

upon the point. The only case had been referred to in the course of the trial. It seemed, however, clear that the master is the delegate of the parent. Then, what is a parent's authority over his infant child? By Roman law it was absolute over life and death even. There is no such power in this land, but still he has a great power over his child. It is his duty, if the child will not do what he advises it to do, to take whatever steps he considers reasonably necessary for its correction. But he must act honestly in this course. There must be a cause which a reasonable father honestly believes requires punishment. In a case of a mere childish fault for a parent to use weapons would be, for instance, so unreasonable as to destroy a parent's right. The law therefore does justify a parent in a case where he honestly considers correction necessary in administering blows in a reasonable and proper manner. But then this power is not limited to corporal punishment, but extends to detention and restraint. I think, he said, that the father parts with all these powers and delegates them to the master under whose charge he places his child. We have all experienced, no doubt, a parent's punishments. Therefore, unless limited by special contract, I think that the master has the power of judging when a punishment is required, and also to what extent. His lordship then referred to the case of *Fitzgerald v. Northcote* (F. & F. 609), and said, as to the question of justification, that it was grounded in that case upon breach of disciplinary rules, and there could be no doubt the boy had committed those breaches. There had been, he said, and there still existed, a sad state of things at Haileybury, viz., the thefts that they had heard of; and those things must be all considered in gauging the action of the master. Reverting to the above case, his lordship read the judgment therein of Chief Justice Cockburn, and, continuing, said: I adopt the views laid down therein, and you will have to say, therefore, whether the conduct of the masters in the present case was reasonable and honest in that light. While the child remains in its own family its interests are synonymous with those of its fellows; but when the delegation I alluded to occurs, and the child enters a public school, these interests are greatly extended, and the master must take into consideration the interests, not only of the one boy, but those of the whole school. No doubt there were circumstances under which a master might be called upon to decide a case upon what at the time he considered to be facts, but which eventually turned out not to be so. Would he not in such a case be justified if the nature of the case required immediate action and he had acted honestly and his conclusions were under the circumstances reasonable? What

amount of power is actually delegated by a parent to a master must depend upon the circumstances in each case. Those circumstances might be very greatly varied by any special terms in the contract. This college had existed, he continued, under a royal charter since 1864. By it it was made a corporation and a council was appointed, and it was "willed and ordained" that the education, both moral and secular, should be conducted by a member of a university and selected by the council. There was also a power given to make bye-laws. Among these, those from 27 to 42 regulated the pupils. On one side it has been contended that these are a part of the contract; while the defendants say this is not so, but rather that they merely draw out a form of guidance as to the admission, &c., of the pupils for the guidance of the executive, and were in fact not brought to the parents' notice. By these the fees were payable in advance, and among them was this very important bye-law, viz., No. 37: "Pupils may be removed or expelled by the master for any grave offence, or for the repetition of any offence, or for disobedience when it shall seem to him necessary to resort to that extremity." Now, was this bye-law a part of the contract between the father and the governors? A prospectus was produced, dated January 1, 1888, and it no doubt substantially sets out what the terms were, and it is agreed that Mr. Hutt had seen it. The question, therefore, would be whether he put his son at the school under its terms. It contained no reference at all as to expulsion. Under it boys could not choose their house of residence. There is also on the prospectus a notice that, by a bye-law of the college, if any boy shall at any time be taken or kept away from the college during the term time he can only be admitted again by the master's leave. These appear to be all the essential elements embraced in the question of the contract. I will now deal with the question of detention. I think—but that is for you—that a larger discretion must be given to masters on this than on the head of expulsion. For the consequences are not serious to the same extent, and there ought to be some such discretion of restraint given to masters in the interests of school order and discipline. To what extent was for them. In regard to the question whether the boy had stolen the money the jury must be satisfied here, as in an ordinary criminal case, beyond reasonable doubt that the lad had stolen it. The lad had from the first denied it, and had done so on oath in court. All these things they must consider.

In the result the effect of the findings of the jury given above was reserved for further consideration by Mr. Justice Field. (See p. 225.)