

taken in charge by the Court of Wards, it was liable to be taken in execution of the decree. When the property was re-transferred by the Court of Wards to the judgment-debtor, it was equally chargeable, and we find it impossible to say that the proceeds of the subsequent sale to the Court of Wards are in any way exempt from liability, whether the payment was immediate or deferred. Moreover, a promise not to alienate cannot *per se* operate as a bar to expropriation by the act of a Court.

We have had cited to us the case of *Haridas Acharjia v. Baroda Kishore Acharjia* (1), in which it was held that there could not be a valid attachment of any portion of a maintenance allowance by prohibitory order issued to the person bound to pay such allowance, of a date anterior to the time when the same falls due to the judgment-debtor. The learned Judge relied upon a passage reported in the ruling *Syud Tuffuzool Hossain Khan v. Rughoonath Pershad* (2). We find that the subject-matter of that case was totally different from that which forms the subject-matter of this appeal.

Our attention was also called to the case of *Maniswar Das v. Baboo Bir Pertab Sahu* (3) as an authority for the proposition that future maintenance can be attached.

In our opinion to hold that the deferred payments in this case are exempt from attachment would be contrary to common sense, equity, and good conscience.

We consider the Court below was right, and we dismiss the appeal with costs.

Appeal dismissed.

Before Sir Arthur Strachey, Knight, Chief Justice, and Mr. Justice Banerji.
SHIBHO MAL (DEFENDANT). v. LACHMAN DAS (PLAINTIFF).*

Act No. IX of 1872 (Indian Contract Act), Section 30—Wagering contract
—Contract collateral to a wagering contract not unenforceable.

Although by reason of section 30 of the Indian Contract Act, 1872, a wagering contract is void, a contract collateral to such a contract is not necessarily unenforceable, and the fact that a person has constituted another

* First Appeal from Order No. 98 of 1900, from an order of Pandit Giraj Kishore Das, Additional Subordinate Judge of Saharanpur, dated the 2nd May 1900.

(1) (1899) I. L. R., 27 Calc., 38. (2) (1871) G B. L. R., 646.
(3) (1871) 14 Moo. I. A. 40.

1901

HAR
SHANKAR
PRASAD
SINGH
v.
BAIJNATH
DAS.

1901

January 18.

1901

SHEBHO
MAL
v.
LACHMAN
DAS.

person his agent to enter into and conduct wagering transactions in the name of the latter, but on behalf of the former, the principal, amounts to a request by the principal to the agent to pay the amount of the losses, if any, on those wagering transactions.—*Parakh Govardhanbhai Haribhai v. Ransordas Dulabhdas* (1) and *Thacker v. Hardy* (2) referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Babu *Durga Charan Banerji*, for the appellant.

Babu *Satish Chandar Banerji*, for the respondent.

STRACHEY, C. J., and BANERJI, J.—This was a suit brought by an agent to recover from his principal a balance due to him on account of commission and losses incurred by him in the business of his agency which was the purchase and sale of grain. The substantial defence was that the transactions were not, as they professed to be, genuine transactions of sale and purchase of grain, but were merely gambling transactions in differences. The Court of first instance took that view of the transactions and dismissed the suit. On appeal the Additional Subordinate Judge set aside the first Court's decree, and remanded the case under section 562 of the Code of Civil Procedure, to the lower Court for trial on the merits. The lower appellate Court held that, notwithstanding that the transactions effected by the plaintiff on behalf of the defendant with third parties were gambling transactions only, the defendant was nevertheless bound to make good the losses incurred in those transactions to the plaintiff and pay the commission claimed. In that view we think the Court was right. Section 30 of the Indian Contract Act shows that a wagering contract is void, but it does not say that it is illegal. The judgment of Sir Michael Westropp, C. J., in *Parakh Govardhanbhai Haribhai v. Ransordas Dulabhdas* (1) shows that it does not follow because a wagering contract is void that contracts collateral to it cannot be enforced, and "the fact that a person has constituted another person his agent to enter into and conduct wagering transactions in the name of the latter but on behalf of the former, the principal, amounts to a request by the principal to the agent to pay the amount of the losses, if any, on those wagering transactions." See also *Thacker v. Hardy*, (2). There is in these Provinces no enactment similar to the Gaming Act,

(1) (1875) 12 Bom., H. C. Rep., 51.

(2) (1878) L. R., 4 Q. B. D., 685.

1892 (55 Vic. Cap. IX) and Bombay Act III of 1865, according to which contracts collateral to or in respect of wagering transactions cannot support a suit. It is contended, however, that there is nothing in the present case to show that the defendant ever authorized the plaintiff to enter into transactions in differences only or other than genuine transactions of sale and purchase, that the plaintiff in entering into gambling transactions exceeded his authority, and that consequently the defendant is not liable either to make good the losses or to pay the commission. We construe the judgment of the lower appellate Court, however, as finding that the defendant was aware of and authorized the plaintiff to enter into the transactions in question. That being so, the order of the lower appellate Court remanding the case under section 562 is correct, and this appeal must be dismissed with costs.

Appeal dismissed.

Before Sir Arthur Strachey, Knight, Chief Justice, and Mr. Justice Banerji.

HABIB BAKHSH AND OTHERS (DEFENDANTS) v. BALDEO PRASAD AND OTHERS (PLAINTIFFS).*

Civil Procedure Code, sections 562, 564, 566—Appeal—Remand—Power of appellate Court to remand for trial on the merits otherwise than under the provisions of section 562.

Section 564 of the Code of Civil Procedure must be read subject to the other provisions of the Code, for example, those contained in section 27, section 32, or section 53. An appellate Court has power to make an order under any of those sections, and in order to give effect to the provisions of the section which is applicable, it is necessary that it should in certain cases send back the case to the Court of first instance: Under such circumstances section 564 of the Code will not preclude an appellate Court from remitting a case to the Court of first instance. *Ramesh Singh v. Sheodin Singh* (1), *Mahgu Kuar v. Faujdar Kuar* (2), *Mullu Khan v. Than Singh* (3), *Durga Dihal Das v. Anoraji* (4), *Salima Bibi v. Sheikh Muhammad* (5), *Mihin Lal v. Imtiaz Ali* (6), *Rajit Ram v. Katesar Nath* (7), *Ganesh Bhikaji Juvekar v. Bhijaji Krishna Juvekar* (8) and *Kelu Mulacheri Nayar v. Chendu* (9) referred to.

* Second Appeal No. 780 of 1898, from a decree of Babu Sanwal Singh, Judge of the Court of Small Causes, Agra, with powers of a Subordinate Judge, dated the 24th June 1898, reversing a decree of Khwaja Abdul Ali, Munsif of Agra, dated the 29th March 1898.

- | | |
|------------------------------------|------------------------------------|
| (1) (1889) I. L. R., 12 All., 510. | (5) (1895) I. L. R., 18 All., 131. |
| (2) Weekly Notes, 1891, p. 105. | (6) (1896) I. L. R., 18 All., 332. |
| (3) Weekly Notes, 1891, p. 187. | (7) (1896) I. L. R., 18 All., 396. |
| (4) (1894) I. L. R., 17 All., 29. | (8) (1886) I. L. R., 10 Bom., 398. |
| (9) (1895) I. L. R., 19 Mad., 157. | |

1901

SHIBHO
MAL
v.
LACHMAN
DAS.

1901
January 30.