NINTH REVISION

REVISED STATUTES

OF THE

STATE OF MAINE

1954

FIRST ANNOTATED REVISION

IN FIVE VOLUMES

VOLUME 3

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA

Chapter 94.

Pauper Laws.

Paupers, Settlement and Support.

Cross References.—See c. 3, § 2, re voting; c. 25, § 9, re transfer of paupers between states.

Sec. 1. Settlements.—Settlements subjecting towns to pay for the support of persons on account of their poverty or distress are acquired as follows:

Legislature has power to prescribe rules for settlement.—The legislature, in establishing rules for the settlement of paupers, as provided in this section, is limited in its power only by its own perception of what is proper and expedient. Hallowell v. Portland, 139 Me. 35, 26 A. (2d) 652; Hartland v. Athens, 149 Me. 43, 98 A. (2d) 542.

And towns have no vested rights in pauper settlements, and changes in the law of settlement controls where relief is furnished subsequent to such changes. Mercer v. Anson, 140 Me. 214, 36 A. (2d) 255.

Pauper settlements must be determined in accordance with the law existing at the time the supplies are furnished. Hallowell v. Portland, 139 Me. 35, 26 A. (2d) 652.

I. A married woman has the settlement of her husband, if he has any in the state; if he has not, she shall be deemed to have no settlement in the state. A woman over 21 years of age, having no husband, shall acquire a settlement in a town by having her home therein for 5 consecutive years without receiving supplies as a pauper. When, in a suit between towns involving the settlement of a pauper, it appears that a marriage was procured to change it by the agency or collusion of the officers of either town, or of any person having charge of such pauper under authority of either town, the settlement is not affected by such marriage. No derivative settlement is acquired or changed by a marriage so procured, but the children of such marriage and their descendants have the settlement which they would have had if no such marriage had taken place; and the same rule applies in all controversies touching the settlement of paupers between the town by whose officers a marriage is thus procured and any other town whether the person whose marriage is thus procured is a pauper at the time of the marriage or becomes so afterwards.

The wife has and continues to have the settlement of the husband, under this subsection however his settlement may change. Bangor v. Wiscasset, 71 Me. 535.

Though she is in insane hospital.—The settlement of the wife though in the insane hospital follows that of the husband though he may change it during such residence. Bangor v. Wiscasset, 71 Me. 535.

Wife cannot acquire separate settlement.—By the terms of this subsection a wife cannot gain a pauper settlement separate from her husband's, though she can establish for herself a home separate from his. Burlington v. Swanville, 64 Me. 78; Winslow v. Pittsfield, 95 Me. 53, 49 A. 46.

Her home is presumably that of husband.—The presumption in ordinary cases is that the home of the wife is that of her husband. But this presumption ceases to operate where she in fact has no home. Glenburn v. Naples, 69 Me. 68.

Marriage and husband's settlement make out prima facie case of wife's settlement.—If a plaintiff proves a husband's settlement and proves the due solemnization of his marriage, such evidence makes out a case prima facie for the settlement of the wife under this subsection. Harrison v. Lincoln, 48 Me. 205.

Void marriage does not change wife's settlement.—Where a man, having his settlement in the defendant town, married a wife and abandoned her, and the wife married another man, the second marriage being void, her settlement, under this subsection, remains that of the first hus-

band. Howland v. Burlington, 53 Me. 54.

A void marriage, as where the first husband is still living, conveys no settlement to the wife. Pittston v. Wiscasset, 4 Me. 293.

Meaning of "marriage procured" by collusion of officers.—If a municipal officer of a town, by way of advice, argument, persuasion or inducement, makes use of any means to induce a marriage for the purpose of changing the settlement of a pauper of such town, in such a sense that but for such act of the municipal officer, the marriage would not have taken place, if such a state of facts is shown, then the marriage was procured by agency of the municipal officer to change the settlement within the meaning of this subsection. Minot v. Bowdoin, 75 Me. 205; Hudson v. Charleston, 97 Me. 17, 53 A. 832.

Circumstantial evidence of collusion is sufficient.—Evidence of explicit directions and positive utterances to induce a collusive marriage as prescribed by this paragraph being ordinarily unavailable, the proposition involved may be established by circumstantial as well as by direct evidence. Hudson v. Charleston, 97 Me. 17, 53 A. 832.

Subsection contemplates only collusive litigant. — It is only when the town procuring the collusive marriage is a party to the litigation that a marriage so procured will affect the pauper settlement under this subsection. Orrington v. Bangor, 142 Me. 54, 46 A. (2d) 406.

The words "of either town," in this paragraph, refer only to the towns engaged in the controversy through the agency or collusion of one of which the marriage was procured to change the pauper settlement. Orrington v. Bangor, 142 Me. 54, 46 A. (2d) 406.

The words "so procured," in the last sentence of this subsection, refer back to the language of the previous sentence and must be held to mean a marriage procured by the agency or collusion of either party to the action. Orrington v. Bangor, 142 Me. 54, 46 A. (2d) 406.

Former provisions of subsection.—For cases relating to a former provision of this subsection whereby a wife could have a settlement though her husband had none, see Sanford v. Hollis, 2 Me. 194; Bangor v. Hampden, 41 Me. 484; Hallowell v. Augusta, 52 Me. 216; Bucksport v. Rockland, 56 Me. 22.

For cases relating to this paragraph before the enactment of the provision pertaining to acquisition of derivative settlement by children, see Houlton v. Ludlow, 73 Me. 583; Gardiner v. Manchester, 88 Me. 249, 33 A. 990.

Applied in Winthrop v. Auburn, 31 Me. 465; Bowdoinham v. Phippsburg, 63 Me. 497; Appleton v. Belfast, 67 Me. 579.

Stated in Fryeburg v. Brownfield, 68 Me. 145; Hampden v. Troy, 70 Me. 484.

II. Legitimate children have the settlement of their father, if he has any in the state; if he has not, they shall be deemed to have no settlement in the state. Children shall not have the settlement of their father acquired after they become of age and have capacity to acquire one. Minor children of parents divorced after July 12, 1929, if given into the custody of either parent by the decree of divorce, shall follow the settlement of the parent to whom custody is given; if custody is not given, such children shall follow the settlement of their father, unless emancipated.

I. General Consideration.

II. Emancipated Children.

A. Effect of Emancipation.

B. What Constitutes Emancipation.

III. Children Coming of Age.

I. GENERAL CONSIDERATION.

Minor children, until emancipated, are incapable of gaining a settlement in their own right. Farmington v. Jay, 18 Me. 376; Brewer v. East Machias, 27 Me. 489.

A child of a deceased father has the pauper settlement of the father and retains it, though the mother contracts a subsequent marriage. Presque Isle v. Caribou, 122 Me. 269, 119 A. 584.

And posthumous children have a derivative settlement from their father, if he had any; and in this respect they are in the same condition with such as are born in his lifetime, for every legitimate child en ventre de sa mere, is considered as born for all beneficial purposes. Farmington v. Jay, 18 Me. 376.

Birth out of state does not affect settlement.—A child being legitimate, has the settlement of his father by the provisions of this subsection, and the fact that he was born without the jurisdiction of the

state does not change the result. Oldtown v. Bangor, 58 Me. 353.

Nor does lack of consent.—If the pauper settlement of the father changes during the child's minority, that of the child likewise changes, by operation of law, under this subsection, and regardless of the consent or desire of the parties. Trenton v. Brewer, 134 Me. 295, 186 A. 612.

Former provisions of subsection. — For cases relating to 2 former provisions of this subsection whereby children could take the settlement of the mother in certain cases, see Sanford v. Hollis, 2 Me. 194; Parsonsfield v. Kennebunkport, 4 Me. 47; Fairfield v. Canaan, 7 Me. 90; Eddington v. Brewer, 41 Me. 462; Hampden v. Troy, 70 Me. 484; St. George v. Rockland, 89 Me. 43, 35 A. 1033; Winslow v. Pittsfield, 95 Me. 53, 49 A. 46; Thomaston v. Greenbush, 106 Me. 242, 76 A. 690; Albany v. Norway, 107 Me. 174, 77 A. 713.

For cases relating to a former provision of this subsection pertaining to the settlement of stepchildren, see Guilford v. Monson, 134 Me. 261, 185 A. 517; Rockland v. Lincolnville, 135 Me. 420, 198 A. 744.

For a case relating to this subsection, before the enactment of the provision for settlement of child upon divorce of parents, see Bangor v. Veazie, 111 Me. 371, 89 A. 193.

Applied in Winthrop v. Auburn, 31 Me. 465; Raymond v. North Berwick, 60 Me. 114; Gardiner v. Manchester, 88 Me. 249, 33 A. 990; Gouldsboro v. Sullivan, 132 Me. 342, 170 A. 900; Ft. Fairfield v. Millinocket, 136 Me. 426, 12 A. (2d) 173; Mexico v. Moose River Plantation, 139 Me. 8, 26 A. (2d) 657; Bangor v. Etna, 140 Me. 85, 34 A. (2d) 205.

Quoted in Mercer v. Anson, 140 Me. 214, 36 A. (2d) 255; Orrington v. Bangor, 142 Me. 54, 46 A. (2d) 406.

Cited in Milo v. Kilmarnock, 11 Me. 455; Livermore v. Peru, 55 Me. 469, overruled in Biddeford v. Benoit, 128 Me. 240, 147 A. 151; Eagle Lake v. Ft. Kent, 117 Me. 134, 103 A. 10; Durham v. Lisbon, 126 Me. 429, 139 A. 232; Somerville v. Smithfield, 126 Me. 511, 140 A. 195.

II. EMANCIPATED CHILDREN.

A. Effect of Emancipation.

Emancipation severs parental settlement relationship. — The tie that binds parent and children together, so far as pauper settlement is concerned, is absolutely and irretrievably severed by emancipation. Thomaston v. Greenbush, 106 Me. 242, 76 A. 690.

And emancipated child does not follow father's settlement. — If this subsection were interpreted literally, the children would follow the father even after becoming of age, unless they have gained a settlement of their own. But this cannot be the meaning of the legislature. Children are not, in law, always regarded as members of the father's family. There must ordinarily be a time when the child may act for himself and be independent of his parents. For this reason it is necessary to insert into the law a qualification which is not therein expressed, but is there by implication only. This qualification is found in the doctrine of emancipation. The emancipated child no longer follows his parents, and none but the emancipated can gain a settlement independent of his parent. Lowell v. Newport, 66 Me. 78.

The emancipated child ceases to follow any settlement acquired by the father after emancipation. Orneville v. Glenburn, 70 Me. 353.

Children are no longer children, within the sense of this subsection, so as to take a new settlement acquired by their parents when capable of gaining one for themselves, if they are separated from their parents by marriage or other legal emancipation. Hampden v. Troy, 70 Me. 484.

But may gain a settlement of his own. —If a minor child is emancipated, he may gain settlement himself, and distinct from his parents. Lubec v. Eastport, 3 Me. 220.

A minor who, while living with his parents, can have only a derivative settlement, if emancipated, may acquire a settlement in his own right in any mode provided in this section applicable to persons under 21 years of age. Monroe v. Jackson, 55 Me. 55.

At emancipation child's settlement is fixed until new one is acquired in his own right. — Under this subsection emancipated minors take at the time of emancipation the pauper settlement which their father then has, and this settlement continues until they gain a new one for themselves. Thomaston v. Greenbush, 106 Me. 242, 76 A. 690; Winslow v. Old Town, 134 Me. 73, 181 A. 816; Trenton v. Brewer, 134 Me. 295, 186 A. 612. See note to § 3, re this rule not affected by that section.

And an emancipated child does not follow the new settlement of the father, but retains that which he derived from him at the time of emancipation. Bangor v. Readfield, 32 Me. 60.

The decisions have changed the strict wording of this subsection in its application to emancipated minors so that such

minors take the settlement of their father, if he has one in the state, at the time of emancipation and do not take a new settlement of the father acquired at any time thereafter. Liberty v. Levant, 122 Me. 300, 119 A. 811.

B. What Constitutes Emancipation.

Emancipation defined. — Emancipation, for the purposes of this subsection, occurs either by the death of his natural protector, or by the voluntary act of the parent surrendering the rights and renouncing the duties of his position, or, in some way, acting in relation thereto in a manner which is inconsistent with any further performance of them. Monroe v. Jackson, 55 Me. 55.

Termination of control and right to service effect emancipation. — When the father ceases to have any control over his children or any right to their service, they should be considered as emancipated and as no longer having a derivative settlement with the father on his acquiring a new settlement. Hampden v. Troy, 70 Me. 484. See Hampden v. Brewer, 24 Me. 281.

As by parents' death and abandonment. —Where a child's father was dead and the mother abandoned him and left the country, it was held that the child was emancipated. Wells v. Kennebunk, 8 Me. 200.

Or abandonment under circumstances indicating relinquishment of control.—Under this section abandonment of his children by a father, under circumstances indicating relinquishment of control, effects their emancipation and they take the pauper settlement of the father, which continues until they gain a new one for themselves. Bangor v. Veazie, 111 Me. 371, 89 A. 193.

But abandonment without relinquishing control does not have such effect.—Where a father abandons his family without intention to return, but manifests a desire to have them come to live with him, such facts do not prove an emancipation of the son, so as to fall without the scope of this subsection. Pittston v. Wiscasset, 4 Me. 293.

A father having a legal settlement in a town and removing therefrom and leaving there a minor son, who in fact remains there until he is of full age, does not thereby necessarily emancipate the son before he attains full age. Brewer v. East Machias, 27 Me. 489.

Nor does death of father and remarriage of mother.—A legitimate minor child, whose father is deceased, is not emancipated for the purposes of this subsection by a subsequent marriage of the mother. Hampden v. Troy, 70 Me. 484.

Nor does expulsion of child from father's home.—Proof that a father would not allow his daughter to live at his house, and that he was not able to take care of her, does not show that she was emancipated, so as not to follow the father's settlement. Clinton v. York, 26 Me. 167.

A minor pauper may be emancipated by the death of both his parents and gain a settlement in his own right. Milo v. Harmony, 18 Me. 415.

Emancipation of a child under age is ordinarily a matter of contract. When the parents are living, there must be consent proved on their part, or acts from which such consent may be inferred, to constitute emancipation so that the child no longer follows the settlement of the father. Lowell v. Newport, 66 Me. 78.

And not presumed.—An emancipation of a minor is not to be presumed, but must always be proved, though it need not be in writing. Lowell v. Newport, 66 Me. 78.

Though it may be implied or inferred.—Emancipation, within the meaning of this subsection, is never presumed, but must always be proved, although it may be implied from circumstances, or inferred from the conduct of the parties. Trenton v. Brewer, 134 Me. 295, 186 A. 612.

And express or implied consent to child's marriage is sufficient.—A minor child married with the consent of the father, either express or implied, is thereby emancipated so as not to follow the settlement of the father. Bucksport v. Rockland, 56 Me. 22.

Under this subsection, "emancipation," the dissolution of paternal authority during the lifetime of the parents, may take place during the minority of the child by his marriage with the consent, and not contrary to the direction, of his parents. Trenton v. Brewer, 134 Me. 295, 186 A. 612.

As is express voluntary surrender of child.—Where a child, deserted by its mother, is given by its father to another person, the father relinquishing all rights and authority over the child, such child is thereby emancipated, and takes the settlement of the father at the time of emancipation. Orneville v. Glenburn, 70 Me. 353.

In which case emancipation does not require adoption. — Complete emancipation may take place, so that a child takes and retains the settlement that the father has at the time of emancipation, although a statutory adoption is never be-

gun or thought of. West Gardiner v. Manchester, 72 Me. 509.

Where a father delivers his child to a husband and wife for adoption by them and relinquishes his parental rights and authority, such action constitutes emancipation under this section, notwithstanding the child was not in fact legally adopted. West Gardiner v. Manchester, 72 Me. 509.

But such surrender must be absolute.—Emancipation such as will affect a settlement under this subsection must be an absolute and entire surrender on the part of the parent of all right to the care and custody of the child, as well as to its earnings, with a renunciation of all duties arising from such a position. Lowell v. Newport, 66 Me. 78.

And with express or implied consent of father.—Without the father's consent to a surrender of his rights in a minor child, either express or implied, there can be no emancipation. Lowell v. Newport, 66 Me. 78.

Pauperism of parent does not work emancipation. — Under this subsection a minor cannot gain a settlement in his own right, until emancipated, and emancipation is not to be presumed; nor does parental authority or control cease when the parent becomes a pauper. Fayette v. Leeds, 10 Me. 409.

Even if the child was bound out.—Where a minor child of parents who were paupers was bound to service until twenty-one years of age, he was not thereby emancipated, so as to gain a new settlement in his own right, but had a derivative settlement from his father under this section. Frankfort v. New Vineyard, 48 Me. 565.

Nor does desertion by child.—Poverty, even culminating in absolute pauperism of the parent, does not affect emancipation; neither does desertion of his home nor vagrancy of the child, unless assented to by the parent. Monroe v. Jackson, 55 Me. 55.

Desertion by a minor child of his father's home does not constitute emancipation for the purposes of this subsection, so long as the father has not relinquished his right of control, nor consented that he should act for himself independently of the father. Bangor v. Readfield, 32 Me. 60.

III. CHILDREN COMING OF AGE.

Coming of age has effect of emancipation.—While a child is under age his settlement accompanies and follows that of his father. But when the child arrives at full age, the settlement derived from his father remains fixed until a new one is acquired in some of the modes specified in this section. Milo v. Gardiner, 41 Me. 549.

Even though the child continues to live with father.—Under this section a legitimate child, after he has become twenty-one years of age, although voluntarily living with his father, no longer has a derivative settlement under him, if the father acquires a new one; but the settlement of the child when he becomes twenty-one years of age remains until he gains a new one for himself. Hampden v. Brewer, 24 Me. 281.

Upon the father's gaining a new settlement, a child of full age, although voluntarily living with him, does not have the new settlement with his father, but his former settlement remains. Hampden v. Troy, 70 Me. 484.

Unless child is non compos and dependent.—A person non compos, though of full age, will follow the settlement of his father, with whom he resides. Wiscasset v. Waldoborough, 3 Me. 388; Strong v. Farmington, 74 Me. 46.

