

Bench in that case caused great surprise, and the Government of India, by its Legal Member, wrote to me for an explanation, and particularly for the reason why my judgment in the case of *Mata Deen Dosley v. Chundee Deen Dosley* (1) before referred to had been dissented from. In reply I could only refer them to the judgment of the Full Bench itself, and to the argument maintained by my colleagues in *Mata Deen Dosley v. Chundee Deen Dosley* (1), and the other members of the Court of course declined, and very properly declined, to discuss the matter further. However, this Court has at last by its Full Bench now placed the law on a sound footing.

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In answer to the first question before us, I have simply to repeat that the jurisdiction in the case stated would lie in the Civil and not in the Revenue Court; but in answer to the second question I agree with my colleagues as to the effect of s. 208 of the Rent Act, and the appeal will now be finally disposed of by the Division Bench.

APPELLATE CIVIL.

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 March 9.

Before Mr. Justice Oldfield and Mr. Justice Brodhurst.

PRINGLE (DEFENDANT) v. JAFAR KHAN (PLAINTIFF).*

Money paid—Betting on a horse-race—Entrance-money for horse-race—Agreement by way of wager—Act IX of 1872 (Contract Act), ss. 23, 30.

Where a person who had lost a bet on a horse-race requested another to pay the amount of such bet, agreeing to repay him, and the latter paid such amount, *held* that the money so paid was recoverable from the person for whom it was paid, the consideration for the agreement not being unlawful within the meaning of s. 23 of the Contract Act, 1872, and the agreement not being one by way of wager, within the meaning of s. 30 of the same Act.

Knight v. Fitch (2); *Knight v. Camlors* (3); *Jessopp v. Lutwyche* (4); and *Beeston v. Beeston* (5) referred to.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of the High Court.

Mr. Howard, for the appellant.

* Second Appeal No. 1501 of 1881, from a decree of H. G. Keene, Esq., Judge of Meerut, dated the 6th September, 1881, affirming a decree of Rai Bakhtawar Singh, Subordinate Judge of Meerut, dated the 9th April, 1881.

(1) N.-W.P.H.C. Rep., 1874, p. 118. (3) 24 L. J., C. P., 121.

(2) 24 L. J., C. P., 122.

(4) 10 Exch. 614; S.C., 24 L.J., Exch. 65.

(5) L. R., 1 Ex. D. 13.

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Mr. *Ross*, for the respondent.

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The Court (OLDFIELD and BRODHURST, JJ.) delivered the following judgment:—

OLDFIELD, J.—The plaintiff in this suit, Jafar Khan, was a jockey of Mr. Collins, who died on the 12th January, 1879, and he has brought this suit against Mr. Collins' executor for the recovery of certain sums of money alleged to have been due by Mr. Collins. The Courts below have decreed the claim. The defendant has appealed in respect of three items of the claim,—(i) a sum of Rs. 1,005 which the plaintiff avers was due by Collins to the Honorary Secretary of the Calcutta Races on a lottery account, and which he, acting on the authority and by the request of Collins, paid through Mr. Kelly Maitland—(ii) a sum of Rs. 74, which was due by Collins to the Honorary Secretary of the Calcutta Races for the horse-racing account of the horse "Mars," which he discharged for Collins after his death on the 19th April, 1897—(iii) a sum of Rs. 100 paid by him on the 31st December, 1878, on account of Collins and with his authority for the entries of the horse "Mars" at the Dacca Races.

The appellant contends that there was no authority on Collins' part to pay any of the above sums; that the payment of them is not proved; that they are sums claimed in respect of wagering transactions which the plaintiff cannot recover at law; and that an item of Rs. 1,000, which the plaintiff received from the defendant, should be set off against his demand; also that the debt must be held to be satisfied by the legacy left by Collins to the plaintiff in his will. In regard to the questions of fact which the appeal raises we find that the Courts below have held that the sum of Rs. 1,005 was due by Collins on a lottery account in connection with the Calcutta Races, in which the plaintiff had no personal concern, and that he had the authority of Collins to satisfy the debt, which as a matter of fact he did: the sum was in the first instance paid by Mr. Maitland and recovered from the plaintiff.

