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THE POLICE

[WILSON, P., ZEKIA, VASSILIADES AND JOSEPHIDES, JJ.]

ANTONIOS GEORGHIOU POULLOS,  
*Appellant,*

v.

THE POLICE,  
*Respondents.*

(Criminal Appeal No. 2683)

*Lottery—Definition—The Lotteries Law, Cap. 74, section 2—“Tombola”—On the evidence “tombola” is a lottery within the aforesaid definition, even though at the same time it is a game of chance within the purview of section 2 of the Betting Houses, Gaming Houses and Gambling Prevention Law, Cap. 151—Promoting a lottery, in this case a game of “tombola”, contrary to sections 10 and 11 (1) (f) of the former Law, Cap. 74 (supra)—The offence is committed notwithstanding that the persons playing at the said “tombola” were playing, in the circumstances of this case, at such game for social amusement or recreation and not for gain within the relevant proviso to section 2 of the Betting Houses, etc., etc., Law, Cap. 151 (supra)—And notwithstanding, therefore, that, had those persons who participated in that game of “tombola”, been prosecuted under the last mentioned Law, viz. Cap. 151 (supra), they would have had a complete defence under the aforesaid proviso to section 2 of the same statute Cap. 151 (supra).*

*Constitutional Law—Unconstitutionality of laws etc.—Reference of the question to the Supreme Constitutional Court for its decision under Article 144 of the Constitution—This reference, however, in view of the express provisions of Article 188.4 of the Constitution, must not be resorted to in cases concerning issues of unconstitutionality of laws in force at the date of the coming into operation of the Constitution (i.e. the 16th August, 1960) being incumbent under paragraph 4 of Article 188 of the Constitution (supra) upon the trial Courts, whether exercising civil or criminal jurisdiction, to apply the provisions of a law in force on the 16th August, 1960 with such modifications as may be necessary to bring them into accord with the Constitution.*

*Constitutional Law—The Lotteries Law, Cap. 74, sections 2, 6, 10 and 11—The provisions of those sections are not contrary to, or inconsistent with, Articles 15, 23 and 25 of the Constitution.*

By section 2 (1) of the Lotteries Law, Cap. 74, "lottery" means any scheme for distributing prizes by lot or chance".

By section 6 of the same law certain small lotteries, on the conditions and in the circumstances set out therein, are deemed not to be unlawful under the statute. The instant case does not fall within this exemption.

Section 10 of the Law, Cap. 74 (*supra*) provides : "Subject to the provisions of this Part, all lotteries are unlawful".

Section 11 (1) of the same Law, Cap. 74 provides : "Subject to the provisions of this section, every person who in connection with any lottery promoted or proposed to be promoted either in Cyprus or elsewhere—(a) (b) (c) (d)..... (f) uses any premises or causes or knowingly permits any premises to be used for purposes connected with the promotion or conduct of the lottery or (g) . . . . shall be guilty of an offence and shall be liable to imprisonment not exceeding six months or to a fine not exceeding two hundred pounds or to both such imprisonment and fine."

By section 2 of the Betting Houses, Gaming Houses and Gambling Prevention Law, Cap. 151,

" 'gamble' with its grammatical variations and cognate expressions, means to play at, or engage in, any game of chance or of mixed chance and skill, for money or money's worth ; Provided that the playing at, or engaging in, any such game shall not be deemed to be gambling if the person playing at, or engaging in, the same proves to the satisfaction of the Court trying the offence that having regard to the circumstances including the stakes, he was playing at, or engaging in, such game for social amusement and recreation and not for gain."

Article 15 of the Constitution reads :

"1. Every person has the right to respect of his private and family life.

2. There shall be no interference with the exercise of this right except such as is in accordance with the law and is necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the rights and liberties guaranteed by this Constitution to any person."

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Article 23 of the Constitution provides *inter alia* :

Paragraph 1. "Every person, alone or jointly with others, has the right to acquire, own, possess, enjoy or dispose of any movable or immovable property "

Paragraph 2. "No deprivation or restriction or limitation of any such right shall be made except as provided in this Article."

Paragraph 3. "Restrictions or limitations which are absolutely necessary in the interest of the public safety or . . . or the *public morals* or the town and country planning "

Article 25 of the Constitution provides :

Paragraph 1. "Every person has the right to practise any profession or to carry on any occupation, trade or business."

