

1905.

July 20.

Present : Sir Charles Peter Layard, Kt., Chief Justice.

JANSZ *v.* PERERA.

P. C., Colombo, 92,909.

Unlawful gaming—Jurisdiction of Police Court—Village Committee rules—Exclusive jurisdiction of Village Tribunal—Ordinance No. 17 of 1889, ss. 4 and 22—Ordinance No. 24 of 1889, ss. 6, 28, and 49.

The provisions of "The Gaming Ordinance, 1889" (No. 17 of 1889) have no application in places which have been brought within the operation of the "Village Communities' Ordinance, 1889" (No. 24 of 1889), and in which the inhabitants have, under the provisions of section 6 (12) of the said Ordinance, made rules for the prevention of "gambling" and "cock-fighting." In such places the Village Tribunal or the Village Committee has exclusive jurisdiction.

THE facts sufficiently appear in the judgment.

H. Jayewardene, for the accused.

Van Längenberg, A. S.-G., for the Crown.

Cur. ad. vult.

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This matter comes before me in revision. The applicants were originally charged before a Village Tribunal with the offence of unlawful gaming, to wit, cock-fighting, under Village Committee rule 63, published in the *Government Gazette* of the 13th June, 1889, but were subsequently brought up before the Police Magistrate of Colombo, and convicted of an offence punishable under section 4 of Ordinance No. 17 of 1889.

By the provisions of that section, whosoever commits unlawful gaming shall be punished with fine not exceeding one hundred rupees or rigorous imprisonment for a term which may extend to six months, or with both. For the purpose of that Ordinance "unlawful gaming" includes cock-fighting, whether for a stake or not, and whether practised publicly or privately.

Prior to the passing of that Ordinance the Legislature had delegated to Village Committees the power to make rules for the prevention of gambling and cock-fighting by the provisions of "The Village Committees' Ordinance, 1871." The attention of Government was apparently drawn to the question as to whether rules could be made under that Ordinance inflicting penalties for offences which the statute law had already dealt with. To protect the rules framed under "The Village Committees' Ordinance, 1871," provision was made in the Ordinance No. 17 of 1889 (see section 22) that no rule made under that Ordinance or any future Ordinance relating to Village Committees should be held to be *ultra vires* on the ground that it conflicts with the provisions of the Ordinance No. 17 of 1889. At the date of the passing of the Ordinance No. 17 of 1889 the Government had just sanctioned rules made under the provisions of "The Village Committees' Ordinance, 1871," for certain Village Committees in the Western Province. One of these rules is the rule 63 above-mentioned. This rule prohibited cock-fighting, and enacted among other things that any person found cock-fighting shall be liable to a fine not exceeding Rs. 10. It appears to me that by enacting section 22 of the Ordinance No. 17 of 1889 the Legislature intended to conserve the rules made by the Village Committees in respect of unlawful gaming, including cock-fighting, and virtually enacted that whenever such rules had been made they were to prevail, and did not intend to say that persons resident in districts subject to rules framed by Village Committees would be liable to be punished for breach of such rules if tried before Village Tribunals, and also to be punished for the same offence under the Ordinance No. 17 of 1889 before a Police Magistrate. I read section 22 as directing that whenever other provision has been made, or in the future is made, by Village

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 LAYARD C.J. provisions, even should they be in conflict with some of its provisions.

This is emphasized by the Legislature later in the same year passing "The Village Committees' Ordinance, 1889," still providing for the inhabitants of any subdivision brought within the operation of the Ordinance being allowed to make rules for the prevention of gambling and cock-fighting, notwithstanding the existence of the Ordinance No. 17 of 1889, thus continuing the powers previously given to the Village Committees, if they so desired, to make rules both inconsistent with and repugnant to the provisions of that Ordinance; and so anxious was the Legislature to leave all matters connected with any rule made by the Village Committees to be dealt with by the Village Tribunals and Village Committees alone, that whilst by the proviso to section 28 it gave power to Village Tribunals to refer any case, civil or criminal, to the Court of Requests or Police Court having no jurisdiction over the subdivision, or to the Attorney-General or any Crown Counsel in any criminal case or to the Government Agent in any civil or criminal case to direct it to be tried by the Police Court or Court of Requests, it did not give such power in respect of breaches of rules made by the inhabitants of a subdivision under the authority of the Ordinance. Section 28, in giving jurisdiction to Village Tribunals, divided the jurisdiction into three classes, (1) breaches of rules, (2) civil jurisdiction, (3) criminal jurisdiction, and the proviso necessarily only purported to deal with the two latter classes, because Police Courts and Courts of Requests have never had conferred on them jurisdiction to try breaches of village rules.

This is further emphasized by the Legislature in section 49 giving Village Committees, where Village Tribunals do not exist, exclusive jurisdiction not only in respect of breaches of such rules, but in matters connected with them as well, and in declaring that they are to exercise the same exclusive jurisdiction as the Ordinance had conferred on Village Tribunals in respect thereof, and making no provision for the transfer of such cases from such Committees to any other Court.

It could not have been the intention of the Legislature to allow a person found guilty of cock-fighting to be liable to punishment both for breach of a Gansabhawa rule and of the Gaming Ordinance. On the contrary, the Legislature desired to delegate, and has delegated, the power to the Village Committees to make rules for the prevention of cock-fighting, even if such rules be in direct conflict with the Gaming Ordinance. Where such rules have been made they must have

been intended by the Legislature to supersede such provisions of the Gaming Ordinance as they were in direct conflict with, and that not only breaches of the rules so made but all matters connected with any such rule were to be within the exclusive jurisdiction of the Village Tribunals or Village Committees is clear from section 49 of the Ordinance No. 24 of 1889. The Police Court of Colombo had, in my opinion, no jurisdiction to entertain this charge, and I quash the conviction, sentence, and all proceedings in revision.

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