JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 127/81

BEFORE: THE HON. MR. JUSTICE KERR - PRESIDENT (AG.)
THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE WHITE, J.A.

REGINA

V.

CECIL CHARLTON

AND

TEDDY KOW

Mr. F.O.A. Dayes for Charlton.

Mr. Horace Edwards, Q.C. for Kow.

Mr. Howard Cooke, Jnr. for Crown.

February 23, 25, 26, 1982; January 28, 1983.

KERR, P. (AG.):

The appellants were convicted on indictment in the Resident Magistrate's Court for the parish of St. James held at Montego Bay on July 27, 1981 for obtaining credit by false pretences contrary to Section 36 of the Larceny Act on the following counts:

"Particulars of Offence

Count 2. - Cecil Charlton, on the 15th June, 1980 in the parish of Saint James in incurring a debt of $44,500.00 to Keith Richards by falsely pretending that a certain cheque which the said Cecil Charlton then produced and delivered to the said Keith Richards was a valid order for the payment of $44,500.00 and that he had authority to draw same for the said sum on the Worker's Savings and Loan Bank situated at Mandeville in the parish of Manchester.

"Particulars of Offence

Count 3. - Cecil Charlton on the 15th day of June, 1980 in the parish of Saint James in incurring a debt of $15,000.00 to Keith by falsely pretending that a certain cheque which the said Cecil Charlton then produced and delivered to the said Keith Richards was a valid order for the payment of $15,000.00 and that he had authority to draw same for the said sum on the Worker's Savings and Loan Bank situated in the parish of Manchester."

With respect to Kow, the particulars of offence were:

"Count 4. -Teddy Kow on the 15th June, 1980 in the parish of Saint James in incurring a debt of $58,000.00 to Keith Richards by falsely pretending that a certain cheque which the said Teddy Kow then produced and delivered to the said sum on the Bank of Commerce Jamaica Limited situated at Mandeville in the parish of Manchester."

In the city of Montego Bay there is a club called 'The Palace': it is a members' club and billiards is the popular and usual game played there. To that club went the appellants on June 14, 1980. Despite the fact that this club as the Resident Magistrate found was not "approved" under Section 38 of the Betting, Gaming and Lotteries Act, for the playing of games of chance, the appellants, Keith Richards who operated the club and others engaged in the game of "Piqu." At the close of play when the reckoning was rendered by Richards, the appellants' loss amounted to $15,000.00. Charlton who held himself responsible tendered a cheque for $15,000.00 to cover the amount which was the total sum borrowed from Richards. In an obvious endeavour to recoup the losses they resumed play on June 15 and when the game was over sometime on the 16th, Charlton was down $44,500.00 and Kow $58,000.00. On cheque leaves provided by Richards, each drew a cheque to cover his loss. All three cheques were dishonoured for want of sufficient funds. Promises to make good remained unfulfilled and Richards, his patience apparently exhausted, complained

to the police and flowing from their investigations, criminal proceedings were instituted. At the trial, Charlton rested his defence on submissions made by his attorney. Kow gave evidence on oath. He admitted giving the cheque as stated by Richards but said that at the time he had asked Richards to delay presentation as he had not then sufficient funds to his credit and that his subsequent efforts to raise the necessary funds had failed. The Resident Magistrate rejected Kow's factual defence as well as the submissions on behalf of Charlton. He found inter alia, that the club not being an "approved club" the playing of "piqu" constituted unlawful gaming; that during play the appellants had borrowed cash, $15,000.00 on the first session and during the second session from time to time varying amounts ranging from $200, to $500 and aggregating the amounts for which the appellants tendered the cheques, which they knew would be dishonoured for want of sufficient funds. He also found that repayment of the sums advanced was not dependent on the outcome of the game.

The Resident Magistrate preferred the submissions of the prosecution and held in effect that "debt or liability" in the provisions creating the offence was not limited to debts recoverable by action in the Courts.

At the hearing of this appeal Mr. Dayes with commendable courage and good sense, confined his arguments to one substantial point. He astutely argued that an essential element constituting the offence for which the appellants were charged, is "incurring a debt" and that "debt", in that context, meant one enforceable by action - R. v. Leon, 1 K.B. 136; 30 Cr. App. R. 120. In the instant case, the Resident Magistrate having found that there was unlawful gaming in which the amounts on the cheque were lost by the appellants, the debts were therefore unenforceable. In support for this proposition, he relied on Paramount Betting Limited v. Brown

(1971) 12 J.L.R. 342 and Off Course Betting (1955) Ltd. v. Chen (1972) 12 J.L.R. 757. He submitted that in the circumstances, the Resident Magistrate erred in convicting the appellants.

