The agreement in question did not in terms alter the expectations or fortunes of the child; and, even if justified by 1 Geo. V. ch. 35, sec. 3, as to which I express no decided opinion, it was immediately revoked or repudiated.

I do not see how this Court can order or require the grandparents to implement their promise, if promise there was, to make the child their heir. They offer so to do; but it must, I think, be left to the father to say whether he is willing to pay the price they require. If there had been a will or settlement made in pursuance of the agreement, the question of revocation by the father would have occasioned more difficulty, and, I think, must have been the subject of an action.

The agreement is dated the 4th December, 1911, and the writ asking its cancellation was issued on the 28th December, 1911, and this application was begun on or about the 16th February, 1912. It has been contested, and for a year the infant has remained in the grandparents' custody. She is now three and a half years old. The father has filed an affidavit, as directed by the Divisional Court, sworn on the 25th February, 1912, stating that he has rented for six months and furnished a house, and was ready to receive the child, his sister having come to reside with and keep house for him. What the situation is just at present is not apparent. No serious fault has been found with either the father or the grandparents, and the father is entitled primâ facie to the custody of the child. Were it not for the affidavit of Dr. Reid, I should agree with the Divisional Court that the custody should be changed; but, in view of his statement as to the temperament of the child and the effect upon her health, I am unable to come to the conclusion reached by the Divisional Court, and prefer the views expressed by the learned Chancellor, so far as they relate to the welfare of the child. See The Queen v. Gyngall, [1893] 2 Q.B. 232.

I think the proper disposition to make of the matter would be to allow the appeal without costs and restore the judgment of the Chancellor, reserving leave for the father to apply when the child attains the age of six years for her transfer to his care. In the meantime the father should have the right to 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.

GARROW, MACLAREN, and MAGEE, JJ.A., concurred.

MEREDITH, J.A., dissented, for reasons stated in writing. He was of opinion that the father should have the custody of the