

Ontario, R.S.O. 1914 ch. 231, sec. 18 (d): "Any person who . . . is guilty of an act or omission which contributes to a child being or becoming a neglected child, shall incur a penalty not exceeding \$100 and in lieu of or in addition thereto shall be liable to imprisonment for a term not exceeding one year."

T. N. Phelan, for the defendant.

J. E. Jones, for the informant and the Commissioner.

MIDDLETON, J., in a written judgment, said that the husband of Katherine Vera Reynolds and the father of the child left Canada on the 17th May, 1916, to serve with His Majesty's forces abroad. During the husband's absence, the accused was a frequent visitor at the house where the mother of the child lived, and from June, 1916, had improper relations with her. The husband recently returned on leave; and the wife and the defendant were prosecuted before the Commissioner. The wife admitted the truth of the charge, and was allowed to go upon suspended sentence. Upon her evidence, the defendant was convicted and sentenced to 9 months in gaol.

There was no evidence, apart from the statutory definition of a "neglected child" (sec. 2 (h) of the Act), that this child was in any way neglected. There was no suggestion that she was not well-fed, well-clothed, and cared for. The only thing was that the mother and the defendant were guilty of immoral conduct. At the time the offences were committed, the child was asleep; but the defendant was frequently in the house while the child was awake, and it learned to call him by his Christian name.

In *Rex v. Owens* (1915), unreported, Clute, J., held that there was not, under the statute, any right to punish unless it was shewn that there was an actual injury to the child; and, when the child was of such tender years as to be unable to appreciate the moral quality of its mother's conduct, her immorality did not ipso facto make the child a neglected child within the meaning of the Act; and, consequently, the adulterer could not be convicted of contributing to making the child a neglected child.

The learned Judge felt bound to follow this decision and to quash the conviction upon the ground that the evidence did not disclose an offence against the statute.

The learned Judge also suggested that the Ontario Legislature had probably exceeded its powers in creating a statutory crime and making that crime punishable by a tribunal of its own creation, although the Provincial authority has not power to appoint Judges.