

Present : De Sampayo J.

1919.

ELANGAMANIPILLAI *et al.* v. KANDASAMY.

298—C. R. Colombo 63,923.

Auction "cheetu" club—Lotteries Ordinance, No. 8 of 1844—Is it illegal?

The plaintiffs, who were managers of an "auction cheetu club," sued to recover from the defendant (a member) the amount of the subscription due from him.

Held, that the action was maintainable, as the contract was not repugnant to the Lotteries Ordinance (No. 8 of 1844).

THE plaint in this case was as follows :—

2. In the month of November, 1916, the plaintiffs, the defendant, and various others entered into an agreement to collect a sum of Rs. 700 among them each month for a period of twenty-eight months, commencing from the said month of November, 1916, and also to pay the amount monthly to each individual in rotation, and the order in which they were to receive the said sum of Rs. 700 was to be decided publicly by a competitive auction sale of the right of each individual for the said sum of Rs. 700.

3. In the month of November, 1916, it was further arranged and agreed upon among the plaintiffs, the defendant, and the others who joined them in the aforesaid arrangement that the plaintiffs should be their agents for collecting the money from the various persons who had entered into the aforesaid agreement for making payments, and for

¹ (1905) 8 N. L. R. 372.

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recovering by action, if necessary, the amounts due from those who had entered into the aforesaid agreement.

4. The defendant paid his monthly contribution of Rs. 25 up to the end of December, 1917, but he has failed and neglected to pay the contribution due for the months of January, February, March, April, May, and June, 1918, amounting to Rs. 150, although requested thereto.

5. The defendant was paid a sum of Rs. 700 by the plaintiffs on April 10, 1917, in terms of the aforesaid agreement.

6. A cause of action has now accrued to the plaintiffs to sue for and recover from the defendant the aforesaid sum of Rs. 150.

Wherefore the plaintiffs pray for judgment for the said sum of Rs. 150, together with a sum of Rs. 25 per month from the 10th day of each month, beginning from July 10, 1918, up to date of decree, legal interest from date hereof up to date of payment in full, for costs against, and for such other and further relief as to this Court shall seem meet and proper.

The defendant took the preliminary objection that the action was not maintainable, as the contract was repugnant to the provisions of the Lotteries Ordinance.

For the purposes of the argument of the point of law the parties filed statement showing how the club was worked :—

Statement.

The plaintiffs, the defendant, and several others formed themselves to what is commonly known as an Ela "Cheetu" Club. The club was formed on November 10, 1916, and had twenty members. It was agreed that the club should continue till February 10, 1919.

Each member has to contribute Rs. 25 a month. The total amount paid by the contributors once a month is Rs. 700, and the auction sales are held monthly.

The first auction sale was held on November 10, 1916. At this sale the total amount collected (Rs. 700) was put up for sale by auction among the members. Various bids were offered, the highest bid being Rs. 693 offered by Elangamani pillai. Elangamani pillai was then given Rs. 700, and he refunded Rs. 7, the difference between his bid and the total amount collected, to be divided equally among the remaining twenty-seven members. Similarly, at the second auction sale held on December 10, 1916, S. Mahadeva, another member, became the highest bidder with an offer of Rs. 615. Mahadeva was then given Rs. 700, and refunded Rs. 85, the difference between his bid and the total amount contributed, to be divided equally among the remaining twenty-seven contributors. At each auction sale the same procedure is gone through. A member who has been declared the highest bidder at any particular auction sale, and has been given the total contribution made for the month as the result of such auction sale, cannot bid at a subsequent sale. Thus, each member becomes the highest bidder, and is entitled to draw the total monthly contribution at one, and only one, auction sale held during the existence of the club.

Each member has to contribute Rs. 25 a month during the existence of the club.

The bids are made and accepted at an auction sale held among the members as given in detail above. No lots whatever are used in determining who should be declared the highest bidder for any particular month. The highest bid offered by any member at an auction sale is

determined by what that member ~~thinks~~ ^{is} the present value to him of the Rs. 700, which he has to contribute ~~month~~ ^{month} after month at Rs. 25 a month for twenty-eight months. Thus, Elangamani's bid of Rs. 693 means that he thinks that Rs. 693 is the present value to him on November 10, 1916, of his contributions of Rs. 25 a month from November 10, 1916, to February 10, 1919. S. Mahadeva offered Rs. 615, as he thought that Rs. 615 was the present value to him on December 10, 1916, of his various monthly contributions of Rs. 25 from November 10, 1916, to February 10, 1919.

