

CRIMINAL REVISION.

Before Sir L. H. Jenkins, Chief Justice, and Mr. Justice Batty.

EMPEROR *v.* WALLI MUSSAJI.*

1902.

May 8.

*Gambling—Prevention of Gambling Act (Bombay Act IV of 1887), section 8—
Power of seizing money 'found therein'—Interpretation.*

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.

APPLICATION under section 435 of the Criminal Procedure Code (Act V of 1898) for the revision of convictions and sentences passed by Ráo Bahádur A. G. Kotwal, First Class Magistrate of Thána.

Walli Mussaji, accused No. 1, was charged under the Prevention of Gambling Act (Bombay Act IV of 1887) with keeping a common gaming house at Santa Cruz, and accused Nos. 1—37 with gaming in the said house.

The trial ended in the conviction of accused Nos. 1—5, 6, 9—28, and 37, who were variously sentenced and fined. The Magistrate also ordered "the money found on the persons of the accused convicted to be seized and forfeited to Government under section 8 of the Act."

The accused applied to the High Court under its Criminal Revisional Jurisdiction under section 435 of the Criminal Procedure Code (V of 1898).

R. R. Desai for the accused:—The Magistrate has no power to forfeit the money found on the persons of the accused under section 8 of the Prevention of Gambling Act (Bombay Act IV of 1887). Section 6 of the Act gives the power of seizure, and under section 6 (c) the power is limited to the seizure of money found in the gaming house and not on the persons of those found therein. Section 8 distinguishes between things "found therein" and "found on the persons of those found therein." Under section 6 (d) the persons of those found in the gaming house may be searched, but there is nothing in

* Criminal Application for Revision No, 36 of 1902.

1902,

EMPEROR

v.

WALLI
MUSSAJI.

section 6 or section 8 to authorize the seizure of money found on them.

Ráo Bahádur *Vasudeo J. Kirtikar*, Government Pleader, for the Crown:—The money found on the persons of those found in a gaming house would be money found therein: the words “with all money found therein” in the second paragraph of section 8 of the Prevention of Gambling Act, therefore, give power to a Magistrate to forfeit such money.

Per Curiam:—Following on a conviction under the Bombay Prevention of Gambling Act, 1887, the Magistrate has ordered the money on the persons of the accused to be seized and forfeited under section 8 of that Act, and we are asked to set aside this order in revision. Under that section a Magistrate may “on the conviction of any person for opening, keeping or using a common gaming house, or playing or gaming therein, or being present therein for the purpose of gaming, order all moneys seized therein to be forfeited.” The power of seizure is conferred by section 6, which empowers any Magistrate “upon any complaint made before him on oath that there is reason to suspect any house, room or place to be used as a common gaming house,” and upon satisfying himself, as the section prescribes, to authorize certain specified officers “to seize all instruments of gaming and all moneys and securities for money and articles of value reasonably suspected to have been used for the purpose of gaming which are found therein.” The power of seizing money, therefore, is limited to “moneys which are found therein.” But it is apparent from section 8 that the expression “found therein” is used in contrast with the phrase found “on the person of those found therein,” so that on the phraseology of the section we hold that the power of seizing money does not extend to that found on the person. That this is so, is made clear beyond doubt by sub-section (d) of section 8, which gives the authorized officers power “to search all parts of the house, room or place which he shall have so entered when he shall have reason to believe that any instruments of gaming are concealed therein, and also the persons of those whom he shall so find therein, or take into custody and to seize and take possession of

all instruments of gaming found upon such search." This is the only power of searching the person, and it is clear there is no power to seize money found on the person in such search.

The Magistrate's order as to the moneys found on the person is, therefore, illegal, and must be set aside, and the money must be restored to those from whom it has been taken.

1902.

 EMPEROR
 v.
 WALLI
 MUSSAJI.

ORIGINAL CIVIL.

Before Mr. Justice Starling.

PANDURANG KRISHNAJI AND ANOTHER, (PLAINTIFF), v. DADABHOY
 NOWROJI AND OTHERS (DEFENDANTS).*

1902.

 June 24.

Mortgage—Redemption—Death of mortgagor—Notice by executors of mortgagor to mortgagor to redeem within three months—Sale of mortgaged property by mortgagor in order to pay off mortgage debt—No probate obtained by executors and sale, therefore, not completed—Mortgage debt not paid within period of notice—Negligence of executors—Interest on mortgage ceased to run on expiration of notice to redeem.

In 1898 the plaintiff mortgaged certain property to one Shapurji Sukhia for Rs. 30,000 with interest at $7\frac{1}{2}$ per cent. per annum, the debt to be repayable in one year. Shapurji died in 1901 and the defendants were the executors of his will, which had been lodged for safe custody with the Registrar of Assurances. On 8th January, 1902, the defendants requested the Registrar to lodge the will in the High Court in order that they might obtain probate of it. It was duly lodged on the 24th January, 1902, and was sent to the Translator's Office for translation. On the 3rd February, 1902, the defendants gave notice to plaintiff to pay them the debt due on the mortgage, intimating at the same time that they had taken steps to obtain probate. The plaintiff, in order to pay off the debt, immediately (12th February, 1902) agreed to sell the property to Haji Osman & Co. for Rs. 35,000, the sale to be completed by the 14th April, 1902. The plaintiff informed the defendants of the sale and requested inspection of the deeds relating to the property. The sale, however, was not completed by the 14th April, 1902, in consequence (as the plaintiff alleged) of defendants not having obtained probate, and the purchasers (Haji Osman & Co.) gave notice to the plaintiff that the purchase-money was lying idle and that they would charge interest thereon. The plaintiff informed the defendant of this on the 23rd April, 1902. It appeared that the will was obtained from the Translator's Office on the 9th April, 1902. The plaintiff filed this suit for redemption on

* Suit No. 294 of 1902.