

No. 14321

Supreme Court of Illinois

Payne

vs.

Durham

71641  7

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STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

14331

No. 256.

Payne
vs

Dunham

14862

Proffers

Pleas before the Honorable
 Judge of the thirteenth Judicial Circuit of the
 State of Illinois and Presiding Judge of the
 County Court of the McHenry County Circuit Court at a
 Court begun and held at the Court
 House in Woodstock on Monday the
 14th day of October (A.D. 1861) in the
 year of Our Lord one thousand eight hundred
 and fifty one Judge Grant Goodrich of the
 Superior Court of Chicago presiding through
 the first week Present

Now Grant Goodrich, Clerk
 Lewis P. Moon States Atty.
 Lewis Ellsworth Sheriff.

On the 17th day of May 1861
 Payne appellee in a suit before H. P. D.
 McArthur in which the town of Dunham
 in said McHenry County was Plaintiff filed
 his appeal Bond in the Circuit Clerk's
 Office in said County which said appeal
 Bond has been lost and by the most
 diligent search can not be found

And therefore was issued out of said
 Circuit Clerk's Office a Writ of Habeas Corpus

to Ward P. M. Arthur J. P. which said writ
is in words and figures as follows to wit

State of Illinois
McHenry County J. P. The People of the

State of Illinois to
Ward P. M. Arthur Esquire one of the
Justices of the Peace of said County and
a constable in and for said County: Greeting

Whereas in a certain cause lately
pending before the said Justice of the Peace
wherein the town of Dunham was
Plaintiff and Waldo Payne Defendant
Judgment has been given by you against
the said Defendant as it is said from
which Judgment an appeal has been
taken by the said Payne to the Circuit
Court of said County and a bond duly
approved and filed in the Office of the
Clerk of said Circuit Court

Therefore We command and enjoin
you the said Justice of the Peace and
Constable to suspend all further proceedings
on said Judgment and cease from further
molesting the said Waldo Payne on occasion
thereof until the further order of said Circuit
Court.

Witness E. A. Russell clerk
of said Court and the Seal

3

Seal
(Endorsed.)

Sheweth at Hartford in said
County this 17 day of May
A.D. 1861

C. H. Russell clerk

State of Illinois, McHenry County ss. I have
duly served this writ by sending the same to Wm.
P. McArthur this 29 day of May A.D. 1861
This service 50. mileage 85. Ret. 10 = \$1.45. Lewis Ellsworth
Sheriff. P. H. D. Taylor. Filed in the Circuit Court
this 29 day of May 1862 C. H. Russell clerk

And thereafter to wit on the 11th day of
June A.D. 1861 was filed in the clerk's
office of said Circuit Court a Transcript
of the proceedings in a case wherein the
Town of Durham is Plaintiff and
Waldo Payne Defendant before W. P.
McArthur J. P. which said Transcript is
in words and figures as follows to wit;
Justice Court Chemung McHenry County
Illinois

The town of Durham }
vs }
Waldo Payne 1861 } action - Debt
Demand \$100.

I David Gilbert do hereby enter
myself security for all costs that may
accrue in the above entitled cause Wm
my husband and seal this 17th day of April

4
A.D. 1861 Signed D. W. Gilbert. Seal 1861 April 17th.
Summons issued returnable April 25th at
two o'clock P.M. delivered to Wm G. Billings
constable returned served by copy April 18th.
1861 Fees 1.05 April 25th just called Plaintiff,
in court no appearance by Defendant cause
continued to May 7th 1861 at two o'clock P.M.
Second summons issued delivered to Wm G.
Billings constable returned personally served
May 2^d 1861 Fees \$1.05 May 7th just called
Plaintiff appear and answer Defendant
appear by his Counsel A. S. Marchett
to object Plaintiff's demand for bringing
Sanford Huff a Pauper into the town of
Dunham by Defendant and leaving him
there. Defendant by his Counsel makes a
motion to dismiss the suit upon the ground
of its not having been legally brought Motion
to dismiss overruled Defendant withdrew his
appearance Cabino Van Curen, Seymour
Bachus and William G. Billings were sworn
as witnesses for the Plaintiff, and claimed
their fees Sarah Nichol, Richard Lashbrook
and O. N. Thompson & wife were in attendance
as witnesses for Plaintiff, and claimed
their fees. After hearing the testimony
the Court considers that the Plaintiff
have and recover of the Defendant
the Sum of one Hundred Dollars and

5 the penalty and the costs of the Suit taxed at
Thirteen Dollars and sixty three cents
and that they have Execution therefor

Debt 100.00 costs 13.63. W. P. McArthur J.P.
Impounded on me by Harvey Tyler
Deputy Sheriff May 29th 1861
W. P. McArthur. J.P.

