*Present:* **Keuneman J.**

DINORIS APPU, Appellant, *and* MAHENDRAM (S. I. Police), Respondent

*1,844—M. C. Hambantota, 11,396.*

*Unlawful gaming—Common gaming place—Quantum of evidence necessary—Gaming Ordinance (Cap. 38), s. 22.*

The accused, who were charged with unlawful gaming, had been arrested without a search warrant. The evidence showed that the place where the gaming was held was a garden in the vicinity of two roads which were on opposite sides, but there was no proof that the public—in the wide sense in which that word is used—had access to the place of gaming, although there was no physical obstacle in the way of any individual walking from the public road to the place of gaming.

*Held*, that the evidence was not strong enough to establish the fact that the place of gaming was a "common gaming place" within the meaning of the term in section 22 of the Gaming Ordinance.

*Held, further*, that the fact that the persons found gaming came from a number of different villages was not, taken by itself, conclusive.

APPEAL against a conviction from the Magistrate's Court, Hambantota.

*L. A. Rajapakse, K.C.* (with him *S. R. Wijayatilake*), for the 17th accused, appellant.

*J. G. T. Weeraratne, C.C.*, for the Attorney-General.

*Cur. adv. vult.*

February 11, 1947. KEUNEMAN J.—

This case is another instance of the difficulty of bringing home a charge under the Gaming Ordinance (Cap. 38) where the Police arrest without a search warrant.

The facts disclose that a raiding party of policemen found about "30 people seated in the garden in a circle and playing cards". First accused shuffled the pack, 2nd accused cut the pack, and all the others took side bets, placing money on the mats which were there. The Police rushed in and arrested 17 persons, including this accused who is a Headman.

The Crown argued that all these persons were guilty of the offence of unlawful gaming. That there was gaming is beyond question, but the matter for decision is whether the gaming was unlawful. It is clear that the prosecution has not established that the gaming took place in or upon any "place to which the public has access whether as of right or not", but it is argued that the gaming was held in a "common gaming place", under section 22, viz., a place "kept or used for betting or the playing of games for stakes and to which the public may have access".

The evidence is not quite clear as to the spot in the garden where the gaming was held. The Magistrate held that the garden was 100 yards from Hospital Street and 75 yards from the Hambantota-Tangalla Road, these two roads being on opposite sides. There was no complete fence round the garden separating this garden from the various premises adjoining, but there were some fences and also a stile, while in some places there was scrub jungle and no regular fence.

I do not think this evidence is strong enough to establish the fact that the place was accessible to the public :—vide *Burmester v. Muttusamy* [1]; *Perera v. Singho* [2]. It has not been proved that the public—in the wide sense in which that word is used—may have access to the place of gaming although there was no physical obstacle in the way of any individual walking from the public road to the place of gaming.

The only other facts on which the prosecution relies are the number of persons found gaming and the fact that they came from a number of different villages. It is in evidence that the following day was "arrack issue day" at a tavern not very far off, and that people from outlying regions used to gather at this neighbourhood to procure the arrack. This fact, however, is not decisive. It may mean that there were large numbers of the public assembled nearby or that a number of friends and acquaintances had gathered there. The fact that these persons came from different villages is also accounted for, and in any event that fact taken alone is not conclusive : vide *Wittensleger v. Appuhamy* [3]. In that case the fact that persons gathered together were of different castes and communities was held not to be conclusive, taken by itself.

In the circumstances I allow the appeal and set aside the conviction and sentence of the 17th accused and acquit him. Acting in revision I also set aside the convictions of the 1st to the 16th accused who have not appealed and I acquit them.

*Appeal allowed.*

[1] *(1916) 19 N. L. R. 153.* [2] *(1921) 23 N. L. R. 154*

[3] *(1937) 39 N. L. R. 93.*