

1947

*Present : Howard C.J. and Windham J.*ARUMUGAPERUMAL, Appellant, and THE ATTORNEY-  
GENERAL, Respondent.*S. C. 328—D. C. Point Pedro, 1916.**Customs Ordinance—Forfeiture of boat—Guilty knowledge of owner—Seizure  
—What constitutes—Authority to auction—Opportunity of owner to make  
claim—Sections 127, 128, 132, 146, 147.**The forfeiture of a boat under section 128A (i) of the Customs Ordinance  
is valid irrespective of the guilty knowledge of the owner of the boat.**The seizure contemplated by section 132 of the Ordinance is a physical  
act of seizure.***A** PPEAL from a judgment of the District Judge, Point Pedro.*N. K. Choksy, K.C. (with him H. W. Thambiah, S. Mahadevan and  
B. Gandevia), for the plaintiff, appellant.**H. W. R. Weerasooriya, C.C., for the Attorney-General, respondent.**Cur. adv. vult.*

October 13, 1947. HOWARD C.J.—

This is an appeal by the plaintiff from a judgment of the District Judge, Jaffna, dismissing his action with costs. The action was instituted by the plaintiff against the Attorney-General as representing the Crown praying (a) that a boat belonging to the plaintiff be declared not liable to be sold by the Customs authorities, (b) that the said boat be declared not liable to be forfeited under section 128A of the Customs Ordinance and (c) that the plaintiff be declared entitled to a clearance outwards in respect of the said boat. The facts that led up to the institution by the plaintiff were as follows. The boat valued at Rs. 1,500 was loaded in the South India port of Athirampatanam with an assorted cargo consisting of beedies, gingelly, poonac and other goods. These goods were consigned to different consignees at Point Pedro and left Athirampatanam in the early hours of March 11, 1943. The boat arrived at Point Pedro on March 14, 1943, a Sunday. The manifest of the cargo was handed over by the port authorities at Athirampatanam to Balasundaram, the tindal of the boat. The latter was in complete charge of the vessel on behalf of the plaintiff. The manifest indicated a consignment of 88 bundles of beedies to one S. V. Sivasubramaniam. According to the evidence of Ramachandran, the Sub-Collector of Customs at Athirampatanam, each of these bundles of beedies was a double package consisting of two ordinary packages stitched together. Originally the correct number of beedies had not been inserted, but after the Customs authorities had discovered the mistake the weight of the beedies was doubled and the correction initialled on the shipping documents D 3 and D 4. The actual manifest D1 which was handed over to the tindal at Athirampatanam and submitted to the Customs authorities at Point Pedro contained the weight of 88 single bundles. The shipping documents D 3 and D 4, however, indicated the correct weight. Balasundaram, the tindal, endeavoured to explain the discrepancy in the documents in his evidence. He stated that he found the weight for the 88 bundles of beedies as given in D 1 was in excess of the true weight and he pointed out this mistake to Ramachandran who corrected it to read 1.9.2.24 and initialled it. The District Judge has disbelieved the evidence of Balasundaram and accepted that of Ramachandran. It has, therefore, been established that Balasundaram left port with 88 bundles of beedies, each bundle consisting of two ordinary sized packages stitched together. The manifest, however, was not specific as to the size of the bundles, but as presented to the Customs authorities at Point Pedro indicated a weight of 88 single bundles. Customs duty was paid on 88 single bundles. Balasundaram was unable to account for the disappearance of the remaining 88 bundles. The Crown asked the Court to accept the inference that in order to avoid Customs duty they were landed somewhere else on the northern coast of Ceylon. The District Judge was of opinion that this was the only reasonable conclusion.

In the circumstances as briefly detailed the Customs authorities took the following action. After the cargo had been landed at Point Pedro on March 15, 1943, R. K. Subramaniam, the Sub-Collector of Customs, checked up the documents and weighed the bundles. The weight more

or less agreed with the weight noted in the manifest, the alteration in which bore the initials of the Collector at Athirampatanam and the seal of the port authority. On March 16, 1943, the boat after being washed and fumigated was given coastwise clearance and proceeded to Valvettiturai. The tindal, Balasundaram, had applied for clearance outwards but this had been refused by the Sub-Collector, Point Pedro, on the ground that the figures regarding the weight in the manifest had been altered. On April 20, 1943, the plaintiff wrote P 5 to the Collector of Customs, Jaffna, stating that he understood his boat had been detained on the orders of the Assistant Collector and inquiring why such action had been taken. On April 21, 1943, the Sub-Collector at Point Pedro wrote the following letter P 6 to Balasundaram, the tindal of the boat :—

“ H. M. Customs,  
Point Pedro, 21 April, 1943.

