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JANUARY 23RD, 1905.

C.A.

REX v. MARTIN.

*Criminal Law—Joint Indictment of Husband and Wife for Murder—Evidence—Admission or Confession of Wife Implicating Husband—Admissibility in Whole—Caution to Jury—No Evidence against Husband—Counsel Representing Attorney-General—Right of Reply where Prisoners Adduce no Evidence.*

The prisoner Alexander Martin, and his wife Ethel Martin, were tried before FALCONBRIDGE, C.J., presiding at the sittings of oyer and terminer and general gaol delivery for the county of York, on a joint indictment wherein they were charged with the murder of their infant son.

The prisoners were defended by different counsel, but did not otherwise separate in their defence.

In the course of the trial Agnes Whidden, police matron at the Court street station, Toronto, was called as a witness for the Crown, and testified that the female prisoner, after being cautioned by the witness, had made a statement to her. She proceeded to testify that the prisoner stated that the police said that she killed her baby, and then said, "I did not kill it, but I saw it killed." She went on to say that she and her husband went out one afternoon in a boat together with the baby. At this point counsel for the female prisoner, stating that counsel for the male prisoner joined with him, objected to the reception of the evidence. He admitted that anything the female prisoner said, after proper caution, would be evidence against herself, but he submitted that any thing stated by her in the absence of her husband could not be used as evidence against him. The Chief Justice ruled