The Legal News.

Vol. V. NOVEMBER 25, 1882. No. 47.

ALTERATION OF NUMBER OF BANKNOTES.

A decision of considerable interest has been rendered by the English Court of Appeal, in *Suffell* v. *Governor and Company of Bank of England.* The case will be found reported in 47th L. T. Rep. N. S. 146. The Court holds that an alteration of the number printed on a Bank of England note is a material alteration of the note, which renders it void, and discharges the Bank from any liability in respect of it to an innocent holder for value. The case was explained by Lord Justice Brett, in the following terms:

"In this case the plaintiff for full value and with perfect innocence, bought certain Bank of England notes, and presented them at the bank for payment; the bank declined to pay them; thereupon the plaintiff brought an action for the precise amount of these notes, that is, for the exact sum which the bank undertook to repay to the holder of them. The question is whether the innocent proprietor of those notes can recover the exact amount for which the bank issued them, or whether the bank can say, we decline to pay the very sum which by the issue of the notes we undertook to pay to the person who should present them. If the bank is not liable to pay the amount of these notes there is a great hardship inflicted upon the innocent purchaser; and the bank, so far as these instruments are concerned, will escape the obligation to pay the very sum which they undertook to pay for value received when these instruments were issued by them. As between the individual parties in this case therefore there can be no question that one would get a great advantage, and that a considerable hardship would be inflicted upon the other. After these notes had been issued, one of the figures in the numbers of each of them was altered; some person purposely altered that figure with a fraudulent intention to prevent the tracing of the notes. It is a material point that the alteration was purposely made. It is argued that the intentional alteration of the numbers of the notes does not relieve the bank from paying the holder of them; that the alteration does not affect the contract contained in the notes; that there is no evidence that the notes were stolen, no evidence how the person who made the alteration came into possession of the notes. The argument on the other side is that the person, whether thief or not, having possession of these instruments, which were bank notes, could so long as they were unaltered, have enforced payment of them upon the bank. It is argued that a bank note besides being a contract is a piece of currency, so that the payment of a debt by a bank note is a good payment; and that the holder of a bank note is entitled to payment by the bank however the person who paid it to him got possession of it, because it is a part of the currency. It is said that whether the contracts contained in these notes have been altered or not, there has been an alteration which affects their identity, and is therefore material."

The learned judges were agreed that an instrument containing a contract may in some cases be avoided by an alteration which does not affect the contract. Lord Justice Cotton said:—"The principle really is not that an alteration of the contract, but that any substantial alteration of the instrument vitiates it. What is the instrument that we have to consider in this case? A Bank of England note. Can it be said that the number is not an essential part of the note? No one for years would have taken a note without a number upon it. The Bank of England in order to secure as far as they can the persons who hold their notes from loss, when notice has been sent to them of the numbers of any missing notes will stop them, and so far as possible protect the public. The numbers upon the notes are therefore a protection to the holders of them; and they are also a protection to the bank. The numbers must be a protection to the bank, because the bank knows when a note is presented for payment if a note with that number is in circulation, and they are therefore of importance in detecting forgery. The person who has altered the numbers of these notes has, in my opinion, made a material alteration of the instruments, and consequently the plaintiff, who is the holder, cannot recover on them."

The decision of Lord Chief Justice Coleridge in the Court below was overruled.

THE COURT OF APPEALS.

The Montreal term in September opened with 107 cases on the printed list. Of these, 23 cases were heard on the merits, 1 case was submitted on the factums, and 2 cases were settled out of Court. Two other cases, not on the printed list, were heard by privilege. Thus 28 appeals were disposed of. Yet in November, after an interval of only six or seven weeks, a printed list containing precisely the same number of cases (107) is placed before the Court. This suggests the epithet applied by a foreign contemporary to a somewhat similar state of things existing elsewhere. He refers to the toil of the judges in dealing with the ever-rolling mass of litigation as a "Sisyphean" task,—without, we presume, any dark insinuation as to the locality in which the labor is performed.

NOTES OF CASES.

SUPERIOR COURT.

SHERBROOKE, Nov. 14, 1882.

Before BROOKS, J.

THE QUEEN v. J. W. MCCONNELL, & ELIZABETH MEIKLEJOHN es qual., Petitioner for *Habeas Corpus.*

Habeas Corpus—The Knowlton Distributing Home —Custody of minor.

