

1948

Present : Howard C.J. and Canekeratne J.

MOHIDEEN *et al.*, Appellants, and THE ATTORNEY-GENERAL,
Respondent.

S. C. 484—D. C. Colombo, 17,059.

Customs Ordinance—Forfeiture of goods—Deposit of security—Action for refund of money—Is it available?—Section 146.

The action available under section 146 of the Customs Ordinance to a person whose goods have been seized as forfeited and who has given security is not limited to an action for declaration of title to the goods and the discharge of the bond. He can sue for the return of the money deposited as security.

APPPEAL from a judgment of the District Judge, Colombo.

H. V. Perera, K.C., with *H. W. Jayewardene*, for plaintiffs appellants.

H. W. R. Weerasooriya, Crown Counsel, for the defendant respondent.

Cur. adv. vult.

December 10, 1948. HOWARD C.J.—

This is an appeal from a decision on two preliminary issues in an action instituted by the appellants, the plaintiffs, against the Attorney-General, for the recovery of a sum of Rs. 30,000. The plaint alleged that the plaintiffs had consigned to them thirteen bundles of cow leather from South India to Colombo and by letter dated May 28, 1946, the Principal Collector of Customs informed the plaintiffs that the thirteen bundles were forfeited under section 49 of the Customs Ordinance. Maintaining that the forfeiture of the bundles was unlawful the appellants on May 29, 1946, gave to the Principal Collector of Customs notice in writing that they intend to enter a claim to the thirteen bundles declared forfeit and paid a deposit of a sum of Rs. 30,000 and executed a bond in terms of section 146 of the Customs Ordinance. The appellants contended that a cause of action had, therefore, accrued to them to prosecute their claim as provided in the said bond and to sue the defendants for the recovery of the said sum of Rs. 30,000. On behalf of the respondent it was submitted that the action could not be maintained under section 146 of the Customs Ordinance. Issues 12 and 13 were worded as follows:—

“ 12. Have the plaintiffs in terms of the conditions in the bond dated May 29, 1946, given under the provisions of section 146 of the Customs Ordinance instituted in the proper Court within 30 days of the said bond, proceedings for the recovery of the 13 bundles of leather seized as forfeited under the provisions of the Customs Ordinance.

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13. If issue 12 is answered in the negative can plaintiffs maintain the present action? ”

Section 146 is worded as follows :—

“ 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 authorized by him, shall, within one month from the date of seizure of the same, give notice in writing to the Collector or other chief officer of customs at the nearest port 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, 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.”

It was contended by the Crown that the action brought by the plaintiffs was not in accordance with the provisions of section 146, and must, therefore, be dismissed. The only action available under this section to a person whose goods have been seized as forfeited after having given security within the time prescribed is for declaration of title to the goods, whereas the plaintiffs had merely asked for a refund of the money which they had paid under the bond. In this connection the Crown relied on the judgment of Wijeyewardene J. in *Sangarapillai v. Prasad*¹. In the course of this judgment the learned Judge said that “ the claim contemplated by section 146 in respect of the goods released on security is clearly a claim for declaration of title to the goods and the discharge of the relative bond.” The District Judge stated that he was in complete agreement with this dictum because he construed section 146 to mean that the claimant to the goods is bound to bring an action for the recovery of the goods by way of a declaration that the goods were not liable to seizure and forfeiture. The learned Judge also held that the goods were not released but merely handed over to the claimant pending institution of action contemplated by section 146. It was, therefore, immaterial whether or not the goods had been returned to the claimants. The action prescribed by section 146 was an action, in substance, to recover the goods. He, therefore, answered Issues 12 and 13 in favour of the respondent and dismissed the plaintiffs’ claim.

¹ (1944) 45 N. L. R. 443.

The only question that requires consideration is whether the learned Judge was correct in holding that an action by a person whose goods have been seized as forfeited must under section 146 be for their recovery or in the alternative a declaration that he is entitled to such goods. The dictum of Wijeyewardene J. cited in the lower Court does state that section 146 contemplates a claim for declaration of title to the goods and the discharge of the relative bond. It would appear that this dictum was *obiter*. In that case the action was instituted under section 146 against the Principal Collector of Customs, Northern Province, for the recovery of goods seized. It was held that such an action should be instituted against the Attorney-General. No other point was decided. Although *obiter* the dictum of Wijeyewardene J. is, however, entitled to consideration. But it may be observed that although the learned Judge said that the section contemplated a claim for declaration of title to the goods and discharge of the relative bond, he did not state that this was the only claim that could be instituted or rule out other claims. Section 146 clearly contemplates the position where the person brings an action under the section in respect of the goods seized after the goods have been delivered to him on giving security. In such a case it must be borne in mind that the claimant is not prohibited by the Ordinance, pending the result of the claim, from dealing and disposing of the goods after he has given security. It is quite clear that by the time the claim is considered the goods may no longer be in existence. They may be perishable goods or, as in the present case, goods which may have been converted into something else. The wording of the section is not very clear, but I have no doubt that the intention is to deal with such a position. To ask for delivery of goods which have been delivered to the claimant or for a declaration of title to goods no longer in existence does not make common sense. I consider that the section must be construed in a broad sense in consonance with natural principles of justice. The claim makes it clear that it is founded on a wrongful seizure of the goods. I think that is all that is required. The claimant is at liberty to ask for the remedy which flows from such seizure if unlawful.

I am fortified in my opinion that it is open to the claimant to recover the sum of Rs. 30,000 by the phraseology employed in section 151. This section is worded as follows :—

“ In case any information shall be brought to trial on account of any seizure made under this Ordinance, and a judgment shall be given for the claimant thereof, and the court before which the cause shall have been tried shall certify on the record that there was probable cause of seizure, the claimant shall not be entitled to any costs of suit, nor shall the person who made such seizure be liable to any action or prosecution on account of such seizure ; and if any action shall be brought to trial against any person on account of such seizure, wherein a judgment shall be given against the defendant, if the court before which such information shall have been tried shall have certified on the said record that there was a probable cause for such seizure, the plaintiff shall only be entitled to a judgment for the things seized, or the value thereof, and not to any damages, nor to any costs of suit. ”

The fact that the words "or the value thereof" occur in the section indicates that the claim under section 146 of a person whose goods have been seized is not limited to a demand for the recovery of the goods or a declaration that he is entitled thereto.

For the reasons I have given the appeal is allowed with costs in this Court.

CANEKERATNE J.—I agree.

Appeal allowed.
