

Whether such an agreement was or was not made as defendant alleges must be left to be dealt with at the trial, when full discovery has been made on both sides, and the evidence has been given in open Court, and subjected to the test of cross-examination before a Judge or a Judge and jury, who will then have the advantage of hearing and seeing the opposing witnesses, and estimating their respective credibility. Once an issue is clearly raised such as is done in this case, rule 603 has no application.

This is my understanding at least of the case of *Jacobs v. Booth's Distillery*, 5 O. W. R. 49, 85, L. T. R. 262, which Riddell, J., said in *G. T. R. v. Toronto*, *supra*, "lays down the proper principles authoritatively. Where, assuming all the facts in favour of the defendant they do not amount to a defence in law, there, and only there, an order should be made for judgment under this rule."

This is confirmed by the more recent case also in the House of Lords, of *Codd v. Delap*, 92 L. T. 511, as noted in my former opinion. The reasons given by the L. C., and his three colleagues are clear, distinct and emphatic on this point of the proper application of C. R. 603. I see no reason to vary my former disposition of this motion which stands dismissed with costs in the cause of this argument to defendant only.

COURT OF APPEAL.

JANUARY 15TH, 1913.

REX v. RYAN.

4 O. W. N. 622.

*Criminal Law—Bribery—Counselling and Procuring—No Evidence of
—Conviction Quashed—Criminal Code, s. 1018.*

COURT OF APPEAL quashed conviction of defendant for having counselled and procured the bribery of a peace officer on the ground of lack of evidence.

Crown case reserved by LATCHFORD, J.

J. Haverson, K.C., for defendant.

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