

Mr. Montague Lush, K.C. (Mr. E. O. Simpson with him), for the respondent, argued that the Magistrate had really found that the user of the machine was a game of mere chance. A mere scintilla of dexterity was not enough to take the game out of the category of those which were games of mere chance. That this was an unlawful game was decided in *Fielding v. Turner* (*supra*), and the appellant's shop was a gaming-house within the statutes.

The Lord Chief Justice, in giving judgment, said that if he thought that the Magistrate had taken the finding of the Court in *Fielding v. Turner* as a finding of fact binding upon him, or that he had declined to find the facts, they would send the case back to him. But that was not what the Magistrate had done. There being in this case elements of chance of the same kind as in *Fielding v. Turner*, it was contended before him that the case should be dismissed on the grounds (1) that there was more conclusive evidence of this being a game of skill than in *Fielding v. Turner*, and (2) that it was not proved that the chances were not alike favourable to the operator and to the appellant. The Magistrate referred to the opinion with reference to unlawful games laid down in *Jenks v. Turpin*. Then he referred to the contention on behalf of the appellant. His finding was that it was not proved that the chances were alike favourable to the appellant and to the operator, and, though in one sense that might be stated as if the onus was on the defendant rather than on the prosecution, this really arose from the way in which the contention was stated. The Magistrate found that the use of the machine constituted the offence alleged, and His Lordship thought that he meant to find that this was a game of chance, that the element of skill alleged was of the same kind as in *Fielding v. Turner*, and that he did not come to the conclusion that it was a game of skill as distinguished from a game of chance. There was nothing in this case to turn the transaction from a game of chance into one of skill. Whether it was right to say that it was a mere game of chance it was not necessary to discuss here, though it was, in His Lordship's opinion, chance and practically nothing but chance, and he declined to give any effect to the argument that because a man went on putting in pennies a number of times he might be more successful after a time.

The other learned Judges agreed, and the appeal was accordingly dismissed.

EXTRACT FROM NEW ZEALAND GAZETTE.

(From *Gazette*, 1904, page 1492.)

Animals Protection Acts: Declaring Reserve for Native and Imported Game, Rotorua.

RANFURLY, Governor.

PURSUANT to the powers conferred upon him by "The Animals Protection Act, 1880," His Excellency the Governor of the Colony of New Zealand doth hereby notify that native and imported game shall not be taken or killed within that portion of the County of Rotorua, in the Auckland Land District, more particularly described in the Schedule hereto.

SCHEDULE.

ALL that area in the Auckland Land District, containing by admeasurement 2,610 acres, more or less, situated in Tarawera and Horohoro Survey Districts. Bounded towards the north generally by Lake Rotorua; towards the east generally by that lake, the Puarenga Stream, the Rotorua-Maketu Road, and the north-eastern boundary-line of Section No. 4, Block I., Tarawera Survey District, being a State forest, as described in the *New Zealand Gazette* No. 68, of the 15th September, 1898; towards the south generally by the Moerangi and Tihiotonga Blocks; and towards the west generally by Sections Nos. 65, 64, 63, Suburbs of Rotorua, the road forming the eastern boundary of Section No. 62, and by Sections Nos. 33 and 31 to Fenton Street, Town of Rotorua; and thence by that street, the railway-line, and the Utuhina Stream to Lake Rotorua: together with that portion of Lake Rotorua lying between the southern shore of the said lake from the outlet of the Utuhina Stream to the Rotorua Town Belt, abutting on the lake to the south, and a line running parallel to and one mile distant from the shore thereof.

As witness the hand of His Excellency the Governor,
this second day of June, one thousand nine
hundred and four.

J. G. WARD.