

1924.

Present: Jayewardene A.J.

## INSPECTOR OF POLICE, MARADANA, v. STANTON.

324—M. C. Colombo, 3,196.

*Unlawful gaming—Public place—Common gaming place—Place to which admission was by ticket on payment—"Submarine dive"—"Dart throwing"—What is a game played for a stake—Lottery—Games of skill played for stake—Chance not necessary element of offence of unlawful gaming.*

Chance is not a necessary element in the offence of unlawful gaming.

The game called "submarine dive" (described in the judgment) was held to be a game played for a stake and not a lottery.

*Hayley* (with him *de Jong*), for accused, appellant.

*M. W. H. de Silva*, for Crown, respondent.

July 1, 1924. JAYEWARDENE A.J.—

In this case the accused, appellant, appeals against his conviction under section 5 of the Gaming Ordinance, 1889, for keeping a common gaming place. The accused is the proprietor of "Stanton's Midway Shows," and has been carrying on his show at Darley road, Colombo, for the last few months. The police complain that some of the games conducted there involve unlawful gaming as defined in the Ordinance. The games objected to are called "the submarine dive," "dart throwing," and a game on a miniature bagatelle table. The learned Police Magistrate has convicted the accused holding that there is a mixed element of chance and skill in the games, and as they are played for a stake, they amount to unlawful gaming under the Ordinance. He has also held that the place is a "public place" as defined in the Ordinance. He imposed a fine of Rs. 5 only, as the police who had been shown these games before they were started had not objected to them. The accused appeals on certain points of law, and has also applied for a revision of the Magistrate's finding on the facts. Counsel for the appellant very properly abandoned the ground that the place was not a "public place." The learned Magistrate had very rightly overruled this contention. A place, although a charge is made for admission to it, is nevertheless a "public place," provided members of the public have access to it. The evidence shows that the public have access to it on payment of an admission fee of 10 cents. The only point pressed before me was that the evidence fails to show that the games played were played

for a stake, and that in the case of " the submarine dive," which the appellant was most anxious to protect, there was a lottery and not a game for a stake. If it amounts to a lottery, the accused cannot be convicted, as there is an element of skill involved in it. The decision of this point must depend on the view taken of the facts. The description of the games given by the complainant is not in dispute. The " submarine dive " is played in this way. There is a miniature submarine in a tank almost full of water. It is worked by electricity. There are 48 numbers marked on the inside of the upper edge of the tank. There are twelve tickets each containing four numbers. The price of each ticket varies from Re. 1 to Rs. 10. The holder of the ticket containing the number against which the submarine has stopped is given a movable switch, and asked to switch on, then the submarine dives and keeps going round and round under the water. When it is switched off, this may be done at the will of the person who works the switch, the submarine mounts to the surface, and comes to a standstill. There is a pointer on the submarine which points to the number against which it has stopped. This is the winning number, and the holder of the ticket containing this number wins the prize, which, if the tickets have been sold for Re. 1, would be Rs. 10. The prize is ten times the value of the ticket. Rs. 2 on every twelve rupees goes to the management. There is a certain amount of skill involved. For, if the person who has to manipulate the switch knows exactly when to switch off, he can get the " submarine " to stop opposite to his number. This can be done by practice and observation, as the position of the " submarine " can be located by the movement of the water. Mr. Hayley contends that there is no " stake " in the game, but that the money received from the players is collected in the hands of the man in charge who pays ten out of the twelve rupees collected to the winner, retaining two for the accused. There would be a great deal in this contention if the facts support it. But Mr. de Silva contends that, although there is a collection, and the winner is paid out of this collection, yet the management invites the public to play the game promising to pay Rs. 10 for every one that is paid for a ticket. The players are not concerned with one another, they look to the management for the payment of the prize, and it is immaterial to them whether all the twelve tickets are sold or not. It may often happen that all the tickets are not sold. The management does not say that the game would not be played unless all the tickets are sold, or that the prize would come out of the money contributed by the players. The management assures the players that if the game is played, the winner would get ten times the amount he paid for his ticket. This seems to me to be the correct view. If this is so, it becomes unnecessary to discuss the authorities cited by Mr. Hayley in support of the contention that this was a lottery. It is a game played for a stake. Unlawful gaming, as defined in the

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Gaming Ordinance of 1889, includes playing a game for a stake in any place to which the public have access, whether as of right or not, and a "common gaming place" includes a place kept for the playing of games for stakes to which the public may have access with or without payment. The game—"the submarine dive"—is therefore prohibited under the Ordinance. As regards "dart throwing"—the contention is that it is an "athletic exercise" within the meaning of section 18 of the Gaming Ordinance, and is not prohibited whether played for a stake or not. I do not think that the game of "dart throwing" described in the evidence can be regarded as an "athletic exercise" in any sense. With regard to the game played on the miniature bagatelle table, it is said that this is the well-known game of bagatelle, which it is not an offence to play, whether for a stake or not, under the same section. The game described in the evidence is not the ordinary game of bagatelle at all, but an entirely different game for which a miniature bagatelle table is utilized. The appellant has not brought himself within the provisions of section 18.

The learned Magistrate was, in my opinion, also quite right in holding that the games objected to were games of mixed chance and skill. Our Ordinance makes the playing of any game for a stake an offence, if played in the circumstances stated in section 3 of the Ordinance, and in *Modder v. Silva*<sup>1</sup> Wood Renton C.J. (then Wood Renton J.) held that playing a game for a stake, though the game be one of skill alone, was an offence under the Gaming Ordinance, 1889, and that chance was not a necessary element of unlawful gaming.

The Magistrate has come to a right conclusion on the facts and on the law, and the appeal must be dismissed.

*Appeal dismissed.*

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<sup>1</sup> (1912) 15 N. L. R. 189.