

taken by the mother, McMahon lodged an undertaking to maintain and educate the child in a proper manner until she was 21 or married with the approval of the rector and then to pay her £20 charging his property with the payment. The Court of Appeal, Lord Ashbourne, C., Fitzgibbon and Holmes, L.JJ., unanimously reversed this decision—though McMahon was “a decent honest man of his class, of blameless character:” p. 236; “a very respectable man” who had “given his evidence fairly:” p. 237. While the examination of the child by Kenny, J., was approved of it was considered “on the other hand, the parent’s *prima facie* right must also be considered and the wishes of a child of tender years must not be permitted (to use the words of Lord Campbell) to subvert the whole law of the family or to prevail against the desire and authority of the parent unless the welfare of the child cannot otherwise be secured . . . misconduct or unmindfulness of parental duty or inability to provide for the welfare of the child must be shewn before the natural right can be displaced. Where a parent is of blameless life, and is able and willing to provide for the child’s material and moral necessities in the rank and position to which the child by birth belongs, i.e., the rank and position of the parent—the Court is, in my opinion, judicially bound to act on what is equally a law of nature and of society and to hold (in the words of Lord Esher) that the best place for a child is with its parent,” pp. 240, 241. FitzGibbon, L.J., (p. 241), goes on to say: “Of course I do not speak of exceptional cases . . . where special disturbing elements exist which involve the risk or moral or maternal injury to the child such as disturbance of religious convictions or of settled affections or the endurance of hardship or destitution with a parent as contrasted with solid advantages elsewhere. The Court acting as a wise parent is not bound to sacrifice the child’s welfare to the fetish of parental authority by forcing it from a happy and comfortable home to share the fortunes of a parent, however innocent, who cannot keep a roof over its head or provide it with the necessities of life.”

The whole judgment of the local Judge full as it is of masculine common sense well repays perusal. Holmes, L.J., p. 253, says: “the period during which a child has been in the care of the stranger is always an important element in considering what is best for the child’s welfare. If a boy has been brought up from infancy by a person who has won