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the correctness or otherwise of the decree, and the sole question before us is to find out the terms and the meaning of the decree.

SHADI LAL C.J.

I, therefore, hold that the judgment-debtor can be removed from the *waqf* property attached to the institution. The result is that I accept the appeal, and setting aside the judgment of Mr. Justice Martineau restore that of the District Judge with costs throughout.

BROADWAY J.

BROADWAY J.—I concur.

N. F. E.

Appeal accepted.

REVISIONAL CRIMINAL.

Before Mr. Justice Broadway.

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Jan. 31.

MISRI LAL, Petitioner

versus

THE CROWN, Respondent.

Criminal Revision No. 1394 of 1926.

Gambling Act, III of 1867, sections 4, 5—Spectators—Burden of proof—Confiscation—of money and valuables found on accused's person—legality of.

Held, that where persons are found amongst the spectators in a gambling house, the *onus* is upon them to prove conclusively that they were nothing more than spectators, and that the accused in this case had failed to discharge that *onus*.

Held further, however (on the general principle that a penal Statute must be constructed strictly in favour of the subject) that under section 5 of Act III of 1867, it would be unsafe in a case of this nature to direct confiscation of moneys or valuables such as gold watches and ornaments found merely on the persons of the accused so convicted.

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Ram Sakhi Ram v. *King-Emperor* (1), *Khair Din* v. *Emperor* (2), *Emperor* v. *Tulla* (3), *Lachmi Narain Marwari* v. *King-Emperor* (4), *Emperor* v. *Walli Mussaji* (5), and *Emperor* v. *Sadashiv Bab Habbu* (6), followed.

Jiwan v. *Queen-Empress* (7), and *Emperor* v. *Maturwa* (8), distinguished.

Emperor v. *Kifayat* (9), referred to.

Mahadeya v. *King-Emperor* (10), not followed.

Application for revision of the order of S. L. Sale, Esquire, Sessions Judge, Delhi, dated the 3rd July 1926, affirming that of Sheikh *Muhammad Arif, Magistrate, 1st class, Delhi, dated the 15th May 1926, convicting the petitioner.*

RAJ KRISHNA, for Petitioner.

RAM LAL, Assistant Legal Remembrancer, for Respondent.

JUDGMENT.

BROADWAY J.

BROADWAY J.—This and the two connected petitions Nos. 1483 and 1526 of 1926 arise out of certain proceedings taken under the Gambling Act, III of 1867, in the Court of Mr. Muhammad Arif, Magistrate of the 1st class. It appears that a raid was made by the Delhi police on the 16th October 1925 on certain premises with the result that 36 persons were arrested and sent up for trial under sections 3 and 4 of the Gambling Act, III of 1867. The result of the prosecution that followed was that the majority of the persons charged were convicted and sentenced to various punishments. One of the persons so arrested was Misri Lal, who was found guilty under section 4

(1) (1921) 63 I. C. 408.
(2) (1926) A. I. R. (Lah.) 290.
(3) (1918) I. L. R. 41 All. 366.
(4) (1924) A. I. R. (Pat.) 42.
(5) (1902) I. L. R. 26 Bom. 641.
(6) (1919) I. L. R. 44 Bom. 686.
(7) 5 P. R. (Cr.) 1898.
(8) (1918) I. L. R. 40 All. 517.
(9) (1918) I. L. R. 41 All. 272.
(10) (1910) 7 All. L. J. 404.

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and sentenced to pay a fine of Rs. 100. He is the petitioner in Criminal Revision No. 1394 of 1926. Baij Nath, Mannu Lal, Ganga Parshad and Tota, the petitioners in Criminal Revision No. 1526 of 1926, were also sentenced under section 4 of Act III of 1867 to various fines and Hem Chand, the petitioner in Criminal Revision No. 1483 of 1926, was sentenced to a fine of Rs. 100 and a note for Rs. 100 found on his person was ordered to be confiscated. On appeal the sentences were upheld in the case of all the petitioners with the exception of Hem Chand and Baij Nath whose sentences of fine were reduced owing to the fact that monies found on their persons had been confiscated.

So far as the convictions of these petitioners are concerned I see no reason to interfere. It has been urged that the evidence of Kabul Singh shows that when the police entered the premises they were followed, if not accompanied, by a certain number of spectators, and that the present petitioners were amongst those spectators. Having regard to the provisions of section 4 in my judgment it was for them to establish conclusively that they were spectators, and the evidence on the record lamentably fails in this respect. It must, therefore, be held that they have been rightly convicted of being present in this gaming house for the purpose of gaming. For Misri Lal Mr. Raj Krishna urged that his youth was in his favour, inasmuch as he is only 16½ years of age. I am unable to see that this is any excuse. If a youth of that age attempts to see life in this manner, steps must be taken to prevent him, and he has not been sentenced for any term of imprisonment so long as his fine is paid up. Mr. Bishen Narain Mathur for Hem Chand has also pleaded the youth of his client. But here

again I am unable to see that the fact that he is young and a student and a son of a respectable gentleman is any excuse for his presence in a gaming house for the purpose of gaming.

