

. . . any disorderly house . . . the magistrate may, subject to the subsequent provisions of Part XVI. of the Code, hear and determine the charge in a summary way.

Section 773 (f) was amended in 1915, by 5 Geo. V. ch. 12, sec. 8: it now reads "with keeping a disorderly house under section 228."

Section 774 of the Code provides that the jurisdiction of the magistrate is absolute in the case of any person charged with keeping . . . any disorderly house . . . and does not depend on the consent of the person charged.

Section 226 of the Code defines a common gaming-house as a house, room, or place kept or used for playing therein any game of chance, or any mixed game of chance or skill; and the amending Act of 1918, 8 & 9 Geo. V. ch. 16, sec. 2, adds "in which the whole or any portion of the stakes or bets or other proceeds at or from such games is either directly or indirectly paid to the person keeping such house, room, or place."

And sec. 228 of the Code enacts that every one is guilty of an indictable offence . . . who keeps any disorderly house, that is to say, any . . . common gaming-house.

After his conviction, the defendant applied to the magistrate to reserve for the opinion of the Court the question, whether there was any evidence upon which he (the defendant) could be convicted lawfully. The application was refused.

The defendant then moved for leave to appeal against the refusal to reserve the question.

The motion was heard by MEREDITH, C.J.C.P., BRITTON, RIDDELL, and LATCHFORD, JJ., and FERGUSON, J.A.

T. C. Robinette, K.C., for the defendant.

Edward Bayly, K.C., for the Crown, submitted that there was no power to reserve a question in such a case as this, referring to *Rex v. Booth* (1914), 31 O.L.R. 539, at p. 541.

The judgment of the Court was delivered by MEREDITH, C.J.C.P.:—We are unable to find that any appeal lies to this Court in such a case as this

*Motion dismissed.*