The Legal News.

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CRIMINAL LEGISLATION.

In the case of *Regina* v. *Smith*, Mr. Justice Ramsay directs attention to what he considers an oversight in the Statute respecting offences against the person, 32-33 Vic., cap. 20, sec. 25. The Canadian Statute follows the terms of the English Act, but instead of confining the enumeration to masters and mistresses, "husbands, "parents, guardians, committees and nurses" are included in the list of those who are guilty of a misdemeanor, if they wilfully and without lawful excuse refuse or neglect to provide necessary food, clothing or lodging for the wife, child, ward, lunatic, etc., for whom they are legally liable to provide. The Canadian Statute then proceeds to copy the English section without repeating this enumeration in the latter portion; and the clause respecting endangering life or impairing health is not made to apply to any but masters and mistresses. A husband having been convicted under this section of refusing to provide his wife with necessary food, the Court reserved the questions: 1st. Whether the capacity of providing on the part of the defendant should have been alleged. 2nd. Whether the neglect or refusal to provide for his wife should have been alleged to be of a nature to endanger her life, or to permanently injure her health.

The Court of Queen's Bench, in deciding the points reserved, were unanimously of opinion that the terms of our Statute are too positive to be disregarded, but the extension of the offence to the persons enumerated, as well as the change in the nature of the offence caused by the interpolation, was criticized by Mr. Justice Ramsay, and the necessity of caution on the part of those who have to give effect to the law was pointed out.

CHAMPERTY.

The *Albany Law Journal* reviews several recent American decisions on the subject of champerty, and as the attention of the profession in Canada has been directed to this question by the case of *Dorion & Brown*, it may be worth while to notice some of the cases referred to.

In New York State, the most important decision is *Coughlin* v. *N. Y. Central & H. R. R. Co.*, 71 N. Y. 443, in which it was held that an attorney may stipulate with his client for an agreed compensation, and make it absolute or contingent, but he cannot advance the money needed to carry on a prosecution as an inducement to the placing of a claim in his hands for prosecution. This decision was based upon a statutory enactment of New York State, prohibiting attorneys from buying claims for prosecution, and from lending or advancing means for the purpose of inducing a party to place a claim in their hands for collection.

The Supreme Court of Iowa, in *Adye* v. *Hanna*, 47 Iowa, 264, held that an agreement by an attorney to pay any judgment that should be finally rendered against his client in a certain suit, in consideration that the latter would appeal the case and pay the attorney a fee for conducting the same, was void as against public policy, and could not be enforced by either attorney or client.

On the other hand, the Supreme Court of New Jersey, in *Schomp* v. *Schenck*, 40 N. J. L. R. 195, sustained an agreement by which an attorney undertook to set aside a will for a client, on the condition of getting five per cent of the recovery, in case of success, and his expenses in case of defeat. And in *Duke* v. *Harper*, 66 Mo. 51, the Court held that in Missouri champertous contracts are void; but a contract between attorney and client is not champertous, because the attorney agrees to receive, as a compensation for his services, a portion of the property in controversy. Bouvier defines champerty: "A bargain with a plaintiff "or defendant, *campum partire*, to divide the "land or other matter sued for between them, "if they prevail at law, the champertor under-"taking to carry on the suit at his own expense. "This offence differs from maintenance in this, "that in the latter the person assisting the "suitor receives no benefit, while in the former "he receives one-half or other portion of the "thing sued for."

NOTES OF CASES.

COURT OF REVIEW.

MONTREAL, June 18, 1879.

JOHNSON, TORRANCE and PAPINEAU, JJ.

BEAUDRY et al. v. BROUSSEAU.

Electoral lists—Property qualification—Value of Usufruct.

JOHNSON, J. This is a Provincial election petition by qualified electors against the return of Mr. Brousseau as member for Verchères, and it contains three separate grounds of objection to the return and election of this gentleman.

