

1863.

Aug. 6.

## REG. v. RA'MA' bin RABHA'JI.

*Fine—Imprisonment and Fine—Ind. Pen. Code, Sec. 211.*

A prisoner convicted under the second clause of Sec. 211 of the Indian Penal Code should be sentenced to imprisonment, with or without fine, and not to fine alone.

THE charge against the accused in this case was that he had, with intent to injure one Vishṇu bin Hanmantá, presented a petition to the Police *Amaldár* of Shivgám, charging the said Vishṇu bin Hanmantá with having stolen from his house five of his cattle, an offence punishable with imprisonment for seven years, well knowing at the time that there was no just or lawful ground for such charge, and thereby committed an offence defined in and punishable under Sec. 211 of the Indian Penal Code.

W. H. Newnham, the Assistant Judge of Ahmednagar, found the prisoner guilty as charged, and sentenced him to pay a fine, or in default to suffer a term of imprisonment; and the case having been entered in the Ahmednagar Session Judge's Monthly Return, the case was called for by the High Court, and in remanding it to the Session Judge the following minute was made:—

The Court (FORBES and WARDEN, JJ.) annuls the sentence, and directs the case to be returned to the Session Judge, in order that a legal sentence may be passed, including imprisonment.

Aug. 6.

*Special Appeal No. 343 of 1862.*

TRIBHUVANDA'S JAGJIVANDA'S.....*Appellant.*  
MOTILA'L RA'MDA'S.....*Respondent.*

*Agent—Wagering Contract entered into by Agent—Act XXI. of 1848.*

An agent employed to effect a wagering contract is entitled to recover from his principal money paid on his account in respect thereof, his authority not having been revoked. The claim is not affected by Act XXI. of 1848.\*

THIS was an action in which the plaintiff sought to recover from the defendant the sum of Rs. 999-15-11, alleged to be the balance due to the plaintiff on an account current.

\* NOTE.—See Act (Bombay) III. of 1865.

The defence was that the transactions, with respect to which the action was brought, were of a gambling character, and, as such, not cognisable by the Civil Courts.

The Munsif of Bhivandi, A'zam Vináyak Govind, rejected the claim, partly because the transactions between the parties were of a gambling character, and partly because the evidence failed to establish Motilál's liability.

On appeal against this decision by Tribhuvan, the Assistant Judge of Tháná, M. Melvill, who heard the appeal, confirmed this decision, on the ground that the action was brought for the recovery of money won by wagering, and, as such, was prohibited by Act XXI. of 1848.

Tribhuvan thereupon preferred a special appeal against this decision, on the ground that the action was cognisable by a Civil Court, and that the Assistant Judge was in error in throwing out the claim on the ground that it was prohibited by Act XXI. of 1848; that the action being brought to recover the balance due on an account current for sums paid by the appellant on behalf of the respondent, and as his agent, to third parties, with whom the respondent had made wagers, the provisions of that Act did not apply.

The special appeal was argued before FORBES and WARDEN, JJ.

*Dhirajlál Mathurádás* for the appellant.

*Mádhavráv Krishná* for the respondent.

PER CURIAM:—The decree of the Court below is reversed, and the case remanded in order that the lower Court may decide whether any and what balance is due by Motilál to Tribhuvandás on account of sums paid by Tribhuvandás to other parties on his account, and may pass a new decree upon the merits, awarding costs.

*Decree reversed.*

1868.

TRIBHUVAN-  
DA'S JAGJI-  
VANDA'S  
v.  
MOTILÁL  
RA'MDA'S.