

Upon this statement of facts it may be conceded that the defendants were present in the enclosure, with all necessary assistance and equipment, for the purpose of betting, and that they did enter into bets with all such members of the general public within the enclosure as were disposed to deal with them. But the question is, whether what has been shewn to have been done by the defendants constitutes the keeping of a disorderly house, to wit, a common betting house, within the meaning of the two sections of the Code under which the conviction has been made.

If, while considering this question, the general definition of a common betting house, given by sec. 227, viz., a house, office, room, or other place opened, kept, or used for the purpose of betting between persons resorting thereto and the owner, occupier, or keeper thereof, any person using the same, any person procured or employed by or acting for or on behalf of any such person, or any person having the care or management, or in any manner conducting the business thereof, is borne steadily in mind, there can be very little difficulty in reaching a conclusion.

Viewed apart from the authorities by which we are bound, the words themselves seem almost naturally to suggest a structure of some sort, and to import fixity or localization. They also import rights peculiar to the person designated as the owner, occupier, or keeper, which rights are not shared by others. It is obvious that there must be not only a house, office, room, or other place, but it must be one capable of being opened, kept, or used for the purpose of betting. And there must also be some person who is entitled to exercise the right of opening, keeping, or using, to the exclusion of the exercise of a similar right by others except with his permission.

Whatever doubts may have been entertained upon these points before the decision of the House of Lords in the leading case of *Powell v. Kempton Park Racecourse Co.*, [1899] A. C. 143, affirming the decision of the Court of Appeal, [1897] 2 Q. B. 242, must now be considered as set at rest by the result of that case. And, unless the findings in the stated case disclose a condition of affairs different from those appearing in that case, the conviction cannot be sustained, for in the main the facts of that case correspond closely with the findings of the special case.