

The Daily Pioneer Press.

SAINT PAUL, SATURDAY, DECEMBER 14, 1895. —TEN PAGES.

WELFARE OF THE CHILD

SUPREME COURT FILES TWELVE DECISIONS

The Right of a Father to Possession of a Child Is Not Absolute Beyond the Control of the Courts—The Primary Object of the Court Is to Secure the Welfare of the Child—Lower Courts Reversed in Five Cases.

Justice Buck, of the supreme court, returned twelve decisions yesterday, in five which the order of the lower court was reversed. In the case of George J. Flint, relator, vs. Ellen Flint, respondent, Justice Buck affirms the order of the lower court. This is a local case. Flint and his wife separated without securing a divorce, the wife taking their child, a three-year-old boy, with her. Flint brought an action in the Ramsey county district court to regain possession of the child. The case was decided against Flint, and he appealed to the supreme court, which now affirms the order of the lower court. Justice Buck, in his decision, says that it does not appear that Flint wishes to possess his child on account of his parental love for the infant, but because he wishes to exercise his authority as "head of his family." The syllabi of that and the other decisions follow: State of Minnesota ex rel. George J. Flint, relator, vs. Ellen Flint, respondent.

While the statute provides that the father, if a suitable person, shall have the custody of the person and the care at the education of his minor child, yet this is not an

absolute legal right beyond the control of the courts.

The primary object of the courts in such matters is to secure the welfare of the child, and not the special claims of either parent, and the cardinal principle is to regard the benefit of the infant the paramount consideration.

In this case the parents have separated and were living apart without any prospect of reconciliation. The child was only four years old, and the mother had had the care of it since its birth. She was admitted to be a perfectly competent person to have its care and custody. The father had no female inmate at his family except a daughter by a former marriage, aged only fourteen years. His engagements required his absence from his home during the day, and frequently in the evening. Held that without regard to which party was most to blame for the separation there was no error in the trial court, in the exercise of its judicial discretion, committing, for the time being, the custody of the person of the child to the mother, subject to the right of the father at seasonable intervals to visit it and take it out for walks or drives. Order Affirmed.

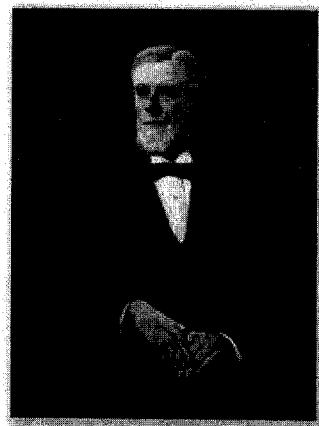
—Mitchell, J.

December 14, 2007

THE REST OF THE STORY

SUPREME COURT VIOLATES VERTICAL SEPERATION OF POWERS

The Right of a Natural Guardian to the Possession of a Child Is Inalienable Not Subject to the Control of the Courts—Compelling Interest Absent



Justice William Mitchell, who apparently had a very exalted idea of the powers of a state supreme court, seems to have decided this case upon an assumptive theory, that, the state's probate code vests state courts with a power to determine who shall be appointed guardian of a child, to the exclusion of the child's natural guardian, who has no rights in the matter except as the court, in its discretion, may see fit to grant him, and it is apparent from the court's decision that, in rendering its opinion, the court actuated quite as much by a desire to abolish natural rights of fathers as by its regard for the best interest of the child.

The *Flint* court failed to preserve the vertical separation of power between family and state government. Before the state can exercise its sovereign powers over a head of a family, it must evidence a compelling state interest. As the evidence did not support a finding that Mr. Flint had either exceeded his powers as head of the family or abused his authority as natural guardian, no state interest was implicated. Instead, the supreme court, for political reasons, chose to exercise extraconstitutional powers—a tyrannous act—rather than recognize and protect Mr. Flint's natural guardianship status.