

BOOK REVIEWS

GAMING IN MALAYA. By Choor Singh; with a foreword by Sir Alan Rose, K.C.M.G., Q.C., Chief Justice of the State of Singapore. [1960, Singapore: Malayan Law Journal Ltd. \$50. xix + 231 pp. inc. index 16 pp.]

To handle this volume, to read it, is to become conscious of the vast desert which the Malayan legal profession has traversed since the days when the genius of Roland Braddell contributed to our legal literature. It is astonishing to recognise that in more than a generation there has been little original work, and that only in a limited field by S. K. Das. That continuity should have been maintained in Malayan legal development is surprising in these circumstances and attributable mainly to the faithful service of the Malayan Law Journal which doggedly maintained its monthly contribution whilst others fell by the wayside. It is to this same remarkable organisation that gave us the works on the Rules of the Supreme Court, the Criminal Procedure Code and the monthly reports that we now owe this first major oasis in the desert of Malayan legal literature.

This remarkably well-produced "careful work on a complicated subject," as the Honourable the Chief Justice of Singapore writes in his foreword, is on excellent paper, very well printed with paragraph and marginal headings, a full index and painstakingly researched: covering the law derived from almost 400 cases, mainly Malayan, though some are from India, Burma, England, and elsewhere.

The plan of the book is an amalgam, and a very successful one, of the two schools of thought — the English which believes in the narrative form, and the Indian which believes in annotation of individual sections. More than one third of the book is given to narrative discussion of the special aspects of the law of gaming, including the question of evidence and onus of proof, and the remainder to careful annotation of the individual sections of the Common Gaming Houses Ordinance of the Federation of Malaya.

Both in the narrative portion and the sectional annotation, the author exhaustively deals with the position in Singapore where it differs from that in the Federation of Malaya. Throughout the book there is constant and careful reference to supporting case law.

It is unavoidable in dealing with a subject in this two-pronged fashion that there should be repetition, but as this makes for lucidity and ease of reference, that is hardly a subject for complaint. However, in the chapter on Lotteries, the author carefully examines the English cases and holds that consideration for the chance to win a prize has always been deemed by the English Courts to be an essential element of a lottery, although not incorporated in their definition. This, he recognises, has been negated by the Straits Settlements Supreme Court decision in the case of *Sahib bin Ali*¹ which the author considers to be wrongly decided. Although he recognises that "unless and until the decision is overruled, the law on this point is settled as far as the Courts in Singapore are concerned," he nevertheless in his summary of the chapter incorporates the element of consideration as one of the

1. (1939) 8 M.L.J. 281.

three necessary elements to constitute a lottery. There is no support for this contention in any of the dicta in the Malayan cases, and it runs counter to the ratio decidendi in *Sahib bin Ali's* case.

Another matter which calls for comment is the discussion in the chapter on evidence of the quantum of evidence necessary to displace the burden on an accused in respect of an issue raised by a statutory rebuttable presumption of law. The author seems inclined to the view that the burden is purely an evidential burden and it is sufficient to raise a "reasonable doubt" as to the existence of the issue introduced by the presumption, whereas the cases he quotes (*Carr-Briant*² and *Sodeman*³) enunciate the principle of the persuasive burden of "balance of probability." There is a very real distinction between these two approaches to the burden of proof cast on an accused by a statutory presumption. It may be that the author is right in his submission that a reasonable doubt should displace the statutory burden placed on the accused by the phrase "unless the contrary is proved." The final paragraph in the judgment of the Court of Criminal Appeal in *Carr-Briant* could be read as supporting that approach, though, when it is read in the context of the whole judgment, what the Court of Criminal Appeal there seems to accept is the balance of probability test in civil cases, till then limited in criminal law to the special common law exception of the plea of insanity. The ratio decidendi of the Singapore Court of Criminal Appeal in the case of *Soh Cheow Hor*⁴ (not available at the time of the publication of this book) . . . "Whatever the position may have been in the past, it appears now to be the accepted rule that when the accused person endeavours to bring himself within one of the exceptions (to section 300 of the Penal Code) it is sufficient for his purpose if a reasonable doubt is raised in the minds of the Jury as to whether or not the necessary factors exist" . . . does support the author's contention, and it is hoped that in a subsequent edition of this work the author will deal specifically with the distinction between the two schools as to the quantum of evidence necessary to displace a statutory rebuttable presumption.

In a field of criminal law particularly distinguished for its thorny thickets, it is undoubtedly true that "this work may well prove to be a handy work for practitioners and magistrates" as Sir Alan Rose indicates in his foreword. It must unquestionably find a place in the library of every court exercising criminal jurisdiction in the Federation, Singapore and Borneo territories, and of every practitioner dealing with questions of betting and gaming in this area.

On the very first day of its publication, this work was quoted in a Magistrate's Court in Singapore by defence counsel who stated: "Choor Singh says . . ."—"Mr. Choor Singh!" corrected the youthful magistrate, looking as severe as he could. In the years to come, the phrase "Choor Singh says . . ." will be heard in the courts from Alor Star to Sandakan, used by persons blissfully unconcerned with the fact that the author is the respected senior criminal District Court judge and should be reverently called "Mr."

The author deserves the thanks of the legal fraternity on the considerable industry, application and knowledge which has resulted in a coherent, able work, and the Malayan Law Journal is to be congratulated on its enterprise.

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2. [1943] K.B. 607.

3. [1936] 2 All E.R. 1138.

4. (1960) 26 M.L.J. 254.