

HON. MR. JUSTICE BRITTON.

FEBRUARY 20TH, 1914.

RE WESTACOTT INFANTS.

5 O. W. N. 924.

Infants—Custody—Application of Father—Custody of Mother—Circumstances Leading up to Separation—Discretion—Welfare of Infants—Dismissal of Application.

BRITTON, J., refused the application of the father of certain infants for their custody as against the mother, having regard to the circumstances of the case and the welfare of the children.

Application by George W. Westacott for a writ of *habeas corpus* directed to Margaret M. Westacott, mother of the children, and asking that the custody of the children be given to their father, the present applicant.

Notice of this application was served upon the mother, and she appeared by counsel on this motion.

R. H. Holmes, for applicant.

E. W. S. Owens, K.C., for Mrs. Westacott.

HON. MR. JUSTICE BRITTON: — An affidavit made by Hannah Webb was filed in opposition to the present application. Mrs. Webb is the mother of Margaret M. Westacott, and she states that on one occasion not very long ago, the present applicant denied the paternity of the younger child and doubted being the father of the older one. It appears that Marshall is about the age of six years, and Edward only seven months old. An affidavit is also made by the mother.

It appears that beyond reasonable doubt the children are being well cared for. Marshall is with the deponent Mrs. Webb, and Edward is in charge of a Mrs. Paddon at Milton. The mother is paying Mrs. Paddon.

I must assume that the children are so far in the custody of their mother that the mother could get and produce them in Court if so ordered, so that the custody of them could be given to the father, but I would not, considering the welfare of the children, the age of each, and having regard to the facts leading to the separation of the parents, make the order as asked.

Motion dismissed. No costs.