Paragraph 2. "The exercise of this right may be subject to such formalities, conditions or restrictions as are prescribed by law and relate exclusively to the qualifications usually required for the exercise of any profession or are necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or . . . the *public morals* "

Article 144, paragraph 1, of the Constitution provides :

"A party to any judicial proceedings, including proceedings on appeal, may at any stage thereof, raise the question of the unconstitutionality of any law or decision or any provision thereof material for the determination of any matter at issue in such proceedings and thereupon the Court before which such question is raised shall reserve the question for the decision of the Supreme Constitutional Court and stay further proceedings until such question is determined by the Supreme Constitutional Court."

Article 188, paragraphs 1, 4 and 5 provide :

"1. Subject to the provisions of this Constitution and to the following provisions of this Article, all laws in force on the date of the coming into operation of this Constitution (*editor's note : i.e. on the 16th August, 1960*) shall, until amended, whether by way of variation, addition or repeal, by any law or Communal law, as the case may

be, made under this Constitution, continue in force on or after that date and shall, as from that date be construed and applied with such modification as may be necessary to bring them into conformity with this Constitution.”

“ 4. Any court in the Republic applying the provisions of any such law which continues in force under paragraph 1 of this Article, shall apply it in relation to any such period, with such modification as may be necessary to bring it into accord with the provisions of this Constitution including the Transitional Provisions thereof.”

“ 5. In this Article—

“..... modification ” includes amendment, adaptation and repeal.”

The appellant in this case was convicted of the offence of promoting a lottery, viz. “tombola” in his coffee shop at Larnaca contrary to the provisions of sections 10 and 11 (1) (f) of the Lotteries Law and was bound over in the sum of £25 for one year. He was originally charged together with four other persons. The one accused was charged with promoting a lottery with the appellant and the four of them together with selling tickets of a lottery. They were all found guilty and bound over but none of them appealed.

Apparently, the players were playing at that game (viz. “tombola”) for social amusement or recreation and not for gain, within the proviso to section 2 of the Betting Houses, Gaming Houses and Gambling Prevention Law, Cap. 151 (*supra*), so that, had the persons who participated therein been prosecuted under the last mentioned law, they would have had a complete defence under the said proviso (*supra*).

The appellant appealed against his conviction, the grounds of appeal being as follows :

1. The facts as found by the trial Court do not constitute an offence under the Lotteries Law, Cap. 74 ;

2. The trial Court ought to have reserved the question of the unconstitutionality of sections 6, 10 and 11 of the Lotteries Law, Cap. 74, for the determination of the Supreme Constitutional Court ;

3. The provisions of the definition of “ Lottery ” in section 2 and of section 6 of the Lotteries Law, Cap. 74, were con-

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trary to, or inconsistent with, Articles 15, 23 and 25 of the Constitution and that they should be modified as follows :

- (a) that the definition of the expression " lottery " in section 2 should be amended by the addition at the end thereof of the words " but shall not include a game under Cap. 151 " ; or
- (b) that section 6, except the first three lines should be deemed as repealed.

The High Court in dismissing the appeal :

*Held, on ground 1 (VASSILIADES, J. dissenting) ;*

(1) Having regard to the wide definition of the expression " lottery " in section 2 of our law (*i.e.* Cap. 74, *supra*), there is no doubt that " tombola " as played in the appellant's café was a game of pure chance with no element of skill and a lottery within the definition of our law. Whether we agree or not with the provisions of our Lotteries Law, Cap. 74, the fact remains that the definition of " lottery " in section 2 of the aforesaid law is so wide as to include the game of " tombola ".

(2) The appellant was, therefore, rightly convicted ; and we leave to the legislature the question of relaxing the rigidity of the law on the lines of the recent English legislation to which we had occasion to refer in this judgment.

(3) *Per VASSILIADES, J., in his dissenting judgment :*  
I am of opinion that this case, on the substance, is a case of lawful social entertainment and not a case of promoting a lottery. I would, therefore, allow the appeal on that ground and quash the conviction.