The original doctrine of emancipation founded upon majority is not universally applied; for a person who has become twenty-one years of age is not thereby emancipated so as no longer to follow his parents' settlement when, by reason of mental imbecility, he is compelled still to remain dependent upon his parents for guidance and support. Hampden v. Troy, 70 Me. 484.

A non compos child residing in his father's family, and more than twenty-one years of age, is not emancipated, and he will acquire a new settlement derived from the father, and by him gained after the child is of age. Tremont v. Mt. Desert, 36 Me. 390; Harrison v. Portland, 86 Me. 307, 29 A. 1084.

Under this section when a child, though 21 years of age, by reason of mental imbecility is compelled to remain dependent upon the parent for guidance and support, then the settlement of the child remains dependent upon that of the father and liable to change only with his. Monroe v. Jackson, 55 Me. 55.

In which case his settlement follows that of father notwithstanding commitment in hospital.—Where an insane person lived continuously in his father's family until after he became of age, and was then sent to the insane hospital, it was held that he followed the residence of his father acquired while the pauper was an inmate of the hospital. Strong v. Farmington, 74 Me. 46.

But if emancipated he may gain own

settlement.—A minor who has been emancipated may acquire a legal settlement in his own right. The same rule is applicable to persons non compos mentis being of age. Gardiner v. Farmingdale, 45 Me. 537.

Since this subsection does not require mental capacity.—Mental capacity to form or have an intention as to residence is not made by this subsection essential to the acquisition of another settlement than that of the deceased father. Waterville v. Benton, 85 Me. 134, 26 A. 1089.

III. Children, legitimate or illegitimate, do not acquire a settlement by birth in the town where they are born. Illegitimate children have the settlement of their mother, but when the parents of such children born after March 24, 1864, intermarry, they are deemed legitimate and have the settlement of the father.

History of subsection.—For a case relating to the history of the second sentence of this subsection, see Lyon v. Lyon, 88 Me. 395, 34 A. 180.

Subsection seeks to preserve the family. —The obvious purpose of this subsection is to promote the moral welfare of the people by preserving the family in its entirety and preventing the separation of innocent children from their parents in the event of their falling into distress and needing relief under the pauper laws. Wellington v. Corinna, 104 Me. 252, 71 A. 889.

And give child settlement of supporting parent. — This subsection recognizes the underlying principle that the settlement of children should follow that of the parent who is responsible for their support. Augusta v. Mexico, 141 Me. 48, 38 A. (2d) 822.

But it legitimizes only as to settlement. —This subsection is intended to legitimize only so far as the pauper settlement of the illegitimate is concerned. Lyon v. Lyon, 88 Me. 395, 34 A. 180.

Illegitimate child follows mother's settlement.—The same law subsists for the illegitimate child with relation to the mother's pauper settlement that obtains for a legitimate child with relation to its father's settlement. As a legitimate child follows its father's pauper settlement, so under this subsection an illegitimate child follows its mother's settlement. The purpose of this provision is to prevent the separation of mother and child and to accord the illegitimate child the same privilege that the legitimate has. Augusta v. Mexico, 141 Me. 48, 38 A. (2d) 822.

Prior to emancipation.—An illegitimate child has the settlement of the mother at any and all times prior to its emancipation or acquisition of a settlement in its own right. Augusta v. Mexico, 141 Me. 48, 38 A. (2d) 822.

The marriage of the mother does not emancipate an illegitimate child. Fayette v. Leeds, 10 Me. 409.

Former provision of subsection. — For cases relating to a former provision of this subsection whereby illegitimate children took the settlement of their mother at the time of birth, see Biddeford v. Saco, 7 Me. 270; Milo v. Kilmarnock, 11 Me. 455; Houlton v. Lubec, 35 Me. 411; Raymond v. North Berwick, 60 Me. 114; St. George v. Rockland, 89 Me. 43, 35 A. 1033; Augusta v. Mexico, 141 Me. 48, 38 A. (2d) 822.

Applied in Hollowell v. Augusta, 52 Me. 216; Minot v. Bowdoin, 75 Me. 205; Gardiner v. Manchester, 88 Me. 249, 33 A. 990; Exeter v. Stetson, 89 Me. 531, 36 A. 1045; Mt. Desert v. Bluehill, 118 Me. 293, 108 A. 73.

Stated in Hartland v. Athens, 149 Me. 43, 98 A. (2d) 542.

Cited in Livermore v. Peru, 55 Me. 469, overruled in Biddeford v. Benoit, 128 Me. 240, 147 A. 151; Durham v. Lisbon, 126 Me. 429, 139 A. 232; Bunker v. Mains, 139 Me. 231, 28 A. (2d) 734.

IV. Upon division of a town, a person having a settlement therein and being absent at the time has his settlement in that town which includes his last dwelling place in the town divided. When part of a town is set off and annexed to another, the settlement of a person absent at the time of such annexation is not affected thereby. When a new town, composed in part of one or more existing towns, is incorporated, persons settled in such existing town or towns or who have begun to acquire a settlement therein and whose homes were in such new town at the time of its incorporation have the same rights incipient and absolute respecting settlement as they would have had in the town where their homes formerly were.

Settlements not affected by land set off but not annexed or incorporated.—If territory is set off from one town, and not incorporated into another, settlements of per-

sons residing upon such territory will remain unaffected by such dismemberment. Weld v. Carthage, 37 Me. 39.

Residence in the poorhouse does not constitute a home, for the purpose of acquiring a settlement, within the meaning of this subsection. Brewer v. Eddington, 42 Me. 541.

Where a person is legally presumed dead because of absence from his home, he cannot be considered "absent" in the sense of that word as used in this subsection. Rockland v. Morrill, 71 Me. 455.

Upon division, paupers without settlement supported by town wherein located.—When part of a town is set off and incorporated into a new town, and no provision is made in the act for the support of such paupers in the old town as have no settlement in the town, they must be supported by the town in which they are, when the support is given, and no action can be maintained by one of the towns against the other for reimbursement. Winterport v. Frankfort, 51 Me. 447.

Former provision of subsection.—For cases relating to this subsection before the enactment of the second sentence thereof, see Hallowell v. Bowdoinham, 1 Me. 129; New Portland v. Rumford, 13 Me. 299; Smithfield v. Belgrade, 19 Me. 387.

Applied in Mt. Desert v. Seaville, 20 Me. 341; Belgrade v. Dearborn, 21 Me. 334; Freeport v. Pownal, 23 Me. 472; Winthrop v. Auburn, 31 Me. 465; Livermore v. Phillips, 35 Me. 184; Starks v. New Sharon, 39 Me. 368; Ripley v. Levant, 42 Me. 308; Wilton v. New Vineyard, 43 Me. 315; Yarmouth v. North Yarmouth, 44 Me. 352; Frankfort v. Winterport, 51 Me. 445; Manchester v. West Gardiner, 53 Me. 523; Monroe v. Frankfort, 54 Me. 252; Castine v. Winterport, 56 Me. 319; Belmont v. Morrill, 69 Me. 314.

Cited in Veazie v. Howland, 47 Me. 127; Woodstock v. Bethel, 66 Me. 569.

V. A minor who serves as an apprentice in a town for 4 years, and within 1 year thereafter sets up such trade therein, being then of age, has a settlement therein.

Farming not a "trade."—It is to be much doubted whether the business of farming comes under the appellation of a "trade," within the true meaning of this subsection. Leeds v. Freeport, 10 Me. 356.

VI. A person of age having his home in a town for 5 successive years without receiving supplies as a pauper, directly or indirectly, has a settlement therein.

I. General Consideration.
II. What Constitutes "Home."
III. Residence Must Continue for Five Years.
IV. Receipt of Pauper Supplies as Affecting Settlement.
V. Settlement of Insane Persons.

I. GENERAL CONSIDERATION.

"Settlement" relates only to public charity.—The word "settlement," in reference to paupers, is technical and is used exclusively in relation to the dispensing of public charity. Augusta v. Waterville, 106 Me. 394, 76 A. 707.

By his settlement a pauper has the right, in case of need, to support from the inhabitants of the town in which he has his settlement. Augusta v. Waterville, 106 Me. 394, 76 A. 707.

Pauper must be "person of age".—In order to show compliance with this subsection, it is necessary to prove the pauper to be "a person of age." See Solon v. Washburn, 136 Me. 511, 2 A. (2d) 928.

And an emancipated minor cannot acquire a pauper settlement under this subsection in a town by having his home therein for five successive years. It is only a "person of age" who can acquire such settlement. Veazie v. Machias, 49 Me. 105; North Yarmouth v. Portland, 73 Me. 108; Brooksville v. Bucksport, 73 Me. 111; Thomaston v. Greenbush, 106 Me. 242, 76 A. 690; Winslow v. Old Town, 134 Me. 73, 181 A. 816.

Support of wife in insane hospital does not affect husband's settlement.—Support furnished an insane wife in the hospital under c. 27 is not pauper supplies and does not affect the husband's residence necessary to gain a new settlement. Nor does the commitment and residence of the wife in the insane hospital affect his period of residence. Bangor v. Wiscassett, 71 Me. 535.

The husband's residence is not suspended, for the purposes of this section, during the stay of the insane wife in the hospital. It is the residence of the husband that settles it, and not that of the wife. His residence fixes his settlement and hers follows that. Glenburn v. Naples, 69 Me. 68.

Party alleging settlement must prove compliance with subsection.—In an action by one town against another town for pauper supplies, the burden of proof is on the plaintiff town to prove that the pauper is a person of age having his home in defendant town for five successive years without receiving supplies as a pauper, directly or indirectly as provided in this subsection. Moscow v. Solon, 136 Me. 220, 7 A. (2d) 729.

Presumption that supplies were not furnished.—When a plaintiff undertakes to to prove a pauper settlement acquired by the mode prescribed in this subsection, proof of residence in the ordinary way, without unusual circumstances showing want or destitution, without apparent sign of the need or of the furnishing of supplies, raises a certain presumption of fact that none was furnished, which is as far as the plaintiff need go towards proving a negative, until the defendant overcomes this presumption by evidence. Belmont v. Morrill, 73 Me. 231.

Town records admissible to show settlement.—A record of town orders, given by a town for the support of a pauper on the ground that he had a settlement therein, is admissible in evidence on the question of his settlement under this subsection, not conclusive as an estoppel, but for the jury to weigh. Weld v. Farmington, 68 Me. 301.

Fact of voting in town not conclusive on question of settlement.—The fact of voting in a town, while of importance as bearing on the question of settlement under this subsection, is by no means conclusive, for the vote may be without right and fraudulent, or it may be through mistake on the part of the voter as to his legal rights. East Livermore v. Farmington, 74 Me. 154.

Former provision of subsection.—For a case under an early form of this subsection, holding that a widow may not count as a part of the required 5 years residence time during which her husband was living, see Thomaston v. St. George, 17 Me. 117.

Applied in Smithfield v. Waterville, 64 Me. 412; Deer Isle v. Winterport, 87 Me. 37, 32 A. 718; Orland v. Penobscot, 97 Me. 29, 53 A. 830; Somerville v. Smithfield, 126 Me. 511, 140 A. 195; Bar Harbor v. Jonesport, 133 Me. 345, 177 A. 614; Trenton v. Brewer, 134 Me. 295, 186 A. 612.

Quoted in Bangor v. Etna, 140 Me. 85, 34 A. (2d) 205.

Stated in Kennebunkport v. Buxton, 26 Me. 61; Bucknam v. Thompson, 38 Me. 171; Burlington v. Swanville, 64 Me. 78.

Cited in Starks v. New Portland, 47 Me. 183; Frankfort v. New Vineyard, 48 Me. 565; Hallowell v. Augusta, 52 Me. 216; Bangor v. Veazie, 111 Me. 371, 89 A. 193; Ft. Fairfield v. Millinocket, 136 Me. 426, 12 A. (2d) 173; Hartland v. Athens, 149 Me. 43, 98 A. (2d) 542.

II. WHAT CONSTITUTES "HOME."

The word "home" as used in this subsection means residence or dwelling-place. North Yarmouth v. West Gardiner, 58 Me. 207.

"Home" is equivalent to domicile depending on residence and intention.—The home which a person must have, for five successive years, without receiving supplies as a pauper, to acquire a settlement in a town under this subsection, is equivalent to domicile, which depends upon residence and intention. Madison v. Fairfield, 132 Me. 182, 168 A. 782; see Knox v. Montville, 98 Me. 493, 57 A. 792.

A residence or home once established may be abandoned or lost, without having acquired another. North Yarmouth v. West Gardiner, 58 Me. 207.

A home does not necessarily remain until another is gained. It may be abandoned, and a person may have for years only a succession of temporary homes, or none at all. Fayette v. Livermore, 62 Me. 229.

Bodily presence must concur with intention to enable a person to establish a home and subsequent settlement under this subsection. Fayette v. Livermore, 62 Me. 229.

And intention must be to make the place home for indefinite period.—In order to constitute a settlement under this subsection, there must be a combination of physical presence with the intention of remaining. The intention must be, not to make the place a home temporarily, but to make it a real home for an indefinite period. Gouldsboro v. Sullivan, 132 Me. 342, 170 A. 900.

But person need not have lodging place at all times.—To retain his home in a town, within the meaning of this subsection, it is unnecessary that the person should at all times have some house or building, or room, to which he has a right to go. Madison v. Fairfield, 132 Me. 182, 168 A. 782.

Intent may be conclusively inferred.—So far as intention is a necessary element of a "residence" or "home," it will be conclusively inferred from an actual presence accompanied with such circumstances as usually surround a home. North Yarmouth v. West Gardiner, 58 Me. 207.

And may be evidenced by habits and

mode of life.—The character of a person's home, his mode of life, his habits and his disposition, may be important aids in coming to a result on the question of his intention to abandon a home or to establish one. Wayne v. Greene, 21 Me. 357.

And by payment of poll taxes.—The statutory home under this section is made up of presence and intention. To prove such intention it is competent to show that the pauper has paid poll taxes. Rockland v. Deer Isle, 105 Me. 155, 73 A. 885.

And declarations of the pauper are competent evidence of his intention to make a place his home, and it is not essential that the declarant should be dead, or that his declarations should be against his interest, but only that they be made under such circumstances as to be parts of the res gestae. Knox v. Montville, 98 Me. 493, 57 A. 792; see Cornville v. Brighton, 39 Me. 333.

At the time the individual is actually leaving the place where he has resided, when he cannot foresee the consequences of a declaration of his intention, and there is no apparent inducement to speak falsely, such declarations are a part of his acts, and are important evidence in determining the question of his intention as to his residence or home. Wayne v. Greene, 21 Me. 357.

But only if accompanied by overt act.—An unexecuted intention of a pauper, while away from his residence, to take up a permanent residence in another town, unaccompanied with any act, can legally have no effect upon the pauper's residence within the intent of this section. And declarations of the pauper as to such intention are clearly inadmissible, except so far as they might tend to contradict the pauper as a witness in other respects. Bangor v. Brewer, 47 Me. 97.

A person's intention as to his home can only be shown by his acts and words, but a mere expression of intent disconnected with any relevant circumstances would be too remote to be admissible as evidence. Knox v. Montville, 98 Me. 493, 57 A. 792; Gouldsboro v. Sullivan, 132 Me. 342, 170 A. 900.

Precarious tenure of lodgings immaterial on question of home.—If a person resides with the intention to abide for an indefinite period in a town to which he has removed, the place where he lodges is for the time being his home, however precarious may be the tenure by which he holds it. Wilton v. Falmouth, 15 Me. 479.

And possession need not be lawful.—The character of the residence and home in a particular town depends in no degree on the question whether such residence or home was on land and in a house by permission of the owner; the lawfulness of the possession in such cases is not contemplated by this subsection. Richmond v. Vassalborough, 5 Me. 396.

III. RESIDENCE MUST CONTINUE FOR FIVE YEARS.

Presence and intent to remain must continue for 5 years.—To establish settlement under this subsection there must be personal presence in the town, and also an intent to remain, continued for five consecutive years, without receiving public aid, and without being absent during such five years with an intent not to return. Gouldsboro v. Sullivan, 132 Me. 342, 170 A. 900.

And residence must be in legal limits of town.—The residence, or home, under this subsection, must be in the town, not outside of it. A five years' residence to fix a settlement, must be shown to have been on the actual territory, within the legal limits of the town. Ellsworth v. Gouldsboro, 55 Me. 94.

Without intention to make residence temporary.—The five years' residence, required by the provisions of this subsection in order to gain a settlement, must be continued residence, and without any intention of making it temporary merely. Wayne v. Greene, 21 Me. 357.

But temporary absences do not prevent the acquirement of a pauper settlement within the meaning of this subsection. Gouldsboro v. Sullivan, 132 Me. 342, 170 A. 900.

Unless without intention to return.—In order to interrupt an existing residence, such as the statute contemplates, there must be an act of removal from the place where it exists, accompanied by an intention of the pauper to remain permanently at the place of removal or at some other place, or, at least, the pauper must be without any present intention of returning to the place from which he removed; and such intention must be simultaneous with the act of removal, or in some way connected with an actual residence in another place. Bangor v. Brewer, 47 Me. 97; Pittsfield v. Detroit, 53 Me. 442; North Yarmouth v. West Gardiner, 58 Me. 207; Detroit v. Palmyra, 72 Me. 256; Eagle Lake v. Ft. Kent, 117 Me. 134, 103 A. 10.

Brief absences, without intention to abandon home — or, more accurately, perhaps, with the formed and determined intention of returning — do not prevent the acquisition of a settlement under this sec-

tion. Madison v. Fairfield, 132 Me. 182, 168 A. 782.

But there must at all times be an intention to return.—To continue a home while absent from it, within the language of this subsection, there must be at all times an intention to return to it. The intention may be latent, and it need not be at all times present in the mind; but it must exist. Detroit v. Palmyra, 72 Me. 256.

If the pauper abandons his former residence and while in transit to his new destination, he determines not to return, his home, as the term is used in this paragraph, has ceased at his former residence. Littlefield v. Brooks, 50 Me. 475; Hampden v. Levant, 59 Me. 557.

And actual return will not save settlement if person removed with intent not to return.—An absence from a town will defeat the running of the five successive years of residence necessary under this subsection to acquire a pauper settlement therein, if made with the intention on the part of the pauper not to return, though he does in fact return after a brief absence. Burnham v. Pittsfield, 68 Me. 580.

