

If any malice is alleged in such cases, either against a person performing a judicial act or a person performing in an official capacity a legal duty, it must, I apprehend, be not mere inferential malice to be deduced from the defective mode in which the duty may have been alleged to have been performed, but personal malice which must be directly proved. In these circumstances I hold that there is not in the case any tort set forth which could warrant further inquiry in this case, and that the defendant's pleas upon the admitted facts are a full and complete answer to the case as put before the Court, and that the action must be accordingly dismissed. I allow costs; and, as the plaintiff represents himself as an official of the King of Samoa and only temporarily resident in Levuka, I think it right, in this case, that the attorney should be looked to for the amount in the first instance, leaving him to recover the same from his client. I allow £151 15s. od. in name of costs.

Judgment for defendant with costs.

BRODZIAK AND COMPANY *ats.* RECEIVER GENERAL.

[Appellate Jurisdiction (H. S. Berkeley Acting C.J.) June 14, 1887.]

Customs Regulation Ordinance 1881 ss. 77, 100—Forfeiture of dutiable goods—proceedings taken for the forfeiture of dutiable goods under s. 77 of the Customs Regulation Ordinance 1881,—goods ordered by magistrate to be forfeited—whether magistrate has a discretion as to forfeiture.

An employee of the appellant 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 Customs together with the invoices of the goods upon which duty was then paid. The magistrate held that he had no option save to order forfeiture of the goods.

HELD.—The Magistrate was not bound to order the forfeiture, but that he had a discretion given to him under the Customs Regulation Ordinance, 1881, s. 100, to dismiss the case if he thought that no intention to defraud had been shown.

[**EDITORIAL NOTE.**—S. 100 of the Ordinance of 1881 was as follows :—

“ When any information shall have been laid before any Stipendiary 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 . . . ” *vide* s. 147 of the Customs Ordinance (Cap. 147) Revised Edition Vol. II, p. 1540.

S. 77 of the Ordinance of 1881 was 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 therefore 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 ” *vide* s. 104 of the Customs Ordinance (Cap. 147) Revised Edition Vol. II, p. 1526.

See also (i) *Receiver-General v. Brodziaak and Co.* [1894] 1 Fiji L.R.—as to the discretion in cases within s. 117 of the Customs Ordinance (Cap. 147).

(ii) *Surat Singh v. Receiver-General* [1890] 1 Fiji L.R.—as to procedure.]

APPEAL against an order made by the Chief Magistrate under s. 77 of the Customs Regulation Ordinance 1881, ordering forfeiture of certain goods, the property of the appellants.

P. S. Solomon, Q.C. 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, *F. P. 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.

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.
