

MARCH 12TH, 1906.

C.A.

REX v. FINNESSEY.

*Criminal Law—Rape—Indictment for Aiding and Assisting—Evidence—Character of Prosecutrix for Chastity—Question as to Connection with a Particular Man—Witness—Question as to Relations with Prosecutrix—Examination to Credit—Refusal to Answer—Finding of no Substantial Wrong or Miscarriage.*

The prisoner was indicted for the offence of aiding and assisting one Blais to commit a rape upon one Lucy Carroll, and was tried before a Judge of the High Court and a jury, at Ottawa.

Part of the evidence for the prosecution was to the effect that the prosecutrix, Lucy Carroll, met one Brennan on the evening of 24th April, in the city of Ottawa, and that, after being at other places, they went to the Balmoral hotel about 2 o'clock in the morning of the 25th; that they were allowed by the clerk to remain in the smoking room, and that later on he found out that Brennan and the prosecutrix had gone into a small side room, the door of which was shut and the light turned out. The evidence further shewed that about 4 a.m. the prosecutrix and Brennan left the Balmoral hotel, and while they were walking together, one Eugene Blais came along and started a fight with Brennan, which resulted in Brennan finally retiring, leaving the prosecutrix with Blais.

The prosecutrix stated that Blais and Finnessey (the prisoner), after Brennan had left, carried her into a vacant house, and that there Blais criminally assaulted her, Finnessey at the time holding her by the feet.

In cross-examination the prosecutrix was asked by counsel for the prisoner whether Brennan had any connection with her at the Balmoral hotel, and refused to answer.

The trial Judge ruled that she might refuse to answer if she liked.

Brennan was called as a witness for the Crown, and on cross-examination counsel for the prisoner asked him what