

There is no doubt as to the law. It is not as at the common law, where "the parent had, as against other persons generally, an absolute right to the custody of the child, unless he or she had forfeited it by certain acts of misconduct" (per Lord Esher, M.R., in *Regina v. Gyngall*, [1893] 2 Q.B. 232, 239); but as in equity, where "the Court is placed in a position, by reason of the prerogative of the Crown, to act as supreme parent of children, and must exercise that jurisdiction in a manner in which a wise, affectionate, and careful parent would act for the welfare of the child. . . ."

[Reference to *In re Fynn*, 2 De.G. & S. 457; *In re O'Hara*, [1900] 2 I.R. 232; *Re Faulds*, 12 O.L.R. 245.]

There is and can be no pretence that the appellant is other than of good character. . . . Nothing which . . . could be called misconduct is even alleged.

The facts, or alleged facts, adduced to shew unmindfulness of parental duty, are almost absurdly petty. . . . There is nothing which shews that the father is unmindful of his parental duties.

Then is there any inability to provide for the welfare of the child? I do not see any. The father is healthy—the attempt to shew, or at least to suggest, that he is tuberculous . . . wholly fails . . . He is respectable, of good habits, industrious, and trustworthy. . . . He intends to take up house, and have his sister keep house for him; she is about thirty years of age, and was trained in housework by her mother. . . . She has at different times acted as nurse and taken special care of children. She swears that she is fond of children, and has been in contact with them a great deal. . . . She is . . . quite able and fit to look after her brother and his child.

It is rather suggested than said that the expectations of the child will be diminished by placing her in the hands of her father. This, I decline to believe. . . . But, if it be so, "pecuniary benefit is often a very secondary consideration"—and more so in this new land than in the older countries. . . .

I think the appeal should be allowed without costs here or below; the order not to issue until the father files an affidavit shewing that he has procured a suitable house or rooms for himself and child.

A mass of affidavits has been filed, containing much irrelevant material. The climax of absurdity in that regard is reached by the filing of a petition signed by a number of neighbours giving their opinions as to the proper custody of the child. This will be taken off the files. The Court does not decide cases ac-