

alleged in the charge, that the wife's health was or was likely to be permanently injured by the accused's neglect of duty; but this fact was not found, and could not have been found, by the Judge, because there was no evidence whatever of it. On the contrary, it is found that the wife had "suffered no privation," that is to say, that she was not in want, because her needs had been supplied by her mother, with whom she was living. Unless the husband's omission to perform his legal duty, where it exists, causes danger to the wife's life or permanent or probably permanent injury to her health, there is no criminal responsibility on his part: *Regina v. Nasmith*, 42 U. C. R. 242. And the fact that she is maintained by the charity of others, or gains her livelihood by her own means or exertions, forms no ground for a prosecution under the Code, which was not intended as a means of enforcing the husband's civil responsibility for the wife's necessities, either at her own instance or that of those who supply them. She may proceed against him, in a proper case, under the Deserted Wives' Maintenance Act, R. S. O. 1897 ch. 167; but the Criminal Code cannot be invoked in aid, as here it seems to have been, of an order made under that Act.

The conviction must, therefore, be quashed.

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