Present: De Sampayo J.

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BURMESTER *v.* MUTTUSAMY.

573 and 574—P. C. Gampola, 9,637.

Unlawful gaming—Coolies playing cards for money in verandah of cooly lines—Is it a place to which "public" have access?

Four persons were found playing cards for money in the verandah of a set of cooly lines on an estate, where some 500 coolies worked.

Held, that as persons not employed on the estate had no access to the place, it was not a place to which the public had access within the meaning of the Gaming Ordinance, 1889.

THE facts are set out in the judgment.

F. J. de Saram, for first and fourth accused, appellants.

July 5, 1916. DE SAMPAYO J.—

The first and fourth accused appeal from a conviction under the Ordinance No. 17 of 1889 for unlawful gaming. In the formal conviction the offence is laid under section 5 of the Ordinance, which is evidently a mistake for section 4. The appellants and two other labourers on Choughleigh estate were found playing a game of cards for money in the verandah of a set of lines. The Police Magistrate has rightly stated the question in the case to be whether this is a place to which the "public" have access within the meaning of section (2) (*a*) of the Ordinance. He says that, although it is true that the general public outside the estate cannot be said to have access to the place, still, as the coolies of the estate, who appear to be some 500 in number, may have access to it, it may be regarded as a place to which the public have access. I do not think that this construction of the Ordinance is in accordance either with its intention or with its letter. The word "public" is not defined in the Ordinance, but there is no difficulty as to its ordinary meaning. It signifies the general body of people in a country. For instance, where it was provided by the Railway and Canal Traffic Act, 1888, that a certain thing might be done "in the interests of the public," Wills J. observed that, though the public meant nothing wider than the British public, it was at any rate as wide as that, and that "the interests of the public" did not mean merely the interests of any particular localities. *The Liverpool Corn Trading Association v. The London and North-Western Railway Co.*[1] The very essence of the term "public" is its generality and indeterminateness. The coolies on an estate, like other members of the community, are no doubt a part of the public, but they cannot by themselves form a "public". The coolies, however numerous, are determinate persons,

[1] *L. R. (1890) 1 Q. B., at pp. 134 and 135.*

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and because they as individuals have access to the lines of the estate on which they are employed, it is impossible to say that the public have access to the lines in the sense of the Ordinance. I therefore think, though the result may be regrettable, that the appellants cannot be said to have played cards in a place which would under the Ordinance make the gaming unlawful.

On this ground the conviction is set aside.

Set aside.