1951 *Present :* **Jayatilleke C.J. and Gunasekara J.**

SEYAVARTHANA, Petitioner, *and* HUDSON (Collector of Customs, Jaffna), Respondent

*S. C. 595—Application for a Writ of Mandamus on the Collector of Customs, Jaffna*

*Customs Ordinance (Cap. 185)—Seizure of boat or goods—Quantum of security to be given by owner—Section 146.*

Under section 146 of the Customs Ordinance, if the owner of the goods seized as forfeited does not require the goods to be delivered to him he is under no obligation to give security in a sum equal to the value of the property seized. If no such delivery is asked for, security for costs alone need be given.

THIS was an application for a writ of *mandamus* on the Collector of Customs, Jaffna.

*H. V. Perera, K.C.*, with *E. B. Wickramanayake, K.C., H. Wanigatunga, E. R. S. R. Coomaraswamy* and *D. R. P. Goonetileke*, for the petitioner.

*H. W. R. Weerasooriya*, Crown Counsel, with *V. G. P. Perera*, Crown Counsel, for the respondent.

*Cur adv. vult.*

August 27, 1951. JAYATILLEKE C.J.—

This is an application for a writ of Mandamus on the Collector of Customs, Jaffna (hereinafter referred to as the respondent), directing him to fix and accept security for costs alone under s. 146 of the Customs Ordinance (Cap. 185).

On October 19, 1950, a motor launch belonging to the petitioner with a cargo of beedies, foreign liquor and textiles was seized as forfeited for an alleged smuggling offence in contravention of the provisions of the Ordinance. On November 1, 1950, the petitioner by his letter marked B requested the respondent to fix the security for costs to enable him to institute an action. In that letter he informed the respondent that he did not require the launch to be delivered to him pending the determination of the action. The respondent by his letter marked C dated November 2, 1950, informed the petitioner that for purposes of action under s. 146 of the Ordinance security for costs alone was insufficient and fixed the security for the launch at Rs. 35,000 and for costs at Rs. 3,000. The present application is to compel the respondent to accept security for costs alone under the section.

S. 146 is not a very good specimen of the draftsman's art, and, though it has been on the statute book for nearly ninety years, it has not, I

understand, so far received any judicial interpretation. In *Mohideen v. The Attorney-General*[1] Howard C.J. said:

"I consider that the section must be construed in a broad sense in consonance with natural principles of justice".

The section reads:

"All ships, boats, goods and other things which shall have been or shall hereafter be seized as forfeited under this Ordinance, shall be deemed and taken to be condemned, and may be dealt with in the manner directed by law in respect to ships, boats, goods, and other things seized and condemned for breach of such Ordinance, unless the person from whom such ships, boats, goods, and other things shall have been seized or the owner of them, or some person authorised by him, shall, within one month of the date of seizure of the same, give notice in writing to the Collector or other chief officer of customs at the nearest post that he intends to enter a claim to the ship, boat, goods or other things seized as aforesaid, and shall further give security to prosecute such claim before the Court having jurisdiction to entertain the same, and to restore the things seized or their value, and otherwise to satisfy the judgment of the Court and to pay costs. On such notice and security being given in such sum as the Collector or proper officer of customs at the port where or nearest to which the seizure was made shall consider sufficient, the ship, boat, goods, or other things seized shall, if required, be delivered up to the claimant; but if proceedings for the recovery of the ship, boat, goods, or other things so claimed be not instituted in the proper Court within thirty days from the date of notice and security as aforesaid, the ship, boat, goods, or other things seized shall be deemed to be forfeited and shall be dealt with accordingly by the Collector or other proper officer of customs."

Two views on the section have been submitted to us. Mr. Perera said that if the owner of the goods seized as forfeited does not require the goods to be delivered to him he is under no obligation to give security to restore the goods or their value. Mr. Weerasooriya on the other hand said that the claimant must in every case, as a condition precedent to instituting his proposed action, furnish security *inter alia* in a sum equal to the value of the property seized.

The section operates to suspend the disposal of seized goods pending the determination by a Court of the question whether the goods should or should not be condemned. The right given by the section to a claimant to canvass the validity of a seizure cannot be regarded as a mere statutory right and nothing more because elementary principles of justice require that the statute must contain a safeguard against abuse or misuse of power by customs officers. It is not sufficient to point out that an owner would, in any event, have an action for damages for a wrongful seizure since damages may, in certain cases, be far less satisfactory a remedy than restoration of the seized property. Hence, the exercise of the right to prevent the disposal of seized goods should not be restricted

[1] *(1948) 50 N. L. R. 217.*

in any unreasonable manner and in interpretation of s. 146 which would unreasonably restrict the claimant's rights should, if possible, be avoided.

The first sentence in s. 146 on the face of it requires that the security furnished by the claimant must cover—

(i) The prosecution of the claim,

(ii) The restoration of the thing seized or their value,

(iii) Satisfaction of the judgment in other respects and the payment of costs.

If this sentence stood alone the conclusion that security in respect of restoration of the goods must always be given by a claimant would probably have been irresistible. But the second sentence clearly contemplates that delivery of goods to the claimant by whom a notice of claim is given is not a necessary consequence of his making the claim. It says that the goods shall be delivered up to the claimant by the collector " if required ". Since therefore the section does contemplate a case where the goods seized remain in the custody of the collector it seems to be absurd to suppose that the legislature contemplated the giving of security for an event which cannot possibly occur. In the present case there is no possibility whatever of it being ever necessary to restore the goods and hence the taking of security against such an event is purposeless.

It seems to me that s. 146 can be only given a reasonable and proper effect by interpreting it in a manner different from the interpretation which it bears on its face. For example, there is no imperative provision that the amount of the security should be in such sum as the Collector considers sufficient. The section only says that where a sum considered sufficient by the Collector is given as security then the goods shall be delivered back " if required ". Hence unless the claimant asks for delivery the Collector will not be able to exercise any discretion as to the sufficiency of the security. Such a construction of the section, although it is the necessarily literal construction, is not one which the Courts would reasonably give. It is apparent that the draftsman has not clearly set out the intention of the legislature with regard to the sufficiency of the security. In order to reach a reasonable construction, just as much as one is compelled to import into the first sentence the notion of the sufficiency of the security so also is one entitled to read into that sentence the implication that security in respect of the goods is only required if delivery is asked for. The draftsman has erred in placing in the second sentence the clause regarding the sufficiency of the security, and in the first sentence the clause regarding security for restoration of the goods. In both respects we are compelled to depart from the literal construction in order to reach a reasonable construction of the intention of the legislature. For these reasons we are of opinion that Mr. Perera's contention is sound and that the application should be allowed. The petitioner will be entitled to the costs of the application.

GUNASEKARA J.—I agree.

*Application allowed.*