*Held, on ground 2 :*

(1) We have held in many cases that it is undesirable that criminal trials should be interrupted for the purpose of reserving the unconstitutionality of a law, under Article 144 of the Constitution, for the decision of the Supreme Constitutional Court, where the law was one which was in force on the date of the coming into operation of the Constitution : a recent case to the point is that of *Michael Demetriou Zavos v. The Police* (1963) 1 C.L.R. 57, in which reference is made to previous decisions of this Court.

(2) Under the express provisions of Article 188, paragraph 4, of the Constitution, it is the duty of every trial

Court, exercising civil or criminal jurisdiction, to apply the provisions of a law in force on the 16th August, 1960, with such modification as may be necessary to bring it into accord with the provisions of the Constitution. The Lotteries Law, Cap. 74, being a law which was in force on the 16th August, 1960, it was not necessary for the trial Court to refer the matter to the Supreme Constitutional Court.

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*Held, on ground 3:*

(1) Obviously Article 15 of the Constitution relied upon refers to the private and family life of a person, and is not relevant.

(2) As to Articles 23 and 25 of the Constitution it was held by the Supreme Constitutional Court in the case of *Police and Hondrou and another* (1962) 3 R.S.C.C. 82, that the restrictions imposed by section 6 (1) of the Gambling Prevention Law, Cap. 151, were not contrary to, or inconsistent with, Articles 23 and 25 of the Constitution, because they were necessary, *inter alia*, in the interests of public morals.

*Appeal dismissed.  
Conviction affirmed.*

Cases referred to :

*Taylor v. Smetten* (1883) 11 Q.B.D. 207 ;

*Smith v. Wyles* (1958) 3 All E.R. 279 ;

*Santongeli v. Neilson* (1900) 3F (Ct. of Sess) 10 ;

*Munro v. Kelly* (1911) 45 I.L.T. 179 ;

*Payne and others v. Bradley* (1961) 2 All E.R. 36 and 882  
at pages 40, 883 and 888 ;

*Joseph Lachner v. People of the State of New York* (1905)  
United States Supreme Court Reports, Vol. 198, 45  
at page 75 ;

*Michael Demetriou Zavos v. The Police* (1963) 1 C.L.R. 57 ;

*Police and Hondrou and Another* (1962) 3 R.S.C.C. 82 ;

*Director of Public Prosecutions v. The Regional Pool Pro-  
motions Ltd.*, (1964) 2 W.L.R. 209.

**Appeal against conviction.**

The appellant was convicted on the 7th October, 1963, at the District Court of Larnaca, (Criminal Case No. 2146/63) on one count of the offence of promoting a lottery *viz.*

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“ tombola ” contrary to sections 10 and 11 (1) (f) of the Lotteries Law, Cap. 74, and was bound over by Vassiliades, D.J. in the sum of £25 for one year.

*A. Triantafyllides*, for the appellant.

*K. C. Talarides*, Counsel of the Republic, for the respondents.

*Cur. adv. vult.*

The facts of the case sufficiently appear in the judgment of JOSEPHIDES, J.:

WILSON, P.: I agree with the reasons for judgment to be given by Mr. Justice Josephides in this case.

ZEKIA, J.: I also agree.

JOSEPHIDES, J.: The appellant was convicted of the offence of promoting a lottery, *viz.* “ tombola ”, in his coffee-shop at Larnaca, contrary to the provisions of sections 10 and 11 (1) (f) of the Lotteries Law, Cap. 74, and bound over in the sum of £25 for one year. He now appeals against his conviction.

He was originally charged with four other persons. The one accused was charged with promoting a lottery with the appellant, and the four of them together with selling tickets of a lottery. They were all found guilty and bound over, but none of them appealed.

The grounds of appeal are shortly as follows :

- (1) The facts as found by the trial Court do not constitute an offence under the Lotteries Law, Cap. 74 ;
- (2) The trial Court ought to have reserved the question of the unconstitutionality of sections 6, 10 and 11 of the Lotteries Law, Cap. 74, for the determination of the Supreme Constitutional Court ; and
- (3) The trial Court ought to have applied the provisions of the Lotteries Law, Cap. 74, as modified by the Constitution.

*As to the first ground* : The facts, which were not in dispute, were as follows : The appellant admitted that the patrons of his cafe played the game known as “ tombola ”.

In order to paly the game in question each player was supplied with tickets by the appellant and his assistants on payment of 25 mils each, up to a maximum of 6 tickets.

