

1. Was the evidence of Joliette Pailleur and Bessie Archansky, not given upon oath, admissible?
2. Was such evidence corroborated by any other material evidence?
3. Was the complaint or statement made by Joliette Pailleur to Richard Berthiaume admissible?
4. Does the indictment or formal charge disclose an indictable offence?

The case was heard by MOSS, C.J.O., OSLER, GARROW, MACLAREN, and MEREDITH, J.J.A.

Gordon Henderson, for the prisoner.

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

Moss, C.J.O.:— . . . 1. At the trial sufficient appeared to lead to the opinion—and the learned Judge acted upon that opinion—that Joliette Pailleur did not fully understand the nature of an oath, and Bessie Archansky was of too tender years to be deemed capable of doing so, and the learned Judge having satisfied himself that in other respects they answered the requirements of sec. 16 of the Canada Evidence Act, the provisions of which are applicable to all criminal proceedings (sec. 2), their evidence was properly admitted.

2. No doubt, the evidence of Joliette Pailleur was in some respects at variance with that of Richard Berthiaume, but in the material particulars of his being present when the prisoner went upstairs and called the girl Joliette to come up to him, of her reluctance to go, of her having ultimately gone and remained for some time, and of her coming back with her clothing in disorder and shewing signs of agitation, there was no substantial contradiction between them. Then there was other evidence as to the condition of her clothing and person and of other facts, every inference from which tended to support the charge she made against the prisoner in her evidence at the trial.

The law does not require that every part of the evidence shall be corroborated, but only that it must be corroborated by some other material evidence: sec. 16 (2). And that requisite appears in this case.

3. The learned Judge, no doubt, accepted the statements made by Richard Berthiaume, set out in the case, beginning with the question, "When the little girl came out of the house, who spoke first, you or she?" The questions he deposed to having put to her were such as might properly be addressed to her by him, hav-