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LUDOVICI *v.* NICHOLAS APPU.

M. C., Colombo, 1,435.

Gaming Ordinance, No. 17 of 1889—Common gaming house—Place to which the public have access—Evidence of keeping or using—Meaning of "include" in a definition clause.

A common gaming house is a house in which a large number of persons are invited habitually to congregate for the purpose of gaming. It makes no difference that the house was not open to all persons who might be desirous of using the same.

It is a house kept or used for playing therein any game of chance or any mixed game of chance and skill, in which (1) a bank is kept by one or more of the players, exclusively of the others, or (2) in which any game is played the chances of which are not alike favourable to all the players, including among the players the bankers or other persons by whom the game is managed, or against whom the other players stake, play, or bet.

Where twenty or thirty persons belonging to different nationalities assembled in a house day after day for the purpose of gambling, and the proprietor of the house collected commission from such persons every time the dice were thrown, *held* it was a common gaming house.

Where a man, in such a house, held a croupier's rake and directed by it the dice box holder to throw the dice, and then raked in the commission paid by the players, *held* this was sufficient evidence of assisting in the management of the gaming house.

Jayawardana v. *Thomas* (*1 N. L. R. 216*) disapproved.

The word "include" in a definition clause means "has the meaning given to the word in the Ordinance in addition to its popular meaning."

THE accused in this case was charged with having at No. 68, Messenger street, assisted in the management of a place kept and used as a common gaming place, and thereby having committed an offence punishable under section 5, sub-section (c), of the Ordinance No. 17 of 1889.

As regards the place being a common gaming place, the complainant, an Inspector of Police, deposed that he went with the warrant of the Police Magistrate to search premises No. 68 in Messenger street, and found the big gate and the premises closed and barred from inside: "The small door was not ajar, it could admit one man at a time. It was also closed. We entered and saw about thirty men gaming in one of the rooms. We arrested twenty, and about ten escaped. I saw in the room a black cloth spread on the floor, a brass box or till with two compartments, and two sticks on the lid which was locked with Chubb's patent lock. It contained money, Rs. 22. There was also a sum of money on the floor (Rs. 34.89) and a leather rattle or dice box and a stick, a croupier's stick, called by the natives *thong* stick." O'Dowd, Police Sergeant, deposed:—"I have watched these premises before, and have seen from time to time people of different nationalities going in and out. I have often heard them talking while coming out as to their winnings and losses. On the present occasion I saw about thirty people seated in a circle inside. As soon as we entered some of the people pushed me and escaped. We arrested twenty." William Perera, a fruit-seller, deposed that "he had been to house No. 68 for gambling nine or ten times, in the night as well as in the day, and saw gambling going on whenever he went. He received no notice of gambling being carried on any particular day. On the day of the arrest he was with the gamblers. And Pabliano Naide, a watcher on the premises No. 68, deposed:—"At the entrance there is one large gate and a small door in the middle of it. The large gate is always bolted. By the small door inside there is a bench, and this door is also closed. When the watcher outside tells me to open the little door I do so, and people enter one by one, or by twos, at a time. I have also gambled about fifteen times."

As to the defendant assisting in the management of this common gaming place, it was proved that he was in the circle of the gamblers receiving commission, or *thong*, every time the dice were thrown, at the rate of 4 cents per rupee; that he took the commission and put it with the other money in front of him, which was different from the stake which the winners got; that the place was kept by one Neina Marikar; that the accused was his manager, and as such the accused was always present; that on the 8th of April, when the entry of the Police occurred, as also on previous days, he supervised the games and collected the commission at the rate of 4 cents per rupee; and the accused used to take the *thong* money to Neina Marikar.

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The Magistrate held the charge proved, and found the accused guilty, and sentenced him to three months' rigorous imprisonment.

The accused appealed.

H. J. C. Pereira, for appellant.—The evidence led shows that gambling took place at house No. 68, but there is nothing to show that the public had access to it. " Common gaming place," as defined by section 3 of Ordinance No. 17 of 1889, means a place to which the public had access. [BONSER, C.J.—Do you then mean to say that this was a gambling club?] Yes. The facts proved permit me to say so. [BONSER, C.J.—But that will not help you, since a club formed for gambling will come under the Ordinance, *Stephen's Criminal Law, pp. 122-123.*] Section 23 of our Ordinance excludes clubs. [BONSER, C.J.—But what is there in the Ordinance to limit the meaning of the term " common gaming place " to a place to which the public have access so as to exclude its ordinary meaning as known to the English Law?] I believe it has been so understood here. *1 N. L. R. 216*, and *2 ib. 79*. [BONSER, C.J.—Then you contend that " common gaming places " in the ordinary acceptation of the term are not common gaming places under the Ordinance? In English " common " means habitual, not public. This definition is not excluded by the Ordinance, which provides that " common gaming place " shall *include* any place kept or used for the playing of games for stakes, and to which the public may have access. Here, " include " is more comprehensive than " mean." " Include " means " extend to and include "] There is no evidence that accused assisted in the management on the 8th April. [BONSER, C.J.—Yes, there is. But why did not the accused go into the box to explain away the facts proved against him?] I do not know, my Lord. [BONSER, C.J.—I do not want to hear counsel for respondent. The judgment seems to me to be quite right.]

Ramanathan, S.-G., for the Crown, not called upon.

