

1897.

November 25.

KEEGEL v. JAMES APPU et al.*P. C., Matara, 699.*

Gaming—Keeping a common gaming place—Presumption under s. 10 of Ordinance No. 17 of 1889—Entry under the Ordinance—Search warrant issued on insufficient material.

The presumption under section 10 of Ordinance No. 17 of 1889 as to a place being a common gaming place arises only when such place is entered under the Ordinance. An entry by a person armed with a warrant issued by a Police Magistrate, without sufficient material to justify such issue, is not an entry under the Ordinance.

THE facts of the case sufficiently appear in the judgment.

Dornhorst, for appellant.

Templer, C.C., for respondent.

25th November, 1897. LAWRIE, A.C.J.—

The first accused, James Appu, has been convicted of keeping a common gaming place and has been sentenced to six months' rigorous imprisonment and to pay a fine of Rs. 100. The other accused have been convicted of unlawful gaming and have been sentenced each to a fine of Rs. 25, in default one month's rigorous imprisonment. Their appeal succeeds on a point of law.

In my opinion there is no evidence that James Appu's house was kept by him as a common gaming place. The conviction rests on the presumption created by the 16th section. Was then this house of James Appu entered in conformity with the provisions of Ordinance No. 17 of 1889? I think it was not, because the Magistrate could lawfully issue the warrant only on being satisfied upon written information on oath and after such further inquiry as he might think necessary that there was good reason to believe that the place was used as a common gaming place.

The warrant must proceed on some testimony which there is good reason to believe. Some of the respectable inhabitants of Ceylon habitually play whist, but the issue by a Magistrate of a warrant to search their houses, and proof that there were found in their houses packs of cards, would not give rise to the presumption that their houses were common gaming places.

Turning to the affidavit of the sergeant of police on which the warrant issued, it is clear that there were not before the Magistrate materials from which he could believe that the house of

James Appu was a common gaming place. The sergeant said in the affidavit that he was credibly informed, but of what facts, or by whom informed, he does not say. What he says he heard was that "seven men named are using or keeping as a common gaming place by the above-named person, and pray for warrant to search the said houses and premises of the said above-named persons," &c.

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In my opinion this was unintelligible, and it was insufficient. The fact proved was that the police officer went to James Appu's house and found him and others playing a game for a stake and were betting, but they had right to do that in a private house; and until it was proved that James Appu's house was a common gaming house, those who played there were innocent of any offence against the law.

The interference of the police with people in their private houses seems to me altogether intolerable and unwarranted by the Ordinance.

I set aside and acquit them all.

