

JUDGMENT—COLLATERAL ATTACK—COURTS—LEGAL FRAUD ON JURISDICTION WILL COMPEL SURRENDER OF CHILD WITHOUT ADJUDICATION OF PARTIES' RIGHTS.

Scott v. Brown (Ark. Sup.), 254 S. W. 1074:

Application by Mrs. Nellie Brown for a writ of habeas corpus against John and Ethel Scott, to recover the custody of her ten-year-old daughter. The Scotts filed an answer or return, in which one Louis Barton joined, alleging that Barton had been appointed guardian for said minor by the juvenile court of Crittenden County, Arkansas, and that the child had been given into the custody of the Scotts by Barton, its legal guardian. On the hearing it was shown that Mrs. Brown had, seven years before, placed the child in an orphan asylum in Memphis under an arrangement to pay the asylum board for the child; that the Scotts, who had no children, went to the asylum to obtain a child, and selected the child in question, the asylum representing that both its parents were dead, and took it home to Arkansas. When Mrs. Brown a month later learned what had been done, she refused to abide thereby and got the child back. Several months later she changed her mind and consented to the Scotts having the child, but would not consent to their adopting it. The Scotts had the child under that arrangement for about two years, and finally took it to Memphis for a visit. While they were in Memphis, Mrs. Brown took and carried the child away. Then the Scotts sued out a writ of habeas corpus before a Tennessee court, to secure custody of the child. Pending the hearing, the court ordered Mrs. Brown to surrender the child to Mrs. Scott, who immediately took the child back to Arkansas. The Tennessee court cited Mrs. Scott to appear or be adjudged in contempt, but she did not appear and finally the court dismissed the petition and directed the child to be restored to the custody of its mother, who thereafter went to Arkansas and instituted the present proceeding.

The court held that, although the present proceeding was a collateral attack on the judgment of the juvenile court in appointing Barton guardian for the child, such appointment being pleaded as a defense, yet as the answer did not set forth the facts which it was decided gave that court jurisdiction, and the evidence adduced by the defendants was wholly inconsistent with any state of facts essential to that court's jurisdiction, the averments in the answer were not sufficient to continue the custody in such guardian as against the mother.

The facts stated established fully that the child whose custody was in controversy was not a "neglected or delinquent child" within the statute conferring jurisdiction on the juvenile court to award custody over neglected or delinquent children.

It was further held that the conduct of Mrs. Scott in removing the child from the jurisdiction of the Tennessee court and in violating that court's order made after such removal, constituted legal fraud upon the jurisdiction of the courts both of Tennessee and Arkansas, so that she must surrender the child to its mother before any adjudication of the rights of the parties or the welfare of the child could be considered by the Arkansas court in habeas corpus proceedings.