

## CRIMINAL REFERENCE.

*Before Mr. Justice Prinsep and Mr. Justice Trevelyan.*

## THE QUEEN-EMPRESS v. MOORE.\*

1893  
June 12

*Companies Act (VI of 1882), ss. 35, 252—Magistrate, jurisdiction of—Jurisdiction—“Forfeit”—“Penalty”—Share warrant not duly stamped—Stamps on share warrants—Criminal Procedure Code (Act X of 1882), s. 32.*

There is no distinction between the word “forfeit” as used in section 35 of the Indian Companies Act and the word “penalty” as used in other sections of the Act, and the omission to duly stamp a share warrant under that section is an offence under the Act punishable by a penalty, to enforce the payment of which a Magistrate has jurisdiction under section 252.

In a case under section 35 a Magistrate has no option but to inflict the full fine of Rs. 500 if the offence be proved.

Where a person was charged as being the principal officer of a company, with having issued nine share warrants not duly stamped, in respect of which the penalties claimed under section 35 amounted to Rs. 4,500, and where it was contended that the infliction of such a penalty was beyond the jurisdiction of the Magistrate, which under the provisions of section 32 of the Code of Criminal Procedure was limited to inflicting a fine of Rs. 1,000; *held*, that the issue of each of the nine share warrants was a separate offence, and the fact that several offences had been committed, and therefore that the Magistrate’s power to fine would extend to more than Rs. 1,000, was not affected by that section of the Code.

THE accused in this case, who was alleged to be the principal officer of a Company known as the “People Printing and Publishing Company, Limited,” was charged with an offence under section 35 of the Indian Companies Act, 1882, namely, issuing certain share warrants of the Company not duly stamped. It appeared that the warrants were in favour of the bearer and were only stamped with a one-anna stamp, whereas it was contended that the proper amount of stamp duty exceeded that amount, being an *ad valorem* duty which in the case of some of the warrants amounted to 6 annas each and in others to 12 annas.

\* Criminal Reference No. 2 of 1893, made by F. J. Marsden, Esq., Chief Presidency Magistrate of Calcutta, dated the 31st of May 1893.

At the commencement of the hearing of the case before the Magistrate, Counsel on behalf of the accused took the objection that the Magistrate had no jurisdiction in the matter, as he was only empowered under section 252 of the Act to take cognizance of offences under the Act declared to be punishable by a penalty, and section 35 inflicted no penalty, but merely a forfeit, and as such was only recoverable by civil process.

The Magistrate thereupon stopped the further hearing of the case and referred the question to the High Court under the provisions of section 432 of the Code of Criminal Procedure. The letter of reference was in the following terms:—

“I have the honor to refer the following under the provisions of section 432 of the Code of Criminal Procedure for the opinion of the High Court.

“The defendant is charged in the above case under section 35 of the Indian Companies Act, 1882, with having issued certain share warrants without the same having been duly stamped. Section 35 of the Act declares that ‘If a share warrant is issued without being duly stamped, the Company issuing the same, and also every person who at the time when it is issued, is the Managing Director, or Secretary, or other principal officer of the Company, shall forfeit the sum of Rs. 500.’

“It has been contended by Mr. Hyde, for the defence, that this Court has no jurisdiction under the said section, inasmuch as the sum of Rs. 500 is a forfeit and not a “penalty” within the meaning of the Act, and being a forfeit should be recovered in the Civil Court.

“It appears clear that if a Presidency Magistrate has jurisdiction under section 35, no discretion is left to him, but in the case of each insufficiently stamped share warrant he is compelled to direct both the defendant and the Company each to forfeit the sum of Rs. 500. This, I apprehend, could scarcely have been the intention of the Legislature. In the present case the defendant is charged with having issued nine share warrants without the same being duly stamped, and section 35 of the Act would apparently require from him a forfeiture of Rs. 4,500, and also a forfeiture of a like sum from the Company, making a total of Rs. 9,000.

“Mr. Apear, for the prosecution, contended that not only has a Presidency Magistrate jurisdiction, but also that he has discretion as to the amount to be forfeited, and is in no way compelled to enforce the forfeiture of the full amount of Rs. 500.

“I would call their Lordships’ attention to section 32 of the Criminal Procedure Code which limits the amount of fine a Presidency Magistrate is empowered to inflict to Rs. 1,000, and section 35 of the Indian Companies Act would seem to be in direct conflict with this.

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“ The questions, therefore, on which I have the honor to ask an expression of their Lordships’ opinion are—

“ 1. Is the issuing of a share warrant, the same not being duly stamped, an offence within the meaning of Act VI of 1882 ?

“ 2. Is the forfeiture provided by section 35 of Act VI of 1882 a penalty within the meaning of section 252 of the said Act ?

