

1937

Present : Soertsz J.

HALALDEEN *v.* YOTHAN.

332—P. C. Gampola, 41,359.

Search warrant—Description of premises to be searched—Sufficient description necessary—Evidence given at the trial to determine the sufficiency of description—Gaming Ordinance, No. 17 of 1889, s. 7.

In an application for a search warrant under section 7 of the Gaming Ordinance a sufficient description of the premises to be searched would satisfy the requirements of the Ordinance.

It is permissible to examine the evidence given before the issue of the search warrant and at the trial to determine whether there has been a sufficient description of the place to be searched and also whether the place searched was the place intended and whether that intention has been adequately given effect to by the description given in the warrant.

APPEAL from an acquittal by the Police Magistrate of Gampola.

Illangakoon, K.C., Attorney-General (with him *Pulle, C. C.*), for complainant, appellant.

Colvin R. de Silva, for accused, respondent.

Cur. adv. vult.

September 29, 1937. SOERTSZ J.—

In this case the learned Police Magistrate found that on the search warrant issued by him under section 7 (1) of Ordinance No. 17 of 1889, the Police raided the place in which according to the information given on oath by the informants, unlawful gaming was being carried on habitually, but he nevertheless held that the presumption created by section 9 of the Ordinance did not arise because the land on which this gaming took place was described in the search warrant as Jayakoddy estate *alias* Tuttirihena, whereas, in point of fact, the particular portion of land involved was lot D of Diulapitiya and, therefore the correct description should have been Jayakoddy estate *alias* Diulapitiya.

Assuming for the moment that the Magistrate's finding is right that this portion of land is not known as Tuttirihena, I am unable to agree with the Magistrate that that fact invalidated the search warrant in this

case to the extent of avoiding the presumption created by section 9. The land to be searched is described in the warrant not only as "Jayakoddy estate *alias* Tuttirihena and in a shed on the said estate", but also as situated in the village of Balagalla and on the border of Wewagedera and as owned by Lionel Jayakoddy. It is beyond question that the portion of land raided is a portion of Jayakoddy estate situated in Balagalla and on the border of Wewagedera and belongs to Lionel Jayakoddy.

In my view, therefore, although on the finding of the Magistrate the use of the name Tuttirihena as an *alias* for this piece of land is inaccurate it is nothing more than innocuous *falsa descriptio* and the land of which the warrant authorised a search is sufficiently identified by the other particulars contained in the warrant. Section 7 provides that the warrant should be in the form A given in the schedule to the Ordinance. An examination of that form shows that no stereotyped description of the place to be searched is required. All that appears necessary is a sufficient description. I am of opinion that when this question whether there has been a sufficient description of the place arises, it is permissible to examine the evidence given before the issue of the search warrant and at the trial in order to answer that question and the other question, namely, whether the place searched has been adequately given effect to by the description given of the place in the warrant. Of course the mere intention that the search should be of a certain place will not suffice, if, in fact, the description employed is erroneous in that it clearly applies to some other place, and not to the place intended, or does not apply with reasonable certainty to the place intended.

In this case the evidence given before the Magistrate directed a search warrant to issue as well as the evidence at the trial clearly establishes, in my view, that the place sought to be searched has been sufficiently described despite the use of the alternative name of Tuttirihena and that it was the place described in the warrant that was searched. So far I have dealt with this question on the assumption that the Magistrate's finding is correct that this portion of land is not correctly described as Tuttirihena. But, on the evidence, I am satisfied that although this portion of land was originally Diulapitiya, after it was acquired by the owners of Tuttirihena, it became incorporated in Tuttirihena, and was itself, generally, referred to as Tuttirihena. In that view of the matter, there is not even a *falsa descriptio* when the words *alias* Tuttirihena are used as an alternative description.

On this finding by me on this question, it does not become necessary for me to consider the other question raised, namely, whether the Magistrate was right when he found on the evidence before him, that there was no proof of specific acts of gambling against the accused or any of them.

I set aside the order of the Magistrate and remit the case to him so that he may examine the evidence and record his findings on the basis that the presumption created by section 9 of the Ordinance arose.

The parties may lead any further evidence they desire in proof or in refutation of the charge.

Sent back.