

But I am quite unable to see what bearing sec. 28 can have as applied to the provisions of the preceding section, 27, sub-sec. 4. By the latter, the Judge of the High Court Division can inquire "whether the child is being brought up in a different religion from that in which the parent has a legal right to require the child shall be brought up;" and he can make such order as he may think fit. If sec. 28 is intended to control the discretion of the High Court Judge, then the power to make such order as he may think fit is meaningless. If it applied, the Judge would be bound to change the custody, whether he thought fit or not. If sec. 28 is read as meaning children of Protestant or Roman Catholic parents, then, as it applies till the child is sixteen years of age, it would deprive the latter of any right to have its views regarded, notwithstanding sec. 28, sub-sec. 5, as the prohibition is expressed in absolute terms.

The two sections, I think, point in two different directions the later one as preventing a child with religious views (see on this *Re Faulds*, 12 O.L.R. at pp. 258-9), or if of some religious persuasion, from being put, under the statutory machinery, into a foster home or committed to the care of a society contrary to its religious desires, and as conferring a right upon the child which is a personal one. The earlier section recognises the parent's legal right in all cases, including those coming under sec. 28, as overriding the wishes of the child, except where the Judge of the High Court, in his discretion, either after or without consultation with the child, settles its religious custody.

In this case the child is being brought up by Protestants, in a religion different from that in which the father on his application says he desires him to be brought up. It would not matter, therefore, it seems to me, whether he were in the foster home at his own wish or under the committal order. The parent has, under sec. 27, the right to insist on his wishes being considered, and the burden is cast upon the Judge either to give effect to that right or in his discretion to refuse to yield to it.

In the case in hand my brother Middleton has exercised his discretion, and we are asked to review it. That he had the power to make the order appealed against cannot be doubted, both under the earlier general jurisdiction vested in the Court and by the statute under discussion. And, in view of the age of the child, "the Court has absolute power" over him. See per Lord Cottenham in *Warde v. Warde*, 2 Ph. 786. This case was followed and approved by Mowat, V.-C., in *Re Davis* (1871), 3 Ch. Chrs. 277, a case of a girl of seven years old. In *In re McGrath*, [1893] 1 Ch. 143, the Court of Appeal state the rule of law to