Five games were played on that evening so that a player might lose anything from 25 mils to 750 mils. There were about 200 players. Each ticket had several numbers printed on it, and the person in charge of the game called out numbers marked on balls released by chance from a revolving canister operated by him. As each number was called out any player who held a ticket with that number on it crossed it out. The first player to cross out 5 numbers in a line, and the first player to cross out all the numbers, won a cash prize each. Part of the money collected from the sale of the tickets was kept by the appellant. The game of "tombola" is a game of pure chance.

On these facts the Judge found the appellant guilty of promoting a lottery under the Lotteries Law, Cap. 74.

The expression "lottery" is defined in section 2 of the Law as meaning "any scheme for distributing prizes by lot or chance". It was submitted on behalf of the appellant that the object of our Lotteries Law was to protect the State Lottery from unauthorized lotteries and not to prohibit games like tombola. It was further submitted that tombola falls within the definition of "gambling" in section 2 of the Betting Houses, Gaming Houses and Gambling Prevention Law, Cap. 151, and that the appellant should have been prosecuted under the provisions of that Law which enables an accused person to set up a defence that he was playing the game "for social amusement and recreation and not for gain" (section 2 of Cap. 151).

I think, before proceeding further, it will be useful if we consider the origin and history of our legislation on gambling. So far as I have been able to trace, a Law was enacted in 1896 (Law 10 of 1896) "to amend the Law as to Gambling". By that Law gambling was prohibited, and by section 2 a defence was allowed to accused persons where the game was one of mixed chance and skill and was played for "amusement and recreation and not for gain". Section 6 of that Law provided as follows :

"Any person who shall to the public nuisance or scandal advertise, establish, conduct or take part in any *lottery* or solicit contributions towards or in respect of any *lottery or scheme whereby money or other things are given to be divided among the contributors by chances or prizes*, or by any game, method or device whatsoever depending on chance, shall be liable to a fine not exceeding two pounds."

It will be observed that there was no provision for a defence similar to the one provided in the case of gambling,

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*i.e.* that it was a game of mixed skill and chance and that it was played for amusement and recreation and not for gain.

The Law of 1896 was consolidated and amended by Law 15 of 1947. In that Law the expression "lottery" was given a wider definition. Section 2 provided as follows :

" 'lottery' includes any *scheme or device for the sale, gift, disposal or distribution of any property* depending upon, or to be determined by, *lot or chance*, whether by the throwing or casting of dice or of any other object having effect similar to that of dice or by the drawing of tickets, cards, lots, numbers or figures or by means of a wheel or trained animal or otherwise howsoever ;"

And by section 4 of that Law any person who sold or had in his possession for sale any ticket in a lottery, or who printed or published any advertisement of a lottery, was guilty of an offence. The Law of 1947 again prohibited gambling but allowed the defence of playing for "social amusement and recreation and not for gain" in the case of gambling but *not* of lotteries.

Finally, the present Lotteries Law, Cap. 74, was enacted in 1956 (Law 14 of 1956), when Government for the first time decided to promote and conduct Government lotteries. Part II of the Law provides in detail as to how Government lotteries are to be promoted and conducted. The provisions relating to lotteries in Law 15 of 1947 (now the Betting Houses, Gaming Houses and Gambling Prevention Law, Cap. 151) were repealed by the present Lotteries Law, Cap. 74 which in Part III (with which we are concerned in this appeal) reproduces practically *verbatim* the provisions of the English Betting and Lotteries Act, 1934, Part II, "Lotteries and Prize Competitions", sections 21 to 28.

The English Act has no definition of the word "lottery" but it has been construed in *Taylor v. Smetten* (1883) 11 Q.B.D. 207 as "a *scheme for distributing prizes by lot or chance*", and the draftsman of our Lotteries Law has reproduced *verbatim* this definition in section 2 of the Law. By section 10 of our Law (section 21 of the English Act) all lotteries are declared to be unlawful. By sections 6 and 7 (English sections 23 and 24) certain exemptions are made—

- (a) in the case of small lotteries incidental to certain entertainments such as bazaars, sales of work, etc.; and
- (b) private lotteries promoted for members of "societies", which includes social clubs and institutions, and for persons who work or reside on the same premises.

