (1952); N.D. REV. CODE § 50-0203(2) (1943); OKLA. STAT. ANN. tit. 56, § 40(Fourth) (1950); S.C. CODE § 71-152(3) (1952); S.D. CODE § 50.0102(3) (1939); UTAH CODE ANN. § 17-5-60(4) (1953); VT. REV. STAT. § 7102 (1947).

Conceivably, a statute providing simply that a "minor" shall take the settlement of his parents could apply to an illegitimate child also. This is the viewpoint of the Minnesota court. *County of Stearns v. Township of Fair Haven*, 203 Minn. 11, 279 N.W. 707 (1938).

90. See PECK, *DOMESTIC RELATIONS* 247 (3d ed. 1930). This seems to be assumed in cases arising under the family responsibility laws. *Cf. Bradley v. Zimmerman*, 13 N.J. Misc. 580, 180 Atl. 241 (Sup. Ct. 1935).

91. See, e.g., *Inhabitants of Dedham v. Inhabitants of Natick*, 16 Mass. *135 (1819); *Burrell Township v. Pittsburg*, 62 Pa. 472 (1869).

92. The rule applies whether the child has, at the time of his mother's remarriage, his mother's settlement or that of his deceased father. *Town of Oxford v. Town of Bethany*, 19 Conn. *229 (1848); *Inhabitants of Freetown v. Inhabitants of Taunton*, 16 Mass. *52 (1819); *Spencer Township v. Pleasant Township*, 17 Ohio St. *31 (1866); *Trustees of Bloomfield v. Trustees of Chagrin*, 5 Ohio *315 (1832); *Borough of Northumberland v. Borough of Milton*, 9 Atl. 449 (Pa. 1887); *Wells v. Westhaven*, 5 Vt. *322 (1833). On the authority of *Rex v. Munden*, 1 Str. 190, 93 Eng. Rep. 465 (K.B. 1719), the English courts ultimately held that at common law a stepfather was not responsible for the support of his minor stepchild. *Tubb v. Harrison*, 4 T.R. 118, 100 Eng. Rep. 926 (K.B. 1790). Much earlier, however, the conclusion had been reached on somewhat similar grounds that the stepchild did not take the settlement of his stepfather on his mother's remarriage. *Parish of St. George v. Parish of St. Katharine*, Sess. Cas. 22, 93 Eng. Rep. 22 (K.B. 1714).

93. See N.J. STAT. ANN. § 44:8A-15 (Supp. 1954) (implies that minor child takes settlement of mother on her remarriage if in her custody); VT. REV. STAT. § 7099 (1947) (explicit provision).

94. *Inhabitants of Great Barrington v. Inhabitants of Tyringham*, 35 Mass. (18 Pick.) 264 (1836); *Inhabitants of Plymouth v. Inhabitants of Freetown*, 18 Mass. 197 (1822); *Hopkinton v. Warner*, 53 N.H. 468 (1873); *cf. City of Willmar v. Village of Spicer*, 129 Minn. 395, 152 N.W. 767 (1915). The Maine statute has now been amended to prevent the child from acquiring the settlement of his stepfather. See *City of Augusta v. Town of Mexico*, 141 Me. 43, 38 A.2d 822 (1944). This is also the effect of the present New Hampshire law. N.H. REV. LAWS c. 123, § 1(XI) (1942).

mother's remarriage.⁹⁵ Some statutes have corrected this situation by awarding the child the settlement of the mother upon the death of the father.⁹⁶

Since, in the absence of an explicit statutory provision to the contrary, an illegitimate child does not derive a settlement through his mother, her remarriage would not affect his settlement. In Connecticut, where the illegitimate child takes the settlement of his mother, the court has held that it changes with her remarriage.⁹⁷ In other jurisdictions, statutes awarding the illegitimate child the settlement of his mother have been variously construed as limited to the settlement which his mother had upon his birth,⁹⁸ or as extended to any settlement which she acquires by derivation.⁹⁹

