

rather to be a debt owed by the executor, in his capacity of executor, acting under Manitoba letters probate.

Application refused with costs to be paid by the executor.

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MASTEN, J., IN CHAMBERS.

FEBRUARY 3RD, 1917.

RE JEANES.

*Infant—Custody—Illegitimate Child—Right of Mother—Interest of Infant—Evidence.*

Application by Lena Grace Jeanes for a writ of habeas corpus, supplemented by a motion by way of originating notice for an order for the custody of the infant Ivy Grace Jeanes.

The parties, by their counsel, asked that the whole question should be summarily determined on the present application; that the actual issue of a writ of habeas corpus, the return thereto, and subsequent proceedings thereon, should be dispensed with.

C. V. Langs, for the applicant.

W. M. McClemon, for the respondents.

MASTEN, J., in a written judgment, said that the infant was an illegitimate child. The application was made by the mother of the infant, and the respondents were Lance Hill and his wife, who, about a year before, had received the infant from the putative father under an informal agreement as to adoption.

The affidavits were voluminous and contradictory. Without making any finding of fact on the contradictory statements, but assuming them all in favour of the applicant, the learned Judge thought that they were overborne by the precarious nature of her ability to support and provide a home for the infant.

The applicant earned her living by domestic service. At present she was engaged as servant in the household of Charles Barsky. Mrs. Barsky had consented that the infant should be brought to her house, kept with its mother the applicant, and brought up along with the children of the Barsky household, and to this arrangement Mr. Barsky had agreed. It was in contemplation that this arrangement should be permanent, but it seemed to the learned Judge too precarious to rely upon; and, in the event of its cessation, there was little likelihood of the applicant