

1895.

October 2.

ANDERSON *v.* SAIDNUBAI *et al.**P. C., Chilaw, 8,951.*

“*The Gaming Ordinance, 1889*”—*Entry under it—Presumption as to a place being a common gaming place, &c.—Knuckle bone.*

An entry into a gaming place under “*The Gaming Ordinance 1889*,” is an entry made under section 7 of the Ordinance, that is to say, under the authority of a warrant issued by a Police Magistrate in terms of that section ; and it is only in case of such entry that the presumptions mentioned in sections 9 and 10 as to the place entered being a common gaming place, and as to the guilt of the persons found therein or running away therefrom, &c., arise.

A knuckle bone is not enumerated as an instrument of gaming in section 3 of the Ordinance ; and it cannot be held as such when there is no evidence to justify the finding.

THE facts of the case sufficiently appear in the judgment.

Senathirajah, for appellant.

Dumbleton, C. C., for respondent.

2nd October, 1895. BONSER, C.J.—

In this case the appellants were convicted under “*The Gaming Ordinance, 1889*,” of unlawful gaming, by Mr. Carbery, the Acting Police Magistrate of Chilaw. The evidence on which the conviction is founded is shortly this. A Local Board Inspector having received some information proceeded to a place, which he described as an open space surrounded by jungle. There he sees a number of men. He does not see any gambling. Having taken

others with him who surrounded the place, he called out "Catch them," whereupon the men all ran away. Three were caught near the spot, and the rest the Local Board Inspector professes to identify, although the other witnesses could not. On the spot was found a knuckle bone and ten cents. These are the facts on which the conviction is based. The Magistrate dealt with these facts in this way. He said that this was a place which was entered under the Ordinance, and being so entered there were found there instruments of gaming, to wit, the knuckle bone aforesaid; that, therefore, by virtue of section 10 of the Ordinance the presumption arose that this place was a common gaming place. Then he raised another presumption under section 9. Having found that this place was a common gaming place, he applied section 9, which provides that a person found in a common gaming place or found escaping therefrom on the occasion of its being entered under this Ordinance shall be presumed, until the contrary is proved, to be guilty of unlawful gaming. The appellants therefore were guilty of unlawful gaming. If the facts established the presumptions, the chain of reasoning is complete, but in my opinion they do not. In the first place, this place was not entered under the Ordinance. The entry under the Ordinance is an entry made under section 7, which provides that "a Police Magistrate on being satisfied upon written information on oath, and after any further inquiry which he may think necessary, that there is good reason to believe that any place is kept, or used, as a common gaming place, may by warrant authorize any person therein named, or any police officer, with such assistance and by such means as may be necessary, by night or by day, to enter or go to such place and to search the same and all persons therein found." But in the present case no warrant was issued. The Local Board Inspector went on his own motion to this place. I hold therefore that this place was not entered under the Ordinance. That takes away the foundation stone from the edifice. But there is another difficulty in sustaining this conviction. The Magistrate held that the knuckle bone was an instrument for gaming. It is not enumerated as such in section 3 of the Ordinance; and there is no evidence to justify the finding that a knuckle bone is an instrument for gaming. For these reasons, I am of opinion that the conviction is wrong, and must be quashed.

I think that in this case the appellants are entitled to their costs.

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BORNER, C.J.