

rake-off was not more than reasonably sufficient to pay the proprietor for what he furnished in the way of cigars and refreshments, then, leaving to one side the evidence of Repath, defendant would not be liable. But, if the amount of the rake-off was so disproportionate to the value of what was actually furnished in the way of cigars and whatever was given in the way of refreshment as to be an actual substantial profit to himself, he thought defendant had broken the law, and that the refreshment business was only a device to evade the statute; and that, apart from the testimony of Repath, the evidence would not sustain a conviction.

The jury found the defendant not guilty, and at the request of the Crown the Judge reserved the following question for the Court of Appeal: "Was I right in my direction as a matter of law, or did the profit made by the defendant out of the sale of the cigars to the persons who frequented his place for the purpose of playing at games of chance, under the circumstances set forth, render him liable as keeping the place for gain?"

The place in question was a room or place kept by the defendant, and it was a place to which persons resorted for the purpose of playing games, or a game, of chance. Was it kept by him for "gain"? The act does not define the word or limit its meaning to gain derived from the rental of the room or a share of or interest in the stakes played for.

"Gain" is "that which is acquired or comes as a benefit, profit, or advantage," and it may be derived indirectly as well as directly.

The defendant was not keeping the room or place heated and lighted until all hours of the night and morning for nothing, or for some benevolent or charitable purpose. It was, or so the jury might have found, an adjunct to his usual business of a cigar dealer. By what he allowed to be done there the profits of that business were increased more or less by the sale of the goods in which he dealt, and so he might be found to have kept it for gain, though the gain was confined to the profits on the cigars which he sold to the players. Such a place as the defendant kept is, in my opinion, one of the places the Act strikes at, and perhaps one of the most dangerous. The question of what is a keeping it for gain ought not to be embarrassed by the consideration of whether the amount the defendant receives is an actual substantial profit to him over the price of the cigars which he sells and the refreshments which he furnishes to the players. The question for the jury is whether he keeps the place for gain, and they may be properly told that the in-