

DECEMBER 14TH, 1909

REX v. BOWES.

*Criminal Law—Attempting to have Unlawful Carnal Knowledge of Child—Evidence of Child not Given on Oath—Criminal Code, sec. 1003—Corroboration—Sufficiency—Reasonable Evidence to Sustain Conviction.*

Case stated by the Judge of the County Court of Brant, heard by MOSS, C.J.O., OSLER, GARROW, MACLAREN, and MEREDITH, J.J.A.

L. F. Heyd, K.C., for the prisoner.

J. R. Cartwright, K.C., and E. Bayly, K.C., for the Crown.

OSLER, J.A.:—The only questions reserved by the learned Judge of the County Court are: (1) whether the child's account of the offence attempted by the prisoner was sufficiently corroborated so as to comply with the requirements of sec. 1003 of the Criminal Code, which permits the evidence of a child of tender years to be received under certain circumstances, though not given upon oath; and (2) whether the learned Judge was right in holding that there was sufficient evidence to justify him in finding the defendant guilty.

The defendant was charged with the indictable offence under sec. 302 of the Code, of having attempted to have unlawful carnal knowledge of a child under the age of 14 years, to wit, of the age of 7 or 8 years.

I am of opinion that the evidence of the child was sufficiently corroborated by the evidence:—

(a) Of the statement made by her to her mother within an hour or two after the occurrence, a statement volunteered by her and not extracted, so far as the evidence shews, by interrogation or suggestion on the part of the mother: *Rex v. Osborne*, [1905] 1 K. B. 551.

(b) Of the condition of the child's clothing, as testified to by the mother and by the doctor and by Cyril Mulley.

(c) Of the fact of the child having been with the prisoner in his waggon or buggy during the time testified to as that during which his improper conduct took place. See the evidence of Atkins and of the prisoner himself.

By the second question the learned Judge meant, I assume, to ask whether there was any evidence or any reasonable evidence on which, if he believed it, he could find the charge proved, as he has not given leave under sec. 1021 of the Criminal Code to apply to