

[Full Bench.]

1906.
November 7.

Present: Sir Joseph T. Hutchinson, Chief Justice, Mr. Justice
Wendt, and Mr. Justice Wood Renton.

SINNATURAI v. CHINNIAH.

C. R., Point Pedro, 10,198.

*Cheetoo Club—Illegality—Lottery—Recovery of prize—Contribution—
Ordinance No. 8 of 1844.*

A cheetoo club comes within the scope of the Lottery Ordinance (No. 8 of 1844), and no action can be maintained for the recovery of prizes won at the drawings of such a club; but contributions made by the members may be recovered, provided they have not been paid over to any one else in accordance with the rules of such club.

THE plaintiff appealed from a judgment of the Commissioner of Requests dismissing her action for the recovery of a money prize won at a drawing of a club known as a cheetoo club, and also of the contributions made by her towards the funds of the club.

E. W. Jayewardene (with him *Balasingham*), for the plaintiff, appellant.—Cheetoo clubs do not come within the scope of the Lottery Ordinance, No. 8 of 1844. No one wins a prize, and no one risks anything. The contributors get back their contributions and no more. The mere use of the money is not such a benefit as is contemplated by section 3 of Ordinance No. 8 of 1844 (15 *Natal L. R.* 354 and *Natal Law Quarterly* 84). A lottery is a distribution of prizes by lot or chance, *Barclay v. Pearson* (1); *O'Connor v. Bradshaw* (2). A society constituted (avowedly) for the benefit of its members, making certain of them entitled to particular benefits by the process of periodical drawings, does not come within the Lottery Acts, *Wallingford v. Mutual Society* (3). In any event the plaintiff is entitled to be repaid the deposits as money had and received by the defendant for and on behalf of plaintiff.

Bawa (with him *Wadsworth*), for the defendant, respondent.—The dismissal of the action is right. Cheetoo clubs have been held to be illegal and to fall under the Lottery Ordinance (*Vand.* 180). [HUTCHINSON C. J.—We are of that opinion and do not wish to hear you on that point. What have you to say to the repayment of the deposits?] The deposits must have already been paid to the other members of the club; it cannot be said that because the plaintiff

(1). (1893) 2 *Ch.* 154.(2) (1850) 5 *Ex.* 882.(3) *L. R.* 5 *AC.* 685.

1906. did not get what the others got that the constitutions have not
 November 7. been exhausted.

E. W. Jayewardene, in reply.

7th November, 1906. HUTCHINSON C.J.—

The reason given in the petition of appeal for alleging that the judgment of the Court of Requests in this case is wrong is that these cheetoo clubs do not come within the scope of the Lottery Ordinance, No. 8 of 1844. On that point we are agreed that an arrangement of this kind, by which prizes are distributed by lot, is a lottery. The appellant contended that there were no prizes, inasmuch as every person who joins the club simply gets back all his money and neither more nor less. In my opinion, however, 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 plaintiffs in their plaint describe it as a prize, and the defendants in their answer refer to it as a prize. The advantage is the getting of the use of the money at the beginning of the term—£10 in hand to-day is something better than £10 a year or two hence—the advantage is to get it now at once; and getting that advantage by means of lots, you get a prize by the drawing of lots, and being therefore a lottery it is not a lawful contract, and on that point the decision of the Court of Requests is right. The appellant further relies on a claim which she made also in the plaint, to recover Rs. 44, the amount of the contribution which she says she had made for what is described as “the other number of the second club.” The defendants deny that she paid any contribution for two numbers in the second club. If she did make any such contributions she is entitled to get back from the treasurer of that club any of those contributions which still remain in his hands, and which have not been paid over to any one else in pursuance of the rules of that club. One of the issues settled for trial was: “Did the second plaintiff contribute to two numbers of the second cheetoo club, and if so how much?” There is no answer given by the Court of Requests to that issue. If the plaintiff thinks it worth while to have that issue tried, we will send the case back for trial of the issue whether the plaintiff contributed to two numbers of the second club, and if so, are her contributions or any of them still in the hands of the defendants or any of them?”

We think that the appellants should pay the costs of this appeal.

WENDT J.—I quite agree and have nothing more to add.

WOOD RENTON J.—I also agree and would add nothing.

Case remanded.