However short the absence.—Casual and fitful absences for short periods in the course of the five years, without any intention of taking up his abode elsewhere, or abandoning his residence there, would not interrupt the running of the five years necessary for a person to gain a settlement under this subsection. But if during any part of the five years, he had determined to abandon his residence, and had actually carried his determination into effect, for ever so short a period, it will prevent his gaining a settlement. Wayne v. Greene, 21 Me. 357.

And fixed intention not to return not necessary to defeat settlement.—In order to prevent the acquisition of a settlement after 5 years under this subsection, it is not necessary that a person's departure from his new home during such five years should be with a fixed purpose not to return. It is enough if he departs without an intention to return. Detroit v. Palmyra, 72 Me. 256.

Settlement not defeated by temporary removal on order of selectmen.—If a person, who afterwards becomes a pauper, removes from the town wherein he usually resides, by order of the selectmen of the town, to prevent his gaining a settlement therein, and his removal is for that purpose only and temporary, then such removal and return will not prevent his gaining a settlement under this subsection. Clinton v. York, 26 Me. 167.

Nor by imprisonment in state prison.—Imprisonment for a term in the state prison, pursuant to a legal sentence, does not, of itself, interrupt the continuity of the residence of the prisoner in the town where he had his home and was supporting his family when imprisoned. Topsham v. Lewiston, 74 Me. 236.

Burden of proof on party alleging 5 years' residence.—The burden, under this subsection, is upon the party setting up the five years' continuous residence, to prove it. It must be shown affirmatively that the legal home remained there, notwithstanding any absences. Mexico v. Moose River Plantation, 139 Me. 8, 26 A. (2d) 657; see North Yarmouth v. West Gardiner, 58 Me. 207.

IV. RECEIPT OF PAUPER SUPPLIES AS AFFECTING SETTLEMENT.

Settlement not defeated unless aid actually rendered.—The mere fact that a person falls into distress and makes application to the town for aid is not sufficient to interrupt the period of residence required by this paragraph; aid must be actually rendered; there must be supplies received as a pauper. Glenburn v. Naples, 69 Me. 68.

By town of settlement or where person found in distress.—A person is to be considered as receiving supplies as a pauper, within the meaning of this subsection, only when he receives such supplies from the town where he has his settlement, or where he is found in distress. Pittsfield v. Detroit, 53 Me. 442.

But application for aid not necessary to prevent settlement.—It is not necessary that the pauper should make the application for aid to prevent his gaining a settlement under this section. Hampden v. Levant, 59 Me. 557.

Receipt of supplies defeats settlement even though they are afterwards paid for.—It is the five years' successive residence without receiving, directly or indirectly, supplies as a pauper that gives a settlement by the terms of this subsection. No exception is made in favor of a man who receives such supplies and afterwards pays for them. Lewiston v. Harrison, 69 Me. 504.

Payment by town for physician's services after 5 years' residence does not prevent settlement.—If the services of the physician were rendered before the patient had resided five years within the town, and his bill was paid by the town after the five years had elapsed, it does not amount to

such furnishing of supplies as will prevent the gaining of a settlement under this paragraph. Windham v. Portland, 23 Me. 410.

Nor does support of a parent by son under bond to town.—Although the sons of a pauper gave an obligation to the town of settlement of their mother to support her, and did support her in another town for a period of five successive years; such circumstances will not prevent her gaining a settlement under this paragraph. Standish v. Windham, 10 Me. 97; see Wiscasset v. Waldoborough, 3 Me. 388.

Nor aid furnished to avoid settlement.—Relief furnished to prevent a pauper from gaining a settlement in the town where he is residing, and when there is no existing distress to be relieved, is not in good faith and will not affect the settlement of the pauper. Foxcroft v. Corinth, 61 Me. 559.

Supplies cannot be considered as furnished to a man as a pauper unless furnished to himself personally, or to one of his family; and those only can be considered as his family, who continue under his care and protection. Green v. Buckfield, 3 Me. 136; Hallowell v. Saco, 5 Me. 143.

But man's settlement may be defeated by supplies to family against his protest.—If the husband and father, through false pride, or a reckless disregard of the wants of his family, or from any other motive, should protect against the proffered supply by the overseers, and refuse to receive it as a pauper, it is still the duty of the overseers to relieve his and their distress, and if the supply is finally received, it will prevent the gaining of a settlement under this subsection. Corinna v. Exeter, 13 Me. 321.

And by supplies to wife living apart.—So long as a husband continues to claim the performance of a wife's duties from her, and though she has left his home, if he knows of her necessities, he must avoid her receiving supplies from the town upon peril of incurring pauper disabilities himself. Lewiston v. Harrison, 69 Me. 504.

Or to child over 21.—If the pauper's residence is in her father's family, and in common with the other members of it, though the pauper is 21 years of age, the destitution of her father, which makes it proper that he should be relieved by the town, would apply to her, and the supplies, within the sense of this paragraph, must be treated as furnished to both. Corinth v. Lincoln, 34 Me. 310.

Or living away from father.—Supplies furnished to children living separate from the father on account of his poverty, the parental and filial relations in other respects continuing, constitute supplies indirectly furnished the father, and prevent his gaining a settlement under this subsection. Garland v. Dover, 19 Me. 441.

When minor children are separated from their father and maintained by the town of their legal settlement, by reason of his inability to support them, such separation is not to be considered as an abandonment by him of his children, or an abandonment by them of their father. Such support of his children is to be considered as supplies indirectly furnished to him within the import of this subsection. Sanford v. Lebanon, 31 Me. 124.

Regardless of at whose request supplies furnished. — Where supplies furnished a child appear to have been necessary, and to have been supplied by the overseers, it is not material at whose request, they were furnished. Clinton v. York, 26 Me. 167.

Unless father was able to support child and supplies were furnished without his knowledge.—Although it is the duty of a town to give aid to a child who there falls into distress, such aid does not convert the parent into a pauper, and thereby prevent him from gaining a settlement, where the parent is able to provide for the child, and where the aid was furnished without the knowledge and consent of the parent. Bangor v. Readfield, 32 Me. 60.

V. SETTLEMENT OF INSANE PERSONS.

A person of age, though non compos mentis, may gain a settlement in his own right under this subsection. Augusta v. Turner, 24 Me. 112.

It is not necessary for a person of age to be of sound mind, or have any mental capacity in order to acquire a settlement under this subsection; thus a person non compos mentis, if of age, can acquire a new pauper settlement. Waterville v. Benton, 85 Me. 134, 26 A. 1089. But see Topsham v. Lewiston, 74 Me. 236, wherein it was said that under this subsection insanity does not prevent a continuous residence of five years from establishing a settlement provided the residence commenced before the insanity.

If emancipated.—A person 21 years of age, whose parents are deceased, though non compos mentis, may gain a settlement in a town by compliance with this subsection. Gardiner v. Farmingdale, 45 Me. 537.

A person, non compos mentis from infancy, and not emancipated, though more than twenty-one years of age, cannot acquire an independent settlement by resi-

dence in a town for five successive years, but will follow the settlement of the father with whom he resides. Monroe v. Jackson, 55 Me. 55.

Though residence is by direction of guardian.—A person non compos, or insane, may acquire a settlement in his own right by five years continuous residence in a town, even though such residence is by direction of his guardian. Auburn v. Hebron, 48 Me. 332; see New Vineyard v. Harpswell, 33 Me. 193.

Under this subsection, a person non compos, of age and emancipated, can acquire a pauper settlement in his own right. Such a person intentionally kept living for five successive years in a town by his guardian without receiving pauper supplies, directly or indirectly, has his home in that town. Friendship v. Bristol, 132 Me. 285, 170 A. 496.

One committed under c. 27 is not made a pauper.—By the express provisions of c. 27, § 138, no insane person shall suffer the disabilities incident to pauperism, nor be deemed a pauper by reason of such support. Glenburn v. Naples, 69 Me. 68.

Nor is his residence suspended if town does not pay for commitment.—If an insane person is duly committed to the insane hospital under the provisions of c. 27, and the friends of such insane person pay all the expenses of commitment and support and the town makes no payment, the time of commitment and stay at the hospital is not to be excluded from the period of residence prescribed by this paragraph for the establishment of a new settlement. Dexter v. Sangerville, 70 Me. 441.

But one committed may also be a pauper.—An insane person may also be a pauper, although one, not otherwise in need of relief, incurs no pauper disabilities by reason of being committed to a hospital for the insane. Jay v. Carthage, 53 Me. 128.

For a case holding that time spent in commitment under c. 27 is not to be excluded from the period prescribed in this section necessary to settlement, prior to the enactment of a contrary provision in c. 27, § 138, see Pittsfield v. Detroit, 53 Me. 442.

VII. A person having his home in an unincorporated place for 5 years without receiving supplies as a pauper and having continued his home there until the time of its incorporation acquires a settlement therein. Those having homes in such places for less than 5 years before incorporation and continuing to have them there afterwards until 5 years are completed, acquire settlements therein. (R. S. c. 82, § 1.)

Cross reference.—See note to § 2, re what constitutes "supplies."

Child cannot gain settlement under this subsection unless emancipated. — A child, while a minor and during the life of its parents, can gain no settlement in its own right under this subsection unless such child is emancipated. Milo v. Kilmarnock, 11 Me. 455.

Whether legitimate or illegitimate.—As to the power of minors to acquire a settlement in their own right, no distinction is to be made between legitimate and illegitimate. Unless emancipated, neither have that power under this subsection. Milo v. Kilmarnock, 11 Me. 455.

Former provision of subsection.—For cases relating to this section before the 5 years' residence provision was added, see Gorham v. Springfield, 21 Me. 58; Kirkland v. Bradford, 30 Me. 452; Kirkland v. Bradford, 33 Me. 580.

Applied in Monson v. Fairfield, 55 Me. 117.

Cited in Fayette v. Hebron, 21 Me. 266; Woodstock v. Bethel, 66 Me. 569.

Sec. 2. Pauper supplies.—To constitute pauper supplies, they must be applied for in case of adult persons of sound mind by such persons themselves or by some person by them duly authorized; or such supplies must be received by such persons or by some person authorized by them with a full knowledge that they are such supplies; and all care, whether medical or otherwise, furnished to said persons is subject to the same rule. (R. S. c. 82, § 2.)

Section applies only to questions of settlement.—Whether care furnished constitutes pauper supplies under this section becomes material only in suits between towns where it is sought to interrupt a five years' pauper settlement by evidence of the alleged pauper having received "supplies as a pauper." The requirement therefore of this section only applies to cases where the settlement of the pauper is in question. Hutchinson v. Carthage, 105 Me. 134, 73 A. 825.

To constitute pauper supplies they must reduce the person receiving them to a

pauper, subject to the disabilities incident to pauperism. Glenburn v. Naples, 69 Me. 68.

Person cannot be made pauper against his will.—By the terms of this section adult persons of sound mind cannot be made paupers against their will. To constitute pauper supplies, under the laws of this state, the supplies must be applied for, or received with a "full knowledge" that they are pauper supplies; and all care, whether medical or otherwise, is subject to the same rule. Bucksport v. Cushing, 69 Me. 224.

But slight evidence of request or knowledge is sufficient. — Very slight evidence of a request for relief, or of knowledge that supplies furnished are pauper supplies, ought to be sufficient, where there is no evidence tending to prove the contrary. Linneus v. Sidney, 70 Me. 114.

And if the necessity for supplies existed, it is not essential to show that the recipient called for them, or that the party whose settlement is thereby affected should have assented to the furnishing of them by the town. If the supplies were actually needed and were furnished, received and consumed, it suffices within the terms of this section. Eastport v. Lubec, 64 Me. 244.

And person cannot change character of relief by promise to pay, etc.—A person cannot be pauperized under this section except by applying for supplies himself, or by receiving them with a full knowledge of their character. This does not, however, mean that he can, by a promise to pay or by a disavowal of intent to apply for relief as a pauper, change the character of that relief and thereby affect the obligation of the town of his settlement to furnish support in the first instance, or to pay for it if furnished by another town. Bar Harbor v. Jonesport, 133 Me. 345, 177 A. 614.

Husband's consent not required to constitute supplies furnished wife pauper supplies. — A wife is competent to apply to the overseers of the poor for relief, and if an application for relief for herself and children is made by her in good faith, and the case is one of actual destitution and suffering, neither the want of previous authority from the husband, nor the absence of a subsequent ratification by him, will prevent the supplies furnished in pursuance of such application from being pauper supplies. In such a case the application is not made for the husband; it is made by a destitute wife in behalf of herself and children; and such an application is clearly within the intent of this section. Sebec v. Foxcroft, 67 Me. 491.

Supplies to family render head thereof pauper.—When supplies are properly furnished to any member of a family with whose support the head of it is chargeable, and such head of the family is unable to furnish support, he thereby becomes a pauper, and may be dealt with as such. Poland v. Wilton, 15 Me. 363.

And supplies furnished child may be considered furnished to father.—When the parental and filial relation continues to subsist, and there has been no emancipation or abandonment, and the circumstances are such as make it evident that the father has knowledge of the necessities of the child, and he fails to supply those necessities, and they are supplied by the town officers, acting in good faith to relieve a case of actual want and distress, the supplies thus furnished will, under this section, be deemed supplies furnished indirectly to the father, and will operate to prevent his gaining a settlement under § 1, subsection VI. Eastport v. Lubec, 64 Me. 244.

But not if child emancipated. — Where the father has deliberately abandoned his family and taken up his residence in another town, emancipating them from all duty to him, and renouncing all obligation to them, supplies furnished, even under such circumstances as imply a knowledge of the fact upon his part, will not be considered as supplies furnished to him within the meaning of this section. Eastport v. Lubec, 64 Me. 244.

Or living apart without father's consent.—The furnishing of supplies to a minor child, who is not a member of her father's family, but is away from his care and protection either through her own fault or his neglect, without the knowledge or consent of the father, he being of sufficient ability and willing to support her at his own home, would not be considered a furnishing of supplies to him as a pauper. Eastport v. Lubec, 64 Me. 244.

Whether supplies obtained by town on credit or paid for is immaterial.—In ordinary cases of furnishing supplies directly by a town to a pauper, it matters not, for the purposes of this section, whether the town has paid for the supplies or has obtained them on its own credit. Dexter v. Sangerville, 70 Me. 441.

Supplies must be received from town.—To constitute pauper supplies they must be either applied for, or received, with a full knowledge that they are such supplies. The absence of such application or knowledge may prevent that being pauper sup-

plies which would otherwise be such. But the application alone is not sufficient; belief that the supplies are furnished by the town is not sufficient; it is the fact that they are received from the town in accordance with the obligation imposed by the statute upon the municipality, and not from individuals as the voluntary offerings of private charity, which constitutes them pauper supplies. Orland v. Penobscot, 97 Me. 29, 53 A. 830.

Directly or indirectly. — The supplies mentioned in this section must be received from the town, whether received directly or indirectly; otherwise they do not constitute pauper supplies. The indirect receipt by the pauper of supplies from the town is put upon the same basis, and has the same effect, as the direct receipt of them, but in either case they must be furnished by the town. Orland v. Penobscot, 97 Me. 29, 53 A. 830.

Upon adjudication or ratification by majority of overseers.—To constitute pauper supplies, under this section, it must be shown that there was an adjudication by a majority of the overseers of the poor that the alleged pauper had fallen into distress and stood in need of relief, or that the overseer furnished the supplies upon his own view of what is necessary and proper, if his act is subsequently assented to or ratified by a majority of the board. Mt. Desert v. Bluehill, 118 Me. 293, 108 A. 73.

Payment by town of pauper's debts does not constitute pauper supplies.—The payment by a town of the debts of one however destitute, even at the debtor's request, cannot constitute the furnishing of pauper supplies within the meaning of this section; and the payment of a pauper's overdue rent by a town is simply payment of the pauper's debt. Vinalhaven v. Lincolnville, 78 Me. 422, 6 A. 600.

Nor does reimbursement for private charity.—When the person furnishing and the person receiving aid understand the aid to be a mere act of neighborly kindness, the subsequent voluntary payment for such aid by the town will not make the aid thus furnished to be supplies within the meaning of this section. Hampden v. Bangor, 68 Me. 368.

Nor aid for health under c. 19.—Supplies furnished for health and prevention of contagious diseases under c. 19 are not chargeable as pauper supplies under this section. Machias v. East Machias, 116 Me. 423, 102 A. 181.

Nor expenses of commitment of child to children's home.—The entrance fee and the expense of commitment of a minor child of a pauper to a children's home do not come within the meaning of pauper supplies under this section. Freedom v. McDonald, 115 Me. 525, 99 A. 459.

For a case relating to this section before the enactment of a provision of c. 27, § 138 providing that support in an insane hospital shall not be deemed pauper supplies, see Waldoboro v. Liberty, 94 Me. 472, 48 A. 186.

Cited in Camden v. Belgrade, 75 Me. 126.

Sec. 3. Settlements; retained and lost.—Settlements acquired under existing laws remain until new ones are acquired or until lost under the provisions of this section. Former settlements are defeated by the acquisition of new ones. Whenever a person of capacity to acquire a settlement, having a pauper settlement in a town, has lived or shall live for 5 consecutive years in any unincorporated place or places in the state, or 5 consecutive years outside of the town in which he has a settlement after August 1, 1926, without receiving pauper supplies from any source within the state, he and those who derive their settlement from him lose their settlement in such town, and whenever a person of capacity to acquire a settlement having a pauper settlement in any town in the state shall after April 29, 1893 also live for 5 consecutive years beyond the limits of the state without receiving pauper supplies from any source within the state, he and those who derive their settlement from him shall lose their settlement in such town. The state shall be deemed to be liable for support of such persons. The settlement status of a person in the military or naval service of the United States or of a person who is an inmate of any asylum, penitentiary, jail, reformatory or other state institution shall not change during such period of service, confinement or imprisonment, but his settlement shall remain as it was at the time of the beginning of such service, confinement or imprisonment. (R. S. c. 82, § 3.)

Verified history of section.—See Thomaston v. Greenbush, 106 Me. 242, 76 A. 690; Hartland v. Athens, 149 Me. 43, 98 A. (2d) 542.

Section is valid.—Of the validity of this section there can be no doubt, notwithstanding it may operate to deprive a person of his pauper settlement in certain cases. Rangeley v. Bowdoin, 77 Me. 592, 1 A. 892.