A girl, aged 15, was placed in the household of a farmer by the manager of the "Knowlton Distributing Home." Soon afterwards, the manager applied for a writ of habeas corpus in order to procure the restoration of the girl to her charge. The farmer, by an amended return to the writ, declared that he did not detain the girl, who was at liberty to go where she pleased. The girl herself, when examined by the Judge, stated that she was happy and contented where she was, and would prefer remaining there to returning to the Home. No specific reasons were stated in support of the application, except that it was for the welfare and benefit of the child that she should be removed, and that the farmer with whom she had been placed was about to go to the United States. The latter statement was contradicted by affidavit.

Held, that under the circumstances the Court would not, on a writ of habeas corpus, the object of which is the protection of personal liberty, make any order of a nature to exert coercion, but would leave the minor to follow her own inclination in the matter.

The Petition of Miss Elizabeth Meiklejohn was as follows:—

The Petition of Elizabeth Meiklejohn of Knowlton in the Township of Brome, in the District of Bedford, Spinster, in her quality of Manager of "The Knowlton Distributing Home," a charitable institution, duly authorized by law to place out children under their charge, and having their head office and chief place of business at Knowlton aforesaid, respectfully represents: That the said petitioner Elizabeth Meiklejohn is the duly authorized and appointed manager of the said Institution.

That on or about the 14th day of March, 1882, the said petitioner entered into an agreement in writing with one Jesse W. McConnell of the Township of Hatley in the District of St. Francis, farmer, wherein and whereby petitioner placed in his charge a minor child, one Margaret Rickerby, whom the said Jesse W. McConnell hired from the petitioner and agreed to pay at the rate of $25 per annum, in addition to board and lodging for and during the term of three years, subject however to the reservation in and by said agreement specially expressed—that the said petitioner in her said quality should have the right of removing said Margaret Rickerby if and when petitioner should see fit, the whole as will appear on reference to said agreement herewith produced marked as petitioner's exhibit A, which said exhibit was duly executed by petitioner on behalf of said Knowlton Distributing Home, who previous thereto had had charge and custody of the said minor Margaret Rickerby.

That for certain reasons the said petitioner hath reason to believe and doth verily believe that it is for the benefit and welfare of said child Margaret Rickerby, that she should be removed, and petitioner desires to remove said Margaret Rickerby from the care and custody of the said Jesse W. McConnell, and petitioner, on or about the 28th of October, now last past, notified said Jesse W. McConnell at his domicile in Hatley aforesaid, that she desired to remove said Margaret Rickerby from his care and custody, and then and there did demand of him the person of the said Margaret Rickerby—but the

said Jesse W. McConnell then and there refused and still refuses to restore or deliver the said Margaret Rickerby to petitioner, and petitioner verily believes that without the benefit of a Writ of Habeas Corpus, addressed to the said Jesse W. McConnell ordering him to bring the body of the said Margaret Rickerby before your Honor, and to show cause why he detains her against the will and consent of your petitioner —the said petitioner will sustain damage, and lose the custody, charge and control of the said Margaret Rickerby.

Wherefore petitioner prays that a Writ of Habeas Corpus may issue addressed to the said Jesse W. McConnell of the Township of Hatley, in the District of St. Francis, farmer, commanding him to bring the body of the said Margaret Rickerby before your Honor without delay, or on the first day of the term of the Superior Court, to wit: on the tenth day of November instant, and to show cause why he detains the said Margaret Rickerby, and that the said Jesse W. McConnell be ordered to restore and deliver the said Margaret Rickerby to the said petitioner, and that the said Margaret Rickerby be ordered to return to the said petitioner, and that the said petitioner be placed in charge of the said Margaret Rickerby,—the whole with costs *distraits* to the undersigned attorneys.

Sherbrooke, 6th November, 1882.

The application was supported by the following affidavit:

"Elizabeth Meiklejohn, of Knowlton, in the Township of Brome in the District of Bedford, Manager of the Knowlton Distributing Home, being duly sworn doth depose and say:—

That petitioner is the only authorized manager of the Knowlton Distributing Home, and has a personal knowledge of the matters set forth in the foregoing petition, and that the same as set forth and alleged therein and each and every thereof, are and is true.

"That deponent in her said capacity has a right to the custody and charge of the person of the said Margaret Rickerby named in said petition, and the said Jesse W. McConnell unlawfully detains the said Margaret Rickerby, and restrains her, and prevents the said petitioner from obtaining possession of the said Margaret Rickerby, and deponent verily believes that without the benefit of a writ of *habeas corpus* addressed to the said Jesse W. McConnell, deponent will be unable to obtain possession of the said Margaret Rickerby, and will sustain damage.

