

Vict., ch. 20, sec. 25. That statute made it a misdemeanor in any person who was legally liable as husband, guardian, etc., to provide for any person as wife, child, apprentice, etc., necessary food, clothing or lodging, wilfully and without lawful excuse to refuse or neglect so to provide. The majority of the Court in *R. v. Bissell*, 1 O.R. 514, (Hagarty, C.J., with whom Cameron, J., concurred) thought the prosecution had failed to shew that the case falls within the exceptions allowed to the general rule. As said by Hagarty, C.J., at p. 519:—

"Force or injuries to her person or liberty, forcible or fraudulent abduction, or inveigling into a marriage procured by friends have been held to be admitted exceptions. I have not met with any case where the charge was wholly of non-feasance, decided to be an exception to the rule. It is said, not very directly, that there is also an exception from necessity where the offence cannot be proved except by the wife. Conceding for the argument that it is so, the case presented to us does not shew any such necessity. The charge against defendant is stated to have been proved by other witnesses. The wife was called to prove the non-supply of money from a named date, with a refusal so to do. In cases like these it may be that the charge can be fully made out without the wife's evidence."

Armour, J., afterwards of the Supreme Court of Canada, dissented from the opinion so expressed by Hagarty, C.J., and thought the wife was a competent witness. He based his reasoning on two grounds, first from the necessity of the case, and secondly, because it is a crime committed by her husband against her. He added:—

"The second ground really springs from the first, for the reason of the wife being admitted as a witness against her husband where a crime has been committed against her by her husband is "from the necessity of the case," for were she not admitted, the crime might go unpunished and in all the authorities that I have been able to examine upon the subject, I find necessity to be the foundation for the admission of a wife to testify against her husband; and if on a prosecution such as the one I am now considering a failure of justice must take place unless the wife is admitted to testify. I think she is competent to testify."

See also reference to the *Bissell* decision in *Mulligan v. Thompson*, 23 O.R. 54.

The decision in the *Bissell* case cannot well be said to have passed into settled law for the subsequent statute, the Canada Evidence Act, 1893, made the wife a competent and compellable witness in such a case. See now secs. 242 and 244 of the Criminal Code, 1906, and the revised Canada Evidence Act, R.S.C. 1906, ch. 145, sec. 4.

The importance of the *Bissell* decision is now revived because of the legislation creating the new offence stated by the added sec. 242A, inserted in the Code by the Code Amendment Act of 1913 (1913 Can. Statutes, ch. 13). The legislation is of a similar character to that under consideration in the *Bissell* case, and it furthermore bears indications that it was to be available as a remedy for the wife against her husband. The offence is made punishable "on summary conviction"; a new duty in so far as the criminal law is concerned is created with a criminal penalty for infraction,