"Settlement" imports right to support.—The word "settlement" means that a person has, on becoming poor and unable to support himself, a right of support from the town where his settlement may be. Trenton v. Brewer, 134 Me. 295, 186 A. 612.

A settlement may be acquired derivatively as well as otherwise. The words "remain until new ones are acquired," in the first sentence of this section, embrace a settlement acquired by derivation as well as one acquired directly. Augusta v. Mexico, 141 Me. 48, 38 A. (2d) 822.

And cannot be affected by overseers.—It is not within the official authority or duty of overseers of the poor to create or change the settlement of paupers, and neither their acts nor their admissions to that extent can bind or estop towns. New Vineyard v. Harpswell, 33 Me. 193.

Or by contracts between towns.—A contract between towns for the future support of certain paupers cannot by its own force change legal settlements. Veazie v. Howland, 47 Me. 127.

Or by abandonment of spouse.—Abandonment of a home or residence may affect the settlement, but the abandonment of a husband or wife will have no such effect within the language of this section. Burlington v. Swanville, 64 Me. 78.

Nor is it affected by temporary absences.—When a residence has once been established by the concurrence of intention and personal presence, continuous personal presence thereafter is not essential to a continuous residence, within the meaning of this section, especially when he whose residence is in question has a family between whom and him the mutual family relations are in full force; for absences of longer or shorter periods for temporary purposes do not change the established home at which the family continues to reside with the consent of its head. Topsham v. Lewiston, 74 Me. 236.

But if lost it cannot be revived.—Under this section, when a pauper settlement is defeated or lost, it is finally ended and cannot be revived. A subsequent settlement in the same town, as in a different one, is a new settlement and is entirely separate and distinct from the old. They cannot be deemed the same in fact or in any legal consequence. Friendship v. Bristol, 132 Me. 285, 170 A. 496.

Since there is no provision for revival.—No provision is made in this chapter for the revival of a lost settlement, and without such provision there is no revival, since the obligations of towns to support paupers are wholly the result of statutory provisions. Monson v. Fairfield, 55 Me. 117.

Section affects only relations subsisting at end of five years.—The words "he and those who derive their settlement from him lose their settlement in such town," mean that those who, at the time he loses his settlement, namely, at the end of five years, are so connected with him as to then have a derivative settlement from him, lose theirs also. But when the tie of settlement existing between father and unemancipated minors has been severed before the five years expire, then the loss is his alone, because the emancipated children are pursuing an independent course and the expiration of the five years cannot revive the relations between parent and child nor reunite the tie once broken. The provision was not designed to disrupt already acquired settlements in this way. Thomaston v. Greenbush, 106 Me. 242, 76 A. 690; Winslow v. Old Town, 134 Me. 73, 181 A. 816.

It is not retroactive.—This section does not speak until the end of five years and when it does speak it has no retroactive force to bring a loss of settlement to those who at one time derived their settlement from such party but do so no longer. Bangor v. Veazie, 111 Me. 371, 89 A. 193; Thomaston v. Greenbush, 106 Me. 242, 76 A. 690; Winslow v. Old Town, 134 Me. 73, 181 A. 816.

But husband's loss of settlement is wife's loss also.—Within the meaning of the provision of this section for loss of settlement after five years absence, it is to be observed that there is a wide difference between a deserted wife and emancipated children. A man may desert or abandon his wife but he cannot emancipate her. Until divorce or death his settlement is hers, and his loss of settlement is hers, because at the time of the loss she still derives her settlement from him. The settlement tie is not severed and therefore the statute applies to both. Thomaston v. Greenbush, 106 Me. 242, 76 A. 690.

Burden of showing lost settlement on defendant.—Where a defendant town asserts that the pauper has lost his settlement under this section, the burden of sustaining this proposition is on the defendant. Gouldsboro v. Sullivan, 132 Me. 342, 170 A. 900; Ft. Fairfield v. Millinocket, 136 Me. 426, 12 A. (2d) 173.

The last sentence of this section was enacted for the purpose of making a uniform rule governing the settlements of certain classes of persons. Hartland v. Athens, 149 Me. 43, 98 A. (2d) 542.

In the last sentence of this section "person" includes both minor and adult, and the settlement of each is affected thereby. Hartland v. Athens, 149 Me. 43, 98 A. (2d) 542.

The settlement status of a former member of the armed services who entered the services as a minor remains unchanged under this section notwithstanding the loss of settlement status of the serviceman's father. Hartland v. Athens, 149 Me. 43, 98 A. (2d) 542.

Without differentiation.—The words of the last sentence of this section are plain and clear. There is no differentiation between change of settlement by an adult of capacity to acquire a new settlement for himself, and by a minor whose settlement is derivative. Hartland v. Athens, 149 Me. 43, 98 A. (2d) 542.

Former provision of section.—For a case relating to a former provision of this section whereby a settlement once acquired was retained until a new one was acquired, see Winthrop v. Auburn, 31 Me. 465.

Applied in Old Town v. Bangor, 58 Me. 353; Portland v. Auburn, 96 Me. 501, 52 A. 1011; Machias v. Wesley, 99 Me. 17, 58 A. 240.

Stated in Albany v. Norway, 107 Me. 174, 77 A. 713; Somerville v. Smithfield, 126 Me. 511, 140 A. 195.

Cited in Rockland v. Morrill, 71 Me. 455.

Sec. 4. Towns relieving persons who lose settlement under § 3, reimbursed by state.—Whenever a person having a pauper settlement in a town loses such settlement by virtue of the provisions of section 3, relief shall be furnished, and towns furnishing such relief shall be reimbursed by the state as provided in section 21, in case of paupers having no legal settlement in the state. In case the existing derivative settlement of a person cannot be determined after a diligent effort and search by the municipality furnishing pauper supplies to said person, then said person shall be deemed to have no settlement in the state and the state shall be liable for the support of said person; provided, however, that said derivative settlement which cannot be determined shall involve a period of more than 20 years or the 3rd generation and that the commissioner of health and welfare and the attorney general shall first be satisfied that the municipality furnishing the relief has made a diligent effort and search to establish the true legal settlement of said person. (R. S. c. 82, § 4.)

Cited in Thomaston v. Greenbush, 106 Me. 242, 76 A. 690.

Sec. 5. Towns must notify state when state paupers assisted.—When relief is provided for paupers and other dependent persons having no settlement within the state under the provisions of this chapter or any other provisions of law, the overseers of the poor of the city, town or plantation wherein such relief is provided shall give written notice within 90 days to the department of health and welfare upon such blanks as may be prescribed by the commissioner; and the state shall reimburse such city, town or plantation for the relief furnished to such an amount as the commissioner adjudges to have been necessarily expended therefor; provided, however, that in no case shall the state reimburse such city, town or plantation for any expense incurred in such case more than 90 days prior to the date of the receipt of the aforesaid notice by the said department, unless it shall be proved to the satisfaction of the department that the said overseers were unable to determine the status of the paupers or other dependent persons until within 60 days of the date of the filing of their written notice. All claims for reimbursement in such cases shall be made up to and including the last day of each month of the year, covering all bills for assistance furnished during that month, and filed with the department of health and welfare within a reasonable time thereafter. (R. S. c. 82, § 5.)

Sec. 6. Inmates of Veterans Administration Center at Togus. — Inmates of the Veterans Administration Center at Togus, in the county of Kennebec,

and persons subject to the rules and regulations thereof or receiving rations therefrom have their settlement in the respective towns in which they had a legal settlement when their connection with said Veterans Administration Center commenced, so long as such connection continues therewith. (R. S. c. 82, § 6.)

Settlement cannot be acquired during connection with Veterans Administration Center.—Under the provisions of this section no inmate of the Veterans Administration Center at Togus, or person subject to its rules and regulations, or receiving rations therefrom, whether when his connection with the center commenced he had a pauper settlement in this state or not, can acquire a pauper settlement in this state so long as his connection with the center continues. Winslow v. Pittsfield, 95 Me. 53, 49 A. 46.

Sec. 7. Towns relieving former inmates, reimbursed by state.—If a town furnishes relief to any such person mentioned in section 6, who becomes a pauper after his connection with said Veterans Administration Center has ceased, having no legal settlement in the state, or to his family, the state shall reimburse such town for the relief furnished, to such an amount as the department of health and welfare adjudges to have been necessarily expended therefor. (R. S. c. 82, § 7.)

Sec. 8. Children's home at Bath.—No child acquires a pauper settlement in the city of Bath by reason of being an inmate of the State Military and Naval Children's Home. (R. S. c. 82, § 8.)

Sec. 9. Acquiring pauper settlement limited.—During the period that a person is supported in whole or in part by old age assistance or aid to the blind, he and those who derive their settlement from him shall not acquire or lose a pauper settlement nor be in the process of acquiring or losing a pauper settlement. Upon the termination of such old age assistance or aid to the blind, he shall again have the capacity to start to acquire or lose a pauper settlement, but until such time as he has acquired a new settlement or lost his old settlement, he and those who derive their settlement from him shall hold the settlement he had at the time of the receipt of such old age assistance or aid to the blind. During the period that a dependent child is receiving aid under the pertinent provisions of chapter 25, such dependent child and the parent from whom such child derives his settlement shall not acquire or lose a settlement. (R. S. c. 82, § 9. 1949, c. 127. 1953, c. 249.)

Sec. 10. Soldiers, sailors, marines honorably discharged not considered paupers; families not supported in poorhouse.—No soldier, sailor or marine who served in the army, navy or marine corps of the United States in the war of 1861 or in the war with Spain, and no male or female veteran who served in World Wars I or II or the Korean Campaign, and who has received an honorable discharge from said service, and who has or may become dependent upon any town shall be considered a pauper or be subject to disfranchisement for that cause; but the time during which said soldier, sailor or marine is so dependent shall not be included in the period of residence necessary to change his settlement; and overseers of the poor shall not have authority to remove to or support in the poorhouse any such dependent soldier, sailor or marine or his family. The word "family" here used shall be held to include the soldier, sailor or marine, his wife, his unmarried minor children living with him and dependent upon him for support and such other unmarried children of his dependent upon him for support who by reason of mental incapacity or physical disability are unable to provide for themselves; but the town of his settlement shall support them at his own home in the town of his settlement or residence or in such suitable place other than the poorhouse as the overseers of the town of his settlement may deem right and proper. The words "soldier, sailor or marine" here used shall be held to include male and female veterans. In case of violation of the provisions of this section the overseers of the poor shall be subject to a fine

of $25; and for every day they allow them to remain in such poorhouse, after reasonable notice, they shall be subject to a further fine of $5 a day, to be recovered by complaint or indictment. This section shall not be so construed as to deprive overseers of the poor of any right to remove and support such dependent soldier, sailor or marine and his family in the town of his settlement as provided by law. (R. S. c. 82, § 10. 1951, c. 157, § 14.)

Cross reference. — See § 34, re out-of-state paupers.

History of section.—See Sebec v. Dover, 71 Me. 573.

This section completely, save the exception contained in it, removes pauper disabilities from soldiers whose distress calls for relief under the pauper laws of the state. Augusta v. Mercer, 80 Me. 122, 13 A. 401.

But does not prohibit aid to soldier.—The legislature, by the prohibition in this section of pauper disabilities on account of aid rendered a needy soldier, did not mean that he should not be supplied in accordance with the pauper law. Sebec v. Dover, 71 Me. 573.

And does not affect remedy over upon town of settlement.—The same condition of poverty is necessary to entitle one to supplies under this section as under the general pauper law, but the same consequences do not result. The section has reference to the person rather than the towns and, while it prevents any change in his rights, it has no tendency to destroy or affect the remedy over upon the town where is the settlement of the person receiving such supplies. Sebec v. Dover, 71 Me. 573; Augusta v. Mercer, 80 Me. 122, 13 A. 401.

Cited in Orland v. Ellsworth, 56 Me. 47; State v. Montgomery, 92 Me. 433, 43 A. 13.

Sec. 11. Towns to relieve poor.—Towns shall relieve persons having a settlement therein when, on account of poverty, they need relief. They may raise money therefor as for other town charges; and may at their annual meeting choose not exceeding 7 legal voters therein to be overseers of the poor. (R. S. c. 82, § 11.)

Cross references.—See c. 25, § 64, re antitoxin, etc.; c. 91, § 12 re overseers of poor; c. 91, § 100, re authority to raise money.

Legislature may require support of paupers.—The legislature has the power to impose upon the state itself or upon particular municipalities, as this section provides, the support of paupers as it may choose. Augusta v. Waterville, 106 Me. 394, 76 A. 707.

And obligation of towns is statutory.—The obligation of towns, such as provided under this section, regarding the relief of the poor originates in statutory enactment and not from contract, express or implied. Augusta v. Waterville, 106 Me. 394, 76 A. 707; Rockland v. Lincolnville, 135 Me. 420, 198 A. 744.

But they may indemnify by contract against liability.—Under this section a town may indemnify itself by proper contract against the contingent liability of furnishing pauper supplies to one who at the time of the contract has a pauper settlement within the town, and this without regard to whether he is in present need or not, or whether the person affected knows that he is receiving pauper supplies or not. In matters like this, they may properly avert or prevent liability, and the overseers of the poor have authority to make such a contract without instructions from the town. Palmyra v. Nichols, 91 Me. 17, 39 A. 338.

This section is absolute in terms and was not repealed expressly or by necessary implication by the act creating the board of health. Hutchinson v. Carthage, 105 Me. 134, 73 A. 825.

It is to be separately construed from c. 91, § 12.—This section and c. 91, § 12, which provides for the election of three, five or seven selectmen and overseers of the poor when other overseers are not chosen, are not to be construed together so as to provide that the requirement in chapter 91 to choose three, five, or seven, is at the same time to be a special designation of the number of overseers of the poor to be chosen under this section. With respect to the number of officers the two sections are to be construed separately. Lyman v. Kennebunkport, 83 Me. 219, 22 A. 102.

The right by this section to choose not exceeding seven overseers is the right to choose any number not exceeding seven. Lyman v. Kennebunkport, 83 Me. 219, 22 A. 102.

Stated in Furbish v. Hall, 8 Me. 315; Warren v. Islesborough, 20 Me. 442; Sebec v. Dover, 71 Me. 573; Augusta v. Mercer, 80 Me. 122, 13 A. 401.

Cited in Turner v. Brunswick, 5 Me. 31.

Sec. 12. Overseers' duties; employment directed by towns.—Overseers shall have the care of all paupers or persons dependent upon the town for their support residing in their town and cause them to be relieved and employed at the expense of the town; and the town may direct their employment, whether said pauper or other dependent person has a settlement in their town or not. Nothing contained herein, however, shall in any way diminish the liability of the town of settlement or of the state with respect to the reimbursement to the town of residence for supplies furnished to such pauper or dependent person. Overseers of the poor and all other officers having charge of the administration of pauper funds shall keep full and accurate records of the paupers fully supported, the persons relieved and partially supported and the travelers and vagrants lodged at the expense of their respective towns, together with the amount paid by them for such support and relief; and shall annually make return of the number of such persons supported and relieved, with the cost, to the department of health and welfare. Any person who refuses without lawful excuse to perform the employment directed by the town shall be punished by a fine of not more than $20 or by imprisonment for not more than 90 days for each offense, or by both such fine and imprisonment. (R. S. c. 82, § 12. 1951, c. 10.)

Cross references.—See § 40, re duty of overseers to sue and defend; c. 25, § 253, re minors not to be placed in almshouses; c. 25, § 333, re Indians.

Overseers are agents of the town.—Overseers of the poor have the care and oversight of the poor under this section and, in the discharge of their duties, they are the authorized agents of the town. Palmyra v. Nichols, 91 Me. 17, 39 A. 338; Hutchinson v. Carthage, 105 Me. 134, 73 A. 825.

And may bind town by contract.—Overseers of the poor, while not general agents within certain limits, are agents of the town, and bind it by their acts. They have care of the paupers, and may "cause them to be relieved and employed at the expense of the town," and may bind the town by contract to these ends, unless the town has otherwise directed. Rockland v. Farnsworth, 93 Me. 178, 44 A. 681.

The overseers of the poor may make contracts for the relief and support of those found in need of relief. Hutchinson v. Carthage, 105 Me. 134, 73 A. 825.

A town may become liable to the inhabitants of another town for relief furnished a pauper by virtue of a contract between the town and a person furnishing relief. Hutchinson v. Carthage, 105 Me. 134, 73 A. 825.

The powers with which overseers are clothed under this section require an exercise of judgment by which they may charge their towns with the support of paupers. Ft. Fairfield v. Millinocket, 136 Me. 426, 12 A. (2d) 173.

But they cannot change settlements or confess away rights of town.—Although, from the necessity of the case, overseers of the poor may, by virtue of their office, make contracts for the support of the poor, and transact a variety of business in relation to their regulation and employment, yet they have no authority, by their mere acts or declarations, to change the settlement of a pauper from one town to another, and confess away the rights of their town, and subject it to liabilities and burdens by any of their arrangements. This is no part of their duty. Veazie v. Howland, 47 Me. 127.

As to estop town from contesting settlement.—It is not within the official authority or duty of overseers of the poor, within the language of this section, to create or change the settlement of paupers, and neither their acts nor their admissions to that extent can bind or estop towns. Weld v. Farmington, 68 Me. 301.

Nor is a town estopped to contest a settlement by the mere fact that it has furnished supplies and support for the pauper. Weld v. Farmington, 68 Me. 301.

Overseers are required to determine and direct their action as a body. Carter v. Augusta, 84 Me. 418, 24 A. 892.

And minority alone cannot act.—By implication of c. 10, § 22, Rule III, less than a majority of the overseers can do no binding act; consequently, the actions of a minority, without more, can have no effect to make responsible those for whom it professes to act. Boothby v. Troy, 48 Me. 560.

But action by minority may be authorized or subsequently ratified.—The action of one overseer is the action of the board when authorized by them; and in many cases, when consistent with implied authority, although no express authority had been given, becomes the action of the board, when approved or ratified. Carter v. Augusta, 84 Me. 418, 24 A. 892.

It is not necessary that a majority of the

overseers of a town should make a personal examination as to the necessity for supplies. One overseer may in a proper case furnish supplies to a distressed pauper by virtue of precedent authority, or his act, without such authority, may receive a subsequent ratification. Smithfield v. Waterville, 64 Me. 412.

