WASHINGTON v. COOLY.

Case No. 17,226.

[4 Cranch, C. C. 103.][1]

Circuit Court, District of Columbia. Dec. Term, 1830.

SETTING UP FARO-TABLE—SUFFICIENCY OF WARRANT.

A warrant upon the by-law of the city of Washington, of January 12, 1830 (section 1), for setting up a faro-table, must state it to be "for the purpose of gaming for money."

Appeal from the judgment of a justice of the peace for a fine of $50 for setting up "a table called faro, upon which cards were played."

Mr. Coxe, for defendant [Azariah Cooly], objected that the warrant did not charge any offence under the by-law, because the purpose or intent of setting up the table is not stated therein. The words of the by-law are, that "no E. O. A. B. C., L. S. D., faro, rolly-bolly, shuffle-board, equality-table, or other device, to be used with cards, balls, dice, coin, or money, or any other game of hazard, (except the game of billiards, upon licensed billiard-tables,) for the purpose of playing or gaming for money, or any thing in lieu thereof, shall be set up, kept, or exhibited in any part of this city, under the penalty of fifty dollars for every day," &c.

Mr. Ashton, contra. The justice of the peace is to proceed according to the right and equity of the matter; and the court is not to regard mere matter of form. The intent may be inferred from the use actually made of it. If the intent had been alleged in the warrant, and he could disprove that intent, he would be acquitted. The words, "for the purpose of gaming for money," are only applicable to the words "or any other device," and not to the word "faro," the setting up of which is prohibited, although not set up with any such intent.

THE Court, upon motion (THRUSTON, Circuit Judge, absent), quashed the warrant, because it did not set forth the intent which constitutes an essential part of the offence, under the by-law.

[1] [Reported by Hon. William Cranch, Chief Judge.]