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PETITION.

IN CHANCERY OF NEW JERSEY.

To his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey:

The petition of Somers S. Price and Margaret E. Price, his wife, of the City of Atlantic City, in the State of New Jersey, respectfully shows: 10

1. That your petitioners are the father and mother respectively of Florence Helen Price, sometimes called Theone Sansot, aged seven years.

2. That your petitioners are married and live in Atlantic City aforesaid.

3. That in November, 1920, the said Florence Helen Price was born to the said Somers S. Price and Margaret E. Price in the City of Philadelphia, in the State of Pennsylvania; and that shortly thereafter, by mutual arrangements, the said Florence Helen Price was entrusted to the care of Albert Sansot and Lena Sansot, his wife, who live at Millville, in the County of Cumberland and State of New Jersey. 20

Said arrangement whereby the said defendants were given the care and custody of the said Florence Helen Price by your petitioners has existed from November, 1920, until the present time. Petitioners made the aforesaid arrangement because, at that time, they did not care to have it publicly known that they were married or that the said Florence Helen Price was their child. 30

That since that time the reasons for their desiring no publicity concerning the marriage have ceased to exist. Petitioners say that it has become increasingly difficult to have access to their child, the aforesaid Florence Helen Price, and that the defendants have recently been placing difficulties in the way of petitioners visiting their daughter and have been teaching their daughter to regard defendants as her father and mother and otherwise destroying her love and affection for petitioners.

Whereupon your petitioners did, on or about the 22nd day of September, 1927, demand of defendants that they forthwith deliver into petitioners' custody the said Florence Helen Price, which defendants refused to do; and that the said defendants have kept away and detained from the lawful custody and care of petitioners the said Florence Helen Price and have denied access thereto.

And your petitioners further show that they are financially capable of taking care of and maintaining their daughter, the said Florence Helen Price; that they have their own home in the City of Atlantic City; and that the educational advantages in Atlantic City are superior to those now afforded to their said daughter; and that they are entirely responsible and willing to take over the care and custody of the said Florence Helen Price.

Your petitioners therefore pray that a writ of habeas corpus may be issued out of this Honorable Court directing to the said Albert and Lena Sansot, requiring them to have the body of the said Florence Helen Price before your Honor in this Honorable Court on a certain day and place to be expressed therein, with the cause of their taking and detention; and to do, submit to and receive whatsoever

this Honorable Court shall then and there consider of them in this behalf.

And your petitioners will ever pray, etc.

SOMERS S. PRICE.
MARGARET E. PRICE.

EMERSON RICHARDS.

(Petition filed September 26th, 1927.)

STATE OF NEW JERSEY, }
COUNTY OF ATLANTIC, } *ss*:

SOMERS S. PRICE and MARGARET E. PRICE, the petitioners mentioned in the above petition, being duly sworn according to law, upon their oath say that the matters set forth in the said petition, as far as they relate to their own acts and deeds, are true; and that, so far as they relate to the acts and deeds of others, they believe them to be true.

And deponent, Somers S. Price, further says that he is the father of Florence Helen Price and that he is capable of supporting and maintaining his daughter, Florence Helen Price.

And deponent, Margaret E. Price, says that she is the mother of said Florence Helen Price, and that she likewise is capable of supporting her daughter aforesaid; and that her husband, Somers S. Price, and herself maintain a suitable home for their daughter to live with them in Atlantic City, N. J.; and that it will be for the best interests of their daughter in Atlantic City, N. J.; and that it will be for the best interests of their daughter to live with them in Atlantic City; and that on or about the 22nd day of September, 1927,

deponents made a demand upon Albert and Lena Sansot for the custody of their said daughter, which was denied.

SOMERS S. PRICE.
MARGARET E. PRICE.

Sworn and subscribed before me this 26th day of September, A. D. 1927.

ESTHER ULITSKY,
10 (Seal.) *Notary Public of N. J.*

ORDER FOR HABEAS CORPUS.

IN CHANCERY OF NEW JERSEY.

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20 In the matter of the application SOMERS S. PRICE and MARGARET E. PRICE, *Petitioners.*	On Petition, etc. Order for Habeas Corpus.

Upon reading a verified petition of Somers S. Price and Margaret E. Price and on duly considered the same:

It is, thereupon, on this 26th day of Sept. 1927, on
30 motion of the solicitor of the petitioners, ordered, that a writ of habeas corpus do forthwith issue out of and under the seal of this court, according to the prayer of said petition.

E. R. WALKER,
C.

R. H. INGERSOLL,
V. C.

WRIT OF HABEAS CORPUS.

NEW JERSEY, to wit:

The State of New Jersey to Sheriff of Cumberland County, Albert Sansot and
(Seal) *Lena Sansot:*

Greeting: We command you that you have the body of Florence Helen Price by you restrained of her liberty and detained in 10 your custody, as is said, by whatsoever names she may be called or known, together with the day and cause of her being taken and detained by you, before our Chancellor (or such Vice-Chancellor as may sit for him), at the Chancery Chambers in the Real Estate and Law Building in the City of Atlantic City, on the 27th day of September, 1927, at two o'clock in the forenoon of said day, to do, submit to, and receive, what shall then and there be considered in that behalf. 20

Witness, his Honor, Edwin Robert Walker, Chancellor of our said State, at Trenton, the 26th day of September, 1927.

THOMAS BARBER,
Clerk.

EMERSON RICHARDS,
Solicitor.

This writ is allowed: Let it be sealed.

R. H. INGERSOLL, 30
V. C.

RETURN TO WRIT.

IN CHANCERY OF NEW JERSEY.

In the matter of the application of Somers S. Price for a Writ of Habeas Corpus.	On Petition, &c. Return to Writ.

To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey:

The return of Albert Sainsot, of the City of Millville, County of Cumberland and State of New Jersey, respectfully shows that:

1. That he has in his custody the body of Florence H. Price known as Florence Sainsot.

2. The authority and true cause for having the body of the said Florence H. Price, known as Florence Sainsot, in his custody is that the said infant child is held and in his custody peaceably and legally and by reason of a written agreement entered into between Somers S. Price and Margaret Price and Albert Sainsot on December 10, 1920, which said written agreement is duly signed by the said Somers S. Price and Margaret Price and acknowledged before Henry O. Burt, a Master in Chancery of New Jersey, a true copy of which said agreement is hereto attached and made a part of this return.

Albert Sainsot.

State of New Jersey, }
County of Cumberland, } *ss.*

Albert Sainsot, of full age, being duly sworn, on his oath deposes and says: That he is the person named in and who signed the within return; that the matters and things therein contained are true.

Albert Sainsot.

Sworn to and subscribed before me this 24th day of June, 1927. Dominic J. Novarro
Notary Public of N.J.

ANSWER.

IN CHANCERY OF NEW JERSEY.

In the matter of the application of Somers S. Price for a Writ of Habeas Corpus.	On Petition, &c. Answer.

The answer of the defendants, Albert Sainsot and Lena Sainsot, his wife.

These defendants, Albert Sainsot and Lena Sainsot, husband and wife, living in the City of Millville, County of Cumberland and State of New Jersey, answering the petition of the petitioner, say that:

1. Paragraphs one to four, inclusive, are admitted.

2. Paragraph five is denied.

3. Paragraph six is denied and defendants aver that they never informed petitioner that they did not want him to call and see his daughter in the future.

10 4. Paragraph seven is denied and defendants aver that the said petitioner did relinquish all his rights to the custody of the said child, Florence Price.

5. Paragraph eight is admitted.

6. Defendants neither admit or deny paragraphs nine and ten and leave the petitioner to his proof.

20 7. Paragraph eleven is admitted.

8. Paragraph twelve is denied insofar as it alleges that petitioner is denied the privilege of communicating with his said daughter.

9. Defendants, further answering the petition of petitioner, say that they are in possession of one Florence Price, known as Sainsot, and that they lawfully obtained possession of said infant child
30 by written license or agreement signed by Somers S. Price and Margaret Price, husband and wife, and the parents of said infant child, on the 10th day of December, 1920, which said license or agreement was signed by the said Somers S. Price and Margaret Price and duly acknowledged before

Henry O. Burt, a Master of the Court of Chancery of New Jersey, a true copy of which said agreement or license is hereto attached and made a part hereof and marked Schedule A; defendants further say that said infant child was taken by them when she was six months old, at which time the said child was broken out over her body and face with virulent sores and that defendants immediately procured a physician and for a long time doctored the said infant child for her ailment and succeeded in curing 10
her of said illness; that since the child came into the possession of defendants when only six months of age that defendants have given her tender care, have clothed her properly, provided her with proper food and have taken tender care of said infant child, that said infant child has been sent to Sunday School and to the public schools; that she has been kept in as good a way and manner as is possible for defendants to have given her care, taking into regard the earning ability and social standing of 20
said defendants; defendants further say that they have expended several thousands of dollars in the care and custody of said child; that they have attended to giving her a musical education as far as is consistent with her age and that they have purchased a piano for such child for the purpose of giving her lessons; defendants further say that they have no children other than said child Florence Price; that they have become attached to the said infant child and love her as they would love an own daughter; defendants further say that the parents 30
of said child, the said Somers S. Price and Margaret Price, have not visited or cared for said child or shown any affection for said child or attempted to see or have the custody of said child until within the past few months; defendants further say that

at no time have they intended to take the said infant child out of the jurisdiction of this State or have they ever attempted to prevent the father of said child from visiting her, or have they ever stated to him that he was not wanted at their home or requested him to discontinue calling on his said daughter; defendants further say that the said Somers S. Price and Margaret Price well knew and understood that at the time of making said written license hereinbefore mentioned that they were relinquishing all their rights to the custody of said child and did agree that said child should remain in the custody and care of defendants "to raise, educate and exercise the same control over said child as if she were a daughter of defendants, or of their own blood;" defendants further say that they are of sufficient financial ability to give good care to said child, to properly educate and raise said child and that there is no reason why said child should be taken from their care or custody; defendants further say that said child is attached to defendants and would receive better care in the custody of defendants than in the custody and care of petitioner.

