1954 *Present :* **Pulle, J.**

W. D. WILLIAM APPUHAMY, Appellant, *and* S. I. POLICE, WATTEGAMA, Respondent

S. C. 331—M. C. Panwila, 8,015

Gaming Ordinance (Cap. 38)—Search warrant to enter a hotel—Conditions necessary for issue thereof—Sections 7, 21 (b).

A search warrant authorising entry into a hotel is not valid for the purpose of furnishing presumptive proof of unlawful gaming in terms of section 7 of the Gaming Ordinance unless the informant, upon whose evidence it is issued, expressly states that the hotel is unlicensed and, therefore, not protected by section 21 (b) of the Gaming Ordinance.

APPEAL from a judgment of the Magistrate's Court, Panwila.

Walter Jayawardene, for the accused-appellant.

V. S. A. Pullenayegum, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

[1] *(1914) 18 N. L. R. 117.* [2] *(1951) 54 N. L. R. 350.*

[3] *(1955) 57 N. L. R. 436.*

August 23, 1954. PULLE, J.—

The appellant was one out of forty persons who were charged with having on the 3rd January, 1954, committed the offence of unlawful gaming. He was convicted and fined Rs. 25. Of the points of law certified in the petition of appeal only one was pressed before me. It was to the effect that the search warrant on which the premises were entered was improperly issued and that, therefore, no presumption of guilt could arise under section 7 of the Gaming Ordinance (Cap. 38).

The submission questioning the validity of the search warrant is based on section 21 the relevant portion of which reads as follows :—

" Nothing in this Ordinance contained shall be held to apply to or in any way to affect—

(*b*) any hotel duly licensed under any Ordinance or Ordinances for the time being in force regulating the licensing of hotels, so long as the licence of such hotel continues in force. "

The search warrant authorised the entry into and search of " Amarasiri " Hotel, No. 11, Matale Road, Wattegama, and it was based on the evidence of the informant who stated,

" I know Amarasiri Hotel bearing No. 11, Matale Road, Wattegama. This hotel is run by Podimahataya *alias* William Appuhamy. "

The argument for the appellant was that, in view of the express exclusion of hotels of the description mentioned in paragraph (*b*) of section 21 from the purview of the Ordinance, it was the duty of the learned Magistrate to have satisfied himself before issuing the warrant that what was described by the informant as a hotel was not protected against entry. In other words, the evidence of the informant immediately raised the question whether or not a warrant could issue and in the absence of evidence that the hotel was not protected the issue of the warrant could not be justified.

In my opinion the submission on behalf of the appellant is right. I do not for a moment suggest that whenever it is alleged that any place is used as a common gaming place a duty is cast on the Magistrate to satisfy himself upon evidence of a negative character that it is not exempted from entry. Where, however, there is evidence which would fairly raise the issue whether the place is exempted or not, the matter calls for further inquiry and before a warrant is issued the Magistrate should satisfy himself that the place which under certain conditions may be exempt from search does not in fact enjoy that immunity. It seems to me that if a contrary view is taken the protection afforded by section 21 against the most vexatious consequences of the search of a hotel, club or resthouse would in a large measure be illusory.

In fairness to learned Crown Counsel I must say that he did not dispute the reasonableness of the view which I have expressed. He limited himself to the argument that although the informant described the place as a " hotel " that word should not be understood in any sense

covered by the meaning of the word " hotel " in paragraph (*b*) of section 21. There might be substance in this argument, if the informant's evidence taken as a whole indicated that the word " hotel " was just a name and nothing more in order to fix the place where unlawful gaming was carried on. It is clear he meant more for he said, " This hotel is run by Podimahataya *alias* William Appuhamy ".

Had the appellant been charged with keeping a common gaming place it is possible that even without the aid of any presumption his guilt could have been established. His conviction for unlawful gaming, however, can only be justified on the presumption under section 7 and as it cannot be called in aid for the reasons I have given, I set aside the conviction and sentence and acquit the appellant.

Appeal allowed.