

2. *The words in sect. 25 of 32-33 Vict., cap. 25, "so that the life of such apprentice or servant is endangered, or the health of such apprentice or servant has been, or is likely to be, permanently injured," must be read as applying to the "wife, child, ward, lunatic or idiot," mentioned in the first part of the section, notwithstanding that in the repetition of the enumeration "apprentices or servants" are alone mentioned.*

The prisoner was indicted for neglecting to provide for his wife the necessaries of life.

Esther Desormeau, wife of the prisoner, was brought up as a witness on behalf of the Crown. On the part of the prisoner her evidence was objected to.

RAMSAY, J. I have to decide as I did the other day in the case of *Gauthier*, who was not defended, that the evidence of the wife is admissible, as it seems to me that the section of the Act under which the prisoner is indicted (32 & 33 Vic. c. 20, s. 25) must be considered as creating a constructive assault. It appears, however, that the Courts in Ontario have arrived at a different conclusion, and if the case results in a verdict of guilty I shall reserve the point.

The woman's evidence was then proceeded with.

The Crown case being closed, Mr. *Prefontaine*, the counsel for the prisoner, submitted that there was no case to go to the jury, inasmuch as there was no evidence of destitution of such a nature as to endanger or be likely to endanger the health of the complainant.

*Davidson*, Q.C., for the Crown, said that if the last portion of the section, "so that the life of such apprentice or servant is endangered, or the health of such apprentice or servant has been, or is likely to be, permanently injured," is to be considered as applying to the whole of the offences mentioned in section 25, the indictment, which is drawn according to the form usually employed in this Court, is insufficient. He directed the attention of the Court to the fact that the French version, by its punctuation, seemed to make these words applicable only to the offence against the apprentice or servant.

RAMSAY, J. The question now raised has not come under my notice for the first time,

and therefore I am prepared to express my opinion at once. It seems to me that section 25 sets forth varieties of a new offence which are all controlled by the words referred to by the learned counsel for the Crown. This is the natural construction of the sentence, for it is followed by words which are necessarily applicable to all that goes before, the quality of the offence and its punishment. The sense also indicates this, for if these words do not apply to the first part of the sentence as well as to the last, we should have the actual doing of bodily harm made innocent, unless there was the likelihood of its doing permanent injury, while the refusal or neglecting to provide the necessaries of life alone would be an offence: that is to say, an act of omission would be more readily considered to be criminal than an act of commission. Of course I observe that in the repetition of the enumeration of the persons who may be the subjects of these offences, apprentices and servants are alone mentioned, but I think they are mentioned as representatives of the class fully enumerated before, and the Statute saying "such apprentice or servant," the others are to be understood.

I attach no importance to the difference of punctuation between the French and English versions, for two reasons—1st, This Statute is borrowed almost textually from an English Act; and 2ndly, the smaller divisions of punctuation are a very slender guide to interpretation.

In addition to this, I think that without these words in the Statute, it would be necessary to prove such a deprivation of the necessaries of life as would amount to a constructive assault. It surely could not be intended to say that a man must be obliged to establish in a criminal court some lawful excuse each time he refuses to give his wife such food, clothing or lodging as she might choose to demand. In this case there is no evidence of destitution at all. It amounts to this, that the first witness was refused money by her husband at Longueuil, where he was engaged at work, and where she followed him. That she went back to her sisters, and there refused to eat either at dinner or supper, although food was offered to her—that since that time she has lived as