

Criminal Code, 1892, which is as follows:—"Every one who is under a legal duty to provide necessaries for his wife, is criminally responsible for omitting, without lawful excuse, so to do, 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." Evidence was offered on behalf of the prisoner that at the time the marriage took place it was agreed between the prisoner and the person now his wife that they were to live at their respective houses in the city of Windsor, and be supported as before the marriage, until the prisoner obtained a situation where he could earn sufficient for their maintenance. This evidence was rejected. The question reserved was whether this evidence should have been admitted. Counsel for the prisoner contended that evidence of such an agreement was admissible, citing *Regina v. Nasmith*, 42 U. C. R., at p. 249. Counsel for the Crown contended, that although the evidence might be given in answer to an action by the wife for alimony, it could not be given in answer to an indictment of the prisoner for not performing his duty to the public. He cited *Regina v. Plummer*, 1 C. and K., 600; *Hunt v. De Blaquiere*, 5 Bing., 550. Armour, C.J.—The evidence is not an absolute answer to the indictment, of course, but it is evidence to go to the jury of a lawful excuse; it is evidence which tends to show a lawful excuse. It may not be decisive of the case, but it should have been admitted. Falconbridge, J.—I quite agree. Street, J.—I cannot see that the evidence is admissible in any view. Order

made under section 746 of the Code, directing a new trial.

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SAMPLE v. McLAUGHLIN.

[BEFORE ARMOUR, C.J., FALCONBRIDGE AND STREET, JJ., THE 19TH MAY, 1897.

Security for costs—Application by solicitor on record against parties who repudiate his authority—Solicitor is officer of the Court—Charge of improper conduct should be freely investigated.

Judgment on appeal by the plaintiffs' solicitor on the record from an order of the Master in Chambers, dismissing an application by the appellant for security for costs of proceedings taken by two of the plaintiffs, Thomas and Andrew Sample, to set aside the judgment in this action, and strike their names out of the action, upon the ground that the solicitor had no authority from such plaintiffs to bring the action in their names. Held, that, under the circumstances, the solicitor was not entitled to require these plaintiffs to give security for costs. He brought them into Court by the use of their names, and they were entitled to come into Court to defend themselves against such a use of their names without being required to give security for costs, upon the principle laid down in *Re Perry*, 2 Chy. D. 531. Held, also, that where a charge of improper conduct is made against a solicitor, who is an officer of the Court, by a person out of the jurisdiction, the Court ought not to order security for costs, and thus prevent such a charge being investigated. Appeal dismissed with costs. W. M. Douglas, for appellant. Aylesworth, Q.C., for respondents.