

BOYD, C.—The information is for that Spiegelman did “permit or allow a game of chance or hazard with dice, cards, or other device, to be played for money, liquor, or other thing, within 139 Adelaide street west, in the city of Toronto,” contrary to the by-law in that behalf.

The evidence shews that the place in question is the private house of defendant; that his friends come to visit him on Sundays, and sometimes play poker for money, and the occasion under investigation was one of these Sundays, when this game of chance was played for money.

The by-law relied on provides that no person shall keep or permit to be used in any house, room, or other place, for the purpose of gambling, any faro bank, rouge et noir, roulette table, or other device for gambling, or permit or allow any game of chance or hazard with dice, cards, or other device, to be played for money, liquor, or other thing, within such house, room, or place.

The conviction literally follows this language, with all its alternatives changed as to conjunctives, and if the by-law is valid, the conviction would be deemed sufficient.

The by-law purports to be founded on a clause in the Municipal Act empowering the municipality to pass by-laws “for suppressing gambling houses and for seizing and destroying faro banks, rouge et noir, roulette tables, and other devices for gambling found therein:” R. S. O. 1897 ch. 223, sec. 549 (4.)

The legislation is pointed at houses where gaming or gambling is practised, and the house is kept for such purpose. The inquiry in this case was not as to whether the place in question was a “gambling house,” and there was no evidence to induce that conclusion. One instance is proved, or perhaps two, in which cards for gain had been played at the house, but that falls far short of what would be required to attach to it the character of a “gambling house.”

It is grouped in the Municipal Act with “disorderly houses,” under the general heading of “Public Morals,” and contemplates places which are to be regarded as nuisances to the community. For it is old law that all common gaming houses are nuisances in the eye of the law, not only because they are great temptations to idleness, but also because they are apt to draw together great numbers of disorderly persons, which cannot but be inconvenient to the neighbourhood: Hawkins’s P.C., book 1, ch. 75, sec. 6.

The element of frequency at least is essential to make out that any place is a gambling house, and isolated instances on Sundays, when Jews or others come together in private