State of Illinois
McHenry County Ill. I the subscriber a Justice
of the Peace in and for
the said County do certify that the above
transcript and the papers annexed contain
a full and perfect statement of all the
proceedings and of the Judgment before me
in the above Entitled Cause

Dated this fifth day of June
A.D. 1861

W. P. McArthur (Seal)
Justice of the Peace

Total Costs \$ 14.98
(Endorsed) filed June 11. A. D. 1861

Thereafter to wit on the 24th day of October
A.D. 1861 the following among other proceedings
were had in said Court and ordered to be
entered of Record to wit:

Town of Danbury }
Holds Payne } appeal
and now

6

~~Comes the Plaintiff by Kerr and Kerr his motion~~
~~it is ordered that this cause be continued~~
 comes the Defendant by Hanchett and enters
 his motion to dismiss for want of Jurisdiction
 & proper parties. And thereafter comes the
 Plaintiff by Kerr and the Defendant by
 Hanchett and issue being joined by agreement
 Submit this cause to the Court for trial
 without the intervention of a Jury

And thereafter to wit on the 26th day of
 October A.D. 1861 the following among other
 proceedings were had to wit;

Town of Dunham }
 v } Appeal
 Wade Payne }
 Comes the Plaintiff
 by Kerr and the Defendant by Hanchett
 and the Court being fully advised upon
 the proofs herein submitted finds the issue
 for the Plaintiff and assesses his damages
 at the sum of One Hundred Dollars
 It is therefore ordered and considered
 that the Plaintiff have and recover of
 the Defendant the sum of One Hundred
 Dollars his damages so assessed as aforesaid

7
as also his costs and charges herein expended
and that he have execution therefor

Whereupon the Defendant prays an appeal
which is allowed on condition that he file
a Bond and the Bill of Exceptions within
thirty days the Bond to be approved by the
Clerk.

And thereafter to wit on the 22^d day
of November A. D. 1861, was filed in
the Office of the Clerk of said Circuit Court
aforesaid an appeal Bond which said
Bond is in words and figures as follows
to wit:

Know all men by these Presents
that We Huld Paine and Ira Slocom
Murtio Steers are held and firmly bound
unto the Town of Danham in the penal sum
of Two Hundred Dollars lawful money of
the United States for the payment of which
well and truly to be made we bind ourselves
our heirs and administrators jointly severally
and firmly by these presents

Witness our hands and seals this 20th day
of November A. D. 1861

The Condition of the above obligation
is Such whereas the said Town of Danham
did on the 24th day of October A. D. 1861
before the Circuit Court of the County of

McHenry recover a judgement against the above bounden Waldo Payne for the sum of One Hundred Dollars and cents and costs of Suit from which said judgement the said Waldo Payne has taken an appeal to the Supreme Court of the State of Illinois And if the said Waldo Payne shall prosecute his appeal with Effect and shall pay whatever judgement may be rendered by the Court upon dismissal or trial of said appeal then the above obligation to be void otherwise to remain in full force and Effect

Taken and approved } W. W. Payne
 by me this 22^d } J. A. Stocorn
 day of Nov. AD 1861. } M. D. Steers
 C. H. Russell clerk

(Endorsed) filed Nov 22. 1861. C. H. Russell clerk

And thereafter to wit on the 18th day of April AD 1862 was filed in the Office of the Clerk of said Court a Bill of Exceptions in the above Entitled cases, which is in words and figures as follows to wit;

