CA before Lord Denning MR : Lord Wilberforce; Lord Justice Phillimore. 23rd March 1970

THE MASTER OF THE ROLLS:

1. Crockfords is one of the famous gaming clubs in London. It has premises of distinction at 16 Carlton Rouse Terrace, which it holds from the Crown Estates Commissioners. It seeks a certificate to enable it to apply for a gaming licence. The Gaming Board have refused their consent. So Crockfords is faced with extinction. It applies to this Court to quash the decision of the Gaming Board. It says that they did not aot in accordance with the rules of natural justice.

2. Three years ago, in 1967, the gaming clubs in England were having a very profitable time. They had found a way to avoid the Gaming Acts of 1960 and 1963. The Courts had let through their devices. So much so that the police had given up any effort to enforce the law. The prospects were so promising that new clubs were springing up all the time. It was in this climate that in October 1967 two Frenchmen came to England. They made a bid to take over Crockfords. Their names were Gilbert Benaim and Youssef Khaida. They had vast experiences for they had run gaming clubs in Algiers and in Paris. They obtained work permits from the Home Office. They became joint managing directors of Crockfords. They agreed to pay £185,000 for the shares to control it. They sought permission from the Bank of England to carry through the deal. But then there came a hitch. The Treasury were not prepared to grant permission at that stage. But this disappointment did not deter them. They went ahead with their plans. They still ran Crockfords.

3. In the next year, 1968, things changed. First, the House of Lords declared that the device of *"offering the bank"* to be illegal. Next, this Court warned the gaming clubs~ *"No longer will we tolerate these devices"*. Finally, the police declared that they would enforce the law. But the gaming clubs, or, at any rate, some of them, took no notice. They: tried other devices, such as marker chips, or *"kittyscoop"*. But the Courts soon declared these to be illegal also. Crockfords themselves were among the transgressors. On the 24th January, 1969* they were summoned at Bow Street and fined £~200 and costs.

4. Parliament itself also intervened. *"Enough',* it said, *"of these devices. We are tired of this continual battle between the gaming clubs and the law - with the clubs always one jump ahead. We will try a new way altogether.'* So Parliament enacted the Gaming Act, 1968. By this statute there was to be no gaming at all except in premises licensed for the purposes but, once licensed, gaming can take place without hindrance. The licence will be granted by the licensing justice~ but, before any person can even apply for a licence, he must be certified as one who can be trusted. He must go before a responsible body, the Gaming Board, set up for the purpose. He must get a - *"certificate of consent"* from the Board. Else he cannot apply for a licence.

5. On 28th February, 1969, Crockfords applied to the Board for a certificate of consent. They filled in all the forms. They set out the games which they wished to play. We are by now familiar with them, chemin-de-fer, baccarat, roulette, blackjack, and craps. They also set out the stakes. They were high enough. They gave all the particulars about Mr. Benaim and Mr. Khaida and others who would be concerned in running the club. At first they put in the application in the names of two limited companies, who were legally the owners of the clubs but on 12th November, 1969, at the suggestion of the Board, they amended the application so as to name Mr. Benaim and Mr. Khaida as the applicants.

6. On 11th December, 1969s there was a meeting of the Gaming Board. It was a responsible body. There were present Sir Stanley Raymond, the Chairman of the Board, Sir Ranulph Bacon, (former Deputy Commissioner of Police of the Metropolis), Mr. Usherwood (Deputy Chairman of the Prudential Assurance Company), Mr. Ravenscroft, the Accountant for the Boards and Mr. Saunders. the Secretary. There came to the meeting Mr. Benaim, Mr. Khaida and Captain Black, all representing Crockfords.

