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the subject. Here it seems to me that it would be unsafe in a case of this nature to direct confiscation of all monies or valuables such as gold watches and ornaments found on the person of a man arrested in a gaming house, and I would therefore accept the revision petitions of Baij Nath and Hem Chand to this extent that I would direct the return to them of the monies found on their persons. In all other respects all the three petitions are dismissed.

N. F. E.

Revision accepted in part.

REVISIONAL CRIMINAL.

Before Mr. Justice Campbell.

BEHARI LAL—Petitioner.

versus

THE CROWN—Respondent.

Criminal Revision No. 1753 of 1926.

Indian Evidence Act, I of 1872, section 25—fact that accused signed recovery list made by police during investigation—whether admissible as evidence that the house searched was accused's property—Confession to Police.

In the present case the Appellate Court held that the prosecution evidence coupled with the fact that the accused put his signature on the recovery list conclusively proved that the accused was in possession of the house from which the articles were recovered.

Held, that if a recovery list signed by the accused petitioner contained a statement that the house belonged to him or was in his possession, the statement was in the nature of a confession to a Police Officer and could not be proved by reason of the prohibition contained in section 25 of the Indian Evidence Act.

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Application for revision of the order of Rai Bahadur Lala Rangī Lal, Sessions Judge, Gujranwala, dated the 4th October 1926, affirming that of Lala Hukam Chand, Magistrate, 1st class, Gujranwala, dated the 12th July 1926, convicting the petitioner.

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NIAMAT RAI, for Petitioner.

R. C. SONI, for Government Advocate, for Respondent.

JUDGMENT.

CAMPBELL J.—The petitioner has been convicted of offences under section 61 of the Excise Act, and the Magistrate's decision was endorsed on appeal by the Sessions Judge. He has come to this Court on revision, the contention being that there is no evidence to support the finding that the house in which the incriminating articles are alleged to have been found belonged to, or was in possession of, the petitioner.

CAMPBELL J.

The final conclusion of the learned Sessions Judge is that the prosecution evidence coupled with the fact that the accused put his signature on the list of recovery conclusively proves that the accused was in possession of the house from which the articles were recovered. I consider it very doubtful whether the fact of the accused putting his signature on the recovery list is admissible in evidence against him in this case. If it is evidence that the premises searched belonged to him, this would be an incriminating statement of the nature of a confession to a Police officer and could not be proved by reason of the prohibition contained in section 25 of the Indian Evidence Act. The rest of the prosecution evidence consists of the statements of Sub-Inspector Ram Rang, Dayal Singh and Suchet Singh. All three describe the search of

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the building where the excisable articles were discovered and speak generally of the place as the accused's house. None of them, however, is a resident of the village, and no reasons are given for calling it the accused's house. The Sub-Inspector has stated that on arriving in the village with a raiding party he saw the accused running through the bazar in a suspicious manner, and that he pursued the accused and found him about to unlock the house in question. He was prevented by the Sub-Inspector and the key was taken from him and the house was guarded. In due course, after the search of other houses, this place was searched and *lahan* and other articles were found in it.

The fact that the accused was trying to unlock the house does not prove conclusively that it was his house. He clearly denied when he was examined in Court, that the house was his and he produced a number of defence witnesses to prove that he did not live in the village. One of the witnesses was the Patwari who stated that the house belonged to Multani Ram, a cousin of the petitioner. This, at any rate, would be one explanation for the accused's alleged behaviour in trying to get into the house when he saw an excise raiding party in the village.

It appears to me that it would have been perfectly possible for the prosecution to prove positively who occupied this particular house. The failure to do so creates a flaw in the case which must be fatal to it.

I accept the petition and acquit the petitioner who will be released and his fine, if paid, will be refunded.

A. N. C.

Revision accepted.