

THE HIGH COURT

Case Stated

1983 No. 338 S.S.

Pursuant to the Courts (Supplemental Provisions) Act, 1961, Sec. 52 for the opinion of the High Court, in the matter of Summonses

SERGEANT FRANCIS A. MULLIGAN

COMPLAINANT

AND

TERRY ROGERS FAIRVIEW LIMITED

RESPONDENT

Judgment delivered by O'Hanlon J., on the 7th November, 1983.

This Case Stated relates to a prosecution brought against the Respondent under the provisions of Sec. 4 (1) and Sec. 5 of the Gaming and Lotteries Act, 1956 (as amended).

The facts as found by the President of the District Court disclose that the Respondent was the holder of a gaming licence issued under the Gaming and Lotteries Act, 1956, Sec. 14, entitling it to carry on gaming at premises situate at Fairview Strand in the City of Dublin, and was also the holder of a gaming machine licence issued under the provisions of the Finance Act, 1975, Sec. 43, in respect of each gaming machine used for gaming purposes on the said premises.

The breach of the law alleged against the Respondent was that the stake required for the operation of certain machines exceeded the amount provided for by Sec. 14 (b) of the Act of 1956 (as amended), and that the amount that could be won by the operation of the machines also exceeded

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the statutory limit imposed by Sec. 14 (d) of the said Act (as amended).

It was submitted on behalf of the Respondent that the use of gaming machines for gaming purposes was now regulated by the provisions of the Finance Act, 1975, which requires a separate licence to be obtained for the operation of each machine (with very substantial excise duties being payable in respect of same), in addition to the gaming licence which must be obtained under the provisions of the Act of 1956 in respect of the premises where the machines are to be housed, and that no conditions are laid down or imposed by the Act of 1975 limiting the amount of the stake or the amount of the winnings.

On behalf of the Complainant it was submitted that the offence of unlawful gaming is still regulated by the provisions of the Act of 1956 and that the Finance Act, 1975, expressly provided by Sec. 43 (13) that -

"(13) Nothing in this section shall operate to make lawful anything which apart from this section, is not lawful". Sec. 43 is the Section of the Act of 1975 which makes it necessary for the holder of a gaming licence to obtain, in addition, a gaming machine licence, before it can be lawfully made available for play on the premises to which his gaming licence refers.

The Finance Act, 1975, does not purport to amend or repeal any of the provisions of the Gaming and Lotteries Acts, 1956 to 1979, and having considered the submissions made by both sides in the present case, I have come to the conclusion that the provisions of Sec. 14 of the Act of 1956 (as expressly amended by later provisions of the Gaming and Lotteries Acts, 1956 to 1979) continue to apply in relation to the operation of gaming machines in respect of which a gaming machine licence is issued under the Finance Act, 1975, Sec. 43; that the limitations on stake money and winnings imposed under Sec. 14 of the Act of 1956 are still applicable in respect of such machines and that accordingly the question posed by the learned President of the District Court at the end of the Case Stated should be answered in the negative.



R. J. O'Hanlon

7th November, 1983