As in the case of married women, the legally dependent status of the minor child is both an aid and a hindrance to his acquisition and retention of a settlement. While an absence during minority will not result in a loss of his derivative settlement,¹⁰⁰ neither may the minor add his residence in a locality prior to attaining his majority to a residence subsequent to that date in order to meet the statutory requirement for a settlement by residence.¹⁰¹

95. *Inhabitants of Walpole v. Inhabitants of Marblehead*, 62 Mass. (8 Cush.) 528 (1851). See also *City of Rockland v. Inhabitants of Lincolnville*, 135 Me. 420, 198 Atl. 744 (1938); cf. *Town of Newark v. Town of Sutton*, 40 Vt. *261 (1867) (if father had no settlement, child takes settlement of mother when father dies).

96. MASS. ANN. LAWS c. 116, § 1(Third) (1949); N.J. STAT. ANN. § 44:8A-12 (Supp. 1954); OHIO REV. CODE § 5113.05 (Supp. 1955); VT. REV. STAT. § 7101 (1947); WIS. STAT. § 49.10(2) (1953). The Massachusetts statute would appear to change the result in the *Walpole* and *Rockland* cases, *supra* note 95.

97. *New Haven v. Town of Newtown*, 12 Conn. 164 (1837). However, Connecticut follows the usual rule with regard to legitimate children. See the cases cited in note 92 *supra*.

98. *Inhabitants of Boylston v. Inhabitants of Princeton*, 13 Mass. *381 (1816) (under prior law); *Town of Dorchester v. Town of Deerfield*, 3 N.H. 316 (1825); *Town of Morristown v. Town of Fairfield*, 46 Vt. *33 (1873); *Town of Burlington v. Town of Essex*, 19 Vt. 91 (1846). Some of these cases appear to rely on a provision in the statute that an illegitimate child is to have the settlement of his mother at the time of his birth. MASS. ANN. LAWS c. 116, § 1(Fourth) (1952) provides that, "illegitimate children shall follow and have the settlement of their mother." Cf. *Inhabitants of Petersham v. Inhabitants of Dana*, 12 Mass. 428 (1815).

99. *City of Augusta v. Town of Mexico*, 141 Me. 48, 38 A.2d 822 (1944) (noting a change in the Maine law which the court reasoned was intended to accomplish this result). Cf. *Overseers of the Poor of Canajoharie v. Overseers of the Poor of Johnson*, 13 N.Y.C.L. Rep. (17 Johns. R.) *41 (1819) (under prior law).

100. *Treasurer & Receiver General v. Boston*, 255 Mass. 499, 152 N.E. 37 (1926). Maine has a statute which provides that an individual's loss of settlement will result in the loss of any settlements derived from him. ME. REV. STAT. c. 82, § 3 (1944). This clause does not apply to persons not dependent on the individual at the time his settlement is lost, e.g., to minors who previously have been emancipated. *Town of Winslow v. City of Old Town*, 134 Me. 73, 181 Atl. 816 (1935); *City of Bangor v. Inhabitants of Veazie*, 111 Me. 371, 89 Atl. 193 (1914). For a similar provision, see MASS. ANN. LAWS c. 116, § 5 (1952). See also VT. REV. STAT. § 7104 (1947) (derivative settlement lost three years after minor comes of age).

101. *Town of Poultney v. Town of Glover*, 23 Vt. *328 (1851). While the case involved residence prior to the time the minor achieved his majority, the reasoning

Difficulties such as those just described can be obviated by the adoption of statutes, already existing in some jurisdictions,¹⁰² which award the children the settlement of the parent with whom they in fact reside. If it is made clear that the statute applies to all of the members of the family group, whether adopted or illegitimate children, or the wife's children by a prior marriage, then the derivative settlement principle will preserve rather than split the unity of the family.

The need for a statutory change such as this is well-illustrated by the rules regarding emancipated children. The courts have uniformly held that an emancipated child takes the settlement of his parent, if any, at the time of his emancipation and does not take any settlement which the parent might acquire subsequent to this time.¹⁰³ As in other contexts involving the parent-child relationship, emancipation for settlement purposes may occur by means of the consent of the parent or by operation of law.¹⁰⁴ Of course, children are considered

of the decision would seem applicable to a residence prior to the date of a minor's emancipation in a state where an emancipated minor may acquire a settlement in his own right. See notes 106-07 *infra*.

