

1870. particular house acted in such a manner as to cause a public
 REG. nuisance within the meaning of Sec. 268 of the Penal Code.
 v. Although, following the English decisions, we might perhaps
 HA'U NA'GJI hold that a common gaming-house, to which every one who
 et al. chooses to pay is able to go, is necessarily a nuisance, and
 that no evidence of any actual annoyance to the public is
 in such a case required, yet we cannot, without such evi-
 dence, hold that every person who admits gamblers into his
 house, and every person who games therein, is guilty of a
 public nuisance.

Convictions and Sentences reversed.

Dec. 1.

REG. V. SANGA'PA' bin BASHIA'PA'.

*Indian Income Tax Act—General Clauses Act—Imprisonment in default
 of Payment of Fine.*

The Indian Income Tax Act (Act IX. of 1869, supplemented by Act XXIII. of 1869) having been passed subsequently to the General Clauses Act (No. I. of 1868), Sec. 5 of the latter authorises the award of imprisonment in default of payment of the fine imposed under Sec. 25 of the former.

THIS was a case referred for the orders of the High Court by J. Elphinston, Magistrate of the District of Kánará. The accused, having failed to pay the additional tax imposed upon him under the supplementary Income Tax Act (No. XXIII. of 1869,) was sentenced, on conviction, by the First Class Subordinate Magistrate of Kumptá, to pay a fine of Rs. 6, or in default to suffer fifteen days' simple imprisonment. In referring the case, the District Magistrate stated that "neither of the Income Tax Acts (IX. and XXIII. of 1869) prescribes imprisonment for default of payment of a fine, Sec. 26 referring to recoveries only, and that the High Court held the same view in 1868, in the case of *Reg. v. Chenáppá valad Nágáppá (a)*. That was a case disposed of under Sec. 15 of the License Tax Act (XXI. of 1867), as amended by Sec. 3 of Act XXIX. of 1867; but the 25th section of Act IX. of 1869, under which Sangápá was fined, would be found to be a corresponding one to Sec. 15 of Act XXI. of

(a) 5 Bom. H. C. Rep., Cr. Ca. 44.

1867, as amended by Act XXIX. of 1867; and Sec. 26 of Act IX. of 1869 was an exact copy of Sec. 17 of Act XXI. of 1867, under which the High Court ruled that the trying Magistrate had, under the Act, no power to award imprisonment in default of payment of a fine."

1870.
REG.
v.
SANGA'PA'
BASHIA'PA'.

The reference was heard by GIBBS and MELVILL, JJ.

PER CURIAM:—The Indian Income Tax having been passed subsequently to the General Clauses Act (No. I. of 1868), Sec. 5 of the latter Act disposes of the Magistrate's objection.

The record and proceedings in the case to be returned.

Papers returned.

Sec. 5 of the General Clauses Act runs as follows:—

"The provisions of Sections sixty-three to seventy, both inclusive, of the Indian Penal Code, and of Section sixty-one of the Code of Criminal Procedure, shall apply to all fines imposed under the authority of any Act hereafter to be passed, unless such Act shall contain an express provision to the contrary."



REG. v. REAY.

Dec. 16.

Privy Council—Appeals in Criminal Trials—Referred Case—Criminal Proc. Code, Sec. 404—Amended Letters Patent of 1865, Cl. 41.

The High Court has no power, under Cl. 41 of the Amended Letters Patent of 1865, to grant leave to appeal to Her Majesty in Council from an order made or decision given in a criminal case referred by a Magistrate, under Sec. 404 of the Code of Criminal Procedure.

THE order of the High Court, made on the 21st of May 1870, annulling the conviction and sentence of Mr. Reay, and the proceedings in the case generally, will be found reported in the 7th volume of the Bombay High Court Reports, at p. 6 of the Crown Cases.

That order was made upon the proceedings in the case having been referred by the District Magistrate of Ahmed-ábád for the orders of the High Court, under Sec. 404 of the Code of Criminal Procedure.

A petition for leave to appeal from that order to Her Majesty in Council was presented by *Dhirajlál Mathurádás* (Government Prosecutor).