Mr. Edwards, who followed, in the brief moment he was on his feet did little more than adopt Mr. Dayes' arguments which were applicable to Kow.

Mr. Cooke in reply contended that R. v. Leon (supra) ought not to be followed. He submitted that although the provisions in the English Act, were of the same wording as the Jamaican Statute the offence in England was created by the Debtors Act, 1869 and that fact influenced the Court there in giving to "debt" that restricted meaning. In Jamaica the provision creating the offence was part of the Larceny Act and the word "debt" should be interpreted as an ordinary English word. Further that gambling in Jamaica was only unlawful, in the circumstances described in the statute, while the English Gaming Act rendered all gambling debts "null and void" and the fact that the complainant Richards engaged with the appellants in unlawful gaming should not affect the appellants' criminal liability.

The first question then for the determination of this Court is: was the debt in the instant case recoverable by action in a Court?

Section 38 of the Betting, Gaming and Lotteries Act as far as may be considered relevant reads:

> "(1) For the purpose of this Act "unlawful gaming" means gaming -
>
> (a) in any street or in any other place to which, whether on payment or otherwise, the public have access;
>
> (b) in any place kept for habitual gaming, whether or not the public have access thereto;
>
> (c) in any premises in respect of which a licence has been granted

"to distill, manufacture, sell or possess rum or any intoxicating liquor.

(2) Subject to the provisions of this Act, if any person takes part in unlawful gaming or is present at any such gaming for the purpose of taking part therein, he shall be guilty of an offence and shall be liable to a fine not exceeding four hundred dollars or to imprisonment with or without hard labour for a term not exceeding twelve months or to both such fine and imprisonment.

(3) If any unlawful gaming takes place on any premises any person concerned in the organization or management of the gaming, and any other person who, knowing or having any reasonable cause to suspect that such unlawful gaming would take place on those premises -

(a) allowed the premises to be used for the purpose of gaming; or

(b) let the premises, or otherwise made the premises available to any person by whom an offence in connection with the gaming has been committed, shall be guilty of an offence and shall be liable to a fine not exceeding one thousand dollars or to imprisonment with or without hard labour for a term not exceeding twelve months; and for the purposes of this subsection any person who took part in procuring the assembly of the players shall be deemed to have been concerned in the organization of the gaming.

(4) A constable may arrest without warrant anyone whom he suspects, with reasonable cause, to be committing an offence under this section.

.....

(7) For the purposes of this section proof that any person was present at any unlawful gaming shall be evidence that he was present for the purpose of taking part therein unless he proves that he was present neither for that purpose nor for any of the following purposes, that is to say, taking part in the management of the gaming, operating any instrument or other thing whatsoever used in connection with the gaming or making bets with respect to the gaming."

Section 40 of the same Act provides for the Minister to grant exemption from these provisions to an "Approved Club" and an "Approved Club" means a club to which for the time being the Minister, subject to such terms and conditions as he thinks

fit, grants express exemption from the provisions of this Part."

The Resident Magistrate's findings that "The Palace" was not an "Approved Club" and that the playing of piqu constituted unlawful gaming have not been challenged.

In Paramount Betting Limited v. Brown (supra), the plaintiff [B] effected two betting transactions in a liquor bar through O.H. the husband of D.H. the agent of the company which operated a licensed betting agency in premises adjoining the bar. It was held that "the effect of the Betting, Gaming and Lottery Act 1965, was to render unenforceable betting transactions effected at premises other than those in respect of which a betting office licence is for the time being in force or those within the statutory exceptions provided by S. 4(2) of that Law." The Paramount case was approved and followed in Off Course Bettting Limited v. Chen (supra).

Now in the instant case although the cheques represented losses incurred in the game the amounts as the Resident Magistrate found were actually cash borrowed from Richards. In our view it is immaterial whether the money lent was to enable the player to put up his ante or to meet losses already incurred providing it was lent at the particular time and place and for the purpose of playing the illegal game there. To put it concisely, the loans were made in contemplation of the money being used in the game. We are fortified in so holding by cases such as Hill v. William Hill (Park Lane) Ltd. (1949) A.C. 530, in which it was held that a new agreement to pay what is in effect the amount of a lost bet is not actionable whether it is made for fresh consideration or not; a fortiori, where the purpose of a loan is to enable the borrower to engage in an illegal venture i.e. one prohibited by the Statute - see McKennell v. Robinson (1838) 3 M & W 434. In our view having regard to the Betting, Gaming and Lotteries Act and in particular Sections 38 and 40, the legislative intent was

clearly to prohibit the playing of such games as piqu in clubs other than "Approved Clubs" and consequentially to render unenforceable and irrecoverable by action not only money owing at the table to the winning players but to collateral transactions as in the instant case.