If Elangamani or S. Mahadeva was pressed for money at the time of such auction, he would have bought the monthly contributions of Rs. 700 for Rs. 100, or even less.

[In this statement the term "lowest" would more correctly describe the working of the club.]

Arulanandan, for the appellant.—There is no element of chance in this "auction club." Every month the members bid against each other for the collections. The decision in *4 Leader Law Reports 69*, which the Commissioner has followed, gives no reason for holding that an auction club is illegal besides the fact that it is a "cheetu" club.

Balasingham, for the respondent, referred to *Stroud, vol. II., p. 1128*; C. R. Colombo, 38,519. In England missing word competition was held to be a lottery. There is an element of chance, inasmuch as there is no certainty that any member will get the collections for any specified month.

Cur. adv. vult.

March 5, 1919. DE SAMPAYO J.—

The question of the legality of what is called a "cheetu" club has once more arisen for consideration. A "cheetu" club usually understood is an arrangement by which a number of persons join together and contribute money weekly or monthly to a fund, which is distributed among the members in a certain manner. At the end of the week or month, when all the subscriptions for that period have been paid in, there is a drawing among the members by lot, and the whole sum is paid to the member who has drawn the winning ticket. This goes on until each of the members has in his turn got the amount of the weekly or monthly subscriptions, those who have already drawn the money being obliged to continue to pay the agreed subscription until the list of members is exhausted. A "cheetu" club of the above description is illegal, as it contravenes the provisions of Ordinance No. 8 of 1844 for the suppression of lotteries, and a member cannot either sue for the prize he may have won or be sued for the amount of the contribution. See *Vanderstraaten's Reports 180 and 181*, and *Sinnaturai v. Chinniah*.¹ The principle is that, although each member gets back what he has contributed, the time of his so getting back is determined by the drawing of lots, and the whole arrangement, therefore, constitutes a lottery. The present case, however,

¹ (1906) 10 N. L. R. 5.

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has a special feature, which requires consideration. In the "cheetu" club to which the parties belonged there is no drawing of lots, or any other method of chance by which a member becomes entitled to receive the money, but an auction is held at the end of the period of distribution, which in this case is a month, and the money is paid over to the member who makes the highest bid above the amount of the fund. The highest bidder no doubt has the benefit of the money before the others, but he obtains that advantage, not by chance, but by open competition, and the premium he pays for it is determined at his own free will. Mr. Balasingham, however, argues that there is still an element of chance, because the highest bidder's will may be influenced by the impecunious condition in which he may happen to be at the time. But the chance must be involved in the nature of the transaction itself, and has no reference to the motive which actuates the bidder. The Commissioner of Requests was himself inclined to the view that the "cheetu" club in question was, for the reason I have indicated, distinguishable from those which have been previously condemned, but he felt himself bound to follow the decision reported in *4 Leader Law Reports 69*, which also was a case of auction "cheetu." But it appears to me that in that case the judgment of Grenier J. proceeded upon the mere fact that it was a "cheetu" club, and without any special reference to the particular method of distributing the fund, and I think I am free to consider the point myself. To call an association of men a "cheetu" club does not help to elucidate its legal character. Each case depends on its own circumstances. In my opinion an arrangement such as the one adopted by the "cheetu" club in this case does not constitute a lottery. Nor is it a wagering contract. The essence of a wager is the uncertainty of the event, but there is no such uncertainty here. No wager is involved in the competition among the contributors any more than in the case, for instance, of a sale by auction of shares in a company. In both cases there is a certain degree of speculation, but that does not make them unlawful. I think that this is not an illegal association, nor the transaction one incapable of being enforced by action.

The case has been decided by the Commissioner on the pure question of law, and no evidence has been heard. The plaintiffs allege that by common consent they were appointed managers or trustees to collect the contributions, and they sue to recover from the defendant, who has already drawn some money as the highest bidder at an auction, the amount of subscription alleged to have since become due from him. The defendant has raised certain questions of fact, which have still to be determined. The decree of dismissal is set aside, and the case sent back for further proceedings. The plaintiffs are entitled to the costs of the day in the Court below and of this appeal.

Sent back.