

## Province of Ontario.

### COURT OF APPEAL.

Full Court.]

REX v. BLAIS.

[March 12.]

*Criminal law—Rape—Trial of one co-offender only—Evidence—Right of comment as to other co-offender not giving evidence.*

The prisoner and one F. were jointly indicted for committing rape on the prosecutrix, and a true bill was found. The indictment was then traversed to the next sittings, and at such sittings the prisoner was tried alone, the indictment as to F. being again traversed to the next sittings.

*Held*, that F. was not a "person charged" under Canada Evidence Act, 1893, 56 Vict. c. 31, s. 4, for that section only refers to the person actually on trial; and therefore the judge did not contravene that section in commenting on the fact that F. had not been called as a witness.

*Reg. v. Payne* (1872) 1 C.C.R. 349, and *Reg. v. Gosselin* (1903) 33 S.C.R. 255, commented on.

*E. Mahon*, for the prisoner. *Carriewright*, K.C., for the Crown

Full Court.]

REX v. BROOKS.

[March 31.]

*Evidence—Depositions on another trial—Reception of—Consent of counsel—New trial.*

Even if a mistake is made by counsel at a trial, that does not relieve the judge in a criminal case from the duty to see that proper evidence only is before the jury.

At the trial of a prisoner, the prosecuting counsel put in a letter addressed to the Crown Attorney from the counsel who had been retained to act for the prisoner as follows: "I find that I will be unable to go on with this trial on 23th Dec. . . . Would you kindly see the judge and ask him if we can take it on Saturday, the 6th January. . . . I am quite willing to accept the evidence of the family, in particular those who gave evidence at the II. trial, so that it would not be necessary for you to call them." The trial did not stand over until January 6, but was proceeded with on Dec. 29, when the prisoner was represented by