

Crim. Ct.]

REGINA V. TOPP—RECENT ENGLISH PRACTICE CASES.

the conclusion reached from the peculiar circumstances of the case, although no reasons whatever were given for the judgment. They expressed the opinion that "under the circumstances," and as that was "the first case of the kind under the statute, that a lenient punishment ought to be inflicted." It has to be observed also with reference to that case, that no counsel appeared on the 13th November, 1869, when it should have been argued; that the Court, consisting of Kelly, C. B., Martin, B., and Blackburn, Lush, and Brett, JJ., reserved it for the consideration of the fifteen judges. On the 22nd January, 1870, counsel appeared to argue the case for the prosecution, but was not heard, as the Court, thinking that no counsel appeared, had already considered the case, and a majority of them had arrived at a conclusion in favour of the prosecution. The sending that infant in the hamper on that journey, totally unattended and uncared for, when the turning the hamper upon its end might have caused the whole of its weight to rest on its head; or the being carried with other parcels or hampers might have suffocated it for want of air, or other causes injurious to health, could only be regarded as endangering the life of the child.

I cannot say that the life of the child in this case was endangered, especially when I do not see that its health suffered. When a person leaves a child at the door of its putative father, *where it is likely, or almost certain, to be taken into the house immediately*, it would be too much to say that if death ensued it would be murder in the person who left it there. The probability there would be so great (almost amounting to a certainty) that the child would be found and taken care of, that malice *prepens*e—the essential ingredient in an accusation for murder—could not be presumed. If, on the other hand, it were left in an unfrequented place, such as an abandoned or distant shed or stable or barn, the inference would be at once drawn that the party left it there in order that it might die.

Here the child was exposed near a public street, on the doorstep of a house, and at an hour when it would almost sure to be seen, and its cries heard, at an hour when and place where persons not only might pass, but were frequently passing. I think, therefore, a jury, if trying this case, might very fairly find that the important

constituent in the offence alleged in this indictment is wanting—which is, that the life of the child was endangered—especially in view of the fact that its *health* did not suffer in the least. Had it been alleged that its health was likely to have been permanently injured the case might have been different; but even that would be doubtful. The defendant is acquitted.

(See judgment of Coltman, J., in *Regina v. Walters*, 1 Car. & Mar. 170.)

RECENT ENGLISH PRACTICE CASES.

VIVIAN V. LITTLE.

Production—Inspection of documents.

[L. R. 11 Q. B. D. 370.]

In an action of trespass to land brought against the committee of a lunatic whose title-deeds are in the custody of the court having jurisdiction in lunacy, an order on the defendant for inspection of the documents ought not to be made, as they are not in his possession or control.

IN RE BRADFORD, THURSBY AND FARISTS.
Imp. Jud. Act, 1873, sec. 49—Ont. Jud. Act, sec. 32.

Costs—Order on solicitor personally to pay—Appeal.

[L. R. 11 Q. B. D. 373.]

An order that the costs of an application at Chambers on behalf of a client shall be paid by his solicitor personally, is within the above section, and therefore not subject to any appeal except by leave.

LOPES, J.—It is said that this is not a true construction of sec. 49 (Ont. sec. 32), and that the Legislature intended to deal only with costs as between party and party. I cannot put such a limited construction on the words.

POLLOCK, B.—The Master had power to make the order as to costs, for he had the same power as a Judge in Chambers, and a Judge in Chambers has the same power as the Court, and the Court has power to exercise its jurisdiction over its officers, and to order that costs shall be paid by them personally. . . . I have no doubt that the present is a case in which the discretion of the Master and of the learned