

C. L. Cham.]

IN THE MATTER OF SOPHIA LOUISA LEIGH.

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tively, and has since continued to reside with her mother. The affidavit then alleges that the father, on the 5th April, 1871, succeeded in getting possession of her child of four years of age, and in taking it away; and avers that since it was so taken away, the mother has never seen the child, nor does she know of its whereabouts. The affidavit then proceeds to allege that two of the husband's brothers have for a long time been subject to fits of insanity, and that the wife, from her husband's treatment of her, and his general demeanor, has no hesitation in saying that he is, and for some time has been, subject to fits of insanity; and that she has no doubt he was under the influence of one of such fits when he took away his child, on the 5th April last: and it alleges that the mother is well able to supply all the wants of the children.

Now, the first observation which strikes one upon the perusal of this affidavit is, that it is strange that no single particular instance is given of the ill-treatment, which it is said has continued for a period of eight years, during which the life of the wife, in consequence of such ill-treatment, was frequently despaired of. If the husband is one of a family long afflicted with fits of insanity, and if he himself, as is alleged, has been subject to such fits, and under the influence of them has, for a period of eight years, in the midst of a civilized community, treated his wife, in the language of her mother, "more like a brute than a natural creature;" and if, in consequence of such treatment, the wife, acting upon the advice of her physician, found it necessary to leave her husband's house, and fly with her children for protection to her mother, surely abundant and indisputable evidence could be adduced of the truth of the charges. The only evidence, however, which has been offered, is that contained in the affidavits of the wife, her mother, and the hired servant now living with them, and who, it appears, did at one time live with Mr. and Mrs. Leigh for about four months, in the year 1868.

The husband, in his affidavit, contradicts, in as express terms as is possible, the general charges made against him; and he states matters which are wholly uncontradicted, and which, being uncontradicted, I should be obliged, even though not confirmed, to treat as true upon this application, but they are confirmed in most important particulars by the affidavits of other persons. These affidavits appear to establish that reliance cannot be placed on the affidavits filed by the petitioner, upon the essential points offered to evoke the jurisdiction conferred upon me by the statute.

Leigh, in his affidavit, after extracting the material allegations from the affidavit of his wife, says that there is not a word of truth in any of such statements: that he has never in any way abused or ill-treated his said wife or any of his children, and that she left him entirely without cause: that he and his wife lived always on good terms up to the time she left him, and that when she did leave him it was without any previous misunderstanding whatever: that she had asked him to drive her and the little girl (the custody of whom is now in question) out to her mother's, and to let her stay two or three days, and that he did so; and that on leaving her at her

mother's, it was arranged between him and his wife that he should take them back home on the following Sunday: that accordingly he went for them on the Sunday, but that his wife's mother said they had better not return that day, it was so very cold: that he then returned without them, and without any suspicion whatever that his wife did not intend to return to him, he having parted with her then on the best terms: that previous to his leaving on that occasion, it was arranged that Mrs. Bull (his wife's mother) should drive his wife and child home: that having waited for a week without their returning, he went over to Mrs. Bull's again, and then asked his wife if she was going to forget him altogether, to which she made no answer; and that then, for the first time, he saw that there was something wrong; and that he had again to leave the mother's house and return home without discovering what was the matter, or what his wife intended to do: that on the next day he again went to see his wife, and found her at Mr. Steele's house; that she at first hid from him, but that on his asking for her, she came out and shook hands with him; but on talking to her there, she at last told him she did not intend returning to her home: that he returned home alone, and that shortly afterwards Mrs. Leigh got possession of the other two children by taking them on their way home from school. He then proceeds to contradict the several other charges made against him; and after retorting charges against her in relation to her temper and ill-treatment of her children (which is much to be regretted, as this case cannot be made to depend upon the relative suitability of either to have sole charge of the children), he concludes by saying that he is still and always has been willing and anxious that his wife should return and resume her proper place in the management of his household, and that she keeps away from her home entirely against his will.

This affidavit is accompanied with certificates, signed by about twenty of his neighbours, who have known him for periods varying from ten to forty years, describing him to be a sensible, upright, honest, trustworthy, respectable man, of sound judgment, a good and obliging neighbour, to whose disparagement nothing is known; that he bears the best of characters; and one describes him to be noted as a good husband and kind father—a man of good sense, steady habits, and amiable disposition, and esteemed so by all his neighbours. Mr. John Steele, who has been for thirteen years reeve of the township in which Leigh lives, states on affidavit that he has known Leigh for eighteen years; that during all that time he has always found him to be a temperate, well-conducted man; that he has known the brothers of Leigh also for eighteen years, and that he has never heard of any of them being insane, or subject to fits of insanity; that his brother Leonard, upon the occasion of his wife's death, was much overcome with grief for about a month; and this, as well from Mr. Steele's affidavit as from that of Mr. Simpson, who was Leonard Leigh's father-in-law, seems to be the only foundation for the charge of insanity. Mr. Steele also states that about three years ago Mrs. Leigh was very ill, and was expected to die; and that as she owned some separate property, Mr. Steele