First, it sets up, as was done in the Chambly case, that the wrong lists were used. 2nd. The want of legal qualification as a member of the House of Assembly by the candidate returned; and 3rdly, certain irregularities in the voting by which the result of the election might have been affected. Under the first head, the question raised is precisely the same as that which was decided in the Chambly case, only the position of the parties is reversed. There the voting took place under the lists that had ceased to be in force, and the election was, on that ground, set aside. Here the voting was under the new lists actually in force at the time of voting, and therefore, unless we could set aside our own decision in the Chambly case, we must hold here, as we did there, that the votes of electors on the lists at the time of voting are legal votes. We may express our regret that it should have fallen to the lot of the same Judges who heard the Chambly case to hear this one — that is to say, regret if the petitioners should imagine they have lost any advantage; but we have done all that was in our power, by notifying the Judges in our district next on the rota, as the rules of practice require, and we were unable to get their attendance, and we mentioned this to the parties before the present case was heard, and no objection was made. Therefore, we desire merely to say, on that part of the case, that we see no reason to change the opinion we have already expressed, and all the less because the other party, to whose benefit it would inure in the present case, had a right to rely on that decision.

With respect to the second question raised, the want of qualification in the candidate, I must say that it is one that has given me some anxiety; because I have very little to guide me in the books, or in my experience, on the subject. At the same time, there are the plain words of a statute, and the common sense application of it; and I do not think there is any substantial difficulty in dealing with it. The point has been urged on behalf of the petitioners with great ability and fairness, and has been met by the other side with equal ability, and in a spirit of complete truthfulness and candor. Perhaps the best way of stating the pretensions of the parties will be to begin by citing the language of the law itself that requires this qualification. Sec. 124 of the 38th Vic., c. 7, enacts that "no person shall be elected a member of, or vote, or sit as such in the Legislative Assembly of this Province, who is not at least twenty-one years of age, of the male sex, a subject of Her Majesty, by birth or naturalization, free from all legal incapacity, and proprietor in possession of lands or tenements in the Province, of the value of $2,000, over and above all rents, hypothecs, incumbrances and hypothecary claims thereon." Sec. 125 requires a declaration to be made by the candidate, if it is formally demanded in writing; and the declaration he is required in such case to make is as follows:—"I do declare and certify, that I am duly seized to my own proper use and benefit of lands or tenements in the Province of Quebec, of the value of at least two thousand dollars, over and above all rents, hypothecs, incumbrances and hypothecary claims charged upon, or due or payable out of, or affecting the same; and that I have not collusively or colourably obtained a title to, or become possessor of, the said lands and tenements, or of any part thereof, for the purpose of qualifying myself to be returned a member of the Legislative Assembly of the Province." (Then follows a description of the property.)

I may state here that, as I understood the argument of the learned counsel of the petitioners, he contended that this law required of the candidate three things: 1st. The property and possession of the lands or tenements of the required value, and for his own use and benefit; 2nd. That he had not got his title to them collusively or colourably; and 3rd. That

he had not obtained it for the purpose of rendering himself eligible. We think, however, that the two last requirements in reality only constitute one, and that acquiring property for the purpose of qualifying, unless the title be collusive or colourable, is permissible. The language of the Act has that plain and natural meaning, and on principle, as well as on the authority of numerous cases, while the property qualification was required in England, it could never be successfully maintained that a complete and real conveyance of property was vitiated by the fact of itself that it was acquired for the purpose of qualification, or for any other lawful purpose; for if qualification is to exist at all, and does not already exist by virtue of inheritance or previous purchase, there must be some means of qualifying lawfully. Indeed it is frankly admitted in the present case, as plainly as anything can be admitted, that the title to the property in question here (whether a colourable title or a real title) was both given and taken for the express purpose of qualifying Mr. Brousseau; and if that were enough of itself, there would, of course, have been no need of argument at all. Therefore we must look at this part of the case with reference to the circumstances of the acquisition, as showing, on the one hand, a real and effective transfer of property, or, on the other, a merely colourable one.

The facts, as they appear in evidence, are that Mr. C. A. Geoffrion, the counsel for the defendant here, executed a deed of donation *inter vivos* to Mr. Brousseau, on the 20th of April, 1878. This donation is made on the face of it, à *titre d'alimens*, and has a clause excluding it from seizure, and also a prohibition to alienate, or of the free power of alienation, and there is, besides, another stipulation as to the right of reversion to the donor in case of the donee's predecease. These stipulations are in the following terms in the deed: 1. Que le dit morceau de terre et ses dépendances, de même que tous fruits et revenus d'iceux, loyers et produits de toute sorte à l'avenir, demeureront insaisissables, étant donnés à titre d'alimens; mais, bien que la donation soit à titre d'alimens, pourra le dit donataire vendre, échanger ou autrement aliéner le susdit morceau de terre et ses dépendances, pourvu que ce soit avec le consentement exprès et par écrit du donateur, mais non autrement."

