

THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. ISIDRO HILARIO, DEFENDANT AND APPELLEE.

G.R. No. 6941. March 06, 1913

Ponente: TRENT, J.

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TRENT, J.:

The accused, Isidro Hilario, was charged in the municipal court of the city of Manila with a violation of section 621 of the Revised Ordinances of that city. A demurrer to the complaint was sustained by that court, and the Government appealed to the Court of First Instance, where a demurrer was again sustained upon the ground that the facts stated in the complaint do not constitute a public offense. From that order sustaining the demurrer the Government appealed to this court. The complaint reads as follows:

"That on or about the 17th day of March, 1911, in the city of Manila, Philippine Islands, the said accused, being the owner or in charge of the premises and billiard hall situated in Pulung-Mayaman Street of this city, voluntarily and illegally permitted the playing in the same of a game called *nones y pares* for money and things of value, in violation of section 621, Revised Ordinances of the city of Manila."

The court *a quo* said:

"The third ground (of the demurrer) raises the question as to whether or not the keeping of a house or place where the game of '*nones y pares*' is played for money as charged in the complaint constitutes a violation of section 621, Revised Ordinances of the city of Manila, and if it does, whether or not said section is in harmony with the general laws of the state on the same subject,

"It is admitted by counsel that the game called '*nones y pares*' is a game played with cues, balls, and pins upon a billiard or pool table and similar to the American games of pool, '*cocked hat*,' and '*skittle*.' It is further admitted and the court judicially notices that it is a game depending for success upon the skill, experience and practice of the player; a game peculiarly dependent upon the player's judgment of distance, of the elasticity of cushions, and of the action and tractability of billiard balls; a game requiring for successful playing a perfect coordination of brain, eye, nerve and muscle.

* * * * *

"The municipal board of Manila derives the power to legislate on the subject of gambling from section 17 of Act No. 183. At the time of the delegation of this power (July 31, 1901) gambling in the Philippine Islands was defined and punished by articles 343-4-5 of the Penal Code. Since such delegation the Commission, by Act No. 1757, enacted October 9, 1907, has repealed said articles of the Penal Code and has by section one of said Act clearly and unequivocally defined '*gambling*' to be the playing for money or other thing of value of any game the result of which depends wholly or chiefly upon chance or hazard; thereby by a clear inference declaring to be licit the playing of any game the result of which depends on skill.

"It is a well settled and universal rule that a grant by a legislature to a municipality to make by-laws or ordinances is always restricted in its scope to the confines of subsequent general legislation on the same subject. In other words, such grant or delegation is amended and any ordinances passed thereunder repealed or

modified by such subsequent legislation.

* * * * *

"The game of 'nones y pares' being a game of skill, the keeping of a house or place where such game is played for money does not constitute the keeping of a gambling house, and in consequence the demurrer is sustained and the cause dismissed, with costs de oficio"

It will be noted that the court said:

"It is further admitted, and the court judicially noticed, that it (nones y pares) is a game depending for success upon the skill, experience, and the practice of the player; a game peculiarly dependent upon the player's judgment of distance, of the elasticity of cushions, and of the action and tractability of billiard balls; a game requiring for successful playing a perfect coordination of brain, eye, nerves, and muscle."

Or, in other words, the court said that it was admitted and the court judicially notices that the game of nones y pares is a game of skill and not a game the result of which depends by any means wholly or chiefly upon chance or hazard. These admissions could not have been legally taken into consideration by the court for the reason that the court was passing upon the sufficiency of the complaint raised by a demurrer, and in so doing it should have confined itself strictly to the allegations in the complaint. If the complaint had been amended by inserting these admissions, then they could properly have been considered. No such amendment was made by the prosecution, and the Attorney-General does not now say that the said admissions were made. Again, the court erred in judicially noticing that the game of nones y pares is a game of skill. If this game be one of skill, this fact is not so generally accepted and known as a truth that it cannot be and is not seriously disputed. We must therefore confine ourselves strictly to the allegations contained in the complaint.

Two questions present themselves: (1) Do the allegations in the complaint show that the defendant maintained or permitted to be maintained gambling devices upon premises occupied by him; and (2) if the first question be answered in the negative, does section 621 of the Revised Ordinances of the city of Manila prohibit the keeping or maintaining of any table or other instrument or device for the purpose of playing other games than gambling games? The two questions will be considered together.

The ordinance in question reads:

"SEC. 621. Gambling devices, maintenance of.—No person shall set up, keep, or maintain, or permit to be set up, kept, or maintained, on any premises occupied or controlled by him, any table or other instrument or device for the purpose of gaming or gambling, or with which money, liquor, or anything of value shall in any manner be played for.

