[VASSILIADES, P., JOSEPHIDES AND LOIZOU, JJ.]

ANTONAKIS TRYPHONA PISSOURIOS AND 11 OTHERS,
Appellants,

v.

THE POLICE,
Respondents.

(*Criminal Appeals Nos.* 2910–2921)
(*Consolidated*)

Gaming—Gaming houses—The Betting Houses, Gaming Houses and Gambling Prevention Law, Cap. 151*—Keeping a gaming house contrary to section* 3 (1) (*a*) (2) *of the said law—Gambling contrary to section* 4 *— Warning gamblers contrary to section* 11 (*b*)*—Assembling for the purpose of gambling contrary to section* 4 *of the same Law—Presumptions of law—Rebuttable presumptions laid down in section* 12 (1) *of the law—In the present case the prosecution did not rely on any of those presumptions but on the ordinary law of circumstantial evidence—Primary facts as found by the trial Judge on the evidence adduced sufficient to justify the inference that the appellants found on the premises were assembled for the purpose of gambling—Not always necessary to make specific finding as to which illegal game they intended to play—See, also, herebelow.*

Evidence in criminal cases—Presumptions of law laid down in section 12 *of Cap.* 151 (supra)*—The question whether or not those presumptions are unconstitutional as contravening Article* 12, *paragraph* 4, *of the Constitution, left open—Presumptions under the aforesaid section* 12*—Where reliance is placed upon any of those presumptions by the trial Judges, they are expected to state so expressly in their judgment and to specify on which of the four paragraphs of section* 12 (1) *they relied—Stating further in what way the burden of disproving such presumptions was not discharged by the accused persons—This course is necessary in cases where the onus of proof is cast on the defence—As this burden may be discharged by evidence satisfying the Court on the balance of probabilities and not beyond reasonable doubt.*

Evidence in Criminal Cases—Onus of proof—Cases where the onus of proof (or disproof) is cast on the defence—Discharge of such onus—Standard of proof being that of the balance of probabilities—See, also, above.

Presumptions—Presumptions of law—Rebuttable—Section 12 (1), *of Cap.* 151 (supra)—*See above under Gaming ; Evidence in Criminal Cases.*

Gaming Houses—Warrant of search—Requiring police officers to enter premises "forthwith"—Search warrant carried out 22 *days after its issue—Form* 6 *of the Criminal Procedure Rules—Observations of the Court regarding the validity of such search warrant—Question of validity left open—As, having regard to the constitutional provisions on human rights, the Court should not be taken to assent to the proposition that a search warrant can remain in force, under the provisions of section* 28 (3) *of the Criminal Procedure Law, Cap.* 155, *indefinitely "until it is executed or until it is cancelled by a Judge", regardless of the surrounding circumstances in which the warrant was issued.*

Criminal Procedure—Appeal—Powers of Court of Appeal—Inferences to be drawn from primary facts as found by trial Courts—The Courts of Justice Law, 1960 (*Law of the Republic No.* 14 *of* 1960) *section* 25 (3).

Appeal—Powers of the Court of Appeal to draw inferences from primary facts—See immediately above.

Search warrants—Duration—Validity—See above under Gaming Houses.

Warrants of search—See above under Gaming Houses.

Human Rights—Warrant of search—See above under Gaming Houses.

Gambling—Assembling for the purpose of gambling—Not always necessary to make a specific finding as to the unlawful game the accused persons intended to play—See above under Gaming.

Constitutional Law—Article 12, *paragraph* 4, *of the Constitution—Whether or not the presumptions laid down in section* 12 (1) *of Cap.* 151 (supra) *contravene Article* 12.4 *of the Constitution—Question left open—See, also, above under Evidence in Criminal Cases.*

Constitutional Law—Human rights—Search warrant—Duration—Validity—Section 28 (3) *of the Criminal Procedure Law, Cap.* 155—*See above under Gaming Houses.*

In these consolidated appeals the appellants were found guilty of offences under the Betting Houses, Gaming Houses and Gambling Prevention Law, Cap. 151 as follows : The first appellant was found guilty of keeping a gaming house, contrary to section 3 (1) (*a*) and (2), and of gambling contrary to section 4. The appellant Onisiforos Panayiotou was found guilty of warning gamblers contrary to section 11 (*b*) and all the remaining appellants were found guilty of gambling contrary to section 4, and of assembling for the purpose of gambling, contrary to section 4 of the same Law. Seven of the appellants were bound over in the sum of £20 for two years, and fines ranging from £4 to £13 were imposed on the remaining accused. They now appeal against conviction only on a number of grounds which may be summarized as follows :

