

R. v. SAMUEL GOULD.

A CRIMINAL REVIEW CASE OF 1931.

Gaming in a public place—36 and 37 Vict. C. 38 S. 3—meaning of “Public Place”.

The following review judgment deals not only with the above case but also with another similar case, viz., *R. v. O'Connor* reported at page 45 *post*.

The note of the Subordinate Court in the present case reads:

“The facts were not in dispute. Accused produced a Crown and Anchor board and sat with it outside the Mine Club at Nkana. The club in question is on Mine property but is not enclosed and anyone can walk across the ground on which it stands.

The club building is only ten or fifteen yards from the road.

The evidence was that anyone, Mine employee or not, could have gone up to accused, and put money on the board and I held that accused was gaming in a public place.”

The offence of gambling in a public place is now contrary to a Municipal By-law, a Township Regulation or a Mine Township By-law as the case may be. A definition of the expression “public place” is to be found in the respective by-laws or regulations and in each case reads thus “public place includes any public way or building and any place or conveyance to which for the time being the public are entitled or permitted to have access, either without any condition or upon condition of making any payment”. But see the judgment of the Federal Supreme Court in *Regina v. Mumanga* 1956 R. & N. 53 on the interpretation of the definition of “public place” (which definition appears in By-law 2 of the Ndola Municipal By-laws) in relation to By-law 240 of the Ndola Municipal By-laws. It should be noted that the said By-law 240 has now been repealed.

Gordon Smith, A.J.: Both these cases raise the point as to what is a “public place”. In the first case the accused was conducting a “Crown and Anchor” board outside the Mine Club, Nkana, the place being on unenclosed Mine property and to which anybody had access. In the other the accused was found lying drunk outside one of the Cator Huts which constitute the single quarters, similarly on Mine property. Pedestrians and motor cars pass along and between the huts and the passages are in the nature of thoroughfares.

In many Acts, public places are defined. In the Street Betting Act, 1906, “public place” is defined as including “any public park, garden or seabeach and any unenclosed ground to which the public for the time

being have unrestricted access and shall include every enclosed place (not being a public park or garden) to which the public have a restricted right of access whether on payment or otherwise if at or near every public entrance there is conspicuously exhibited by the owners or persons having the control of the place a notice prohibiting betting therein". The Act does not apply to Ireland and is restricted in its application to Scotland so, I apprehend, it does not apply here, but I make no ruling on this point.

In *Langrish v. Levy*, 10 Q.B.D. 44, a railway carriage, on its journey, was held to be "an open place to which the public have access", within the meaning of the section under which the accused Gould was charged. The inside of a cab standing on a public rank was similarly so held an open and public place. The roof of a house within the view of many persons was also held to be a public place in a case of indecent exposure, although the actual spot where the accused was could not be seen from the street (*R. v. Thallman* 33 L.J.M.C. 58). I might mention the fact that the wording of section 3 of the Vagrancy Act Amendment Act, 1873, speaks of "any street, road, highway or other open and public place or in any open place to which the public have or are permitted to have access".

In section 13 of Proc. 15/1916 the expression is "public place" and not "open and public place". A public place would therefore appear to include any place to which the public are accustomed to resort without being interfered with, though there is no legal right to do so, and it would appear to be immaterial whether the place is enclosed or not.

Both convictions are therefore affirmed.