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IN THE COURT OF APPEAL

R.M.C.A. No. 155a/65, 155b/65 and 155c/65

BEFORE: The Hon. Mr. Justice Duffus (President)
The Hon. Mr. Justice Henriques
The Hon. Mr. Justice Moody (Ag.)

R. v CHARLEY FUNG, JAMES CHONG
and YEE LUE

Mr. E. L. Miller appeared for the Crown.

Mr. C. Henriques appeared for the Appellants.

5th November, 1965

MOODY, J.A.(Ag):

In this case the appellants were charged separately that is to say, Charley Fung was charged on an information and James Chong and Yee Lue were charged together on another information with breach of the Gambling Law. The information specifically charged them with a breach of Section 5 Sub-section 1 of the Gambling Law. At the trial two police constables gave evidence stating that they had entered these premises at 39 Matthews Lane under a Search Warrant. There they found a number of instruments of gaming and they found the appellants.

At the trial the solicitor for the appellants took objection to the information stating that the information charges the defendants under Section 5 Sub-section 1 of the Gambling Law, and that they ought to have been charged under Section 5 Sub-section 2. The learned Resident Magistrate did not accept his submissions and the appellants decided then not to give evidence or to call any witness on their own behalf. The learned Resident Magistrate found the appellants guilty and inflicted a fine of £5 and costs One Guinea in default of ^{payment} attendance.

Before us the learned counsel for the appellant made application to amend the grounds of appeal filed in order to

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read: "That the learned Resident Magistrate misdirected himself in law when he came to the conclusion that the informations on which the appellants were charged disclosed an offence." No objection was taken to this application for amendment and it was in due course allowed. In furtherance of this amended ground, learned counsel referred to the sections of the law and pointed out that Section 5 Sub-section 1 did not disclose an offence of being found in a common gaming house. Indeed, he referred to Section 5 Sub-section 2 which raises a presumption that anyone found in a common gaming house is deemed to be playing in the common gaming house unless the contrary is proved. Indeed, it was pointed out in the course of the argument that there are other sections which provide for the offence of being found in a common gaming house.

In reply, learned counsel for the Crown submitted that perhaps it might be possible for an amendment to be made under Section 303 of the Resident Magistrate's Law, but we do not agree with that submission. This Court, in the case of Byron Grey, that has been referred to, has emphasized the necessity for particularity in the drafting of informations. We accept the submissions made by the learned counsel for the appellants. The section under which the appellants were charged does not disclose an offence, and we do not feel that this is a case in which the information can be amended. The submission succeeds and the appeals are allowed.

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