(Signed.) ELIZABETH MEIKLEJOHN.

Sworn before the undersigned at the City of Sherbrooke, this sixth day of November A. D. 1882.

(Signed.) E. T. BROOKS, J. S. C.

The Judge made the following order:—"Let a writ of *habeas corpus* issued as prayed for, returnable to the Superior Court at the City of Sherbrooke in session on the tenth day of November instant.

Sherbrooke, 6th November, 1882.

(Signed.) E. T. BROOKS, J. S. C."

The respondent appeared and made the following petition:—

"I, Jesse W. McConnell, of the Township of Hatley, in the District of St. Francis, farmer, the respondent in this cause, now have and produce the body of said Margaret Rickerby. The causes of her detention by me are the following:—On or about the 14th day of March last, the said Margaret Rickerby was received into my family and entered my service under and by virtue of a written contract of lease and hire, made and executed by and between one Louisa Birt as lessor, and myself as lessee, by virtue of which contract I engaged and hired the services of the said Margaret Rickerby for the term or period of three years from the date thereof, and for fair and reasonable remuneration in said contract specified, and I have fulfilled up to the date hereof all the obligations devolving upon me under said contract.

"That said Margaret Rickerby is and always has been while with me well treated and cared for by me and by my family, and she is not and never has been since entering my service under restraint, nor confined or restrained of her liberty, but the said Margaret Rickerby is free to exercise her choice as to her place of residence. That she is a girl of sufficient age, intelligence and capacity to choose for herself. That she is and always has been desirous of remaining with me and my family with whom she has become much attached, and she is unwilling to leave my employ or to return to Louisa Birt, with whose treatment she is dissatisfied.

"That I have received no legal or sufficient notice of Louisa Birt's desire to terminate said

contract of lease or hire, or to remove said girl from my service and employ, and no sufficient opportunity has been given me to seek elsewhere for a servant to take the place of said Margaret Rickerby, who is and has been of great assistance to me and my wife, and needed by us to perform the duties for which she was hired. And her immediate departure with said Louisa Birt or with petitioner would subject us to great inconvenience and damage. That I am, as I believe, and, as I have been informed by legal counsel, entitled to the usual legal notice of intention to terminate said contract of lease and hire. That I am not detaining said Margaret Rickerby against her will and consent, and her liberty is in no way infringed by me or by my family. That I hold said girl under a contract of lease and hire of personal service under which there is no stipulation or agreement that petitioner, or that either party shall have the right to terminate the same in a summary manner *without notice.*

"These are my reasons for the present detention of said Margaret Rickerby whom I now produce before your Honor to abide your Honor's order in the premises.

Dated 10th November, 1882.

(Signed) J. W. McConnell."

The petitioner then moved that the foregoing return attached to the writ be declared to be inconsistent, and that the respondent be required to declare whether he detained the girl or not.

Respondent amended his return by declaring that he did not detain the girl, and that she might go where she pleased—thus waiving any rights respondent might have had over the said Margaret Rickerby by reason of the agreement above mentioned. The amended return reads as follows:—

"I, Jesse W. McConnell, the respondent in this cause, hereby amend my return by alleging that I have not and do not detain said Margaret Rickerby, that she has been and is at perfect liberty to go with petitioner if she sees fit, and I hereby withdraw from my return (the subject of this amendment) any and all allegations by which I claim any detention of said girl, and substitute therefor this allegation, that I do not detain her, that she is under no restraint, and is not confined or restrained of her liberty in any way, but is at liberty to act for herself, and choose for herself whether she will remain with me or go with petitioner."

The following affidavit was then made by Miss Meiklejohn:—

"That the said Respondent, by an amended return made by him to the Writ of Habeas Corpus in this cause, declares that he does not detain the body of Margaret Rickerby who is at liberty to go where she pleases:

"That the said Margaret Rickerby is a minor child under the age of fifteen years, and has an elder sister in this Province who is now between the ages of seventeen and eighteen, and who is at present in the charge of Mrs. Samuel Brown of Waterloo, under whose care she was placed by the petitioner.

"That the said minor children have a mother living in the city of Liverpool, in England, by whom they were placed in the charge of Louisa Birt in England, for the purpose of and with the intention of their being brought to Canada and placed in the care and custody of deponent.

