Present: Schneider J.

1922.

WEERAKOON *v.* CUMARA *et al.*

225—P. C. Nuwara Eliya, 5,593.

Unlawful gaming—Issue of search warrant—No proof that place was used as a common gaming place—Presumption as to guilt of person found in premises—Warrant to search one place—Search of another place.

Where a search warrant was issued without proof that the premises in question were being used as a common gaming place, that is, a place to which the public have access,—

Held, that the presumption created by section 9 of the Gaming Ordinance, 1889, of the guilt of the persons found in the premises does not arise.

THE facts appear from the judgment.

A. St. V. Jayewardene, K.C. (with him *Sunderam*), for appellants.

May 25, 1922. SCHNEIDER J.

In this case fourteen persons were charged with having committed unlawful gaming by playing a game of cards, and thereby of having committed an offence punishable under section 4 of the Gaming Ordinance of 1889. It would appear that information was placed before the Police Magistrate by a police constable to the effect that gambling was going on in certain premises described as those of William Perera of Queen's Cottage, that he saw a large number of people seated round and heard bets being made, that these people were playing cards for money, and that one man in a coat was seen to be collecting *thone*. Upon these materials the constable made an application for a search warrant, which application was granted for the search of the "house and premises of William Perera, the bungalow-keeper of Queen's Cottage." Under the authority of this warrant a Police Inspector and three police officers proceeded to Queen's Cottage grounds and there arrested the fourteen persons, who were subsequently charged in this case. William Perera, the person whose house and premises were to be searched, has given evidence for the defence. He says that he is in occupation of a house consisting of three rooms in Queen's Cottage grounds, and that the gambling had taken place in a room which was next to the room occupied by the assistant bungalow-keeper, whose room was between Perera's room and the room in which the gambling was taking place. Upon this evidence it is quite obvious that the entry

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of the place where the gambling was taking place was not under the Ordinance, because it was not an entry of the premises authorized to be searched by the warrant which had been issued by the Magistrate. There is another reason why the presumption arising under the Ordinance that the place raided was a common gaming place does not arise in this case. It is this. The search warrant was issued under the provisions of section 7 of the Ordinance. That section requires that the Magistrate should be "satisfied that there is good reason to believe that any place is kept or used as a gaming place." Now, the Ordinance defines a common gaming place as meaning a place kept or used for betting or the playing of games for stake, and to which the public have access with or without payment. There is nothing in the information on oath given by the police constable before the issue of the search warrant which could have satisfied the Magistrate that the premises of William Perera were being used as a common gaming place, that is, a place to which the public had access. It would, therefore, seem that the search warrant cannot be regarded as having been rightly issued under the provisions of section 7, and, therefore, the presumption created by section 9 of the Ordinance of guilt of persons found in such a place does not arise in the circumstances of this case. But the learned Magistrate appears to have considered that the evidence at the trial established the fact that the room in which the gamblers were found was a common gaming place. He appears to have thought this because he says that seven outside persons were amongst those who were charged in the case, and also from the evidence of the police constable that *thone* was being collected from persons who were in that room. It seems to me that the evidence in the case fails to prove that the public had access to the place where the gambling took place. It is a room within the grounds of Queen's Cottage, and the evidence led on behalf of the prosecution proved that people of the status of those who had been charged in this case have no right of access to those grounds, and that if found there without any lawful excuse were liable to be prosecuted for trespass, whatever that may mean, and that the two entrances are guarded by police constables, who are stationed there constantly. The first accused, who gave evidence, said that of the fourteen persons accused, seven were servants of the establishment of His Excellency the Governor, that three were friends of those seven servants, and that one was a servant who had been employed in Queen's Cottage before that date. As regards the other three, he said that one was a trader from Batticaloa, and two others were servants employed in Nuwara Eliya town. Upon these facts it seems to me that the inference cannot legitimately be drawn that the public had access to the spot where the gambling was taking place. In fact, if any inference may be drawn from these facts, it is that the public did not have any access. The failure on the part of

the prosecution to prove that the place was a common gaming place is fatal to the conviction, because gambling is not unlawful, unless it takes place in a common gaming place. I, therefore, set aside the convictioon for the reasons given by me.

For the same reasons, acting in revision, I would set aside the conviction of the fifth, eleventh, thirteenth, and fourteenth accused, who have not appealed. The fourth accused has been acquitted.

The productions which have been confiscated upon the order of the Magistrate should, I think, be restored to the owners thereof.

Set aside.