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tions. It is simply a loan of the common fund to each subscriber in turn, and neither the right of the subscribers to the return of their contributions, nor to a loan of the fund is made a matter of risk or speculation. No loss appears to be necessarily hazarded, nor any gain made a matter of chance, except perhaps as regards the payment of interest, which is only an ordinary incident of the contract of loan; and the benefit in this respect all, it seems, are intended to enjoy alike. The drawing of lots appears only to be made the means of deciding the order or turn in which the loan is to be made to each member.

There is in this, we think, nothing of that risk, speculation, and gaming which make ordinary lotteries a common and public nuisance, and which it was the policy and intention of the Act in question to provide against. The utmost that can be said is that it is an arrangement that, like many other unobjectionable matters of agreement, is very likely to be attended with litigation, and we think that a transaction is not necessarily a lottery within either the spirit or letter of the Act, simply because a matter of whatever kind is agreed to be decided by lot. For these reasons we are of opinion that the claim of the plaintiff was not affected by the provisions of the Act.

NOTE.—See *S. A. No. 169 of 1857*, Mad. S. D., 1858, p. 53.

APPELLATE JURISDICTION (a)

Criminal Petition No. 135 of 1863.

Ex parte SUPPAKON and others.

Fraudulent gain or benefit to the offender is not an essential element of the offence of false personation under Sec. 205 of the Penal Code, and a conviction for false personation may be upheld even where the personation is with the consent of the person personated.

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THIS was an appeal against the sentence passed by J. H. Blair, Acting Sessions Judge of Tinnevely, on the prisoners in Case No. 48 of 1863.

The first prisoner was charged with having on the 6th February 1863 falsely personated Sangukon, the fourth pri-

(a) Present : Scotland, C. J. and Frere, J.

soner, and in such assumed character falsely stated to the village authorities of Mudimanárkottai that he was Sangu-kon, owner of two bullocks which had been stolen and which he had discovered to be in possession of Palania Pillai and Kupaiyandi Náyak, and further given a deposition to the same effect before the Sub-Magistrate of Tiruchili, and that he, the first prisoner, had thereby committed an offence punishable under section 205 of the Penal Code(a). The purpose of the false personation appeared to have been merely to save the fourth prisoner the trouble of making the complaints in person. The second, third and fourth prisoners were charged with having abetted the first prisoner in committing the said offence. The Sessions Judge found the four prisoners guilty, and sentenced them to one year's rigorous imprisonment.

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Mayne, for the petitioners, the four prisoners, submitted that if the fourth prisoner abetted the act of the first prisoner, he must have authorised it, in which case the first prisoner was his agent and did not commit the offence of personation. There is, moreover, nothing to shew fraudulent gain or benefit to the offender which is essential to justify the conviction.

The Court was of opinion that the act of the first appellant amounted to the offence of false personation within the meaning of Section 205 of the Penal Code, and that fraudulent gain or benefit to the offender was not an essential element of such offence. As, however, it did not appear that any fraudulent purpose was to be served, the sentence was reduced to six months' rigorous imprisonment.

(a) This section enacts that " whoever falsely personates another and in such assumed character makes any admission or statement, or confesses judgment, or causes any process to be issued, or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both.

Even where the prisoner personated an imaginary person, a conviction was upheld under this section : *Reg. v. Bhitto Kahar*, 1, Ind. Jur., 123. See sec. 416.