

his application *in toto*. It follows that any further attempt to set up this alleged agreement, through any effort which the appellant may hereafter make to repair his own omission, ought to fail unless supported by an agreement in writing signed by the decree-holder.

I agree with the order passed by my brother.

By THE COURT:— We dismiss this appeal with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Stuart.

EMPEROR v. SUKHANANDAN SINGH AND ANOTHER.*

Act No. III of 1867 (Public Gambling Act), section 13—Public place—Grove to which public commonly have access in fact, although it is the subject of private ownership.

A place to which the public have access, without their access being refused or interfered with, is a public place, within the meaning of Act No. III of 1867, whether the public have a right to go there or not. *Queen Empress v. Sri Lal* (1) followed. *Queen v. Wellard* (2) referred to. *Ahmad Ali v. King-Emperor* (3) distinguished.

THIS was an application in revision from an order convicting the applicants of an offence under the Public Gambling Act, 1867. The facts of the case, so far as they are necessary for the purposes of this report, appear from the judgment of the Court.

Babu Satya Chandra Mukerji, for the applicants.

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

STUART, J.:—The only point raised in this revision is whether the applicants were gambling in a public place. On the finding of the Magistrate who tried the case, they were found gambling in the area occupied by a large grove. At one end of the grove is the shrine of a goddess and a tank. A fair was in progress at the time that they were gambling and visitors to the fair had penetrated to all parts of the grove. The grove is private property, but on the occasion of the fair the public use the grove

* Criminal Revision No. 648 of 1921, from an order of E. T. Thurston, Sessions Judge of Cawnpore, dated the 21st of June, 1921.

(1) (1895) I L. R., 17 All., 166. (2) (1884) L. R., 14 Q. B. D., 68.

(3) (1904) 1 A. L. J., 129.

1921

LACHMAN
DAS
v.
BABA
RAMNATH
KALI-
KAMLIWALA.

1921

December, 16,

1921

EMPEROR
v.
SUKHNANDAN
SINGH.

and there is no interference with their so doing. The decision in the case of *Ahmad Ali v. King-Emperor* (1) is not in point, because the grove used for the purpose of gambling in that case was a private grove to which the public did not have access. The question as to whether the grove in this case was or was not a public place presents little difficulty. When the public have access to a place, without their access being refused or interfered with, that place is a public place whether the public have a right to go there or not. Authority for this proposition will be found in *Queen v. Wellard* (2). Lord COLERIDGE laid down there that a place was a public place if the public were in the habit of resorting to it and no one prevented them from so doing. GROVE, J., laid down that a public place is one where the public go, no matter whether they have a right to go or not. This view was accepted in the case of *Queen Empress v. Sri Lal* (3). EDGE, C. J., laid down that a public place was a place to which the public had by right or by permission or by usage or otherwise, access. I, therefore, find that the applicants were gambling in a public place and they were rightly convicted. I dismiss this application.

Application dismissed.

FULL BENCH.

1922
January, 3.

Before Mr. Justice Piggot, Mr. Justice Walsh and Mr. Justice Lindsay.

SITA RAM (DECREE-HOLDER) v. JANKI RAM (JUDGMENT-DEBTOR).
Civil Procedure Code (1903), Order XXI, rules 71 and 84—Execution of decree—Failure of auction purchaser to make deposit of 25 per cent.—Property re-sold next morning—"Forthwith"—Order against defaulting purchaser to make good deficiency of price on re-sale—Appeal—"Decree."

The highest bidder at an auction sale in execution of a decree failed to deposit the 25 per cent. of the purchase money which he was required by law to deposit on the spot. In consequence of this the property for sale was re-sold, and, as the first sale had taken place somewhat late in the day, the re-sale was held the following morning. The property realized a much lower price on the re-sale than it had at first, and the judgment-debtor applied for

* First Appeal No. 94 of 1921, from an order of J. Allsop, District Judge of Ghazipur, dated the 13th of April, 1921.

(1) (1904) 1 A. L. J., 12. (2) (1881) L. R., 14 Q. B. D., 6.

(3) (1835, I. L. R., 17 All., 136.