

The only direct evidence as to the mode of determining the awards was that of William Lumgair, and it distinctly negatived selection by lot or chance. And there was no evidence of any direct admission by the defendant that selections were made in any such manner. On the contrary, there was evidence of repudiation, in some instances, of the correctness or truth of statements alleged to be made by agents that the selections were made by drawings of names.

In face of this testimony, it lay upon the Crown either to shew actual drawings by lot or some other mode of chance, or to shew facts from which it might reasonably be inferred that the selections were made and the business actually carried on in that manner. It would be possible, no doubt, to prove admissions by the defendant from which the same inference might be drawn; and, to some extent, that was attempted, by shewing representations, made by persons acting as agents, said to have been afterwards brought to the defendant's knowledge and to have not been repudiated by her. In this view, it is quite apparent that the evidence of some of the witnesses who testified for the Crown should not have been received. For instance, the evidence of Jane Goodale, Amelia Hoth, and Edith Clark, who testified to interviews with and statements made by agents which were not communicated to the defendant, could not be received in support of the charge in the indictment. And, while it may be said of the evidence of Mrs. Ford that it was not improperly received, it was in itself such slight evidence in support of an admission that it might well have been submitted with a direction that it would scarcely be safe to convict upon it alone.

In some respects the evidence of Jane Goodale, Amelia Hoth, and Edith Clark, was more favourable than prejudicial to the defendant; but, having regard to the manner in which it was dealt with in connection with the other evidence in the learned Chairman's charge, it is impossible to judge of its possible adverse effect upon the minds of the jury.

The first question should be answered in the negative; and, as that involves the setting aside of the conviction, it is not necessary to make formal answer to the second question.

In the result, there was a mistrial; and the conviction should be set aside; but there should be a new trial, if the Crown desires it.

GARROW, MACLAREN, and MEREDITH, JJ.A., concurred.

MAGEE, J.A.:—I agree in the propriety of a new trial. The evidence points rather to a fraudulent business than to a merely illegal one of lottery.