

MEREDITH, C.J.O., read the judgment of the Court. After setting out the facts, he said that the proper conclusion upon the evidence, in his opinion, was that the respondents had properly cared for the child, and that they would do so in the future if she were allowed to remain with them, and that the interests of the child would be better subserved if she remained a member of the respondents' family than if she was entrusted to the care and custody of her mother, the appellant. The Chief Justice doubted whether "a rooming house" was a desirable place in which to bring up a young female child, and at best there was no certainty that the home which the mother proposed to provide for the child would always be available to her. The question was whether these and other considerations affecting the welfare of the child outweighed the claims of the appellant.

The desire of the mother of an illegitimate child as to its custody is primarily to be considered and must be given effect to, unless it would be prejudicial to the child's interests if it were delivered into the custody of the mother: *Barnardo v. McHugh*, [1891] A.C. 388.

The remarks of Fitzgibbon, L.J., in *In re O'Hara*, [1900] 2 I.R. 232, 240, 241, appear to be directly applicable to the facts of this case: "The Court, acting as a wise parent, is not bound to sacrifice the child's welfare to the fetish of parental authority by forcing it from a happy and comfortable home to share the fortunes of a parent, however innocent, who cannot keep a roof over its head or provide it with the necessaries of life." The case is a fortiori where the child is illegitimate.

The Court could not say that the discretion exercised by Sutherland, J., in deciding against the appellant, was wrongly exercised, or that it proceeded upon a misapprehension of the facts or a mistaken view of the law; and it followed that his order must be affirmed.

Terms as to bringing up the child in the Roman Catholic faith and permitting the mother access at stated periods may be spoken to, if not arranged between the parties.

It may be that under the Infants Act, R.S.O. 1914 ch. 153, sec. 2, the right of the mother is not as ample as it was held to be in the cases referred to.

*Appeal dismissed without costs.*