notions appear to exist. The object of the Act, and of the promoters of it, and that which I think appears upon the face of the Act itself, was to protect mothers from the tyranny of those husbands who ill-used them. Unfortunately, as the law stood before, however much a woman might have been injured, she was precluded from seeking justice from her husband, by the terror of that power which the law gave to him, of taking her children from her. That was felt to be so great a hardship and injustice, that Parliament thought the mother ought to have the protection of the law with respect to her children up to a certain age, and that she should be at liberty to assert her rights as a wife without the risk of any injury being done to her feelings as a mother. That was the object with which the Act was introduced, and that is the construction to be put upon it. It gives the court the power of interfering; and when the court sees that the maternal feelings are tortured for the purpose of obtaining anything like an unjust advantage over the mother, that is precisely the case in which it would be called upon and ought to interfere."

In re Halliday, Ex parte Woodward, 17 Jur. 56, came before Turner, V. C., in 1852. That was the case of a petition under the Act, presented by the mother, praying for the custody of her infant child, four years of age. It appeared that the husband and wife had lived happily enough together until about a year previously, when a legacy of £540 had been left to the wife, which, it was alleged, the husband had since squandered in dissipation. The money being all gone, and his wife becoming chargeable to the parish, he was taken up for deserting his wife, convicted, and sentenced to six months' imprisonment. Shortly after coming out of prison, he made his way, in the absence of his wife, to the lodgings where she was living and maintaining herself by going out as a laundress, and took away their child. He refused to state what had become of it, except that it was at board in Essex. By the affidavits filed in the matter, each accused the other of habitual drunkenness, and in addition the wife accused the husband of adultery.

In relation to the Act and its object, the Vice-Chancellor says: "It will necessarily be important, in the first place, to look at the principles upon which the Act proceeds. When this Act came into operation, it was the undoubted law of the country that the father is entitled to the sole custody of his infant children, controllable only by this court (the Court of Chancery) in cases of gross misconduct. With this right the Act does not, as I understand it, interfere so far as to have destroyed the right; but it introduces new elements and considerations under which that right is to be exercised. The Act proceeds upon three grounds: first, it assumes and proceeds upon the existence of the paternal right; secondly, it connects the paternal right with the marital duty, and imposes the marital duty as the condition of recognizing the paternal right; thirdly, the act regards the interest of the child. These three grounds, then—the paternal right, the marital duty, and the interest of the child—are to be kept in mind in deciding any case under this statute." He then cites *Warde* v. *Warde*, in confirmation of his view, and says, "I think there is a very great difficulty in calling on the court to restrain a man in the exercise of his legal right. * * * There are, however, two grounds on which the court has jurisdiction under the Act, viz, breach of marital duty, and the interest of the child. That the husband did desert his wife previously to May, 1851, he does not deny; but he justifies the desertion as necessary. It is, therefore, incumbent upon me to look into the conduct of the wife. The charge against her is that of habitual drunkenness." The Vice-Chancellor, upon the evidence, came to the conclusion that this charge was not proved; and, referring to the conduct of her husband taking away her child from his wife's lodgings, and to the fact that he did not even inform the court where the child was, except that it was at board in Essex, he proceeds: "Is it, or is it not, in contravention of the marital duty, which the Act has placed in competition with the paternal right, that the husband should thus take away his children and keep them, without any communication with the mother as to the mode, or place, or circumstances of their maintenance? The natural right must be held to have been modified by the Act, and the same opportunities must now be given to the mother as to the father, of communicating with the offspring. Then there is to be considered the question of access only, or of custody of the child; and that depends upon what is most for the interest of the child in the position of the parties." And finally, he says: "But I shall decide, if possible, rather in favour of the paternal right than against it; and I therefore give now an option to the father to place his child to be taken care of where the mother can have access to it, and see that it is properly attended to, so that she may have the benefit intended by the Act. Unless it be shown by affidavit on the next seal day that this has been done, I shall direct the child to be delivered over to the mother."

In *Shillito* v. *Collett*, 8 W. R. 683 (A.D. 1860), the application was by the mother against the testamentary guardians of the children, appointed by her husband's will, for the custody of three children, all under seven years of age. The observations of Kindersley, V. C., in that case, are to be taken as applying to the particular circumstances of that case, which from its nature raised no question arising out of the fact of a husband and wife living apart. The stress which he lays upon the interest of the children being the point to decide the case, must be limited to the case before him. This sufficiently appears to be the intent of the learned Vice-Chancellor, from the context of his judgment; and it is therefore by no means an authority for the position, that in the case of separation between husband and wife, the cause of separation is to be overlooked, and that the sole point for consideration is the benefit of the children. He says, there, "Beyond all doubt, if it had not been for Mr. Justice Talfourd's Act, the guardians could have assumed the conduct themselves of the education and maintenance of the children; but under the statute, the court has the discretion, either against the father or the testamentary guardians, as in this case, where any of the children are under seven years of age, if it sees fit, to decide that the custody shall be given to the mother, although she was not appointed guardian. With respect to the age of the children, the Legislature considered that as between the guardian and the mother, the very young children required a mother's nurture; and, notwith-