

is about forty years of age and unmarried, lived with a relative near by. He was in the habit of going to his mother's frequently, and bringing in water and doing other chores. From an accident in childhood his mentality was arrested and he could not be taught, but he developed physically. He was examined for discovery and as a witness sometimes he answered intelligently and at other times not, but nearly always in monosyllables. He denied the charge. Plaintiff said the offence was committed in the morning when he and she were alone in the house. She said she screamed but was not heard. She did not tell any person about it until nearly two months after the alleged outrage, when she went to the hospital and her pregnancy was discovered.

The appeal to Court of Appeal was heard by HON. MR. JUSTICE GARROW, HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MEREDITH and HON. MR. JUSTICE MAGEE.

E. F. B. Johnston, K.C., for the appellant.

W. A. Logie, for the respondent.

HON. MR. JUSTICE MACLAREN:—Counsel for the appellant argued that the action should fail because her testimony required corroboration and because there was no disclosure of her for nearly two months. This is not a criminal case and the rules of evidence in the Criminal Code on these points do not apply and these were questions for the jury.

It was also claimed for appellant that the trial Judge improperly allowed plaintiff's counsel to urge upon the jury large damages on account of the expense she would be put to for the bringing up of the then unborn infant whereas in the result it lived only one day. Defendant's counsel did not raise any objection at the trial and there is nothing to shew that any improper appeal was made. The possible early death of the child was a contingency that would be present to the minds of the jury, and the actual result could be no ground for a new trial.

A new trial was also claimed on the ground of excessive damages. The damages are much larger than are ordinarily allowed in such cases; but this is a matter peculiarly for the jury. The offence was a very grievous one if the evidence of the plaintiff was true, and the jury believed her.