

CRIMINAL REVISION.

Before Pearson and Jack JJ.

MEHER SARDAR

v.

KING-EMPEROR.*

1930

May 22.

Appeal—Section 59 of the Indian Forest Act (XVI of 1927), scope of—Claimant of the property seized, if can maintain an appeal—Indian Forest Act (XVI of 1927), ss. 57, 59.

Under section 59 of Indian Forest Act, a person who, though not an accused person or a party to a proceeding under the Act in the trial court, but claimed to be interested in a boat used in the commission of the offence and confiscated, could maintain an appeal.

The phrase "any person claiming to be interested in the property so seized" used in section 59 is not confined in its scope to the conditions contemplated in section 57.

The words "so seized" refer to the "seizure under section 52" which includes seizure of tools, boats, etc.

RULES obtained by claimants.

In Criminal Revision Case No. 1, the facts were that six persons obtained from the Forest Department a permit to collect honey in the Sundarban forests. While there, their boat was searched on suspicion by the forester and twenty iguana skins were found concealed therein. In due course they were placed on trial and convicted and sentenced on their own plea of guilty. In disposing of the case, the learned magistrate by his order dated the 29th August, 1929, directed the boat and other implements to be confiscated under section 55. On the 19th July, 1929, before the conclusion of the trial, the petitioner, Meher Sardar, made an application to the court, claiming that the boat belonged to him and the accused had hired his boat and in support of his claim produced a *bhâgrapatra*, namely, an agreement for hire. He stated that he had no idea that any forest offence would be committed. The trial court did not enter

* Criminal Revision, Nos. 1 and 2 of 1930, against the order of E. S. Simpson, Sessions Judge of Khulna, dated Sept. 16, 1929, confirming the order of J. K. Biswas, Subdivisional Magistrate of Khulna, dated July 29, 1929.

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into the matter of his claim, but ordered the confiscation of his boat.

In Criminal Revision Case No. 2, a forest officer, Babu Kulachandra Sarkar, while patrolling the reserved forest in the Sundarban Division, saw a boat in an out of the way place. He grew suspicious and, on making a search in the forest, recovered some iguana skins in a sack. The seven occupants of the boat were tried for an offence under the Forest Act. Five of them were acquitted and two were convicted and sentenced. The trial court directed the confiscation of the boat. The trial was concluded and the order of confiscation was passed on the 24th August, 1929.

In the first case, the claimant, Meher Sardar, preferred an appeal against the order of confiscation. In the second case, one Ajar Dhali, who was neither a party in the trial court nor made any application before it, preferred an appeal also. The two cases were heard by the Sessions Judge of Khulna, who dismissed them, holding that third parties, claimants, could not maintain an appeal under section 59 of the Forest Act. Thereupon, the petitioners in the two cases obtained the present Rules.

Sureshchandra Talukdar (with him *Haridas Gupta*) for the petitioners. The learned District Judge was wrong in dismissing these appeals on the preliminary ground that the appellants had no *locus standi*. They were undoubtedly persons who claimed interest in the properties seized and as such came directly under section 59 and could maintain the appeal. The language of section 59 is clear and there is no reason why any *tortious* interpretation should be given.

Anilchandra Ray Chaudhuri for the Crown. Although section 59 apparently supports the appellant, the general scheme of the Act indicates a limited interpretation of these words to avoid anomaly. After the seizure under section 52, if the accused is apprehended, a case starts. The only parties

at such trial are the Crown and the accused and no third party has been given any *locus standi*. There is no provision for the investigation of the claim of third parties analogous to the provisions in the Civil Procedure or other Codes. Section 55 clearly indicates that a boat, even of a third party, is liable to confiscation. The real aim is to punish persons who are really at the back of the smuggling and furnish implements. It is only in the case contemplated by section 57 that a third party has been given a *locus standi*. Section 59, referring to persons claiming interest in the property, must, by necessary implication, be limited to that case only. A court of appeal merely sets right the errors of the trial court. Otherwise, it leads to this anomaly that, although the trial court cannot investigate the claims of third parties and consequently there is no record of the same, the appeal court will be bound to enter into it and to take evidence and investigate as an original court. The legislature has not left the case of an innocent owner unprovided for. His proper remedy is to approach the Local Government under section 61, who, if satisfied about his claims, will at once release his property. This is a much simpler and more appropriate remedy and fits in with the scheme of the Code.

PEARSON AND JACK JJ. In this case, an order has been made by the Subdivisional Magistrate of Khulna confiscating a boat, said to belong to the petitioner, under the provisions of Chapter IX of the Indian Forest Act. The boat has been confiscated under the provisions of section 55. On appeal to the learned Judge, he has dismissed the appeal, holding apparently *inter alia* that the applicant was no party to the proceedings in the original court and no investigation as to his claim for relief from confiscation was made in that court, and that, under the provisions of section 59 of the Indian Forest Act, he is not entitled to a determination of that question on appeal.

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The language of section 59 is this: "The officer "who made the seizure, under section 52, or any of his "official superiors, or any person claiming to be "interested in the property so seized, may appeal" from the order of confiscation. The contention before us has been that the phrase "or any person interested "in the property so seized" has reference only to the circumstances previously contemplated and provided for in section 57. Section 57 provides a special procedure when the offender is not known or cannot be found and it relates to the forest produce and provides that no order of confiscation is to be made in that case amongst other things without hearing the person, if any, claiming any right thereto and the evidence, if any, which he may produce in support of his claim. We are unable to give effect to the contention that the clause already quoted from section 59 is to be confined in its scope to the conditions contemplated in section 57. The first canon of construction of a statute is that you must take the language as it stands and, if it is clear, give effect to it. There is no possible ground for saying that the phrase "any person "claiming to be interested in the property so seized" should be construed as limited to the case contemplated by section 57, when no mention is made of any such limitation: the language of the section is perfectly clear and unrestricted in its terms and must be given effect to accordingly. Apart from that, the words "so seized" logically and grammatically refer to the "seizure under section 52," which includes seizure of tools, boats, *etc.*

The only other argument placed before was that, even if it was conceded that the present applicant had any *locus standi* before the appellate court, it should be laid down that his contention there must be limited to this, that the order for confiscation will not stand because the boat was not used in the commission of the offence; and that once it is shown that it was in fact used the order for confiscation must stand as a matter of course. To any such proposition laid down in such broad terms, we are unable to assent. It need

only be said that the matter is one to be determined upon such evidence as there may be in the particular circumstances of each case.

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The Rules, accordingly, are made absolute in these terms and the matters must go back to the learned Judge for determination of the question according to law.

Rules absolute.

A. C. R. C.