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the suit was not cognizable by a Revenue Court, the plain meaning of the plea taken is that, if the defendant can establish the facts to be as alleged by him and as alleged in the plaint, then the plaintiff will not be entitled to the remedy claimed by him in the Revenue Court. There was nowhere any plea that the suit as brought was not cognizable by a Revenue Court, that is to say, that assuming the allegations made in the plaint to be true, the Assistant Collector had no jurisdiction to entertain that plaint. In any case the question is covered by recent authority. I refer to the unreported decision of a Bench of this Court in *Deo Narain Singh v Silla Bahsh Singh* (1), decided on the 25th of May, 1916. The present case is in my opinion a stronger one in favour of the plaintiff appellant. In any event I, sitting as a single Judge, am bound to follow the decision above referred to. The result is that I so far accept the appeal that I set aside the decree of the learned District Judge and remand the case to his court, with directions to return the memorandum of appeal to the defendants appellants for presentation to the proper Revenue Court having jurisdiction to entertain it. Costs here and hitherto will be costs in the cause."

The plaintiff appealed.

Pandit *Mohan Lal Sandal*, for the appellant.

RICHARDS, C. J. and BANERJI, J.:—We agree with the view taken by the learned Judge of this Court and dismiss the appeal.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Muhammad Rafiq.

EMPEROR, v. KIFAYAT.*

1918
December, 20.

Act III of 1867 (Public Gambling Act), sections 4 and 8—Conviction for being found in a common gaming house—Forfeiture of money found in the house legal.

A conviction under section 3 or section 4 of the Public Gambling Act, 1867, differs from a conviction under section 13, in that in the case of the latter the forfeiture of money found with the persons convicted is not lawful, but in the case of the former the forfeiture of money or securities for money found in a common gaming house is lawful. *Emperor v. Tota* (2) referred to.

This was a reference made by the Sessions Judge of Meerut in the case of one Kifayat convicted under section 4 of the Public Gambling Act, 1867. The facts of the case are set forth in the referring order, which was as follows:—

"This is an application for revision of an order of Babu Jai Narain, Special Magistrate, convicting the applicant under section

* Criminal Reference No. 835 of 1918.

(1) S. A. No. 409 of 1915.

(2) (1904) I. L. R., 26 All., 270.

4 of the Gambling Act (III of 1867) and sentencing him to pay a fine of Rs. 10.

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“Two points have been argued on this application. The first that it is not proved that the house was used as a common gaming house, and the second that the learned Magistrate was not justified in ordering the confiscation of the money found on the premises. With regard to the first point, it is sufficient to say that the police acted under a proper warrant in searching the house and that instruments for gaming were found in the room. The owner of the house, who has also been convicted but has not applied for revision of the order, was met coming out of the room as the police entered it. Under section 6 of the Act, therefore, the presumption is that the house was used as a common gaming house. The evidence produced to rebut this presumption is quite unsatisfactory.

“With regard to the other point the ruling in *Emperor v. Maturwa* (1) makes it clear that the order directing the confiscation of the money found in the house was quite illegal. I have, therefore, to report the case for the orders of the Hon'ble High Court with the recommendation that this part of the Magistrate's order be set aside.

“The Magistrate will be asked to furnish any explanation he may think fit.”

The Magistrate's explanation was as below :—

“In this case Gabdu (owner of the gambling house) was convicted and sentenced to one month's rigorous imprisonment under section 3/15 of the Gambling Act, III of 1867.

“Kifayat and three other accused were convicted under section 4 of the said Act and sentenced to pay a fine of Rs. 10 each, out of the above five accused, Kifayat alone filed a revision in the Sessions Court.

“In the order of the learned Sessions Judge, dated the 9th of November, 1918, the ruling *Emperor v. Maturwa* (1) was also referred to me, but it is clear that it is concerned exclusively with section 13 of the said Act and not with section 3 or 4. This fact is mentioned in my judgment, dated the 24th of September, 1918, which I have marked with a red pencil. I may add here that under section 8 of the said Act this Court was quite competent

(1) (1918) I. L. R., 40 All., 517.

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to order confiscation of money as well as gambling instruments found on the spot."

Neither the accused nor the Crown was represented.

RAFIQ, J.:—I have read the order of reference of the learned Sessions Judge of Meerut. It appears to me that in view of the provisions of section 8 of Act III of 1867, the order about the forfeiture of the money seized at the house is correct, *vide Emperor v. Tota* (1). Let the record be returned to the lower court.

Reference rejected.

APPELLATE CIVIL.

Before Mr. Justice Piggott and Mr. Justice Walsh.

MUHAMMAD SHARIF (PETITIONER) v. RADHA MOHAN (RECEIVER).*

1918
December, 21.

Insolvency—Rights of judgment creditor of insolvent as against the receiver in respect of execution of his decree before and after adjudication.

In 1914 one B. P. attached in execution of his own decree a decree held by his judgment-debtors against other parties. In the same year a petition in insolvency was filed against the judgment-debtors, and in 1915 an *interim* receiver was appointed. The judgment-debtors deposited the amount due under the attached decree in court to the credit of B. P. who proceeded to draw out a considerable part of it. After this the judgment-debtors were declared insolvents and, subsequently to the adjudication, B. P. assigned his rights under the attached decree to one M. S.

Held that the receiver had no right to recover the money realized by B. P. prior to the adjudication: but in respect of any balance of the decretal money remaining due after the date of the adjudication the assignee might prove his claim as against the insolvents. The assignee would, however, be bound to account for any part of the decretal money which he might have realized after the adjudication. *Sri Chand v. Murari Lal* (2) and *Dambar Singh v. Mumawar Ali Khan* (3) referred to.

THE facts of this case are fully stated in the judgment of the Court.

Dr. S. M. Sulaiman, for the appellant.

Muushi Harnandan Prasad, for the respondent.

PIGGOTT and WALSH, JJ.:— This is an appeal from the order of the District Judge in an insolvency matter, dated the 8th of March, 1918.

*First Appeal No. 85 of 1918, from an order of W. F. Kirton, District Judge of Benares, dated the 6th of March, 1918.

(1) (1904) I. L. R., 26 All., 270. (2) (1912) I. L. R., 54 All., 628.

(3) (1917) I. L. R., 40 All., 86.