

are also in my opinion entitled to possession and there will be a declaration and order to that effect and a judgment in their favour for 50%. The plaintiff Manæma will have costs of the appeal as well as costs in the Court below. The other plaintiffs will have costs in the Court below but not costs of appeal as the appeal was entered on behalf of Manæma alone.

1886
MANÆMA
v.
MCARTHUR
AND
COMPANY.

Judgment for plaintiffs.

[APPELLATE JURISDICTION.]

RECEIVER-GENERAL v. BRODZIAK AND COMPANY.

1887
June 14.

Customs Regulation Ordinance 1881, ss. 77, 100—Forfeiture of dutiable goods.

Upon proceedings being taken for the forfeiture of dutiable goods under s. 77 of the Customs Regulation Ordinance 1881,* and the goods having been ordered by the magistrate to be forfeited,

Held, on appeal, that the magistrate was not bound to order the forfeiture, but that he had a discretion given to him under s. 100, to dismiss the case if he thought that no intention to defraud had been shown.

This was an appeal by the defendants against an order made by the Chief Police Magistrate under s. 77 of the Customs Regulation Ordinance 1881, whereby certain goods, the property of the defendants, had been forfeited under the following circumstances. An employé of the firm had passed entries for certain dutiable goods at the Customs, but had not included in those entries certain other goods contained in the same packages, though the invoice of the goods so omitted was presented at the

* As to forfeitures under this section, see now s. 51 of Ordinance I. of 1895.

1887
 RECEIVER-
 GENERAL
 v.
 BRODZIAK
 AND
 COMPANY.

Customs together with the invoices of the goods upon which duty was then paid.

Mr. Solomon, for the appellants, contended that there was no evidence to show that there was any intention to defraud the Customs, but that the order had followed upon the magistrate's declaration that s. 77 (1), under which the information was laid, gave him no option; whereas an option was presented to him by virtue of s. 100. (2)

The Acting Attorney-General (Mr. Winter), for the respondent, argued that it was not necessary to prove any intent to defraud. The Receiver-General did not accept the explanation given as satisfactory; hence the prosecution and confiscation.

(1) S. 77 is as follows:—

“When any dutiable goods are found in any package box or chest containing any other goods for which entries have been passed such dutiable goods if no entry has been passed therefor and their presence before discovery by an officer of Customs has not been disclosed by the owner of the same shall be forfeited to the Crown together with such package and all goods contained therein unless the presence of such dutiable goods is satisfactorily accounted for to the Receiver-General.”

(2) S. 100 is as follows:—

“When any information shall have been laid before any Stipen-

diary Magistrate for the forfeiture of any goods or of any article whatsoever seized under this Ordinance such Stipendiary Magistrate shall issue his summons to the person or persons owning or claiming such goods or other article to appear in support of his claim to the same and upon such appearance or in default after due proof of the service of the summons a reasonable time before the hearing the said Stipendiary Magistrate may proceed to inquire into the matter and shall condemn such goods or other article as aforesaid or make such order as the circumstances require ”

H. S. BERKELEY, Acting C.J. This is an important case and one that has been ably argued on both sides. I do not think that there is any ground for believing that there was any intention on the part of the appellants to defraud the Customs. The letter of explanation written was explicit and the statements made from first to last were perfectly consistent. But, apparently, the question of intent had not been considered by the magistrate, for on reading the judgment I find it stated that the magistrate considered that he had no option but to confiscate. I do not agree with this view of the case as I consider the option is preserved under s. 100. It seems as though the magistrate thought that he was compelled to order the forfeiture of the goods. I hold that the magistrate might, had he chosen, have dismissed the case if he had thought that the omission to make the entry was purely a mistake. I do not believe that there was any intention to defraud, and as I believe that if the magistrate had thought that there was any discretion he would have dismissed the case—a conclusion I arrive at from his own words—I shall allow this appeal, but without costs.

Appeal allowed without costs.

1887

RECEIVER-
GENERAL
v.
BRODZIAK
AND
COMPANY.