Defendants, therefore, pray that the petition of the petitioner be henceforth dismissed.

J. Roy Oliver,
Solicitor for Defendants.

State of New Jersey, }
County of Cumberland, } *ss.*

Albert Sainsot and Lena Sainsot, of full age, being duly sworn, on their oaths depose and say:

That they have read the within answer and that the matters and things therein contained are true.

Albert Sainsot,
Lena Sainsot.

Sworn to and subscribed before me this 24th day of June, A. D. 1927.

Dominic J. Novarro
Notary Public of N. J.

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Between SOMERS S. PRICE and MARGARET E. PRICE, *Petitioners,* and ALBERT SAINSOT and LENA SAINSOT, *Defendants.*	On Habeas Corpus.

Atlantic City, N. J., October 3, 1927.

TESTIMONY.

Before HON. R. H. INGERSOLL, Vice-Chancellor.

APPEARANCES:
For the petitioners, EMERSON RICHARDS, ESQ.
For the defendants, LEROY OLIVER, ESQ.

MARGARET E. PRICE, sworn.

Direct examination.

By Mr. Richards:

Q. What is your name?
A. Margaret E. Price.
Q. Where do you live?
A. Atlantic City, 2 North LaClede Place.
Q. How long have you lived in Atlantic City?
A. All my life. I was born here.
Q. Are you married?
A. Yes.
Q. Who is your husband?
A. Somers S. Price.
Q. Have you a daughter?
A. Yes, I have.
Q. What is her name?
A. Florence Helen Price.
Q. When was she born?
A. She was born on the twentieth of June, 1920—seventeenth of June, pardon me, seventeenth of June.
Q. Who is the father of that child?
A. Somers S. Price.
Q. Now, were you, at the time the child was born, married to Mr. Price?
A. No, I was not.
Q. When were you married?
A. October third, 1923, four years ago today.
Q. Was there any promise of marriage or anything of that sort at the time the child was born?
A. Well, I was at that time getting a divorce from my former husband and I wasn't able to marry.

Q. Was there any difficulty about that divorce? What was the trouble about it?

A. My lawyer, Mr. Goldenberg, was very ill at the time and I had received my first papers and due to some trouble he had had with his stenographer, she had embezzled some money and had some trouble, he had a new stenographer who wasn't familiar with the work and my divorce came through while Lawyer Goldenberg was away and on his return I received it but it was some months afterwards almost, well, about six months afterwards.

Q. Had the divorce been commenced before you met Mr. Price?

A. Yes.

Q. Was it defended?

A. No.

Q. Now, where was the child born?

A. In Philadelphia.

Q. Is that the child that is the subject of this writ?

A. Yes.

Q. Where was it born?

A. In the Northwestern General Hospital.

Q. Now what occurred? Will you tell the Court what occurred concerning the child after the child was born?

A. Well, after she was born we placed her for the time being in the Central Hospital of Philadelphia to board.

Q. You say "we"; who do you mean by "we?"

A. Mr. Price and I, and we were planning to find some place to board her until such time as I would get my divorce and we would be married and it was during that time that I first, when I visited the child it was during that time that I met a nurse there who spoke to me quite often about the baby and often said, "If you want to sell this baby, I will buy her,"

and I thought she was kidding me and it was during that time that I met Mrs. Sainsot who coaxed me for the baby and through my doctor, because the baby wasn't getting along very well, while he ran in to see her two or three times a week, she didn't get the individual attention she needed and he thought inasmuch as these folks would like to take her that it would be a very good thing for the baby.

Q. At the time—why didn't you take the baby home with you at the time?

A. Well, we weren't married, of course, and I didn't like to bring it on my family, family are prominent here and I didn't want to bring it on.

Q. You wished to keep the matter quiet at that time?

A. I did, yes.

Q. Did you make any arrangement with Mrs. Sainsot about taking care of the baby?

A. Yes, Mrs. Sainsot asked me to let her have the baby, that she had fell in love with her at the hospital, Mrs. Sainsot seemed an awfully nice woman, and through my doctor's recommendation I felt that she would be in good hands inasmuch as I couldn't take care of her the way I would like her to be at that time, she agreed to take her down there and I could come to see her, things would be just the same except that she would have her.

Q. Do you know whether that agreement was ever put in writing?

A. The only agreement was put in was the paper that Mr. Price and I signed. I don't know the wording, the exact wording but something to the effect that we wouldn't take her.

Q. Where was that agreement prepared, do you remember?

A. Yes, in Mr. Burt, lawyer, Mr. Burt's office in Millville.

Q. Mr. Burt ever make any comment about it at the time?

A. Yes, he did.

Q. What did he say about it?

A. After we went there to see the paper, we read it over and naturally hesitated and he was rather angry about something, I don't know what, he said, "I don't know what Mrs. Sainsot wants this drawn up, it isn't worth the paper it is written on and you needn't hesitate to sign it."

10 Q. Was there ever any talk about adopting the baby?

A. Any talk about?

Q. Did you ever have any understanding with the Sainsots about adopting the baby?

A. None.

Q. Did you ever agree to have them adopt the baby?

A. None.

Q. Would you have allowed them to adopt the
20 baby?

A. No.

Q. Did you expect them to keep the baby?

A. I didn't know how things would plan out. I hoped for the best.

Q. Then Mr. Price married you?

A. Yes.

Q. Have you a home here in Atlantic City?

A. Oh, yes.

Q. Where abouts?

30 A. 2 North LaClede Place.

Q. How long have you had a home there?

A. We have always had a home since we are married.

Q. Is this an apartment or residence?

A. No, it is an apartment, a large apartment.

Q. How many rooms in it?

A. We have seven rooms and bath.

Q. Anybody live there besides yourselves?

A. My sister. She has always lived with us since we are married.

Q. So there are just three of you in the seven-room apartment?

A. Yes.

Q. How long have you had this apartment?

A. This new one we moved in on the first of September, before that we had a large apartment from the time we were married until the first of September. 10

Q. Your husband work?

A. Oh, yes.

Q. Where is he employed?

A. He is employed as a salesman for Abbotts.

Q. Abbotts' Dairies?

A. Yes.

Q. Is he able to support you? 20

A. Oh, yes.

Q. Support you well, does he?

A. Oh, yes.

Q. Do you yourself have a position?

A. Yes, I do.

Q. Where abouts?

A. In the City Hall, Building Department, City Hall.

Q. What is the nature of it?

A. I am secretary. 30

Q. To whom?

A. John W. Conway, the building inspector.

Q. Building inspector?

A. Yes.

Q. Are you able to take care of this child?

A. Very well.

Q. Do you want to take care of her?
A. Yes, sir.
Q. Do you want the child with you?
A. Yes.
Q. About how old is the child now?
A. She is seven years old last June.
Q. Why do you want the child with you?
A. Well, I feel that we can do better for her. We feel that the educational advantages here are better than they are in Millville and feel that her social advantages will be better, in fact, all the advantages will be better with us.
Q. Your family knows about this child now, don't they?
A. Yes, they know now.
Q. You love the child, I presume?
A. Certainly.
Q. As its mother you want the child with you, is that it?
A. Yes.
Q. Have you had any difficulty recently about seeing the child?
A. Well, we had difficulty all these years in seeing her, after I placed her with Mrs. Sainsot about five or six months afterwards I received a letter telling me for the best interests of the child I should never come again and when I went I didn't get in and I wasn't able to get in, even though sometimes I think they were home. Of course, I believe during the summer months they were out of town and they weren't home when I called but during those times I went I never was able to get in.
Q. You say never; did you ever see the child after? After you got the letter when was the next time you saw the child?
A. I didn't see her until she was on the street going to school.

Q. How many years was that?
A. That would be between five or seven I would judge.
Q. How often did you go to Millville?
A. I went very often, every several weeks we would go ride up there.
Q. Never able to see the child?
A. Never able to get in, no. On Easter Sunday this last year we did get in.
Q. What happened that day?
A. At that time we got in and they treated us fairly nice and after that we had a lawyer from Bridgeton arrange with them to sign an agreement we would see the child every week and we were satisfied to do that for the present thinking perhaps something would come out of it. We at least wanted to see her and if—then they wanted to take a trip, which we agreed to let them do, for the benefit of the child and when they came down, our first visit we were treated shamefully, they insulted us in every possible manner and refused to tell the child who was her mother and father, but they finally did tell her that I was her first mother and Mr. Price was the first father, her first father, which didn't make much impression on a child of that age.
Q. Did Mrs. Sainsot say anything to you about not informing the child that you were her mother?
A. Pardon me?
Q. Did Mrs. Sainsot say anything to you about not informing the child that you were her mother?
A. Yes, she said at first that she wouldn't do it. She didn't think that the child should know, that she was too young, but it was my contention that if she knew when she was young and allowed to grow with it, it wouldn't be quite such a shock to her later on.
Q. Did Mrs. Sainsot want to pass as her mother?

A. The child thinks Mrs. Sainsot is her mother, yes.

Q. Did you make a formal demand on Mrs. Sainsot for the child?

A. Yes, I did.

Q. Did your husband do that?

A. Yes.

Q. What happened?

A. They refused to let us have her.

10

Cross-examination.