In the latter case, provided certain conditions are observed, cash prizes may be won by the persons participating without this being an offence. Our Law also exempts from the prohibition any lottery duly approved by the then Financial Secretary (now the Minister of Finance) for the purpose of raising funds for the building or repair of any church, mosque or public hospital, or for any other charitable purpose ; and sweepstakes or pari-mutuel organized at any race meeting controlled by an approved racing club.

It will be observed that our Lotteries Law, Cap. 74, as well as the English Act of 1934, prohibit the promotion or conduct of lotteries but they do not make it an offence to buy a lottery ticket or participate in a lottery, though a person participating would, presumably, be charged with gambling under the provisions of our Gambling Law, Cap. 151, in which case the defence provided under section 2 of Cap. 151, would be open to him, that is to say, that he was playing for social amusement and recreation and not for gain. In the United Kingdom participating in a lottery was held to be gaming (*Smith v. Wyles* (1958) 3 All E.R., 279) ; and there are also Scottish and Irish cases which show that "lotteries" and "gaming" are not exclusive terms : *Santongeli v. Neilson* (1900) 3F. (Ct. of Sess.) 10 ; *Munro v. Kelly* (1911) 45 I.L.T. 179.

Although our Law reproduces the provisions of the English Act of 1934, it was not subsequently amended to reproduce the amending provisions enacted by the U.K. Parliament in 1956 and 1960. By the Small Lotteries and Gaming Act, 1956, Parliament authorized the conduct of small lotteries *for other than private gain*, by societies for raising money for charitable, sporting and other purposes, etc., and by the Betting and Gaming Act, 1960 (section 21), provision has been made for a defence in prosecutions under the Betting and Lotteries Act, 1934 (section 22 (1)), if it is proved that the lottery was also a game of chance and that at the time of the alleged offence the person charged believed, and had reasonable ground for believing, that it was being conducted as aforesaid. Finally, the English Betting, Gaming and Lotteries Act, 1963, consolidated the previous enactments relating to gaming, lotteries and other matters (see sections 32 to 50).

In the present case it should be borne in mind that the appellant is a cafe-keeper charged with promoting a lottery, *viz.* tombola, in his cafe, and not a private individual playing tombola for social amusement and recreation and not for gain.

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Having regard to the wide definition of the expression “lottery” in section 2 of our Law, there is no doubt that “tombola” as played in the appellant’s cafe was a game of pure chance with no element of skill and a lottery within the definition of our Law. Recently, in a House of Lords’ case, where they had to consider the exception provided under section 4 (1) and (3) of the Small Lotteries and Gaming Act, 1956, their Lordships were of opinion that tombola is lottery. This is what Lord Denning had to say in *Payne and others v. Bradley* (1961) 2 All E.R. 882 at page 883 :

“ My Lords, this game of tombola is played so widely that I do not suppose many people realise that it is a lottery. Yet it is so. And, being a lottery, it is unlawful—and the promoters are guilty of an offence—unless they can bring themselves within one of the exceptions permitted by statute : see section 21 and section 22 of the Betting and Lotteries Act, 1934.”

It should be noted that the aforesaid sections 21 and 22 of the English Act of 1934 correspond to sections 10 and 11 of our Lotteries Law under which the charge was laid against the appellant coffeeshop-keeper in the present case.

Although Lord Denning and Lord Morris were of opinion that the promoters had established the exception permitted by section 4 of the 1956 Act, they were, nevertheless, agreed that tombola is a lottery (see *Payne v. Bradley*, supra at pp. 883 and 888).

Lord Parker, C.J. in his judgment in the same case in the Queen’s Bench Division said :

“ It is, I think, conceded for the purposes of this case that tombola is a game ; it is further conceded for the purposes of this case that the playing of the game was an entertainment. It is further clear that the game in question, as the justices found, is a lottery. But if the proceeds were applied for purposes other than purposes of private gain then that lottery would be a lawful lottery and there would be a defence to the charge. The sole question, therefore, in this case is whether the money which was paid into general funds of this society was or was not being applied for purposes other than purposes of private gain.”

(*Payne & others v. Bradley* (1961) 2 All E.R. 36 at p. 40).

