Before Mr. Justice Chamier.

EMPEROR *v.* ABDUL WAHID KHAN. *

1911
October, 25.

Act No. I of 1872 (*Indian Evidence Act*), *sections* 14, 15—*Evidence—Act No. XLV of* 1860, (*Indian Penal Code*), *section* 415—*Cheating—Evidence to show instances of cheating other than those charged inadmissible.*

A person employed as a clerk in charge of the renewal of licences for hand-carts received Rs. 2 for each such renewal, whereas he ought to have taken Rs. 1-14. He was charged with cheating, and evidence was produced showing that he had taken 2 annas in excess from persons other than those named in the charge. *Held* that such evidence was inadmissible either under section 14, or under section 15 of the Evidence Act. *Emperor* v. *Debendra Prosad* (1) distinguished. *Empress* v. *M. J. Vyapoory Moodeliar* (2) referred to.

THE facts of this case were as follows:—

The accused was a clerk in the office of the Municipal Board of Pilibhit, and it was his duty to deal with applications for renewal of licences for hand-carts. He should have taken a licence fee of Rs. 1-8-0 for each hand-cart and 6 annas for the preparation of the *takhti* or board showing the number of the cart. The case for the prosecution was that he had demanded and received Rs. 2 from several applicants, and had thereby cheated each of them out of 2 annas.

As it was not permissible to charge the accused with more than three such acts of cheating, the prosecution selected three complainants and produced evidence that each of them had been induced to pay two annas more than could properly have been demanded. The prosecution produced also evidence that the accused had cheated a number of other applicants for licences. The accused was convicted and appealed to the Sessions Judge on various grounds, one of which was that he had been prejudiced by the admission of evidence that he had taken two annas in excess from several persons other than those named in the charges framed against him. The Sessions Judge held that the evidence complained of ought not to have been admitted and he has ordered a fresh trial.

The Assistant Government Advocate (Mr. *R. Malcomson*) for the Crown.

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* Criminal Revision No. 533 of 1911, by the Local Government from an order of F. E. Taylor, Sessions Judge of Bareilly, dated the 8th of July, 1911.

(1) (1909) I. L. R., 36 Calc., 578. (2) (1881) I. L., R., 6 Calc., 655.

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EMPEROR v. ABDUL WAHID KHAN.

Maulvi *Muhammad Rahmat-ullah*, for the applicant (accused).

CHAMIER, J.—The accused was a clerk in the office of the Municipal Board of Pilibhit, and it was his duty to deal with applications for renewal of licences for hand carts. He should have taken a licence fee of Rs. 1-8-0 for each hand-cart and 6 annas for the preparation of the *takhti* or board showing the number of the cart. The case for the prosecution was that he had demanded and received Rs. 2 from several applicants, and had thereby cheated each of them out of 2 annas.

As it was not permissible to charge the accused with more than three such acts of cheating, the prosecution selected three complainants and produced evidence that each of them had been induced to pay two annas more than could properly have been demanded. The prosecution produced also evidence that the accused had cheated a number of other applicants for licences. The accused was convicted and appealed to the Sessions Judge on various grounds, one of which was that he had been prejudiced by the admission of evidence that he had taken two annas in excess from several persons other than those named in the charges framed against him. The Sessions Judge held that the evidence complained of ought not to have been admitted and he has ordered a fresh trial.

This is an application presented under the orders of the Local Government for revision of the orders of the Sessions Judge. On behalf of the Crown it is contended that the evidence which has been ruled out by the Sessions Judge was rightly admitted either under section 14 or under section 15 of the Evidence Act. It appears to me that section 15 cannot possibly apply to the case. There is no question whether the accused's act was accidental or intentional or done with a particular knowledge or intention. He admits and it is obvious that he knew what amount he was entitled to take from applicants for licences. In support of the contention that the evidence is admissible under section 14, Mr. *Malcomson* relied upon the decision of the Calcutta High Court in *Emperor* v. *Debendra Prosad* (1). In that case the accused was charged with having

(1) (1909) I. L. R., 36 Calc., 578.

