

[HIGH COURT OF AUSTRALIA.]

O'SULLIVAN APPELLANT;
 DEFENDANT,

AND

COLLIS RESPONDENT.
 COMPLAINANT,

ON APPEAL FROM THE SUPREME COURT OF
 QUEENSLAND.

H. C. OF A. *Lottery—Building Society—Rules of registered society—Ballot for loans to members*
 1913. —*Cash in lieu of loan—Mens rea—Suppression of Gambling Act of 1895 (Qd.)*
 (59 Vict. No. 9), secs. 4, 5, 7, 8—*Criminal Code (Qd.)*, secs. 24, 234.

HOBART,
 Feb. 17.

Griffith C.J.,
 Barton, and
 Isaacs JJ.

The director and the legal manager of a society which had been duly registered under the *Building Societies Act of 1886* (Qd.), were convicted by a magistrate of unlawfully conducting a lottery contrary to the provisions of the *Suppression of Gambling Act of 1895* (Qd.). By rules of the society the right to loans was to be balloted for by the members, and on the application of any member winning a right to a loan and being unable to dispose of the same on satisfactory terms, such right was to be purchased by the society for a specific sum in cash.

Held, that on the evidence they had been rightly convicted.

Special leave to appeal from the Supreme Court of Queensland: *Collis v. Macgroarty and O'Sullivan*; *Ex parte Macgroarty and O'Sullivan*, 1913 S.R., Qd., 25, refused.

APPLICATION for special leave to appeal.

The objects of a society called the Speedy Home Building Society, which was registered under the *Building Societies Act of 1886* (Qd.), were, according to its rules, to raise a fund by payments, subscriptions, or contributions made by its members,

to apply such fund in assisting its members to obtain freehold or leasehold property, to make loans or advances to its members and to other persons, and to afford means for the profitable investment of small savings. After providing, *inter alia*, that the society's capital was to consist of any number of shares of the nominal value of one shilling each, the rules authorized the Board from time to time to set aside the whole or any portion of the funds of the society for the purpose of appropriation, free of interest, to the use of any member winning at a ballot a right to a sum of money, to be repayable by instalments, and by rule 55 it was provided that "if a member who gains an appropriation is unable to dispose of the same on satisfactory terms, the Board, on the application of such member, shall purchase the appropriation at the rate of £50 for each sum of £100." At a meeting of members of the society a ballot took place by the process of drawing marbles out of bags similar to that adopted in sweeps or consultations, and eight persons became entitled to borrow various sums of money or to take in cash half of the amounts under rule 55. They all chose to take the cash. Upon evidence of these facts and also to the effect that the real object of the society as disclosed by the conduct of the defendants was to carry on a lottery, or, as it is commonly called, a sweep or consultation, under the protection which they supposed would be conferred on them by registration under the *Building Societies Act* and particularly by rule 55 of the society's rules, two persons who were directors, and Patrick O'Sullivan, who was the legal manager of the society, were convicted by the police magistrate at Brisbane, of unlawfully conducting a lottery contrary to the provisions of the *Suppression of Gambling Act of 1895* (Qd.). O'Sullivan and one of the other defendants appealed to the Supreme Court of Queensland, who upheld the conviction: *Collis v. Macgroarty and O'Sullivan; Ex parte Macgroarty and O'Sullivan* (1).

O'Sullivan now applied to the High Court for special leave to appeal from the decision of the Supreme Court.

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Lodge, for the applicant. The society was a lawfully estab-

(1) 1913 S.R., Qd., 25.

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lished building society, and its objects were those allowed by law. It was a Starr Bowkett society which gave an additional advantage to its members by providing in its rules that a member winning a right to a loan was to be entitled to sell his right to the society. Further, the applicant should not have been convicted as there was no *mens rea*, and he acted under the rules of the society, which were lawful, having been certified to by the proper officer : *Criminal Code* (Qd.), secs. 24, 234.

GRIFFITH C.J. Leave must be refused. It is sufficient to say that the police magistrate had sufficient evidence before him to warrant a conviction. I agree with the Supreme Court that he could do nothing but convict.

BARTON J. I agree.

ISAACS J. I thoroughly agree with what the learned Chief Justice has said.

Leave to appeal refused.

Solicitor, for the applicant, *P. A. O'Sullivan*, Brisbane.

N. McG.