102. See the statutes in Michigan, Minnesota, and Nebraska in note 84 *supra*. If the child resides apart from his parents, he should be given the settlement of the person with whom he lives. Of course, if the family is living together as a unit and the father has a settlement, this should control the settlement of the other members of the family.

103. *Town of Torrington v. Town of Norwich*, 21 Conn. *543 (1852); *Trenton v. Brewer*, 134 Me. 295, 186 Atl. 612 (1936); *Town of Liberty v. Town of Levant*, 122 Me. 300, 119 Atl. 811 (1923); *Inhabitants of Hampden v. Inhabitants of Brewer*, 24 Me. 281 (1844); *Inhabitants of Shirley v. Inhabitants of Lancaster*, 88 Mass. (6 Allen) 31 (1863); *Fremont v. Sandown*, 56 N.H. 300 (1876); *Salisbury v. Orange*, 5 N.H. 348 (1831); *Town of Niskayuna v. City of Albany*, 16 N.Y.C.L. Rep. (2 Cow.) 537 (1824); *Loyalsock Township Overseers v. Eldred Township Overseers*, 154 Pa. 358, 26 Atl. 313 (1893); *Town of Tunbridge v. Town of Eden*, 39 Vt. *17 (1866).

The rule of the Maine cases appears to have been changed by ME. REV. STAT. c. 94, § 1(II) (1944) (child takes derivative settlement of father until child comes of age). See also MICH. STAT. ANN. § 16.168 (1950) (derivative settlement not lost until person acquires new settlement in own right); MINN. STAT. ANN. § 261.07(3) (West Supp. 1954) (same); NEB. REV. STAT. § 68-115(3) (Supp. 1953) (same); N.D. REV. CODE § 50-0204(3) (Supp. 1953) (same). The New Hampshire law appears to have codified the rule of the cases. N.H. REV. LAWS c. 123, § 1(X) (1942).

104. HARPER, PROBLEMS OF THE FAMILY 499 (1952). For typical general assistance cases considering the question of emancipation for settlement purposes, see *Town of Torrington v. Town of Norwich*, 21 Conn. *543 (1852); *Town of Bozrah v. Town of Stonington*, 4 Conn. 373 (1822); *Inhabitants of Trenton v. City of Brewer*, 134 Me. 295, 186 Atl. 612 (1936); *City of Bangor v. Inhabitants of Veazie*, 111 Me. 371, 89 Atl. 193 (1914); *Inhabitants of Thomaston v. Inhabitants of Greenbush*, 106 Me. 242, 76 Atl. 690 (1909); *Inhabitants of Liberty v. Inhabitants of Palermo*, 79 Me. 473, 10 Atl. 455 (1887); *Inhabitants of Portland v. Inhabitants of New-Gloucester*, 16 Me. 427 (1840); *Inhabitants of Sumner v. Inhabitants of Sebec*, 3 Me. *223 (1824); *Inhabitants of Taunton v. Inhabitants of Plymouth*, 15 Mass. *203 (1818); *Adams v. Foster*, 14 N.Y.C.L. Rep. (20 Johns. R.) *452 (1823); *Overseers of the Poor of Toby Township v. Overseers of the Poor of Madison*, 44 Pa. 60 (1862); *Highland Township Poor District v. Jefferson County Poor District*, 25 Pa. Super. 601 (1904).

The New Hampshire and Vermont settlement laws contain a definition of emancipation. N.H. REV. LAWS c. 123, § 1(XI) (1942); VT. REV. STAT. § 7097

legally emancipated when they reach twenty-one years of age. Only the child over twenty-one who is compelled to continue in his parents' home because he is incapacitated or for any reason incapable of caring for himself is considered to be unemancipated.¹⁰⁵

Difficulties arise in connection with emancipated children who either continue to reside with their families or return to their families after a period of absence. Especially in the latter instance, if the child no longer takes the settlement of his parent or parents, the family may be split if the head of the family has acquired a new settlement in the meantime. The effects of this rule may be avoided in the case of children of age who voluntarily continue to reside in their parents' home because such children may acquire a settlement by residence in their own right at the same time that their parents acquire a settlement in the same locality. Whether minor children who are emancipated may acquire a settlement in their own right is not clear.

