CRIMINAL REFERENCE.

Before Mr. Justice Mirza and Mr. Justice Broomfield.

EMPEROR *v.* MANGHUBHAI DAHYABHAI AND ANOTHER.* 1930 *April* 2.

Bombay Prevention of Gambling Act (Bom. Act IV of 1887), section 12 (a)—Gambling in a hotel—"Public place," meaning of.

The expression "in any place to which the public have or are permitted to have access" in section 12 of the Gambling Act would include a hotel.

The object of amending section 12 (*a*) of the Gambling Act in 1910 was to free the word "place" which had been originally used in that section from the restricted meaning which it was held to bear, appearing as it did between the expression "public street" and the word "thoroughfare".

Emperor v. *Hussein*[1] and *Emperor* v. *Chennappa*,[2] distinguished.

CRIMINAL Reference to the High Court under section 438 of the Criminal Procedure Code by the Sessions Judge at Surat in Criminal Application No. 39 of 1929.

On April 25, 1929, the accused were arrested without a warrant under section 12 of the Gambling Act when they were gambling in a hotel. The First Class Magistrate was of opinion that section 12 applied, as a hotel was a public place to which people have or are permitted to have access and convicted the accused, and sentenced them to pay a fine of Rs. 100 each and in default to undergo one month's rigorous imprisonment.

The Sessions Judge at Surat was of opinion that the arrest was illegal on the ground that the word "place" should be read *ejusdem generis* with the words "public street" and "thoroughfare". He further held, purporting to follow *Emperor* v. *Chennappa*,[2] that the amendment of section 12 in 1910 did not affect the authority of *Emperor* v. *Hussein*[1] and that the

*Criminal Reference No. 6 of 1930 by K. W. Barlee, Sessions Judge, Surat.

(1) (1905) 30 Bom. 348. (2) (1912) 15 Bom. L. R. 101.

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fact that a person had the right to exclude people from the place did not affect the question. He was of opinion that the conviction should be set aside and therefore referred the case for the opinion of the High Court.

W. B. Pradhan, Acting Government Pleader, for the Crown.

No appearance for the accused.

MIRZA, J. :—This is a reference made by the Sessions Judge, Surat, expressing an opinion that the conviction of the accused for an offence under section 12 of the Bombay Prevention of Gambling Act by the First Class Magistrate, Surat City, is bad in law. The case is reported to this Court for its consideration. The accused were arrested while they were gambling in a hotel. The First Class Magistrate, Surat City, who tried the case, was of opinion that the arrest was not illegal as a hotel could be regarded as a public place within the meaning of section 12 of the Gambling Act. Section 12 of the Gambling Act is as follows: "A Police-officer may apprehend without warrant—(*a*) any person found gaming in any public street, or thoroughfare, or in any place to which the public have or are permitted to have access or in any race-course . . ." The Sessions Judge is of opinion that the case is covered by the authority of *Emperor* v. *Hussein*,[1] where the word "place" occurring in section 12 as it then stood was held to mean "a place of the same general character as a road or thoroughfare". Section 12 (*a*) at the date of that decision read: "A Police-officer may apprehend without warrant—(*a*) any person found playing for money or other valuable thing with cards, dice, . . . in any public street, place or thoroughfare". The word "place" appearing in the

[1] (1905) 8 Bom. L. R. 92; 30 Bom. 348.

section came between " public street " and " thoroughfare ". Russell J. in the course of his judgment at page 30 observed :

" Several cases were referred to in course of the argument. The first was *Langrish* v. *Archer*[1] where it was held that the railway carriage while travelling on its journey was an ' open and public place ' or ' an open and public place to which the public have or are permitted to have access '.

Now if the words in the statute before us were the same as in that, of course the accused would have been rightly convicted, but in the statute there referred to (36 & 37 Vic. c. 38), the words used are ' open place to which the public have or are permitted to have access '."

It is clear from this passage in the judgment that the decision in *Emperor* v. *Hussein*[2] would have been different if the words " to which the public have or are permitted to have access " had governed the word " place " in the section as it then was. The Legislature amended the Gambling Act in 1910 and the words " or in any place to which the public have or are permitted to have access " have been since inserted in the section.

