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*Present: Schneider J.*REX *v.* PAREED *et al.*664—*M. C. Colombo, 8,571.*

Gaming—Search warrant—Determination of authority—Reissue with endorsement—Validity—Ordinance No. 17 of 1889, s. 7.

Where a warrant issued under the Gaming Ordinance was once executed by search, its authority is exhausted.

Where such a warrant was reissued by a Magistrate with an endorsement, based upon a statement made by an Inspector of Police that gaming was continuing in the same place,—

Held, that such an endorsement does not operate to give it the force of a new warrant issued under section 7 of the Ordinance.

The insertion of a returnable date in regard to a warrant issued under the section cannot control the effect of the word "forthwith" in the warrant.

A PPEAL from a conviction by the Municipal Magistrate of Colombo.

Tisseverasinghe, for accused, appellants.

Crosette Tambyah, for Crown, respondent.

October 27, 1927. SCHNEIDER J.—

At the argument of these appeals it was agreed that the following were the facts:—Upon due information placed before him the Municipal Magistrate of Colombo rightly issued a warrant in the form A in the schedule to the Gaming Ordinance, No. 17 of 1889, to a Sub-Inspector of Police authorizing him "forthwith to enter and to search" a "place" mentioned therein. The only variations in the warrant from the form A are that under the signature of the Magistrate there appears the date 6.8.27, which is the date of the issue of the warrant, and at the bottom "Returnable 15.8.27." Acting upon this warrant the Sub-Inspector of Police in question entered into and searched the "place." Several persons were arrested and some money and playing cards were seized. A prosecution followed, and the warrant in question was produced at the trial on August 17. The result of that prosecution is of no consequence. But the endorsement on the back of the warrant, which at the date of that endorsement was in the hands of the Sub-Inspector of Police to whom it had been

issued, shows that this Sub-Inspector of Police had made an application to the Court before August 15. The endorsement is the following:—"This warrant has already been once executed. The Police (Sub-Inspector Schokman of Pettah) brings it to my notice that he has himself seen unlawful gaming still continuing on the same premises. I authorize a further search on the same warrant." This endorsement is signed by the Magistrate and bears date 12.8.27.

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Acting in these circumstances the Sub-Inspector of Police entered the place once again on August 15 and arrested twelve persons, some of whom are the appellants, and all of whom, he says, he found "gambling for a stake". He says he found in cash Rs. 7.13 scattered on the ground, a pack of cards, and a hanging lamp. The appellants are the 1st, 2nd, 5th, 6th, 7th, 8th, 11th, and 12th accused. The 3rd, 4th, 9th, and 10th, who are the remaining accused, were convicted upon pleas of guilty tendered by them. It was agreed that the conviction of the appellants by the Magistrate should be sustained or set aside, as it is held that the entry into the "place" was or was not under a warrant rightly issued under the provisions of section 7 of the Ordinance. Two distinct questions arise according to the view taken on the facts agreed upon. Was the warrant of August 6 exhausted by the search of that date? If it was, did the endorsement operate as a new warrant issued under section 7 of the Ordinance. The argument for the appellants was that the warrant was spent by the entry into the "place" and the search made upon its authority, because it was the only entry and search the warrant authorized, and next, that being so, even if the endorsement be regarded as the issue of a fresh warrant, it was not issued on the Magistrate "being satisfied upon written information on oath," as required by section 7 of the Ordinance. The question before me was discussed before the Magistrate, and he held that the warrant was in force till August 15, which was the date endorsed upon it as the returnable date. I am unable to take the same view.

