1913.

NOWROJI PUDUMJI (SIRDAR) v. PUTLIBAI.

Attorneys for the plaintiffs: *Messrs. Kanga and Sayani.*

Attorneys for the defendants: *Messrs. Nadirshaw and Darashaw; Payne & Co.; Pestonji, Rustomji, Kolah & Co.*

H. S. C.

CRIMINAL REVISION.

Before Mr. Justice Batchelor and Mr. Justice Shah.

EMPEROR *v.* FATTOO MAHOMED SHER MAHOMED AND OTHERS.*

1913.

June 11.

Prevention of Gambling Act (Bombay Act IV of 1887), section 4, clauses (a), (c)†—Place—Interpretation—A chok *having houses on all sides and approached by a narrow lane.*

The accused were convicted under section 4, clauses (*a*) and (*c*) of the Bombay Prevention of Gambling Act (Bombay Act IV of 1887), for having the use of a place and keeping or using the same for the purpose of a common gaming house. The spot in question was a small open space surrounded by houses on all sides and accessible only by a narrow lane on which was a sign-board pointing to the spot. The accused No. 1 was the lessee in occupation of the spot. The question for determination was whether the spot in question was a "place" within the meaning of section 4 of the Act:—

Held, that the spot in question was a place within the meaning of section 4, inasmuch as it was a small area, limited by metes and bounds, surrounded on all sides by buildings, and appropriated for the business of betting by the accused No. 1 becoming the lessee in occupation of it.

* Criminal Application for Revision No. 107 of 1913.

† The material portions of the section run as follows:—

4. Whoever—

(*a*) being the owner or occupier or having the use of any house, room or place, opens, keeps or uses the same for the purpose of a common gaming-house,

* * * * * *

(*c*) has the care or management of, or in any manner assists in conducting the business of any such house, room or place opened, occupied, kept or used for the purpose aforesaid,

* * * * * *

shall be punished with fine which may extend to five hundred rupees, or with imprisonment which may extend to three months.

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THIS was an application under the criminal revisional jurisdiction to revise convictions and sentences passed by C. H. Setalvad, Third Presidency Magistrate of Bombay.

The two accused were convicted, under section 4, clauses (*a*) and (*c*) of the Prevention of Gambling Act (Bombay Act IV of 1887), for keeping a common gaming house and gaming there with others.

The spot in question was a small open space. It was surrounded on sides by houses. It was approached by a narrow lane having a signboard pointing to the space. It was in the occupation of accused No. 1 as a lessee.

The trying Magistrate sentenced the accused No. 1 to pay a fine of Rs. 150 ; and accused No. 2 to pay a fine of Rs. 100.

The accused applied to the High Court.

S. R. Davar, with *G. N. Thakore*, for the accused :—The term 'place' must be interpreted *ejusdem generis* with the words "house or room" that precede it. See *Queen* v. *Silvester*[1]. The word "place" as applied to the space in question here has nothing in common with a house or room. See, also, *Queen-Empress* v. *Jagannayakulu*[2] ; and *Abbi* v. *Queen-Empress*[3].

S. S. Patkar, Government Pleader, for the Crown :—The Bombay Gambling Act is based on the English Gaming Act (16 and 17 Vic., chapter 119, sections 1, 3). The expression employed in the latter enactment is "house, room, office or place." It has been held that as soon as a spot gets localised it attains to a "place" within the meaning of the Act. See *Brown* v. *Patch*[4] ; *Shaw* v. *Morley*[5] ; and *Bows* v. *Fenwick*[6].

(1) (1864) 33 L. J. M. C. 79.
(2) (1894) 18 Mad. 46.
(3) (1896) P. R. No. 14 of 1896 (Cr).
(4) [1899] 1 Q. B. 892.
(5) (1868) L. R. 3 Ex. 137.
(6) (1874) L. R. 9 C. P. 339.

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Davar, in reply.

BATCHELOR, J. :—In this case the two petitioners have been convicted under section 4 (*a*) and (*c*) of the Bombay Prevention of Gambling Act (Bombay Act IV of 1887), the petitioner No. 1 being the owner or occupier or having the use of a house, room or place and keeping or using the same for the purpose of a common gaming house, and petitioner No. 2 having assisted in conducting the business of such house, room or place.

