1932

Present: **Macdonell C.J.**

ABEYERATNE *v.* PERERA.

525—P. C. Chilaw, 36,518.

Public performance—Admission of public without payment—Test of public performance—Ordinance No. 7 of 1912, s. 2.

It is sufficient to constitute a public dramatic representation within the meaning of section 2 of Ordinance No. 7 of 1912, if the public are generally admitted to it even though such admission be made without payment.

APPEAL from an acquittal of the Police Magistrate of Chilaw.

Wendt, C.C., for the appellant.

September 2, 1932. MACDONELL C.J.—

In this case the two accused were charged in that they used or permitted to be used a building or erection for the purpose of a public performance, to wit, staging a play, without having obtained a licence for that purpose from the proper licensing authority, in contravention of rule A 2 of the rules framed under section 3 (1) of Ordinance No. 7 of 1912, as amended by Ordinance No. 7 of 1919. It is not disputed that the accused had erected this building or that they staged on it a play which was witnessed by a large crowd of people or that they were without any licence from the proper authority. The point was taken by the accused that no money was charged for entrance into the building or erection to see the play, and further that the parish priest under whose control the play was being staged, could have turned out any of the audience if he had wished. The evidence was that a large number of people attended of all religions. The learned Magistrate agreed with the argument that, as no money was required of persons going in to see the play, and as the parish priest had the power to turn out any of the spectators, it was not a public dramatic representation within section 2 of Ordinance No. 7 of 1912. I do not think that this is a correct test of what constitutes a public performance. It is sufficient if the public are admitted generally even though that admission be without payment. Section 5 of the Ordinance suggests that it is not the test of public performance whether a person has or has not to pay to see it, and notoriously there are many kinds of gatherings, entrance to which is free but which are, beyond argument, public. In regard to the power to exclude people I would quote Lawrence J. in *Kitson v. Ashe*[1], where he says, " this betting ground is clearly a place of public resort in the ordinary sense of the words. The public do in fact go there, though, if the owner pleased, they could be turned off; but in the same way people could, under certain circumstances, be turned out of many other places such as parks and recreation grounds, which are undoubtedly places of public resort ". In this case it is quite clear that the public were admitted freely without distinction and that being so, I think that this was a public dramatic representation and that a licence was necessary for the building in which it was being held. If that is so, the Magistrate should have convicted the accused. I will therefore formally alter the acquittal into a conviction, and return the case to the learned Magistrate

[1] *(1899) 1 Q. B. 428.*

with directions to pass such a sentence as he thinks necessary in this case. As this has been in the nature of a test case, no doubt the Magistrate will consider a small fine sufficient. The case is remitted to the lower Court accordingly. *Set aside.*