The Sessions Judge is of opinion that this Court followed the decision in *Emperor* v. *Hussein*[2] in the later case of *Emperor* v. *Chennappa*[3] and that was a case to which the provisions of section 12 (*a*) since its amendment in 1910 applied. In that case the accused had been found playing for money with cards in a Math which was managed by a Swami. It was found that the Swami could, if he chose, keep the people out. On those facts the Court set aside the conviction and sentence of the accused holding that the Math could not be regarded as a public place within the meaning of the Bombay Prevention of Gambling Act, 1887. In the report of the reference made by the District Magistrate to this Court the case of *Emperor* v. *Hussein*[2] was quoted and relied on for the view that it applied and that the conviction should be set aside. In the order of the

[1] (1882) 10 Q. B. D. 44. [2] (1905) 8 Bom. L. R. 22 : 30 Bom. 348.
[3] (1912) 15 Bom. L. R. 101.

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Mirza J.

Court no reference was made to *Emperor* v. *Hussein*.[1] The order simply stated (p. 102):

"We agree with the learned District Magistrate that the Math in which the card-playing in this case was carried on cannot be regarded as a public place within the meaning of the Bombay Prevention of Gambling Act IV of 1887. We must, therefore, set aside the convictions of the accused and direct their acquittal and discharge. The fines, if paid by them, should be refunded to them."

Section 12 (*a*) of the Gambling Act quoted in a footnote of the report of the case is the section as it stood prior to the amendment of 1910. It is not clear from the report whether the section which the Court was considering was the old section or the one since its amendment in 1910. The learned Sessions Judge remarks: "The High Court, in a short judgment, merely expressed agreement with him (the District Magistrate) that the Math could not be regarded as a public place within the meaning of the Act; but did not specify as to which of the reasons adduced by him was the basis of their decision. It would appear, however, that they must have followed the case—*Emperor* v. *Hussein*[1]—because at that date (1912), the Act had already been amended and the mere fact that the Swami had authority to exclude the public cannot have been a deciding factor." We are unable to agree with the last statement in this passage. The fact that the Swami had authority to exclude the public could, in our opinion, have been made the basis of the judgment in *Emperor* v. *Hussein*[1] if that case was dealt with under the amended section.

The words in the amended section 12 of the Gambling Act "in any place to which the public have or are permitted to have access" would, in our opinion, include a hotel. The public have a right to use a hotel provided there is accommodation available in it, and can be said to have or be permitted to have access to it.

[1] (1905) 8 Bom. L. R. 22: 30 Bom. 348.

It is no longer necessary to interpret the word " place " appearing in this section *ejusdem generis* with the words " public street " and " thoroughfare ". Maxwell on the Interpretation of Statutes (7th Edition) at page 288 states :

" Of course, the restricted meaning which primarily attaches to the general word in such circumstances is rejected when there are adequate grounds to show that it has not been used in the limited order of ideas to which its predecessors belong. If it can be seen from a wider inspection of the scope of the legislation that the general words, notwithstanding that they follow particular words, are nevertheless to be construed generally, effect must be given to the intention of the Legislature as gathered from the larger survey."

It is clear that the object of the amended section 12 (*a*) in 1910 was to free the word " place " which had been originally used in that section from the restricted meaning which it was held to bear appearing as it did between the expression " public street " and the word " thoroughfare ". We agree with the interpretation put on the section by the First Class Magistrate and see no reason to interfere with the convictions.

BROOMFIELD, J. :—I agree.

Conviction confirmed.

B. G. R.

PRIVY COUNCIL.

NILKANTH BALWANT NATU AND OTHERS (PLAINTIFFS) *v.* VIDYA NARASINH BHARATI AND OTHERS (DEFENDANTS) (AND CROSS-APPEAL).

J. C.*
1930
April 1.

[On appeal from the High Court at Bombay]

Mortgage—Suit for sale—Limitation—Jurisdiction—Properties in and properties outside British India—Mortgage with possession—Mortgagee ceasing to collect rents—Alleged abandonment of security—Time for repayment not specified—Bom. Reg. (V of 1827), section 15, sub-section 3—Code of Civil Procedure (Act V of 1908), section 17.

Between 1840 and 1844 the respondents' predecessor mortgaged to the appellants' predecessor properties of which some were in the Bombay Presidency and some in Kolhapur State. The mortgages provided for interest at a fixed rate, and that the mortgagee should have the right to collect the

Present: Lord Blanesburgh, Lord Russell of Killowen and Sir Lancelot Sanderson.