Present: Bertram C.J. 1920.

POLICE SERGEANT, TANGALLA, *v.* PORTHENIS *et al.*

669–673—P. C. Tangalla, 10,177.

Unlawful gaming—Search warrant—Ordinance No. 17 of 1889, s. 7.

For the purpose of obtaining a warrant under section 7 of the Gaming Ordinance, No. 17 of 1889, general evidence to the effect that the informant has reason to believe that gaming is going on upon the premises is not sufficient.

Where a Police Sergeant swore an affidavit to the effect (1) that he had received credible information and had reason to believe that the offence of public gaming was being carried on, and (2) that he had watched the house for the past seven days and had found people habitually congregating there for the purpose of gaming for stakes, but did not explain why he formed that inference,—

Held, that the issue of the search warrant under section 7 was irregular.

J. S. Jayawardene, for the appellants.

September 10, 1920. BERTRAM C.J.—

In deciding this case the Magistrate does not seem to have had the advantage of having before him the various decisions which this Court has given on the construction of section 7 of the Gaming Ordinance, No. 17 of 1889. The Magistrate says, in regard to the affidavit which was sworn for the purpose of obtaining a warrant, "In this statement he," that is, the Police Sergeant, "gave the grounds for believing that unlawful gaming was being carried on, and I fail to see what further evidence could have been adduced." The grounds given were two: firstly, that he had received credible information, and had reason to believe, that the offence of public gaming was being carried on; and, secondly, that he had watched the house for the past seven days and had found people habitually congregating there for the purpose of gaming for stakes.

The authorities on this subject commence with *Anderson v. Saidnubai*,[1] and the subsequent cases are *Keegel v. James Appu*,[2] *Lewispillai v. Chelliah*,[3] *The Sub-Inspector of Police, Panadure, v. Charles*,[4] *Seyne v. Podi Sinno*,[5] and *Silva v. Silva*.[6] As the result of all these

[1] *(1895) 2 N. L. R. 78.*
[2] *(1897) 3 N. L. R. 76.*
[3] *(1915) Bal., Notes of Cases 54.*
[4] *(1916) 3 C. W. R. 98.*
[5] *(1917) 4 C. W. R. 130.*
[6] *(1920) 22 N. L. R. 27.*

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BERTRAM C.J.

Police Sergeant, Tangalla, v. Porthenis

authorities, it appears to be established that the very strictest construction must be given to the provisions of section 7 with regard to the issue of a search warrant. The result of the issue of a search warrant is so drastic, that this Court has come to the conclusion that special care should be taken to see that all the conditions attaching to the issue of a warrant are fully complied with. If, upon a place being entered on a search warrant, any instrument or appliances for gaming are found, and those included a pack of cards, then the place is presumably a common gaming place. Any person found there or found escaping therefrom, or found in possession of any instrument or appliance for gaming, is deemed to be *primâ facie* guilty of unlawful gaming, and all persons found on the premises are liable to arrest without warrant. The Courts, therefore, have declared that the Magistrate must be satisfied upon sufficient *primâ facie* evidence. It is not enough that general evidence should be given him that the informant has reason to believe that gaming is going on upon the premises. That disposes of the sufficiency of the first ground on which the warrant was sought in this case.

With regard to the second ground, all that the Police Sergeant said was that for some days past he found people congregating, and he adds "for the purpose of gaming for stakes." He does not explain why he formed that inference. Nor did the Magistrate make any further inquiry as he might have done under the section. It seems to me, therefore, that the issue of the warrant cannot be justified. We have, therefore, to look to see whether outside the warrant—that is, outside the presumption which arises under section 7—there is sufficient evidence that this place was kept on the occasion when it was raided as a common gaming house. What the police found on entering were eight persons sitting in a ring playing cards. There is only one circumstance which excites suspicion. Although most of those persons were of the status of proctors' clerks, there was in the assembly one Sanitary Board cooly. Is that enough to show that the place was a common gaming house, that is to say, is it enough to show that it was open to all and sundry for the purpose of gaming? I do not think so. The facts are perfectly consistent with the entry being restricted to those who were selected as being safe and discreet. The fact that one of them was a cooly and the others were proctors' clerks is no doubt a peculiar circumstance. But is this circumstance alone sufficient to show that the public had access to the house on the occasion of the gaming? It seems to me that outside the presumption there is not sufficient evidence to justify the conviction, which must, therefore, be quashed.

Conviction quashed.