As formal adjudication of board not required.—The law does not require a formal adjudication by the board of overseers that a person has fallen into distress and requires relief. It is sufficient, within the meaning of this section, if one overseer furnishes the supplies upon his own view of what is necessary and proper, if his act is subsequently assented to or ratified by a majority of the board. Linneus v. Sidney, 70 Me. 114.

Overseers' sound discretion determines relief required.—Overseers are bound to act in good faith and with reasonable judgment regarding the necessity for and the nature and extent of relief furnished. The relief must be reasonable and proper under the circumstances and this, in the first instance, must be left to their sound and honest discretion. Ft. Fairfield v. Millinocket, 136 Me. 426, 12 A. (2d) 173.

And their reasonable conclusions respected.—If the overseers act in good faith and with reasonable judgment touching the necessity of relief of persons found in need, their conclusions will be respected under this section. Hutchinson v. Carthage, 105 Me. 134, 73 A. 825; Bishop v. Hermon, 111 Me. 58, 88 A. 86; Machias v. East Machias, 116 Me. 423, 102 A. 181.

It is presumed that the overseers act with integrity until the contrary is shown; and it is the duty of the courts to expect decisive proof of a breach of their trust. Bishop v. Hermon, 111 Me. 58, 88 A. 86.

Though their decisions are not final.—The conclusions of the overseers with regard to the nature and extent of relief should be respected. Their decision is not final, but it is presumed that they act with integrity until the contrary is shown. Macias v. East Machias, 116 Me. 423, 102 A. 181.

Overseers must inquire whether immediate relief is necessary.—It is made the duty of the overseers of the town where a person may be found in distress to institute an inquiry, not as to any means he may possess, of which he cannot then avail himself; but whether immediate relief is necessary. Hutchinson v. Carthage, 105 Me. 134, 73 A. 825.

And it is their duty to see that suitable provision is actually made for the suffering poor within their towns, whenever they have notice that any such have fallen into distress and stand in need of immediate relief. It not enough that they contract with other persons to provide it, for such persons may violate their contracts. Perley v. Oldtown, 49 Me. 31.

Regardless of how distress occasioned.—It is immaterial under this section whether the person in need is brought into that condition by quarantine, neglect of the board of health or otherwise, inasmuch as it is the fact of the situation, not the method of producing it, that requires the action of the officers. Hutchinson v. Carthage, 105 Me. 134, 73 A. 825.

A person need not necessarily be a pauper to enable the overseers to furnish relief. Hutchinson v. Carthage, 105 Me. 134, 73 A. 825.

As he may have property unavailable.—It is the duty of the overseers of the poor under this section to relieve a person found in their town in distress, although he may have property of his own not available for his immediate relief. Hutchinson v. Carthage, 105 Me. 134, 73 A. 825.

Reasonable care and prudence required in removal of pauper.—The care to be used by the overseers in the execution of their duties prescribed by this section in removing a person in distress from one town to another, is that care and prudence which a reasonably careful and prudent man would exercise under the circumstances of a like situation. Merrill v. Bassett, 97 Me. 501, 54 A. 1102.

And inquiry must be made as to whether pauper can withstand removal.—In removing a distressed person the overseers are bound to exercise due care and prudence to ascertain whether the plaintiff is in suitable physical condition to be moved; and whether the distressed person is or is not actually in physical condition to bear the strain of the removal, the overseers discharge their full duty in this respect by the exercise of ordinary care to find out. It is incumbent upon them to remove the distressed person in a prudent manner. Merrill v. Bassett, 97 Me. 501, 54 A. 1102.

Care and relief of paupers, and supervision of their employment do not mean commitment to institutions for a term of years. Freedom v. McDonald, 115 Me. 525, 99 A. 459.

Former provision of this section.—For a case concerning this section before enactment of the provisions giving towns authority to employ paupers having no settlements therein, see Auburn v. Farmington, 133 Me. 213, 175 A. 475.

Quoted in part in Poland v. Biddeford, 148 Me. 346, 93 A. (2d) 722.

Sec. 13. Employers to furnish overseers of poor with record of wages paid.—Overseers of the poor of any municipality in this state may furnish any employer of labor, employing regularly five or more workmen, with a list containing the names of any persons receiving or applying for aid in such municipality and request that such employer furnish them with a statement of the earnings of the persons named on such list, in their employ, paid within 1 month immediately preceding the date on which said list was furnished. Such employer shall, within 10 days of the receipt of such list, furnish the overseers of the poor with a statement of the wages paid within 1 month immediately preceding the receipt of such list to all employees named therein. Any person, firm or corporation violating the provisions of this section shall be punished by a fine of not more than $15 for each offense. (R. S. c. 82, § 13.)

Sec. 14. Duties delegated; oath; bond.—Overseers may authorize some person whom they shall designate to perform such of the duties imposed upon them by the provisions of this chapter as they may determine; provided, however, that in cities and towns having a population of 10,000 or more the said overseers may designate more than 1 person to perform such duties. Before entering upon the performance of said duties, the person or persons so designated shall be sworn, and shall give bond to the town for the faithful performance thereof, in such sum and with such sureties as the overseers order. (R. S. c. 82, § 14.)

Cross reference.—See § 40, re duty of overseers to sue and defend.

Clerk of overseers may testify.—In an action by one town against another to recover for supplies furnished, the clerk of the overseers may properly be allowed to testify as to his duties and acts without preliminary proof of compliance with this section. See Poland v. Biddeford, 148 Me. 346, 93 A. (2d) 722.

Sec. 15. Auction prohibited; towns may contract for support.—Persons chargeable shall not be set up and bid off at auction either for support or service; but towns at their annual meetings, under a warrant for the purpose, may contract for the support of their poor for a term not exceeding 5 years. (R. S. c. 82, § 15.)

Sec. 16. Home for poor and infirm; union farms.—A town or two or more towns, by vote thereof, at an annual or special town meeting called for that purpose by an appropriate article in the warrant, may authorize the acquisition by purchase, lease or otherwise of land and buildings together with household furniture, farming tools, implements and equipment and livestock for the purpose of suitably, efficiently and humanely caring for the poor and infirm within their respective territorial limits, upon such terms as may be agreed upon by vote of the towns, or by contract of the municipal officers thereof after the votes of the towns have authorized such purchase or maintenance. Existing homes used for such dependents may be used as homes for dependents in towns making such union, when they so agree. (R. S. c. 82, § 16.)

Sec. 17. Paupers removed to union farm.—In cases where such union town farms described in section 16 are maintained, the rights of any town comprising a part of such union to remove its paupers to the union town farm shall be the same, whether said farm is located in the limits of said town or within the limits of some other town which has united for such purpose with said town. (R. S. c. 82, § 17.)

Sec. 18. Joint board of overseers.—The overseers of the poor of the towns comprising such a union described in section 16 shall constitute a joint board of overseers, with the same authority over such union town farm and the inmates thereof as the overseers of the poor of a single town have over the separate farm and its inmates of such town. The joint board may choose a chairman and a secretary, but in case they fail to do so, the chairman of the

board of overseers of the poor of the oldest town of such union shall act as chairman and the chairman of the same board of the next oldest town shall act as secretary. They may at a full meeting establish rules for the management of such farm, appoint a superintendent, prescribe his powers and duties and cause all the paupers of such towns to be supported there. They may receive and support there paupers of other towns. Towns may raise money for the purposes named in this and the 2 preceding sections. (R. S. c. 82, § 18.)

Sec. 19. Union of towns for the employment of social welfare workers.—Two or more adjoining towns may unite in employing the same social worker, whose duty shall be to assist the overseers of the poor of such towns in the administration of poor relief. Towns desiring to take advantage of the provisions of this section are empowered to appropriate or raise money for the foregoing purpose at an annual town meeting. The state shall contribute not exceeding $200 per year on account of the salary of any such social welfare worker whose qualifications meet the requirements of the department of health and welfare, and said amount shall be paid from the appropriation for support of state paupers and other dependent persons having no settlement within the state. (R. S. c. 82, § 19.)

Sec. 20. Kindred liable for support of kindred; procedure.—The father, mother, grandfather, grandmother, children and grandchildren, by consanguinity, living within the state and of sufficient ability, shall support persons chargeable in proportion to their respective ability. A town, the state or any kindred of a pauper, having incurred expense for the relief of such pauper, may complain to the superior court in the county where any of the kindred reside; and the court may cause such kindred to be summoned, and upon hearing or default may assess and apportion a reasonable sum upon such as are found to be of sufficient ability for the support of such pauper to the time of such assessment; and shall issue a writ of execution as in actions of tort. Such assessment shall not be made to pay any expense for relief afforded more than 6 months before the complaint was filed. Such complaint may be filed with the clerk of the court who shall issue a summons thereon, returnable and to be served as writs of summons are; and on suggestion of either party that there are other kindred of ability not named, the complaint may be amended by inserting their names, and they may be summoned in like manner and be proceeded against as if originally named. The court may assess and apportion upon such kindred a sum sufficient for the future support of such pauper, to be paid quarterly, until further order; and may direct with whom of such kindred consenting thereto and for what time he may dwell, having regard to his comfort and their convenience. On application of the town, the state or person to whom payment was ordered, the clerk may issue or renew a writ of execution returnable to the next term of the court to collect what may be due for any preceding quarter. The court may, from time to time, make any further order on complaint of a party interested, and after notice given, alter such assessment or apportionment. On failure to sustain a complaint, the respondents recover costs. (R. S. c. 82, § 20. 1951, c. 25; c. 255, §§ 1, 2. 1953, c. 308, § 97.)

Cross references.—See § 45, re burial of honorably discharged soldiers and sailors; c. 25, § 294, re old age assistance; c. 95, § 14, re prisoners; c. 166, § 22, re children to care for parents.

The town may elect to call upon the kindred, but it is not obliged to do so under this section. Auburn v. Lewiston, 85 Me. 282, 27 A. 159.

The obligation under this section to render aid depends upon the sufficient ability of the party liable. When that ceases, the obligation ceases. Tracy v. Rome, 64 Me. 201.

And if not of sufficient ability, the kindred specified in this section stand in the same position as other inhabitants of the town in which they reside. Hall v. Clifton, 53 Me. 60.

This section does not embrace within its

provisions an illegitimate child who has become chargeable as a pauper. Hiram v. Pierce, 45 Me. 367.

But child of second marriage legitimate where first husband presumed dead. — Where a second marriage was contracted by a wife after seven years' absence of the first husband, without a divorce from such first husband, the issue of such second marriage may be held to be legitimate and come within the language of this section. See Hiram v. Pierce, 45 Me. 367.

Contingent liability outside prescribed period not sufficient to sustain promise.— The contingent statutory liability which a son is under to reimburse the town of his mother's pauper settlement for pauper supplies furnished to her, not within the period prescribed by this section, is not a sufficient consideration for his promise to the town to pay the same. Freeman v. Dodge, 98 Me. 531, 57 A. 884.

Complaint by town should be in name of town.—Under this section the complaint by a town should be in the name of the town by their appropriate officers, and the judgment should be rendered in favor of the city or town thus complaining. The overseers of the poor, as such, are not proper parties to such proceedings, for they are the agents of the town complaining. Calais v. Bradford, 51 Me. 414.

And complaint must be to court having jurisdiction of first decree.—The process by complaint, allowed by this section, is for the purpose of making such alteration in the existing record as justice may demand. The provision that the court may "make further order" assumes that this complaint must be before the court having jurisdiction of the original complaint. The record of the original decree and of the new decree altering it must be in one and the same county. Tracy v. Rome, 64 Me. 201.

Stated in Marston, Petitioner, 79 Me. 25, 8 A. 87.

Cited in Ex parte Pierce, 5 Me. 324; Bridgton v. Bennett, 23 Me. 420; Harvey v. Lane, 66 Me. 536; Carrier v. Bornstein, 136 Me. 1, 1 A. (2d) 219.

Sec. 21. Relief of paupers in unincorporated places; state paupers; paupers in deorganized places.—Persons found in places not incorporated and needing relief are under the care of the overseers of the oldest incorporated adjoining town or the nearest incorporated town where there are none adjoining, who shall furnish relief to such persons as if they were found in such towns. When relief is so provided, the towns so furnishing it have the same remedies against the towns of their settlement as if they resided in the town so furnishing relief.

When such paupers have no legal settlement in the state, the state shall reimburse said town for the relief furnished, to such an amount as the department of health and welfare adjudges to have been necessarily expended therefor; and the reasonable expenses and services of said overseers relative to such paupers shall be included in the amount to be so reimbursed by the state. The department of health and welfare may, in its discretion, make such other arrangements as it may deem advisable for the care and support of paupers and other dependent persons having no settlement within the state. It may acquire property adjoining any state institution and erect suitable houses thereon or may erect such houses on land owned by the state for the occupancy of such persons, and may order such persons placed therein and cared for and employed in or at such institution or elsewhere under the direction of the superintendent of any such institution; and the expense of acquiring such property or erecting such houses shall be paid from the appropriation for support of paupers and other dependent persons having no settlement within the state. Whenever such persons are so employed elsewhere than in or at such institution, said superintendent shall contract for the payment of wages for such employment which shall be collected by him, paid into the state treasury and credited to said appropriation for support of paupers and other dependent persons having no settlement within the state and used, under the direction of the department of health and welfare, for the support of the families of such persons.

The provisions of this section shall not apply to administrative responsibility for relief of persons found in townships which have become unincorporated through an act to surrender their organization passed by the legislature. All persons found in such deorganized places needing relief are under the care of the

department of health and welfare. The state shall recover for relief furnished persons in deorganized towns from the towns of their settlement, if any within the state. If such persons have no settlement within the state, the department of health and welfare shall have the same rights and privileges as to location, care, support and earnings of such persons as are set forth in this section relative to persons found in unorganized townships. (R. S. c. 82, § 21. 1947, c. 230.)

Cross reference.—See c. 25, § 65, re medical supplies to indigent nonresidents.

The object of this section undoubtedly is to secure relief and needed supplies to persons in distress, in places where there are no overseers of the poor and no corporation bound by law to furnish such aid. Ellsworth v. Gouldsboro, 55 Me. 94.

Paupers relieved by adjoining town not thereby paupers of such town.—The provision of this section that persons found in unincorporated places in distress are under the care of the overseers of an adjacent town does not make such persons the legal paupers of such town; they have no legal settlement in the town, and there is no provision making that town liable for any relief furnished such persons after they have removed from the vicinity of the town. Ellsworth v. Gouldsboro, 55 Me. 94; Machias v. Wesley, 99 Me. 17, 58 A. 240.

Only oldest adjoining town has remedy.—The paupers mentioned in this section are not under the care of the overseers of the poor of the several towns in the state, but of "the overseers of the oldest incorporated adjoining town." The towns furnishing such paupers relief must be under the obligation imposed by this section to furnish relief, else they are without remedy. Newry v. Gilead, 60 Me. 154.

Stated in Rackliff v. Greenbush, 93 Me. 99, 44 A. 375; Auburn v. Farmington, 133 Me. 213, 175 A. 475.

Cited in Kennedy v. Weston, 65 Me. 596; Davis v. Milton Plantation, 90 Me. 512, 38 A. 539.

Sec. 22. Towns relieving persons removing from unincorporated place, reimbursed by state.—When persons, residing in an unincorporated place and having no pauper settlement in the state, remove from such place to any town and there need relief and the same is furnished to them by such town, the state shall reimburse said town for such relief so furnished, in the same manner and under the same restrictions as to the amount reimbursed, as provided in the preceding section. (R. S. c. 82, § 22.)

Sec. 23. Removal of state paupers.—Whenever towns that are compelled to care for and furnish relief to state paupers in unincorporated places, for reasons of economy, desire to remove the same into their own town, their overseers of the poor may make a written request, stating their reasons to the department of health and welfare, which shall examine the same, and if in its judgment such state paupers would thereby be supported with less expense to the state, may permit in writing such transfer to be made. Whenever state paupers are thus transferred and maintained in a town for such purposes, they do not become paupers of such town by reason of residence therein while so maintained. Whenever any person for whose support the state is liable shall be in need of immediate relief, the department of health and welfare may order such person to be removed to any town within the state or placed in the care of any state institution without formal commitment, and such orders shall be carried out by the overseers of the poor of the town required by law to provide relief for such person or by any official designated by the department of health and welfare. The expenses of such removal shall be paid by the state from the appropriation for support of paupers; provided that no such person or pauper shall be removed into any town, other than a town required by law to provide relief for such person or pauper, without the consent of the overseers of the poor of the town into which it is proposed to move said person or pauper. (R. S. c. 82, § 23.)

Sec. 24. State to reimburse for relief furnished persons having no legal settlement.—Whenever persons who have no legal settlement within the state and needing immediate relief are found in any town or in unincorporated

places and are brought into an adjoining town obliged by law to care for and furnish relief to such persons, and relief is so furnished, the state shall reimburse said town for such relief so furnished in the same manner and under the same restrictions as provided in section 21, although the overseers of the poor of said town have no permit in writing from the department of health and welfare to remove the same into their town. (R. S. c. 82, § 24.)

Applied in Augusta v. Waterville, 106 Me. 394, 76 A. 707.

Stated in Hallowell v. Portland, 139 Me. 35, 26 A. (2d) 652.

Cited in Machias v. Wesley, 99 Me. 17, 58 A. 240.

Sec. 25. Certain larger plantations to maintain their paupers.—Plantations having a population of 200 or more and a valuation of at least $100,000 shall support the paupers therein, in the same manner that towns now do, and the expenses therefor shall not be chargeable to the state. (R. S. c. 82, § 25.)

Sec. 26. Persons needing relief in certain plantations under care of assessors; state paupers not affected.—Persons found in plantations having a population of more than 200, to be determined by the returns of the county commissioners as provided by section 1 of chapter 101, and a state valuation of $40,000 and needing relief are under the care of the assessors of such plantations; and the duties and powers of such assessors relative to such persons are the same in every respect as overseers of the poor in towns have in like cases; and such plantations shall assess and raise all moneys necessary to defray the expense incurred in the care of such persons; and plantations so furnishing relief have the same remedies against the towns of their settlement that towns have in like cases; but this section does not extend to, nor affect the laws concerning so-called state paupers or paupers' settlements. (R. S. c. 82, § 26.)

Claims for support of state paupers must go through oldest adjoining town.—Any claim for the support of state paupers, as distinguished from town paupers found in the class of plantations specified in this section, must come through the oldest incorporated adjoining town, or nearest incorporated town where there are none adjoining, as specified in § 21. Davis v. Milton Plantation, 90 Me. 512, 38 A. 539.

