NUGAWELA *v.* SARDINA *et al.*

1898.
March 7.

P. C., Kegalla, 17,916.

Gaming—Search warrant—Material for its issue—Instruments for gaming being found at the place searched, and flight of people therefrom—Presumption under s. 10 of Ordinance No. 17 of 1889.

Where a search warrant to search a place under section 7 of "The Gaming Ordinance, 1889," was issued on the bare statement, on oath, of a headman that he had "good reason to believe that the "place was kept as a common gaming place"—*Held*, that the material for the issue of the warrant was insufficient, and the fact that instruments for gaming were found in the place, and that persons were seen to escape therefrom on its being entered on such warrant, did not give rise to the presumption under section 10 as to the place being a common gaming place.

IN this case the accused appealed from the following judgment of the Police Magistrate of Kegalla :—

The accused, thirteen in number, are charged with unlawfully gaming in a house occupied by the first, second, third, fourth, fifth, and eighth accused. The fourteenth accused pleaded guilty to the charge. The house was entered under the provisions of Ordinance No. 17 of 1889 by the complainant armed with a warrant issued by this Court. It has been urged by the counsel for the defendants that that warrant was issued on insufficient grounds, and my attention has been called to the judgment of the Supreme Court in P. C., Matara, 699. I consider that the warrant was issued on sufficient grounds. The Court considers the written information on affirmation of the Ratemahatmaya sufficient ground for issuing the warrant. I cannot gather from the judgment quoted that more is required. It has been proved to my satisfaction that the accused were all in the house playing with dice and betting on the throw. A bamboo dice box, dice, and some copper money and a rupee were found in the maduwa. I do not believe the evidence for the defence. I do not believe that the first seven accused were arrested in their beds and assaulted and ill-treated in the manner described by them.

I find the accused guilty, &c. .....

W. Pereira, for appellants, cited judgment in case No. 699, P. C., Matara (*3 N. L. R. 76*), and contended that, inasmuch as, apart from the presumption under section 10 of the Ordinance, the Police Magistrate did not hold that the place where the accused were gaming was a common gaming place, the accused were entitled to be acquitted.

Loos, C. C., for respondent.

7th March, 1898. LAWRIE, J.—

These appellants were convicted of unlawful gaming and were sentenced to a fine of Rs. 3·50. The appeal is on the point of law that the warrant issued under the 7th section of the Ordinance No. 17 of 1889 was issued on insufficient evidence, and therefore

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that the arrest of the accused in the place and their escaping therefrom did not give rise to the presumption that they had unlawfully gamed. The warrant was issued on a written statement, on oath, by a headman that he had good reason to believe that the place was kept as a common gaming place.

In my opinion that was not information on which the Magistrate could be satisfied that there was good reason to believe that the place was kept as a common gaming place.

The information must be a statement of facts from which the Magistrate may reasonably believe that a place is a common gaming place.

It is not enough that a headman comes before the Magistrate and swears, " I believe the place is a common gaming place."

The headman's belief is of no consequence. He has to furnish facts which the Magistrate can believe, and from which he can draw an inference. Here no facts were furnished. The warrant ought not to have been issued.

In the present case, however, the convictions seem to me to rest on the evidence of eye-witnesses of the acts of the accused. The conviction does not rest on the presumption.

I affirm.