

Present: Wood Renton C.J.

1917.

BURAH *v.* SINNIAH.

33—*P. C. Gampola, 10,831.*

Jurisdiction—Unlawful gaming in estate—European superintendent of estate—Prosecution in Court by Malay police officer—Exclusive jurisdiction of Village Tribunal.

The fact that a person was engaged in unlawful gaming in a house on an estate, of which an European was at the time superintendent, does not oust the jurisdiction of the Village Tribunal in respect of such offence.

The fact that a "native" police officer appears in support of a charge of unlawful gaming does not oust the Police Court of its jurisdiction and confer jurisdiction on the Village Tribunal.

"I cannot believe that the Legislature could have intended to make the jurisdiction of the Police Court on the one hand and of Village Tribunals on the other dependent on the accident of nationality of the particular officer who was appearing to support the charge."

THE facts appear from the judgment.

Bartholomeusz, for sixth accused, appellant.

Driberg, for the respondent.

Cur. adv. vult.

January 29, 1917. WOOD RENTON C.J.—

The accused-appellant was charged, with twenty-three other persons, in the Police Court of Gampola, with having been engaged in unlawful gaming in a house in the lines of Hunukotuwa estate, Nawalapitiya, of which Mr. R. K. Bowie is superintendent. The

1917. Police Magistrate convicted him, and sentenced him to pay a fine of Rs. 20. The appellant's proctor took the point that, in view of the provisions of the Village Communities Ordinance, 1889,¹ section 28, the offence was triable by the Village Tribunal, and that, therefore, under section 34 of the same Ordinance the Police Court had no jurisdiction to try the case. The learned Police Magistrate surmounted this difficulty by holding that Mr. Bowie, the superintendent of the estate on which the gaming took place, was a "party" to the proceedings within the meaning of section 28 of the Ordinance of 1889¹ or was at least an "aggrieved party," and that, therefore, as he was not a "native" as defined in section 3 of the Ordinance, the case was triable, not by a Village Tribunal, but by the Police Court itself. I should not be prepared, as at present advised, to uphold this ruling. Mr. Bowie was no doubt interested in the prosecution, inasmuch as he had control of the lines in which the unlawful gaming was carried on. But he was not, in my opinion, a "party" to the proceedings in any real sense of the term, and it must be observed that section 28 says nothing about "aggrieved parties" or "aggrieved persons."

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Mr. Allan Driberg, however, as counsel for the respondent, took what is, in my opinion, a more formidable objection to the jurisdiction of a Village Tribunal over the present case. The prosecution was conducted in the name of a Sub-Inspector of Police, who is a Malay, and who is, therefore, a "native" as defined by section 3 of the Village Communities Ordinance, 1889.¹ The appellant's counsel contended that this circumstance at once attracted the exclusive jurisdiction of the appropriate Village Tribunal. To that argument Mr. Driberg replied that the prosecution was really one by the Police as a Department, and that in such cases the nationality of the particular officer of police who represented the Department for that purpose was immaterial. No authority directly governing this question was cited to me. But Mr. Arulanandan, as *amicus curiæ*, kindly called my attention to a case—No. 747/748, P. C. Anuradhapura, 41,100²—in which it has been held that a police headman is not a police officer within the meaning of section 54 of the Police Ordinance, 1865.³ In the absence of judicial decisions, the question has, therefore, to be decided on principle. In my opinion Mr. Allan Driberg's contention is correct. The fact that a prosecution is in the hands of the regular police itself indicates that the offence is not a trivial one, and I cannot believe that the Legislature could have intended to make the jurisdiction of the Police Court on the one hand and of Village Tribunals on the other dependent on the accidental nationality of the particular officer who was appearing to support the charge.

I have already formally dismissed this appeal. The above are my reasons for doing so.

Appeal dismissed.

¹ No. 24 of 1889.

² S. C. Min., Oct. 24, 1913.

³ No. 16 of 1865.