[HALLINAN, C.J., AND GRIFFITH WILLIAMS, J.]

(May 17, 1952)

CHRISTOS TOFA TOMAS AND ANOTHER, *Appellants*,

v.

THE POLICE, *Respondents*.

(*Criminal Appeal No.* 1911.)

Gambling and Gaming Houses—Section 9 of Cap. 48: Presumption of lawful entry of such houses by the Police—Section 13 (1) (a): Instruments for gambling must be found by police—Section 13 (1) (d): "persons" includes one person.

The police entered the premises suspecting that some thirty persons were assembled there for gambling. The second appellant started running away. A witness for the prosecution, not a police officer, deposed that he had seen the convicted persons playing cards for money. The trial Court held on these facts that the premises must be presumed to be a gaming house under the provisions of section 13 (1) of Chapter 48 where this presumption is raised under para. (*a*) if any instruments for gambling are found, and under para. (*d*) if any persons are seen escaping. The appellants called no evidence to rebut the presumption and they were convicted.

Held: (1) It must be presumed, in the absence of evidence to the contrary, in favour of the police that they entered the premises lawfully under section 9 of Chapter 48.

(2) The presumption that the premises are a gaming house is not raised under section 13 (1) (*a*) where the instruments for gambling are not found by a police officer entering the premises under the provisions of Chapter 48.

(3) The presumption that the premises are a gaming house is raised under section 13 (1) (*d*) even if only one person is seen escaping. The word "persons" in that paragraph includes "person".

Appeal dismissed.

Appeal by the accused from the judgment of the District Court of Larnaca (Case No. 297/52).

L. Clerides, for the appellants.

R. R. Denktash, Junior Crown Counsel, for the respondents.

The facts of the case are set out in the judgment of the Court which was delivered by:

HALLINAN, C.J.: In this case the appellants together with one other person were convicted of gambling in a gaming house. The evidence for the prosecution was that a sergeant of police saw some thirty persons assembled on the verandah of a restaurant and he suspected that gambling was going on. The police entered the premises and the second appellant started running away. A youth

who gave evidence for the prosecution said that he had seen the three convicted persons playing cards for money. No evidence was called for the defence and the learned President of the District Court convicted the appellants on the ground that a presumption under section 13 (1) paras. (*a*) and (*d*) had been raised that the accused had been found in a gaming house, and this presumption had not been rebutted.

Counsel for the appellants advanced several arguments why these convictions should be set aside, but I think it is only necessary to deal with two of his submissions.

He submitted that in order to raise a presumption under section 13 the prosecution must prove that the police had entered the premises under the provisions of section 9 of Chapter 48, and in particular should have given evidence that they had a reasonable ground for believing that the premises were kept or used as a gaming house before they entered. I consider however that the maxim that everything is presumed to be rightly and duly performed until the contrary is shown, applies to an entry made by police under section 9. If this were not so the consequences might prejudice an accused person more than it might embarrass the prosecution, for, in order to establish a reasonable ground of belief, the police might have to give evidence of conduct on other occasions which might seriously prejudice the defence.

The other submission of counsel for the appellants was that in the circumstances of the present case the evidence was insufficient to raise a presumption either under paragraph (*a*) or paragraph (*d*) of section 13 (1). As regards paragraph (*a*) his submission is undoubtedly correct. The instruments of gambling (in this case, cards) were seen by the youth who gave evidence for the prosecution; they were not found by the police. Crown Counsel has not sought to support the conviction under paragraph (*a*).

Mr. Clerides for the appellants argued that in paragraph (*d*) which reads: "If any persons are seen or heard escaping therefrom", the word "persons" cannot refer to a single person. And he referred us to section 5A of the Gambling Law of 1896 where "person" is used in the singular. Since the provision in section 13 (1) (*d*) of Cap. 48 replaces a similar provision in the law of 1896, and uses the plural instead of the singular, he argues that the legislative authority deliberately used the plural.

In favour of this submission it might be also said that in a large gathering of people it is a very stringent law which raises a presumption of facts against the defence if one person out of those assembled chooses to run away.

However, it would appear from the other provisions of this section that the legislative authority intended it to be stringent. For under para. (*a*) of section 13 (1), if even cards are found on the premises or in the possession of some person therein, a presumption arises. Moreover, if the Court were to hold that the word "persons" in para. (*d*) in sub-section (1) does not include the singular, such an interpretation would conflict with sub-section (2) which reads :—

> "Any person found in or escaping from a gaming-house on the occasion of its being entered under the provisions of this Law shall be presumed, until the contrary is proved, to be or to have been gambling therein."

For these reasons I do not consider that there is anything in Cap. 48 to cause this Court to depart from the provision contained in section 2 of the Interpretation Law (Cap. 1) that words in the plural include the singular.

In my view the evidence for the prosecution in this case raised a presumption under section 13 (1) (*d*) and sub-section (2) that the appellants had been gambling in a gaming house. They called no evidence to rebut this presumption and their convictions must in consequence be affirmed.

The appeal is therefore dismissed.