Present: Mr. Justice Grenier.

1909.
June 7.

ABEYAKOON *v.* PHILIP *et al.*

P. C., Colombo (Addl.), 8,753.

Keeping a common gaming place—Unlawful gaming—Charges tried in one proceeding—Legality—Enhancement of sentence—Ordinance No. 17 of 1889, ss. 4 and 5 (a)—Criminal Procedure Code, ss. 184 and 425.

A charge of keeping a common gaming place against one accused under section 5 (*a*) of Ordinance No. 17 of 1889, and a charge of gaming under section 4 of the said Ordinance against others may be joined and tried together at one and the same trial.

APPEAL from convictions under sections 4 and 5 (*a*) of Ordinance No. 17 of 1889. The material facts appear in the judgment.

Bawa (with him *Morgan*, *Tisseveresinghe*, and *Tambayah*), for the accused, appellants.

Walter Pereira, K.C., S.-G., for the Crown.

Cur. adv. vult.

June 7, 1909. GRENIER A.J.—

This case was well argued for the 29th accused-appellant by Mr. Bawa, but I see no reason to interfere with the verdict of the Magistrate as regards him or the other appellants. The facts are

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very fully stated in the judgment of the Magistrate, who had sifted and analyzed the evidence with great care. His conclusions appear to me quite sound, and I cannot therefore interfere on the merits.

In regard to the objection taken by counsel for appellants to the regularity of the proceedings, in that the Magistrate had consolidated the case against the 29th accused for keeping a gaming place under section 5 (*a*) of Ordinance No. 17 of 1889 with the case against the other appellants for unlawful gaming under section 4 of Ordinance No. 17 of 1889, I am inclined to take the view submitted by the Solicitor-General that section 184 of the Criminal Procedure Code applies, as they were different offences committed in the same transaction, and therefore could be tried together. But assuming that section 184 is not applicable, there is section 425 of the Criminal Procedure Code, which provides that no judgment passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error, omission, or irregularity in the complaint, summons, warrant, charge, judgment, or other proceedings before or during trial, &c., unless such error, omission, or irregularity, or want has occasioned a failure of justice.

It cannot be said the 29th accused was in any way prejudiced by the course adopted by the Magistrate, or that in consequence of what the Magistrate did there has been a failure of justice. The appellant was represented by counsel, and had the benefit of a careful and exhaustive trial, and his substantial rights have in no sense been affected or prejudiced by the consolidation of the two cases.

The Solicitor-General pressed for a heavier sentence on the 29th accused than the fine of Rs. 200 imposed by the Magistrate, whilst his learned counsel asked me to reduce the fine. According to the evidence unlawful gaming has been carried on for some time past in the shed in question. The Magistrate was of opinion that it had been regularly used as a common gaming place. He says the appearance of the shed when he visited the spot confirmed him in this opinion. The 29th accused was the man who collected "thon," not only on the occasion in question, but on previous occasions. It is clear that he is the person who must be held primarily responsible for the crime and demoralization which are inseparable from a common gaming place. If there are no keepers of gaming places in the villages there will be no gamblers. The evidence shows that when the police raided the spot and after, the 29th accused acted in a very defiant manner, and had what was supposed to be a revolver in his hand. In these circumstances I think that a fine was inadequate, and was not a sufficiently deterrent sentence. I would therefore set aside the fine and impose in lieu thereof a sentence of six months' rigorous imprisonment. The appeal of the other accused will be dismissed.

Appeal dismissed.