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In this case the appelant was convicted of assisting in the management of a place kept or used as a common gaming place. He has appealed against that conviction. It appears that on the 8th April last, Inspector Ludovici went armed with a warrant, accompanied by Sergeant O'Dowd and other police constables, to certain premises in Messenger street which were reported to be the scene of habitual gambling. On entering the

house they saw some thirty people seated in a circle around a black cloth on which was a dice box and a money box and a *thong* stick, which I am told is a sort of croupier's rake used for the purpose of raking in the commission paid to the keeper of the establishment. On seeing the police the assembly broke up hurriedly. Twenty of them were arrested and some ten escaped, among them this appellant. The sergeant says that at the time they went in this accused was sitting next to the man who held the dice box. When the appellant took up the *thong* stick the dice were thrown. He saw that. It is suggested that his handling this implement does not prove that he was engaged in assisting in the operations of gambling. Perhaps not taken by itself, for he might have taken up the stick to strike one of his fellow players. But there is the evidence of other witnesses who have been in the habit of attending this place, and they speak of this man as one of the managers, whose business it was to collect the commission and to wield the *thong* stick, so that their evidence leaves no doubt in the mind of any reasonable man that, on the night this place was entered, the appellant was using this *thong* stick as on previous occasions. I may mention that the appellant did not go into the witness box and deny any of the facts alleged against him. Mr. Pereira argued strenuously that, although he might have been assisting in the management of the gambling, yet this place was not a common gaming place within the Ordinance, and that therefore he was not guilty of any offence. Now the evidence, which, as I said before, is uncontradicted, is that twenty or thirty people used to assemble in this house day after day, people of all nationalities (Sinhalese, Moors, Malays, Tamils), and gamble there, and that the proprietor of the establishment collected commission from persons who played there. Mr. Pereira, however, argued that there was no evidence that this was a public gaming house, and that the general public had access to it. He said it might have been a private gambling club, where people who had a common taste for gambling met together for gratifying that taste. But it seems to me that, if so, the place is none the less a common gaming place. The Ordinance says in the definition clause: "Common gaming place "shall *include* any place kept or used for betting or the playing of "games for stakes, and to which the public may have access with "or without payment." Now, as I had occasion to remark before, the words "shall include" in a definition clause mean shall have the following meaning in addition to their popular meaning. That was held to be the meaning of those words by Lord Esher, late Master of the Rolls, and Lord Justice Baggallay, in the case of

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the *Corporation of Portsmouth v. Smith, 13 Q. B. D. 195*, and that disposes of the argument of Mr. Pereira that the definition was meant to be exhaustive, and that no place could be a common gaming place which did not come within these words in the definition clause. There is no foundation whatever for that argument.

Now a common gaming place has been variously defined. In the case of *Jenks v. Turpin*, the question was exhaustively considered (*13 Q. B. D. 505*). That was a case where a proprietory club was used for the purpose of playing baccarat, and it was there argued that, as the gaming was limited to subscribers and members of the club, the club was not a common gaming house. Mr. Justice Hawkins deals with that contention in this way: "I do not think it makes any difference that the use of the "house and the gaming therein was limited to the subscribers "and members of the club, and that it was not open to all "persons who might be desirous of using the same. If this "could be set up as a defence to an indictment, any indictment "for keeping a common gaming house might be defeated. To "no gaming house is the public at large invited to go without "restriction of some sort or other. The keeper of such a house "has always the right to permit or refuse admission to any "one he pleases, or to make such rules as he may think fit for "the regulation of such permission. Here he placed himself in "the hands of the committee to elect whom they would, provided "only the number of members did not exceed 500. If the "admission of 500 persons to a gaming house does not make it a "common gaming house, it might equally be said that the admis-"sion of 5,000 would not. The law does not require that it shall "be a public gaming house; a common gaming house is that which "is forbidden, that is, a house in which a large number of persons "are invited habitually to congregate for the purpose of gaming."

Mr. Pereira called my attention to case of *Jayewardena v. Don Thomas* (*1 N. L. R. 216*), in which it seems to have been held by my brother WITHERS that publicity was the essence of the offence of keeping a common gaming place. It does not appear, however, that any cases were cited to him, and I am sure that, had his attention been called to the English decisions, he could not have expressed the opinion he did.

Quite apart from the question of the admission of the public, there is another ground on which this house must be determined to be a common gaming place. In the case to which I have alluded Mr. Justice Smith adopted another definition of a common gaming house, which I think was the definition of Mr. Justice

Fitz James Stephen, and that was this: "A common gaming "house has been defined to be a house kept or used for playing "therein any game of chance or any mixed game of chance and "skill in which (1) a bank is kept by one or more of the players "exclusively of the others, or (2) in which any game is played the "chances of which are not alike favourable to all the players, "including among the players the bankers, or other persons by "whom the game is managed, or against whom the other players "stake, play, or bet. That constitutes a common gaming house." In this case there is evidence that a bank was kept by one of the players, exclusively of the others. So that, whichever way we look at the question, this place must be held to be a common gaming place. I am not at all satisfied that it was also not a public gaming place. I think the evidence is sufficient to establish that fact. But whether it was a public gaming place or not, I am satisfied that it was a common gaming place, and that the appellant was assisting in the management. The appeal consequently fails, and the conviction must be affirmed.