

of the Peace for the County of York. The prisoner was indicted upon a charge of incest with his daughter on the 21st January, 1900. At the trial the evidence of one Rogers, who arrested the prisoner at Regina, was admitted as to the contents of certain letters written by the prisoner to his daughter and his sister, respectively, and letters received by him from them. The prisoner admitted sending and receiving certain letters, which he said had been destroyed. The evidence was objected to. Evidence as to the contents of the letters was also given by the daughter, and was objected to. In his charge to the jury the Judge said: "There is a circumstance which I will just simply mention in conclusion, that if the aunt and the girl told the truth, she was not with child on the 16th January, because she had her usual monthly courses at that period, five days before the date when this said alleged offence was committed." And upon objection by the prisoner's counsel to these remarks, the Judge added: "I do not say it was conclusive testimony, I only say it was fairly conclusive testimony, that on the 16th January she was not impregnated." "As to the fact of menstruation after impregnation there has been no evidence offered on either side beyond the bare fact that on the 16th January the girl had her usual monthly periods. It is common knowledge, to this extent, that these periods occur at regular intervals, and that they cease after impregnation. It is unfortunate, perhaps, that some of the medical men were not asked along that line, but certainly there is no evidence to shew it is at all a frequent or common occurrence, that a woman will have her menstruation after she has been impregnated."

The prisoner was convicted, and the following questions were reserved for the consideration of the Court:—1. Was the evidence of Rogers and the daughter as to the contents of letters written by her to her father properly admitted? 2. Was the Judge right in charging the jury with reference to the inference that might fairly be drawn from the fact that the girl had not menstruated after the 16th January, 1900? 3. If, in the opinion of the Court of Appeal, the Judge was wrong in either of his rulings, as a matter of law has there been a mistrial?

C. C. Robinson, for the prisoner.

Frank Ford, for the Crown.

OSLER, J.A.—The first question must be answered in the affirmative and the second in the negative. There was