The only question that requires consideration is whether the order forfeiting the monies found on the persons of two of these petitioners was warranted in law. It has been urged by the learned Assistant Legal Remembrancer that having regard to the provisions of sections 4, 5 and 8 the order was legal and should not be interfered with in revision. He has also urged that owing to the fact that the learned Sessions Judge has taken into consideration these confiscation orders and has reduced the fines imposed on these petitioners because of their monies having been forfeited, whether the order of forfeiture is strictly legal or not, this Court should not, in its revisional jurisdiction, interfere. Various authorities have been cited, and of these two only are of this Court. One is *Jiwan* v. *Queen Empress* (1), a decision by Mr. Justice Chatterjee which, however, does not touch the point. What was decided in that case was that an order of confiscation could only be passed *after* a conviction had been had. It was not decided whether money found on the person could be confiscated. The second case was *Khair Din* v. *Emperor* (2), in which Mr. Justice Harrison held that money found in such circumstances was not liable to be forfeited. This decision is based on certain authorities which have also been referred to by the learned counsel. In *Emperor* v. *Tulla* (3). Lindsay, J. held that the law does not contemplate the confiscation of money found on the

(1) 5 P. R. (Cr.) 1898. (2) (1926) A. I. R. (Lah.) 280.
(3) (1918) I. L. R. 41 All. 866.

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persons of the accused and a reference was made to *Emperor* v. *Maturwa* (1). This last case, however, was one under section 13 of the Gambling Act and therefore does not appear to me to have any value. Lindsay, J., apparently did not have brought to his notice a decision of the Allahabad High Court by Mr. Justice Rafiq in *Emperor* v. *Kifayat* (2). It would appear that Mr. Justice Rafiq's view was not in accord with that expressed by Mr. Justice Lindsay. In *Mahadeya* v. *King-Emperor* (3), Knox, J., differentiated between convictions under section 4 and section 13 of the Act, and came to the conclusion that in cases under section 4 it was legal to forfeit monies found on the person as in the present case. In most of these cases reference has been made to *Emperor* v. *Walli Mussaji* (4), where it was held that the power of seizing money found in a gaming house under section 8 of Bombay Act IV of 1887 does not extend to money found on the persons of those who may at the time be in such gaming house. To the same effect is a decision in *Emperor* v. *Sadashiv Bab Habbu* (5). Now section 8 of Bombay Act IV of 1887 is in very similar terms to section 8 of Act III of 1867 and the views expressed by Judges of the Bombay High Court therefore afford a very good guide for construing section 8 of the Act now under consideration. Finally, reference was made to *Lachmi Narain Marwari* v. *King-Emperor* (6), where Bucknill, J., considered the provisions of Act III of 1867 and came to the conclusion that the private property of an individual who is found gaming in a gaming house could not be seized and forfeited unless it was quite clear that

(1) (1918) I. L. R. 40 All. 517.
(2) (1918) I. L. R. 41 All. 272.
(3) (1910) 7 All. L. J. 404.
(4) (1902) I. L. R. 26 Bom. 641.
(5) (1919) I. L. R. 44 Bom. 686.
(6) (1924) A. I. R. (Pat.) 42.

there was attached to such private property the taint that it was reasonably suspected to have been used or intended to be used for the purpose of gaming. Now section 5 authorises the seizure of all instruments of gaming and all money and securities for money, and articles of value, reasonably suspected to have been used or intended to be used for the purpose of gaming which are found therein.

It has been urged by Mr. Ram Lal that the word 'therein' does not mean merely within a gaming house, but includes the private property found on the person of an accused while he was in the gaming house. No doubt, strictly speaking, Mr. Ram Lal's contention is correct, but after a consideration of the authorities referred to it seems to me that a stricter interpretation must be given to the word 'therein' as used in section 5. This was emphasized by Stuart, J., in *Ram Sukhi Ram* v. *King Emperor* (1). He says "This section justifies the seizing and forfeiting of money found on the table or on the floor or other places in the house, but not on the persons of the men arrested therein. The reason for this distinction is tolerably obvious. A man found in a common gaming house is liable to have certain money confiscated, but he is not liable to have everything found upon his person confiscated. A man might have currency notes for Rs. 10,000 in his pockets and he might be gambling with 2 anna bits. The law does not contemplate confiscating Rs. 10,000 when the Rs. 10,000 is not being used for the purpose of gaming."

I am aware that the view I am taking is open to a certain amount of criticism but the general principle is to construe an Act strictly, and where there is any doubt such doubt should be given in favour of

(1) (1921) 63 I. C. 408.

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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.

1927

Feb. 1

Criminal Revision No. 1758 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.