MOTHER WANTS CHILD.

Court Holds That Law Gives Her Boy to Another.

A human interest lawsuit was settled in Judge Little's Court this week in which, though the parties were Japanese and not supposed to possess "finer feelings," tears and sobs and hysterical gesticulations played a prominent part. The dignified Court itself did not escape the contagion and counsel for both sides were compelled to look out through the Court house windows in the effort to forget the affecting scenes in which they were active participants.

The action was one of habeas corpus in which the father and mother of a bright eight year old boy sought to regain possession of him, after he had been raised and cared for from infancy by others. C. F. Parsons of Smith & Parsons appeared for the petitioning parents and Homer L. Ross of Wise & Ross resisted the application. The trial covered two days and the mother of the boy and the woman who had taken him as a baby to raise were dramatic witnesses. There was little dispute as to facts, the matter resting almost wholly on points of law. The Court held that the mother could not regain the custody of her child. Following is the decision:

This is one of a class of cases which involves the holiest character of woman, as the nurse of innocence the cherisher of the first principles of mind—the guardian of an immortal being who will write upon the records of eternity how faithfully she has fulfilled her trust.

In Chapsky vs Wood, in the 40th American Reports at page 321, Mr. Justice Brewer, now of the Supreme Court of the United States, in the course of a splendid opinion rendered while a member of the Supreme Court of Kansas, made use of the following beautiful language in a case exactly similar to the one at bar—"In this case," said Judge Brewer, "of the petition of Morris A. Chapsky for the possession of his minor child, counsel have in their argument expressed very feelingly and truthfully the embarrassments and difficulties which surround the decision of a case like this. These arise, not because there is a conflicting question of fact to be settled by the Court, for that is a matter of everyday occurence in judicial proceedings; it is not that it is a question between a grown man on one side and a grown woman on the other, for we could dispose of every question affecting simply them without any embarrassment or hesitation; the burden of the case is that the decision is one which involves the future welfare of a little girl and I think no man can look upon the fact of a bright and happy little girl like the one before us and come to a decision of a question which may make or mar her future life without hesitation and feeling, certainly we are not so insensible as to be able to do it. The questions of law which are involved in a case like this are few in number and I think not subject to much doubt. They may be summed up briefly thus—The father is the natural guardian and is entitled to the custody of his minor children. This right springs from two sources; one that he who brings a child, a helpless being into life, ought to take care of that child until it is able to take care of itself and, because of this obligation to take care of and support this helpless being, arises a reciprocal right to the custody and care of the offspring whom he must support, and the other reason is that it is a law of nature that the affection which springs from such a relation as that is stronger and more potent than any which springs from any other human relation."

Again the learned judge says,—"The fifth proposition is, in questions of this kind three interests are to be considered, the right of the father must be considered, the right of the one who has filled the parental place for years should be considered—perhaps it may not be technically correct to speak of that as a right, yet they who have for years filled the place of parents and have discharged all the obligations of care and support and especially when they have discharged these duties during those years of infancy when the burden is especially heavy, when the labor and care are of a kind whose value cannot be expressed in money, when all these labors have been performed and the child has bloomed into a bright and happy girlhood (In the case at bar it is a bright and happy boy), it is but fair and proper that their previous faithfulness and the interest and affection which these labors have created in them should be respected. Above all things, the paramount consideration is, what will promote the welfare of the child. These I think are about all the rules of law applicable to a case of this kind."

There is evidence on the part of the respondents in this case that the parents by an express agreement, however informal, committed the custody and maintenance of their child to the respondents at the time of its birth and that they among themselves endeavored to adopt it according to Japanese custom, by having its name registered at the Japanese Consulate, etc. This, however, is denied by the parents and supported by the respondents and one other witness.

In Fletcher vs Hickman, 88th American State Reports at 862, we find the following: "A parent who contracts to commit the custody and maintenance of his child to a third person is bound by such contract after it has been acted upon, unless the welfare of the child demands that the contract be disregarded."

It is also held—"If a parent by voluntary contract releases his parental power over his child to another, he cannot revoke such contract after it has been acted upon in good faith, except for sufficient legal reasons such as insufficient support, bad treatment or the like."

Bentley vs Terry, 77th American Reports, 329.

Bonnett vs Bonnett, 47th American Reports, 810.

"Or if a parent has transferred the custody of his infant child by voluntary agreement, which has been acted upon by such other person to the manifest interest and welfare of the child, the parent cannot be permitted to reclaim its custody unless he can show that a change of custody will materially promote the welfare of this child."

Stringfellow vs Summerville, 29th S. E. Reporter, 685.

Green vs Campbell, 29th American State Reports, 843.

Cunningham vs Barnes, 38th American State Reports, 57.

It is also held that "If a child has been permitted to grow up in a family of a third person as his son, such person cannot raise the objection that the agreement is not binding on the ground that he could not have enforced it against the child's parents for the purpose of avoiding his liability under the contract to provide for the child as his son."

Van Dyne vs Vreeland, 11th New Jersey Equity, 370, and affirmed in the 12th New Jersey Equity at 112.

In Chapsky vs Wood, supra, the Court said, "No one has said that this child has lacked anything which a child should have and the testimony all shows that it has been cared for most patiently and faithfully, as well as it could have been cared for by anyone, and to that care the face and appearance of the child abundantly testify—this fact does not rest on probabilities. It is a serious question, always to be considered, whether a change should be advised. 'Let well enough alone' is an axiom founded on abundant experience. There is nothing in the present situation of the respondents, their pecuniary condition, the business capacity of the husband, their social position, their affection for this child, absolutely nothing which tends in anyway to suggest that the welfare of the child, which has been promoted in the past, would be limited or abridged in the future. What they have done for the child tends to show what they will do through the future years of its childhood—what that has been is certainly ample and I think more

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