Present: Shaw J. 1920.

SILVA *v.* SILVA.

348—P. C. Galle, 12,927.

Gaming Ordinance, No. 17 of 1889, s. 7—Hearsay evidence insufficient to justify the issue of warrant.

Mere hearsay evidence in an affidavit is not sufficient to enable a Magistrate to issue a warrant under section 7 of the Gaming Ordinance, No. 17 of 1889.

THE facts appear from the judgment.

J. S. Jayawardene, for accused, appellant.

June 22, 1920. SHAW J.—

The accused has been fined Rs. 100 for unlawful gaming, and has appealed on the ground that the warrant, under which the house where the gaming is said to have been going on was searched, was not issued in conformity with the provisions of section 7 of the Gaming Ordinance in that the affidavit on which the warrant issued was not sufficient to satisfy the Magistrate that there was good reason to believe that the place was kept or used as a common gaming place. The affidavit of the Sub-Inspector merely states that he has received credible information from one Richie and other private inquiries that unlawful gaming was being carried on in the house. There was no affidavit or evidence by Richie or by any other person. It has been held in numerous cases, some of which are referred to in *Sub-Inspector of Police, Panadure v. Charles*,[1] and another case on the same subject is *Seyna v. Podi Sinho*,[2] that the provision in section 7 requiring satisfactory evidence before the issue of the warrant that the place is used as a common gaming place must be strictly complied with. In the case of *Keegal v. James Appu*[3] the affidavit on which the search warrant was issued was very similar to that in the present case. The learned Acting Chief Justice Lawrie in his judgment in that case says: "the sergeant said in the affidavit that he was credibly informed, but of what facts or by whom informed he does not say." It is not quite the same in the present case, because the sergeant in that case did not say who his informant was, but the mention of the name of the informant does not seem to me to carry the matter any further unless that informant himself goes and tells the Magistrate what the facts are. It appears to me that the mere hearsay evidence

[1] *2 C. W. R. 98.* [2] *4 C. W. R. 130.* [3] *3 N. L. R. 76.*

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in an affidavit is not sufficient to enable the Magistrate to issue a warrant which has such a far reaching effect on the proof of the case as a warrant under the Gaming Act has. The Ordinance makes provision for the Magistrate, when he has not the entire proof before him that is necessary for the purpose, to hold a further inquiry after the information on oath has been given before he issues the warrant, so that he may be satisfied that the place is a common gaming place. It appears to me that the warrant here was issued on insufficient grounds, as it was merely issued on hearsay evidence, and without any evidence that should have been satisfactory to the Magistrate that the house was, in reality, a common gaming place. There is no proof of the accused's guilt other than the presumption of guilt directed to be drawn under section 7 of the Gaming Ordinance.

I therefore think it necessary to set aside the conviction, and acquit the accused of the offence with which he is charged.

Set aside.