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THE SECRETARY OF STATE FOR INDIA IN COUNCIL v. DWARKA PRASAD.

than an engine driver could have been examined by the railway to show that at the date in question the spark protectors were used with all the engines. Ram Lal says that for some time, when he was giving his evidence, the spark protectors had been removed from the engines. On the question of fact, therefore, I am not disposed to differ from the court below. I hold, therefore, that the court below was right in finding negligence on the part of the railway company. I accordingly dismiss the application with costs.

*Application rejected.*

## REVISIONAL CRIMINAL.

*Before Mr. Justice Boys.*

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*February*, 4.

EMPEROR *v.* ISMAIL AND OTHERS.*

*Act (Local) No. I of* 1925 [*United Provinces Public Gambling (Amendment) Act*], *section* 2—"*Common gaming house*"—*Criminal Procedure Code, section* 264—*Summary trial—Notes of evidence destroyed by magistrate.*

On a question whether a certain house was or was not a "common gaming house" it was *held* (1) that papers which formed the record of "*satta*" transactions were "instruments of gaming"; (2) that it was not necessary to prove that "the bank" was bound to win—the mere expectation of profit was sufficient, and (3) that in a case falling within the first definition of "common gaming house" in the United Provinces Gambling (Amendment) Act, 1925, it was not necessary to show that gambling was carried on "for the profit or gain" of the owner. *Emperor* v. *Atma Ram* (1), followed.

*Held* also that in cases to which sections 263 and 264 of the Code of Criminal Procedure apply, the magistrate is perfectly free to take such notes as he pleases: the notes that he may take are his private property which he can dispose of as

* Criminal Reference No. 735 of 1926.
(1) (1924) I.L.R., 46 All., 447.

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he likes. *Emperor* v. *Mantu Tiwari* (1), followed. *Satish Chandra Mitra* v. *Manmatha Nath Mitra* (2), dissented from.

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

Munshi *Kumuda Prasad*, for the applicant.

The Assistant Government Advocate (Dr. *M. Wali-ullah*), for the Crown.

BOYS, J. :—In this case the Magistrate has convicted two persons, Ismail and Ibrahim, for keeping a common gaming house, and one Bihari for gaming in that common gaming house. The facts found are that a shop and a house belonged to Ismail and Ibrahim jointly, that when the shop was raided "*satta*" papers were found, and when the house was raided advertisements of the "*satta*" gambling were found and accounts of the "*satta*" gambling. In the shop was Ismail who was writing on a bit of paper; in the house was Ibrahim. Both men declared that the papers found were waste paper. There can be no doubt on the facts, as found by the Magistrate, that they were not waste papers but memoranda of "*satta*" gambling and that the two men, Ismail and Ibrahim, were jointly carrying on the gambling business. The learned Sessions Judge has referred this case on several grounds, firstly, on the strength of a Calcutta decision, *Satish Chandra Mitra* v. *Manmatha Nath Mitra* (2). He has held that the Magistrate's action in destroying his "notes" of the summary trial was illegal. This is not so according to the view of this Court, though the learned Judge could not be expected to be aware of the ruling which has, so far as I can ascertain, not yet been actually reported. It is *Emperor* v. *Mantu Tiwari* (1). There was, therefore, nothing illegal in this case in the Magistrate destroying his notes.

(1) (1926) I.L.R., 49 All., 261. (2) (1920) I.L.R., 48 Calc., 280

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Next, the learned Judge has held that the papers found were not instruments of gaming, and he has so held on the authority of the Full Bench case, *Emperor* v. *Atma Ram* (1). I do not so read the decision in *Atma Ram's* case. The learned Judges held that where "*satta*" gambling was going on, the bits of paper rolled up in a ball on which the figures were written were instruments of gaming. At page 453 of the report they say:—"It is quite clear that these balls of paper were instruments of gaming." There is no substantial difference between the papers used in that case and the papers found in the house of Ismail in this case. So far, then, the case quoted would support the learned Magistrate's finding. It is clear that in *Atma Ram's* case the Court had no doubt about the question whether such papers were instruments of gaming.

Next the learned Judge suggests that it was necessary to establish that the making of profit was certain, and he holds this on the authority also of the same case to which I have already referred, that of *Atma Ram*. The question referred to the Full Bench in that case was as to the interpretation of the words "for the profit or gain of the person," i.e., whether the words "for the profit" necessitated proof that profit was certain to result or whether it was sufficient that the instruments were used in the hope of profit. But that question was not decided by the Full Bench because it found that in the particular case profit was certain to result and therefore, *in any event* the particular case came within the more strict interpretation, *assuming* that interpretation was the correct one. The narrower interpretation was not held to be in fact the correct one. If I had to decide the point I should unhesitatingly hold that it was not necessary to prove that profit was certain to result. In my

(1) (1924) I.L.R., 46 All., 447.

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opinion a mere expectation of profit would suffice. I further note that such a case as this comes within the first definition of "common gaming house" in the United Provinces Public Gambling (Amendment) Act No. I of 1925, in which the phrase "for the profit or gain" does not appear.

In view of what I have said above I see no reason to differentiate between the cases of Ismail and Ibrahim.

As regards Bihari the finding of fact is stated by the learned Sessions Judge and I see no reason to interfere with it.

The result is that I decline to accept the reference. The convictions will be maintained and the papers returned.

*Reference rejected.*

## APPELLATE CIVIL.

*Before Mr. Justice Lindsay and Mr. Justice Sulaiman.*

RAM CHARAN SAHU AND ANOTHER (PLAINTIFFS) *v.* MATA PRASAD AND OTHERS (DEFENDANTS) AND MUSAMMAT BAKHTAURA (PLAINTIFF).*

1927 *February*, 7.

*Act No. IX of* 1908 (*Indian Limitation Act*), *schedule I, article* 109—*Mesne profits*—Pendente lite *and future mesne profits claimed but not awarded by decree—Second suit for mesne profits to date of possession—Limitation*—Res judicata—*Civil Procedure Code, section* 11.

The period of limitation cannot be suspended, once it has begun to run, unless that suspension is itself provided for in the Indian Limitation Act.

*First Appeal No. 1 of 1924, from a decree of Radha Kishen, Subordinate Judge of Basti, dated the 11th of September, 1923.