

“During the trial, evidence of Jane Goodale, Amelia Hoth, Edith Clark, Edith Ford, and others, as to representations made by agents of the defendant, not in her presence, was admitted by me, upon the ground that, such representations having been brought by these witnesses to the knowledge of the defendant and not contradicted by her, and she having thereafter continued the said agents in her employ without instructing them to discontinue making such representations, the said evidence was admissible as shewing the true course of dealing of the defendant, and from which the jury might infer that such representations, being made with the defendant’s sanction and approval, were a true statement of the real scheme of the defendant.

“Pursuant to the order of the Court of Appeal dated the 26th January, 1911, I submit the following questions of law for the opinion of this Honourable Court:—

“1. Was I right in admitting the evidence of Jane Goodale, Amelia Hoth, Edith Ford, Edith Clark, and others, as to statements made by agents of the defendant, not in her presence, under the circumstances hereinbefore stated?

“2. Was I right in admitting the evidence of Mrs. E. Ford as to her conversation with the agent and the father of the defendant, at the defendant’s store, as set out on pp. 52, 53, 54, and more especially on p. 55, of the evidence taken at the trial herein?”

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

T. C. Robinette, K.C., for the defendant.

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

Moss, C.J.O.:—It will be observed that the gravamen of the charge was the unlawful carrying on of a business by modes of chance, not that the defendant was fraudulently representing that she was carrying on a business by such modes. Upon the charge preferred, it was incumbent upon the Crown to prove not merely that she represented or permitted representations to be made on her behalf that she was carrying on such a business, but that the business was in fact so carried on. Apart from the alleged representations deposed to by the witnesses, there was no proof of the use of a lottery scheme or of any other method of awarding property to persons agreeing to purchase under the contracts put in evidence which involved selection by lot or chance.