In the absence of an explicit statutory provision it has been held that emancipated minors may acquire a settlement by residence,¹⁰⁶ and some statutes so provide.¹⁰⁷ On the other hand, there are statutes ex-

(1947). The Vermont statute, which appears declaratory of the case law, provides: "Emancipated: a minor arriving at the age of majority, the marriage of such minor or the contracting of a relation inconsistent with the relation of parent and child by which thereby the parent loses all authority over the minor including the right to his services."

105. *Inhabitants of Winterport v. Inhabitants of Newburgh*, 78 Me. 136, 3 Atl. 48 (1886); *Inhabitants of Monroe v. Inhabitants of Jackson*, 55 Me. 55 (1867); *Town of Orford v. Town of Rumney*, 3 N.H. 331 (1825); *Overseers of the Poor of Alexandria v. Overseers of the Poor of Bethlehem*, 16 N.J.L. 119 (Sup. Ct. 1837); *Overseers of Washington v. Overseers of Beaver*, 59 Pa. Sup. Ct. Rep. (3 W. & S.) 548 (1842); *Town of Topsham v. Town of Chelsea*, 60 Vt. 219, 13 Atl. 861 (1887). It has been held that the exception does not apply if the disability occurs after the child has reached his majority. *Inhabitants of Buckland v. Inhabitants of Charlemont*, 20 Mass. (3 Pick.) *173 (1825); *Loyalsock Township Overseers v. Eldred Township Overseers*, 154 Pa. 358, 26 Atl. 313 (1893). These holdings ignore the reason for the rule, which is to prevent the separation of a family in which one of its members depends on the others for support. The rule that an incapacitated child who resides away from his parent does not take his settlement by derivation may be justified. *Inhabitants of Harrison v. Portland*, 86 Me. 307, 29 Atl. 1084 (1894).

There seems to be little support in the American cases for the English view that a child of age is not emancipated if he continues to reside in his parents' home. For an expression of the English view, see *The King v. Inhabitants of Roach*, 6 T.R. *247, 101 Eng. Rep. 536 (K.B. 1795). For a case typifying the American view, see *Inhabitants of Shirley v. Inhabitants of Lancaster*, 88 Mass. (6 Allen) 31 (1863). In a few instances the English view has been adopted by way of dictum. *Overseers of the Poor of Alexandria v. Overseers of the Poor of Bethlehem*, 16 N.J.L. 119 (Sup. Ct. 1837); *Overseers of Washington v. Overseers of Beaver*, 59 Pa. Sup. Ct. Rep. (3 W. & S.) 548 (1842). Both cases, however, involved mentally incapacitated individuals.

106. *Town of Milford v. Town of Greenwich*, 126 Conn. 340, 11 A.2d 352 (1940); *Town of Plainville v. Town of Milford*, 119 Conn. 380, 177 Atl. 138 (1935); *Inhabitants of Township of Marlborough v. Inhabitants of Freehold*, 50 N.J.L. 509, 14 Atl. 595 (Sup. Ct. 1888) (under prior law); *cf.* *Overseers of Washington v. Overseers of Beaver*, 59 Pa. Sup. Ct. Rep. (3 W. & S.) 548 (1842). See Annot., 5 A.L.R. 958 (1920).

107. ILL. ANN. STAT. c. 23, § 436-10(e), (f) (Supp. 1954); IND. ANN. STAT. § 52-147(h) (Burns 1951); MICH. STAT. ANN. § 16.168 (1950); N.H. REV. LAWS c.