“ 3. Having regard to sections 35 and 252 of Act VI of 1882, has a Presidency Magistrate jurisdiction to impose a forfeit under section 35 of the Act ?

“ 4. If a Presidency Magistrate has jurisdiction, has he any discretion empowering him to impose a lesser forfeit than Rs 500 in the case of each share warrant ? ”

At the hearing of the reference

Mr. *Hyde* appeared for the accused.

Mr. *T. A. Apear* for the Crown.

Mr. *Hyde*.—The only section conferring jurisdiction on the Magistrate is section 252, and that gives him jurisdiction only in cases where an offence declared to be punishable by a penalty under the Act is disclosed. Section 35 in express terms provides for a “forfeit” and not a “penalty,” and by the use of the word “forfeit” it is clear that the Legislature intended something different from a “penalty.” This is the only section in the Act which provides for a “forfeit,” and it provides that it is to be the specific sum of Rs. 500, and apparently leaves no discretion to the Court as to the amount. In other sections of the Act which provide for penalties, such as sections 66, 68, 69, 71, 75, the Act provides that the penalty inflicted shall *not exceed* a specific sum. Some distinction must therefore be drawn between the meaning of the words “forfeit” and “penalty,” and when you find that section 252 gives the Magistrate summary jurisdiction in cases brought before him, it never could have been intended that such jurisdiction should be exercised in cases such as this, where the amount claimed from the accused is Rs. 4,500, as he is charged in respect of nine warrants. In prosecutions under the Stamp Act the Magistrate has a discretion as to the amount of the penalty he inflicts, and in other sections of this Act where the offences are of a more serious character than under this section, he has a like discretion. This all points to the fact that a civil liability was contemplated by the Legislature and not a summary trial before a

Criminal Court. This view is confirmed when you see that section 35 of the Act is taken *verbatim* from 33 and 34 Vic., c. 97, section 127, except that Rs. 500 is substituted for £50. Under that Act (section 26) it is provided that penalties are to be recoverable by information in the Court of Exchequer in the name of the Attorney-General, thereby showing that a civil and not a criminal liability is incurred. Section 26 of that Act has, it is true, not been incorporated in the Indian Companies Act; but that was unnecessary, as section 144 of Act X of 1875 has not been repealed by Act X of 1882, and that section provides for the Advocate-General exhibiting informations in the High Court for all purposes for which the Attorney-General may exhibit informations on behalf of the Crown in the Court of Exchequer. The power, therefore, to recover forfeits to the Crown exists, and it must be taken that the Legislature by incorporating section 127 of the English Stamp Act of 1870 in the Indian Companies Act, did not intend to give greater powers than was given under that Act, as, if such had been the intention, the recovery of a forfeit would have been expressly provided for in section 252, or the wording of section 35 altered, to bring it into conformity with the other penal sections of the Act. It is true the marginal note to section 35 refers to a "penalty;" but so does the marginal note of section 127 of the English Stamp Act, and marginal notes do not necessarily form portions of the Act.

*Mr. T. A. Aycar.*—The issuing of a share warrant not duly stamped is an offence under the Act, and is cognisable by the Magistrate under section 252. There is no distinction between a "forfeit" and a "penalty" as used in the Act. This is shown clearly by the marginal note to section 35, which is taken from the English Act. In this case it is clear that section 252 applies, and that the Magistrate has jurisdiction to try the accused for an offence under the Act.

The opinion of the High Court (PRINSEP and TREVELYAN, JJ.) was expressed in the following terms:—

This is a reference from the Chief Presidency Magistrate of Calcutta. The defendant is charged under section 35 of the Indian Companies Act, 1882, with having issued certain share

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warrants without the same having been duly stamped. Section 35 provides as follows:—"If a share warrant is issued without being duly stamped, the Company issuing the same, and also every person who at the time when it is issued, is the Managing Director, or Secretary, or other principal officer of the Company, shall forfeit the sum of Rs. 500."

The questions which we are asked are, first—"Is the issuing of a share warrant, the same not being duly stamped, an offence within the meaning of Act VI of 1882?" Second—"Is the forfeiture provided by section 35 of Act VI of 1882 a penalty within the meaning of section 252 of the same Act?" Third—"Having regard to sections 35 and 252 of Act VI of 1882, has a Presidency Magistrate jurisdiction to impose a forfeit under section 35 of the Act?" and Fourth—"If a Presidency Magistrate has jurisdiction, has he any discretion empowering him to impose a lesser forfeit than Rs. 500 in case of each share warrant?"

