Present: Wood Renton J.

1912.

MODDER *v.* SILVA.

94—P. C. Kurunegala, 11,935.

Unlawful gaming—Playing a game of pure skill for stake—Ordinance No. 17 of 1889, s. 5 (a).

Playing a game* for stake, though the game be one of skill alone, is an affence under section 5 of Ordinance No. 17 of 1889.

Chance is not a necessary element of unlawful gaming.

THE facts are set out in the judgment.

Balasingham, for the accused, appellant.—The playing of a pure game of skill for a stake is not unlawful. See judgment of Cockburn C.J. in *Bew v. Harston*[1] and *Ramanathan's Reports (1877) 83.* In this case money was not staked. The accused only offered to pay a certain sum if the thrower succeeded in throwing the ring on a certain place. This is playing on credit. It has been held by Lawrie J. that playing even a game of chance is not an offence unless money was actually staked. Playing on credit is not an offence. *Puhaitamby v. Karolis*,[2] *Perera v. Siddirappu*.[3]

Akbar, C.C., for the respondent.—The case cited from *Ramanathan's Reports (1877) 83* was decided under Ordinance No. 4 of 1841. Under that Ordinance only games of chance were prohibited. Our present Ordinance prohibits all games if played for a stake. Even games of pure skill fall within the definition of "Game." See *Lockwood v. Cooper*,[4] *Dyson v. Mason*,[5] *Jenks v. Turpin*.[6]

There were 50-cent and 10-cent pieces on the table, and the thrower was entitled to 50 or 10 cents as the ring covered one or the other. That is not playing on credit.

Tambyah, as amicus curiæ, referred the Court to Indian authorities, which were submitted on a later day.

Cur. adv. vult.

February 26, 1912. Wood Renton J.—

The accused-appellant was convicted in the Police Court of Kurunegala of having kept a room, of which he was the occupier, as

* Playing billiards or bagatelle or any game, which is also an athletic exercise, is not an offence. See section 18.

[1] *(1878) 3 Q. B. D. 455.*
[2] *(1893) 2 S. C. R. 62.*
[3] *(1893) 2 S. C. R. 75.*
[4] *(1903) 2 K. B. 428.*
[5] *(1889) 2 Q. B. D. 353.*
[6] *(1884) 13 Q. B. D. 565.*

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a common gaming place, and of having thereby committed an offence punishable under section 5 (*a*) of Ordinance No. 17 of 1889. The Police Magistrate has sentenced him to pay a fine of Rs. 25. It is not disputed that the appellant was the occupier of the house in question, or that, if the game alleged to have been allowed to be played on the premises is one of a class against which the Ordinance is directed, the room so used was a common gaming house. The game was thus described in effect by the appellant himself in his evidence at the trial. The principle of play was to throw rings on a slanting table, to which 153 10-cent pieces and 4 50-cent pieces were affixed. One cent was payable for each throw. If the ring enclosed a coin, the thrower became the winner of the coin enclosed. The learned Police Magistrate held that this was a pure game of skill, and I will decide the present appeal on the footing that that finding is correct, although I find in the case of *Ahamad Khan v. Emperor*,[1] to which I have been kindly referred by Mr. Tambyah as *amicus curiæ*, that two Judges of the High Court of Allahabad held that the element of chance in a game consisting of throwing a ring over a pin is so strong that the game cannot be held to be a mere game of skill. The question for decision is whether the learned Police Magistrate's interpretation of the law in the present case is correct. It was held in P. C. Jaffna, 2,838,[2] that for the purpose of section 4 of Ordinance No. 4 of 1841, a game is not unlawful where it is one of skill alone. I do not think, however, that that decision can be made to apply to a prosecution under section 5 of Ordinance No. 17 of 1889. The language of section 4 (4) of Ordinance No. 4 of 1841 by clear implication makes chance a necessary element of an unlawful game. There is no provision to that effect in Ordinance No. 17 of 1889. The essence of the offence of gaming, as defined by that Ordinance, is the existence of a stake, for which the parties play (see *Puhaitamby v. Karolis*[3] and *Perera v. Siddirappu*[4]). On the showing of the appellant himself a stake was clearly played for in the present case. The view of the law that I am taking here is confirmed by English decisions. It was held by Lord Campbell C. J. and Coleridge, Wightman, and Erle JJ., as far back as 1852, in *Regina v. Ashton*,[5] that the object of the analogous English statute, 9 George IV., c. 61, section 21, was to prevent the contracting of bad habits by the practice of games where money was staked in public houses. "If money were staked," said Lord Campbell, "that would be gaming." This decision was followed by Mellor J. in *Bew v. Harston*,[6] although Sir Alexander Cockburn C.J. in the same case doubted its correctness. In *Dyson v. Mason*[7] Huddleston B. and Wills J. said that Cockburn C.J.'s view was unsupported by any other authority, and held that playing any game

[1] *(1911) 12 Crim. Law Journal of India 612.*
[2] *(1877) Ram. 83.*
[3] *(1893) 2 S. C. R. 62.*
[4] *(1893) 2 S. C. R. 75.*
[5] *(1854) 1 E. & B. 286.*
[6] *(1878) 3 Q. B. D. 455.*
[7] *(1889) 2 Q. B. D. 353.*

for a stake is unlawful. The only authority in support of a contrary view that I am aware of is the case of *Hari Sing v. Emperor*,[1] to which Mr. Tambyah has also referred me, where it was held that if a game is one of skill, the playing of it is not an offence under the Indian Gaming Act of 1867. The judgment is a short one. None of the English cases to which I have referred are mentioned in it, and I am not prepared to follow it. The appeal is dismissed.

Appeal dismissed.