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as already stated, must be deducted and this will leave a sum of Rs. 500. I would, therefore, vary the finding of the lower court by reducing the sum of Rs. 1,500 to one of Rs. 500. The parties in both courts will get proportionate costs according to their success and failure.

MUKERJI, J. :— I agree.

BY THE COURT. :—The appeal is allowed in part. The decree of the court below is modified and the decree in favour of the respondent is reduced to the sum of Rs. 500. The parties will receive and pay their costs in proportion to their respective success and failure throughout.

Decree modified.

REVISIONAL CRIMINAL.

Before Mr. Justice Iqbal Ahmad.

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August, 3.

EMPEROR *v.* DARAB AND OTHERS.*

Act No. III of 1867 (*Public Gambling Act*), *sections* 3 *and* 4—*Accused charged under different sections but offences committed in course of same transaction—Joint trial—Criminal Procedure Code, section* 239 (*d*).

There is nothing to prevent persons charged with offences under sections 3 and 4 of the Public Gambling Act, 1867, being tried jointly with persons charged only with offences under section 4, provided that all the offences were committed in the course of the same transaction. *Makhan* v. *Emperor* (1) and *Emperor* v. *Fazal Din* (2), dissented from.

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

Mr. *P. N. Sapru*, for the applicants.

The Assistant Government Advocate (Dr. *M. Waliullah*), for the Crown.

*Criminal Revision No. 394 of 1927, from an order of Raghunath Prasad, Sessions Judge of Meerut, dated the 18th of May, 1927.

(1) (1909) 5 Indian Cases, 720. (2) (1914) 27 Indian Cases, 844.

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IQBAL AHMAD, J. :—Darab and Taqi applicants were charged with offences punishable under sections 3 and 4 of the Gambling Act and were tried jointly with the other applicants who were charged under section 4 of the Act. The learned Magistrate found Darab and Taqi guilty under both the sections and the remaining applicants under section 4. He ordered Noor Ahmad to execute a bond for Rs. 50 and to provide a surety in the sum of Rs. 50 to appear and receive sentence when called upon during the period of three months, and in the meanwhile to keep the peace and be of good behaviour. He sentenced Darab to three months' rigorous imprisonment and a fine of Rs. 200, and he fined the other applicants. The learned Sessions Judge on appeal has affirmed the conviction and the sentences passed by the learned Magistrate.

It appears that, on the basis of certain information supplied to it, the police obtained a warrant for the search of the house of Darab and Taqi applicants and, in accordance with that warrant, raided their house on the 26th of March, 1927. It has been held by both the courts below that the search warrant was illegal and, therefore, the courts below have rightly held that no presumption under section 6 of the Act arose that the house was a common gaming house, or the persons present in the house were there for the purpose of gaming. But the courts below, on a consideration of the materials upon the record, have come to the conclusion that the case against each of the applicants was satisfactorily proved. With this finding I cannot interfere in the exercise of my revisional jurisdiction.

It is argued that Darab and Taqi could not be jointly tried with the other applicants inasmuch as Darab and Taqi were charged not only with the offence punishable under section 4 of the Act but also with the offence punishable under section 3 of the Act, and the other applicants

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were not charged under that section. I am unable to agree with this contention. It is true that Darab and Taqi were charged with an offence different from the offence with which the other accused were charged, but the offences alleged to have been committed by all the applicants were committed in the course of the same transaction, viz., in the course of gaming and, therefore, in view of the provisions of clause (*d*) of section 239 of the Code of Criminal Procedure all the applicants could be jointly tried. In support of his contention the learned counsel for the applicants has relied on the cases of *Makhan* v. *Emperor* (1) and *Emperor* v. *Fazal Din* (2). With all respect I am unable to agree with those decisions. No reason has been assigned by the learned Judge who decided those cases for holding that the offence of keeping a common gaming house and the offence of gaming cannot be committed in the course of the same transaction.

In my judgement the decision of the courts below is perfectly correct and I dismiss this application.

Application dismissed.

Before Mr. Justice Iqbal Ahmad.

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August, 4.

HAFIZ-UD-DIN *v.* LABORDE.*

Criminal Procedure Code, sections 144 *and* 561A*—Emergency order—Wrongful use of section to procure the delivery of property by the person in possession to the claimant.*

Section 144 of the Code of Criminal Procedure cannot legally be used simply to procure the transfer of property and documents from the person in possession to the claimant because, in the opinion of the court, the claimant is entitled to their possession and when, as a matter of fact, it has been so used, section 561A of the Code enables the court, if it so thinks fit, to direct that the property and documents in ques-

*Criminal Reference No. 369 of 1927.

(1) (1909) 5 Indian Cases, 720. (2) (1914) 27 Indian Cases, 844.