REVISIONAL CRIMINAL.

Before Mr. Justice Lindsay.

1927
April, 27.

EMPEROR *v.* LODAI.*

Act No. IX of 1890 (*Indian Railways Act*), *sections* 3(4) *and* 122—"*Railway*"—*Staff-quarters not part of a* "*railway*" *within the meaning of section* 3(4).

Staff-quarters or any building of a residential character, though they may be on railway land, cannot be deemed to be a part of a "railway" within the meaning of section 3(4) of the Indian Railways Act, 1890.

Where a person was found playing cards at the house of a railway employee, situated between two railway lines, and there was no evidence to show that his entry on these premises was unlawful: *held*, that he could not rightly be convicted under section 122 of the Railways Act. *Margam Aiyar* v. *Mercer* (1), referred to.

THIS was a reference made by the Additional Sessions Judge of Mirzapur. The facts of the case sufficiently appear from the Sessions Judge's order.

Munshi *Kumuda Prasad*, for the applicant.

The Assistant Government Advocate (Dr. *M. Waliullah*) for the Crown.

The following is the *Referring Order*:—

"The applicant was tried summarily by the Magistrate and was fined Rs. 10 under section 122 of the Indian Railways Act (IX of 1890).

Two things are necessary to bring a man under that section, (1) that the place of entry must be 'railway' as defined in section 1(*b*) of the Act and (2) the entry should have been unlawful in the inception. If the entry was not unlawful in the beginning, neither part of the section 122 of the Act would apply.

From the judgement of the learned Magistrate it is clear that the place where the accused was found is occupied as quarters by the railway employees. In *Margam Aiyar* v. *Mercer* (1), it was found by a Division Bench of the Madras High

* Criminal Reference No. 232 of 1927.
(1) (1914) 23 Indian Cases, 177.

Court that 'Staff-quarters or any building of a residential character cannot be deemed to be part of a railway' within the meaning of section 3 (4) of the Act, and so a conviction under section 122 of the Act was set aside against the accused in that case. The fact that the place happens to be between two lines makes no difference in this case, as the lines by themselves are quite apart and there can be even private land between the lines.

As regards the second point also there is no evidence at all to show that the entry of the applicant was unlawful in the beginning. The learned Magistrate has presumed too much. He has not referred in his judgement to any evidence to show that the accused had gone to the place with the object of gambling. The Station Master does not prove it. What he says is that when he went there some persons who were there ran away and an empty card case was found. It is a long jump to presume from an empty card case that there was a pack of cards also there, and if it was, it was used for gambling. Playing of cards is an innocent pastime in all classes of people in this country. Mere playing of cards is no offence under the Gambling Act and if a friend of an employee of a railway company asks his friends to play with cards at his house, he thereby commits no offence, nor the entry of such friends becomes unlawful under section 122 of the Act. Such invitations are the order of the day even among the society people and it would act very hardly if such invitations are held to be illegal. Nor does the fact that some other people ran away raise any presumption against the applicant who remained on the spot. Other people's conduct is not at all mentioned by the Station Master in his report nor was the accused called upon to answer that charge. I think this conviction should be set aside on both the grounds : (1) that the section 122 of the Act did not apply to the locality as it did not come under the definition of railway and (2) that the learned Magistrate had no legal evidence before him to prove that the entry of the applicant was unlawful. Let the record be sent to the Hon'ble High Court with the recommendation that the conviction of the petitioner be set aside, along with any explanation the learned Magistrate may think proper to submit."

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EMPEROR v. LOHAR.

LINDSAY, J. :—For the reasons given in the order of the Additional Sessions Judge I accept the reference in this case and direct that the conviction of the petitioner be set aside and that the fine, if paid, be refunded.

Reference accepted.

APPELLATE CIVIL.

Before Mr. Justice Sulaiman and Mr. Justice Banerji.

1927
April, 27.

JAIKARAN SINGH AND OTHERS (DEFENDANTS) *v.* SHEO KUMAR SINGH (PLAINTIFF) AND MUSAMMAT KAULRAJI KUAR (DEFENDANT).*

Mortgage—Redemption—Mortgaged property sold for arrears of rent which the mortgagee was bound to pay—Purchase by mortgagee—Equity of redemption not lost.

The mortgagee of a fixed rate holding, who was under a covenant to pay the rent of the holding to the zamindar, made default in such payment, in consequence of which the holding was sold, and it was purchased by the mortgagee himself. *Held*, that the mortgagee could not by his own wrongful act deprive the mortgagor of his rights, and the mortgagor's equity of redemption still subsisted. *Nawab Sidhee Nazur Ally Khan* v. *Rajah Ojoodhyaram Khan* (1), *Kalappa bin Giriappa* v. *Shivaya bin Shivlingaya* (2) and *Babaji* v. *Magniram* (3), referred to.

THE facts of this case are fully stated in the judgement of the Court.

Babu *Piari Lal Banerji*, for the appellants.

Pandit *K. N. Laghate*, for the respondents.

SULAIMAN and BANERJI, JJ.—This is a defendants' appeal arising out of a suit for redemption. The plaintiff's predecessor, Ram Kumar, made three usufructuary mortgages of his fixed rate tenancy in succession. In April, 1888, he mortgaged about 6 bighas and odd to Hakim Singh for Rs. 272 which was redeemable in 1302

* Second Appeal No. 560 of 1925, from a decree of K. G. Harper, District Judge of Benares, dated the 6th of January, 1925, confirming a decree of Ali Ausat, Subordinate Judge of Jaunpur, dated the 3rd of November, 1924.

(1) (1866) 10 Moo., I.A., 540. (2) (1895) I.L.R., 20 Bom., 492.
(3) (1895) I.L.R., 21 Bom., 396.