THE MISSISSIPPIAN.

The State of Mississippi---High Court of Errors and Appeals---April Term, 1859.

Finley B Hiern, Ex'or, 5391--vs. Edward Breslenit and wife.

Dissenting opinion delivered by Mr. Justice Handy.

The first question in this case is whether the appellee, Mrs. Breslenit is the child, and heir of Hall the deceased.

And upon that point I think there is a clear and very decided preponderance of evidence, showing that she was not the daughter of Hall. The strongest evidence in the case upon the point, is the declarations of Hall. It appears that the had been for a long time a member of his family, first in New York, and afterwards in New Orleans; and although he called her his child in common conversation, and frequently spoke of her as such to indifferent persons, yet he repeatedly declared under the most solemn circumstances that she was not his child except by his having taken her into his family and supporting, and educating her, having no children himself. These declarations were made seriously and under such circumstances as entirely to exclude the supposition that they were false—to confidential friends, and to the priest of his church, and to his executor, and to the draftsman of his will. They are corroborated by the reputation and circumstances in New York, where she is said to have been taken by Hall into his family, and by the circumstance of the improbability of her being the child of Hall's wife, who is shown to have been childless for many years after her marriage in France to Hall, and who does not appear to have had any other child, after the introduction of the appellee into Hall's family.

The alleged undue influence, under which these solemn declarations of Hall were made, appears to be insufficient to destroy or impair their force.— And I consider them conclusive of the fact, that she was not his daughter.

This view disposes of the case.

But upon the main point considered in the opinion of the Court, I do not clearly appear whether Marceline Maresse is now a resident of this State, or of Louisiana. The petition states that she was a free woman of color of Louisiana, and that she was then about to be brought into this State by the appellee's testator. But, what was her place of residence at the time the testator died, (or when the petition was filed) does not clearly appear. It is, however, to be presumed that she was, at either of those periods, in this State, contrary to our laws. She is alleged to have been a citizen of Louisiana, and to have possessed all the rights and capabilities of such citizens.

The question then, as to her right as a free person of color to come into this State, is the same as that decided in Shaw vs. Brown and upon the general question considered in the opinion of the Court, I have expressed my views in the case of Hubert vs. Wells at the last October Term. Upon the general grounds therein stated I dissent from the opinion of the majority of the Court, in this case.

The following is the opinion of Mr. Justice Handy reported to in the foregoing opinion:

William Mitchell, Nancy Wells. } High Court of Errors and Appeals, April Term, 1859.

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Nancy Wells, Petitioner, vs. William Mitchell, Executor of Edward Breslenit and wife, Respondent.

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