CRIMINAL REFERENCE.

Before Mukerji J.

EMPEROR

v.

ARJUN SINGH.*

1929

May 8.

Gaming—" Gaming ", meaning of—Bengal Public Gambling Act (Beng. II of 1867), ss. 1, 11A.

Under the Bengal Public Gambling Act, 1867, as amended by Bengal Act IV of 1913: "*gaming*" means playing at any game for money which is staked on the result of the game, which is to be lost or won according to the success or failure of the person who has staked, provided that it is not a lottery. By section 11A, games of "*mere skill*" are exempted. After the amendment of 1913, the question as to whether the game is one of pure chance or one in which the element of skill preponderates is no longer pertinent.

Hari Singh v. *King-Emperor* (1), *Bangali Shah* v. *Emperor* (2) and *Ram Newaz Lal* v. *Emperor* (3) distinguished.

Hari Singh v. *Jadu Nandan Singh* (4), *Ram Pratap Nemani* v. *Emperor* (5) and *King-Emperor* v. *Musa* (6) followed.

REFERENCE under section 438 of the Code of Criminal Procedure by the Sessions Judge of Hooghly, recommending that the conviction of Arjun Singh and fourteen other accused persons under section 4 of the Bengal Public Gambling Act be set aside.

The material facts appear from the judgment of Mukerji J.

Mr. Khoda Bux (with him *Mr. Satindranath Mukherji*), for the petitioners. It was the duty of the prosecution to prove that the play which was going on was gaming and this the prosecution failed to prove. The prosecution witnesses could not give any description as to how the actual play was going on and, in the absence of any evidence to that effect, the conviction was not maintainable. The game that

*Criminal Reference, No. 24 of 1929, made by K. C. Nag, Sessions Judge of Hooghly, dated Jan. 30, 1929.

(1) (1907) 6 C. L. J. 708.
(2) (1913) I. L. R. 40 Calc. 702.
(3) (1914) 15 Cr. L. J. 276.
(4) (1904) I. L. R. 31 Calc. 542.
(5) (1912) I. L. R. 39 Calc. 968.
(6) (1916) I. L. R. 40 M d. 556.

was being played was really "Jullendhur play" or "the Americal sale system" which, as the police officers called on behalf of the defence prove, was sanctioned by many district authorities. The play was not gaming within the purview of the Gambling Act, but was a game of skill. The prosecution failed to prove that the articles seized were articles of gaming and hence there can be no presumption against the accused in this case.

Mr. Santoshkumar Basu, for the Crown. The trial was a summary trial and although the evidence was not recorded as fully as it should have been in a regular trial, yet the evidence on the record sufficiently made out an offence. The game was not one of pure skill and came within the purview of the Act. If there was any element of chance in it, it would amount to an offence. The case of *Hari Singh* v. *The King-Emperor* (1) was not followed in the later case of *Ram Newaz Lal* v. *Emperor* (2). In this case the articles seized were undoubtedly articles of gaming and hence it was for the accused to prove that the game did not come within the purview of the Act. The defence attempted to prove an absurd game which left no profits to the accused who lost every time the game was played. One of the prosecution witnesses said that he actually lost money. This and other circumstances show that the accused were engaged in gambling.

MUKERJI J. This is a Reference made under section 438 of the Code of Criminal Procedure by the Sessions Judge of Hooghly, recommending that the conviction of 15 persons, one Arjun Singh and 14 others, under section 4 of Bengal Act II of 1867 and the fine imposed thereunder may be set aside. The case has been argued before me in great detail on behalf of the petitioners, as well as on behalf of the Crown.

The only question that arises for determination in the case is whether the game that was being played

(1) (1907) 6 C. L. J. 708. (2) (1914) 15 Cr. L. J. 276.

1929

EMPEROR v. ARJUN SINGH.

MUKERJI J.

at the time when the petitioners were arrested was "gaming" within the meaning of the Act. The definition in the Act does not really define "gaming," but merely indicates what it is like and excludes wagering or betting on some particular occasion and in particular circumstances and also excludes a "lottery." In *Hari Singh* v. *The King-Emperor* (1), it was held that a game of skill is not an offence under the Act but a game of chance is, and that if a game involves a certain amount of skill as well as a certain amount of chance, if the chief element of the game is skill it is not an offence. This decision was passed in 1907. It was incidentally approved of in *Bangali Shah* v. *Emperor* (2). *In Ram Newaz Lal* v. *Emperor* (3), the learned Judges referring to section 10 of the Act, which said "Nothing in the foregoing provisions of this "Act contained, shall be held to apply to billiards, "whist, or any other game of mere skill wherever play-"ed," observed: "The criterion is not whether it is a "game of mere chance, but whether it is a game of "mere skill, and we may point out that the word "'mere' is used in legal language in its meaning "derived from its Latin origin and imports the "meaning of 'pure skill'...There is a further point "which we wish to set out and which was not "apparently discussed in *Hari Singh's case*, and that "is that the games of skill referred to in section 10 "obviously refer to a game where there are two "parties putting their skill against each other." The Allahabad High Court, dealing with a case under section 12 of Act III of 1867, in which *Hari Singh's case* appears to have been cited held that the words of the Bengal Act were materially different and held that, under the other Act, the conviction was all right, as the game was not a game of mere skill. Bengal Act II of 1867, however, was amended by Bengal Act IV of 1913, by which, amongst other alterations, section 10 was repealed and a new section numbered 11A was introduced, which is in these words

(1) (1907) 6 C. L. J. 708. (2) (1913) I. L. R. 40 Calc. 702.
(3) (1914) 15 Cr. L. J. 276.