By Mr. Oliver:

Q. Mrs. Price, may I inquire your age?

A. Yes, I am thirty-two.

Q. Thirty-two years old?

A. Yes.

Q. This child was born in 1920 on the seventeenth day of June?

20

A. That is right.

Q. Where?

A. In the Northwestern General Hospital in Philadelphia.

Q. Philadelphia?

A. Yes.

Q. Now, at the time this child was born, you were married to whom?

A. Jacob W. Goos.

Q. And the father of this child is Somers Price?

30

A. That is right.

Q. You hadn't obtained your divorce at the time this child was born.

A. Not the final papers I didn't have.

Q. What name did you give for this child in the hospital when the child was born, what name did you enter?

A. She was entered as Florence Helen Price.

Q. Did you enter the child's name as Florence Goos?

A. Not as I ever recall. They called me Mrs. Goos but I don't recall what the child was.

Q. Do you say that you didn't enter the child under that name?

A. No, I won't say that because I don't remember.

Q. So you will not say that you didn't?

10

A. No.

Q. After the birth of that child where did you leave it?

A. In the Central Hospital in Philadelphia.

Q. How long did you leave it there?

A. She was there about, I would judge between four or five months.

Q. Between four and five months?

A. Yes.

Q. Who cared for it during that four or five months?

20

A. She was taken care of by the nurses and my doctor saw her three or four times a week.

Q. Where did you go after the birth of the child?

A. I came to Atlantic City.

Q. Leaving the child in Philadelphia?

A. Yes.

Q. Now, when did you first know that Mrs. Sainsot desired to adopt or take this child?

A. I received a letter from my doctor telling me of it.

30

Q. Your physician advised you that Mrs. Sainsot would take the child?

A. Yes.

Q. Was that agreeable to you?

A. Well, not until after I had seen Mrs. Sainsot and talked to her.

Q. Did you see her?
A. I did.
Q. Did you investigate her standing in the City of Millville as to whether she would be a fit person to take the child?
A. Yes, I did.
Q. And what did you find respecting her standing?
A. I found that Mrs. Sainsot was, would be all right to take care of her and I was satisfied for her to do that.
Q. Did you make a careful investigation before you decided to let her care for the child?
A. Yes, I did.
Q. Did you tell Mr. Price that?
A. I did.
Q. What was the marital standing of Mr. Price at the time of the birth of that child; was he a single man?
A. He was.
Q. Do you know whether he had been married before?
A. He never has been married before, no.
Q. As a result of your conversation with Mr. Price, was he willing to let the child go to Millville?
A. Yes.
Q. Now, on or about December tenth, 1920, did you and Mr. Price go to Millville?
A. Well, yes. Yes, we often went.
Q. Where did you go in Millville?
A. Why to Mr. Sainsot's home.
Q. And then did you go to Mr. Henry Burt's office?
A. We did, yes.
Q. Did Mr. Burt prepare a paper in your presence?

A. He did.
Q. Was it read to you?
A. Pardon me?
Q. Was it read to you?
A. It was; we read it over ourselves.
Q. And you read it yourselves?
A. Yes.
Q. And was aware of the contents?
A. We were.
Q. Was that paper satisfactory to you?
A. It wasn't satisfactory until after what Mr. Burt told us.
Q. Did you sign it?
A. We did.
Q. And Mr. Burt told you that, after the drawing of the paper, that you needn't hesitate to sign it, that it wasn't worth the paper it was written on?
A. He certainly did, yes.
Q. You say that you read the paper?
A. Oh, yes.
Q. And was aware of the contents?
A. Yes.
Q. And did you understand, was it your intention to relinquish custody of that child to the Sainsots?
A. No, we didn't, but we wanted to do the best for her at the time.
Q. I am not asking you what you wanted to; was your intention ——

Mr. Richards: I object.

The Court: I will permit it on cross-examination.

Q. Was it your intention to relinquish possession to the Sainsots?

A. No.
Q. What was your intention?
A. I wanted her to take care of it.
Q. How long?
A. Until such time as we could do it ourselves.
Q. Did you so tell her?
A. No, I didn't.
Q. You didn't tell her that?
A. No.
10 Q. So that your intention was to sign this paper and give it to Mrs. Sainsot and yet a mental reservation to get the child later?

Mr. Richards: That is objected to.

The Court: I will sustain the objection.

Q. I show you a paper purporting to have been signed by Somers S. Price and Margaret Price, acknowledged before Henry O. Burt, dated the tenth
20 day of December, 1920, and ask you if that is your signature?

Mr. Richards: We will admit it.

A. Yes, that is my signature.

(Paper offered, received in evidence and marked Exhibit D1.)

30 Q. Did you at any time, after meeting Mrs. Sainsot, intend to relinquish the possession of the child?
A. I did not.
Q. Did you in the presence of a Mrs. Wiegand, a neighbor of Mrs. Sainsot, say to her that you thought it was better for the child if the child never

knew that you were its parents or if you never saw it again?
A. I don't know the woman you speak of.
Q. Did you make that statement while in Millville?
A. I don't recall that I did.
Q. Will you say that you did not?
A. I don't know who the woman is. I don't know.
Q. May I inquire, Mrs. Price, what year you lived at 611 B. Sewell Avenue, Atlantic City? 10
A. I never lived there.
Q. You never lived there?
A. No.
Q. Did you board there?
A. I did not.
Q. Have you relatives living there?
A. Not that I ever knew of.
Q. I show you a letter without date signed Margaret E. Price and written to Mrs. Sainsot, Millville, and ask you if that is your signature, Mrs. 20 Price?
A. Oh, yes; I can understand the address. The address was a friend of mine, Mrs. Valentine, yes.
Q. Can you tell me when that letter was written?
A. No, I don't recall the letter at all.
Q. As a matter of fact that letter was written when your child was about one year old, wasn't it, first year she was at Mrs. Sainsot's.
A. I don't recall it.
Q. That is a letter written by you? 30
A. That is my signature, yes.

(Letter marked D2 for identification.)

Q. I quote you from this letter, Mrs. Price ——

Mr. Richards: I object to him reading a letter or paper that is not in evidence.

Mr. Oliver: There was something I wanted to examine her about here.

Q. Did you ever write—I will ask you this—did you ever write to Mrs. Sainsot that you never expected the little girl to be anything more to you than she then was?

A. I don't recall the letter at all.

Q. Did you write to Mrs. Sainsot that you hoped that in the future the possession of the little child would repay her for the great kindness to her?

A. I don't recall the letter at all.

Q. Did you write to Mrs. Sainsot, "Please don't think me hard-hearted because I haven't been up, but it is better that I don't see her too often as you must know what her loss means to me?"

A. I don't recall that letter at all.

Q. Did you write her that you haven't been up to see her, "It makes me feel so bad when I see how lovely she is and know she can't ever be really mine again?"

A. I said I didn't recall the letter at all.

Q. You don't recall the letter?

A. I don't recall the letter at all.

Q. But this is your letter?

A. Yes, it is my handwriting.

Q. You never had any intention relinquishing possession of this child to Mrs. Sainsot?

A. For her to adopt her, never, no.

Q. You were married in 1923?

A. 1923, yes.

Q. May I inquire, Mrs. Price, when you received your divorce from your first husband?

A. Yes, I received my final papers some time in April of 1921, the exact date I don't recall.

Q. In the spring of 1921?

A. Yes.

Q. And you married Mr. Price over two years later?

A. Yes, I did.

Q. So that you could have married Mr. Price any time after the spring of 1921, could you not?

Mr. Richards: That is objected to.

Mr. Oliver: If the Court please, I think ——

The Court: This is a conclusion. The Court will draw the conclusion.

Q. Was the date of your marriage, Mrs. Price, October third, 1923?

A. That is right.

Q. You were married under the name of Margaret E. Mullen?

A. That is correct, I was given my maiden name, I had the privilege.

Q. After your marriage where did you go to live?

A. We went to live at 2630 Atlantic Avenue.

Q. And you are now employed working?

A. Yes.

Q. Where do you work?

A. In the Building Department, City Hall.

Q. How many hours a day are you employed?

A. Six hours.

Q. Have you worked continuously since your marriage?

A. For seven years I have worked.
Q. You have worked for seven years?
A. Seven years the twentieth of October this year.
Q. May I inquire what Mr. Price's occupation is?
A. Yes, he is a salesman for Abbotts.
Q. Salesman?
A. Yes.
Q. Is he away from home or return every night?
A. Returns every night.
10 Q. So that he is only gone through the day-time?
A. That is all.
Q. For seven years you have also worked helping make a living?
A. Yes.
Q. And are working now?
A. I am.
Q. After you left the child with Mrs. Sainsot and signed this paper, how soon did you again see your child?
20 A. Well, I couldn't say, maybe a week or two, some time during the next couple of weeks or three weeks, maybe; I don't know just what time.
Q. Then how long a period elapsed before you again saw her?
A. We saw her quite frequently until, as I recall, would be probably February or March that I received that letter I wasn't welcome any more.
Q. Of what year?
A. That would be 1921.
30 Q. 1921?
A. Yes.
Q. After that letter was received by you in 1921 how long before you again saw the child?
A. I had arranged to come the following week to see her.

