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No. 13.

COURT OF APPEAL.

DECEMBER 7TH, 1911.

REX v. LUMGAIR.

Criminal Law—Lottery—Conviction—Evidence—Statements Made by Agents of Defendant, not in her Presence—Inadmissibility—Conversation with Agent—Mistrial—New Trial.

Case stated by the Chairman of the General Sessions of the Peace in and for the County of Wentworth, pursuant to an order of the Court of Appeal.

The defendant was brought to trial upon an indictment containing three counts, the last of which charged that she did, within two years last past, unlawfully manage and conduct a scheme for the purpose of determining who were the winners of certain property disposed of by her, by lots and modes of chance, contrary to the provisions of sec. 236 of the Criminal Code. The Chairman withdrew the first count, and the jury returned a verdict finding the defendant guilty of conducting a lottery. The Chairman treated this finding as a verdict of "guilty" under the third count.

The following was the case as stated:—

"The defendant was tried by a jury before me at the December sittings of the Court of General Sessions of the Peace for the County of Wentworth, upon an indictment charging her with carrying on a business by modes of chance, under sec. 236 of the Criminal Code. The jury found a verdict of 'guilty.'

"The defendant had carried on a business in Hamilton, under the name of the People's Furniture Company, for eighteen or nineteen months. In this business, she employed agents who canvassed different sections of Hamilton and had several people sign contracts. These contracts are in evidence in this case as exhibits numbers 1, 2, 3, 4, 5, 6, and 7.

"The evidence as taken at the trial is made a part of the case stated.