McHenry Circuit Court } McHenry County
 October Term 1861 } State of Illinois

The Town of Durham

Waldo Payne

Appeal

Be it Remembered

That on the day of October 1861 the same being one of the days of the October Term 1861 of said Court the above cause was brought on to be heard upon the allegations of Counsel and proofs and the following among other proceedings were had the cause having been submitted to the Court without the intervention of a jury It was admitted upon the part of the Defendant that he the said Defendant did on or about the ^{24th} day of April 1861 take Sanford Keuff which was the child in question from the village of Woodstock in the Township of Dorr County of McHenry to the Township of Durham in said County and leave it there in the door yard of C. H. Thompson

The Plff. then introduced Sabine Van Curen who being sworn testified as follows That Mrs Keuff the mother of the child in question brought the said child to his Hotel in Woodstock sometime in March 1861 that she stayed with it at his Hotel nearly two weeks and paid for her and the child's Board while she

10 Stayed there and had money left did not know
how much That after she had been there
about two weeks she went away and left
the said child at his Hotel without any
means of support that he kept the said
child about six days after she had so left
and notified the Supervisor and poor
Master of the Township of Dorr that
they would have to see to the support of
the said child That after the child had been
so left about six days Walter Payne the
Defendant ~~in this suit~~ drove up to his
Hotel and asked him the witness to help
bring the child down from the room and
put or load it into the wagon which
he (witness) did when Payne drove away
with the said child which was the last
he (witness) saw of the child. That Payne
kept a Livery Stable at Woodstock that he
did not have any conversation with the
said Payne about the taking away
of the child than as above stated. That
said child was about 18 years old idiotic
and helpless was unable to walk stand
or feed itself and required a great deal
of care and attention did not know of
any means of support belonging to
said child.

11

Prentice Prooman was then introduced and sworn for the Plff. who testified as follows. That he was present when the child was put into the wagon of the Defendant did not hear the defendant say why he took the child and did not know why he took it remembers when the child and its mother came to the Hotel, C.A. Thomas came to the Hotel the day they came and told him (witness) that there was a woman and child at the Depot who wanted to get to a Hotel and could not get there without assistance that he (witness) then went to the Depot and found the woman and the child in question and helped bring them up to the Hotel. That the mother of the child was there about two weeks and the child nearly three weeks.

The plff. then introduced Ira Slocom who being sworn testified as follows. That he was at the time the child was so taken to the town of Dunham the Supervisor of the town of Dorr did not employ Deft. to take the child there never heard Deft. say who did employ him. Heard Deft. say that he had to fight the woman to get him into Thompson's door yard. That he witness was notified as Supervisor of the Town of Dorr by

12 Van Curen to take charge of the child
in question

The Plaintiff then introduced P. N.
Thompson who being sworn testified as
follows That the child in question was
left in his door yard in the town of
Durham about the ~~24th~~ ^{24th} day of April 1861
was about 18 years old a helpless idiot
without any means of support and
incapable of supporting itself and was
at the time of this trial a town charge
upon the town of Durham, That the
morning before the mother and child got off
the cars at the Depot in Woodstock he (witness)
saw them get on the cars at Harwood in the
township of Chemung that he was told that
they were taken from the town of Durham
to Harwood by two men by the name of Country-
man and Stiles that he knew by reputation
that the father and mother of the child had
formerly lived in the town of Durham that
the father had left the family there and
gone to parts unknown that the mother
had afterwards left taking with her
the child in question leaving other
children of the same family without
means of support and which became
town charges that all but one were

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taken by the town authorities and bound out and that one had been a town charge ever since upon the Town of Dunham That the mother had been gone a year and a half or two years with the child in question That the Town of Dunham had taken care of its own Poor seven or eight years when the Plff closed its case Whereupon the Deft. introduced Lyman Packus who being sworn testified as follows That the father and the mother of the child in question had moved into the Town of Dunham about four years and a half ago and bought a house and lot in said town and occupied the same with their family as a Residence. That about two years and a half ago the mother of the family and of the child in question left the family in the house without any thing to eat and without furniture except an old bed quilt and part of an old straw bed and took with her Sanford Huff the child in question and was gone about two or three months when she returned bringing the child with her and stayed two or three weeks when she again left with the child and has not been back since except she was back at the she got on the case at Harwood. That the children left became

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town charges on the town of Dunham
two of them having been bonded out by
the town authority, and one still remaining
a charge upon said town of Dunham. That
the father left before the mother did not
know where they were or had been supposed
from what he had heard that the mother
had been wandering around from place
to place. That when she returned after having
been gone the two or three months another
family was in the house that he the
witness and Asa Farnum had at the time
they took the children after she first left
taken away the quilt and old straw bed

