

Province of Nova Scotia.

COUNTY COURT.

Wallace, Co. J.]

REX *v.* ALLEN.

[17 D.L.R. 719.]

Husband and wife—Non-support of wife or children—Summary proceedings—Wife as a witness.

The amendment to the Criminal Code in 1913, by the addition of new sections 242A and 242B (3-4 Geo. V., ch. 13), will not affect the interpretation of the words "the three last preceding sections" used in sec. 244; the three sections intended are 241, 242 and 243, and these relate to indictable offences as to criminal omission of duty, while the added sections relate to summary convictions for neglect to provide for wife or children; the reference in the Canada Evidence Act, R.S.C. 1906, ch. 145, sec. 4, to offences against sec. 244 does not constitute the wife of the accused a competent witness against him on a summary hearing of a charge under the added section 242A.

Witnesses—Wife as witness against husband—Criminal law—Non-support triable under summary conviction procedure.

The evidence of the wife is not admissible against her husband on the hearing before a magistrate of a charge under Code sec. 242A (amendment of 1913) whereby it was made an offence punishable on summary conviction for a husband to neglect without lawful excuse to provide for his wife and children when destitute, as no corresponding amendment was made to the Canada Evidence Act when sec. 242A was added to the Code.

Statutes—Amending statutes—New section introduced with number and letter designation.

Section 242A of the Criminal Code which was inserted by the Code Amendment Act, 1913, is not to be considered a sub-section of sec. 242, but as an entirely independent section.

H. C. Morse, for the appellant, the defendant. *John J. Power*, K.C., for the respondent, the prosecutrix.

ANNOTATION ON ABOVE CASE IN DOMINION LAW REPORTS.

The case of *Rex v. Allen*, above reported, raises an interesting question which there appears to have been no occasion to consider in England since the Criminal Evidence Act, 1898 (Imp.) or heretofore in Canada since the Canada Evidence Act. That is whether, assuming as is done in the *Allen*