

THE TOWN OF DORCHESTER

vs.

THE TOWN OF DEERFIELD.

Under the statute of January 1, 1796, illegitimate children retain the settlement of their mothers, at the time of their birth, and do not change their settlements with the mothers, if the latter gain a new one.

ASSUMPSIT for the support of two children, paupers, alleged to be settled in the town of Deerfield.

The cause was tried here, at November term, 1824, upon the general issue; when it appeared, that one of the paupers was of the age of nine years, and the other of the age of seven years; and that they were the illegitimate children of *Susanna Thurston*, who, at the time of their birth, had her legal settlement in the town of Deerfield. In 1821 the said *Susanna* was married to *Henry Lillis*, who had his settlement in the town of Dorchester. It also appeared, that the said *Henry* and *Susanna* had lived together in Dorchester for more than twenty years, as man and wife; and she has had seven children, reputed to be the children of the said *Lillis*.

On the part of Deerfield, it was contended, that these children, being illegitimate and living with the mother at the time of her marriage, changed their settlement with her upon that event; but the court being of a different opinion, a verdict was taken for the plaintiff, subject to the opinion of the court upon the foregoing case.

Noyes, for the plaintiff.

Sullivan, for the defendant.

By the court. We are of opinion, that illegitimate children retain the settlement of their mothers, at the time of their birth, until they acquire one of their own, and do not change their settlements with their mothers, when the latter acquire a new one. The statute enacts, that "legitimate children shall have the settlement of their father, if he shall have any such within this state, until they gain a settlement of their own." But "illegitimate children shall have the settlement of their mother at the time of their birth, if she shall have any within this state." 1 N. H. Laws, 362. Legitimate children have always been under-

stood to follow the settlement of the father, until emancipated. But illegitimate children have the settlement of the mother at the time of their birth, by the express words of the statute, and have never been understood to follow the settlement of the mother, if she acquire any new one afterwards. 13 *Mass. Rep.* 381, *Boylston vs. Princeton*.—1 *Pick.* 144.—12 *Mass. Rep.* 429.

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There must, therefore, be

Judgment on the verdict.



RUFUS PARISH vs. WALTER HARRIMAN.

Where a sheriff, in his return of an extent of an execution upon land, returned "that the debtor, having gone to parts unknown, so that since judgment he could not be found, or notified, and no person appearing to represent him, I chose on his behalf an appraiser, *A, B.*" &c. The extent was held to be sufficient to pass the estate.

This was a writ of entry tried here, upon the general issue, at May term, 1825. The demandant claimed to hold the land by virtue of an extent of an execution upon the demanded premises, and showed, in evidence, a judgment in his own favor against *David Burnham*, rendered in the common pleas, in Strafford county, January term, 1820, an execution issued upon the judgment, and an extent of the execution upon the land, as the estate of *Burnham*. The sheriff, in his return of the extent, stated that "*David Burnham*, the debtor, having gone to parts unknown, so that since judgment he could not be found, or notified, and no person appearing to represent him, I chose, in his behalf, *A. B.* an appraiser." It was objected, that nothing, passed by the extent, because it did not appear, by the sheriff's return, that the debtor had an opportunity to choose an appraiser; and a verdict was taken for the demandant, subject to the opinion of the court upon said exception.

Woodbury, for the demandant.

Bartlett, for the tenant.