(1) That the convictions were unreasonable having regard to the evidence, including the allegation that the inferences drawn by the trial Judge were not open to him on the evidence adduced ;

(2) that the Judge relied on the presumptions laid down in section 12 of the aforesaid Law, Cap. 151 (*supra*), on the basis that the police who carried out the search were acting on the strength of a valid warrant of search whereas in fact such a warrant was not a valid one ;

(3) that even if the warrant of search was valid, the presumptions of guilt laid down in section 12 of Cap. 151 (*supra*) are contrary to the provisions of Article 12, paragraph 4, of the Constitution, which provides that any person accused of a crime is presumed to be innocent until he is proved guilty according to law.

The aforesaid search warrant was issued by a Judge on the 25th November, 1966, and the Police did not enter the premises of the first appellant until the 17th December, 1966, in the circumstances fully set out in the judgment of the Court (*post.*) The warrant in question follows Criminal Form No. 6 of the Criminal Procedure Rules ; it authorizes and requires the police " forthwith, with proper assistance, to enter the said premises . . . . . and there diligently search for the said things . . . . . ". It was submitted by counsel for the appellant that on those facts the warrant in question authorizing a search to be carried out " forthwith " was no longer operative on the

17th December, 1966, *i.e.* 22 days after its issue, notwithstanding the provisions of section 28 (3) of the Criminal Procedure Law, Cap. 155 which provide that a search warrant " shall remain in force until it is executed or until it is cancelled by a Judge ".

Section 12 (1) of the Betting Houses, Gaming Houses and Gambling Prevention Law, Cap. 151 reads :

" 12. (1) Every place entered under the provisions of this Law, in so far as they relate to a gaming house, shall be presumed, until the contrary is proved, to be a gaming house and to be kept or used by the owner, occupier or manager thereof as a gaming house, in any of the following cases, that is to say—

(*a*) if any instruments or appliances for gambling are found therein or upon any person found therein or escaping therefrom ;

(*b*) if any police officer acting under the provisions of this Law, or any of his assistants is wilfully prevented from, or obstructed or delayed in, entering, or approaching the same or any part thereof ;

(*c*) if any passage or staircase or means of access to any part thereof is unusually narrow or steep or otherwise difficult to pass or any part thereof is provided with unusual or unusually numerous means of preventing, obstructing or delaying an entry or with any contrivance for enabling persons therein to see or ascertain the approach or entry of persons or for giving the alarm or for facilitating escape therefrom ; or

(*d*) if any persons are seen or heard escaping therefrom ".

The trial Judge, apparently without relying on any of the presumptions created by section 12 of the said Law (*supra*), but acting on the basis of certain primary facts as found by him concluded as follows : " All these facts lead to the conclusion " that they (the accused) were assembled to play *zari* (dice) and that they played *zari* contrary to law " ; and on this finding he found the accused guilty as stated earlier (*supra*).

In allowing partly the appeal and quashing the convictions on the count of gambling, but affirming the other convictions, the Court :—

Held, (1)—(*a*). Counsel for the respondents conceded, we think very properly, that he could not rely on the presumptions laid down in section 12 of the Law (*supra*) but only on the

ordinary law of circumstantial evidence, to the effect that the finding of the trial Judge was open to him on the evidence adduced ; in other words, that the inferences drawn by him that the appellants were assembled for the purpose of playing *zari* (dice) and that they actually played *zari*, were reasonable inferences which could be drawn from the primary facts proved before him.

(*b*) Once the prosecution do not base their case on the presumptions laid down in section 12 of the said law, the question whether the provisions of that section are unconstitutional (as well as the question of the validity of the search warrant) no longer arises for the purposes of the present appeal and need not be decided.

(*c*) But on the evidence adduced before the trial Judge we do not think that it was open to him to make a finding that the accused were either assembled for playing *zari* or that they were actually playing *zari*. They might have been playing at any other game of chance. For this reason we are unable to uphold the finding of the learned trial Judge with regard to the specific game of *zari*.

