

1958

Present: K. D. de Silva, J.

CYRIL DE SILVA and others, Appellants, and S. I. AZEEZ (Inspector of Police)

S. C. 185, with Application 136—M. C. Colombo South, 85,869

Unlawful gaming—Search warrant issued under repealed Ordinance—Validity—Revised Edition of the Legislative Enactments Ordinance (Cap. 1), s. 19 (3)—Gaming Ordinance (Cap. 38), ss. 2, 7.

A search warrant issued in terms of the repealed Ordinance No. 17 of 1889 has no legal effect and cannot be taken into consideration in a prosecution for unlawful gaming under the Gaming Ordinance (Cap. 38 of the Revised Edition of the Legislative Enactments).

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

C. S. Barr Kumarakulasinghe, with *G. L. L. de Silva*, for the accused-appellants.

A. M. Coomaraswamy, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

September 8, 1958. K. D. DE SILVA, J.—

This appeal and the connected application in revision result from a conviction under section 2 of the Gaming Ordinance (Cap. 38) (hereinafter referred to as the Ordinance). On December 22, 1957, Sub-Inspector

Rajapakse of the Mt. Lavinia Police placed before the Magistrate, Colombo South, written information on oath to the effect that premises No. 515, Galle Road, Mt. Lavinia, known as the "Mount Sports Club" was being kept as a common gaming place and obtained the search warrant P1. The same day the Sub-Inspector in the company of other Police Officers watched the premises from outside and observed about fifteen to twenty persons playing a game called "Baby" with cards for money stakes, there. He then entered the building, disclosed his identity and explained the purpose of his visit and also produced the search warrant from his pocket. He took charge of the productions and arrested sixteen persons who had participated in the game of cards. The appellants are fourteen of those persons arrested. Subsequently he filed a plaint against all the sixteen persons arrested by him. On being charged under section 2 of the Ordinance the appellants pleaded not guilty while two others pleaded guilty to the charge. After trial the Magistrate convicted the appellants and imposed a fine of Rs. 25 on each. The principal question which arises on this appeal relates to the validity of the search warrant P1. The learned Magistrate held, *inter alia*, that the appellants had failed to rebut the presumption which arose under section 7 of the Ordinance. It was contended on behalf of the appellant both here and in the court below that no presumption arose under section 7 as the search warrant in question was irregular on the face of it. This search warrant has been filled up on a printed form. The material part of it is as follows ➤ ➤

" This is to authorise and require you forthwith to enter and search No 515 Galle Road, Mt. Lavinia—the Mt. Sports Club and to exercise all and singular the powers conferred upon you by this Warrant and by the 7th section of the Ordinance No. 17 of 1889. "

There is no reference to Cap. 38 in this document. Clearly a printed form meant to be used under Ordinance No. 17 of 1889 has been utilized. That Ordinance was amended by Ordinance No. 37 of 1917. In the Revised Edition of the Legislative Enactments which came into force on the 30th day of June 1938 the Gaming Ordinance was revised and the sections were renumbered. That Revised Edition of the Legislative Enactments came into being under the provisions of the Legislative Enactments Ordinance (Cap. 1). Sub-section 3 of section 10 of that Ordinance provided as follows :—

- (3) From the date appointed in such proclamation the revised edition shall be deemed to be and shall be without any question whatsoever in all Courts of Justice and for all purposes whatsoever the sole and only proper Statute Book of Ceylon in respect of the legislative enactments therein contained and shall be substituted for, firstly, the revised edition of the legislative enactments of Ceylon in force immediately before the date appointed in such proclamation and secondly for all Ordinances passed between the thirty-first day of December, nineteen hundred and twenty-three, and the thirty-first day of December, nineteen hundred

and thirty-seven, or such later date as the Governor may fix under section 2 ; and the legislative enactments firstly and secondly herein referred to except such legislative enactments as may be omitted under section 4 shall be repealed from that date.

In terms of this sub-section, on the Revised Edition coming into force, the Gaming Ordinance No. 17 of 1889 as amended by Ordinance No. 37 of 1917 stood repealed and the Gaming Ordinance (Cap. 38) took its place. Therefore no proceedings can be had under the repealed Ordinance. The search warrant P1 on the face of it has been issued under the repealed Ordinance. Consequently, it has no legal effect. The Magistrate has therefore erred in holding that a presumption of guilt arose under section 7. The search warrant P1 cannot be taken into consideration in deciding the case against the appellants. Once the search warrant is eliminated from the proceedings the other evidence in the case is quite insufficient to support the charge of unlawful gaming.

I would therefore set aside the convictions of the appellants and the fines imposed on them and allow the appeal and the application in revision.

Appeal allowed.
