1913.

Present : Pereira J.

DISSANAYAKE *v.* FERNANDO.

892—P. C. Negombo, 20,502.

Unlawful gaming—Common gaming place—Place used for cockfighting.

A place kept or used for cockfighting and to which the public have access is a common gaming place, although in the definition of "common gaming place" in the Gaming Ordinance, 1889, there is no mention of cockfighting.

THE facts appear from the judgment.

A St. V. Jayewardene, for the accused, appellant.—The evidence is not sufficient to show that the accused's garden was used as a common gaming place. The presumption under section 10 does not arise here, as the place was not searched under a warrant.

"Common gaming place" has been defined in the Ordinance as any place kept or used for betting or the playing of games for stakes, and to which the public may have access with or without payment. The definition makes no mention of cockfighting.

The definition of unlawful gaming includes cockfighting ; but the definition of common gaming place does not include cockfighting, It is clear that the Legislature did not intend to punish a person for keeping a place for cockfighting, though it thought it desirable to punish persons who indulged in cockfighting for unlawful gaming.

No appearance for the respondent.

Cur. adv. vult.

December 3, 1913. PEREIRA J.—

In this case there is, I think, on the whole, sufficient evidence to show that the enclosure in the accused's garden was used as a "common gaming place." The presumptions provided for by sections 9 and 10 of "The Gaming Ordinance, 1889," do not arise, because the police had no search warrant to enter into and search the enclosure, but there is evidence from which it is not difficult to conclude that the enclosure was used as a common gaming place. The mere fact that on the occasion of the entry of the police some men ran away, and immediately thereafter there were indications in the enclosure that cockfighting had taken place there, is not sufficient to show that the place was a common gaming place, but it is sufficient to show that cockfighting had taken place there that day. Then, there is the additional evidence that the place had been

used before for gaming, and that the men who ran away on the occasion of the entry by the police were men from different villages, and this, with the other evidence already referred to, shows that the place was used as a common gaming place. It has been argued that a place cannot be said to be a common gaming place by reason of its being open to anybody to enter it and indulge in cockfighting. I cannot accede to this contention. True, in the definition of " common gaming place " in the Ordinance there is no reference made to cockfighting, but the definition is not exhaustive. It lays down not what " common gaming place " means, but what the term includes. That being so, the position that a place kept for any form of unlawful gaming to be carried on by anybody who chooses to enter it is a " common gaming place " is not obnoxious to the definition given in the Ordinance. Now, cockfighting, it is laid down in the Ordinance, is "unlawful gaming," whether the practised publicly or privately. A place, therefore, kept for cockfighting would be a common gaming place. The fact that cockfighting, even though practised privately, is unlawful gaming, in my opinion, makes a place kept for cockfighting all the more a " common gaming place."

I affirm the conviction.

Affirmed.