"2. Que le dit morceau de terre donné et ses dépendances retourneront au donateur, si le donataire décède avant lui (le donateur), soit que le dit donataire laisse des enfants, soit qu'il n'en laisse pas, ce droit de réversion étant expressément réservé, sans préjudice néanmoins à toute aliénation qui aurait pu en être faite avec le consentement exprès et par écrit du donateur, tel qu'il a été pourvu plus haut."

Mr. Geoffrion, examined as a witness, speaks as follows:—

Question.—"Dans quel but avez-vous donné la propriété à M. Brousseau, n'était-ce pas pour le qualifier et pour le rendre éligible?"

Réponse.—"Je m'occupais activement de l'organisation de l'élection du comté de Verchères: M. Brousseau était, le 20 Avril, 1878, candidat accepté par le parti politique auquel j'appartenais, pour le comté de Verchères. Je savais qu'il fallait une qualification foncière à M. Brousseau: j'ai fait l'acquisition de l'immeuble en question dans le but d'en faire la donation exhibit No. '17' des Pétitionnaires; mais ce n'est pas la seule considération des deux actes qui sont maintenant sous mes yeux Nos. '17 et 18' des Pétitionnaires; mais c'était certainement un de mes buts et le plus important."

Question.—"Voulez-vous dire quel était l'autre but?"

Réponse—"De rendre M. Brousseau propriétaire absolu de l'immeuble en question, et de le mettre, le jour même, en possession légale de l'immeuble, car je vois que j'ai stipulé dans la donation qu'il sera obligé de maintenir un certain bail en par lui recevant les loyers résultant du dit bail."

Question—"N'est-il pas vrai que vous ne vouliez ainsi le rendre propriétaire et le mettre en possession légale que pour le rendre éligible?"

Réponse—"C'était pour cela; mais pour répondre davantage à votre question, je dirai que s'il ne s'était pas agi de le qualifier, je n'aurais pas fait la donation en question; mais, sachant que pour le qualifier, il lui fallait un titre réel et non pas fictif, je l'ai, en vertu de cette acte, rendu propriétaire absolu de l'immeuble, sujet aux restrictions mentionnées dans la donation."

Question—"Comptez-vous que M. Brousseau est obligé de vous tenir compte de cette dona-

tion, sinon d'après les actes, du moins d'après l'équité, en conscience et en honneur ?"

Réponse—" En équité, en conscience et en loi, il n'y est aucunement tenu ; au contraire, lorsque l'acte a été passé je connaissais la portée de la transaction que je faisais, j'avais étudié la loi autant que je pouvais le faire, et je savais qu'il était important que le titre ne fût pas feint; je faisais une chose sérieuse, j'ai formellement déclaré à M. Brousseau qui l'a accepté comme tel, que je ne voulais aucun lien civil de droit entre lui et moi. Je lui ai déclaré, lorsqu'il a même essayé à me dire, 'Geoffrion, tu peux compter sur moi,' que je ne comptais en aucune manière sur lui *en loi*, en lui disant : c'est une donation pure et simple que je te fais. M. Brousseau l'a compris comme tel."

Question—" Maintenant en honneur ?"

Réponse—" Il n'y a point de code absolu sur ce point, mais encore, sur ce point, il n'est pas tenu de me payer ; il n'est, vis-à-vis de moi, tenu qu'à la gratitude qu'un donataire doit avoir pour celui qui lui donne quelque chose."

Question—Est-ce une gratitude qui peut s'évaluer en argent, par une valeur quelconque, ou si c'était une simple reconnaissance ? "

Réponse—" Quand une donation se fait, c'est le plus riche qui donne au plus pauvre ; si jamais M. Brousseau a des moyens de garder cette propriété et de reconnaître la chose, soit en argent, ou autrement, je considère qu'il est, en vertu de la gratitude que je viens de mentionner, tenu de m'indemniser du sacrifice que j'ai fait ce jour-là. Et de fait, depuis, M. Brousseau, le défendeur, m'a déjà rendu des services dont je lui tiens compte."

Question—" Ces services qu'il vous a rendus depuis, sont-ils appréciables à prix d'argent?"

