

fore the magistrate, the police court not being a court of record; that it was immaterial whether there was or was not an information in the police court proceedings, and consequently proof of it was quite unnecessary; and also that in a case such as this in which the error could have been corrected when the objection was made, the proper course is to permit it to be corrected, not to aid in a miscarriage of justice.

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DECEMBER 31ST, 1909.

REX v. PAILLEUR.

*Criminal Law—Attempt to Commit Incest—Evidence of Children of Tender Years—Corroboration—Statement Made by Child—Evidence of—Indictable Offence.*

The prisoner, with his own consent, was tried before the junior Judge of the County Court of Carleton, under the provisions of Part XVIII. of the Criminal Code, upon a charge of having attempted incest with his daughter Joliette Pailleur, and was found guilty.

Joliette Pailleur was between 7 and 8 years of age, and her evidence and that of Bessie Archansky, a child of 4, was received, though not given on oath, the learned Judge being of opinion that they were possessed of sufficient intelligence to justify the reception of their evidence, and understood the duty of speaking the truth.

It was objected on behalf of the prisoner that their evidence was not corroborated in the manner and to the extent required by the enactments governing its admission, but the learned Judge was of the contrary opinion.

The Judge also received in evidence a complaint or statement made by Joliette Pailleur immediately after the offence was committed, as alleged, it being objected on behalf of the prisoner that the complaint or statement was not made freely or voluntarily, but was the outcome of questions improperly addressed to her by one Richard Berthiaume.

It was also objected that, from the nature of the crime of incest, there could be no attempt by one person to commit it, and that the indictment or formal charge upon which the trial took place disclosed no indictable offence.

At the request of counsel for the prisoner, the Judge stated the following questions for the opinion of the Court of Appeal:—