

Present : De Sampayo J.

1920.

MORTIMER *v.* SINGHO *et al.*

155-156—P. C. Colombo, 11,472.

Unlawful gaming—Exclusive jurisdiction of Village Tribunal—Issue of search warrant by Police Magistrate.

A Police Magistrate alone can issue a search warrant under section 7 of the Gaming Ordinance, No. 17 of 1889. Even where the Village Tribunal has exclusive jurisdiction to try the offence, the Magistrate may issue the search warrant.

THE facts are set out in the judgment.

De Jong, for the fourteenth accused.

H. J. C. Pereira, for the fifteenth accused.

Grenier, C.C., for the respondents.

May 7, 1920. DE SAMPAYO J.—

This is a prosecution under Ordinance No. 17 of 1889 for unlawful gaming. There were fifteen persons charged, and all of them were found guilty, but only the fourteenth and fifteenth accused have appealed. It is, in the first place, objected on their behalf that the case was within the exclusive jurisdiction of the Village Tribunal, and that the conviction is therefore bad. There is a Village Committee rule

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against gambling and cockfighting. Even assuming that "gambling," which is not defined, is the same thing as unlawful gaming in the sense of the Gaming Ordinance, the punitive jurisdiction of the Village Tribunal for the breach of any rule is limited to a fine not exceeding Rs. 20, and section 28B of the Village Communities Ordinance, 1889, provides that where the breach of any rule is also an offence under any other Ordinance, the Attorney-General or the Government Agent of the Province may direct such offence to be tried by the Police Court. This provision no doubt has in view serious cases in which a fine of Rs. 20 may not be an adequate punishment. It appears that systematic gambling on a large scale was carried on at the place in question, and the police on this occasion with creditable energy raided the place. There was a large number of people engaged in a game for money stakes, thirteen of them were arrested on the spot, and two of them, the appellants, escaped, but subsequently surrendered. It was a case which it was desirable should be tried by the Police Court, and the Government Agent ordered accordingly. It is further contended that this order does not rectify matters, because the search warrant, which in the circumstances was the foundation of the proceedings, was issued by the Police Magistrate before the order of the Government Agent, and when, therefore, the Police Magistrate had no jurisdiction to issue such a warrant. This contention is not sustainable, because under section 7 (1) of the Gaming Ordinance, No. 17 of 1889, it is the Police Magistrate alone that is vested with power to issue a warrant. Consequently, whether the Police Court had jurisdiction to try the offence or not, the issue of the warrant was regular.

The search warrant was of importance in this case, because the guilt of the accused and the fact of the place being a common gaming place depended on the presumption created by sections 9 and 10 of the Ordinance. It is objected that this presumption cannot be raised, because it is alleged the search warrant did not authorize the police to enter the particular house in which the accused were found gambling. The fact does not appear to be so. The police laid evidence before the Police Magistrate proving that systematic gambling was going on in a group of houses at the riverside at Peliyagoda occupied by various persons, one of whom was the thirteenth accused, and they produced a sketch showing the houses in question. In the sketch the houses were numbered, and the warrant authorized the police to search those houses. It was proved at the trial that the gambling took place at house No. 6, which was the house of the thirteenth accused. I, therefore, think that the objection is not well founded.

[His Lordship then discussed other points not relevant to this report.]