Before Mr. Justice Tudball and Mr. Justice Chamier.

EMPEROR *v.* MIAN DIN AND ANOTHER.*

1915
July, 23.

Act No. III of 1867 (*Public Gambling Act*), *sections* 1 *and* 3—"*Place*"—*Bullock-run of disused well surrounded by low wall of loose bricks*—"*Common gaming house*."

Held that the lower end of a bullock-run round which, in the shape of a semi-circle, was raised a low wall of loose bricks, was a 'place' within the meaning of the Public Gambling Act, 1867. *King-Emperor* v. *Fattoo Mahomed Sher Mahomed* (1) followed. *Powell* v. *The Kempton Park Race Course Company Limited* (2) referred to.

IN this case two persons, Mian Din and Farid-ud-din, were charged with an offence under section 3 of the Public Gambling Act, 1867. The spot where the gambling was said to have taken place was the lower end of the bullock-run of a disused well on a piece of open land, round which had been raised a low semi-circular wall of loose bricks. Under the shelter of this wall the gambling complained of took place. The Magistrate acquitted the accused upon the ground that this spot was not a "place" within the meaning of sections 1 and 3 of the Public Gambling Act. Against this order of acquittal the present appeal was field by the Local Government.

The Government Advocate (Mr. *A. E. Ryves*), for the Crown.

Mr. *R. K. Sorabji*, for the accused.

TUDBALL and CHAMIER, JJ.:—This is a Government appeal against an order of acquittal passed by a Magistrate of the first class in the case of two persons Mian Din and Farid-ud-din who were charged with an offence under section 3 of the Public Gambling Act, 1867. The Magistrate passed his order on the finding that the spot where the gambling was taking place was not a "place" within the meaning of section 1 or section 3 of the Act. In section 1 a common gaming house is defined as "any house, walled enclosure, room or place in which cards, dice, tables or other instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, enclosure, room or place" etc. The spot where the gambling is said to have taken place in the present case is the lower end of a bullock-run of a disused well on a bit of open land where

* Criminal Appeal No. 536 of 1915, by the Local Government, from an order of V. de V. Hunt, Cantonment Magistrate of Allahabad, dated the 29th of April, 1915.

(1) (1913) I. L. R., 37 Bom., 651. (2) (1899) A. C., 143.

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there are some trees and a small hut. Round the sides of the bullock-run, in the shape of a semi-circle, has been raised a low wall of loose bricks and it is within the shelter of this low brick wall that the gambling is said to have taken place. The Magistrate has passed his opinion that it is not a 'place' within the meaning of the Act relying on a ruling to be found in the Punjab Records of 1896, No. 14, and on *Queen Empress* v. *Jagannayakulu* (1). He refused to follow *King-Emperor* v. *Fattoo Mahomed Sher Mahomed* (2). In our opinion the place where the gambling is said to have occurred in the present case falls within the definition of the word "place" in the Act. The question was discussed with some detail in the judgement in *King-Emperor* v *Fattoo Mahomed Sher Mahomed* (2). In the Bombay Act the words are "whoever being the owner or occupier or having the use of any house, room or place, opens, keeps or uses the same for the purpose of a common gaming house." The only difference between the Bombay Act and the Act which is in force in this province is that the words "walled enclosure" are added in the latter. The section runs—"Having the use of any house, walled enclosure, room or place." The Bombay Judges in their judgement refer to certain English cases in which a decision was given in regard to the meaning of the word "place" in sections 1, 2 and 3 of the English Betting Act which prohibit the use for betting of any house, office, room or other place. We agree with them that there is no reason to suppose that the word "place" in either of the two Indian Statutes has any more narrow or restricted meaning than it has in the English Statute. In *Powell* v. *Kempton Park Race Course Company Limited* (3) Lord HALSBURY remarked as follows:—"I think in this respect with RIGBY, L J., that any place which is sufficiently definite, and in which a betting establishment might be conducted, would satisfy the words of the Statute." Lord JAMES of Hereford remarked:—"There must be a defined area so marked out that it can be found and recognized as the "place" where the business is carried on and wherein the bettor can be found." In the Bombay case the place which was under consideration was a piece of open land on which there was

(1) (1894) I. L. R., 18 Mad., 46. (2) (1913) I. L. R., 37 Bom., 651.
(3) (1899) A. C., 143.

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neither roof nor wall but which was surrounded by houses and was approached by a narrow lane. In our opinion in the case which is now before us, the spot where the gambling is said to have taken place was a sufficiently defined area so marked out that it could be found and recognized as the place where the business of betting was being carried on. The argument has been raised that the adjective "walled" in Act III of 1867, applies not only to the noun 'enclosure' but also to the two nouns 'room or place.' With this we cannot agree. It is clear that the word "walled" is applied only to the word "enclosure." It could hardly in common parlance be used with the word "room." We therefore are of opinion that the decision of the Magistrate in so far as the meaning of the word "place" is concerned is incorrect, and we must therefore set aside the order of acquittal. At the same time the case is one of a very trivial nature. The accused have been subjected practically to two trials, one in the court below, and one in this Court, and we think that the ends of justice have been sufficiently met. We therefore do not direct that the accused be again placed upon their trial.

Order set aside.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir George Knox.

EMPEROR *v.* DHANI RAM AND ANOTHER.*

1915 *October*, 30.

Act No. X of 1873 (*Indian Oaths Act*), *sections* 5, 6 *and* 13—*Act No.* I *of* 1872 (*Indian Evidence Act*), *section* 118—*Evidence—Statement of witness not recorded on oath—Capacity of child of tender years to testify.*

The fact that a court has advisedly refrained from administering an oath to a witness is not sufficient by itself to render the statement of such witness inadmissible. But a court should only examine a child of tender years as a witness after it has satisfied itself that the child is sufficiently developed intellectually to understand what it has seen and to afterwards inform the court thereof, and if the court is so satisfied it is best that the court should comply with the provisions of section 6 of the Indian Oaths Act, 1873, in the case of a child just as in the case of any other witness. *Queen-Empress* v. *Maru* (1) dissented from.

THIS was an appeal from jail against a conviction under section 302 of the Indian Penal Code and a sentence of death. The Sessions Judge had based his judgement to some extent on

*Criminal Appeal No. 668 of 1915, from an order of D. R. Lyle, Sessions Judge of Agra, dated the 9th of August, 1915.

(1) (1888) I. L. R., 10 All., 207.