

HENRIETTA TOWNSHIP v. BROWNHELM TOWNSHIP.

In order to gain a settlement under the law for the relief of the poor, the domicil must be clear, notorious, and continuous.

DEBT. From Lorain. Suit to recover compensation for the support and maintenance of Samuel B. Wilgus, a pauper, claimed to be an inhabitant of Brownhelm. The case came on to trial before a jury in Lorain County upon the general issue.

On the trial of this case it was proven that Samuel B. Wilgus, then an infant, from the year 1829, until late in the fall of 1834, was occasionally in the township of Brownhelm, but had there, within that time, no fixed residence. That late in the fall of 1834, and after the close of navigation upon Lake Erie, he took boarding at the house of one Parsons, in Brownhelm. During the subsequent winter he was in this township, not to exceed one-half of the time, and the residue of the time, was in the adjoining and neighboring townships. Upon the opening of navigation in the spring of 1835, he left and was absent upon the lake until late in the fall of the same year. During this absence, he left at the house of Parsons, a box and some small articles of clothing, and in two instances visited the house himself, but did not stay to exceed one day, at each time. At the times of these two visits, he took away some small articles of clothing and left others. After the close of navigation in the fall of 1835, he again returned to the house of Parsons, and was there, as testified by one of the witnesses 'off and on,' until the March following, when he left entirely, and did not return until brought back by the overseers of the poor of the township of Henrietta, in September, 1836. Wilgus was an unmarried man.

By consent the jury returned a verdict for the plaintiff, subject to the opinion of the court, and assessed his damages at one hundred and forty-four dollars and fifty cents.

TIFFANY for the plaintiff, and ROOT for defendant, submitted the case without argument.

By the Court, HITCHCOCK, Judge.

The only question for determination in this case is, whether Samuel B. Wilgus, the pauper, had acquired a legal settlement in Brownhelm, prior to March, 1836. The mode of acquiring such settlement is, by 'residing one year in any township of this state, without being warned by the overseers of the poor for said township to depart the same; or three years after *77 having been once so warned, without being again warned as aforesaid.' 29 O. L. 320. It is not pretended that Wilgus had ever been warned to depart from the township of Brownhelm; of course, if before March, 1836, he had resided in that township one year, he

had gained a legal settlement. In order to gain such settlement, however, I apprehend the residence must be *continuous*. It will not suffice that a person shall have been in a township four months in one year, four months in another, and four months in a third. The residence must have continued for one entire year from the time of its commencement. In saying that the residence must be continuous, I would not be understood as intending that a person may not be occasionally absent, provided the intention to return be open and manifest. As if, for instance, an individual should go into a township, purchase property and take up his residence, or having a family, should, with his family take up his residence in such township, in either case a settlement would be gained at the end of the year, although the individual might have been absent for days or weeks.

The residence must not only be *continuous*, it must also be *open and notorious*, and attended with such circumstances as to lead the authorities of the township in the exercise of proper vigilance, to the conclusion that there is an intention to gain a settlement.

In the case before the court, it appears that Wilgus, the pauper, was an unmarried man. In the fall of 1834, and after the close of navigation upon the lake, he took boarding at the house of Parsons, in Brownhelm. Previous to that time, if not afterwards, he appears to have been a transient person, having, so far as we know, no fixed place of residence. From the fall of 1834, to the following spring, he resided in Brownhelm, not to exceed one-half the time, and the balance of the time was in the adjoining and neighboring townships. Upon the opening of navigation in the spring of 1835, he left the neighborhood, and continued absent until its close, late in the fall, with the exception of two occasional visits, not exceeding one day each. True, he left at Brownhelm a small box with some few articles of clothing, but there is nothing to show that this was a fact of general notoriety, or that it came to the knowledge of any of the township authorities. From the close of navigation in the fall of 1835, until 1836, he was 'off and on' at Brownhelm and in the neighborhood.

In the opinion of a majority of the court, these facts do not prove such *continuous, open and notorious* residence as is necessary under the statute to entitle a person to a legal settlement.

*78 The verdict, therefore, must be set aside, and a judgment entered for the defendants.
WOOD, J. dissented.

Citation: 9 Ohio 76 (1839)