CRIMINAL LAW: FALSE PRETENCES.

R. v. Clucas.[1]

Bookmakers may well be unhappy about the activity of the Courts in 1949. By its decision in *Hill v. William Hill Ltd.*,[2] overruling *Hyams v. Stuart King*[3], the House of Lords destroyed the last remaining method of enforcing payment of gambling debts by legal action. Now, by the decision in *R. v. Clucas*, it appears that bookmakers are to be denied the protection normally afforded by the criminal law to those carrying on other occupations.

In this case the Court of Criminal Appeal, in a judgment delivered by Lord Goddard, held that a person who, by false pretences induced a bookmaker to bet with him, and who thus received money from the bookmaker on winning the bet, was not guilty of obtaining the money by false pretences. The reason given for the decision was that the false pretence was merely a contributory cause, the effective cause of the money being received being the fact that the chosen horse won the race. But is this reasoning justified? If a rogue, by adopting various guises and making false representations, succeeds in placing credit bets with a bookmaker, on every horse entered in a race, surely the false pretences will be the effective cause of obtaining the money which he recovers from the bookmaker in respect of the bet laid on the winning horse.

In a case, such as the present, where a bet is made on one horse only, the certainty of obtaining any money is gone, but if in fact money is obtained, it is difficult to see why the false pretence should not be regarded as the effective cause.

It is submitted that this decision introduces an unnecessary refinement into the law which is not supported by other authority. The theory that the chain of causation is broken by any chance event is rejected in the law of murder. Thus if A wounds B and B dies, either because he has neglected to obtain reasonable medical treatment, or by chance infection, B's death is none the less attributable to A's act, and A is guilty of murder if the other conditions required for the crime are satisfied.[4] Nor do the civil cases assist the argument. Whatever be the true test of causation in such cases it must be conceded that an intervening act will not break the chain of causation where it is either intended or reasonably foreseeable. If this test be applied, it seems impossible to suppose that it lies in the mouth of the man, who has made a wager on a particular horse, to argue that no person could reasonably have foreseen that the horse would win.

Fortunately the decision does not leave a complete gap in the law. The rogue who embarks on a scheme of this kind may not be guilty of false pretences, but he will be guilty of some crime. This crime is not, as might be thought, "obtaining credit by fraud"[5] but the offence

1. [1949] 2 All E.R. 40.
2. [1949] 2 All E.R. 452.
3. [1908] 2 K.B. 696.
4. e.g. See *R. v. Holland*, (1792) 2 M. & R. 35.
5. *R. v. Leon*, [1945] 1 All E.R. 14.

constituted by section 95 of the *Police Offences Act* of obtaining any money or valuable thing by fraud " in wagering on the event of any game sport or pastime or exercise."

Whether this section covers all betting transactions depends on the construction of the phrase " game, sport or pastime or exercise,"[6] a question which is beyond the scope of this note.

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6. *ibid.*
7 It was assumed without argument in *R. v. Leon* that horse-racing came within the phrase, and it has been held that tossing with coins for wagers is " a pastime or exercise if not a game, within the meaning of the Statute"—*per* Lord Coleridge C.J. in *R. v. O'Connor and Brown*, (1881) 45 L.T. 512.
The Act (16 *Car.* 2 *c.* 7) from which this section was originally derived was much more explicit. It referred to fraud " in playing at or with cards, dice, tables, tennis, bowles, kettles, shovel board, or in or by cockfighting, horse races, dog-matches, foot races, or other pastime, game or games whatsoever."

CRIMINAL LAW: RAPE BY HUSBAND ON WIFE.

R. v. Clarke.[1]

Most textbooks on criminal law when dealing with the felony of rape, state categorically that a husband cannot be guilty as principal in the first degree of a rape on his wife. According to Hale this rule was inevitable since absence of consent was a necessary element in the crime of rape, and by entering into the marriage the wife was regarded as having given a general consent extending for the term of the marriage, and which she was powerless to revoke—" . . . by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract."[2]

This explanation cannot be regarded as entirely satisfactory. There are cases in which the law recognises that a wife is warranted in refusing her husband's advances, as where the husband is suffering from some contagious disease.[3] Certainly the wife who refuses consent to intercourse under these circumstances is in no sense guilty of any matrimonial offence.

Perhaps a better basis for the rule is public policy, the undesirability of a court's entering on this delicate question of consent or non-consent as between husband and wife. Judges, when dealing with applications for decrees of nullity on the ground of non-consummation, have recognised that a husband under some circumstances, may legitimately use some slight persuasion in overcoming the wife's reluctance; and there are obvious reasons why a husband should not be placed in jeopardy of a charge of rape arising from such an incident. If, of course, a husband uses actual violence, he will be guilty of an unlawful assault and will not receive any protection from the normal consequences inflicted in such cases by the criminal law.

Whatever be the true basis for the rule, however, the instant case shews that one exception to it must be recognised. Here the husband

1. [1949] 2 All E.R. 448.
2. Hale, *Pleas of the Crown*, Vol. 1, p. 629.
3. *R. v. Clarence*, (1888) 22 Q.B.D. 23.