

# The Ontario Weekly Notes

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## COURT OF APPEAL.

FEBRUARY 14TH, 1911.

### REX v HOGARTH.

*Criminal Law—Conveying Information Relating to Betting upon Horse-races—Criminal Code, sec. 235 (h)—“Wilfully and Knowingly”—Local Manager of Telegraph Company—Absence of Evidence to Sustain Conviction—Stated Case—Mistake in Facts—Correction—Criminal Code, sec. 1017 (3).*

Case stated by a Police Magistrate.

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

E. E. A. DuVernet, K.C., for the defendant.

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

MEREDITH, J.A.:—The accused was charged with having wilfully and knowingly sent and transmitted messages, by telegraph, conveying information relating to book-making, betting, and wagering upon a horse-race;\* the charge, thus baldly stated, was attempted to be proved in regard to a telegraphic message sent to a Detroit newspaper, over the lines of the Great North-Western Telegraph Company; but the only attempt, in evidence, to connect the accused with that message was proof that he was local manager of the company.

It ought hardly to be needful to say that such evidence was entirely insufficient to prove the charge, which is a criminal one, subjecting the offender to severe punishment: see *Rex v. Hayes*, 5 O.L.R. 198.

\*The charge was laid under sec. 235 (h) of the Criminal Code: see 9 & 10 Edw. VII. ch. 10, sec. 3 (D.)