

THIS was an appeal against a conviction upon an indictment under the Betting Act, 1853, at the Southampton Quarter Sessions, charging the appellant with using a certain house for the purpose of certain moneys being received by him as and for the consideration for certain assurances, undertakings, promises, and agreements to pay thereafter certain moneys upon certain events and contingencies of and relating to horse-races. The appellant was fined £25, with £20 costs.

Mr. G. W. Ricketts appeared for the appellant; and Mr. Charles for the Crown.

Mr. RICKETTS said that in May of this year the police of Southampton were desirous of entrapping the appellant, a bookmaker, into making an illegal bet, and to that end a letter was written from Portsmouth in the name of one Ellison, a bogus name as far as this case was concerned, saying that the writer was not desirous of communicating with a local bookmaker, but wished to open a deposit account with the appellant, and on hearing from him would forward a £5 note, and that none of his commissions would exceed that amount without a further remittance. This was written early in May. The death of the King just afterwards put an end to all racing for a time. On May 24 the appellant replied enclosing a book of rules, and saying that "on receipt of yours, as suggested, I will place you on my list of clients." The money was then sent in the form of postal orders. Bets were made on May 26 and 27. On June 1 a raid was made on the appellant's premises, when books of account showing betting transactions and about a hundred and sixty betting slips were found. By section 1 of the Betting Act, 1853 (16 and 17 Vict., c. 119) it was enacted "No house, office, room, or other place shall be opened, kept, or used for the purpose of . . . any money or valuable thing being received by or on behalf of such owner, occupier, keeper, or person as aforesaid as or for the consideration for any assurance, undertaking, promise, or agreement, express or implied, to pay or give thereafter any money or valuable thing on any event or contingency of or relating to any horse-race." By section 3, "Any person who, being the owner or occupier of any house, office, room, or other place, or a person using the same shall open, keep, or use the same for the purposes hereinbefore mentioned, or either of them . . . shall be liable to certain penalties. Mr. Ricketts, continuing, submitted that there was no evidence that these premises were used in contravention of the statute, for there was only evidence of one transaction. The presence of the betting slips did not show that illegal bets had been made, for they might have been made as records of past transactions, or refer to credit bets. They did not show that money was received beforehand in those cases. The words "I will place you on my list of clients" did not show that these clients were persons with whom the appellant made illegal bets. He referred to *Reg. v. Davies* (13 *The Times* L.R., 405; [1897] 2 Q.B. 199). The jury was not directed to the consideration of the "purpose" for which the house was used. They returned the verdict "Guilty, but we think he was very reluctantly led into it in this case." That showed that they were thinking of this one case only. The money was received on no consideration whatever; at the time the orders were received there was no contract at all in existence, and the writer of the letter could have demanded the £5 back—*The Universal Stock Exchange v. Strachan* ([1896] A.C., 166). Therefore there was no consideration on either side. The money was deposited as security against a debt which might arise from a gambling transaction. The appellant was not guilty at the time he received the orders, which was the only time when guilt could attach, if at all. These orders were not money, and the indictment only charged the reception of money, not of any "valuable thing." *Lennox v. Stoddart* (18 *The Times* L.R., 585; [1902] 2 K.B., 21) was also referred to.

Mr. CHARLES said that, with regard to the contention that the money was received on no consideration, the letter from Ellison said that he wished to open a deposit account, and that the commissions would not exceed the amount deposited without a further remittance, and the appellant made bets in consequence. If that did not come within the statute it was difficult to see how any ready-money betting

transaction did. With regard to this being a solitary transaction, the jury was entitled to consider the paraphernalia found on the appellant's premises when raided.

The LORD CHIEF JUSTICE, in giving the judgment of the Court, said that he recognized that betting was illegal only in certain cases. In this case the appellant was indicted for unlawfully using a certain house for the purpose of certain moneys being received by him as and for the consideration for certain assurances, undertakings, promises, and agreements to pay thereafter certain moneys upon certain events and contingencies of and relating to horse-races. It could not be said that the attention of the jury was not properly directed to the question whether or not the appellant used the rooms for the above purpose. It appeared that this transaction was the result of a trap set by the police, and, although he (the learned Judge) did not, any more than did anybody else, like police traps, at the same time there were some offences which could not be discovered otherwise, and the offence was none the less an offence because committed as the result of a trap. The Court had no doubt that this particular transaction infringed the provisions of the statute. The £5 was sent on the terms that a deposit account was to be opened, and that commissions were not to exceed that amount without further remittances. The meaning of that was, "I do not ask you to give me credit, but to make bets with me up to the amount sent," and the reply was that on receipt of the £5 Ellison would be placed on the appellant's list of clients, a book of rules being enclosed. It was unfortunate, if the book showed anything in the appellant's favour, that no copy of it had been produced. It seemed to him that the transaction contemplated the naming of horses by Ellison and an undertaking by the appellant to make bets with him up to £5. The latter was not wise enough to see that he was on dangerous ground, but kept the money and made bets, and appropriated portions of the £5 for that purpose. It seemed to him that the transaction was within the statute. Then it was said that the house was not being used, &c., because only this one instance was proved. It by no means followed that the jury might not convict. It was shown that the appellant was carrying on a betting business, and a number of slips were found relating to bets made on the same day, and he should have thought it a strong suggestion to say that all these other transactions were on credit as far as the backer was concerned. He did not think on the facts proved that they ought to hold that there was no evidence on which the jury could convict. With regard to the contention that the postal orders were not money, he did not intend to express any final opinion, but his impression was that there was authority for saying that the receipt of a document which could be turned into money might be the receipt of money. But they were all of opinion that, even if they felt bound to decide this point in the appellant's favour, they would give effect to the proviso to section 4, subsection 1, of the Criminal Appeal Act, 1907, under which they could in such a case dismiss the appeal if they considered that no substantial miscarriage of justice had actually occurred. The appeal would therefore be dismissed.

EXTRACT FROM NEW ZEALAND GAZETTE.

(From *Gazette*, 1911, page 272.)

Clerk of Court, &c., appointed.

Department of Justice,
Wellington, 25th January, 1911.

HIS Excellency the Governor has been pleased to appoint

Constable CHARLES FINDLAY

to be Clerk of the Magistrate's Court at Mosgiel and Clerk of the Licensing Committee for the District of Taieri from the first day of January, 1911, *vice* Constable J. Walton, retired.

JOHN G. FINDLAY,
Minister of Justice.