Q. You are not answering my question; how long again before you saw the child?
A. How long?
Q. Yes.
A. Well, some time during the winter months of the year before last when she was going to school.
Q. 1926?
A. Or 1925, I presume that would be.
Q. So that a period of four or five years elapsed without you seeing the child? 10
A. Yes.
Q. During that period of time where did you live?
A. 2630 Atlantic Avenue.
Q. Still in Atlantic City?
A. Yes.
Q. During that time, did you or Mr. Price, to your knowledge, send anything to the Sainsots toward helping support the child?
A. We did not.
Q. Did you send any clothing to the child? 20
A. No, we did not.
Q. And when Christmas came did you send any Christmas presents to the child?
A. No.
Q. Sent nothing to the child?
A. Nothing.
Q. Do you know during that period of time who supported the child?
A. Yes, I do.
Q. Who did? 30
A. Mr. and Mrs. Sainsot.
Q. Do you know anything about the condition of the child's health during that time whether the child was well or sick?
A. I do; we inquired quite frequently.

Q. From whom?

A. From the people in the neighborhood, a man who has a store there.

Q. Will you kindly tell me who you inquired from?

A. From a man who has a store in their neighborhood.

Q. What is the name, please?

A. I don't know the man's name but lives next door to them.

10 Q. You never inquired his name?

A. No, I don't know the man's name.

Q. May I inquire what you learned?

A. I learned when she was well that she was well, being well taken care of, that was another thing, when we would go and not be able to get in, we would walk in the store and inquire.

Q. Do you mean where Mr. and Mrs. Sainsot lived?

A. Of course.

20 Q. Was the result of your inquiry as to the care which was being taken of the child favorable?

A. Yes; I felt that they were all right.

Q. You say that you have inquired as to the care which the Sainsots had given this child?

A. Yes.

Q. Have you learned as to whether it goes to the public school regularly?

A. Yes; she does I believe.

30 Q. Do you know whether the child has attended church?

A. I believe she has.

Q. Sunday School?

A. Yes.

Q. Have you learned as to whether the child has been properly clothed and fed?

A. Yes.

Q. And whether it has received medical attention?

A. Yes.

Q. And as to whether the child has been properly reared?

A. Yes.

Q. And was the result of that inquiry favorable?

A. Yes, I feel they have taken good care of her.

Q. Did you find what the reputation and social standing of the Sainsots were in the City of Millville? 10

A. Yes.

Q. What was it?

A. I don't know much about their social standing, no.

Q. I asked you if you inquired?

A. No, I haven't.

Q. You never inquired as to their social standing?

A. Not recently, no. 20

Q. You would say from the result of your inquiry that the child has received good care?

A. Yes, I would.

Q. Do you know whether there is a bond of affection between the Sainsots and the child from your observation?

A. Yes, I am sure that they love her.

Q. And from the child to the Sainsots?

A. Yes, I feel so.

Q. You know of no reason, outside of your desire to possess the child, why it should be taken from the Sainsots, you know no other reason? 30

A. Except the ones I stated that I feel that her education would be better here, and her social advantages.

Q. You have no reason to find any fault with the educational advantages which have been given to the child by the Sainsots, Mrs. Price?

A. Well, no. I don't feel that the schools are as good there as they are here.

Q. You have no reason to find fault with the religious education which has been given the child?

A. No.

Q. Do you know whether the child has been given music lessons as young as it is?

A. Yes, she has.

Q. You are aware of that?

A. Yes.

Q. So that you have nothing to say against the Sainsots from any standpoint excepting personal ones?

A. I wouldn't say personal ones, as I explained, the educational advantages and I feel for the best interests she would be better with me.

Q. Have you inquired into the schools of the city of Millville as to whether they were good or poor?

A. No, but I have seen them.

Q. You have made no study of the schools?

A. No.

Q. You haven't inquired?

A. No, I have made no study.

Q. And made no effort, have you, Mrs. Price?

A. I have inquired around a little as to it but I have never been to the school to see the workings of it.

Q. Mrs. Price, have you inquired into the moral standing of the Sainsots as to whether they were good moral people?

A. I feel that they were.

Q. Have you inquired as to whether they were moral?

The Court: Is there going to be any attack upon that line at all?

Mr. Richards: No.

The Court: I see no reason, then, to pursue it.

Q. Do you know whether Mrs. Sainsot is employed or whether she gives her entire time to the domestic duties at home?

A. I don't believe she is employed. I never heard that she was.

Q. She is a housewife, is she not?

A. She is, yes.

Q. That is all.

Re-direct examination.

By Mr. Richards:

Q. Mrs. Price, you are still working for the city of Atlantic City?

A. Yes, I am.

Q. Now, will you continue to work for the city of Atlantic City if you are awarded the custody of this child?

A. It isn't necessary. My husband makes more than enough to take care of us.

Q. Will you devote your entire time, then, to your domestic duties and the care of this child?

A. Absolutely, yes.

Re-cross examination.

By Mr. Oliver:

Q. Mrs. Price, do you own your home or rent?
A. No, we rent our home.
Q. You rent your home?
A. Yes.
Q. You rent an apartment?
10 A. Yes, we do.
Q. Where is the apartment located?
A. Two North LaClede Place.
Q. How many rooms in your apartment, Mrs. Price?
A. We have seven rooms and bath.
Q. Seven and bath?
A. Yes.
Q. Consisting of how many sleeping rooms?
A. How many sleeping rooms?
20 Q. Yes.
A. We have four bedrooms, dining room, living room, kitchen and bath.

By Mr. Richards:

Q. What part of Atlantic City is LaClede Place?
A. What part is it?
Q. Yes.
A. It is in Chelsea.
Q. Is that a residential section of Atlantic City?
30 A. Yes.
Q. A desirable one?
A. Considered one of the finest in Atlantic City.

Somers S. Price, sworn.

Direct examination.

By Mr. Richards:

Q. Mr. Price, are you the father of Florence Helen Price?
A. I am. 10
Q. The subject of this suit?
A. Yes, sir.
Q. And you are now married to the preceding witness?
A. Yes.
Q. Is she the mother of that child?
A. Yes, sir.
Q. Are you a party to this suit?
A. Sir?
Q. You are a party to this suit? 20
A. Yes, sir.
Q. Are you employed here in Atlantic City?
A. Yes, sir.
Q. Whereabouts?
A. Abbotts Dairies.
Q. What is your business?
A. Salesman.
Q. Do maintain a home here?
A. Yes, sir.
Q. How long have you maintained a home? 30
A. Ever since I have been married—how long? I don't quite understand that.
Q. How long have you maintained a home here?
A. I have lived here all my life.
Q. I know but I mean since you have been married?

A. Ever since we have been married.
Q. Are you able to support your wife and child?
A. I am.
Q. Where do you live now?
A. Two North LaClede.
Q. What kind of a place is that?
A. It is a seven-room apartment.
Q. What is the locality in the neighborhood like there?
A. Very good.
Q. Do you want your daughter back?
A. I do.
Q. Will you be able to maintain her and support her in proper shape?
A. Yes.
Q. Did you make a demand on the Sainsots for your daughter?
A. Yes, sir.
Q. Was it refused?
A. Yes, sir.

Cross-examination.

By Mr. Oliver:

Q. Mr. Price, you accompanied Mrs. Price to the City of Millville in 1920, in December?
A. Yes, sir.
Q. I will ask you if that is your signature?
A. Yes, sir.
Q. Did you read that paper before you signed it?
A. I did.
Q. Knew what it called for?
A. Yes.

Q. Now, at that time you weren't married to your present wife, were you?
A. No.
Q. You weren't married to your present wife?
A. No.
Q. And you married her about three years after you signed that paper, didn't you?
A. Two years, wasn't it?
Q. What?
A. Two years, wasn't it?
Q. That was in December, 1920. It is true that you were married in July, 1923?
A. Yes, that is in October we was married.
Q. October, 1923?
A. Yes.
Q. So it was nearly three years after you signed that paper that you became married?
A. Yes.
Q. You had known your wife some time previously?
A. Yes, sir.
Q. Were you aware that she procured her divorce from her first husband in 1921?
A. I was.
Q. You knew that she obtained her final papers in June, 1921; that is correct?
A. Yes.
Q. In October, 1923, you and she became married?
A. Yes.
Q. Did you ever tell Mr. and Mrs. Sainsot that you had married your wife and would like to have your child back?
A. No, sir.
Q. After your marriage you didn't tell the Sain-

sots that you had established a home of your own and be glad to have your child back?

A. No.

Q. As a matter of fact you didn't see the Sainsots until the year 1925 or 1926, did you?

A. We couldn't get in to see.

Q. No, but I say, you didn't see them?

A. No, sir.

Q. Did you ever write Mr. and Mrs. Sainsot that you had established a home of your own and would like to have your child?

A. No.

Q. After your marriage to Margaret Muller did you attempt to support this little child in any way?

A. No.

Q. And didn't send any money up for the child?

A. No.

Q. For clothing?

A. No.

Q. When Christmas came you sent no little gifts to this little daughter?

A. No.

Q. Made no attempt to, did you?

A. No.

Q. Some time in the year 1926 you conceived the idea that you would like to have the custody of this child, didn't you?

A. Yes, sir.

Q. And have asked for the child since?

A. Yes.

Q. Your wife has worked, Mr. Price, ever since you married her, hasn't she?

A. Yes, sir.

Q. And earned her own living?

A. Yes, sir.

Q. And you are working, too?

A. Yes, sir.

Q. And you don't own your home?

A. No.

Q. Did you ever examine into the care which your child has received in the City of Millville?

A. Yes.

Q. Did you find it is receiving good care?

A. Yes, sir.

Q. And you have no objection to the Sainsots from a moral or social standpoint?

A. No.

Q. Or from the care which they give your child?

A. No, sir.

PETITIONERS REST.

DEFENDANTS' TESTIMONY.

Dr. Frank Sheppard, sworn.

Direct examination.

