Present : Shaw J.

1921.

POLICE OFFICER, BELIATTA, *v.* BABUNAPPU.

405—P. C. Tangalla, 10,814.

Unlawful gaming—Keeping a common gaming place—Owner of premises superintending premises and collecting "thon."

The collection of commission on the stakes by somebody who is present at the gambling is not sufficient evidence that that person has the care or management of or assists in the management of a place kept or used as a common gaming place within the meaning of section 5 (*c*) of the Gaming Ordinance. When a person is the owner of a house, and is on the premises superintending the gambling and taking commission on the winnings gained, it is sufficient and definite proof that it is he who is keeping or using the place as a gaming house.

Hart v. Warnasuriya [1] and *Thamby v. Ukku Banda* [2] commented upon.

THE facts appear from the judgment.

Keuneman, for the appellant.

M. W. H. de Silva, C.C., for the Crown.

May 9, 1921. SHAW J.—

In this case the accused has been convicted of an offence under section 5 (*a*) of the Gaming Ordinance of 1889, "being the owner or occupier, keeps or uses his place as a common gaming place." He has been sentenced to pay a fine of Rs. 300, or, in default, to three months' rigorous imprisonment. Objection is taken to the conviction on the ground that the evidence does not show that an offence has been committed under the Ordinance. It is said that there is no evidence that the house was a common gaming place, because it is not shown that the public had access, nor is it shown that gaming for money was in fact proceeding at the time of which the witnesses give evidence. The evidence is certainly somewhat scanty. It is to this effect: That on November 22 the police officers raided a house of which the accused is the owner, and that they there found the accused and over fifty other people engaged in playing the game of "baby." They were people from various villages, and they were playing in three groups, one in the house and two in the compound. That the accused himself was collecting "thon" or commission from the players. When the headman began to effect arrest, the people who were assembled there ran away. It is said on behalf of the appellant that the collection of "thon" does not show that the

[1] *5 Leader L. R. 109.* [2] *(1910) 13 N. L. R. 286.*

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SHAW J.

Police Officer, Beliatta, v. Babunappu

place was a common gaming place, and it is said that this is decided in certain cases—*Hart v. Warnasuriya*[1] and *Tamby v. Ukku Banda.*[2] These cases do not appear to me to decide any such thing. What these cases decide is that the collection of commission on the stakes by somebody who is present at a gambling is not sufficient evidence that that person has the care or management of or assists in the management of a place kept or used as a common gaming place within the meaning of section 5 (c) of the Ordinance. This may be so, as the Judge in these cases quite properly point out that a person who is engaged in managing the gambling itself is not necessarily the person who manages the gambling house. Had the charge in these cases been under sub-section (*a*) which the present charge is being brought under, and the people in these cases have been proved to be the owners of the house, the result of those cases might have been entirely different. It seems to me that, when a person is the owner of a house, and is on the premises superintending the gambling and taking commission on the winnings gained, it is sufficient and definite proof that it is he who is keeping or using the place as a gaming house. In the present case, I think, there is sufficient evidence that this is a common gaming house within the meaning of the Ordinance. We have evidence that the gaming of " baby," which is a game of cards and a game of chance, was being played by fifty people coming from different places. We have evidence that the accused collected " thon " or commission on the winnings. That clearly shows that the money was passing hands, and that the game was being played for stakes. It also, in my opinion, shows that it was not a private party, but that it was a place kept for the public to come and game at, because a person who invites his friends to a game of cards in his private house does not charge his guests a commission on the amount of their winnings. The very number of the people, coming as they did from different neighbourhoods, seems also to support the other evidence to the effect that this was not a party of friends assembled for a quiet and lawful game of cards.

I have been asked to reconsider the amount of the sentence which has been imposed by the Magistrate. I do not think I ought to do so. This is a case of a somewhat bad nature. It is a gaming carried on a very large scale, and it has been carried on by the accused after warnings from the police authorities against the use of his house for this purpose. The Gaming Ordinance provides for a fine of not exceeding Rs. 500 in a case of this sort, and gives the Magistrate special jurisdiction to that amount. The fine in the present case is, I think, not too severe in the circumstances of the case.

I would dismiss the appeal.

Appeal dismissed.

[1] *5 Leader L. R. 109.*

[2] *(1910) 13 N. L. R. 286.*