The first question argued before us is whether the Presidency Magistrate has any jurisdiction to fine a person issuing a share warrant not duly stamped. It was contended that because the word "forfeit" occurs in section 35 and the word "penalty" occurs in other sections of the Act, a distinction must be made between "forfeit" and "penalty," and that although under section 252 of the Companies Act, a Presidency Magistrate may deal with an offence declared to be punishable by a penalty, he could not do so in a case under section 35. It was suggested that the remedy was by information under section 144 of Act X of 1875, and that, having regard to the fact that there was that remedy, the Legislature had omitted to enact a provision similar to section 26 of the Stamp Act, 1870 (33 and 34 Vic., c. 97), although they had taken from section 127 of that Act the words contained in the last portion of section 35 of the Indian Companies Act.

This difficulty, if it be one, arises from the Legislature having adopted *verbatim* a part of the English Statute without adopting the other parts bearing on it, or making it completely correspond in phraseology with the terms of the Indian Bill. It does not appear that the Legislature here really intended to make any distinction between a "forfeit" and a "penalty." In ordinary parlance, those

words are usually interchangeable, and in legislative nomenclature they are sometimes used one for the other. In the Stamp Act, to which we have referred, we find that, although the different sections which inflict a fine upon omissions to comply with the provisions of that Act provide that the offending person shall "forfeit" certain sums, section 26, which provides for the mode of recovering such forfeits, describes them as "penalties." If the contention of the learned Counsel here was correct, and if it were that a penalty and a forfeit were not the same thing, section 26 of the Stamp Act, 1870, would be meaningless and would have nothing to apply to. We think it quite clear that the Presidency Magistrate has jurisdiction under section 252 to deal with a charge of the kind in this case.

It is not necessary for us to consider whether there be also a remedy by information under section 144 of the High Court's Criminal Procedure Act, 1875.

There is no doubt that the omission to stamp a share warrant is an offence under the Indian Companies Act, and it is, as we have shown, an offence declared punishable by a penalty. The Magistrate has jurisdiction.

In this way we answer the first three questions referred to us.

The learned Magistrate refers to section 32, Code of Criminal Procedure. That section gives him power only to fine up to Rs. 1,000. We do not think that that section affects the present case. Section 35 of the Indian Companies Act inflicts a penalty of Rs. 500 in respect of each share warrant issued without being duly stamped. The issue of each share warrant not duly stamped is a separate offence. The fact that several offences may have been committed, and therefore his power to fine would extend to more than Rs. 1,000, is not affected by section 32, Code of Criminal Procedure.

The last question is not, we think, a difficult one. Sections 68 and 69, 71, 75, &c., provide for penalties not exceeding certain sums. This distinction of words, we think, makes it quite clear, if it were not otherwise made so, that the Magistrate has no discretion at all. The words of section 35 are imperative. They provide that if warrants are issued without being duly stamped, the Company and every person, &c., &c., shall forfeit the sum of Rs. 500. This

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is an express penalty fixed by the Statute for the offence. The Magistrate, if the offence is proved, is bound to impose a fine of Rs. 500 in respect of each offence. It is for the Revenue authorities to determine whether they would enforce such penalties.

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## APPELLATE CIVIL.

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*Before Sir W. Comer Petheram, Knight, Chief Justice, and  
 Mr. Justice Norris.*

1892  
 December 22.

BARAHI DEBI (ONE OF THE DEFENDANTS) v. DEBKAMINI DEBI  
 AND ANOTHER (PLAINTIFFS) AND ANOTHER (DEFENDANT).\*

*Hindu Law—Partition—Bengal School of Law—Partition of one item of joint family property by outside shareholder—Widow's share on such partition.*

The right of a widow (a member of a joint Hindu family) to a share in lieu of maintenance only arises when there is a partition of the joint family estate in the sense that it ceases to exist as a joint estate. Hence upon a partition enforced by a stranger in respect of property which forms merely one item of the joint estate, the widow is not entitled to such share, if, notwithstanding such division, the main estate remains undivided.

*Held*, upon the facts of this case that the widow was not entitled to such share.

THE facts in this case were shortly as follows:—

One Rama Nath Goswami, governed by the Bengal school of Hindu law and possessed of considerable property, died on the 12th of October 1884, leaving him surviving his widow Barahi Debi and two sons, Debendro Nath Goswami and Jogendro Nath Goswami. Amongst the properties left by him was an undivided one-third share in two houses at Barrackpore.

Debkamini was the owner of the remaining two-thirds of the two houses, and after the death of Rama Nath Goswami, she purchased from the elder son, Debendro Nath, his half share of the one-third

\* Appeal from Original Decree No. 28 of 1891, against the decree of Baboo Radha Krishna Sen, Subordinate Judge of 24-Pergunnahs, dated the 30th of December 1890.