There therefore remains the pivotal point: should "debt" in the relevant provisions be interpreted to mean an "actionable debt?"

Leon's case (supra) seems the first reported case in which there is an interpretation of "debt" in a statute creating a criminal offence. Accordingly before examining the ratio decidendi in that case it may be helpful to consider the offence of obtaining property by false pretences in contravention of the Larceny Laws as illustrated in decided cases.

It was an offence under the Larceny Laws - Section 32(1) of the Larceny Act 1916 - (see Archbold 33rd Edition # 1244); (also see 30 Geo. 2, c. 24, 52 Geo. 3, c. 64, 7 & 8 Geo. 4, c. 29) for any person with intent to defraud to obtain from another any chattel, money or valuable security by means of false pretences. [The corresponding provision in Jamaica is to be found in Section 35(1) of the Larceny Act which reads:

> "Every person who, by any false pretence -
>
> (1) with intent to defraud, obtains from any other person any chattel, money, or valuable security, or causes or procures any money to be paid, or any chattel or valuable security to be delivered, to himself or to any other person for the use or benefit or on account of himself or any other person;.....
>
> shall be guilty of a misdemeanour....."].

This offence was in existence in England under the earlier statutes referred to above before the offence of obtaining credit by fraud was created by Section 13 of the Debtors Act 1869. Straightforward though the earlier offence

may seem to be, it suffered from a serious defect born of judicial interpretation. It was laid down as a general rule that the pretences must be of an existing fact and that a mere promise of future conduct was insufficient, R. v. Woodman, 14 Cox 179. Thus an indictment against B. "for obtaining money from A. under the false pretence that the prisoner intended to marry A, and wanted the money to pay for a wedding suit he had bought, was held not sufficient to sustain a conviction," R. v. Johnson 2 Mood 254. With the law in such a state, the advent of the offence of obtaining credit by fraud would seem to fill this lacuna, because in the latter offence, the pretence need not be to an existing fact; false pretences as to future conduct may be sufficient. In R. v. Jones (1898) 1 Q.B. 119:

> "The defendant ordered a meal in a restaurant; he made no verbal representation at the time as to his ability to pay, nor was any question asked him with regard to it. After the meal he said that he was unable to pay, and that he had (as was the fact) only one half-penny in his possession."

In delivering the judgment Lord Russell, C.J. said at page 124:

> "In the circumstances of the case it is clear that the prosecutor parted not merely with the possession, but also with the property in his goods, and that he intended to do so, for the goods were intended for immediate consumption. The finding of the jury that the defendant was guilty of obtaining the goods by false pretences cannot therefore be supported on that ground, and the conviction on the first count is bad.
>
> The second count is framed upon a different statute, upon s. 13 of the Debtors Act, 1869, which provides that in certain cases a person shall be deemed guilty of a misdemeanour, the first case being if in incurring any debt or liability he has obtained credit under false pretences, or by means of any other fraud. There are three elements which have to be considered in the construction of that section: first, there must be the incurring of a debt or liability; secondly, there must be an

> "obtaining of credit; and thirdly, there must be fraud: the conjunction of these three ingredients makes the offence. No one can doubt that the defendant did incur a debt or liability; he ordered goods under circumstances which implied a promise to pay for them. Then did he obtain credit? We are of opinion that he did ..... The jury found that he had no intention of paying; he intended to cheat, and so the jury found. We think, therefore, that the conviction was right upon the second count, and that it must be affirmed."

R. v. Leon (supra) by restricting the interpretation of debt or liability to an obligation enforceable by action in Court introduced a limitation on the scope of the offence of obtaining credit by fraud and so rendered it less effective as a remedy for fraudulent deprivation by false pretences as to future conduct. It is necessary therefore in determining its applicability and authority to consider the case not only for what it did decide but for the reasoning therein. In that case, the appellant was charged on indictment which contained inter alia two counts for obtaining credit by fraud contrary to the Debtors Act, 1869, Section 13. The facts: Between the appellant and his bookmaker, Jack Wilson, was an arrangement "that Wilson would accept the bets of the appellant on horse races up to a limit of £500 a week, settlements to be made each week." The appellant had assured Wilson that he was perfectly able to meet these obligations. For three successive weeks the appellant won sums of £140, £100, £225, respectively and was duly paid. Then the two following weeks he lost, £147.19.1., £305. He didn't pay either of these sums. At the trial evidence was given to show that the appellant was not in a position to meet a loss of £500 a week, that at all material times his banking account was considerably over-drawn, and that many of his cheques had been returned.

