

THE COURT dismissed the appeal of the plaintiffs and allowed the cross-appeal of the defendant Philoméne Miller, and varied the judgment so as to make the amount awarded to the plaintiffs the same as the balance, if any, of the sums received or which should have been received on the sale of the goods in question. Reference directed if asked by the plaintiffs—otherwise action to be dismissed with costs. The plaintiffs should pay the costs of the appeal and cross-appeal.

SECOND DIVISIONAL COURT.

JANUARY 16TH, 1919.

*REX v. HYNES.

Criminal Law—Engaging in the Business of Betting or Wagering—Criminal Code, sec. 235 (e) and (2) (9 & 10 Edw. VII. ch. 10, sec. 3)—Aiding Another to Commit Offence—Sec. 69 (b)—Evidence of Offence to Go to Jury.

Case reserved by the Senior Judge of the County Court of the County of York upon the trial of the defendant by a jury at the Sessions, and conviction made upon a verdict of "guilty."

The case was heard by RIDDELL, LATCHFORD, and MASTEN, JJ., FERGUSON, J.A., and ROSE, J.

James Haverson, K.C., for the defendant.

Edward Bayly, K.C., for the Crown.

RIDDELL, J., in a written judgment, said that Hynes was a hotel-keeper in Toronto. One Maynard, a bank manager, wanted to place money with Gagen, who carried on business as a book-maker; he did not know Gagen, but Hynes did, and Maynard knew Hynes, and Maynard got Hynes to bet on his behalf on the races with Gagen, Maynard supplying the money and selecting the horse himself. The bets ranged from \$200 to \$500 at a time, one or sometimes more bets per day. When Maynard lost, he paid the money to Hynes; when he won, Gagen drew a cheque to "cash" and gave it to Hynes, who cashed it (sometimes without shewing it to Maynard), and gave the proceeds to Maynard. The bets in all were about a dozen in number within the six months before prosecution.

There was no evidence that Hynes was paid anything by either Gagen or Maynard, and none to contradict his statement that he acted in this way to oblige his friend Maynard. Although there was something in the evidence of Gagen which might indicate that Hynes was acting for Gagen, it was not enough to establish this as a fact.

There was another class of transactions in which Hynes took