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"it, but is not willing to pay the price demanded, and when a "neighbour arranged to have it, he, with a view to thwart him, "induces defendants 1 and 2 to execute a registered sale-deed to "himself." In substance the finding is that exhibit A was contrived as a means of defrauding the third defendant and has the semblance of a sale or legal transaction. The Subordinate Judge has, it must be remembered, discredited appellant's evidence that he paid value for the sale-deed and found collusion between appellant on the one part and first and second defendants on the other. No property passes or is presumably intended to pass when there is in substance no legal transaction, but a mere semblance of it collusively contrived as an instrument of fraud. This second appeal fails and is dismissed with costs.

APPELLATE CRIMINAL

Before Mr. Justice Best.

1894. August 2.

QUEEN-EMPRESS

v.

JAGANNAYAKULU AND OTHERS.*

Towns Nuisanses Act (Madras)—Act III of 1889, *s.* 3—*Common gaming house—Vacant unenclosed site.*

The accused were found gaming on a vacant site, the property of the seventh accused. The seventh accused was convicted under Towns Nuisances Act (Madras), ss. 6 and 7, and the other accused under s. 7.

Held, that the site in question was not a common gaming house, and that the convictions were accordingly wrong.

CASE referred for the orders of the High Court under section 438, Criminal Procedure Code, by H. T. Ross, Sessions Judge of Godavari.

The case was stated as follows:—

"The accused were convicted by the Court of First Instance under section 3, clause (10) of Act III of 1889, for being found gaming in a vacant site belonging to the seventh accused. The Appellate Court, finding that such private site was not a public

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* Criminal Revision Case No. 342 of 1894.

street, road, thoroughfare or place of public resort, and that section 3 of the Act could, therefore, not be applied to the case, altered the conviction to one under sections 6 and 7 of the Act as regards the seventh accused, the owner of the site, and to one under section 7 as regards the first accused, these being the only two who appealed out of the nine persons convicted by the Court of First Instance.

" These convictions under sections 6 and 7 are, in my opinion, bad in law. The essential point in both sections is that the place used should be a 'common gaming house.' This is not defined in Act III of 1889; but even taking the definition in Act III of 1888, this vacant site of the seventh accused cannot, on the evidence, be brought within the definition. There is no evidence that instruments of gaming are kept or used there for the profit of the owner, and the Appellate Court had no right to assume that such must be the case. It is in fact, simply a case, so far as the evidence goes, of a man and his friends playing a game of chance in his private place, just as one might play loo in one's own house, and it is ridiculous to call the place a 'common gaming house' in the circumstances."

Parties were not represented.

JUDGMENT.—The finding is that the "gaming" took place in a vacant site belonging to the seventh accused adjoining a public street.

The Deputy Magistrate held that this did not constitute an offence punishable under clause 10 of section 3 of Act No. III of 1889 (Madras), which makes punishable gambling or cock-fighting in any "public street, road, thoroughfare or place of public resort." In thus holding the Deputy Magistrate is no doubt right. But he proceeded to find the first and seventh accused (the only appellants in the case), respectively, guilty of offences punishable under sections 7 and 6 of the Act, the latter of which renders liable to punishment any person who "opens, keeps or uses or permits to be used any common gaming house," while the former makes punishable any person " found gaming or present for the purpose of gaming in a common gaming house." The Deputy Magistrate refers to the definition of " common gaming house" as contained in Madraas Act III of 1888, and, as it contains the word "place" holds it wide enough to include any "vacant site." It is clear that the word "place" in the definition in question must be read with

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the words immediately preceding, namely, "enclosure, room or place." It clearly means some "enclosed" place. Even assuming, therefore, that the definition in Act III of 1888 can be used for the purposes of Act III of 1889, the site in question cannot be held to be a "common gaming house."

All the convictions in both the Courts are set aside and the fines levied will be refunded.

APPELLATE CRIMINAL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Parker.

1894. August 8, 28.

QUEEN-EMPRESS

v.

PALAYATHAN.*

Abkari Act (Madras)—Act I of 1886, *s.* 43—*Default by persons bailed to appear before the Abkari Inspector—Procedure of magistrate.*

When an Abkari Inspector under Abkari Act, s. 43, forwards a bail bond to a magistrate in order that payment may be compelled of the penalty mentioned therein, the magistrate should call upon the person liable to appear and show cause against such order being made, and should otherwise observe the procedure prescribed in Criminal Procedure Code, s. 514.

CASE referred for the orders of the High Court under section 438 of the Criminal Procedure Code, by J. Thomson, District Magistrate of Chingleput, in reference No. 239 of 1894.

The case was stated as follows :—

"One Para Paliathan stood surety for one Munuswami Gramani charged with an offence under section 55 of the Abkari Act (I of 1886) and executed a bail bond before the police station-house officer in the sum of Rs. 25 for the appearance of the accused before the Inspector of Salt and Abkari Revenue, Conjeeveram Circle, whenever required. A summons issued by the Abkari Inspector for appearance on the 11th July 1893 was duly served on the accused, but was disobeyed. Three warrants were then issued for his arrest, but were returned unexecuted, the man having

* Criminal Revision Case No. 272 of 1894.