

The statement proposed to be given in evidence was one made by the witness as to what she and the accused said at the time the assault was alleged to have been committed.

Held, that this was material to the matter in issue, and part of the res gestæ, and could be contradicted under the statute. Code ss. 700-701.

Attorney-General, for Crown. *W. E. Roscoe*, Q.C., for prisoner.

Full Court.]

THE QUEEN v. CORBY.

[Jan. 11.

Theft—Improper comment by prosecuting counsel on trial—New trial—Dominion Acts, 1893, c. 31, s. 4, sub-sec. 2.

Defendant was indicted for stealing a quantity of pine oil. He pleaded "not guilty," and on the trial gave evidence on his own behalf. The prosecuting counsel in addressing the jury commented unfavorably on the failure of the defendant's wife to testify.

Held, that the comment was a violation of the provisions of the Act (Acts of 1893, c. 31, s. 4, sub-sec. 2), and that defendant was entitled to a new trial.

Attorney-General for Crown. *A. Drysdale*, Q.C., for prisoner.

Full Court.]

THE QUEEN v. DAVIDSON.

[Jan. 11.

Murder—Dying declaration—Belief of impending death.

On the trial of defendant on an indictment for the crime of murder, the Crown offered in evidence the dying declaration of the deceased, as follows: "He said he was shot. I said 'Do you really say you are shot?' He said 'I am shot in the body. I am going fast.' I said, 'Can't you take my arm and I will take you away.' He said, 'I can never walk again.' I said, 'For God's sake who shot you?' He said, 'Henry Davidson shot me. God help him. I hope he will not be hanged for it.'"

Held, that the evidence showed that deceased was speaking under a sense of impending death, and that the statement then made was properly received.

Held, further, that the fact that deceased asked for a doctor did not lead necessarily to the conclusion that he had still some hope of living.

Attorney-General, for Crown. *C. E. Gregory*, for prisoner.

Province of New Brunswick.

SUPREME COURT.

Vanwart, J.)
In Chambers. }

KELLY v. KELLY.

[Nov. 18, 1897.

Justices Court—Evidence—Title to land—Consent does not give jurisdiction.

Action in a Justices Court on a promissory note by endorsee against maker (the note having been endorsed to plaintiff after maturity). The defendant disputed liability on the ground that he had given the note for cordwood,