

1920.

*Present* : De Sampayo J.MEEDIN *v.* PERIES.226—*P. C. Colombo, 27,308.**Lotteries Ordinance, No. 8 of 1844—Penal Code, s. 288—Lottery—Cheetu club.*

Accused started a club for drawing a monthly lottery. The proposals were as follows: There were to be 150 members, who were to contribute each a sum of Rs. 2·50 a month. There was to be a monthly drawing of tickets, and during the first twenty months the members who drew the winning tickets were to be paid Rs. 50 and cease to be members. During the next ten months the winner of the ticket was to be paid Rs. 75, and was, similarly, to go out. In the thirtieth month the whole scheme was to be concluded, and the 120 members who would be left without having drawn any money in the meantime were to be paid Rs. 75. Provision was also made for a member borrowing a sum not exceeding one-third of his contributions, and for paying to the heirs of a member who might die within the thirty months the amount of his contributions, together with an additional sum of Rs. 5.

*Held*, that the accused was guilty of a breach of section 5 of the Lotteries Ordinance, No. 8 of 1844, and section 288 of the Penal Code.

**T**HE facts are set out in the judgment.

*Muttunayagam, C.C.*, for Solicitor-General, appellant.

*A. St. V. Jayawardene*, for accused, respondent.

June 2, 1920. DE SAMPAYO J.—

In this case the question of the legality of what is known as a cheetu club comes up again for consideration. The accused was charged under section 288 of the Penal Code and section 5 of the Lotteries Ordinance, No. 8 of 1844, with having kept an office or place at Ratmalana for the purpose of drawing a monthly lottery, and with having published proposals for the drawing of such a lottery. The Police Magistrate held that the drawing in this particular case was not a lottery and acquitted the accused, and the Solicitor-General has appealed.

In November, 1918, the accused started a club, which he called "Danarakshaka Samitiya," with himself as Secretary and his wife as Treasurer. There were to be 150 members, who were to contribute each a sum of Rs. 2·50 a month. There was to be a monthly drawing of tickets, and during the first twenty months the members

who drew the winning ticket were to be paid Rs. 50 and cease to be members. During the next ten months the winner of the ticket was to be paid Rs. 75 and was, similarly, to go out. In the thirtieth month the whole scheme was to be concluded, and the 120 members who would be left without having drawn any money in the meantime were to be paid Rs. 75. The rules also contained provisions for lending to a member any sum not exceeding one-third of his contributions, for paying to the heirs of a member who might die within the thirty months the amount of his contribution, together with an additional sum of Rs. 5, and for paying to the member who might draw the last cheetu or ticket the sum of Rs. 75, together with an additional sum of Rs. 5 as a present from the club. These provisions are put forward on behalf of the accused as showing that the club was a benevolent or provident association and not a cheetu club in the ordinary sense. But if the organization was, in fact, in the nature of a lottery, these provisions would not prevent its being declared illegal. For, otherwise, a person may start an actual lottery and may yet evade the law by adding to the scheme a few small offers of an innocent kind.

It would seem that the scheme was bound to end in disaster, as it was based on an actuarial fallacy. The total contribution for thirty months would be Rs. 10,162·50, and the total amount of prizes would be Rs. 10,735, so that the accused would have to pay out of pocket Rs. 592·50. His counsel suggests that he is a philanthropic person, and intended to benefit his fellow-villagers out of his own moneys. This kind of charity, however, provokes suspicion. There were other risks which would make the scheme wholly unworkable. For instance, one of the members, who was called as a witness, says that he borrowed from the club more than his contributions, although according to the rules the limit was to be one-third of the contributions, and, strangely, he adds "if I can repay my debt, I do so, if I cannot, the society absolves me; it is the same with any other member." I have no doubt that the members believe all this, but, I think, they are under a delusion, and require to be protected against themselves. The police appear to me to have done the right thing in putting a stop to this extraordinary club, whether it is an illegal club or not. The undesirableness of its existence is not lessened by the fact that the accused and his wife are, so to say, the only proprietors of the club, and have its sole management.

Now, is this scheme a lottery or not? A "lottery" is not defined in the Ordinance. In essence it is a distribution of prizes by lot. The argument on behalf of the accused, which has found acceptance with the Police Magistrate, is that in this scheme there are really no prizes, because it is alleged that the members draw no more than their own contributions. But this is not in accordance with facts. It takes twenty months for a member to contribute

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Rs. 50, but nineteen out of the first twenty members who draw the winning tickets will have contributed sums ranging from Rs. 2.50 to Rs. 47.50 only. Similarly, with regard to the next ten members they will have contributed less than Rs. 75 up to the thirtieth month, except the member who draws the winning ticket in the thirtieth month. Consequently, the thirty members in these two groups, except the last in each group, will draw more than their contributions, and will thus win prizes. It was sought to support the accused's acquittal by reference to such English cases as *Wallingford v. Mutual Society*,<sup>1</sup> but they have no bearing on this case. They are decisions on the application of the English Lottery Acts. One of the Acts, as pointed out by *Wallingford v. Mutual Society (supra)*, has reference to gambling transactions only, and the other to persons who kept lottery offices and invited the public to buy lottery tickets, and the Court held that that particular case did not come under either of the Acts. The defendant in that case was a loan society, registered under the Companies Acts, the object of which was to obtain subscriptions from members, and to lend them money out of the funds on interest upon "certificates of appropriation." These certificates were documents issued to every member on his entering the society. The "appropriations" or advances were made according to the number of certificates held by the member, and were allotted the first and every fourth one, free of premium or interest, by drawing, while those intermediate were allotted to the members tendering the highest premium for the same. It is obvious that this is quite different from the scheme in the present case. Those same English decisions were cited without success in the local Full Bench case *Sinnaturai v. Chinniah*.<sup>2</sup> This is a strong authority, because there every member of the cheetu club got back all his money and neither more nor less, and the argument was that under those circumstances there were no prizes. But Hutchinson C.J., who delivered the judgment of the Court, observed "a person who at the beginning of the drawings (say, at the end of the first month) gets a sum equivalent to the whole of the contributions which he will have to make during the whole of the term for which the club is to last, gets a prize . . . . The advantage is the use of the getting of the money at the beginning of the term . . . . and getting that advantage by means of lots 'you get a prize by the drawing of lots.'" And the Court held that this was a lottery declared illegal by Ordinance No. 8 of 1844. That decision, being that of the Full Bench, is binding upon me, and I follow it all the more readily, because I am in entire accord with it. It will be observed that in that case the members who should draw the money did not cease to be members, but continued to pay their subscription to the end of the term. But in this case the winning members have the further advantage of not paying

<sup>1</sup> (1880) 5 A. C. 685.<sup>2</sup> (1906) 10 N. L. R. 5.

any more subscriptions, and, as I have shown, they draw more than their total subscriptions, while even the 120 members, who would be left after the first thirty members have drawn winning tickets and got the money, would get Rs. 75 at the end of the thirtieth month, although their total subscriptions during the whole period would be Rs. 50 only. So that it cannot be said that the members would get nothing more or less than their contributions. This, therefore, is much more of a lottery than the scheme in *Sinnaturai v. Chinniah (supra)* or in the older case, P. C. Colombo, 56,249,<sup>1</sup> which, similarly, condemned a cheetu club of the same description as an illegal association falling under the penal provisions of the Ordinance No. 8 of 1844.

The order of acquittal is set aside, and the accused is hereby convicted on the charges made against him, and is ordered to pay a fine of Rs. 50.

*Set aside.*

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