

Queen-empress Vs. Barton

Queen-empress Vs. Barton

SooperKanoon Citation : sooperkanoon.com/851439

Court : Kolkata

Decided On : Feb-07-1889

Reported in : (1889)ILR16Cal238

Judge : W. Comer Petheram, C.J., ;Wilson and ;Norris, JJ.

Appellant : Queen-empress

Respondent : Barton

Judgement :

W. Comer Petheram, C.J.

1. The facts are stated in the case certified by the Advocate-General, and it is not necessary to re-state them here.

2. It was argued before us, that, under the provisions of the Merchant Shipping Act, 1854, Section 267, the prisoner should have been tried in every respect as if he had been tried at the Central Criminal Court in London, and the cases of Queen v. Thompson I B.L.R. O. Cr. 1 and Beg. v. Elmstone 7 Bom. Cr. 89 were cited and relied on on behalf of the prisoner. As to those cases, I think it enough to say that the words relied on were obiter dicta only, and that in the result the Court held in each case that the prisoners were properly tried according to the procedure of the Court before which the trial took place, 80 that both cases are authorities against the view which was pressed upon us.

3. The question, however, depends upon the true construction of the statutory law. The Merchant Shipping Act, 1854, by no means contains the whole of the legislation on the subject, and when the whole of the enactments are considered, I think the matter is free from doubt.

4. The first statute in point of time which it is necessary to notice is 12 and 13 Vic, c. 96, Section 1. That Act provides that if any person is charged in any colony with an offence committed on the seas, he shall be dealt with there, as if the offence had been committed within the limits of the local jurisdiction of the Courts of Criminal Justice of such colony.

5. Next in order of time comes the Merchant Shipping Act, 1854, 17 and 18 Vic, c. 104, Section 267. That section, so far as it is material to the present question, provides that all offences committed afloat against a person, by any seaman employed in any British ship, shall be inquired of, heard, and tried in the same manner as if such offences had been committed within the jurisdiction of the Admiralty of England.

6. The next statute on the subject is the Merchant Shipping Amendment Act, 1855, 18 and 19 Vic, c. 91. Section 21 provides that if any British subject charged with having committed any crime or offence on board any British ship on the high seas is found within the jurisdiction of any Court of Justice within Her Majesty's dominions, which would have had jurisdiction to try the case if the offence had been committed within its jurisdiction, shall have jurisdiction to try the case as if the offence had been committed within its jurisdiction.

7. The next enactment is 23 and 24 Vic, c. 88. It extends the provisions of 12 and 13 Vic, c. 96, to India.

8. The last enactment on the subject is contained in the Merchant Shipping Act, 1867, 30 and 31 Vic, c. 124. Section 11 of this Act provides that, if any British subject commits any offence on board any British ship or on board any foreign ship to which he does not belong, any Court of Justice in Her Majesty's dominions, which would have had cognizance of such offence, if committed on board a British ship within the limits of its ordinary jurisdiction, shall have jurisdiction to hear and

determine the case.

9. If the whole of these enactments apply to the case of an offence committed by a British seaman on board a British ship on the high seas, it is clear that the case must be tried by the Court before which the trial takes place according to its own procedure, as both the 12 and 13 Vic, c. 96, and the Merchant Shipping Amendment Act, 1855, expressly provide that the Court to which the jurisdiction to try the case is given, shall have the same jurisdiction as if the offence had been committed within the limits of its local jurisdiction. And it has not been argued before us that this would not be the case, but it has been contended that as Section 267 of the Act of 1854 is for the benefit of, or at least has reference to, a particular class, the general legislation contained in the other statutes cannot operate to control the effect of that section. I cannot accede to this argument, because I think that the section is only a part of the legislation intended to give various Courts in Her Majesty's dominions jurisdiction to try offences committed on the high seas, and is not for the benefit of any particular class. I think, however, that even if. Section 267 is read alone, it does not bear the construction sought to be placed upon it by Mr. Graham. If the section is read without any portion of it, except those which relate to the expression in the same manner, it will read that offences committed by seamen employed in a British ship afloat, out of Her Majesty's dominions, shall be tried in the same manner as if the offence had been committed within the jurisdiction of the Admiralty of England. This in my opinion must mean, shall be tried by the same Court which would have tried the case if the offence had been committed within the jurisdiction of the Admiralty of England, but does not in any way affect the practice of the Court to which the jurisdiction is given. For these reasons I think that the prisoner was properly tried according to the ordinary practice of this Court, and that the evidence was properly admitted.

Wilson, J.

10. I am of the same opinion, and I think that, when the statutes are looked at in their natural connection, there cannot be any doubt about the matter.

11. The question before us is, whether the prisoner ought to have been tried, not according to the course of procedure followed by our own Court, but by such a course of procedure as would have been followed by the Courts which ordinarily exercise criminal jurisdiction in England in cases within the jurisdiction of the Admiralty.

12. There are two Acts which deal with the general question as to how criminal offences, committed within the jurisdiction of the Admiralty, are to be tried here and elsewhere. The first is 12 and 13 Vic, c. 96, which, in its first section, provides in substance that criminal offences committed within the jurisdiction of the Admiralty are to be tried in any Colonial Court, in the same manner as if the offence had been committed within the ordinary jurisdiction of such Court. Then there is Act 23 and 24 Viet., c. 88, which extends this provision to India, declaring that India is to be regarded as a colony within the meaning of the earlier Act.

13. These Acts have been construed both by this Court in *Queen v. Thompson* 1 B.L.R. O. Cr. 1 and by the Bombay High Court in *Beg. v. Elmstone* 7 Bom. Cr. 89, and it seems to me that the effect of these cases, so far as procedure is concerned, is to say that offences committed within the jurisdiction of the Admiralty are to be tried by the Indian Courts according to the course of their own procedure.

14. Having thus ascertained the general rule for the trial of offences committed within the jurisdiction of the Admiralty, we come next to the particular provisions in the several Merchant Shipping Acts which deal with cases which either do not or may not fall within the ancient jurisdiction of the Admiralty.

15. The first of these is the section of the Merchant Shipping Act, 1854, 17 and 18 Vic, c. 104, upon which reliance has been placed, namely, Section 267. This section deals with cases which might or might not fall within the Admiralty jurisdiction. It deals with offences committed by British seamen either ashore or afloat out of Her Majesty's dominions. The next Act is the Merchant Shipping Act, 1855, 18 and 19 Vic, c. 91, Section 21, which goes a step further and deals with offences committed by any British subject on board a British ship on the high seas or in a foreign port, or by a foreigner on board a British ship on the high seas. And Section 11 of the Merchant Shipping Act, 1867, 30 and 31 Vic, c. 124, goes on to

create a further extension because it includes cases not only of offences committed on board British ships but offences committed by British subjects on board foreign ships to which they do not belong,' It seems to me that the real intention of these sections is not to interfere with the course of procedure laid down in the General Act, 23 and 24 Vic c. 88, but to secure that, in cases analogous to those of offences committed within the jurisdiction of the Admiralty, though not strictly within it, the same rules of procedure shall apply.

Norris, J.

16. I am of the same opinion and substantially for the reasons given by my brother Wilson.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com