By Mr. Oliver:

10 Q. Doctor, you live where?
A. Millville, New Jersey.
Q. Physician and surgeon, are you not?
A. I am.
Q. How many years have you been practicing medicine and surgery?
A. Since 1903.
Q. 1903? Twenty-four years?
A. Twenty-four years.
Q. Are you acquainted with Mr. and Mrs. Sainsot?
20 A. I am.
Q. How many years have you known them?
A. I think I have known them probably about twenty years.
Q. Are you acquainted with their social and moral standing in the City of Millville?
A. I am.
Q. What is it?

Mr. Richards: Objected to. Can't form any defense to this action at all.
30

The Court: It isn't attacked in any way. Sustain the objection.

Q. Have you had an opportunity to see the little child in question?

A. I have.
Q. Have you treated it?
A. I have.
Q. Do you know the condition the child was in at the time the Sainsots received it?
A. The child was suffering from ——

Mr. Richards: I object.

The Court: How can that be relevant? 10

Mr. Oliver: If the Court please, I feel it is very relevant to this case to show that the child has received the support and care and that the best interests of this child is in the Sainsots. Isn't that the whole question?

Mr. Richards: Oh, no.

The Court: It has been admitted the child has had proper care. Why is it necessary to go into that? It isn't attacked in any way. Presumption is that the child has had good care in every way. 20

Mr. Oliver: I understand that you don't care to hear testimony on that?

Mr. Richards: Don't think it makes the slightest bit of difference. Refer your Honor to the very ancient case of Mallin v. Baldwin.
30

The Court: Is that the case in 5 Equity?

Mr. Richards: Yes.

HENRY O. BURT, sworn.

Direct examination.

By Mr. Oliver:

Q. Mr. Burt, you are a practicing lawyer in the City of Millville, are you not?
10 A. I am.
Q. How many years have you practiced?
A. Since 1901.
Q. Do you know Mr. and Mrs. Sainsot?
A. I do.
Q. And do you know Mr. and Mrs. Price, parties to this suit?
A. I can't recall them.
Q. I show you a paper purporting to have been acknowledged before you and ask you if that is your
20 signature?
A. That is my signature.
Q. Was that signed in your presence?
A. It must have been; my signature is there as a witness.

Mr. Richards: I object.

A. Yes, it was.
Q. Mr. and Mrs. Price have testified that you told
30 them at the time they signed that paper that it wasn't worth the paper it was written on and didn't mean anything. Did you or did you not tell them that?
A. No, I didn't tell them that.

Cross-examination.

By Mr. Richards:

Q. What did you tell them, Mr. Burt?
A. I told them that the proper procedure was to take out adoption papers and that in case of a paper of this kind being signed that they could come into court the next week and have it set aside. 10
Q. I think you are a good lawyer, Mr. Burt.

ALBERT SAINSOT, sworn.

Direct examination.

By Mr. Richards:

Q. Mr. Sainsot, where do you live? 20
A. 538 South Second Street, Millville.
Q. What is your occupation?
A. Bricklayer.
Q. Do you own your home?
A. Yes, sir.
Q. How long have you owned your home?
A. Twenty years.
Q. Do you have a little child in your possession who is the subject-matter of this suit?
A. Yes, sir. 30
Q. When did you receive that child?
A. 1920.
Q. Are you married to Mrs. Sainsot, the co-defendant?
A. Yes, sir.

Q. Has that child been in your possession ever since December tenth, 1920?
A. Yes, sir.
Q. Where did you get this child?
A. Sir?
Q. Where did you get the child?
A. I don't know; can't answer that.
Q. Well, your wife brought the child home?
A. Yes.
10 Q. Did you take the child by reason of the paper which has been offered in evidence here?
A. Yes, sir.
Q. Did you have any talk with Mrs. Price at the time of taking this child?
A. No, sir.
Q. Have you become attached to the child?
A. I sure have.
Q. Love the child?
A. Yes, sir.
20 Q. Love the child as much as though it had been born to you?
A. Yes, sir.

Mr. Richards: Objected to, if your Honor please.

The Court: I will permit it.

Q. Who has educated and supported the child since you took possession of it?
A. I have.
30 Q. Have you sent the child regularly to the public schools?
A. Yes, sir.
Q. To Sunday School?
A. Yes, sir.
Q. Given it music lessons?
A. Yes, sir.

Q. After you took possession of the child when next did you see Mr. or Mrs. Price?
A. Well, about thirty-five days from the time they delivered the child.
Q. Did they pay a visit there?
A. Yes, sir.
Q. When next did you see them?
A. Easter Sunday, 1927, I believe.
Q. Easter Sunday, 1927?
A. Yes, sir. 10
Q. At least a period of four or five years elapsed before you saw them again?
A. Yes, sir.
Q. During that period of time did you receive any support or call from the Prices?
A. No, sir.
Q. Or on behalf of the child?
A. No, sir.
Q. What does your wife do, Mr. Sainsot?
A. Keeps the house. 20
Q. Has she any other occupation?
A. No, sir.

Cross-examination.

By Mr. Richards:

Q. You say your wife brought the child home?
A. Yes, sir.
Q. How long before was that before you had this paper signed by Mr. Burt or acknowledged by Mr. 30 Burt, which is in evidence?
A. They gave her a paper up in Camden or Philadelphia, some kind of a paper and I referred it to Mr. Burt, told him to make adoption paper out to make them safe, he says, "Who is this man, Price?"

Q. Don't tell us about what was said between somebody and yourself; the paper that you referred to here you got after the child came to your house, isn't that right?

A. Yes, sir.

Q. So you didn't take the child by reason of that paper, did you? You already had the child, didn't you?

A. They gave us a paper, gave my wife a paper —they gave us, delivered some kind of a paper when my wife fetched the baby home, she had it.

Q. Do you remember about what time of year it was when you got the baby?

A. I think it was November twentieth, around there.

Q. November twentieth?

A. Yes. Within a few days, I don't know exactly.

Q. This paper was dated tenth of December, 1920? So you had the baby before you had this paper, isn't that right?

A. Yes.

Mrs. Lena Sainsot, sworn.

Direct examination.

By Mr. Oliver:

Q. Mrs. Sainsot, you are the wife of Mr. Sainsot who has just testified?

A. Yes, sir.

Q. May I inquire your age?

A. Thirty-eight.

A. Thirty-eight?

A. Yes, sir.

Q. What is your occupation?

A. Housekeeping.

Q. Do you do anything else?

A. No, sir.

Q. As a matter of fact, do you devote your entire time to the duties of your home?

A. Yes, sir.

Q. Taking care of your house and taking care of this little girl?

A. Yes, sir.

Q. How long have you had this little child?

A. I have had her ever since November.

Q. November twentieth?

A. Twentieth, yes, sir.

Q. Do you love the little girl?

A. Yes, sir.

Q. Does she have an affection for you?

A. Yes, sir.

Q. You send her to the public schools?

A. Yes, sir.

Q. Regularly?

A. Yes, sir.

Q. You send her to Sunday School?

A. Yes, sir.

Q. And have you given her music lessons?

A. Yes, sir.

Q. How soon after your taking this child did you again see the Prices or either of them, Mrs. Sainsot?

A. It was several weeks after I took her.

Q. Several weeks?

A. Yes, about three weeks.

Q. Then after that how long after?

A. I saw Mrs. Price day before Christmas, day before Christmas.

Q. What year?

A. 1920.

Q. Is that the last you saw of them for some considerable time?

A. Yes.

Q. Until when?

A. Easter, 1927.

Q. So that a period of about six years had elapsed or more?

A. Yes.

10 Q. Now, during that time did you receive any inquiries from Mr. or Mrs. Price as to their child?

A. No, sir, I did not.

Q. To the best of your knowledge did they ever come there to see her?

A. Not that I know of, no.

Q. Did they ever send you anything toward the support of the child?

A. No, sir.

Q. Or did they ever send any presents to the

20 child?

A. No, sir.

Q. Now, then they came there, you say, Easter of 1927?

A. Yes, sir.

Q. Did they want the child at that time?

A. They didn't say nothing about it.

Q. When did you first learn that they wanted the child?

A. That has been about a month ago or so, I

30 couldn't just recall it.

Q. You learned then that they wanted possession of the child?

A. Yes.

Q. Do you wish to keep possession of the child and to educate her?

A. Yes, sir.

Q. And you are willing to take care of her?

A. Yes, sir.

Q. I show you a letter, Mrs. Sainsot, purporting to be addressed to you, "My dear Mrs. Sainsot" and signed by Margaret E. Price, and ask you if that is a letter which you received from Mrs. Price?

A. Yes, sir.

Q. Can you recall about what time you received that?

A. Just before she was a year old.

Q. Just before the child was a year old? 10

A. Yes, she was up there when the child was a year old.

Q. That is when you received it?

A. Yes, sir.

Mr. Oliver: I ask that be offered in evidence.

Mr. Richards: Objected to, your Honor please. Letter can't have any bearing, the only question is whether or not the parents are legally entitled to 20 the custody of the child, whether they love the child or whether this mother here at one time desired to dispose of it has no bearing on the situation, she couldn't legally do it except by legally adopting the child.

The Court: I will permit it.

(Letter admitted and market Exhibit D2.)

Q. How old is the child now? 30

A. Seven years old.

Q. Was the child kept out of school today for the purpose of bringing her here?

A. Only yes.

Q. She goes every day?

A. Goes every day.

Q. What is the health of the child?
A. She has poor health just at present.
Q. Has the child ever been out of your possession since you received it in December of 1920?
A. No.
Q. Continually in your possession?
A. Yes.

(No cross-examination.)

10

MRS. FRIEDA YARKER, sworn.

Direct examination.