7. The Chairman told them that they could be legally represented if they wished, but they did not so desire. The meeting lasted four hours. It was soon apparent that the Board had gathered together a lot of information about Crookfords. They rid not tell from whom they got it. But it is a fair guess that they had got a good deal from the police~ and no doubt other sources. They said they were troubled about it. They asked questions concerning it. This is how Mr. Benaim described it in his affidavits *"We were questioned about the circumstances in which the application came to be made, our residence in the United Kingdom, our previous experience of the management of gaming clubs, our motives in wishing to purchase and run Crockford's, the staff whom we proposed to employ at Crockfords, certain transactions involving the taking abroad of cheques drawn on foreign banks, the expropriation of our assets in Algeria, our commercial interest and activities in France, and our relations with and the background of several named individual proposed employees and acquaintances. We answered all these questions in considerable detail to the best of our knowledge, information and belief. At the end of the meeting, the Chairman added that if we considered that there was any further information which we should supply, we should do so within twenty-one days."*

8. In pursuance of that invitation Captain Black wrote a letter of the 12th December, 1969, covering some points which he said *"were not fully answered yesterday";* and on the 31st December he wrote on behalf of Mr. Benaim and Mr. Khaida offering to give assurances to the Board.

9. On 9th January, 1970, the Board came to their decision. They refused their consent. The Secretary wrote to Captain Black saying: *"When Mr. J. Khaida and Mr. G. Benaim attended with you for interview on 11 December last the matters troubling the Board were discussed and their representations noted. Your letters of 12 December and 31 December have also been considered by the Board, who, however, have decided not to issue a Certificate of Consent in this case."*

10. Mr. Benaim and Mr. Khaida at once consulted their solicitors. On the 14th Januarys 1970, the solicitors wrote asking the Board to re-open the case. On the 21st January, 1970, the Board replied that they would not re-open it. They said they were not prepared "to entertain a new or amended application in respect of Crockford"s in the current round". On the 13th February, 1970, the solicitors wrote again asking for the reasons for the Board's decision. On the 24th February 1970 the Board replied in a letter which I must read, for it is a summary of the matters inquired into:

"As your clients are aware, the matters discussed with them at the interview on 11 December 1969, were:-

(a) the association of your clients with certain persons who are of unacceptable background and reputation, especially with Marcel Paul Francisci, Roland Francisci, and Amede Darlay (or Attal).

(b) the Board's doubts as to the capacity of your clients to control the club effectively having regard to the extent of their business interests outside Great Britain, the time they spend outside Great Britain, and their imperfect command of the English language.

(c) the misgivings raised by certain transactions involving the taking abroad of cheques drawn on foreign banks. The Board sought to satisfy themselves that this was not done with the object of evading exchange control.

(d) the uncertainty as to the legal ownership of Crockfords. While your clients appeared to be the de facto owners, it was necessary to establish their effective and lawful ownership~ and to explore the circumstances of the purchase.

(e) the doubt thrown on the character of your clients by their operations as hoteliers and casino managers in Algeria during and before the civil war in that country and their subsequent expulsion.

The Board made clear that these were the matters troubling them, and your clients showed by their replies that they understood this. They were given every opportunity to answer at length and at the end of the interview they were invited to make further representations in writing concerning any of these matters within 21 days, and were told that the Board would then determine the application. Further representations were received in letters dated 12 and 13 December. These were considered by the Board and their decision that the application did not satisfy the requirements of Paragraph 4(5) and (6) of Schedule 2 to the Gaming Act 1968 was conveyed by letter of 9 January."

11. The solicitors were still not satisfied. On the 25th February, they wrote asking the Board to indicate which of the matters set out in paragraphs (a) to (e) were still troubling the Board. To this the Board replied at once, the same date, saying: *"The Board are not obliged to give their reasons for the decisions they reach and it is not their practice to do so. They are not prepared to indicate to what extent they are still not satisfied in regard to any of the specific matters mentioned at (a) to (e) in the second paragraph of my letter of 24 February. They are, however, prepared to consider further written representations on any of these matters if your clients wish to put further evidence before them."*

12. Crockfords were aggrieved by this refusal. Mr. Quintin Hogg on their behalf now moves the Court for an order of certiorari to quash the decision of the 9th January, 1970. He said that the Board had not observed the rules of natural justice. He also asked for an order of mandamus requiring the Board to give sufficient information to enable them to answer the case against them. He said that the Board were quite wrong to make the charges in (a) to (e) and not specify which of them remained. It was asking the applicants, he said, to find a needle in a haystack or several needles in several haystacks.

