

that he could not exclude the evidence, because the statements were receivable against the person who made them. He then informed the jury that he could not exclude the evidence, but that it was not evidence against the male prisoner, and said he would again refer to the matter in his charge. The witness then gave the whole statement made to her. In substance it tended to shew that the male prisoner killed the child by striking him with something, she was not sure what, and then throwing him into the water, and that she took no part in the crime.

Subsequently, in his charge, the Chief Justice repeated to the jury several times that the testimony of Whidden was not evidence against the male prisoner, and must not be considered by the jury in weighing the evidence against him.

No witnesses were examined for the defence, and counsel for the prisoners claimed the privilege of addressing the jury last, and contended that the counsel for the Crown was not entitled to reply. W. Proudfoot, K.C., who appeared for the Crown, representing the Attorney-General, claimed the right to reply, and the Chief Justice ruled in his favour.

The jury found the prisoner Alexander Martin guilty, and acquitted the female prisoner.

At the request of counsel for Alexander Martin, the Chief Justice reserved a case for the opinion of the Court of Appeal upon the following questions:

1. Whether or not the alleged statement of the female prisoner to the witness Whidden was properly admitted as evidence, when the prisoners were tried together.

2. Whether or not, no evidence being adduced by either of the prisoners, counsel for the defence had the right of reply, my ruling being that counsel for the Crown, who claimed to be acting on behalf of the Attorney-General, had the right of reply.

The case was heard by MOSS, C.J.O., OSLER, MACLENNAN, GARROW, MACLAREN, J.J.A.

A. R. Hassard, for the prisoner Alexander Martin.

J. R. Cartwright, K.C., for the Crown.

Moss, C.J.O.—The questions raised were fully and ably argued from the prisoner's point of view by Mr. Hassard. But a review of the authorities leads me clearly to the conclusion that the Chief Justice's rulings were right.

No objection was made to the reception of Ethel Martin's statement, on the ground that it was not properly made to