By Mr. Oliver

Q. Mrs. Yarker, where do you live?
20 A. Cleveland, Ohio.
Q. What is your occupation?
A. Housewife.
Q. In the year 1920 what was your occupation?
A. I was in training as a nurse in the Central Hospital, Philadelphia.
Q. Philadelphia?
A. Yes.
Q. In the year 1920 did you see Mrs. Price, the lady over here?
30 A. I never saw Mrs. Price until the day she gave the baby away.
Q. Did you see her then?
A. Yes, Mrs. Price sitting there, I recognized her.
Q. Do you know the name that the baby was entered in the hospital by Mrs. Price?

A. When the baby was put in the hospital?
Q. Yes, the name.
A. She was put in as Florence ——

Mr. Richards: I object.

The Court: Sustain the objection.

Mr. Oliver: If I understand she has testified she didn't, I simply want to impeach her testimony. 10

Mr. Richards: Can't do that except by the record.

The Court: Have to have the record.

MRS. BERTHA WIEGAND, sworn.

Direct examination. 20

By Mr. Oliver:

Q. Mrs. Wiegand, where do you live?
A. Millville, 528 South Second Street.
Q. Do you know Mr. and Mrs. Sainsot?
A. I surely do.
Q. You live neighbors to them?
A. Yes, sir.
Q. About the latter part of the year 1920 or the first of the year 1921 did you hear any conversation between Mrs. Margaret Price and Mrs. Sainsot respecting this child? 30
A. I did; I heard her say that she didn't ——

Mr. Richards: I object.

The Court: I will permit it.

Q. What was that conversation respecting the custody of the child?

A. She said she never wanted that child to know who she was as a mother, that is the first time I ever met Mrs. Price.

10

Mr. Richards: I ask the answer be stricken out as irrelevant and immaterial.

The Court: I will permit it to remain.

(No cross-examination.)

Mr. Oliver: I would like to offer the child as evidence.

20

The Court: The child is in court by virtue of the return.

TESTIMONY CLOSED.

CONCLUSIONS.

Ingersoll, V. C.:

30

I can see no advantage of reserving my opinion in this case. I am bound to decide it as the situation exists at the present time and it is unnecessary, apparently, in the decision of that to consider the unfortunate and illegal situation of the mother and the father of the child at the time of the birth of

the child. It is manifest that the child is the result of illegal intercourse between the present husband and wife. They, however, have since that time entered into bonds of matrimony and have made the child legitimate. It is a difficult situation. The present man and wife who have the custody of the child have given that child evidently the best of care and have done all that could be done and probably as much as they would have done for their own child.

10

The legal situation is, however, that the father and mother—the mother at the time and the father by admission and marriage since—are at this time entitled to the custody of this child unless the welfare of the child would be better preserved in the custody of the present custodians. I think that custody has in every way been all it should be. There is nothing in any way before me to indicate that at this time the father and mother are not in a position to do the same for the child as has been done.

20

I hesitate to take the custody of this child from Mr. and Mrs. Sainsot and were there any way in which I could permit that child to remain there, I would do so, but I cannot see how I can find, at the present time, the husband and the wife, the father and the mother, are not entitled to the custody of this child. Had application been made for the custody by them at a prior time it may be that I would have been compelled to have refused to give them custody, certainly would not have thought that the mother in her condition as the legal wife of another man would be entitled to it and I would have had very grave doubts had application been made before the marriage between them that I, under the circumstances, would have doubted the wisdom of permitting the mother to have had custody of the child.

30

I have considered in this the question of the relations between this man and this woman but I cannot find that it has not been, so far as they now appear, entirely covered by the fact that they have married.

The only remaining point is that Mr. and Mrs. Sainsot have had an opportunity for years to make the custody of this child absolute in themselves. They have produced a letter which indicated that at one time, at least, the mother was perfectly willing that they should have the custody and at that time that consent would have been sufficient for the adoption. They took no steps to do this and had it not been for the fact that evidently their lawyer had given intimation to Mr. and Mrs. Price—and I assume that it probably was said also to Mr. and Mrs. Sainsot—that the agreement as then prepared was not binding and that it would be necessary perhaps to take other steps.

I do this regretfully because I can imagine what a tremendous blow it is to the heart and the affections of the Sainsots, but I am compelled to make an order giving the custody of this child to the petitioners.

I trust counsel can make arrangements that will make it as little painful as it is possible to do.

EXHIBIT D1.

10/20/27. L.

WHEREAS, we, Somers S. Price and Margaret Price, husband and wife, of the City of Atlantic City, in the county of Atlantic and State of New Jersey, are the lawful parents of Florence Price, a minor child of the age of six months, and are so situated that they cannot well care for, raise and educate the said child;

AND WHEREAS Albert Sainsot and wife of the city of Millville, in the county of Cumberland and State of New Jersey, have the child in their possession, and are desirous of adopting, raising and educating said child, and are competent and fit so to do:

NOW THEREFORE, in consideration of the facts above stated, we, the said Somers S. Price and Margaret Price, do hereby relinquish all our rights to the custody of said child, and do hereby place the same in the custody of the said Albert Sainsot and wife, and do hereby authorize and empower them to keep the said child in their custody, and to raise, educate and exercise the same control over said child as if she were a daughter of theirs of their own blood.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this tenth day of December, in the year of our Lord one thousand nine hundred and twenty (1920).

Somers S. Price (SEAL)
Margaret Price (SEAL)

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF
Henry O. Burt

STATE OF NEW JERSEY, CUMBERLAND COUNTY, SS.

This is to certify, that on December 10, 1920, before me, a master in chancery of New Jersey, personally appeared Somers S. Price and Margaret Price, who, I am satisfied, are the persons named in and who executed the foregoing instrument, and I having first made known to them the contents thereof, they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed. All which is hereby certified.

Henry O. Burt,
MASTER IN CHANCERY
OF NEW JERSEY.

EXHIBIT D2.

611 B. Sewell Ave.,
Atlantic City, N. J.

My dear Mrs. Sainsot:

I have been wanting to write you for weeks to inquire about Theone but I hated to bother you but I am so anxious to know how she is that I am taking the liberty of writing and hope you will have a few spare moments to let me know how she is.

I haven't been up to see her as it makes me feel so bad when I see how lovely she is and know she cant ever be really mine again.

I hope she has been well since I last saw her. She must be real big by now. Will you tell me all about her when you write. I would be glad to pay at any time for any little pictures you might have taken of her.

I wish you could understand how grateful Mr. Price and I are to you and how pleased we are that you love her and are so good to her. I hope the time will come when Theone can repay you for us.

Please dont think I am hard-hearted because I haven't been up but it is better that I dont see her too often as you must know what her loss means to me.

I would however, like to come up before her birthday, the 17th, and will drop you a line to see if it is convenient for you.

When you write will you give me some idea how big she is as I want to send her a birthday gift. I hope you dont mind me buying her presents, that is about all that is left for me to do. I know she must have everything as you and Mr. Sainsot are so good to her.

I hope you have all been well and happy since I last saw you and that Theone will be just the kind of a girl I pray every night for her to be.

Very sincerely
Margaret E. Price

611 B. Sewell Ave.

ORDER.

(Filed October 3, 1927.)

IN CHANCERY OF NEW JERSEY.

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Between SOMERS S. PRICE and MARGARET E. PRICE, *Petitioners,* and ALBERT SANSOT and LENA SANSOT, *Respondents.*	Order.

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The body of Florence Helen Price, an infant of the age of seven years, in the writ of *habeas corpus* above mentioned, having been brought before this Court, at the time and place in said writ directed, and the said cause having been adjourned until October 3rd, 1927, and the return to said writ having been read and considered and testimony having been taken in the presence of counsel for the respondents and of the petitioners in open court, and it appearing to the Chancellor that the said return does not set forth sufficient cause for the detention of the said Florence Helen Price by the respondents, and that the petitioners, the parents of the said Florence Helen Price, are competent and proper persons to have the custody of the said child, and therefore the said petitioners are en-

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titled to the custody of the said Florence Helen Price;

It is on this third day of October, 1927, ordered that the said Albert Sansot and Lena Sansot to forthwith surrender the said Florence Helen Price unto the said Somers S. Price and Margaret E. Price.

E. R. WALKER,
C.

Respectfully advised:
R. H. INGERSOLL,
V. C.

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NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY.

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Between SOMERS S. PRICE and MARGARET E. PRICE, *Petitioners,* and ALBERT SAINSOT and LENA SAINSOT, *Defendants.*	On Habeas Corpus. Notice of Appeal.

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The defendants, Albert Sainsot and Lena Sainsot, hereby appeal from the final decree made in the above-entitled cause on October 3rd, 1927, by the Chancellor on the advice of Robert H. Ingersoll, Vice-Chancellor, and from the whole and every part

thereof, to the Court of Errors and Appeals in the Last Resort in All Causes.
Dated: December 30th, 1927.

CARL KISSELMAN,
Solicitor for and of Counsel with Defendants.

I conceive there is good cause for appeal in the above-entitled cause.

10 CARL KISSELMAN,
Of Counsel with Defendant.

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

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SOMERS S. PRICE and MARGARET E. PRICE, *Complainants-Appellees,* v. ALBERT SAINSOT and LENA SAINSOT, *Defendants-Appellants.*	On Appeal from the Court of Chancery. Petition of Appeal.

