

she had an interview with her husband from whom she had been living apart since the 11th of August of the same year, and asked him if he intended to give her money or victuals, he passed by her without answering, and went into his house; this was about 7 p.m.; his mother shut the wicket of the garden and forbade his wife from coming in. The wife then went to the door of the house, laid the child down close to the door, and called out "Bill, here's your child, I can't keep it, I am gone," she left and was seen no more that night. Shortly after the prisoner came out of the house, stepped over the child, and went away. About 8.30 two witnesses found the child lying in the road outside the wicket of the garden, which was a few yards from the house door, it was dressed in short clothes with nothing on its head; they remained at the spot till about 10 p.m.; when the prisoner came home, they told him that his child was lying in the road, his answer was "it must bide there for what he knew and then the mother ought to be taken up for the murder of it." Another witness Maria Thorn (the mother of the wife) deposed also to the fact that about the same time in answer to her observation that he ought to take the child in, he said "he should not touch it, those that put it there must come and take it." She then went into the house. About 11 p.m. one of the two witnesses went for a police-constable and returned with him to the place about 1 a.m., when the child was found lying on its face in the road with its clothes blown over its waist and cold and stiff. The constable took charge of it, and by his care it was restored to animation. At 4.30 a.m. the constable went to the house and asked the prisoner if he knew where his child was; he said "no." On being asked if he knew it was in the road he answered "yes." It appeared that during the time which elapsed between the prisoner leaving his house about 7 p.m. and his return about 10 p.m., he had been to the police-constable stationed at Beaulien, and told him that there had been a disturbance between him and his wife, and wished him to come up and settle it, but he did not say anything about the child.

The prisoner's counsel objected that upon these facts there was no evidence of abandonment or exposure under the Act by the prisoner.

The Court overruled the objection. The jury found the prisoner guilty.

The question for the Court is, whether the prisoner was or was not properly convicted.

April 29.—No counsel appeared.

Cur. adv. vult.

May 6.—BOVILL, C. J.—We have considered this case and are of opinion that the conviction was right. Section 27 of 24 & 25 Vic. c. 100, declares it to be a misdemeanour unlawfully to abandon or expose any child under the age of two years, whereby the life of the child shall be endangered. The words are in the alternative, and if either abandonment or exposure is proved, the offence is complete. The prisoner was the father of the child, and was bound, not only morally, but legally, to provide for and protect it; he was aware that it had been deserted by its mother, and the evidence is clear that he had the opportunity of taking it under his protection. The only question which we have had to consider is, whether there was any evidence to go to the jury

of abandonment or exposure by the prisoner, whereby the child's life was endangered. I am clearly of opinion that upon the facts stated the jury not only might, but ought to have convicted. The life of the child was in danger. The prisoner must have been well aware that this was the case, and his responsibility and duty with respect to it were very different from that of a stranger.

MARTIN, B.—I concur, though at first I felt some doubt whether without extending the words of the statute beyond their ordinary meaning, we could hold that the father, not having the actual possession of the child, could be said to have abandoned or exposed it. But he was legally bound to protect the child, and failed to do so, and on the facts I think he did abandon it.

BRAMWELL, B.—I am of the same opinion.

CHANNELL, B.—I have been requested by my brother Byles, who was present on Saturday last, to say that he agrees that the conviction was right. I also have considered the case and am of the same opinion.

BLACKBURN, J.—I think there was evidence for the jury that the prisoner abandoned the child. If a stranger to it had been charged with the same offence under similar circumstances, I think he would have been under no legal obligation to protect it, and would have been entitled to an acquittal. There might be a moral duty, but it would be one of imperfect obligation, for breach of which he could not be convicted. But the father was legally bound to protect and maintain his own child, and if he had failed to do so, and it had in consequence died, there can be no doubt that he would have been guilty of manslaughter. He is bound to protect the child, and though no mischief may in fact have happened to it, I think that if it was in danger, and he wilfully left it in that condition, he abandoned it by neglecting a duty, which it is clear that physically he was in a position to perform.

Conviction affirmed.

CHANCERY.

JOYCE V. COTTRELL.

Administration—Maintenance—Claim by mother.

Advances made by a mother for the maintenance of a son during his minority will be regarded as acts of bounty, unless there is evidence of an intention of claiming repayment.

In order to establish a claim for repayment of money expended for maintenance subsequent to majority, a contract must be shown.

[19 W. R. 1076—V. C. W.]

This suit, which now came before the Court on further consideration, was one for the administration of the estate of Joseph Cottrell, who died intestate in September, 1861, and the question which now arose was whether his mother was entitled to claim out of her son's estate a sum of £920, which she had expended for his maintenance during his minority and after he attained twenty-one years of age.

A suit of *Cottrell v. Cottrell*, had previously been instituted for the administration of the estate of Samuel Cottrell, the father of the intestate, who had by his will bequeathed a sum of £100 to each of his children, and a further sum of £1,000 to his son Joseph. The will contained a declaration that the legacy should not be paid to