1915.

ASSISTANT COLLECTOR OF KAIRA v. VITHALDAS.

the interest.....to the person or persons who would, for the time being, have been entitled to the possession of the said land,...until the same be applied in the purchase of such other lands.....or in payment to any person or persons becoming absolutely entitled." It appears to me that the expressions 'if it appears that the land belonged to any person who had no power to alienate' and 'any person becoming absolutely entitled' could be applied completely and without practical difficulty only to limited owners. It could not be adapted without strain of language to absolute owners of circumscribed properties. Such adaptation, therefore, was, in my opinion, not contemplated by section 32 of the Land Acquisition Act.

We ought, therefore, in my opinion, to dismiss the appeals and cross-objections with costs and to affirm the decisions of the learned Joint Judge.

Appeals dismissed.

R. R.

CRIMINAL REVISION.

1915.
October 13.

Before Mr. Justice Batchelor and Mr. Justice Hayward.

EMPEROR *v.* MANILAL MANGALJI.*

Bombay Prevention of Gambling Act (Bombay Act IV of 1887), section 3 †—Instruments of gaming—Book used for recording bets already made is an instrument of gaming.

A book which is used for recording entries of the bets made by persons frequenting a place, is an instrument of gaming, within the definition of that term in section 3 of the Bombay Prevention of Gambling Act (Bombay Act IV of 1887).

* Criminal Application for Revision No. 250 of 1915.

† The material portion of the section runs as follows :—

In this Act the expression "instruments of gaming" includes any article used as a subject or means of gaming.

1915.

EMPEROR v. MANILAL MANGALJI.

Emperor v. *Lakhamsi* [1], followed.

THIS was an application in revision against conviction and sentence passed by Frank Oliveira, Third Presidency Magistrate of Bombay.

The facts were that the accused was charged with keeping a common gaming house, an offence punishable under section 4 of the Bombay Prevention of Gambling Act (Bombay Act IV of 1887). The evidence adduced at the trial showed that the room, occupied by the accused, was used for making *teji mandi* bets on the number of bales of cotton expected to be sold on a particular day at Liverpool. The room, when raided by the Police, had no instruments of gaming. It only contained a book, called the green book in the case, which was used for recording bets made or accepted by persons frequenting the room. Some of the entries in it, ran as follows :—" 10-11½ Mohan Jutha ; 10-71 Kukal 0-8-0 ; 5-12½ Mohan Jutha."

The trying Magistrate held that the book in question was an instrument of gaming ; convicted the accused of the offence charged ; and sentenced him to undergo rigorous imprisonment for one month.

The accused applied to the High Court.

Jinnah with *T. R. Desai* for the applicant.—The book cannot be treated as an instrument of gaming. The expression "instrument of gaming" has been defined in section 3 of the Bombay Prevention of Gambling Act 1887, as including "any article used as a means of gaming." To come within the definition the article must have been actually used for the purpose of enabling the gambler to gamble. The moment a bet is laid and is accepted, the transaction is complete and the gaming is over. The subsequent recording of the result of the bet is no part of gaming at all. It played

[1] (1904) 29 Bom. 264.

no part in wager and cannot constitute wager. If no record were made, the gaming would be complete all the same.

Refers to *Queen-Empress* v. *Narottamdas Motiram* [1]; *Emperor* v. *Jesang Motilal* [2]; *Queen-Empress* v. *Kanji Bhimji* [3]; *Emperor* v. *Lakhamsi* [4]; and *Emperor* v. *Tribhovandas* [5].

Bahadurji, acting Advocate General, with *E. F. Nicholson*, Public Prosecutor, for the Crown, was not called upon.

BATCHELOR, J. :—In this case the applicant, Manilal Mangalji, has been convicted by the learned Third Presidency Magistrate of managing or assisting in conducting the business of a common gaming house under section 4 of the Bombay Prevention of Gambling Act, IV of 1887, and has been sentenced to one month's rigorous imprisonment.

The only point of law urged by the learned counsel for the applicant is that a certain green book, in which were recorded entries of the bets made by those frequenting the room managed by the applicant, is not an instrument of gaming within the definition of that term in section 3 of the Act. Unfortunately, however, for this argument, a Bench of this Court has decided against it in the case of *Emperor* v. *Lakhamsi* [6] which followed the decision in *Emperor* v. *Tribhovandas* [5] where the judgment of Mr. Justice Fulton was presumably specially relied upon. We are bound by the decision in *Emperor* v. *Lakhamsi* [6] unless we are prepared to refer the matter to a Full Bench. That I am not prepared to do, though I recognize that in view of the divergence of judicial opinion to which this topic has

(1) (1889) 13 Bom. 681.
(2) (1915) 17 Bom. L. R. 600.
(3) (1892) 17 Bom. 184.
(4) (1904) 29 Bom. 264.
(5) (1902) 26 Bom. 533.
(6) (1904) 29 Bom. 264.

1915.

