

[Eng. Rep.]

THE QUEEN V. WHITE.

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right to call the attention of the Dominion Government and the Legislature to what we conceive to be the actual state of the law upon a question so deeply affecting the trade and commerce of the country.

It may be that with a view to their protection, Parliament may deem it advisable to enact a law for the whole Dominion, founded on the Imperial Act of 1854, with such modifications as the experience of the mother country and the decisions since that period will naturally suggest.

In the case in hand, we are constrained by the authorities to set aside the verdict of the plaintiff, and award the defendants a new trial with costs of argument.

Rule absolute.

Plaintiff's attorney, *Mr. Peter Lynch.*

Defendant's attorney, *Mr. J. N. Ritchie.*

[We are indebted to Mr. N. H. Meagher, student-at-law, Halifax, as well for the above report as for others previously received.—Eds. L. J.]

ENGLISH REPORTS.

COMMON PLEAS.

THE QUEEN V. WHITE.

Abandoning child whereby life was endangered—Child allowed by father to remain in danger—Misdemeanour—24 & 25 Vic. c. 100, s. 27.

The prisoner was convicted under section 27 of 24 & 25 Vic. c. 100, of having unlawfully abandoned and exposed a certain infant under the age of two years whereby its life was endangered.

The prisoner and his wife were the parents of the child, which was about nine months old on the 1st of September, 1870, the time mentioned in the indictment. They had been living apart for three weeks, when the mother came to the house of the prisoner at seven o'clock in the evening, laid the child down outside the door, and called out, "Bill, here's your child; I can't keep it; I am gone." She then went away, and was not seen again that night. Shortly afterwards the prisoner came out, stepped over the child, and walked away. About ten o'clock the prisoner returned, and was told that the child was lying outside the house, in the road; he then refused to take it in. About one a.m. a police constable who had been sent for found the child lying in the road, cold and stiff; he took charge of it, and by his care it was restored to animation. At 4.30 a.m. the prisoner admitted to the constable that he knew the child was in the road.

Held, that the prisoner was properly convicted.

[19 W. R. 783, C. C. R.]

Case stated by the Chairman of Quarter Sessions for the County of Southampton. The prisoner was indicted at the Quarter Sessions for the County of Southampton, held at Winchester, on the 19th day of October, 1870, under the Act 24th and 25th Vic. c. 100, s. 27, for that he did on the 1st day of September, 1870, unlawfully and wilfully expose and abandon a certain child, then being under the age of two years, whereby the life of the said child was endangered. It appeared from the evidence that Emily White (the wife of the prisoner) was the mother of the child, which was about nine months old at the time mentioned in the indictment. On that day 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.