

With this brief outline of the salient facts I will proceed to the crux of the case, which is whether a declaration or adjudication of forfeiture by a court of law is a *conditio sine quo non* to any forfeiture under section 13 A of the Smuggling Act, 1895; it is common ground that no such declaration or adjudication was obtained in this instance.

The only case cited by learned counsel for the plaintiff in this connection was *Attorney General v. Hunter*, (1949) 2 K.B. 111, in which the Attorney General of England applied for and was granted a declaration for forfeiture of a ship under the Customs Consolidation Act, 1876. In considering that case, however, it is important to bear in mind section 218 of the English Act, which provides that, "All duties, penalties, and forfeitures incurred under or imposed by the Customs Acts, and the liability to forfeiture of any goods seized under the authority thereof, may be sued for prosecuted determined and recovered by action information or other appropriate proceeding in the High Court of Justice in England." Our relevant enactments contain no such provision; sections 50 to 53 of our Trade and Revenue Ordinance, 1900, which apply also to seizures and forfeitures under the Smuggling Act, clearly contemplate that where anything is liable to forfeiture it may forthwith be seized as forfeited; then, if anyone claims the thing, "the Treasurer within seven days after such claim or, in case of his default, the claimant shall cause a complaint to be preferred for the adjudication of such forfeiture before a Magistrate, and if it is made to appear by the claimant to the satisfaction of the Magistrate that such thing was not liable to forfeiture the Magistrate shall adjudge such thing to be restored, but if the Magistrate is not satisfied, or if the claimant fails to prove that such thing was not liable to forfeiture, the Magistrate shall confirm the seizure, and thereupon the same shall be sold as hereinbefore directed....." No such complaint was preferred by the plaintiff.

Attention was also asked to section 54 of the Trade and Revenue Ordinance, 1900, which provides that "All penalties under *this* Ordinance shall be recoverable before a Magistrate under the provisions of the Magistrate's Code of Procedure Act, 1891"; and it was urged that a forfeiture is in the nature of a penalty and its validity or otherwise cannot be left to be dealt with as a side issue in an action of this kind. Section 54 of the Trade and Revenue Ordinance, it will be observed, does not apply to the Smuggling Act, 1895; but apart altogether from that, it would appear, on reading the whole of the 1895 Act and the 1900 Ordinance, that wherever the Legislature intended to refer to forfeitures it has expressly done so. It is also observed that where, as in the case of the Aliens Land Holding Regulation Act, Cap. 76, it was intended that a declaration of a court should be obtained for the purposes of establishing a forfeiture, the Legislature has so provided.

For all of these reasons, I have reached the conclusion that it was not incumbent on the defendant to initiate proceedings for a declaration or adjudication of forfeiture. I am satisfied that the "Lady Marsh" was seized in the manner stated by Sgt. Edwards in circumstances which provided all requisites for a forfeiture under section 13 A of the Smuggling Act, and that there has been no unlawful detention of the vessel. Judgment will accordingly be entered for the defendant with costs.

W. A. DATE,  
*Puisne Judge.*

28th July, 1954.

ANTIGUA.

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