"SEC. 622. Gambling devices, possession, etc., of.—No person shall bring into the city, expose in a street or public place, or have in his possession for the purpose of gaming or gambling any table, instrument, or device of any kind whereon or with which money or other thing of value may in any manner be played for.

"SEC. 623. Frequenting, or acting as banker, etc., of gambling house.—No person shall frequent, visit, become an inmate of, solicit, run, or act as banker, dealer, agent, or doorkeeper for any house, store, hall, clubroom, or other place where any game of chance is conducted, or where is kept any table, instrument, or device of any kind used for gaming or gambling whereon or with which money or other thing of value may in any manner be played for.

"SEC. 624. Penalty; confiscation.—A violation of any of the provisions of the last three preceding sections shall be punished by a fine of not more than two hundred pesos, or by imprisonment for not more than six months, or by both such fine and imprisonment in the discretion of the court, for each offense. All money and every table, instrument, or other device used, set up, kept, or maintained for the purpose of gaming or gambling shall

be seized and confiscated.

"SEC. 625. Faro, roulette and other games of chance; penalty.—No person shall play or engage in faro, roulette, or any other device or game of chance or hazard in which money or other thing of value is in any manner played for, under a penalty of not more than two hundred pesos, for each offense."

At the time of the enactment of this municipal legislation, the general law on the subject was to be found in the Penal Code, Book 2, Title 6, and articles 529 and 579, and Book 4, Title 12, Chap. 3, of the Civil Code. Under these provisions a clear distinction was made between gambling and betting; gambling referring only to games of luck, chance, or hazard, while betting was allowed on any other game, the only penalty being in case the loser lost more than he could afford to lose. By Act No. 1757 of the Philippine Commission, gambling is defined to include the playing at or the betting upon games the result in which depends wholly or chiefly upon chance. Gambling is, therefore, no longer restricted to games of chance, luck or hazard, but may include those in which some element of skill affects the result. But although the definition of gambling is thus somewhat enlarged by Act No. 1757, it has remained materially the same in that games depending wholly or chiefly upon skill are excluded. That "gambling" under these statutes has a limited and restricted sense not coterminous with the generally accepted sense of the term must be conceded.

"Any contest or course of action commenced and prosecuted in consequence of a bet or wager, and with a view to determine the bet or wager upon the event of such contest or course of action, is gaming. To constitute gaming there must not only be a betting upon the termination of an event, but the course of action to bring about such event must have been originated with a view to determine the bet." (Words and Phrases, Vol. 4, p. 3024, Title, Gambling-Gaming. See also other definitions thereunder.)

In this jurisdiction, therefore, gambling has a limited, statutory definition which excludes some forms of betting. Comparing the provisions of the Spanish Codes with Act No. 1757, it is concluded that the statutory definition of gambling has been practically the same during the whole time that the city of Manila has had a corporate existence under Act No. 183, with the exception noted.

That the municipal board of that city had before it the provisions of the general law, on the subject of gambling at the time section 621 et seq. of the Revised Ordinances were passed must be presumed. These sections were passed by the municipal board without attempting to make any distinction between gambling in its statutory sense in this jurisdiction and its broad, commonly accepted meaning. The provisions of the Penal Code in respect to gambling were construed by the supreme court of Spain in a decision published on December 28, 1887. (U. S. vs. Reyes, 3 Phil. Rep., 611.)

"Where words have been long used in a technical sense and have been judicially construed to have a certain meaning prior to a particular statute in which they are used, the rule of construction requires that the words used in such statute should be construed according to the sense in which they have been so previously used, although that sense may vary from the strict, literal meaning of the words." (Sutherland, Stat Const., § 255.)

In section 621, although the phrase "gambling devices" appears in the heading and also in the text of the section, no attempt is made to make it more comprehensive than its statutory signification. Again, in section 622, which prohibits the possession of gambling devices, no attempt is made to use the words in other than their statutory sense, and the arrangement of the text is a still stronger indication that only gambling in its statutory sense is considered, as it prohibits for the purpose of gaming or gambling any table, instrument, etc. Section 623 refers to "gambling houses" and to "games of chance" without qualifying these expressions. Section 624, which provides the penalty for the violation of the three preceding sections, provides for the confiscation of "every table, instrument or other device used, set up, kept, or maintained for the purpose of gaming or gambling" And section 625 prohibits the playing of faro, roulette, or any other device or game of chance or hazard. Under the most liberal

construction of section 625, it cannot be said to include other than games of chance or hazard. It first names two games of the prohibited class—faro and roulette—and then provides, "or any other device or game of chance or hazard." If the section merely stated "or any other device or game," there is abundant authority for construing the prohibition to include only games ejusdem generis to faro and roulette. But with the addition of the phrase "of chance or hazard" the prohibition is restricted beyond the possibility of argument to games of that class. Referring again to the preceding Sections, it certainly appears inconsistent and improbable that the board would have penalized the possession or maintenance of instruments or devices which were used for playing games not depending upon chance or hazard, and at the same time provide no penalty for the actual participants of such games. Reading all these sections together in the light of the general law on the subject, it seems clear that only games of chance were being prohibited. The enlarged definition of gambling under Act No. 1757 to include those games the result of which depends chiefly upon chance can in no wise affect the questions under consideration.

