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

(April 17, 1952)

THE POLICE, *Appellants*,

v.

LOIZOS CHRISTODOULOU AND OTHERS, *Respondents*.

(*Case Stated No.* 74.)

"*Gaming House*"—*Meaning in Betting Houses, etc., Law* (*Cap.* 48)—*Need of discretion in bringing prosecutions.*

Case Stated by the police against the acquittal of the respondents for gambling in a gaming house contrary to section 5 of the Betting Houses, etc., Law (Cap. 48). Under section 2 of Chapter 48 the word gaming house "includes any place kept or used for gambling and a place shall be deemed to be used for gambling if it is used for gambling even on one occasion only". The appellants (the prosecution) did not prove gambling on any occasion except the occasion the subject of the charge. Nor did they prove that the house was kept or used for gambling by the owner, occupier or manager.

The trial Court acquitted the respondents holding that the prosecution must prove use of the premises for gambling on an occasion prior to the occasion the subject of the charge.

Held: (1) In order to establish that a house has been used for gambling on one occasion only it is sufficient for the prosecution to prove gambling on the occasion the subject-matter of the charge. *Koungas and another* v. *the Police*, Criminal Appeal No. 1889/51 distinguished.

By making it sufficient to prove gambling on one occasion only, the legislative authority has facilitated the mode of proof; but in the opinion of the Court this throws on the police the duty of exercising a wide discretion, bearing in mind the mischief aimed at by the law.

(2) The words "kept or used for gaming" in the definition of gaming house mean: kept or used or permitting to be kept or used for gambling by a person having the ownership, occupation, management or control of the house. Since there was no evidence that the house had been so kept or used the prosecution failed to prove that the respondents had gambled in a gaming house.

Case Stated by the Police from the judgment of the District Court of Larnaca (Case No. 5133/51).

P. N. Paschalis, Crown Counsel, for the appellants.

L. Clerides for the respondents.

The judgment of the Court was delivered by:

HALLINAN, C.J.: In this Case Stated the 1st respondent stopped off an omnibus at a coffee-shop. Two others, the 2nd and 3rd respondents, came in and started to play a three-card game called "Rigaki". The statement of the case clearly suggests that the 2nd and 3rd respondents were tricksters: they induced the 1st respondent to join them and he was despoiled of £20 by these card-sharpers.

He complained to the police who did not charge the 2nd and 3rd respondents with cheating but charged all under section 5 of Chapter 48 with gambling in a gaming house. The learned P.D.C. refused to convict on the ground that the prosecution had not proved that the coffee-house was a gaming house since, to establish this, it must be shown that the place was used for gambling on at least one occasion previous to the one for which the charge is preferred.

The applicant contends that it is not necessary for the prosecution to prove a previous act of gambling and relies on the definition of gaming house contained in section 2 of Chapter 48 :—

> " 'gaming house' includes any place kept or used for gambling and a place shall be deemed to be used for gambling if it is used for gambling even on one occasion only."

It has been submitted by the respondents that in the definition " used for gambling on even one occasion only " means " one occasion prior to the occasion the subject-matter of the charge ". The learned P.D.C. in accepting the respondents' submission relies on a passage in the judgment of the Supreme Court in *Koungas and another* v. *The Police* (Criminal Appeal No. 1898, reasons delivered on 2.6.51).* The passage cited, however, was not necessary to the decision ; the appeal was allowed because the 1st appellant, a café keeper was charged with using his café as a gaming house for playing the game of " zari ". The Supreme Court held that there was no evidence that this game had been played on the 1st appellant's premises, and there was no evidence of playing a game for money or money's worth : therefore the prosecution, whether it was in respect of gambling or of playing an unlawful game, failed. The passage, which begins " even if the District Judge was entitled to hold that the game of 'zari' was being played . . . . . " was clearly an " *obiter dictum* ". Nor does it appear that the Court was referred to the definition of " gaming-house " in Chapter 48 which was enacted in 1947 after the decision of the Supreme Court in the case of *Mitso and another* v. *The Police* (1941) 17 C.L.R., 93.

Prior to the enactment of Chapter 48 in 1947 the law regulating this subject was the Gambling Law (No. 10 of 1896) which contained no definition of gaming house. It was an offence under section 4 of that Law to keep, hold or use any house or other premises for the purpose of gambling therein or to admit the public for the purpose of gambling. In the case of *Mitso and another* v. *The Police* where the appellants had been convicted *inter alia* under this section, it was held that, since there was no evidence that the house had been used on any other occasion than the one which

* See page 59 of this volume.

led to the charge, the conviction must be quashed. This accords with the English decision in *R.* v. *Davies* (1897) 2 Q.B. 199 which was a case under the similar section 4 of the Gaming Houses Act, 1854.

Having regard to the decision of the Supreme Court in Mitso's case in 1944 it is not unreasonable to assume that the legislative authority intended to overcome the difficulty of the prosecutor in proving prior occasions of gambling by providing that the actual occasion the subject of the charge should be sufficient to turn a premises into a gaming house. I consider therefore that the applicant's contention in this Case Stated is correct.