PLICITLY to the contrary.¹⁰⁸ Some statutes, furthermore, restrict the acquisition of a settlement by residence to persons "of full age" and the courts have held that these statutes cannot be extended to minors "of age" by virtue of their emancipation.¹⁰⁹ A better solution to these problems might be achieved by extending the suggested rule that the child take the settlement of the parent with whom he resides to an emancipated child also. Even though the child is emancipated, if he is still part of the family group his settlement should be treated accordingly.

CONCLUSION

A textual statement, point by point, of the elements of settlement law, tends to oversimplify the issues that are presented in the typical settlement case. Determining an individual's settlement may well involve a decision regarding an original derivative settlement, perhaps changed by the acquisition of another derivative settlement, which in turn may have been changed by the acquisition of a settlement by residence. Judicial inquiry is further complicated by the fact that a derivative settlement, if it is not lost, may be passed forward from generation to generation much like an inheritance of real estate.¹¹⁰

Not only is settlement law complex but, in this country, it has largely been made by the courts in the New England and Middle Atlantic states.¹¹¹ This phenomenon may be attributed to the fact that these states were settled first and, therefore, were more subject to the English influence. This is particularly true of New England. In these jurisdictions the bar appears to have inherited the English tradition

123, § 1(X) (1942) (in certain cases); N.J. STAT. ANN. § 44:8A-14 (Supp. 1953); OHIO REV. CODE ANN. § 5113.05 (Supp. 1955); VT. REV. STAT. § 7103 (1947); WIS. STAT. § 49.10(6) (1953) (upon marriage). See MINN. STAT. ANN. § 261.07(3) (West Supp. 1954); NEB. REV. STAT. § 68-115(3) (Supp. 1953); N.D. REV. CODE § 50-0204(3) (1943), all of which imply that an emancipated minor may acquire a settlement in his own right. Some statutes authorize any minor who has no settlement to acquire one in his own right. IND. ANN. STAT. § 52-147(e) (Burns 1951); OKLA. STAT. ANN. tit. 56, § 40(Fifth) (1950); S.D. CODE § 50.0102(5) (1939); UTAH CODE ANN. § 17-5-60(6) (1953).

108. MASS. ANN. LAWS c. 116, § 1(First) (1949); S.C. CODE § 71-152(4) (1952). See also the statutes in note 107 *supra* which authorize minors, whether emancipated or not, to acquire a settlement.

109. County of Clay v. County of Palo Alto, 82 Iowa 626, 48 N.W. 1053 (1891) (under prior law); Inhabitants of Thomaston v. Inhabitants of Greenbush, 106 Me. 242, 76 Atl. 690 (1909); Town of Hartford v. Town of Hartland, 19 Vt. *392 (1847) (under prior law); Town of Grand Chute v. Milwaukee County, 230 Wis. 213, 282 N.W. 127 (1938) (under prior law). *But cf.* Inhabitants of Lowell v. Inhabitants of Newport, 66 Me. 78 (1876) (under earlier form of the statute).

110. In Town of Marlborough v. Town of Hebron, 2 Conn. 20, 22 (1816) the court said, "A settlement by parentage, is, in most respects, analogous to an interest acquired by inheritance. . . ."

111. The only other jurisdictions in which there has been a fair amount of settlement litigation at the appellate level are Iowa, Minnesota, Wisconsin, and the Dakotas.

of litigating settlement questions ad infinitum,¹¹² and the decisions bear the imprint of English settlement doctrine.

The consequences of the English influence should not be overlooked. Because of the normal influence of the doctrine of stare decisis and perhaps because settlement cases are so very complex, courts in other states tend to follow the lead of the eastern cases. For this reason, a contemporary settlement opinion reads very much like a settlement opinion of 1795.¹¹³

In this connection, it may be noted that interesting problems of interpretation are presented by statutes like those in New York and Pennsylvania. These states, while not abandoning the concept of settlement, have simplified the statute by requiring a state residence only, and by abandoning earlier statutes containing very detailed provisions.¹¹⁴ Just how the courts will deal with such statutes has not yet been made clear, though it would seem that the many problems of acquired and derivative settlements cannot be entirely eliminated simply by ignoring them.