Since section does not include state paupers.—This section, properly construed in connection with the last clause contained in it, is as if it read: "Persons (other than state paupers) found in plantations having a population of more than two hundred," etc. Davis v. Milton Plantation, 90 Me. 512, 38 A. 539.

Sec. 27. Individuals may relieve the sick in unincorporated places and bury the dead.—A person residing in a place not incorporated may provide relief and medical aid for any other sick, wounded or injured resident, and in case of his death may cause him to be buried, and may recover the amount necessarily expended of the town where such person had a settlement if, within 60 days thereafter, he has delivered into a postoffice, postage paid, a written notice signed by him informing the overseers of such town of the name of the person relieved, the nature of his sickness or injury, if known, and the amount expended. Towns paying such expenses or costs may recover the amount, with interest, of the person relieved or of anyone liable for his support. (R. S. c. 82, § 27.)

Cited in Kennedy v. Weston, 65 Me. 596.

Sec. 28. Overseers to relieve persons having settlement in other towns; actions between towns.—Overseers shall relieve persons destitute, found in their towns and having no settlement therein, and in case of death, decently bury them or dispose of their bodies according to the provisions of section 12 of chapter 66; the expenses whereof and of their removal, incurred within 3 months before notice given to the town chargeable, may be recovered of the town liable by the town incurring them, in an action commenced within 2 years after the cause of action accrued and not otherwise; and may be recovered of their kindred in the manner provided in this chapter.

When relief is given to a person having a settlement in another municipality and no legal notice of such aid has been sent to the municipality of settlement within 6 months from the time that expense has been incurred, the continuity of acquiring a settlement in the municipality furnishing such aid or relief shall not be interrupted thereby.

Notice as hereinbefore provided shall be deemed sufficient if the said notice is sent to the municipality of apparent settlement as indicated by written evidence of settlement submitted by the applicant for relief.

In all actions between towns in which the determination of the pauper settlement of a person or persons is involved, it shall be the duty of the clerk of the court wherein such action is pending to notify the state department of health and welfare in writing of the pendency of such suit within 10 days from the date of entry of the suit. Such notice shall contain the names of the parties to the suit and the names and addresses of the persons whose pauper settlement is involved. In the event of a notice for trial at the return term the aforesaid notice shall be forwarded as soon as is possible after the entry of the action. The state shall have the right to enter its appearance on the docket of the court in which such action is pending as a party defendant to plead and introduce evidence in the trial of the cause on material issues involving pauper settlement. A recovery in such an action against a town estops it from disputing the settlement of the pauper with the town recovering in any future action brought for the support of the same pauper. (R. S. c. 82, § 28.)

I. General Consideration.
II. Authority and Duties of Overseers.
III. General Aspects of Recovery.
IV. Accrual of Action and Notice Required.
V. Estoppel.

Cross References.

See note to § 2, re what constitutes supplies furnished to paupers; note to c. 25, § 60, re recovery of expenses of preventing the spread of contagious diseases by paupers; c. 25, § 65, re medical supplies to indigent nonresidents; c. 25, § 350, re relief to persons found destitute upon tribal reservation; c. 25, § 351, re relief of members of tribe found destitute beyond tribal reservations; c. 25, § 376, re reimbursement to towns.

I. GENERAL CONSIDERATION.

Legislature has power to require care of paupers.—This section comes clearly within the authority of the legislature in the exercise of the police power of the state. In the exercise of this power the legislature has an undoubted right to divide the state into as many political divisions as it sees fit, whether counties, cities, towns or plantations, and impose upon them the care and support of paupers in any manner it desires. Rockport v. Searsmont, 101 Me. 257, 63 A. 820.

Such obligation is statutory, not contractual.—The obligations of towns and plantations under this chapter in reference to the support of paupers result from provisions of positive law. Whatever there is originates solely from statutory enactment, and it has none of the elements of a contract, express or implied. There are no equitable considerations out of which presumptions will arise in favor of either party. Davis v. Milton Plantation, 90 Me. 512, 38 A. 539.

This section must be construed along with c. 66, § 12. Bath v. Harpswell, 110 Me. 391, 86 A. 318.

Under the provisions of this section, together with c. 66, § 12, overseers have the authority either to bury such bodies as this section provides for, or, if the situation warrants, to deliver them to the board of distribution. Bath v. Harpswell, 110 Me. 391, 86 A. 318.

Aid in medical institution is within section.—The fact that medical services were rendered to a pauper suffering from tuberculosis at an institution within the state especially equipped for the treatment of tuberculosis should not of itself place such services outside the pale of this section. Machias v. East Machias, 116 Me. 423, 102 A. 181.

But not expense of protection of public from dangerous paupers.—This section authorizes the recovery only of the expenses of relieving persons destitute, and of their removal or burial. Expenses incurred by a town to protect its inhabitants or the

public from danger of hurt by paupers are not recoverable under the pauper statute. Casco v. Limington, 102 Me. 37, 65 A. 523.

Applied in Turner v. Brunswick, 5 Me. 31; Kennebunkport v. Buxton, 26 Me. 61; Holden v. Brewer, 38 Me. 472; Wilton v. New Vineyard, 43 Me. 315; Belfast v. Washington, 46 Me. 460; Jay v. Carthage, 53 Me. 128; Pittsfield v. Detroit, 53 Me. 442; Bremen v. Brewer, 54 Me. 528; Monson v. Fairfield, 55 Me. 117; Belfast v. Lee, 59 Me. 293; Smithfield v. Waterville, 64 Me. 412; Searsmont v. Lincolnville, 83 Me. 75, 21 A. 747; Rockport v. Searsmont, 103 Me. 495, 70 A. 444; Durham v. Lisbon, 126 Me. 429, 139 A. 232; Trenton v. Brewer, 134 Me. 295, 186 A. 612; Ft. Fairfield v. Millinocket, 136 Me. 426, 12 A. (2d) 173; Solon v. Washburn, 136 Me. 511, 2 A. (2d) 928; Sanford v. Hartland, 140 Me. 66, 34 A. (2d) 15.

State in Warren v. Islesborough, 20 Me. 442; Augusta v. Mercer, 80 Me. 122, 13 A. 401; Auburn v. Farmington, 133 Me. 213, 175 A. 475.

Cited in Ames v. Smith, 51 Me. 602; Ellsworth v. Gouldsboro, 55 Me. 94; Waldoboro v. Liberty, 94 Me. 472, 48 A. 186.

II. AUTHORITY AND DUTIES OF OVERSEERS.

Overseers must act as a body or by ratification.—Overseers of the poor are required, within the meaning of this section, to determine and direct their action as a body. The action of one overseer is the action of the board when authorized by them; and, in many cases, when consistent with implied authority, although no express authority had been given, becomes the action of the board, when approved or ratified. Carter v. Augusta, 84 Me. 418, 24 A. 892.

Which may be proved by notice signed by majority of overseers.—If all, or a majority of the overseers of a town, join in a notice to the town where the pauper's settlement is, stating that he had fallen into distress and stood in need of immediate relief, and that such relief had been furnished by the town, this is competent evidence of a ratification of the action of a single overseer in furnishing supplies, and, in the absence of proof to the contrary, sufficient evidence of the fact in an action under this section. Linneus v. Sidney, 70 Me. 114.

And as agents they may bind the town.—Overseers are to relieve destitute persons, and in case of death, bury them. In these cases they act as agents of the town, and bind it by their contracts within the scope of their authority. Rockland v. Farnsworth, 93 Me. 178, 44 A. 681.

And settle actions for pauper supplies.—It may be fairly inferred from the powers and duties of overseers, that they are authorized to pay expenses incurred for the support of one of their paupers by another town, when their town, in their judgment, is liable by law for such expenses. And the power to pay the expenses would embrace that of settling an action commenced to recover them. Harpswell v. Phipsburg, 29 Me. 313.

If they act in good faith within their authority.— By the language of this section the overseers act as the agents of their respective towns, and the towns are to be the parties to actions brought for the reimbursement of expenses incurred against those, where is the settlement of the paupers; and if the overseers act in good faith, and do not go beyond the scope of their authority, their acts are those of their towns. Thomaston v. Warren, 28 Me. 289.

But overseers cannot be regarded as the officers or agents of other towns, in which persons aided by them have their lawful settlement. Thomaston v. Warren, 28 Me. 289.

Overseers must actually relieve persons in distress.—It is clearly the duty of overseers of the poor to see that suitable provision is actually made for the suffering poor within their towns, whenever they have notice that any such have fallen into distress and stand in need of immediate relief. It is not enough that they contract with other persons to provide it, for such persons may violate their contracts. Perley v. Oldtown, 49 Me. 31.

Upon determining immediate necessity therefor.—The practical question for the determination of overseers under this section, is, whether the party for whose relief application is made, is then and there actually destitute, and in need of relief. If so, the obligation to furnish such relief at once arises. The relief must be furnished, and the question upon whom shall the burden ultimately fall cannot control or affect their obligation to act in the premises. Norridgewock v. Solon, 49 Me. 385.

And need not inquire of pauper's property.—By this section it is made the duty of the overseers of the town where a person may be found in distress to institute an inquiry, not as to any means he may possess, of which he cannot then avail himself, but whether immediate relief is necessary. Norridgewock v. Solon, 49 Me. 385.

Relief shall be reasonable and proper.—This section does not prescribe the manner in which nor the extent to which the relief shall be administered. That must depend upon the facts and conditions connected with each call for assistance. The governing rule is that the relief shall be reasonable and proper. It must be suited to the particular needs of the destitute person, whether they be food or clothing or shelter or medical or surgical assistance, or all together. Machias v. East Machias, 116 Me. 423, 102 A. 181.

The test in all cases under this section must be the reasonableness and propriety of the relief provided. Machias v. East Machias, 116 Me. 423, 102 A. 181.

But it may be furnished only the destitute, in the sound discretion of overseers.—To authorize relief under this section, the persons relieved must be destitute; and the relief furnished must also be reasonable and proper. Whether this relief shall be administered personally by the overseers or by contract with other parties must be left to the sound discretion of the overseers, who are bound to act reasonably and in good faith. Clinton v. Benton, 49 Me. 550.

Overseers of the poor under this section and under their oath of office must furnish to destitute persons relief which is reasonable and proper. What is reasonable and proper must be left in the first instance to their sound and honest discretion. But they have not unlimited power. Hartland v. St. Albans, 123 Me. 82, 121 A. 552.

Including families of soldiers.—Towns cannot rightfully refuse to furnish supplies to persons found destitute, and the families of soldiers are as much entitled to relief under its provisions as the families of those not soldiers. Veazie v. China, 50 Me. 518.

However the destitution occurred.—This provision is general. The obligation rests upon the municipal officers to relieve all persons found destitute, and it is immaterial how such destitution may have arisen. Veazie v. China, 50 Me. 518.

Even in violation of § 42.—The overseers of a town are bound to furnish such relief as the exigencies of destitute persons found in the town might require, even if such persons went to the town in contravention of the provisions of § 42. Minot v. Bowdoin, 75 Me. 205.

And though it prevents gaining of settlement.—Overseers are justified in relieving destitution, although they might know and act upon the knowledge that it would prevent or postpone for five years more the gaining of a settlement, and might take steps to ascertain the condition of the family, which they would not have taken if the alleged paupers had an acknowledged settlement in their own town, and they might intend that the act should have an effect on the settlement, as well as to relieve a case of destitution which comes within this section. Foxcroft v. Corinth, 61 Me. 559.

III. GENERAL ASPECTS OF RECOVERY.

The right to reimbursement given by this section is purely a statutory right, depending upon no equitable considerations, but arising solely from positive provisions of law. These provisions are doubtless designed, so far as is practicable, to distribute such burdens equitably among the towns. Bangor v. Fairfield, 46 Me. 558.

And is allowed only by recovery from town of settlement.—The only means provided for reimbursement for expenditures under this section is, not by taxation as in § 11, but by a recovery of the expense from the town where the destitute person has a settlement. Thus the right of recovery is a condition of the duty, an elementary part of and inseparable from it. Sebec v. Dover, 71 Me. 573.

But one town cannot recover of another, unless strictly within the terms of the statute. Bangor v. Fairfield, 46 Me. 558.

To justify recovery distress and necessity must be shown.—To justify recovery in an action under this section, the jury must be satisfied that the persons alleged to be paupers had fallen into distress and stood in need of immediate relief, and that the supplies furnished were necessary for their maintenance and support; that if they were in such a situation, it is immaterial for what cause. Bangor v. Hampden, 41 Me. 484; Mt. Desert v. Bluehill, 118 Me. 293, 108 A. 73.

Not merely opinion of overseers.—Under this section the liability of the town sought to be charged is not to depend upon the opinion of the overseers, however correct it may be, or however honestly entertained, that the relief was furnished to a proper subject, but upon the fact that the person provided for had fallen into distress and stood in need of immediate relief. Thomaston v. Warren, 28 Me. 289.

Qualification of overseers need not be proved.—In an action under this section it is not necessary to prove that the overseers who acted in that capacity, were legally chosen and qualified. It is sufficient to show that they acted in that capacity. Brewer v. East Machias, 27 Me. 489.

Ability of husband to support wife need

not be averred.—In an action under this section it is not necessary to aver that the pauper's husband was not able to support her. It is sufficient to aver that, at the time the supplies were furnished, the person receiving them was destitute and needed relief. Fryeburg v. Brownfield, 68 Me. 145.

And ability of kindred to support pauper not defense.—The ability of kindred, liable to contribute for the support of paupers under § 20, cannot be set up as a defense, by the town where the pauper has his legal settlement, to an action under this section by the town that furnished the relief. Auburn v. Lewiston, 85 Me. 282, 27 A. 159.

Nor is a contract for support of pauper.—A defendant town cannot set up as a defense against a plaintiff town, when an offer is made to prove that certain paupers have a legal settlement in the defendant, that another town agreed, when the territory of the plaintiff was included in its limits, to provide for the support of such paupers. Veazie v. Howland, 47 Me. 127.

Recovery in former action is competent evidence.—In an action under this section for the expense of a pauper, evidence of a former suit, for previous expenses of the same pauper and of payment of the same by the overseers of the defendant town, is admissible. Harpswell v. Phipsburg, 29 Me. 313.

As well as property of pauper on question of distress.—In an action under this section any property or claims a pauper had from which anything could be realized may be put in evidence, as bearing upon his poverty or distress at the time the supplies were furnished. Appleton v. Belfast, 67 Me. 579.

A town will not be estopped to contest the settlement, by the mere fact that it has furnished supplies for the pauper. New Vineyard v. Harpswell, 33 Me. 193.

Removal only by written authority of overseers.—An overseer or other town official has no authority to remove a pauper except by authority in writing from the board of overseers. Hunnewell v. Hobart, 42 Me. 565.

Non-removal is not cause to relieve town of other expenses.—Unless there be a removal there can be no expenses of removal. But, because there is no removal, the town chargeable is not to be exonerated from the payment of other expenses, properly incurred, and of which due notice has been given. And it is immaterial why there was no removal. Ellsworth v. Houlton, 48 Me. 416.

Nor is decease of pauper before removal.—A town liable for expenses for the support of a pauper, when incurred, is not relieved from its liability under this section because of the decease of the pauper, before his removal. Ellsworth v. Houlton, 48 Me. 416.

IV. ACCRUAL OF ACTION AND NOTICE REQUIRED.

Action accrues 2 months after notice if no answer given.—No action can be maintained by one town against another, under this section, for the support of a pauper, until after the lapse of two months from notice given if no answer is made; the action thereupon accrues. Camden v. Lincolnville, 16 Me. 384. See Belmont v. Pittston, 3 Me. 453; Veazie v. Howland, 53 Me. 39.

Whereupon action commenced within 2 years of lapse of 2 months.—An action under this section must be commenced within two years after the expiration of two months, from the giving of said notice, where no answer is returned. Robbinston v. Lisbon, 40 Me. 287.

But action accrues sooner if answer denies liability.—An action under this section may be maintained if the town notified has returned an answer denying that the settlement of the pauper was in their town, and negativing their liability for the expenses, although commenced within two months after notice was given. Sanford v. Lebanon, 26 Me. 461; Veazie v. Howland, 53 Me. 39.

Whereupon action commenced within 2 years of answer.—If an answer denying liability is returned within two months, then the action must be commenced within two years from the return of the answer. Robbinston v. Lisbon, 40 Me. 287.

Plaintiff may recover expenses to date of action.—If an action is commenced within two years after the cause of action accrues, the plaintiff town may recover, not only such expenses as were incurred before the notice was given, but such also as were incurred for the same paupers after the notice was given and before the date of the writ. Veazie v. Howland, 53 Me. 39.

Notwithstanding part of expenses billed and paid.—One notice given is sufficient to authorize recovery under this section for a period of time beginning three months before the date of the notice and ending at the date of the writ, if the suit is commenced within two years after the cause of action accrues. The fact that a bill for a portion of the expenses was first presented and paid, and then another bill

for the balance, does not change the rule, so long as no suit was brought prior to the last claim. Bath v. Harpswell, 110 Me. 391, 86 A. 318.

But recovery barred to date of action if not seasonably brought.—If no suit is brought within the two years, from the time the action accrues, the right to recover is barred, not only with respect to such items of expense as were incurred before the two years commenced running, but also, if no new notice is given, with respect to such as were incurred within the two years. Veazie v. Howland, 53 Me. 39.

Cause originates when expenses paid.—The cause of action under this section originates when the expenses incurred by the plaintiff town for the support of the pauper, are paid. A premature notice is of no effect. West Gardiner v. Hartland, 62 Me. 246.

As where pauper committed to hospital.—Where a town has committed an insane pauper belonging to another town to the hospital, although the town making the commitment is responsible to the hospital for the board and expenses, a right of action under this section to recover such expenses of the town where the pauper belongs does not accrue until the sums due to the hospital are paid. Bangor v. Fairfield, 46 Me. 558.

And notice must be given within 3 months thereof.—In an action under this section it is incumbent on the plaintiffs to show that they gave written notice to the defendants, within three months after such expenses were paid, of their claim for reimbursement. Cooper v. Alexander, 33 Me. 453; Jay v. Carthage, 48 Me. 353.