13. Such being the facts, I turn to the law. To what extent are the Board bound by the rules of natural justice? That is the root question before us. Their jurisdiction is countrywide. They have to keep under review the extent and character of gaming in Great Britain, see section 10(3). Their particular task, in regard to Crockfords is to see if the applicants are fit to run a gaming club: and if so, to give a certificate of consent.

14. Their duty is set out in schedule 2 paragraph 4(5) and (6)s-

"(3) The Board shall have regard only to the question whether, in their opinion, the applicant is likely to be capable of, and diligent in securing that the provisions of this Act and of any regulations made under it will be complied with, that gaming on those premises will be fairly and properly conducted, and that the premises will be conducted without disorder or disturbance.

"(6) For the purposes of sub-paragraph (5) the Board shall in particular take into consideration the character, reputation and financial standing

(a) of the applicant, and

(b) of any person (other than the applicant) by whom.......the club shall be managed.....or for whose benefit.....the club would be carried on

but may also take into consideration any other circumstances appearing to them to be relevant in determining whether the applicant is likely to be capable of, and diligent in, securing the matters mentioned in that sub-paragraph".

15. Note also that schedule 1, sub-paragraph 7 gives the Board power to regulate its own procedure. Accordingly the Board has laid down an outline procedure which they put before us. It is too long to read in full. So I will just summarise it. It says the Board will give the applicant an opportunity of making representations to the Board, and will give him the best indications possible of the matters that are troubling them. Then there are these two important sentences:

"In cases where the source or content of this information Is confidential, the Board accept that they are obliged to withhold particulars the disclosure of which would be a breach of confidence inconsistent with their statutory duty and the public Interest......'

"In the course of the interview the applicant will be made aware, to the greatest extent to which this is consistent with the Board's statutory duty and the public interest, of the matters that are troubling the Board."

16. Mr. Quintin Hogg criticised that outline procedure severely. He spoke as if Crockfords were being deprived of a right of property or of a right to make a living. He read his client's affidavit saying that *"Crockford's has been established for over a century and is a gaming club with a world-wide reputation for integrity and respectability, with assets and goodwill valued at £185,000."*

17. He said that they ought not to be deprived of this business without knowing the case they had to meet. He criticised especially the way in which the Board proposed to keep that confidential information. He relied on some words of mine in ***Kanda v. Government of Malaya*** (1962 A.C.322) at page 337; when I said *"that the judge or whoever has to adjudicate must not hear evidence or receive representations from one side behind the back of the other."*

18. Mr. Hogg put his case, I think, too high. It is an error to regard Crockfords as having any right of which they are being deprived. They have not had in the past, and they have not now, any right to play these games of chance — roulette, chemin-de-fer, baccarat and the like — for their own profit. What they are really seeking is a privilege -- almost I might say a franchise — to carry on gaming for profit, a thing never hitherto allowed in this country. It is for them to show that they are fit to be trusted with it.

19. If Mr. Hogg went too far on his side, I think Mr. Kidwell went too far on the other. He submitted that the Gaming Board are free to grant or refuse a certificate as they please. They are not bound, he says, to obey the rules of natural justice any more than any other executive body, such as, I suppose, the Board of Trade, which grants industrial development certificates, or the Television Authority which awards television programme contracts. I cannot accept this view. I think the Gaming Board are bound to observe the rules of natural justice. The question is: What are those rules?

