

REVISIONAL CRIMINAL.

Before Mr. Justice Ashworth.

EMPEROR *v.* PANNA LAL AND OTHERS.*

1925
July, 23.

Act No. III of 1867 (Public Gambling Act), section 13—Act (Local) No. I of 1917 (U. P. Gambling (Amendment) Act), section 6—Gambling—“Game of mere skill”—Playing of marbles on a public road.

The playing, in a public place, of a game of mere skill, into which chance does not enter, is not within the purview of section 13 of Act No. III of 1867 as amended by Local Act No. I of 1917, even though it may be accompanied by wagering or betting.

This was a reference made by the Sessions Judge of Aligarh in a case in which the applicants in revision before him had been convicted of offences under section 13 of the Public Gambling Act, 1867. Actually, the accused had been playing marbles for pice on a public road at Mursan. The magistrate who convicted them was of opinion that marbles was not a game of mere skill. The Sessions Judge, however, did not accept this view and recommended that the convictions and sentences should be set aside.

Babu *Surendra Nath Gupta*, for the applicants.

The Crown was not represented.

ASHWORTH, J.—This is a reference by the District Judge of Aligarh recommending that the conviction of six persons under section 13 of the Public Gambling Act (III of 1867) should be set aside in revision.

The finding was that the accused persons were playing a game with marbles on a public road, the game being one of mere skill into which chance did not enter. It is not disputed that before the amendment of the said Act by U. P. Gambling (Amendment) Act I of 1917 the conviction would have been

* Criminal Reference No. 392 of 1925.

in order. That Act, however, has added a section that nothing in the Gambling Act shall apply to any game of mere skill *wherever played*. The result of this amendment appears to be as follows. The playing of a game of mere skill in a public place is gaming but it is not such gaming as falls within the ambit of the Public Gambling Act. The Magistrate's suggestion that the expression "any game of mere skill" means a game in respect of which there is no wagering or betting, is untenable. Accordingly the convictions of the six persons in this case are set aside and the fines, if paid, will be returned to them.

Convictions set aside.

APPELLATE CIVIL.

Before Mr. Justice Lindsay and Mr. Justice Kanhaiya Lal.

BACHIAN SINGH AND OTHERS (PLAINTIFFS) *v.* BIJAI SINGH AND OTHERS (DEFENDANTS).*

Pre-emption—Lis pendens—Application of the doctrine of lis pendens to a suit for pre-emption.

Two suits for pre-emption of the same property were filed by rival pre-emptors having equal claims, and on the date of the filing of the second the purchasers sold the property in suit to a person having an equal right of pre-emption with both sets of plaintiffs.

Held that, applying the doctrine of *lis pendens*, the second purchaser and the two sets of pre-emptors were *prima facie* entitled to divide the property amongst them; but, inasmuch as both suits had been dismissed by the first court and the second set of pre-emptors had not appealed, the property was divided proportionately between the second purchaser and the first set of pre-emptors. *Bhikhi Mal v. Debi Sahai* (1); followed. *Harkeshi v. Mewa Ram* (2), dis-sented from.

1925.

EMPEROR
O.
PANNA
LAL.

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July, 24.

* Second Appeal No. 1612 of 1924, from a decree of Lakshmi Narain Tandan, Subordinate Judge of Farrukhabad, dated the 24th of September, 1924, reversing a decree of Banwari Lal Mathur, Munsif of Kaimganj, dated the 26th of May, 1924.

(1) (1925) I.L.R., 47 All., 923.

(2) (1923) 72 Indian Cases, 247.