"That the said Margaret Rickerby is not capable of exercising a sound discretion as to the custody in which she should remain or be placed, that she is easily influenced, as shown by the facts that up to quite a recent date she has shown great love and affection for petitioner: when she left Knowlton in March last she threw her arms about petitioner's neck and said, she did not wish to leave petitioner, but would prefer to stay with her without wages, than to go out for service: and now without any just cause her affections have been alienated, and she is apparently unwilling to have any conversation with petitioner.

"That since the said Margaret Rickerby was placed in respondent's custody, certain circumstances have been disclosed to deponent, which deponent cannot divulge without injury to other persons, and which (whether true or untrue) are of so grave a character as to make petitioner deeply apprehensive for the future welfare of said Margaret Rickerby.

"That in the desire to remove said Margaret Rickerby again into her own care and custody, the deponent is actuated by no other motive than a consideration for the moral welfare of the said child, and a desire to discharge the sacred obligations assumed by deponent towards said child and her sister and mother, as well as

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

the respondent. Under 35th Vict., Cap. 13, sec. 7, she stands *in loco parentis*, and by sec. 4 had a right to place her out to domestic service.

By the Habeas Corpus Act, C. C. P. 1040 *et seq.*, any person who is confined or restrained of his liberty otherwise than in criminal matters, or any other person on his behalf, may apply for this writ: and there can be no doubt that the correct interpretation of this would cover the case of a parent or guardian entitled to the custody of a child of such tender age as to be incapable of judging for him or herself, *i.e.*, who has no *will* or *discretion*, for whom the parent or guardian is bound to exercise such will.

The right of *Habeas Corpus ad subjiciendum* has been acknowledged and acted upon in such cases in England and in this country.

In *Rex & Greenhill*, 31st Eng.Com.Law Reports, p. 259, A. D. 1836, the children were respectively 5½, 4 and 2 years of age. Lord Denman says: "When an infant is brought before the "Court by Habeas Corpus, if he be of an age to "exercise a choice, the Court leaves him to "elect where he will go. If he be not of that "age, and a want of direction would only "expose him to dangers or seductions, the "Court must make an order for his being placed "in the proper custody." Lord Littledale: "I "am of the same opinion, etc." Williams, J. "In general when the party brought up by "Habeas Corpus is competent to exercise a "discretion on this point, the Court merely "takes care that the option shall be left *free*."

Coleridge, J. "The Habeas Corpus proceeds on the fact of an illegal restraint. But when the person is too young to have a choice we must refer to legal principles to determine who is *entitled* to the custody, because the law presumes that where the legal custody is, no restraint exists."

Queen & Maria Clarke, 1857, 90 Eng. Com. Law Reports, p. 185, ages 10 and 11. "A "guardian for nurture has a legal right to the "custody of the ward unless, etc."

Lord Campbell, C. J., Lords Denman, Littledale, Williams, J., and Coleridge, J., all make age the criterion, and not mental capacity, to be ascertained by examination. They certainly do not specify the age, but they cannot refer to 7 as the criterion, and there is no intervening age marking the rights or responsibilities of an infant at 14, when guardianship for nurture ceases, upon the supposition that the infant has not reached the age of discretion.

Queen & Howes, 107 English Common Law Reports, p. 332. The child was 16 years of age, but had *recently* left the father without any just cause. *Re Goldsworthy*, Q. B. Division Reports, vol. 2, p. 75. Child, age 9. Court refused to interfere on account of the *bad habits of the father*.

It is said that 16 is the age fixed under 32 – 33 Vic., cap. 20, sec. 56. This is an Act by which it is made a misdemeanor to unlawfully take from the custody of a parent or guardian any girl under 16.

Why say that this age (16) is fixed as the age of discretion, more than 14, the age when under our Code (Art. 304) a minor can sue for wages up to $50, and at which age, under the Act invoked by petitioner, 35 Vic., cap. 13, sec. 6, she can give a valid receipt for monies paid her?

The case of *Ex parte Stoppellben*, in the Superior Court, 2 Q. L. Reports, p. 255, and 3 Q. L. Reports, p. 136 *et seq.*, have been referred to.

Meredith, C.J., says: "We cannot say that "before the age of 14 a minor shall not be con- "sulted, but that after 14 a minor may be con- "sulted as to the custody in which he will be, "and therefore all that can be done here is for "the judge, in each case admitting of doubt, to "enquire as to the age, capacity and intelli- "gence of the child, so that, so far as may be; "its feelings, attachments and reasonable pre- "ference may be ascertained and considered, "and the judge assisted in the exercise of his "legal discretion."