Rponse—" Je crois qu'ils sont appréciables à prix d'argent pour moi ; j'avais un de mes frères qui avait une famille que je supportais en partie, et par l'entremise de M. Brousseau, mon frère a obtenu un emploi public qui le met en état de faire vivre sa famille et qui me libère d'autant. Ces services entre M. Brousseau et moi ne sont pas appréciables à prix d'argent, mais, pour moi, je trouve des avantages pécuniaires comme résultat de la gratitude que M. Brousseau vient de me manifester en agissant ainsi."

Again, further on in his evidence, Mr. Geoffrion says :—" J'ai formellement déclaré à M. Brousseau qui l'a compris comme tel que je ne voulais aucun lien civil de droit entre lui et moi. Je lui ai déclaré, lorsqu'il a même essayé à me dire, 'Geoffrion, tu peux compter sur moi,' que je ne comptais nullement sur lui *en loi* en lui disant : 'C'est une donation pure et simple que je te fais.' M. Brousseau l'a compris comme telle." Then we have also Mr. Brousseau's account of this transaction from his own mouth. He is asked, and answers as follows :

Question—" N'est-il pas vrai que cette donation n'aurait pas été faite si vous ne vous étiez pas présenté à cette élection ?"

Réponse—" Je pense que M. Geoffrion ne m'aurait pas fait une pareille liberalité, si je n'avais pas été pour me présenter."

Question—" Jurez-vous que vous n'êtes pas tenu de donner de considération quelconque, si vous ne remettez pas la propriété ?"

Réponse—" Je n'y suis nullement tenu en loi, et je pourrais même ajouter, en conscience, parce que lorsque M. Geoffrion me fit cette donation, il m'a dit expressément qu'il ne la faisait sous aucune autre condition que celles qui y sont stipulées."

Question—" En honneur, vous considérez-vous obligé ?"

Réponse—" En honneur, c'est une autre chose. Je crois que plus tard, lorsque mes moyens me le permettront, je pourrai indemniser M. Geoffrion des sacrifices qu'il a faits pour me donner cette propriété ; mais je ne me croirais pas obligé de le faire dans aucune acception du sens légal, et même du for intérieur."

Under this state of the facts, the petitioners' counsel has contended, first, that Mr. Brousseau is not duly seized and possessed for his own proper use and benefit (to use the very words of the statutory declaration, which are certainly explanatory of the meaning of the enactment itself) of this property. Secondly, that his title is only a collusive and colourable one obtained for the purpose of qualifying him ; thirdly, that the property itself, even supposing there has been a real transfer, is not worth the requisite sum of $2,000. And, fourthly, the petitioners' counsel have contended that under any circumstances, Mr. Brousseau can have no title, he being an undischarged bankrupt. The order

in which these questions were presented does not seem the most natural one, for there could obviously be no use in examining the nature, the extent of the value of the property, any more than the capacity of the donee to contract, if no property has been really transmitted at all. Therefore the first question is that of the character—real or colourable—of this instrument. No commentary, I think, can be necessary, upon the full admissions which both of these gentlemen make; admissions, I must say, which in my judgment decisively disclose the true character of this transaction. I have great pleasure in saying at once, that I see nothing fraudulent or dishonorable in it, personally attaching to either of the parties in the sense of wrong to others for their own profit; but I do see that one of them was anxious that the other should be elected, and be qualified to be elected, and for that purpose he gave him an estate, or went through the form of giving it, which estate, if the donee had not been elected, he would, no doubt, have felt bound immediately to reconvey to his benefactor. Both of them expressly admit that the object, I may certainly say the main object and probably the only object, of the deed was to qualify the donee. It is true that Mr. Geoffrion says there was another object also, viz., that of doing it according to law; but no one can fail to perceive that one of these was less an object than a means of attaining an object; therefore, if the result had proved that the attempted qualification was useless, it is impossible to understand that Mr. Brousseau, under his own statement of what honor required at his hands, could have avoided giving back this estate the very next moment. In that point of view, therefore, I look upon this transaction as a mere temporary expedient and a sham; and the fact that there was no express stipulation for the return of the property in such a case as I have supposed, is, on general principles, a suspicious circumstance, tending to the conviction that even the main purpose for which the deed was made—though it is now openly avowed—was at the time considered as a thing to be kept dark. I should not hesitate, therefore, in saying that the two concurrent conditions of the statute for the illegality of this transaction are, both of them, present here, the purpose, and the collusion. The one is admitted and the other appears to me an inevitable conclusion of common sense. Therefore, I should not feel disposed to go into the discussion of the nature of the defendant's interest in the thing supposed to be given, considered as a thing by itself satisfying the requirements of the law; but there is one aspect of the nature and the extent of his estate in this property that appears absolutely decisive as to the absence of legal qualification. The restrictions contained in the deed are such as to reduce the defendant's title to a title of usufruct and nothing more. He cannot sell, and the property must go back to the donor if he survives, and whether the donee has children or not. I say the donee cannot sell, although it is said that he may sell with the express consent of the donor; because it really makes no difference, the liberty of proprietorship being shorn of its very essence. I do not say that an usufructuary estate is incapable of qualifying its possessor. I say nothing about it; but I do most expressly maintain that the mere usufruct of a property worth at the utmost $2,000, is a very different thing in point of value, from the right of absolute and entire property itself; and if this lot was worth $1,700, the price paid for it in the morning, and even $2,000 in the afternoon, when it was the subject of this deed of gift, it can only and barely be contended that it was worth that much out and out, and not that what the donor has conveyed of it is worth anything like that sum. The full, absolute and unrestricted right of property with all its attributes might perhaps, at the very outside, be said to be worth $2,000; certainly not the restricted and mutilated rights with which alone this deed invests the defendant. Therefore, the Court is of opinion unanimously to say that the defendant was not, and is not, duly qualified or eligible; and to set aside the election. We do not reach the question of insolvency; it is not necessary to discuss it; but we all think that the rights the defendant has in this property (if he has any) are not worth the required sum of $2,000, and that although it may perhaps be fairly said that the absolute proprietorship is worth that sum, that would be the utmost that could be said, and the defendant could never sell his present limited rights in it for that amount, even if

