1879

SREERAM CHANDRA LEHKAN v. BIPINDASS.

entering and searching an alleged gaming-house legal, but he must receive his authority for that purpose from a Magistrate of a District or a District Superintendent of Police. In this case such authority was not given.

This being so, we cannot say that there is any evidence on the record, that the house which was entered and searched was a gaming-house within the meaning of the Act. We have gone through the record, and we find no evidence bearing upon this matter. It cannot, we think, be presumed under s. 6 of the Act, because that presumption only arises when the proceedings are authorized by the preceding section, which, as we have observed before, was not the case here.

The order of the Deputy Magistrate, therefore, must be quashed; the fines, if realized, must be refunded; and the properties, which have been declared to be forfeited to Government, must be restored to the parties from whose possession they were taken.

Conviction set aside.

Before Mr. Justice Jackson and Mr. Justice Tottenham.

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Dec. 2.

THE EMPRESS *v.* NIPCHA AND ANOTHER.*

Sanction to Prosecute—Power of District Magistrate to proceed where Prosecutor has not availed himself of the Sanction—Amendment of Charge—Criminal Procedure Code (Act X of 1872), ss. 450, 470.

Where sanction has been given under s. 468 of Act X of 1872 by a Deputy Magistrate to a person to prosecute another for bringing a false charge, and such sanction is not proceeded under, it is open to the District Magistrate to take up the case under s. 142 without complaint.

REFERENCE to the High Court under s. 296 of the Criminal Procedure Code (Act X of 1872).

One Hanif had been charged before a Deputy Magistrate with theft on the evidence of two chowkidars. He was, however, acquitted, and the Deputy Magistrate gave the accused permis-

* Criminal Statement, No. 714 of 1878, from an order made by H. Beveridge, Esq., Sessions Judge of Rungpore, dated the 21st November 1878.

sion to prosecute the chowkidars under s. 211 of the Indian Penal Code, and security was taken from the chowkidars for their attendance next day before the Magistrate. Hanif did not complain, but the Magistrate of the District took up the case on the report of the Police, and thinking that s. 192 of the Penal Code was more applicable to the case than s. 211, he committed the prisoners under that section.

On the case coming before the Sessions Judge, he was of opinion that the Magistrate was not competent to take up the case without a complaint, and although he authorized Hanif to prefer a complaint, Hanif did not do so, and that, therefore, the Magistrate was not competent to create a charge of his own against the accused. He further found that, even supposing the proceedings to be legal, there was not sufficient evidence to justify a conviction of the accused.

No one appeared to argue the case.

The opinion of the High Court was delivered by

TOTTENHAM, J. (JACKSON, J., concurring).—It seems to me that the Judge is wrong in his law throughout.

The Deputy Magistrate did expressly sanction a complaint under s. 211, and even took bail for the appearance of the accused. The sanction was none the less valid, because the person to whom it was given did not avail himself of it, and sanction having been given, the Magistrate of the District was competent, under s. 142, Code of Criminal Procedure, to take up the case without a complaint.

As to the change from s. 211 to s. 192, the sanction in respect of one offence covers also one under the other on the same facts (ss. 470 and 450, Code of Criminal Procedure).

But after all it would appear that the Judge would acquit the prisoners on the merits also. It will be sufficient, therefore, to point out to the Judge that his view of the law is erroneous.

His attention should also be called to the fact that he has omitted to sign the depositions recorded by him as required by para. 2, s. 335, Code of Criminal Procedure.