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COURT OF APPEAL,

FEBRUARY 28TH, 1911.

**REX* v. *MENARY*.

Criminal Law—Indecent Assault—Conviction for Attempt to Commit—Evidence—Judge's Charge—Question for Jury.

Case stated by DENTON, one of the Junior Judges of the County Court of York, before whom and a jury the prisoner was tried upon a charge of committing an indecent assault, and found guilty of an attempt to commit that offence.

The question reserved was, whether, in view of the facts developed in evidence and set forth in the stated case and appearing on the record, the learned Judge was right in directing the jury that, if they could not find the prisoner guilty of having committed an indecent assault, they might, if they believed the evidence for the Crown, find him guilty of an attempt to commit that offence.

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

T. C. Robinette, K.C., for the prisoner.

E. Bayly, K.C., for the Crown.

MOSS, C.J.O.:—The instructions to the jury, and indeed the whole charge, must be considered with reference to the evidence appearing on the record, which has been made part of the case.

The principal charge was of committing an indecent assault upon one Virginia Harrison, a girl who was at the time over 14 years of age.

Before he directed the jury as set forth in the special case, the learned Judge told them, in effect, that, if they could find,

*To be reported in the Ontario Law Reports.