(2)—(*a*) The question which now arises is whether on the primary facts as found by the trial Judge we, as an appellate court, can draw the inference that the accused were either gambling, or assembled for the purpose of gambling as actually charged ; it should be recalled that both in the statement of the offence and the particulars of the offence of gambling and assembling for the purposes of gambling, no mention is made of the game of " *zari* " or indeed of any other game.

(*b*) On the facts as they stand, we do not think that it can be reasonably inferred that the accused were actually gambling ; so that the only question now left is whether the inference can be drawn that they were assembled for the purpose of gambling, without necessarily finding which kind of specific illegal game they intended to play.

(*c*) Depending on the circumstances of a case, we think that a court is not precluded from finding persons guilty of this charge without specifying expressly the particular illegal game. The question is always a question of fact depending on the circumstances of the particular case.

(3) In reaching our conclusion we have to consider the main facts in the present case (*Note :* Those salient facts are fully set out in the judgment of the Court, *post*). It may

well be that each of these facts taken by itself, or two or three of them taken together, might not justify the inference that these persons were on that night assembled for the purpose of gambling. But we are of the view that the cumulative effect of all these facts taken together is sufficient to justify the inference that they were assembled for the purpose of gambling, and we do not think that it is necessary to make a specific finding as to which illegal game they intended to play with cards, dice or otherwise.

(4) For these reasons the convictions of the appellants on the count of gambling should be set aside but otherwise the convictions of the first appellant for keeping a gaming house and the other appellants for assembling for the purpose of gambling, including that of the fifteenth accused (the said Onisiforos Panayiotou) for warning gamblers, should be affirmed.

Appeals partly allowed. Convictions on the count of gambling quashed. Other convictions affirmed.

Per curiam, (1). In cases where trial Judges rely on any of the presumptions of law laid down in section 12 (1) of the Betting Houses, Gaming Houses and Gambling Prevention Law, Cap. 151, we would expect them to state so expressly in their judgments and to specify on which of the four paragraphs of section 12 (1) they relied, stating further in what way the burden of disproving such presumptions was not discharged by the accused persons. This is necessary in cases where the onus of proof is cast on the defence as this burden may be discharged by evidence satisfying the trial Court on the balance of probabilities and not beyond reasonable doubt as would be required in the case of prosecution in proving the charge : See *R.* v. *Koutchouk* (1957) 22 C.L.R. 61, at p. 64 ; and *R.* v. *Carr-Briant* [1943] K.B. 607, at p. 612.

(2) Regarding the question of the validity of the search warrant raised by counsel for the appellants, considering that no reliance was placed by counsel for the prosecution on the presumptions created under section 12 of Cap. 151 (*supra*), it is no longer necessary for the purposes of the present appeals to decide this point, which we would like to leave open as, having regard to the constitutional provisions on human rights, we should not be taken to assent to the propo-

sition that a search warrant can remain in force, under the provisions of section 28 (3) of the Criminal Procedure Law, Cap. 155 (*supra*), indefinitely "until it is executed or until it is cancelled by a Judge", regardless of the surrounding circumstances in which the warrant was issued.

Cases referred to :

R. v. *Koutchouk* (1957) 22 C.L.R. 61, at p. 64 ;

R. v. *Carr-Briant* [1943] K.B. 607, at p. 612 ;

Kafalos v. *The Queen* 19 C.L.R. 121, at p. 125 ;

Adem v. *Mevlid* (1963) 2 C.L.R. 3 ;

Droushiotis (No. 2) v. *Cyprus Asbestos Mines Ltd.* (1966) 1 C.L.R. 215 at p. 228 ;

Patsalides v. *Afsharian* (1965) 1 C.L.R. 134 ;

Aristidou v. *The Republic* (reported in this part at p. 43 *ante*).

Appeal against conviction.

Appeal against conviction by appellants who were convicted on the 10th April, 1967, at the District Court of Limassol (Criminal Case No. 164/67), on four counts of offences contrary to sections 3(1)(*a*)(2), 4 and 11(*b*) of the Betting Houses, Gaming Houses and Gambling Prevention Law, Cap. 151 and seven of them were bound over by Kakathymis, Ag. D.J., in the sum of £20 for two years and fines ranging from £4 to £13 were imposed on the remaining of them.

