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given by the learned Sessions Judge. When such complaints are made under section 476 the officer making them must state the evidence on which he relies, otherwise the Magistrate to whom the case is referred for decision has no means of ascertaining what the evidence is on which the prosecution case is based. As far as I can see the Magistrate, who is required to act on the complaint in the present case, would start and end with the opinion of the Sessions Judge that this lease was ante-dated and that Babu Shankar Sahai had made a false statement about it. I am at a loss to see how either opinion of the learned Sessions Judge was to be established by legal evidence. I consider that the whole order was misconceived. There was no justification for the prosecution of Babu Shankar Sahai either under section 193 or section 465 of the Indian Penal Code; and under section 476B of the Code of Criminal Procedure I direct the withdrawal of the complaint.

Appeal allowed.

REVISIONAL CRIMINAL.

Before Mr. Justice A. G. P. Pullan.

LALA AND OTHERS (ACCUSED-APPLICANTS) v. KING-
EMPEROR (COMPLAINANT-OPPOSITE PARTY).*

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April, 24.

Gambling Act (XVIII of 1867), section 13—Public place, meaning of—Verandah of a shop on a public road, whether a public place within the Gambling Act.

A public place for the purposes of the Gambling Act is a place which is in full view of the public and to which the public have a right of access and the question of ownership is immaterial.

Therefore the verandah of a shop on a public road is not a public place within the meaning of the Gambling Act for though it be in a public situation the owner might have refused to allow the public to go there and so the public had no right of access to it.

*Criminal Reference No. 15 of 1930.

White v. Cubitt (1), *Queen v. Wellard* (2), *King-Emperor v. Bashir* (3), *Sir Mahomed Yusuf Ismail v. the Secretary of State for India in Council* (4), and *King-Emperor v. Lalji and others* (5), referred to.

Mr. *Jagannath Prasad Kapoor*, for the applicants.

The Assistant Government Advocate (Mr. *H. K. Ghose*), for the Crown.

PULLAN, J.:—This is a reference by the second Additional Sessions Judge of Lucknow at Unao in a case of gambling under section 13 of the Public Gambling Act (XVIII of 1867). The first objection made to the trial was that one of the accused was only 13 years of age. The Magistrate pointed out that he himself recorded his age as 17, and he was therefore quite entitled to proceed with the case as no plea was raised that this accused was a minor. The second point raised by the learned Additional Sessions Judge is that the place where the gambling took place was not a public place. He describes it as a verandah of a shop and he does not controvert the statement of the Magistrate that it is on a public road. A public place for the purposes of the Gambling Act is a place to which the public have a right of access and the question of ownership is immaterial. The same is the view taken by the courts in England in interpreting various special Acts and I have before me a very recent decision of the King's Bench in *White v. Cubitt* (1), in which reference is made to the standard case of *Queen v. Wellard* (2), which shows that the view taken in England still is that a plot of ground privately owned to which the public have no right of access but are allowed to pass over may be a public place. The learned Additional Sessions Judge refers me to two cases: one reported in *King-Emperor v. Bashir* (3), and another reported in an unauthorized report of the Lahore High Court *Sir Mahomed Yusuf Ismail v. The Secretary of State for India in Council* (4), in which cases it was held that certain

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(1) (1930) 1 K. B., 443.

(2) (1884) 14 Q. B. D., 63.

(3) (1922) 26 O. C., 41.

(4) (1920) 57 I. C., 971.

(5) (1922) 25 O. C., 114.

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places, namely, land forming an angle between two roads in the one case and, lands situated near a tank in the premises of the railway station in the other case were not public places. I have been referred on the part of the Crown to another ruling of the Judicial Commissioner's Court reported in *King-Emperor v. Lalji and others* (1) in which it was held that a foot-path running from a public way through a private grove and used by the public as of right is a public place. None of these cases are exactly parallel to that before me. In my opinion a public place is one which is in full view of the public and one to which the public has access. But in this case there is no evidence that the public had a right of access to the verandah. For all I know the owner of the shop may have refused to allow the public to go on his verandah. If the public had no right of access even though the shop is in a public situation it is not a public place within the meaning of the Gambling Act. I accept the reference, set aside the order of conviction, but in the circumstances it is not necessary to return the 184 *kowris* and two annas which were confiscated. The fines, if paid, will be returned.

Reference accepted.

(1) (1922) 25 O. C., 114.