

1921.

Present : De Sampayo J.

PERERA v. SINGHO *et al.*

1,098-1,102—P. C. Kalutara, 5,184.

*Unlawful gaming—Gambling on an open ground near the cooly line on an estate—Public roads passing through the estate—Public place.*

The accused were found gambling on an open ground in front of a cooly line on an estate.

*Held*, that the fact that public roads passed through the estate did not make the place a public place.

**T**HE facts appear from the judgment.

*Zoysa*, for appellants.

December 13, 1921. DE SAMPAYO J.—

This is a prosecution under the Gaming Ordinance. Some eight persons, seven of whom are Sinhalese, were charged with having carried on unlawful gaming on Arapolakanda estate. The Tamil accused pleaded guilty. If he had not, he would have been able to urge the same point which the appellants in this case urge in defence. The point is whether they were gambling in a public place. The idea of the place being kept as a gaming place is negatived, nor did the police enter the premises with a warrant, so the prosecution had to depend on proof that the place was one to which the public had access whether of right or not. Now, this Arapolakanda estate would appear to be a very extensive rubber estate, and through it are roads along which the public may pass, but the particular place in which the gaming is said to have taken place is an open ground in front of a cooly line. Now, as the estate had public roads, the Magistrate appears to think that the whole estate was a place to which the public had access. I think this is going too far. It is not the whole estate we have to take into account, but a particular spot at which the gaming took place, and I should say that in the neighbourhood of the cooly lines the public have no right of access, nor can they be said to have access though without any right to it. Reference may be made on the subject as to how far a part of an estate may be considered a public place within the meaning of the Gaming Ordinance to *Burmester v. Muttusamy*.<sup>1</sup> Although the place there in question was the lines themselves, yet the reasoning which I ventured to maintain in that case is applicable to the compound or open bit of place in front of a set of cooly lines. I think, therefore, the prosecution failed to prove an essential element in the charge.

The conviction of the appellants are set aside.

*Set aside.*

<sup>1</sup> (1916) 19 N. L. R. 153.