

The signed and sealed agreement of the 4th December, while it stands, appears to be a bar to any such application as the present; and it is valid in law under the statutory provisions in 1 Geo. V. ch. 35, sec. 3, taken from the revised statute in force when the deed was executed. But, apart from this agreement, I think, upon the material placed before me, that the interests of the child will be better subserved by letting her custody remain in statu quo; the father having all reasonable access to the child when he so desires; this right of access to be settled by the Local Master, if the parties cannot agree. . . .

[Reference to *Re Davis* (1909), 18 O.L.R. 384.]

It may be that the proper reading of the statute is, that the declaration that such disposition shall be good and effectual against all and every person claiming the custody and tuition of the child, does not include a father if living. But I do not see any decided case to that effect. But, apart from the statute, if the agreement has been made by the father in pursuance of an understanding that the child was to be the heir to or inheritor of the property of the grandparents, and has been brought up by them under that impression, and if that is supplemented by an actual deed or will irrevocable to such effect, the Court, acting on principles of equity, will not, at the father's instance, disturb that arrangement. I refer to the considerations influencing the Court in such cases as *Lyon v. Blenkin*, Jac. 245; *Roberts v. Hall* (1882), 1 O.R. 388, approved of in *Chisholm v. Chisholm* (1908), 40 S.C.R. 115.

Therefore, in the peculiar circumstances of this case, following *Ex p. Templer*, 2 Saund. & C. 169, I refuse to change the custody.

I do not award costs to either side.

I can only express the earnest desire that the parties may take thought and act reasonably and considerately on both sides, so as to preserve harmony in the family and avoid a devastating litigation in the Courts, which may go far to impoverish the moneyed litigant and to embarrass the one who is poorer.