

1st. July, 1946

Judge:

The Hon. Mr. Justice W. Harding, B.Litt., LL.D.

The Police versus Dolores Borg

**Hotel — Lodging House — Subletting of Flats —
Police Licence — Art. 154 of the Code of Police Laws.**

Our law does not give any definition of a hotel or lodging-house, for the keeping of which a Police licence is required. In the case of subletting of furnished rooms or apartments, such a licence is not required by law, as the law does not put them on a par with hotels or lodging-houses.

In the absence of such a legal definition, there are two tests to distinguish between hotels or lodging-houses and furnished room or apartments, i.e. (1) in the case of a hotel or lodging-house, the key of the room or apartment is not kept by the occupant, but by the hotel-keeper; (2) in the case of a hotel or lodging-house, service is provided, personally or by his servants, by the hotel-keeper in the shape of meals or in the cleaning up of the rooms, while when it is merely a case of subletting of furnished rooms or apartment, there is only under-letting, and no service is catered for beyond the mere use of the apartment or room.

The appellant was charged with having kept a lodging-house without a Police licence. The Criminal Court of Magistrates for Malta, by its judgment of the 24th. May, 1946, found the appellant guilty of the charge and sentenced her to the payment of a fine (ammenda) of £5;

This Court, after hearing....., considers as follows;

It appears from the evidence that the appellant, who is the tenant of a flat in Old Mint Street, Valletta, sublets, furnished, three of the rooms of the flat to Service people. Each of her sub-tenants has his own key of the flat. She does not supply any of the meals, nor does she clean up the rooms herself, or employ any servants to do so. She does not undertake to do any washing for the occupants of the rooms in question, either of their underwear or of the bedding. Although they have the use of the bath-room, they supply their own towels. In short, at least according to the evidence before the Court, she merely gives them on pay-

ment the use of the rooms, but does not give them any sort of service;

The point is whether this amounts to keeping a hotel or lodging-house in contravention to section 154 of the Police Code, Chapter 13. The matter was exhaustively dealt with by Judge Dr. Camilleri in an elaborate judgment given by him when sitting in this Court on the 22nd. January, 1921. in the case "The Police vs. Nikola Bonnici". It was pointed out by the learned judge that our law, which does not give any definition of a hotel or lodging-house, does not require any Police licence, as the Italian Law does, for the subletting of furnished rooms or apartments, and does not put them on a par with hotels or lodging-houses. He then applied two tests in order to distinguish between one case and the other, that is:—

1. In the case of a hotel or lodging-house, the key of the room or apartment is kept not by the occupant, but by the hotel-keeper;

2. In the case of a hotel or lodging-house, service is provided either in the shape of meals, or in cleaning up the rooms, personally or by servants. When it is merely a case of sub-letting, there is only an under-letting, and no services are catered for, beyond the mere use of the apartment or the room;

The sitting Judge is inclined to agree that, as the law stands, the distinction made in the "Bonnici case" must be maintained. There may be border-line cases in which perhaps it may be sought to evade the law. But that would only mean that it may be desirable to amend the law in such a way as to bring under control these cases which hover on the dividing line;

The facts of this case are not such as to bring it under the prohibition. As far as the circumstances have been made to appear by the rather scanty evidence, there is merely a subletting of rooms, by the aforesaid tests;

This Court, there, allows the appeal, reverses the judgment of the Court below, declares the defendant not guilty, and orders her discharge.
