

Admitting that it was the intention of all parties that the father and mother should give up the child to the Boons, what follows?

Under the civil law, as is well known, adoption with its fictions more or less curious and interesting, played a conspicuous part, but "the law of England, strictly speaking, knows nothing of adoption:" Eversley, 3rd ed., p. 514; *Blayborough v. Brantford Gas Co.*, ante 573. "By the common law of England the father has the right to the custody of his infant children as against third parties:" Eversley, p. 511. And "parents cannot enter into an agreement legally binding to deprive themselves of the custody and control of their children, and, if they elect to do so, can at any moment resume their control over them:" p. 513.

No doubt has been attempted to be cast upon these propositions; but it is argued that the statutory provisions do or may prevent an order for the delivery of the child to the parents now asking for it. R. S. O. 1897 ch. 259, sec. 12, provides that "where the parent of a child applies to any Court . . . for . . . an order for the production of the child, and the Court is of opinion that the parent has abandoned or deserted the child, or that he has otherwise so conducted himself that the Court should refuse to enforce his right to the custody of the child, the Court may, in its discretion, decline to . . . make the order."

This Act is based upon the Imperial Act of 1871; 34 Vict. ch. 3, "Custody of Children Act, 1871;" but does not very much assist in this case.

I think "abandon" and "desert" must, in this legislation, involve a wilful omission to take charge of the child, or some mode of dealing with it calculated to leave it without proper care. Leaving the child with those who had contracted to take proper care of it cannot be fairly called abandonment or desertion, and the further and subsequent act of giving up all claim to the child, I think, is not an abandonment or desertion within the Act. The Act to be relied upon must be such as shews such disregard of the welfare of the infant as would shew the parent to be unfit to again receive it into his charge. And I cannot say that there is anything in the conduct of the father shewing him to be unfit to take charge of the infant.