The Principal Collector of Customs, Colombo, has imposed upon you a penalty of Rs. 15,000 under sec. 34 and a further penalty of Rs. 15,000 under sec. 127 of the Customs Ordinance (Chapter 185) and you are requested to remit this amount within 10 days, on receipt of this letter.

You are requested to produce the boat to this port forthwith.

P. P. Balasundaram,  
Tindal of Bt. No. 15.

(Sgd. illegibly)  
Sub-Collector.”

The boat was not apparently produced as requested in P 6, but was kept by the plaintiff at Valvettiturai. On May 14, 1943, the sale of the plaintiff's boat was advertised in the *Government Gazette*, vide P 9. On May 20, 1943, the plaintiff wrote P 7 to the Attorney-General giving notice of his intention to institute an action in respect of the advertising of the boat for sale and also for a declaration that the boat was entitled to a clearance outwards which had been refused.

The District Judge, in dismissing the plaintiff's action, has found (a) that the plaintiff was not in possession of the boat after clearance coastwise was granted at Point Pedro on March 16, 1943, (b) that the declaration of forfeiture of the said boat by the Principal Collector of Customs under section 128A of the Customs Ordinance was not wrongful, (c) that the said boat was liable to be forfeited under that section and sold as forfeit to the Crown under the provisions of the Customs Ordinance, (d) that the plaintiff was not entitled to a clearance outwards without paying the penalties imposed, (e) that the declaration of the detention of the boat under section 26 of the Customs Ordinance was legal, (f) in view of the findings under (d) and (e) the plaintiff was not entitled to maintain the action, (g) the plaintiff could not maintain the action as he had failed to comply with sections 146 and 147 of the Customs Ordinance.

Various points have been raised by Mr. Choksy on behalf of the plaintiff. Section 128A of the Customs Ordinance is worded as follows :—

“ 128A. (1) Any ship not exceeding 250 tons tonnage knowingly used in the importation or exportation of any goods prohibited of import or export, or in the importation, exportation or

conveyance or in the attempted importation, exportation or conveyance, of any goods with intent to defraud the revenue, shall be forfeited.

- (2) The owner or master of any ship exceeding 250 tons tonnage, which would be liable to forfeiture under this section if the ship were of less than 250 tons tonnage, shall forfeit a sum not exceeding ten thousand rupees, and the ship may be detained on the order of the Collector until such sum is paid or until security for its payment is given to the satisfaction of the Collector.”

Mr. Choksy contends that before a ship could be forfeited under subsection (1) of this section the guilty knowledge of the owner in the importation of prohibited goods must be established. There was no proof in the present case that the plaintiff had any knowledge that goods were being imported without the payment of the prescribed Customs duties. There was an absence of any intention to defraud the revenue. It has been found by the District Judge that beedies were imported by this vessel without the payment of the prescribed Customs duties. This finding has not been challenged. The boat was therefore used for the importation of goods prohibited of import with intent to defraud the revenue. In the circumstances I am of opinion that the boat was forfeited under the provisions of section 128A and that such forfeiture was valid irrespective of the guilty knowledge of the owner. In this connection I would refer to the case<sup>1</sup> of *De Keyser v. British Railway Traffic & Electric Co., Ltd.*<sup>1</sup>.

The headnote of this case is as follows :—

“ A motor tank wagon was seized by officers of the Customs and Excise on the ground that it was being used in the conveyance of goods liable to forfeiture under Customs Acts. The owners claimed the vehicle under s. 207 of the Customs Consolidated Act, 1876, and an information was exhibited before justices on behalf of the Commissioners of Customs and Excise for the forfeiture and condemnation of the vehicle under s. 226 of the Act :—

*Held*, that, it having been admitted that the vehicle had been used in the conveyance of goods liable to forfeiture (in which case s. 202 of the Act provides that the vehicle itself shall be forfeited), the justices were bound to condemn the vehicle, s. 226 giving them no discretion to refuse to do so on the ground, for example, of hardship on an innocent owner.”

