

DECEMBER 5TH, 1910.

*REX v. McNULTY.

Criminal Law—Murder—Counselling and Procuring—Illegitimate Child—Evidence—Intimacy of Prisoner with Mother of Child—Admissibility—Improper Relations with other Men—Inadmissibility—Accomplice—Corroboration.

Case stated by BRITTON, J., under the Criminal Code, after trial and conviction of the prisoner upon a charge of having on or about the 26th March, 1910, murdered an unnamed child, of which one Mary Dolan had lately been delivered.

The evidence, which was made part of the case, revealed that the child was actually put to death by its mother, Mary Dolan; and the case of the Crown against the prisoner was that he counselled and procured her to do the act, and so rendered himself a party to and guilty of the crime.

Mary Dolan was the principal witness for the Crown. She deposed to the existence between the prisoner, a married man, and herself, of a criminal intimacy extending over a period of about four years; that he was the father of two children of which she was the mother, the last born being the child in question; that, at his instigation, she had left the first child on the doorstep of an institution in Buffalo, with a sum of money supplied by him; that she became pregnant the second time in the month of June, 1909; that, not long after, she communicated the fact to the prisoner, who procured and advised her to take certain pills with a view to bringing about a miscarriage; that she took them without effect; that eventually she was obliged to leave her father's house in order to avoid discovery by him of her condition, and was thereafter for some time kept concealed by the prisoner in a loft over a driving shed or stable in Orillia; that, between the latter part of October, 1909, and the first week of January following, she, at his instance and with money supplied by him, paid two visits to Toronto, during the latter of which she met a Mrs. Lavoie; that finally on the 9th February, 1910, she again, at the instance of and with funds supplied by the prisoner, went to Toronto and into lodgings at Mrs. Lavoie's, where she remained until the 26th March, during which time the child was born; that the prisoner was made aware of the birth, and afterwards wrote letters to her; that on the 25th March she received a letter from

*This case will be reported in the Ontario Law Reports.