

The Ontario Weekly Notes

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TORONTO, DECEMBER 14, 1910.

No. 12.

COURT OF APPEAL.

DECEMBER 5TH, 1910.

*REX v. HUGHES.

Criminal Law—Carnal Knowledge of Girl under Fourteen—Second Count for Offence when Girl over Fourteen—Trial of Prisoner on both together—Withdrawal from Jury of Second Count after Evidence all in—Conviction on First Count—Prejudice—Evidence—Admissibility—Exhibiting Child to Jury—Pointing out Likeness to Defendant.

Motion by the defendant for leave to appeal from a conviction and for a direction to the Judge of the County Court of York, before whom and a jury the defendant was tried, to state a case, which he had refused to do.

The defendant was indicted for two offences, set out in separate counts, viz., (1) for having carnal knowledge in 1907 of a girl then under fourteen, and (2) for illicit connection in 1909 with the same girl—being a girl of previously chaste character—and then over fourteen, but under sixteen.

The defendant was tried upon the two counts together, no application being made for a separate trial. But the trial Judge, after all the evidence had been taken, withdrew the second count from the consideration of the jury; and they found the defendant "guilty" upon the first count.

The defendant suggested certain questions which might form the subject of a stated case, viz.: (1) whether it was proper to include the two charges in one indictment, and whether it was proper, after all the evidence had been taken, to submit the first charge to the jury; (2) whether it was proper to exhibit the child of the prosecutrix to the jury as evidence against the defendant; (3) whether it was proper for the jury to hear evidence of criminal intimacy subsequent to 1907; (4) whether there was

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