Section 202 of the Customs Consolidated Act, 1876, was worded as follows :—

“ All . . . . conveyances . . . . made use of in the importation, landing, removal, or conveyance of any uncustomed, prohibited, restricted, or other goods liable to forfeiture under the Customs Acts shall be forfeited . . . . .”

<sup>1</sup> (1936) 1 K. B. 224.

In his judgment on p. 230 Lord Hewart L.C.J. stated as follows:—

“There is no opportunity for mercy with regard to a conveyance which has been forfeited, although there may be grounds for contending that the conveyance does not come within the class of forfeited property.

In the present case no such contention was advanced. All that was argued on behalf of the respondents was that they did not know of the wrongful use for which the lorry was being employed. That circumstance was wholly irrelevant to the proceedings before the justices. It did not affect the purpose for which the lorry had been used. If that sort of argument were to be open to the owner of a conveyance in such a case as the present, the result might be, in the case of two partners, where one was aware of the wrongful use to which the vehicle was being put and the other was not, that the vehicle might be excused from condemnation because of the innocent mind of one of the partners, that result enuring for the benefit of the guilty partner. In the present case the argument adduced before the justices, which was really an argument in mercy, that the owner of the vehicle was not aware of the illegal use to which it was being put, was wholly irrelevant to the only question which the justices had to consider.”

The next point raised by Mr. Choksy was that the Customs authorities could not proceed to advertise the boat for sale merely because of forfeiture under section 128A. Before such action was lawful, the forfeiture must be completed by a physical seizure of the boat under section 132 of the Customs Ordinance. This section provides that “all goods and all ships and boats and all carriages and all cattle liable to forfeiture under this Ordinance, *shall and may be seized* in any place, &c.” Mr. Choksy contends that the words “shall and may be seized” are mandatory and must be read as “must be seized”. Seizure having been made under section 132, ships, boats and goods are deemed and taken to be condemned under sections 146 and 147. These sections give a right to the owner of the goods to make a claim. Mr. Choksy argues that, no seizure having been made under section 132, the plaintiff was deprived of the protection afforded to him of making a claim under section 146. Mr. Weerasooriya on the other hand contends that by the refusal of outward clearance, notification of auction, and the request to Balasundaram, contained in P 6 for production of the boat at Point Pedro there has been a seizure within the meaning of section 132 of the Ordinance. I am unable to accept this contention. The Ordinance contemplates a physical act of seizure. P 6 with its request for production of the boat to Point Pedro indicates clearly that there had at that time been no seizure. Nor do the admissions of the plaintiffs as contained in P 5 and P 7 indicate a seizure as contemplated in section 132. The term “seizure” must be taken in its ordinary and natural meaning and is not a term of art, *vide* judgment of Cave J. in *Johnston v. Hogg*<sup>1</sup>. The ordinary meaning of “seizure” is a forcible taking possession. In this case I am, therefore, of opinion there was no seizure.

The only remaining question for decision is whether in the absence of a seizure the Customs authorities were justified in putting up the boat for

<sup>1</sup> (1883) 10 Q. B. D. 434.

auction. In my opinion Mr. Choksy's contention that further action on the part of the Customs authorities was necessary to complete the ownership of the Crown even though the boat was forfeited under section 128A is in accordance with the law. The words "shall and may be seized" where they occur in section 132 must be construed as "must be seized". In this connection I would refer to *In re John Henry Lamb*<sup>1</sup>. *De Keyser v. British Railway Traffic and Electric Co., Ltd.* (*supra*) also lends support to this contention of Mr. Choksy's.

It is only after the forfeiture of the boat has been followed by "seizure" that sections 146 and 147, providing procedure by which an owner may assert his claim come into operation. As there has been no seizure in this case sections 146 and 147 have not been operative and the plaintiff has had no opportunity of asserting his claim. In the circumstances the Customs authorities have not adopted the procedure required by law to precede the condemnation of the boat. There was therefore no authority to auction the boat. To hold otherwise would be to deprive the owner of a ship the opportunity of making a claim. At the same time the plaintiff having failed to pay the penalties imposed under section 127 of the Ordinance was not by virtue of section 122 entitled to clearance.

For the reasons I have given I think the plaintiff, though not entitled to succeed under paragraphs 12 (ii) and (iii) of his plaint, is entitled to a declaration under paragraph 12 (i) that the boat is not liable to be sold by the Customs authorities. The plaintiff must also have his costs in this Court and the Court below.

WINDHAM J.—I agree.

*Appeal allowed*