In this case C. J. Meredith and Stuart and Casault, J J., all agreed in sustaining the judgment of Mr. Justice Dorion.

In the matter of *Mary Therese Kinne*, aged 14, January 12, 1870, C. J. Hagarty and Mr. Justice Gwynne "in the case of a child under "14 who was sought by her father, refused the "application," Hagarty, C. J. saying: "We "consider the charge of want of intelligence of "the child not in any way supported. Her "manners and answers establish to our satisfac- "tion that the child is a peculiarly intelligent "one and fully understands her position. The "only order we can make is *the child is free to "go with whom she pleases.*"

In the case of *Rivard* v. *Goulet*, 1 Q. L. Reports

p. 174, before C. J. Meredith and Mr. Justice Dorion, it was held that under the circumstances stated, the boy of 14 and the girl of 17 would be allowed to go where they pleased.

Meredith, C. J., then referred to three cases not reported, one of Kinne (above referred to), another when Mr. Justice Quain "*Times*" Oct. 24, 1872, observed; "That the daughters, 12 and "14 years of age, were of an age that they might "be consulted in the matter." Another in the "*Times*," June 4, 1874, in which Lord Chief Justice Cockburn observed "that the child (12 "years of age) was of an age to exercise a "choice." And then gave the reason upon which all the above decisions turn, *viz.* "that "the Court would not on a Writ of Habeas "Corpus, the object of which was only the pro- "tection of personal liberty, exert any coercion "on the child."

The case of *Barlow* v. *Kennedy* is one in which the Court finally held that the father could not divest himself of his right, and inferentially of his obligation to his child.

And the case of *The Queen & Edward Smith* in re *Boreham*, 16 English Law and Equity Reports, p. 221: "That notwithstanding the agreement "that the child should be brought up by his "uncle, the father was at liberty to revoke his "consent, and that the Court was bound to "deliver up to his father when brought up on "Habeas Corpus." In this case the child was of tender years, as also in the case of *Barlow* v. *Kennedy*.

It has been held in England, 1852, English Law and Equity Reports, vol. 12, p. 463, Exparte *Sandillands*: "That where a wife is voluntarily "and without restraint absent from her husband, "a Court of Common Law has no jurisdiction "upon an application to issue a Writ of Habeas "Corpus to bring up her body."

Lord Campbell, C. J. says: "The case of an "infant to which allusion has been made, is "quite different, because there the parent has a "right to the custody of the child, and if the "infant is of *tender years*, the Court will order "it to be delivered to its father."

Hurd, American Edition, 1876, p. 449, says: "The object, it will be observed, in such cases "is not to enforce a right of custody, but to "remove unlawful restraint. The party thus "interested in the custody will be presumed to "represent the wishes of the person restrained "so far as to enable him to set the remedial "power of the Court in motion. But the right "properly speaking extends no farther than "that."

Again, p. 453: "The term imprisonment "usually imports a restraint contrary to the "wishes of the prisoner, and the Writ of "*Habeas Corpus* was designed as a remedy for "him, to be invoked at his instance to set him "at liberty, *not to change his keeper*."

In New York, 1847, Hurd, p. 518, Oakly, J., said: "The true view is that the rights of the "child are alone to be considered, and these "rights clearly are to be protected in the enjoy- "ment of its present liberty, according to its own "choice, if arrived at the age of discretion, and "if not, to have its personal safety and interest "guarded and secured by the law acting through "the agency of those who are called upon to "administer it."

Page 533, *Rex* v. *Delavel*, Lord Mansfield said: "The Court is bound *ex debito justitiæ* to set the "infants free from an improper restraint, but "they are not bound to deliver them over to "anybody nor to give them any privilege."

Page 534: "The Court does not feel bound "in all cases to deliver the child into legal "custody where it has not been abused or trans- "ferred. It has been said, indeed, in such cases "that the *Habeas Corpus* ceases to be a remedy "for the father. It does not cease to be a "remedy. It never was a remedy to that ex- "tent."

Page 537: In re *Lloyd*, the child was between 11 and 12 years of age, and she was allowed to choose. Here the Court intimated that she would have been allowed the privilege had she been only 7 years old. Tindall, C. J., said: "Had she been *under* 7 years of age the Court "would have said that she could exercise no "discretion."

Commonwealth v. *Hammond*: The child was between 11 and 12, and its wishes were consulted.

The People v. *Ordronaux*: Three children, 15, 13 and 9 years. All consulted.

