

MAGEE, J.A., delivering the judgment of the Court, stated the facts as follows:—

The accused, a tobacconist, kept in his shop a machine known as "Mills Counter O.K. Vendor." Any one depositing an American nickel 5 cent coin in a slot therein would, on pulling a lever, receive, out of the machine, a package of chewing gum, and also so many, if any, brass tokens called premium checks as were indicated upon the machine before he deposited the coin. Each token would entitle him to get goods in the shop to the extent of 5 cents. The indicator might shew that he would not receive any token, or it might shew any one of the 19 numbers from 2 to 20 inclusive. The indicator was made by means of designs upon the edges of three wheels inside the machine, passing close to a narrow opening or slit which allowed one design on each wheel to be seen at a time, thus making a combination of three designs. The combinations would change with the turning of the wheels, which did not all turn in the same direction. A chart shewed the value of each combination in tokens, whether none or 2 or more up to 20. It is not clear whether the values of the combinations remained the same or were liable to change with the contemporaneous turning of a fourth wheel opposite to an opening in the chart. By the pulling of the lever, after depositing the coin, the wheels were set in motion, and on their stopping a new combination would be shewn with its value in tokens to be received by the depositor of the next coin or token. Instead of a coin, one of the tokens might be deposited with the like results, except that no gum would be received. What this next combination would be, the depositor had no means of knowing beforehand. But, so far as appears, he was not limited to one or any number of operations. The very object of the tokens was that he could not be so limited. He being at the machine, no one other than the proprietor, and ordinarily not even he, would have a right to make him stand aside and take from him the opportunity to receive for another coin or token the value of the combination which his pulling of the lever had caused to appear. Hence for his previous deposit of 5 cents he would, in addition to the gum and tokens, if any, which he knew himself entitled to, have the chance of getting, for another 5 cents, or its equivalent token, goods to the value of 10 cents or more up to \$1, with other successive chances from new combinations. In other words, he would by his original coin purchase the opportunity of winning one of 19 prizes worth from 5 up to 95 cents, or one of an unknown number of blanks, which such further opportunities