

is a jurisdiction that it has inherited from the old Supreme Court, and was conferred upon that Court by the Charters of the Crown, which invested it with all the process and authority of the then Court of King's Bench and of the High Court of Chancery in Great Britain. I am unable to see that this jurisdiction, in the particular instance in which it has been exercised in the case before us, has been removed or affected, or was intended to be removed or affected, by the new Code of Civil Procedure. If Mr. Hill's contention were right, the High Court would in a measure be disarmed. It would be deprived of the best and most effectual, and, in some cases, the only effectual, means of securing obedience to its orders. On the whole, I am of opinion, that Mr. Justice Broughton was perfectly right in refusing the appellant's application.

1877  
MARTIN  
v.  
LAWRENCE.

GARTH, C. J.—The appeal will be dismissed, but without costs, as no one appears for the respondent.

Attorney for the appellant: Mr. M. Dover.

*Appeal dismissed.*

## APPELLATE CRIMINAL.

*Before Mr. Justice Jackson, Offg. Chief Justice, and Mr. Justice McDonell.*

NAZIR KHAN v. PROLADH DUTTA AND OTHERS.\*

1878  
Nov. 29.

*Gambling—Beng. Act II of 1867, s. 5—Unauthorized Entry and Arrest—Evidence.*

Where a police officer, unauthorized by a Magistrate or District Superintendent of Police, enters and searches an alleged gaming-house, and arrests persons found therein, a Magistrate is justified in convicting such persons, if it is proved without resorting to the presumption created by Beng. Act II of 1867, s. 6, that the house is a gaming-house.

*Sreram Chundra Lerhan v. Bipin Duss* (1) distinguished.

\* Criminal Reference, No. 149 of 1878, from an order made by P. Dickens, Esq., Sessions Judge of Nuddea, dated Krishnaghur, the 19th November 1878.

(1) 2nd Feby. 1877.

1878  
 NAZIR KHAN  
 v.  
 PROLADH  
 DUTTA.

REFERENCE to the High Court under s. 296 of Act X of 1872, and Circular Order of the High Court, dated 5th July 1863, No. 18.

It appeared that a head constable, of his own accord and without any instruction from a Magistrate or District Superintendent of Police, took upon himself to enter a house where gambling was alleged to be going on, and arrested certain persons whom he found there, and, on their being taken before a Magistrate, the latter, on the evidence of the Police Officer and one Hurri Krishna Gosswami to the effect that the house was a gaming-house and belonged to the persons arrested, convicted the accused under Beng. Act II of 1867, and fined them.

On the record coming up before the Sessions Judge, he was of opinion that, having regard to ss. 5 and 6 of Beng. Act II of 1867, and the Notification at p. 1181 of the *Calcutta Gazette* of the 24th June 1868, the proceedings were irregular; and, on the authority of the case of *Syeram Chundra Lerkan v. Bipin Dass* (1), decided on the 2nd February 1877, that the case ought to be sent up to the High Court in order that the conviction might be quashed.

No one appeared to argue the case.

The opinion of the High Court was given by

JACKSON, C. J.—This case is not on all fours with the one referred to by the Sessions Judge.

In that case a Division Bench of this Court, finding no independent evidence on the record that the house which was entered and searched was a gaming-house within the meaning of the Act, held, that it could not be presumed to be so under s. 6 of the Act, because that presumption only arises when the proceedings are authorized by the preceding section, which, for the reasons stated in the judgment, was held not to be the case.

In the case under reference there is the direct evidence of the witness Hurri Krishna Gosswami to show that the house of

(1) Not reported.

Kangali Dhoni was a gaming-house. Therefore, although the action of the Police may have been illegal, this would not exculpate the accused, or prevent the Magistrate convicting them on other independent evidence.

We, therefore, decline to interfere with the order of the Deputy Magistrate.

*Conviction affirmed.*

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## APPELLATE CIVIL.

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*Before Mr. Justice Morris and Mr. Justice Prinsep.*

PORESH NARAIN ROY (PLAINTIFF) *v.* KASSI CHUNDER TALUKDAR (DEFENDANT).\*

1878  
*Dec. 19.*

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*Limitation—Non-payment of Rent by Occupancy-ryot—Title to Land—Admission by Tenant of Liability to pay Rent.*

The non-payment of rent for a term of twelve years and more does not relieve an occupancy-ryot from the status of a tenant so as to give him a title to the land. Rent falls due at certain periods, and the failure to pay it becomes a recurring cause of action, and, therefore, where the right to take rent is admitted by the ryot, no question of limitation can arise.

THIS was a suit for the possession of one biga of land and of a building or a portion thereof. The plaintiff stated that the defendant took possession of a portion of the land in question in the month of Aghran 1275 (December 1868), and gradually encroached on the remainder, and erected buildings thereon; and that in the month of Assar 1279 (June 1872) and the month of Joisto 1281 (May 1874) he (the plaintiff) gave the defendant notice to desist from building and to quit the land; but that, notwithstanding such notice, the defendant remained in possession. Both the plaintiff and the defendant admitted that the land belonged to the jote of one Krishna Kishore Dutt,

\* Appeal from Appellate Decree, No. 819 of 1878, against the decree of J. R. Hallet, Esq., Judge of Zilla Rajshahye, dated the 9th of January 1878, affirming the decree of Baboo Nund Coomar Bose, Roy Bahadur, Subordinate Judge of that District, dated the 28th August 1876.