Pages 554-5-6. *The State* v. *Cheesman*: Child, age 13½. Southard, J., said, after defining objects of writ, *i.e.*, to relieve from restraint or imprisonment: "Wherever there is no impri- "sonment there is no ground for the writ, and "I apprehend no case can be cited where the

" writ is either used to determine a question of " property or the conflicting rights to the pos- " session of the person."

Now, let us apply the law and the authorities to the present case. The child is over 15. I have examined her. She is bright and intelligent even beyond her years. She answered all questions clearly, and has expressed a decided preference to remain with respondent, where she says she has been under no restraint, has been treated as one of the family, and has become attached to them, and where she desires to remain. The petitioner has relied wholly upon the reservation in the contract, *i.e.*, that she might claim the child whenever she chose. The Court here is not to determine the nature or extent of this reservation nor the petitioner's rights under it, but have to say if under the prerogative Writ of *Habeas Corpus*, and under the circumstances of this case, they will coerce this young girl into returning to petitioner. It is not alleged, or if alleged, only generally, and no reason is assigned, why the child should be removed. It is not shown how she can be injured by remaining; on the contrary, the respondent is proved by the affidavits to be a most respectable, worthy farmer, in good repute, and one in whose family a child like Margaret Rickerby would be well cared for in every way. It is said that he intends leaving the country. This he denies, except temporarily. He swears that he has no intention of removing his residence from Canada.

I have no doubt that petitioner is actuated by the best of motives. I have great sympathy with the good work which is being done by the Home which she represents. But in law she only stands before the Court as a parent would, and I am bound to say that under similar circumstances, if a parent had put out its child to service, and should attempt by virtue of the Writ of *Habeas Corpus* to enforce the contract and obtain possession of the child, I should, under the law and the precedents, be compelled to quash the writ and to say, as I am now compelled to say, that the child Margaret Rickerby is at liberty to remain with whom she pleases. The Court will not exercise any coercion, and the writ is quashed, but without costs.

Writ quashed.

Hall, White & Cate for petitioner.
Camirand & Hurd for respondent.

RECENT UNITED STATES DECISIONS.

Insurance—Fire Policy—Statement as to distance of detached building.—A statement in a fire policy describing the building which contained the personal property insured, as "detached at least one hundred feet," *held*, a warranty, and not a mere description of the building, for the purpose of identifying the personal property insured contained within it, the building having already been sufficiently described by its ownership and situation. See Wall v. East River Ins. Co., 7 N. Y. 370. The phrase is not merely descriptive of identity, but relates to the character of the risk. Thus understood and appearing in the face of the policy it amounts to a warranty. Alexander v. Germania Ins. Co., 66 N. Y. 464; Richardson v. Protection Ins. Co., 30 Me. 273; Parmalee v. Hoffman Ins. Co., 54 N. Y. 193. The language of the phrase is not void for ambiguity. Higgins v. Mutual Life Ins. Co., 74 N. Y. 6. But the sensible construction of the language is, and it is held to mean, detached one hundred feet from any other building of such character as to constitute an exposure and increase the risk. Where a choice is to be made between two constructions, the one rigorous and hard and producing a forfeiture, and the other natural and reasonable and supporting the obligation, the latter construction is to be preferred. Baley v. Hartford Ins. Co., 80 N. Y. 21. Accordingly *held*, that a small frame building, ten by twelve feet on the ground, seven feet high, clapboarded, and ceiled inside, having a chimney but no stove in it, situated seventy-five feet from the building containing the insured property, the evidence tending to show that it did not increase the risk, did not make a breach of the condition mentioned. Judgment of General Term reversed, and of Circuit affirmed. *Burleigh* v. *Adriatic Fire Insurance Co.*, New York Ct. of Appeals, October 17, 1882.

Attorney—Purchase of Matter in Suit from client.—An attorney at law cannot purchase from his client the subject-matter of litigation in which he is employed and acting, if as part of his negotiations for the purchase, he advises his client as to the probable outcome of the litigation, and its effect upon the value of the property he is seeking to purchase. See West v. Raymond, 21 Ind. 305; Simpson v. Lamb, 17 C. B. 306; Hall v. Hallett, 1 Cox, 134; Wood v. Downes, 18 Ves. 120; Hawley v. Cramer, 4 Cow. 737; Henry v. Raiman, 25 Penn. St. 359; Armstrong v. Huston's Heirs, 8 Ohio, 554; U.S. Circ. Ct. Colorado, July, 1882.—*Rogers* v. *Marshall*, (U. S. Circuit Court) 13 Federal Reporter.