Although paupers may be so sick or infirm as to prevent their removal, yet their condition would not excuse a want or notice. Cooper v. Alexander, 33 Me. 453.

Notice need be given only to town of settlement. — A town which furnishes needed supplies under this section is bound to give notice only to the town in which the pauper has a legal settlement, and is not bound to know or to act upon any agreement between other towns, as to support or even settlement of the pauper relieved. Veazie v. Howland, 47 Me. 127.

Where expenses paid upon notice, new notice necessary for subsequent expenses.—Where notice is given as required by this section and payment is duly received for all expenditures to date, a new notice will be necessary to charge the same town for supplies subsequently furnished the same pauper. See Bangor v. Fairfield, 46 Me. 558.

And notice of past invalid expenses is not notice of subsequent valid expenses.—If there is no legal liability to pay for the supplies furnished up to the time of notice and referred to in it, because no pauperism existed, no recovery can be had under that notice for subsequent supplies, although furnished under such circumstances as made them pauper supplies for which the town, if notified, would be liable. Verona v. Penobscot, 56 Me. 11.

One notice will not suffice for a series of consecutive suits, though commenced within the two years allowed by this section. East Machias v. Bradley, 67 Me. 533.

V. ESTOPPEL.

Last sentence intends final decision as to settlement.—The intention of the last sentence of this section is to afford one opportunity to have a final decision upon the legal settlement of the pauper; and not to allow it to be the subject of continued litigation as often as either town may wish to commence an action to recover for expenses incurred in the support of the pauper. Bangor v. Brunswick, 33 Me. 352.

Without distinction as to parties.—The language of this section makes no distinction between parties plaintiff and defendant respecting the effect of a recovery in such an action. The town against which the recovery is had, is to be barred by it. Oxford v. Paris, 33 Me. 179.

But estoppel does not apply to new settlements. — The legislature, in enacting and continuing in force the statutory estoppel provided in this section, did not intend to set aside or modify the general provisions of §§ 1 and 3 relating to the acquisition or defeat or loss of pauper settlements. The intention appears only to have been to bar repeated and continuous litigation respecting the same settlement. It does not apply to a new and independent settlement acquired subsequent to that upon which the recovery has been had. Friendship v. Bristol, 132 Me. 285, 170 A. 496.

And burden is on defendant to show new one.—In an action under this section for supplies furnished to a pauper, who is proved to have once had his settlement in the defendant town, the burden is on that town to prove a subsequent settlement gained elsewhere. Starks v. New Portland, 47 Me. 183.

Meaning of "future action."—By the words used in the last sentence of this section, "in any future action brought for the support of the same pauper," must be intended any action brought or to be tried

subsequently to the one, in which the recovery was had. Oxford v. Paris, 33 Me. 179.

And of "recovery."—The word recovery, as used in the last sentence of this section, means the obtaining of a final judgment in such a suit. Oxford v. Paris, 33 Me. 179.

One judgment may bar another.—A judgment for a town in either one of two actions commenced at different times by the same plaintiff town, for the support of the same pauper, may be proved as a bar to the other action. Bangor v. Brunswick, 33 Me. 352.

Sec. 29. Overseers' notice and request to town liable; relief may be refused in certain cases.—Overseers shall send a written notice, signed by one or more of them, stating the facts respecting a person chargeable in their town, to the overseers of the town where his settlement is alleged to be, requesting them to remove him, which they may do by a written order directed to a person named therein, who is authorized to execute it. If such pauper, so ordered to be removed, shall refuse to obey such order and to return to the town of his settlement, then the overseers of the town wherein said pauper is found may refuse to furnish him relief. (R. S. c. 82, § 29.)

Cross reference.—See c. 95, § 12, re pauper notice to towns where prisoner has settlement.

The object of this section is to give the town attempted to be charged, information that the relief and expense will fall upon it. Kennebunkport v. Buxton, 26 Me. 61.

A pauper notice under this section is given for different reasons, as to permit the overseers of the town of settlement to take such measures as they deem expedient; to lay foundation for future action; to give information that the relief and expense will fall on the town notified; to prevent accumulation of expense and permit removal of the pauper; to fix the time when the cause of action accrues and the statute of limitations commences to run. Turner v. Lewiston, 135 Me. 430, 198 A. 734.

And may be sent to overseers of record.—Notices under this section might properly be sent or delivered to such persons, or any of them, as appear by the records of the town sought to be charged to be overseers of the poor, for the current year. Gorham v. Calais, 4 Me. 475.

It authorizes recovery for relief 3 months prior to notice and 2 years after accrual of action.—Notice under this section authorizes recovery for expenses incurred in the relief of destitute persons for three months prior to the notice and until the expiration of two years beyond the date when the right of action accrues unless its effectiveness is terminated by removal of the pauper, by other action such as undertaking the care of the pauper named, or by the institution of process. Sanford v. Hartland, 140 Me. 66, 34 A. (2d) 15. See Hartland v. St. Albans, 123 Me. 82, 121 A. 552.

And a notice is not premature merely because the actual amount of expense is not definitely determined, where liability for expense has been incurred. Fayette v. Livermore, 62 Me. 229.

The pauper notice provided under this section is mandatory. Turner v. Lewiston, 135 Me. 430, 198 A. 734.

It may be signed by selectmen where no overseers chosen.—When the notice required by this section is signed by the selectmen, and does not appear that other persons had been chosen as overseers of the poor, it will be presumed that the selectmen acted in that capacity, and the notice will be sufficient. The same presumption applies when the notice is directed to the selectmen of the defendant town. Jay v. Carthage, 48 Me. 353. See Garland v. Brewer, 3 Me. 197; Ellsworth v. Houlton, 48 Me. 416.

Or overseers may delegate signing to agent.—The sending of notice and answers is simply a ministerial function within the meaning of the section and such ministerial functions may be delegated to an agent or clerk by overseers of the poor. Ft. Fairfield v. Millinocket, 136 Me. 426, 12 A. (2d) 173. But see Cooper v. Alexander, 33 Me. 453, wherein it was held that a notice signed in the name of some person other than the overseer of the poor, though in their behalf, is not sufficient.

Its sufficiency is matter of law.—A notice cannot be made good or otherwise by the action of the jury. Its sufficiency is a question of law, to be decided by the court. Sanford v. Lebanon, 31 Me. 124.

It must clearly show its purpose and object.—All that is required of a notice is that it should be so clear and precise, as to the persons charged, and as to the official character of the persons sending the notice, that its purpose and object can be fully understood. Ellsworth v. Houlton, 48 Me. 416.

And name or clearly indicate persons re-

ferred to.—To secure intelligent action the overseers notified under this section must have such accurate description as will enable them to identify the person referred to. This may be done by name, or other description, if sufficient, so that the overseers may certainly know whom to remove. Holden v. Glenburn, 63 Me. 579; Wellington v. Corinna, 104 Me. 252, 71 A. 889; Durham v. Lisbon, 126 Me. 429, 139 A. 232. See Bangor v. Deer-Isle, 1 Me. 329.

Without necessitating further investigation.—Among the facts to be stated in a notice under this section are those which shall serve to identify the persons relieved, in order that the overseers to whom the notice is given may comply with the request, come to the town, take the persons relieved — all of them and no more — and remove them. And the notice itself should be sufficiently definite to enable this to be done, without outside investigation. Thomaston v. Greenbush, 98 Me. 140, 56 A. 621.

Notices specifying "family" or "children" of a named pauper are too general under this section as to such family or children. Bangor v. Deer-Isle, 1 Me. 329; Thomaston v. Greenbush, 98 Me. 140, 56 A. 621.

Though statement of correct total number of children is sufficient.—Notices have been held good which specified a stated number of children of a named pauper, without naming the children, where the number of the children was correctly given, and in each case, they were all of the children. In such cases, the overseers would know how many persons were chargeable, and how many were to be removed. Thomaston v. Greenbush, 98 Me. 140, 56 A. 621.

But no particular form of notice is required by this section. Nor should officers of a town be held to that exactness of statement required in legal pleadings. It must, however, contain the substance of the statutory requirement, which is, that it must state the facts relating to the person alleged to have fallen into distress. Durham v. Lisbon, 126 Me. 429, 139 A. 232. See Rockport v. Searsmont, 103 Me. 495, 70 A. 444.

And overseers may waive defects.—As the authorized agents of the town, the overseers of the poor may waive any objection arising from an informality, or defect in a notice. Wellington v. Corinna, 104 Me. 252, 71 A. 889; Durham v. Lisbon, 126 Me. 429, 139 A. 232.

Purpose of "the facts" is to lay foundation for action.—What facts are to be stated are not specified but the object to be accomplished makes it sufficiently clear. The purpose is to lay a foundation for the future action of the overseers. Durham v. Lisbon, 126 Me. 429, 139 A. 232; see Holden v. Glenburn, 63 Me. 579.

"The facts" are those important to be known of pauper.—The notice, as provided in this section, should contain the substance, of that which the statute requires, but no particular form is necessary. The name of the person for whom relief has been afforded should be given, or be so designated, that it would be understood who was intended. "The facts relating to the person," are those which are important to be known of him, as a pauper, by the town notified; and request for removal, although such request is sufficiently implied from a statement that the whole expense incurred, and that which is expected to arise afterwards, is claimed till removal. Kennebunkport v. Buxton, 26 Me. 61.

And facts stated in a notice as to the parentage of a minor are highly material. Durham v. Lisbon, 126 Me. 429, 139 A. 232.

Misstatement of material facts vitiates notice.—A notice, which, instead of stating the facts, states what is not true in important particulars is not a compliance with this section. A mistake in an unimportant particular would not vitiate the notice. But the misstatement of material facts — facts so important that they change the settlement of the pauper — will vitiate it. Glenburn v. Oldtown, 63 Me. 582; Durham v. Lisbon, 126 Me. 429, 139 A. 232.

As where persons named as wife and children of pauper are not so.—The statement in a notice under this section that a woman and children are the wife and children of a man named, when in fact she is not his wife, and the children are illegitimate, is such a misrepresentation of material facts as will vitiate the notice, and prevent its laying the foundation for a recovery of the expense incurred in their support. Glenburn v. Oldtown, 63 Me. 582.

After a suit is brought, a new notice must be given for subsequent supplies— so also where payment has been made of the amount, claimed as due, to a certain date. Verona v. Penobscot, 56 Me. 11.

And new action requires new seasonable notice.—For every new action, a new notice must be given, even though a former action, between the same parties for the support of the same paupers, is still pending. And such new notice must, in every

case, be within two years and two months before the suit is commenced, or it will not be sufficient; and sooner, if answer, denying liability, is received in less than two months from the time the notice was given. Veazie v. Howland, 53 Me. 39.

But supplies furnished continually require only one notice.—Where supplies are furnished occasionally or continuously, only one notice need be proved to enable a plaintiff town to recover for the supplies furnished three months before such notice down to the date of the writ; provided the action is commenced within two years next after the cause of action accrues. Veazie v. Howland, 53 Me. 38.

Though where pauper returned after removal and was supplied again, new notice required.—Where the town in which a pauper had his settlement, being duly notified pursuant to the statute, paid the expenses of his support and removed him, but before he reached the place of his settlement he returned to the town where he had been removed, where he again became chargeable; it was held that the town in which he had his settlement was not liable for the expenses accruing after his return, without a new notice. Greene v. Taunton, 1 Me. 228.

Request for removal not necessary after burial.—Where expenses of support and burial have been rightfully incurred before notice is given a removal ceases to be necessary or proper, and consequently it is unnecessary to include in the notice a request for removal. Ellsworth v. Houlton, 48 Me. 416.

And a valid notice respecting one person will not be affected by its being united with a defective notice respecting other persons. Sanford v. Lebanon, 31 Me. 124.

Former provision of section.—For a case relating to this section before the enactment of the express provision for signing by one or more overseers, see Dover v. Deer-Isle, 15 Me. 169.

Applied in Athens v. Brownfield, 21 Me. 443; Bangor v. Fairfield, 46 Me. 558; Bangor v. Madawaska, 72 Me. 203; Elsemore v. Longfellow, 76 Me. 128; Rockport v. Searsmont, 101 Me. 257, 63 A. 820; Auburn v. Farmington, 133 Me. 213, 175 A. 475; Sanford v. Hartland, 140 Me. 66, 34 A. (2d) 15.

Cited in Augusta v. Vienna, 21 Me. 298.

Sec. 30. Answer to be returned within 2 months. — Overseers receiving such notice referred to in the preceding section shall within 2 months, if the pauper is not removed, return a written answer signed by one or more of them, stating their objections to his removal; and if they fail to do so, the overseers of the town of residence may cause him to be removed to the town of settlement by a written order directed to a person named therein, who is authorized to execute it; and the overseers of the town to which he is sent shall receive him and provide for his support; and their town is estopped to deny his settlement therein, in an action brought to recover for the expenses incurred for his previous support and for his removal. (R. S. c. 82, § 30.)

The town notified under § 29 is required either to deny the settlement of the alleged paupers or to remove them, as the facts may require. Holden v. Glenburn, 63 Me. 579.

Otherwise estoppel incurred.—This section requires either an answer or removal. If neither is provided by the town notified, the estoppel is incurred. Ellsworth v. Houlton, 48 Me. 416.

Whether removal or recovery exercised jointly or severally.—Under this section the right to remove, and the right to recover expenses incurred for the pauper's previous support, are independent rights; either may be exercised without exercising the other, and the estoppel applies whether exercised jointly or severally. Bangor v. Madawaska, 72 Me. 203.

Unless settlement in town of notice.—The provision of this section that if a pauper notice is not answered within two months, the defendant town shall be barred from contesting the question of settlement, does not apply to cases where the settlement can be shown to be in the town giving the notice. Turner v. Brunswick, 5 Me. 31; Ellsworth v. Houlton, 48 Me. 416.

Or unless no legal answer given.—Where no legal answer was returned to a notice given under § 29, the defendant town is not estopped to deny the settlement of an alleged wife and children unless it appears that they were the wife and children of the person named in the notice, and testimony tending to negative that fact would be admissible. Holden v. Glenburn, 63 Me. 579; Wellington v. Corinna, 104 Me. 252, 71 A. 889.

The estoppel can go farther than the notice. The settlement of such as are therein named is admitted but no others. Holden v. Glenburn, 63 Me. 579.

And answer must refer to each person named in notice.—If the notice is made on account of two or more persons, the answer must in some way refer to each one. Any objections contained in the answer can apply no further than to those persons named, or to whom reference is made. Palmyra v. Prospect, 30 Me. 211.

"Previous support" means support prior to suit.—The term "previous support" used in this section does not mean support furnished before a removal, but support furnished prior to the commencement of the suit. Bangor v. Madawaska, 72 Me. 203.

Sending of notices and answers may be delegated.—The sending of notices and answers is simply a ministerial function within the meaning of this section, and such ministerial functions may be delegated to an agent or clerk by overseers of the poor. Ft. Fairfield v. Millinocket, 136 Me. 426, 12 A. (2d) 173.

In the computation of the two months, mentioned in this section, the day of giving the notice is to be excluded. Windsor v. China, 4 Me. 298.

Former provision of section.—For a case, before enactment of the last sentence of § 28, holding that, in an action subsequent to the operation of an estoppel under this section, settlement may be contested, see Ellsworth v. Houlton, 48 Me. 416.

Applied in Veazie v. Howland, 53 Me. 39; Auburn v. Farmington, 133 Me. 213, 175 A. 475.

Stated in Belmont v. Pittston, 3 Me. 453; Augusta v. Vienna, 21 Me. 298; Kennebunkport v. Buxton, 26 Me. 61.

Sec. 31. Notice and answer by mail sufficient.—When a written notice or answer provided for in this chapter is sent by mail, postage paid, and it arrives at the postoffice where the overseers to whom it is directed reside, it is sufficient. (R. S. c. 82, § 31.)

Use of mail proof of delivery.—Proof of use of the mail service, as provided by this section, is intended not to be evidence of the contents of the letter, but only of delivery. See Belfast v. Washington, 46 Me. 460.

Whereupon parol evidence of contents admissible.—Where delivery of a notice at the post office is proved, and neither the notice nor a copy thereof is available, parol proof of the contents of the notice is admissible. Athens v. Brownfield, 21 Me. 443.

Applied in Ellsworth v. Houlton, 48 Me. 416.

Sec. 32. Overseers' complaint if pauper refuses to be removed to town of settlement; proceedings; fees and costs.—When the removal of a pauper to the town of his alleged settlement is sought, under the provisions of section 29 or section 30, and the person to whom the order of the overseers is directed requests him to go with him in obedience thereto and he refuses to go or resists the service of such order, the person to whom it is directed may make complaint in writing, by him signed, of the facts aforesaid, to any judge of a municipal court or trial justice within the county where said pauper is then domiciled. Said magistrate shall thereupon, by proper order or process, cause said pauper to be brought forthwith before him by any officer to whom the same is directed to answer said complaint and show cause why he should not be so removed. The complaint may be amended at any time before judgment thereon according to the facts. The complainant and the pauper shall both be heard, and if upon such hearing the magistrate finds that the town to which it is proposed to remove such pauper is liable for his maintenance and support, he shall issue his order, under his hand and seal, commanding the person to whom it is directed to take said pauper and transport him to the town aforesaid and deliver him to the custody of the overseers of the poor thereof. In such a hearing the written order of the overseers of the poor of the town of settlement requesting the removal of the pauper shall be accepted by the magistrate as prima facie evidence that the settlement of the pauper is in the town requesting the removal and thereupon the burden of proof shall be upon the pauper to deny said settlement. The person to whom said last named order is directed shall have all the authority to execute the same, according to the precept thereof, that the sheriff or his deputy has in executing warrants in criminal proceedings. In the foregoing proceedings, the

fees and costs shall be the same as for like services in criminal cases and shall be paid by the town of settlement. (R. S. c. 82, § 32.)

Applied in Knowles' Case, 8 Me. 71; Elsemore v. Longfellow, 76 Me. 123.

Sec. 33. Persons removed, returning, sent to house of correction.—A person removed as provided in this chapter to the place of his settlement, who voluntarily returns to the town from which he was removed without the consent of the overseers, may be sent to the house of correction or jail as a vagabond. (R. S. c. 82, § 33.)