This distinction between games of chance and games of skill, making betting upon the former illegal, is quite well treated in *State vs. Gupton* (30 N. C., 271), where a game of tenpins was held not to be a game of chance, but a game depending chiefly upon the skill of the players, and betting thereon consequently not prohibited by a statute prohibiting bets or wagers upon games of chance.

Nor is it unknown in other jurisdictions. In *State vs. Quaid* (43 La., 1076), the defendant was indicted under a city ordinance prohibiting "gambling with dice, cards, or other means" or "keeping a banking game or gambling house," for maintaining a game of pin pool on his premises. It was held that this game was exclusively a game of skill, and a conviction under the ordinance in question for that reason illegal.

In *Ridgeway vs. Farndale* (2 Q. B. (1892), 309), where the sufficiency of the complaint was under consideration, the court said:

"The original offense, as described by the Vagrancy Act, 1824 (5 Geo. 4, c. 83), s. 4, was 'playing or betting in any street, road, highway, or other open and public place, at or with any table or instrument of gaming, at any game or pretended game of chance.' The Act of 1873 (36 & 37 Vict., c. 38), s. 3, contains a similar provision, with the addition of the words 'or any coin, card, token, or other article used as an instrument or means of such wagering or gaming;' but in that Act the words 'at any game or pretended game of chance' remain a part of the essential definition of the offense. In the present case those words are omitted from the information, and the magistrate has come to no finding on an essential part of the case, namely, that the appellant was wagering or gaming at a game or pretended game of chance. The conviction is invalid on the face of it, and must be quashed."

See also *State vs. Grimes* (49 Minn., 443).

Furthermore, this court has already construed section 621 of the Revised Ordinances. In *United States vs. Chan-Cun-Chay* (5 Phil. Rep., 385), it is said:

"An examination of the provisions of the said ordinance in connection with the provisions of said article (343) of the Penal Code will disclose the fact that the said ordinance provides for the punishment of a different offense than that provided for by the said article of the Penal Code. The ordinance punishes a person who shall set up, keep, or maintain, etc., on any premises occupied or controlled by him, instruments for the purpose of gaming or gambling, etc., which may be used for gambling for anything of value. It will be seen that under this ordinance these things need not be used for gambling, whereas article 343 of the Penal Code punishes bankers and proprietors of houses where games of chance, stakes, or hazard are played. The ordinance punishes the maintenance of a house in which are kept gambling paraphernalia, while the Penal Code punishes the maintenance of a house where games of chance are actually played. Therefore the ordinance punishes a different offense from that provided for by the Penal Code in said article."

It is therefore clear that the Municipal Board, in enacting section 621 et seq. was only dealing with the subject of gambling in its statutory sense, and paraphernalia used for that purpose, and did not prohibit the playing of games or the betting thereon, or the possession of paraphernalia used in playing thereof, the result of which does not depend wholly or chiefly upon chance. The result is that, unless the complaint alleges that the defendant was maintaining gambling devices on his premises, it does not allege facts sufficient to constitute a public offense.

The complaint alleges that the defendant voluntarily and illegally permitted the playing of a game called *nones y pares* for money and other things of value upon his premises in violation of section 621 of the Revised Ordinances of the city of Manila. It is nowhere alleged that *nones y pares* is a gambling game, nor can this be inferred from the allegations in the complaint. It therefore follows that the allegations in the complaint do not constitute a public offense. In reaching this conclusion, we have found it unnecessary to decide whether or not the Municipal Board is empowered to prohibit by municipal legislation the playing at or the betting or wagering upon games which are not gambling, but which might be in the opinion of the board detrimental to the welfare of the city. Neither have we found it necessary to decide at this time whether, in view of the provisions of Act No. 1757, a municipality can, by ordinance, penalize gambling. The only questions involved in this case, and Which we have decided, are: (1) That section 621 et seq. of the Revised Ordinances deal with matters relating to gambling only; and (2) that the complaint does not allege that *nones y pares* is a gambling game.

For the foregoing reasons the judgment appealed from is affirmed, with costs against the appellant.

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

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