Asa Farnum was then introduced and
sworn upon the part of the defendant and
testified as follows That the father and mother
of the child in question came to the township
of Dunham about four and a half years ago
and bought property there resided upon it for
over two years, that the father left for parts
unknown that shortly afterwards and about
two and half years ago the mother left taking
with her the child in question and was gone
two or three months when she returned bringing
with her the child That another family was
in the house formerly occupied by them
That the town of Dunham had levied

15- upon and sold the property formerly owned and occupied by the father of the child with his family by virtue of an attachment in favor of the said Town. That he did not know when the father or the mother of the child in question were whilst they were so gone nor does he know when they are now. That there were three or four other children all of them were taken charge of by the town of Durham and two or three bound out by the town of Durham and are still remaining a town charge upon the Town of Durham. That the child in question had no means of support* which was all the evidence introduced on the trial of this cause whereupon the Court gave judgement for the Plaintiff and against the Defendant for one Hundred Dollars and costs to the giving of which judgement said Defendant then and there excepted.

* It is hereby stipulated and agreed that the act to provide for the support of paupers in Bureau and McHenry counties, approved Feb 10. 1850 was offered in evidence on the trial of said cause and was on the trial of said cause admitted to have been infred in McHenry County for the past eight years.

The above Bill of Exceptions is hereby

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agreed to and the signing the same by the Judge
of the Court is hereby waived

Joslyn & Marchett
for Defts.
Church & Herr
Attys for Plaintiff

(Entered) Filed Apr 18. 1862
C. H. Russell clerk

State of Illinois
McHenry County of Sp.

I Charles H. Russell
Clerk of the Circuit Court
in and for said County in the State aforesaid
do hereby certify that the above and foregoing
is a true and complete copy of the Record of
this Court in the above entitled cause as appears
by diligent examination thereof

In Witness whereof I have
hereunto set my hand and seal
of said Court at Woodstock this
the 19th day of April A.D. 1862
C. H. Russell clerk.



Recd \$4 00

256

W. A. Payne

vs
The Town of Dunham

Appeal from McHenry

Filed April 20. 1862
L. C. Keland
Clerk.

State of Illinois } Third Division
Supreme Court } April Term 1862

Waldo Payne
Plff in Error

vs } Appeal from
Town of Danham } In Henry
Def in Error

And the said Plff
by H S Hammett says that there
is manifest error in the record
in this cause to wit

- 1 The Court Erred in rendering
Judgement in this cause without
disposing of the motions to dismiss
- 2 The Court Erred in rendering judgement
because there was no declaration
upon which a penal action could
be maintained as set out in
the pleading and Transcript
of the Magistrate
- 3 The Court Erred in rendering
Judgement upon the evidence

Supreme Court & Grand Jurors

April Term 1862

John of Denmark
at Appellee

Waldo Puzon
Appellant

} Appeal from the Hon.

And the said Appellee by Church &
Kerr Attys. comes and argues the
wrong & injury done and says that in
the record and proceedings of the said
court is not any such error
as can be said of said Appellee's
assignment of error allowed

~

Robert A. Kerr
Attys for Appellee

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1862, AT OTTAWA.

WALDO PAYNE,
vs
TOWN OF DUNHAM, } *Appeal from McHenry County.*

Page
of Record.

This is a suit, purporting to be brought by the town of Dunham against Waldo Payne, before a magistrate, to recover a penalty for bringing a pauper into the said town of Dunham, by virtue of the law approved February 10th, 1853, relating to paupers in Bureau and McHenry counties.

3 Security for Costs.

4 Manuscript of the magistrate showing that defendant in court
5 below, by his attorney, appeared and made objection to plaintiff's demand for bringing Sandford Huff, a pauper, into the town of Dunham; also the defendant in the court below moved the court to dismiss the suit for want of jurisdiction. Motion overruled. Defendant withdrew his appearance. Magistrate rendered a judgment in favor of plaintiff for \$100; the amount of penalty.

6 7 Motion by defendant in court below renewed to dismiss the suit for want of jurisdiction and for want of proper parties. Motion not disposed of. Jury waived and cause submitted to the court.

