

REGINA *y.* WINNING  
*Ontario Court of Appeal, Gale, C.J.O., Estey and Martin, J.: T.A.*  
*June 5, 1973.*

*R. F. Evans*, for accused, appellant.  
*E. G. Hachborn*, for the Crown, respondent.

The judgment of the Court was delivered orally by

GALE, C.J.O. :—This is an appeal by the appellant, who was convicted on May 16, 1972, of obtaining credit from T. Eaton Co. Limited (Eaton's) by false pretences. Following conviction she was sentenced to 14 days in jail.

We are all of the opinion that the conviction ought not to have been made and that the appeal should therefore be allowed.

Admittedly, the appellant applied for credit at Eaton's. She filled out an application for that purpose giving her proper name and address. In the particulars which she gave she made at least two false statements. Had Eaton's relied upon that application form then she would have been guilty of the offence charged, although it must be mentioned in passing that in fact she honoured her obligation and paid Eaton's on every occasion credit was advanced to her. However, the evidence clearly establishes that Eaton's did not rely upon the information contained in the application save for the name and address. This was made very clear by an Eaton's employee in this exchange:

Q. So the point I am making is you don't rely on this card except for anything other than the name and the address.

A. That's right.

Accordingly, in our view, the appellant did not obtain credit by a false pretence, because the credit was given not in reliance on her application, but rather in reliance on Eaton's investigation of her. The only matter upon which the company relied was her name and address, both of which were correctly given.

In the circumstances, the appeal will be allowed and the conviction quashed.

*Appeal allowed.*