Sept. 12, 1910

Present: Mr. Justice Middleton.

TAMBY *v.* UKKU BANDA.

P. C., Gampola, 2,685.

Unlawful gaming — Common gaming place — Proof — Definition of "gaming" under Village Committee rules.

It is open to people to play games of chance for money at their own houses provided the house is not used as a common gaming place, or is not a place to which the public has access whether as of right or not. Where there is no warrant issued under the Gaming Ordinance strict proof should be adduced on the part of the prosecution to show that the act charged is one which is an offence under the Ordinance.

The use of a place on one occasion only would under certain circumstances eititle a Court to say that it is a common gaming place; but there must be some evidence, apart from the fact that it was used once for playing games for stakes, which shows that it was in fact a common gaming place.

THE facts are set out in the judgment

Bawa, for the appellant.

No appearance for the respondent.

September 12, 1910. MIDDLETON J.—

In this case the accused has been convicted, under section 4 of Ordinance No. 17 of 1889, of unlawfully gaming with cards for stakes,

and sentenced to pay a fine of Rs. 30, or in default one month's rigorous imprisonment. He appealed against that conviction on two grounds: the first ground being that the evidence does not establish his identity as one of the persons found in Wijehamy's house on the night of April 16 last; the second point is that the evidence does not prove that the gaming in which he was concerned, if any, was unlawful. On the first point I am satisfied on the evidence that the Magistrate was right in finding that the ninth accused, here the appellant, was one of the persons who was found in Wijehamy's house on the night in question. On the second point I have been referred to *Jayewardene v. Don Thomas*,[1] where Mr. Justice Withers laid down, what is undoubtedly true, that the essence of the offence of unlawful gaming is the publicity which attracts idlers of all sorts to various forms of public nuisance, and he also emphasizes there the necessity of proving that the house in which the accused was playing is a common gaming place within the terms of section 3, sub-section (2), of the Ordinance, or is a place to which the public has access whether as of right or not. Now, I think, that both the Magistrate and the police here are under a certain amount of misapprehension with regard to these offences. The Government Agent here had directed that this case should be tried in the Police Court, and it accordingly has been tried. If the case is tried in the Police Court, it must undoubtedly be considered under the terms and according to the meaning of Ordinance No. 17 of 1889. If a charge is made and considered in a Gansabhawa it will have, I take it, to come under rule 43, of the rules made under section 7 of the Village Communities' Ordinance, No. 24 of 1889 (*Ratwatte v. Kadoris*[2]). That rule forbids any person from gambling or cock-fighting. Now, gambling is defined in the Imperial Dictionary as the act of playing a game for money or other stakes, so that under the Gansabhawa rules a person who is guilty of playing a game of cards for stakes would be necessarily guilty of the offence of gambling, without reference to the particular terms of the Ordinance which is directed against unlawful gaming therein specifically defined. It is, therefore, possible under these circumstances that people may think that playing games of cards in their own house is a breach of the law if they play for money. Of course, that is not so. This may account for the running away, said to have occurred, when the house was raided. It is open to people to play games of chance for money at their own houses, provided that the house is not used as a common gaming place, or is not a place to which the public has access as of right or not. Now, this being so, it becomes incumbent, where there is no warrant issued under the terms of the Ordinance, that strict proof should be adduced on the part of the prosecution to show that the act charged is one which is an offence under the

[1] *(1905) N. L. R. 216.*

[2] *(1908) 11 N. L. R. 245.*

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Ordinance. Now, in the present case, there does not appear to be any evidence other than that these men were found playing, in a private house, cards for money. There is no evidence on the record that that house was one to which the public generally had access as of right or by way of payment or otherwise, nor any proof that it was a common gaming place within the meaning of the section, or that it was kept or used for playing games for stakes. It is true under that section the law contemplates that the use of a place on one occasion only would under certain circumstances entitle a Court to say that it is a common gaming place, but there must be some evidence, apart from the fact that it was used once for playing games for stakes, which show, that it was in fact a common gaming place. In my opinion this prosecution must fail on this ground only. I therefore direct that the conviction be quashed and this man acquitted.

Accused acquitted.