Judgment rendered for the plaintiff, in court below, for full amount of penalty, \$100, and costs.

Defendant excepted and prayed an appeal.

7 Bond filed.

9 Bill of exceptions recites that it was admitted by the defendant in the court below that he took the child in question on, or about the 24th day of April 1861, into the township of Dunham, and left it there. That the plaintiff proved by VanCuren that the mother of the child in question brought it to his hotel in Woodstock some time in March, 1861. That she stayed with it at the hotel

nearly two weeks, and paid for her own and the child's board, whilst she stayed there, and had money left, did not know how
 9 much. That after the mother had been there two weeks she went away and left the child at his hotel without any means of support. That he kept the child two days after she had so left; he notified the supervisor and poormaster of the town of Dorr that they would have to see to the support of said child. That after the child had been there about six days after she so left, Waldo Payne drove up to his hotel, and witness helped him load the child into
 10 the wagon, when Payne drove away, which was the last he saw of the child. That Payne kept a livery stable in Woodstock, he had no conversation with Payne. That the said child was about eighteen years of age, idiotic and helpless—was not able to walk, stand or feed itself, &c., knew of no means of support belonging to said child.

11 The evidence of Prentice Bowman shows he was present when the defendant put the child into the wagon, did not hear him say why he took it; he helped bring the child from the cars to the hotel; the mother was there two weeks, the child three weeks.

12 By Ira Slocum, That he was supervisor of the town of Dorr when the child was taken; did not employ defendant to take the child there; never heard defendant say who did employ him to take it there; heard him say he had to fight the women to get it into Thompson's door yard; was notified as supervisor of Dorr, by Van Curen to take charge of the child.

By O. H. Thompson, that the child was left in his dooryard in the town of Dunham, about the 24th day of April, 1861; was about eighteen years old, a helpless idiot, without means of support and incapable of supporting itself, and was at the time of the trial of this suit a town charge on the town of Dunham. That the morning before the mother and child got off the cars at Woodstock he (witness) saw them get on the cars at Harvard, in the township of Chemung. That he was told they were taken from the town of Dunham to Harvard by two men by the name of Countryman and Styles, that he knew by reputation that the father and mother of the child had formerly lived in the town of Dunham; that the father had left the family and gone to parts unknown; that the mother had afterwards
 13 left, taking with her the child in question, leaving other children of the same family without means of support, and which became town charges; that all but one were taken by the town authorities and bound out, and that that one had been a town charge upon the town of Dunham ever since; that the mother had been gone about a year and a half or two years with the child in question; that the town of Dunham had taken charge of its own poor for seven or eight years.

Page of R. The defendant proved by Lyman Backus that the father and mother of the child in question, moved into the town of Dunham about four years and a half ago, and bought a house and lot in said town, and occupied the same with their family as a residence. That about two and a half years ago the mother of the child left the family in the house without anything to eat and without furniture, except an old quilt and part of an old straw bed, and took with her the child, and was gone two or three months when she returned, bringing the child with her, and stayed two or three weeks, when she again left with the child and has not been back since, except she was back at at the time she got on the cars at Harvard. That the children left
14 became town charges in the town of Dunham, three of them having been bound out by the town authorities, and still remain a charge upon the town of Dunham. That the father left before the mother did; did not know where they were or had been, but supposed from what he had heard that the mother had been wandering about from place to place. That when she returned after having been gone two or three months, another family was in the house formerly occupied by the Huff family. That witness and Asa Farnham had taken away the quilt and straw bed.

By Asa Farnham that the father and mother of the child in question came to the town of Dunham about four and a half years ago; bought property there and resided upon it for over two years when the father left for parts unknown. That shortly afterwards the mother left with the child and in two or three months returned with the child. That another family was in the house formerly occupied by
15 them. That the town of Dunham had levied upon and sold the property formerly occupied by the father of the child with the family, by virtue of an attachment in favor of said town. That he did not know where the mother and father were whilst they were gone, nor does he now know where they are; that there were three or four other children; all of them were taken charge of by the town of Dunham, two or three of them were bound out by the town and one still remaining a town charge.

A stipulation that the act to provide for the support of paupers in Bureau and McHenry counties, approved Feb. 10 1853, was offered in evidence in the trial of said cause, and was in the trial of said cause admitted to have been in force in McHenry county for the past eight years.

