

(1878) 01 CAL CK 0002

Calcutta High Court

Case No: None

The Empress on the
Prosecution of Michell

APPELLANT

Vs

Joggessur Mochi

RESPONDENT

Date of Decision: Jan. 24, 1878

Acts Referred:

- Contract Act, 1872 - Section 76
- Criminal Procedure Code, 1898 (CrPC) - Section 418

Hon'ble Judges: McDonell, J; Ainslie, J

Bench: Division Bench

Judgement

Ainslie, J.

We think that the Sessions Judge might have disposed of this case u/s 419, Criminal Procedure Code without a reference to this Court.

2. The words "Court of appeal" in that section are not necessarily limited to a Court before which an appeal is at the moment pending. It may very often happen, as in this case, that the question of the propriety of an order u/s 418 for the disposal of any property produced before the Court may in no way concern the convicted person; and we think it unreasonable to put such a construction on Section 419 as shall make the power of the Judge to modify, alter or annul a Magistrate's order affecting one, contingent on the accident whether another person has or has not chosen to appeal.

3. Section 286, by the words "except in the cases provided for by this Act" must include cases in which the power to alter or annul the order of a Magistrate is expressly given.

4. We are further of opinion that the case does not call for our interference. It is admitted in the order of reference that the note came honestly into the hands of the Poddar, to whom it has been returned by the Magistrate. The Sessions Judge refers

to Section 108 of the Indian Contract Act, and to the definition of "goods" in Section 76 of the same Act, q. v. supra ILR 8 Cal. 379 in which, for the purposes of that particular chapter dealing with contracts of sale, the word is defined.

5. No one has appeared to argue the points raised before us. As at present advised, we are of opinion that the provisions of the Contract Act do not apply to this case. The change of a Government currency note for money is no more a contract of sale than the payment of the same not to over the counter of goods is a sale of the note for the goods. In this last case the note is paid as money being "legal tender" for the amount expressed therein u/s 15, Act III of 1871.^[1] Section 77 of the Contract Act defines "sale" to be the exchange of property for a price, but this is the exchange, of money in one form for money in another form. Either form being legal tender, it is impossible to say that one is the price of the other. If we are to look to Section 76 of the Contract Act, we must read it with Section 77, and this latter section shows that the provisions of that Act, do not apply in this case.

[1]

Section 15: Within any of the said Circles of Issue
issued under this Act from any office of Issue in
Notes where legal tender. Shall be a tender to the amount expired in such r
payment or on account of-
any revenue or other claim to the amount of five rupees and upwards due to
ment of India, any Hum of five rupees and upwards due by the Government of
any body corporate or person in British India:
Provided that no such note shall be deemed to be a legal tender by the Gove
India at any Office of Issue.]