Whether we agree or not with the provisions of our Lotteries Law, Cap. 74, the fact remains that the definition of the expression “lottery” in section 2 of the Law is so wide

as to include the game of tombola. As was stated by Mr. Justice Holmes of the United States Supreme Court in the case of *Joseph Lochner v. People of the State of New York* (1905), reported in the United States Supreme Court Reports, volume 198, page 45 at page 75 :

“ It is settled by various decisions of this Court that state constitutions and state laws may regulate life in many ways which we as legislators might think as injudicious, or if you like as tyrannical, as this, and which, equally with this, interfere with the liberty to contract. Sunday laws and usury laws are ancient examples. A more modern one is the prohibition of lotteries. The liberty of the citizen to do as he likes so long as he does not interfere with the liberty of others to do the same, which has been a shibboleth for some well-known writers, is interfered with by school laws, by the Post Office, by every state or municipal institution which takes his money for purposes thought desirable, whether he likes it or not.”

For these reasons we hold that the appellant was rightly convicted ; and we leave to the Legislature the question of relaxing the rigidity of the Law on the lines of the recent English legislation to which we had occasion to refer earlier in this judgment.

*The second* ground of appeal was that the trial Court ought to have reserved the question of the unconstitutionality of sections 6, 10 and 11 of the Lotteries Law, Cap. 74, for the determination of the Supreme Constitutional Court.

We have held in many cases that it is undesirable that criminal trials should be interrupted for the purpose of reserving the unconstitutionality of a law, under Article 144 of the Constitution, for the decision of the Supreme Constitutional Court, where the law was one which was in force on the date of the coming into operation of the Constitution : a recent case to the point is that of *Michael Demetriou Zavos v. The Police* (1963) 1 C.L.R. 57, in which reference is made to previous decisions of this Court. Under the express provisions of Article 188, para. 4, of the Constitution, it is the duty of every trial Court, exercising civil or criminal jurisdiction, to apply the provisions of a law in force on the 16th August, 1960, with such modification as may be necessary to bring it into accord with the provisions of the Constitution. The Lotteries Law, Cap. 74, being a law which was in force on the 16th August, 1960, it was not necessary for the trial Court to refer the matter to the Supreme Constitutional Court.

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The *third* and final ground of appeal was that the provisions of the definition of "lottery" in section 2, and of section 6 of the Lotteries Law, Cap. 74, were contrary to, or inconsistent with, Articles 15, 23 and 25 of the Constitution and that they should be modified as follows :—

- (a) that the definition of the expression "lottery" in section 2 should be amended by the addition at the end thereof of the words "but shall not include a game under Cap. 151"; or
- (b) that section 6, except the first three lines should be deemed as repealed.

Obviously Article 15 relied upon refers to the private and family life of a person, and is not relevant.

As to Articles 23 and 25 it was held by the Supreme Constitutional Court in the case of *Police and Hondrou and another* (1962) 3 R.S.C.C. 82, that the restrictions imposed by section 6 (1) of the Gambling Prevention Law, Cap. 151, were not contrary to, or inconsistent with, Articles 23 and 25 of the Constitution, because they were necessary, *inter alia*, in the interests of public morals.

In the present case the appellant is a coffceshop-keeper, and if lotteries are prohibited under the provisions of the Lotteries Law, Cap. 74, he is not restricted from carrying on his business of running a cafe. He is simply prevented from *promoting or conducting a lottery, viz. tombola, in his cafe*. But this restriction may be considered to be necessary in the interests of public morals, within the provisions of Article 25, para. 2, of the Constitution. We are, therefore, of the view that the aforesaid provisions of the Lotteries Law, Cap. 74, should be applied without any modification.

In the result the appeal is dismissed and the conviction affirmed.

VASSILIADES, J.: I agree that there is no substance in the submission made on behalf of the appellant regarding the unconstitutionality of the law upon which the appellant was prosecuted or regarding the proceedings taken thereunder. But, with all respect to the majority judgment as regards the substance of the case I dissent. I do not wish to take time now with my reasons. I shall give them later. I would allow this appeal and quash the conviction.

WILSON, P.: In the result the appeal is dismissed.

(Note : These are the reasons for the dissenting judgment of Vassiliades, J. referred to at page 42, ante).

VASSILIADES, J.: With all deference to the view taken by the majority of the Court, I am of opinion that this case, on the substance, is a case of lawful social entertainment ; and not a case of promoting a lottery. I would, therefore, allow the appeal.