cheated one Boodri by falsely representing that he was the *Dewan* of an estate and could obtain an appointment for him and thereby obtaining a sum of money as a pretended security deposit. The cross examination foreshadowed the defence that the accused's intention at the time of the representation was not dishonest. The court held that evidence was admissible to show that at or about the same time the accused had had similar transactions with other persons which taken together showed that the accused's intention was dishonest and that the transaction with Boodri was only one of a systematic series of frauds. I am unable to see how that case is any authority for the admission of the evidence which has been objected to in this case. A ruling which applies closely to the present case is that in *Empress* v. *M. J. Vyapoory Moodeliar* (1), where accused was charged with having received a bribe on three specific occasions and an attempt was made to prove that he had received bribes from the same firm on other occasions. The evidence was ruled out on the ground that section 14 of the Evidence Act applies to cases where a particular act is more or less criminal or culpable according to the state of mind or feeling of the person who does it, not to cases where the question of guilt or innocence depends upon actual facts, and not upon the state of a man's mind or feeling.

In the present case the accused knew what amount he was entitled to take, and the only question is whether he represented to the three complainants named in the charge that they were bound to pay two annas more, and on the strength of that representation induced each of them to pay Rs. 2 instead of Rs. 1-14 and put the difference in his pocket. It appears to me that section 14 of the Evidence Act does not justify the admission of the evidence which has been objected to.

But I do not understand why the Sessions Judge ordered a fresh trial. He should have disposed of the case on the evidence which was admissible. I would invite his attention to section 167 of the Evidence Act. I set aside the order of the Sessions Judge and direct that the appeal be disposed of according to law.

Order set aside.

(1) (1881) I. L. R., 6 Calc., 655.

1911
October, 25.

Before Mr. Justice Sir George Knox and Mr. Justice Griffin.

EMPEROR *v.* AHMAD KHAN. *

Act No. III of 1867 (*Public Gambling Act*) *section* 12—"*Mere game of skill*"—*Game of chance.*

Held that a game which is in fact only to a very slight extent a game of skill and almost entirely a game of chance is not a game which is excluded by reason of section 12 of the Gambling Act, 1867, from the previous provisions of that Act. *Hari Singh* v. *King Emperor* (1) distinguished.

THE facts of this case are fully set out in the order of the Sessions Judge, which was as follows:—

"Ahmad Khan has been convicted under section 13 of the Gambling Act and sentenced to pay a fine of Rs. 15. He has filed this application in revision on the ground that the game which he played was a game of skill.

"The accused played what is known as the ring game at Gajner fair. He has a number of papers which prove that he used to apply for permission to the authorities to play this game; he has two such orders from some tahsildar granting permission for the game to be played, and saying that this is a game of skill. He also possesses an order of the Joint Magistrate to the effect that if this is not a gambling game, permission is granted. He urges that he has been allowed to play this game for some years without interference. In the Calcutta Law Journal, 1907, page 708, the Calcutta High Court have delivered a judgement dealing with an exactly similar case. After describing the game at some length they decided that it was a game of skill. This Court is not bound to follow that judgement, and it is to be remarked that they have based their decision on a mistaken appreciation of what the game is.

"A table about 11 feet long, 3½ feet broad, and about 3¼ feet high is used; on this is attached a red baize cloth. At intervals round the three sides of it there are tall brass pegs and at regular intervals over the whole surface of the table are fixed no fewer than 321 coins, there being five rupees, four eight-annas pieces, ten four-anna pieces, 168 two-anna pieces and 134 one-anna pieces. Cups, clocks and other such articles are scattered at intervals over the table. Four feet away from this table a barrier, 4 feet 6 inches high, is fixed into the ground. A competitor buys small brass curtain rings at a piece each, and the game is that he may lean over the barrier and throw these rings upon the table, if they go over a brass peg or if they encircle a coin he wins a prize. The rings are very light and are made of round wire about ⅛ inch in thickness. With a great deal of practice it is possible that certain small amount of skill might be attained but practically it is a game of mere chance, and certainly, as presented to a number of holiday-making peasants, a simple game of chance and nothing else. Section 13 does not contemplate relaxation of the law in favour of a game in which a certain amount of skill is attainable; the law is relaxed if the game is one, not of skill, but of mere skill; and I have no hesitation in deciding that this is not a game of mere skill. The application is therefore rejected.