the required consent was given, if the same limitation of the right of alienation was continued to the vendee.

Lacoste & Globensky for petitioners.
Geoffrion & Co., for defendant.

SUPERIOR COURT.

MONTREAL, June 18, 1879.

TORRANCE, J.

HIRD et al. v. FAUTEUX.

Insolvent Act of 1875, *Sec.* 136—*Purchasing "with intent to defraud."*

The plaintiffs complained of the defendant that on the 2nd August, 1878, they had sold and delivered to him goods of the value of $188.54; and on the 6th August, 1878, goods of the value of $249.77, in all $428.31; that the defendant went into insolvency on the 20th August, 1878, and fraudulently purchased from plaintiffs the said goods, wares and merchandises on credit, knowing and believing himself, and having probable cause for believing himself, at the time of the purchase of said goods and each of them, to be insolvent and unable to meet his engagements, and, moreover, plaintiffs alleged that said defendant concealed the fact of such insolvency and inability to meet his engagements, and his knowledge and belief thereof, from the plaintiffs with the intent aforesaid, to wit, with intent to defraud the plaintiffs. The declaration accordingly concluded for the punishment provided by the Insolvent Act, 1875, section 136. The defendant pleaded the general issue.

TORRANCE, J. The plaintiffs have proved in general terms by William New the sale and delivery. The witness was not present at the sale, and says he does not know that defendant ordered the goods except by the order of Mr. Laferty, and that Mr. Fauteux said they were all right. This was said about the time of the defendant going into insolvency. I understand it to be after the estate had vested in the assignee. I do not see any proof that the goods were bought on credit. Mr. Laferty, who made the sale, is not produced as a witness. The other evidence as to the sale is supplied by the defendant and two of his clerks, Alphonse Marcotte and Michel Plouffe. The defendant says: "Pour bien dire je n'ai jamais acheté de marchandises de ces gens-là, et à l'heure qu'il est je ne les connais pas. Un Mr. Laferty est venu me dire à ma maison qu'un monsieur me demandait au magasin. Je ne savais pas si c'était M. Laferty ou un autre; toujours est-il vrai que dans le temps ma toilette n'était pas faite et que j'étais pressé ce matin là; après m'être préparé, je me rendis au magasin, et là ce M. Laferty m'a fait part du sujet de sa visite: il m'a dit que c'était pour me vendre des marchandises. Je lui répondis que je n'avais pas besoin de marchandises. La-dessus il m'a dit: 'donnez vous le trouble de voir mes échantillons.' Après m'avoir longuement solicité, j'ai regardé ses échantillons et je lui ai dit: 'je n'ai pas besoin de marchandises.' La-dessus je lui tournais le dot, et à ce moment-là, il s'est mis à dire: Tiens, tiens, je vais prendre un ordre, et je vais vous envoyer cela. A ce moment là je passais la porte, attendu que j'étais très pressé, mais je sais qu'il a pris un ordre de son propre chef, et qu'il a inscrit cette ordre sur un morceau de papier. Quand ces marchandises sont arrivées au magasin, j'ai donné l'ordre à mes commis de les mettre de coté, lui disant en même temps que je ne les prenais pas, parcequ'elles ne me convenaient pas."