It was argued on behalf of the appellant, that no offence had been committed under Section 13 of the Debtors Act, 1869 because, in that section, "debt" must be taken to refer to

an actionable debt or a debt enforceable at law. In delivering the judgment of the Court, Singleton, J. said:

> "..... but it is right to say that there is some authority for saying that the word "debt" in a statute means an actionable debt, and a fortiori it would appear to be so in a penal section such as s. 13 of the Debtors Act, 1869.
>
> We think, however, that more help is to be obtained by an examination of the Act itself. The Debtors Act, 1869, is entitled: "An Act for the abolition of imprisonment for debt, for the punishment of fraudulent debtors, and for other purposes." Part I deals with the abolition of imprisonment for debt, and Part II, which includes s. 13 deals with the punishment of fraudulent debtors, and is mostly concerned with bankruptcy offences. ..... It is difficult to think that betting transactionswere contemplated by the legislature as being within the framework of the Act. One cannot envisage imprisonment for a gambling debt or bankruptcy arising directly from such a debt, for the legislature twenty-four years earlier had said in s. 18 of the Gaming Act, 1845, that any such contract was null and void. It is to be remembered that no credit was given when the present arrangement was made. It was no more than an agreement to accept bets, if made, up to a certain limit. Again, no credit was given when a bet was placed and accepted. It was only when the fancied horse lost that a debt so-called arose and the credit was given. In our view, losses so incurred are not debt within the meaning of s. 13 of the Debtors Act, 1869, and we have come to this conclusion on an examination of the Act itself, and of its scope."

Although Singleton,J.'s statement "that there is some authority" seems too indefinite to be authoritative yet since the eminent judge found some comfort there, it would not be inappropriate to look at some of the authorities in which the meaning of "debt" was considered:

> "The legal acceptation of debt is, a sum of money due by certain and express agreement (3 Bl. Com. 153)." quoted in Words and Phrases Legally Defined - 2nd. Edition Vol. 2 page 19.

In Graham v. Wickham (No. 2) [1862] 31 Beav. p. 478, a father who voluntarily paid a debt due to a bank from his son, afterwards died insolvent. It was held that there was no debt from the son to the father's estate because "when an advancement is made by a father on behalf of his son, that does not constitute a debt due from him to the father; it is merely a benefit bestowed on the son, which, under some circumstances, the son is afterwards obliged to account in the distribution of the father's estate. That being so, I am of opinion that I cannot now call upon the son to repay these sums as debts due to the testator's estate," (at page 481).

In Lees v. Newton (1866) 1 L.R.C.P. page 658, an attachment for non-payment of money under an order of the Court of Chancery was held an attachment for non-payment of a debt within the meaning of Section 113 of the Bankrupt Law Consolidation Act, 1849. Section 113 enacted that:

> "..... if any bankrupt shall be arrested for debt, or on any escape warrant, in coming to surrender, or shall after his surrender and while protected by order of the court be so arrested, he shall, on producing such protection to the officer who shall arrest him, and giving such officer a copy thereof, be immediately discharged."

In his concise judgment Earle, C.J. said (page 664):

> "But, inasmuch as the courts have uniformly declared that an attachment for non-payment of a sum of money under an order of the Court of Chancery is an attachment for non-payment of a debt within the 112th section of the Bankrupt Law Consolidation Act, 1849, and we cannot consistently hold that the words of the 113th section are to receive a different construction, I come reluctantly to the conclusion that the officer is liable for the one day during which he detained the plaintiff after having been shewn the protection."

See also Port of London Authority v. Commissioners of Inland Revenue (1922) 2 K.B. 599:

In the authorities referred to above the word "debt", from the context in which it was used, clearly merited the interpretation as being an obligation to pay a sum of money enforceable by action in Court.