* Criminal Revision No. 509 of 1911, from an order of Austin Kendall, Sessions Judge of Cawnpore, dated the 25th of July, 1911.

(1) (1907) 6 C. L. J., 708.

"It must be noted, with reference to the permission which the applicant professes to have obtained from various officials, that the Magistrate's order was not simply a bare permission to him to play but simply ran that if it were not a gambling game it might be played. The tahsildar's permission no doubt, was direct, but I fail to understand under what law the tahsildar was empowered to grant such permission, nor could the fact that such permission had been obtained absolve the accused from the consequences of his act if, as a matter of fact, the game which he played was not a game of mere skill. With reference to the last paragraph, I direct that a copy of this order be sent to the District Magistrate for information."

Ahmad Khan thereupon applied in revision to the High Court.

Mr. *C. Ross Alston*, for the applicant.

The Assistant Government Advocate (Mr. *R. Malcomson*), for the Crown.

CHAMIER, J.—The applicant has been convicted under section 13 of the Public Gambling Act, 1867, of having played a game for money in a public place. He was caught in the act of conducting what is known as the ring game. It is fully described in the judgement of the Sessions Judge and it seems to me the same game as that which is described by MITTRA and FLETCHER, JJ., in the case of *Hari Singh* v. *King-Emperor*, decided on August 19th, 1907 (1). That case was decided under the Bengal Gambling Act, II of 1877, in section 10 of which as in section 13 of the Public Gambling Act, III of 1867, the expression "game of mere skill" is used. The learned Judges of the Calcutta High Court said:—"It seems to us that, although there is an element of chance in throwing a ring over the pin, the chief element of the game is one of skill." I am somewhat disposed to think that the element of chance in this case is so strong as to make it impossible to hold that the game is a mere game of skill. At the same time there is no doubt that a considerable amount of skill might be attained at the game. Having regard to what seems to have taken place in past with reference to this case, I am inclined to think that there ought not to have been an order for the prosecution of the applicant. In this case, however, the question must be decided whether the game was a mere game of skill or not. In view of

(1) (1907) 6 C. L. J., 708.

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the decision of the Calcutta High Court I refer this case to a bench of two Judges.

The case coming on before a Division Bench, the following judgement was delivered :—

KNOX and GRIFFIN, JJ.—We have carefully considered the description given of the game which both the courts below held to be not a game of mere skill. The learned counsel for the applicant who asks us to interfere with the view taken by these courts, has referred us to a Calcutta ruling in Criminal Revision No. 771 of 1907, *Hari Singh* v. *King-Emperor*. There is a material difference between the words used in section 10 of the Bengal Public Gambling Act and section 12 of Act No. III of 1867, which is the Act which governs the case now before us. We are by no means sure that the game which the Calcutta High Court Judges had under consideration was precisely the same as is described by the learned Sessions Judge of Cawnpore. We are, of course, only concerned with the game described by the latter. From the description so given we find ourselves unable to interfere. We hold that the game described by the learned Sessions Judge of Cawnpore is not a game of mere skill. The application is dismissed.

Application dismissed.

APPELLATE CIVIL.

1911
October, 26.

Before Mr. Justice Sir George Knox and Mr. Justice Griffin.

BISHAMBHAR NATH (PLAINTIFF) *v.* BHULLO AND OTHERS (DEFENDANTS.) *

Act (Local) No. II of 1901 *(Agra Tenancy Act), section* 194—*Lambardar—Suit by lambardar against co-sharers for excess of profits due to other co-sharers and himself—Lambardar not agent of co-sharers.*

Held that a lambardar is not the agent of the co-sharers generally so as to be entitled to sue on their behalf to recover profits due to some of them from other co-sharers holding *sir* and *khudkasht* lands in excess of their proper shares.

THE facts of this case were briefly as follows :—

The plaintiff was lambardar and the defendants were co-sharers of a certain village. The defendants held *sir* and *khud-kasht* in

* First Appeal No. 56 of 1911 from an order of H. W. Lyle, District Judge of Agra, dated the 23rd of January, 1911.