If the settlement requirement is retained, it would seem preferable to ameliorate the harsh effects of the settlement laws through statutory changes specifically directed to the undesirable features of the present system. The first point to be made is that settlement should not affect the receipt of relief; assistance ought to be given to everybody without discrimination. The settlement laws would then serve, as is now the case in some jurisdictions, solely to allocate the cost of the relief that has been given. Such an approach, it should be noted, will require a change in attitude on the administrative as well as the legislative level.

112. See the comment of Lord Mansfield in *The King v. Inhabitants of Harberton*, 1 T.R. 139, 99 Eng. Rep. 1017, 1018 (K.B. 1786), who termed the poor law litigation in New England may result from the fact that general relief in those states was from the first the responsibility of small, local units of government. The meagre resources of the typical New England town may have led to the belief that relief costs could ultimately be reduced by litigating all doubtful points. See RAUP, *INTERGOVERNMENTAL RELATIONS IN SOCIAL WELFARE* 184, 191-92 (1952) (similar experience in Minnesota).

113. It should also be noted that the present nature of the settlement statutes in the New England states facilitates the continuation of ancient concepts in this area. With the exception of Rhode Island, these states now have statutes regulating the law of settlement in detail. In other jurisdictions where such detailed statutory prescriptions do not exist, courts and administrators must turn to very early decisions by the New England courts which date from a time when the settlement statutes of these states were also very brief. The alternative is to rely on equally ancient cases decided under the comparable early form of the English law.

114. N.Y. SOCIAL WELFARE LAW §§ 62, 117; PA. STAT. ANN. tit. 62, § 2509 (Supp. 1954). However, the Pennsylvania statutes applicable to county institution districts, which have the ultimate responsibility for persons not eligible under the state-supervised general assistance program, still contain detailed provisions applicable to settlement. See Mandelker, *The Settlement Requirement in General Assistance*, 1955 WASH. U.L.Q. 355, 367 n.49.

Furthermore, a statute would seem to meet the objectives stated in this article if it would predicate the acquisition of a settlement on residence alone without reference to the intent or living habits of the individual and without any qualifications based on incapacity. The difficulties involved in determining a settlement would be further obviated if a settlement were necessary only on the state level. A return to the concept that a settlement is not lost until another is obtained would help prevent situations in which an applicant for relief has no settlement in any locality. Finally, if the settlement of the father, or of the mother if the child has no father, were attributed to all of the other members of the family unit, the potentialities of the principles of derivative settlement for family-splitting would be removed.

Settlement laws, in spite of predictions to the contrary,¹¹⁵ show no signs of disappearing in the general assistance program. This article might well end with an accounting of the human consequences of this system. It has been pointed out that large scale internal migration has become a permanent feature of the American social scene and that individuals generally migrate, not to secure better treatment as public assistance recipients, but to seek better economic opportunities. This article has indicated, however, that migrants are particularly disadvantaged in qualifying for general assistance because of the difficulties they face in attempting to acquire settlement. Because they penalize personal initiative, the settlement statutes would hardly seem to have a place in twentieth-century America.¹¹⁶

115. Earlier hopes for the quick demise of the institution of settlement appear to have been too sanguine. See 4 BURN, *JUSTICE OF THE PEACE* i (30th ed., Davis 1869): "the Law of Settlement is daily becoming of less importance."

116. The Missouri statutes still contain provisions authorizing a county-administered program of poor relief, but the statutory provisions are quite sketchy. MO. ANN. STAT. §§ 205.580-760 (Vernon 1949). The settlement statute, for example, merely defines an "inhabitant" who is eligible for relief as a person who has "resided" in the county twelve months. MO. ANN. STAT. § 205.600 (Vernon 1949). For this reason, most of the problems raised in this article have not been resolved by the Missouri statute. In practice, most general assistance is dispensed, with state supervision, under the terms of the public assistance act, although there are no provisions in that statute expressly defining residence for this program. MO. ANN. STAT. §§ 207.010, 208.201 (Vernon 1949). Letter from John F. Pletz, Chief, Missouri Department of Public Health and Welfare, Division of Welfare, Bureau of Standards and Procedures, to the author, February 15, 1955.