"Nothing in this Act shall apply to any game of "mere skill wherever played." The result, therefore, is that we are left with the definition of "gaming," such as it is in section 1 and the provision exempting games of mere skill as contained in section 11A. The question as to whether a game is one of pure chance or one in which the element of skill preponderates—considerations which were thought important under the Act as it stood before are no longer pertinent. We have to see whether the game is covered by what is meant by "gaming"; if it is, it is hit by the Act, unless it is a game of mere skill.

As regards the definition of "gaming," it has been already said that it is hardly a definition. Etymologically it is equivalent to playing a game. In the Imperial Dictionary, gaming is defined as "to use "cards or other instruments according to rules with "a view to win money or other things waged upon the "issue of the contest." In Murray's Dictionary, it is defined as "the action of playing at games for "stakes." In Wharton's Law lexicon, it is defined as "the act or practice of playing or following any game, "particularly those of chance." In *Hari Singh* v. *Jadu Nandan Singh* (1), Stephen J. incidentally laid stress on the accompaniment of stakes or betting as the distinguishing element of "gaming." In *Ram Pratap Nemani* v. *Emperor* (2), where the meaning of "gaming" pure and simple was in question, it was explained as meaning "playing at any game for "money, which is staked on the result of the game, *i.e.*, "which is to be lost or won according to the success "or failure of the person who has staked." In the case of *King-Emperor* v. *Musa* (3), Oldfield J. said that "the existence of a stake, not the character of the "game as one of skill or chance, is regarded as consti-"tuting the distinction between playing a game and "gaming": and Sadasiva Ayyar J. observed, "I do "not think that the question of chance or skill enters "into the connotation of the verb." I entirely agree

(1) (1904) I. L. R. 31 Calc. 542. (2) (1912) I. L. R. 39 Calc. 968, 975.
(3) (1916) I. L. R. 40 Mad. 556, 558, 560.

1929

EMPEROR
v.
ARJUN SINGH.

MUKERJI J.

in this view. In my judgment, all that has to be seen in this case is whether the game that was going on, was for money which was staked on the result of the game which was to be lost or won according to the success or failure of the person who has staked, provided of course that it was not a lottery.

The version of the game given by the witnesses for the defence—a version by putting forward which the accused obtained sanction or permission to play—is one that is perfectly understandable. That perhaps would amount to a "lottery" as defendants' witness No. 2 says, but it is not necessary to express any definite opinion on this question, as this, according to the prosecution, was not the game that was being played on this occasion. I may, however, mention in passing that I do not understand the sense of this game, because called by whatever name it may be either as "the Americal sale system" or the "Jullen-"dhur play"—it fetches nothing to the principals for whose benefit the game is meant to go on. According to the defence, as I understand it, each player has to put in 4 anna in lieu of which all the players get articles worth ranging from 4 annas to Re. 1-8. It may be that the agents get a commission, but the principals undergo a loss of a good decent sum at each round of the play. I need not dilate further on it, as I do not believe that that was the kind of game that was ever seriously pursued.

As regards the game which the prosecution allege was being played on the occasion, Mr. Basu has made several attempts before me to construct it out of the evidence of the prosecution witnesses, but I must say I am not satisfied that he has been successful. The witnesses examined in the case have not been made to describe the play in detail or at any rate in a sensible way and I entirely agree in the opinion which the defendants' witness No. 1 has expressed, *viz.*, that the description as given by the witnesses is "nonsense" and in what the Sessions Judge says, namely, that their evidence as recorded is "extremely incompre-"hensible." It does not signify much that one

witness says that on one occasion he lost Rs. 2, for we have to see what was done not on one occasion but on the present occasion. The putting out of the lights on the arrival of the police, though significant, cannot be held as supplying all *lacunæ* in the evidence. I share in the view which the Sessions Judge has expressed, namely, that the offence has not been proved. The consequence is perhaps regrettable, but a case of this sort should certainly have been more adequately tried.

It may be noted here that there is on the record the warrant which was issued by the Superintendent of Police for the search that took place. It is not possible to avail of the presumption that the law provides for a case like this, because the warrant has not been marked as a piece of evidence against the accused persons. Moreover, it may again be that such presumption, even if it did arise, has been rebutted by the fact that the presence of the dice, *etc.*, is accounted for by the kind of game which the defence says is the game that used to be played, though for my part I should be very reluctant to accept it.

On the whole, I agree in the view which the learned Sessions Judge has taken of the case. I accept the Reference and acquit the accused and direct that the fines if paid be refunded.

A. C. R. C. *Reference accepted; accused acquitted.*