

if the contract had not been carried out, and not against the appellants.

Upon another question raised, the respondents should not succeed. The premises were satisfactory to Mr. Hamilton, the agent of the plaintiffs at Toronto; he had the head-lease in his possession, and he appeared to have thought that everything was satisfactory. Mr. Gray, the manager of this branch of the real estate business of the appellants, after waiting a considerable time, inquired of Mr. Hamilton whether the transaction had been closed, and inquired of Stedman also, and, according to his testimony, was informed by both that the transaction was closed. The evidence of Mr. Waldie was that he made the same inquiry of Mr. Hamilton and received the same answer. The learned trial Judge did not pass upon that question; he was of opinion that, whether or not that had happened, it was not necessary to pass upon it, because, according to the terms of the written document, the money was not to be paid over until the transaction was closed in accordance with the terms of the agreement.

On both questions, therefore, the judgment could not be supported.

Appeal allowed with costs, and action dismissed with costs.

OCTOBER 12TH, 1915.

*REX v. O'MEARA.

Criminal Law—Keeping Common Gaming House—Conviction—Evidence—Criminal Code, secs. 228, 986—Game of Chance or Skill.

Case stated by the Deputy Police Magistrate for the City of Ottawa, on a conviction of the defendant for unlawfully keeping a disorderly house, that is to say, a common gaming house.

The question asked was, whether there was any evidence that the offence charged had been committed.

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

E. F. B. Johnston, K.C., for the defendant.

J. R. Cartwright, K.C., and E. Bayly, K.C., for the Crown.

*This case and all others so marked to be reported in the Ontario Law Reports.