

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. WALTER E. OLSEN AND BILLY MARKER, DEFENDANTS AND APPELLANTS.*G.R. No. 11602. March 06, 1917*

Ponente: MORELAND, J.

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The appellants in this case were convicted of operating a lottery. The facts upon which the charge is based are that Walter E. Olsen and Co., dealers in tobacco, and especially cigars and cigarettes, desiring to introduce to the Philippine trade a brand of cigarettes known as the "Omar" brand, conceived and put into execution a scheme by which it was hoped to place in the hands of a larger number of persons packages of the cigarette named. To that end, and purely as a method of advertising and of introducing the cigarette to the trade, the appellants, acting for and on behalf of the company, inclosed a certain coupon inside of one of the packages of Omar cigarettes and then placed the package among about five hundred similar packages in such manner that it could not be distinguished from them. They thereupon advertised that the 500 packages of cigarettes would be sold to the public at the regular price, and that the person who was fortunate enough to buy the package containing the coupon would be entitled to receive from the company a gold watch described in the advertisement. The 500 packages were to be sold at 30 cents a package, which was the regular market price of the cigarette at that time. Nothing in addition to the market price was required to be paid by a purchaser of any one of the 500 packages. Every person who bought one of the packages received the full value of his money in cigarettes and, accordingly, lost nothing by the purchase. On the other hand, the company gained nothing by the sale of any one of the 500 packages, and necessarily lost the value of the watch in case all of the packages were sold. The situation presented, therefore, was such that a person becoming a party to the scheme by purchasing a package of cigarettes could lose nothing while the company from which the cigarettes were purchased could gain nothing, except the profit normally obtained by the sale of any other package of cigarettes. In other words, a purchaser of a package of cigarettes paid absolutely nothing for the naked chance to win the watch; while the company did not take and could not possibly take anything from the purchaser in return for the chance which it gave him to win the watch. In other words, the player could lose nothing and the operator could gain nothing by the venture.

Upon these facts the appellants were charged with maintaining and operating a lottery in violation of Act No. 1757. They were tried and convicted and sentenced to pay a fine of P10, with subsidiary imprisonment in case of nonpayment. They appealed.

We are of the opinion that the judgment of conviction cannot stand. We base that opinion on (1) the title of Act No. 1757; (2) the nature of the Act itself as shown by the essential provisions thereof; and (3) the connection, and, therefore, the sense, in which the word lottery is used in the Act and the mischief which the Act sought to prevent.

The Act is entitled "An Act to prohibit gambling," etc. Section 1 of the Act provides as follows:

"Gambling within the meaning of this Act consists in the playing of any game for money or any representative of value or valuable consideration or thing, the result of which game depends wholly or chiefly upon chance or hazard, or the use of any mechanical invention or contrivance to determine by chance the loser or winner of

money or of any representative of value or of any valuable consideration or thing."

Section 2 defines a gambling house; section 3 defines vessel, or part thereof, to which the public is ordinarily admitted; section 4 punishes any person having charge of gambling in a public place; section 5 punishes any person being in charge or possession or control of any building, structure, or vessel, or any part thereof, who permits any gambling game to take place therein at which game a charge of any kind is made for playing or for the use of the premises or apparatus, or for which game any percentage is taken or collected; section 6 punishes any person who shall keep, maintain, or have charge or possession or control of any gambling house, or who shall have any interest in any gambling house; and section 7, the one under which the appellants were charged and convicted, punishes "the playing at and the conducting of any game of monte, jueteng, or any form of lottery or policy or any banking or percentage game." The other sections and parts of some of the section already referred to deal with the rights of persons who have lost money or other valuable thing while playing prohibited games, and with the punishment of officers charged with the suppression of gambling who fail to perform their duties. As will be seen from these observations and references, the Act is essentially and solely a gambling Act. It deals exclusively with gambling games or operations. It prohibits only those games or operations in which the player stakes his money or property, or some part thereof, upon a naked chance—those in which for the money or property or some part thereof which he invests he receives no consideration and can receive no consideration. It prohibits that class of games or operations in which the operator obtains something for which he has given nothing except a naked chance.

The word "lottery" is found in the statute in conjunction with monte, jueteng, policy and banking or percentage games. These words and phrases deal exclusively with what the statute defines as gambling games or operations—those in which the player pays something for a naked chance to win. They do not refer to schemes, such as the one presented by this case, in which the player, if we may call him such, obtains full value for his money's worth is a mere incident. The player loses nothing by virtue of his failure to win the prize; while the playing of the scheme does not result in giving the operator an opportunity to obtain the player's money without giving therefor a consideration which law and justice recognize not only as valuable but as adequate also.

We are aware that it might be urged that Walter E. Olsen & Co. gained or obtained an advantage as a result of the scheme described in view of the increased sale of the cigarette which the prize feature includes. Even so; aside from the obvious reply which could be made, it is to be remembered that the player (purchaser) lost nothing and could not possibly lose anything as a result of his playing. He might gain but he could not lose. On the other hand, the operator could not gain anything as a direct result of the element of chance. On the contrary, he was certain to lose the value of the watch. Thus, in the case before us the element of chance did not enter either as to the operator or the player as it enters in the gambling transactions defined by the statute.

We are of the opinion that Act No. 1757 does not cover the case in hand. We are not concerned with the question whether the scheme or system involved in this case is or is not subject to criticism from the standpoint of business or society or whether, if pushed to extremes, it would produce pernicious results. Those are matters for the Legislature to consider. We are concerned solely with the question whether it was the intention of the Legislature, when it passed Act No. 1757, to include in its prohibition operations like the one before us and whether, in carrying out that intention, such language was used as could properly be held to cover them. In holding that the prohibition of the Act does not include the acts charged in the information, we have been governed by the principle, universally accepted, that an act will not be held to be a criminal act unless the statute clearly and unmistakably makes it so.

The judgment appealed from is reversed and the accused acquitted. So ordered.

Arellano, C. J., Torres and Araullo, JJ., concur.

CARSON, J., dissenting:

I dissent. I am of opinion that the acts charged in the information are included within both the spirit and the letter of the prohibitions of the gambling statute (Act No. 1757).

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