20. It is not possible to lay down rigid rules as to when the principles of natural justice are to applies nor as to their scope and extent. Everything depends on the subject-matter. See what Lord Justice Tucker said in ***Russell v. Duke of Norfolk*** (1949) 65 T.L.R. at page 231 and Lord Upjohn in ***Alfred Thangarajah Durayappah of Chundikuly Mayor of Jaffra and W.J.. Fernando and others*** (1967 2 A.C. 337) at page 349. At one time it was said that the principles only apply to judicial proceedings and not to administrative proceedings. That heresy was scotched in ***Ridge v. Baldwin*** (1964 A.C. 40). At another time it was said that the principles do not apply to the grant or revocation of licences. That too is wrong. The cases of ***Regina v. Metropolitan Police Commissioner Ex parte Parker*** (1953 1 M.L.R. 1150) and ***Nakkuda Ali v. H.F. de S. Jayaratne*** (1951 A.C. 66) are no longer of authority for any such proposition. See what Lord Reid and Lord Hodson said about them in ***Ridge v. Baldwin*** in 1964 A.C. at pages 77,79 and 133. So let us sheer away from these distinctions and consider the task of this Gaming Board and what they should do. The best guidance is, I think, to be found by reference to the cases of immigrants. They have no right to come in, but they have a right to be heard. The principle in that regard was well laid down by Lord Parker, the Lord Chief Justice, in ***Re H.K. (An Infant)*** (1967 2 Q.B. 617). At page 630 he said: - *"even if an immigration officer is not in a judicial or quasi-judicial capacity, he must at any rate give the immigrant an opportunity of satisfying him of the matters in the subsection, and for that purpose let the immigrant know what his immediate impression is so that the immigrant can disabuse him. That is not as I see it, a question of acting or being required to act judicially, but of being required to act fairly."*

21. Those words seem to me to apply to the Gaming Board. The statute says in terms that in determining whether to grant a certificate, the Board "shall have regard only" to the matters specified. It follows, I think, that the Board have a duty to act fairly. They must give the applicant an opportunity of satisfying them of the matters specified in the sub-section. They must let him know what their impressions are so that he can disabuse them. But I do not think that they need quote chapter and verse against him as if they were dismissing him from an office (***Ridge v. Baldwin*** 1964 A.C. 40), or depriving him of his property, as in ***Cooper v. Wandsworth Board of Works*** (1863 14 C.B. (N.S.) 180). After all, they are not charging him with doing anything wrong. They are simply inquiring as to his capability and diligence and are having regard to his character, reputation and financial standing. They are there to protect the public interest, to see that persons running the gaming clubs are fit to be trusted.

22. Seeing the evils that have led to this legislation, the Board can and should investigate the credentials of those who make application to them. They can and should receive information from the police in this country or abroad, who know something of them. They can, and should, receive information from any other reliable source. Much of it will be confidential. But that does not mean that the applicants are not to be given a chance of answering it. They must be given the chance, subject to this qualification? I do not think they need tell the applicant the source of their information, if that would put their informant in peril: or otherwise be contrary to the public interest. Even in a criminal trial, a witness cannot be asked who is his informer. The reason was well given by Chief Justice Eyre in ***Hardy's case*** (24 State Trials 751) at page 809s *"There is a rule which has universally obtained, on account of its importance in the detection of crimes, that those persons who are the channel by means of which that detection is made, should not be unnecessarily disclosed."*

23. And Mr. Justice Buller added at page 818: *"If you call for the name of the informer in such cases, no man will make a discovery and public justice will be defeated."*

24. That rule was emphatically re-affirmed in ***Attorney-General v. Briant*** (1846 15 M. & W. 169) and ***Martin v. Beyfus*** (189O 23 Q.B.D. 494). That reasoning applies with equal force to the inquiries made by the Gaming Boards.

That Board was set up by Parliament to cope with disreputable gaming clubs and to bring them under control. By bitter experience it was learned that these clubs had a close connection with organised crime, often violent crime, with protection rackets and with strong arm methods. If the Gaming Board were bound to disclose their sources of information, no one would "tell" on those clubs, for fear of reprisals. Likewise with the details of the information. If the Board were bound to disclose every detail, that might itself give the informer away and put him; in peril. But, without disclosing every detail, I should have thought that the Board ought in every case to be able to give to the applicant sufficient indication of the objections raised against him such as to enable him to answer them. That is only fair. And the Board must at all costs be fair. If they are not, these Courts will not hesitate to interfere.