The only point upon which the propriety of the convictions is challenged on behalf of the petitioners is whether the particular spot on which the petitioners and the others were found to be gaming may be rightly described as a "place" within the meaning of section 4 (*a*) of the Bombay Act.

The facts are that this particular spot resembles in all essentials what is usually known in this country as a *chok*. It is a small open space surrounded by houses on all sides and is accessible only by a narrow lane on which is a signboard pointing to the *chok*. Of this space the first applicant is the lessee in occupation. At the time the alleged offence was committed the spot was open to the sky, though shortly before the date of the alleged offence there had been standing on the spot a zinc roofed shed. That, however, had been removed, perhaps only temporarily removed, before the date of the alleged offence. In these circumstances we have to decide whether such a spot is a place within section 4 of the Act. That section provides for the punishment of any person who, being the owner or occupier or having the use of any house, room or place opens, keeps, or uses the same for the purpose of a common gaming house.

Now these words closely follow the words of the English Betting Act, 1853, 16 and 17 Vic., chapter 109, sections 1, 2 and 3 of which prohibit the use for betting

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of any "house, office, room or other place." There is, we think, no reason to suppose that the word "place" in the Indian Statute has any more narrow or restricted meaning than it has in the English Statute. As to the meaning of the words in the latter Act, we have the highest authority from England. In *Bows* v. *Fenwick*[1] the defendant was on a race-course standing on a stool over which was a large umbrella similar to a carriage umbrella. He was calling out offering to make bets and was seen to make several bets. It was held that he was using a fixed and ascertained place for the purpose of betting and had been properly convicted under the Statute. Though the spot was determined only by a moveable stool and a moveable umbrella, Lord Coleridge, C. J., said: "It was an ascertained spot where the appellant for the time at least carried on the business of betting with all persons who might resort thither for that purpose." Mr. Justice Denman in agreeing said that "It was enough that there was a piece of ground ascertained and appropriated by the appellant for carrying on his proceedings." In *Powell* v. *Kempton Park Racecourse Company*[2] the construction of the Statute was explained by the House of Lords. It was there decided that betting in Tattersall's Ring on the Kempton Park Racecourse was not within the prohibition, because it was not in a place kept or used for betting; but as to the meaning of the word "place" and of the requirements of the Statute, we have the speeches of the Earl of Halsbury, Lord Chancellor, and Lord James of Hereford who formed part of the majority of the House. Lord Halsbury said (page 162):—

> "I do not think, therefore, that the important question is, what is a 'place'? I think in this respect with Rigby L. J., that any place which is sufficiently definite, and in which a betting establishment might be conducted, would satisfy the words of the Statute."

[1] (1874) L. R. 9 C. P. 339.

[2] [1899] A. C. 143.

Lord James of Hereford said (page 194) :—

"Speaking in general terms, whilst the place mentioned in the Act must be to some extent *ejusdem generis* with house, room, or office, I do not think that it need possess the same characteristics ; for instance, it need not be covered in or roofed. It may be, to some extent, an open space. But certain conditions must exist in order to bring such space within the word 'place.'

There must be a defined area so marked out that it can be found and recognized as 'the place' where the business is carried on and wherein the bettor can be found. Thus, if a person betted on Salisbury Plain, there would be no 'place' within the Act. The whole of Epsom Downs or any other race-course where betting takes place would not constitute a place ; but directly a definite localization of the business of betting is effected, be it under a tent or even moveable umbrella, it may be well held that a 'place' exists for the purposes of a conviction under the Act. If this view be correct, I think that the inclosure existing at Kempton Park might, physically speaking, under certain conditions constitute "a place" within the meaning of the first and second sections of the Act of 1853. It is a defined space limited by metes and bounds, and of such an area that a person therein carrying on the business of betting can be found."

On the authority of this decision it seems to us that the particular area with which we are here concerned must be pronounced to be a place within the meaning of section 4. It is a small area limited by metes and bounds, being surrounded on all sides by buildings, and it is this particular area which the petitioner No. 1 has appropriated for the business of betting by becoming the lessee in occupation of it. There has, we think, been such a localization of his business by this betting man as converts the locality into a place within the enactment.

This being so, in our opinion the convictions are right and the rule must be discharged.

Rule discharged.

R. R.