The facts are not in dispute. On a Saturday evening, in June last, some 200 people were taking part in a game of " tombola ", organised by the appellant at his public coffee-shop in a suburb of Larnaca town. The persons participating in the game were sitting in groups, mostly around tables, in the open air yard, having gathered there, for a lawful purpose, namely for the purpose of social entertainment. There is no suggestion that they were gambling ; or that they were engaged in any other sort of socially objectionable activity. The appellant cafe-keeper supplied the usual cards for participation in the game, at 25 mils each. No player could take part with more than six cards ; so none could stake more than three shillings in a game. The stake money was distributed amongst the winners in the usual way. There is no allegation of any improper exploitation or other objectionable conduct on the part of the appellant.

The prosecution was lodged on the ground that the game fell within the statutory definition of a lottery and it was, therefore, prohibited under the provisions of the Lotteries Law, Cap. 74. This is the issue upon which the case turns.

" Tombola " is an old and popular game in this country, played as a rule for purposes of social entertainment. It is a game where a player's chance to win depends mostly on luck and partly on his following carefully and checking correctly on his card the drawing of the numbers as the game goes on. Depending on the stakes and other relevant factors, " tombola " can be played for purposes of gambling. In such a case it would amount to an offence under the provisions covering gambling in Chapter 151 (Betting Houses, Gaming Houses and Gambling Prevention Law) ; and the organiser of the game would be committing an offence under the same law.

In the case in hand the evidence sufficiently describes the game organised by the appellant, and being in fact played at the time. And as I have already said, there is no allega-

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tion of gambling. The Prosecution merely contend that the game played amounted to a lottery within the meaning of the word in the definition of the Lotteries Law (Cap. 74). I may add here that, as far as I am aware, this was a sort of a test prosecution, the first of its kind, under a statute which has been in force since May, 1956.

It is submitted on behalf of the appellant that the facts as found by the trial Court do not constitute an offence under the Lotteries Law. This is the substance of the defence. Other grounds and objections were taken, both at the trial and in the appeal, some of them extending as far as to raise Constitutional issues ; but I find it unnecessary to deal with them in this judgment, as I agree with the view taken by the other members of the Court regarding such grounds.

The appeal, therefore, in my opinion, turns on the following two questions :

- (1) Whether the game played in this case falls within the definition of "lottery" in the Lotteries Law (Cap. 74)?
- (2) If yes, whether the Lotteries Law is applicable considering that the game in question is also a "game" within the provisions of the Betting Houses, Gaming Houses and Gambling Prevention Law (Cap. 151).

I find no difficulty in answering either of these questions. But, before doing so, I must, I think, clear the ground with two unchallengeable, in my opinion, statements :—

- (i) The English Law in this connection is substantially different from our law. It rests and develops on statutes different to ours ; and English cases on the question in hand, if of any help at all, must be read in that light.
- (ii) The word "lottery" (λαχειον) and the word "game" (παιγνίδι) convey in the local Greek language and usage, two different conceptions. The same, as far as I can say, applies more or less to the English words.

According to the Oxford Universal Dictionary, Illustrated, Third Edition (1961) Volume 1, (page 1170, col. 2),

"lottery" means—

- (1) An arrangement for the distribution of prizes by chance among persons purchasing tickets, slips or lots bearing the same numbers as the tickets and representing either prizes or blanks which are drawn from a wheel."

“ Game ” (page 773 col. 1) means :

“ (1) Amusement, fun, sport ;

...

- (4) A diversion of the nature of a contest, played according to rules, and decided by superior skill, strength or good fortune.”

In a lottery each holder of one or more tickets shares proportionately the chances in the *distribution* of prizes. In a game each player takes part in the *playing* of the game.

Prior to 1956, both, unlawful gaming and lotteries came under the provisions of the statute known as the Betting Houses, Gaming Houses, Lotteries, and Gambling Prevention Law, 1947, (Cap. 48 in the 1950 Edition of the Cyprus Statutes). In the definition section (section 2) “gamble” with its grammatical variations and cognate expressions meant “to play at, or engage in, any game of chance or of mixed chance and skill for money or money’s worth” ; provided that if the person charged, proved, to the satisfaction of the court trying the offence, that having regard to the circumstances, he was playing for social amusement, he would not be guilty of an offence.