G. Cacoyiannis, for the appellants.

A. Frangos, Counsel of the Republic, for the respondents.

Cur. adv. vult.

VASSILIADES, P.: The judgment of the Court will be delivered by Mr. Justice Josephides.

JOSEPHIDES, J.: In these consolidated appeals the appellants were found guilty of offences under the Betting Houses, Gaming Houses and Gambling Prevention Law, Cap. 151 as follows : The first appellant was found guilty of keeping a gaming house, contrary to section 3(1)(*a*)(2), and of gambling contrary to section 4. The appellant Onisiforos Panayiotou *alias* Christakis (fifteenth accused) (Criminal Appeal 2920) was found guilty of warning gamblers, contrary to section 11(*b*), and all the remaining

appellants were found guilty of gambling contrary to section 4, and of assembling for the purpose of gambling, contrary to section 4 of the same Law. The appellant Onisiforos Panayiotou was also found guilty of another count but we are not concerned with that. Seven of the appellants were bound over in the sum of £20 for two years, and fines ranging from £4 to £13 were imposed on the 1st, 3rd, 4th, 15th and 16th accused. They now appeal against conviction only.

The notice of appeal filed on behalf of the appellants contains a number of grounds which, I think, may be summarized as follows :

(1) that the convictions were unreasonable having regard to the evidence, which includes also the allegation that the inferences drawn by the trial Judge were not open to him on the evidence adduced ;

(2) that the Judge relied on the presumptions laid down in section 12 of the Betting Houses, Gaming Houses and Gambling Prevention Law, Cap. 151, on the basis that the police who carried out the search were acting on the strength of a valid warrant of search issued by a Judge while in fact such a warrant was not a valid one ; and that once the appellant Onisiforos Panayiotou was acquitted of wilfully preventing the police officers in the exercise of their powers under the law, paragraph (*b*) of section 12(1) was not satisfied ; and

(3) that even if the warrant of search was valid, the presumptions laid down in section 12 of Cap. 151 were contrary to the provisions of Article 12, paragraph 4, of the Constitution.

With regard to the question whether the trial Judge relied on any of the presumptions created by section 12 of the law we think that it should be stated that there is no reference at all in his judgment to that section, nor to any presumptions of law, and if he did rely on those presumptions we would expect him to state so expressly in his judgment and to specify on which of the four paragraphs of section 12(1) he relied, stating further in what way the burden of disproving such presumptions was not discharged by the accused persons. This is necessary in cases where the onus of proof is cast on the defence as this burden may be discharged by evidence satisfying the trial Court on the balance of probabilities and not beyond reasonable doubt as would be required in the case

of the prosecution in proving the charge : see *R.* v. *Koutchouk* (1957) 22 C.L.R. 61, at page 64 ; and *R.* v. *Carr-Briant* [1943] K.B. 607, at page 612.

Although learned counsel for the appellants in his able address dwelt at length on the second and third grounds of appeal, counsel for the respondents conceded, we think very properly, that he could not rely on the presumptions laid down in section 12 of the Law but only on the ordinary law of circumstantial evidence, to the effect that the finding of the trial Judge was open to him on the evidence adduced ; in other words, that the inferences drawn by the trial Judge that the appellants were assembled for the purpose of playing *zari* and that they actually played *zari*, were reasonable inferences which could be drawn from the primary facts proved before him. On that basis it is no longer necessary for this Court to consider the second ground of appeal, and from that it follows that, once the prosecution do not base their case on the presumptions laid down in section 12 of the Law, the question whether the provisions of that section are unconstitutional no longer arises for the purposes of the present appeal and need not be decided (third ground of appeal).

We shall have something to say about the validity of the warrant of search under which the police officers were acting on that day after we state the facts.

