

C. C. R.]

REX v. JAMES.

[April 14

*Criminal law—Keeping common gaming houses—"Gain"—Payment for refreshments—Profit—Misdirection—Acquittal of defendant—Crown case reserved—New trial.*

The defendant was indicted for keeping a common gaming house, contrary to ss. 196 (a) and 198 of Criminal Code. The former defines a common gaming as a house, room, or place kept by any person for gain to which persons resort for the purpose of playing at any game of chance. The evidence shewed that the defendant was the manager of a cigar shop, in the rear of which was a room to which persons, chiefly customers, commonly resorted for the purpose of playing "poker". Out of the stakes on most of the hands a sum of five cents was withdrawn to cover the expenses of refreshments consumed by the players. No charge was made for the use of the room. The "rake-off" did not more than cover a fair price for the refreshments. The proprietor or manager derived an indirect advantage from the sale of cigars to the players, from 50 to 100 being sold to them in the course of a night's play.

*Held*, that "gain" may be derived indirectly as well as directly; that by what the defendant allowed be done in the room mentioned, the profits of his usual business were increased more or less owing to the sale of the goods in which he dealt, and so he might be found to have kept the room for gain, though the gain was confined to the profits on cigars which he sold to the players. The question of what is a keeping for gain ought not to be embarrassed by the consideration of whether the amount the defendant receives is an actual substantial profit to him over the price of the cigars which he sells and the refreshments which he furnishes to the players.

The direction of the Judge at the trial to the jury, upon which the defendant was acquitted, was found to be wrong, upon a case reserved for the Crown, but the Court declined to order a new trial.

Per OSLER, J.A.: A case should not be reserved at the instance of the prosecutor after an acquittal.

*Cartwright*, K.C., for the Crown. *Robinette*, K.C., for defendant

C. C. R.]

REX v. WOODS.

[April 14.

*Criminal law—Bigamy—Defence—Dissolution of former marriage—Decree of foreign court—Validity—Domicile.*

Upon an indictment of the defendant for bigamy the defence was that she had been divorced from her husband by the decree of a foreign court.

*Held*, that the marriage being a Canadian one, and the domicile of both parties being in Canada, and not having been changed, although they both resided for a short time in the foreign country previous to the making of the decree, the marriage was not dissolved, and the defence failed.