“Lottery”, as defined in the same section 2, included “any scheme or device for . . . . the distribution of any property” . . . . by lot or chance.

I need not give here verbatim the elaborate statutory definition which was apparently intended to be wide enough to cover all kinds of lotteries. It was, in my opinion, wide enough in that statute as well, to cover “tombola”.

In 1956 the legislature enacted a separate law “to authorise the promotion and conduct of Government lotteries, to prohibit unauthorised lotteries and restrict certain prize competitions ; and for purposes connected with the matters aforesaid”. This was Law No. 14 of 1956, the present Lotteries Law, enacted in May of that year, now Cap. 74 in the 1959 edition of the Statute Laws of Cyprus. By this same Law (Law 14/1956) the Betting Houses, Gaming Houses, Lotteries and Gambling Prevention Law, 1947, (Cap. 48 at that time) was amended by a change in the title to exclude “Lotteries” and by repealing the definition of “lottery” in section 2, and the whole of section 4 providing for the sale of lottery tickets, etc. (Cyprus *Gazette*. Legislation of the year 1956 ; vol. 1, page 35 at page 42). In this new Lotteries Law (the present Cap. 74) “lottery” means “any scheme for distributing prizes by lot or chance” (sect. 2 (1)).

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While under the Gambling Prevention Law in its present form (Cap. 151) gambling with its grammatical variations and cognate expressions, means “to play at, or engage in, any game of chance or of mixed chance and skill, for money or money’s worth.”

It is conceded that a game may well fall within the statutory definitions of both “lottery” and “game”. As the learned trial Judge has put it in his judgment, “the two definitions are undoubtedly very wide and evidently in most cases overlapping. Indeed I venture to say that only games involving mixed chance and skill would clearly not fall within both definitions at the same time.”

With all respect, I agree with that statement. The position is thus created under which a “game” where a player’s chances to win depend on pure luck and there is a prize going to the winner, innocent and harmless as it may be, constitutes an illegal “lottery” in respect of which a prosecution lies. And moreover, in such a case the persons prosecuted for taking part in such a game would not be able to avail themselves of the defence of satisfying the judge that their game was being played for purposes of social entertainment.

I find myself unable to accept the proposition that this was either the intention of the legislature, or the effect of the enactment of the Lotteries Law of 1956. In my opinion the statute in question was enacted for the purposes stated in the heading thereof, referred to earlier in this judgment; and should be applied accordingly. On the other hand, activities constituting “games”, in the ordinary meaning of that word should continue to be governed by the law applicable to gaming (Cap. 151).

The recent case of the *Director of Public Prosecutions v. The Regional Pool Promotions Ltd.* considered by the Court of Criminal Appeal in the Queen’s Bench Division of the High Court of England (1964; 2 W.L.R. p. 209) in the form of a case stated, offers a good illustration of the correct approach, if I may say so with all respect, to this type of case: *i.e.* the activity which, while falling within the statutory ambit of lottery, is also a game within the law applicable to gaming. The distinction is there clearly made between a mere lottery where participation consists in the purchase or acquisition of lottery-tickets, and a game which requires the active participation of the player; a distinction which can only be made on the facts, and which therefore has to be determined, at least partly, as a question of fact in each case.

I can now return to the two questions stated earlier in this judgment, upon which this appeal, in my opinion, turns :—

- (1) Whether the game in this case was also a lottery within the definition of the Lotteries Law ?
- (2) If yes, whether the Lotteries Law is applicable considering that the activity in question is also a game under the law applicable to gambling, (Cap. 151) ?

The answer to the first question is, I think, clearly in the affirmative. And the answer to the second is, in my opinion, equally clearly, in the negative. The activity under consideration is a “game” as distinguished from a “lottery” in the ordinary meaning of these words, in the language of the appellant (and in English as well, as far as I can say). And its legality or illegality should be determined, in my opinion, under the law intended to govern such activities respectively. A “game” in the ordinary as well as the statutory meaning of the word, which is lawful under the law applicable to gaming, cannot, I think, be at the same time unlawful because it falls also within the very wide definition of “Lottery” in the statute enacted to govern lotteries. I would, therefore, allow the appeal and set aside the conviction.

*Order* : In the result the appeal was dismissed.

*Appeal dismissed. Conviction affirmed.*

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