any evidence of carnal knowledge apart from what occurred after 1907, the prosecutrix's evidence being self-contradictory and uncorroborated; (5) whether there should be a new trial.

The motion was heard by Moss, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, JJ.A.

T. C. Robinette, K.C., and C. W. Plaxton, for the defendant.

E. Bayly, K.C., for the Crown.

The judgment of the Court was delivered by MEREDITH, J.A., who said that it was within the power of the Court to try the two counts together; that no objection was made, nor any application for a separate trial; so that, if the question were one of law, a reserved case was rightly refused on the first point, whilst, if not one of law, there was no power to reserve it.

The second point also failed—the evidence was admissible, and admitted, upon the second count; and the jury were plainly told that it was not admissible upon, and not to be applied to, the first count. The fact that the trial Judge afterwards withdrew from the jury the second count, on the ground that the evidence of the prosecutrix was inconsistent with guilt does not affect the question materially; . . . the jury were not bound to believe all that she said—they might discredit her as to the earlier and credit her as to the later intercourse.

The last point is one upon which there is . . . conflict of authority in . . . the United States of America; but it has long been the practice of the Courts of this province to permit the production of the child at the trial and the pointing out to the jury of the likeness in the child to the defendant. The cold water thrown upon the practice . . . in Udy v. Stewart, 10 O.R. 591, does not seem to have had an appreciable effect upon it. I am unable to see anything objectionable in principle in such evidence; and it ought to be within the power of the Court to prevent an abuse of the practice. . . . Such evidence seems to have been always considered admissible in England. . . . It is also to be borne in mind that the evidence was given upon the second count, and was withdrawn from the jury; . . . all was withdrawn, and that is sufficient in law, however lame it might be in fact.

Application dismissed.