

Eng. Rep.]

RE AN ARTICLED CLERK.—JOYCE V. COTTRELL.

[Eng. Rep.]

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.

QUEEN'S BENCH.

Re AN ARTICLED CLERK.

Attorney—Articled clerk—Sufficiency of service—6 & 7 Vic. c. 73, ss. 3, 6, 13.

On application by an articled clerk to be admitted as an attorney it appeared that, upon the execution of the articles and without any service under them, he became pupil to a conveyancer and continued so for more than a year. Upon the expiration of his pupillage the articles were assigned to another attorney, and he served under that and subsequent assignments for more than four years.

Held, that a year of the pupillage was equivalent to a year's service under the articles, and that he was entitled to admission.

[19 W. R. 780.—Bail Court.]

C. Wood, on behalf of an articled clerk, applied that he might be admitted as an attorney. It appeared by the affidavit that the applicant had been articled to his father, an attorney, and that immediately upon the execution of the articles, and without service under them, he entered the chambers of a conveyancer as a pupil. He remained there more than a year, and upon the expiration of that time his articles were assigned to another attorney; he served under that and subsequent assignments for more than four years. The Incorporated Law Society refused to admit the applicant on the ground that as he had not served at all under the articles to

his father, but had been a pupil to a conveyancer during the whole continuance of those articles, he was not entitled, by section 6 of 6 & 7 Vic. c. 73, to reckon twelve months' pupillage with the conveyancer as service under those articles.

6 & 7 Vic. c. 73, s. 3 enacts that, except as thereafter mentioned, no person shall, after the passing of the Act be admitted as an attorney, unless he shall have been bound by contract in writing to serve as clerk for and during the term of five years to a practising attorney or solicitor, and shall have duly served under such contract for and during the said term of five years.

Section 6 provides that any person so bound, and who shall be and continue as pupil with any practising barrister for any part of the said term not exceeding one whole year, shall be capable of being admitted as if he had served the whole period of the five years with the attorney or solicitor to whom he was bound.

Section 13 provides for an assignment of the articles in certain cases, and enacts that service under the new contract shall be good and effectual.

BLACKBURN, J.—was of opinion that by section 6, a year of the period spent by the applicant as a pupil was equivalent to a year spent under the original articles, though there had been no actual service under those articles: and that, as by section 13, four years' service under assignment was as effectual as four years' service under the original articles, the applicant was entitled to admission.

Order accordingly.

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 his son Joseph until he attained the age of twenty-eight years, at the discretion of his guardians, but the interest was directed to be applied for his maintenance and education. Accordingly in that suit an inquiry was directed as to who had maintained Joseph Cottrell from the date of his father's death, and what was proper to be allowed in that respect, and to what date, and the chief clerk certified that Joseph Cottrell had been