The facts as found by the trial Judge were as follows :

The first appellant, who is a bachelor, was the tenant of a flat on the third floor of a house above the " Maxim " cabaret in Limassol. This flat was previously occupied by its owner, one HadjiPavlou and his wife. The first appellant had the flat under a lease from the beginning of November, 1966 to 1st of April, 1967. This flat has one entrance on the Ayios Andreas Street, which is 43 steps up from the street level. The police on the 25th November, 1966, obtained a warrant of search from a District Judge in Limassol after laying before him information on oath that the first appellant's flat had been kept under police supervision for a fortnight and that the police had observed various persons, some of whom were known gamblers, entering and leaving those premises at very late hours and that it was suspected that these premises were used as a gaming house contrary to the provisions of section 3 of Cap. 151. On the strength of this information, P.C. 1255 S. Demetriou applied to the

Judge for the issue of a search warrant under the provisions of section 7 of Cap. 151, to enable the police to carry out a search in the said premises between the hours of 6 p.m. and 2 a.m. to secure evidence. In fact, the warrant of search was, as already stated, issued by a District Judge on the 25th November, 1966 and it follows Criminal Form No. 6 to the Criminal Procedure Rules. After the introductory paragraph, the warrant of search reads as follows :

> " This is therefore to authorize you and require you forthwith, with proper assistance, to enter the said premises of the said Antonis Pissourios between the hours of 6 p.m. and 2 a.m. next day and there diligently search for the said things ....."

Armed with that warrant the police entered the premises of the first appellant on the 17th December, 1966 under the following circumstances : As a visitor was going up the stairs to the first appellant's flat at about 9 p.m. he was followed by two policemen in mufti who got in the flat after a struggle. When the visitor knocked at the door the fifteenth accused first opened a small window on the door and after having a look at the visitor he opened the door for the visitor to enter. At that moment the two policemen tried to enter but they were refused entrance by the fifteenth accused who pushed the door back to shut. The policemen pushed open the door and managed to get in after a struggle with the fifteenth accused who, meantime, had called " police " " police ". He may have called out also " help " during the struggle with one of the policemen. The policemen never mentioned from outside that they had a search-warrant.

After entering the flat the policemen saw movement of a number of persons from one of the six rooms of the flat towards the hall and other rooms. There were in all 16 persons including the first accused in the flat at the time. They were all men including an Englishman and a Turk. The police found in the room from which persons moved out 17 coins, mainly of fifty mils, scattered about on the floor. In that room there was a big table 6'6" × 3'9", covered with a blanket and a table cloth. There was also a gas-heater in the room. Small sums of money ranging between 250 mils and £4.750 mils were found on five of the accused persons. No playing cards or instruments of gambling were found on the premises. One of the accused (accused thirteen) was sitting in a dark room. Another accused (accused eight) was sitting in the hall

having before him a "tavli" which was open but there were no dice in it. When the police inspector warned those present that they would be charged with gambling, the first accused (first appellant) immediately intervened and said to all of them "you must say that whatever you have to say you will state it to the court". All the persons present followed his advice.

When the police inspector warned the eighth accused who had the "tavli" before him, the latter replied "I was playing 'tavli' with a friend". The inspector then remarked "but without dice"? Thereupon the first accused (first appellant) intervened and said: «Έχει γοῦστο νὰ πάρετε τὰ ζάρια καὶ νὰ πῆτε ὅτι ἔπαιζε ζάρι». The first appellant added "We were throwing our coins up and they dropped on the floor". In his evidence before the court the first appellant said that he was doing the 'kavadji' (Handstand) and the coins dropped from his pockets. He also said that he had a party, but there were no drinks or meze about. These explanations were rejected by the trial Judge who, after finding the above facts, concluded as follows: "All these facts lead to the conclusion that they were assembled to play zari and that they played *zari* contrary to law"; and on this finding he found the accused guilty as stated earlier in this judgment.

It should be observed, however, that both in the statement of the offence and the particulars of the offence of gambling and assembling for the purpose of gambling, no mention is made of the game "*zari*" or indeed of any other game. It is therein stated that the accused "were found gambling" (2nd count), and that they "were assembled together for the purpose of gambling" in the house of the first appellant (3rd count).

