

1949

Present: **Windham J.**

CRUSE, Appellant, *and* S. I. POLICE, MODERA,
Respondent

S. C. 917—M. C. Colombo, 4,260/D

Betting on Horse-racing Ordinance (Cap. 36)—Sections 15 (1), 16, 17—Search warrant—Power of Magistrate to extend returnable date—Fresh information on oath not necessary—Criminal Procedure Code (Cap. 16), S. 68 (2).

Section 15 (1) of the Betting on Horse-racing Ordinance permits a Magistrate who has issued a search warrant under its provisions to extend its returnable date for a reasonable number of days on the same information on which the warrant had originally been granted.

A PPEAL from a judgment of the Magistrate's Court, Colombo.

M. M. Kumarakulasingham, for the accused appellant.

J. G. T. Weeraratne, Crown Counsel, for the Attorney-General.

October 24, 1949. WINDHAM J.—

The accused-appellant appeals against his conviction of two betting offences contrary to sections 17 and 16 of the Betting on Horse-racing Ordinance, namely, unlawful betting contrary to section 17, and keeping premises for unlawful betting on horse-racing contrary to section 16. The accused gave no evidence and the learned Magistrate, in finding these charges proved against him, relied on the presumption, raised by

sections 16 and 17 of the Ordinance as amended by the Betting on Horse-racing (Amending) Ordinance, No. 55 of 1948. These sections place the burden upon the accused of proving that the premises were not kept or used for the purpose of unlawful betting on horse-racing, and that if the premises were kept or used, that he is not guilty of the offence of unlawful betting. The presumption raised by section 16, which will likewise cause the presumption of section 17 to arise, arises only where the premises have been entered under the authority of a search warrant issued by a Magistrate under section 15 (1) of the Ordinance. The search warrant in the present case was issued by a Magistrate on certain Police information and it was made returnable on the 24th May; that is to say, the duration was stated to be from the 19th May, on which date it was issued, until the 24th May. Later, this same Magistrate extended the date for the return of the warrant until the 31st May. This he did without any further information being afforded to him. Under section 68 (2) of the Criminal Procedure Code, "such warrant shall remain in force for a reasonable number of days to be specified in the warrant". It has not been contended that the period from the 19th May to the 31st May was not a reasonable period, but it is contended for the appellant that the extension of the warrant from the 24th May to the 31st May was illegal because the Magistrate had no power to extend it without further information being afforded to him on which he could extend it. This contention, in my view, cannot prevail. Section 15 (1) of the Betting on Horse-racing Ordinance, under which the warrant was issued, provides that where the Magistrate is satisfied by information on oath that there is reason to suspect any offence against the Ordinance being committed, he can grant a search warrant. A reasonable interpretation of this section, to my mind, would permit an extension of the date until which such a warrant was to be in force, and, moreover, the section does not require that any extended date shall require further information on oath. Because the Magistrate was satisfied by the information on oath that there was reason to suspect that an offence was being committed, he granted the warrant over a certain period; but there is no reason to presume that the period for which he originally granted it was the maximum period for which the information on oath would justify his extending the warrant. Accordingly, in my view, the extension to the 31st May was justified by section 15 (1) and was properly made on the same information on which the warrant had originally been made returnable on the 24th May.

The search of the premises in question was made between the 24th May and the 31st May in the present case, and for the reasons given, it was a search properly made under the authority of a warrant covering that period. The learned Magistrate was, therefore, justified in holding that the burden placed upon the accused by sections 16 and 17 of the Ordinance as amended had arisen; and since the accused gave or called no evidence to rebut the presumption, the learned Magistrate was justified in convicting him of the offences charged.

The appeal is accordingly dismissed.

Appeal dismissed.