

Apart from legal difficulties, there is no reason why the order sought by the mother should not be made.

First, it is said that the decision of the Commissioner is final, and that, he having made an order for delivery to the Children's Aid Society, it is not open to the High Court to review it.

The statute 8 Edw. VII. ch. 59 deals with "neglected children." . . .

[Reference to the provisions of sec. 2, sub-sec. 1; secs. 10, 11, 12, 13, and 14.]

Section 14 applies only to the parent who executes the instrument, and does not give to the father the right to hand over a child to a children's aid society, to the prejudice of the mother; and I, therefore, think that the instrument of the 31st July, 1907, may be ignored.

Then sec. 13 recognises the right of the High Court to deal with the custody of an infant whose case has been dealt with by the Commissioner. Power is given to the High Court, in certain circumstances, to decline to make the order sought. This implies the right of the Court to make the order, notwithstanding the prior adjudication of the subordinate tribunal. The power of the Court of Chancery now vested in the Supreme Court to deal with the custody of children can only be taken from that Court by an enactment couched in the clearest and most positive terms. The statute in question falls far short of this, and, as already pointed out, it tacitly recognises that jurisdiction.

With reference to the elder of the two infants, it is further to be observed that, as it was not born in wedlock, Maher had no right whatever. The rights of the mother of an illegitimate child were investigated carefully in a case reported as *Re C.*, 25 O.L.R. 218; and I find nothing to add to what I there said.

In this case I interviewed the infants, and am satisfied that there is so much affection between them that they ought not to be separated; and, therefore, finding no unfitness in the mother to have their control at the present time, I think that I should award her the custody of both.

The only matter which occasions me trouble is the question of the religion of the younger child. The mother has said, and this has not been contradicted, that upon marriage it was understood between her husband and herself that any boys born of the marriage should be brought up as Roman Catholics; any girls should be brought up as Protestants. There is nothing definite before me to indicate that the father ever receded from this position. No doubt at his instance, shortly before his death, the