1896.

IN RE NAHALCHAND.

have not dealt with this point. The Magistrate calls the construction a *mándap*. The District Magistrate calls it a pendal.

We think that the conviction cannot be supported, and we reverse it and the sentence.

CRIMINAL REVISION.

Before Mr. Justice Parsons and Mr. Justice Ranade.

QUEEN-EMPRESS *v.* BAI VAJU AND OTHERS.*

1896.
November 26.

Gaming—Prevention of Gambling Act (Bombay Act IV of 1887), *Secs.* 4, 5 *and* 7—*Proof of keeping or of gaming in a common gaming house—Presumption—Evidence.*

A number of persons were found by the police in a closed room in the upper story of a house, gambling with dice, and having cowries and money before them. They were convicted under Bombay Act IV of 1887.

Held, confirming the conviction, that under section 7 of the Act the facts found were evidence (until the contrary was shown) that the room was used as a common gaming house, and that the persons found therein were there present for the purpose of gaming.

APPLICATION under section 435 of the Code of Criminal Procedure (Act X of 1882).

The accused, who were fourteen in number, were charged under sections 4 and 5 of Bombay Act IV of 1887,—accused No. 1 with keeping a common gaming house, and accused Nos. 2 to 14 with gaming in a common gaming house.

On the night of the 31st August, 1896, all the accused except No. 1 were found by the police in a closed room on the upper story of a house, sitting in a circle with dice and *cowries* (shells), and money before them.

The house was attached to a Hindu temple, of which accused No. 1 was the *pujari* or ministrant.

Accused No. 1 was not in the house when the police appeared on the scene and arrested the other accused.

The accused were tried summarily under Chapter XXII of the Code of Criminal Procedure (Act X of 1882) by the First Class

* Criminal Revision, No. 260 of 1896.

1896.

QUEEN-EMPRESS v. BAI VAJU.

Magistrate of Dhandhuka. He held that the house in question was a common gaming house, and that all the accused except two were guilty of the offences charged, and he sentenced them to pay fines varying from Rs. 10 to 40.

Against these convictions and sentences, the twelve accused applied to the High Court under its revisional jurisdiction.

Nagindas Tulsidas (with *Ganpat S. Rao*) for accused.

Ráo Sáheb *Vasudev J. Kirtikar*, Government Pleader, for the Crown.

PER CURIAM:—No doubt, as held in Criminal Ruling No. 9 of 1896, in the absence of evidence that a house is used for profit or gain, it cannot be held to be a common gaming house as defined in the Bombay Prevention of Gambling Act, 1887, section 3. In the present case, thirteen persons were found in a room in the upper story of the house in question, sitting in a circle, gambling with dice, and having a quantity of *cowries* and money before them. Section 7 of the above quoted Act enacts that this shall be evidence, until the contrary is made to appear, that the room is used as a common gaming house, and that the persons found therein were there present for the purpose of gaming. The criminal ruling, therefore, has no application to the facts of the present case, and we see no reason to interfere with the conviction of the applicants 2 to 12. Applicant 1 is convicted under section 4 of the Act. But she was not in the room, and the Magistrate does not record any finding that she is the owner or occupier of the house or room, but merely that her daughter was sitting outside the door, which was chained. In her case we reverse the conviction and sentence.

APPELLATE CRIMINAL.

Before Mr. Justice Parsons and Justice Ranade.

1896.

December 3.

QUEEN-EMPRESS *v.* ROSS.*

Police—Bombay District Police Act (IV of 1890), Sec. 47—Right of the police to have free access to a place of public amusement or resort—Race-course enclosure.

Races were held in a certain enclosed ground at Poona which belonged to the Military authorities, and was lent for the purpose to the Western India Turf

* Criminal Appeal, No. 352 of 1896.