

HIGH COURT DIVISION.

BOYD, C.

NOVEMBER 13TH, 1916.

*BALDWIN v. HESLER.

Judgment—Application to Open up—Rule 523—Fraud—Discovery of New Evidence—Seduction—Resemblance of Child to Person other than Defendant—Admissibility—Discredited Witness—Affidavits—Weight of Testimony.

Motion by the defendant in an action for seduction, under Rule 523, to set aside the judgment for the plaintiff or suspend its operation.

Bertha Bissett, the girl seduced, was the adopted daughter of the plaintiffs, Henry Baldwin and his wife Alberta.

The motion was made upon the following grounds: (1) that the judgment was obtained by the fraud of the plaintiffs and by coercing Bertha Bissett to give false testimony; (2) that the defendant was taken by surprise in that dates were sworn to at the trial of his having had intercourse with the girl long prior to the date given in the statement of claim or sworn to by the plaintiffs in their examination for discovery; (3) that the defendant had discovered, since the trial, new evidence which, if it had been brought forward at the trial, would have changed the result.

The defendant filed an affidavit of Bertha Bissett in which she stated that she never had carnal connection with the defendant; that the plaintiff Henry Baldwin was the father of her child; and that the child strongly resembled him in features and complexion. She also swore that the plaintiff Alberta Baldwin prepared a statement and compelled her (Bertha) to learn it and swear to it in Court.

This was contradicted by the plaintiff Alberta, who gave an explanation of the existence of a statement of dates etc. written by her, which the girl had found after the trial.

There were other affidavits on both sides.

The application was to have been made before the trial Judge, BRITTON, J.; but, in his absence, the parties agreed to its being heard by the Chancellor.

The application was accordingly heard in the Weekly Court at Toronto.

W. M. German, K.C., for the defendant.

A. C. Kingstone, for the plaintiffs.