
(1872) 01 CAL CK 0002

Calcutta High Court

Case No: None

Ganeshlal and Another

APPELLANT

Vs

Amir Khan

RESPONDENT

Date of Decision: Jan. 8, 1872

Judgement

Phear, J.

The question on which my decision in this matter turns is simply this:--Do the words of section 3 of Act XXV of 1857,--namely, the words "such an offence as aforesaid" refer to the offences mentioned in the immediately preceding 2nd section of the Act, as well as to the offence of mutiny mentioned Marshall, 259, in the 1st section. Mr. Lowe, on behalf of the judgment-creditors, contends that the words refer to the offence of mutiny only; but the words "such an offence as aforesaid" seem certainly large enough to apply to all the offences previously mentioned in the Act, and they seem to me also almost necessarily to imply a plurality of offences. The words "such an offence" would hardly have been used in connection with the context, if only one offence were referred to. It is also obvious, I think, that there is an intentional distinction of expression on the part of the Legislature in the two passages of the 1st clause of this section. The section runs thus:-- "The forfeiture whether upon conviction of such an offence as aforesaid, or upon an adjudication of forfeiture under this Act." If Mr. Lowe's contention leads to the right construction, then it would have been more simple and consistent for the Legislature to have said upon a conviction of mutiny under this Act," as it has said "on an adjudication of forfeiture under this Act." On the whole, therefore, I think the words "such an offence as aforesaid" do refer to the offences mentioned in the 2nd section, as well as to the offence of mutiny mentioned in the 1st section. Now it is incontestable that the judgment-debtor in this case has been convicted of one of the offences mentioned in the 2nd section. He has been specifically convicted of an offence under Act XI of 1857. Then upon the construction which I feel bound to place on the 3rd section, it follows that the forfeiture declared by Act XI of 1857 of the felon's property, by the operation of the 3rd section of Act XXV of 1857 extends to all property and effects of or to which the offender shall have been possessed or entitled, either at the time of committing the offence, or at the time of the conviction, or

of the adjudication of forfeiture, or at any intermediate time." The property therefore attached in this case was at the time of the attachment, which was admittedly intermediate between the time of the commission of the offence for which the prisoner was convicted, and the time of the conviction, property liable to be forfeited to the Crown by conviction, and was ultimately so forfeited. At the end of the discussion yesterday, I suggested a query whether, in consequence of the property being locally situated in Calcutta, that part of the English law is applicable, which, in the case of a conviction for felony, makes the passage of real property to the Crown take place, not upon the occurrence of the event causing the forfeiture, but upon what is technically called "office found." I have not had the advantage of hearing any argument on this point, and I do not know whether it has ever been held that it is necessary to complete the forfeiture of a felon's property to the Crown that the inquisition should be had or office found, when that property is immoveable property situated in Calcutta. Probably not, for the original necessity of such a proceeding in England depended on the peculiar circumstances of feudal tenure, and even there personal property was never subject to it. More than this a statute of Henry VIII made forfeiture immediate without office found in a case of treason, and the offence for which Amir Khan has been convicted under Act XI of 1857 seems to be almost undistinguishable from the offence of treason. However this may be, it appears to me that the words of the section themselves must be taken to mean forfeiture absolute ipso facto. I don't suppose the Legislature of this country, when passing Act XXV of 1857, had in its mind any such qualification of the term forfeiture as that which I have been referring to, and the section expressly declares that no sale, alienation, or other disposition of such property made subsequent to the commission of the offence shall have any effect against the right of Government "to the forfeiture." I cannot say that I have any doubt that the Legislature intended that the property of the convict, both former and present, should pass at once on the conviction, without anything more, to the Crown, notwithstanding any intermediate alienation.

The application is dismissed with costs.