

the escape. The learned Judge who tried the case was very well aware of the reasons for, as a matter of fact, requiring corroboration of the story of an accomplice; so that, if there had been less evidence than there is, this point would fail: see *Rex v. Frank*, 21 O. L. R. 196.

I would answer such questions as are material and proper in accordance with the views I have expressed.

OCTOBER 29TH, 1910.

**REX v. MUMA.*

Criminal Law—Indictment for Rape—Verdict of Common Assault—Competency—Evidence as to Unchastity of Complainant—Denial by Complainant—New Trial—Right of Crown—Stated Case.

On an indictment for rape the defendant was tried before RIDDELL, J., and a jury at Toronto. The jury found a verdict of "common assault."

At the request of the defendant, the Judge reserved for the consideration of the Court of Appeal the question: "Had the jury power to find a verdict of common assault upon this indictment for rape?"

The complainant, on cross-examination, was asked whether, before the date of the alleged crime, she had not been living with her future husband as his wife, which she denied. The Judge allowed the defence to bring witnesses to prove that she had done so. At the request of the Crown, the Judge reserved the question: "Was I right in admitting this evidence?"

A third question reserved was whether, in the event of the first question being answered in the negative, there should be a new trial.

The case was heard by Moss, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, J.J.A.

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

No one appeared for the defendant.

Moss, C.J.O.:—The accused was not represented by counsel upon the argument of this case, but subsequently a written argu-

* This case will be reported in the Ontario Law Reports.