

of a fraud, &c." In this clause we see that there must be a purchase with intent to defraud. If we look at the evidence of the defendant and of his clerks, Marcotte and Plouffe, it is difficult to see evidence of a purchase with intent to defraud. I see no evidence that the defendant agreed to take the goods from Laferty. On the contrary the goods were sent without his desiring to have them, for they were not what he wanted. This is probably the case of a selling agent dealing with a person in good credit and eager to make a sale and gain his commission. It is to be regretted that we have not the evidence of Laferty as to the circumstances connected with his interview with Fauteux. We do not know whether he would contradict or confirm the story told by Fauteux and his two clerks. Under these circumstances I cannot say that the fraudulent intent is proved which would justify the condemnation asked for by the plaintiff. At the same time, I am of opinion that the evidence establishes that the defendant in the beginning of August knew or believed that he was unable to meet his engagements. The inventories made of his assets and liabilities show his real condition, and must have been known to him, and it is an unfavorable aspect of the case that in previous years he has bought goods to the amount of \$6,000 or \$7,000, but that last year his purchases were over \$36,000. Still we have to look at this purchase as it is presented by the witnesses who deny a voluntary *consensus* by the defendant to buy from Laferty. The only witness of plaintiffs, New, besides defendant, as to the sale, was not present at it, and refers to Laferty, as having made the sale. On the whole, I find it neither alleged nor proved that the defendant Fauteux bought the goods in question on credit with intent to defraud the plaintiffs, and the demand is therefore dismissed for imprisonment, and judgment will go simply for the sum of \$428.31 and costs.

F. J. Keller for plaintiff.
J. Doure, Q.C., for defendant.

COURT OF QUEEN'S BENCH.

MONTREAL, June 21, 1879.

Sir A. A. DORION, C. J., MONK, RAMSAY, TESSIER & CROSS, JJ.

THE QUEEN v. SMITH.

Refusing to provide necessary food and clothing—32 & 33 Vict., c. 20, s. 25—Defective Legislation.

RAMSAY, J. This is a case reserved by the

General Sessions of the Peace. The defendant was indicted under section 25, 32 & 33 Vic., cap. 20, for that he, "on the 7th day of April, 1879, at the City of Montreal, &c., then being the husband of one Bridget Doyle, his wife, and then being legally liable to provide for the said Bridget Doyle as his wife as aforesaid necessary food and clothing and lodging, unlawfully, wilfully, and without lawful excuse did neglect and refuse to provide the same, against the form," &c. A motion was made at the opening of the case to quash the indictment on the following grounds: 1st. Because the indictment did not allege that the defendant had the means and was able to provide the necessary food, clothing and lodging for the said Bridget Doyle. 2nd. Because the said indictment did not allege that the neglect on the part of the defendant to provide the necessary food, clothing and lodging for the said Bridget Doyle, endangered the life or affected the health of Bridget Doyle. The motion was rejected, and on the trial the accused was found guilty, and the Judge of Sessions reserved the two following questions: 1st. Whether the capacity of providing on the part of the defendant should have been alleged. 2nd. Whether the neglect or refusal to provide for his wife, should have been alleged to be of a nature to endanger her life, or to permanently injure her health.

With regard to the [first of these questions, this Court is of opinion that the indictment having followed the words of the Statute, it is sufficient, without alleging that the defendant had the means to provide necessary food, &c., for his wife. As to the second question, it is to be remarked that the section on which this indictment is drawn, is in great part borrowed from the 14th & 15th Vic., cap. 100, s. 26. The phraseology of the two sections is identical, except that the Canadian Act extends the provisions of the law to husbands, parents, guardians, or committees, nurse or other person, as well as to masters and mistresses, failing to provide necessary food, clothing or lodging. But the Canadian Act goes on, strictly following the words of the English Act, "or unlawfully or maliciously does or causes to be done any bodily harm to any such apprentice or servant, so that the life of such apprentice or servant is endangered, or the health of such apprentice or