In regard to the other sums it is found that they were due by Collins for entries at the races for his horse "Mars," and that they were paid by the plaintiff and on Mr. Collins' authority and request.

With these findings of fact we are precluded from interfering in second appeal, but as the point was much pressed on us by the counsel for appellants, that the findings proceed on no evidence, and as the character for integrity of the plaintiff is at issue, we think it right to state that in our opinion the findings are based on adequate evidence, and we see no reason to doubt their correctness or the *bond fide* character of the claim, nor are we of opinion that the claim is one which is legally unsustainable.

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In respect of the item of Rs. 1,005, that no doubt was a debt due by Collins on a race-lottery account, and an action could not have been maintained for its recovery against him, with reference to s. 30 of the Contract Act, being an agreement by way of wager and void at law. But the agreement between Jafar Khan and Collins is of a quite a different character. There is nothing illegal in the consideration of the agreement, whereby Collins promised to repay Jafar Khan the money he paid to satisfy his liabilities on the lottery account. It is not made illegal by the provisions of s. 23, Contract Act; the provisions of s. 294A of the Penal Code do not apply to a lottery of this kind; nor is the consideration otherwise unlawful under s. 23 of the Contract Act; the agreement is only void under s. 30 of the Act. When money has been paid at the request of a person, it can be recovered if the contract is void and not illegal,—see *Knight v. Fitch* (1); *Knight v. Cambers* (2); *Jessopp v. Lutwyche* (3); *Beeston v. Beeston* (4). In the last case there was an agreement that plaintiff should pay defendant certain moneys, and defendant should employ them, with certain moneys of his own, in making bets on the results of horse-races, and should pay plaintiff a proportion of the winnings. He gave a cheque to plaintiff, which was dishonoured, and plaintiff brought an action. It was held that the action was not an attempt to recover under a contract by way of wagering, but for money received by the defendant for which he ought to account to plaintiff. There was nothing illegal in the contract; betting at horse-races could not be said to be illegal in the sense of tainting any transaction connected with it. This distinction between an agreement which is only void and one in which the consideration is also unlawful is

(1) 24 L. J., C. P., 122. (3) 10 Exch. 614; S. C., 24 L. J., Exch. 65.

(2) 24 L. J., C. P., 121. (4) L. R., 1 Ex. D. 13.

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made in the Contract Act. §. 23 points out in what cases the consideration of an agreement is unlawful, and in such cases the agreement is also void, that is, not enforceable at law. S. 30 refers to cases in which the agreement is only void, though the consideration is not necessarily unlawful. There is no reason why the plaintiff should not recover the sum paid by him on this lottery account at the request of Collins.

The next item is Rs. 74, which was paid to the Honorary Secretary of the Calcutta Races by plaintiff for Collins for his horse "Mars," entries for the Calcutta Races. This transaction is open to no objection, either under s. 23 or s. 30 of the Contract Act, coming as it does under the exception of the latter section; and it is found that it was paid at the request of Collins, in consequence of which the plaintiff took upon himself the liability for it, and had been compelled to pay that sum which Collins would have had to pay. The fact that it was paid after Collins' death will not, under such circumstances, affect the plaintiff's right to recover it from the estate.

The last item is Rs. 100, a sum found to have been paid by the plaintiff, at Collins' request, prior to his death, for entry of his horse "Mars" for the Dacca Races. This was a sum which under the circumstances found is clearly recoverable by the plaintiff.

The appellant's claim as to the sum of Rs. 1,000, by way of set-off, in our opinion, fails. There is a finding of fact by the Court below, (and one which we see no reason to interfere with), that this money was paid over to the plaintiff and expended for Collins on quite different account, and had been adjusted, and does not affect this claim.

The plea that the legacy left to the plaintiff by Collins in his will is a satisfaction of any debt owing by the testator to the plaintiff is met by the provisions of s. 164 of the Indian Succession Act. We affirm the decree and dismiss the appeal with costs.

Appeal dismissed.