

## REVISIONAL CRIMINAL.

1895  
June 19.*Before Mr. Justice Aikman.*QUEEN-EMPRESS *v.* BHAWANI.*Act No. III of 1867 (Gambling Act), section 6 "Instrument of gaming"  
- Cowries.*

*Held* that cowries are not "instruments of gaming" within the meaning of section 6 of Act No. III of 1867.

THE facts of this case sufficiently appear from the judgment of the Court.

AIKMAN, J.—In this case, which has been reported for the orders of this Court under the provisions of section 438 of the Code of Criminal Procedure by the learned Sessions Judge of Cawnpore, one Bhawani was convicted under section 3 of Act No. III of 1867 of being the owner of a common gaming house, and four other men were convicted under section 4 of the same Act of being present in the common gaming house for the purpose of gambling. It appears that the house occupied by Bhawani was searched under a warrant issued under the provisions of section 5 of the Act. Bhawani and the four other accused were found in the house, but there is no evidence that they were actually engaged in gambling. There is evidence that some coins and cowries were found in the house when it was searched, and the Magistrate, regarding the cowries as instruments of gaming, applied section 6 of the Act and convicted the accused. The question which has to be considered is whether cowries come within the meaning of the words "other instruments of gaming." Section 6 runs as follows:—

"When any cards, dice, gaming tables, cloths, boards or other instruments of gaming are found in any house, walled enclosure, room or place entered or searched under the provisions of the last preceding section, or about the person of any of those who are found therein, it shall be evidence, until the contrary is made to appear, that such house, walled enclosure, room or place, is used as a common gaming house, and that the persons found therein were present for the purpose of gaming, although no play was actually seen by the Magistrate, or police officer, or any of his assistants."

1895

QUEEN-  
EMPRESS  
v.  
BHAWANI.

In the case of *Empress v. Vithal Bhawichand* (1) it was held that coins were not an instrument of gaming, and that an instrument of gaming meant an instrument devised and intended for that purpose. In the case of *Watson v. Martin* (2) it was held that a person on the high way playing at pitch and toss with half-pence was not liable to conviction under Statute 5 Geo. IV, Cap. 83, s. 4, as being a person "playing with an instrument of gaming." After that decision the statute was amended by 31 and 32 Vict., Cap. 52, and 36 and 37 Vic., Cap. 38. By these Acts, after the words "instrument of gaming" in the old Act, the words "or any coin, card, token, or other article used as an instrument or means of such wagering or gaming at any game or pretended game of chance" have been added. Similarly the Act in force at Bombay has been amended by Bombay Act I of 1890, so as to make the words "instrument of gaming" include any article used as a subject or means of gaming. But the Legislature has not yet seen fit to alter Act No. III of 1867, and, until it does so, I must hold that, although cowries can be used for the purpose of gambling, they are not "instruments of gaming" within the meaning of the Act as it at present stands. The question as to whether the finding of cowries would be sufficient evidence under the Act was mooted in the case of *Empress v. Shaker Chand* (3) but was not then decided. I am of opinion that the learned Sessions Judge was right in considering that the offences of which the accused were convicted were not established. I quash the convictions, and direct that the fines, if paid, be refunded, and that the accused Kedar, who was sentenced to two months' imprisonment, be forthwith released.

Before Mr. Justice Knowlton, Mr. Justice Banerji, and Mr. Justice Aikman.

QUEEN-EMPRESS v. CHANDA.

Act XLV of 1860 (*Indian Penal Code*), section 373.—*Obtaining possession of minor for purposes of prostitution—Offences defined by above section explained.*

To constitute the offence provided for by section 373 of the *Indian Penal Code* it is necessary, first, that a minor under sixteen years of age shall be bought, hired or otherwise obtained possession of, and, secondly, that the minor shall be bought, hired or otherwise obtained possession of with the intent that the same minor while still

(1) I. L. R., 6 Bom., 19.

(2) 10 Cox. Cr. Ca., 56.

(3) Weekly Notes, 1882, page 132.

1895

26th June.