25. Accepting that the Board ought to do all this, when they come to give their decision, the question arises, are they bound to give their reasons? I think not. Magistrates are not bound to give reasons for their decisions. See ***Rex v. Northumberland*** (1952 1 K.B. at page 352). Nor should the Gaming Board be bound. After all, the only thing that they have to give is their opinion as to the capability and diligence of the applicant. If they were asked by the applicant to give their reasons, they could answer quite sufficiently: *"In our opinion, you are not likely to be capable of or diligent in the respects required of you."* Their opinion would be an end of the matter.

26. Tested by those rules, applying them to this case, I think that the Gaming Board acted with complete fairness. They put before the applicants all the information which led them to doubt their suitability. They kept the sources secret, but disclosed all the information. Sir Stanley Raymond said so in his affidavit, and it was not challenged to any effect. The Board gave the applicants full opportunity to deal with the information. And they came to their decision. There was nothing whatever at fault with their decision of the 9th January, 1970. They did not give their reasons. But they were not bound to do so.

27. But then complaint is made as to what happened afterwards. It was said that the Board did not pin-point the matters on which they thought the explanations were not satisfactory. They did not say which of the matters (a) to (e) they were not satisfied about. But I do not see anything unfair in that respect. It is not as if they were making any charges against the applicants. They were only saying they were not satisfied. They were not bound to give any reasons for their misgivings. And when they did give some reasons, they were not bound to submit to cross-examination on them.

28. Finally, complaint was made that the Board refused to consider a new or amended application in respect of these premises of Crockfords in the current round. They refused to consider applications in other names or in new names. But here again I see nothing unfair. Crockfords had full opportunity of putting their application in the first instance. If there had been a technical defect in it, I feel sure that the Board would have allowed an amendment. But if the application fails in matters of substance, that should be the end of it. There must be an end to the claim to "cut and come again"

29. In all the circumstances I think that all the criticisms of the Board's conduct fail, and in my opinion the application should be dismissed.

LORD WILBERFORCE. I agree.

LORD JUSTICE PHILLIHORE, I also agree.

Mr KIDWELL; Then, my Lord, I ask that the application be dismissed with costs.

THE MASTER 0F THE ROLLS: Yes.

Mr QUINTIN HOGG: My Lord, clearly I cannot resist that. I think my clients would wish to consider their position. I am wondering whether it would be convenient for me to ask for leave In case they should wish to take a certain course. Your Lordship said in reserving judgment that this is an important case, and in delivering judgment your Lordship said that the club was faced with extinction. These circumstances only would have, I submit, justified the course which I ask the Court to take. It may be that your Lordships found that the arguments on both sides were interesting and it is desirable that finality should be reached in this matter. I cannot say that, if given leave, they will necessarily pursue the matter further, because of the time factor, but I think I should ask this Court for leave.

THE MASTER OF THE ROLLS: What do you say, Mr. Kidwell?

Mr KIDWELL: My Lord, though of course, there are points of general importance involved in this case, they do not affect these applicants, and the fact is that in this case, in the light of your Lordship's judgment, it is difficult to see how any other conclusion could possibly be reached. Therefore I invite your Lordships to consider that this is not a case for leave.

(The Court conferred.)

THE MASTER OF THE ROLLS: Mr. Hogg, we do not give leave.

Mr QUINTIN HOGG: If your Lordship pleases.

Mr. QUINTIN HOGG, Q.C., and Mr. ANTHONY LESTER (instructed by Messrs. Theodore Goddard & Co.) appeared on behalf of the applicants.

Mr. RAYMOND KIDWELL, Q.C., and Mr. LIONEL READ (instructed by Messrs. Gregory Rowcliffe & Co.) appeared on behalf of the Gaming Board of Great Britain.