

IN THE SUPREME COURT OF THE WINDWARD ISLANDS AND LEEWARD ISLANDS
(ANTIGUA CIRCUIT)

Suit No. 27 of 1953

Between:

BINDON MARSH

Plaintiff

and

CARDIGAN MCARTHUR STEVENS

Defendant.

Before:

DATE, J.

S. T. Christian, and C. E. Francis for Plaintiff

A. F. Louisy (Acting Crown Attorney) for Defendant.

JUDGMENT.

The plaintiff was the owner of the sloop "Lady Marsh." On 28th January, 1953, the sloop was seized under section 13A of the Smuggling Act, 1895, by Vernon George Edwards, a sergeant of the Leeward Islands Police Force, on the ground that it, being a vessel of less than thirty tons burthen, was within the territorial water of this Presidency and had on board a quantity of spirits and tobacco. In accordance with general practice, Sergeant Edwards delivered the sloop, spirits and tobacco to the defendant, who was then acting as Treasurer and Collector of Customs, Antigua. Section 13 A of the Smuggling Act, 1895, as added by section 3 of the Smuggling (Amendment) Ordinance, 1950, reads thus:—

13 A. Any vessel of less than thirty tons burthen save and except as hereinbefore provided, having on board any spirits or tobacco and arriving at or anchoring or lying to or being within the territorial waters of this Presidency or departing therefrom shall together with the cargo on board thereof, and the furniture, tackle, apparel and boats belonging thereto, be forfeited.

Provided always that the provisions of this section shall not apply where the master of the vessel satisfies the Treasurer that the vessel has arrived, anchored, lain to or was as aforesaid through stress of weather or other good and sufficient cause.

Section 47 of the Trade and Revenue Ordinance, 1900, is also relevant and provides as follows:—

47. All goods and all vessels, boats, conveyances and animals liable to forfeiture under this Ordinance or any other law relating to the revenue may at any time be seized by the Treasurer or any Treasury officer or any person acting under the direction or control of the Treasurer, or by any member of the Police Force or rural constable, or by any officer or person employed for the protection of the revenue or the prevention of smuggling.

Then there is section 15 of the Smuggling Act, 1895, which says that, "Any vessel forfeited by virtue of any of the Revenue Laws may be seized as forfeited by any officer or person having authority to board vessels...and...may be sold by the Treasurer at auction to the highest bidder, and the proceeds of the sale of the same shall be applied in the manner hereinafter provided with reference to fines, forfeitures and penalties."

The sloop and its cargo were put up for sale at auction by the defendant. Its sails, mast, rope fittings and dinghy were sold, as also a small portion of its cargo; the rest of the cargo was destroyed. The sloop itself was withdrawn from sale, the highest bid received being less than half the reserve price fixed. It is still in the possession of the defendant, who is now Treasurer of the Presidency.

On 24th July, 1953, the plaintiff's solicitor wrote to the defendant demanding the return of the sloop and stating that the plaintiff and a crew would call upon the defendant on 27th July, 1953, in order to take over the vessel. When they and their solicitor called on the defendant on 27th July he refused to deliver the sloop, informing them that the matter was one which would have to be dealt with by "the Executive;" the defendant apparently had in mind the provisions of section 21 of the Smuggling Act, 1895, which enables the Governor to remit the whole or any part of any "fine, penalty or forfeiture;" it was not suggested by anyone that the proviso to section 13 A of the Act could be invoked.

Later that same day (27th July) the writ in this action was filed and served on the defendant—claiming the return of the sloop, or alternatively its value £450, and damages for its detention.