1948 *Present :* **Wijeyewardene A.C.J.**

LESLIE ISAACS, Appellant, *and* CHIEF INSPECTOR OF POLICE, Respondent

S. C. 771—M. C. Colombo (Joint), 23,670

Betting on Horse Racing Ordinance—Room in which betting slips were taken—Accused present—Meaning of word "used"—Section 17, Ordinance No. 55 of 1943.

The accused was found in a room in which some person was seated accepting betting slips.

Held, that he was rightly convicted under section 17 of Ordinance No. 55 of 1943. It was not necessary to prove that betting slips had been accepted in that room on previous occasions.

APPEAL from a judgment of the Joint Magistrate, Colombo.

H. W. Jayewardene, for accused, appellant.

A. C. M. Ameer, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

October 15, 1948. WIJEYEWARDENE A.C.J.—

The accused was convicted of an offence in breach of section 17 of the Betting on Horse Racing Ordinance as amended by Ordinance No. 55 of 1943. The relevant parts of that section read :

> " Any person who is found in any premises kept or used for the purpose of unlawful betting on a horse race . . . . shall be presumed, until the contrary is proved, to be guilty of the offence of unlawful betting on a horse race."

The evidence for the prosecution was that the accused and others were in a room in No. 33, Canal Row, near a table at which one Francis was seated, accepting betting slips. The defence put forward was that the accused was in a Reading room " adjoining the room in which Francis was ". The Magistrate rejected the defence and convicted the accused.

In appeal it was argued that the " room in which Francis was " could not be regarded as " premises " coming within the ambit of section 17, as there was no evidence that betting slips were accepted in that room on previous occasions. The learned Counsel for the appellant cited *Powell v. The Kempton Park Race Course Company, Limited* [1] and *Milne v. The Commissioner of Police for the City of London* [2] which were decided under 16 and 17 Victoria Chapter 119. These authorities are not of much assistance in the present case. In *Powell v. The Kempton Park Race Course Company, Limited* (*supra*) the defendant company who were the owners of a race course admitted the public on race days to an enclosure adjacent to the race course on payment of an entrance fee. Some of the persons admitted happened to be bookmakers, while some of the others went there for the purpose of backing horses with the bookmakers. Any particular bookmaker was usually found near a particular part of the enclosure on all race days, calling out the odds to attract backers. That use of the enclosure was known to and permitted by the defendant company. It was held that the enclosure was not a place

> " opened, kept or used for the purpose of the owner, occupier or keeper thereof, or any person using the same, or any person procured or employed by or acting for or on behalf of such owner, occupier or

[1] (*1899*) *Appeal Cases 143.* [2] (*1939*) *3 All England Reports 399.*

keeper or person using the same or of any person having the care or management, or in any manner conducting the business thereof betting with persons resorting thereto ".

In the course of his judgment Lord Halsbury said that the question for decision was the meaning to be given to the word " used " with special reference to the phrase " for the purpose of owner, occupier, or keeper thereof, or any person using the same betting with persons resorting thereto " and added

> " It is not the repeated and designed, as distinguished from the casual or infrequent, use which the employment of that word imports here, but the character of the use as a use by some person having the dominion and control over the place, and conducting the business of a betting establishment with the persons resorting thereto. "

In *Milne v. The Commissioner of Police for the City of London* (*supra*) the Judges held against the contention that a person who employed public telephones for the purpose of sending messages to or receiving them from the members of a club, who were in the club premises, made such an employment of the club premises as to make him a person using the club premises within the meaning of the Act.

It will be noted that the words used in section 17 of our Ordinance are " kept or used ". The word " used " must have been intended to mean something different from " kept " and to enlarge the scope of the section [*vide* observations of Lord Davey in *Powell v. The Kempton Park Race Course Company, Limited* (*supra*)]. I see no reason why I should limit the meaning of " used " by construing it as " used repeatedly ".

I dismiss the appeal.

Appeal dismissed.