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Newspaper Guessing Contest Illegal

(Continued from page 11.)

court remarked, is very similar to the Federal statute.

In the Coyne case the court said:

We do not consider it necessary to enter into details of the plan, which is a somewhat complicated one, and the success of which obviously depended upon constantly and rapidly increasing the number of subscribers or co-operators. The only money paid in was a small enrollment fee of \$3 and a monthly payment of \$1 for five years. The return to the subscribing member, which is called a realization, is not only uncertain in its amount, but depends largely upon the number of new members each subscriber is able to secure, as well as the number of members which his co-operators are able to secure. The return to members who have been able to secure a large number of other members and to pay their own monthly dues may be very large in comparison with the amount paid in, but the amount of such return depends so largely, and indeed almost wholly, upon conditions which the member is unable to control that we think it fulfills all the conditions of a distribution of money by chance.

The scheme lacks the elements of a legitimate business enterprise, and we think there was no error in holding it to be a lottery within meaning of the statute (pp. 513,515).

It will be observed that the court in this case proceeded upon the broad ground that it was not necessary to bring a scheme within the inhibitions of the statute that the distribution of prizes should be dependent wholly upon chance, but that if the scheme was not a "legitimate business enterprise," and the distribution was dependent largely upon chance, the statute was violated.

The ruling in the New York case, as stated in the syllabus, is as follows: "Under Pen. Code, sections 323, 327, defining a lottery as a scheme for the distribution of property by chance among persons who have paid a valuable consideration for the chance, and making advertising a lottery a misdemeanor, a scheme for the distribution of money and cigars among purchasers of certain brand of cigars who will estimate most closely the number of cigars of all brands on which taxes would be collected by the Government during a named month is a lottery, though the distribution does not depend exclusively on chance, and the advertising of the same is a misdemeanor." The court said:

"Pure chance" is defined by Black in his Law Dictionary to be "the entire absence of all means of calculating results," and if, to constitute a lottery, it is necessary that the distribution should be purely by chance, without any other element affecting the result, as has been held in a number of jurisdictions * * * then it may be conceded that the scheme before us is not a lottery. Our statute, however, does not provide that the distribution must be by pure chance, or by chance exclusively, but by chance.

If we examine the plan of distribution advertised, the number and character of the persons who were invited to compete for the distribution, as well as the event by which the distribution was to be determined, we think it perfectly clear that the dominating and controlling factor in the award of the prizes is chance. * * * The scheme contemplates over 35,000 competitors. From the table given in the advertisement it appears that the quantity of cigars stamped varies from month to month in the same year as greatly as 40,000,000, and between a month of one year and the corresponding month of the next year as greatly as 90,000,000; and that the number stamped in the month immediately previous to that for which an estimate is called was 562,000,000. It would seem

perfectly clear that if several experts should agree in estimating the output within 5,000,000, or 1 per cent of the number actually stamped, it would show a remarkable accuracy in their methods of calculation. Yet with 35,000 competitors the probabilities are overwhelmingly that the first prize will be won by a very much closer approximation. If the difference between the estimate which won the first prize and that which secured the second prize should be only 10,000, or even only 100,000, would any one deny that the result occurred through "pure chance" as defined and that it did not proceed from the possession of superior information or the exercise of greater judgment or skill? * * * We think the distribution in this case is controlled by chance, within the meaning of the statute, and that, therefore, it is illegal. The scheme certainly falls far within the requisites of a lottery as defined by the Supreme Court of the United States in the Public Clearing House case, under a statute very similar to our own.

In the World's Fair contest 1,180 prizes, aggregating \$85,500, are to be distributed to the contestants submitting the nearest estimates to the total number of paid admissions to the fair. Since 25 cents is charged for each guess at least 342,000 guesses must be submitted before the company can reconp itself for the \$85,500 distributed in prizes. Owing to the wide publicity given the scheme the actual number of participants will probably reach a million.

Conceding that the estimates in such a contest will be to some extent affected by intelligent calculation, the conclusion is nevertheless irresistible that it is largely a matter of chance which competitor will submit the nearest correct estimate. The estimates can not be predicated upon natural and fixed laws, since the total number of admissions may be affected by many conditions over which the participants in this scheme have no control, and can not possibly foresee.

Should several foreign powers become involved in war, their withdrawal from participation in the fair would materially affect the attendance. A great conflagration in St. Louis, similar to that in Baltimore, during the progress of the fair, might destroy the exposition buildings, which, of course, would bring the exposition to an abrupt close. The number of paid admissions to the Pan-American Exposition at Buffalo was the subject of a "guessing contest." The assassination of President McKinley, while he was in attendance at the exposition, which shocked humanity, plunged the nation into grief, and brought the exposition to a standstill, is fresh in our minds. The effect of this calamity upon the exposition attendance was so great that congress was asked by the management for an appropriation to meet the claims against the exposition company; and \$500,000 was appropriated for that purpose. Other illustrations might be given of conditions which would seriously affect the attendance at St. Louis.

And even assuming that normal conditions will prevail during the entire period of the fair, it must of necessity be largely a matter of speculation how many will attend. It must be very largely a matter of chance whether a contestant estimates within one or within fifty thousand of the number of paid admissions, and, as stated by the court in the New York case, "if the difference between the estimate which won the first prize and that which secured the second prize should be only ten thousand, or even one hundred thousand, would anyone deny that the result occurred through 'pure chance,' as defined, and that it did not proceed from the possession of superior information or the exercise of greater judgment or skill?" The reasoning relative to the World's

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