

MAY 26TH, 1906.

C.A.

REX v. WILKES.

*Criminal Law—Omission to Provide Necessaries for Wife—  
Criminal Code, secs. 210 (2), 215—Injury to Health—  
Absence of Proof of—Necessaries Supplied by others—  
Conviction Quashed.*

Case stated by the junior Judge of the County Court of Wentworth exercising criminal jurisdiction under part LIV. of the Criminal Code, 1892, setting forth that Thomas C. Wilkes, the defendant, was charged before the police magistrate for the city of Hamilton with "criminal non-support" of his wife and child; that he elected to be tried and was tried before the Judge, and was found guilty; that sentence was suspended, and he was ordered to pay \$3.50 per week to his wife and \$10 costs to the solicitor for the private prosecutor, till the stated case should be disposed of; that Wilkes married the complainant in 1901; that they lived together as man and wife till August, 1902, when the wife left the husband; that the Judge found that she was justified in leaving him, and was still justified in living apart; that she and her child went to live with her mother, upon whose charity they have ever since been and are now dependent, and on account of such charity they have suffered no privation, but she has no means of her own of support; that defendant is a working man, and earns 30 cents per hour, and usually works 50 hours per week.

The question asked of the Court was whether, upon these facts, a conviction could be supported, in the absence of proof that the wife was actually in need of food, clothing, and shelter.

J. L. Counsell, Hamilton, for defendant.

G. S. Kerr, Hamilton, for private prosecutor.

The judgment of the Court (MOSS, C.J.O., OSLER, GARROW, MACLAREN, MEREDITH, J.J.A.), was delivered by

OSLER, J.A.:—The charge or indictment upon which the accused was tried, dated 13th February, 1906, after setting