EMPEROR v. MANILAL MANGALJI.

given rise, my own view must be expressed with diffidence. Speaking for myself, then, I agree with the decision in *Emperor* v. *Lakhamsi*[1]. It is to be observed that the definition in section 3 of the Act is an inclusive definition, the words reading that the "expression 'instruments of gaming' includes any article used as a subject or means of gaming." The whole argument has turned—and I think rightly turned—upon the correct signification of the word 'means' in this definition. Now as there is nothing to the contrary in the Act, it is clear that the word 'means,' which is a popular word and not a term of art, must be construed in its popular sense, that is to say, in the sense in which the word would have been understood amongst ordinary Englishmen the day after the statute was passed: see *Reg.* v. *Commissioners of Income Tax*[2] which was affirmed in *Commissioners for Special Purposes of Income Tax* v. *Pemsel*[3] and *The Fusilier*[4] where Dr. Lushington said: "one of the rules of construing statutes, and a wise rule too, is, that they shall be construed *uti loquitur vulgus*, that is, according to the common understanding and acceptation of the terms." So far as I am able to understand the current usage of this ordinary word 'means,' I should say, having regard particularly to the inclusive character of the definition which we are interpreting, that it must include a thing or article, such as this green book, which was specially contrived and used to promote and facilitate the wagering. I say it was specially contrived and used for this purpose, because in fact it contains nothing but pencilled memoranda of the wagers made. Mr. Jinnah has contended that the wagering might conceivably have been carried on without the assistance of a book to record the wagers, and that no doubt is so. But the question is, when

(1) (1904) 29 Bom. 264.
(2) (1888) 22 Q. B. D. 296.
(3) [1891] A. C. 531.
(4) (1864) 34 L. J. P. M. & A. 25.

1915.

EMPEROR v. MANILAL MANGALJI.

a book is in fact used so as to record the wagers, what is the position of that book? Is it or is not a 'means' of wagering within the definition? In our present case, as it appears to me, the reasonable inference is that it was found by those engaged in this wagering that the wagering could not conveniently be conducted otherwise than with or, I think I may say, by means of this green book: in other words, it was found desirable to maintain this book as a method or, I think, a means of carrying on the wagering which without it could not have been carried on without great or insuperable difficulties.

For these reasons, though I am sensible of the difficulty created by the divergent view expressed by other single Judges in *Queen-Empress* v. *Kanji Bhimji*[1] and *Emperor* v. *Jesang Motilal*[2], it is my opinion that the case of *Emperor* v. *Lakhamsi*[3] was correctly decided, and that we ought now to follow it and hold that the green book in the case before us was a 'means' or 'instrument' of gaming within the definition in the Act.

That being so, the conviction in this case must be affirmed; and though Mr. Jinnah has addressed us on the question of sentence, I see no reason whatever to suppose that the sentence in this case was one whit too severe.

I would, therefore, discharge the rule.

HAYWARD, J.:—The applicant used the green book now before us in his room kept for registering *Teji Mandi* wagers on the results of the cotton sales in Liverpool, and he has, in consequence, been convicted of keeping a common gaming house under section 4 of the Bombay Prevention of Gambling Act. It has not been

(1) (1892) 17 Bom. 184. (2) (1915) 17 Bom. L. R. 600.
(3) (1904) 29 Bom. 264.

1915.

EMPEROR v. MANILAL MANGALJI.

disputed on behalf of the applicant that he so used the green book. But it has been contended that the green book so used was not an instrument of gaming and that, therefore, the applicant was not legally guilty of keeping a common gaming house under the Act.

Now it appears that the original legislative prohibition was directed merely against gaming, in the ordinary sense of the word, that is to say, against playing for stakes or betting at sports or pastimes as was pointed out in the rain betting case of 1889, *Queen-Empress* v. *Narottamdas Motiram*[1]. Thereafter the prohibition was extended to include betting on other events under the term "wagering" by the insertion of these definitions: "In this Act the expression 'instruments of gaming' includes any article used as a subject or means of gaming"; and "In this Act the word 'gaming,' whenever it occurs, shall include wagering" by the Amending Act of 1890. The question, therefore, which we have to decide is, whether the green book before us was used as a 'means' of 'gaming;' or rather to substitute the word which we must substitute under the definition as a 'means' of 'wagering.' It seems to me that the green book would, in ordinary language, be said to have been used as a 'means' of carrying on this particular form of wagering. It is difficult to believe in the circumstances disclosed that any persons would, without some such record, have been induced to enter into these wagering transactions. Whether that is a correct interpretation or not, has, however, been laid open to doubt by the *dicta* on former occasions of certain of the Judges of the Benches of this Court. Those *dicta*, therefore, require careful consideration. In *Queen-Empress* v. *Kanji Bhimji*[2], decided soon after the Amendment Act, while Parsons J. held that it was a question of fact for

(1) (1889) 13 Bom. 681. (2) (1892) 17 Bom. 184.

determination in each case whether account books were instruments of wagering; Telang J. doubted whether they could ever be instruments of wagering. He considered that they were too remotely connected with wagering and were merely helps to the preservation of evidence relating to the completed wagering transaction. In the Opium Sales Case, *Emperor* v. *Tribhovandas*[1], while Fulton J. was of opinion that the account books used to record the wagers were, on that account alone, used as a 'means' of wagering; Candy J. held that these were so used as they were especially contrived and were not merely helps to the preservation of evidence of the wagering transactions. In the Teji Mandi case, *Emperor* v. *Lakhamsi*,[2] both Judges concurred that even slips of paper used to record the wagers were, no less than account books, used as a 'means' of wagering. But in the most recent case, *Emperor* v. *Jesang Motilal*[3], Beaman J. doubted whether such slips of papers or account books could ever be instruments of wagering. It appears, however, that Macleod J. was not prepared to share his doubts, and those doubts were not acted upon, so that there was no decision upon the matter by the Bench.

It appears, therefore, that the interpretation which has commended itself to us as the plain meaning of the language used is the interpretation approved by the only previous decision directly in point which can be regarded as a binding decision of a Bench of this Court. We ought, therefore, to discharge this rule and confirm the conviction. The sentence of one month's rigorous imprisonment is, further, not unduly severe in the case of a keeper of a common gaming house, the suppression of which is the special object of these Acts of the Legislature.

Rule discharged.

R. R.

(1) (1902) 26 Bom. 533. (2) (1904) 29 Bom. 264.
(3) (1915) 17 Bom. L. R. 600 at p. 602.