[In Revision.]

1927.

Present: Lyall Grant J.

PARSON *v.* KANDIAH *et al.*

P. C. Bandarawela, 20,553.

Search warrant—Unlawful gaming—Issue of warrant—Written information not signed—Ordinance No. 17 of 1889, s. 7.

Where a search warrant was issued under the Gaming Ordinance upon information reduced to writing by the Police Magistrate but not signed by the informant,—

Held, that the issue of the search warrant was irregular.

APPLICATION to revise a conviction by the Police Magistrate of Bandarawela.

Croos DaBrera, for petitioner.

June 20, 1927. Lyall Grant J.—

This is an application in revision from a conviction for unlawful gaming. A search warrant was issued for the search of a certain boutique, and when the boutique was searched the police found four persons playing cards. The Magistrate says that he was satisfied that the search warrant was rightly issued and that the first accused's boutique was on the occasion of the raid a common gaming place and that cards were being played for money.

The only evidence that cards were being played for money is that of the Police Constable, who says that when he arrived at the boutique he heard the counting of coins, heard a man asking for " buruah " and heard two other voices taking the pack, and that when the Police

entered they found a pack of cards in first accused's hand and cigarette tin with 45 cents beside him. He says there was also other money, 55 cents, but he does not say where it was found.

Certain objections to this conviction have been taken in revision. It is submitted, in the first place, that the search warrant is a bad one, inasmuch as the information upon which it is founded is not written information in the sense of section 7 of the Gaming Ordinance, 1889. Bertram C.J. said in the case of *Police Sergeant, Tangalla v. Porthenis* [1] that the result of the issue of a search warrant is so drastic under the Ordinance that this Court has come to the conclusion that special care should be taken to see that all conditions attaching to the issue of a warrant are fully complied with. The certified copy of the information which is supplied to the Court in this case shows that the information given was oral and not written. No doubt it would have been sufficient in order to convert this oral information into written information if the information, which was given on affirmation, had been read over to the informant and signed by him, but there is no record that this was done. I cannot, therefore, hold that the Court in issuing the search warrant proceeded upon written information, and unless the case comes under the exception mentioned in section 8 of the Ordinance, the issue of the warrant must be held to be irregular. Section 8 provides that in certain cases where haste is required a Magistrate may dispense with the delay necessary to reduce the information from writing, and may in such circumstances himself proceed to make the search. It is quite clear, however, that section 8 is not applicable to the present case. The Magistrate has not made the search, nor is there anything to show that there was any need for haste. As the search warrant is irregular, it follows that the drastic provisions of section 9 of the Ordinance do not apply to the present case, and accordingly there is no evidence against any other accused except the first accused.

No specific act of betting is spoken of by the prosecution witnesses. The utmost, I think, that one can assume from the evidence is that gambling was about to commence, and I am doubtful whether on the evidence it is quite safe to assume this. Another point was raised, viz., that the place where this game of cards took place was not a public place. On this point the facts are very similar to those of the case of *Sub-Inspector of Police, Dandagamuwa v. Gan-Arachchy.*[2] In that case the game of cards took place on the outer verandah of the first accused's boutique. In the present case the gambling took place either in the boutique itself or as is alleged by the defence in the upper room of the boutique. On both occasions the gambling was after 7 P.M., in the evening, when in all probability no business was actually being carried on in the boutique. There is

[1] *22 N. L. R. 163.*

[2] *1 Times of Ceylon L. R. 106*

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really nothing to show that the persons engaged in playing cards were not friends of the proprietor and that the game was not a private one. The only question which arises is whether the boutique on the occasion was a place to which the public has access. In the case to which I have referred Mr. Justice Sampayo said that a boutique was not a public place on the ground that the proprietor or manager of the boutique could keep out any particular person whom he wished. A similar conclusion was arrived at by Mr. Justice Shaw in the case of *Wijesuriya v. Abeysekera.*[1] In that case the question arose whether the accused was drunk in a public place, and it was held that no definition of a public place is given in the Penal Code or in any general Interpretation Ordinance. That case is probably not so much in point as the one decided by Mr. Justice Sampayo, but the latter case seems to me to be on all fours with the present one, and on that authority I think the accused in this case ought to have been acquitted. The conviction is quashed.

[1] *21 N. L. R. 159.*