ASSIGNMENT OF ERRORS.

1st. The court erred in rendering judgment in this cause without disposing of the motions to dismiss.

2nd. The court erred in rendering judgment because there was no declaration upon which a penal action could be maintained, as set out in the pleadings and transcript of the magistrate.

3rd. The court erred in rendering judgment upon the evidence.

4th. The court erred in rendering judgment in manner and form aforesaid.

5 The court erred in not sustaining the motion to dismiss

POINTS FOR PLAINTIFF IN ERROR.

1st. The declaration in this case was insufficient to give the justice jurisdiction, because it nowhere sets up that Payne left the pauper in the town of Dunham knowing it to be a pauper, nor does it anywhere negative the lawful settlement of the pauper in the town of Dunham at the time it was taken there by Payne.

Rev. Stat. Ill., sec. 16, p. 187.

2d. There was no proof of the townships of the county of McHenry adopting separate support in the manner prescribed by section 1 of Revised Statutes, page 190, nor in any other manner.

3d. The evidence shows that the child's last place of residence was in the town of Dunham, it taking its residence by derivation from the last place of settlement of its parents.

Huntington v Oxford 4 Day Conn 189
Salisbury v Fairfield 1 Root - 131
Warwick v Windham 1 Root - 232
Quincy v Vernon 17 Johns 57
Stacy v Oaks 20 - 282
Quincy v Middle town v Kingston 1

4th. The child could not gain a settlement of its own. Having proved a former settlement of the parents of the child in the town of Dunham, in contemplation of law that settlement is the last one, unless a later one is proven affirmatively by the town of Dunham, and that absence for any length of time cannot create any presumption that the parents had acquired a settlement elsewhere.

Huntington vs Oxford 4th Dec 189
~~Inhabitants of Dighton~~
Somerset vs Dighton 12 Mass 383
Rea vs Wakefield 5 East 173

5th. A settlement once gained continues until a new one is acquired.

Chelsea vs Malden 4th Mass 131
Dorchester vs Belvidere 10 ~ 411
Lauduff vs Atkinson 8 CrM 532

6th. This being a penal action, all the requirements of the law, as to the form of action, the declaration and proofs, must be strictly complied with.

H. S. HANCHETT, Attorney.

52 250

Waldo Payne

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Dunham

Applied from
McHenry

Filed Apr. 29-1862

L. Leland
Clark

H. S. Haughtell
for Ref

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

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vs
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6 7 Motion by defendant in court below renewed to dismiss the suit for want of jurisdiction and for want of proper parties. Motion not disposed of. Jury waived and cause submitted to the court.

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A stipulation that the act to provide for the support of paupers in Bureau and McHenry counties, approved Feb. 10 1853, was offered in evidence in the trial of said cause, and was in the trial of said cause admitted to have been in force in McHenry county for the past eight years.

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3d. The evidence shows that the child's last place of residence was in the town of Dunham, it taking its residence by derivation from the last place of settlement of its parents.

Huntington vs Oxford 4th Day Conn 189
Salesbury vs Fairfield 1 Root - 131
Armsick vs Bindham 232
Overseer of Vernon vs Smithville 17 Johns 59
Adams vs Oaks 20 - 282
Overseer of Marbletown vs Kingston - - 1

4th. The child could not gain a settlement of its own. Having proved a former settlement of the parents of the child in the town of Dunham, in contemplation of law that settlement is the last one, unless a later one is proven affirmatively by the town of Dunham, and that absence for any length of time cannot create any presumption that the parents had acquired a settlement elsewhere.

Huntington v Oxford 4 Day Conn 189
Somerset v Dighton 12 Mass 383
Re v Wakefield 5 East 173

5th. A settlement once gained continues until a new one is acquired.

Chelsea v Malden 4 Mass 131
Townshend v Billerica 10 - - 411
Danvers v Atkinson 8 CrA 532

6th. This being a penal action, all the requirements of the law, as to the form of action, the declaration and proofs, must be strictly complied with.

H. S. HANCHETT, Attorney.

Waldo Payne

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Town of Durham

Appeal from Mr. Henry

Filed Apr 29, 1842

J. Leavelle
clerk

H. S. Haughton