The power to issue such a search warrant as is contemplated by section 7 is derived solely from the provisions of that section—not under section 9 of the Criminal Procedure Code as Crown Counsel on behalf of the respondent contended. It appears to me that the language of section 9 considered in the light of the provisions in sections 68, 70, and 72 indicates clearly that a search in the nature of that provided for in section 7 of the Gaming Ordinance does not come within the provisions of the Criminal Procedure Code, which contemplate only warrants issued for the purposes indicated in sections 68, 70, and 72, which are different from the purpose of a warrant under section 7 of the Gaming Ordinance. A consideration of the provisions of the Gaming

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Ordinance relating to the arrest of persons and the search of persons and places will indicate that the intention underlying the provisions is prompt action. Certain public officers are given power to arrest, search, and produce before a Court persons found gaming, and to seize and take before a Court appliances for gaming (section 6). A Magistrate is given power to issue a warrant authorizing the doing of those things by "any person named therein" (section 7) or himself to do those things (section 8).

Section 7 enacts that the warrant shall be in the form A. That form is a substantive part of the Ordinance. A Magistrate does not possess the power to vary it. The warrant is to "authorize and require" the person named "forthwith to enter and to search the place". The form provides for the signature and the designation of the public officer issuing it, but there is no provision for a date appearing on it. There can be no objection to the insertion of the date of issue, as the insertion of that date will have no bearing upon the word "forthwith" appearing in the body of the warrant. A Magistrate does not possess the power to give an extended interpretation to the word "forthwith" by anything he may insert on the warrant at the time he issues it. "Forthwith" should be taken to mean as soon as possible. Within what time such a warrant should be executed it is not possible to determine at the time it is issued. It will depend on circumstances, which can only be ascertained after it has been issued and an attempt made to execute it. I cannot, therefore, accept the Magistrate's view that the warrant in this instance was to be considered as in force till August 15 simply because that date was inserted at the bottom of the warrant as the date for its return. It seems to me that it is a fallacy to say, even in regard to an ordinary warrant, that it is in force until the returnable date. It is of the very nature of the authority granted by any warrant that the warrant will cease to be in force when the act authorized by it has been done, which should be before the date fixed for its return to the Court. When the returnable date arrives ordinarily, a warrant must be returned to the Court whether it is executed or not. Upon such return the warrant ceases to be in force. It is, of course, open to a Court to extend the date of return even after the warrant has been returned to the Court. There are two sections in the Criminal Procedure Code which are of some assistance in the consideration of this point, although, in my opinion, those sections of the Criminal Procedure Code have no application whatever to warrants issued under the provisions of the Gaming Ordinance. Section 73 of the Criminal Procedure Code enacts that the provisions of section 50 of the Code shall apply to search warrants issued under Chapter VI. of the Criminal Procedure Code. Section 50 (2) provides that a warrant remains in force until it is cancelled by the Court which

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issued it, or until it is executed. These provisions seem to embody the ordinary principle that a warrant ceases to be in force, either when it is cancelled by a Court for some reason, or it is executed, or by the effluxion of time fixed by a Court for its duration, when it should be returned to the Court. There can be no objection to the insertion of a returnable date in regard to a warrant issued under section 7 of the Gaming Ordinance, but the insertion of such a date cannot control the effect of the word "forthwith". The evidence in this case proves that the warrant in question was executed on August 6 by a search made under its authority of the place, and the seizure of money and cards, and by the production before the Court of the persons found gaming. The authority contained in the warrant was exhausted by that entry on August 6, and although the returnable date had not arrived the warrant was spent. If, therefore, the entry into the place, and the search, on August 15 be regarded as upon the original warrant issued on August 6, it was an entry and search not made in pursuance of a warrant issued under section 7. If on the other hand, it be regarded to have been made under the authority of the endorsement made on August 12 by the Magistrate on the back of the warrant regarding that endorsement as being tantamount to the issue of a fresh warrant, the entry and search cannot even then be regarded as having been made in pursuance of a warrant issued under section 7. Before such a fresh warrant could have been issued the Magistrate should "have been satisfied upon written information on oath" before he issued it. The only information he acted upon in making that endorsement is the statement made by the Sub-Inspector to him that he had seen gaming still continuing in the place. That information was not on oath. The endorsement cannot be regarded as a fresh warrant issued under the provisions of section 7.

The appeals, therefore, must be allowed and the accused acquitted.

Appeal allowed.