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of Administration to any provision of the Indian Succession Act. The result is that both these orders, one made on the 1st of October and the other made on the 3rd of December, must be discharged and the parties must be left in the position in which they were when the Letters of Administration were granted to the present respondent on the 6th of September 1918.

This will be without prejudice to any remedy which the persons interested in the estate may have for securing relief by way of such directions to the administratrix as they may desire under the circumstances.

The costs of this appeal and costs in the lower Court subsequent to the order of the 6th of September to come out of the estate.

Order accordingly

R. R.

CRIMINAL REVISION.

Before Mr. Justice Shah, and Mr. Justice Crump.

EMPEROR v. SADASHIV BAB HABBU AND OTHERS.*

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*Bombay Prevention of Gambling Act (Bombay Act IV of 1887), section 8†—
Order of forfeiture—Cash and ornaments found on the person of the gamblers.*

* Criminal Application for Revision No. 354 of 1919.

† The section runs as follows :—

8. On 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, the convicting Magistrate may order all the instruments of gaming found therein, or on the persons of those who were found therein, to be forthwith destroyed,

and may also order all or any of the securities for money and other articles seized, not being instruments of gaming, to be sold and the proceeds thereof with all moneys seized therein, to be forfeited or, in his discretion, may order any part of such proceeds and other moneys to be paid to any person appearing to be entitled thereto.

Cash, ornaments and currency notes found on the person of the accused convicted of gambling, cannot be ordered to be forfeited under section 8 of the Bombay Prevention of Gambling Act, 1887:

Emperor v. Walli Mussaji⁽¹⁾, referred to.

THIS was an application to revise convictions and sentences passed by R. R. Divekar, First Class Magistrate at Honawar.

The accused were tried for offences punishable under sections 4 and 5 of the Bombay Prevention of Gambling Act, 1887. Accused No. 1 was convicted under sections 4 and 5 of, keeping a common gaming house and of gambling therein and sentenced to pay a fine of Rs. 75. The remaining accused were convicted of gaming in the common gaming house and sentenced to pay fines of varying amounts.

Cash, ornaments and currency notes were found on the person of the accused in the gaming house. In disposing of them under section 8 of the Act, the trying Magistrate observed as follows :—

The cash, currency notes and ornaments were found both on the gaming place and on the person of the accused as noted in the Panchnama. There is no doubt that they had been used or intended for use in gambling. The several ornaments appear to have been brought for use in case the gamblers became short of cash in the course of the gambling. None of the accused has adduced any evidence to the contrary. In this case, cash, ornaments, currency notes and other property have been attached as having been reasonably suspected to have been used or intended to be used for the purpose of gaming and found therein along with the cash and ornaments, mats, lamps used in gaming, certain papers and sundry things such as keys, postage stamps, penknives, leather pocket, piece of pencil and match box have been seized. These cannot be said to have been used in gaming. These should, therefore, be restored to the respective owners. A pair of Bugadi (ear-ornament worn by women) was found in the coat pocket of accused no. 1 along with cash. It is evident that he had kept it on his person for being pawned for a loan in case he ran short of money in the course of gaming. I hold from the evidence adduced that the cash, ornaments and other articles except those enumerated above had been

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either used in gaming or intended to be used and therefore direct they should be forfeited to Government, section 8 of the Act.

Accused Nos. 2, 5-8 and 15 applied to the High Court.

J. G. Rele for Nilkanth Atmarām, for accused Nos. 3, 5 to 8 and 15:—I submit that the order of the Magistrate directing that the ornaments actually worn by the accused and money found on their person, be forfeited to the Crown is not legal under section 8 of the Bombay Prevention of Gambling Act, 1887. Section 6 of the Act gives the power of seizure and under section 6 (c) the power of seizure is limited to all instruments of gaming and money "found therein", i.e., in the gaming house and not on the person of those found therein. Under section 8, paragraph (1) of the Act, the Magistrate may order all the instruments of gaming found therein or on the person of those who were found therein to be destroyed and under second paragraph of the same section the Magistrate could order forfeiture of money and other articles *not being instruments of gaming*. In this case, however, the Magistrate has found that the ornaments and money were intended to be used as instruments of gaming and therefore he could have at the most directed them to be destroyed under first paragraph of section 8 but his order of forfeiture under second paragraph of the section is inconsistent with his finding as to cash and ornaments being instruments of gaming. These ornaments and cash found on the person of the accused cannot, therefore, be treated as instruments of gaming for the purpose of section 8: *Emperor v. Walli Mussaji*⁽¹⁾.

SHAH, J.:—In this case several accused have been convicted under sections 4 and 5 of the Bombay Prevention of Gambling Act IV of 1887. In the course of the search under the Act not only were certain

articles including cash found in the house attached, but also certain cash, ornaments and currency notes on the persons of the several accused were attached. The trial Magistrate has found on the evidence that the cash, ornaments and other articles except those mentioned in his judgment had been either used in gaming or intended to be used, and he has ordered them to be forfeited to Government under section 8 of the Act.

It is clear from the provisions of section 8 and the decision in the case of *Emperor v. Walli Mussaji*⁽¹⁾ that the power of forfeiture extends only to securities for money and other articles seized in the house which are not instruments of gaming. It is clear from the first paragraph of the section that the convicting Magistrate may order all instruments of gaming, found in the house or on the persons of those who were found in the house to be forthwith destroyed, and it is clear from the second paragraph that the power of forfeiture really is confined to those articles which are not instruments of gaming and which have been seized in the house. The power of forfeiture does not extend to articles found on the persons of the accused which are not instruments of gaming. The order of the Magistrate as to forfeiture seems to me to be inconsistent with his finding as to the cash and ornaments being instruments of gaming. It seems to follow from the terms of section 8 that the cash, currency notes and ornaments found on the persons of the accused cannot be treated as instruments of gaming for the purpose of that section even though they may have been used or may be intended to be used for the purposes of gaming. The cash, currency notes and ornaments found on the persons of the accused cannot be ordered to be forfeited to Government, but ought to be returned to the respective persons from whom they were taken.

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The petitioners before us are accused Nos. 3, 5, 6, 7, 8 and 15. But as the case is brought to our notice on this petition we make the order which would apply to all the accused; on whose persons cash, currency notes and ornaments were found, even though some of them may not have applied to this Court.

The order of forfeiture made by the Magistrate is set aside and the cash, currency notes and ornaments found on the persons of the accused as noted in the Panchnama to which the order of forfeiture relates are ordered to be returned to the respective persons from whom they were taken.

Order set aside.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Shah, and Mr. Justice Crump.

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December 8.

LAXMINARAYAN SHESHGIRI HALDIPUR (ORIGINAL APPLICANT),
APPLICANT v. PARVATIBAI PARMESHWAR MUDBIRI AND ANOTHER
(ORIGINAL OPPONENTS), OPPONENTS.*

Guardians and Wards Act (VIII of 1890), sections 12, 43 and 47—Appointment of guardian of the person of a minor—Custody of minor with a relative pending appointment—Order passed by the Court regarding marriage of minor—Jurisdiction of the Court to pass the order.

A minor girl was left in the custody of her grandmother pending the appointment by the Court of a guardian of her person. In the meanwhile, a proposal of marriage of the girl was brought before the Court, which sanctioned it at first; but the sanction was later rescinded. A second proposal was similarly brought up and sanctioned by the Court. An application having been made to the High Court against the order:—

Held, that though the order as to the temporary custody of the girl was a proper order under section 12 of the Guardians and Wards Act, 1890, yet the

* Civil Extraordinary Application No. 269 of 1919.