

## REVISIONAL CRIMINAL.

1918  
March, 20.*Before Justice Sir Pramada Charan Banerji.*

EMPEROR\* v. MATURWA.

*Act No. III of 1867 (Public Gambling Act), section 13—Gaming in public place—Seizure of money as well as instruments of gaming illegal.*

Where persons are found gambling in a public place in circumstances to which section 13 of the Gambling Act, 1867, is applicable, although instruments of gambling, etc., may be seized by the police, there is no authority for the confiscation of money found with the persons arrested. *Emperor v. Tota* (1) followed.

THIS was a reference made by the Sessions Judge of Saharanpur.

The facts of the case sufficiently appear from the referring order, which was as follows:—

“On the findings of fact of the learned Magistrate the conviction is right. The place was a public place, and I have been shown by the learned counsel for the applicant the game which was played, and am of opinion that it was distinctly a gambling one, and in no sense a game of skill. As to the sentence, the appellant has been three times fined, that it would have been idle to go on fining him.

“The learned Magistrate has, however, ordered confiscation of the money which was found in the applicant’s possession. Apart from the apparent clearness of the section itself, the ruling in *Emperor v. Tota* (1) is authority that this is illegal. The case will, therefore, have to be reported to the Hon’ble High Court, after the usual reference to the learned Magistrate, with the recommendation that this part of the learned Magistrate’s order be set aside. The rest of the learned Magistrate’s order should hold good.”

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

BANERJI, J.—The accused in this case was convicted under the Gambling Act. The Magistrate who convicted him ordered confiscation of the money which was found in his possession. The learned Sessions Judge has reported the case to this Court with the recommendation that this portion of the learned Magistrate’s

\* Criminal Reference No. 156 of 1918.

(1) (1904) I. L. R. 26 All. 270.

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order should be set aside as not being in conformity with law. It is clear from the language of section 13 of the Gambling Act that all that could be confiscated were the instruments of gaming. This was so held in the case to which the learned Sessions Judge refers. Acceding therefore to the recommendation of the learned Sessions Judge, I set aside so much of the order of the Magistrate as directs the confiscation of the money found in the possession of the accused and direct that it be refunded to him.

## APPELLATE CIVIL.

Before Mr. Justice Piggott and Mr. Justice Walsh.

JUMANAN AND OTHERS (DEFENDANTS) v. JAHANJIRA (PLAINTIFF).\*

*Hindu law—Hindu widow—Gift—Suit to contest alienation made by widow—Plaintiff not the nearest reversioner.*

In order that a reversioner may be able to maintain a suit to contest an alienation, made by a Hindu widow, of her husband's property he must either be the next presumptive reversioner or he must show that the nearer reversioners are colluding with the widow. *Rani Anand Kunwar v. The Court of Ward*: (1) and *Meghu Rai v. Ram Kholawan Rai* (2) followed. *Raja Dei v. Umed Singh* (3) distinguished.

THE facts of this case were as follows :—

On the death of one Tota, his widow succeeded to a life estate. She executed a deed of gift of part of her husband's estate in favour of her children by a second marriage. Thereupon, a male reversioner brought a suit for a declaration that the gift would not be binding after the death of the widow. One of the pleas in defence was that Tota had left a daughter who had an infant son, and that during the life-time of the daughter and the daughter's son, the plaintiff would not be the nearest reversioner to the estate of Tota and consequently would not be entitled to bring the suit. The plaintiff had made no mention of the daughter or her son in the plaint, and denied that she was Tota's daughter, but the court found against him on this point. It was also found that, but for the daughter and her son the plaintiff and one Tulshi, who was the second husband of the widow,

\*First Appeal No. 220 of 1916, from a decree of Man Mohan Sanyal, Additional Subordinate Judge of Meerut, dated the 12th of June, 1916.

(1) (1880) I. L. R., 6 Cal., 764. (2) (1918) I. L. R., 35 All., 326.

(3) (1912) I. L. R., 34 All., 207.