Accordingly, the true ratio decidendi in Leon's case, rests partly on the purpose of the Act as expressed in its long title, and partly on the improbability of the legislature in passing an Act primarily concerned with the abolition of imprisonment for an actionable debt having in contemplation penal sanctions in respect of a debt rendered "null and void" by an earlier statute, namely the Gaming Act, 1845. However, this interpretation of debt was approved in subsequent cases including R. v. Carlick (1958) 42 Cr. App. R. 141. In that case:

> "The appellant was convicted on two charges of obtaining credit under false pretences or by means of fraud other than false pretences, contrary to section 13 (1) of the Debtors Act, 1869. The first charge arose out of a credit sale agreement in relation to a bicycle, in which the appellant had used a false name. The terms of the credit sale agreement contravened article 1 (1) of the Hire-Purchase and Credit Sale Agreements (Control) Order, 1957. The second charge arose out of a hire-purchase agreement in the usual form in relation to a bicycle.
>
> Held, that the conviction on both counts must be quashed, as in the first transaction, in view of its illegality, there was no actionable debt and in the second there had been no obtaining of credit, since the ownership of the bicycle was at the material time in the person who let it out on hire."

Havers, J. who delivered the judgment of the Court said (page 144):

> "This, therefore, is a stronger case than Leon, 30 Cr. App. R. 120; [1945] 1 K.B. 136, a case of a bookmaker. In that case this court held that the word "debt" in section 13 (1) of the Debtors Act, 1869, meant an actionable debt, and that under the Gaming Act, 1855, the

> "transaction was void. In this case, because of a breach of the Hire-Purchase and Credit Sale Agreements (Control) Order, 1957, the transaction was illegal. In these circumstances we think it impossible to uphold the conviction on either count, and the convictions on both counts must be quashed. We do so with considerable reluctance because there was abundant evidence that the appellant was guilty of dishonest and fraudulent conduct."

"Incurring a debt" and "obtaining credit" are co-relative aspects of the transaction. Thus in Fisher v. Raven (1964) A.C. 210:

> "The appellant was adjudicated bankrupt in March, 1960, with a deficiency of £28,000. The evidence given at his trial shows that between November, 1960, and December, 1961, he had called at the homes of 13 persons and had obtained on these visits sums varying from £5 to £237 in return for his undertaking to supply to them paintings from photographs given to him for that purpose. His practice was to hand to a prospective customer a card which showed "K. Fisher" in the centre and at the foot "presented by Mr. Maurice Fisher" and to give a receipt headed "K Fisher" at the top and with the address of the appellant and his wife below."

In considering whether the appellant obtained credit within the meaning of The Debtors Act, Lord Dilhorne said at page 231:

> "To commit an offence against the section credit has to be obtained and in its ordinary significance, in my view, the expression "obtained credit" connotes the obtaining of credit in respect of the payment of money and no more. To constitute the offence there must be the obtaining of credit in particular circumstances, namely, in incurring a debt or liability and by particular methods, namely, under false pretences or by means of any other fraud. I do not think it follows from the fact that the definition of "liability" shows that there can be a wide variety of circumsrances in which the offence can be committed is any ground for interpreting the words "obtained credit" more widely than their natural significance imports."

Having preferred the narrower interpretation of the phrases, Lord Dilhorne expressed his unhappiness with the results thus:

> "I realise that if your Lordships agree with my opinion the result may be that some fraudulent persons may escape justice. ..... While it may be that consideration should now be given to closing this gap in the criminal law - and one possible solution might be to change the law so that a false pretence need no longer be a pretence as to an existing fact - one cannot on this account give a more extended meaning now to "obtained credit" or obtains credit."

The other learned law Lords unreservedly concurred in his judgment.

R. v. Hazelton (L.R.) 2 C.C.R. p. 134 illustrates a technical but important difference between the offence of obtaining money or goods by false pretences contrary to the Larceny Act and that of obtaining credit by fraud under the Debtors Act. In Hazelton's case the defendant had tendered a worthless cheque for goods purchased and it was held that a person who gave a cheque in payment for goods purchased in a ready-money transaction made a representation that the cheque was a good and valid order for the amount therein and if such a person had but a colourable account at the Bank on which the cheque was drawn with no arrangements or prospects of meeting it and know that the cheque would be dishonoured on presentation an intention to defraud might be inferred and he might be convicted of obtaining goods by false pretences.

