

**J.S. BENEDICT, Appellant, vs. C. J. McGILL, Appellee.**

**LRSC 4; 1 LLR 26 (1864) (1 January 1864)**

[January Term, A. D. 1864.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Habeas Corpus.*

1. The father is the proper custodian of his children unless under some legal disability. By statute, the judge of the Court of Quarter Sessions and Common Pleas, in making a decree of divorce, may appoint guardians for the children where equity requires that he should. .

There can be no doubt as to the proper custodian of children as defined and settled by law. It unquestionably makes the father the only legal representative of them, unless there is some disability on his part preventing him from taking proper care of them. Where this is the case, the law makes ample provision for the protection and care of the children, so that there is nothing wanting that is necessary to meet the exigency of any case. In cases of divorce the Liberia statute law provides for a departure from the general provisions of the common law, in regard to children, by giving the judge of the Court of Quarter Sessions and Common Pleas the privilege of exercising and employing equity principles instead of law, by authorizing him to place the children with guardians or other persons besides the father, provided he can show good reasons in equity for so doing. Therefore, it is proper for any judge acting in equity to state clearly and fully the grounds in equity on which he founded his actions.

This precludes the necessity of making any reference to the rules of common law, because the said statute authorizes a departure from them. This is not the case in the decree of Judge Wilson in said case, for there is no extensive reference to common law when his action was in equity. There is no statement in his decree setting forth the facts in equity which actuated him.

Therefore, it is the decision of this court that the case be remanded, and that Judge B. R. Wilson be required to set forth clearly and fully the reasons in equity that moved him to his decree in said case, after the rendition of his reasons, the same to be forwarded to the Supreme Court or the Chief Justice for further disposition of the case. The cost follows the final judgment. .