

[IN REVISION.]

July 20, 1911

Present : Wood Renton J.

ATTORNEY-GENERAL v. KANDAIYA *et al.**P. C. Anuradhapura, 35,867.**Punishment—Unlawful gaming—Plea of guilty by accused—Light sentence—Case sent back for inquiry into antecedents of accused.*

Where a person was convicted of unlawful gaming and sentenced to pay a fine of Re. 1, and where there was nothing on the face of the record to show why the offence had met with so trivial a penalty, the Supreme Court set aside the sentence, and sent the case back to the Magistrate and directed him to fix the penalty in the light of any evidence as to the character and antecedents of the accused which might be put before him either by the prosecution or by the defence.

It is competent for courts of first instance to inquire, after the conviction of the accused persons before them, into the character and antecedents of the persons so convicted. Such inquiries must be held on oath.

THIS was an application by the Attorney-General for the alteration or enhancement, by the Supreme Court in revision, of the sentence passed by the Police Magistrate of Anuradhapura on the accused, who were tried before him on a charge of unlawful gaming, and who were convicted on their own plea and sentenced to pay a fine of Re. 1 each.

Walter Pereira, K.C., S.-G., for the Attorney-General. There is nothing on the record to show why so light a sentence should have been passed. The prosecution can place before the Magistrate facts which will show that the sentence is inadequate. Before the Magistrate imposed such a light sentence he should have inquired into the antecedents of the accused.

Balasingham, for the respondents, had no objection to the case being remitted to the Magistrate, for him to impose after inquiry such sentence as he may think fit.

July 20, 1911. WOOD RENTON J.—

This is a motion on behalf of the Attorney-General by the learned Solicitor-General for the alteration or enhancement by the Supreme Court in revision, of the sentences passed by the Police Magistrate of Anuradhapura on the accused-respondents, who were tried before him on a charge of unlawful gaming, in contravention of section 4 of Ordinance No. 17 of 1889, and who were convicted on

July 20, 1911

WOOD
RENTON J.

Attorney-
General
v. Kandaiya

their own plea. The sentence imposed by the learned Police Magistrate was in each case a fine of Re. 1 only. The offence of unlawful gaming is punishable under section 4 of Ordinance No. 17 of 1889 with a fine not exceeding Rs. 100, or with rigorous imprisonment for a term which may extend to six months, or with both. There was nothing on the face of the record to show why an offence of this character had met with so trivial a penalty, and accordingly the learned Police Magistrate was requested to state, for the information of the Court, why he imposed a merely nominal fine. In his reply he says, that in view of the fact that it was the accused's first offence, and that the gambling did not take place in a place kept for unlawful gaming, he considered that a fine of Re. 1 and a strict warning would deter the accused from repeating the offence. There is nothing in the record, so far as I can see, to show that the accused were first offenders, and even if that fact had been proved, it would have been a matter for consideration by the Police Magistrate as to whether the imposition of a purely nominal penalty could have a deterrent effect. In a case decided by my brother Middleton and myself the other day, we have held that under the law of this Colony it is competent for courts of first instance to inquire, after the conviction of accused persons before them, into the character and the antecedents of the persons so convicted. Such inquiries must, of course, be held on oath. It appears to me that the present case is one in which the Police Magistrate should receive whatever legal evidence as to the character and antecedents of the accused-respondents may be put before him either by the prosecution or by the defence, and that he should fix the penalty to be imposed in the light of that evidence. Dealing with the case in revision, I affirm the convictions, but set aside the sentences, and send the case back for further inquiry on the lines that I have indicated in this judgment.

Sent back.