Alphonse Marcotte, one of the clerks of the defendant, says that Laferty offered goods to Mr. Fauteux, and Mr. Fauteux told him that he did not want them. Michel Plouffe, another clerk, says the same thing, and adds: After which he (defendant) turned his back on Laferty and went off to attend to other business. Mr. Laferty then took an order and sent the goods. Plouffe is then asked, was it Mr. Fauteux who mentioned the goods. He answers, No. The goods which Mr. Fauteux mentioned he did not send. He had no samples of the goods that Mr. Fauteux wished. He says further that the goods were not checked and placed with the rest of the stock, because Mr. Fauteux had not bought them and did not wish to accept of them, seeing they did not suit him. They were put to one side. The clause of the Insolvent Act of 1875 applicable to the case, Section 136, contains these words: "Any person who, for himself, * * * purchases goods on credit * * * knowing or believing himself to be unable to meet his engagements, and concealing the fact from the person thereby becoming his creditor, with the intent to defraud such person, * * * and who shall not afterwards have paid the debt or debts so incurred, shall be held to be guilty

of a fraud, &c." In this clause we see that there must be a purchase with intent to defraud. If we look at the evidence of the defendant and of his clerks, Marcotte and Plouffe, it is difficult to see evidence of a purchase with intent to defraud. I see no evidence that the defendant agreed to take the goods from Laferty. On the contrary the goods were sent without his desiring to have them, for they were not what he wanted. This is probably the case of a selling agent dealing with a person in good credit and eager to make a sale and gain his commission. It is to be regretted that we have not the evidence of Laferty as to the circumstances connected with his interview with Fauteux. We do not know whether he would contradict or confirm the story told by Fauteux and his two clerks. Under these circumstances I cannot say that the fraudulent intent is proved which would justify the condemnation asked for by the plaintiff. At the same time, I am of opinion that the evidence establishes that the defendant in the beginning of August knew or believed that he was unable to meet his engagements. The inventories made of his assets and liabilities show his real condition, and must have been known to him, and it is an unfavorable aspect of the case that in previous years he has bought goods to the amount of $6,000 or $7,000, but that last year his purchases were over $36,000. Still we have to look at this purchase as it is presented by the witnesses who deny a voluntary *consensus* by the defendant to buy from Laferty. The only witness of plaintiffs, New, besides defendant, as to the sale, was not present at it, and refers to Laferty, as having made the sale. On the whole, I find it neither alleged nor proved that the defendant Fauteux bought the goods in question on credit with intent to defraud the plaintiffs, and the demand is therefore dismissed for imprisonment, and judgment will go simply for the sum of $428.31 and costs.

F. J. Keller for plaintiff.
J. Doutre, Q.C., for defendant.

COURT OF QUEEN'S BENCH.

MONTREAL, June 21, 1879.

Sir A. A. DORION, C. J., MONK, RAMSAY, TESSIER & CROSS, JJ.

THE QUEEN v. SMITH.

Refusing to provide necessary food and clothing—32 & 33 *Vict., c.* 20, *s.* 25—*Defective Legislation.*

RAMSAY, J. This is a case reserved by the General Sessions of the Peace. The defendant was indicted under section 25, 32 & 33 Vic., cap. 20, for that he, "on the 7th day of April, 1879, at the City of Montreal, &c., then being the husband of one Bridget Doyle, his wife, and then being legally liable to provide for the said Bridget Doyle as his wife as aforesaid necessary food and clothing and lodging, unlawfully, wilfully, and without lawful excuse did neglect and refuse to provide the same, against the form," &c. A motion was made at the opening of the case to quash the indictment on the following grounds: 1st. Because the indictment did not allege that the defendant had the means and was able to provide the necessary food, clothing and lodging for the said Bridget Doyle. 2nd. Because the said indictment did not allege that the neglect on the part of the defendant to provide the necessary food, clothing and lodging for the said Bridget Doyle, endangered the life or affected the health of Bridget Doyle. The motion was rejected, and on the trial the accused was found guilty, and the Judge of Sessions reserved the two following questions: 1st. Whether the capacity of providing on the part of the defendant should have been alleged. 2nd. Whether the neglect or refusal to provide for his wife, should have been alleged to be of a nature to endanger her life, or to permanently injure her health.