On the evidence adduced before the trial Judge we do not think that it was open to him to make a finding that the accused were either assembled for playing *zari* or that they were actually playing *zari*. They might have been playing at any other game of chance. For this reason we find ourselves unable to uphold the finding of the learned Judge with regard to the game of *zari*, and the question which now arises is whether on the primary facts as found by the trial Judge we, as an appellate court, can draw the inference (Courts of Justice Law, 1960, section 25(3); *Kafalos* v. *The Queen*, 19 C.L.R. 121, 125; *Adem* v. *Mevlid* (1963) 2 C.L.R. 3; *Droushiotis (No. 2)* v. *Cyprus Asbestos*

Mines Ltd. (1966) 1 C.L.R. 215 at p. 228 ; *Patsalides* v. *Afsharian* (1965) 1 C.L.R. 134 ; and *Aristidou* v. *The Republic* (reported in this part at p. 43 *ante*), that the accused were either gambling or assembled for the purpose of gambling as actually charged.

On the facts as they stand, we do not think that it can be reasonably inferred that the accused were actually gambling ; so that the only question now left is whether the inference can be drawn that the accused were assembled there for the purpose of gambling, without necessarily finding which kind of specific illegal game they intended to play. Depending on the circumstances of a case, we think that a court is not precluded from finding persons guilty of this charge without specifying expressly the particular illegal game. The question is always a question of fact depending on the circumstances of the particular case.

In reaching our conclusion we have to consider the following facts in the present case :

(*a*) the kind and size of premises : 6 big rooms, 43 steps up from the level of the street occupied by a bachelor ;

(*b*) the flat was leased and occupied by the first accused from November, 1966 to April, 1967 ;

(*c*) at the time of the entry by the police there were 16 male persons, 14 Greeks, one Turk and one British ;

(*d*) the watching through the small window on the door before allowing a visitor in ;

(*e*) the obstruction of the two policemen in mufti from entering, although they did not state that they were police before they started pushing the door ;

(*f*) the moving of persons in the flat as soon as the policemen entered from one room (room C) out into the hall and other rooms ;

(*g*) one of the persons sitting in a dark room by himself ;

(*h*) the finding of 17 coins, scattered about on the floor in the room (room C) from where a number of persons moved out (see (*f*)) ;

(*i*) a long table in the same room covered with a blanket and table cover ;

(*j*) the first accused's conduct in advising all the other 15 persons in the flat not to say anything to the police but to state what they had to say to the court ;

(*k*) the explanations given by the accused which were rejected by the court—

(i) that they were throwing coins up for fun ;

(ii) that he was doing some exercise, that is the 'kavadji';

(iii) that he had a party, but there were no drinks or food ;

(*l*) a man sitting before an open 'tavli' without dice. No dice found and the observation to the police of the first accused regarding the dice.

It may well be that each of these facts taken by itself, or two or three of these facts taken together, might not justify the inference that these 16 persons were on that night assembled there for the purpose of gambling. But we are of the view that the cumulative effect of all these facts taken together is sufficient to justify the inference that they were assembled there for the purpose of gambling, and we do not think that it is necessary to make a specific finding as to which illegal game they intended to play with cards, dice, or otherwise.

For these reasons we are of the view that the convictions of the appellants on the count of gambling should be set aside but otherwise the convictions of the first accused (first appellant) for keeping a gaming house and the other accused for assembling for the purpose of gambling, including that of the fifteenth accused for warning gamblers, should be *affirmed*.

In the course of his argument counsel for the appellants argued that the search warrant which was issued on the 25th November, 1966, was not valid on the 17th December, 1966, that is, 22 days later, when the police entered the premises of the first appellant. In support of his argument counsel referred to the word "forthwith" contained in the search warrant, which required the police officers to proceed forthwith to enter the said premises. He submitted that the word "forthwith" should be interpreted strictly and that, in any event, forthwith could not mean 22 days later. The warrant, according to his sub-

mission, was not operative in spite of the provisions of section 28(3) of the Criminal Procedure Law Cap. 155 which provide that a search warrant " shall remain in force until it is executed or until it is cancelled by a Judge ".

As already stated, considering that no reliance was placed by counsel for the respondents on the presumptions created under section 12 of Cap. 151, it is no longer necessary for the purposes of the present appeals to decide this point, which we would like to leave open as, having regard to the constitutional provisions on human rights, we should not be taken to assent to the proposition that a search warrant can remain in force indefinitely until it is executed or cancelled, regardless of the surrounding circumstances in which the warrant was issued.

In the result the appeals are partly allowed ; the convictions on the count of gambling quashed and the other convictions affirmed.

Order accordingly.

Appeals partly allowed. Convictions on the count of gambling quashed. Other convictions affirmed.