

1928.

Present : Garvin J.

WEERAKOON v. FERNANDO.

750—P. C. Kurunegala, 3,289.

Search warrant—Execution without delay—Endorsement of date—Meaning of the word “forthwith”—Ordinance No. 17 of 1889. s. 7.

A search warrant issued under section 7 of the Gaming Ordinance must be executed forthwith, *i.e.*, within a period reasonable under the circumstances, and without any delay that can be reasonably avoided.

It is not within the power of a Magistrate to attach a special meaning to the word “forthwith” by means of an endorsement making the warrant returnable on a particular day.

*Gunasekere v. Arsecularatne*¹ not followed.

A PPEAL from a conviction by the Police Magistrate of Kurunegala.

H. V. Perera, for appellant.

Illangakoon, C.C., for the Crown.

February 15, 1928. GARVIN J.—

This is an appeal by a number of persons who have been convicted of the offence of unlawful gaming. It is alleged that they were found in certain premises which had been entered by the Police, who in making that entry purported to act under a search warrant issued by the Police Magistrate. It is urged that the evidence in this case, regarded entirely apart from the special presumptions which the law permits the Court to draw in a case in which a common gaming place has been entered in pursuance of a search warrant under section 7, does not establish as against each of these accused that they did such act or acts as would justify the inference that they individually were committing the offence of unlawful gaming. This contention, I think, must be admitted. But if the presumptions to which I have referred can be called in aid, then it is equally clear that the judgment of conviction entered in this case must be sustained. It is urged, however, that in the circumstances of this case, these presumptions do not arise. In short, the contention of Counsel is that this search was not effected “forthwith” as directed in the warrant, and cannot therefore be regarded as an entry authorized by a warrant issued under the provisions of section 7 of

¹ (1924) 26 N. L. R. 67.

the Gaming Ordinance. The warrant under which this entry purports to have been made was issued on September 16. It is in all respects in accordance with the form A referred to in section 7, save only that there is entered in the margin the word "returnable" and underneath the date September 26, 1927. On the back of the warrant there is an endorsement "warrant not executed, beg for an extension till October 6, 1927." This endorsement is signed by the Inspector of Police, to whom the warrant was issued, and is dated September 26, 1927. This application was evidently granted, for we find upon the face of the warrant the entry "extended to October, 1927," signed by the Police Magistrate and dated September 26, 1927. A warrant issued by a Court ordinarily ceases to be of force when it is executed or when the time fixed by the Court for its execution has elapsed or when it is cancelled by the Court. The practice of endorsing upon warrants issued under the provisions of section 7 a date within which a return is to be made has doubtless had its origin in the practice which obtains in regard to other warrants issued under the provisions of the Criminal Procedure Code. But a warrant issued under section 7 stands on a different footing, for the form prescribed by the law in which it is to be issued expressly states that the person to whom it is issued is "authorized and required forthwith to enter and search, &c." There is ample authority for the proposition that the word "forthwith" should be ordinarily construed as meaning as soon as is reasonably possible or without any delay which can possibly be avoided. The policy and intention of the law as manifested in section 7 and the kindred sections of Ordinance No. 17 of 1889 is that a warrant should be only issued when the Court is satisfied that a place "is kept or used as a common gaming place" and when issued must be acted on as soon as is reasonably possible. The authority is to enter forthwith a place believed to be kept or used as a common gaming place. It would be contrary to the policy and intention of the Legislature to permit such a warrant to be treated as an authority to enter a place at leisure, search it and all persons found there, and generally to exercise the large and inquisitorial powers conferred thereby because at the date of the issue of the warrant the place was believed to be a common gaming place. The whole character of the place may have changed in the interval. It may have passed into the occupation of others, who may at the time be using it in a perfectly legitimate way.

Nor can this warrant be treated as a fresh warrant issued on the date on which the Magistrate purported to "extend" it. On that date it was already ten days old, and no evidence was placed before the Magistrate to prove that the place was then being kept or used as a common gaming place.

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Now, there is nothing in the circumstances of this case to show that there was any reason why this warrant which was executed as far back as September 26, 1927, should have been left unexecuted till October 5. It is difficult under these circumstances to say that the warrant in this case has been executed "forthwith". In the case of *Gunasekere v. Arsekularatne*¹ the suggestion was made and accepted that the act of the Magistrate in fixing a returnable date must be regarded as an indication that it was the view of the Magistrate that if the warrant was executed within any time within that period it must be taken to have been executed forthwith. I do not agree with, and am not prepared to follow, that ruling. In the first place, there is nothing in the endorsement making the warrant returnable on a particular day to show that it was done deliberately by the Police Magistrate with due regard to the provisions of section 7 and with the intention of giving a special interpretation to the word "forthwith". In the next place, it is not within the power of the Magistrate to attach in advance by such an endorsement a special meaning to the word "forthwith," i.e., within a period reasonable under the circumstances, but without any delay that can possibly be avoided. For these reasons, I think that in this case the warrant cannot be regarded as executed forthwith. It must, therefore, be treated as a warrant that had expired, and the prosecution cannot claim the benefit of the special presumptions created by section 9.

The appeal is allowed and the accused acquitted.

Appeal allowed.



¹ (1924) 26 N. L. R. 67.