

4829.

LEGAL SETTLEMENT—WOMAN DERIVATIVELY ACQUIRES
HUSBAND'S LEGAL SETTLEMENT UPON MARRIAGE.

SYLLABUS:

Where a woman marries a person who has a legal settlement in a particular township in a county, she, by her marriage, ipso facto derivatively acquires her husband's legal settlement and retains such until he acquires a settlement in the township to which he removes.

COLUMBUS, OHIO, October 24, 1935.

HON. MELTON BOYD, *Prosecuting Attorney, Cambridge, Ohio.*

DEAR SIR:—I am in receipt of your communication which reads as follows:

“Your opinion on the following respectfully is requested:

Kate L. of Center Township, an indigent, married Paul D. of Cambridge Corporation, an indigent, who upon marriage went to live at the home of his wife. Within ninety days, while still living in Center Township, the wife died. Is her legal settlement in Center Township or Cambridge Corporation?

Your attention is called to the case of *Commissioners vs. Commissioners*, 116 O. S. 663, as bearing on the question although presenting facts where the wife moved into the sub-division of her derivative settlement.”

Section 3479, General Code, reads in part as follows:

“A person having a legal settlement in any county in the state shall be considered as having a legal settlement in the township, or municipal corporation therein, in which he has last resided continuously and supported himself for three consecutive months without relief, under the provisions of law for the relief of the poor, or from any charitable organization or other benevolent association which investigates and keeps a record of facts relating to persons who receive or apply for relief. * * *”

Under the provisions of this section it is clear that Paul D. retained his legal settlement in Cambridge Corporation, notwithstanding his moving to Center Township at the time of his marriage, since at the time of his wife's

(Kate L.) death, he had not resided in Center Township a sufficient length of time to acquire a legal settlement therein.

At common law and on general principles, all persons incapable of gaining a legal settlement in their own right have that of the person on whom they depend for support and who has control of their persons and a right to their services. Such persons have what is termed a "derivative settlement". It is a well settled principle that a wife takes, by derivation, the settlement of her husband, thereby losing her own maiden settlement. 31 *O. Jur.*, 102; 48 C. J., 480.

The reason on which the rule is predicated is well stated in *Somerville vs. Boston*, 120 Mass., 574, 575, as follows:

"It is founded on the highest consideration of public policy and morality, it concerns the unity of the marriage relation, and is declared by Blackstone to prevail because the law will not permit the separation of husband and wife. 1 *Black Commentaries*, 363. It cannot be inferred without clear and express provision, that the Legislature intended that the rules regulating pauper settlements should under any circumstances effect the compulsory separation of man and wife and the breaking up of joint parental relations to their children. By the construction contended for by the plaintiff, the wife would gain a settlement in five years, irrespectively of the fact that at the end of that time the husband's settlement was elsewhere. She would then lose the settlement which up to the end of five years she would hold by virtue of her marriage, and acquire a new one by force of the statute. If both should fall in need of relief, that relief as furnished by law would compel the separation."

The rule that the legal settlement of a married woman is that of her husband was recognized in *The Annual Report of the Attorney General for 1909-1910*, page 542, wherein it was held as disclosed by the syllabus:

"A legal settlement of persons in general within meaning of section 702 R. S. is continuous residence in a county and township without relief for twelve consecutive months, *but that of a married woman is that of her husband.*" (Italics the writer's)

In my opinion to be found in *Opinions of the Attorney General for 1933*, Vol. II, page 1307, it was held as disclosed by the second branch of the syllabus:

"2. Where a woman marries a person who has a legal settlement and residence in a county she thereby acquires, by her marriage,

such legal settlement and residence without living therein for twelve consecutive months without charitable relief."

This opinion was reaffirmed in an opinion to be found in *Opinions of the Attorney General for 1934*, Vol. 1, page 303. See also *Commissioners vs. Commissioners*, 116 O. S. 663.

Specifically answering your question it is my opinion that where a woman marries a person who has a legal settlement in a particular township in a county, she, by her marriage *ipso facto*, derivatively acquires her husband's legal settlement and retains such until he acquires a settlement in the township to which he removes.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4830.

APPROVAL, TWO LEASES TO LAND IN JEFFERSON TOWNSHIP, KNOX COUNTY, OHIO, FOR STATE GAME REFUGE PURPOSES—CHARLES I. SHELDON AND F. J. VAN VORHIS.

COLUMBUS, OHIO, October 26, 1935.

HON. L. WOODDELL, *Commissioner, Division of Conservation, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval two certain leases executed to the State of Ohio by property owners in Jefferson Township, Knox County, Ohio, leasing and demising to the State for the purposes therein stated tracts of land in said township and county.

The leases here in question, designated with respect to the number of the lease, the owner of the property and the acreage of land covered by the respective leases, are as follows:

Number	Name	Acreage
2324	Charles I. Sheldon	40
2325	F. J. Van Voorhis	195.95

These leases are for a term of five years and the property described is leased to the state for the sole purpose of a state game refuge. And, in this connection, it is noted that as to each of these leases the Conservation Council, acting through you as Conservation Commissioner, has made an order setting