

forth that he had been committed for trial for an offence triable by the Judge under the provisions of part LIV. of the Criminal Code, and had elected to be tried therefor before a Judge without the intervention of a jury, stated such offence as follows: "For that the said Thomas C. Wilkes, at Hamilton, in the said county, for several months last past, did unlawfully omit, without lawful excuse, to supply his wife and child with the necessaries of life, whereby the health of each of them became and was and is likely to become permanently injured."

Presumably this is what is meant by the expression "criminal non-support" in the stated case.

The offence charged is created by sec. 210 (2) of the Code, which enacts that "every one who is under a legal duty to furnish necessaries for his wife is criminally responsible for omitting, without lawful excuse, to do so, if the death of his wife is caused or if her life is endangered or her health is or is likely to be permanently injured by such omission," and sec. 215, as amended by the Act of 1893, enacting that "every one is guilty of an indictable offence and liable to three years' imprisonment who, being bound to perform any duty specified in sec. 210, without lawful excuse neglects or refuses to do so, unless the offence amounts to culpable homicide."

The case states the facts in evidence upon which the Judge acted in convicting the accused. We cannot interfere merely on the ground that a conviction is against the weight of evidence: *Regina v. Bowman*, 3 Can. Crim. Cas. But, if there is no evidence to bring the charge within the terms of the Code, the conviction is contrary to law and cannot be maintained.

Assuming that, in the circumstances, a legal duty was cast upon the husband to provide necessaries for the wife, facts must be found which create the criminal responsibility for the omission to perform it, and these facts are either that the death of the wife has been caused (which gives rise to a prosecution of a different nature from that now in question), or that her life is endangered, or that her health is or is likely to be permanently injured by such omission. These conditions of criminal responsibility are expressly provided by sec. 210. It was, therefore, necessary to allege, and it is