What if the goods in Hazelton's case were spirits purchased after closing hours? Would that avail as a defence? We think not. Yet if the circumstances were such that credit was extended, which made the transaction not a ready-money one as in R. v. Jones (supra) then on the authority of R. v. Leon a conviction would not be maintainable. Therefore, on the authority of Hazelton's case in a ready-money transaction i.e. where a 'dud' cheque is cashed or given in payment for goods purchased by the drawer, then on a charge of obtaining money

or goods by false pretences the illegal purposes for which the money or goods were obtained or may subsequently be put, would be immaterial. Undesirable though it may be that criminal culpability should rest upon such a technical distinction, it appeared to be the law of England, prior to the coming into force of the Theft Act in January 1969.

Accordingly, it was necessary for the English Legislature in repealing and replacing Section 13 of the Debtors Act, by pertinent provisions in the Theft Act, to expressly remove the limitations imposed by R. v. Leon by enacting Section 16:

> "(1) A person who by any deception, dishonestly obtains for himself or another any pecuniary advantage shall on conviction on indictment be liable to imprisonment for a term not exceeding five years.
>
> (2) The cases in which a pecuniary advantage within the meaning of this section is to be regarded as obtained for a person are cases where:
>
> (a) any debt or charge for which he makes himself liable or is or may become liable including one not legally enforceable is reduced or in whole or in part evaded or deferred."
>
> (Emphasis added).

In this new legislation, the scheme was to embrace the dishonest obtaining by deception "any pecuniary advantage" and in that context it was consonant with good sense and with the obvious legislative intent to expressly extend the meaning of "debt".

Against the background of the perplexing precedents cited above, should "debt" in Section 36 of our Larceny Act be given the "restricted" meaning as in R. v. Leon?

The arguments against such interpretation may be summarised thus:

(1) In the Jamaican Statute the offence creating provisions are now part of the Larceny Act.

(2) The long title of the enactment introducing the relevant amendment reads:

> "An Act to Amend the Law to provide for the punishment of persons who obtain credit by false pretences or by means of other fraud."
>
> [See Act 37 of 1967].

(3) The narrow interpretation leaves a lacuna in the law which may seem inconsistent with the purpose of the enactment and the mischief it was sought to remedy.

On the other hand in favour of that interpretation the following are more weighty considerations:

(i) In a penal statute a Court should lean towards the interpretation favourable to the citizen - Attorney General v. Sillem (1864) 2 H. & C 431.

(ii) The provisions of Section 36 of our Larceny Act are ipsissima verba of the English Debtors Act, Section 13, and there is the general rule that "where a Colonial enactment has been passed in the same terms as an English Statute, the Colonial Courts should adopt the construction put on the word by the English Courts" - Mahumarakalage Edwards Andrew Cooray v. R. (1953) A.C. 407. Though perhaps with less force, the principle is applicable to legislation by a self governing "Dominion" such as Jamaica - See Craies on Statute Law - 7th Edition p. 487.

(iii) At the time the Jamaican provisions came into effect in 1967, the pertinent provisions relating to unlawful gaming under The Betting Gaming and Lotteries Act 1965 were in force.

(iv) The interpretation of "debt" as in R. v. Leon was authoritative in England and the Jamaican Legislature must be presumed to be aware of the interpretation. Indeed it is of interest to note that in The Jamaica Hansard of the House of Representatives - Session 1967 - 68 Vol. 2, page 398, the Attorney General in his speech in support of the Bill cited a number of English cases

including, R v. Jones (supra); Fisher v. Raven and in referring to the judgment in R. v. Garlick said:

> "It was established by the decision that the provision does not cover the case where a person takes goods on hire-purchase under a Hire-Purchase Agreement in the usual form and fails to pay the instalments on the hire-purchase price. In such circumstances, the Court held it is impossible to say that the hirer had obtained credit."

(v) The interpretation as in R. v. Leon could have been avoided in the same simple manner as in the Theft Act by extending the meaning of "debt" by appropriately adding the words "including one not legally enforceable."

(vi) The interpretation sought by the prosecution would result in the imposition of criminal sanctions for a debt not recoverable by civil action.

Accordingly, we are not satisfied that in the absence of express words, the legislative intent was to extend the meaning of "debt" to include those that are illegal and not actionable in Court. In so concluding, we are not unmindful that in cases like the instant case, the payee relying in good faith on the cheques, may incur liability for which he may be personally liable; nevertheless, a person who knowingly lends money to enable others to take part in an illegal venture and one expressly prohibited by statute, must bear the risks of irremediable loss. If there is a lacuna in the law so be it; the cure lies in legislation as judges exist "not to change the law but to fulfil it."

In the circumstances, we are constrained to say that the question must be answered in the affirmative and consequentially in favour of the appellants.

For these reasons the appeals are allowed, the convictions quashed and the sentences set aside.