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To the Honorable, the Court of Errors and Appeals in the Last Resort in All Causes:

The petition of Albert Sainsot and Lena Sainsot, the appellants in the above-entitled cause, respectfully shows that:

1. Petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date October 3rd, 1927, in a certain cause in said Court of Chancery, wherein said Somers S. Price and Margaret E. Price were complainants and the said Albert Sainsot and Lena Sainsot were defendants, in this respect, to wit, that the said decree adjudges that the said Somers S. Price and Margaret E. Price are competent and 10 proper persons to have the custody of Florence Helen Price, and the said decree orders said Albert Sainsot and Lena Sainsot to surrender the said Florence Helen Price unto the said Somers S. Price and Margaret E. Price.

The petitioners therefore pray that said order or decree of the said Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden; and your petitioners shall have such 20 relief from the premises as to this Honorable Court shall seem meet.

CARL KISSELMAN,
Solicitor for and of Counsel with Appellants.

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JOINDER.

NEW JERSEY COURT OF ERRORS AND APPEALS.

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SOMERS S. PRICE and MARGARET E. PRICE, *Complainants-Appellees,* v. ALBERT SANSOT and LENA SANSOT, *Defendants-Appellants.*	On Appeal from the Court of Chancery. Joinder.

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The complainants now come, by Emerson Richards, Esquire, their attorney, and say there is no error either in the record and proceedings aforesaid, or in the giving of judgment aforesaid, and pray that the Court may examine as well the said record and proceedings as the matters assigned in the grounds of appeal and that the judgment may in all things be affirmed.

EMERSON RICHARDS,
Attorney for and of Counsel with Complainants-Appellees.

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NEW JERSEY COURT OF ERRORS AND APPEALS.

SOMERS S. PRICE and MARGARET E. PRICE,
Complainants-Appellees,
v.
ALBERT SAINSOT and LENA SAINSOT,
Defendants-Appellants.

ON APPEAL FROM COURT OF CHANCERY.

BRIEF OF DEFENDANTS-APPELLANTS.

FACTS.

This case arises out of the following facts:

On June 17, 1920, in the Northwestern General Hospital, in Philadelphia, Pennsylvania, a female child was born to complainant, Margaret E. Price, whose name at that time was Margaret E. Goos, she being then the lawful wedded wife of Jacob W. Goos.

The undisputed testimony is that the child was the result of illicit intercourse between complainant, Margaret E. Price, and complainant, Somers S. Price, to whom she was married on October 3rd, 1923, after Mrs. Price had secured a divorce from her former husband, Jacob W. Goos.

Shortly after the birth of the child, on December

10th, 1920, complainants delivered the child to defendants, Albert Sainsot and Lena Sainsot, at the same time entering into a written agreement (Exhibit D1, p. 49) by which they relinquished all their right to the custody of the child. This agreement was acknowledged before Henry O. Burt, a member of the Bar and a Master in Chancery. From that time until October 3rd, 1927, the child was in the custody of the defendants at their home in Millville, New Jersey. It is admitted that the child was subjected only to the finest influences, was carefully reared as a child of defendants, was attending grammar school, Sunday school, and given a good education in the usual subjects as well as in music.

The complainants sought the custody of the child by a writ of *habeas corpus* returnable September 27, 1927, at which time the Chancellor, upon the advice of Vice-Chancellor Ingersoll, awarded the custody of the child to complainants.

This appeal is to review the action of the Court below, and secure a reversal of its decree to the end that the custody of the child may be re-awarded to defendants.

LAW AND ARGUMENT.

It is the defendants-appellants' contention that the custody of the child should be awarded to them for the reason that:

THE WELFARE AND HAPPINESS OF THE INFANT, NOT FILIAL RELATIONSHIP, CONTROLS ITS CUSTODY, AND THAT IT APPEARED IN THE PROCEEDINGS BELOW THAT THE BEST INTERESTS OF THE INFANT WOULD BE SERVED BY PERMITTING THE DEFENDANTS TO RETAIN THE CUSTODY OF THE CHILD.

Justice Minturn, in a very comprehensive opinion which discussed the questions herein involved has affirmed the first premise of defendants' contention in the following language:

> "Manifestly, the touchstone of our jurisprudence in matters dealing with the custody and control of infants is the welfare and happiness of the infant, and not the filial affections arising from parental relationship." Lippincott, *et al.* v. Lippincott, *et al.*, 97 E. 517, 128 Atl. 254 (Errors and Appeals, March 23, 1925).

Justice Minturn, in the same case, disaffirms the rule upon which the learned Chancellor awarded the custody of the child to complainants-appellees, to wit, that regardless of how well the child's interests and welfare may have been served, the parent was entitled to the infant's possession as a matter of right.

> "Thus, it has been quite generally held that even the natural right of the father to the custody of his child cannot be treated as an absolute property right, but rather as a trust reposed in the father by the State, as parents *patriae* for the welfare of the infant."

In the case of *Richards v. Collins, et ux,* 45 N. J. E. 283, 17 Atl. 831, Justice Knapp, speaking for the Court of Errors and Appeals which reversed the order of the Court of Chancery, awarding the infant to its parent, said:

> "A parent by transplanting his offspring into another family, and surrendering all care of it for so long a time that its interest and affections all attach to the adopted home, may thereby seriously impair his right to have back its custody by judicial decree. In a controversy

over its possession, its welfare will be the paramount consideration in controlling the discretion of the Court. The strict right of the parent will be passed by, if a judgment in observance of such right would substitute a worse for a better custodian.''

An analagous situation is presented in the case at bar as in the Richards case. The child's mother and putative father abandoned the child and turned it over to the defendants. By their written agreement (p. 49) they relinquished all their right to the custody of the child and indicated their complete abandonment of interest in its welfare. For seven years defendants nursed and cared for it through helpless infancy. They watched over it and provided for it as it grew in years. Whatever it has known of parental love and care is from them. Vice-Chancellor Ingersoll found as a matter of fact that the child's welfare had been bountifully provided for. (State of Case, p. 47, lines 16 and 17.) There is nothing in the case to indicate that the complainants could do any more. As a matter of fact so little interest did the mother take in her child that between March of 1921 and the winter of 1925, a period of 4½ years, she made no attempt to even see the child. (State of Case, p. 22, line 20 to p. 23, line 11.)

Indeed, testimony of the mother indicates (p. 11, line 22 to line 33) that because of her employment the child will receive very little of that mother's daily care which is so important and necessary to a young child's welfare and happiness. As in the Richards case, *supra,* appellants feel that they have faithfully cared for the child and carried it through the most difficult and trying period of its life. They are not only willing but anxious to rear it in the fine

atmosphere which has already characterized its training. The complainants have permitted the child's affections to become rooted in its foster home. The true interest of the infant would seem to require that she should remain in the appellant's family.

It is respectfully submitted that the decree be reversed and a decree be entered permitting the custody of the child to appellants.

CARL KISSELMAN,
Attorney for and of Counsel with Defendants-Appellants.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

SOMERS S. PRICE AND MARGARET E. PRICE,
Complainants-Appellees,

VS.

ALBERT SAINSOT AND LENA SAINSOT,
Defendants-Appellants.

ON APPEAL FROM THE COURT OF CHANCERY.

BRIEF OF RESPONDENTS.

This is an appeal from a writ of habeas corpus granted by Vice-Chancellor Ingersoll, granting the custody of one Florence Helen Price to her parents and requiring that the defendants-appellants, Albert Sainsot and Lena Sainsot, surrender the said Florence Helen Price to her parents, Somers S. Price and Margaret E. Price.

FACTS.

The facts are that the child, Florence Helen Price, was born to Margaret E. Price, the mother, and Somers S. Price, the father, prior to their marriage. Margaret Price had obtained a decree nisi in an undefended divorce from her former husband, but due to the illness of her attorney never obtained a final decree until after the child was born.

Because of the prominence of the mother's family, the Price's did not desire to publicly acknowledge the birth of the child until after they could be married. An arrangement was therefore made with the defendants, Albert Sainsot and Lena Sainsot, whereby they undertook to take care of the child.

Shortly after the Sainsot's took the child, a paper, marked Exhibit D1 (page 49, State of the Case), was executed by the Price's in which they relinquished custody of the child to the Sainsot's. At the time this paper was executed, counsel for the Sainsot's, a Mr. Burt of Millville, told the Price's that "it was not worth the paper it was written on and that the Price's need not hesitate to sign it." (Page 10, lines 7, 8, 9, State of the Case.) Mr. Burt affirms this testimony. (Page 37, lines 8 to 10, State of the Case.)

> "I told them that the proper procedure was to take out adoption papers; that in case of a paper of this kind being signed that they could come into Court the next week and have it set aside."

It therefore appears quite conclusively that the parties knew that they were not bound by any agreement. In addition it might be observed that the paper, Exhibit D1, is unilateral, that it contains no promise upon the part of

the Sainsot's to care for the child, or to give it a home or education, but merely a statement that they are desirous of adopting, raising and educating the child, and that the Price's authorize "and empower them to keep the said child in their custody." There can be no doubt that this paper was not binding upon the parties, and that they so understood it.

The defendant, Sainsot, is a bricklayer by trade. Notwithstanding the statements made in the brief of appellants' counsel, there is nothing to show that the defendants are in a position to give this child any particular social or educational advantages. It is admitted that they have cared for the child for something over five years; that the child was sent to school and that there are no moral shortcomings upon the part of the Sainsot's. On the other hand, the parents of the child live in the Chelsea district of Atlantic City; the husband, according to the undisputed testimony, is engaged in business with a substantial firm in Atlantic City at a salary that permits him to maintain a seven-room apartment in the best dwelling section of Atlantic City; and that both he and his wife are competent to give the child every social, educational and moral advantage.

