

quondam partner were obviously placing every obstacle in the way of a just assessment and they have only themselves to thank, if the result of their efforts is that they have been assessed in a way and under a section, which they do not like.

We do not feel called upon to require the Commissioner to state a case upon any of the points raised before us.

The application is dismissed with costs. Advocate's fee five gold mohurs.

1928
A.K.A.C.T.
V.V.
CHETTIYAR
v.
THE
COMMISSIONER OF
INCOME-TAX.
PRATT, C.
AND
CUNLIFFE, J.

APPELLATE CRIMINAL.

Before Mr. Justice Baguley.

KING-EMPEROR

v.

JAN MAISTRY AND OTHERS.*

1928
July 20.

Gambling Act (Burma Act 1 of 1899), ss. 11 and 12—Relative punishments under the sections—Offence of a daing much more serious than that of a mere gambler.

The law regards the offence of a *daing* (owner, keeper or manager of a gaming-house) as far greater than the offence of a mere gambler. The maximum fines and sentences of imprisonment that can be imposed on a *daing* under s. 12 of the Burma Gambling Act, are far heavier than those for the ordinary gambler who is dealt with under s. 11 of the Act. The *daing* makes opportunities for other people to break the law of the country.

BAGULEY, J.—The Second Additional Magistrate of Yenangyaung tried nine men under sections 11 and 12 of the Gambling Act. Some he acquitted, some he fined Rs. 10 each under section 11, and the other two he found guilty under section 12 of the Gambling Act and fined one of them Rs. 15 and the other Rs. 20.

Criminal Revision No. 372B of 1928 against the order of the Second Additional Magistrate of Yenangyaung in Criminal Regular Trial No. 10 of 1928.

1928
 KING-
 EMPEROR
 v.
 JAN MAISTRY
 AND OTHERS.
 BAGULEY, J.

The accused, Maw Pet Khan, whom he fined Rs. 20 at the time of the commission of the offence, was a police-officer, and the Magistrate was of opinion that he had acted as an *agent provocateur*, and that was the reason for punishing him more severely than the others. He, however, went out of his way to make some sweeping statements against the police in general.

[His Lordship directed those remarks to be expunged and then proceeded to deal with the sentences imposed.]

I would also point out that the sentences passed show a failure to grasp the relative seriousness of offences under sections 11 and 12 of the Gambling Act. The moral turpitude of gambling in itself is regarded by most people as small, and the man who commits an offence against section 11 of the Gambling Act merely by going to a *waing* and having a flutter is not really committing a crime involving serious moral turpitude. The principal portion of his offence is that he is breaking the law of the country. The law has been framed in the way that it is because gambling of a certain kind among certain classes of people is apt to lead to more serious crime and that, I gather, is the main, if not the only reason for which it is forbidden by law. On the other hand, the man who commits an offence under section 12 of the Gambling Act is a man who is breaking the law of the country not merely for the sake of gaining a passing amusement but with the intention of making money. The gambler may win, or he may lose. On the whole, the general body of gamblers lose, because the *daing* always wins. If there were no *daings* to run illegal gambling, no one could commit an offence under section 11 of the Gambling Act. It is the *daing* who makes opportunities

for other people to commit offences under section 11 and not *vice versa*.

A reference to the two sections will show that the law regards the offence of the *daing* as far greater than the offence of the mere gambler. If the maximum fines which can be inflicted are looked at, it will be seen that the *daing* can be punished five times as heavily as the gambler. If the maximum sentences of imprisonment are looked at, the *daing* can be punished three times as heavily as the gambler, and this clearly shows that the *daing* under ordinary circumstances should be punished very much more heavily than the ordinary gambler.

In this case the Magistrate has fined the ordinary gamblers Rs. 10 each, and the ordinary *daing* Rs. 15. It would be far more reasonable if the *daing* had been punished four or five times as heavily as the gambler.

APPELLATE CIVIL.

Before Mr. Justice Carr.

DAYALAL & SONS

v.

KO LON AND ANOTHER.*

1928

July 23.

Estoppel—Tenant in possession from landlord cannot deny his title, however defective—Suit by tenant claiming as owner—Surrender essential before suit—Evidence Act (I of 1872), s. 116.

Plaintiff came into occupation of a house as tenant of defendant-appellants who claimed to have bought it from its former owner but without a registered conveyance. Plaintiff, occupying the property all the time as tenant of the appellants, obtained a registered conveyance of the house from a legal representative of the former deceased owner, and sued the appellants for a declaration of his ownership and for an injunction against them to restrain them from recovering any rent from him.

* Civil Second Appeal No. 769 of 1927 against the judgment of the District Court of Toungoo in Civil Appeal No. 123 of 1927.