With regard to the first of these questions, this Court is of opinion that the indictment having followed the words of the Statute, it is sufficient, without alleging that the defendant had the means to provide necessary food, &c., for his wife. As to the second question, it is to be remarked that the section on which this indictment is drawn, is in great part borrowed from the 14th & 15th Vic., cap. 100, s. 26. The phraseology of the two sections is identical, except that the Canadian Act extends the provisions of the law to husbands, parents, guardians, or committees, nurse or other person, as well as to masters and mistresses, failing to provide necessary food, clothing or lodging. But the Canadian Act goes on, strictly following the words of the English Act, "or unlawfully or maliciously does or causes to be done any bodily harm to any such apprentice or servant, 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, shall be guilty of a misdemeanor," &c. The special offence then created by the English Act is, first, the refusal or neglect by a person, legally liable as master or mistress, to provide an apprentice or servant with necessary food, so that the life of such apprentice is endangered, or his health is or is likely to be permanently impaired; second, the doing, or causing to be done, to such person any bodily harm, so that the life of such apprentice is endangered, or his health is, or is likely to be, permanently impaired. But by the Canadian Act, strictly interpreted, the special offence is refusing necessary food, &c., no matter whether it endangers life or impairs or is likely to impair health; while on the other hand it excludes husbands, parents, guardians, committees, nurses, and all but masters and mistresses, from the penalties imposed by the Act for assaults which do bodily harm, endangering life or impairing or likely to impair health. It hardly requires to be said that this was not the intention of the Legislature, and that we owe this piece of legislation to a mistake. To arrive at any other conclusion we should have to suppose that the Legislature of Canada had borrowed the phraseology of the law creating a new offence from the Legislature of England, without having a single idea in common on the point. We are now appealed to, and asked to set the law right. However evident it may appear to us that this was not meant, and that it was only intended to extend the provisions of the law to other persons not included in the English Act, we know of no rule of interpretation which would permit of our interfering with the express words of a Statute. It is much to be regretted that we are forced to this conclusion, but the reservation of this case may serve to draw the attention of those in authority to the defects of this section of the law. To this I may, perhaps, be permitted to add that the extension of the provisions of the law, in so far as regards food, clothing, and lodging, to persons other than masters or mistresses, is a very dangerous innovation. It seems to imply that there is some resemblance between the relation of the husband to the wife, the parent to the child, and so forth, to that of the master to his domestic servant or apprentice. I think it may safely be affirmed that this is altogether erroneous. Take, for instance, the relation of husband and wife. It gives rise to no just presumption that the husband is a wrong-doer, that the wife lacks necessary food, clothing, or lodging. It is quite possible that it may be she who should provide these things for her husband. So also it may be said of a parent to a child who is not of tender years. Exposing children of tender years is provided for in the very next section. Let any one imagine the result easily arrived at under this act. A man and his wife have a quarrel and he goes off in a passion, refusing or even neglecting to give her money to go to market. There is no dinner for the wife or for anybody else, and he is liable to be indicted and sent for three years to the penitentiary. Again, it may be asked, does necessary food mean food cooked or uncooked? Is the wife to have her necessary clothing from a milliner, or will an Indian blanket suffice? Those called upon to give effect to this law will require to be very watchful and discreet in putting it in force.

MONK, J., remarked that where the law had made a distinction, it was impossible for the Court to say that no distinction existed. The legislature evidently meant to visit with severe punishment a man who neglected to provide his wife with food. He remembered sending a man to the common jail for a month on a conviction for not providing food for his wife.

Sir A. A. DORION, C. J. The statute had made a singular innovation upon the English statute. There was no reason why the law should have been changed, except that those who put a few more cases in the first part, did not think they should be repeated in the latter part. The Court found that the first part of the statute makes it an offence to refuse food to the wife.

Conviction affirmed.

F. X. Archambault, Q.C., for the Crown.

Greenshields for the defendant.

CORRECTION.—On p. 202, for *Mills & Weare* read *Mills & Meier*. The facts were not quite accurately stated, though the point reported is not affected thereby. The defendants were successful in the Superior Court, and the plaintiffs in Review. The defendants have appealed.