Mrs. Price explains her position in regard to giving the custody of the child to the Sainsot's on the ground that her doctor thought that the baby would be better off with them in Millville than in a hospital in Philadelphia. (Page 9, lines 5 to 10, State of the Case.) She did not at any time ever contemplate permitting the Sainsot's to adopt the child. (Page 10, lines 5 to 21, State of the Case.)

There is considerable dispute concerning the attitude of the father and mother toward the child between the latter part of 1921 and 1926. The Sainsot's testify that the Price's did not take any interest in the child and did

not undertake to see her. This is directly contradicted by the Price's. Mrs. Price testifies (page 12, lines 24 to 33, State of the Case):

> "Well, we had difficulty all these years in seeing her, after I placed her with Mrs. Sainsot about five or six months afterwards I received a letter telling me for the best interests of the child I should never come again and when I went I didn't get in and I wasn't able to get in, even though sometimes I think they were home. Of course, I believe during the summer months they were out of town and they weren't home when I called but during those times I went I never was able to get in."
>
> "Q. How often did you go to Millville?
>
> "A. I went very often, every several weeks we would go ride up there.
>
> "Q. Never able to see the child?
>
> "A. Never able to get in, no. On Easter Sunday this last year we did get in.
>
> "Q. What happened that day?
>
> "A. At that time we got in and they treated us fairly nice and after that we had a lawyer from Bridgeton arrange with them to sign an agreement we would see the child every week and we were satisfied to do that for the present. * * * When we came down for our first visit we were treated shamefully, they insulted us in every possible manner and refused to tell the child who was her mother and father, but they finally did tell her that I was her first mother and Mr. Price was the first father." (Page 13, lines 4 to 26, State of the Case.)

It was also testified to that Mrs. Sainsot wanted the child to believe that she was its mother.

> "A. The child thinks Mrs. Sainsot is her mother, yes." (Page 14, lines 1 and 2, State of the Case.)

It was admitted that they saw the child frequently until they received the letter from the Sainsot's refusing them the privilege of seeing the child. (Page 22, lines 20 to 28, State of the Case.)

During the four years in which they did not see the child, the testimony is that they made frequent trips to Millville, that they were unable to see the Sainsot's but that they did inquire from the neighbors and found out that the child was all right.

> "A. I do; we inquired quite frequently." (Page 23, lines 33 to 35, State of the Case.)
>
> "Q. From whom?
>
> "A. From the people in the neighborhood, a man who has a store there." (Page 24, lines 1 to 3, State of the Case.)
>
> "Q. May I inquire what you learned?
>
> "A. I learned when she was well that she was well, being well taken care of, that was another thing, when we would go and not be able to get in, we would walk in the store and inquire." (Page 24, lines 10 to 15, State of the Case.)

Mrs. Price's testimony is confirmed by that of her husband. On cross-examination he testified:

"Q. As a matter of fact, you didn't see the Sainsot's until the year 1925 or 1926, did you?

"A. We couldn't get in to see." (Page 32, lines 4 to 6, State of the Case.)

Appellants' brief contends that the child will receive little care from the mother because the mother is employed. This is answered by Mrs. Price's testimony:

"Q. Mrs. Price, you are still working for the city of Atlantic City?

"A. Yes, I am.

"Q. Now, will you continue to work for the city of Atlantic City if you are awarded the custody of this child?

"A. It isn't necessary. My husband makes more than enough to take care of us.

"Q. Will you devote your entire time, then, to your domestic duties and the care of this child?

"A. Absolutely, yes." (Page 27, lines 21 to 32, State of the Case.)

ARGUMENT.

The facts show that the child will have equal or better care in the possession of its parents than that of the defendants. The defendant, Albert Sainsot, is a workingman, a bricklayer by trade, and cannot give the child the same social advantages as that enjoyed by the Price's. It is admitted that both parties love the child. The child itself is too young to choose between them.

The parents feel that the educational advantages in Atlantic City are superior to that of the much smaller town of Millville, and of this there can be little doubt. As between the parties, both equally competent to care for the child, certainly the parents are the ones entitled under the law to its custody.

The rule that the parents are entitled to the custody of the child unless the Court of Chancery as parens patriae deems that the best interests of the child require otherwise, is too well settled for the citation of authority in Mayne vs. Baldwin, 5 Eq., page 454.

Chancellor Halsted said:

"A father is entitled to the custody of his minor children as guardian by nature and guardian for nurture."

3 P. Wms. 154.

"Such guardianship is not assignable."

2 Swanst. 567.

"The care and custody of minor children is a personal trust in the father and he has no general power to dispose of them to another."

3 Hills Reports, 410.

The case of Lippincott vs. Lippincott, 97 Eq., page 517, cited in appellant's brief, does not apply. The question involved was the custody of an orphaned infant as between two sets of grand-parents. The disposition of the care of the child by the Vice Chancellor was not disturbed upon appeal. Considerable of this opinion relates to matters not germaine to the issue and may therefore be regarded as dicta. Certainly the rule is that as between

guardians, the welfare of the child is to be considered. It may be even conceded that under certain circumstances the Court of Chancery, by reason of its superior right, may even remove a child from the custody of an unfit parent and award it to a guardian, where the interests of the child demand it. But there is no authority in this State which holds that the Court of Chancery will take a child from its parents and award it to a guardian where the social, educational and moral advantages of the child are at least equal with either the parents or the guardian. In the latter case the paramount right of the parents to the possession of the child as well as their legal duty to support and care for it require that the child be placed within the custody of its parents. So it is conceded in the Lippincott case:

> "Thus it has been quite generally held that even the natural right of the father to the custody of his child cannot be treated as an absolute property right, but rather as a trust imposed in the father by the State for the welfare of the infant."

Unless, therefore, there is convincing evidence of a violation of this trust, the Court of Chancery has no right or power to remove the child from the custody of the parent.

In ex parte Kirschner, 111 Atl., page 737, Vice Chancellor Stevenson said:

> "The State of New Jersey repudiates the theory that it should control the custody which parents by natural right have over their children and dispose of children according to the view which officials of the State take as to what is for the best interests of the children. Parental right is sacred in the eye of our law, and the home is an institution which lies

> at the basis of our civilization. In all these custody cases where the well-being of a little child is involved, parental right should never be disregarded unless that right has been surrendered. It is a right which should be touched with an extremely cautious and gentle hand."

This was a case where the parents sought to recover from a stranger the custody of their child. The learned Vice Chancellor said:

> "Laying out a view statutory proceedings and the rescue of children from conditions in which they are subject to starvation or immoral influences our law gives no Court the power to award the custody of a child away from its parents unless the parental right to custody has been transferred or abandoned. No Court has power to thwart and disregard the unabandoned and untransferred parental right, although it may be evident that the best interests of the infant would be promoted by giving its custody to the stranger.
>
> "The parental right is displaced only by a transfer or an abandonment. The Court must find one of these facts or it has no right to consider the question which home will afford the greater advantage to the child. The millionaire cannot steal the child of the laborer and maintain its custody because the Court finds that the interests of the child will be promoted by disregarding the parental right."

It was this decision that the learned Vice Chancellor followed in disposing of the case at bar. There having been no legal transfer of the child by way of adoption, the right of the parent over the stranger to the custody of the child was paramount.

The case of Richards vs. Collins, 45 Eq., page 283, is not authority for the position taken by the appellants. On the contrary, this case states the position of the Court of Errors and Appeals to be as follows:

> "Doubtless it is the strictly legal right of the parents to have the custody of their infant children as against strangers. *This right will control the judgment of the Court unless circumstances of weight and importance connected with the welfare of the child exist to overbear such strict legal right.*"

The Court in thus stating the rule has stated the law covering the case at bar. There being no controlling factor, the right of the parent is paramount.

The Richards vs. Collins case is authority for the proposition that the right of the parent is not controlling where to do so would imperil the personal safety, morals, health or happiness of the child. No such question is involved in the case at bar.

CONCLUSION.

The law in this case is well settled. The right of a parent to re-claim from a stranger his child is a strict legal right—a right only to be lost by the formal adoption of the child according to the process outlined in the statute. Where the legal right has not been abandoned, it must prevail, unless the Court is convinced that the parent is not a fit guardian for the child. In the latter case, the paramount right of the State to protect the child is superior to the right of the parent. Unless, therefore, it appears by convincing proof that the parent is either unfit or unable to properly care for the child, it does not lie within the province of the Court to choose between the parent and another guardian. The Court has no right to weigh the relative advantages that the child may

receive between a stranger and the parent. It only weighs such advantages as between guardians of the same class, for example, between husband and wife, or between two sets of relatives, or between two strangers. It does not weigh the relative advantages between a parent and a stranger unless the parent is unfit.

In the case at bar the evidence is that both the stranger and the parent are amply able to care for the child, but that the advantages that the child will receive are with the parent. Under such circumstances, the paramount legal right of the parent must prevail.

Indeed, any other decision would be subversive both of the long established precedents of Anglo Saxon jurisprudence, but shocking to that sense of natural justice which decrees that a mother who bore the child should have its custody and upbringing. To assert that the State through its judicial officers may set aside the natural law and of elementary justice and to dispose of the children of parents capable of supporting and maintaining them according to what such officers may consider to be the best interest of the child or the State is to set up that type of communism first proposed in ancient Sparta and now revived by soviet Russia.

It is the duty of the State to protect the child, but not to take possession of it. It is the duty of the Courts to maintain the home—not to destroy it; to unite parents and their children—not to separate them, and in the case at bar to deny to this mother and the father the right to the love, affection and up-bringing of their child, would be to strike at the very foundations of society and to outrage the maternal feelings of every mother in the land.

Respectfully submitted,

EMERSON RICHARDS,

Of Counsel with Respondents.