

Present : Porter J.

NAIR v. ISRAEL et al.

255—P. C. Nuwara Eliya, 2,257.

Unlawful gaming—Empty room in the railway lines—Place to which public have access.

An empty room in the railway lines where several persons were gambling with cards was held not to be a place to which the public had access.

THE facts appear from the judgment.

Weerasuriya (with him *Samarakoon*), for accused, appellant.

May 23, 1923. PORTER J.—

I see no reason to disagree with the finding of fact in this case by the learned Magistrate that the accused, eight in number, were gambling with cards at a game called "Baby." I cannot, however, agree with him on the question of law that the place was a common gaming place. The police did not enter on a warrant, so the prosecution had to depend on proof that the place was one, to which the public had access.

The place where the gaming was taking place was an "empty room in the railway lines or a room devoid of furniture." In order to sustain a conviction, the place must be such a place as the public have access to within the meaning of section 2 (a) of the Ordinance. A room in the railway lines is not such a place, and except for the tenant allowed by the Railway Company, it would appear that all the others would be trespassers. It therefore is not a place to which the public had access within the meaning of the Gaming Ordinance, 1889. On this ground the conviction is set aside.

Set aside.