

1947

*Present : Wijeyewardene and Jayetileke JJ.*SANGARAPILLAI, Appellant, and THE ATTORNEY-GENERAL,
Respondent.

121—D. C. Inty, Jaffna, 492.

Customs Ordinance (Cap. 185), s. 127—Pleadings—Claim in plaint for a sum exceeding Rs. 1,000 as penalty—Amendment of plaint claiming same sum as forfeiture or penalty—Objection raised that such amendment would permit a claim which would otherwise be prescribed—Validity of such amendment.

The Attorney-General sued the defendant for the recovery of a sum of Rs. 21,000 as "penalty" due under the provisions of section 127 of the Customs Ordinance. More than two years after the institution of the action the Court permitted the plaint to be amended by the substitution of the words "a forfeiture or penalty equivalent to treble the value of the goods for the word "penalty". The defendant, thereupon, moved that the amended plaint be rejected on the ground that it sought to substitute a new cause of action for the original cause of action and that the amendment, if allowed, would have the effect of permitting the plaintiff to sue on a cause of action which was prescribed at the time the amended plaint was accepted.

Held, that the amended plaint did not introduce a new cause of action but set out more clearly how the relief asked for on the original cause of action was assessed.

A PPEAL from an order of the District Judge of Jaffna.

H. V. Perera, K.C. (with him C. Renganathan), for the defendant, appellant.

H. W. R. Weerasuriya, C.C., for the Attorney-General.

May 14, 1947. WIJEYWARDENE J.—

The Attorney-General instituted this action in February, 1943, for the recovery of a sum of Rs. 21,000. It was alleged that the Assistant Collector of Customs, Jaffna, seized on October 10, 1942, a lorry carrying 62 bundles of beedies imported into Ceylon without payment of customs duties and that the lorry and the beedies were forfeited to the Crown under the Customs Ordinance. The Attorney-General then proceeded to set out his claim for Rs. 21,000 as follows in paragraph 4 of the plaint :—

“That the Collector of Customs, Northern Province, acting under the provisions of section 127 of the Customs Ordinance, did on November 26, 1942, impose on the defendant a penalty of Rs. 21,000 in that the defendant was knowingly concerned in conveying and removing the said beedies being goods liable to duties of Customs, with intent to defraud the revenue of such duties.”

The defendant filed answer, pleading, *inter alia*, that “customs duty was duly paid at the place of importation, namely, Kayts”. He pleaded further “that in any event the alleged penalty of Rs. 21,000 was not legally imposed”.

There was a great deal of discussion when the Counsel for the plaintiff and the defendant proceeded under section 146 of the Civil Procedure Code to state, in the form of issues, the various questions of fact and of law to be decided in the case. At the close of the discussion, the District Judge said :—“I am disposed to allow the issues (suggested by plaintiff’s Counsel) but I think the proper course would be for the Crown to amend its pleadings thus giving the defendant an opportunity of meeting the averments in respect of them”. In pursuance of the District Judge’s order an amended plaint was filed on August 20, 1945. The material amendment was effected by paragraph 4 of the new plaint which read :—

“That the Collector of Customs, Northern Province, acting under the provisions of section 127 of the Customs Ordinance, did find that the defendant was knowingly concerned in conveying and removing the said beedies, being goods liable to duties of Customs with intent to defraud the revenue of such duties, and the said Collector did elect to impose on the defendant a forfeiture or penalty equivalent to treble the value of the goods the defendant was knowingly concerned in conveying or removing with intent to defraud the revenue of such duties.”

The defendant filed “a statement of objections” and moved that the amended plaint be rejected for the reasons given in that statement. After hearing argument the District Judge made order accepting the amended plaint and the present appeal is preferred against that order.

It was argued in appeal :—

- (a) that the amended plaint sought to substitute a new cause of action for the original cause of action.

- (b) that the new cause of action could not have been in existence at the time the original plaint was filed,
- (c) that the amendment, if allowed, would have the effect of permitting the plaintiff to sue on a cause of action which was prescribed at the time the amended plaint was accepted,
- (d) that this was a penal action, and, therefore, no amendment of the plaint should be allowed.

The main argument of the appellant's Counsel is based on certain words in section 127 of the Customs Ordinance. That section enacts :—

“Every person . . . who shall be knowingly concerned in conveying, removing, depositing, concealing or in any manner dealing with any goods liable to duties of customs with intent to defraud the revenue of such duties . . . shall in each and every of the foregoing cases forfeit either

- (A) treble the value of the goods, or
- (B) the penalty of one thousand rupees,

at the election of the Collector of Customs.”

I have inserted (A) and (B) in the latter part of the section for facility of reference in the course of this judgment.

That section creates the liability of a defaulter to pay a certain sum demanded by the Collector of Customs and states that the Collector could fix the sum to be demanded either under (A) or (B). Most probably, the Collector would, in the absence of any mitigating circumstances, proceed under (B), if treble the value of the goods is less than Rs. 1,000. It is, however, left to the discretion of the Collector whether he should proceed under (A) or (B) in assessing the liability of the defaulter. The Legislature has vested the Collector with a very wide discretion, as may be seen by reference to section 155 which empowers him, in an appropriate case, to claim an amount less than treble the value of the goods or the sum of Rs. 1,000 mentioned in section 127. The position, therefore, is that a defaulter is made liable to pay a sum duly demanded by the Collector of Customs and the Collector is given the right to assess the amount according to (A) or (B) and demand the payment of a sum even less than the amount so assessed.

As paragraph 4 of the original plaint refers to the amount claimed as a “penalty” imposed by the Collector, the appellant's Counsel argues that it should be presumed that the Collector elected in the first instance to assess under (B) the amount payable by the defendant. It is argued therefrom that the Attorney-General could not have claimed more than Rs. 1,000 in the original plaint. It is then contended that in the amended plaint the Attorney-General is presumably relying on a subsequent election made by the Collector after the filing of the original plaint to assess the liability of the defendant under head (A). All that reasoning is made the basis for the argument that in the amended plaint the Attorney-General is seeking to introduce a new cause of action based on an election made by the Collector after the filing of the original plaint and the amended plaint should not therefore be accepted.

It will be seen that the whole argument rests on the assumption that the use of the word "penalty" in paragraph 4 of the original plaint affords proof of an election by the collector to assess the defendant's liability under (B). To uphold that contention would be to ignore the fact that the Collector has fixed the liability at Rs. 21,000 which he could not do under (B). I believe the draftsman of the plaint used the word "penalty" to mean a fine or forfeiture and not to indicate in any way that the assessment was made under (B).

On the Collector assessing the amount under (A), the original plaint was filed in respect of the amount so annexed. As the defendant's mind, however, appeared to be assailed with doubts whether the Collector made his assessment under (A) or (B), the District Judge considered it would be proper to remove the doubts of the defendant by making it clear that the amount was, in fact, made under (A). The amended plaint was, therefore, filed by the Attorney-General in compliance with that direction of the District Judge. The amended plaint does not introduce a new cause of action but sets out more clearly how the relief asked for on the original cause of action was assessed.

It is not necessary to consider the other points raised by the appellant's Counsel in view of the opinion I have expressed above.

I dismiss the appeal with costs.

JAYETILEKE J.—I agree.

Appeal dismissed.

