1939

*Present :* **Hearne J.**

SOMAPALA *et al. v.* RAJAPAKSE.

*843-5—M. C. Hatton, 9,973.*

*Unlawful gaming—Presumption raised by search warrant—No evidence as to information on which warrant was issued—Gaming Ordinance (Cap. 38).*

**Where a conviction for unlawful gaming rested upon the presumption raised by the issue of a search warrant and no evidence was led at the trial as to the information on which the warrant was issued,—**

*Held,* that the conviction was bad.

***The Sub-Inspector of Police, Panadure v. Charles et al. (2 C. W. R. 98)* followed.**

APPEAL from a conviction by the Magistrate of Hatton.

*S. P. Wijewickreme,* for accused, appellants.

No appearance for complainant, respondent.

December 12, 1939. HEARNE J.—

The appellant was convicted of unlawful gaming under section 2 of Cap. 38, Vol. 1 (Legislative Enactments). He was not convicted on the strength of the evidence adduced. Indeed an analysis of that evidence, in particular the divergence between the testimony of prosecution witnesses as to where the gaming took place, might easily have led the Magistrate to conclude that the offence charged had not been proved. He was convicted because "the raid was carried out on a search warrant, the presumptions created by the Gaming Ordinance arose", and the appellant "had not discharged the burden cast upon him".

[1] *24 Beec. 405.*

It was held in *the Sub-Inspector of Police, Panadure v. Charles et al.*[1] that where the conviction of an accused rested upon the presumption raised by the issue of a warrant and the warrant was not produced at the trial and no evidence was led as to the information on which the warrant was issued, the conviction was bad.

In this case no evidence was led that the warrant had been issued on testimony which there was reason to believe, the accused could not challenge such testimony, and I therefore allow the appeal.

In exercise of the revisional powers of this Court I also quash the convictions of the two applicants in the proceedings numbered 526.

*Conviction quashed.*

[1] *2 C. W. R. 98.*