1951 *Present :* **Gratiaen J.**

WILLIAM *et al.*, Petitioners, *and* WEERAKOON (Inspector of Police), Respondent

S. C. 255—Application in revision in M. C. Kurunegala, 1,351

Unlawful gaming—Search warrant—Presumption that a place is a common gaming place—Quantum of evidence necessary to bring such presumption into operation—Gaming Ordinance (Cap. 38), ss. 5, 7 and 8.

A Court should not draw the presumptions sanctioned by Sections 7 and 8 of the Gaming Ordinance when suspected premises have been raided on the authority of a search warrant under Section 5 unless the evidence led at the trial proves that the strict requirements of Section 5 had been duly complied with before the warrant issued.

per GRATIAEN J.—" It is not legitimate to assume that a search warrant had been regularly issued upon proper material, and to proceed from a presumption of regularity to apply the further statutory presumptions which the Gaming Ordinance creates under Sections 7 and 8 ".

THIS was an application to revise a judgment of the Magistrate's Court, Kurunegala.

H. V. Perera, K.C., with *S. Saravanamuttu* and *S. Sharvananda* for the petitioners.

V. G. B. Perera, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

October 9, 1951. GRATIAEN J.—

The petitioners have been convicted of offences of unlawful gaming punishable under Section 2 of the Gaming Ordinance. It is common ground that on December 28, 1950, they were playing a card game called " Baby " for stakes at an institution known as the " Rock View Club " in Kurunegala. This place was raided by Police Inspector Weerakoon on the authority of a search warrant purporting to have been issued earlier in the day by the Magistrate in terms of Section 5 of the Ordinance. It is not denied that the accused were engaged in playing " Baby " for stakes at the time of the raid. Their guilt therefore depends on whether the learned Magistrate was justified in holding upon the evidence that the so-called Club was on this occasion a " common gaming place " within the meaning of the Ordinance.

The evidence led at the trial against the petitioners was admittedly insufficient by itself to establish that the Club was a common gaming place. In that state of things, the convictions could only be justified if the statutory presumption created by the Ordinance applies to the case.

The search warrant upon the authority of which the inspector raided the premises was produced at the trial, but it seems to me that before a Court can decide that the presumption created by section 7 applied,

the preliminary proceedings leading up to the issue of the warrant should also have been produced and scrutinised. Section 7 gives rise to a presumption that a place is a common gaming place only if it has been " entered under the Ordinance "—i.e., if the strict requirements of section 5 have been duly complied with. I do not regard it as legitimate for a Court to assume that the search warrant had been regularly issued upon proper material, and to proceed from a presumption of regularity to apply the further statutory presumptions which the Ordinance creates under Sections 7 and 8. The learned Magistrate states in his judgment that the validity of the search warrant was not questioned by the defence in the lower Court. That might well be so, but this circumstance did not absolve the prosecution from its obligation to lead such evidence as was sufficient to bring the presumption, if relied on, into operation. I therefore quash the convictions and make order acquitting the petitioners.

Application allowed.