Sec. 34. Out-of-state paupers removed; exception of families of volunteers.—On complaint of overseers that a pauper chargeable to their town has no settlement in this state, any judge of a municipal court or trial justice may, by his warrant directed to a person named therein, cause such pauper to be conveyed, at the expense of such town, beyond the limits of the state to the place where he belongs; but this section does not apply to the families of volunteers enlisted in the state who may have been mustered into the service of the United States. (R. S. c. 82, § 34.)

Sec. 35. Towns liable to individuals relieving. — Towns shall pay expenses necessarily incurred for the relief of paupers by an inhabitant not liable for their support, after notice and request to the overseers, until provision is made for them. (R. S. c. 82, § 35.)

Section requires explicit notice and request.—Not only must there be notice, express, formal and particular under this section, but also a distinct request; and the request must be as explicit as the notice. Bishop v. Hermon, 111 Me. 58, 88 A. 86.

To at least one overseer.—A notice under this section given to one overseer may properly enough be regarded as a notice to the entire board since they should interchangeably inform each other of any and all matters pertaining to their official duties, which may come to their knowledge individually. Newbit v. Appleton, 63 Me. 491.

Or to overseers' agent.—Notice, under this section, to a duly appointed clerk or agent of the overseers is notice to the overseers themselves. Sullivan v. Lewiston, 93 Me. 71, 44 A. 118.

Before supplies furnished.—The person who makes a supply with a view to remuneration from the town, should first give notice to the overseers, and such person only shall maintain an action under this section against the town. Warren v. Islesborough, 20 Me. 442.

An action under this section is maintainable only by an inhabitant of the town sued. Boothby v. Troy, 48 Me. 560.

And no liability to any other.—Neither this section nor any other statute creates any liability upon the part of a municipality to reimburse an inhabitant of another town for expenses incurred by him in such other town for relief of a pauper. Conley v. Woodville, 97 Me. 240, 54 A. 400; see Windham v. Portland, 23 Me. 410.

Even for medical supplies.—A physician will not be entitled under this section to recover of a town of which he is not an inhabitant, for medical services rendered to its paupers. Childs v. Phillips, 45 Me 408.

All supplies must be furnished within the town.—To warrant recovery, under this section the plaintiff must be an "inhabitant" of the defendant town; and the supplies must be furnished to the pauper within the town. Kennedy v. Weston, 65 Me. 596.

Inhabitant may recover though overseers contracted for support.—A contract made by the overseers for the relief of a pauper will not exonerate them from further duty; and in cases of actual necessity, notwithstanding the making of any such contract, an inhabitant may recover under this section for actual relief given after notice and request, even though forbidden by the overseers to give such relief. Perley v. Oldtown, 49 Me. 31.

And even kindred to extent of inability.—If the kindred specified in § 20 have not sufficient ability to support the pauper, he may recover, under this section, the expenses necessarily incurred in relieving the pauper; and, if he has hired him kept, the expenses actually paid out. If of sufficient ability to contribute partial support, they can recover only that part of the sup-

port which they cannot supply. Hall v. Clifton, 53 Me. 60.

Though such inability must be proved.—In order for the plaintiff to recover for supplies furnished to his father, he must prove that his father was destitute and in need of immediate relief; that he, himself, was not financially able to take care of his father and mother, and that the notice given was such as this section requires. Allen v. Lubec, 112 Me. 273, 91 A. 1011.

But ability of kindred is good defense.—If the kindred mentioned in § 20 are of sufficient ability, and furnish aid to those whom they are bound in law to support and seek to recover compensation for the same, under this section, such facts will constitute a good defense in whole or in part. Hall v. Clifton, 53 Me. 60.

Aid not recoverable if pauper being supplied by town.—A town which provides a place for the support of its poor is not liable under this section to an inhabitant who, after request upon the overseers for removal, assists one of its paupers at his own house if the pauper, when turned from such person's doors, is reasonably able to proceed to the place provided for him. Knight v. Ft. Fairfield, 70 Me. 500.

And aid thereafter furnished requires new notice.—When provision has been made by the overseers upon notice and request as required by this section, the liability of the town ceases; and in order to render it liable for further expense a new notice and request are necessary. Gross v. Jay, 37 Me. 9; Bishop v. Hermon, 111 Me. 58, 88 A. 86.

Though plaintiff was theretofore under contract to furnish supplies.—If the person making the request under this section is employed by the overseers to keep the pauper for a limited time, and he continues to support the pauper after the time agreed upon has elapsed; the town will not be liable for such support after the termination of their contract, without a new notice and request. Gross v. Jay, 37 Me. 9.

And new notice required where first notice limited as to time.—If an application is made for aid only while the pauper should continue sick then the town would not be further liable under this section without a new application after his recovery. Brown v. Orland, 36 Me. 376.

But no recovery where town properly offered to remove pauper.—An action under this section will be defeated by proof of knowledge on the part of the plaintiff that the town or any individual, bound to support the pauper, had made, at another place, suitable provision for that purpose, and had offered to remove the pauper thereto. But if the pauper, while supported by the plaintiff, was too sick to bear a removal, recovery may be had. Brown v. Orland, 36 Me. 376.

Such offer must be act of board.—The removal or offer to remove a pauper must be the act of the board and not the individual, personal act of one member alone, unauthorized by the board, in order to terminate the liability of the town under this section. Carter v. Augusta, 84 Me. 418, 24 A. 892.

And no recovery against plantation for state pauper.—This section does not authorize recovery against a plantation for relief of state paupers by an inhabitant not liable for their support. See Davis v. Milton Plantation, 90 Me. 512, 38 A. 539.

Applied in Bolster v. China, 67 Me. 551.

Stated in Hutchins v. Penobscot, 120 Me. 281, 113 A. 618.

Sec. 36. Overseers to complain of intemperate paupers.—When a person in their town, notoriously subject to habits of intemperance, is in need of relief, the overseers shall make complaint to a judge of a municipal court or trial justice of the county, who shall issue a warrant and cause such person to be brought before him, and upon hearing and proof of such habits, he shall order him to be committed to the house of correction, to be there supported by the town where he has a settlement, and if there is no such town, at the expense of the county, until discharged by the overseers of the town in which the house of correction is situated or by 2 justices of the peace. (R. S. c. 82, § 36.)

Cross reference.—See c. 95, re workhouses and houses of correction.

Former provision of section.—For a case concerning the constitutionality of an early form of this section whereby the overseers were empowered to commit certain paupers to the work house, see Nott's Case, 11 Me. 208, overruled in Portland v. Bangor, 65 Me. 120.

Cited in Gilman v. Portland, 51 Me. 457.

Sec. 37. Towns may recover of paupers.—A town which has incurred expense for the support of a pauper or his wife, whether he has a settlement in

that town or not, may recover the full amount expended for the support of either or both, from either the pauper or his wife, their executors or administrators, in an action of assumpsit. If such pauper has no settlement within the state and the town is reimbursed by the state for the expense incurred for the support of such pauper, the state may recover it in the manner hereinbefore provided. (R. S. c. 82, § 37.)

Section is remedial and gives recovery on implied promise.—This section, giving a right of recovery against the pauper, is remedial. It gives the inhabitants of a town the right to be reimbursed by the recipient of the benefit for an expenditure incurred by authority of law. It creates an implied promise on the part of the pauper to make the reimbursement. Kennebunkport v. Smith, 22 Me. 445; Peru v. Poland, 78 Me. 215, 3 A. 284.

But not for officious payments.—A purely officious payment of expense for an impecunious person which a town is under no legal obligation to make is not recoverable under this section; nor are expenses for items not properly classifiable as pauper supplies. Vienna v. Weymouth, 132 Me. 302, 170 A. 499.

Nor on account of emancipated minors.—Supplies furnished minors after emancipation cannot even constructively be held to be regarded as supplies furnished the father within the sense of this section. Thomaston v. Greenbush, 106 Me. 242, 76 A. 690.

Nor after 6 years.—An action under this section must be commenced within 6 years if it is to be maintained. Knight v. Bean, 22 Me. 531; Vienna v. Weymouth, 132 Me. 302, 170 A. 499.

Repayment of expenditures in money or other approved medium by the pauper extinguishes the debt. It no longer exists as against the pauper or the town of his settlement. Auburn v. Farmington, 133 Me. 213, 175 A. 475.

Coverture no bar to recovery against deserting husband.—Mere coverture is no bar to an action under this section. A town furnishing necessary relief to a married woman totally deserted by her husband, it having been applied for and received as pauper supplies, may obtain reimbursement from the husband. Vienna v. Weymouth, 132 Me. 302, 170 A. 499.

But compliance with court decree bars recovery against husband.—Where there is no failure of compliance by a husband with a court decree determining the extent of his obligation to support his wife, no recovery can be had against him by a relieving town under this section. Vienna v. Weymouth, 132 Me. 302, 170 A. 499.

Applied in Alna v. Plummer, 4 Me. 258; Cutler v. Maker, 41 Me. 594, overruled in Veazie v. Howland, 53 Me. 39; Freedom v. McDonald, 115 Me. 525, 99 A. 459.

Stated in Furbish v. Hall, 8 Me. 315.

Cited in Palmyra v. Prospect, 30 Me. 211; Orono v. Peavey, 66 Me. 60.

Sec. 38. Overseers to take possession of property of paupers deceased.—Upon the death of a pauper then chargeable, the overseers may take into their custody all his personal property, and if no administration on his estate is taken within 30 days, they may sell so much thereof as is necessary to repay the expenses incurred. They have the same remedy to recover any property of such pauper, not delivered to them, as his administrator would have. (R. S. c. 82, § 38.)

The overseers of the poor, as such, have no power to interfere with private property of paupers while they are living. Furbish v. Hall, 8 Me. 315.

Sec. 39. Support of paupers.—No pauper or other dependent person shall be assisted or supported by a city or town other than the city or town in which he is actually living or in which he is personally present, without the consent in writing of the overseers of the poor of such city or town; but any city or town assisting or supporting a pauper or other dependent person having a settlement in another city or town shall be reimbursed by the city or town in which he has a settlement for the reasonable and necessary cost of such assistance or support, if notice is given as provided by section 29; and in absence of the consent herein provided, said city or town wherein the pauper or other dependent person is actually living or in which he is personally present shall have the right to require his removal as provided in sections 29 to 34, inclusive. (R. S. c. 82, § 39.)

Sec. 40. May prosecute and defend.—For all purposes provided for in this chapter, its overseers or any person appointed by them in writing may prosecute and defend a town. (R. S. c. 82, § 40.)

Cited in Harpswell v. Phipsburg, 29 Me. 313.

Sec. 41. Plantations may raise money.—Any plantation, at a legal meeting called for the purpose, may raise and expend money for the support of the poor, to be applied by its assessors. (R. S. c. 82, § 41.)

This section does not require plantations to relieve and support their poor. It authorizes plantations to raise money for the support of the poor, but does not impose it as a duty. Blakesburg v. Jefferson, 7 Me. 125.

Stated in Bragg v. Burleigh, 61 Me. 444.

Cited in Means v. Blakesburg, 7 Me. 132.

Sec. 42. Bringing paupers into a town.—Whoever brings into and leaves in a town any poor, indigent or insane person, having no visible means of support and having no settlement in such town, or hires or procures such person to be so brought, or aids or abets in so doing, knowing such person to be poor, indigent or insane as aforesaid, with intent to charge such town in this state with the support of such person, shall be punished by a fine of not more than $300 or by imprisonment for not more than 11 months; and shall be further liable to any town or to the state for such sums of money as are expended by such town or by the state for the support and maintenance of such person which may be recovered in an action on the case. (R. S. c. 82, § 42.)

Cross references.—See §§ 45, 46, re burial of honorably discharged soldiers and sailors; c. 2, § 1, re aliens admitted or committed to public institutions, records to be furnished U. S. immigration officer; c. 25, § 20, re charitable and benevolent institutions to submit itemized bills; c. 25, § 251, re aid furnished to neglected children does not make them paupers; c. 25, § 282, re aid furnished old age recipients does not make them paupers; c. 25, § 309, re aid furnished to the blind does not make them paupers; c. 26, § 11, re aid furnished to dependents of soldiers and sailors does not make them paupers; c. 27, § 143, re idiotic and feeble-minded state paupers; c. 95, § 12, re duties of overseers of poor as to notice in case of paupers committed to house of correction.

The unlawfulness of the intention is the essence of this section. Sanford v. Emory, 2 Me. 5.

Applied in Houlton v. Martin, 50 Me. 336.

Cited in Minot v. Bowdoin, 75 Me. 205.

Sec. 43. False representations to overseers.—Whoever knowingly and willfully makes any false written representations to the overseers of the poor of any town or city or their agents or to the department of health and welfare or its agents for the purpose of causing himself or any other person to be supported in whole or in part by a town or city or by the state shall be punished by a fine of not more than $300 or by imprisonment for not more than 11 months. (R. S. c. 82, § 43.)

Sec. 44. Banks, etc., to furnish information.—A treasurer of any bank, trust company, benefit association, insurance company, safe deposit company or any corporation or association receiving deposits of money, except national banks, shall, on request in writing signed by a member of the board of overseers of the poor of any town or city or its agents, or by the commissioner of health and welfare or his agents or by the commissioner of institutional service or his agents, inform such board of overseers of the poor or the department of health and welfare or the department of institutional service of the amount deposited in the corporation or association to the credit of the person named in such request, who is a charge upon such town or city or the state, or who has applied for support to such town or city or the state. Whoever willfully renders false information in reply to such request shall be punished by a fine of not less than $25 nor more than $100, to be recovered on complaint in any court of competent juris-

diction for the use of the town, city or the state making the request. (R. S. c. 82, § 44. 1951, c. 31.)

Burial of Honorably Discharged Soldiers and Sailors.

Sec. 45. State to pay burial expenses of destitute soldiers and sailors and their widows. — Whenever any person who has served in the army, navy or marine corps of the United States and was honorably discharged therefrom shall die, being at the time of his death a resident of this state and in destitute circumstances, the state shall pay the necessary expenses of his burial; or whenever the widow of any person who served in the army, navy or marine corps of the United States and was honorably discharged therefrom shall die, being at the time of her death a resident of this state and being in destitute circumstances and having no kindred living within this state and of sufficient ability legally liable for her support, the state shall pay the necessary expenses of her burial; such expenses shall not exceed the sum of $100 in any case and the burial shall be in some cemetery not used exclusively for the burial of the pauper dead. (R. S. c. 82, § 45.)

Section avoids any semblance of pauper burial.—The manifest intention of the legislature in enacting this section was that no honorably discharged serviceman should, at his death, fill a pauper grave; and that there should not be even the semblance of a pauper burial, as would be the case if the municipal officers were required to provide for the burial. Rackliff v. Greenbush, 93 Me. 99, 44 A. 375.

Cited in State v. Montgomery, 92 Me. 433, 43 A. 13; Ricker Classical Institute v. Mapleton, 101 Me. 553, 64 A. 948.

Sec. 46. Cities and towns to pay expenses and reimbursed by state; person not constituted a pauper.—The municipal officers of the city or town in which such deceased, mentioned in section 45, resided at the time of his death shall pay the expenses of his burial, and if he die in an unincorporated place, the town charged with the support of paupers in such unincorporated place shall pay such expenses; and in either case upon satisfactory proof by such town or city to the department of health and welfare of the fact of such death and payment, the state shall refund to said town or city the amount so paid; provided, however, that the person whose burial expenses are paid in accordance with the provisions of this and the preceding section shall not be constituted a pauper thereby; said proof shall contain a certificate from the adjutant general of the state to the effect that such person was an honorably discharged soldier or sailor or the widow of an honorably discharged soldier or sailor. (R. S. c. 82, § 46.)

The obvious intention of this section is that the town shall pay the expenses of burial to whosoever shall incur them. Therefore any proper person incurring such expenses has an action against the town in which the deceased resided at the time of his death. Rackliff v. Greenbush, 93 Me. 99, 44 A. 375.

And towns required to do no act except to pay.—This section does not require or authorize either the town or its officers to take charge of or provide a burial for the deceased soldier, nor is it required that the expenses of the burial shall be authorized by the municipal officers, or by any officer representing either the town or the state. The state undertakes, through the instrumentality of the town, to "pay" the burial expenses of the soldier. The municipal officers are required to perform no duty, to do no act in the matter of the burial, but are simply required to "pay" the burial expenses; and the state undertakes to refund the town or city the amount so paid. Rackliff v. Greenbush, 93 Me. 99, 44 A. 375.

"Refund" implies payment for burial from town funds.—The word "refund" in this section implies a payment to the town of money previously paid by the town. The obvious meaning of the section in this respect is that such burial expenses shall be paid by the municipal officers, not in their individual capacity, but from the funds of the town at the charge of the town, to be refunded to the town by the state. Rackliff v. Greenbush, 93 Me. 99, 44 A. 375.

Cited in Ricker Classical Institute v. Mapleton, 101 Me. 553, 64 A. 948.

Location of Children of Paupers for School Purposes.

Sec. 47. Pauper expenses of towns, cities, plantations and state regulated; conveyance and tuition of school children.—Any city, town or plantation which locates paupers having children attending the public schools in another city, town or plantation shall locate such paupers so that the city, town or plantation where they reside shall not be put to extra expense for the tuition of children or for the conveyance of children to elementary or secondary schools; provided, however, that if the said city, town or plantation does not so locate said paupers, the said city, town or plantation shall reimburse the city, town or plantation wherein the said paupers reside for the extra expense so caused. The state shall locate its paupers so that the city, town or plantation in which they reside shall not be put to extra expense for tuition or for conveyance of the children of said paupers to elementary or secondary schools; provided, however, that if the state does not so locate said paupers, the state shall reimburse the city, town or plantation wherein the said paupers reside for the extra expense incurred for said tuition or conveyance. For the purposes of this section the word "paupers" shall mean all persons who have been directly or indirectly furnished with pauper supplies, as such, within the 3 months next preceding the time when the extra expense for conveyance, as above described, was incurred. Expenses incurred by any town or by the state under the provisions of this section may be paid from funds made available for relief of the poor but shall in no other respect be treated as pauper expense. (R. S. c. 82, § 47. 1947, c. 129.)

Section part of pauper law.—The legislature intended this section when enacted to become part and parcel of the general statutory pauper law requiring notice. Turner v. Lewiston, 135 Me. 430, 198 A. 734.

Cited in Sanford v. Hartland, 140 Me. 66, 34 A. (2d) 15.