

got a sum of Rs. 314-8-0, out of the sum deposited by him. There was an appeal in the pre-emption suit to this Court, and this Court modified the decree of the first court by ordering the pre-emptor to pay a sum of Rs. 10,000, instead of Rs. 6,800. He deposited in compliance with the order of this Court an extra sum of Rs. 3,200. This deposit was made in time. The judgement-debtor took objection to this deposit on the ground that it was not a compliance with the order of the High Court, inasmuch as the decree-holder had taken out the sum of Rs. 314-8-0 out of the sum previously deposited by him. The court below disallowed the objection. Hence this appeal. There is a series of decisions of this Court; see *Ishri v. Gopal Saran* (1), *Balmukand v. Pancham* (2), *Parmanand Raot v. Gobardhan Sahai* (2), and *Bechai Singh v. Shumi Nath* (3). In all these cases it has been ruled that such a deposit as was made by the pre-emptor in this case, was a complete compliance with the order of the court. Mr. Justice TYRRELL in *Balmukand v. Pancham* no doubt, took a different view. But we are bound to follow the other rulings of this Court with which we ourselves agree. The appeal fails and is dismissed with costs.

1912

ALI HUSAIN
v.
AMIN-ULLAH.

Appeal dismissed.

REVISIONAL CRIMINAL.

1912

June 24.

Before Mr. Justice Chamier.

EMPEROR v. ABBU SINGH AND OTHERS.*

Ac No. III of 1867 (Public Gambling Act), section 5—Jurisdiction—Power to issue search warrant—“Officer invested with the full powers of a Magistrate” —Sub-divisional officer issuing warrant for search outside his sub-division.

Held that a search-warrant issued under section 5 of the Public Gambling Act, 1867, by a first class magistrate was not invalid by reason of the fact that the house to be searched was situated outside the limits of the tahsils in respect of which such magistrate had been appointed sub-divisional officer.

This was an application for revision of an order convicting and sentencing the applicants under sections 3 and 4 of the Public Gambling Act, 1867. The only point taken in revision was that

* Criminal Revision No. 358 of 1912, from an order of H. Dupernex, Sessions Judge of Farrukhabad, dated the 13th of April, 1912.

(1) (1888) I. L. R., 10 All., 400. (2) (1906) I. L. R., 28 All., 676.

(3) (1910) 8 A. L. J., Notes, p. 27.

1912

EMPEROR
v.
ABBU SINGH.

the warrant under which the suspected house had been searched was issued by a sub-divisional officer, and the house in question was outside the limits of his sub-division. It was therefore contended that the magistrate, who was a magistrate of the first class, had no jurisdiction to issue the warrant.

Mr. *W. Wallack*, for the applicants.

The Assistant Government Advocate (Mr. *R. Malcomson*), for the Crown.

CHAMBER, J.—The applicants have been convicted under sections 3 and 4 of the Public Gambling Act, 1867. The only point taken in revision is that the warrant under which the police searched the house of the first applicant was issued by a magistrate who was not competent to issue it, and, therefore, the discovery of instruments of gaming in the house did not give rise to the presumption that the house was a 'common gaming house,' as defined in the Act. Section 5 of the Act provides that a search warrant may be issued by the Magistrate of the District or 'other officer invested with the full powers of a magistrate.' This expression means a magistrate of the first class,—see section 3 (2) of the Code of Criminal Procedure. The warrant in the present case was issued by M. Muhammad Shafi Khan, a magistrate of the first class in the Farrukhabad district. In November last, he was appointed to be sub-divisional officer of two tahsils in the district. The house searched is not in either of those tahsils, and it is on this account that the warrant is said to be illegal. It appears to me that there is no force in the contention. The officer in question was a magistrate of the first class with jurisdiction extending throughout the district when he was appointed to be a sub-divisional officer. The appointment gave him certain additional powers in the area of which he became sub-divisional officer, but did not deprive him of all his powers as a magistrate. A Sub-divisional Magistrate exercises magisterial powers in matters which do not concern his sub-division, and I find nothing in the Code which suggests that this practice is contrary to law. It is true, as pointed out by counsel for the appellants, that some of the ordinary powers of a magistrate of the first or second class, who has been appointed to be a sub-divisional officer, cannot be exercised by him except in cases arising in his sub-division or

transferred to him by higher authority, but that is on account of the nature of those powers. There are other powers which any magistrate can exercise anywhere in the district, for example, the power to command an unlawful assembly to disperse or the power to record a confession. All that section 5 of the Public Gambling Act requires is that the search warrant shall be issued by the magistrate of a district or a magistrate of the first class. It is impossible to hold that the magistrate who issued the warrant in the present case was not a magistrate of the first class. The application is rejected.

Application rejected.

APPELLATE CIVIL.

1912
EMPEROR
v.
ABBU SINGH.

1912
June 26.

Before Mr. Justice Karamat Husain and Mr. Justice Tudball.

GAJADHAR TELI (PLAINTIFF) v. BHAGWANTA AND ANOTHER (DEFENDANTS).
Mortgage—Prior and subsequent mortgages—Suit for sale on second mortgage, first mortgagees being made parties—Rights of first mortgagees not set up—Subsequent suit by first mortgagees barred—Res judicata—Civil Procedure Code (1908), section 11.

Certain puisne mortgagees brought a suit for sale on their mortgage in which, although they impleaded the prior mortgagees, they simply asked for the sale of the property mortgaged, neither claiming to have their mortgage redeemed nor asking for sale subject to the prior mortgage. The prior mortgagees on their part did not set up their rights under the prior mortgage. *Held* that section 11 of the Code of Civil Procedure was a bar to the prior mortgagees afterwards suing for sale on their mortgage. *Mahomed Ibrahim Hossain Khan v. Ambika Pershad Singh* (1) followed. *Surji Ram Marwari v. Barhamdeo Prasad* (2) distinguished.

The facts of this case are fully stated in the judgement of the court.

Babu *Surendra Nath Sen*, for the appellant.

Maulvi *Ghulam Mujtaba*, for the respondents.

KARAMAT HUSAIN and TUDBALL, JJ. :—The facts of the case out of which this appeal has arisen are as follows :—On the 20th of June, 1885, Husain Ali and Jawwad Husain mortgaged 6 bighas, 1 biswa and 18 dhurs of zamindari to Radhe and Chirkil.

*Second Appeal No. 962 of 1911, from a decree of Rama Das, Additional Subordinate Judge of Azamgarh, dated the 20th of July, 1911, modifying a decree of Raghunath Prasad, City Munsif of Azamgarh, dated the 19th of December, 1910.

(1) (1912) I. L. R., 99 Calc., 527.

(2) (1905) 1 C. L. J., 337.