

ing regard to the fact that the girl's mother had in a measure placed her in his charge during her absence. The questions were natural questions likely to be put under the circumstances by a person in charge, and there is no valid reason for supposing that the answers were not made freely or voluntarily.

4. Upon this question arises the question whether an attempt to commit incest is an indictable offence under the Criminal Code.

By sec. 204 of the Code, every one who commits incest as therein defined is guilty of an indictable offence and liable to 14 years' imprisonment. An attempt to commit the offence is not amongst the offences specially enumerated in the Code. But by sec. 570 it is declared that every one is guilty of an indictable offence and liable to 7 years' imprisonment who attempts in any case not thereinbefore provided for to commit any indictable offence for which the punishment is imprisonment for life or for 14 years, or for any longer term. And sec. 571 makes provision for the case of an attempt to commit an indictable offence for which the longest term of imprisonment is less than 14 years, where no express provision is made by law for the punishment of such attempt, and provides a term of imprisonment proportioned to the term to be imposed for the offence itself. The policy of the legislation seems to be to provide for the punishment of attempts to commit indictable offences, in addition to the cases where on a trial for an indictable offence the accused may be found guilty of an attempt, instead of guilty of the offence itself.

Is it open to doubt that under sec. 570 both the male and female within the prohibited degrees might be prosecuted for attempting to commit incest where the intention was plain, but the final act was frustrated? Then why not one of the parties under similar circumstances?

The principle seems to be that if a person intends to commit an offence and does all that lies in his power towards its committal, he is not excused because some impediment presents itself which prevents his attempt from being successful.

In this case the prisoner might have been prosecuted for an attempt to have carnal knowledge, but is there any reason for saying that carnal knowledge would not have completed the offence of incest?

The prisoner had the intention, the child was a party to his acts, but doubtless only by reason of his restraint and from fear or duress. If there had been accomplishment, the case as regards her would have fallen within the words of the proviso of sec. 204 of the Code.