

1903

RAM
BAKSH
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MUGHLANI
KHANAM.

to no other conclusion than that Naim Beg has no such interest, and had none on the day when his suit was instituted. This view is supported by the decision of Jenkins, C. J., in the case of *Karalia Namubhai Mahomedbhai v. Mansukhrām Vakhatchand* (1). The earlier decision of the Bombay High Court in the case of *Hormasji Manekji Dadachanji v. Keshav Purshotam* (2) does not appear to us to apply, inasmuch as in that case the title attempted to be set up against a purchaser of property at a sale in execution of a decree was based upon a contract for sale in writing executed a fortnight previously and not registered, and under which possession of the property had not been given and only a small portion of the purchase money had been paid.

Upon the facts which have been established in the case before us we hold that the judgment-debtor Naim Beg has no interest in the property in dispute which can be attached and sold in execution of the plaintiff's decree. We therefore dismiss the appeal with costs.

1904
January 5.

REVISIONAL CRIMINAL.

Before Mr. Justice Aikman.

EMPEROR v. TOTA AND OTHERS.*

*Act No. III of 1867 (Gambling Act), section 13—Gaming in public place—
Seizure of money as well as instruments of gaming not authorized.*

Held that where persons are found gaming in a public place under circumstances to which section 13 of Act No. III of 1867 is applicable, although instruments of gaming, &c., may be seized by the police, there is no authority for the confiscation of money found with the persons arrested. *Sant and Ram Sahai v. Queen-Empress* (3) followed.

TOTA and a large number of other persons were found gambling in a public place and were convicted by a Magistrate of the first class under section 13 of Act No. III of 1867 and sentenced some to one month's rigorous imprisonment and others to fines. In addition a considerable sum of money

* Criminal Reference No. 726 of 1903.

(1) (1900) I. L. R., 24 Bom., 400. (2) (1893) I. L. R., 18 Bom., 13.
1 (3) Panj. Rec., 1891, Cr. J., p. 60.

which the persons arrested had with them was seized by the police, and the convicting Magistrate ordered that it should be confiscated and credited to Government. The convicts applied in revision to the Sessions Judge, who, whilst rejecting the plea raised that the place where the gambling was going on was not a public place within the meaning of section 13 of the Gambling Act, was of opinion that the Magistrate had no authority under the circumstances to confiscate the money which had been found at the spot by the police. He accordingly reported the case to the High Court under the provisions of section 438 of the Code of Criminal Procedure with the recommendation that the Magistrate's order, so far as it related to the money found, should be set aside.

AIKMAN, J.—In this case certain men were convicted under section 13 of Act No. III of 1867 of having been found gaming in a public place and were sentenced, some of them to imprisonment and some to fine. The Magistrate further directed that the money seized by the police at the time, said to be upwards of Rs. 700 in amount, should be forfeited and credited to Government. The learned Sessions Judge has reported the case to this Court, with the recommendation that the order as to the forfeiture of the cash should be set aside as illegal. The learned Sessions Judge is clearly right. On a conviction under section 13 the Magistrate may order all instruments of gaming found in the public place or on the persons of those arrested to be forthwith destroyed, but that section contains no provision such as is to be found in section 8 of the Act authorizing the forfeiture of the money seized. As to this I entirely concur in what was said by Sir Charles Roe in the case of *Sant and Ram Sahai v. Queen Empress* (1). I quash that part of the Magistrate's order directing the forfeiture of the cash. The money found must be restored to those from whom it was taken or in whose possession it was found.

(1) Panj. Rec., 1891, Cr. J., p 60