

her duties to the institution of which deponent is the manager.

"That deponent has been credibly informed that respondent is about immediately to leave Canada and go to reside in the United States of America.

"That it is against the will of deponent and in violation of the agreement between deponent and respondent that said child, Margaret Rickerby should be removed out of Canada, and unless the said Margaret Rickerby is ordered to return to the custody of deponent, there is reason to fear that she will leave Canada, and be exposed to all the dangers surrounding an unprotected girl of minor age, deprived of the care and guardianship of her legal custodians and parents."

Other affidavits also were filed by petitioner, showing that an auction was going on of respondent's movables when he was served with the writ, as well as his intention of going to the United States.

Counter affidavits were also produced by the respondent denying that respondent had an intention of going to the United States, alleging also his personal character and reputation to be good, as well as that of his family.

A motion to quash the writ was then filed by respondent, alleging the following among other reasons:—That Margaret Rickerby is not confined or restrained of her liberty, or detained against her will by respondent:—That it does not appear that petitioner is acting on behalf of the girl: petitioner is seeking to enforce a written contract by Habeas Corpus, a remedy which is not applicable in the present case, but only where the personal liberty is constrained. The child in question is not under the age of discretion, but, on the contrary, is of sufficient age, intelligence and capacity to choose for herself. Margaret Rickerby is not under restraint, but, as a matter of fact, is at perfect liberty to choose for herself whether she will go with petitioner or stay with respondent. The petition does not specify the reasons why the benefit and welfare of the girl would be promoted by removal from the respondent's. The Court cannot by Habeas Corpus order a person of intelligence to go into the custody of any one in particular. The petitioner is acting in the name of a third party to wit, the Knowlton Home. The respective rights of the parties

to the custody of the child cannot be tried by Habeas Corpus.

The child herself was also examined by the Judge. She declared her age to be under *sixteen*, and not under *fifteen*, as the petitioner's affidavit stated. She stated also that she was happy and contented at the respondent's, and would prefer remaining there to returning to the Home, or going to some other place, giving as her reason, that she did not like to change her place. The respondent and his family, she said, were very kind to her, and treated her as one of the family.

The case was argued very fully, and many authorities were cited in support of their pretensions by the counsel on each side.

Judgment was given on the 14th November.

BROOKS, J. The petitioner alleges that she is manager of "The Knowlton Distributing Home." That said Home is authorized by Order in Council, under the provisions of 35th Victoria, Cap. 13, as amended by 36th Victoria, Cap. 24, to place out children to service.—That on the 14th March last, she as such manager, placed a minor Margaret Rickerby, then under the protection of the Home, with respondent under conditions mentioned, amongst others reserving the right of removing her if she saw fit. That she believes the welfare of the child requires her removal, but respondent refuses. She prays a Writ of *Habeas Corpus ad subjiciendum*, and that respondent be compelled to restore the child, and that said Margaret Rickerby be ordered to return to petitioner.

Respondent brings the child and says he does not detain her, and that she is at liberty to go where she pleases; and then states the circumstances under which she came to him: that she is of an age of discretion to choose where she should go. He also appears by attorney and moves that the writ be quashed for the various reasons mentioned in said motion, alleging that the writ improvidently issued, and that the attempt is to obtain a decision under writ of Habeas Corpus as to the right to the custody of the child. That she is of an age to decide for herself, and that it was not alleged in the petition, nor was it true that she was restrained of her liberty.

The position of the petitioner was this:—She had all the rights, power and authority of the parent over his child: this is not denied by