

purchasers on the dates of the respective sales. The sales were held in execution of the decree obtained by the applicant to this Court, Vishvanath Maheshwar.

None of the other decree-holders, mentioned in the Subordinate Court's judgment, applied to the Court for execution prior to the realization of the proceeds of the sale of the *gamtya* property on the 22nd July, 1880, and, therefore, none of them are entitled to share in the proceeds of that sale, and, therefore, the whole sum of Rs. 99-8-0 realized by the sale of the *gamtya* property must be paid to the applicant, Vishvanath Maheshwar, after deducting the costs of the realization.

The only decree-holder, other than the applicant, who applied to the Subordinate Court for execution prior to the realization of the proceeds of the sale of the *bhagdari* property on the 1st September, 1880, was Virchand Panachand, who applied for execution on 6th August, 1880. He is entitled under section 295 of the Code of Civil Procedure, to share rateably with the applicant in the Rs. 1,752 realized by the sale of the *bhagdari* property after deducting the costs of the realization.

The Subordinate Court's order must be amended accordingly. The applicant Vishvanath Maheshwar to receive his costs from the opponents, who will bear their own costs in both Courts.

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## APPELLATE CRIMINAL.

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*Before Mr. Justice Melvill and Mr. Justice Pinhey.*

IMPERATRIX *v.* VITHAL BHA'ICHAND.\*

November 17.

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*Gambling—Coin—Bombay Act III of 1866, Section 11.*

A coin is not an instrument of gaming within the meaning of section 11 of Bombay Act III of 1866. An instrument of gaming means an implement devised or intended for that purpose.

THIS was an application for the revision of the order of J. M. Campbell, Magistrate of Kheda, confirming the sentence passed on the applicant by Vishnu Ramchandra, Magistrate (Second Class) at Kheda.

Application for Revision, No. 227 of 1881.

1881

VISHVANATH  
MAHESHVAR  
*v.*  
VIRCHAND  
PANACHAND.

1881

IMPERATRIX  
v.  
VITHAL  
BHAICHAND.

The accused was convicted of having gambled with coins at a fair within two miles of the Mehmadaabad railway station. The game played was not one of mere skill; but no cards, dice, counters or other instruments of gaming were used in playing the game. The Subordinate as well as the District Magistrate considered that, as the game played was not one of mere skill, the act of the accused was criminal under section 11 of Bombay Act III of 1866, and sentenced the accused to a fine of ten rupees. The accused consequently applied to the High Court.

*Gokaldas Kahandas Parekh* for the applicant.

*Nanabhai Haridas*, Government Pleader, for the Crown.

*Per Curiam*.—The Court is of opinion that a coin is not an instrument of gaming within the meaning of section 11 of Bombay Act III of 1866. An instrument of gaming means an implement devised or intended for that purpose: *Watson v. Martin*<sup>(1)</sup>; see also the case of *Rama Zilu*, Criminal Rulings dated 19th June, 1873. The Court, therefore, reverses the conviction and sentence, and directs that the fine be restored.

*Conviction reversed.*

(1) 34 L. J. M. C. 50; 11 Jur. N. S. 321.

## APPELLATE CIVIL.

*Before Mr. Justice Melvill and Mr. Justice Kembal.*

PUNJA KUVARJI (ORIGINAL PLAINTIFF), APPELLANT, v. BAI KUVAR  
AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.\*

*Limitation—Prescription—Act XV of 1877, Sections 23 and 26—Continuing nuisance—Easement.*

From time immemorial, and certainly for more than twenty years prior to the date of the obstruction by the defendants, the plaintiff enjoyed the right of having an egress for his rain water through a drain in the defendants' land. The plaintiff, more than two years after the date of the obstruction, sued the defendants for the removal of the obstruction.

*Held* that though, under the circumstances, the plaintiff had failed to prove a title acquired under section 26 of Act XV of 1877, yet the plaintiff, having a title, evidenced by immemorial user, did not require the aid of that Act; and inasmuch as the obstruction complained of, constituted a continuing nuisance, as to

\* Second Appeal, No. 236 of 1881.