Nevertheless, at the end of the hearing of this Case Stated the Court decided that the decision of the Court below in acquitting the respondents was correct and I shall now give reasons for so deciding.

At an early stage in Crown Counsel's argument for the applicant I asked him whether the words "kept or used for gambling" means kept or used by one who owns, occupies, manages or controls the place or whether user for gambling by persons having no interest in or control over the premises is sufficient to make the place a gaming house. He contended that the words should bear the latter meaning. To support a conviction in this case, this latter interpretation must be accepted, for the respondents had no interest in or control over the coffee shop.

If the interpretation for which Crown Counsel contends is correct, a curious position arises. Section 5 prohibits gambling in a gaming house, which includes any place other than a "street", and section 6 prohibits gambling in a street. Topographically speaking, "place" and "street" as defined in Chapter 48 include every square inch of the Colony. According to Crown Counsel's submission any person proved to have been gambling in a place not a street is guilty of an offence under section 5; and of course any one gambling in a street is also guilty of an offence under section 6. In short, any one found gambling anywhere is guilty of an offence. I do not think this extraordinary result represents the intention of the legislative authority, for if such was the intention, sections 5 and 6 would quite shortly have been combined into one as follows:—

> "Any persons gambling or assembled together for the purpose of gambling is guilty of an offence."

Moreover, the essential difference between sections 5 and 6 on the one hand and section 7 on the other would vanish; for section 7 makes it an offence to play certain specified unlawful games anywhere; whereas sections 5 and 6 prohibit gambling at any game of chance or mixed chance and skill other than a specified unlawful game only when

played in a gaming house or in a street. In the leading case of *Jenks and another* v. *Turpin* (13 Q.B.D. 505) Hawkins J. divides " unlawful games " into two classes. Of these classes (the first being what I have called " certain specified unlawful games ") he says :—

> " This class includes ace of hearts, pharaoh (or faro), basset, and hazard, made illegal by 12 Geo. 2, c. 28 ; passage and every other game with a die or dies except backgammon, made illegal by 13 Geo. 2, c. 19 ; roulet (or rolly-poly), made illegal by 18 Geo. 2, c. 34. The second class comprises a number of games not altogether prohibited under penal consequences, nor declared to be altogether illegal, but which nevertheless have been styled " unlawful " by the legislature, because the keeping of houses for playing them and the playing them therein by anybody were rendered illegal."

In my view section 5 aims at gambling in houses that are kept for gambling in the ordinary sense of the word " keep ": that is to say the person having the ownership, occupation, management or control of a house is using his premises or permitting it to be used for gambling. In *Jenks* v. *Turpin* Hawkins J. at p. 516 defined " a common gaming house " as a place "in which a large number of persons are invited habitually to congregate for the purpose of gaming". Since our definition has not the word " common " and provides that one occasion is sufficient to constitute a premises as a gaming house, the words " large " and " habitually " must be excluded from Hawkins J's definition in its application to the law of Cyprus ; but the element of invitation or consent on the part of the " keeper " of the premises still remains. Our law of gambling has been taken over together with its nomenclature and phraseology from English law with certain modifications. Neither in ordinary usage nor as employed in English law can the expression " gaming house " include a coffee house where three members of the public enter casually and fall to playing cards without any evidence that the coffee house keeper knew what they were doing. Nor is there anything in Chapter 48 which disposes me to think that the expression in this law has any such extraordinary and artificial meaning.

I therefore consider that the words " kept or used for gambling " in the definition of " gaming house " mean " kept or used for gambling by the owner or occupier or by the person having the care or management of any ' place '." It follows that having regard to the facts of this case, the respondents cannot be convicted under section 5.

I would like to add that in my view the words " even on one occasion only " were appended to the definition of gaming house primarily to facilitate the proof of offences rather than to turn into gaming houses places

that would not have been gaming houses under the law prior to 1947 when Chapter 48 was enacted. Stated in simple language, the law as to gaming houses is aimed against persons who aggravate the social evil of gambling by habitually opening their houses to persons practising that vice. The words "even on one occasion only" facilitate the police in prosecuting such persons to conviction; but if the police prosecute a person whom they know has in fact used his house for gambling on only one occasion, in the great majority of such cases the prosecution will be for what is little more than a nominal offence. The legislative authority in facilitating the mode of proof, in my view, throws on the police the duty of exercising a wide discretion, bearing in mind the mischief aimed at by the law. On the facts of this case the failure to exercise a proper discretion has been particularly unfortunate. It would appear that there was considerable evidence that the 2nd and 3rd respondents had cheated the 1st respondent out of £20. Either the 2nd and 3rd respondents should have been charged with cheating; or if the police considered the evidence insufficient, then at least the unfortunate 1st respondent should have been allowed to accept the offer of the 2nd and 3rd respondents to restore the £20.

GRIFFITH WILLIAMS, J.: I concur.